SEC. 6. No **PERSON SHALL BE A MEMBER OF THE HOUSE OF REPRESENTATIVES UNLESS HE IS A NATURAL-BORN CITIZEN OF THE PHILIPPINES AND, ON THE DAY OF THE ELECTION, IS AT LEAST TWENTY-FIVE YEARS OF AGE, ABLE TO READ AND WRITE, AND, EXCEPT THE PARTY-LIST REPRESENTATIVES, A REGISTERED VOTER IN THE DISTRICT IN WHICH HE SHALL BE ELECTED, AND A RESIDENT THEREOF FOR A PERIOD OF NOT LESS THAN ONE YEAR IMMEDIATELY PRECEDING THE DAY OF THE ELECTION.**

1. Qualifications of district and party-list Representatives.

A *district* representative must be a natural-born citizen of the Philippines, a registered voter in the district in which he shall be elected, and a resident of that district for a period of not less than one year immediately preceding the day of the election. The qualifications must be possessed on the day of the election.[110]

The qualifications of a *sectoral* representative were not explicitly discussed by the Commission. Since, however, *sectoral* representatives were, for a limited period, meant to take the place of party-list representatives and were a prelude to full implementation of the party-list system, they should have the same qualifications as party-list representatives. A *party-list* representative must possess the same qualifications except for the exemption from the requirement of being a resident of a district for at least one year immediately preceding the election. This is because a party-list representative does not represent a district. It is understood, moreover, that implicit in this requirement is that a party-list representative must be a registered voter and a resident of the Philippines. However, as noted above, *Ang Bagong Bayani* seems to have amended the Constitution by adding the requirement that party-list nominees "must represent marginalized and underrepresented sectors."

The citizenship qualification is that a representative must be a natural born citizen of the Philippines. "Natural-bom citizens," according to the Constitution, "are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accor-

***"Compare* with Espinosa v. Aquino, Jr., Senate Electoral Tribunal, Electoral Case No. 9. January 15, 1969.**

dance with paragraph (3), Section 1 [of Article IV] shall be deemed natural-bom citizens.""

When the second sentence of Section 4, Article IV, was being discussed by the Constitutional Commission, one objection to it was that it would allow citizens by election to qualify for constitutional positions reserved for natural-born citizens. The new provision was nonetheless accepted on the understanding that, if desired, the distinction between different kinds of natural-bom citizens could be made for purposes of qualifying for constitutional offices when qualification for these offices come up for discussion.[112] When these offices, however, were discussed, no distinction was made. Hence, even citizens by election who are deemed to be natural-born citizens satisfy the citizenship qualification for representatives (as well as for Senators, President, and Vice-President).[113] Moreover, the 2001 case of *Bengzon* v. *Cruz"** ruled that a natural born citizen who loses his citizenship by naturalization in another country but later is repatriated recovers his status of being a natural-born citizen and therefore is qualified to be a member of Congress.

The age qualification is the same as the age qualification for representatives under the 1935 Constitution and for Batasan members under the 1973 Constitution — twenty-five years.

A representative must not only be a *qualified* elector, but he must actually be "a *registered* voter."

As to the residence requirement, the meaning of residence as found in the election law under the 1935 Constitution has been retained. *Gallego v. Verra*[114] summed it up thus:

The term *"residence"* as used in the election law is synonymous with *"domicile,"* which imports not only intention to reside in a fixed place but also personal presence in that place coupled with conduct indicative of such intention *(Nuval vs. Guray, 52*

[111] **Article IV, Section 2. *See* dissent discussed under Article IV, Section 3, *supra.***

[114] **I RECORD 355, 369.**

"This expanded meaning of natural-bom citizenship is not a novel idea. The 1971 Constitutional Convention, which first formulated the definition of a natural born citizen as one who is a citizen from birth without having to perform any act to acquire or perfect his citizenship, acting as the sole judge of the qualifications of the delegates to the Convention, voted to consider Delegate Ernesto G. Ang, a natural-bom citizen and therefore qualified to be a delegate in spite of the fact that Delegate Ang was a citizen by election under the 1935 Constitution.

[16]GA. No. 142840, May 7, 2001.
[5]73 Phil.453,455-6(1941).Sec. 6 ART. VI - THE LEGISLATIVE DEPARTMENT 715
Phil. 645). In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must be an *animus non revertendi* and an *animus manendi.* The purpose to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with this purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual; and to the fact of residence there must be added the *animus manendi.*

Such residence, according to *Faypon v. Quirino,*[116] is not necessarily lost even through prolonged absence:

A citizen may leave the place of his birth to look for "greener pastures," as the saying goes, to improve his lot, and that, of course includes study in other places, practice of his avocation, or engaging in business.

The reason for the residence requirement was expressed by *Gallego* thus:"[7]

We might add that the manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community; and when the evidence on the alleged lack of residence qualification is weak or inconclusive and it clearly appears, as in the instant case, that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected.

The definition of residence when written by the Court in *Gallego* had reference to the residence qualification of a Mayor and in *Faypon,* with reference to residence as a requirement for suffrage. The same concept was used for residence as a qualification for representatives in the 1935 Constitution and in the 1973 Constitution. A proposal to make actual physical residence a requirement was rejected by the 1971 Constitutional Convention."[8]

"*96 Phil. 294,299 (1954).
"[7]73 Phil, at 459.
"'Sessions of July 23,1972 and October 12,1972; II RECORD 87 (1986).716 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES
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When the decisions say that "residence" as requirement for Representatives means "domicile," does it mean that a person must be domiciled in the district which he wishes to represent and that he must have been domiciled there for one year immediately preceding his election? Or does it mean that one who has been a temporary resident of a place for a year but has retained his domicile elsewhere may be elected representative of his temporary residence?

It should be noted that the Constitution does not use the word "domiciled." It uses the word "resident." There is a legally recognized difference between residence and domicile. Residence means a place of abode, whether permanent or temporary; domicile means permanent residence to which one, when absent, has the intention to return. Residence, in other words, is not necessarily domicile; but domicile is necessarily residence.

Keeping that distinction in mind, when the Constitution prescribes a residence qualification, does it mean either residence or domicile, or does it mean domicile only? What did the 1935 Constitution, from which this requirement was copied, mean?

The debates about residence during the 1934-1935 Constitutional Convention show that there was a group of delegates led by Delegate Ricardo Nepomuceno, Sr. who favored doing away with any local residence requirement altogether. Nepomuceno argued that it would be "to the interest of the district and to the interest of the Filipino people to choose from as many good Filipinos as may be possible.""[9] This position lost (although later it would win for Senators).

The next debatable point was whether the Constitution should require *actual physical* residence. The first draft of the provision, following the example of the Jones law, provided for *actual* residence. But Delegate Alejandro de Guzman argued against this. He pointed out that residence has two meanings. It can mean either actual or constructive

residence (domicile). He argued against narrowing the meaning to only one half of the word. He said that to narrow it thus would deprive the provinces of individuals who, even if absent from the provinces, *"tanto*

quieren y aman a la provincia y al distrito, mucho mas que los que viven o residen actualment en la provincia."™
De Guzman won the vote. The adjective "actual" was dropped.
The full meaning of residence was restored. But even as late as 1995 the meaning was not yet clear and it became the subject of *Romualdez-Marcos v. Commission on Elections'*[21] and *Aquino v. Commission on Elections}*[22]
The first case involved the candidacy of Imelda Marcos in her native Leyte. The decision did not contain an opinion which commanded the concurrence of a majority even though the Court did rule that Mrs. Marcos had satisfied the residence requirement. Briefly, there were three approaches to this one conclusion. The first was that Leyte had been her domicile of origin and that in all her life she never lost it. Hence, she was qualified to run. The second was that she did lose her domicile of origin because when she married Ferdinand Marcos she acquired the domicile of her husband; but when Ferdinand Marcos died, she automatically reacquired her domicile of origin, and this, early enough to satisfy the one year residence in her reacquired domicile. The third was that, when Ferdinand Marcos died, she was left free to establish her domicile anywhere and she chose to establish it in Leyte early enough to satisfy the one year residence.
From these three approaches, two conclusions may be drawn.
First, if a person retains his domicile of origin, for purposes of the residence requirement for representatives the one year period is irrelevant because, by legal fiction, wherever he may be, he is a resident of his domicile of origin. Second, if a person re-establishes a previously abandoned domicile or acquire a new one, the one year requirement must be satisfied.[1 2 3]
The case of Agapito Aquino was the reverse of that of Imelda Marcos. Aquino's domicile of origin was Tarlac. The Court ruled that
[21] **W. at 41CM12.**
[1 2] **GJi.No. 119976, September 18, 1995.**
[122] **G.R. No. 120265, September 18,1995.**
[23] **Two doctrinal points were raised by dissenting justices. The first point made was that neither the Supreme Court nor the Commission on Elections had jurisdiction to pass judgment on qualifications because such jurisdiction belongs exclusively to the Electoral Tribunal. The second point, conceding that the Commission on Elections could pass judgment on qualification, said that the Supreme Court could only reverse the Commission on the basis of grave abuse of discretion.718 THE 1987 CONSTTTUTION OF THE REPUBLIC OF THE PHILIPPINES**
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Aquino had not abandoned his Tarlac domicile and that, even if he had, he had not been in Makati, the district where he had chosen to run, one year immediately preceding the election. Justice Padilla, in addition, made the suggestion that, even if he had not abandoned Tarlac as his domicile but had established residence in Makati for one year immediately preceding the election, he would be qualified. In other words, Padilla's view was that either domicile or residence would suffice provided that the one year physical presence is satisfied. No justice contradicted this view but none affirmed it either.
The residence requirement was further clarified in *Domino* v. ***COMELEC.'***[24] Records showed that petitioner's domicile of origin was Candon, Ilocos Sur and that sometime in 1991, he acquired a new domicile of choice at 24 Bonifacio St. Ayala Heights, Old Balara, Quezon City, as shown by his certificate of candidacy for the position of representative of the 3rd District of Quezon City in the May 1995 election. Petitioner subsequently claimed that he had effectively abandoned his "residence" in Quezon City and had established a new "domicile" of choice in the Province of Sarangani. He contended that his actual physical presence in Alabel, Sarangani since December 1996 was sufficiently established by the lease of a house and lot located therein in January 1997 and by the affidavits and certifications under oath of the residents of that place that they had seen him and his family residing in their locality.
This, however, was found to be insufficient to establish a new domicile. To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention. It requires a declared and probable intent to make it one's fixed and per-

manent place of abode, one's home. To successfully effect a change of domicile one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose. In other words, there must basically be *animus manendi* coupled with *animus non revertendi.* The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual. The Court, however.
[1]**G.R.No. 134015, July 19,1999.Sec. 7 ART. VI - THE LEGISLATIVE DEPARTMENT 719**
found that the lease contract did not engender the kind of permanency required to prove abandonment of one's original domicile. Moreover, he was found to have registered as a voter in one of the precincts of his former barangay in Quezon City.

The enumeration of qualifications in Section 6 is exclusive. Congress may not add anything to it. Thus, the requirement in Republic Act No. (RA) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of2002,* that candidates for public office should undergo mandatory random drug testing was declared unconstitutional for candidates for national office in *Social Justice Society v. Dangerous Drugs Board.'*[25]

SEC. 7. THE MEMBERS OF THE HOUSE OF REPRESENTATIVES SHALL BE ELECTED FOR A TERM OF THREE YEARS WHICH SHALL BEGIN, UNLESS OTHERWISE PROVIDED BY LAW, AT NOON ON THE THIRTIETH DAY OF JUNE NEXT FOLLOWING THEIR ELECTION.

No **MEMBER OF THE HOUSE OF REPRESENTATIVES SHALL SERVE FOR MORE THAN THREE CONSECUTIVE TERMS. VOLUNTARY RENUNCIATION OF THE OFFICE FOR ANY LENGTH OF TIME SHALL NOT BE CONSIDERED AS AN INTERRUPTION IN THE CONTINUITY OF HIS SERVICE FOR THE FULL TERM FOR WHICH HE WAS ELECTED.**

1. Term of Representatives.

The Constitution has fixed the term of Representatives at three years to be counted from noon on the thirtieth day of June next following their election. The starting date, however, may be changed by law. The date of election, unless otherwise provided by law, is the second Monday of May preceding the start of a new term. The same rule applies to the Senate.

The three-year term for Representatives was arrived at to facilitate synchronization with the six-year term of the President, Vice-President and the Senators. The term of Representatives first elected under the 1987 Constitution, however, began on June 30, 1987 and, like the term of the Senators elected at the same time, did not end until noon of June
'"G.R. No. 157870, November 3,2008.720 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 7
30,1992.[126] This expiry date, which in effect gave a term of five years to the Members of Congress first elected under the 1987 Constitution, was also arrived at in order to facilitate synchronization of congressional election with the next presidential election.

Aside from fixing the term, the 1987 Constitution has also set a limit on the number of consecutive terms a person may serve as Representative. "No Member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." If one is elected Representative to serve the unexpired term of another, that unexpired term, no matter how short, will be considered one term for the purpose of computing the number of successive terms allowed.[127]

The three year term set by the Constitution may not be changed by Congress. May Congress, however, pass a law which can have the effect of shortening a Representative's tenure? The case of *Dimaporo* v. *Mitra, Jr.*[28] involved Section 67, Article IX, of the Omnibus Election Code, BP Big. 881, which said that any "elective official whether national or local running for any office other than the one he is holding in a permanent capacity except for the President and Vice-President shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy." After Congressman Dimaporo filed his candidacy for Governor of the Autonomous Region of Muslim Mindanao, he was excluded from the Roll of Members of the House of Representatives. Dimaporo challenged the law as an unconstitutional shortening of his term. He argued that Article VI specifies the conditions under which a member of Congress may lose his seat: voluntary renunciation under Section 7; forfeiture under Section 13; expulsion under Section 16, and

disqualification under Section 17.[129]
In upholding the validity of the law the Court said:[130]
... [r]ather than cut short the term of office of elective public officials, this statutory provision seeks to ensure that such officials
[126]**Article XVIII, Section 2.**
[127]**II RECORD 592.**
[128]**202 SCRA779(1991).**
***"Id.* at 784.**
***'"Id.* at 790.Sees. 8-9 ART. VI - THE LEGISLATIVE DEPARTMENT 721**
serve out their entire term of office by discouraging them from running for another public office and thereby cutting short their tenure by making it clear that should they fail in their candidacy, they cannot go back to their former position. This is consonant with the constitutional edict that all public officials must serve the people with the utmost loyalty and not trifle with the mandate which they have received from their constituents." This does not shorten the constitutional term of office. What happens is that the tenure is shortened through voluntary resignation.
Correctly the Court said that the law did not shorten Dimaporo's term; it merely shortened his tenure. Nonetheless the question may be raised whether Congress may, in spite of the rule that *inclusio unius est exclusio alterius,* add to the modes of terminating tenure in Article VI as enumerated by Dimaporo. In point of fact earlier statutes prescribing termination of tenure upon filing of a certificate of candidacy were applicable only to local officials.[131]
There is thus an important distinction between the term and the tenure of an elective official. The term is the period of time allotted to the office by law whereas tenure is the period during which the official actually holds office. The rule now, moreover, affirmed in *Farinas, et al. v. Executive Secretary,"*[2] is that a national elective official does not terminate his tenure by the mere fact of having filed for candidacy to a position different from what he is holding. This new rule was established by the Fair Election Law which repealed a contrary rule in the *Dimaporo* case involving the Omnibus Election Code, BP Big. 881.
SEC. 8. UNLESS OTHERWISE PROVIDED BY LAW, THE REGULAR ELECTION OF THE SENATORS AND THE MEMBERS OF THE HOUSE OF REPRESENTATIVES SHALL BE HELD ON THE SECOND MONDAY OF MAY.
SEC. 9. IN CASE OF VACANCY IN THE SENATE OR IN THE HOUSE OF REPRESENTATIVES, A SPECIAL ELECTION MAY BE CALLED TO FILL SUCH VACANCY IN THE MANNER PRESCRIBED BY LAW, BUT THE SENATOR OR MEMBER OF THE HOUSE OF REPRESENTATIVES THUS ELECTED SHALL SERVE ONLY FOR THE UNEXPIRED TERM.
[2]***See* dissent, Gutierrez, *J.***
'"Farinas, et al. v. Executive Secretary, G.R. No. 147387, December 10, 2003. The current rule returns to what it was under the 1935 Constitution.722 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES
Sees. 8-9
1. Filling vacancies.
"In case of vacancy in the Senate or in the House of Representatives, a special election may be called to fill such vacancy in the manner prescribed by law, but the Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term." And, as already noted, service of the unexpired term will be counted as one term for purposes of counting the number of allowable successive terms. Note, moreover, that the holding of special elections has not been made mandatory; and, if held, no set date is prescribed for it. In the case of Senators, for instance, the special election for a vacant seat could wait until the next triennial election for Senators.[1]"
In 2001, a vacancy was created in the Senate when Senator Guingona was made Vice-President to fill a vacancy in the vice-presidency when Vice President Gloria Macapagal-Arroyo was raised to the presidency. The Senate thereupon called on C O M E L E C to fill the vacancy through a special election to be held simultaneously with the regular elections on 14 May 2001. In that election twelve Senators, with a 6-year term each, were due to be elected. When the C O M E L E C issued a resolution providing that the "Senatorial candidate garnering the 13th highest number of votes shall serve only for the unexpired term of former Senator Teofisto T. Guingona, Jr.," the validity of the resolution was challenged on the ground that the C O M E L E C had failed to notify the electorate of the position to be filled in the special election as required under Section 2 of Republic Act N o . 6645 to require senatorial candidates to indicate in their certificates of candidacy whether they were seeking election under the special or regular elections as allegedly required under Section 73 of Batas Pambansa Big. 8 8 1 . In ignoring this

objection the Court ruled that the right and duty to hold special election emanates from the statute and not from a call for the election by some authority like the C O M E L E C . The law itself charges voters with knowledge of the time and place of the election. This is so because a statute that expressly provides that an election to fill a vacancy shall be held at the next general elections fixes the date at which the special election is to be held and operates as the call for that election. Consequently, an election held at the time thus prescribed is not invalidated

by the fact that the body charged by law with the duty of calling the election failed to do so.[134]

SEC. 10. THE SALARIES OF SENATORS AND MEMBERS OF THE HOUSE OF REPRESENTATIVES SHALL BE DETERMINED BY LAW. NO INCREASE IN SAID COMPENSATION SHALL TAKE EFFECT UNTIL AFTER THE EXPIRATION OF THE FULL TERM OF ALL THE MEMBERS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES APPROVING SUCH INCREASE.

1. Salary of Senators and Representatives.

The annual salary of the members of Congress has been initially fixed by Article XVIII, Section 17 at two hundred four thousand pesos, and that of President of the Senate and of the Speaker at two hundred forty thousand pesos. These are subject to change by law. However, "No increase in said compensation shall take effect until after the expiration of the full term of all the Members of the Senate and the House of Representatives approving such increase." This limitation is a carry over from the 1935 Constitution as well as from the 1973 Constitution. Its purpose is to place a "legal bar to the legislators yielding to the natural temptation to increase their salaries. Not that the power to provide for higher compensation is lacking, but with the length of time that has to elapse before an increase becomes effective, there is a deterrent factor to any such measure unless the need for it is clearly felt."[135]

It should be noted that an increase in salary does not take effect "until after the expiration of the full term of *all* the Members of the Senate and of the House of Representatives approving such increase." Although the term of Representatives is only three years, the term of Senators is six years. It is only after the expiration of the six-year term of Senators who approved the increase that the increase in salary becomes effective.[136] Moreover, the retirement benefits of a legislator must be based on the salary in effect during his term and not on the increased salary of the subsequent term.[137]

„Tolentino v. COMELEC. G J 4 . No. 1 4 8 3 3 4 , January 2 1 , 2 0 0 4 .

[135]2 TANADA & FERNANDO, CONSTTTUTION OF THE PHILIPPINES 8 6 7 , *quoted* in PHILCONSA v. Mathay, 18 SCRA 3 0 0 , 3 0 7 (1 9 6 6) .

<See* PHILCONSA v. Mathay, 18 SCRA 3 0 0 , 3 0 7 (1 9 6 6) .**

'"Ligot v. Mathay, 56 SCRA 8 2 3 , 8 2 7 - 8 (1 9 7 4) .724 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES

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The 1935 Constitution provided that the fixed annual compensation of legislators already included "per diems and other emoluments or allowances" and excluded only "traveling expenses to and from their respective districts in the case of Members of the House of Representatives and to and from their places of residence in the case of Senators, when attending sessions of the Congress." Hence, a grant of "per diems and other emoluments or allowances" constituted an increase which could take effect only after the expiration of the full term of the Senators and Members of the House approving such per diems and other emoluments or allowances. Thus, it was that the immediate effectivity of a law allowing retirement gratuity and commutation of vacation and sick leave to Senators and Representatives was disallowed in *PHILCONSA* v. *Gimenez.*™ No similar provision on per diems, emoluments, and allowances appeared in the 1973 provision, nor does one now appear in the 1987 provision. The prohibition of immediate increase in the 1987 text refers only to "salaries," the fixed annual amount.[139]

2. Allowances.

The 1935 Constitution allowed for traveling expenses of legislators but it said nothing about office expenses for supplies and personnel. It is common knowledge, however, that the old Congress was generous in providing for office expenses. As a gesture to the clamor for reform, the move in the 1971 Convention to set a limit to allowable travel, office and personnel expenses gained ground and found a place in the earlier drafts. The 1971 Convention eventually withdrew the gesture.

„PHTLCONSA v. Gimenez, 15 SCRA 479 (1965).

'"It should be pointed out that the 1935 provision did not use the term "salary," which is a fixed amount; rather, it used the broader term "compensation" and then went on to specify that this

included various variables, such as "per diems and other [variable] emoluments and allowances" and excluded only "traveling expenses to and from their respective districts in the case of Members of the House of Representatives and to and from their places of residence, in the case of Senators, when attending sessions of the Congress." [Article VI, Section 14 (1935)] The fact that traveling expenses were singled out for exclusion is extremely significant. Traveling expenses, strictly speaking, are not part of compensation but are more in the nature of reimbursement for actual expenses incident to the discharge of one's duties. They do not therefore constitute additional compensation. Peraha v. Mathay, 38 SCRA 256,260-61 (1971). That traveling expenses were singled out for exclusion from the constitutional prohibition implied, because of the principle *inclusio unius, exclusio alterius,* that other forms of "reimbursement" were not similarly excluded. In other words, the 1935 provision showed "how jealous were the members of the [1935] Constitutional Convention in guarding against the temptation for members of Congress to increase their salaries." PHILCONSA v. Gimenez, 15 SCRA at 489.Sec. 11 ART. VI - THE LEGISLATIVE DEPARTMENT 725

Explaining the deletion of the limitation from the draft, Delegate de Guzman said:[140]

It does not mean that the members of the National Assembly shall not be entitled or shall not enjoy expenditures for travel, supplies, personnel or technical services. It simply means, your Honor, that it is not necessary that we should incorporate it here because the Committee feels that this is an internal matter which could very well be taken up by the National Assembly.

Delegate Yancha explained further:[141]

The National Assembly is granted general legislative powers, particularly in appropriations. The power of the Assembly to enact appropriations is only limited by the provisions in the Constitution; and we feel that appropriating funds for the operational expenses and the maintenance of the National Assembly should not be spelled out anymore in the Constitution because the National Assembly can appropriate those funds.

The 1986 Constitutional Commission chose not to be more strict than the 1971 Constitutional Convention. Does this mean therefore that there is no limit to the amount Congress may appropriate? There is no legal limit. The limit will only be moral, arising from the realization that, according to Section 20, the records and books of account of Congress shall be open to the public in accordance with law and that such books shall be audited by the Commission on Audit which shall publish annually the itemized expenditures for each member.

SEC. 1 1 . A SENATOR OR MEMBER OF THE HOUSE OF REPRESENTATIVES SHALL, IN ALL OFFENSES PUNISHABLE BV NOT MORE THAN SIX YEARS IMPRISONMENT, BE PRIVILEGED FROM ARREST WHILE THE CONGRESS IS IN SESSION. NO MEMBER SHALL BE QUESTIONED NOR BE HELD LIABLE IN ANY OTHER PLACE FOR ANY SPEECH OR DEBATE IN THE CONGRESS OR IN ANY COMMITTEE THEREOF.

1. Privilege from arrest.

The privilege from arrest found in Section 15, Article VI of the 1935 Constitution was the same parliamentary immunity from arrest

'•"Meeting of the 166-Man Special Committee, November 16,1972.
***'"Id.*726 THE 1987 CONSTITUTION**
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enjoyed by the members of the Parliament of England and by members of the United States Congress. As authoritatively interpreted by the Philippine Supreme Court in *Martinez v. Morfe,"*[2] a case involving a delegate to the 1971 Constitutional Convention, contrary to the contention of Delegate Martinez, the privilege did not include immunity from arrest arising from an act or omission punishable by law. It covered only immunity from civil arrests. The Court explained the rationale of the immunity thus:"[13]

The above conclusion reached by this Court is bolstered and fortified by policy considerations. There is, to be sure, a full recognition of the necessity to have members of Congress, and likewise delegates to the Constitutional Convention, entitled to the utmost freedom to enable them to discharge their vital responsibilities, bowing to no other except the dictates of their conscience. Necessarily the utmost latitude in free speech should be accorded them. When it comes to freedom from arrest, however, it would amount to the creation of a privileged class, without justification in reason, if notwithstanding their liability for a criminal offense, they would be considered immune during their attendance in Congress and in going to and returning from the same. There is likely to be no dissent from the proposition that a legislator or a delegate can perform his functions efficiently and well, without the need for any transgression of the criminal law. Should such an unfortunate event come to pass, he is to be treated like any other citizen considering that there is a strong public interest in seeing to it that

crime should not go unpunished. To the fear that may be expressed that the prosecuting arm of the government might unjustly go after legislators belonging to the minority, it suffices to answer that precisely all the safeguards thrown around an accused by the Constitution, solicitous of the rights of an individual, would constitute an obstacle to such an attempt at abuse of power. The presumption of course is that the judiciary would remain independent. It is trite to say that in each and every manifestation of judiciary endeavor, such a virtue is of the essence.

The rationale of limiting the immunity to civil arrests, as expressed by the Supreme Court and reflecting parliamentary experience going back to the mother of parliaments, did not appeal to the wisdom of the

'44 SCRA 22 (1972).

***'Id.* at 37-8.Sec. 11 ART. VI - THE LEGISLATIVE DEPARTMENT 727**

1971 Constitutional Convention. Section 9 of Article VIII of the 1973 Constitution made an assemblyman immune from arrest arising from "all offenses punishable by not more than six years imprisonment." The 1986 Constitutional Commission chose to follow what the 1971 Constitutional Convention did.[144] Needless to say, moreover, the immunity applies for as long as Congress is in session, whether or not the legislator involved is actually attending it.[145]

In the light of the reasoning in the *Martinez* case, however, it is submitted that the expansion of the immunity made by the 1973 and 1987 Constitutions cannot be further expanded by ordinary legislation. In fact, an attempt in the Constitutional Commission itself to extend the protection to immunity from searches was rejected.'[146]

It should also be added that one who has been convicted does not enjoy immunity from arrest. Thus a Congressman who has been convicted of rape and is in detention cannot claim that he should be freed because of popular sovereignty and the need of his constituents to be represented. *People* v. *Jalosjos*,[147] ruled that Members of Congress are not exempt from detention for crime. They may be arrested, even when the House is in session, for crimes punishable by a penalty of more than six months. There is no basis whatsoever for treating him or her differently from other convicts.

2. Parliamentary freedom of speech and debate.

Section 15, Article VI, of the 1935 Constitution provided that "for any speech or debate" in Congress, the Senators and Members of the House of Representatives "shall not be questioned in any other place." *Osmefia, Jr. v. Pendatun*[148] explained the import of this provision thus:

Our Constitution enshrines parliamentary immunity which is a fundamental privilege cherished in every legislative assembly of the democratic world. As old as the English Parliament, its

'[46]The 1973 provision also said that "the Batasang Pambansa shall surrender the Member involved to the custody of the law within twenty-four hours after its adjournment for a recess or its next session, otherwise such privilege shall cease upon its failure to do so." The new Constitution has dropped this on the reasoning that Congress is not the bondsman or custodian of its members, n RECORD 178.

[145]W.at 182-184,195.

'"/d. at 178-185.

[147]G.R. Nos. 132875-76, February 3,2000.

[148]"109 Phil. 863,868-69 (1960).728 THE 1987 CONSTTTUTION OF THE REPUBLIC OF THE PHILIPPINES Sec.11

purpose "is to enable and encourage a representative of the public to discharge his public trust with firmness and success" for "it is indispensably necessary that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense."[149] Such immunity has come to this country from the practices of Parliament as construed and applied by the Congress of the United States. Its extent and application remain no longer in doubt in so far as related to the question before us. It guarantees the legislator complete freedom of expression without fear of being made responsible in criminal actions before the courts or any other forum outside of the Congressional Hall. But it does not protect him from responsibility before the legislative body itself whenever his words and conduct are considered by the latter disorderly or unbecoming a member thereof.

The 1935 provision was a copy of the speech and debate clause of Article I, Section 6, of the United States Constitution. The 1987 text, as also the 1973 text, is a slight modification of the traditional phraseology but it has preserved the traditional limit and scope of the immunity. In the first place, it is a guarantee of immunity from answerability before

an outside forum but not from answerability to the disciplinary authority of Congress itself. In the second place, to come under the guarantee the "speech or debate" must be one made "in the Congress or in any committee thereof." This requirement, however, does not refer merely to the locale of the "speech or debate" but, more importantly, also to its nature. As *Jimenez v. Cabangbang* put it:[150]

Said expression refers to utterances made by Congressmen in the performance of their official functions, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the official discharge of their duties as members of Congress and of Congressional Committees duly authorized to perform its functions as such, at the time of the performance of the acts in question.[151]

""Tenney v. Brandhove, 341 U.S. 367.

[150]17 SCRA 876, 878 (1966).

'"Vera v. Avelino, 77 Phil. 192; Tenney v. Brandhove, 341 U.S. 367; Coffin v. Coffin, 4 Mass. 1 See also Antonino v. Valencia, 57 SCRA 70 (May 27, 1974).Sec. 12 ART VI - THE LEGISLATIVE DEPARTMENT 729

Two American cases shed further light on the nature of the legislative acts protected by the speech and debate clause. *Gravel v. US.*[152] emphasized that although the speech and debate clause has been extended beyond pure speech and debate, the essential requirement for its applicability has always been that the action involved must be legislative action. Legislative action refers to the "deliberative and communicative process" by which members participate in committee and House proceedings in the consideration of proposed legislation or of other matters that the Constitution places within the jurisdiction of the legislature. When legislative action is involved, the testimonial privilege protects even the agents and aides of the members of the legislature. In the light of this, the Supreme Court found that Senator Mike Gravel's alleged arrangement for private publication of the Pentagon Papers was not an integral part of the deliberative and communicative process of legislative activity protected by the speech and debate clause. The vote however was 5 to 4.

In *Brewster v. US.,*[153] the Supreme Court held that a United States Senator was not protected by the speech and debate clause for solicitation and acceptance of a bribe in return for his vote on a legislative question. Again the decision revolved around the nature of a legislative act: "A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it. In sum, the Speech and Debate clause prohibits inquiry only into those things generally said or done in the House in the performance of official duties and the motivation of those acts." A prosecution for taking a bribe does not require such inquiry. Distinguishing the case from *US. v. Johnson,'*[154] the Chief Justice said that the Johnson case involved questioning about the speech, who wrote it, and its factual basis. When however an action is merely related to legislative responsibilities, it is not covered by the clause. The purpose of the clause is merely to protect the integrity of the legislative process. But again the vote was divided 6 to 3.

SEC. 12. ALL MEMBERS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES SHALL, UPON ASSUMPTION OF OFFICE, MAKE A FULL DISCLOSURE OF THEIR FINANCIAL AND BUSINESS INTERESTS. THEY

[152]408 U.S. 606 (1972).

[153]408 U.S.501 (1972).

[154]383 U.S. 169.730 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES SHALL NOTIFY THE HOUSE CONCERNED OF A POTENTIAL CONFLICT OF INTEREST THAT MAY ARISE FROM THE FILING OF A PROPOSED LEGISLATION OF WHICH THEY ARE AUTHORS.

Sec.13

1. Financial and business interests.

The first sentence of Section 12 sets down a policy of full disclosure of the financial and business affairs of a legislator. The second sentence requires him to put the House on notice about any "potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors." However, it does not prevent the legislator from filing the proposed legislation. It merely enables the House to examine the arguments he might present with a sharper eye and in the context of his personal interest. The advance disclosure would create a presumption in favor of the legislator concerned should he later be charged by his colleagues with conflict of interest.'[155]

S E C 1 3 . No **SENATOR OR MEMBER OF THE HOUSE OF**

REPRESENTATIVES MAY HOLD ANY OTHER OFFICE OR EMPLOYMENT IN THE GOVERNMENT, OR ANY SUBDIVISION, AGENCY, OR INSTRUMENTALITY THEREOF, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS OR THEIR SUBSIDIARIES, DURING HIS TERM WITHOUT FORFEITING HIS SEAT. NEITHER SHALL HE BE APPOINTED TO ANY OFFICE WHICH MAY HAVE BEEN CREATED OR THE EMOLUMENTS THEREOF INCREASED DURING THE TERM FOR WHICH HE WAS ELECTED.

1. Disqualifications.

A member of Congress may not hold, during his tenure as member, any other office in the government or in any of its instrumentalities, including government-owned or controlled corporations or their subsidiaries. The prohibited offices include membership in the board of regents, board of trustees, or board of directors of state universities and colleges.[156] Since the prohibition is only during his tenure, a legislator is not prevented from accepting an appointment. However, if he chooses to accept another office, he automatically forfeits his seat in Congress.[157]

'"II RECORD 165-168.

[154]W.at89.

***'"Id.* at 162-3. Compare this with a similar prohibition in Article IX, B, Section 7.Sec.14 ART. VI - THE LEGISLATIVE DEPARTMENT 731**

The disqualification in the second sentence, however, applies for the duration of the six year term even if he resigns from Congress before the end of his term. Under the 1935 and 1973 Constitutions, to come under this disqualification, two conditions must concur: (1) the office must be civil; and (2) such office must have been created or its emoluments increased "while he was a member" of the legislature. Under the 1987 provision, the office need not be a civil one; it could be a military office.[158]

SEC. 1 4 . No **SENATOR OR MEMBER OF THE HOUSE OF REPRESENTATIVES MAY PERSONALLY APPEAR AS COUNSEL BEFORE ANY COURT OF JUSTICE OR BEFORE THE ELECTORAL TRIBUNALS, OR QUASI-JUDICIAL AND OTHER ADMINISTRATIVE BODIES. NEITHER SHALL HE, DIRECTLY OR INDIRECTLY, BE INTERESTED FINANCIALLY IN ANY CONTRACT WITH, OR IN ANY FRANCHISE OR SPECIAL PRIVILEGE GRANTED BY THE GOVERNMENT, OR ANY SUBDIVISION, AGENCY, OR INSTRUMENTALITY THEREOF, INCLUDING ANY GOVERNMENT-OWNED OR CONTROLLED CORPORATION, OR ITS SUBSIDIARY, DURING HIS TERM OF OFFICE. HE SHALL NOT INTERVENE IN ANY MATTER BEFORE ANY OFFICE OF THE GOVERNMENT FOR HIS PECUNIARY BENEFIT OR WHERE HE MAY BE CALLED UPON TO ACT ON ACCOUNT OF HIS OFFICE.**

1. Prohibitions; lawyer legislators.

The prohibitions found in Section 14 are intended to prevent members of Congress from taking advantage, pecuniary or otherwise, of their position in their dealings with the courts, or in their business operations, or in their dealings with any government agency or corporation.

The prohibition imposed on lawyer-legislators is a much stricter one than its counterpart in the 1935 or 1973 Constitution neither of which had a blanket prohibition of appearances in court.[159] Under the 1987 provision, a lawyer legislator may not "personally appear as counsel before any court of justice." This prohibition cannot be circumvented under the guise of appearing "in intervention" in one's behalf. *Puyat* v. *de Guzman*™ dealt with an Assemblyman who bought a nomi-

[15]W. at 45-6.

'"See Article VI, Section 17 (1935) and Article Vin, **Section 11 (1973).**

'"113 SCRA 31,37 (March 25, 1982).[732] THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec.14

nal amount of shares in a corporation which was party to a suit before the Securities and Exchange Commission and then proceeded to appear "in intervention" purportedly to protect his own interest. The Court saw through the ruse and said:

A ruling upholding the "intervention" would make the constitutional provision ineffective. All an Assemblyman need do, if he wants to influence an administrative body is to acquire a minimal participation in the "interest" of a client and then "intervene" in the proceedings. That which the Constitution directly prohibits may not be done by indirection.

One may infer from this conclusion of the Court that a legislator may appear in person if in fact he is a genuine party in the case.

The extent of the prohibition imposed on lawyer legislators was extensively discussed by the 1986 Constitutional Commission. The original proposal submitted by the Conuriittee did not prohibit appearance before collegiate courts. The final version, principally because of the advocacy of Commissioner Colayco, prohibits appearance before any court;[16]' however, it is not a blanket prohibition of the practice of

law.[162]

When Commissioner Colayco, himself a judge of fifteen years experience, argued for an absolute prohibition of appearances before any court, the proposal he was espousing read thus: "No Senator or Member of the House of Representatives may appear as counsel before any court." Arguing against allowing Senators and Representatives to appear even before collegiate courts, he said:[163]

It may be argued that insofar as the Supreme Court is concerned the danger may be minimal because they have nothing more to expect as far as promotion is concerned. But what about those below the Supreme Court? For instance, the members of the Intermediate Appellate Courts and the Sandiganbayan always hope that they will be promoted. And like good men, they do not want to have any negative factor that may be an obstacle to their promotion. Legislators are influential people whether they lift a

"II RECORD 123-127.
"W.at 105-6.
by Padilla,,*d.* 125-127.
***"Id.* at 123-4. Colayco was strongly supported by Romulo, *id.* 124, and strongly opposedSec. 14 ART. VI - THE LEGISLATIVE DEPARTMENT 733**

finger or not. There is always that fear in the mind of the member of the collegiate court that sometime in the future he may need the help of the legislative member appearing before him, although unsolicited.

Colayco's argument was followed by an interpellation by Commissioner Suarez which went thus:[164]

MR. SUAREZ. There is a phrase here which reads: "shall appear as counsel." I suppose the proponent is referring to a personal appearance as counsel.

MR. COLAYCO. That is correct.

MR. SUAREZ. It would not preclude, for example, the law firm to which this Senator or Member of the House would be connected from appearing before any court?

MR. COLAYCO. I would include that in my prohibition.

MR. SUAREZ. In other words, the proponent would prohibit even the law firm to which he or she may be a partner from appearing before any court of justice.

MR. COLAYCO. That is correct, Madam President.

After this exchange, there were more spirited arguments from both sides. But just before the vote, Colayco intervened again and prefaced his remarks by saying: "I would like to say a few words before submitting my proposals to the body for a v o t e . . . . I am afraid I did not know that my proposal will be so unpopular especially with the lawyers who are Members of the legislature."[165] Thereafter, he offered to read his proposal:[166]

MR. COLAYCO I would like to clarify that my proposal covers only the personal appearance of the Members of the House of Representatives and of the Senate.

THE PRESIDENT. So, how would the proposed amendment be?

MR. COLAYCO. It will read: "No Senator or Member of the House of Representatives MAY PERSONALLY appear as counsel

***"Id.* at 125.**
[16]W.at 127.
***Id.*734 THE 1987 CONSTITUTION**
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before any court OF JUSTICE." With this prohibition, the subsequent lines will be covered already.

Put to a vote immediately thereafter, the proposal was approved 25 to 10.

Did Colayco modify his answer to Commissioner Suarez relative to the appearance of law firms? It would seem so. He modified his original proposal and added "personally." It is quite clear that the personality of a law partnership is distinct from that of its partners.

2. Prohibitions: conflict of interests.

Legislators are also prohibited from being '"directly or indirectly . . . interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office." Thus, they cannot be members of the board of corporations with contract with the government. Such would be at least indirect financial interest.[167]

Neither may a legislator "intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office." The prohibited pecuniary benefit could be direct or indirect and thus would cover pecuniary benefit for relatives.[168]

SEC. 1 5 . THE CONGRESS SHALL CONVENE ONCE EVERY YEAR ON THE FOURTH MONDAY OF JULY FOR ITS REGULAR SESSION, UNLESS A DIFFERENT DATE IS FIXED BY LAW, AND SHALL CONTINUE TO BE IN SESSION FOR SUCH NUMBER OF DAYS AS IT MAY DETERMINE UNTIL THIRTY DAYS BEFORE THE OPENING OF ITS NEXT REGULAR SESSION, EXCLUSIVE OF SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS. THE PRESIDENT MAY CALL A SPECIAL SESSION AT ANY TIME.

1. Sessions of Congress.

Unlike the regular session under the 1935 Constitution, which lasted for only one hundred days, the regular session under Section 15,

[167] **W. at 106-7.**

***Id.at* 128.Sec. 16 ART. VI - THE LEGISLATIVE DEPARTMENT 735**

like that in the 1973 Constitution, may last for as long as Congress wishes but only "until thirty days before the opening of its next regular session, exclusive of Saturdays, Sundays, and legal holidays." However, the President may call Congress to a special session at any time. And again unlike the special session under the 1935 Constitution which was limited to thirty days, the special session under Section 15, like that in the 1973 Constitution, has no fixed limit. It can last for as long as the Congress wants.

May the President limit the subjects which may be considered during a special session called by him? Under the 1935 Constitution, the President could, because Section 9, Article VI, said that the President could call a special session "to consider general legislation *or only such subjects as he may designate."* The language of the 1987 Constitution is different: "The President may call a special session any time." The language is not exclusive. The President is given the power to call a session and to specify subjects he wants considered, but it does not empower him to prohibit consideration of other subjects. After all, Congress, if it so wishes, may stay in regular session almost all year round.

SEC. 1 6 . (1) THE SENATE SHALL ELECT ITS PRESIDENT AND THE HOUSE OF REPRESENTATIVES ITS SPEAKER, BY A MAJORITY VOTE OF ALL ITS RESPECTIVE MEMBERS.
EACH HOUSE SHALL CHOOSE SUCH OTHER OFFICERS AS IT MAY DEEM NECESSARY.
(2) A MAJORITY OF EACH HOUSE SHALL CONSTITUTE A QUORUM TO DO BUSINESS, BUT A SMALLER NUMBER MAY ADJOURN FROM DAY TO DAY AND MAY COMPEL THE ATTENDANCE OF ABSENT MEMBERS IN SUCH MANNER, AND UNDER SUCH PENALTIES, AS SUCH HOUSE MAY PROVIDE.
(3) EACH HOUSE MAY DETERMINE THE RULES OF ITS PROCEEDINGS, PUNISH ITS MEMBERS FOR DISORDERLY BEHAVIOR, AND WITH THE CONCURRENCE OF TWO-THIRDS OF ALL ITS MEMBERS, SUSPEND OR EXPEL A MEMBER. A PENALTY OF SUSPENSION, WHEN IMPOSED, SHALL NOT EXCEED SIXTY DAYS.
(4) EACH HOUSE SHALL KEEP A JOURNAL OF ITS PROCEEDINGS, AND FROM TIME TO TIME PUBLISH THE SAME, EXCEPTING SUCH PARTS AS MAY, IN ITS JUDGMENT, AFFECT NATIONAL SECURITY; AND THE *YEAS* **AND** *NAYS* **ON ANY QUESTION SHALL, AT THE REQUEST OF ONE-FIFTH OF THE MEMBERS PRESENT, BE ENTERED IN THE JOURNAL.[736] THE 1987 CONSTTTUTION OF THE REPUBLIC OF THE PHILIPPINES**
EACH HOUSE SHALL ALSO KEEP A RECORD OF ITS PROCEEDINGS.
(5) NEITHER HOUSE DURING THE SESSIONS OF THE CONGRESS SHALL, WITHOUT THE CONSENT OF THE OTHER, ADJOURN FOR MORE THAN THREE DAYS, NOR TO ANY OTHER PLACE THAN THAT IN WHICH THE TWO HOUSES SHALL BE SITTING.
Sec. 16

1. Officers of Congress.

Congress becomes properly organized once the officers have been chosen. The only officers prescribed by the Constitution are the President of the Senate and the Speaker of the House of Representatives, both of whom are elected by a majority vote of all the Members **of** their respective Houses. Each House, however, may decide to have other **officers**. How these other officers are chosen is something that is within the control of each House. Thus, when Senator Tatad challenged the validity of the election of Guingona as minority leader claiming that **he** should be the minority leader, the Court said in *Santiago* v. *Guingona'*[69] that "in the absence of constitutional or statutory guidelines **or** specific rules, this Court is devoid of any basis upon which to determine the legality of the acts of the Senate relative thereto. On grounds **of** respect for the basic concept of separation of powers, courts may not intervene in the internal affairs of the legislature; it is not within the province **of**

courts to direct Congress how to do its work."
An interesting question which arose under the 1935 Constitution was whether the judiciary could look into the legality of the election **of** a Senate President. For the answer, one can look to the Supreme Court**'s** handling of the matter in *Avelino v. Cuenco.*™
During the Senate session of February 2 1 , 1 9 4 9 , Senate President Avelino walked out of the session hall followed by nine other senators. This left only twelve senators in the session hall. (Of the twenty-four senators, one was in the United States and another in a local hospital.) The Senate President Pro-Tempore then took over and, by a resolution approved by the twelve remaining senators, the position of Senate President was declared vacant, and Senator Cuenco was designated Acting Senate President. Avelino brought the case to court asking whether the
'Santiago v. Guingona, G.R. No. 134577, November 18,1998
'83 Phil. 17 (1949).Sec.16 ART. VI - THE LEGISLATIVE DEPARTMENT 737
twelve senators who had designated Cuenco Senate President constituted a quorum.
By a vote of 6-4, the Court refused to assume jurisdiction. It declared that the controversy was political in nature and that the constitutional grant to the Senate of the power to elect its own president should not be taken over by the judiciary. The choice of a Senate President "affects only the Senators themselves who are at liberty at any time to choose their officers, change or reinstate them."[171] Furthermore, the Court said:[172]
The Court will not sally into the legitimate domain of the Senate on the plea that our refusal to intercede might lead into a crisis, even a revolution. No state of things has been proved that might change the temper of the Filipino people as a ***[sic]*** peaceful and law-abiding citizens. And we should not allow ourselves to be stampeded into a rash action inconsistent with the calm that should characterize judicial deliberations.
Chief Justice Moran, Justices Tuason, Perfecto and Briones argued for assuming jurisdiction.
Moran argued that the question of quorum was a constitutional issue which could be decided by neither of the two conflicting Senate factions. With the conflict remaining unsettled, the laws passed by the Senate would be open to doubt. He warned against the "general situation of uncertainty, pregnant with grave dangers" which was "developing into confusion and chaos with severe harm to the nation." He therefore advocated intervention by the Court, the guardian of the Constitution, through the exercise of "the utmost judicial temper and judicial statesmanship."[173]
Justice Tuason's reasoning ran thus:[174]
Here the process sought is to be issued against an appointee of a Senate, that, it is alleged, was not validly constituted to do business because . .. there was no ***quorum.*** The Court is not asked to interfere with an action of a coordinate branch of the govem-
[170] ***'Id.*** **at 21-2. But, jurisdiction or not, eight Justices voted 4-4 on the question.**
[171] ***Id.***
[172] ***Id.*** **at 25-6.**
[173] **W.at66-7.738 THE 1987 CONSTITUTION**
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merit, so much as to test the legality of the appointment of the respondent.
. . . Although this Court has no control of either branch of the Congress, it does have the power to ascertain, whether or not one who pretends to be its officer is holding his office according to law or the Constitution. Political questions as a bar to jurisdiction can only be raised by the supreme power, by the legislature, and not by one of its creatures.
Justice Perfecto conceded that the Senate was the only body that could determine from time to time "who is and shall be its President."[175] But, he added:[176]
[I]n making such changes of leadership, the Senate and the Senators are bound to follow the orderly processes set and outlined by the Constitution and the rules adopted by the Senate as authorized by the fundamental law. Any step beyond said legal bounds may create a legal hiatus which, once submitted to the proper courts of justice, the latter cannot simply wash their hands and ignore the issue upon the pretext of lack of jurisdiction . . .
Justice Briones was for assuming jurisdiction because the heart

of the controversy was the business of legislation, one of the essentials of a republic. Moreover, *"el conflicto surgido . . . ha cobrado las proporciones de una tremenda crisis nacional, prenada de graves peligros para la estabilidad de nuestras instituciones politicas, para el orden publicoypara la integridadde la existencia de la nation."*"" Finally, he agreed with *Werts v. Rogers* that, besides justiciability, another ground for courts to take cognizance of a case is *"extrema necesidad."*™ But six Justices remained unconvinced.

In the case of *Alejandrino v. Quezon,* Justice Ostrand had said: "It is usually when courts fail in these respects [performance of duties], and thus prove unfaithful to their trust, that their orders are disregarded and trouble ensues."[179] Whether or not the 6-4 vote in the original reso-

„*Id.* at 38.
""*Id.* at 52.
[177] W.at58.
„*Id.* at 69.
[17,] 16Phil. 142-3(1910).Sec. 16 ART. VI - THE LEGISLATIVE DEPARTMENT 739

lution of the Court in *Avelino v. Cuenco* meant a failure in judicial duties will forever be a subject of debate. But trouble did ensue. Following the constitutional provision that in the absence of a *quorum* "a number may adjourn from day to day and may compel the attendance of absent Members," the Cuenco group issued orders for the arrest of absenting Senators. But the orders were ignored.

Originally, the Court had said that no circumstances had been proved which could change the pacific and law-abiding temper of Filipinos. Now there were indications that the Filipino temper was being taxed severely. Chief Justice Moran and Justice Briones had already spoken of a situation pregnant with grave dangers. Thus it was that, in the reconsideration of the case, the Court, by a vote of 7-4, decided to assume jurisdiction "in the light of subsequent events which justify its intervention."[180]

The language of Justice Pablo was solemn and sacrificial:[181]

Es un sano estadismo judicial evitarlo [fatales consecuencias]y, si es necesario, impedirlo ... Como magistrado, no deben importarme las consecuencias de mi opinion, emitida despues de un estudio concienzudo; pero como ciudadano, me duele ver una lucha enconada entre dos grupos en el senado sin fin practico ...Si insisto en mi opinion anterior, fracasara todo esfuerzo de reajuste de nuestras opiniones para darfin a la crisis en el Senado.

Justice Feria, however, was more radical. He was for establishing "in this country, judicial supremacy, with the Supreme Court as the final arbiter, to see that no one branch or agency of the government transcends the Constitution, *not only in justiciable but political questions as well"*™[2]

If Justice Feria's reasoning had been the decisive factor in the reconsideration, this case would constitute a radical change in the Court's attitude to political questions. But what caused the reversal of the Court's original resolution were the peculiar circumstances that had developed in the political scene. The Court Resolution on reconsideration

[8]°83 Phil. 68 (1949).
"*Id.* at 74-5.
'"*Id.* at 71. Italics added.740 THE 1987 CONSTITUTION
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spoke of "subsequent events" which justified its intervention."[3] Justice Pablo, in reversing his stand, admittedly yielded only to a citizen's desire for the settlement of the Senate crisis. Thus, when two years later, in 1951, the case of *Avelino v. Cuenco* was invoked in the case of *Cabili v. Francisco* as authority for the Supreme Court to intervene in the allegedly unconstitutional reorganization of the Commission on Appointments, the Court ruled that the conditions which impelled the Court to assume jurisdiction in the Avelino case did not presently obtain.[184]

2. "A quorum to do business."

For a long time the accepted practice in the House of Representatives of the United States, operating under a provision on quorum identical with the one found in Section 16(2), was that only members voting on a proposition were counted for the purposes of determining a quorum. In 1890, however, Speaker Reed ruled that all members present, whether voting or not voting, should be counted. This ruling eventually became Rule XV of the House and the U.S. Supreme Court upheld the rule saying that, since the Constitution did not prescribe the method for determining the presence of a majority, the House was competent "to

prescribe any method which shall be reasonably certain to ascertain the fact."[185]

The base for computing the majority of the legislative body for the purpose of determining the existence of a quorum should normally be the total membership of the body. It will be noted, however, that in the case *of Avelino v. Cuenco*™[6] the base used was twenty-three, although the total membership of the Senate was twenty-four. Apparently this was because the twenty-fourth senator was abroad and therefore

„*U.* at 68.

[184]G.R. No. 4638, May 8,1951.16 LJ. 302,303. The facts of the case were as follows: As a result of a new party alignment that divided the Senate into two factions, the Little Senate and the Democratic Group, the latter commanding a majority, a reshuffle was made of the membership in the Commission on Appointments. The Senators composing the so-called Little Senate filed a petition with the Supreme Court seeking to annul the reorganization of the Commission on Appointments.

„hile not assuming jurisdiction over the case, the Court discussed the legality of the reshuffle. Four Justices held that membership in the Commission on Appointments should at all times reflect party alignment. Four others held that the constitution contemplated stability of tenure for the members, irrespective of subsequent change in party alignment.

•"United States v.Ballin, 144 U.S. 1,5-6(1892)

"*83 Phil. 17(1949).Sec.16 ART. VI - THE LEGISLATIVE DEPARTMENT 741

beyond the coercive power of the Senate,[187] although this manner of approaching the subject can lead to the ridiculous should the majority of the legislative body be abroad and beyond the coercive power of the body.

3. Internal rules and discipline.

Inherent in any legislative body is its power of internal regulation and discipline. As Justice Story said, "If the power did not exist, it would be utterly impracticable to transact the business of the nation, either at all, or at least with decency, deliberation, and order. The humblest assembly of men is understood to possess this power; and it would be absurd to deprive the councils of the nation of a like authority."[188]

Article VI, Section 10(3) of the 1935 Constitution said: "Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the consent of two-thirds of all its Members, expel a member." The 1973 counterpart modified the above rule by prescribing the number of votes needed to impose a suspension and by limiting suspension to sixty days. The 1987 provision follows that of 1973. In other respects, the 1935 provision has been preserved; hence, jurisprudence prior to 1973, *mutatis mutandis,* still applies.

What stands out from the jurisprudence on the subject is that, except for some limitations of detail found in the Constitution itself, there is a clear recognition of the overall autonomy of the legislative body both in the formulation and in the application of its rules. "The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the House, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal."[189]

The well-nigh absolute control which the legislature has over its rules is well illustrated by the celebrated case of *Osmefia, Jr.* ***v.*** *Pendatun.*[m] Disciplinary proceedings were initiated by the House of Representatives against Congressman Sergio Osmeiia, Jr. for a speech he had delivered on the floor of Congress. In a petition filed with the Supreme

"7d.at68.

""STORY, *COMMENTARIES* 835 (1833).

"'United States v. Ballin, 144 U.S. 1.5 (1892).

"°109 Phil. 863 (1960).742 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 16

Court for declaratory relief and ***certiorari*** and prohibition Osmefia alleged, among others, (1) that his speech did not constitute disorderly behaviour and (2) that, by House Rule XVII, Section V, he could not be censured for his speech since other business had transpired before Congress decided to take action.

On the question whether Osmena's speech constituted disorderly behavior, the Supreme Court simply said "that the House is the judge of what constitutes disorderly behavior, not only because the Constitution has conferred jurisdiction upon it, but also because the matter depends mainly on factual circumstances of which the House knows best but which can not be depicted in black and white for presentation to, and adjudication by the Courts.... The theory of separation of powers, fastidiously observed by this Court, demands in such situation a prudent refusal to interfere."[191] On the question of the binding force of Rule XVII, Section V, the Court said:[192]

[CJourts have declared that "the rules adopted by deliberative bodies are subject to revocation, modification or waiver at the pleasure of the body adopting them."[193] And it has been said that "Parliamentary rules are merely procedural, and with their observance, the courts have no concern. They may be waived or disregarded by the legislative body." Consequently, "mere failure to conform to parliamentary usage will not invalidate the action (taken by a deliberative body) when the requisite number of members have agreed to a particular measure."[194]

It is thus clear that on matters affecting only the internal operation of the legislature, the legislature's formulation and implementation of its rules is beyond the reach of the courts. In these matters, what is referred to as the "expanded jurisdiction" of the Supreme Court found in the second sentence of Article VIII, Section 1 does not apply. When, however, the legislative rule affects private rights, the courts cannot altogether be excluded. When the construction to be given to a rule affects persons other than the members of the legislature, "the question presented is of necessity a judicial one."[195]

„*Id.* at 871-2.
""*Id.* at 870-1.
",67 CJ.S.870.
'"South Georgia Power v. Bauman, 169 Ga. 649; 159 S.W. 515.
„United States v. Smith, 286 U.S. 6 (1932). *See also* Vera v. Avelino, 77 Phil. 192, 206 (1946)Sec. 16 ART. VI - THE LEGISLATIVE DEPARTMENT 743

The case of *Paredes, Jr. v. Sandiganbayan*[196] presented a novel question. Congressman Ceferino Paredes was charged with violations of the Anti-Graft Law allegedly committed while still a provincial governor. The Sandiganbayan took action on the case while Paredes was already in his second term as a member of the House of Representatives. Relying on the provision of the Anti-Graft Law which prescribes a mandatory preventive suspension on all those charged the law, the Sandiganbayan suspended him from the House of Representatives. Claiming that under Section 16(3) of Article VI only the House could suspend him, Paredes went to the Supreme Court on *certiorari.* On the argument that the suspension imposed by the graft court was not based on grounds found in Section 16(3), the Supreme Court upheld the suspension. Whereupon the House erupted in protest.

One thing which must have rubbed the members of the House of Representatives the wrong way was that, all Paredes got from the Court was a one page resolution containing a curt "Nyet." Moreover, in an earlier decision the Court had ruled that no judge of inferior courts may be proceeded against by investigating bodies without prior clearance from the Supreme Court. The Court demanded observance of the procedure prescribed by the Constitution which places administrative supervision of lower courts in the exclusive hands of the Supreme Court. The Court could have accorded the same procedural courtesy to the House of Representatives; but it did not. Alternatively, the Court might have said that the preventive suspension referred to by the Anti-Graft Law was meant to be from the office the official held when he committed the wrong doing. But the Court chose to be literal. Hence, when the House decided not to implement the suspension, the Court could do nothing.

4. rolled bill" rule.

Journals, Record: publicity and probative value; "en-

The duty to keep a journal has a dual purpose: (1) "to insure publicity to the proceedings of the legislature, and a correspondent responsibility of the members to their respective constituents,""[7] and (2) to

.„GJi. 118364,August 10,1995.
""1 STORY, *COMMENTARIES* 840, quoted with approval in Field v. Clark, 143 U . S . 649, 670 (1892).744 THE 1987 CONSTITUTION
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provide proof of what actually transpired in the legislature. Under the 1935 Constitution, Congress could impose secrecy at its discretion. The 1973 Constitution and the 1987 Constitution exempt from publication only such matters "as may, [in each House's] judgment, affect national security." This rule is an application of Section 7 of the Bill of Rights which says:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for

policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

It still remains to be seen, however, how the rule can be enforced and who can enforce it against Congress.

The interesting cases on legislative journals involve their probative value when measured against other forms of evidence. In *United States* v. *Pons,*[m] the contention of the defendant was that the statute under which he was being prosecuted was invalid for having been passed after the last allowable day of legislative session. He claimed that the legislature's clock had been stopped at midnight on the last day of session and that it was in fact after midnight that the statute was passed. The legislative journal, however, indicated that the statute was passed before midnight when the legislature adjourned *sine die.* Could the courts then look beyond the journal to determine the actual date of adjournment?

The Court answered:[199]

Counsel for the appellant, in order to establish his contention, must necessarily depend upon the memory or recollection of witnesses, while the legislative journals are the acts of the Government or sovereign itself. From their very nature and object the records of the Legislature are as important as those of the judiciary, and to inquire into the veracity of the journals of the Philippine Legislature, when they are, as we have said, clear and explicit, would be to violate both the letter and the spirit of the organic laws by which the Philippine Government was brought into exis-

""34 Phil. 729 (1916).

[m]*Id.* at 733-34.Sec.16 ART. VI - THE LEGISLATIVE DEPARTMENT 745

tence, to invade a coordinate and independent department of the Government, and to interfere with the legitimate powers and functions of the Legislature. But counsel in his argument says that the public knows that the Assembly's clock was stopped on February 28, 1914, at midnight and left so until the determination of the discussion of all pending matters. Or, in other words, the hands of the clock were stayed in order to enable the Assembly to effect an adjournment apparently within the time fixed by the Governor's proclamation for the expiration of the special session in direct violation of the Act of Congress on July 1, 1902. If the clock was, in fact, stopped, as here suggested, "the resultant evil might be slight as compared with that of altering the probative force and character of legislative records, and making the proof of legislative action depend upon uncertain oral evidence, liable to loss by death or absence, and so imperfect on account of the treachery of memory. Long, long centuries ago, these considerations of public policy led to the adoption of the rule giving verity and unimpeachability to legislative records. If that character is to be taken away for one purpose, it must be taken away for all, and the evidence of the laws of the state must rest upon a foundation less certain and durable than that afforded by the law to many contracts between private individuals concerning comparatively trifling matters."

Thus, what gives conclusive weight to the journal, when balanced side by side with extraneous evidence, is the fact that it is an official act of the legislature. What happens, however, when the journal conflicts with another official act of the Legislature? In *Mabanag v. Lopez-Vito,*[200] the Supreme Court discussed at length the correct resolution of a case when the journal's content conflicts with what is found in an "enrolled bill." The "enrolled bill" is a duly authenticated copy of a bill or resolution bearing the signature of the Speaker and of the Senate President and the certification of the secretaries of both Houses that such bill was passed.[201] The Court arrived at the conclusion, based likewise on the respect due from the courts to a co-equal body, that "a duly authenticated bill or resolution imports absolute verity and is binding on the courts."[202]

Although *Mabanag* was most emphatic in its acceptance of the "enrolled bill rule," it cannot be regarded as establishing a definite dbc-

*****ni* Phil. 1 (1947).**

^'Arroyov. De Venecia, *GSL.* No. 127255, June 26, 1988.

[n]78 Philat 12.746 THE 1987 CONSTITUTION
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trine because, in fact, there was no evidence of conflict between the journal and the enrolled bill.[203] Withal, however, subsequent cases have also been most emphatic in their adherence to the enrolled bill rule. As

the Court said in *Casco Philippine Chemical Co.* v. *Gimenez*:[210]* "If there has been any mistake in the printing of the bill before it was certified by the officers of Congress and approved by the Executive, on which we cannot speculate, without jeopardizing the principle of separation of powers and undermining one of the cornerstones of our democratic system, the remedy is by amendment or curative legislation, not by judicial decree."

The same principle was once more reiterated in *Morales* v. *Subido*[m] which, however, added a cautionary note:

By what we have essayed above we are not of course to be understood as holding that in all cases the journals must yield to the enrolled bill. To be sure there are certain matters which the Constitution[206] expressly requires must be entered on the journal of each house. To what extent the validity of a legislative act may be affected by a failure to have such matters entered on the journal, is a question which we do not now decide.[207] All we hold is that with respect to matters not expressly required to be entered on the journal, the enrolled bill prevails in the event of any discrepancy.

It should be noted that what gives special probative weight to an enrolled bill is the certification it receives from the officers of the legislature. In the case of Congress under the 1935 Constitution, the signatures of the Speaker of the House of Representatives and of the President of the Senate were what counted. Thus, when, as happened in *Astorga* v. *Villegas*[10]* not only the Senate President but also the President of the Philippines withdrew their signatures upon discovery of the inaccuracies in the bill, the document was stripped of the character and probative value of an enrolled bill and had to yield to the version found in the journal. In *Tolentino v. Secretary of Finance*,[209] even though the

[m] *Id.at* 18.

• *»! SCRA 347, 350 (1963).

[m] *27* SCRA 131 (1969).

""Art. VI, Sees. 10(4), 20(1) and 21(1) (1935).

[m] *Cf. e.g.,* Wikes Country Comm'rs v. Color, 180 U.S. 506 (1900)

™56 SCRA 714,722-3 (April 30, 1974).

[20,235] SCRA 630,672 (1994), affirmed on reconsideration GJt. Nos. 111206-08 October 6,1995.Sec.17 ART. VI - THE LEGISLATIVE DEPARTMENT 747

challenge to the bill came from an incumbent Senator and a former Senate President, the Court refused to go beyond the "enrolled bill."

In addition to a journal, each House is also supposed to keep a Record.[210] The journal is usually an abbreviated account of the daily proceedings; the Record contains a word for word transcript of the deliberations of Congress.

5. Recess.

Both Houses may hold session practically all year round. They go on compulsory recess thirty days before the opening of the next regular session. Each House may also adjourn for a voluntary recess; but neither House may adjourn, without the consent of the other, for more than three days nor to any place than that in which the two Houses shall be sitting. This coordinative rule is necessary because the two houses form only one legislative body.

SEC. 1 7 . 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, WHO SHALL BE CHOSEN ON THE BASIS OF PROPORTIONAL REPRESENTATION FROM THE POLITICAL PARTIES AND THE PARTIES OR ORGANIZATIONS REGISTERED UNDER THE PARTY-LIST SYSTEM REPRESENTED THEREIN. THE SENIOR JUSTICE IN THE ELECTORAL TRIBUNAL SHALL BE ITS CHAIRMAN.

1. Composition.

Section 17 sets down the composition of the two Electoral Tribunals. Like the Electoral Tribunals of the 1935 Constitution, they are a mixture of members of Congress and of the Supreme Court, "thus reflecting both the respect for parliamentary sovereignty and the need for

[211] This provision, the second sentence of Section 16(4), was a last minute addition. V RECORD 702.748 THE 1987 CONSTTTUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 17

legal impartial decisions."[2]" The legislative part of the mix, however, departs from the 1935 rule which gave three seats each to only the two political parties having the largest number of votes in each House. The

1987 formula of proportional party representation reflects the Constitution's desire to encourage the growth of a multi-party system. It should be noted, however, that representation in the Electoral Tribunals is given to "political parties and the parties or organizations registered under the party-list system." There is no provision for the representation of sectors except in so far as they might be part of the party-list system.[212]
The Supreme Court has had occasion to deal with problems arising from the partisan element in the Electoral Tribunals. In *Abbas* v. *Senate Electoral Tribunal,* Abbas sought to disqualify all six Senator members of the Electoral Tribunal on the ground that they, together with all the other Senators, were respondents in the contest filed by the opposition party. He therefore wanted his case to be decided solely by the three Supreme court justices in the Electoral Tribunal. In rejecting such contention the Supreme Court said:[213]
Where as here a situation is created which precludes the substitution of any Senator sitting in the Tribunal by any of his other colleagues in the Senate without inviting the same objections to the substitute's competence, the proposed mass disqualification if sanctioned and ordered would leave the Tribunal no alternative but to abandon a duty that no other court or body can perform but which it cannot lawfully discharge if shorn of the participation of its entire membership of Senators.
The case of *Bondoc* v. *Pineda",* involved a blatant attempt of a political party to manipulate the decision of the Tribunal by manipulating its membership. On the eve of the promulgation of a decision of the Tribunal against a member of the Laban ng Demokxatikong Pilipino (LDP), the L D P expelled Camasura from the party on the ground of disloyalty. Camasura, the L D P member of the Electoral Tribunal, had confided to the L D P that he was voting against the party's candidate. The Supreme Court considered the expulsion of Camasura from the

[2]**"U RECORD 45.**

[n]***Id.* at 590.**

[213]**166 SCRA 651.655 (1988).**

[3]***201 SCRA 792 (1991).Sec.17 ART. VI - THE LEGISLATIVE DEPARTMENT 749**

Tribunal a clear impairment of the Tribunals prerogative to be the sole judge of election contests.[2]'[5]

2. Jurisdiction of the Electoral Tribunals.

What is the meaning and scope of the power of the Electoral Tribunals to be judge of congressional election contests? To answer this question, it is useful to trace the history of the provision from its counterpart in the United States Constitution and through the various Philippine organic laws that preceded the present Constitution. The original provision on this subject is found in Section 7, paragraph 5, of the Act of the United States Congress of July 1,1902. The Act provided that "the assembly shall be the judge of the elections, returns, and qualifications of its members." The provision was taken from Section 5, Article 1 of the Constitution of the United States providing that "Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members." The Act of the United States Congress of August 29,1916, Section 18, paragraph 1, modified the provision to read "That the Senate and House of Representatives, respectively, shall be the *sole* judges of the elections, returns, and qualifications of their elective members." The effect of this modification was to emphasize the exclusive character of the jurisdiction conferred upon each House.[2]'[6] This exclusive grant of jurisdiction at once effectively barred either House from interference with the judgment of the other House and also completely removed the subject matter from the jurisdiction of the courts in language that was "full, clear and complete."[2]'[7]
The 1935 Constitution made a significant departure from earlier provisions by providing in Article VI, Section 4, thus: "There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The Electoral Commission shall be the sole judge of all contests relating to the election, returns, and qualifications of all members of the National Assembly." Thus, a power

[215]**W. at 810-812. *See* dissent of Padilla and Sarmiento saying that the decision impairs the independence of the House.**

[216]**Angara v. Electoral Commission, 63 Phil. 139,162 (1936).**

[217]**Veloso v. Board of Canvassers, 39 Phil. 886,888 (1919).750 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES**

traditionally lodged in the legislative body itself was taken away and given "to an independent, impartial and non-partisan tribunal."[218] The innovation was in answer to "the long-felt need of determining legislative contests devoid of partisan considerations."[2]"
The effect of this provision, however, was not to divest the legislature of all power relative to the election, returns, and qualifications of its members and thus render it powerless to protect its own integrity. What was transferred to the Electoral Commission was merely the power to be the "sole judge of all contests." The significance of this language was explained in *Vera v. Avelino* thus:[220]
The Convention did not intend to give it ***all*** the functions of the Assembly on the subject of election and qualifications of its members. The distinction is not without a difference. "As used in constitutional provisions," election contest "relates only to statutory contests in which the contestant seeks not only to oust the intruder, but also to have himself inducted into office."[221]
Where, therefore, no defeated candidate challenges the credentials of a member in order not only to dislodge him but also to take his seat, the legislative body itself, in the exercise of its inherent right of self-preservation, may inquire into the credentials of the member and judge his qualifications. When a member of the legislative body challenges the qualification of another, an "election contest" does not thereby ensue, because the former does not seek to be substituted for the latter, and, hence, it is the legislative body itself and not the Commission, which has jurisdiction over the question raised.[222]
When the National Assembly of the 1935 Constitution was abolished by a 1940 amendment which created a bicameral Congress, the identical powers given to the Electoral Commission of the National Assembly were transferred to the respective Electoral Tribunals of the Senate and House of Representatives.

[218] **63 Phil, at 170.**

[2] **"W. at 175. The Constitutional Convention debates on the subject are dealt with at length *id.* at 164-170.**

^ P h i l . 192,209(1946).

"'LAUREL on *ELECTIONS,* Second Edition, p. 250; 20 C J 58

[221] ***Id.* at 210-211.Sec.17 ART. VI - THE LEGISLATIVE DEPARTMENT 751**

Under the 1973 Constitution, these powers, as delineated in *Vera v. Avelino,* were given to the Commission on Elections. There was no Electoral Tribunal under the 1973 Constitution. Similarly, the same powers to judge qualifications retained by the National Assembly under the 1935 Constitution and by the Senate and House of Representatives under the 1940 amendment were retained by the *Batasang Pambansa* under the 1973 Constitution.
Under the 1987 Constitution the C O M E L E C decides who the winner is in an election. A person holding office in the House must yield his or her seat to the person declared by the C O M E L E C to be the winner and the Speaker is duty bound to administer the oath.[223] The Speaker should administer the oath on the winner.
But since the C O M E L E C administers all election laws, when does a controversy leave the C O M E L E C ' s control? In election contests, the jurisdiction of the C O M E L E C ends once a candidate has been proclaimed and has taken his oath of office as a Member of Congress. Jurisdiction then passes to the Electoral Tribunal of either the House or the Senate. This is true even if there is allegation that the proclamation was invalid. The Tribunal will decide that too.[224]
But up to what point may the C O M E L E C entertain protests before proclamation? This was the question in *Sanchez* **v.** *COMELEC*[225] and *Chavez v. COMELEC.*[226] In both cases the candidates who were trailing in the announced count wanted the COMELEC to withhold proclamation until a recount could be made of the votes. In *Sanchez,* the contention of the candidate was that the name of another Sanchez who had been disqualified had not been removed from all the voting precincts. He claimed that in the process of counting, a vote for Sanchez without specification of given name had been considered an invalid vote. He therefore wanted the ballot boxes reopened for purposes retrieving the invalidated Sanchez votes. The situation in *Chavez* was similar.
In deciding against Sanchez the Court laid down the premise that "the policy of the election law is that pre-proclamation controversies

[223] **Codilla v. de Venecia, G.R. No. 150605, December 10,2002.**

^Aggabao v. COMELEC, GR. No. 163756, January 26, 2005; Vinzons-Chato v. COMELEC,GR.No. 172131, April 2,2007.

[223] **153 SCRA 67 (1987).**
^ I I SCRA 315 (1992).752 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec.17
should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible." Hence, under the Omnibus Election Code in effect then, the scope of pre-proclamation controversy was limited to incomplete returns, or returns with material defects, or returns which appeared to be tampered with, falsified or prepared under duress, or containing discrepancies in the votes credited to any candidate the difference of which would affect the results. Any thing else outside of these should be brought before the Electoral Tribunal.[227]
In *Chavez,* the Court reached an identical result. The policy of the law enunciated in *Sanchez* was by then embodied in R.A. N o . 7166 which prescribed that no pre-proclamation controversies were allowed for the election of President, Vice-President, Senators and Members of the House of Representatives except in the case of "manifest error in the certificate of canvass or election returns." Errors which cannot be verified except by the opening of the ballot boxes are not "manifest errors." Hence, as in Sanchez, the proper remedy was recourse to the Electoral Tribunal.[228]
Another question that need be answered is: What does to "judge qualifications" mean? In other words, can the Tribunal disqualify a member on the basis of qualifications or disqualifications not found in the Constitution itself? Or, put differently, can the legislature add to the qualifications and disqualifications found in the Constitution?
Since a member of Congress must be a "registered voter"[229] and since Congress may determine who are disqualified from voting,[230] it is evident that through its limited power over the right of suffrage Congress may in effect create disqualifications. The question of additional "qualifications," however, is a different matter. From the care with which the qualifications were formulated and from the absence of an explicit grant of power to add to the qualifications enumerated by the Constitution, it may be inferred that the enumeration is meant to be exclusive. It will be noted that in the instance where the Constitution means to enumerate merely minimum qualifications, as in the case of
'153 SCRA at 75.
'211 SCRAat321,324.
'Article VII, Sections 3 and 6.
'Article V, Section 1.Sec.17 ART. VI - THE LEGISLATIVE DEPARTMENT 753
judges of lower courts, the Constitution explicitly says that Congress may prescribe qualifications over and above the minimum which the Constitution prescribes.[231] Moreover, it should also be recalled that Philippine legislative bodies are patterned after their American counterpart and that therefore American doctrine on the subject is not without application to the Philippine situation.
American jurisprudence on the subject points to the conclusion that the Constitution leaves the legislature "without power to *exclude* any member-elect who meets all the Constitution's requirements for membership."[232] This conclusion was arrived at by a historical analysis of early English and American colonial exclusion precedents, of the debates at the Philadelphia Convention, and of early post-ratification precedents.[233] The analysis concludes:
Had the intent of the Framers emerged from these materials with less clarity, we would nevertheless have been compelled to resolve any ambiguity in favor of a narrow construction of the scope of Congress' power to exclude members-elect. A fundamental principle of our representative democracy is, in Hamilton's words, "that the people should choose whom they please to govern them."[234] As Madison pointed out at the Convention, this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself. In apparent agreement with this basic philosophy, the Convention adopted his suggestion limiting the power to expel. To allow essentially that same power to be exercised under the guise of judging qualifications, would be to ignore Madison's warning, borne out in the *Wilkes* case and some of Congress' own post-Civil War exclusion cases, against "vesting an improper and dangerous power in the Legislature."[235] Moreover, it would effectively nullify the Convention's decision to require a two-third vote for expulsion. Unquestionably, Congress has an interest is preserving its institutional integrity, but in most cases

that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member with the concurrence of two-thirds.

"'Article VIII, Section 7(2).

".Powell v. McCormack, 395 U.S. 486,547 (1969). *See also* Maquera v. Bona, 15 SCRA 7 (1965), which deals with an attempt to add a property qualification.

„*Id.* at 522-547.

Elliot's Debates 257.

„2 Farrand 249.754 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec.17

In short, both the intention of the Framers, to the extent it can be determined, and an examination of the basic principles of our democratic system persuade us that the Constitution does not vest in the Congress a discretionary power to deny membership by a majority vote.

For these reasons, we have concluded that Art. I, Section **5,** is at most a "textually demonstrable commitment" to Congress to judge only the qualifications expressly set forth in the Constitution. Therefore, the "textual commitment" formulation of the political question doctrine does not bar federal courts from adjudicating petitioners' claims.

Our Court, however, has decided not to follow the above American teaching. The right of Farinas to sit in the House of Representatives was challenged on the ground that his certificate of candidacy was invalid. He had failed to satisfy the statutory requirements for certificate of candidacy. Farinas had already been proclaimed winner and was actually holding office. Moreover, he had all the qualifications prescribed by Section 17. Was this an issue which could be decided by the House Electoral Tribunal? The Court ruled that it was:

. . . [AJrticle VI, Section 17 of the Constitution cannot be circumscribed lexically. The word "qualifications" cannot be read as qualified by the term "constitutional." *Ubi lex non distinguit noc nos distinguire debemos.* Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish. There should be no distinction in the application of a law where none is indicated. For firstly, the drafters of the fundamental law, in making no qualification in the use of a general word or expression, must have intended no distinction at all. Secondly, the courts could only distinguish where there are facts or circumstances showing that the lawgiver intended a distinction or qualification. In such a case, the courts would merely give effect to the lawgiver's intent.

It is submitted, however, that, although the Court's conclusion is correct, the issue here is not about qualifications. When the Constitution enumerates qualifications without a generic clause like "and such other qualifications which may be provided by law," the rule is that the qualifications are exclusive and may not be added to by Congress. Farinas had all the qualifications prescribed by Section 6. His problem, however, was failure to follow the requirements for a certificate of candidacy. Thus, this is not a contest involving "qualification" but a contest involving "election" over which the Electoral Tribunal also has jurisdiction.

The case of *Garcia* v. *HRET,"*. also involved a procedural rule promulgated by the Electoral Tribunal itself. Petitioners, seeking to disqualify Harry Angping failed to make the cash deposit required by the rules of the HRET. When the petition was dismissed, they claimed grave abuse of discretion. The Court said that challenging the right of a member of Congress to hold office on the ground that he was not a natural born Filipino citizen was a serious charge. In view of the delicate nature and importance of this charge, the observance of the HRET Rules of Procedure must be taken seriously if they are to attain their objective, *i.e.,* the speedy and orderly determination of the true will of the electorate. Imperative justice requires the proper observance of technicalities precisely designed to ensure its proper and swift dispensation.

The Court has also clarified the rule on who should assume the position should the candidate who received the highest number of votes is disqualified. The second m rank does not take his place. The reason is simple: "It is of no moment that there is only a margin of 768 votes between protestant and protestee. Whether the margin is ten or ten thousand, it still remains that protestant did not receive the mandate of the majority during the elections. Thus, to proclaim him as the duly-elected

representative in the stead of protestee would be anathema to the most basic precepts of republicanism and democracy as enshrined within our Constitution."[237]

3. Independence of the Electoral Tribunals.

Although six members of the Electoral Tribunals are members of Congress, the Tribunals themselves are not part of either House of Congress. They are independent constitutional creations which have power to create their own rules[238] and are not under the supervision or control of Congress.[23]' As *Suanes v. Chief Accountant* said:[240]

[236]G.R. No. 134792, August 12,1999.

[237]Ocampo v. HRET, G.R. No. 158466, June 15,2004.

[238]n RECORD 87-88.

.'W. at 112. Angara v. Electoral Tribunal, 63 Phil. 139.

""SI Phil. 818,827-28 (1948).756 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 17

Considering then that the Electoral Tribunals are constitutional creations, designed as bodies distinct from and independent of the Congress, so that they may carry out their constitutional mission with independence and impartiality, it follows that within the precise sphere of their functions, they are as sovereign over their internal affairs as are each of the other powers of government over their respective domains. Consequendy, the employees of an Electoral Tribunal are its own, and not of the Senate nor of the House of Representatives nor of any other entity, and it stands to reason that the appointment, the supervision and the control over said employees rest wholly within the Tribunal itself. ...

The fact that the appropriation for the Senate Electoral Tribunal is included in the budget corresponding to the Senate, does not and cannot mean that the employees of the Electoral Tribunal are also employees of the Senate, for both institutions are separate and independent of each other under the Constitution....

Similarly, the Electoral Tribunals are independent of the Commission on Elections. Hence, cases before the Electoral Tribunal are governed not by the rules of procedure for election controversies prescribed by the Commission on Elections but by the Tribunal's own rules.[241] But since the jurisdiction of Electoral Tribunals is over "election contests" in the statutory sense, they do not have jurisdiction over pre-proclamation controversies which come under the jurisdiction of the Conrmission on Elections.[242]

Finally, since the Constitution has constituted the Tribunals as "sole judge" of legislative election contests, their decisions on such controversies are not subject to appeal to the Supreme Court.[243] However, the Supreme Court is not totally excluded. Under Article VIII, Section 1, judicial power includes the authority "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."[244] On this basis, the Supreme Court has invalidated a final vote tally made by the Electoral Tribunal without supporting evidence.[245]

"'Lazatin v. Electoral Tribunal, 168 SCRA 391 (1988).

^ll RECORD 111.

"Vrf.at 113.

^Robles v. House Electoral Tribunal, 181 SCRA 780 (1990); Co v. House Electoral Tribunal, 199 SCRA 692 (1991).

^Lerias v. House Electoral Tribunal, 202 SCRA 808 (1991); Arroyo v. House Electoral Tribunal, G.R. No. 118597, July 14, 1995.Sees .18-19 ART. VI - THE LEGISLATIVE DEPARTMENT 757

S E C . **1 8 . T**HERE SHALL BE A **C**OMMISSION ON **A**PPOINTMENTS CONSISTING OF THE PRESIDENT OF THE SENATE, AS *EX-OFFIC10* **C**HAIRMAN, TWELVE **S**ENATORS AND TWELVE **M**EMBERS OF THE **H**OUSE OF **R**EPRESENTATIVES, ELECTED BY EACH **H**OUSE ON THE BASIS O F PROPORTIONAL REPRESENTATION FROM THE POLITICAL PARTIES AND PARTIES OR ORGANIZATIONS REGISTERED UNDER THE PARTY-LIST SYSTEM REPRESENTED THEREIN. **THE** CHAIRMAN OF THE COMMISSION SHALL NOT VOTE, EXCEPT IN CASE OF A TIE. **THE** COMMISSION SHALL ACT ON ALL APPOINTMENTS SUBMITTED TO IT WITHES THIRTY SESSION DAYS OF THE CONGRESS FROM THEIR SUBMISSION. **THE** COMMISSION SHALL RULE BY A MAJORITY VOTE OF ALL THE M E M B E R S .

S E C . **1 9 . T** H E **E**LECTORAL **T**RIBUNALS AND THE **C**OMMISSION ON **A**PPOINTMENTS SHALL BE CONSTITUTED WITHIN THIRTY DAYS AFTER THE **S**ENATE AND THE **H**OUSE OF **R**EPRESENTATIVES SHALL HAVE BEEN ORGANIZED WITH THE ELECTION OF THE **P**RESIDENT AND THE **S**PEAKER. **T** H E **C**OMMISSION ON **A**PPOINTMENTS SHALL MEET ONLY WHILE THE **C**ONGRESS IS IN SESSION, AT THE CALL OF ITS **C**HAIRMAN OR A MAJORITY OF ALL ITS MEMBERS, TO DISCHARGE SUCH POWERS AND FUNCTIONS AS ARE HEREIN CONFERRED UPON I T .

1. Commission on Appointments: composition, nature, functions.

The Commission on Appointments consists of "the President of

the Senate, as *ex-ojficio* 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." With the Chairman, therefore, the total complement is twenty-five, thus making it easier to allow for representation of more parties.[246]
Like the composition of the Electoral Tribunals, the structure of the Commission on Appointments departs from that of its counterpart in the 1935 Constitution which gave preferential representation only to the two largest political parties represented in each House. The 1987 Constitution calls for proportional representation of all political parties and parties and organizations registered under the party-list system. And, as with the Electoral Tribunals, sectors will be represented only in so far as they form part of the party-list system.

"*A proposed amendment to reduce the total to thirteen was not approved. II RECORD 139-140.758 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sees. 18-19

The arithmetic involved in the formation of the Commission on Appointments has occasioned a number of controversies. The first of these was *Coseteng v. Mitra, Jr.[2]"* Coseteng was the only member of Congress from the political party KAIBA. Was she entitled to one of the twelve seats in the Commission? The answer was simple arithmetic. Since the total membership of the House of Representatives was 202, to be entitled to a seat in the Commission a party must have 16.8 members in the House or 8.4% of the total membership. KAIBA was obviously short of the required number even if she had the support of members not belonging to her party.
The second case, *Guingona, Jr. v. Gonzales,*[24]* involved the Senate contingent in the Commission. The senatorial elections of 1992 yielded 15 LDP senators, 5 NPC, 3 Lakas-NUCD, and 1 LP-PDP-LABAN. On the basis of proportional representation, therefore, the Commission on Appointments could contain 7.5 LDP, 2.5 N P C , 1.5 Lakas, and .5 LP-PDP-LABAN. The Senate, however, put in 8 L D P by rounding up 7.5, 2 NPC by ignoring .5, 1 LAKAS also by ignoring .5, and 1 LP-PDP by rounding out .5 to 1. Was this constitutional? The Court ruled that rounding out 7.5 to 8 and .5 to 1 was unconstitutional because it deprived Lakas and NPC of .5 each. Nor can the holders of .5 each, while belonging to distinct parties, form a unity for purposes of obtaining a seat in the Commission. Thus, under the Court's arithmetic, the result would be a total of only 11 members. But the Court ruled that a full complement of 12 was not mandatory.
Since the composition of the Commission on Appointments is proportional to the size of the political parties and organizations in Congress, periodic reorganization may be necessary in order to reflect changes in the proportion within Congress. This principle was emphasized in *Daza* v. *Singson*.[249] However, to justify reorganization, the changes in the political complexion of the House must be permanent and not temporary in character:[250]

w7187 SCRA 377 (1990).

244214 SCRA 789 (1992). The case of Lorenzo Tanada being given a seat in the Commission on Appointments in the old Senate in spite of his being the only member of the Citizens Party was cited as justification for reconsidering the decision. The Court did not consider the case of the older Tanada as precedent because the action of the Senate then was never challenged in court. Guingona, Jr. v. Gonzales, 219 SCRA 326 (1993).

"•180 SCRA 496 (1989).

""Cunanan v. Tan, 5 SCRA at 4.Sees. 18-19 ART. VI - THE LEGISLATIVE DEPARTMENT 759

> In other words, a shifting of votes at a given time, even if due to arrangements of a more or less temporary nature ... does not suffice to authorize a reorganization of the membership of the Commission for said House. Otherwise, the Commission on Appointments may have to be reorganized as often as votes shift from one side to another in the House. The framers of our Constitution could not have intended to thus place a constitutional organ, like the Commission on Appointments, at the mercy of each House of Congress.
> "In order that the members of the Commission could properly discharge their duties as such, it is essential that their tenure therein be provided with a certain measure of stability to insure the necessary freedom of action."[251]

Although the Commission on Appointments is formed through the instrumentality of the two Houses of Congress, the Commission itself,

once formed, is independent of Congress:[252]

The Commission on Appointments is a creature of the Constitution. Although its membership is confined to members of Congress, said Commission is independent of Congress. The powers of the Commission do not come from Congress, but emanate direcdy from the Constitution. Hence, it is not an agent of Congress. In fact, the functions of the Commission are purely executive in nature.

As an independent body, it can promulgate its own rules[253] and the Supreme Court cannot pass upon the correctness of the interpretation placed by the Commission of its own rules.[254]

Section 19 prescribes that the Electoral Tribunals and the Commission on Appointments shall be constituted within thirty days after the Senate and the House of Representatives shall have been organized with the election of the President and Speaker. Thus, the two Commissions are not coaetaneous with Congress. However, the Commission

l u n a r i a n v.Tan, 5 SCRA 1,3 (1962).

"[3]II RECORD .at 88.

""Advincula v. Commission On Appointments, 7 SCRA 1 (January 12,1963). In the original petition, 5 SCRA 1179 (1962), the Court had said that it could not determine the correctness of the Commission's interpretation of its own rules "without violating the fundamental principle of separation of powers." *See also* Quimsing v. Tajanglangit, GJt. No. 19981, February 29,1964 and Altarejos v. Molo, 25 SCRA 550 (1968).760 THE 1987 CONSTITUTION

OF THE REPUBLIC OF THE PHILIPPINES

Sees. 20-21

on Appointments may meet only while Congress is in session, at the call of its Chairman or a majority of all its Members. "How often and how long it shall meet is left entirely to the discretion of the Commission, as long as it is during the session of the Congress . . . . Therefore, if the Commission itself decides that its working days should be from Monday through Friday of the week, excluding Saturday and Sunday, it would be exercising its lawful authority and would not be infringing any constitutional provision."[255]

Since the Commission can meet only when Congress in session, Article VII, Section 16 makes provision for appointments made by the President when Congress is not in session. More on this later on.

The function of the Commission on Appointments is to consent to or confirm nominations or appointments submitted to it by the President pursuant to Article VII, Section 16 which enumerates the appointments which need action by the Commission on Appointments. The Commission is thus intended to serve as an administrative check on the appointing authority of the President. The powers of the Commission, however, can be abused. Hence, in order to lessen the possibility that political vindictiveness might make the Commission freeze the confirmation of unwanted nominees or allow one member to block the confirmation of a nominee, the rule was added that the Commission shall act on all appointments submitted to it within thirty session days of Congress from their submission and that the Commission should rule by majority vote.[256]

S E C . **20.** T H E RECORDS AND BOOKS OF ACCOUNTS OF THE CONGRESS SHALL BE PRESERVED AND BE OPEN TO THE PUBLIC IN ACCORDANCE WITH LAW, AND SUCH BOOKS SHALL BE AUDITED BY THE COMMISSION ON A U D I T WHICH SHALL PUBLISH ANNUALLY AN ITEMIZED LIST OF AMOUNTS PAID TO AND EXPENSES INCURRED FOR EACH M E M B E R .

S E C . **21.** T H E SENATE OR THE **H**OUSE OF **R**EPRESENTATIVES OR ANY OF ITS RESPECTIVE COMMITTEES MAY CONDUCT INQUIRIES IN AID OF LEGISLATION IN ACCORDANCE WITH ITS DULY PUBLISHED RULES OF PROCEDURE. T H E RIGHTS OF PERSONS APPEARING IN OR AFFECTED BY SUCH INQUIRIES SHALL BE RESPECTED.

„J SCRA at 3.

[256] **The principal sponsor of this rule was Commissioner de Castro who related his own sad experiences with the pre-martial law Commission on Appointments. II RECORD 141-144.Sec.** 21 **ART. VI - THE LEGISLATIVE DEPARTMENT 761**

1. Legislative investigations.

The foundation of the power of legislative investigation and the means for enforcing it were stated by Justice Ozaeta thus in *Arnault v. Nazareno:*[257]

Although there is no provision in the [1935] Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the ab-

sence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information — which is not infrequently true — recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed.[258] The fact that the Constitution expressly gives to Congress the power to punish its Members for disorderly behavior, does not by necessary implication exclude the power to punish for contempt any other person.[259]

What was implicit under the 1935 Constitution, as influenced by American jurisprudence, became explicit under the 1973 Constitution and under the 1987. Likewise, for the protection of the rights of witnesses, Section 21 has made explicit the limitations on the power of legislative investigation: (1) it must be "in aid of legislation"; (2) it must be "in accordance with its duly published rules of procedure;" and (3) "The rights of persons appearing in or affected by such inquiries shall be respected."

No person can be punished for contumacy as a witness unless his testimony is required in a matter into which the legislature or any of its committees has jurisdiction to inquire.[260] The requirement that the inves-

t s ? Phil. 29,45(1950).

"'McGrain v. Daugherty, 273 U.S., 135; 71 L. ed.,580; 50A.L.R., 1.

"'Anderson v. Dunn, 6 Wheaton, 204; 5 L. ed., 242.

tigation be "in aid of legislation" is an essential element for establishing the jurisdiction of the legislative body. It is, however, a requirement which is not difficult to satisfy because, unlike in the United States, where legislative power is shared by the United States Congress and the state legislatures, the totality of legislative power is possessed by the Congress and its legislative field is well-nigh unlimited. "It would be difficult to define any limits by which the subject matter of its inquiry can be bounded."[261] Moreover, it is not necessary that every question propounded to a witness must be material to a proposed legislation. "In other words, the materiality of the question must be determined by its direct relation to the Subject of the inquiry and not by its indirect relation to any proposed or possible legislation. The reason is that the necessity or lack of necessity for legislative action and the form and character of the action itself are determined by the sum total of the information to be gathered as a result of the investigation, and not by a fraction of such information elicited from a single question."[262]

On the basis of this interpretation of what "in aid of legislation" means, it can readily be seen that the phrase contributes practically nothing towards protecting witnesses. Practically any investigation can be in aid of the broad legislative power of Congress. The limitation, therefore, cannot effectively prevent what *Kilbourn v. Thompson*™ characterized as "roving commissions" or what *Watkins v. United States*[264] labeled as exposure for the sake of exposure.

In spite of the broad scope of investigation "in aid of legislation," however, the Court found in *Bengzon, Jr. v. Senate Blue Ribbon Committee*[265] that the committee had gone beyond what was allowable. The case started with a speech by Senator Enrile suggesting the need to determine the existence of violation of law in the alleged transfer of some properties of "Kokoy" Romualdez to the Lopa Group of Companies. On this basis, the Senate Blue Ribbon Committee decided, purportedly in aid of legislation, to investigate the transaction. Meanwhile, too, the petitioners in this case had been charged criminally before the Sandiganbayan in connection with the same transaction. When the Blue

[261] *Id.* at 46.

[262] W . a t 4 8 .

[263] 103 U . S . 168(1881).

[264] 3 5 4 U . S . 178,200(1957).

[265] *203* S C R A 767(1991).

Ribbon Committee summoned the petitioners to appear, they asked the Court for a restraining order on the ground among others that the investigation was not in aid of legislation and that their appearance before the investigating body could prejudice their case before the Sandiganbayan, thus violating due process, because it could result in the weakening of their case.

The Court ruled that the investigation was not in aid of legisla-

tion because "the speech of Senator Enrile contained no suggestion of contemplated legislation" but merely pointed to the need to determine whether "the relatives of President Aquino, particularly Mr. Ricardo Lopa, had violated the law."[266]

In effect, therefore, on the basis of the speech of one member of the Senate, the Court second guessed the intention of the Blue Ribbon Committee.[267] Having made this conclusion, the Court no longer looked into the due process allegation of Bengzon. If it had done so, it could have found a valid foundation for stopping the investigation in the provision that the "rights of persons appearing in or affected by such inquiries shall be respected." The general rule of fairness, which is what due process is about, could have justified exclusion of respondents from appearance before the Committee. Which would not mean that the Committee should not go ahead with the investigation making use of other witnesses, if any there were. In other words, one must distinguish between the jurisdiction of the Committee, which it had, and the limits on that jurisdiction, which are prescribed by the Constitution.

In *Standard Charter v. Senate,*[268]* when bank officers who had been summoned used the *Bengzon* argument as their defense, the Court said that the factual milieu in *Bengzon* did not obtain in the case. Resolution No. 166 calling for the hearing was explicit about the subject and nature of the inquiry to be conducted by the respondent Committee. The Court found that the hearing was clearly in aid of legislation.

It should also be noted that the Constitution explicitly recognizes the power of investigation not just of Congress but also of "any of its committees." This is significant because it constitutes a direct conferral of investigatory power upon the committees and it means that the means

*** M . at 781.**

[267] See dissents of Justices Gutierrez and Cruz.

which the Houses can take in order to effectively perform its investigative function are also available to the committees. This is unlike the situation under the 1935 Constitution where the investigatory powers of committees were conferred by the legislature. Hence, for the purpose of protecting witnesses against the improper use of the compulsory process by committees, *Watkins v. United States*[269] could require "that the instructions to an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity." This requirement of particularity of purpose was intended to enable the witness to determine the pertinence of the committee's questions. Now, however, that investigatory power has been directly conferred on committees, the committees themselves as far as subject matter jurisdiction is concerned, are limited only by the broad requirement that their investigations be "in aid of legislation" on subjects pertaining to the particular committees. Provided that the committees act within the broad legislative area assigned to them by Congress, they would not exceed their investigatory jurisdiction. The problem of affording witnesses the opportunity to determine for themselves the pertinence of the questions can be solved by clarificatory statements by the committee itself.[270] And, it should be recalled, the measure of pertinence is not the question's relation to a specific legislation but merely to the general subject of the enquiry.[271]

The significance of the second limitation on the investigatory power — that the inquiry be "in accordance with its duly published rules of procedure"

— can, perhaps, be appreciated by considering it side by side with the control Congress has over its rules when they affect merely matters internal to it. As already seen in *Osmefia, Jr. v. Pendatun*[272] where Congress suspended the operation of a House rule which could have protected Congressman Osmefia, the Supreme Court accepted the view that parliamentary rules "may be waived or disregarded by the legislative body."[273] This view can be accepted as applicable when private rights are not affected. When, however, the private rights of witnesses in an investigation are involved, Section 21 now prescribes that Congress and its committees must follow the "duly pub-

[269] 354U.S.at201.

[270] This, in fact was the procedure accepted in *Barenblatt v. United States,* 360 U.S. 109 (1959), a decision which came after Watkins.

[271] '87 Phil, at 48.

[272] 109 Phil. 863 (1960).

[273] 109 Phil, at 871.

lished rules of procedure." Moreover, Section 21 may also be read as requiring that Congress must have "duly published rules of procedure" for legislative investigations. Violation of these rules would be an offense against due process.

The need for publication became a focus in the case of *Neri* v. *Senate*[21]* case where it was shown that the Senate currently conducting the investigation had not published its rules. The Court emphasized that publication gives the notice that is required for due process since investigations can affect the rights of non-members of Congress. Moreover, the Court through the concurring and dissenting opinion of Justice Antonio Carpio added:

The present Senate under the 1987 Constitution is no longer a continuing legislative body. The present Senate has twenty-four members, twelve of whom are elected every three years for a term of six years each. Thus, the term of twelve Senators expires every three years, leaving **less than a majority of Senators to continue into the next Congress.** The 1987 Constitution, like the 1935 Constitution, requires a majority of Senators to "constitute a quorum to do business." Applying the same reasoning in ***Arnault v. Nazareno,*** the Senate under the 1987 Constitution is not a continuing body because less than majority of the Senators continue into the next Congress. The consequence is that the ***Rules of Procedure*** must be republished by the Senate after every expiry of the term of twelve Senators.

In a later Resolution on the same case the Court would elaborate thus:

On the nature of the Senate as a "continuing body," this Court sees fit to issue a clarification. Certainly, there is no debate that the Senate **as an institution** is "continuing," as it is not dissolved as an entity with each national election or change in the composition of its members. However, in the conduct of its day-to-day business the Senate of each Congress acts separately and independently of the Senate of the Congress before it. The Rules of the Senate itself confirms this when it states:

In effect, in the absence of published rules, investigation cannot proceed.

[24] **G.R. No. 180643, March 25,2008.**766 **THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES**
Sec. 21

The later case of ***Garcillano v. Senate,***[25] would reject the contention that previously published Senate Rules had never been changed. The Court said:

The absence of any amendment to the rules cannot justify the Senate's defiance of the clear and unambiguous language of Section 21, Article VI of the Constitution. The organic law instructs, without more, that the Senate or its committees may conduct inquiries in aid of legislation ***only in accordance with duly published rules of procedure, and does not make any distinction whether or not these rules have undergone amendments or revision.*** The constitutional mandate to publish the said rules prevails over any custom, practice or tradition followed by the Senate.

Likewise the Court rejected the contention that the rules could already be found published in the internet:

The invocation by the respondents of the provisions of R.A. No. 8792, otherwise known as the Electronic Commerce Act of 2000, to support their claim of valid publication through the internet is all the more incorrect. R.A. No. 8792 considers an electronic data message or an electronic document as the functional equivalent of a written document only for ***evidentiary purposes.*** In other words, the law merely recognizes the admissibility in evidence (for their being the original) of electronic data messages and/or electronic documents. ***It does not make the internet a medium for publishing laws, rules and regulations.***

Finally, however, the Court was willing to concede that if the previously published rules had stated that their adoption shall remain in force until they are amended or repealed, the rules would then subsist beyond the Senate that adopted it.

The third limitation on legislative investigatory power is that "the rights of persons appearing in or affected by such inquiries shall be respected." This is just another way of saying that legislative investigations must be "subject to the limitations placed by the Constitution

on governmental action."[276] And since all governmental action must be exercised subject to constitutional limitations, principally found in the
'G.R. No. 170338, December 28,2008.
'Barenblatt v. United States. 360 U.S. at 112.Sec. 22 ART. VI - THE LEGISLATIVE DEPARTMENT 767
Bill of Rights, this third limitation really creates no new constitutional right. But it emphasizes such fundamentals as the right against self-incrimination and unreasonable searches and seizures and the right to demand, under due process, that Congress observe its own rules.
In addition to the above express limitations on the power of Congress is the implicit limitation that the power of Congress to commit a witness for contempt terminates when the legislative body ceases to exist upon its final adjournment. "This must be so, inasmuch as the basis of the power to impose such a penalty is the right which the Legislature has to self-preservation, and which right is enforceable during the existence of the legislative body."[277] Thus, unlike the Senate which continues as an institution even after an election, the term of whose members expire at different times and is therefore a continuing body,[278] the life of the House of Representatives terminates upon its final adjournment. With the termination of its life, the power to punish for the purpose of preserving that life must also end. However, there is legally nothing to prevent the subsequent House of Representatives from continuing the investigation and reincarcerating a witness who persists in being contumacious.
Finally, it must be remembered that the exercise of this awesome power of Congress may be looked into by the Supreme Court under its expanded jurisdiction given by Article VIII, Section 1.
How Section 21 operates in relation to Section 22 is explained under Section 22.

SEC. 22. THE HEADS OF DEPARTMENTS MAY UPON THEIR OWN INITIATIVE, WITH THE CONSENT OF THE PRESIDENT, OR UPON THE REQUEST OF EITHER HOUSE, AS THE RULES OF EACH HOUSE SHALL PROVIDE, APPEAR BEFORE AND BE HEARD BY SUCH HOUSE ON ANY MATTER PERTAINING TO THEIR DEPARTMENTS. WRITTEN QUESTIONS SHALL BE SUBMITTED TO THE PRESIDENT OF THE SENATE OR THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AT LEAST THREE DAYS BEFORE THEIR SCHEDULED APPEARANCE. INTERPELLATIONS SHALL NOT BE LIMITED TO WRITTEN QUESTIONS, BUT MAY COVER MATTERS
^Avancena, *CJ.,* concurring in Lopez v. de los Reyes, 55 Phil. 170, 186 (1930). *See* Vivo v. Ganzon, 57 SCRA 255 (May 31, 1974).
"'Article XVm, Section 2; Arnault v. Nazareno, 87 Phil, at 61.768 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES
RELATED THERETO. WHEN THE SECURITY OF THE STATE OR THE PUBLIC INTEREST SO REQUIRES AND THE PRESIDENT SO STATES IN WRITING, THE APPEARANCE SHALL BE CONDUCTED IN EXECUTIVE SESSION.
Sec. 22

1 . Congress a n d Heads of D e p a r t m e n t s .

Section 21 deals with the inherent power of legislative investigation in aid of legislation for which Congress or its committees are authorized to summon witnesses. Because of separation of powers, however, and the peculiar position which heads of departments hold in relation to the President, the relationship of Congress to the official family of the President is also delicate. Section 22 deals with this delicate relationship.
The rule governing the subject has evolved over the years and it remains not without points of unclarity. Before the 1935 Constitution, the rule was found in the Administrative Code which said: "The Secretaries may be called, and shall be entitled to be heard, by either of the two Houses of the Legislature, for the purpose of reporting on matters pertaining to their Departments, unless the public interest shall require otherwise and the Governor-General shall so state in writing." The obvious purpose was to enable the department heads to be heard by the legislature and thereby achieve cooperation between the executive and legislative departments. The practice was for various legislative committees to ***request*** department secretaries either to appear before legislative committees or to furnish written information.[279]
In the drafting of the 1935 Constitution, the Convention debated whether the statutory provision should be elevated to the level of a constitutional provision. Those who opposed incorporation of the rule in the Constitution saw the administrative code provision as a feature of a parliamentary system and therefore contrary to the system of separation of powers. Moreover, the "initiative" given to Secretaries was seen as opening the door to Cabinet lobbying for pet items. But the provision was adopted nonetheless in order to obviate any constitutional challenge to a department head communing with Congress and in order to

keep dealings between department heads and Congress in the open. On the whole it was thought that information given by Secretaries would improve the quality of legislation. Thus the provision incorporated into the 1935 Constitution read: "The heads of departments upon their own initiative or upon the request of the National Assembly may appear before and be heard by the National Assembly on any matter pertaining to their departments, unless the public interest shall require otherwise and the President shall so state in writing."[280]

The whole tenor of the provision was permissive: the department heads could appear but the legislature was not obliged to entertain them; reciprocally the legislature could request their appearance but could not oblige them especially if the President objected. Nobody adverted to the possibility or need of enforcement through formal legislative summonses or through the use of legislative contempt powers because everything would be a gentlemanly game between equals.

The rules radically changed with the adoption of the 1973 Constitution. The original 1973 Constitution adopted a parliamentary form of government and, with it, the parliamentary devise of the "question hour"[281] which was intended to serve not so much as an aid to legislation but as an instrument for keeping administration in line. Since in a parliamentary system administration is answerable to Parliament, the Prime Minister, the real executive, and Cabinet Members could be ""required to appear and answer questions and interpellations" to give an account of their stewardship. When in 1981 the Constitution was revised to revert to the presidential system and thereby revert executive power to the President, the "question hour" was retained with regard to the Prime Minister and members of the Cabinet but the President was kept free from legislative summonses.

During the deliberations of the 1986 Constitutional Commission, the report of the Legislative Committee called for the adoption of the "question hour" during which "the Members of the Cabinet and their deputies may be *required* to appear and answer questions and interpellations by Members of the National Assembly." The sponsorship argued that the "procedure [would provide] the opposition with a means of discovering the government's weak points and because of the publicity it generates, it has a salutary effect on the administration."[282] The proposal, however, was vigorously resisted as being essential to the parliamentary system and therefore contrary to the essence of separation of powers in a presidential system.[283] After much debate and after a series of reformulations,[284] and much against the wishes of the sponsorship because the appearance of department heads would not be mandatory but directory,[285] the present provision was unanimously[286] approved: "The heads of departments may upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session." Should the department head appear, however, whether on his own initiative or upon the request of the House, the appearance will be done "as the rules of each House will prescribe." The provision thus rejects the original proposal patterned after the 1973 version and reflects instead its 1935 counterpart. The tenor is once more permissive. The President may or may not consent to the appearance of department heads; and even if he does, he may require that the appearance be in executive session. Reciprocally, Congress may refuse the initiative taken by the department secretary.

Even after all this discussion, and after the approval of the radically amended provision, Commissioner Davide still insisted that heads of departments could be compelled under pain of contempt to appear, no longer, however, in virtue of Section 22 but in virtue of the power of legislative investigation in Section 21 .[287] Such a position, however, fails to take into consideration the fact that Section 22 was first incorporated into the 1935 Constitution in recognition of the tradition that the inherent power of legislative investigation could run afoul with as-

[281] Article VIII, Section 12(1), 1973 Constitution.

sertion of executive privilege. American legislative tradition, whence Philippine tradition originated, has generally regarded congressional contempt power as an inappropriate device for regulating executive

„₂n RECORD „*Id.* at 133.
4 6 , 9 2 , 1 0 7 , 1 3 2 .
^*Id.at* 133-134, 147-151.
"Vd.at 147-148.
„*U.* at 151.
™*Id.* at 199-200.Sec. 23 ART. VI - THE LEGISLATIVE DEPARTMENT 771

claims of privilege.[288] Hence, although the task of legislation demands adequate information and although the Bill of Rights guarantees the right of the people to information on matters of public concern,[289] the dynamics of legislative-executive relations would dictate that Congress find ways of obtaining information from department heads other than by compulsion. On the other hand, department heads should be aware that information vital to legislation legitimately requested by Congress should not, for the welfare of the nation, be withheld.

Senate v. *Ermita*[2]*> specified who may and who may not be summoned to Section 21 hearings. Under this rule, even a Department Head who is an alter ego of the President may be summoned. Thus, too, the Chairman and members of the Presidential Commission on Good Government (PCGG) are not exempt from summons in spite of the exemption given to them by President Cory Aquino during her executive rule. The Court ruled that anyone, except the President and Justices of the Supreme Court, may be summoned.[291] Nor may a court prevent a witness from appearing in such hearing.[292]

Section 22, for its part, establishes the rule for the exercise of what is called the "oversight function" of Congress. Such function is intended to enable Congress to determine how laws it has passed are being implemented. In deference to separation of powers, however, and because Department Heads are alter egos of the President, they may not appear without the permission of the President. This was explicitly mentioned in the deliberations of the 1935 Constitutional Convention where some Delegates had doubts about the propriety or constitutionality of Department Heads appearing in Congress.

It should be noted, however, that the exemption from summons applies only to Department Heads and not to everyone who has Cabinet rank.

S E C . **2 3 . (1) T** H E **C**ONGRESS, BY A VOTE OF TWO-THIRDS OF BOTH **H**OUSES IN JOINT SESSION ASSEMBLED, VOTING SEPARATELY,

***"'See, e.g., United States* v. *Nixon,* 418 U.S. 683 (1974), where the Supreme Court lent its blessing on the executive right to withhold information as flowing from separation of powers.**
"'Article III, Section 7.
"°G.R. No. 169777, April 20,2006.
₂"Sabio v. Gordon, GJL No. 174318, October 17,2006.
₂₉₅Senate Blue Ribbon Committee v. Judge Majaducon. GR. No. 136760, July 29,2003.772 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES

Sec. 23

SHALL HAVE THE SOLE POWER TO DECLARE THE EXISTENCE OF A STATE OF WAR.

(2) IN TIMES OF WAR OR OTHER NATIONAL EMERGENCY, THE **C**ONGRESS MAY, BY LAW, AUTHORIZE THE **P**RESIDENT, FOR A LIMITED PERIOD AND SUBJECT TO SUCH RESTRICTIONS AS IT MAY PRESCRIBE, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT A DECLARED NATIONAL POLICY. UNLESS SOONER WITHDRAWN BY RESOLUTION OF THE CONGRESS, SUCH POWERS SHALL CEASE UPON THE NEXT ADJOURNMENT THEREOF.

1. Declaration of the existence of a state of war.

War is denned as "armed hostilities between two states."[293] The 1935 Constitution, in Article VI, Section 2 5 , gave to Congress "the sole power to declare war;" the present provision, following that of Article VIII, Section 14(2) of the 1973 Constitution, gives to Congress, in joint session assembled and voting separately, "the sole power to declare the existence of a state of war." The difference between the two phraseologies is not substantial but merely in emphasis.

The two phrases were interchangeable, even under the 1935 Constitution;[294] but the second phrase emphasizes more the fact that the Philippines, according to Article II, Section 2, renounces aggressive war as an instrument of national policy.[295]

The provision does not prohibit the waging of a defensive war even in the absence of a declaration of war or of a declaration of the existence of a state of war. Thus, during the 1935 Convention, Delegate Salvador Araneta asked: *"En caso de que Filipinos fuera invadida por una nation extranjera, no estando la legislatura en funciones; que action podria tomar el gobierno entonces para defender la invasion?"* Delegate Singson-Encamacion's answer was unequivocal: *"Resistir*

con todas susfuerzas armadas."[296] In other words, while the Constitution gives to the legislature the power to declare the existence of a state of war and to enact all measures to support the war, the actual power to *make war* is lodged elsewhere, that is, in the executive power which

Ed.).

w1II RECORD 169.

""X PROCEEDINGS OF THE 1935 CONSTITUTIONAL CONVENTION 468-9 (LAUREL

™*U* RECORD 168.

""IV PROCEEDINGS at 942-3.Sec. 23 ART. VI - THE LEGISLATIVE DEPARTMENT 773

holds the sword of war. The executive power, when necessary, may make war even in the absence of a declaration of war.[297] In the words of the American Supreme Court, war being a question of actualities, "the President was bound to meet it in the shape it presented itself, without waiting for Congress to baptize it with a name; and no name given to it by him or them could change the fact."[298]

2. Delegation of emergency powers.

Section 26, Article VI, of the 1935 Constitution said:

In times of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy.

The pre-conditions for the grant of emergency powers found in the 1935 Constitution have been preserved in the present provision: "war or other national emergency." However, the nature of the power which the legislature is allowed to delegate has been altered. The 1935 Constitution allowed the delegation of the power "to promulgate rules and regulations to carry out a declared national policy." In constitutional law parlance, the power "to promulgate rules and regulations" is not a power to make laws but a power merely to execute the law.[299] It is clear from the debates of the 1935 Constitutional Convention that it was not that Convention's intention to give legislative power to the President.[300] This was affirmed by the Supreme Court in *Araneta* **v.** *Dinglasan:*™

"The point is, under this framework of government, legislation is preserved for Congress all the time, not excepting periods of crisis no matter how serious."

Under the present provision, which follows the phraseology of the 1973 Constitution which was more expansive in its grant of powers to the President, Congress may authorize the President "to exercise powers necessary and proper to carry out a declared national policy." It is a formula well suited to the looser separation of executive and legisla-

t e Prize Cases, 2 Bl. 635 (U.S. 1863).

k1W. at 669.

™*See supra,* on Non-delegability of Legislative Power.

""X PROCEEDINGS at 951-6.

w184 Phil. 369,382 (1949).774 THE 1987 CONSTITUTION

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tive powers in the 1973 system.[302] Note that the nature of the delegated power is not specified. It thus lends support to the conclusion that this authorizes delegation of real legislative power. In fact, when the 1973 text was being formulated, the explanation was made on the floor of the 1971 Convention that emergency powers would include the power to rule by "executive fiat."[303] This meaning too can be read as carried into the 1987 text; but, since even a martial law situation does not allow the President to supplant the legislature, the authority which can be given by the legislature must necessarily be a very limited one and certainly not amounting to the legislature's abdication of its power.[304]

There are, moreover, two limits on the emergency powers. First, it can be given only "for a limited period." If Congress does not set a limit, the provision adds: "Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof." It should thus be noted that the powers may be withdrawn by "resolution"; it is not necessary that the withdrawal be done through a statute. The distinction is important because a resolution does not need the approval of the President whereas a statute, to be effective, needs the President's approval. It should also be noted that the automatic cessation of the President's emergency powers takes place upon the next adjournment. In other words, ironically, when the Congress is not in session and therefore unable to act on emergency situations, the President himself is stripped of his emergency powers.

Secondly, the emergency powers are subject to such restrictions as the Congress may provide. Thus, the emergency powers can be as

narrow or as broad as the Congress may make them.

S E C . **2 4 . A** L L APPROPRIATION, REVENUE OR TARIFF BILLS, BILLS AUTHORIZING INCREASE OF THE PUBLIC DEBT, BILLS OF LOCAL APPLICATION, AND PRIVATE BILLS SHALL ORIGINATE EXCLUSIVELY IN THE **H**OUSE OF **R**EPRESENTATIVES, BUT THE **S**ENATE MAY PROPOSE OR CONCUR WITH AMENDMENTS.

[w] In fact, the provision was rendered useless by Amendment 6 which under the 1973 Constitution gave to the President all the emergency powers he needed and more.

^"Delegate I. Veloso, Session of July 23, 1972

1. plication.

Origin of money bills, private bills and bills of local ap-

An appropriation bill is one whose purpose is to set aside a sum of money for public use. Only appropriation bills in the strict sense of the word are comprehended by the provision; bills for other purposes which incidentally set aside money for that purpose are not included. Similarly revenue or tariff bills are those which are strictly for the raising of revenues; bills for other purposes which incidentally create revenue are not comprehended.

Bills of local application are those whose reach is limited to specific localities, such for instance as the creation of a town. Private bills are those which affect private persons, such for instance as a bill granting citizenship to a specific foreigner.

The theory behind the rule requiring that these originate in the House of Representatives is that district Representatives are closer to the pulse of the people than senators are and are therefore in a better position to determine both the extent of the legal burden they are capable of bearing and the benefits that they need.

The meaning of origination from the House and the scope of the Senate's power to introduce amendments were thoroughly discussed in *Tolentino v. Secretary of Finance*.[s] involving R.A. No. 7716, the Value Added Tax (VAT) law. After the House version of the bill was sent to the Senate, the Senate introduced a substitute bill which apparently it had prepared in anticipation of the House bill. Later the President certified to the urgency of passing the Senate version of the bill. After the two versions had gone through a Conference Committee, the House approved the Conference Committee report which for all practical purposes was the Senate bill. Was there a violation of the rule on origination?

The constitutional rule is that revenue bills must "originate exclusively" from the House of Representatives. The Court said that the exclusivity of the prerogative of the House of Representatives means simply that the House alone can initiate the passage of a revenue bill, such that, if the House does not initiate one, no revenue law will be

™*235* SCRA 630 (1994), affirmed on reconsideration G.R. Nos. 111206-08, October 6, 1995.776 THE 1987 CONSTITUTION

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passed. But once the House has approved a revenue bill and passed it on to the Senate, the Senate can completely overhaul it, by amendment of parts or by amendment by substitution, and come out with one completely different from what the House approved. It does not matter whether the Senate already anticipated a bill from the House and formulated one to take the place of whatever the House might send. The Court rejected the idea that the Senate is bound to retain the essence of what the other House approved. Textually, it is the "bill" which must exclusively originate from the House; but the "law" itself which is the product of the total bicameral legislative process originates not just from the House but from both Senate and House.[306]

S E C **2 5 . (1) T** H E **C**ONGRESS MAY NOT INCREASE THE APPROPRIATIONS RECOMMENDED BY THE PRESIDENT FOR THE OPERATION OF THE GOVERNMENT AS SPECIFIED IN THE BUDGET. T H E FORM, CONTENT, AND MANNER OF PREPARATION OF THE BUDGET SHALL BE PRESCRIBED BY LAW.

(2) NO PROVISION OR ENACTMENT SHALL BE EMBRACED IN THE GENERAL APPROPRIATIONS BELL UNLESS IT RELATES SPECIFICALLY TO SOME PARTICULAR APPROPRIATION THEREIN. A N Y SUCH PROVISION OR ENACTMENT SHALL BE LIMITED IN ITS OPERATION TO THE APPROPRIATION TO WHICH IT RELATES.

(3) T H E PROCEDURE IN APPROVING APPROPRIATIONS FOR THE **C**ONGRESS SHALL STRICTLY FOLLOW THE PROCEDURE FOR APPROVING APPROPRIATIONS FOR OTHER DEPARTMENTS AND AGENCIES.

(4) A SPECIAL APPROPRIATIONS BILL SHALL SPECIFY THE PURPOSE FOR WHICH IT IS INTENDED, AND SHALL BE SUPPORTED BY FUNDS ACTUALLY AVAILABLE AS CERTIFIED BY THE **N**ATIONAL **T**REASURER, OR TO BE RAISED BY A CORRESPONDING REVENUE PROPOSAL THEREIN.

(5) No LAW SHALL BE PASSED AUTHORIZING ANY TRANSFER OF APPROPRIATIONS; HOWEVER, THE **P**RESIDENT, THE **P**RESIDENT OF

THE **S**ENATE, THE **S**PEAKER OF THE **H** O U S E OF **R**EPRESENTATIVES, THE **C** H I E F **J**USTICE OF THE **S**UPREME **C** O U R T , AND THE HEADS OF **C**ONSTITUTIONAL **C**OMMISSIONS MAY, BY LAW, BE AUTHORIZED TO AUGMENT ANY ITEM IN THE GENERAL APPROPRIATIONS LAW FOR THEIR RESPECTIVE OFFICES FROM SAVINGS IN OTHER ITEMS OF THEIR RESPECTIVE APPROPRIATIONS.

***Id.* at 661-662.Sec. 25 ART. VI - THE LEGISLATIVE DEPARTMENT 777**

(6) DISCRETIONARY FUNDS APPROPRIATED FOR PARTICULAR OFFICIALS SHALL BE DISBURSED ONLY FOR PUBLIC PURPOSES TO BE SUPPORTED BY APPROPRIATE VOUCHERS AND SUBJECT TO SUCH GUIDELINES AS MAY BE PRESCRIBED BY LAW.

(7) IF, BY THE END OF ANY FISCAL YEAR, THE CONGRESS SHALL HAVE FAILED TO PASS THE GENERAL APPROPRIATIONS BILL FOR THE ENSUING FISCAL YEAR, THE GENERAL APPROPRIATIONS LAW FOR THE PRECEDING FISCAL YEAR SHALL BE DEEMED RE-ENACTED AND SHALL REMAIN IN FORCE AND EFFECT UNTIL THE GENERAL APPROPRIATIONS BILL IS PASSED BY THE CONGRESS.

1. Limits on power to appropriate.

The provision that "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law"[307] is a limit not on the power of Congress but on the disbursing authority of the executive department.[308] This does not mean, however, that Congress is completely free to appropriate money in any manner and for whatever purpose it may choose. Article VI, Sections 2 4 , 2 5 and 29, and Article VII, Section 22 contain a list of explicit restrictions on the power of Congress.

First, as already seen, "All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments."[309]

Secondly, "The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget."[310]

Thirdly, the Congress may not clutter the general appropriation law with provisions not specifically related to some particular item of appropriation, and every such provision shall be limited in its operation to the appropriation item to which it relates.[3]"

""Article VI, Section 29(1).

""Cincinnati Soap Co. v. United States, 301 U.S. 308 (1937). The restriction also applies to local executives in relation to local government funds. City of Manila v. Posadas, 48 Phil. 309 (1925).

""Section 24.

""Section 25(1).

"'Section 25(2).778 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 25

Fourth, Congress may not adopt a procedure for approving appropriations for itself different from the procedure for other appropriations.[312]

Fifth, special appropriation bills must specify the purpose for which they are intended and must be supported by funds certified as available by the National Treasurer. If the funds are not actually available, the special appropriation bill must provide a corresponding revenue proposal.[313]

Sixth, Congress has limited discretion to authorize transfer of funds.[314]

Seventh, "Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law." This is a new provision intended to prevent abuse in the use of discretionary funds.

Eighth, Congress cannot cripple the operation of government by its failure or refusal to pass a general appropriations bill. Section 25(7) provides for automatic re-enactment of the general appropriations law of the preceding fiscal year. Such "reappropriation" remains in force until the new general appropriations law is approved.

Ninth, Section 29(2) prohibits the expenditure of public money or property for religious purposes. The scope of this prohibition is discussed under the religion clause of the Bill of Rights.

Finally, the general appropriation law must be based on the budget prepared by the President.[315] This is discussed under Article VII.

Aside from the explicit limitations found in Sections 24, 25 and 29, there is also the all important implicit limitation that public money can be appropriated only for a public purpose. This limitation arises from the relation between the power to spend and the power to tax. "The right of the legislature to appropriate public funds is correlative with its right to tax, and, under constitutional provisions against taxa-

[312]**Section 25(3).**
[313]**Section 25(4).**
[314]**Section 25(5).**
[315]**Article VII, Section 22.Sec. 25 ART. VI - THE LEGISLATIVE DEPARTMENT 779**
tion except for public purposes ... no appropriation of state funds can be made for other than a public purpose.".[316]

2. Prohibition of increase.

Article VI, Section 25(1) says: "The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget." This text is different from Article VI, Section 19(1) of the 1935 Constitution which said in part: "The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the Budget, *except the appropriations for the Congress and the Judicial Department."* What is the significance of this difference? Does the 1987 text prohibit Congress from increasing the budget for Congress and the Judicial Department?

This prohibition was not contained in the original draft of Article VI of the new Constitution. Comrnissioner Natividad noted this and said: "Is there no prohibition to increase the presidential budget? The historic practice is that the presidential budget may be decreased but not increased." He explained that this historic prohibition was intended to prevent big budget deficits. For this reason, Commissioner Natividad hinted that he would propose an amendment to incorporate the prohibition explicitly.[317]

Eventually Natividad proposed the amendment which became the present provision. In announcing the Committee's acceptance of the Natividad amendment, Comrnissioner Davide simply said: "I do not think this would require any explanation because this is in the 1935 Constitution."[318] In acceding to the amendment, therefore, Davide's intention was to revert to the 1935 rule. In fact, too, Natividad's express concern was only about the "presidential budget" and not about the budget for Congress or for the judiciary.

3. Prohibition of "riders" in appropriation bills.

Provisions unrelated to the appropriation bill are considered prohibited "riders." Thus, a provision on the reversion of re