

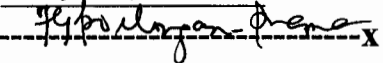
EN BANC

G.R. No. 231671 – ALEXANDER A. PADILLA, RENE A.V. SAGUISAG, CHRISTIAN S. MONSOD, LORETTA ANN P. ROSALES, RENE B. BALLESTEROS, AND SEN. LEILA M. DE LIMA, *petitioners* v. CONGRESS OF THE PHILIPPINES consisting of the SENATE OF THE PHILIPPINES, as represented by Senate President Aquilino “Koko” Pimentel III, and the HOUSE OF REPRESENTATIVES, as represented by House Speaker Pantaleon D. Alvarez, *respondents*.

G.R. No. 231694 – FORMER SEN. WIGBERTO E. TAÑADA, BISHOP EMERITUS DEOGRACIAS S. INIGUEZ, BISHOP BRODERICK PABILLO, BISHOP ANTONIO R. TOBIAS, MO. ADELAIDA YGRUBAY, SHAMAH BULANGIS and CASSANDRA D. DELURIA, *petitioners* v. CONGRESS OF THE PHILIPPINES CONSISTING OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, AQUILINO “KOKO” PIMENTEL III, *President*, Senate of the Philippines, and PANTALEON D. ALVAREZ, *Speaker*, House of Representatives, *respondents*.

Promulgated:

July 25, 2017



X-----X

CONCURRING AND DISSENTING OPINION

LEONEN, J.:

I concur only in the result.

The Petitions are moot in that the 60-day period has already lapsed. It is likewise academic considering that both the Senate and the House of Representatives convened jointly to extend the efficacy of the declaration of martial law and the suspension of the privilege of the writ of habeas corpus.

However, I dissent with the majority’s attempts to establish doctrine in this case.

In my view, the power to revoke intrinsically and logically includes the duty to deliberate on whether or not to revoke.



Immediately after the President, as Commander in Chief, suspends the privilege of the writ of habeas corpus or declares martial law, Congress convenes as a whole to jointly consider the reasons, scope, and proposed authorities to be exercised, deliberates, and thus decides whether or not to revoke the proclamation. Only after all legislators—whether Senator or Member of the House of Representatives—participate in deliberations in one (1) forum will they take a vote.

This, to me, is the clear and logical requirement of Article VII, Section 18 of the Constitution in the light of its context and its history. It harmonizes with the exigency of the circumstances that require the suspension of the privilege of the writ and the declaration of martial law.

The *ponencia* proposes that deliberation to consider whether or not to revoke can be separated from the actual vote to revoke the suspension or the proclamation. It proposes to defer to the political wisdom of the majority in the present Senate and the House of Representatives.

I disagree.

To defer to the actions of the respondents today and grant the veneer of constitutionality ensure the unworkability of the constitutional provision at bar in the future.

Instead of one (1) forum for all legislators to deliberate, there will be two (2). Senators will consider their own issues. Members of the House of Representatives will also consider their own issues, which may or may not be different from that of the Senate. The voices of the minority in the Senate will not be heard by any member of the House of Representatives. Likewise, the minority in the House will not be heard by the Senate.

The representatives of the President, including ranking officers of the Armed Forces of the Philippines as well as the Philippine National Police, will appear, make presentations, and respond to questions not in one (1) but in two (2) forums. One (1) chamber may decide that the information provided by their resource persons will be considered in camera or in executive session. The other chamber may see it differently. Thus, we can have the same information treated confidentially by one (1) chamber and publicly by the other.

Furthermore, the high-ranking officials of both the Armed Forces of the Philippines and the Philippine National Police will, thus, be called out of their stations, where they can best address the urgency of an actual invasion or rebellion, to address the legislators. They will do this not once, but twice.



Perhaps even more. They will appear before the House of Representatives. They will appear before the Senate. They may also still appear when both chambers finally decide to convene jointly to vote.

The Senate will take a vote as to whether they are inclined to revoke the proclamation. The House will also take a vote. The results can be different. If the results are different, then the heads of both houses or their representatives will have to meet perhaps in a bicameral committee.

Then, their representatives will present the results of the bicameral committee to their respective chambers. Only when the Senate and the House separately decide that they should revoke the suspension or the proclamation will they then convene.

Deadlock is possible when one (1) chamber decides to revoke and the other does not. The crisis that gave rise to the suspension or proclamation will then be burdened with another crisis: that of the inability of the government to decide.

All this must be done within the first 60 days from the suspension or proclamation. This is the constitutional limitation imposed on the duration of this type of presidential action. The longer it takes for Congress to decide, the less potent their review of the President's power to suspend the privilege of the writ or to declare martial law. The longer it takes for Congress to decide, the higher the possibility that the rationale for the constitutional provision would be frustrated.

These scenarios were already imagined by those who drafted this Constitution. That is why it requires that Congress convene immediately, vote jointly and thus, logically, also deliberate as one (1) body.

In this case, there was no deadlock between the House and the Senate. Both agreed not to revoke Proclamation No. 216. What happened was one (1) of four (4) possible permutations, namely:

	<b>Senate</b>	<b>House of Representatives</b>
<b>One</b>	Not to revoke	Not to revoke
<b>Two</b>	Not to revoke	Revoke
<b>Three</b>	Revoke	Not to revoke
<b>Four</b>	Revoke	Revoke

But, this case is not being decided *pro hac vice*. We are not dismissing the case on the ground that it is moot and academic upon the

automatic expiration of the 60-day period for Proclamation No. 216 on July 22, 2017. Rather, the *ponencia* proposes a doctrine which will possibly result in a deadlock in the future. With the interpretation proposed by the *ponencia*, two (2) of the four (4) possibilities will result in a constitutional crisis.

Thus, the act of actually revoking the suspension or the declaration becomes a thin and truncated power divorced from its deliberation to be exercised by Congress convened jointly. If it is true that the Senate and the House can deliberate separately on the legality, necessity, and appropriateness of the suspension and the proclamation, then the constitutional requirement that the vote for revocation should be done jointly with both houses convened does not make sense. That is, of course, if such vote to revoke is only mere ceremony.

If the requirement to convene is required when there is a deadlock after the two legislative chambers have opposing views on whether to revoke, then we grossly lose sight of the exigencies of the situation and the importance of the check on the President. Every moment that the suspension of the privilege of the writ of habeas corpus is imposed or martial law is declared is a potential situation where a fundamental right may be violated.


Clearly, the power to revoke exercised by Congress jointly convened logically includes their duty to jointly convene and deliberate.

## I

The real issue in this case is not only one of procedure. It pertains to the role of Congress when the President, as Commander-in-Chief, places any part of the Philippines under martial law or suspends the privilege of the writ of habeas corpus. The relevant constitutional provision states:

### ARTICLE VII Executive Department

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. **Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by**



**the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.**

**The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.**

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis supplied)

The sentences which mention the role of Congress are as follows:

*First:*

*“Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress.”*

*Second:*

*“The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.”*

*Third:*

*“Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.”*

*Fourth:*

*“The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.”*

I agree with the *ponencia* that this case should be reviewed based on the interpretative modality adopted in *Civil Liberties Union v. The Executive Secretary*.<sup>1</sup> A reading of the Constitution requires an examination of the text and an understanding of the “intention underlying the provision under consideration.”<sup>2</sup>

Moreover, the text should be read as a whole, thus:

It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.

In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.<sup>3</sup>

The interpretation of the Constitution based on textual primacy entails a review of the evolution of its provisions. This may involve a comparison between the current text and its counterpart in previous texts.<sup>4</sup> However, the interpretation of the Constitution may also include recourse to extrinsic aids to validate the meaning of the text when the latter is capable of multiple meanings.<sup>5</sup> The primary duty of this Court in interpreting the Constitution is to reasonably construe its provisions under contemporary conditions so that what has been ratified by the sovereign people is given full effect.<sup>6</sup>

We review the history of the text and the corresponding jurisprudence then examine the possible readings taking all the provisions into consideration.

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<sup>1</sup> 272 Phil. 147 (1991) [Per C.J. Fernan, En Banc].

<sup>2</sup> Id. at 157.

<sup>3</sup> Id. at 162.

<sup>4</sup> *David v. Senate Electoral Tribunal*, G.R. No. 221538, September 20, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/221538.pdf>> 22 [Per J. Leonen, En Banc].

<sup>5</sup> Id. at 23.

<sup>6</sup> See J. Leonen, Dissenting Opinion in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 501–523 (2013) [Per J. Mendoza, En Banc].

## II

Prior to the 1987 Constitution, Congress played a limited role with respect to the President's exercise of his Commander-in-Chief powers. It was delegated as a bystander and was never given much participation.

In *Barcelon v. Baker*,<sup>7</sup> the authority to suspend the privilege of the writ of habeas corpus was characterized as a discretionary act of the political branch of the government beyond the review of the judiciary.<sup>8</sup> This Court applied a deferential approach and emphasized that a branch of the government can neither interfere with nor inquire into purely discretionary acts of the other.<sup>9</sup>

*Barcelon* was decided at a time when the Philippine Bill of 1902 was still in force and effect.<sup>10</sup> Although martial law was never mentioned, the Philippine Bill of 1902 empowered the Governor General to suspend the privilege of the writ of habeas corpus.<sup>11</sup> However, its exercise was conditioned upon the concurrence of the legislature:

Section 5.

....

That the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor, with the approval of the Philippine Commission, wherever during such period the necessity for such suspension shall exist.

It was in the Philippine Autonomy Act of 1916 or the Jones Law where the concept of martial law was first introduced into the organic law of the Philippines. The power to suspend the privilege of the writ of habeas corpus was however retained. The relevant text then read:

Section 21.

....

[The Governor General of the Philippine Islands] shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Islands, or summon the posse comitatus, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and *he may, in case of rebellion or invasion, or imminent danger thereof,*

<sup>7</sup> 5 Phil. 87 (1905) [Per J. Johnson, En Banc].

<sup>8</sup> Id. at 98.

<sup>9</sup> Id. at 115.

<sup>10</sup> Id. at 91-92.

<sup>11</sup> Phil. Bill of 1902, sec. 5, par. 7.

*when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the Islands, or any part thereof, under martial law: Provided, That whenever the Governor General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor-General.*  
(Emphasis supplied)

In the exercise of these powers, legislative concurrence was not necessary. Nevertheless, the Governor General was required to notify the President of the United States when the privilege of the writ of habeas corpus was suspended or when any part of the country was placed under martial law. No other branch of government was authorized to review the action taken by the Governor General except the President of the United States.<sup>12</sup>

The passage of the Tydings-Mcduffie Act or the Philippine Independence Act paved the way for the enactment of the 1935 Constitution.<sup>13</sup> Article VII, Section 10 of the 1935 Constitution reiterated the extraordinary powers of the executive and vested the President with the power to call out the armed forces, suspend the privilege of the writ of habeas corpus, or declare martial law in any part of the country, thus:

ARTICLE VII  
*Executive Department*

Section 10.

....

(2) The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under Martial Law.

In the exercise of his Commander-in-Chief powers, the discretion of the President was paramount and was not subject to review by any of the other branches of the government. The participation of Congress was practically nil. It could only step in when it grants emergency powers to the President pursuant to Article VI, Section 26 of the 1935 Constitution.<sup>14</sup> This provided:

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<sup>12</sup> Phil. Autonomy Act (1916), sec. 21.

<sup>13</sup> Phil. Independence Act (1934), sec. 1.

<sup>14</sup> Similarly, the 1987 Constitution in art. VI, sec. 23(2) provides:

(2) 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 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.



Section 26. In times of war and 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 text of Article VII, Section 10, paragraph 2 of the 1935 Constitution was reproduced in Article VII, Section 11 of the 1973 Constitution:

#### ARTICLE VII

##### *The President and Vice-President*

Section 10. The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.

Similar to the 1935 Constitution, the 1973 Constitution appeared to not textually allow any form of intrusion or participation from any of the other branches of the government in the President's exercise of his powers except in cases where there was a vacancy in the office of the President. Legislative concurrence was only deemed necessary when the acting President declared martial law:

#### ARTICLE VII

##### The President and Vice-President

Section 9.

.....

The Acting President may not declare martial law or suspend the privilege of the writ of habeas corpus without the prior consent of at least a majority of all the Members of the Batasang Pambansa, or issue any decree, order or letter of instruction while the law-making power of the President is in force. He shall be deemed automatically on leave and the Speaker Pro Tempore shall act as Speaker. While acting as President, the Speaker may not be removed. He shall not be eligible for election in the immediately succeeding election for President and Vice-President.  
(Emphasis supplied)

The 1935 and 1973 Constitutions suggested deference to the President's discretion and wisdom in declaring martial law or in suspending the privilege of the writ of habeas corpus. This changed with the 1987 Constitution, which was cognizant of the aberrant type of martial law imposed by then President Ferdinand Marcos. That part of our history

served as the impetus to limit the President's powers as Commander-in-Chief<sup>15</sup> by making that power less exclusive.

Instead of wresting power from the President, the 1987 Constitution bestowed powers of review on both the legislature and the judiciary. The text of Article VII, Section 18 of the Constitution outlines a dynamic interaction between the three (3) branches of the government. It also delineates the important functions of each branch, which serves as a check-and-balance mechanism on executive prerogative. Thus:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. ***The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.***

***The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.***

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. (Emphasis supplied)

Article VII, Section 18 of the 1987 Constitution and its historical underpinning direct the legislature and the judiciary not to grant full deference to the President's discretion when he chooses to declare martial law or suspend the privilege of the writ of habeas corpus. The two (2) other branches of the government were intended to play an active role to check any possible abuses that may be committed. As it now stands, the declaration of martial law or the suspension of the privilege of the writ of habeas corpus is no longer a power that exclusively pertains to the President.<sup>16</sup>

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<sup>15</sup> *Sanlakas v. Reyes*, 466 Phil. 482, 521–522 (2004) [Per J. Tinga, En Banc] citing *Marcos v. Manglapus*, 258 Phil. 479 (1989) [Per J. Cortes, En Banc].

<sup>16</sup> *Fortun v. Macapagal-Arroyo*, 684 Phil. 526, 557 (2012) [Per J. Abad, En Banc].

An important safeguard placed by the 1987 Constitution is the authority of Congress to revoke the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus. Although the prerogative to make the declaration or suspension is vested on the President, it is ultimately up to Congress whether to revoke or extend it.<sup>17</sup> The significant role and power of Congress was highlighted in *Fortun v. Macapagal-Arroyo*:<sup>18</sup>

Although the above vests in the President the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*, he shares such power with the Congress. Thus:

1. The President's proclamation or suspension is temporary, good for only 60 days;
2. He must, within 48 hours of the proclamation or suspension, report his action in person or in writing to Congress;
3. Both houses of Congress, if not in session must jointly convene within 24 hours of the proclamation or suspension for the purpose of reviewing its validity; and
4. The Congress, voting jointly, may revoke or affirm the President's proclamation or suspension, allow their limited effectivity to lapse, or extend the same if Congress deems warranted.

It is evident that under the 1987 Constitution the President and the Congress act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*. They exercise the power, not only sequentially, but in a sense jointly since, after the President has initiated the proclamation or the suspension, only the Congress can maintain the same based on its own evaluation of the situation on the ground, a power that the President does not have.<sup>19</sup>

Unlike this Court, whose power of review is activated only upon the filing of an "appropriate proceeding filed by any citizen,"<sup>20</sup> Congress is not constrained by any condition precedent before it can act. Congress convenes automatically through a constitutional mandate. Subject to the voting requirements under the Constitution, Congress can revoke the proclamation or suspension at any time, which the President cannot undo.<sup>21</sup> It can also extend the proclamation or suspension upon the initiative of the President voting "in the same manner."<sup>22</sup>

In my view, moreover, Congress' scope of review under Article VII Section 18 is neither bound nor restricted by any legal standard except when

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<sup>17</sup> CONST., art. VII, sec. 18.

<sup>18</sup> 684 Phil. 526 (2012) [Per J. Abad, En Banc].

<sup>19</sup> Id. at 557-558.

<sup>20</sup> CONST., art. VII, sec. 18, par. 3.

<sup>21</sup> CONST., art. VII, sec. 18, par. 1.

<sup>22</sup> CONST., art. VII, sec. 18, par. 1.

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it is arbitrary or unreasonable. Congress is given “a wider latitude in how it chooses to respond to the President’s proclamation or suspension.”<sup>23</sup> The Court’s power of review meanwhile is limited to a finding of the “sufficiency of the factual basis”<sup>24</sup> or a violation of any of the fundamental rights or processes embedded in a specific provision of the Constitution.

### III

The obvious motivation for the requirement that Congress convene automatically and deliberate and vote jointly was to render any action by a deliberative body practical in the light of the exigencies. The framers of the 1987 Constitution already anticipated the possibility of a deadlock between the two (2) houses. Hence, to make revocation of the proclamation or suspension easier, they purposely proposed an exception to the general rule where each house acts separately:

FR. BERNAS: We would like a little discussion on that because yesterday we already removed the necessity for concurrence of Congress for the initial imposition of martial law. *If we require the Senate and the House of Representatives to vote separately for purposes of revoking the imposition of martial law, that will make it very difficult for Congress to revoke the imposition of martial law and the suspension of the privilege of the writ of habeas corpus.* That is just thinking aloud. To balance the fact that the President acts unilaterally[,] then the Congress voting as one body and not separately can revoke the declaration of martial law or the suspension of the privilege of the writ of habeas corpus.

MR. MONSOD: In other words, voting jointly.

FR. BERNAS: Jointly, yes.

....

MR. RODRIGO: May I comment on the statement made by Commissioner Bernas? I was a Member of the Senate for 12 years. Whenever a bicameral Congress votes, it is always separately.

For example, bills coming from the Lower House are voted upon by the Members of the House. Then they go up to the Senate and voted upon separately. Even on constitutional amendments, where Congress meets in joint session, the two Houses vote separately.

Otherwise, the Senate will be useless; it will be sort of absorbed by the House considering that the Members of the Senate are completely outnumbered by the Members of the House. So, I believe that whenever Congress acts, it must be the two Houses voting separately.

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<sup>23</sup> J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. Nos. 231658, 231771, 231774, July 4, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf>> [Per J. Del Castillo, En Banc].

<sup>24</sup> CONST., art. VII, sec. 18, par. 3.

*If the two Houses vote "jointly," it would mean mixing the 24 Senators with 250 Congressmen. This would result in the Senate being absorbed and controlled by the House. This violates the purpose of having a Senate.*

FR. BERNAS: *I quite realize that that is the practice and, precisely, in proposing this, I am consciously proposing this as an exception to this practice because of the tremendous effect on the nation when the privilege of the writ of habeas corpus is suspended and then martial law is imposed. Since we have allowed the President to impose martial law and suspend the privilege of the writ of habeas corpus unilaterally, we should make it a little more easy for Congress to reverse such actions for the sake of protecting the rights of the people.*

....

MR. RODRIGO: Will the Gentleman yield to a question?

MR. MONSOD: Yes, Madam President.

MR. RODRIGO: So, in effect, if there is a joint session composed of 250 Members of the House plus 24 Members of the Senate, the total would be 274. The majority would be one-half plus one.

MR. MONSOD: So, 148 [sic] votes.

MR. RODRIGO: And the poor Senators would be absolutely absorbed and outnumbered by the 250 Members of the House. Is that it?

MR. MONSOD: *Yes, that is one of the implications of the suggestion and the amendment is being made nonetheless because there is a higher objective or value which is to prevent a deadlock that would enable the President to continue the full 60 days in case one House revokes and the other House does not.*

*The proposal also allows the Senators to participate fully in the discussions and whether we like it or not, the Senators have very large persuasive powers because of their prestige and their national vote.*<sup>25</sup>  
(Emphasis supplied)

Clearly, those who participated in the drafting of the Constitution were contemplating not only the voting but likewise the deliberations that would lead to the voting. Thus, Commissioner Monsod mentioned that "*the proposal allows Senators to participate fully in the discussions and whether we like it or not, the Senators have very large persuasive powers because of their prestige and national vote.*"<sup>26</sup>

When the deliberations are conducted in separate chambers, the final results may differ. Thus, the leaders may have to meet in a bicameral body or repeat the same discussions done in both chambers but, this time, with Congress convened jointly. Since any declaration of martial law or

<sup>25</sup> II Records of the Constitutional Commission, dated July 31, 1986.

<sup>26</sup> II Records of the Constitutional Commission, dated July 31, 1986.

suspension of the writ of habeas corpus will only be for an initial period of 60 days, the length of the deliberations in each chamber duplicated in bicameral and/or in Congress assembled as a whole weakens legislative oversight.

The Constitution requires that Congress convene within 24 hours if it is adjourned to consider the suspension or the declaration. This communicates a sense of urgency that Congress has to act. The context of the provisions, thus, suggests that the discussions in Congress cannot take place in layers—that is, with each Chamber first before it goes to Congress convened jointly.

There will be other unintended consequences which will point to the lack of viability for the interpretation proposed by the *ponencia*.

Clearly, when each chamber deliberates separately, the representatives of the executive will have to make their presentations twice. They will present the reasons, evidence, and their intended program to the Senate and then to the House of Representatives, all within the same 60-day period. In each of their presentations, they will have to take questions, discuss their answers, and adjust their programs of action. The points considered in one (1) chamber may be different in the other. Thus, the other chamber will not benefit from the wisdom of the other. If the points discussed are the same, then the Constitution is read as allowing redundancy during a situation where there may be actual invasion or rebellion.

Such waste of energies does not harmonize with the exigent circumstances sought to be addressed by the extraordinary use of the power to suspend the privilege of the writ or the declaration of martial law. Certainly, it is not the process that will ensure that Congress will always decide early within the initial 60 days. An ordinary filibuster in one (1) chamber by one (1) legislator will negate the power of the entire Congress.

Within such limited time, the views of the minority of the Senate will not be heard by the House of Representatives. Neither will the voice of the minority in the House of Representatives be heard by or considered by the Senators. With separate deliberations read as being allowed by the Constitution, a joint vote becomes a mere ceremony.

The power to revoke should be made as effectively and efficiently as possible. The constitutional design is not to make it difficult for Congress to revoke. This is not what the Constitution requires. In the words of a member of the Constitutional Commission:



FR. BERNAS: [W]e should make it a little more easy for Congress to reverse such actions for the sake of protecting the rights of the people.<sup>27</sup>

The present Constitution negates a vision of an authoritarian. Its goal is the establishment of a “democratic and republican” State.<sup>28</sup> It cannot be read to allow the emergence of a strongman. Even in situations that may appear to require the derogation of certain rights through the suspension of the privilege of the writ of habeas corpus or the declaration of martial law, our fundamental law requires further deliberation by Congress, which should effectively check on the contingent powers of the President. The representatives of the people, thus, gather as a whole Congress jointly considering the reasons, necessity, and appropriateness of the policies taken.

#### IV

With due respect, the *ponente* arrives at her conclusion by proposing that sentences from Article VII, Section 18 be taken in isolation from each other.<sup>29</sup> Thus, she starts with the position that this sentence shall not be considered:

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules even without need of a call.

The *ponencia* thus isolates this sentence:

The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.

I disagree with this approach. The parts of the Constitution must be construed in its entirety. Each provision should provide the context of meaning.

Thus, the requirement that Congress automatically convene qualifies the interpretation of the scope of the power to revoke.

First, it communicates the urgency and that Congressional action should be taken soonest; and

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<sup>27</sup> II Records of the Constitutional Commission, dated July 31, 1986.

<sup>28</sup> CONST., art II, sec 1.

<sup>29</sup> *Ponencia*, pp. 27–30.

Second, it communicates that Congress may exercise all its other legislative powers in order that it may assist in ensuring that the crisis that led to the suspension of the privilege of the writ of habeas corpus or the declaration of martial law is adequately addressed.

The first conclusion does not require further elaboration considering that the duration of the Presidential Proclamation is initially limited to 60 days without Congressional action.

The second is likewise obvious. The Constitution frames an entire government. The social, economic, or political conditions which led to actual invasion or rebellion, including the possible inefficiencies of intelligence or law enforcement, cannot be the sole domain of the President alone. After all, long-term policymaking is the province of the legislature. So is the allocation of resources through regular or special appropriations. Congress, when it convenes and deliberates jointly, will thus be able to identify more efficiently what needs to be done by both the Senate and the House of Representatives. Within the time that it convenes, the chambers do not shed their nature as legislative bodies that can consider the measures that will assist the President to address the emergencies in the near term. After having discussed as a whole body, the Senators and Members of the House of Representatives will, thus, have a better idea of what may be needed in terms of legislation and appropriation. While martial law is declared, they can then proceed either to legislate or appropriate through the normal legislative process.

## V

More telling in the interpretation of how Congress must exercise its full powers during the exigent circumstances described in Article VII, Section 18 is the sentence that comes next to the one (1) privileged in the *ponencia*, thus:

Upon the initiative of the President, the Congress may, *in the same manner*, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it. (Emphasis provided)

The phrase “in the same manner” clearly textually refers to the prior sentence, which reads:

The Congress, voting jointly, by a vote of at least a majority of all its members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.





If the *ponencia* holds, this means that Congress should deliberate in separate chambers first and will only convene jointly as a whole body when it is ready to vote to extend the suspension or the proclamation. Thus, the fact that rebellion and invasion persist and that public safety requires the suspension or proclamation should first be determined separately. Only when both chambers are convinced of the merits to extend the suspension or proclamation will Congress convene jointly. Again, all this confluence of events should happen within the same 60 days—the same 60 days when the House and the Senate separately determine whether they should revoke and then the same 60 days that they will also separately deliberate for the purpose of acting on a proposal of the President to extend.

Given the time constraints, the interpretation proposed by the *ponencia* will, thus, not make sense when there is a difference of opinion between the Senate and the House of Representatives.

## VI

Respondents have not presented any rationale for meeting separately to consider whether or not they should exercise their prerogative to revoke Proclamation No. 216 except either as a policy of deference or their traditions.

I agree with the *ponencia* that respect should be given to the rules that each house of Congress has adopted.<sup>30</sup> However, I disagree with the proposition that Article VI, Section 16(3) of the Constitution, which grants each house of Congress the power and authority to “determine the rules of its proceedings,” is paramount to the mandate in Article VII, Section 18.<sup>31</sup>

The tradition of Congress to first deliberate amongst themselves and subsequently adopt a concurrent resolution convening both houses in joint session must, however, yield to Article VII, Section 18 of the Constitution. The urgency of the provision should be read into the rules of each chamber.

With due respect to my colleagues, the majority impales the meaning of the Constitution at its most critical period. The decision degrades the historical lessons we have learned and weakens the safeguards that those who ratified the 1987 Constitution wanted. There is a more reasoned contemporary reading of the fundamental law: during a crisis that may lead the President to effect the suspension of some fundamental rights, Congress as a whole—not as two (2) chambers—should automatically convene to publicly deliberate. In my view, this is the Congressional power that the

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<sup>30</sup> Ponencia, p. 48.

<sup>31</sup> Id.

respondents should have discharged on behalf of their constituents. When there is a perception that the existence of the democratic republic may be threatened, we should read as inscribed in Article VII, Section 18 of our fundamental law the fullest, most effective, most efficient, and most timely Congressional review of the President's exercise of his awesome powers as Commander-in-Chief.


There can be no second order solutions. The exigencies and the protection of fundamental rights require nothing less.

We are a democratic and republican state. This is true during normal times and during times of perceived crisis.

Sovereignty resides in the people. This is true likewise during normal times and during times of perceived crisis.

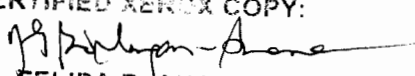
We should live these values and not consciously allow political barriers to degrade what the Constitution means. In my view, it was the constitutional duty of the House of Representatives and the Senate to convene jointly, deliberate jointly, and decide jointly whether or not to revoke Proclamation No. 216.

**ACCORDINGLY**, I vote to **DISMISS** the Petitions but only because they have become moot and academic.



**MARVIC M.V.F. LEONEN**  
Associate Justice

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