

## Con-ass: 2018's biggest legal showdown

**O**ur fate hinges on a typo. In 2017, once obscure doctrines such as martial law and writ of amparo took centerstage. The year 2018 welcomes the never before invoked provision to change the Constitution.

Under Article XVII, Section 1, revision of the Constitution "may be proposed by: (1) The Congress, upon a vote of three-fourths of all its Members; or (2) A constitutional convention."

Proposed revisions must be ratified in a plebiscite. This may be simultaneous with elections, such as the May 2018 barangay elections.

The House of Representatives and the Senate are about to pass resolutions to convert Congress into a constituent assembly or Con-ass under Option 1. They argue that using Congress is cheaper and quicker than electing a constitutional convention.

But Article XVII, Section 1(1) has an obvious typo: What does "a vote of three-fourths of all its Members" mean?

Senators strenuously insist that Con-ass revisions must be approved by both a three-fourths Senate vote and a separate three-fourths House vote.

They argue the Constitution provides for two separate houses. The bicameral structure would become meaningless if 23 senators' votes are dwarfed in a joint vote with 297 congressmen.

This is surely not the intention for such an important vote, argues the constitutional law textbook of Fr. Joaquin Bernas, SJ, an eminent 1986 constitutional commissioner. So do many legal scholars.

One further argues that if the Constitution intended the senators' votes to be diluted, it would specifically say so.

It does so in Article VII, Section 18 on

deliberations are not binding interpretations. Citizens ratified the text of the Constitution as they read it, not as deliberated by the Commission.

Thus, the wording of a single legal phrase is crucial. The course of our nation hinges on a typo.

A similar debate emerged on Article VII, Section 18 on martial law. A group opposing martial law in May 2017 claimed this could not continue unless Congress first met in joint session.

This was problematic because Article VII, Section 18's text only required a

martial law. Here, a martial law proclamation is revoked by: "The Congress, voting jointly."

This specific wording was intentional. In a crisis, there might be no time to resolve a split Senate and House vote on martial law. But otherwise, a separate vote is presumed.

Finally, many scholars posit a glaring typo. Congress was initially intended to be unicameral, per the Constitutional Commission's deliberations. When it was made bicameral, they simply forgot to revise Article XVII, Section 1(1).

But congressmen could interpret "a vote of three-fourths of all its Members" as a joint vote of all congressmen and senators combined. Article XVII, Section 1(1) does not specify a separate vote and simply refers to "all its Members."

They would cite Article X, Section 1 of the 1935 Constitution, which instead required "a vote of three-fourths of all the Members of the Senate and of the House of Representatives voting separately." If the 1987 Constitution used a different language, it must have a different meaning.

Finally, they would cite the legal doctrine that the Constitutional Commission's



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joint session vote to revoke—not to approve—martial law, and both the House and the Senate expressed they would not revoke it.

It would strain separation of powers for the Supreme Court to order Congress to perform an act not explicitly stated in the Constitution, and which would likely result in a joint vote approving martial law, anyway.

Nevertheless, those against martial law fanatically endorsed the theory, even lawyers.

Unsurprisingly, the Supreme Court dismissed this 13-2. Even Chief Justice Maria Lourdes Sereno and Senior Associate Justice Antonio Carpio voted to dismiss, despite voting against martial law in all of Mindanao in the main martial law case.

Proponents on both sides of the Con-ass debate must remember this defeated case on the joint session. For 2018's biggest legal showdown, they had best prepare real law instead of citing politics, emotional appeals and propaganda yet again.

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