

EN BANC

G.R. No. 227757: REP. TEDDY BRAWNER BAGUILAT, JR., REP. EDCEL C. LAGMAN, REP. RAUL A. DAZA, REP. EDGAR R. ERICE, REP. EMMANUEL A. BILLONES, REP. TOMASITO S. VILLARIN, AND REP. GARY C. ALEJANO, *Petitioners*, v. SPEAKER PANTALEON D. ALVAREZ, MAJORITY LEADER RODOLFO C. FARIÑAS, AND REP. DANILO E. SUAREZ, *Respondents*.

Promulgated:

July 25, 2017

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CONCURRING AND DISSENTING OPINION

LEONEN, J.:

I concur in the result.

While there was a violation of the rules of the House of Representatives, a writ of mandamus does not lie to compel the Speaker and the House to recognize a specific member to be the Minority Leader.

I

Courts generally do not intervene in matters internal to Congress, such as the manner of choosing its own officers or leaders. Indeed, Article VI, Section 16(1) of the Constitution gives Congress the power to adopt its own rules:

Section 16. (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.

Once promulgated, any clear and patent violation of its rules will amount to grave abuse of discretion. The House of Representatives has rules on who forms part of the Majority or Minority, or who is considered an independent member. The rules are also clear with respect to how affiliations change. It was grave abuse of discretion for the House of Representatives to disregard the first, second, fourth to eighth, and last

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paragraphs of Rule II, Section 8 of the Rules of the House of Representatives.

Article VIII, Section 1 states:

Section 1. Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and *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.* (Emphasis supplied)

Respondent Representative Danilo E. Suarez (Representative Suarez) wrongly invokes *Avelino v. Cuenco*¹ to assail the jurisdiction of this Court.² *Avelino* resolved the matter of whether a senator's election as Senate President was attended by a quorum.³

It was the 1935 Constitution that governed when *Avelino* was decided in 1949. In *Avelino*, however, four (4) of 10 Justices dissented in the belief that the case was justiciable.⁴

Justice Gregorio Perfecto (Justice Perfecto), who himself was a member of the Constitutional Convention that drafted the 1935 Constitution,⁵ stated in his dissent that it was for this Court to determine whether the election of Senator Mariano J. Cuenco to the Senate Presidency was attended by a *quorum*, thus:⁶

The questions raised in the petition, although political in nature, are justiciable because they involve the enforcement of legal precepts, such as the provisions of the Constitution and of the rules of the Senate.⁷

Justice Perfecto further stated that “[i]f the controversy should be allowed to remain unsettled, it would be impossible to determine who is right and who is wrong, and who really represent[ed] the Senate.”⁸

¹ *Avelino v. Cuenco*, 83 Phil. 17 (1949) [En Banc].

² *Rollo*, pp. 222–223, Comment.

³ *Avelino v. Cuenco*, 83 Phil. 17, 22 (1949) [En Banc].

⁴ *Id.* at 18.

⁵ See ARUEGO, JOSE, THE FRAMING OF THE PHILIPPINE CONSTITUTION, <<https://archive.org/details/the-framing-of-the-philippine-constitution>> (1936).

⁶ *Avelino v. Cuenco*, 83 Phil. 17 (1949) [En Banc].

⁷ *Id.* at 36.

⁸ *Id.*

Acts of the legislature relating to its internal procedures may fall under this Court's power of judicial review. In *Tañada v. Cuenco*,⁹ this Court passed upon the Senate's election of two (2) senators to the Senate Electoral Tribunal. In *Macias v. Commission on Elections*,¹⁰ this Court held that the apportionment of legislative districts is a justiciable controversy. In *Cunanan v. Tan*,¹¹ this Court nullified the resolution of the allied Majority of the House, which declared as vacant the seats of 12 members in the Commission on Appointments and appointed other members in lieu of those whose seats were vacated.

Respondents Representative Pantaleon D. Alvarez (Representative Alvarez), Representative Rodolfo C. Fariñas (Representative Fariñas),¹² and Representative Suarez¹³ substantially quote this Court's ruling in *Defensor-Santiago v. Guingona*¹⁴ to argue that the matters raised by petitioners are "non-justiciable precisely because they belong to the realm of party politics[.]"¹⁵ Representative Suarez even declares that *Defensor-Santiago* is "on all fours" in this case.¹⁶ The ponencia similarly relies on the pronouncements in *Defensor-Santiago*.

However, in *Defensor-Santiago*:¹⁷

It is well *within the power and jurisdiction of the Court* to inquire whether indeed the Senate or its officials committed a violation of the Constitution or gravely abused their discretion in the exercise of their functions and prerogatives.¹⁸

Defensor-Santiago involves a dispute on who was the rightful Senate Minority Leader during the 11th Congress (1998-2001). The Senate was composed of 23 members, majority of whom were from Laban ng Masang Pilipino (LAMP) with 10 members.¹⁹ Seven (7) senators were from Lakas-National Union of Christian Democrats-United Muslim Democrats of the Philippines (Lakas-NUCD-UMDP) were considered as the Minority, while the other senators—one (1) from the Liberal Party, one (1) from Aksyon Demokrasya, one (1) from the People's Reform Party, one (1) from Gabay Bayan, and two (2) without party affiliations—were considered as independents.²⁰

⁹ 100 Phil. 1101 (1957) [Per J. Concepcion, En Banc].

¹⁰ 113 Phil. 1 (1961) [Per J. Bengzon, En Banc].

¹¹ G.R. No. L-19721, May 10, 1962 [En Banc].

¹² *Rollo*, p. 749, OSG Comment.

¹³ *Id.* at 226-229, Suarez Comment.

¹⁴ 359 Phil. 276 (1998) [Per J. Panganiban, En Banc].

¹⁵ *Rollo*, p. 231, Suarez Comment.

¹⁶ *Id.* at 226.

¹⁷ 359 Phil. 276 (1998) [Per J. Panganiban, En Banc].

¹⁸ *Id.* at 296.

¹⁹ *Id.* at 286.

²⁰ *Id.*

Senators Marcelo B. Fernan and Francisco S. Tatad ran for Senate President. Twenty senators, who constituted the Majority or more than half of the Senate members, voted for Senator Fernan. Meanwhile, only two (2) senators, including Senator Miriam Defensor-Santiago (Sen. Defensor-Santiago), voted for Senator Tatad as Senate President.²¹

The seven (7) senators who constituted the Minority then recognized Senator Teofisto T. Guingona (Senator Guingona) as Minority Leader. However, Senators Tatad and Defensor-Santiago sought the ouster of Senator Guingona, alleging that Senator Tatad, who lost the race for Senate presidency, should have been the rightful Minority Leader.²²

This Court dismissed the petition, ruling that the Senate validly recognized Senator Guingona as Minority Leader.²³ Senators Tatad and Defensor-Santiago's allegations had no basis in the Constitution, the statutes, the Senate Rules, and the parliamentary practices of the Senate itself.²⁴ Thus:

[T]he interpretation proposed by petitioners [Senators Tatad and Santiago] finds no clear support from the Constitution, the laws, the *Rules of the Senate* or even from *practices* of the Upper House.²⁵ (Emphasis supplied)

This led to this Court's conclusion that:

[I]n 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.²⁶

This Court held that it had no jurisdiction to intervene as there were "no specific, operable norms and standards" by which the issue could be resolved.²⁷ Simply put, *Defensor-Santiago* does not involve any violation—there was no constitutional or statutory provision, Senate rules, or parliamentary practice that would make the defeated candidate for Senate presidency *ipso facto* the Senate Minority Leader.²⁸

In this case, there are existing Rules of the House of Representatives that disqualify respondent Representative Suarez from being the Minority Leader and exclude the 20 abstaining members from Minority membership. There is also an established parliamentary practice of the House of

²¹ Id. at 287.

²² Id.

²³ Id. at 305.

²⁴ Id.

²⁵ Id. at 297.

²⁶ Id. at 300.

²⁷ Id.

²⁸ Id.



Representatives, evidencing their current collective interpretation, which makes Representative Teddy Brawner Baguilat, Jr. (Representative Baguilat) of the Lone District of Ifugao Province automatically the Minority Leader.

II

The 1973 Constitution under Ferdinand E. Marcos abolished Congress, changed the presidential form of government to a modified parliamentary form of government, and instituted a unicameral legislature known as the National Assembly or *Batasang Pambansa*.²⁹ During the 1986 EDSA Revolution, his ouster ushered in new political institutions. The 1987 Constitution abolished the unicameral legislature and installed a bicameral Congress, which is composed of the Senate and the House of Representatives.

For nearly three (3) decades since the promulgation of 1987 Constitution, the House of Representatives has practiced the tradition of having the second placer for House Speaker automatically become the Minority Leader.³⁰ From what was then the 8th Congress (1987-1992) to the 16th Congress (2013-2016), this practice was enshrined not only in the Rules that the House adopted for all of its sessions but also in the traditions and precedents of the House of Representatives itself.³¹ Petitioners quote the Body's ruling during the 11th Congress:

“Rules, traditions and precedents of the House provide that the losing candidate for Speaker with the second highest number of votes becomes the Minority Leader.”³²

For instance, during the 13th Congress, four (4) candidates ran for House Speaker.³³ Representative Jose De Venecia, Jr. (Representative De Venecia) bested the other candidates, namely, Representative Francis Escudero (Representative Escudero), Representative Jacinto Paras, and Representative Ronaldo Zamora (Representative Zamora), in the bid for House speakership. The second placer, then Representative Escudero, automatically became the Minority Leader.³⁴

Within these past 30 years, there were only two (2) instances when the

²⁹ *Legislative Information*, HOUSE OF REPRESENTATIVES, 17TH CONGRESS, <<http://www.congress.gov.ph/about/?about=history>> (last visited July 24, 2017), citing R. Velasco and M. Sylvano, *The Philippine Legislative Reader* 41 (1989).

³⁰ *Rollo*, pp. 31–32.

³¹ *Id.* at 33, citing *Rulings of the Chair*, 3rd ed., 2010, p. XXXVIII.

³² *Id.* The official website of the House of Representatives does not contain a copy of the Journal of the 11th Congress; only those from the 12th to the present Congresses. See *House Journals*, HOUSE OF REPRESENTATIVES (17TH CONGRESS), <<http://www.congress.gov.ph/legisdocs/?v=journals>> (Last accessed July 25, 2017).

³³ *Id.* at 177, TSN dated August 24, 2016.

³⁴ *Id.*

runner-up for House speakership did not sit as Minority Leader. During the 9th Congress, second placer Representative Jose Cojuangco gave up his Minority Leadership in favor of his party mate, Representative Hernando Perez. During the 14th Congress, Representative De Venecia ran unopposed, leaving out the possibility of having any second placer become the Minority Leader.³⁵

Both circumstances do not apply here: the second placer, Representative Baguilat, has not given up his seat in favor of his party mate, and the winning speaker, Representative Alvarez, did not run unopposed.

An unopposed candidate for Speaker during the 14th Congress presented a challenge for the determination of a Minority Leader. Thus, the House amended the Rules of the 14th Congress so that the Minority Leader could be voted for separately.³⁶ Under the amendment, “[t]he Minority Leader shall be elected by the members of the Minority and can be changed by a majority vote of all the Minority members at any time.”³⁷ The Minority members elected Representative Zamora as the Minority Leader.³⁸

The express provision on electing the Minority Leader during the 14th Congress did not prevent the House from continuing the practice of making the second placer *ipso facto* its Minority Leader during the subsequent 15th and 16th Congresses. Thus, the current interpretation is that when there are several candidates for Speaker, the same election is also the selection for the Minority Leader. Those who voted for the second placer became the Minority.

Thus, the 15th Congress (2010-2013) adopted the Rules of the 14th Congress. The long-standing parliamentary practice constituting the interpretation of the Rules of the House prevailed. Three (3) members then contended for speakership: Representative Feliciano R. Belmonte, Jr. (Representative Belmonte), Representative Edcel C. Lagman (Representative Lagman), and Representative Martin Romualdez (Representative Romualdez).³⁹ Representative Belmonte won as Speaker while Representative Lagman placed second in the election.⁴⁰ The House gave weight to tradition and precedent and recognized second placer Representative Lagman as its Minority Leader.⁴¹

The same thing happened during the 16th Congress (2013-2016),⁴²

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id. at 24.

³⁹ Id. at 24.

⁴⁰ Id.

⁴¹ Id.

⁴² Id. at 178.

where the House respected the tradition and interpretation by the body that the second placer will be the House Minority Leader.⁴³

This is a clear indication that the House itself accords due reverence to its established practices and traditions as its collective interpretation of its rules. Where there can be an ambiguity, practice and tradition should also be read into its Rules. Rule XXV, Section 161 of the Rules of the House of Representatives also provides that “[t]he parliamentary practices of . . . the House of Representatives . . . shall be suppletory to these Rules.”

The House collectively considers the votes for the second placer for House Speaker as the votes of the Minority for its Minority Leader. Insofar as having the second placer automatically become the Minority Leader, this parliamentary practice was not merely suppletory to the Rules of the 15th and 16th Congresses—rather, it took primacy over the Rules themselves. There is no reason to treat the 17th Congress differently. Like the 15th and 16th Congresses, the 17th Congress involves a race among many candidates for Speaker and not simply one (1) unopposed candidate as in the 14th Congress.

III

On July 25, 2016, the House opened the First Regular Session of the 17th Congress (2016-2019).⁴⁴ The Presiding Officer⁴⁵ designated Representative Fariñas as Acting Floor Leader.⁴⁶ Upon Representative Fariñas’ motion, the Body adopted the Rules of the 16th Congress as the Provisional Rules of the House of Representatives (Rules),⁴⁷ with the minor amendment particularly related only to the dress code.⁴⁸ The Rules took effect on the date of its adoption on July 25, 2016.⁴⁹

There was no amendment relating to the process of selecting the Minority Leader.

The Body then proceeded with the period of nominations for the position of Speaker of the 17th Congress.⁵⁰ Three (3) persons were nominated: respondent Representative Alvarez, respondent Representative

⁴³ Id.

⁴⁴ Id. at 251, Journal No. 1 dated July 25, 2016.

⁴⁵ Id. at 215. Atty. Marilyn B. Barua-Yap, Secretary General under the 16th Congress.

⁴⁶ Id. at 215–216, Suarez Comment.

⁴⁷ Id. at 264, Journal No. 1 dated July 25, 2016

⁴⁸ Id. at 719, Journal No. 10 dated August 15, 2016. The first sentence of Rule XII, sec. 94, titled “Conduct and Attire During Sessions and Committee Meetings,” shall be read as follows: MEMBERS SHALL WEAR PROPER ATTIRE WHICH IS BARONG FILIPINO OR COAT AND TIE, OR BUSINESS ATTIRE FOR MEN, AND FILIPINA DRESS OR BUSINESS SUIT FOR WOMEN, AND OBSERVE PROPER DECORUM DURING SESSIONS AND COMMITTEE MEETINGS.

⁴⁹ RULES OF THE HOUSE OF REPRESENTATIVES (17th CONGRESS), Rule XXVIII, sec. 165 provides that “[t]hese rules shall take effect on the date of adoption.”

⁵⁰ *Rollo*, p. 264, Journal No. 1 dated July 25, 2016

Suarez, and petitioner Representative Baguilat.⁵¹ Petitioner Representative Raul A. Daza (Representative Daza) put on record that Representative Baguilat's endeavor for House speakership "was the first time that a member who belongs to the so-called cultural minority was nominated to the highest office of the chamber."⁵²

After the Body closed the period for nominations, Representative Jose L. Atienza (Representative Atienza) inquired about the election of the Minority Leader of the House since the circumstances were similar to those in the 16th Congress, the Rules of which the 17th Congress adopted at the start of the plenary sessions.⁵³

During the 16th Congress, there were also three (3) candidates for House Speaker. The second placer automatically became the Minority Leader, and all those who voted for the third candidate for Speaker became independents.⁵⁴ Representative Atienza wanted to know if the same practice would apply to the 17th Congress.⁵⁵

Representative Fariñas replied by referring to Rule II, Section 8 of the Rules of the House of Representatives.⁵⁶ The first, second, and last paragraphs of Rule II, Section 8 provide:

Members who vote for the winning candidate for Speaker shall constitute the Majority in the House and they shall elect from among themselves the Majority Leader . . .

The Minority Leader shall be elected by the Members of the Minority and can be changed, at any time, by a majority vote of all the Minority Members.

. . . .

Members who choose not to align themselves with the Majority or the Minority shall be considered as independent Members of the House.

Interpreting Rule II, Section 8, Representative Fariñas explained to Representative Atienza that:

[T]he Members who voted for the winning candidate for the Speaker shall constitute the Majority and shall elect from among themselves the Majority Leader, while those who voted against the winning Speaker or

⁵¹ Id. at 266, Journal No. 1 dated July 25, 2016. He was nominated by petitioner Representative Raul A. Daza, seconded by petitioner Representative Tom S. Villarin.

⁵² Id.

⁵³ Id. at 251, Journal No. 1 dated July 25, 2016.

⁵⁴ *Rollo*, p. 816, OSG Comment, Annex 5.

⁵⁵ Id.

⁵⁶ *Rollo*, p. 266, Journal No. 1 dated July 25, 2016.

did not vote at all shall belong to the Minority and would thereafter elect their Minority Leader.⁵⁷

There was no vote taken to confirm the interpretation of Representative Fariñas.

The House then proceeded to elect the House Speaker.⁵⁸ A total of 252 members voted for Representative Alvarez, eight (8) voted for Representative Baguilat, seven (7) voted for Representative Suarez, 21 abstained including Representative Alvarez, and one (1) registered a “no vote.”⁵⁹ Representative Suarez, who himself ran for House Speaker, voted for Representative Alvarez.⁶⁰

Representative Alvarez was declared duly-elected Speaker of the 17th Congress, Representative Baguilat came in second, and Representative Suarez trailed behind them.⁶¹

More than half of the total House membership who voted for House Speaker Alvarez, including Representative Suarez, became Majority members.⁶²

In a letter⁶³ dated July 26, 2016, Representative Suarez clarified to Speaker Alvarez that he voted for Speaker Alvarez in line with the alleged practice of not voting for oneself. He also revealed to the House Speaker his desire to change his affiliation in order to become the Minority Leader. Representative Suarez then sought permission from the Majority to be accepted in the Minority. On the same day, Majority Leader Representative Fariñas granted Representative Suarez’s application to become a Minority member.⁶⁴

Representative Suarez did not ask leave from the Minority to become its member.

A plenary session was held on July 26, 2016. Representative Lagman took the floor to avert that second placer Representative Baguilat should automatically be the Minority Leader.⁶⁵ Thus:

⁵⁷ *Rollo*, p. 266, Journal No. 1 dated July 25, 2016.

⁵⁸ *Id.*

⁵⁹ *Id.* at 266–269.

⁶⁰ *Id.* at 40–42, Petition.

⁶¹ *Id.* at 269.

⁶² *See* RULES OF THE HOUSE OF REPRESENTATIVES (17TH CONGRESS), Rule II, sec. 8 provides: Section 8. Members who vote for the winning candidate for Speaker shall constitute the Majority in the House[.] ”

⁶³ *Rollo*, p. 140.

⁶⁴ *Id.*

⁶⁵ *Id.* at 119, TSN dated July 26, 2016.

Like in the 16th Congress when Representative Zamora won by three votes over Representative Romualdez, Representative Zamora was automatically recognized as the Minority Leader, and *there was no need for an election among the Minority Members* [in line with parliamentary practice].⁶⁶

According to Representative Lagman:

The validity of this practice has never been questioned.

The practice has been invariably adopted and acquiesced in from one Congress to another that it has acquired the character of law or binding rule on the Majority, Minority, or the independent Members of the House of Representatives.⁶⁷

Representative Lagman was also the second placer during the 15th Congress; as such, he automatically obtained the position of Minority Leader.⁶⁸ *He stated that the customary practice of the House is part of the Rules of the House.*⁶⁹

Likewise, Representative Lagman corrected Representative Suarez's statement that candidates for House Speaker were prohibited from voting for themselves as Speaker.⁷⁰ He reminded Representative Suarez that in the 16th Congress, Representatives Zamora and Romualdez, who both contended for the speakership, voted for themselves as House Speaker.⁷¹

Representative Lagman further asserted that Representative Fariñas' interpretation of Rule II, Section 8 violated the spirit and the letter of the Rules of the House of Representatives.⁷² He then read the relevant paragraphs of Rule II, Section 8 that distinguish among the Majority, the Minority, and the independent members of the House.⁷³

Citing Rule II, Section 8, Representative Lagman stated that “[m]embers who choose not to align themselves with the Majority or the Minority shall be considered as independent Members of the House[.]” Thus, the 20 abstaining members, as well as the one (1) who registered a no-vote for House Speaker,⁷⁴ are neither with the Majority nor the Minority.⁷⁵

⁶⁶ Id. at 117.

⁶⁷ Id. at 116–117.

⁶⁸ Id. at 24, Petition.

⁶⁹ Id. at 809, TSN dated July 26, 2016.

⁷⁰ Id. at 117.

⁷¹ Id.

⁷² Id. at 119, TSN dated July 26, 2016.

⁷³ Id. at 118, TSN dated July 26, 2016.

⁷⁴ Except for the House Speaker himself, as he is automatically part of the Majority.

⁷⁵ *Rollo*, p. 118.

Petitioner Representative Edgar R. Erice (Representative Erice) also made a manifestation and a parliamentary inquiry.⁷⁶ He revealed having received an invitation for a meeting to elect a Minority Leader from the Majority bloc.⁷⁷ According to Representative Erice, the “[r]epresentatives who expressed their support to the Speaker. Now, they are calling themselves part of the Minority.”⁷⁸

For his part, Representative Fariñas faulted Representative Erice for not objecting to the former’s opinion the previous day in response to Representative Atienza’s query on the composition of Minority membership.⁷⁹ Representative Fariñas claimed that such non-objection amounted to “estoppel by silence.”⁸⁰ He also defended the Majority’s distribution of the Minority’s invitation for the special election for the *Minority* Leader, stating that all that happens in the plenary must have the Majority Leader’s permission.⁸¹

On July 27, 2016, the election for Minority Leader was held.⁸² Most of the House representatives who abstained from voting for House Speaker voted for Representative Suarez as Minority Leader:⁸³

Name of Representative	Party Affiliation	Vote for the Majority Floor Leader	Vote for the Minority Floor Leader During the July 27, 2016 Minority Leader Election
1. Abayon, Harlin Neil III J.	AANGAT TAYO / Nacionalista Party (NP)	Abstain	Suarez
2. Aggabao, Ma. Lourdes R.	National People’s Coalition (NPC)	Abstain	Abstain
3. Alonte-Naguiat, Marlyn B.	PDP-LABAN	Abstain	Suarez
4. Aragones, Sol	PDP-LABAN	Abstain	Vote not mentioned in the Court’s record
5. Arcillas, Arlene B.	PDP-LABAN	Abstain	Suarez
6. Atienza, Lito	Buhay	Suarez	Suarez
7. Bagatsing, Cristal L.	PDP-LABAN	Abstain	Suarez
8. Batocabe, Rodell M.	AKO-BICOL Party List	Abstain	Abstain
9. Bernos, Joseph Sto. Niño B.	PDP-LABAN	Abstain	Suarez

⁷⁶ Id. at 773–774, TSN dated July 26, 2016.

⁷⁷ Id. at 774, TSN dated July 26, 2016.

⁷⁸ Id.

⁷⁹ Id. at 775, TSN dated July 26, 2016.

⁸⁰ Id. at 781, TSN dated July 26, 2016.

⁸¹ Id. at 780, TSN dated July 26, 2016.

⁸² Id. at 132, Representative Lagman’s Letter dated August 1, 2016.

⁸³ *Rollo*, p. 132, Lagman Letter dated August 1, 2016.

10. Bertiz, Aniceto “John” III D.	ACTS-OFW Party List	Abstain	Suarez
11. Bravo, Anthony M.	COOP-NATCO Party List	Abstain	Suarez
12. Campos, Luis	Makati, 2 nd District	Suarez	Suarez
13. Cerafica, Arnel M.	PDP-LABAN	Abstain	Suarez
14. Chavez, Cecilia Leonila V.	BUTIL Party List	Abstain	Suarez
15. Co, Christopher S.	AKO-BICOL Party List	Abstain	Vote not mentioned in the Court’s record
16. Cortuna, Julieta R.	A TEACHER Party List	Abstain	Suarez
17. Del Rosario, Monsour	Makati, 1 st District	Suarez	Suarez
18. De Vera, Eugene Michael B.	ABS Party List	Abstain	Suarez
19. Eusebio, Richard C.	Nacionalista Party (NP)	Abstain	Suarez
20. Ferriol-Pascual, Abigail Faye C.	KALINGA Party List	Abstain	Suarez
21. Garbin, Alfredo Jr. A.	AKO-BICOL Party List	Abstain	Suarez
22. Garcia, Jose Enrique III S.	National Unity Party (NUP)	Abstain	Vote not mentioned in the Court’s record
23. Garin, Sharon S.	AAMBIS-OWA Party List	Abstain	Abstain
24. Lee, Delphine	AGRI	Suarez	Suarez
25. Roque, Harry	Kabayan	Suarez	Suarez
26. Salon, Orestes	AGRI	Suarez	Suarez
27. Suarez, Danilo	Quezon City, 3 rd District	Fariñas	Suarez
28. Villaraza-Suarez	ALONA	Suarez	Suarez ⁸⁴

Petitioners point out that as early as May 23, 2016, Representative Suarez already sought for his anointment as Minority Leader in order to lead a “cooperative” opposition in the House.⁸⁵ Thus:

29. Shortly after the 09 May 2016 elections, Rep. Danilo Suarez encamped in Davao City, the then center of political activities and maneuverings of President-elect Rodrigo R. Duterte and his men.

30. Rep. Suarez publicly and unabashedly announced that he was seeking the adoption or anointment by the Duterte administration as [M[inority [L]eader in the House of Representatives because he would be leading a “cooperative” minority . . .

....

⁸⁴ Id. at 268–269 and 735. The votes of Representatives Aragonés, Co, and Garcia are not mentioned in the files forwarded to this Court.

⁸⁵ *Rollo*, p. 12, Petition; see also *rollo*, pp. 61–62, Trishia Billiones, *Lagman blasts Suarez’s “anointment” as minority leader*, ABS-CBN NEWS, July 25, 2016, <<http://news.abs-cbn.com/news/07/25/16/lagman-blasts-suarezs-anointment-as-minority-leader>> (last accessed July 24, 2017).

32. In the weeks preceding the opening of the 17th Congress on 25 July 2016, incessant reports were afloat, which were not seriously denied, that the supermajority coalition would lend to Rep. Suarez some of the majority partisans to beef up his small number of minority congressmen to assure his election as the House Minority Leader.⁸⁶

According to petitioners, six (6) of those who abstained belong to Partido Demokratiko Pilipino-Lakas ng Bayan (PDP-LABAN), the political party of President Duterte, Speaker Alvarez, and Majority Leader Fariñas,⁸⁷ while the other abstaining members belong to political parties that “are all allied with the [House] supermajority.”⁸⁸

Petitioners question how the 20 abstaining members were only those with surnames starting from “A” to “G”⁸⁹ and not anyone else from “H,” such as Representative Ferdinand L. Hernandez, to “Z,” such as Rep. Manuel F. Zubiri. For petitioners, the “pre-arranged” alphabetical sequence of the abstaining members’ names easily monitored their votes, and thus, assured Representative Suarez’s election as Minority Leader.⁹⁰ Thus:

44. The alphabetical sequence of the “abstentionists” started with letter “A” (Abayon) and ended with the letter “G” (Garin) [wa]s pre-arranged because the infusion of 20 Representatives was deemed sufficient by the leadership of the supermajority to assure respondent Rep. Suarez’s victory as “minority leader”. “A” to “G” were also considered easy to monitor.⁹¹

On August 1, 2016, Representative Harlin Neil Abayon III (Representative Abayon) manifested to the Body that the meeting on July 27, 2016 resulted in the election of Representative Suarez as Minority Leader. Representative Juan Pablo Bondoc moved to refer Representative Abayon’s manifestation to the Committee on Rules.⁹²

Representative Rodante D. Marcoleta (Representative Marcoleta) stood on a point of order against Representative Abayon’s manifestation, arguing that it violated Rule II, Section 8 of the Provisional Rules of the House. Representative Marcoleta stated that the members who attended the election for Minority Leader on July 27, 2016 were the same members who abstained during the election for House Speaker. Their abstention aligned themselves with neither the Majority nor the Minority, thereby making them

⁸⁶ Id.

⁸⁷ Id. at 16.

⁸⁸ Id.

⁸⁹ Id. at 15. They were Representatives Abayon, Aggabao, Alonte-Naguiat, Aragones, Arcillas, Bagatsing, Batocabe, Bernos, Bertiz, Bravo, Cerafica, Chavez, Co, Cortuna, De Vera, Eusebio, Ferriol-Pascual, Garbin, Garcia, and Garin.

⁹⁰ Id.

⁹¹ Id.

⁹² Id. at 680, Journal No. 4 dated August 1, 2016.

independent and disqualified from voting for a Minority Leader.⁹³

Representative Marcoleta also explained that the non-objection to Representative Fariñas' erroneous interpretation of Rule II, Section 8 on July 25, 2016 does not negate the transgression of the Rules.⁹⁴

In a letter dated August 1, 2016 to Speaker Alvarez, Representative Lagman underscored that no estoppel attaches to a wrong interpretation of the law, especially as such erroneous opinion "was not even submitted for adoption by the House or for a ruling from the Presiding Officer."⁹⁵ In Representative Lagman's letter:

3. The 20 Representatives who abstained from voting for or against the eventual winner as Speaker are indubitably considered independent members of the House pursuant to the last paragraph of Section 8 of Rule II. The remarks on 25 July 2016 of then acting⁹⁶ Floor Leader Rodolfo C. Fariñas is erroneous when he opined that all those who did not vote for the Speaker belong to the Minority, including all those who abstained. This remark is contrary to the unmistakable language and spirit of the aforesaid rule. *Verily, there is no estoppel in favor of an erroneous interpretation which was not even submitted for adoption by the House or for a ruling from the Presiding Officer.*

4. Consequently, the said 20 abstaining Representatives did not have any authority to call for a "special election" for "minority leader", much more elect on 27 July 2016 a "minority leader" in the person of Rep. Suarez.⁹⁷ (Emphasis supplied)

Representative Lagman reiterated that, under the last paragraph of Rule II, Section 8, those who abstained are not part of either the Majority or the Minority.⁹⁸ Therefore, the 20 abstaining Members lacked the authority to even elect a Minority Leader.⁹⁹ Representative Lagman also alleged that the so-called "abstentionists" were Majority allies¹⁰⁰ who engaged in a "sham aggrupation."¹⁰¹ These members were part of a coalition with PDP-LABAN or were affiliated with political parties composing the House supermajority.¹⁰²

Thus, in accordance with the pertinent provisions of the Rules and accepted tradition, the authentic Minority Leader should have been

⁹³ Id.

⁹⁴ Id.

⁹⁵ Id. at 132.

⁹⁶ Id. at 136, Lagman Letter dated August 1, 2016.

⁹⁷ Id. at 132.

⁹⁸ Id. at 133, Lagman Letter dated August 1, 2016.

⁹⁹ Id.

¹⁰⁰ Id. at 134, Lagman Letter dated August 1, 2016.

¹⁰¹ Id. at 133.

¹⁰² Id. at 134.



Representative Baguilat,¹⁰³ who obtained more votes than Representative Suarez did in the contest for House Speaker.¹⁰⁴

Finally, Representative Lagman informed Speaker Alvarez that “Rep. Suarez disqualified himself from aspiring for the position of Minority Leader.”¹⁰⁵ In voting for Speaker Alvarez, Representative Suarez became part of the Majority, pursuant to the first paragraph of Rule II, Section 8.¹⁰⁶

Representative Lagman’s letter to Speaker Alvarez dated August 1, 2016 was subsequently made a part of the Journal of the House on the same day.¹⁰⁷ Neither Speaker Alvarez nor Majority Leader Fariñas officially replied to his letter.¹⁰⁸

Petitioners aver that after Representative Suarez’s “sham”¹⁰⁹ election as Minority Leader, 10 of the abstaining representatives returned to the supermajority coalition.¹¹⁰ These 10 representatives addressed their requests to transfer to the Majority, as follows:

1. Representatives Sharon S. Garin (AAMBIS-OWA Party List)¹¹¹ and Ma. Lourdes R. Aggabao (NPC)¹¹² on August 1, 2016;
2. Representatives Len B. Alonte-Naguiat (PDP-LABAN),¹¹³ Sol Aragonés (PDP-LABAN),¹¹⁴ Rodel M. Batocabe (AKO BICOL Party List),¹¹⁵ Joseph Sto. Niño B. Bernos (PDP-LABAN),¹¹⁶ Christopher S. Co (AKO BICOL Party List),¹¹⁷ and Jose Enrique S. Garcia III (NUP)¹¹⁸ on August 2, 2016;
3. Representative Cristal L. Bagatsing (PDP-LABAN) on August 3, 2016;¹¹⁹ and
4. Representative Arnel M. Cerafica (PDP-LABAN)¹²⁰ on August 8, 2016.

¹⁰³ Id. at 132.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id. at 682, Journal No. 4 dated August 1, 2016.

¹⁰⁸ Id. at 17, Petition.

¹⁰⁹ Id. at 133.

¹¹⁰ Id. at 18–20, Petition.

¹¹¹ Id. at 160, Annex Y of Petition.

¹¹² Id. at 158, Annex X of Petition.

¹¹³ Id. at 148, Annex S of Petition.

¹¹⁴ Id. at 142, Annex P of Petition.

¹¹⁵ Id. at 156, Annex W of Petition.

¹¹⁶ Id. at 152, Annex U of Petition.

¹¹⁷ Id. at 144, Annex Q of Petition.

¹¹⁸ Id. at 146, Annex R of Petition.

¹¹⁹ Id. at 150, Annex T of Petition.

¹²⁰ Id. at 154, Annex V of Petition.

Majority Leader Fariñas accepted¹²¹ all their requests to transfer or return to the Majority.

On August 15, 2016, the Body elected Majority members to various commissions and committees.¹²² The 10 “returning” members received what petitioners describe as “plum positions”—ranging from Deputy Speaker to Member of the House Electoral Tribunal, Committee Chairpersons, and Committee Vice-Chairpersons.¹²³ Thus:

1. Sharon Garin	Deputy Speaker
2. Rodel M. Batocabe	Member of the House Electoral Tribunal (HRET)
3. Sol Aragonés	<ul style="list-style-type: none"> • Chairperson, Committee on Population and Family Relations • Vice Chairperson, Committee on Women and Gender Equality
4. Christopher S. Co	Chairperson, Special Committee on Climate Change
5. Ma. Lourdes R. Aggabao	<ul style="list-style-type: none"> • Vice Chairperson, Committee on Population and Family Relations • Vice Chairperson, Committee on Rural Development
6. Len B. Alonte-Naguiat	<ul style="list-style-type: none"> • Vice Chairperson, Committee on Health • Vice Chairperson, Committee on Women and Gender Equality
7. Joseph B. Bernos	Vice Chairperson, Committee on Public Order and Safety
8. Jose Enrique S. Garcia	<ul style="list-style-type: none"> • Vice Chairperson, Committee on Energy • Vice Chairperson, Committee on Health
9. Cristal L. Bagatsing	<ul style="list-style-type: none"> • Vice Chairperson, Committee on Basic Education and Culture • Member, Committee on Appropriations • Member, Committee on Foreign Affairs
10. Arnel M. Cerafica	<ul style="list-style-type: none"> • Vice Chairperson, Committee on Health • Vice Chairperson, Committee on Public Works and Highway

Representative Fariñas then moved to recognize Representative Suarez as Minority Leader.¹²⁴ Before the Body could act on the motion, Representative Lagman asked why the Body was recognizing Representative Suarez as Minority Leader when the latter voted for the winning House

¹²¹ Id. at 18–20.

¹²² Id. at 713, Journal No. 10 dated August 15, 2016.

¹²³ Id. at 21–22, Petition.

¹²⁴ Id. at 716, Journal No. 10 dated August 15, 2016.

Speaker.¹²⁵

Representative Fariñas replied that Representative Suarez already transferred to the Minority¹²⁶ upon securing the permission of the Majority Leader.¹²⁷

Representative Lagman differed, stating that if one wanted to become a member of the Minority, the “letter of application should [have] be[en] addressed to the Minority Leader, and not to the Speaker or Majority Leader.”¹²⁸ To support his statement, Representative Lagman read Rule II, Section 8 and directed the Body’s attention to the operative phrase, “as the case may be.”¹²⁹ Thus:

A Member may transfer from the Majority to the Minority, or vice versa, at any time: Provided, That:

- a. The concerned Member submits a written request to transfer to the Majority or Minority, through the Majority or Minority Leaders, *as the case may be*. The Secretary General shall be furnished a copy of the request to transfer;
- b. The Majority or Minority, *as the case may be*, accepts the concerned Member in writing; and
- c. The Speaker shall be furnished by the Majority or the Minority Leaders, *as the case may be*, a copy of the acceptance in writing of the concerned Member. (Emphasis supplied)

The Chair¹³⁰ brushed aside Representative Lagman’s objection and held that Representative Suarez had already transferred to the Minority.¹³¹ Representative Lagman appealed¹³² the ruling of the Chair¹³³ but his appeal was denied.¹³⁴

Representative Marcoleta next raised a parliamentary inquiry on who were considered independent members of the House under the last paragraph

¹²⁵ Id.

¹²⁶ Id. at 716–717, Journal No. 10 dated August 15, 2016.

¹²⁷ Id. at 140, Fariñas First Letter dated July 26, 2016.

¹²⁸ Id. at 717.

¹²⁹ Id.

¹³⁰ Id. at 713. The Chair was Deputy Speaker Raneo E. Abu.

¹³¹ Id. at 140, Fariñas First Letter dated July 26, 2016.

¹³² RULES OF THE HOUSE OF REPRESENTATIVES (17TH CONGRESS), Rule XIII, sec. 109 provides:
Section 109. Appeal from Ruling of the Chair. – Any Member may appeal from the ruling of the Chair and may be recognized by the Chair, even though another Member has the floor. No appeal is in order when another appeal is pending. The Member making the appeal shall state the reasons for the appeal subject to the five-minute rule. The Chair shall state the reasons for the ruling and forthwith submit the question to the body. An appeal cannot be amended and shall yield only to a motion to adjourn, to a point of order, to a question of personal privilege or to recess.

¹³³ *Rollo*, pp. 717–718, Journal No. 10 dated August 15, 2016.

¹³⁴ Id. at 718.

of Rule II, Section 8.¹³⁵ He reiterated that the Body did not adopt Representative Fariñas' erroneous opinion on July 25, 2016,¹³⁶ which categorized the House members only into the Majority and Minority without mentioning independent membership.¹³⁷

The Chair recognized Representative Suarez as Minority Floor Leader, notwithstanding the questions raised.¹³⁸ Representative Suarez and other members of the Minority were then elected into various offices and House committees.¹³⁹

Petitioners Representatives Teddy Brawner Baguilat, Jr., Edcel C. Lagman, Raul A. Daza, Edgar R. Erice, Emmanuel A. Billones, Tomasito S. Villarín, and Gary C. Alejano (petitioners) have since sought recourse against respondents House Speaker Pantaleon D. Alvarez, Majority Leader Rodolfo C. Fariñas, and Representative Danilo E. Suarez (respondents) before this Court through this Petition for Mandamus.¹⁴⁰

For resolution are the issues on whether the House leadership committed grave abuse of discretion in installing Representative Danilo E. Suarez as Minority Leader, and whether respondents may be compelled to recognize Representative Teddy Brawner Baguilat, Jr. as Minority Leader.

IV

The ponencia cites *Arroyo v. De Venecia*¹⁴¹ to state that this Court cannot set aside a legislative action as void simply because it thinks that the House violated the latter's internal rules. The question in *Arroyo* was whether Republic Act No. 8240 (Sin Tax Law) was null and void as it was passed despite a senator's failure to question the presence of a quorum.¹⁴² This Court dismissed that case because there was no grave abuse of discretion—the quorum was actually met:

To repeat, the claim is not that there was no quorum but only that Rep. [Joker P.] Arroyo was effectively prevented from questioning the presence of a quorum. Rep. Arroyo's earlier motion to adjourn for lack of quorum had already been defeated, as the roll call established the existence of a quorum. The question of quorum cannot be raised repeatedly—especially when the quorum is obviously present—for the purpose of delaying the business of the House.¹⁴³

¹³⁵ Id.

¹³⁶ Id. at 719.

¹³⁷ Id. at 266, Journal No. 1 dated July 25, 2016.

¹³⁸ Id. at 221, Suarez Comment.

¹³⁹ Id.

¹⁴⁰ Id. at 3–56.

¹⁴¹ *Arroyo v. De Venecia*, 343 Phil. 42 (1997) [Per J. Mendoza, En Banc].

¹⁴² Id. at 60–61.

¹⁴³ Id. at 70.

In contrast, the petitioners have ably established the presence of grave abuse of discretion. Truly, the justiciability of the issue is anchored on the capricious, whimsical, and arbitrary judgment committed by respondents in neglecting and refusing to recognize Representative Baguilat as the *ipso facto* Minority Leader, in accordance with a long-established parliamentary practice and Rules of the House of Representatives.

There was also grave abuse of discretion in counting the votes of Representative Suarez and those of the independent members in the election for Minority Leader. On July 27, 2016, the day of the election for Minority Leader, Representative Suarez himself belonged to the Majority and was thus disqualified from being the Minority Leader. Likewise, the 20 abstaining members and the one (1) who registered a no-vote were independent members. Not being part of the Minority, these independent members were disqualified from electing a Minority Leader.

Rule II, Section 8 of the Rules states in full:

Members who vote for the winning candidate for Speaker shall constitute the Majority in the House and they shall elect from among themselves the Majority Leader. The Majority Leader may be changed, at any time, by a majority vote of all the Majority Members.

The Minority Leader shall be elected by the Members of the Minority and can be changed, at any time, by a majority vote of all the Minority Members.

The Majority and Minority shall elect such number of Deputy Majority and Minority Leaders as the rules provide.

A Member may transfer from the Majority to the Minority, or vice versa, at any time: Provided, That:

- a. The concerned Member submits a written request to transfer to the Majority or Minority, through the Majority or Minority Leaders, as the case may be. The Secretary General shall be furnished a copy of the request to transfer;
- b. The Majority or Minority, as the case may be, accepts the concerned Member in writing; and
- c. The Speaker shall be furnished by the Majority or the Minority Leaders, as the case may be, a copy of the acceptance in writing of the concerned Member.

In case the Majority or the Minority declines such request to transfer, the concerned Member shall be considered an independent Member of the House.

In any case, whether or not the request to transfer is accepted, all committee assignments and memberships given the concerned Member by the Majority or Minority, as the case may be, shall be automatically forfeited.

Members who choose not to align themselves with the Majority or the Minority shall be considered as independent Members of the House. They may, however, choose to join the Majority or Minority upon written request to and approval thereof by the Majority or Minority, as the case may be.

Rule II, Section 8 has two (2) major components: (a) the first, second, and last paragraphs provide for the different kinds of members of the House of Representatives, and (b) the fourth to eighth paragraphs provide for the manner by which a Majority, Minority, or independent member may change affiliation.

The first paragraph of Rule II, Section 8 states that the representatives who vote for the winning candidate for Speaker shall constitute the Majority. The second paragraph declares that the Minority Leader shall be elected by Members of the Minority. The last paragraph confirms that “[m]embers who choose not to align themselves with the Majority or the Minority [i.e. those who abstained or registered a no-vote] shall be considered as independent Members of the House.” Thus:

Members who vote for the winning candidate for Speaker shall constitute the *Majority* in the House and they shall elect from among themselves the Majority Leader . . .

The Minority Leader shall be elected by the Members of the *Minority* and can be changed, at any time, by a majority vote of all the Minority Members.

. . . .

Members who choose not to align themselves with the Majority or the Minority shall be considered as *independent* Members of the House. (Emphasis supplied)

Even the official website of the House of Representatives gives notice to the public that the Minority members are only those who voted for the Speaker’s opponent but do not include those who abstained from voting:

Those who voted for the Speaker belong to the Majority while those who voted for the Speaker’s opponent belong to the Minority. Representatives belonging to the Majority choose the Majority Floor Leader who automatically chairs the Committee on Rules, and those in the Minority choose the Minority Floor Leader.¹⁴⁴

¹⁴⁴ *Legislative Information*, HOUSE OF REPRESENTATIVES, 17TH CONGRESS,

It is a basic legal principle that those not included in the enumeration are deemed excluded.¹⁴⁵ A person or thing omitted from an enumeration must be held to have been omitted intentionally.¹⁴⁶ As the definition of Minority omitted those representatives who abstained or opted for a “no-vote,” then they are deemed intentionally omitted from the definition.

Representative Fariñas himself mentioned the importance of following the Rules. According to him, “[a] law or a regulation is not repealed by non-observance. It can only be repealed by express repeal. *Kung hindi sinusunod iyan, batas pa rin iyan.*”¹⁴⁷

Ironically, in insisting on his July 25, 2016 interpretation¹⁴⁸ of Rule II, Section 8, the Majority Leader was flouting the Rules himself. He cannot simply cling to a mistaken opinion without running afoul of the express provisions of the Rules. Neither Representative Fariñas’ erroneous interpretation of Rule II, Section 8 nor petitioners’ alleged silence cured the violation of the Rules and parliamentary practice of the House.

First, the records do not show that Representative Fariñas’ own interpretation of Rule II, Section 8 was submitted for adoption by the requisite number of members or was ruled upon by the Presiding Officer on July 25, 2016. Rather, the records show that after giving his own interpretation of Rule II, Section 8, Representative Fariñas simply moved to proceed to the election for House Speaker without asking for a vote on whether the Body would adopt his opinion or not.

The House of Representatives Journal No. 1 dated July 25, 2016 narrates the events that transpired:

DESIGNATION OF REP. FARIÑAS AS ACTING FLOOR LEADER

In the interest of orderly proceedings, the Presiding Officer designated Representative Rodolfo C. Fariñas of the First District of Ilocos Norte as Acting Floor Leader.

ADOPTION OF THE RULES OF THE HOUSE, AS AMENDED

<<http://www.congress.gov.ph/legisinfo/?v=students>> (last visited July 25, 2017).

¹⁴⁵ *Expressio unius est exclusio alterius*: the express mention of one person, thing or consequence implies the exclusion of all others. See *Romualdez v. Marcelo*, 529 Phil. 90, 109 (2006) [Per J. Ynares-Santiago, Special First Division].

¹⁴⁶ *Cassus omissus pro omisso habendus est*. See *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, 570 Phil. 395, 417 (2008) [Per J. Reyes, En Banc].

¹⁴⁷ *Rollo*, p. 777, Annex 1 of OSG Comment.

¹⁴⁸ *Id.* at 266, Journal No. 1 dated July 25, 2016. On July 25, 2016, then Acting Floor Leader Representative Fariñas expressed his view that there were only two (2) categories: those in favor of Speaker Alvarez were considered as Majority members, while the rest were considered as Minority members, with no third category of independent membership.

On motion of Rep. Fariñas, there being no objection, the Body adopted the Rules of the 16th Congress as the Provisional Rules of the House to govern its proceedings until the adoption of the Rules for the 17th Congress, subject to the amendment that the first sentence of Section 94, Rule 12, entitled, "Conduct and Attire During Sessions and Committee Meetings," shall read as follows: MEMBERS SHALL WEAR PROPER ATTIRE WHICH IS BARONG FILIPINO OR COAT AND TIE OR BUSINESS ATTIRE FOR MEN, AND FILIPINA DRESS OR BUSINESS SUIT FOR WOMEN, AND OBSERVE PROPER DECORUM DURING SESSIONS AND COMMITTEE MEETINGS.

PERIOD OF NOMINATIONS FOR THE POSITION OF THE SPEAKER OF THE HOUSE

In accordance with the constitutional duty of the House to organize and receive the President's State of the Nation Address later in the day, on motion of Rep. Fariñas, there being no objection, the Body proceeded to the period of nominations for the position of Speaker of the House.

POINT OF CLARIFICATION OF REP. ATIENZA

Upon recognition by the Chair, Rep. Jose L. Atienza Jr. said that he wanted to ask clarificatory questions on the election process. Rep. Fariñas said that he will entertain the same after the nomination period which the Chair thereafter adopted.

POINT OF ORDER OF REP. FUENTEBELLA

Recognized by the Chair, Rep. Arnulfo P. Fuentebella asked that the Chamber proceed to the oath-taking of the Members before the election of the Speaker, as was stated in the Order of Business.

RULING OF THE CHAIR

The Chair ruled that in accordance with (1) parliamentary tradition and practice and (2) the amended Rules of the House that the 17th Congress had adopted, it is the Speaker of the House that administers the oath to the new Members. She added that the oath-taking before the Speaker at the commencement of the First Regular Session is an affirmation of the oaths they had already taken before noontime of June 30, 2016. She explained that in accordance with several Supreme Court decisions, the Members had already complied with the three requirements for membership into the Chamber, namely, a valid certificate of proclamation; oath-taking before any duly authorized officer; and assumption into office without any question by noontime of June 30[,] 2016. She also stressed that the House's highest constitutional privilege was to organize itself before proceeding with its business.

MOTION OF REP. FUENTEBELLA

As he appealed the ruling of the Chair, Rep. Fuentebella said that it was anomalous for the House to elect the Speaker before the oath-taking of the Members. He then asked for a suspension of session as well as a voting on his point of order.



REMARKS OF REP. FARIÑAS

Upon recognition by the Chair, Rep. Fariñas read into the records Section 1, Rule 1 of the aforementioned House Rules as he observed that Rep. Fuentebella did not cite any rule that was being violated.

Thereupon, Rep. Fariñas moved that the Body recognize Rep. Feliciano Belmonte Jr. from the Fourth District of Quezon City for his nomination speech.

MANIFESTATION OF REP. FUENTEBELLA

For his part, Rep. Fuentebella said that he will discuss his position at the proper time.

NOMINATION SPEECH OF REP. BELMONTE (F.)

In nominating Rep. Pantaleon D. Alvarez from the First District of Davao del Norte to be the Speaker of the 17th Congress, Rep. Belmonte cited his personal and professional relationship with the former who was a Member of the 11th Congress and then the Secretary of Transportation and Communications under the administration of former President Gloria Macapagal Arroyo . . .

SECONDING NOMINATION SPEECH OF REP. SINGSON

....

SECONDING NOMINATION SPEECH OF REP. ALVAREZ (M.)

....

SECONDING NOMINATION SPEECH OF REP. CASTRO

....

SECONDING NOMINATION SPEECH OF REP. ABU

....

NOMINATION SPEECH OF REP. ROQUE

Upon motion of Rep. Fariñas, the Chair recognized Rep. H. Harry L. Roque Jr. from Kabayan Party-List for his nomination speech for Rep. Danilo E. Suarez from the Third District of Quezon to be the Speaker of the 17th Congress . . .

SECONDING NOMINATION SPEECH OF REP. CAMPOS

....

NOMINATION SPEECH OF REP. DAZA

Rep. Daza, a member of the Liberal Party for half a century and its President for five challenging years, nominated Rep. Teddy Brawner Baguilat Jr. from the Lone District of Ifugao Province as Speaker of the

House of Representatives. For the record, he took pride in emphasizing that this was the first time that a Member who belongs to the so-called cultural minority was nominated to the highest office of the Chamber. He thereafter recalled Rep. Baguilat's political career and enumerated his achievements as a Governor and Representative of Ifugao Province . . .

SECONDING NOMINATION SPEECH OF REP. VILLARIN

....

TERMINATION OF THE PERIOD FOR NOMINATIONS

On motion of Rep. Fariñas, there being no other nominations and there being no objection, the Body closed the period of nominations.

PARLIAMENTARY INQUIRY OF REP. ATIENZA

Recognized by the Chair, Rep. Atienza inquired as to who would elect the Minority Leader of the House of Representatives.

REMARKS OF REP. FARIÑAS

In reply, *Rep. Fariñas referred to Section 8 of the Rules of the House on membership to the Majority and the Minority.* He explained that the Members who voted for the winning candidate for the Speaker shall constitute the Majority and shall elect from among themselves the Majority Leader, while those who voted against the winning Speaker or did not vote at all shall belong to the Minority and would thereafter elect their Minority Leader.

NOMINAL VOTING ON THE NOMINEES FOR SPEAKER OF THE HOUSE

Thereafter, on motion of Rep. Fariñas, there being no objection, *the Members proceeded to the election of the Speaker of the House of Representatives.* The Presiding Officer then directed Deputy Secretary General Adasa to call the Roll for nominal voting for the Speaker of the House and requested each Member to state the name of the candidate he or she will vote for.¹⁴⁹ (Emphasis supplied)

Second, while the House of Representatives may suspend or amend their rules, specific procedures must be followed for any suspension or amendment to be considered valid. Under Rule XIV, Sections 111, 112, and 114:

Section 111. Authority to Move – Only the Committee on Rules can move for the suspension of the rules.

Section 112. Vote Requirement – A voting of two-thirds (2/3) of the Members present, there being a quorum, is required to suspend any rule.

....

¹⁴⁹ Id. at 264–266.



Section 114. Debate; Effect of Suspension. – A motion to suspend the rules for the passage of a measure may be debated on for one (1) hour, which shall be divided equally between those in favor and those against.

The House shall proceed to consider the measure after voting to suspend the rules. A two-thirds (2/3) vote of the Members present, there being a quorum, shall be necessary for the passage of said measure.

Likewise, Rule XXVII, Section 164 provides:

Section 164. Amendments to the Rules. – Any provision of these Rules, except those that are also embodied in the Constitution, may be amended by a majority vote of all the Members of the House.

In ignoring the third category of independent membership and in allowing the independent members to intrude into the prerogative of the Minority to select its Minority Leader, Representative Fariñas clearly wanted to suspend or amend Rule II, Section 8 of the Rules.

Unfortunately, there was neither a Committee on Rules¹⁵⁰ that moved to suspend the Rules, as required by Section 111, nor a voting of two-thirds (2/3) of the Members present, as required by Section 112 of Rule XIV. There was also no vote taken by all members of the House to amend the Rules, as required by Rule XXVII, Section 164. Thus, Representative Fariñas' mere insistence on a different set of governing rules is invalid.

Third, there is no "estoppel by silence" that could amount to an amendment of the Rules.

Certainly, petitioners have not been silent. On July 26, 2016, a day immediately following Representative Fariñas' own interpretation of Rule II, Section 8, Representative Lagman raised a question of personal and collective privilege assailing such interpretation.¹⁵¹ Representative Erice also made a manifestation and a parliamentary inquiry opposing it.¹⁵²

On July 27, 2016, after Representative Suarez clinched the position of Minority Leader with the help of the abstaining members' votes, Representative Marcoleta questioned how these abstaining members could have validly elected Representative Suarez as Minority Leader under the

¹⁵⁰ See *rollo*, p. 266. When Representative Fariñas made his interpretation at the start of the First Regular Session of the 17th Congress on July 25, 2016, the Committee on Rules had not been constituted because the election for Speaker was yet to commence. The Committee on Rules is headed by the Majority Leader as the chairperson, with the Deputy Majority Leaders as the vice-chairpersons (Rule IX, Section 26 (ss)).

¹⁵¹ *Rollo*, p. 116, TSN dated July 26, 2016.

¹⁵² *Id.* at 772–773, TSN dated July 26, 2016.

Rules.¹⁵³

On August 1, 2016, Representative Lagman also wrote to Speaker Alvarez, pointing out that Representative Fariñas erroneously interpreted Rule II, Section 8.¹⁵⁴

On August 15, 2016, Representative Lagman differed from Representative Fariñas' view on how one becomes part of the Majority or the Minority.¹⁵⁵

Then finally, before this Court, petitioners point to the irregular procedure by which Representative Suarez obtained the position as Minority Leader. Thus, in repeatedly making such inquiries, petitioners cannot be estopped by their alleged silence,¹⁵⁶ especially since there was no such silence.

Fourth, the Rules of the House of Representatives do not cover the doctrine of estoppel.

Estoppel bars a person who admitted or represented something from later on denying or disproving that thing in *any litigation* arising from such admission or representation.¹⁵⁷ The sessions before the House are not litigations; the election of its Minority Leader does not approximate a proceeding in court.

Article VI, Section 16(3) of the Constitution allows the House to determine its own rules during its deliberations. In view of this, the Body adopted the Rules of the 16th Congress as the Provisional Rules of the House of Representatives.¹⁵⁸ The proceedings in the House are guided by the Rules to which the House "has pledge[d] faithful obedience."¹⁵⁹

In contrast, estoppel is a civil law concept found under Article 1431¹⁶⁰ of the Civil Code and Rule 131, Section 2(a)¹⁶¹ of the Revised Rules on

¹⁵³ Id. at 680, Journal No. 4 dated August 1, 2016.

¹⁵⁴ Id. at 132, Lagman First Letter dated August 1, 2016.

¹⁵⁵ Id. at 717, Journal No. 10 dated August 15, 2016.

¹⁵⁶ See *Philippine Realty Holdings Corporation v. Firematic Philippines, Inc.*, 550 Phil. 586, 608 (2007) [Per J. Callejo Sr., Third Division].

¹⁵⁷ See CIVIL CODE, art. 1431 and RULES OF COURT, Rule 131, sec. 2(a).

¹⁵⁸ *Rollo*, p. 264, Journal No. 1 dated July 25, 2016.

¹⁵⁹ RULES OF THE HOUSE OF REPRESENTATIVES (17th Congress), Preamble.

¹⁶⁰ CIVIL CODE, art. 1431 provides:

Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

¹⁶¹ RULES OF COURT, Rule 131, sec. 2(a) states:

Section 2. Conclusive presumptions. – The following are instances of conclusive presumptions:

Evidence. Neither of these provisions on estoppel forms part of the House Rules, whether directly or by reference.

Rule XXV, Section 161 explicitly states that only parliamentary practices of the Philippine Assembly, Congress, and the Batasang Pambansa apply suppletorily to the Rules.

Fifth, even assuming that “estoppel by silence” is recognized in House proceedings, this doctrine does not apply to the situation at bar. In *Santiago Syjuco, Inc. v. Castro*:¹⁶²

[A]n estoppel may arise from silence as well as from words. “Estoppel by silence” arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts *in reliance on which [a person] acts to his [or her] prejudice*.¹⁶³ (Emphasis supplied)

Estoppel by silence may only be invoked if the person’s failure to speak out caused prejudice or injury to the other.¹⁶⁴ For instance, a property owner who knowingly allows another to sell the property without objecting to the transaction is estopped from setting up his title as against a third person who was misled by and suffered an injury from that transaction.¹⁶⁵

Representative Fariñas failed to show how his reliance on petitioners’ alleged silence to his wrong interpretation of the Rules on July 25, 2016 prejudiced him. Petitioners’ silence did not injure his rights; rather, it was his insistence on this mistaken interpretation that has injured petitioners’ rights.

Neither was Speaker Alvarez nor Representative Suarez prejudiced by petitioners’ lack of objection to Representative Fariñas’ opinion on July 25, 2016. On that day, Speaker Alvarez’s election for House Speaker was already guaranteed while Representative Suarez had yet to become Minority Leader. The election for a Minority Leader would arrive only two (2) days later, on June 27, 2016.

V

Majority Leader Representative Fariñas accepted the transfer of the 10

(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing is true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

¹⁶² *Santiago Syjuco, Inc. v. Castro*, 256 Phil. 621 (1989) [Per J. Narvasa, First Division].

¹⁶³ *Id.* at 644.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 645.

abstaining members to the *Majority*¹⁶⁶ and that of Representative Suarez to the *Minority*.¹⁶⁷ Curiously, in both instances of transfer of membership, the Majority Leader had a say in the matter.

Unfortunately, under Rule II, Section 8, while the Majority Leader has discretion to accept a representative applying to be a member of the Majority, he or she does not have the same discretion when a representative applies to be part of the Minority.

The fourth to eighth paragraphs, which constitute the second major component of Rule II, Section 8, state:

A Member may transfer from the Majority to the Minority, or vice versa, at any time: *Provided, That:*

- a. The concerned Member submits a written request to transfer to the Majority or Minority, through the Majority or Minority Leaders, as the case may be. The Secretary General shall be furnished a copy of the request to transfer;
- b. The Majority or Minority, as the case may be, accepts the concerned Member in writing; and
- c. The Speaker shall be furnished by the Majority or the Minority Leaders, as the case may be, a copy of the acceptance in writing of the concerned Member.

In case the Majority or the Minority declines such request to transfer, the concerned Member shall be considered an independent Member of the House.

The text of the provision reveals that before a member may transfer affiliation, he or she must first submit “a written request to transfer to the Majority or Minority, through the Majority or Minority Leaders, as the case may be.”

Transferring from one (1) coalition to the other, thus, involves a two (2)-step process: a written request to transfer and a written acceptance. The phrase, “as the case may be,” implies that there are alternative scenarios here—a member may be transferring from the Majority to the Minority, from the Minority to the Majority, or from independent membership to the Minority or Majority. Whatever course of action he or she takes will flow through to the sentences that follow.

Under the fourth to eighth paragraphs of Rule II, Section 8, a Member

¹⁶⁶ *Rollo*, pp. 18–21.

¹⁶⁷ *Id.* at 140, Fariñas’ Letter dated July 26, 2016.

may transfer from the Majority to the Minority, provided that:

- a. The concerned [Majority] Member submits a written request to transfer to the . . . Minority, through the . . . Minority Leader[.] The Secretary General shall be furnished a copy of the request to transfer;
- b. The . . . Minority . . . accepts the concerned Member in writing; and
- c. The Speaker shall be furnished by the . . . Minority [Leader] . . . a copy of the acceptance in writing of the concerned Member.

Stated otherwise, the Majority member seeking to transfer to the Minority must write to the Minority Leader and ask to be accepted in the Minority. The Minority must accept the applicant-representative in writing, with the Minority Leader copy-furnishing to the House Speaker his or her letter of acceptance. The same is true for independent members seeking to transfer to the Minority.

Under the first, second, and last paragraphs of Rule II, Section 8, the 20 abstaining Members are independent members. The fourth to eighth paragraphs further reveal that these abstaining members are considered independent until they are accepted in the Minority by the *ipso facto* Minority Leader Representative Baguilat. Moreover, Representative Suarez, who voted for Speaker Alvarez, is himself considered part of the Majority. His request to transfer to the Minority needed the permission of Minority Leader Representative Baguilat and not that of Majority Leader Representative Fariñas.

The Majority Leader's contrary observation is incongruous to the purpose of a Minority. It is absurd to require the permission of the Majority Leader before a member may be accepted in the Minority.

One cannot imagine the kind of Minority that is created when the Majority Leader, instead of the Minority Leader, is the deciding person on who would constitute the Minority. Such undermines the opposition. It yields the absurd result of having the opposition subject to the discretion of the dominant group.

Words ought to be more subservient to the intent and not the intent to the words.¹⁶⁸ In *Ty Sue v. Hord*,¹⁶⁹ this Court *En Banc* upheld its duty to select the interpretation "which best accords with the letter of the law and

¹⁶⁸ *Verba intentioni, non e contra, debent inservice.* See Dissenting Opinion of J. Abad Santos in *Philippine Consumers Foundation, Inc. v. National Telecommunications Commission*, 216 Phil. 185, 207 (1984) [Per J. Makasiar, En Banc].

¹⁶⁹ 12 Phil. 485 (1909) [Per J. Tracey, En Banc].

with [the law's] purpose.”

In the Dissenting Opinion of J. Abad Santos in *Philippine Consumers Foundation, Inc. v. National Telecommunications Commission*,¹⁷⁰ he stated:

The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to admit of a construction which will effectuate the legislative intention. The intention prevails over the letter, and the letter must if possible be read so as to conform to the spirit of the act. While the intention of the legislature must be ascertained from the words used to express it, *the manifest reason and obvious purpose of the law should not be sacrificed to a literal interpretation of such words.* Thus words or clauses may be enlarged or restricted to harmonize with other provisions of an act. The particular inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense were they intended to be understood or what understanding do they convey as used in the particular act.¹⁷¹ (Emphasis supplied)

The importance of the Minority Leader and an authentic Minority cannot be understated. The Minority Leader is the spokesperson of the Minority members of the House.¹⁷² He or she is also an ex officio member of all 58¹⁷³ standing Committees¹⁷⁴ of the House, including Appropriations, Constitutional Amendments, Foreign Affairs, Good Government and Public Accountability, Government Reorganization, Human Rights, Justice, Local Government, Public Information, Revision of Laws, and Rules.

All House committees are represented not only by the Majority Leader and Deputy Majority Leaders but also by the Minority Leader and Deputy Minority Leaders. Both the administration and the opposition must have a voice and vote in all committees.¹⁷⁵ The House committees study, deliberate on, and act upon all measures presented to them such as bills, resolutions, and petitions.¹⁷⁶ They also recommend the approval and adoption of these measures if they will advance public interest and welfare.¹⁷⁷

¹⁷⁰ 216 Phil. 185 (1984) [Per J. Makasiar, En Banc].

¹⁷¹ Id. at 207.

¹⁷² *House Leaders Information: Minority Leader*, HOUSE OF REPRESENTATIVES (17TH CONGRESS), <<http://www.congress.gov.ph/leaders/?l=minority>> (last accessed July 24, 2017).

¹⁷³ *House Committees*, HOUSE OF REPRESENTATIVES (17TH CONGRESS), <<http://www.congress.gov.ph/committees/?v=standing>> (last accessed July 24, 2017).

¹⁷⁴ See RULES OF THE HOUSE OF REPRESENTATIVES (17TH CONGRESS), Rule IX, sec. 27 and 33. The House has two kinds of committees, standing and special, whose members are generally chosen based on the proportional representation of the Majority and the Minority.

¹⁷⁵ RULES OF THE HOUSE OF REPRESENTATIVES (17TH CONGRESS), Rule IX, sec. 30 states: Section 30. The Speaker, the Deputy Speakers³, the Majority Leader, the Deputy Majority Leaders, the Minority Leader and the five (5) Deputy Minority Leaders and the chairperson of the Committee on Accounts or a Member deputized by any of the aforementioned officials shall have voice and vote in all committees.

¹⁷⁶ Rule IX, Section 26, first sentence

¹⁷⁷ Rule IX, Section 26, first sentence

The Members of each committee comprising the Majority and the Minority are chosen by the Majority and the Minority, respectively,¹⁷⁸ based on proportional representation.¹⁷⁹ Only the Committee on Rules is not organized according to the proportional representation;¹⁸⁰ nevertheless, the Minority Leader and the Deputy Minority Leaders automatically become members of the Committee on Rules.¹⁸¹

The Committee on Rules is considered the most powerful of all committees, as it dictates all matters relating to the Rules of the House, the Rules of Procedure Governing Inquiries in Aid of Legislation, the Rules of Procedure in Impeachment Proceedings, referral of bills, and the creation of committees and their respective jurisdictions.¹⁸² The Committee on Rules also recommends the organization of special committees and defines their membership and jurisdiction.¹⁸³

The legislative branch is the branch solely entrusted with the creation and amendment of laws. Petitioners describe Representative Suarez as the “Minority” Leader of the Majority,¹⁸⁴ handpicked and chosen by the administration itself:¹⁸⁵

Consistent with the alliance of Respondent Rep. Suarez and the supermajority coalition in the House, as early as 01 July 2016 Respondent Rep. Suarez principally authored, together with Respondent Speaker Pantaleon Alvarez and Respondent Majority Leader Fariñas, key administration measures. Respondent Rep. Suarez is a principal author of H.B. No. 1 reinstating capital punishment[,] H.B. No. 3 granting emergency powers to the President to address the traffic mess[,] and later House Resolution No. 105 calling for the investigation linking Sen. Leila de Lima to the proliferation of drug syndicates in the New Bilibid Prison[.] In fact[,] out of the 15 bills filed by Respondent Speaker Alvarez, Respondent Rep. Suarez is a principal author of 11 of them or three-fourths of all the bills filed by the Speaker.¹⁸⁶

¹⁷⁸ Rule IX, Section 30

¹⁷⁹ Under Section 27 of Rule IX of the Rules of the House:

Section 27. Kinds. - The House shall have standing and special committees that shall be organized, except for the Committee on Rules, *on the basis of proportional representation of the Majority and the Minority*. Standing committees shall have jurisdiction over measures relating to needs, concerns, issues and interests affecting the general welfare and which require continuing or comprehensive legislative study, attention and action. Special committees are intended to address measures relating to special or urgent needs, concerns, issues and interests of certain sectors or constituencies requiring immediate legislative action, or to such needs, concerns, issues and interests that may fall within the scope of the jurisdiction of a standing committee, but which the standing committee concerned is unable to act upon with needed dispatch.

¹⁸⁰ Rule IX, Section 27

¹⁸¹ Rule IX, Section 26 (ss)

¹⁸² Rule IX, Section 26 (ss)

¹⁸³ Rule IX, Section 33

¹⁸⁴ *Rollo*, p. 47, Petition.

¹⁸⁵ *Rollo*, p. 6, Petition.

¹⁸⁶ *Rollo*, p. 13, Petition.

....

Respondents Speaker Alvarez and Majority Leader Fariñas found in Respondent Rep. Suarez the perfect Majority’s “Minority Leader”. He has faithfully complied with his commitment to be a cooperative, if not servile, “opposition” leader. His allegiance to the Respondent House officials and President Duterte finds no parallel.

Petitioner Representative Lagman, himself a veteran lawmaker, asserts that the House of Representatives should have a constructive fiscalizer—or a genuine opposition within the administration¹⁸⁷—in order “that the policies of government will be the result of an extensive debate, not an orchestrated soliloquy.”¹⁸⁸

Article II, Section 1 of the Constitution states that “[t]he Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.” The people, in their sovereign capacity, delegate their government authority to their duly-elected representatives who will speak for them during deliberations and sessions of Congress, among others.

In a representative democracy, there is plurality in governance and no single party has the sole power above all. Opposition is integral in a democracy. Our system goes out of its way to give every person an equal footing, to institutionalize the people, and to allow their voices to be heard. For instance, the people’s “freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances”¹⁸⁹ are protected and guaranteed by the Constitution.

The underrepresented and marginalized are given a voice in lawmaking through party-list representation.¹⁹⁰ Independent people’s organizations are also given a role in “enabl[ing] the people to pursue and

¹⁸⁷ The word “fiscalizer” comes from the Spanish verb “fiscalizar,” which means “to criticize.” Filipino lawmakers turned this into an English word to describe a person who is a critic of an alleged government wrongdoing. For example, in an article dated April 12, 2007 by the Philippine Information Agency, Senator Joker Arroyo used the term to refer to an “opposition within the administration:”

Tacloban City (12 April) -- Re-electionist Senator Joker Arroyo defended his position in running under the Administration ticket during the Team Unity’s campaign sortie here in Samar yesterday saying he will continue to act as “fiscalizer” of the Arroyo administration.

According to Senator Arroyo, his position of being an “opposition within the administration” will not change despite the fact that he is running under the Administration’s Team Unity as there was no agreement at all that he will stop being critical to the Arroyo government in exchange for his being picked up as its candidate. (Joker stresses role as Administration’s “fiscalizer,” <http://archives.pia.gov.ph/?m=12&sec=reader&rp=7&fi=p070412.htm&no=59&date=04/12/2007>)

¹⁸⁸ Trishia Billiones, *Lagman blasts Suarez’s “anointment” as minority leader*, ABS-CBN NEWS, July 25, 2016, <<http://news.abs-cbn.com/news/07/25/16/lagman-blasts-suarezs-anointment-as-minority-leader>> (last accessed July 24, 2017).

¹⁸⁹ CONST., art. III, sec. 4.

¹⁹⁰ CONST., art. VI, sec. 5(1).

protect, within the democratic framework, their legitimate and collective interests and aspirations[.]”¹⁹¹ In *The Diocese of Bacolod v. Commission on Elections*:¹⁹²

[T]he cornerstone of every democracy is that sovereignty resides in the people. To ensure order in running the state’s affairs, sovereign powers were delegated and individuals would be elected or nominated in key government positions to represent the people.¹⁹³

The legislative branch of the government, in its most ideal form, is one that accommodates all voices. Drowning the voice of dissent restricts the right of the people to effective and reasonable participation in public affairs. Having a genuine Minority maintains the integrity of democracy.

A genuine Minority will express differences of opinion without fear. It does not easily hop on the bandwagon. Rather, it scrutinizes and debates on pending legislations from lenses typically opposed to those belonging in the mainstream. Such opinions of dissent may avert the possible prejudicial effects that a future legislation may have on the people or on the Philippines at large.

In determining the process of choosing the Minority Leader, the reason for the Rules and the parliamentary tradition observed by the House must be taken into context and adopted.

To borrow the words of Justice Perfecto in *Avelino*,¹⁹⁴ respondents unfortunately decided to dilute the votes of the actual Minority “as soon as possible to wrest from [the Minority] the leadership which, upon democratic principles, rightly belongs to”¹⁹⁵ someone else.

VI

Petitioners claim to be the genuine and legitimate members of the House Minority as they voted for Representative Baguilat instead of electing House Speaker Alvarez or abstaining.¹⁹⁶ Petitioner Representative Baguilat, the second placer for House Speaker, seeks to be recognized as Minority Leader based on parliamentary practice and as duly chosen by the genuine Minority under Rule II, Section 8 of the Rules.

¹⁹¹ CONST., art. XIII, sec. 15.

¹⁹² *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

¹⁹³ *Id.* at 360.

¹⁹⁴ *Avelino v. Cuenco*, 83 Phil. 17 (1989) [Per J. Carson, En Banc].

¹⁹⁵ Dissenting Opinion of J. Perfecto in *Avelino v. Cuenco*, 83 Phil. 17, 48 (1989) [Per J. Carson, En Banc].

¹⁹⁶ *Rollo*, p. 49.

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Petitioners have consistently protested against Representative Fariñas' erroneous interpretation—one that was not even submitted for voting—which made possible Representative Baguilat's exclusion from his entitlement as Minority Leader. Petitioners have also repeatedly objected to Representative Suarez's irregular transfer to the Minority, secured by the permission of the Majority Leader, instead of the Minority Leader.

Petitioners' numerous objections on different session dates and as contained in letters went unheeded. Left with no other recourse, they come before this Court assailing respondents' grave abuse of discretion.

In their view, Mandamus is the remedy for the violation of their rights. In *Militante v. Court of Appeals*:¹⁹⁷

Mandamus is a writ commanding a tribunal, corporation, board, officer or person to do the act required to be done when it or [the person] unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or *unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled*, there being no other plain, speedy, and adequate remedy in the ordinary course of law.¹⁹⁸ (Emphasis supplied)

Mandamus is available when a person is excluded from the use and enjoyment of a right or office to which he or she is entitled.¹⁹⁹ As a rule, mandamus requires the exhaustion of administrative remedies available to the petitioner.²⁰⁰ However, prior resort to exhaustion of administrative remedies is not required where the questions raised are purely legal.²⁰¹

Mandamus lies to compel the board, officer, or person to do a ministerial act or duty which the board, officer, or person unlawfully neglects to do.²⁰² In *Codilla Sr. v. De Venecia*:²⁰³

¹⁹⁷ *Militante v. Court of Appeals*, 386 Phil. 522 (2000) [Per J. Puno, En Banc].

¹⁹⁸ *Id.* at 537.

¹⁹⁹ *Id.* See also RULES OF COURT, Rule 65, sec. 3:

Section 3. When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner . . .

²⁰⁰ *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City*, 455 Phil. 956 (2003) [Per J. Corona, Third Division].

²⁰¹ *Sunville Timber Products, Inc. v. Abad*, 283 Phil. 400, 407 (1992) [Per J. Cruz, First Division].

²⁰² *Velasco v. Belmonte, Jr.*, G.R. No. 211140, January 12, 2016, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/211140.pdf>> [Per J. Leonardo-De Castro, En Banc].

²⁰³ *Codilla, Sr. v. De Venecia*, 442 Phil. 139 (2002) [Per J. Puno, En Banc].

A *purely ministerial act* or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his [or her] own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him [or her] the right to decide how or when the duty shall be performed, such duty is *discretionary* and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.²⁰⁴

An act is considered ministerial where the public officer must do it, out of a legal obligation, without having any right to decide on the manner, time, or propriety of doing it.²⁰⁵ On the other hand, an act is considered discretionary where the public officer has the right to exercise his or her judgment or official discretion in doing the act.²⁰⁶

In *Codilla Sr.*,²⁰⁷ the issue on the rightful representative of the 4th District of Leyte was already settled by the Commission on Elections En Banc. As the Commission on Elections En Banc Decision was not appealed before this Court, it became final and executory. Thus, the House of Representatives had to officially recognize petitioner as the duly-elected representative of the 4th District of Leyte, without having any discretion on how and when to do it.²⁰⁸

In *Velasco v. Hon. Speaker Belmonte*,²⁰⁹ petitioner argued that the House Speaker and Secretary General unlawfully excluded him from enjoying his clear right as the duly-elected Representative of the Lone District of Marinduque.²¹⁰ The Commission on Elections En Banc had already affirmed petitioner's election, but the House refused to administer his oath and register him in the Roll of the House of Representatives.²¹¹ This Court ruled that the House Speaker and the Secretary General unlawfully neglected their ministerial duties to recognize petitioner's election.²¹²

In both cases, this Court granted the petition for mandamus and compelled the House Speaker to administer petitioner's oath, as well as the House Secretary General to register petitioner's name in the Roll of the House of Representatives.

²⁰⁴ Id. at 189.

²⁰⁵ Id.

²⁰⁶ Id.

²⁰⁷ 442 Phil. 139 (2002) [Per J. Puno, En Banc].

²⁰⁸ Id. at 190.

²⁰⁹ *Velasco v. Belmonte, Jr.*, G.R. No. 211140, January 12, 2016
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/211140.pdf>>
[Per J. Leonardo-De Castro, En Banc].

²¹⁰ Id. at 8–9.

²¹¹ Id.

²¹² Id. at 21.

To emphasize, for about 30 years since the 1987 Constitution was promulgated and the bicameral Congress was restored, the House has collectively considered the votes for the second placer for House Speaker as the votes of the Minority for its Minority Leader.

Thus, it is up to the House leadership to extend recognition to the duly-designated Minority Leader. Mandamus, however, does not lie to allow this Court to choose the Minority Leader.

VII

Caution must be exercised in having a complete hands-off approach on matters involving grave abuse of discretion of a co-equal branch. This Court has come a long way from our pronouncements in *Mabanag v. Vito*.²¹³

In *Mabanag*, the Congress voted on the “Resolution of Both Houses Proposing an Amendment to the [1935] Constitution of the Philippines to be Appended as an Ordinance Thereto.”²¹⁴ The Resolution proposed to amend the 1935 Constitution to give way for the American parity rights provision, which granted United States citizens equal rights with Filipinos²¹⁵ in the exploitation of our country’s natural resources and the operation of public utilities, contrary to Articles XIII²¹⁶ and XIV²¹⁷ of the 1935 Philippine Constitution.²¹⁸

²¹³ *Mabanag v. Vito*, 78 Phil. 1 (1947) [Per J. Tuason, En Banc].

²¹⁴ *Id.* at 2.

²¹⁵ The Parity Amendment read as follows:

Notwithstanding the provision of section one, Article Thirteen [Sec. 1, art. XIII], and section eight, Article Fourteen [Sec. 8, art. XIV], of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, [July 4, 1946], pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, [July 3, 1974], the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coals, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if OPEN to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.

²¹⁶ CONST. (1935), art. XIII, sec. 1. All Agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water right for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

Section 2. No private corporation or association may acquire, lease, or hold public agricultural lands in

Article XV, Section 1²¹⁹ of the 1935 Constitution required the affirmative votes of three-fourths (3/4) of all members of the Senate and the House, voting separately, before a proposed constitutional amendment could be submitted to the people for approval or disapproval. The Senate was then composed of 24 members while the House had 98 members.²²⁰ Two (2) House representatives later resigned, leaving the House membership with only 96 representatives.²²¹ Following the Constitutional mandate, the required votes to pass the Resolution were 18 Senators and 72 Representatives.²²²

The Senate suspended three (3) Senators from the Nacionalista Party, namely, Ramon Diokno, Jose O. Vera, and Jose E. Romero, for alleged irregularity in their elections.²²³ Meanwhile, the House also excluded eight (8) representatives from taking their seats. Although these eight (8) representatives were not formally suspended, the House nevertheless excluded them from participating for the same reason.²²⁴ Due to the suspension of the Senators and Representatives, only 16 out of the required 18 Senators and 68 out of the 72 Representatives voted in favor of the Resolution.²²⁵

excess of one thousand and twenty-four hectares, nor may any individual acquire such lands by purchase in excess of one hundred and forty-four hectares, or by lease in excess of one thousand and twenty-four hectares, or by homestead in excess of twenty-four hectares. Lands adapted to grazing not exceeding two thousand hectares, may be leased to an individual, private corporation, or association.

....

Section 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.

²¹⁷ Article XIV, Section 8. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires.

²¹⁸ See *Republic v. Quasha*, 150-B Phil. 140-166 (1972) [Per J. Reyes, First Division].

²¹⁹ CONST. (1935), art. XV, sec. 1 provides:

Section 1. The Congress in joint session assembled, by a vote of three-fourths of all the Members of the Senate and of the House of Representatives voting separately, may propose amendments to this Constitution or call a convention for that purpose. Such amendments shall be valid as part of this Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification.

²²⁰ See Dissenting Opinion of J. Perfecto in *Mabanag v. Vito*, 78 Phil. 1, 29 (1947) [Per J. Tuason, En Banc].

²²¹ Id. at 38.

²²² Id.

²²³ See *Vera v. Avelino*, 77 Phil. 192 (1946) [Per J. Bengzon, En Banc].

²²⁴ *Mabanag v. Vito*, 78 Phil. 1, 2-3 (1947) [Per J. Tuason, En Banc].

See PROF. H.W. BRANDS, BOUND TO EMPIRE: THE UNITED STATES AND THE PHILIPPINES 231 (1992). Dr. H.W. Brands, Professor of History at the University of Texas at Austin, describes the exclusion of the "announced opponents of parity" as a "strong-arm tactic" engineered "to narrow the odds" of the administration not getting the 3/4 assent required to amend the Constitution that would favor American nationals.

²²⁵ Id. at 39-40.

Mabanag recognized that had the excluded members of Congress been allowed to vote, then the parity amendment that gave the Americans rights to our natural resources, which this Court ruled impacted on our sovereignty, would not have been enacted.²²⁶

Nevertheless, the absence of the necessary votes of three-fourths (3/4) of either branch of Congress, voting separately, did not prevent Congress from passing the Resolution. Petitioners thus assailed the Resolution for being unconstitutional. This Court, ruling under the 1935 Constitution, upheld the enactment despite the patent violation of Article XV, Section 1.²²⁷

Mabanag ruled that Congress in joint session already certified that both Houses adopted the Resolution, which was already an enrolled bill.²²⁸ Thus, this Court had no more power to review as it was a political question:

In view of the foregoing considerations, we deem it unnecessary to decide the question of whether the senators and representatives who were ignored in the computation of the necessary three-fourths vote were members of Congress within the meaning of Section 1 of Article XV of the Philippine Constitution.²²⁹

Justice Perfecto's dissent, however, considered the matter a constitutional question—that is to say, deciding whether respondents violated the requirements of Article XV of the 1935 Constitution was *within* this Court's jurisdiction.²³⁰

Subsequent rulings²³¹ have since delimited and clarified the political question doctrine, especially under the 1987 Constitution. It bears stressing that Article VIII, Section 1 explicitly grants this Court the power “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.”

We cannot again shy away from this constitutional mandate.

The rule of law must still prevail in curbing any attempt to suppress the minority and eliminate dissent.

²²⁶ Id. at 3.

²²⁷ Id. at 19.

²²⁸ Id. at 3.

²²⁹ Id. at 19.

²³⁰ Id. at 39–40.

²³¹ See *Senate of the Phils. v. Ermita*, 527 Phil. 500 (2006) [Per J. Carpio-Morales, En Banc], *Bayan v. Ermita*, 522 Phil. 201 (2006) [Per J. Azcuna, En Banc], *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].



In *Estrada v. Desierto*:²³²

To a great degree, the 1987 Constitution has narrowed the reach of the political question doctrine when it *expanded the power of judicial review of this [C]ourt* not only to settle actual controversies involving rights which are legally demandable and enforceable but also 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 government. Heretofore, the judiciary has focused on the “thou shalt not’s” of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, *courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.* Clearly, the new provision did not just grant the Court power of doing nothing.²³³ (Emphasis supplied)

Any attempt by the dominant to silence dissent and take over an entire institution finds no room under the 1987 Constitution. Parliamentary practice and the Rules of the House of Representatives cannot be overruled in favor of personal agenda.

It is understandable for the majority in any deliberative body to push their advantages to the consternation of the minority. However, in a representative democracy marked with opportunities for deliberation, the complete annihilation of any dissenting voice, no matter how reasonable, is a prelude to many forms of authoritarianism. While politics speaks in numbers, many among our citizens can only hope that those political numbers are the result of mature discernment. Maturity in politics is marked by a courageous attitude to be open to the genuine opposition, who will aggressively point out the weaknesses of the administration, in an orderly fashion, within parliamentary forums. After all, if the true interest of the public is in mind, even the administration will benefit by criticism.

VIII

The remedy petitioners have chosen is a Petition for a Writ of Mandamus. To succeed, however, they should not only be able show that respondents’ acts acknowledging Representative Suarez as the Minority Leader are null and void; they must also show that at the time this Court acts, petitioner Representative Baguilat still has the clear and unmistakable right to be recognized as the Minority Leader.

²³² *Estrada v. Desierto*, 406 Phil. 1 (2001) [Per J. Puno, En Banc].

²³³ *Id.* at 42–43.

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In my view, writs of mandamus against Congress should only be granted when this Court is satisfied, with an abundance of caution, that petitioner still has a clear legal right. The House of Representatives is a political forum where alliances change as soon as the Majority reveals its position on pressing issues, which may have ripened after the House's opening session and which its members may not have anticipated then.

Certainly, at the beginning of the 17th Congress, the right of Representative Baguilat was clear. However, since then, several significant votes, such as those on the death penalty bill and the extension of Martial Law, have been taken. The proper recourse in a case like this should just have been an action for certiorari or prohibition to annul the actions of the respondents. The House would then proceed to allow its Minority to convene and select its leader in accordance with the Rules.

The best kinds of dissents are those that are voiced from a platform of principle. By its very nature, dissents are carried by minorities. If history is to be properly understood, the persistent but often drowned out voices of the minority may be heard better in the future.

For the minority, the present may be unforgiving: for they will be shunned and often times shamed by powerful forces. Yet, dissents by minorities are always expressions of hope. In the near future, with the benefit of hindsight, their views will attain clarity to most, sooner rather than later. The creativity and wisdom of those who took a stand will then be truly appreciated.

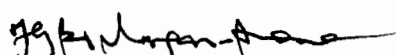
It will be then that they will take their turn to be the majority.

With deep regret, in the absence of a showing of a clear and unmistakable present right on the part of petitioners, considering the possibility of shifting political alliances, I cannot vote to issue the writ of mandamus, even as I find that there was grave abuse of discretion.

Accordingly, I vote to **DISMISS** the petition but only because it was the wrong remedy.


MARVIC M.V.F. LEONEN
Associate Justice

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CLERK OF COURT, EN BANC
SUPREME COURT