

# Addressing Congressional Quorum Conundrum: House Bill Seeks to Dock Pay of Absentee Lawmakers

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Through laws, the legislature defines the rights and duties of citizens, imposes taxes, appropriates funds, defines crimes, and provides for their punishment, and in general, regulates human conduct and the use of property for the promotion of common good. The law-making power, while vested by the Constitution to the Congress, partakes of the nature of a derivative power. This is consistent with the time-honored principle that the fundamental law of the land, from which the Legislature owes its existence and derives all its powers, is the will of the people themselves in their sovereign capacity. This is buttressed by no less than the framers of the Constitution when they referred to the organic law as “the work of the Creator,” and the law as “the work of the creature.”<sup>1</sup> It is therefore based on this postulate that the members of the Congress should carry out its constitutional mandate effectively, equitably, and efficiently.

The 16<sup>th</sup> Congress might go down in history as the least productive crop of lawmakers since the EDSA Revolution in 1986. Records reveal that on February 3, 2016, the last working day for the 16<sup>th</sup> Congress, a dismal total of 111 laws were enacted<sup>2</sup>, in which the year 2014 accounts for the least number of laws passed, i.e. twelve laws. More disheartening is the fact that the quality has not made up for the scant number of laws passed, ranging from measures to mere change of names of national high schools and other places, all the way to the infamous postponement of the Barangay and SK Elections, just to name a few. Indeed, the 16<sup>th</sup> Congress was able to pass some notable measures, but the ones covering the most pressing issues, such as the Bangsamoro Basic Law and the Freedom of Information Bill, failed to make it through the legislative process. Through the years, the derailment of the law-making process was brought about by several compelling factors, one of which is chronic absenteeism.

Absenteeism has been a long standing problem that has truly plagued the Philippine Congress. This is manifested by a practice among a good number of lawmakers where their attendance and voting in legislative sessions are merely optional for them, so much so that they can spend the preponderance of their time attending to their business or personal concerns, while getting financially compensated even if they do not report to the office that they have sworn to serve. According to the most recent attendance record of House Members for the third session of the 16<sup>th</sup> Congress, Saranggani Representative Emmanuel “Manny” Pacquiao tops the list of the notorious absentees during the previous session, with a miserable attendance record of being present for just a single day. This was followed by Negros Occidental Representative

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<sup>1</sup> Constitutional Convention Session of July 12, 1972

<sup>2</sup> Legaspi, Amita. “111 laws passed under the 16<sup>th</sup> Congress, the least since EDSA Revolution.” *GMA News Online*, February 5, 2016. <http://www.gmanetwork.com/news/story/554172/news/nation/111-laws-passed-under-16th-congress-the-least-since-edsa-revolution>

Julio Ledesma IV, who was present for just three days.<sup>3</sup> To curb this almost systematic pattern, Navotas Representative Tobias Tiangco filed House Bill 412, entitled “An Act Providing for a No Work, No Pay Policy for Members of Congress.”

In essence, the bill mandates all members of the Congress to attend, participate and take part both in regular and special sessions of the Congress. In case of failure to attend these sessions without justifiable cause, appropriate deductions on monthly salary shall be imposed in accordance with the following formula:

$$\text{Monthly Salary} / \text{Number of Session Days} = \text{Salary per Session Day}$$

$$\text{Salary per Session Day} \times \text{Number of Absences} = \text{Total Deductions}$$

$$\text{Monthly Salary} \times \text{Total Deductions} = \text{Net Monthly Salary}$$

The proposed measure was greeted with a mixture of relief and distrust by various stakeholders. Batangas Representative Vilma Santos-Recto and Bataan Representative Geraldine Roman, the first transgender in Congress, threw their support to the proposed bill, reiterating that lawmakers, when elected to office by the people themselves, are trusted by them to fulfill their duties which include regular attendance to Congress sessions.<sup>4</sup> Incumbent Senator Richard Gordon, on the other hand, expressed his objection to the proposal, reasoning that there are existing mechanisms to address this issue, such as the presence of ethics committees in both Houses that handle matters relative to duties, conduct, integrity and reputation of the members of the Congress.<sup>5</sup>

At any rate, the authors of this work seek to discuss, among others, the constitutional issues surrounding the proposed bill and its practical effects on the major stakeholders.

### **There is no constitutional proscription on the decrease of the salaries of the members of the Congress**

In determining whether or not a measure is unconstitutional, it is settled that there must be a clear and unequivocal, not a doubtful, breach of the Constitution. It is noteworthy that the constitutional prohibition on the decrease of the salaries of the President and Vice President under Article VII Sec. 6, as well as on the salaries of the Chief Justice and Associate Justices of the Supreme Court under Article VII, Sec. 10, has no equivalent provision under Article VI of the Constitution. Instead, the only prohibition relative to salaries provided under the latter article is that which is provided in Section 10 thereof, which disallows from taking effect any increase in the salaries of Senators and Members of the House of Representatives until after the expiration of the full term of all the Members of the Senate and the House of Representatives approving such increase.

Two well-known rules in statutory construction are relevant in this scenario. First, it is settled that the absence of an express prohibition in one part of the statute, and the presence

<sup>3</sup> Cepeda, Mara. “Pacquiao top absentee in Congress.” *Rappler*, July 18, 2016. <http://www.rappler.com/nation/140143-pacquiao-attendance-last-session-16th-congress>

<sup>4</sup> Arcangel, Xianne. “Neophyte lawmakers back ‘no work, no pay’ policy for Congress.” *GMA News Online*, July 7, 2016. <http://www.gmanetwork.com/news/story/572758/news/nation/neophyte-lawmakers-back-no-work-no-pay-policy-for-congress>

<sup>5</sup> Antiporda, Jefferson. “No-work, no pay-pay proposal ‘baloney.’” *The Manila Times*, July 8, 2016. <http://www.manilatimes.net/no-work-no-pay-proposal-baloney/272573/>

thereof in another part, evinces the legislative intent that proscriptions only apply to the latter. Second, in the absence of a specific indication to the contrary, the plain language of the statute should be afforded its plain meaning.

Applying the foregoing principles, the reasonable conclusion is that it was not the intention of the framers of our Constitution to extend the prohibitory clause on non-decrease of salaries to the Legislative Department. If it were otherwise, then they would have crafted a similar provision to that effect. Neither can it be argued that by necessary implication, Article VI Section 10 should be construed to include the disallowance of the decrease in salaries. Absent any technical terms in Section 10, the same must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum* – from the words of a statute there should be no departure. All told, it goes without saying that the proposed measure is constitutionally sound.

### **The existing mechanisms are not sufficient to deter absenteeism**

A cursory reading of the provisions on Article VI of the Constitution, the Rules of the Senate and Rules of the House of Representatives would reveal the insufficiency of disciplinary measures set for disorderly behavior of its Members, in which chronic absenteeism clearly falls. Under Section 16, paragraph 2 of Article VI the Constitution, each House may determine its own rules of proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. On the other hand, Rule 123, Section 128 of the current House Rules provides that upon the recommendation of the Committee on Ethics, the House may punish its Members for disorderly behavior and, with the concurrence of two-thirds of all Members, suspend or expel Members. No equivalent provision exists under the Senate Rules.

The difficulty in enforcing these provisions lies in the very problem of absenteeism itself. The rules require the concurrence of two-thirds of all Members of the appropriate House where the erring Member holds office. If both Houses of the Congress find it difficult to muster and maintain a quorum to transact business, then with more reason that it would not be feasible to suspend or expel a Member because of the difficulty in compelling the attendance of all Members of the appropriate House. The appalling conclusion is that these provisions are exhausted to mere empty rhetoric, and therefore necessitate the existence of more stringent disciplinary measures, i.e. salary cuts for every unjustified absence.

### **“No Work, No Pay” policy has been enforced in some jurisdictions**

It is noteworthy that the proposed measure is not as taboo as it was perceived by those who are against it. The United States, in which our organic law was patterned after, has strictly observed the above policy during the Second Session of its 21<sup>st</sup> Congress. Mr. Thomas Chilton, former U.S. Representative from the State of Kentucky, spearheaded the resolution in which members of the National Legislature shall receive the allowance of eight dollars per day only for the number of days of each session on which they shall have been in actual attendance upon the service of the House to which they belong – unless absent by reason of sickness, or by leave of the House, or when the same shall not be in session. The proposal expectedly sparked heated exchanges between and among several statesmen. In the end, the question was decided and the proposal was agreed upon by an overwhelming vote of 157 yeas, as against 21 nays.

More recent is that which has been practiced in Afghanistan's parliament. Afghans have long complained about their elected representatives, in particular of its prolonged absences from work. In April of 2012, the Secretariat named 43 Members of the Parliament (MP) who were absent in March without notification.<sup>6</sup> The same number were absent throughout April, resulting to turtle-speed passage of important pieces of legislation. Significantly, the Wolesi Jirga's (House of the People of Afghanistan) internal rules of procedure impose the sanction of salary cuts against legislators who remain absent for more than five days without prior information. A month after the report, the said sanctions were imposed accordingly.

The rationale is quite simple, but likewise rests on practical and logical considerations – it is as much the duty of one statesman as of another one, and equally duty of all statesmen, to be in attendance. Consequently, if any member of either House absents himself without leave, or while attending to a private business of his own, then it is obviously wrong that he should receive compensation as those who were consistent in their attendance in legislative sessions.

### Conclusion

All told, the proposed measure is fair and just. Representative Tiangco, the proponent of the bill, ratiocinated that if ordinary workers get salary deductions by failure to show up for work, then with more reason that senators and congressmen, whose office behooves them to observe high standards in work performance, to adhere to the “no work, no pay” policy.

The bill is likewise reasonable, as it does not warrant outright decrease in the salaries of the Senators and Members of the House. A cursory reading of its provisions would reveal that the deductions will apply only to instances where there is no justifiable cause for failure to attend both regular and special sessions. In the ultimate analysis, therefore, the question of “justifiability” of one's absence can be determined by further legislation, or by the implementing rules and regulations, should the bill pass the strict scrutiny of its own members and become a law.

The Constitution is explicit that that public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. This high sense of idealism, as aptly stated by the late great Justice Malcolm, springs from the basic idea of a representative government, where “the officers are mere agents and not rulers of the people, one where no one man or set of men has a proprietary or contractual right to an office, but where every officer accepts office pursuant to the provisions of the law and holds the office as a trust for the people whom he represents.”<sup>7</sup>

<sup>6</sup> Yasa, Hussain. “Absentee MPs to Face Disciplinary Action.” *The Outlook Afghanistan*, May 7, 2012. [http://outlookafghanistan.net/national\\_detail.php?post\\_id=4192](http://outlookafghanistan.net/national_detail.php?post_id=4192)

<sup>7</sup> *Cornejo vs Gabriel*, 41 Phil. 188

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