

Reasons why House Bill No. 3049 extending the PAGCOR Franchise should not be acted upon by Congress nor should it lapse into law

- The approval of House Bill No. 3049 contravenes the Constitution both procedurally and in substance.
- Gambling is a vice. The extension of the PAGCOR franchise is therefore substantially flawed as it goes against constitutionally-mandated state policies to protect the moral and social well-being of the Filipino people and promote their total human liberation and development. It is not within the power of this Congress to sweep under the rug values enshrined and held sacred by the Constitution itself.
- P.D. 1869 granted PAGCOR the franchise to operate gambling establishments. This was granted by then-President Marcos who exercised both executive and legislative powers. But even the late strongman intended PAGCOR to eventually disappear by fixing a period for its demise. Even a dictator knows gambling is a poor foundation upon which to build the values of a great nation. And being the leaders of our now- democratic society, we should be more aware of this.
- The approval of House Bill No. 3049 is also constitutionally flawed in terms of the process by which it was passed upon.
 - Section 13 of P.D. 1869 granted PAGCOR exemptions from various taxes. These were granted by then-President Marcos who exercised both executive and legislative powers. **But his intention then was to grant the exemption during the period of the original franchise only.** There was no indication that the legislative power then intended to have the exemption automatically carried over if ever the PAGCOR franchise was to be extended.
 - This is supported by jurisprudence which also explicitly provides that ***“tax exemption cannot be implied as it must be categorically and unmistakably expressed.”*** (Jon Hay Peoples Alternative Coalition et al. vs. Victor Lim, October 24, 2003)
 - Under Article VI. The Legislative, Section 28 (4) of the 1987 Constitution, *“[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.”*
 - Despite this explicit constitutional rule, this House approved on third reading HB 3049 which automatically granted tax exemptions to

PAGCOR eventhough less than the majority of all the House members were present to approve it. There are 230 members right which required that at least 116 members should have approved the bill. Based on the records of this House, only 112 approved the Bill. Clearly this falls short of the required 116 votes.

- This is not a mere case of the House not following its internal rules as in the case of the EVAT challenges in 2005, it is the Constitution itself being disregarded by this House. And for what? Gambling?
- The majority of this House kept silent when the Executive trampled on the Constitution with its CPR, EO464 and PD1017. That was political survival they said. Will it continue to remain silent as the very foundation of our nation's values and virtues are also placed in peril? Will we contravene the Constitution for a vice? For gambling? Will this be our legacy as the House of Representatives of the 13th Congress?

Q & A on Amended PAGCOR Charter

- **Who authored the bill seeking renewal of Pagcor franchise, and who were its most active backers?**

The bill to extend PAGCOR's franchise was principally introduced by Rep. Mauricio Domogan of Baguio. There were numerous co-authors though. Among them, leaders of the House majority. And of all of them, I think it was the support of then-Speaker Jose de Venecia to the bill which ensured its passage.

- **Why was it filed around two years early, considering that the old franchise expires 2008?**

I would have to correct that. It is PAGCOR and the supporters of PAGCOR that claim that its franchise would end by July 11, 2008. If we strictly follow the law and existing jurisprudence, PAGCOR's franchise should have already expired six years ago, or on January 1, 2002.

P.D. No. 1067-B was the original PAGCOR Charter. Section 1 of Presidential Decree (P.D.) No. 1067-B expired on January 1, 2002. The 25-year period cannot be counted from P.D. No. 1869, since Section 10 thereof is a mere reiteration of the term of franchise. In fact. The Supreme Court ruled in the case *Del Mar v. Philippine Amusements and Gaming Corporation* that "P.D. No. 1869 is a mere consolidation of previous decrees dealing with PAGCOR. PAGCOR cannot seek comfort in Section 10 as it is not a new provision in P.D. No. 1869 x x x. It is a reiteration of Section 1 of P.D. No. 1067-B." The title, perambulatory clauses and the text of P.D. No. 1869 do not mention any intention to extend PAGCOR's franchise. Under rules of statutory construction, portions of an original statute which an amendatory act simply retains are not generally construed as a new enactment; it remains in force from the time of the original enactment and continues in operation by the amendatory statute.

Since its franchise was not extended or renewed by Congress, PAGCOR should cease and desist from operating under its franchise and disbursing public funds.

This was actually the contention of Rep. Mandanas when he filed his Petition for Certiorari, Prohibition and Mandamus against PAGCOR before the Supreme Court. Unfortunately, the Supreme Court dismissed the case July last year based on mootness considering that Congress by then had already passed R.A. No. 9487 which granted PAGCOR an extended franchise. The Supreme Court though reserved any decision to rule on the validity of the new law (R.A. No.9487).

I think this is one reason why PAGCOR rushed to have its franchise extended fast.

Furthermore, I fear PAGCOR's franchise was extended this early in line with its plans to intensify its campaign to promote gambling and gambling facilities in the Philippines. PAGCOR has even dared to proclaim that they will make the Philippines the new gambling Mecca. This should be a source of shame than anything else.

▪ **What was the general reception to the bill? Was it given priority?**

At the time the PAGCOR bill was brought before the floor for deliberation, key legislations were being considered by the plenary. There was the wage hike bill, the cheaper medicines bill and the debt audit bill. For some reason, all these bills were brushed aside to give way to the deliberations on PAGCOR's franchise.

I think that indicates how much priority was given by the House leadership then to the PAGCOR bill.

Interestingly also, many of my colleagues in the House of Representatives were either very active pushing for the bill or unusually quiet creating the impression that many of the members of the House would either want PAGCOR to see that they actively supported the passage of the PAGCOR bill or simply do not want to earn the ire of PAGCOR.

As far as I remember, aside from CIBAC, only a handful legislators openly opposed the PAGCOR bill.

▪ **What were the main arguments for, and against, the passage of the new charter?**

Those supporting the PAGCOR franchise extension always harped about the money PAGCOR brings in to government. They also enumerate the projects, the ambulances, the medical assistance and other assistance programs of PAGCOR. They also claimed that PAGCOR is essential to strengthen our tourism industry.

Unfortunately, they fail to see the fact that gambling, whether state-supported or not, is a vice. The extension of the PAGCOR franchise is therefore substantially flawed as it goes against constitutionally-mandated state policies to protect the moral and social well-being of the Filipino people and promote their total human liberation and development. It is not within the power of Congress to sweep under the rug values enshrined and held sacred by the Constitution itself.

Furthermore, the money PAGCOR's supporters claim it brings in actually promotes corruption and dependency. The chunk of the fund goes to the President's Social Development Fund, the multi-billion peso presidential pork-barrel, which no longer goes through congressional appropriation thus effectively circumventing the principle of checks and balances in the utilization of government funds.

The passage of the new PAGCOR charter is also flawed. R.A. No. 9487 did not comply with the procedures prescribed by the Constitution for the passage of laws granting tax exemptions

First, It failed to obtain the necessary votes for its passage. Section 13 of P.D. 1869 granted PAGCOR exemptions from various taxes. These were granted by then-President Marcos who exercised both executive and legislative powers. **But his intention then was to grant the exemption during the period of the original franchise only.** There was no indication that the legislative power then intended to have the exemption automatically carried over if ever the PAGCOR franchise was to be extended.

This is supported by jurisprudence which also explicitly provides that ***“tax exemption cannot be implied as it must be categorically and unmistakably expressed.”*** (Jon Hay Peoples Alternative Coalition et al. vs. Victor Lim, October 24, 2003)

Under Article VI. The Legislative, Section 28 (4) of the 1987 Constitution, *“[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.”*

Despite this explicit constitutional rule, this House approved on third reading HB 3049 which automatically granted tax exemptions to PAGCOR eventhough less than the majority of all the House members was present to approve it. There are 230 members in the 13th Congress which required that at least 116 members should have approved the bill. Based on the records of the House, only 112 approved the Bill. Clearly this falls short of the required 116 votes.

Second, the law did not originate from the House contrary to the provision of Article VI, Section 24 of the Constitution. Under Section 24 of Article VI of the 1987 Constitution, *“all appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills, shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.”*

The grant of tax exemptions and the fact that the creation of PAGCOR is in fact a revenue act or a method of raising money for the government place R.A. No. 9487 under the coverage of section 24.

It is quite interesting to note that the certification signed by both the Secretary of the Senate and the Secretary General of the House of Representatives claims that R.A. No. 9487 originated from the House of Representatives BUT if you read closely the Senate approved it on February 7, 2007 while the House approved it on February 19, 2007. How could the Act originate from the House when it was the Senate that approved it first? Had there ever been an instance when the Senate approved the budget first before the House?

This is not a mere case of the House not following its internal rules as in the case of the EVAT challenges in 2005. It is the Constitution itself being disregarded by this House. And for what? Gambling?

- **If I remember correctly, it was approved on a special session, right before House adjourned prior to the 2007 elections. Was there active lobbying for the bill's passage before House adjournment?**

Key legislations were set aside. The number of members who attended the sessions every time the PAGCOR bill was brought before the plenary were unusually high. Even legislators whom you rarely see on the floor were sure to attend. The bill was passed with extraordinary speed and despite the objections of members of the House who signified their intention to interpolate on the bill. Now you're asking if there was "active lobbying" for the quick passage of the bill?! *Res ipsa loquitur* ("the thing speaks for itself").

- **What's the difference between old and new Pagcor charters? What powers does the new charter give the agency that the old charter did not provide?**

The law extends Pagcor's franchise, expiring on July 11, 2008, by another 25 years.

The new law also gives PAGCOR the "authority to operate and license gambling casinos, gaming clubs, and other similar recreation or amusement places, gaming pools, etc." Under the old charter, PAGCOR had no authority to sub-franchise its legislative franchise.

Another salient provision under the new law is the responsibility of to "obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations." Before, Pagcor was not legally required to secure LGU consent.