

LEGAL MEMORANDUM

ON THE THRESHOLD OF CONVICTION IN THE IMPEACHMENT TRIAL
OF VICE PRESIDENT SARA Z. DUTERTE

SUBJECT Whether conviction requires the affirmative votes of sixteen (16) Senators under Article XI, Section 3(6) of the 1987 Constitution notwithstanding the absence, detention, preventive suspension, flight, or presence abroad of one or more Senators.

DATE 5 September 2026

SUMMARY

- (a) The threshold of conviction in an impeachment trial is fixed by the Constitution against the membership of the Senate (“two-thirds of all the Members of the Senate”), not against attendance, participation, or the number of Senators able to vote. The Senate has twenty-four Members. Two-thirds of twenty-four is sixteen.
- (b) Membership in the Senate is lost only by expiry of term, death, resignation, expulsion, forfeiture of seat for accepting an incompatible office, unseating by the Senate Electoral Tribunal, or final judgment carrying perpetual absolute disqualification. Absence, detention, preventive suspension under Republic Act No. 3019, evasion of process, and presence abroad do not terminate membership. The Constitution and the cases treat Senators in each of those situations as Members.
- (c) The Supreme Court has construed the identical phrase in *Bayan v. Zamora* (2000) and anchored it to twenty-four Senators, holding that sixteen affirmative votes are required even where only twenty-three Senators are incumbent. *Santiago v. Guingona* (1998) likewise computed “all the Members” on the whole body. *Avelino v. Cuenco* (1949), a case involving quorum, itself distinguished “all the members” (the larger, fixed base) from “the House” (the smaller base).
- (d) The Senate Rules of Procedure on Impeachment Trials adopt the constitutional formula verbatim (“the votes of two-thirds of all the Members”), depart on this precise point from the United States Senate rules on which they are modelled (“two-thirds of the Members present”), and use the phrase “Members present” elsewhere in the same Rules, including the 2026 amendment on the election of the Presiding Officer.
- (e) On the facts as publicly reported, no seat is vacant. Thus, the threshold for conviction is sixteen.

I

THE QUESTION PRESENTED

The Senate, sitting as an impeachment court, is trying the Vice President upon articles of impeachment transmitted by the House of Representatives. Three Senators have been unable to sit: one is detained and under a ninety-day preventive suspension ordered by the Sandiganbayan, one is detained upon a warrant for plunder, and one is in hiding upon a warrant of arrest issued by the International Criminal Court. A fourth has been absent on medical leave abroad since 3 August 2026. The Presiding Officer ruled on 6 and 7 July 2026 that conviction requires the concurrence of sixteen Senators, and

confirmed that the ruling is a ruling of the impeachment court rather than a personal legal opinion.

Voices in the bar and in the press have argued that the threshold should be recomputed against the Senators “present” or “able to participate,” producing a figure of fourteen. The question is whether the Constitution permits that recomputation. In our opinion, it does not. The threshold is sixteen, regardless of the absence, detention, suspension, flight, or foreign sojourn of any Senator, and it can be altered only by an actual vacancy in a seat, which does not exist.

II
THE FACTS AS PUBLICLY REPORTED

Article VI, Section 2 of the Constitution provides that the Senate shall be composed of twenty-four Senators. All twenty-four seats of the 20th Congress are filled. Senator Jinggoy Estrada was arrested on a non-bailable plunder charge and thereafter placed under a ninety-day suspension by the Sandiganbayan. Senator Rodante Marcoleta was arrested on plunder charges on 6 July 2026, the opening day of the trial. Senator Ronald dela Rosa has been evading arrest under a warrant of the International Criminal Court and, having been absent when the impeachment court convened, has not taken the oath of a Senator-Judge.¹ Senator Loren Legarda has been absent from the trial since 3 August 2026 on medical leave, reportedly abroad.²

On 6 July 2026, upon his election as Presiding Officer, Senator Francis Escudero ruled that conviction requires the affirmative votes of at least sixteen Senator-Judges, reasoning from Article VI, Section 2 and from *Bayan v. Zamora*. On 7 July 2026, in response to a point of inquiry from Senator Panfilo Lacson, he confirmed that the pronouncement is a formal ruling of the impeachment court which, not having been objected to or appealed by any Member, stands, subject to whatever remedy the parties may pursue before the Supreme Court.³ A former President of the Integrated Bar of the Philippines has publicly taken the contrary view that the threshold may be lowered to reflect the Senator-Judges present and participating, while conceding that the three absent Senators “are not yet unseated by any of the constitutionally allowed modes of removal, so they are still senators.”⁴

Two further facts bear on the analysis. On 3 June 2026 the Senate majority reorganized the chamber in a session of twelve Senators and invoked *Avelino v. Cuenco* as authority for the quorum. On the same date, the Senate amended Rule II of its Rules of Procedure on Impeachment Trials to allow the impeachment court to elect a Presiding Officer other than the Senate President “by a majority vote of the members present.”⁵

III
THE CONSTITUTIONAL TEXT

Article XI, Section 3(6) provides:

The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person

¹ Philippine Star, “Chiz settles threshold question: 16 to convict Sara Duterte,” 6 July 2026; Philippine Daily Inquirer, “Sara Duterte Impeachment Trial: Everything you need to know,” 17 July 2026.

² Manila Times, “Legarda extends medical leave anew,” 25 August 2026.

³ GMA News, “Chiz Escudero stands by his ruling: 16 votes needed to convict Sara Duterte,” 7 July 2026; SunStar, “Escudero reiterates: 16 votes needed to impeach Sara Duterte,” 8 July 2026.

⁴ Philippine Daily Inquirer, “Ex-IBP president: Conviction vote can be lowered,” 12 July 2026.

⁵ Philippine Daily Inquirer, “Amended rules now allow other senators to preside over impeach trials,” 3 June 2026; Philippine Daily Inquirer, “Sara Duterte Impeachment Trial: Everything you need to know,” 17 July 2026.

shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

Three features of the text control our analysis. First, the provision is cast as a prohibition (“No person shall be convicted without”), which fixes a floor that neither the Senate nor its Presiding Officer may lower by rule or ruling. Second, the denominator is “all the Members of the Senate,” a phrase the Constitution uses when it intends the entire membership as the base: the same words govern the election of the Senate President (Art. VI, Sec. 16(1)), the suspension or expulsion of a Member (Art. VI, Sec. 16(3)), the concurrence in treaties (Art. VII, Sec. 21), the revocation or extension of martial law (Art. VII, Sec. 18), the grant of tax exemptions (Art. VI, Sec. 28(4)), and the proposal of constitutional amendments (Art. XVII, Sec. 1). Third, where the Constitution intends a base other than the whole membership, it says so: the quorum clause speaks of “a majority of each House” and confers the power to “compel the attendance of absent Members” (Art. VI, Sec. 16(2)); the passage of a bill over a veto requires “two-thirds of all the Members of such House” (Art. VI, Sec. 27(1)), while the yeas and nays on final reading are taken among those voting.

Article VI, Section 2 provides: “The Senate shall be composed of twenty-four Senators.” Two-thirds of twenty-four is sixteen. The Constitution nowhere authorizes the reduction of that base by reason of the physical circumstances of a Member.

IV

THE SUPREME COURT’S INTERPRETATION OF THE IDENTICAL PHRASE

The phrase “two-thirds of all the Members of the Senate” has been construed by the Supreme Court in *Bayan v. Zamora*, G.R. No. 138570, 10 October 2000, which sustained the Senate’s concurrence in the Visiting Forces Agreement under Article VII, Section 21 and Article XVIII, Section 25. At the time of the vote the Senate had only twenty-three incumbents, one seat having been vacated upon the election of its holder as Vice President. The Court held:⁶

Under these circumstances, the charter provides that the Senate shall be composed of twenty-four (24) Senators. Without a tinge of doubt, two-thirds (2/3) of this figure, or not less than sixteen (16) members, favorably acting on the proposal is an unquestionable compliance with the requisite number of votes mentioned in Section 21 of Article VII. The fact that there were actually twenty-three (23) incumbent Senators at the time the voting was made, will not alter in any significant way the circumstance that more than two-thirds of the members of the Senate concurred with the proposed VFA, even if the two-thirds vote requirement is based on this figure of actual members (23). In this regard, the fundamental law is clear that two-thirds of the 24 Senators, or at least 16 favorable votes, suffice so as to render compliance with the strict constitutional mandate of giving concurrence to the subject treaty.

Two consequences follow. The Court anchored “all the Members” to the constitutional complement of twenty-four, not to attendance. And even on the alternative basis the Court was willing to entertain, the base was the number of incumbents (twenty-three), not on the number present. Two-thirds of twenty-three is 15.33, so sixteen votes remained necessary. The provision construed in *Bayan* is verbally identical to the conviction clause, and there is no principled ground on which the same words in the same instrument could bear a lesser meaning where the stakes (removal of a constitutional officer) are greater.

⁶ *Bayan v. Zamora*, G.R. No. 138570, 10 October 2000, 396 Phil. 623, en banc, per Buena, J.

V

THE “ALL THE MEMBERS” CASES

A. *Santiago v. Guingona*

In *Santiago v. Guingona*, G.R. No. 134577, 18 November 1998, the Court construed Article VI, Section 16(1), which requires that the Senate President be elected “by a majority vote of all its respective Members.” The Senate then had twenty-three incumbents, one seat being vacant. The Court held:⁷

The term “majority” has been judicially defined a number of times. When referring to a certain number out of a total or aggregate, it simply means the number greater than half or more than half of any total. The plain and unambiguous words of the subject constitutional clause simply mean that the Senate President must obtain the votes of more than one half of all the senators.

The base was the whole body, computed at most on incumbents. Nothing in the decision suggests that the phrase “all its Members” contracts with the number of Senators in the chamber on a given day.

B. *Avelino v. Cuenco*

Avelino v. Cuenco, G.R. No. L-2821, resolutions of 4 March and 14 March 1949, also supports the sixteen-vote threshold. The question was whether twelve of twenty-four Senators constituted a quorum under the 1935 Constitution, as amended in 1940, which provided that “a majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members.” Senator Tomas Confesor was in the United States. Senator Vicente Sotto was confined in a Manila hospital. The four Justices who found a quorum reasoned as follows:⁸

When the Constitution declares that a majority of “each House” shall constitute a quorum, “the House” does not mean “all” the members. Even a majority of all the members constitute “the House”. (*Missouri Pac. vs. Kansas*, 63 Law ed. [U.S.], p. 239). There is a difference between a majority of “all the members of the House” and a majority of “the House”, the latter requiring less number than the first. Therefore an absolute majority (12) of all the members of the Senate less one (23), constitutes constitutional majority of the Senate for the purpose of a quorum.

The Justices who reduced the base did so precisely because the quorum clause does *not* say “all the Members.” They identified “all the members” as the larger and fixed base and “the House” as the smaller. The reduction was tied to a clause that carries its own power to “compel the attendance of absent Members,” and the sole deduction was of a Senator abroad, beyond that coercive process. Senator Sotto, hospitalized in Manila, was counted, so that the base was twenty-three and not twenty-two. And the authority relied upon, *Missouri Pacific Railway Co. v. Kansas*, construed the United States veto clause, which speaks of “two-thirds of that House,” not of “all the Members.” The framers of the 1987 Constitution, writing against this decision, chose the phrase which the *Avelino* majority itself had identified as the larger base.

The dissenting opinions state the general rule of membership counting, and the majority opinion has not contradicted it. Justice Perfecto wrote:⁹

“Majority of each House” can mean only majority of the members of each House, and the number of said members cannot be reduced upon any

⁷ *Santiago v. Guingona*, G.R. No. 134577, 18 November 1998, 359 Phil. 276, en banc, per Panganiban, J.

⁸ *Avelino v. Cuenco*, G.R. No. L-2821, 4 March 1949, 83 Phil. 17, resolution of the Court (opinion of Paras, Feria, Pablo and Bengzon, JJ., on the quorum question).

⁹ *Avelino v. Cuenco*, supra, Perfecto, J., dissenting.

artificial or imaginary basis not authorized by the context of the Constitution itself or by the sound processes of reason.

Justice Tuason wrote:¹⁰

It appears to me that the basis for computing a quorum of the Senate is the number of senators who have been elected and duly qualified and who have not ceased to be senators by death or legal disqualification. If this were not so, what is the standard of computation? No satisfactory, reasonable alternative has been or can be offered. Absence abroad cannot be a disqualification unless by such absence, under the Constitution, a member of the Senate loses his office, emoluments, and other prerogatives, temporarily or permanently.

VI

THE SENATE RULES OF PROCEDURE ON IMPEACHMENT TRIALS

The Senate’s own Rules confirm the reading of the Constitution in four ways.¹¹

A. *The Rule on the final question adopts the constitutional formula verbatim*

Rule XXI provides:

The trial of all the articles of impeachment shall be completed before the Senators vote on the final question on whether or not the impeachment is sustained. On the final question whether the impeachment is sustained, the vote shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of all the Members, a judgment of acquittal shall be entered; but if the person impeached in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of all the Members, the Senate shall proceed to pronounce judgment of conviction, and a certified copy of such judgment shall be deposited in the Office of the Secretary of the Senate. A motion to reconsider the vote by which any article of impeachment is sustained or rejected shall not be in order.

The Rule does not say “two-thirds of the Members present,” “two-thirds of the Senator-Judges,” or “two-thirds of those who participated in the trial.” It repeats the constitutional denominator, twice, and attaches the judgment of acquittal to the failure to reach it. The form of putting the question that follows Rule XXI directs that “each Senator, as his/her name is called, shall rise in his/her place and answer: guilty or not guilty.” The roll called is the roll of Senators, all twenty-four of them. A Senator who does not answer is not struck from the roll.

B. *The Rules depart from their United States model on this precise point*

The Philippine Rules are modelled, in most instances word for word, on the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials of the United States Senate. The corresponding United States rule (Rule XXIII in the current numbering, Rule XXII in the 1868 rules) provides that “if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the Members present, a judgment of acquittal shall be entered; but if the person impeached shall be convicted upon any such article by the votes of two-thirds of the Members present, the Senate shall proceed” to judgment.¹² The Philippine Senate, copying the sentence, struck

¹⁰ Avelino v. Cuenco, supra, Tuason, J., dissenting.

¹¹ Rules of Procedure on Impeachment Trials, adopted by Senate Resolution No. 39, 15th Congress, 23 March 2011, as amended by Senate Resolution No. 48, 20th Congress, 3 June 2026. Rule XXV provides that the Rules “shall remain in force until amended or repealed.”

¹² Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, Rule XXIII, Senate Manual, 104th Congress, S. Doc. 104-1; Rules of the Senate for the Impeachment Trial of Andrew Johnson, Rule XXII (2 March 1868). The United States Constitution, Art. I, Sec. 3, cl. 6, itself provides that “no Person shall be convicted without the Concurrence of two thirds of the Members present.”

“the Members present” and substituted “all the Members.” The substitution tracks the text of the Philippine Constitution, and it is the clearest possible evidence that the “present” denominator was considered and rejected.

C. The same Rules use “Members present” when they mean present

Rule XXII provides that a motion to adjourn “may be decided without the yeas and nays, unless they be demanded by one-fifth of the Members present.” Rule II, as amended on 3 June 2026, provides that the Senate President shall preside “unless the Senate, by a majority vote of the members present, elects another Senator as the Presiding Officer.”¹³ The Senate that amended Rule II in June 2026 to say “members present” left Rule XXI reading “all the Members.” Under the settled canon that the use of different terms within the same instrument signals a difference in meaning, the two phrases cannot be read as equivalents. The Senate has, within the last three months, reaffirmed the distinction in its own text.

D. The Rules contemplate absent Members who remain Members

Rule III directs the Presiding Officer to administer the oath “to the Members of the Senate then present and to the other Members of the Senate as they shall appear, whose duty it shall be to take the same.” A Senator who is not present at the organization of the court is, in the language of the Rule, one of “the other Members of the Senate,” under a continuing duty to take the oath upon appearance. The Rule treats absence, including prolonged absence, as a deferral of participation, not as a diminution of membership. Rule XXIV, which provides for resumption when the Senate fails to sit on a fixed day, likewise assumes that the body persists intact through interruptions.¹⁴

Two further points on the Rules. Rule VI provides that a ruling of the Presiding Officer “shall stand as the judgment of the Senate, unless a Member of the Senate shall ask that a formal vote be taken thereon.” The 6 July 2026 ruling on the threshold was not put to a vote by any Member and stands as the judgment of the impeachment court. And in any event the Senate could not, by rule or ruling, lower a threshold fixed by the Constitution: Article XI, Section 3(8) authorizes rules “to effectively carry out the purpose of this section,” and *Francisco v. House of Representatives* struck down impeachment rules of the House that contradicted the constitutional text.¹⁵ The Rules, as written, do not attempt any such thing. They confirm the Constitution.

VII
HOW SENATE MEMBERSHIP IS LOST

The absent Senators are not yet unseated by any of the constitutionally allowed modes of removal, so they are still senators.

A. The modes by which membership in the Senate is lost

Membership in the Senate ends only upon: (1) expiry of the six-year term (Art. VI, Sec. 4); (2) death; (3) resignation; (4) expulsion by “two-thirds of all its Members” (Art. VI, Sec. 16(3)); (5) forfeiture of the seat upon acceptance of an incompatible office (Art. VI, Sec. 13; *Adaza v. Pacana*, G.R. No. L-68159, 18 March 1985); (6) unseating by the Senate Electoral Tribunal, “the sole judge of all contests relating to the election, returns, and qualifications” of Senators (Art. VI, Sec. 17); and (7) final judgment of conviction carrying the accessory penalty of perpetual absolute disqualification (Revised Penal Code, Arts. 30 and 41; *Jalosjos v. Commission on Elections*, G.R. No. 205033, 18 June

¹³ Senate Resolution No. 48, 20th Congress, 3 June 2026, amending Rule II; Philippine Daily Inquirer, “Amended rules now allow other senators to preside over impeach trials,” 3 June 2026.

¹⁴ Rules of Procedure on Impeachment Trials, Rules III and XXIV.

¹⁵ *Francisco v. House of Representatives*, G.R. No. 160261, 10 November 2003, 460 Phil. 830.

2013). Each of these events produces a vacancy to be filled under Article VI, Section 9. None has occurred with respect to any of the twenty-four Senators of the 20th Congress.¹⁶

B. Absence

Article VI, Section 16(2) authorizes each House to “compel the attendance of absent Members.” The clause presupposes that an absent Member is a Member. One does not compel the attendance of a person who has ceased to belong to the body. Rule III of the impeachment Rules, quoted above, is to the same effect.

C. Suspension, including preventive suspension under Republic Act No. 3019

Article VI, Section 16(3) authorizes each House to “suspend or expel a Member” and provides that “a penalty of suspension, when imposed, shall not exceed sixty days.” Suspension and expulsion are set side by side as distinct sanctions. A suspended Member is by definition still a Member, and only expulsion vacates the seat. The ninety-day suspension of Senator Estrada is not even a suspension of that kind. In *Santiago v. Sandiganbayan*, G.R. No. 128055, 18 April 2001, the Court upheld a ninety-day preventive suspension of a sitting Senator under Section 13 of Republic Act No. 3019 and, quoting *Paredes v. Sandiganbayan*, described it as “not a penalty but a preliminary, preventive measure,” distinct from the disciplinary power of Congress over its Members. Quoting *Bayot v. Sandiganbayan*, the Court explained: “It is not a penalty because it is not imposed as a result of judicial proceedings. In fact, if acquitted, the official concerned shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension.”¹⁷ Reinstatement and back salaries presuppose that the office was retained throughout. Preventive suspension restrains the exercise of the office. It does not divest the title to it.

D. Detention

Article VI, Section 11 confines the privilege from arrest to offences punishable by not more than six years of imprisonment. The Constitution therefore contemplates that a Member may be lawfully held in custody while remaining a Member. In *People v. Jalosjos*, G.R. Nos. 132875-76, 3 February 2000, the Court described the detained congressman as “a full-fledged member of Congress who is now confined at the national penitentiary,” denied his motion to attend sessions, and observed that his constituents “did so with the knowledge that he could achieve only such legislative results which he could accomplish within the confines of prison.”¹⁸ In *Trillanes v. Pimentel*, G.R. No. 179817, 27 June 2008, the Court applied the same rule to a pre-trial detainee elected to the Senate, holding that “the presumption of innocence does not carry with it the full enjoyment of civil and political rights” and that detention restrains locomotion, not tenure.¹⁹ Senator Trillanes served out his 2007 to 2013 term. Senators Enrile, Estrada, and Revilla were detained on plunder charges beginning in 2014 (Enrile until 2015, Estrada until 2017, Revilla until 2018), and Senator De Lima from 2017 to the end of her term in 2022. Each remained a Senator, was counted as such, and was never treated as having vacated the seat. The Senate sat and legislated during those years on a membership of twenty-four.

E. Evasion of process

No provision of the Constitution or of any statute attaches loss of seat to flight from a warrant of arrest. The remedy the Constitution provides against a Member who will not attend is compulsion (Art. VI, Sec. 16(2)); the remedy it provides against a

¹⁶ *Adaza v. Pacana*, G.R. No. L-68159, 18 March 1985, 220 Phil. 289 (a member of the legislature who assumed an incompatible office thereby forfeited his seat); *Jalosjos v. Commission on Elections*, G.R. No. 205033, 18 June 2013, 711 Phil. 414.

¹⁷ *Santiago v. Sandiganbayan*, G.R. No. 128055, 18 April 2001, 408 Phil. 767, en banc, per Vitug, J., quoting *Paredes v. Sandiganbayan*, G.R. No. 118354, 8 August 1995, and *Bayot v. Sandiganbayan*, G.R. No. L-61776, 23 March 1984.

¹⁸ *People v. Jalosjos*, G.R. Nos. 132875-76, 3 February 2000, 381 Phil. 690, en banc, per Ynares-Santiago, J.

¹⁹ *Trillanes v. Pimentel*, G.R. No. 179817, 27 June 2008, 578 Phil. 1002, en banc, per Carpio Morales, J.

Member whose conduct the chamber will not tolerate is expulsion by two-thirds of all its Members (Art. VI, Sec. 16(3)). Neither has been invoked. Senator Panfilo Lacson remained a Senator throughout the period in 2010 and 2011 during which he evaded a warrant of arrest; his seat was never declared vacant, and he resumed his functions upon the quashal of the warrant.

F. Presence abroad

Senators travel abroad on official and personal business throughout every Congress without any suggestion that their seats are thereby affected. The sole judicial deduction of a Senator abroad, in *Avelino*, was made for the purpose of the quorum clause and was justified by the compel-attendance power peculiar to that clause. Justice Tuason’s answer, that absence abroad “cannot be a disqualification unless by such absence, under the Constitution, a member of the Senate loses his office,” has never been met by any majority opinion of the Court.

**VIII
OBJECTIONS CONSIDERED**

A. That a Senator who did not hear the evidence cannot be a judge

The objection confuses participation with membership. The Constitution counts “Members of the Senate,” not Senator-Judges who attended. Impeachment is a political process entrusted to a political body. Senator-Judges have always been free to vote after missing trial days, there is no rule of juror substitution, and the Rules expressly contemplate Members taking the oath “as they shall appear.”

B. That the provision would be rendered inutile

The provision is fully operative. With twenty-one participating Senators, sixteen votes for conviction are available. A supermajority of the entire membership is intended to be difficult to reach. To recompute it against attendance would convert it into a two-thirds of those present, which is the formula of the United States Constitution and of the United States Senate rules, and the formula which the Philippine Constitution and the Philippine Senate Rules both did not adopt.

C. That a Senator “disqualified by law” through suspension cannot be counted

Preventive suspension under Section 13 of Republic Act No. 3019 is not a disqualification. *Santiago v. Sandiganbayan* describes it as a preventive measure, not a penalty, carrying a right to reinstatement and back salaries upon acquittal. Article VI, Section 16(3) treats even a punitive suspension as a sanction short of expulsion. A Senator under suspension retains the office and is a Member of the Senate. What he cannot do is exercise the office during the suspension. The Constitution asks whether he is a Member, not whether he can presently vote.

**IX
CONCLUSION**

For the reasons stated, it is our opinion that:

1. Conviction of the Vice President upon any article of impeachment requires the concurrence of not fewer than sixteen (16) Senators, being two-thirds of all the Members of a Senate composed of twenty-four Senators under Article VI, Section 2 of the Constitution.
2. The absence, detention, preventive suspension, evasion of process, or presence abroad of any Senator does not reduce that number, because none of those circumstances terminates membership in the Senate.
3. The Rules of Procedure on Impeachment Trials, in Rule XXI, adopt the constitutional formula verbatim, depart deliberately from the “Members

- present” formula of the United States Senate rules on which they are modelled, and reserve the phrase “Members present” for other purposes, including the 2026 amendment to Rule II. The Rules could not in any event lower a threshold fixed by the Constitution.
4. The threshold could be affected only by an actual vacancy in a seat. On the authority of *Bayan v. Zamora*, a single vacancy would still leave the threshold at sixteen. No vacancy exists.
 5. The ruling of the Presiding Officer of 6 and 7 July 2026 correctly states the law and, under Rule VI, stands as the judgment of the impeachment court.

Makati City, Philippines, 5 September 2026.

FOR THE FIRM:

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