SENATE OF THE PHILIPPINES, REPRESENTED BY FRANKLIN M. DRILON, IN HIS CAPACITY AS SENATE PRESIDENT, JUAN M. FLAVIER, IN HIS CAPACITY AS SENATE PRESIDENT PRO TEMPORE, FRANCIS N. P...

G.R. NO. 169777. April 20, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

A transparent government is one of the hallmarks of a truly republican state. Even in the early history of republican thought, however, it has been recognized that the head of government may keep certain information confidential in pursuit of the public interest. Explaining the reason for vesting executive power in only one magistrate, a distinguished delegate to the U.S. Constitutional Convention said: "Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man, in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished."[1]

History has been witness, however, to the fact that the power to withhold information lends itself to abuse, hence, the necessity to guard it zealously.

The present consolidated petitions for certiorari and prohibition proffer that the President has abused such power by issuing Executive Order No. 464 (E.O. 464) last September 28, 2005. They thus pray for its declaration as null and void for being unconstitutional.

In resolving the controversy, this Court shall proceed with the recognition that the issuance under review has come from a co-equal branch of government, which thus entitles it to a strong presumption of constitutionality. Once the challenged order is found to be indeed violative of the Constitution, it is duty-bound to declare it so. For the Constitution, being the highest expression of the sovereign will of the Filipino people, must prevail over any issuance of the government that contravenes its mandates.

In the exercise of its legislative power, the Senate of the Philippines, through its various Senate Committees, conducts inquiries or investigations in aid of legislation which call for, inter alia, the attendance of officials and employees of the executive department, bureaus, and offices including those employed in Government Owned and Controlled Corporations, the Armed Forces of the Philippines (AFP), and the Philippine National Police (PNP).

On September 21 to 23, 2005, the Committee of the Senate as a whole issued invitations to various officials of the Executive Department for them to appear on September 29, 2005 as resource speakers in a public hearing on the railway project of the North Luzon Railways Corporation with the China National Machinery and Equipment Group (hereinafter North Rail Project). The public hearing was sparked by a privilege speech of Senator Juan Ponce Enrile urging the Senate to investigate the alleged overpricing and other unlawful provisions of the contract

covering the North Rail Project.

The Senate Committee on National Defense and Security likewise issued invitations[2] dated September 22, 2005 to the following officials of the AFP: the Commanding General of the Philippine Army, Lt. Gen. Hermogenes C. Esperon; Inspector General of the AFP Vice Admiral Mateo M. Mayuga; Deputy Chief of Staff for Intelligence of the AFP Rear Admiral Tirso R. Danga; Chief of the Intelligence Service of the AFP Brig. Gen. Marlu Q. Quevedo; Assistant Superintendent of the Philippine Military Academy (PMA) Brig. Gen. Francisco V. Gudani; and Assistant Commandant, Corps of Cadets of the PMA, Col. Alexander F. Balutan, for them to attend as resource persons in a public hearing scheduled on September 28, 2005 on the following: (1) Privilege Speech of Senator Aquilino Q. Pimentel Jr., delivered on June 6, 2005 entitled "Bunye has Provided Smoking Gun or has Opened a Can of Worms that Show Massive Electoral Fraud in the Presidential Election of May 2005"; (2) Privilege Speech of Senator Jinggoy E. Estrada delivered on July 26, 2005 entitled "The Philippines as the Wire-Tapping Capital of the World"; (3) Privilege Speech of Senator Rodolfo Biazon delivered on August 1, 2005 entitled "Clear and Present Danger"; (4) Senate Resolution No. 285 filed by Senator Maria Ana Consuelo Madrigal - Resolution Directing the Committee on National Defense and Security to Conduct an Inquiry, in Aid of Legislation, and in the National Interest, on the Role of the Military in the So-called "Gloriagate Scandal"; and (5) Senate Resolution No. 295 filed by Senator Biazon - Resolution Directing the Committee on National Defense and Security to Conduct an Inquiry, in Aid of Legislation, on the Wire-Tapping of the President of the Philippines.

Also invited to the above-said hearing scheduled on September 28 2005 was the AFP Chief of Staff, General Generoso S. Senga who, by letter[3] dated September 27, 2005, requested for its postponement "due to a pressing operational situation that demands [his] utmost personal attention" while "some of the invited AFP officers are currently attending to other urgent operational matters."

On September 28, 2005, Senate President Franklin M. Drilon received from Executive Secretary Eduardo R. Ermita a letter[4] dated September 27, 2005 "respectfully request[ing] for the postponement of the hearing [regarding the NorthRail project] to which various officials of the Executive Department have been invited" in order to "afford said officials ample time and opportunity to study and prepare for the various issues so that they may better enlighten the Senate Committee on its investigation."

Senate President Drilon, however, wrote[5] Executive Secretary Ermita that the Senators "are unable to accede to [his request]" as it "was sent belatedly" and "[a]ll preparations and arrangements as well as notices to all resource persons were completed [the previous] week."

Senate President Drilon likewise received on September 28, 2005 a letter[6] from the President of the North Luzon Railways Corporation Jose L. Cortes, Jr. requesting that the hearing on the NorthRail project be postponed or cancelled until a copy of the report of the UP Law Center on the contract agreements relative to the project had been secured.

On September 28, 2005, the President issued E.O. 464, "Ensuring Observance of the Principle of Separation of Powers, Adherence to the Rule on Executive Privilege and Respect for the Rights of Public Officials Appearing in Legislative Inquiries in Aid of Legislation Under the Constitution, and For Other Purposes,"[7] which, pursuant to Section 6 thereof, took effect immediately. The salient provisions of the Order are as follows:

> SECTION 1. Appearance by Heads of Departments Before Congress. - In accordance with Article VI, Section 22 of the Constitution and to implement the Constitutional provisions on the separation of powers between co-equal branches of the government, all heads of departments of the Executive Branch of the government shall secure the consent of the President prior to appearing before either House of Congress.

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When the security of the State or the public interest so requires and the President so states in writing, the appearance shall only be conducted in executive session.

SECTION. 2. Nature, Scope and Coverage of Executive Privilege. -

(a) Nature and Scope. - The rule of confidentiality based on executive privilege is fundamental to the operation of government and rooted in the separation of powers under the Constitution (Almonte vs. Vasquez, G.R. No. 95367, 23 May 1995). Further, Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees provides that Public Officials and Employees shall not use or divulge confidential or classified information officially known to them by reason of their office and not made available to the public to prejudice the public interest.

Executive privilege covers all confidential or classified information between the President and the public officers covered by this executive order, including:

- Conversations and correspondence between the President and the public official covered by this executive order (Almonte vs. Vasquez G.R. No. 95367, 23 May 1995; Chavez v. Public Estates Authority, G.R. No. 133250, 9 July 2002);

- Military, diplomatic and other national security matters which in the interest of national security should not be divulged (Almonte vs. Vasquez, G.R. No. 95367, 23 May 1995; Chavez v. Presidential Commission on Good Government, G.R. No. 130716, 9 December 1998).

- Information between inter-government agencies prior to the conclusion of treaties and executive agreements (Chavez v. Presidential Commission on Good Government, G.R. No. 130716, 9 December 1998);

- Discussion in close-door Cabinet meetings (Chavez v. Presidential Commission on Good Government, G.R. No. 130716, 9 December 1998);

- Matters affecting national security and public order (Chavez v. Public Estates Authority, G.R. No. 133250, 9 July 2002).

(b) Who are covered. - The following are covered by this executive order:

- Senior officials of executive departments who in the judgment of the department heads are covered by the executive privilege;

- Generals and flag officers of the Armed Forces of the Philippines and such other officers who in the judgment of the Chief of Staff are covered by the executive privilege;

- Philippine National Police (PNP) officers with rank of chief superintendent or higher and such other officers who in the judgment of the Chief of the PNP are covered by the executive privilege;

- Senior national security officials who in the judgment of the National Security Adviser are covered by the executive privilege; and

- Such other officers as may be determined by the President.

SECTION 3. Appearance of Other Public Officials Before Congress. - All public officials enumerated in Section 2 (b) hereof shall secure prior consent of the President prior to appearing before either House of Congress to ensure the observance of the principle of separation of powers, adherence to the rule on executive privilege and respect for the rights of public officials appearing in inquiries in aid of legislation. (Emphasis and underscoring supplied)

Also on September 28, 2005, Senate President Drilon received from Executive Secretary Ermita a copy of E.O. 464, and another letter[8] informing him "that officials of the Executive Department invited to appear at the

meeting [regarding the NorthRail project] will not be able to attend the same without the consent of the President, pursuant to [E.O. 464]" and that "said officials have not secured the required consent from the President." On even date which was also the scheduled date of the hearing on the alleged wiretapping, Gen. Senga sent a letter[9] to Senator Biazon, Chairperson of the Committee on National Defense and Security, informing him "that per instruction of [President Arroyo], thru the Secretary of National Defense, no officer of the [AFP] is authorized to appear before any Senate or Congressional hearings without seeking a written approval from the President" and "that no approval has been granted by the President to any AFP officer to appear before the public hearing of the Senate Committee on National Defense and Security scheduled [on] 28 September 2005."

Despite the communications received from Executive Secretary Ermita and Gen. Senga, the investigation scheduled by the Committee on National Defense and Security pushed through, with only Col. Balutan and Brig. Gen. Gudani among all the AFP officials invited attending.

For defying President Arroyo's order barring military personnel from testifying before legislative inquiries without her approval, Brig. Gen. Gudani and Col. Balutan were relieved from their military posts and were made to face court martial proceedings.

As to the NorthRail project hearing scheduled on September 29, 2005, Executive Secretary Ermita, citing E.O. 464, sent letter of regrets, in response to the invitations sent to the following government officials: Light Railway Transit Authority Administrator Melquiades Robles, Metro Rail Transit Authority Administrator Roberto Lastimoso, Department of Justice (DOJ) Chief State Counsel Ricardo V. Perez, then Presidential Legal Counsel Merceditas Gutierrez, Department of Transportation and Communication (DOTC) Undersecretary Guiling Mamonding, DOTC Secretary Leandro Mendoza, Philippine National Railways General Manager Jose Serase II, Monetary Board Member Juanita Amatong, Bases Conversion Development Authority Chairperson Gen. Narciso Abaya and Secretary Romulo L. Neri.[10] NorthRail President Cortes sent personal regrets likewise citing E.O. 464.[11]

On October 3, 2005, three petitions, docketed as G.R. Nos. 169659, 169660, and 169667, for certiorari and prohibition, were filed before this Court challenging the constitutionality of E.O. 464.

In G.R. No. 169659, petitioners party-list Bayan Muna, House of Representatives Members Satur Ocampo, Crispin Beltran, Rafael Mariano, Liza Maza, Joel Virador and Teodoro Casino, Courage, an organization of government employees, and Counsels for the Defense of Liberties (CODAL), a group of lawyers dedicated to the promotion of justice, democracy and peace, all claiming to have standing to file the suit because of the transcendental importance of the issues they posed, pray, in their petition that E.O. 464 be declared null and void for being unconstitutional; that respondent Executive Secretary Ermita, in his capacity as Executive Secretary and alter-ego of President Arroyo, be prohibited from imposing, and threatening to impose sanctions on officials who appear before Congress due to congressional summons. Additionally, petitioners claim that E.O. 464 infringes on their rights and impedes them from fulfilling their respective obligations. Thus, Bayan Muna alleges that E.O. 464 infringes on its right as a political party entitled to participate in governance; Satur Ocampo, et al. allege that E.O. 464 infringes on their rights and duties as members of Congress to conduct investigation in aid of legislation and conduct oversight functions in the implementation of laws; Courage alleges that the tenure of its members in public office is predicated on, and threatened by, their submission to the requirements of E.O. 464 should they be summoned by Congress; and CODAL alleges that its members have a sworn duty to uphold the rule of law, and their rights to information and to transparent governance are threatened by the imposition of E.O. 464.

In G.R. No. 169660, petitioner Francisco I. Chavez, claiming that his constitutional rights as a citizen, taxpayer and law practitioner, are affected by the enforcement of E.O. 464, prays in his petition that E.O. 464 be declared

null and void for being unconstitutional.

In G.R. No. 169667, petitioner Alternative Law Groups, Inc.[12] (ALG), alleging that as a coalition of 17 legal resource non-governmental organizations engaged in developmental lawyering and work with the poor and marginalized sectors in different parts of the country, and as an organization of citizens of the Philippines and a part of the general public, it has legal standing to institute the petition to enforce its constitutional right to information on matters of public concern, a right which was denied to the public by E.O. 464,[13] prays, that said order be declared null and void for being unconstitutional and that respondent Executive Secretary Ermita be ordered to cease from implementing it.

On October 11, 2005, Petitioner Senate of the Philippines, alleging that it has a vital interest in the resolution of the issue of the validity of E.O. 464 for it stands to suffer imminent and material injury, as it has already sustained the same with its continued enforcement since it directly interferes with and impedes the valid exercise of the Senate's powers and functions and conceals information of great public interest and concern, filed its petition for certiorari and prohibition, docketed as G.R. No. 169777 and prays that E.O. 464 be declared unconstitutional.

On October 14, 2005, PDP-Laban, a registered political party with members duly elected into the Philippine Senate and House of Representatives, filed a similar petition for certiorari and prohibition, docketed as G.R. No. 169834, alleging that it is affected by the challenged E.O. 464 because it hampers its legislative agenda to be implemented through its members in Congress, particularly in the conduct of inquiries in aid of legislation and transcendental issues need to be resolved to avert a constitutional crisis between the executive and legislative branches of the government.

Meanwhile, by letter[14] dated February 6, 2006, Senator Biazon reiterated his invitation to Gen. Senga for him and other military officers to attend the hearing on the alleged wiretapping scheduled on February 10, 2005. Gen. Senga replied, however, by letter[15] dated February 8, 2006, that "[p]ursuant to Executive Order No. 464, th[e] Headquarters requested for a clearance from the President to allow [them] to appear before the public hearing" and that "they will attend once [their] request is approved by the President." As none of those invited appeared, the hearing on February 10, 2006 was cancelled.[16]

In another investigation conducted jointly by the Senate Committee on Agriculture and Food and the Blue Ribbon Committee on the alleged mismanagement and use of the fertilizer fund under the Ginintuang Masaganang Ani program of the Department of Agriculture (DA), several Cabinet officials were invited to the hearings scheduled on October 5 and 26, November 24 and December 12, 2005 but most of them failed to attend, DA Undersecretary Belinda Gonzales, DA Assistant Secretary Felix Jose Montes, Fertilizer and Pesticide Authority Executive Director Norlito R. Gicana,[17] and those from the Department of Budget and Management[18] having invoked E.O. 464.

In the budget hearings set by the Senate on February 8 and 13, 2006, Press Secretary and Presidential Spokesperson Ignacio R. Bunye,[19] DOJ Secretary Raul M. Gonzalez[20] and Department of Interior and Local Government Undersecretary Marius P. Corpus[21] communicated their inability to attend due to lack of appropriate clearance from the President pursuant to E.O. 464. During the February 13, 2005 budget hearing, however, Secretary Bunye was allowed to attend by Executive Secretary Ermita.

On February 13, 2006, Jose Anselmo I. Cadiz and the incumbent members of the Board of Governors of the Integrated Bar of the Philippines, as taxpayers, and the Integrated Bar of the Philippines as the official organization of all Philippine lawyers, all invoking their constitutional right to be informed on matters of public interest, filed their petition for certiorari and prohibition, docketed as G.R. No. 171246, and pray that E.O. 464 be declared null and void.

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All the petitions pray for the issuance of a Temporary Restraining Order enjoining respondents from implementing, enforcing, and observing E.O. 464.

In the oral arguments on the petitions conducted on February 21, 2006, the following substantive issues were ventilated: (1) whether respondents committed grave abuse of discretion in implementing E.O. 464 prior to its publication in the Official Gazette or in a newspaper of general circulation; and (2) whether E.O. 464 violates the following provisions of the Constitution: Art. II, Sec. 28, Art. III, Sec. 4, Art. III, Sec. 7, Art. IV. Sec. 1, Art. VI, Sec. 21, Art. VI, Sec. 22, Art. XI, Sec. 1, and Art. XIII, Sec. 16. The procedural issue of whether there is an actual case or controversy that calls for judicial review was not taken up; instead, the parties were instructed to discuss it in their respective memoranda.

After the conclusion of the oral arguments, the parties were directed to submit their respective memoranda, paying particular attention to the following propositions: (1) that E.O. 464 is, on its face, unconstitutional; and (2) assuming that it is not, it is unconstitutional as applied in four instances, namely: (a) the so called Fertilizer scam; (b) the NorthRail investigation (c) the Wiretapping activity of the ISAFP; and (d) the investigation on the Venable contract.[22]

Petitioners in G.R. No. 169660[23] and G.R. No. 169777[24] filed their memoranda on March 7, 2006, while those in G.R. No. 169667[25] and G.R. No. 169834[26] filed theirs the next day or on March 8, 2006. Petitioners in G.R. No. 171246 did not file any memorandum.

Petitioners Bayan Muna et al. in G.R. No. 169659, after their motion for extension to file memorandum[27] was granted, subsequently filed a manifestation[28] dated March 14, 2006 that it would no longer file its memorandum in the interest of having the issues resolved soonest, prompting this Court to issue a Resolution reprimanding them.[29]

Petitioners submit that E.O. 464 violates the following constitutional provisions:

Art. VI, Sec. 21[30]

Art. VI, Sec. 22[31]

Art. VI, Sec. 1[32]

Art. XI, Sec. 1[33]

Art. III, Sec. 7[34]

Art. III, Sec. 4[35]

Art. XIII, Sec. 16[36]

Art. II, Sec. 28[37]

Respondents Executive Secretary Ermita et al., on the other hand, pray in their consolidated memorandum[38] on March 13, 2006 for the dismissal of the petitions for lack of merit.

The Court synthesizes the issues to be resolved as follows:

- Whether E.O. 464 contravenes the power of inquiry vested in Congress;

- Whether E.O. 464 violates the right of the people to information on matters of public concern; and

- Whether respondents have committed grave abuse of discretion when they implemented E.O. 464 prior to its publication in a newspaper of general circulation.

Essential requisites for judicial review

Before proceeding to resolve the issue of the constitutionality of E.O. 464, ascertainment of whether the requisites for a valid exercise of the Court's power of judicial review are present is in order.

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have standing to challenge the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very lis mota of the case.[39]

Except with respect to the requisites of standing and existence of an actual case or controversy where the disagreement between the parties lies, discussion of the rest of the requisites shall be omitted.

Standing

Respondents, through the Solicitor General, assert that the allegations in G.R. Nos. 169659, 169660 and 169667 make it clear that they, adverting to the non-appearance of several officials of the executive department in the investigations called by the different committees of the Senate, were brought to vindicate the constitutional duty of the Senate or its different committees to conduct inquiry in aid of legislation or in the exercise of its oversight functions. They maintain that Representatives Ocampo et al. have not shown any specific prerogative, power, and privilege of the House of Representatives which had been effectively impaired by E.O. 464, there being no mention of any investigation called by the House of Representatives or any of its committees which was aborted due to the implementation of E.O. 464.

As for Bayan Muna's alleged interest as a party-list representing the marginalized and underrepresented, and that of the other petitioner groups and individuals who profess to have standing as advocates and defenders of the Constitution, respondents contend that such interest falls short of that required to confer standing on them as parties "injured-in-fact."[40]

Respecting petitioner Chavez, respondents contend that Chavez may not claim an interest as a taxpayer for the implementation of E.O. 464 does not involve the exercise of taxing or spending power.[41]

With regard to the petition filed by the Senate, respondents argue that in the absence of a personal or direct injury by reason of the issuance of E.O. 464, the Senate and its individual members are not the proper parties to assail the constitutionality of E.O. 464.

Invoking this Court's ruling in National Economic Protectionism Association v. Ongpin[42] and Valmonte v. Philippine Charity Sweepstakes Office,[43] respondents assert that to be considered a proper party, one must have a personal and substantial interest in the case, such that he has sustained or will sustain direct injury due to the enforcement of E.O. 464.[44]

That the Senate of the Philippines has a fundamental right essential not only for intelligent public decision-making in a democratic system, but more especially for sound legislation[45] is not disputed. E.O. 464, however, allegedly stifles the ability of the members of Congress to access information that is crucial to law-making.[46] Verily, the Senate, including its individual members, has a substantial and direct interest over the outcome of the controversy and is the proper party to assail the constitutionality of E.O. 464. Indeed, legislators have standing to maintain inviolate the prerogative, powers and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action which they claim infringes their prerogatives as legislators.[47]

In the same vein, party-list representatives Satur Ocampo (Bayan Muna), Teodoro Casino (Bayan Muna), Joel Virador (Bayan Muna), Crispin Beltran (Anakpawis), Rafael Mariano (Anakpawis), and Liza Maza (Gabriela) are allowed to sue to question the constitutionality of E.O. 464, the absence of any claim that an investigation called by the House of Representatives or any of its committees was aborted due to the implementation of E.O. 464 notwithstanding, it being sufficient that a claim is made that E.O. 464 infringes on their constitutional rights and duties as members of Congress to conduct investigation in aid of legislation and conduct oversight functions in the implementation of laws.

The national political party, Bayan Muna, likewise meets the standing requirement as it obtained three seats in the House of Representatives in the 2004 elections and is, therefore, entitled to participate in the legislative process consonant with the declared policy underlying the party list system of affording citizens belonging to marginalized and underrepresented sectors, organizations and parties who lack well-defined political constituencies to contribute to the formulation and enactment of legislation that will benefit the nation.[48]

As Bayan Muna and Representatives Ocampo et al. have the standing to file their petitions, passing on the standing of their co-petitioners Courage and Codal is rendered unnecessary.[49]

In filing their respective petitions, Chavez, the ALG which claims to be an organization of citizens, and the incumbent members of the IBP Board of Governors and the IBP in behalf of its lawyer members,[50] invoke their constitutional right to information on matters of public concern, asserting that the right to information, curtailed and violated by E.O. 464, is essential to the effective exercise of other constitutional rights[51] and to the maintenance of the balance of power among the three branches of the government through the principle of checks and balances.[52]

It is well-settled that when suing as a citizen, the interest of the petitioner in assailing the constitutionality of laws, presidential decrees, orders, and other regulations, must be direct and personal. In Franciso v. House of Representatives,[53] this Court held that when the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.

As for petitioner PDP-Laban, it asseverates that it is clothed with legal standing in view of the transcendental issues raised in its petition which this Court needs to resolve in order to avert a constitutional crisis. For it to be accorded standing on the ground of transcendental importance, however, it must establish (1) the character of the funds (that it is public) or other assets involved in the case, (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government, and (3) the lack of any party with a more direct and specific interest in raising the questions being raised.[54] The first and last determinants not being present as no public funds or assets are involved and petitioners in G.R. Nos. 169777 and 169659 have direct and specific interests in the resolution of the controversy, petitioner PDP-Laban is bereft of standing to file its petition. Its allegation that E.O. 464 hampers its legislative agenda is vague and uncertain, and at best is only a "generalized interest" which it shares with the rest of the political parties. Concrete injury, whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution.[55] In fine, PDP-Laban's alleged interest as a political party does not suffice to clothe it with legal standing.

Actual Case or Controversy

Petitioners assert that an actual case exists, they citing the absence of the executive officials invited by the Senate to its hearings after the issuance of E.O. 464, particularly those on the NorthRail project and the wiretapping controversy.

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Respondents counter that there is no case or controversy, there being no showing that President Arroyo has actually withheld her consent or prohibited the appearance of the invited officials.[56] These officials, they claim, merely communicated to the Senate that they have not yet secured the consent of the President, not that the President prohibited their attendance.[57] Specifically with regard to the AFP officers who did not attend the hearing on September 28, 2005, respondents claim that the instruction not to attend without the President's consent was based on its role as Commander-in-Chief of the Armed Forces, not on E.O. 464.

Respondents thus conclude that the petitions merely rest on an unfounded apprehension that the President will abuse its power of preventing the appearance of officials before Congress, and that such apprehension is not sufficient for challenging the validity of E.O. 464.

The Court finds respondents' assertion that the President has not withheld her consent or prohibited the appearance of the officials concerned immaterial in determining the existence of an actual case or controversy insofar as E.O. 464 is concerned. For E.O. 464 does not require either a deliberate withholding of consent or an express prohibition issuing from the President in order to bar officials from appearing before Congress.

As the implementation of the challenged order has already resulted in the absence of officials invited to the hearings of petitioner Senate of the Philippines, it would make no sense to wait for any further event before considering the present case ripe for adjudication. Indeed, it would be sheer abandonment of duty if this Court would now refrain from passing on the constitutionality of E.O. 464.

Constitutionality of E.O. 464

E.O. 464, to the extent that it bars the appearance of executive officials before Congress, deprives Congress of the information in the possession of these officials. To resolve the question of whether such withholding of information violates the Constitution, consideration of the general power of Congress to obtain information, otherwise known as the power of inquiry, is in order.

The power of inquiry

The Congress power of inquiry is expressly recognized in Section 21 of Article VI of the Constitution which reads:

> SECTION 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected. (Underscoring supplied)

This provision is worded exactly as Section 8 of Article VIII of the 1973 Constitution except that, in the latter, it vests the power of inquiry in the unicameral legislature established therein - the Batasang Pambansa - and its committees.

The 1935 Constitution did not contain a similar provision. Nonetheless, in Arnault v. Nazareno,[58] a case decided in 1950 under that Constitution, the Court already recognized that the power of inquiry is inherent in the power to legislate.

Arnault involved a Senate investigation of the reportedly anomalous purchase of the Buenavista and Tambobong Estates by the Rural Progress Administration. Arnault, who was considered a leading witness in the controversy, was called to testify thereon by the Senate. On account of his refusal to answer the questions of the senators on an important point, he was, by resolution of the Senate, detained for contempt. Upholding the Senate's power to punish Arnault for contempt, this Court held:

> Although there is no provision in the Constitution expressly investing either House of Congress with power to

> make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry - with process to enforce it - is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information - which is not infrequently true - recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed.[59] . . . (Emphasis and underscoring supplied)

That this power of inquiry is broad enough to cover officials of the executive branch may be deduced from the same case. The power of inquiry, the Court therein ruled, is co-extensive with the power to legislate.[60] The matters which may be a proper subject of legislation and those which may be a proper subject of investigation are one. It follows that the operation of government, being a legitimate subject for legislation, is a proper subject for investigation.

Thus, the Court found that the Senate investigation of the government transaction involved in Arnault was a proper exercise of the power of inquiry. Besides being related to the expenditure of public funds of which Congress is the guardian, the transaction, the Court held, "also involved government agencies created by Congress and officers whose positions it is within the power of Congress to regulate or even abolish."

Since Congress has authority to inquire into the operations of the executive branch, it would be incongruous to hold that the power of inquiry does not extend to executive officials who are the most familiar with and informed on executive operations.

As discussed in Arnault, the power of inquiry, "with process to enforce it," is grounded on the necessity of information in the legislative process. If the information possessed by executive officials on the operation of their offices is necessary for wise legislation on that subject, by parity of reasoning, Congress has the right to that information and the power to compel the disclosure thereof.

As evidenced by the American experience during the so-called "McCarthy era," however, the right of Congress to conduct inquiries in aid of legislation is, in theory, no less susceptible to abuse than executive or judicial power. It may thus be subjected to judicial review pursuant to the Court's certiorari powers under Section 1, Article VIII of the Constitution.

For one, as noted in Bengzon v. Senate Blue Ribbon Committee,[61] the inquiry itself might not properly be in aid of legislation, and thus beyond the constitutional power of Congress. Such inquiry could not usurp judicial functions. Parenthetically, one possible way for Congress to avoid such a result as occurred in Bengzon is to indicate in its invitations to the public officials concerned, or to any person for that matter, the possible needed statute which prompted the need for the inquiry. Given such statement in its invitations, along with the usual indication of the subject of inquiry and the questions relative to and in furtherance thereof, there would be less room for speculation on the part of the person invited on whether the inquiry is in aid of legislation.

Section 21, Article VI likewise establishes crucial safeguards that proscribe the legislative power of inquiry. The provision requires that the inquiry be done in accordance with the Senate or House's duly published rules of procedure, necessarily implying the constitutional infirmity of an inquiry conducted without duly published rules of procedure. Section 21 also mandates that the rights of persons appearing in or affected by such inquiries be respected, an imposition that obligates Congress to adhere to the guarantees in the Bill of Rights.

These abuses are, of course, remediable before the courts, upon the proper suit filed by the persons affected, even

if they belong to the executive branch. Nonetheless, there may be exceptional circumstances, none appearing to obtain at present, wherein a clear pattern of abuse of the legislative power of inquiry might be established, resulting in palpable violations of the rights guaranteed to members of the executive department under the Bill of Rights. In such instances, depending on the particulars of each case, attempts by the Executive Branch to forestall these abuses may be accorded judicial sanction.

Even where the inquiry is in aid of legislation, there are still recognized exemptions to the power of inquiry, which exemptions fall under the rubric of "executive privilege." Since this term figures prominently in the challenged order, it being mentioned in its provisions, its preambular clauses,[62] and in its very title, a discussion of executive privilege is crucial for determining the constitutionality of E.O. 464.

Executive privilege

The phrase "executive privilege" is not new in this jurisdiction. It has been used even prior to the promulgation of the 1986 Constitution.[63] Being of American origin, it is best understood in light of how it has been defined and used in the legal literature of the United States.

Schwartz defines executive privilege as "the power of the Government to withhold information from the public, the courts, and the Congress."[64] Similarly, Rozell defines it as "the right of the President and high-level executive branch officers to withhold information from Congress, the courts, and ultimately the public."[65]

Executive privilege is, nonetheless, not a clear or unitary concept.[66] It has encompassed claims of varying kinds.[67] Tribe, in fact, comments that while it is customary to employ the phrase "executive privilege," it may be more accurate to speak of executive privileges "since presidential refusals to furnish information may be actuated by any of at least three distinct kinds of considerations, and may be asserted, with differing degrees of success, in the context of either judicial or legislative investigations."

One variety of the privilege, Tribe explains, is the state secrets privilege invoked by U.S. Presidents, beginning with Washington, on the ground that the information is of such nature that its disclosure would subvert crucial military or diplomatic objectives. Another variety is the informer's privilege, or the privilege of the Government not to disclose the identity of persons who furnish information of violations of law to officers charged with the enforcement of that law. Finally, a generic privilege for internal deliberations has been said to attach to intragovernmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated. [68]

Tribe's comment is supported by the ruling in In re Sealed Case, thus:

> Since the beginnings of our nation, executive officials have claimed a variety of privileges to resist disclosure of information the confidentiality of which they felt was crucial to fulfillment of the unique role and responsibilities of the executive branch of our government. Courts ruled early that the executive had a right to withhold documents that might reveal military or state secrets. The courts have also granted the executive a right to withhold the identity of government informers in some circumstances and a qualified right to withhold information related to pending investigations. x x x"[69] (Emphasis and underscoring supplied)

The entry in Black's Law Dictionary on "executive privilege" is similarly instructive regarding the scope of the doctrine.

> This privilege, based on the constitutional doctrine of separation of powers, exempts the executive from disclosure requirements applicable to the ordinary citizen or organization where such exemption is necessary to the discharge of highly important executive responsibilities involved in maintaining governmental operations, and extends not only to military and diplomatic secrets but also to documents integral to an appropriateexercise of the executive" domestic decisional and policy making functions, that is, those documents reflecting the

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> frank expression necessary in intra-governmental advisory and deliberative communications.[70] (Emphasis and underscoring supplied)

That a type of information is recognized as privileged does not, however, necessarily mean that it would be considered privileged in all instances. For in determining the validity of a claim of privilege, the question that must be asked is not only whether the requested information falls within one of the traditional privileges, but also whether that privilege should be honored in a given procedural setting.[71]

The leading case on executive privilege in the United States is U.S. v. Nixon, [72] decided in 1974. In issue in that case was the validity of President Nixon's claim of executive privilege against a subpoena issued by a district court requiring the production of certain tapes and documents relating to the Watergate investigations. The claim of privilege was based on the President's general interest in the confidentiality of his conversations and correspondence. The U.S. Court held that while there is no explicit reference to a privilege of confidentiality in the U.S. Constitution, it is constitutionally based to the extent that it relates to the effective discharge of a President's powers. The Court, nonetheless, rejected the President's claim of privilege, ruling that the privilege must be balanced against the public interest in the fair administration of criminal justice. Notably, the Court was careful to clarify that it was not there addressing the issue of claims of privilege in a civil litigation or against congressional demands for information.

Cases in the U.S. which involve claims of executive privilege against Congress are rare.[73] Despite frequent assertion of the privilege to deny information to Congress, beginning with President Washington's refusal to turn over treaty negotiation records to the House of Representatives, the U.S. Supreme Court has never adjudicated the issue.[74] However, the U.S. Court of Appeals for the District of Columbia Circuit, in a case decided earlier in the same year as Nixon, recognized the President's privilege over his conversations against a congressional subpoena.[75] Anticipating the balancing approach adopted by the U.S. Supreme Court in Nixon, the Court of Appeals weighed the public interest protected by the claim of privilege against the interest that would be served by disclosure to the Committee. Ruling that the balance favored the President, the Court declined to enforce the subpoena. [76]

In this jurisdiction, the doctrine of executive privilege was recognized by this Court in Almonte v. Vasquez.[77] Almonte used the term in reference to the same privilege subject of Nixon. It quoted the following portion of the Nixon decision which explains the basis for the privilege:

> "The expectation of a President to the confidentiality of his conversations and correspondences, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution x x x " (Emphasis and underscoring supplied)

Almonte involved a subpoena duces tecum issued by the Ombudsman against the therein petitioners. It did not involve, as expressly stated in the decision, the right of the people to information.[78] Nonetheless, the Court recognized that there are certain types of information which the government may withhold from the public, thus acknowledging, in substance if not in name, that executive privilege may be claimed against citizens' demands for information.

In Chavez v. PCGG,[79] the Court held that this jurisdiction recognizes the common law holding that there is a

"governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national security matters."[80] The same case held that closed-door Cabinet meetings are also a recognized limitation on the right to information.

Similarly, in Chavez v. Public Estates Authority,[81] the Court ruled that the right to information does not extend to matters recognized as "privileged information under the separation of powers,"[82] by which the Court meant Presidential conversations, correspondences, and discussions in closed-door Cabinet meetings. It also held that information on military and diplomatic secrets and those affecting national security, and information on investigations of crimes by law enforcement agencies before the prosecution of the accused were exempted from the right to information.

From the above discussion on the meaning and scope of executive privilege, both in the United States and in this jurisdiction, a clear principle emerges. Executive privilege, whether asserted against Congress, the courts, or the public, is recognized only in relation to certain types of information of a sensitive character. While executive privilege is a constitutional concept, a claim thereof may be valid or not depending on the ground invoked to justify it and the context in which it is made. Noticeably absent is any recognition that executive officials are exempt from the duty to disclose information by the mere fact of being executive officials. Indeed, the extraordinary character of the exemptions indicates that the presumption inclines heavily against executive secrecy and in favor of disclosure.

Validity of Section 1

Section 1 is similar to Section 3 in that both require the officials covered by them to secure the consent of the President prior to appearing before Congress. There are significant differences between the two provisions, however, which constrain this Court to discuss the validity of these provisions separately.

Section 1 specifically applies to department heads. It does not, unlike Section 3, require a prior determination by any official whether they are covered by E.O. 464. The President herself has, through the challenged order, made the determination that they are. Further, unlike also Section 3, the coverage of department heads under Section 1 is not made to depend on the department heads' possession of any information which might be covered by executive privilege. In fact, in marked contrast to Section 3 vis-á-vis Section 2, there is no reference to executive privilege at all. Rather, the required prior consent under Section 1 is grounded on Article VI, Section 22 of the Constitution on what has been referred to as the question hour.

> SECTION 22. The heads of departments may upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

Determining the validity of Section 1 thus requires an examination of the meaning of Section 22 of Article VI. Section 22 which provides for the question hour must be interpreted vis-á-vis Section 21 which provides for the power of either House of Congress to "conduct inquiries in aid of legislation." As the following excerpt of the deliberations of the Constitutional Commission shows, the framers were aware that these two provisions involved distinct functions of Congress.

> MR. MAAMBONG. x x x When we amended Section 20 [now Section 22 on the Question Hour] yesterday, I noticed that members of the Cabinet cannot be compelled anymore to appear before the House of

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> Representatives or before the Senate. I have a particular problem in this regard, Madam President, because in our experience in the Regular Batasang Pambansa - as the Gentleman himself has experienced in the interim Batasang Pambansa - one of the most competent inputs that we can put in our committee deliberations, either in aid of legislation or in congressional investigations, is the testimonies of Cabinet ministers. We usually invite them, but if they do not come and it is a congressional investigation, we usually issue subpoenas.
>
> I want to be clarified on a statement made by Commissioner Suarez when he said that the fact that the Cabinet ministers may refuse to come to the House of Representatives or the Senate [when requested under Section 22] does not mean that they need not come when they are invited or subpoenaed by the committee of either House when it comes to inquiries in aid of legislation or congressional investigation. According to Commissioner Suarez, that is allowed and their presence can be had under Section 21. Does the gentleman confirm this, Madam President?
>
> MR. DAVIDE. We confirm that, Madam President, because Section 20 refers only to what was originally the Question Hour, whereas, Section 21 would refer specifically to inquiries in aid of legislation, under which anybody for that matter, may be summoned and if he refuses, he can be held in contempt of the House.[83] (Emphasis and underscoring supplied)

A distinction was thus made between inquiries in aid of legislation and the question hour. While attendance was meant to be discretionary in the question hour, it was compulsory in inquiries in aid of legislation. The reference to Commissioner Suarez bears noting, he being one of the proponents of the amendment to make the appearance of department heads discretionary in the question hour.

So clearly was this distinction conveyed to the members of the Commission that the Committee on Style, precisely in recognition of this distinction, later moved the provision on question hour from its original position as Section 20 in the original draft down to Section 31, far from the provision on inquiries in aid of legislation. This gave rise to the following exchange during the deliberations:

> MR. GUINGONA. [speaking in his capacity as Chairman of the Committee on Style] We now go, Mr. Presiding Officer, to the Article on Legislative and may I request the chairperson of the Legislative Department, Commissioner Davide, to give his reaction.
>
> THE PRESIDING OFFICER (Mr. Jamir). Commissioner Davide is recognized.
>
> MR. DAVIDE. Thank you, Mr. Presiding Officer. I have only one reaction to the Question Hour. I propose that instead of putting it as Section 31, it should follow Legislative Inquiries.
>
> THE PRESIDING OFFICER. What does the committee say?
>
> MR. GUINGONA. I ask Commissioner Maambong to reply, Mr. Presiding Officer.
>
> MR. MAAMBONG. Actually, we considered that previously when we sequenced this but we reasoned that in Section 21, which is Legislative Inquiry, it is actually a power of Congress in terms of its own lawmaking; whereas, a Question Hour is not actually a power in terms of its own lawmaking power because in Legislative Inquiry, it is in aid of legislation. And so we put Question Hour as Section 31. I hope Commissioner Davide will consider this.
>
> MR. DAVIDE. The Question Hour is closely related with the legislative power, and it is precisely as a complement to or a supplement of the Legislative Inquiry. The appearance of the members of Cabinet would be very, very essential not only in the application of check and balance but also, in effect, in aid of legislation.
>
> MR. MAAMBONG. After conferring with the committee, we find merit in the suggestion of Commissioner Davide. In other words, we are accepting that and so this Section 31 would now become Section 22. Would it be, Commissioner Davide?

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MR. DAVIDE. Yes.[84] (Emphasis and underscoring supplied)

Consistent with their statements earlier in the deliberations, Commissioners Davide and Maambong proceeded from the same assumption that these provisions pertained to two different functions of the legislature. Both Commissioners understood that the power to conduct inquiries in aid of legislation is different from the power to conduct inquiries during the question hour. Commissioner Davide's only concern was that the two provisions on these distinct powers be placed closely together, they being complementary to each other. Neither Commissioner considered them as identical functions of Congress.

The foregoing opinion was not the two Commissioners' alone. From the above-quoted exchange, Commissioner Maambong's committee - the Committee on Style - shared the view that the two provisions reflected distinct functions of Congress. Commissioner Davide, on the other hand, was speaking in his capacity as Chairman of the Committee on the Legislative Department. His views may thus be presumed as representing that of his Committee.

In the context of a parliamentary system of government, the "question hour" has a definite meaning. It is a period of confrontation initiated by Parliament to hold the Prime Minister and the other ministers accountable for their acts and the operation of the government,[85] corresponding to what is known in Britain as the question period. There was a specific provision for a question hour in the 1973 Constitution[86] which made the appearance of ministers mandatory. The same perfectly conformed to the parliamentary system established by that Constitution, where the ministers are also members of the legislature and are directly accountable to it.

> An essential feature of the parliamentary system of government is the immediate accountability of the Prime Minister and the Cabinet to the National Assembly. They shall be responsible to the National Assembly for the program of government and shall determine the guidelines of national policy. Unlike in the presidential system where the tenure of office of all elected officials cannot be terminated before their term expired, the Prime Minister and the Cabinet remain in office only as long as they enjoy the confidence of the National Assembly. The moment this confidence is lost the Prime Minister and the Cabinet may be changed.[87]

The framers of the 1987 Constitution removed the mandatory nature of such appearance during the question hour in the present Constitution so as to conform more fully to a system of separation of powers.[88] To that extent, the question hour, as it is presently understood in this jurisdiction, departs from the question period of the parliamentary system. That department heads may not be required to appear in a question hour does not, however, mean that the legislature is rendered powerless to elicit information from them in all circumstances. In fact, in light of the absence of a mandatory question period, the need to enforce Congress' right to executive information in the performance of its legislative function becomes more imperative. As Schwartz observes:

> Indeed, if the separation of powers has anything to tell us on the subject under discussion, it is that the Congress has the right to obtain information from any source - even from officials of departments and agencies in the executive branch. In the United States there is, unlike the situation which prevails in a parliamentary system such as that in Britain, a clear separation between the legislative and executive branches. It is this very separation that makes the congressional right to obtain information from the executive so essential, if the functions of the Congress as the elected representatives of the people are adequately to be carried out. The absence of close rapport between the legislative and executive branches in this country, comparable to those which exist under a parliamentary system, and the nonexistence in the Congress of an institution such as the British question period have perforce made reliance by the Congress upon its right to obtain information from the executive essential, if it is intelligently to perform its legislative tasks. Unless the Congress possesses the right to obtain executive information, its power of oversight of administration in a system such as ours becomes a power devoid of most of its practical content, since it depends for its effectiveness solely upon information parceled out ex gratia by the executive.[89] (Emphasis and underscoring supplied)

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Sections 21 and 22, therefore, while closely related and complementary to each other, should not be considered as pertaining to the same power of Congress. One specifically relates to the power to conduct inquiries in aid of legislation, the aim of which is to elicit information that may be used for legislation, while the other pertains to the power to conduct a question hour, the objective of which is to obtain information in pursuit of Congress' oversight function.

When Congress merely seeks to be informed on how department heads are implementing the statutes which it has issued, its right to such information is not as imperative as that of the President to whom, as Chief Executive, such department heads must give a report of their performance as a matter of duty. In such instances, Section 22, in keeping with the separation of powers, states that Congress may only request their appearance. Nonetheless, when the inquiry in which Congress requires their appearance is "in aid of legislation" under Section 21, the appearance is mandatory for the same reasons stated in Arnault.[90]

In fine, the oversight function of Congress may be facilitated by compulsory process only to the extent that it is performed in pursuit of legislation. This is consistent with the intent discerned from the deliberations of the Constitutional Commission.

Ultimately, the power of Congress to compel the appearance of executive officials under Section 21 and the lack of it under Section 22 find their basis in the principle of separation of powers. While the executive branch is a co-equal branch of the legislature, it cannot frustrate the power of Congress to legislate by refusing to comply with its demands for information.

When Congress exercises its power of inquiry, the only way for department heads to exempt themselves therefrom is by a valid claim of privilege. They are not exempt by the mere fact that they are department heads. Only one executive official may be exempted from this power - the President on whom executive power is vested, hence, beyond the reach of Congress except through the power of impeachment. It is based on her being the highest official of the executive branch, and the due respect accorded to a co-equal branch of government which is sanctioned by a long-standing custom.

By the same token, members of the Supreme Court are also exempt from this power of inquiry. Unlike the Presidency, judicial power is vested in a collegial body; hence, each member thereof is exempt on the basis not only of separation of powers but also on the fiscal autonomy and the constitutional independence of the judiciary. This point is not in dispute, as even counsel for the Senate, Sen. Joker Arroyo, admitted it during the oral argument upon interpellation of the Chief Justice.

Having established the proper interpretation of Section 22, Article VI of the Constitution, the Court now proceeds to pass on the constitutionality of Section 1 of E.O. 464.

Section 1, in view of its specific reference to Section 22 of Article VI of the Constitution and the absence of any reference to inquiries in aid of legislation, must be construed as limited in its application to appearances of department heads in the question hour contemplated in the provision of said Section 22 of Article VI. The reading is dictated by the basic rule of construction that issuances must be interpreted, as much as possible, in a way that will render it constitutional.

The requirement then to secure presidential consent under Section 1, limited as it is only to appearances in the question hour, is valid on its face. For under Section 22, Article VI of the Constitution, the appearance of department heads in the question hour is discretionary on their part.

Section 1 cannot, however, be applied to appearances of department heads in inquiries in aid of legislation. Congress is not bound in such instances to respect the refusal of the department head to appear in such inquiry,

unless a valid claim of privilege is subsequently made, either by the President herself or by the Executive Secretary.

Validity of Sections 2 and 3

Section 3 of E.O. 464 requires all the public officials enumerated in Section 2(b) to secure the consent of the President prior to appearing before either house of Congress. The enumeration is broad. It covers all senior officials of executive departments, all officers of the AFP and the PNP, and all senior national security officials who, in the judgment of the heads of offices designated in the same section (i.e. department heads, Chief of Staff of the AFP, Chief of the PNP, and the National Security Adviser), are "covered by the executive privilege."

The enumeration also includes such other officers as may be determined by the President. Given the title of Section 2 - "Nature, Scope and Coverage of Executive Privilege" -, it is evident that under the rule of ejusdem generis, the determination by the President under this provision is intended to be based on a similar finding of coverage under executive privilege.

En passant, the Court notes that Section 2(b) of E.O. 464 virtually states that executive privilege actually covers persons. Such is a misuse of the doctrine. Executive privilege, as discussed above, is properly invoked in relation to specific categories of information and not to categories of persons.

In light, however, of Sec 2(a) of E.O. 464 which deals with the nature, scope and coverage of executive privilege, the reference to persons being "covered by the executive privilege" may be read as an abbreviated way of saying that the person is in possession of information which is, in the judgment of the head of office concerned, privileged as defined in Section 2(a). The Court shall thus proceed on the assumption that this is the intention of the challenged order.

Upon a determination by the designated head of office or by the President that an official is "covered by the executive privilege," such official is subjected to the requirement that he first secure the consent of the President prior to appearing before Congress. This requirement effectively bars the appearance of the official concerned unless the same is permitted by the President. The proviso allowing the President to give its consent means nothing more than that the President may reverse a prohibition which already exists by virtue of E.O. 464.

Thus, underlying this requirement of prior consent is the determination by a head of office, authorized by the President under E.O. 464, or by the President herself, that such official is in possession of information that is covered by executive privilege. This determination then becomes the basis for the official's not showing up in the legislative investigation.

In view thereof, whenever an official invokes E.O. 464 to justify his failure to be present, such invocation must be construed as a declaration to Congress that the President, or a head of office authorized by the President, has determined that the requested information is privileged, and that the President has not reversed such determination. Such declaration, however, even without mentioning the term "executive privilege," amounts to an implied claim that the information is being withheld by the executive branch, by authority of the President, on the basis of executive privilege. Verily, there is an implied claim of privilege.

The letter dated September 28, 2005 of respondent Executive Secretary Ermita to Senate President Drilon illustrates the implied nature of the claim of privilege authorized by E.O. 464. It reads:

> In connection with the inquiry to be conducted by the Committee of the Whole regarding the Northrail Project of the North Luzon Railways Corporation on 29 September 2005 at 10:00 a.m., please be informed that officials of the Executive Department invited to appear at the meeting will not be able to attend the same without the consent of the President, pursuant to Executive Order No. 464 (s. 2005), entitled "Ensuring

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> Observance Of The Principle Of Separation Of Powers, Adherence To The Rule On Executive Privilege And Respect For The Rights Of Public Officials Appearing In Legislative Inquiries In Aid Of Legislation Under The Constitution, And For Other Purposes". Said officials have not secured the required consent from the President. (Underscoring supplied)

The letter does not explicitly invoke executive privilege or that the matter on which these officials are being requested to be resource persons falls under the recognized grounds of the privilege to justify their absence. Nor does it expressly state that in view of the lack of consent from the President under E.O. 464, they cannot attend the hearing.

Significant premises in this letter, however, are left unstated, deliberately or not. The letter assumes that the invited officials are covered by E.O. 464. As explained earlier, however, to be covered by the order means that a determination has been made, by the designated head of office or the President, that the invited official possesses information that is covered by executive privilege. Thus, although it is not stated in the letter that such determination has been made, the same must be deemed implied. Respecting the statement that the invited officials have not secured the consent of the President, it only means that the President has not reversed the standing prohibition against their appearance before Congress.

Inevitably, Executive Secretary Ermita's letter leads to the conclusion that the executive branch, either through the President or the heads of offices authorized under E.O. 464, has made a determination that the information required by the Senate is privileged, and that, at the time of writing, there has been no contrary pronouncement from the President. In fine, an implied claim of privilege has been made by the executive.

While there is no Philippine case that directly addresses the issue of whether executive privilege may be invoked against Congress, it is gathered from Chavez v. PEA that certain information in the possession of the executive may validly be claimed as privileged even against Congress. Thus, the case holds:

> There is no claim by PEA that the information demanded by petitioner is privileged information rooted in the separation of powers. The information does not cover Presidential conversations, correspondences, or discussions during closed-door Cabinet meetings which, like internal-deliberations of the Supreme Court and other collegiate courts, or executive sessions of either house of Congress, are recognized as confidential. This kind of information cannot be pried open by a co-equal branch of government. A frank exchange of exploratory ideas and assessments, free from the glare of publicity and pressure by interested parties, is essential to protect the independence of decision-making of those tasked to exercise Presidential, Legislative and Judicial power. This is not the situation in the instant case.[91] (Emphasis and underscoring supplied)

Section 3 of E.O. 464, therefore, cannot be dismissed outright as invalid by the mere fact that it sanctions claims of executive privilege. This Court must look further and assess the claim of privilege authorized by the Order to determine whether it is valid.

While the validity of claims of privilege must be assessed on a case to case basis, examining the ground invoked therefor and the particular circumstances surrounding it, there is, in an implied claim of privilege, a defect that renders it invalid per se. By its very nature, and as demonstrated by the letter of respondent Executive Secretary quoted above, the implied claim authorized by Section 3 of E.O. 464 is not accompanied by any specific allegation of the basis thereof (e.g., whether the information demanded involves military or diplomatic secrets, closed-door Cabinet meetings, etc.). While Section 2(a) enumerates the types of information that are covered by the privilege under the challenged order, Congress is left to speculate as to which among them is being referred to by the executive. The enumeration is not even intended to be comprehensive, but a mere statement of what is included in the phrase "confidential or classified information between the President and the public officers covered by this executive order."

Certainly, Congress has the right to know why the executive considers the requested information privileged. It does not suffice to merely declare that the President, or an authorized head of office, has determined that it is so, and that the President has not overturned that determination. Such declaration leaves Congress in the dark on how the requested information could be classified as privileged. That the message is couched in terms that, on first impression, do not seem like a claim of privilege only makes it more pernicious. It threatens to make Congress doubly blind to the question of why the executive branch is not providing it with the information that it has requested.

A claim of privilege, being a claim of exemption from an obligation to disclose information, must, therefore, be clearly asserted. As U.S. v. Reynolds teaches:

> The privilege belongs to the government and must be asserted by it; it can neither be claimed nor waived by a private party. It is not to be lightly invoked. There must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer. The court itself must determine whether the circumstances are appropriate for the claim of privilege, and yet do so without forcing a disclosure of the very thing the privilege is designed to protect.[92] (Underscoring supplied)

Absent then a statement of the specific basis of a claim of executive privilege, there is no way of determining whether it falls under one of the traditional privileges, or whether, given the circumstances in which it is made, it should be respected.[93] These, in substance, were the same criteria in assessing the claim of privilege asserted against the Ombudsman in Almonte v. Vasquez[94] and, more in point, against a committee of the Senate in Senate Select Committee on Presidential Campaign Activities v. Nixon.[95]

A.O. Smith v. Federal Trade Commission is enlightening:

> [T]he lack of specificity renders an assessment of the potential harm resulting from disclosure impossible, thereby preventing the Court from balancing such harm against plaintiffs' needs to determine whether to override any claims of privilege.[96] (Underscoring supplied)

And so is U.S. v. Article of Drug:[97]

> On the present state of the record, this Court is not called upon to perform this balancing operation. In stating its objection to claimant's interrogatories, government asserts, and nothing more, that the disclosures sought by claimant would inhibit the free expression of opinion that non-disclosure is designed to protect. The government has not shown - nor even alleged - that those who evaluated claimant's product were involved in internal policymaking, generally, or in this particular instance. Privilege cannot be set up by an unsupported claim. The facts upon which the privilege is based must be established. To find these interrogatories objectionable, this Court would have to assume that the evaluation and classification of claimant's products was a matter of internal policy formulation, an assumption in which this Court is unwilling to indulge sua sponte.[98] (Emphasis and underscoring supplied)

Mobil Oil Corp. v. Department of Energy[99] similarly emphasizes that "an agency must provide "precise and certain" reasons for preserving the confidentiality of requested information."

Black v. Sheraton Corp. of America[100] amplifies, thus:

> A formal and proper claim of executive privilege requires a specific designation and description of the documents within its scope as well as precise and certain reasons for preserving their confidentiality. Without this specificity, it is impossible for a court to analyze the claim short of disclosure of the very thing sought to be protected. As the affidavit now stands, the Court has little more than its sua sponte speculation with which to weigh the applicability of the claim. An improperly asserted claim of privilege is no claim of privilege. Therefore, despite the fact that a claim was made by the proper executive as Reynolds requires, the Court can

> not recognize the claim in the instant case because it is legally insufficient to allow the Court to make a just and reasonable determination as to its applicability. To recognize such a broad claim in which the Defendant has given no precise or compelling reasons to shield these documents from outside scrutiny, would make a farce of the whole procedure.[101] (Emphasis and underscoring supplied)

Due respect for a co-equal branch of government, moreover, demands no less than a claim of privilege clearly stating the grounds therefor. Apropos is the following ruling in McPhaul v. U.S:[102]

> We think the Court's decision in United States v. Bryan, 339 U.S. 323, 70 S. Ct. 724, is highly relevant to these questions. For it is as true here as it was there, that "if (petitioner) had legitimate reasons for failing to produce the records of the association, a decent respect for the House of Representatives, by whose authority the subpoenas issued, would have required that (he) state (his) reasons for noncompliance upon the return of the writ. Such a statement would have given the Subcommittee an opportunity to avoid the blocking of its inquiry by taking other appropriate steps to obtain the records. "To deny the Committee the opportunity to consider the objection or remedy is in itself a contempt of its authority and an obstruction of its processes. His failure to make any such statement was "a patent evasion of the duty of one summoned to produce papers before a congressional committee[, and] cannot be condoned." (Emphasis and underscoring supplied; citations omitted)

Upon the other hand, Congress must not require the executive to state the reasons for the claim with such particularity as to compel disclosure of the information which the privilege is meant to protect.[103] A useful analogy in determining the requisite degree of particularity would be the privilege against self-incrimination. Thus, Hoffman v. U.S.[104] declares:

> The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself - his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified, and to require him to answer if "it clearly appears to the court that he is mistaken." However, if the witness, upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." x x x (Emphasis and underscoring supplied)

The claim of privilege under Section 3 of E.O. 464 in relation to Section 2(b) is thus invalid per se. It is not asserted. It is merely implied. Instead of providing precise and certain reasons for the claim, it merely invokes E.O. 464, coupled with an announcement that the President has not given her consent. It is woefully insufficient for Congress to determine whether the withholding of information is justified under the circumstances of each case. It severely frustrates the power of inquiry of Congress.

In fine, Section 3 and Section 2(b) of E.O. 464 must be invalidated.

No infirmity, however, can be imputed to Section 2(a) as it merely provides guidelines, binding only on the heads of office mentioned in Section 2(b), on what is covered by executive privilege. It does not purport to be conclusive on the other branches of government. It may thus be construed as a mere expression of opinion by the President regarding the nature and scope of executive privilege.

Petitioners, however, assert as another ground for invalidating the challenged order the alleged unlawful delegation of authority to the heads of offices in Section 2(b). Petitioner Senate of the Philippines, in particular, cites the case of the United States where, so it claims, only the President can assert executive privilege to withhold information from Congress.

Section 2(b) in relation to Section 3 virtually provides that, once the head of office determines that a certain

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information is privileged, such determination is presumed to bear the President's authority and has the effect of prohibiting the official from appearing before Congress, subject only to the express pronouncement of the President that it is allowing the appearance of such official. These provisions thus allow the President to authorize claims of privilege by mere silence.

Such presumptive authorization, however, is contrary to the exceptional nature of the privilege. Executive privilege, as already discussed, is recognized with respect to information the confidential nature of which is crucial to the fulfillment of the unique role and responsibilities of the executive branch,[105] or in those instances where exemption from disclosure is necessary to the discharge of highly important executive responsibilities.[106] The doctrine of executive privilege is thus premised on the fact that certain informations must, as a matter of necessity, be kept confidential in pursuit of the public interest. The privilege being, by definition, an exemption from the obligation to disclose information, in this case to Congress, the necessity must be of such high degree as to outweigh the public interest in enforcing that obligation in a particular case.

In light of this highly exceptional nature of the privilege, the Court finds it essential to limit to the President the power to invoke the privilege. She may of course authorize the Executive Secretary to invoke the privilege on her behalf, in which case the Executive Secretary must state that the authority is "By order of the President," which means that he personally consulted with her. The privilege being an extraordinary power, it must be wielded only by the highest official in the executive hierarchy. In other words, the President may not authorize her subordinates to exercise such power. There is even less reason to uphold such authorization in the instant case where the authorization is not explicit but by mere silence. Section 3, in relation to Section 2(b), is further invalid on this score.

It follows, therefore, that when an official is being summoned by Congress on a matter which, in his own judgment, might be covered by executive privilege, he must be afforded reasonable time to inform the President or the Executive Secretary of the possible need for invoking the privilege. This is necessary in order to provide the President or the Executive Secretary with fair opportunity to consider whether the matter indeed calls for a claim of executive privilege. If, after the lapse of that reasonable time, neither the President nor the Executive Secretary invokes the privilege, Congress is no longer bound to respect the failure of the official to appear before Congress and may then opt to avail of the necessary legal means to compel his appearance.

The Court notes that one of the expressed purposes for requiring officials to secure the consent of the President under Section 3 of E.O. 464 is to ensure "respect for the rights of public officials appearing in inquiries in aid of legislation." That such rights must indeed be respected by Congress is an echo from Article VI Section 21 of the Constitution mandating that "[t]he rights of persons appearing in or affected by such inquiries shall be respected."

In light of the above discussion of Section 3, it is clear that it is essentially an authorization for implied claims of executive privilege, for which reason it must be invalidated. That such authorization is partly motivated by the need to ensure respect for such officials does not change the infirm nature of the authorization itself.

Right to Information

E.O 464 is concerned only with the demands of Congress for the appearance of executive officials in the hearings conducted by it, and not with the demands of citizens for information pursuant to their right to information on matters of public concern. Petitioners are not amiss in claiming, however, that what is involved in the present controversy is not merely the legislative power of inquiry, but the right of the people to information.

There are, it bears noting, clear distinctions between the right of Congress to information which underlies the power of inquiry and the right of the people to information on matters of public concern. For one, the demand of a

citizen for the production of documents pursuant to his right to information does not have the same obligatory force as a subpoena duces tecum issued by Congress. Neither does the right to information grant a citizen the power to exact testimony from government officials. These powers belong only to Congress and not to an individual citizen.

Thus, while Congress is composed of representatives elected by the people, it does not follow, except in a highly qualified sense, that in every exercise of its power of inquiry, the people are exercising their right to information.

To the extent that investigations in aid of legislation are generally conducted in public, however, any executive issuance tending to unduly limit disclosures of information in such investigations necessarily deprives the people of information which, being presumed to be in aid of legislation, is presumed to be a matter of public concern. The citizens are thereby denied access to information which they can use in formulating their own opinions on the matter before Congress - opinions which they can then communicate to their representatives and other government officials through the various legal means allowed by their freedom of expression. Thus holds Valmonte v. Belmonte:

> It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people's will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently. Only when the participants in the discussion are aware of the issues and have access to information relating thereto can such bear fruit.[107] (Emphasis and underscoring supplied)

The impairment of the right of the people to information as a consequence of E.O. 464 is, therefore, in the sense explained above, just as direct as its violation of the legislature's power of inquiry.

Implementation of E.O. 464 prior to its publication

While E.O. 464 applies only to officials of the executive branch, it does not follow that the same is exempt from the need for publication. On the need for publishing even those statutes that do not directly apply to people in general, Tañada v. Tuvera states:

> The term "laws" should refer to all laws and not only to those of general application, for strictly speaking all laws relate to the people in general albeit there are some that do not apply to them directly. An example is a law granting citizenship to a particular individual, like a relative of President Marcos who was decreed instant naturalization. It surely cannot be said that such a law does not affect the public although it unquestionably does not apply directly to all the people. The subject of such law is a matter of public interest which any member of the body politic may question in the political forums or, if he is a proper party, even in courts of justice.[108] (Emphasis and underscoring supplied)

Although the above statement was made in reference to statutes, logic dictates that the challenged order must be covered by the publication requirement. As explained above, E.O. 464 has a direct effect on the right of the people to information on matters of public concern. It is, therefore, a matter of public interest which members of the body politic may question before this Court. Due process thus requires that the people should have been apprised of this issuance before it was implemented.

Conclusion

Congress undoubtedly has a right to information from the executive branch whenever it is sought in aid of legislation. If the executive branch withholds such information on the ground that it is privileged, it must so assert it and state the reason therefor and why it must be respected.

The infirm provisions of E.O. 464, however, allow the executive branch to evade congressional requests for

information without need of clearly asserting a right to do so and/or proffering its reasons therefor. By the mere expedient of invoking said provisions, the power of Congress to conduct inquiries in aid of legislation is frustrated. That is impermissible. For

> [w]hat republican theory did accomplish-was to reverse the old presumption in favor of secrecy, based on the divine right of kings and nobles, and replace it with a presumption in favor of publicity, based on the doctrine of popular sovereignty. (Underscoring supplied)[109]

Resort to any means then by which officials of the executive branch could refuse to divulge information cannot be presumed valid. Otherwise, we shall not have merely nullified the power of our legislature to inquire into the operations of government, but we shall have given up something of much greater value - our right as a people to take part in government.

WHEREFORE, the petitions are PARTLY GRANTED. Sections 2(b) and 3 of Executive Order No. 464 (series of 2005), "ENSURING OBSERVANCE OF THE PRINCIPLE OF SEPARATION OF POWERS, ADHERENCE TO THE RULE ON EXECUTIVE PRIVILEGE AND RESPECT FOR THE RIGHTS OF PUBLIC OFFICIALS APPEARING IN LEGISLATIVE INQUIRIES IN AID OF LEGISLATION UNDER THE CONSTITUTION, AND FOR OTHER PURPOSES," ARE DECLARED VOID. SECTIONS 1 AND 2(A) ARE, HOWEVER, VALID.

SO ORDERED.

Panganiban, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.Puno, J., on leave.

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* Henceforth, in consolidated petitions which assail the validity or constitutionality of an issuance of a government official or agency, the petitioner which is the most directly affected by the issuance shall be first in the order of enumeration of the titles of the petitions irrespective of their docket numbers or dates of filing.

[*]On Leave[1] HAMILTON, THE FEDERALIST No. 70. 70.

[2] Annexes "J-2" to "J-7," rollo (G.R. No. 169777), pp. 72-77.

[3] Annex "G," id. at 58.

[4] Annex "B," id. at 52.

[5] Annex "C," id. at 53.

[6] Annex "D," id. at 54-55.

[7] Annex "A," id. at 48-51.

[8] Annex "F," id. at 57.

[9] Annex "H," id. at 59.

[10] Rollo (G.R. No. 169777), p. 379.

[11] Ibid.

[12] The petitioner names the following organizations as members: Albert Schweitzer Association, Philippines, Inc. (ASAP), Alternative Law Research and Development Center, Inc. (ALTERLAW), Ateneo Human Rights

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Center (AHRC), Balay Alternative Legal Advocates for Development in Mindanaw, Inc (BALAOD Mindanaw), Children's Legal Bureau (CLB), Inc., Environment Legal Assistance Center (ELAC), Free Rehabilitation, Economic, Education and Legal Assistance Volunteers Association, Inc. (FREELAVA), Kaisahan Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan (KAISAHAN), Legal Rights and Natural Resources Center-Kasama sa Kalikasan/Friends of the Earth-Philippines, Inc. (LRC-LSK/FOEI-Phils.), Paglilingkod Batas Pangkapatiran Foundation (PBPF), Participatory Research Organization of Communities and Education Towards Struggle for Self-Reliance (PROCESS) Foundation-PANAY, Inc., Pilipina Legal Resources Center (PLRC), Sentro ng Alternatibong Lingap Panligal (SALIGAN), Tanggapang Panligal ng Katutubong Pilipino (PANLIPI), Tanggol Kalikasan (TK), Women's Legal Bureau (WLB), and Women's Legal Education, Advocacy and Defense Foundation, Inc. (WomenLEAD).

[13] Rollo (G.R. No. 169667), p. 22.

[14] Annex "H," id. at 460-461.

[15] Annex "H-1," id. at 462.

[16] Rollo (G.R. No. 169777), pp. 383-384.

[17] Annex "K," rollo (G.R. No. 169777), p. 466.

[18] Annex "J," id. at 465.

[19] Annex "M," id. at 468.

[20] Annex "N," id. at 469.

[21] Annex "O," id. at 470.

[22] Court En Banc Resolution dated February 21, 2006, rollo (G.R. No. 169659), pp. 370-372.

[23] Rollo (G.R. No. 169660), pp. 339-370.

[24] Rollo (G.R. No. 169777), pp. 373-439.

[25] Rollo (G.R. No. 169667), pp. 388-426.

[26] Rollo (G.R. No. 169834), pp. 211-240.

[27] Rollo (G.R. No. 169659), pp. 419-421.

[28] id. at 469-471.

[29] Court En Banc Resolution dated March 21, 2006, rollo (G.R. No. 169659), pp. 570-572.

[30] Sec. 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

[31] Sec. 22. The heads of departments may upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be

conducted in executive session.

[32] Sec. 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

[33] Sec. 1. Public office is a public trust. 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.

[34] Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

[35] Sec. 4. No law shall be passed abridging the 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.

[36] Sec. 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

[37] Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

[38] Rollo (G.R. No. 169777), pp. 524-569.

[39] Francisco v. House of Representatives, G.R. No. 160261, November 10, 2003, 415 SCRA 44, 133.

[40] Citing Lujan v. Defenders of Wildlife, 504 US 555, 119 L. Ed.2d 351 (1992), rollo (G.R. No. 169777), p. 116.

[41] Citing Lim v. Hon. Exec. Sec., 430 Phil. 555 (2002), rollo (G.R. No. 169777), p. 116.

[42] G.R. No. 67752, April 10, 1989, 171 SCRA 657.

[43] G.R. No. 78716, September 22, 1987 (res).

[44] Rollo (G.R. No. 169777), p. 117.

[45] Id. at 279.

[46] Ibid.

[47] Pimentel Jr., v. Executive Secretary, G.R. No. 158088, July 6, 2005, 462 SCRA 623, 631-632.

[48] Section 2 of The Party-List System Act (Republic Act 7941) reads:

SEC. 2. Declaration of Policy. - The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible

representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.

[49] Chavez v. PCGG, G.R. No. 130716, December 9, 1998, 299 SCRA 744 , 761 (1998).

[50] IBP Board of Governors Resolution No. XVII-2005-18, rollo (G.R. No 171246), p. 28.

[51] Rollo (G.R. No. 169667), p. 3.

[52] Rollo (G.R. No. 169660), p. 5.

[53] Supra note 39 at 136.

[54] Francisco, Jr. v. House of Representatives, supra note 39 at 139.

[55] Lozada v. Commission on Elections, 205 Phil. 283, 287 (1983).

[56] Rollo (G.R. No. 169659), p. 79.

[57] Rollo (G.R. No. 169659), pp. 80-81.

[58] 87 Phil. 29 (1950).

[59] Supra at 45, citing McGrain v. Daugherty 273 US 135, 47 S. Ct. 319, 71 L.Ed. 580, 50 A.L.R. 1 (1927).

[60] Id. at 46.

[61] G.R. 89914, Nov. 20, 1991, 203 SCRA 767.

[62] "WHEREAS, pursuant to the rule on executive privilege, the President and those who assist her must be free to explore the alternatives in the process of shaping policies and making decisions since this is fundamental to the operation of the government and is rooted in the separation of powers under the Constitution;

x x x x

"WHEREAS, recent events, particularly with respect to the invitation of a member of the Cabinet by the Senate as well as various heads of offices, civilian and military, have highlighted the need to ensure the observance of the principle of separation of powers, adherence to the rule on executive privilege and respect for the rights of persons appearing in such inquiries in aid of legislation and due regard to constitutional mandate; x x x"

[63] II Record, Constitutional Commission 150-151 (July 23, 1986).

[64] B. SCHWARTZ, EXECUTIVE PRIVILEGE AND CONGRESSIONAL INVESTIGATORY POWER 47 Cal. L. Rev. 3.

[65] M. Rozell, Executive Privilege and the Modern Presidents: In Nixon's Shadow (83 Minn. L. Rev. 1069).

[66] P. SHANE & H. BRUFF, SEPARATION OF POWERS: LAW CASES AND MATERIALS 292 (1996)..

[67] Id. at 293.

[68] I L.TRIBE, AMERICAN CONSTITUTIONAL LAW 770-1 (3[rd] ed., 2000).

[69] 121 F.3d 729, 326 U.S. App. D.C. 276.

[70] Black's Law Dictionary 569-570 (6[th] ed., 1991) citing 5 U.S.C.A. Sec. 552(b)(1); Black v. Sheraton Corp. of America, D.C.D.C., 371 F.Supp. 97, 100.

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[71] I L.Tribe, supra note 68 at 771.

[72] 418 U.S. 683 (1974)

[73] In re Sealed Case 121 F.3d 729, 326 U.S.App.D.C. 276 (1997) states: "It appears that the courts have been drawn into executive-congressional privilege disputes over access to information on only three recent occasions. These were: Unites States v. AT&T, 551 F.2d 384 (D.C. Cir.1976), appeal after remand, 567 F.2d 121 (D.C.Cir.1977); Senate Select Committee on Presidential Campaign Activities v. Nixon (Senate Committee), 498 F.2d 725 (D.C. Cir. 1974); United States v. House of Representatives, 556 F. Supp. 150 (D.D.C. 1983)"; Vide R. Iraola, Congressional Oversight, Executive Privilege, and Requests for Information Relating to Federal Criminal Investigations and Prosecutions (87 Iowa L. Rev. 1559): "The Supreme Court has yet to rule on a dispute over information requested by Congress where executive privilege has been asserted; in the past twenty-five years, there have been only three reported cases dealing with this issue."

[74] J. Chaper & R. Fallon, Jr., Constitutional Law: Cases Comments Questions 197 (9th ed., 2001).

[75] Senate Select Committee on Presidential Campaign Activities v. Nixon 498 F.2d 725, 162 U.S.App.D.C.183 (May 23, 1974).

[76 N. Redlich & B. Schwartz, Constitutional Law 333 (3rd ed. ,1996) states in Note 24: "Now that the Supreme Court decision has specifically recognized a "privilege of confidentiality of Presidential communications," the Select Committee decision appears even stronger. If the need of the Watergate Committee for evidence was not enough before the Supreme Court recognized executive privilege, the same would surely have been true after the recognition. And, if the demand of the Watergate Committee, engaged in a specific investigation of such importance, was not enough to outweigh the nondisclosure claim, it is hard to see what Congressional demand will fare better when met by an assertion of privilege."

[77] 314 Phil. 150 (1995).

[78] Comm. Almonte v. Hon. Vasquez, 314 Phil. 150, 166 (1995) states: "To put this case in perspective it should be stated at the outset that it does not concern a demand by a citizen for information under the freedom of information guarantee of the Constitution."

[79] 360 Phil. 133 (1998).

[80] Chavez v. PCGG, 360 Phil. 133, 160 (1998).

[81] 433 Phil. 506 (2002).

[82] Chavez v. Public Estates Authority, 433 Phil. 506, 534 (2002).

[83] II RECORD, CONSTITUTIONAL COMMISSION 199 (July 24, 1986).

[84] II RECORD, CONSTITUTIONAL COMMISSION 900-1 (October 12, 1986).

[85] H. MENDOZA & A. LIM, THE NEW CONSTITUTION 177 (1974).

[86] CONSTITUTION (1973), Art. VIII, Sec. 12(1).

[87] R. MARTIN, THE NEW CONSTITUTION OF THE PHILIPPINES 394 (1973).

[88] II RECORD, CONSTITUTIONAL COMMISSION 133 (July 23, 1986).

[89] SCHWARTZ, supra at 11-12.

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[90] Supra.

[91] Supra note 82 at 189.

[92] 345 U.S. 1 , 73 S. Ct. 528, 97 L.Ed. 727, 32 A.L.R.2d 382 (1953).

[93] Vide TRIBE, supra note 68.

[94] Supra note 78.

[95] Supra note 75.

[96] 403 F.Supp. 1000, 20 Fed,R.Serv.2d 1382 (1975).

[97] 43 F.R.D. 181 (1967).

[98] Ibid., citation omitted.

[99] 520 F.Supp.414, 32 Fed.R.Serv.2d 913 (1981).

[100] 371 F.Supp.97, 18 Fed.R.Serv.2d 563 (1974).

[101] Ibid., citations omitted.

[102] 364 U.S. 372, 81 S.Ct. 138, 5 L.Ed.2d 136 (1960).

[103] U.S. v. Reynolds, supra note 85.

[104] 341 U.S. 479, 71 S.Ct. 814, 95 L.Ed. 1118 (1951).

[105] In re Sealed Case, supra note 69.

[106] BLACK'S LAW DICTIONARY, supra note 70 at 569.

[107] G.R. No. 74930, February 13, 1989, 170 SCRA 256.

[108] G.R. No. L-63915, December 29, 1986, 146 SCRA 446, 453.

[109] HOFFMAN, GOVERNMENTAL SECRECY AND THE FOUNDING FATHERS: A STUDY IN CONSTITUTIONAL CONTROLS (1981) 13.

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