

GRECO ANTONIOUS BEDA B. BELGICA, JOSE M. VILLEGAS, JR., JOSE L. GONZALEZ, REUBEN M. ABANTE, AND QUINTIN PAREDES SAN DIEGO, PETITIONERS, VS. HONORABLE EXECUTIVE SECRETARY PAQUITO...

G.R. No. 208566. November 19, 2013

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

"Experience is the oracle of truth." [1]

- James Madison

Before the Court are consolidated petitions [2] taken under Rule 65 of the Rules of Court, all of which assail the constitutionality of the Pork Barrel System. Due to the complexity of the subject matter, the Court shall heretofore discuss the system's conceptual underpinnings before detailing the particulars of the constitutional challenge.

The Facts

I. Pork Barrel: General Concept.

"Pork Barrel" is political parlance of American-English origin. [3] Historically, its usage may be traced to the degrading ritual of rolling out a barrel stuffed with pork to a multitude of black slaves who would cast their famished bodies into the porcine feast to assuage their hunger with morsels coming from the generosity of their well-fed master. [4] This practice was later compared to the actions of American legislators in trying to direct federal budgets in favor of their districts. [5] While the advent of refrigeration has made the actual pork barrel obsolete, it persists in reference to political bills that "bring home the bacon" to a legislator's district and constituents. [6] In a more technical sense, "Pork Barrel" refers to an appropriation of government spending meant for localized projects and secured solely or primarily to bring money to a representative's district. [7] Some scholars on the subject further use it to refer to legislative control of local appropriations. [8]

In the Philippines, "Pork Barrel" has been commonly referred to as lump-sum, discretionary funds of Members of the Legislature, [9] although, as will be later discussed, its usage would evolve in reference to certain funds of the Executive.

II. History of Congressional Pork Barrel in the Philippines.

A. Pre-Martial Law Era (1922-1972).

Act 3044, [10] or the Public Works Act of 1922, is considered [11] as the earliest form of "Congressional Pork Barrel" in the Philippines since the utilization of the funds appropriated therein were subjected to post-enactment legislator approval. Particularly, in the area of fund release, Section 3 [12] provides that the sums appropriated for certain public works projects [13] "shall be distributed x x x subject to the approval of a joint committee elected by

the Senate and the House of Representatives.” “[T]he committee from each House may [also] authorize one of its members to approve the distribution made by the Secretary of Commerce and Communications.”[14] Also, in the area of fund realignment, the same section provides that the said secretary, "with the approval of said joint committee, or of the authorized members thereof, may, for the purposes of said distribution, transfer unexpended portions of any item of appropriation under this Act to any other item hereunder.”

In 1950, it has been documented[15] that post-enactment legislator participation broadened from the areas of fund release and realignment to the area of project identification. During that year, the mechanics of the public works act was modified to the extent that the discretion of choosing projects was transferred from the Secretary of Commerce and Communications to legislators. "For the first time, the law carried a list of projects selected by Members of Congress, they 'being the representatives of the people, either on their own account or by consultation with local officials or civil leaders.“[16] During this period, the pork barrel process commenced with local government councils, civil groups, and individuals appealing to Congressmen or Senators for projects. Petitions that were accommodated formed part of a legislator’s allocation, and the amount each legislator would eventually get is determined in a caucus convened by the majority. The amount was then integrated into the administration bill prepared by the Department of Public Works and Communications. Thereafter, the Senate and the House of Representatives added their own provisions to the bill until it was signed into law by the President – the Public Works Act.[17] In the 1960’s, however, pork barrel legislation reportedly ceased in view of the stalemate between the House of Representatives and the Senate.[18]

B. Martial Law Era (1972-1986).

While the previous "Congressional Pork Barrel” was apparently discontinued in 1972 after Martial Law was declared, an era when "one man controlled the legislature,”[19] the reprieve was only temporary. By 1982, the Batasang Pambansa had already introduced a new item in the General Appropriations Act (GAA) called the "Support for Local Development Projects” (SLDP) under the article on "National Aid to Local Government Units”. Based on reports,[20] it was under the SLDP that the practice of giving lump-sum allocations to individual legislators began, with each assemblyman receiving P500,000.00. Thereafter, assemblymen would communicate their project preferences to the Ministry of Budget and Management for approval. Then, the said ministry would release the allocation papers to the Ministry of Local Governments, which would, in turn, issue the checks to the city or municipal treasurers in the assemblyman’s locality. It has been further reported that "Congressional Pork Barrel” projects under the SLDP also began to cover not only public works projects, or so-called "hard projects”, but also "soft projects”,[21] or non-public works projects such as those which would fall under the categories of, among others, education, health and livelihood.[22]

C. Post-Martial Law Era:

Corazon Cojuangco Aquino Administration (1986-1992).

After the EDSA People Power Revolution in 1986 and the restoration of Philippine democracy, "Congressional Pork Barrel” was revived in the form of the "Mindanao Development Fund” and the "Visayas Development Fund” which were created with lump-sum appropriations of P480 Million and P240 Million, respectively, for the funding of development projects in the Mindanao and Visayas areas in 1989. It has been documented[23] that the clamor raised by the Senators and the Luzon legislators for a similar funding, prompted the creation of the "Countrywide Development Fund” (CDF) which was integrated into the 1990 GAA[24] with an initial funding of P2.3 Billion to cover "small local infrastructure and other priority community projects.”

Under the GAAs for the years 1991 and 1992,[25] CDF funds were, with the approval of the President, to be released directly to the implementing agencies but "subject to the submission of the required list of projects and

activities.” Although the GAAs from 1990 to 1992 were silent as to the amounts of allocations of the individual legislators, as well as their participation in the identification of projects, it has been reported[26] that by 1992, Representatives were receiving P12.5 Million each in CDF funds, while Senators were receiving P18 Million each, without any limitation or qualification, and that they could identify any kind of project, from hard or infrastructure projects such as roads, bridges, and buildings to “soft projects” such as textbooks, medicines, and scholarships.[27]

D. Fidel Valdez Ramos (Ramos) Administration (1992-1998).

The following year, or in 1993,[28] the GAA explicitly stated that the release of CDF funds was to be made upon the submission of the list of projects and activities identified by, among others, individual legislators. For the first time, the 1993 CDF Article included an allocation for the Vice-President.[29] As such, Representatives were allocated P12.5 Million each in CDF funds, Senators, P18 Million each, and the Vice- President, P20 Million.

In 1994,[30] 1995,[31] and 1996,[32] the GAAs contained the same provisions on project identification and fund release as found in the 1993 CDF Article. In addition, however, the Department of Budget and Management (DBM) was directed to submit reports to the Senate Committee on Finance and the House Committee on Appropriations on the releases made from the funds.[33]

Under the 1997[34] CDF Article, Members of Congress and the Vice- President, in consultation with the implementing agency concerned, were directed to submit to the DBM the list of 50% of projects to be funded from their respective CDF allocations which shall be duly endorsed by (a) the Senate President and the Chairman of the Committee on Finance, in the case of the Senate, and (b) the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations, in the case of the House of Representatives; while the list for the remaining 50% was to be submitted within six (6) months thereafter. The same article also stated that the project list, which would be published by the DBM,[35] “shall be the basis for the release of funds” and that “[n]o funds appropriated herein shall be disbursed for projects not included in the list herein required.”

The following year, or in 1998,[36] the foregoing provisions regarding the required lists and endorsements were reproduced, except that the publication of the project list was no longer required as the list itself sufficed for the release of CDF Funds.

The CDF was not, however, the lone form of “Congressional Pork Barrel” at that time. Other forms of “Congressional Pork Barrel” were reportedly fashioned and inserted into the GAA (called “Congressional Insertions” or “CIs”) in order to perpetuate the administration’s political agenda.[37] It has been articulated that since CIs “formed part and parcel of the budgets of executive departments, they were not easily identifiable and were thus harder to monitor.” Nonetheless, the lawmakers themselves as well as the finance and budget officials of the implementing agencies, as well as the DBM, purportedly knew about the insertions.[38] Examples of these CIs are the Department of Education (DepEd) School Building Fund, the Congressional Initiative Allocations, the Public Works Fund, the El Niño Fund, and the Poverty Alleviation Fund.[39] The allocations for the School Building Fund, particularly, “shall be made upon prior consultation with the representative of the legislative district concerned.”[40] Similarly, the legislators had the power to direct how, where and when these appropriations were to be spent.[41]

E. Joseph Ejercito Estrada (Estrada) Administration (1998-2001).

In 1999,[42] the CDF was removed in the GAA and replaced by three (3) separate forms of CIs, namely, the “Food Security Program Fund,”[43] the “Lingap Para Sa Mahihirap Program Fund,”[44] and the “Rural/Urban Development Infrastructure Program Fund,”[45] all of which contained a special provision requiring “prior

consultation” with the Members of Congress for the release of the funds.

It was in the year 2000[46] that the "Priority Development Assistance Fund" (PDAF) appeared in the GAA. The requirement of "prior consultation with the respective Representative of the District" before PDAF funds were directly released to the implementing agency concerned was explicitly stated in the 2000 PDAF Article. Moreover, realignment of funds to any expense category was expressly allowed, with the sole condition that no amount shall be used to fund personal services and other personnel benefits.[47] The succeeding PDAF provisions remained the same in view of the re-enactment[48] of the 2000 GAA for the year 2001.

F. Gloria Macapagal-Arroyo (Arroyo) Administration (2001-2010).

The 2002[49] PDAF Article was brief and straightforward as it merely contained a single special provision ordering the release of the funds directly to the implementing agency or local government unit concerned, without further qualifications. The following year, 2003,[50] the same single provision was present, with simply an expansion of purpose and express authority to realign. Nevertheless, the provisions in the 2003 budgets of the Department of Public Works and Highways[51] (DPWH) and the DepEd[52] required prior consultation with Members of Congress on the aspects of implementation delegation and project list submission, respectively. In 2004, the 2003 GAA was re-enacted.[53]

In 2005, [54] the PDAF Article provided that the PDAF shall be used "to fund priority programs and projects under the ten point agenda of the national government and shall be released directly to the implementing agencies." It also introduced the program menu concept,[55] which is essentially a list of general programs and implementing agencies from which a particular PDAF project may be subsequently chosen by the identifying authority. The 2005 GAA was re-enacted[56] in 2006 and hence, operated on the same bases. In similar regard, the program menu concept was consistently integrated into the 2007,[57] 2008,[58] 2009,[59] and 2010[60] GAAs.

Textually, the PDAF Articles from 2002 to 2010 were silent with respect to the specific amounts allocated for the individual legislators, as well as their participation in the proposal and identification of PDAF projects to be funded. In contrast to the PDAF Articles, however, the provisions under the DepEd School Building Program and the DPWH budget, similar to its predecessors, explicitly required prior consultation with the concerned Member of Congress[61] anent certain aspects of project implementation.

Significantly, it was during this era that provisions which allowed formal participation of non-governmental organizations (NGO) in the implementation of government projects were introduced. In the Supplemental Budget for 2006, with respect to the appropriation for school buildings, NGOs were, by law, encouraged to participate. For such purpose, the law stated that "the amount of at least P250 Million of the P500 Million allotted for the construction and completion of school buildings shall be made available to NGOs including the Federation of Filipino-Chinese Chambers of Commerce and Industry, Inc. for its "Operation Barrio School" program[,] with capability and proven track records in the construction of public school buildings x x x."[62] The same allocation was made available to NGOs in the 2007 and 2009 GAAs under the DepEd Budget.[63] Also, it was in 2007 that the Government Procurement Policy Board[64] (GPPB) issued Resolution No. 12-2007 dated June 29, 2007 (GPPB Resolution 12-2007), amending the implementing rules and regulations[65] of RA 9184,[66] the Government Procurement Reform Act, to include, as a form of negotiated procurement,[67] the procedure whereby the Procuring Entity[68] (the implementing agency) may enter into a memorandum of agreement with an NGO, provided that "an appropriation law or ordinance earmarks an amount to be specifically contracted out to NGOs." [69]

G. Present Administration (2010-Present).

Differing from previous PDAF Articles but similar to the CDF Articles, the 2011[70] PDAF Article included an express statement on lump- sum amounts allocated for individual legislators and the Vice-President: Representatives were given P70 Million each, broken down into P40 Million for "hard projects" and P30 Million for "soft projects"; while P200 Million was given to each Senator as well as the Vice-President, with a P100 Million allocation each for "hard" and "soft projects." Likewise, a provision on realignment of funds was included, but with the qualification that it may be allowed only once. The same provision also allowed the Secretaries of Education, Health, Social Welfare and Development, Interior and Local Government, Environment and Natural Resources, Energy, and Public Works and Highways to realign PDAF Funds, with the further conditions that: (a) realignment is within the same implementing unit and same project category as the original project, for infrastructure projects; (b) allotment released has not yet been obligated for the original scope of work, and (c) the request for realignment is with the concurrence of the legislator concerned.[71]

In the 2012[72] and 2013[73] PDAF Articles, it is stated that the "[i]dentification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency [(priority list requirement)] x x x." However, as practiced, it would still be the individual legislator who would choose and identify the project from the said priority list.[74]

Provisions on legislator allocations[75] as well as fund realignment[76] were included in the 2012 and 2013 PDAF Articles; but the allocation for the Vice-President, which was pegged at P200 Million in the 2011 GAA, had been deleted. In addition, the 2013 PDAF Article now allowed LGUs to be identified as implementing agencies if they have the technical capability to implement the projects.[77] Legislators were also allowed to identify programs/projects, except for assistance to indigent patients and scholarships, outside of his legislative district provided that he secures the written concurrence of the legislator of the intended outside-district, endorsed by the Speaker of the House.[78] Finally, any realignment of PDAF funds, modification and revision of project identification, as well as requests for release of funds, were all required to be favorably endorsed by the House Committee on Appropriations and the Senate Committee on Finance, as the case may be.[79]

III. History of Presidential Pork Barrel in the Philippines.

While the term "Pork Barrel" has been typically associated with lump- sum, discretionary funds of Members of Congress, the present cases and the recent controversies on the matter have, however, shown that the term's usage has expanded to include certain funds of the President such as the Malampaya Funds and the Presidential Social Fund.

On the one hand, the Malampaya Funds was created as a special fund under Section 8[80] of Presidential Decree No. (PD) 910,[81] issued by then President Ferdinand E. Marcos (Marcos) on March 22, 1976. In enacting the said law, Marcos recognized the need to set up a special fund to help intensify, strengthen, and consolidate government efforts relating to the exploration, exploitation, and development of indigenous energy resources vital to economic growth.[82] Due to the energy-related activities of the government in the Malampaya natural gas field in Palawan, or the "Malampaya Deep Water Gas-to-Power Project", [83] the special fund created under PD 910 has been currently labeled as Malampaya Funds.

On the other hand the Presidential Social Fund was created under Section 12, Title IV[84] of PD 1869,[85] or the Charter of the Philippine Amusement and Gaming Corporation (PAGCOR). PD 1869 was similarly issued by Marcos on July 11, 1983. More than two (2) years after, he amended PD 1869 and accordingly issued PD 1993 on October 31, 1985,[86] amending Section 1287 of the former law. As it stands, the Presidential Social Fund has been described as a special funding facility managed and administered by the Presidential Management Staff through which the President provides direct assistance to priority programs and projects not funded under the

regular budget. It is sourced from the share of the government in the aggregate gross earnings of PAGCOR.⁸⁸

IV. Controversies in the Philippines.

Over the decades, "pork" funds in the Philippines have increased tremendously,^[89] owing in no small part to previous Presidents who reportedly used the "Pork Barrel" in order to gain congressional support.^[90] It was in 1996 when the first controversy surrounding the "Pork Barrel" erupted. Former Marikina City Representative Romeo Candazo (Candazo), then an anonymous source, "blew the lid on the huge sums of government money that regularly went into the pockets of legislators in the form of kickbacks."^[91] He said that "the kickbacks were 'SOP' (standard operating procedure) among legislators and ranged from a low 19 percent to a high 52 percent of the cost of each project, which could be anything from dredging, rip rapping, asphaltting, concreting, and construction of school buildings."^[92] "Other sources of kickbacks that Candazo identified were public funds intended for medicines and textbooks. A few days later, the tale of the money trail became the banner story of the [Philippine Daily] Inquirer issue of [August] 13, 1996, accompanied by an illustration of a roasted pig."^[93] "The publication of the stories, including those about congressional initiative allocations of certain lawmakers, including P3.6 [B]illion for a [C]ongressman, sparked public outrage."^[94]

Thereafter, or in 2004, several concerned citizens sought the nullification of the PDAF as enacted in the 2004 GAA for being unconstitutional. Unfortunately, for lack of "any pertinent evidentiary support that illegal misuse of PDAF in the form of kickbacks has become a common exercise of unscrupulous Members of Congress," the petition was dismissed.^[95]

Recently, or in July of the present year, the National Bureau of Investigation (NBI) began its probe into allegations that "the government has been defrauded of some P10 Billion over the past 10 years by a syndicate using funds from the pork barrel of lawmakers and various government agencies for scores of ghost projects."^[96] The investigation was spawned by sworn affidavits of six (6) whistle-blowers who declared that JLN Corporation – "JLN" standing for Janet Lim Napoles (Napoles) – had swindled billions of pesos from the public coffers for "ghost projects" using no fewer than 20 dummy NGOs for an entire decade. While the NGOs were supposedly the ultimate recipients of PDAF funds, the whistle-blowers declared that the money was diverted into Napoles' private accounts.^[97] Thus, after its investigation on the Napoles controversy, criminal complaints were filed before the Office of the Ombudsman, charging five (5) lawmakers for Plunder, and three (3) other lawmakers for Malversation, Direct Bribery, and Violation of the Anti-Graft and Corrupt Practices Act. Also recommended to be charged in the complaints are some of the lawmakers' chiefs-of-staff or representatives, the heads and other officials of three (3) implementing agencies, and the several presidents of the NGOs set up by Napoles.^[98]

On August 16, 2013, the Commission on Audit (CoA) released the results of a three-year audit investigation^[99] covering the use of legislators' PDAF from 2007 to 2009, or during the last three (3) years of the Arroyo administration. The purpose of the audit was to determine the propriety of releases of funds under PDAF and the Various Infrastructures including Local Projects (VILP)^[100] by the DBM, the application of these funds and the implementation of projects by the appropriate implementing agencies and several government-owned-and-controlled corporations (GOCCs).^[101] The total releases covered by the audit amounted to P8.374 Billion in PDAF and P32.664 Billion in VILP, representing 58% and 32%, respectively, of the total PDAF and VILP releases that were found to have been made nationwide during the audit period.^[102] Accordingly, the CoA's findings contained in its Report No. 2012-03 (CoA Report), entitled "Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)," were made public, the highlights of which are as follows:^[103]

- Amounts released for projects identified by a considerable number of legislators significantly exceeded their respective allocations.

- Amounts were released for projects outside of legislative districts of sponsoring members of the Lower House.
- Total VILP releases for the period exceeded the total amount appropriated under the 2007 to 2009 GAAs.
- Infrastructure projects were constructed on private lots without these having been turned over to the government.
- Significant amounts were released to [implementing agencies] without the latter's endorsement and without considering their mandated functions, administrative and technical capabilities to implement projects.
- Implementation of most livelihood projects was not undertaken by the [implementing agencies] themselves but by [NGOs] endorsed by the proponent legislators to which the Funds were transferred. - The funds were transferred to the NGOs in spite of the absence of any appropriation law or ordinance.
- Selection of the NGOs were not compliant with law and regulations.
- Eighty-Two (82) NGOs entrusted with implementation of seven hundred seventy two (772) projects amount to [P]6.156 Billion were either found questionable, or submitted questionable/spurious documents, or failed to liquidate in whole or in part their utilization of the Funds.
- Procurement by the NGOs, as well as some implementing agencies, of goods and services reportedly used in the projects were not compliant with law.

As for the "Presidential Pork Barrel", whistle-blowers alleged that "[a]t least P900 Million from royalties in the operation of the Malampaya gas project off Palawan province intended for agrarian reform beneficiaries has gone into a dummy [NGO]."[104] According to incumbent CoA Chairperson Maria Gracia Pulido Tan (CoA Chairperson), the CoA is, as of this writing, in the process of preparing "one consolidated report" on the Malampaya Funds.[105]

V. The Procedural Antecedents.

Spurred in large part by the findings contained in the CoA Report and the Napoles controversy, several petitions were lodged before the Court similarly seeking that the "Pork Barrel System" be declared unconstitutional. To recount, the relevant procedural antecedents in these cases are as follows:

On August 28, 2013, petitioner Samson S. Alcantara (Alcantara), President of the Social Justice Society, filed a Petition for Prohibition of even date under Rule 65 of the Rules of Court (Alcantara Petition), seeking that the "Pork Barrel System" be declared unconstitutional, and a writ of prohibition be issued permanently restraining respondents Franklin M. Drilon and Feliciano S. Belmonte, Jr., in their respective capacities as the incumbent Senate President and Speaker of the House of Representatives, from further taking any steps to enact legislation appropriating funds for the "Pork Barrel System," in whatever form and by whatever name it may be called, and from approving further releases pursuant thereto.[106] The Alcantara Petition was docketed as G.R. No. 208493.

On September 3, 2013, petitioners Greco Antonious Beda B. Belgica, Jose L. Gonzalez, Reuben M. Abante, Quintin Paredes San Diego (Belgica, et al.), and Jose M. Villegas, Jr. (Villegas) filed an Urgent Petition For Certiorari and Prohibition With Prayer For The Immediate Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction dated August 27, 2013 under Rule 65 of the Rules of Court (Belgica Petition), seeking that the annual "Pork Barrel System," presently embodied in the provisions of the GAA of 2013 which provided for the 2013 PDAF, and the Executive's lump-sum, discretionary funds, such as the Malampaya Funds and the Presidential Social Fund,[107] be declared unconstitutional and null and void for being acts constituting grave abuse of discretion. Also, they pray that the Court issue a TRO against respondents Paquito N.

Ochoa, Jr., Florencio B. Abad (Secretary Abad) and Rosalia V. De Leon, in their respective capacities as the incumbent Executive Secretary, Secretary of the Department of Budget and Management (DBM), and National Treasurer, or their agents, for them to immediately cease any expenditure under the aforesaid funds. Further, they pray that the Court order the foregoing respondents to release to the CoA and to the public: (a) "the complete schedule/list of legislators who have availed of their PDAF and VILP from the years 2003 to 2013, specifying the use of the funds, the project or activity and the recipient entities or individuals, and all pertinent data thereto"; and (b) "the use of the Executive's [lump-sum, discretionary] funds, including the proceeds from the x x x Malampaya Fund[s] [and] remittances from the [PAGCOR] x x x from 2003 to 2013, specifying the x x x project or activity and the recipient entities or individuals, and all pertinent data thereto." [108] Also, they pray for the "inclusion in budgetary deliberations with the Congress of all presently off-budget, [lump-sum], discretionary funds including, but not limited to, proceeds from the Malampaya Fund[s] [and] remittances from the [PAGCOR]." [109] The Belgica Petition was docketed as G.R. No. 208566. [110]

Lastly, on September 5, 2013, petitioner Pedrito M. Nepomuceno (Nepomuceno), filed a Petition dated August 23, 2012 (Nepomuceno Petition), seeking that the PDAF be declared unconstitutional, and a cease and desist order be issued restraining President Benigno Simeon S. Aquino III (President Aquino) and Secretary Abad from releasing such funds to Members of Congress and, instead, allow their release to fund priority projects identified and approved by the Local Development Councils in consultation with the executive departments, such as the DPWH, the Department of Tourism, the Department of Health, the Department of Transportation, and Communication and the National Economic Development Authority. [111] The Nepomuceno Petition was docketed as UDK-14951. [112]

On September 10, 2013, the Court issued a Resolution of even date (a) consolidating all cases; (b) requiring public respondents to comment on the consolidated petitions; (c) issuing a TRO (September 10, 2013 TRO) enjoining the DBM, National Treasurer, the Executive Secretary, or any of the persons acting under their authority from releasing (1) the remaining PDAF allocated to Members of Congress under the GAA of 2013, and (2) Malampaya Funds under the phrase "for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of PD 910 but not for the purpose of "financ[ing] energy resource development and exploitation programs and projects of the government" under the same provision; and (d) setting the consolidated cases for Oral Arguments on October 8, 2013.

On September 23, 2013, the Office of the Solicitor General (OSG) filed a Consolidated Comment (Comment) of even date before the Court, seeking the lifting, or in the alternative, the partial lifting with respect to educational and medical assistance purposes, of the Court's September 10, 2013 TRO, and that the consolidated petitions be dismissed for lack of merit. [113]

On September 24, 2013, the Court issued a Resolution of even date directing petitioners to reply to the Comment.

Petitioners, with the exception of Nepomuceno, filed their respective replies to the Comment: (a) on September 30, 2013, Villegas filed a separate Reply dated September 27, 2013 (Villegas Reply); (b) on October 1, 2013, Belgica, et al. filed a Reply dated September 30, 2013 (Belgica Reply); and (c) on October 2, 2013, Alcantara filed a Reply dated October 1, 2013.

On October 1, 2013, the Court issued an Advisory providing for the guidelines to be observed by the parties for the Oral Arguments scheduled on October 8, 2013. In view of the technicality of the issues material to the present cases, incumbent Solicitor General Francis H. Jardeleza (Solicitor General) was directed to bring with him during the Oral Arguments representative/s from the DBM and Congress who would be able to competently and completely answer questions related to, among others, the budgeting process and its implementation. Further, the

CoA Chairperson was appointed as amicus curiae and thereby requested to appear before the Court during the Oral Arguments.

On October 8 and 10, 2013, the Oral Arguments were conducted. Thereafter, the Court directed the parties to submit their respective memoranda within a period of seven (7) days, or until October 17, 2013, which the parties subsequently did.

The Issues Before the Court

Based on the pleadings, and as refined during the Oral Arguments, the following are the main issues for the Court's resolution:

I. Procedural Issues.

Whether or not (a) the issues raised in the consolidated petitions involve an actual and justiciable controversy; (b) the issues raised in the consolidated petitions are matters of policy not subject to judicial review; (c) petitioners have legal standing to sue; and (d) the Court's Decision dated August 19, 1994 in G.R. Nos. 113105, 113174, 113766, and 113888, entitled "Philippine Constitution Association v. Enriquez"[114] (Philconsa) and Decision dated April 24, 2012 in G.R. No. 164987, entitled "Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management"[115] (LAMP) bar the re-litigation of the issue of constitutionality of the "Pork Barrel System" under the principles of res judicata and stare decisis.

II. Substantive Issues on the "Congressional Pork Barrel."

Whether or not the 2013 PDAF Article and all other Congressional Pork Barrel Laws similar thereto are unconstitutional considering that they violate the principles of/constitutional provisions on (a) separation of powers; (b) non-delegability of legislative power; (c) checks and balances; (d) accountability; (e) political dynasties; and (f) local autonomy.

III. Substantive Issues on the "Presidential Pork Barrel."

Whether or not the phrases (a) "and for such other purposes as may be hereafter directed by the President" under Section 8 of PD 910,[116] relating to the Malampaya Funds, and (b) "to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines" under Section 12 of PD 1869, as amended by PD 1993, relating to the Presidential Social Fund, are unconstitutional insofar as they constitute undue delegations of legislative power.

These main issues shall be resolved in the order that they have been stated. In addition, the Court shall also tackle certain ancillary issues as prompted by the present cases.

The Court's Ruling

The petitions are partly granted.

I. Procedural Issues.

The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry,[117] namely: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very lis mota of the case.[118] Of these requisites, case law states that the first two are the most important[119] and, therefore, shall be discussed forthwith.

A. Existence of an Actual Case or Controversy.

By constitutional fiat, judicial power operates only when there is an actual case or controversy.[120] This is embodied in Section 1, Article VIII of the 1987 Constitution which pertinently states that "[j]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable x x x." Jurisprudence provides that an actual case or controversy is one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute." [121] In other words, "[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence." [122] Related to the requirement of an actual case or controversy is the requirement of "ripeness," meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. "A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action." [123] "Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions." [124]

Based on these principles, the Court finds that there exists an actual and justiciable controversy in these cases.

The requirement of contrariety of legal rights is clearly satisfied by the antagonistic positions of the parties on the constitutionality of the "Pork Barrel System." Also, the questions in these consolidated cases are ripe for adjudication since the challenged funds and the provisions allowing for their utilization – such as the 2013 GAA for the PDAF, PD 910 for the Malampaya Funds and PD 1869, as amended by PD 1993, for the Presidential Social Fund – are currently existing and operational; hence, there exists an immediate or threatened injury to petitioners as a result of the unconstitutional use of these public funds.

As for the PDAF, the Court must dispel the notion that the issues related thereto had been rendered moot and academic by the reforms undertaken by respondents. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits.[125] Differing from this description, the Court observes that respondents' proposed line-item budgeting scheme would not terminate the controversy nor diminish the useful purpose for its resolution since said reform is geared towards the 2014 budget, and not the 2013 PDAF Article which, being a distinct subject matter, remains legally effective and existing. Neither will the President's declaration that he had already "abolished the PDAF" render the issues on PDAF moot precisely because the Executive branch of government has no constitutional authority to nullify or annul its legal existence. By constitutional design, the annulment or nullification of a law may be done either by Congress, through the passage of a repealing law, or by the Court, through a declaration of unconstitutionality. Instructive on this point is the following exchange between Associate Justice Antonio T. Carpio (Justice Carpio) and the Solicitor General during the Oral Arguments:[126]

Justice Carpio: [T]he President has taken an oath to faithfully execute the law,[127] correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Carpio: And so the President cannot refuse to implement the General Appropriations Act, correct?

Solicitor General Jardeleza: Well, that is our answer, Your Honor. In the case, for example of the PDAF, the President has a duty to execute the laws but in the face of the outrage over PDAF, the President was saying, "I am not sure that I will continue the release of the soft projects," and that started, Your Honor. Now, whether or not that ... (interrupted)

Justice Carpio: Yeah. I will grant the President if there are anomalies in the project, he has the power to stop the releases in the meantime, to investigate, and that is Section [38] of Chapter 5 of Book 6 of the Revised Administrative Code[128] x x x. So at most the President can suspend, now if the President believes that the PDAF is unconstitutional, can he just refuse to implement it?

Solicitor General Jardeleza: No, Your Honor, as we were trying to say in the specific case of the PDAF because of the CoA Report, because of the reported irregularities and this Court can take judicial notice, even outside, outside of the COA Report, you have the report of the whistle-blowers, the President was just exercising precisely the duty

x x x x

Justice Carpio: Yes, and that is correct. You've seen the CoA Report, there are anomalies, you stop and investigate, and prosecute, he has done that. But, does that mean that PDAF has been repealed?

Solicitor General Jardeleza: No, Your Honor x x x.

x x x x

Justice Carpio: So that PDAF can be legally abolished only in two (2) cases. Congress passes a law to repeal it, or this Court declares it unconstitutional, correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Carpio: The President has no power to legally abolish PDAF. (Emphases supplied)

Even on the assumption of mootness, jurisprudence, nevertheless, dictates that "the 'moot and academic' principle is not a magical formula that can automatically dissuade the Court in resolving a case." The Court will decide cases, otherwise moot, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.[129]

The applicability of the first exception is clear from the fundamental posture of petitioners – they essentially allege grave violations of the Constitution with respect to, inter alia, the principles of separation of powers, non-delegability of legislative power, checks and balances, accountability and local autonomy.

The applicability of the second exception is also apparent from the nature of the interests involved – the constitutionality of the very system within which significant amounts of public funds have been and continue to be utilized and expended undoubtedly presents a situation of exceptional character as well as a matter of paramount public interest. The present petitions, in fact, have been lodged at a time when the system's flaws have never before been magnified. To the Court's mind, the coalescence of the CoA Report, the accounts of numerous whistle-blowers, and the government's own recognition that reforms are needed "to address the reported abuses of the PDAF"[130] demonstrates a prima facie pattern of abuse which only underscores the importance of the matter. It is also by this finding that the Court finds petitioners' claims as not merely theorized, speculative or hypothetical. Of note is the weight accorded by the Court to the findings made by the CoA which is the constitutionally-mandated audit arm of the government. In *Delos Santos v. CoA*,[131] a recent case wherein the Court upheld the CoA's disallowance of irregularly disbursed PDAF funds, it was emphasized that:

[T]he CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and

balance system inherent in our form of government.

[I]t is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x. (Emphases supplied)

Thus, if only for the purpose of validating the existence of an actual and justiciable controversy in these cases, the Court deems the findings under the CoA Report to be sufficient.

The Court also finds the third exception to be applicable largely due to the practical need for a definitive ruling on the system's constitutionality. As disclosed during the Oral Arguments, the CoA Chairperson estimates that thousands of notices of disallowances will be issued by her office in connection with the findings made in the CoA Report. In this relation, Associate Justice Marvic Mario Victor F. Leonen (Justice Leonen) pointed out that all of these would eventually find their way to the courts.[132] Accordingly, there is a compelling need to formulate controlling principles relative to the issues raised herein in order to guide the bench, the bar, and the public, not just for the expeditious resolution of the anticipated disallowance cases, but more importantly, so that the government may be guided on how public funds should be utilized in accordance with constitutional principles.

Finally, the application of the fourth exception is called for by the recognition that the preparation and passage of the national budget is, by constitutional imprimatur, an affair of annual occurrence.[133] The relevance of the issues before the Court does not cease with the passage of a "PDAF- free budget for 2014." [134] The evolution of the "Pork Barrel System," by its multifarious iterations throughout the course of history, lends a semblance of truth to petitioners' claim that "the same dog will just resurface wearing a different collar." [135] In *Sanlakas v. Executive Secretary*, [136] the government had already backtracked on a previous course of action yet the Court used the "capable of repetition but evading review" exception in order "[t]o prevent similar questions from re-emerging." [137] The situation similarly holds true to these cases. Indeed, the myriad of issues underlying the manner in which certain public funds are spent, if not resolved at this most opportune time, are capable of repetition and hence, must not evade judicial review.

B. Matters of Policy: the Political Question Doctrine.

The "limitation on the power of judicial review to actual cases and controversies" carries the assurance that "the courts will not intrude into areas committed to the other branches of government." [138] Essentially, the foregoing limitation is a restatement of the political question doctrine which, under the classic formulation of *Baker v. Carr*, [139] applies when there is found, among others, "a textually demonstrable constitutional commitment of the issue to a coordinate political department," "a lack of judicially discoverable and manageable standards for resolving it" or "the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion." Cast against this light, respondents submit that the "[t]he political branches are in the best position not only to perform budget-related reforms but also to do them in response to the specific demands of their constituents" and, as such, "urge [the Court] not to impose a solution at this stage." [140]

The Court must deny respondents' submission.

Suffice it to state that the issues raised before the Court do not present political but legal questions which are within its province to resolve. A political question refers to "those questions which, under the Constitution, are to

be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.”[141] The intrinsic constitutionality of the “Pork Barrel System” is not an issue dependent upon the wisdom of the political branches of government but rather a legal one which the Constitution itself has commanded the Court to act upon. Scrutinizing the contours of the system along constitutional lines is a task that the political branches of government are incapable of rendering precisely because it is an exercise of judicial power. More importantly, the present Constitution has not only vested the Judiciary the right to exercise judicial power but essentially makes it a duty to proceed therewith. Section 1, Article VIII of the 1987 Constitution cannot be any clearer: “The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. [It] includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.” In *Estrada v. Desierto*,[142] the expanded concept of judicial power under the 1987 Constitution and its effect on the political question doctrine was explained as follows:[143]

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

It must also be borne in mind that “when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; does not in reality nullify or invalidate an act of the legislature [or the executive], but only asserts the solemn and sacred obligation assigned to it by the Constitution.”[144] To a great extent, the Court is laudably cognizant of the reforms undertaken by its co-equal branches of government. But it is by constitutional force that the Court must faithfully perform its duty. Ultimately, it is the Court’s avowed intention that a resolution of these cases would not arrest or in any manner impede the endeavors of the two other branches but, in fact, help ensure that the pillars of change are erected on firm constitutional grounds. After all, it is in the best interest of the people that each great branch of government, within its own sphere, contributes its share towards achieving a holistic and genuine solution to the problems of society. For all these reasons, the Court cannot heed respondents’ plea for judicial restraint.

C. Locus Standi.

“The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. Unless a person is injuriously affected in any of his constitutional rights by the operation of statute or ordinance, he has no standing.”[145]

Petitioners have come before the Court in their respective capacities as citizen-taxpayers and accordingly, assert that they “dutifully contribute to the coffers of the National Treasury.”[146] Clearly, as taxpayers, they possess the requisite standing to question the validity of the existing “Pork Barrel System” under which the taxes they pay have been and continue to be utilized. It is undeniable that petitioners, as taxpayers, are bound to suffer from the unconstitutional usage of public funds, if the Court so rules. Invariably, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper

purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law,[147] as in these cases.

Moreover, as citizens, petitioners have equally fulfilled the standing requirement given that the issues they have raised may be classified as matters "of transcendental importance, of overreaching significance to society, or of paramount public interest." [148] The CoA Chairperson's statement during the Oral Arguments that the present controversy involves "not [merely] a systems failure" but a "complete breakdown of controls" [149] amplifies, in addition to the matters above-discussed, the seriousness of the issues involved herein. Indeed, of greater import than the damage caused by the illegal expenditure of public funds is the mortal wound inflicted upon the fundamental law by the enforcement of an invalid statute. [150] All told, petitioners have sufficient locus standi to file the instant cases.

D. Res Judicata and Stare Decisis.

Res judicata (which means a "matter adjudged") and stare decisis non quia et movere ([or simply, stare decisis] which means "follow past precedents and do not disturb what has been settled") are general procedural law principles which both deal with the effects of previous but factually similar dispositions to subsequent cases. For the cases at bar, the Court examines the applicability of these principles in relation to its prior rulings in *Philconsa* and *LAMP*.

The focal point of res judicata is the judgment. The principle states that a judgment on the merits in a previous case rendered by a court of competent jurisdiction would bind a subsequent case if, between the first and second actions, there exists an identity of parties, of subject matter, and of causes of action. [151] This required identity is not, however, attendant hereto since *Philconsa* and *LAMP*, respectively involved constitutional challenges against the 1994 CDF Article and 2004 PDAF Article, whereas the cases at bar call for a broader constitutional scrutiny of the entire "Pork Barrel System." Also, the ruling in *LAMP* is essentially a dismissal based on a procedural technicality – and, thus, hardly a judgment on the merits – in that petitioners therein failed to present any "convincing proof x x x showing that, indeed, there were direct releases of funds to the Members of Congress, who actually spend them according to their sole discretion" or "pertinent evidentiary support [to demonstrate the] illegal misuse of PDAF in the form of kickbacks [and] has become a common exercise of unscrupulous Members of Congress." As such, the Court upheld, in view of the presumption of constitutionality accorded to every law, the 2004 PDAF Article, and saw "no need to review or reverse the standing pronouncements in the said case." Hence, for the foregoing reasons, the res judicata principle, insofar as the *Philconsa* and *LAMP* cases are concerned, cannot apply.

On the other hand, the focal point of stare decisis is the doctrine created. The principle, entrenched under Article 8 [152] of the Civil Code, evokes the general rule that, for the sake of certainty, a conclusion reached in one case should be doctrinally applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to re-litigate the same issue. [153]

Philconsa was the first case where a constitutional challenge against a Pork Barrel provision, i.e., the 1994 CDF Article, was resolved by the Court. To properly understand its context, petitioners' posturing was that "the power given to the [M]embers of Congress to propose and identify projects and activities to be funded by the [CDF] is an encroachment by the legislature on executive power, since said power in an appropriation act is in implementation of the law" and that "the proposal and identification of the projects do not involve the making of

laws or the repeal and amendment thereof, the only function given to the Congress by the Constitution.”[154] In deference to the foregoing submissions, the Court reached the following main conclusions: one, under the Constitution, the power of appropriation, or the “power of the purse,” belongs to Congress; two, the power of appropriation carries with it the power to specify the project or activity to be funded under the appropriation law and it can be detailed and as broad as Congress wants it to be; and, three, the proposals and identifications made by Members of Congress are merely recommendatory. At once, it is apparent that the Philconsa resolution was a limited response to a separation of powers problem, specifically on the propriety of conferring post-enactment identification authority to Members of Congress. On the contrary, the present cases call for a more holistic examination of (a) the inter-relation between the CDF and PDAF Articles with each other, formative as they are of the entire “Pork Barrel System” as well as (b) the intra-relation of post-enactment measures contained within a particular CDF or PDAF Article, including not only those related to the area of project identification but also to the areas of fund release and realignment. The complexity of the issues and the broader legal analyses herein warranted may be, therefore, considered as a powerful countervailing reason against a wholesale application of the stare decisis principle.

In addition, the Court observes that the Philconsa ruling was actually riddled with inherent constitutional inconsistencies which similarly countervail against a full resort to stare decisis. As may be deduced from the main conclusions of the case, Philconsa’s fundamental premise in allowing Members of Congress to propose and identify of projects would be that the said identification authority is but an aspect of the power of appropriation which has been constitutionally lodged in Congress. From this premise, the contradictions may be easily seen. If the authority to identify projects is an aspect of appropriation and the power of appropriation is a form of legislative power thereby lodged in Congress, then it follows that: (a) it is Congress which should exercise such authority, and not its individual Members; (b) such authority must be exercised within the prescribed procedure of law passage and, hence, should not be exercised after the GAA has already been passed; and (c) such authority, as embodied in the GAA, has the force of law and, hence, cannot be merely recommendatory. Justice Vitug’s Concurring Opinion in the same case sums up the Philconsa quandary in this wise: “Neither would it be objectionable for Congress, by law, to appropriate funds for such specific projects as it may be minded; to give that authority, however, to the individual members of Congress in whatever guise, I am afraid, would be constitutionally impermissible.” As the Court now largely benefits from hindsight and current findings on the matter, among others, the CoA Report, the Court must partially abandon its previous ruling in Philconsa insofar as it validated the post-enactment identification authority of Members of Congress on the guise that the same was merely recommendatory. This postulate raises serious constitutional inconsistencies which cannot be simply excused on the ground that such mechanism is “imaginative as it is innovative.” Moreover, it must be pointed out that the recent case of *Abakada Guro Party List v. Purisima*[155] (*Abakada*) has effectively overturned Philconsa’s allowance of post-enactment legislator participation in view of the separation of powers principle. These constitutional inconsistencies and the *Abakada* rule will be discussed in greater detail in the ensuing section of this Decision.

As for LAMP, suffice it to restate that the said case was dismissed on a procedural technicality and, hence, has not set any controlling doctrine susceptible of current application to the substantive issues in these cases. In fine, stare decisis would not apply.

II. Substantive Issues.

A. Definition of Terms.

Before the Court proceeds to resolve the substantive issues of these cases, it must first define the terms “Pork Barrel System,” “Congressional Pork Barrel,” and “Presidential Pork Barrel” as they are essential to the ensuing

discourse.

Petitioners define the term "Pork Barrel System" as the "collusion between the Legislative and Executive branches of government to accumulate lump-sum public funds in their offices with unchecked discretionary powers to determine its distribution as political largesse."^[156] They assert that the following elements make up the Pork Barrel System: (a) lump-sum funds are allocated through the appropriations process to an individual officer; (b) the officer is given sole and broad discretion in determining how the funds will be used or expended; (c) the guidelines on how to spend or use the funds in the appropriation are either vague, overbroad or inexistent; and (d) projects funded are intended to benefit a definite constituency in a particular part of the country and to help the political careers of the disbursing official by yielding rich patronage benefits.^[157] They further state that the Pork Barrel System is comprised of two (2) kinds of discretionary public funds: first, the Congressional (or Legislative) Pork Barrel, currently known as the PDAF;^[158] and, second, the Presidential (or Executive) Pork Barrel, specifically, the Malampaya Funds under PD 910 and the Presidential Social Fund under PD 1869, as amended by PD 1993.^[159]

Considering petitioners' submission and in reference to its local concept and legal history, the Court defines the Pork Barrel System as the collective body of rules and practices that govern the manner by which lump-sum, discretionary funds, primarily intended for local projects, are utilized through the respective participations of the Legislative and Executive branches of government, including its members. The Pork Barrel System involves two (2) kinds of lump-sum discretionary funds:

First, there is the Congressional Pork Barrel which is herein defined as a kind of lump-sum, discretionary fund wherein legislators, either individually or collectively organized into committees, are able to effectively control certain aspects of the fund's utilization through various post-enactment measures and/or practices. In particular, petitioners consider the PDAF, as it appears under the 2013 GAA, as Congressional Pork Barrel since it is, *inter alia*, a post-enactment measure that allows individual legislators to wield a collective power;^[160] and

Second, there is the Presidential Pork Barrel which is herein defined as a kind of lump-sum, discretionary fund which allows the President to determine the manner of its utilization. For reasons earlier stated,^[161] the Court shall delimit the use of such term to refer only to the Malampaya Funds and the Presidential Social Fund.

With these definitions in mind, the Court shall now proceed to discuss the substantive issues of these cases.

B. Substantive Issues on the Congressional Pork Barrel.

1. Separation of Powers.
 - a. Statement of Principle.

The principle of separation of powers refers to the constitutional demarcation of the three fundamental powers of government. In the celebrated words of Justice Laurel in *Angara v. Electoral Commission*, ^[162] it means that the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government."^[163] To the legislative branch of government, through Congress,^[164] belongs the power to make laws; to the executive branch of government, through the President,^[165] belongs the power to enforce laws; and to the judicial branch of government, through the Court,^[166] belongs the power to interpret laws. Because the three great powers have been, by constitutional design, ordained in this respect, "[e]ach department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere."^[167] Thus, "the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law."^[168] The principle of separation of powers and its concepts of autonomy and independence stem from the notion that the powers of government must be divided to avoid concentration of these

powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry.[169] To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates. Lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others.[170]

Broadly speaking, there is a violation of the separation of powers principle when one branch of government unduly encroaches on the domain of another. US Supreme Court decisions instruct that the principle of separation of powers may be violated in two (2) ways: firstly, "[o]ne branch may interfere impermissibly with the other's performance of its constitutionally assigned function";[171] and "[a]lternatively, the doctrine may be violated when one branch assumes a function that more properly is entrusted to another." [172] In other words, there is a violation of the principle when there is impermissible (a) interference with and/or (b) assumption of another department's functions.

The enforcement of the national budget, as primarily contained in the GAA, is indisputably a function both constitutionally assigned and properly entrusted to the Executive branch of government. In *Guingona, Jr. v. Hon. Carague*[173] (*Guingona, Jr.*), the Court explained that the phase of budget execution "covers the various operational aspects of budgeting" and accordingly includes "the evaluation of work and financial plans for individual activities," the "regulation and release of funds" as well as all "other related activities" that comprise the budget execution cycle.[174] This is rooted in the principle that the allocation of power in the three principal branches of government is a grant of all powers inherent in them.[175] Thus, unless the Constitution provides otherwise, the Executive department should exclusively exercise all roles and prerogatives which go into the implementation of the national budget as provided under the GAA as well as any other appropriation law.

In view of the foregoing, the Legislative branch of government, much more any of its members, should not cross over the field of implementing the national budget since, as earlier stated, the same is properly the domain of the Executive. Again, in *Guingona, Jr.*, the Court stated that "Congress enters the picture [when it] deliberates or acts on the budget proposals of the President. Thereafter, Congress, "in the exercise of its own judgment and wisdom, formulates an appropriation act precisely following the process established by the Constitution, which specifies that no money may be paid from the Treasury except in accordance with an appropriation made by law." Upon approval and passage of the GAA, Congress' law-making role necessarily comes to an end and from there the Executive's role of implementing the national budget begins. So as not to blur the constitutional boundaries between them, Congress must "not concern itself with details for implementation by the Executive." [176]

The foregoing cardinal postulates were definitively enunciated in *Abakada* where the Court held that "[f]rom the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional." [177] It must be clarified, however, that since the restriction only pertains to "any role in the implementation or enforcement of the law," Congress may still exercise its oversight function which is a mechanism of checks and balances that the Constitution itself allows. But it must be made clear that Congress' role must be confined to mere oversight. Any post- enactment-measure allowing legislator participation beyond oversight is bereft of any constitutional basis and hence, tantamount to impermissible interference and/or assumption of executive functions. As the Court ruled in *Abakada*: [178]

[A]ny post-enactment congressional measure x x x should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following:

(1) scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses

on any matter pertaining to their departments and its power of confirmation; and

(2) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.

Any action or step beyond that will undermine the separation of powers guaranteed by the Constitution. (Emphases supplied)

b. Application.

In these cases, petitioners submit that the Congressional Pork Barrel – among others, the 2013 PDAF Article – “wrecks the assignment of responsibilities between the political branches” as it is designed to allow individual legislators to interfere “way past the time it should have ceased” or, particularly, “after the GAA is passed.”[179] They state that the findings and recommendations in the CoA Report provide “an illustration of how absolute and definitive the power of legislators wield over project implementation in complete violation of the constitutional [principle of separation of powers.]”[180] Further, they point out that the Court in the Philconsa case only allowed the CDF to exist on the condition that individual legislators limited their role to recommending projects and not if they actually dictate their implementation.[181]

For their part, respondents counter that the separations of powers principle has not been violated since the President maintains “ultimate authority to control the execution of the GAA” and that he “retains the final discretion to reject” the legislators’ proposals.[182] They maintain that the Court, in Philconsa, “upheld the constitutionality of the power of members of Congress to propose and identify projects so long as such proposal and identification are recommendatory.”[183] As such, they claim that “[e]verything in the Special Provisions [of the 2013 PDAF Article] follows the Philconsa framework, and hence, remains constitutional.”[184]

The Court rules in favor of petitioners.

As may be observed from its legal history, the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post-enactment phases of project implementation.

At its core, legislators – may it be through project lists,[185] prior consultations[186] or program menus[187] – have been consistently accorded post-enactment authority to identify the projects they desire to be funded through various Congressional Pork Barrel allocations. Under the 2013 PDAF Article, the statutory authority of legislators to identify projects post- GAA may be construed from the import of Special Provisions 1 to 3 as well as the second paragraph of Special Provision 4. To elucidate, Special Provision 1 embodies the program menu feature which, as evinced from past PDAF Articles, allows individual legislators to identify PDAF projects for as long as the identified project falls under a general program listed in the said menu. Relatedly, Special Provision 2 provides that the implementing agencies shall, within 90 days from the GAA is passed, submit to Congress a more detailed priority list, standard or design prepared and submitted by implementing agencies from which the legislator may make his choice. The same provision further authorizes legislators to identify PDAF projects outside his district for as long as the representative of the district concerned concurs in writing. Meanwhile, Special Provision 3 clarifies that PDAF projects refer to “projects to be identified by legislators”[188] and thereunder provides the allocation limit for the total amount of projects identified by each legislator. Finally, paragraph 2 of Special Provision 4 requires that any modification and revision of the project identification “shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be.” From the foregoing special provisions, it cannot be seriously doubted that legislators have been accorded post-enactment authority to identify PDAF projects.

Aside from the area of project identification, legislators have also been accorded post-enactment authority in the areas of fund release and realignment. Under the 2013 PDAF Article, the statutory authority of legislators to participate in the area of fund release through congressional committees is contained in Special Provision 5 which explicitly states that "[a]ll request for release of funds shall be supported by the documents prescribed under Special Provision No. 1 and favorably endorsed by House Committee on Appropriations and the Senate Committee on Finance, as the case may be"; while their statutory authority to participate in the area of fund realignment is contained in: first, paragraph 2, Special Provision 4[189] which explicitly states, among others, that "[a]ny realignment [of funds] shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be"; and, second, paragraph 1, also of Special Provision 4 which authorizes the "Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry[190] x x x to approve realignment from one project/scope to another within the allotment received from this Fund, subject to [among others] (iii) the request is with the concurrence of the legislator concerned."

Clearly, these post-enactment measures which govern the areas of project identification, fund release and fund realignment are not related to functions of congressional oversight and, hence, allow legislators to intervene and/or assume duties that properly belong to the sphere of budget execution. Indeed, by virtue of the foregoing, legislators have been, in one form or another, authorized to participate in – as Guingona, Jr. puts it – "the various operational aspects of budgeting," including "the evaluation of work and financial plans for individual activities" and the "regulation and release of funds" in violation of the separation of powers principle. The fundamental rule, as categorically articulated in *Abakada*, cannot be overstated – from the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional.[191] That the said authority is treated as merely recommendatory in nature does not alter its unconstitutional tenor since the prohibition, to repeat, covers any role in the implementation or enforcement of the law. Towards this end, the Court must therefore abandon its ruling in *Philconsa* which sanctioned the conduct of legislator identification on the guise that the same is merely recommendatory and, as such, respondents' reliance on the same falters altogether.

Besides, it must be pointed out that respondents have nonetheless failed to substantiate their position that the identification authority of legislators is only of recommendatory import. Quite the contrary, respondents – through the statements of the Solicitor General during the Oral Arguments – have admitted that the identification of the legislator constitutes a mandatory requirement before his PDAF can be tapped as a funding source, thereby highlighting the indispensability of the said act to the entire budget execution process:[192]

Justice Bernabe: Now, without the individual legislator's identification of the project, can the PDAF of the legislator be utilized?

Solicitor General Jardeleza: No, Your Honor.

Justice Bernabe: It cannot?

Solicitor General Jardeleza: It cannot... (interrupted)

Justice Bernabe: So meaning you should have the identification of the project by the individual legislator?

Solicitor General Jardeleza: Yes, Your Honor.

x x x x

Justice Bernabe: In short, the act of identification is mandatory?

Solicitor General Jardeleza: Yes, Your Honor. In the sense that if it is not done and then there is no identification.

x x x x

Justice Bernabe: Now, would you know of specific instances when a project was implemented without the identification by the individual legislator?

Solicitor General Jardeleza: I do not know, Your Honor; I do not think so but I have no specific examples. I would doubt very much, Your Honor, because to implement, there is a need [for] a SARO and the NCA. And the SARO and the NCA are triggered by an identification from the legislator.

x x x x

Solicitor General Jardeleza: What we mean by mandatory, Your Honor, is we were replying to a question, "How can a legislator make sure that he is able to get PDAF Funds?" It is mandatory in the sense that he must identify, in that sense, Your Honor. Otherwise, if he does not identify, he cannot avail of the PDAF Funds and his district would not be able to have PDAF Funds, only in that sense, Your Honor. (Emphases supplied)

Thus, for all the foregoing reasons, the Court hereby declares the 2013 PDAF Article as well as all other provisions of law which similarly allow legislators to wield any form of post-enactment authority in the implementation or enforcement of the budget, unrelated to congressional oversight, as violative of the separation of powers principle and thus unconstitutional. Corollary thereto, informal practices, through which legislators have effectively intruded into the proper phases of budget execution, must be deemed as acts of grave abuse of discretion amounting to lack or excess of jurisdiction and, hence, accorded the same unconstitutional treatment. That such informal practices do exist and have, in fact, been constantly observed throughout the years has not been substantially disputed here. As pointed out by Chief Justice Maria Lourdes P.A. Sereno (Chief Justice Sereno) during the Oral Arguments of these cases:[193]

Chief Justice Sereno:

Now, from the responses of the representative of both, the DBM and two (2) Houses of Congress, if we enforces the initial thought that I have, after I had seen the extent of this research made by my staff, that neither the Executive nor Congress frontally faced the question of constitutional compatibility of how they were engineering the budget process. In fact, the words you have been using, as the three lawyers [of the DBM, and both Houses of Congress] has also been using is surprise; surprised that all of these things are now surfacing. In fact, I thought that what the 2013 PDAF provisions did was to codify in one section all the past practice that [had] been done since 1991. In a certain sense, we should be thankful that they are all now in the PDAF Special Provisions. x x x (Emphasis and underscoring supplied)

Ultimately, legislators cannot exercise powers which they do not have, whether through formal measures written into the law or informal practices institutionalized in government agencies, else the Executive department be deprived of what the Constitution has vested as its own.

2. Non-delegability of Legislative Power.

a. Statement of Principle.

As an adjunct to the separation of powers principle,[194] legislative power shall be exclusively exercised by the body to which the Constitution has conferred the same. In particular, Section 1, Article VI of the 1987 Constitution states that such 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.[195] Based on this provision, it is clear that only Congress, acting as a bicameral body, and the people, through the process of initiative and referendum, may constitutionally wield legislative power and no other. This premise embodies the principle of non-delegability of legislative power, and the only recognized exceptions thereto would be: (a) delegated legislative power to local governments which, by immemorial practice, are allowed to legislate on purely local matters;[196] and (b) constitutionally-grafted exceptions such as the authority of the President to, by law, exercise powers necessary and proper to carry out a declared national policy in times of war or other national emergency,[197] or fix within specified limits, and subject to such limitations and restrictions as Congress may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.[198]

Notably, the principle of non-delegability should not be confused as a restriction to delegate rule-making authority to implementing agencies for the limited purpose of either filling up the details of the law for its enforcement (supplementary rule-making) or ascertaining facts to bring the law into actual operation (contingent rule-making).[199] The conceptual treatment and limitations of delegated rule-making were explained in the case of *People v. Maceren*[200] as follows:

The grant of the rule-making power to administrative agencies is a relaxation of the principle of separation of powers and is an exception to the nondelegation of legislative powers. Administrative regulations or "subordinate legislation" calculated to promote the public interest are necessary because of "the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law."

x x x x

[Nevertheless, it must be emphasized that] [t]he rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned. (Emphases supplied)

b. Application.

In the cases at bar, the Court observes that the 2013 PDAF Article, insofar as it confers post-enactment identification authority to individual legislators, violates the principle of non-delegability since said legislators are effectively allowed to individually exercise the power of appropriation, which – as settled in *Philconsa* – is lodged in Congress.[201] That the power to appropriate must be exercised only through legislation is clear from Section 29(1), Article VI of the 1987 Constitution which states that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." To understand what constitutes an act of appropriation, the Court, in *Bengzon v. Secretary of Justice and Insular Auditor*[202] (*Bengzon*), held that the power of appropriation involves (a) the setting apart by law of a certain sum from the public revenue for (b) a specified purpose. Essentially, under the 2013 PDAF Article, individual legislators are given a personal lump-sum fund from which they are able to dictate (a) how much from such fund would go to (b) a specific project or beneficiary that they themselves also determine. As these two (2) acts comprise the exercise of the power of appropriation as described in *Bengzon*, and given that the 2013 PDAF Article authorizes individual legislators to perform the same, undoubtedly, said legislators have been conferred the power to legislate which the Constitution does not, however, allow. Thus, keeping with the principle of non-delegability of legislative power, the Court hereby declares the 2013 PDAF Article, as well as all other forms of Congressional Pork Barrel which contain the similar legislative identification feature as herein discussed, as unconstitutional.

3. Checks and Balances.

a. Statement of Principle; Item-Veto Power.

The fact that the three great powers of government are intended to be kept separate and distinct does not mean that they are absolutely unrestrained and independent of each other. The Constitution has also provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.[203]

A prime example of a constitutional check and balance would be the President's power to veto an item written into an appropriation, revenue or tariff bill submitted to him by Congress for approval through a process known as "bill presentment." The President's item-veto power is found in Section 27(2), Article VI of the 1987 Constitution which reads as follows:

Sec. 27. x x x.

x x x x

(2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

The presentment of appropriation, revenue or tariff bills to the President, wherein he may exercise his power of item-veto, forms part of the "single, finely wrought and exhaustively considered, procedures" for law-passage as specified under the Constitution.[204] As stated in *Abakada*, the final step in the law-making process is the "submission [of the bill] to the President for approval. Once approved, it takes effect as law after the required publication." [205] Elaborating on the President's item-veto power and its relevance as a check on the legislature, the Court, in *Bengzon*, explained that:[206]

The former Organic Act and the present Constitution of the Philippines make the Chief Executive an integral part of the law-making power. His disapproval of a bill, commonly known as a veto, is essentially a legislative act. The questions presented to the mind of the Chief Executive are precisely the same as those the legislature must determine in passing a bill, except that his will be a broader point of view.

The Constitution is a limitation upon the power of the legislative department of the government, but in this respect it is a grant of power to the executive department. The Legislature has the affirmative power to enact laws; the Chief Executive has the negative power by the constitutional exercise of which he may defeat the will of the Legislature. It follows that the Chief Executive must find his authority in the Constitution. But in exercising that authority he may not be confined to rules of strict construction or hampered by the unwise interference of the judiciary. The courts will indulge every intendment in favor of the constitutionality of a veto [in the same manner] as they will presume the constitutionality of an act as originally passed by the Legislature. (Emphases supplied)

The justification for the President's item-veto power rests on a variety of policy goals such as to prevent log-rolling legislation,[207] impose fiscal restrictions on the legislature, as well as to fortify the executive branch's role in the budgetary process.[208] In *Immigration and Naturalization Service v. Chadha*, the US Supreme Court characterized the President's item-power as "a salutary check upon the legislative body, calculated to guard the community against the effects of factions, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body"; phrased differently, it is meant to "increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design." [209]

For the President to exercise his item-veto power, it necessarily follows that there exists a proper "item" which may be the object of the veto. An item, as defined in the field of appropriations, pertains to "the particulars, the details, the distinct and severable parts of the appropriation or of the bill." In the case of *Bengzon v. Secretary of Justice of the Philippine Islands*, [210] the US Supreme Court characterized an item of appropriation as follows:

An item of an appropriation bill obviously means an item which, in itself, is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. (Emphases supplied)

On this premise, it may be concluded that an appropriation bill, to ensure that the President may be able to exercise his power of item veto, must contain "specific appropriations of money" and not only "general provisions" which provide for parameters of appropriation.

Further, it is significant to point out that an item of appropriation must be an item characterized by singular correspondence – meaning an allocation of a specified singular amount for a specified singular purpose, otherwise known as a "line-item." [211] This treatment not only allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly veto the same. Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as "line-item" appropriations which are rightfully subject to item veto. Likewise, it must be observed that an appropriation may be validly apportioned into component percentages or values; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item. Moreover, as Justice Carpio correctly pointed out, a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, e.g., MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power. Finally, special purpose funds and discretionary funds would equally square with the constitutional mechanism of item-veto for as long as they follow the rule on singular correspondence as herein discussed. Anent special purpose funds, it must be added that Section 25(4), Article VI of the 1987 Constitution requires that the "special appropriations bill shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified by the National Treasurer, or to be raised by a corresponding revenue proposal therein." Meanwhile, with respect to discretionary funds, Section 25(6), Article VI of the 1987 Constitution requires that said funds "shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law."

In contrast, what beckons constitutional infirmity are appropriations which merely provide for a singular lump-sum amount to be tapped as a source of funding for multiple purposes. Since such appropriation type necessitates the further determination of both the actual amount to be expended and the actual purpose of the appropriation which must still be chosen from the multiple purposes stated in the law, it cannot be said that the appropriation law already indicates a "specific appropriation of money" and hence, without a proper line-item which the President may veto. As a practical result, the President would then be faced with the predicament of either vetoing the entire appropriation if he finds some of its purposes wasteful or undesirable, or approving the entire appropriation so as not to hinder some of its legitimate purposes. Finally, it may not be amiss to state that such arrangement also raises non-delegability issues considering that the implementing authority would still have to determine, again, both the actual amount to be expended and the actual purpose of the appropriation. Since the foregoing determinations constitute the integral aspects of the power to appropriate, the implementing authority would, in effect, be exercising legislative prerogatives in violation of the principle of non-delegability.

b. Application.

In these cases, petitioners claim that "[i]n the current x x x system where the PDAF is a lump-sum appropriation, the legislator's identification of the projects after the passage of the GAA denies the President the chance to veto that item later on." [212] Accordingly, they submit that the "item veto power of the President mandates that appropriations bills adopt line-item budgeting" and that "Congress cannot choose a mode of budgeting [which] effectively renders the constitutionally-given power of the President useless." [213]

On the other hand, respondents maintain that the text of the Constitution envisions a process which is intended to meet the demands of a modernizing economy and, as such, lump-sum appropriations are essential to financially address situations which are barely foreseen when a GAA is enacted. They argue that the decision of the Congress to create some lump-sum appropriations is constitutionally allowed and textually-grounded.[214]

The Court agrees with petitioners.

Under the 2013 PDAF Article, the amount of P24.79 Billion only appears as a collective allocation limit since the said amount would be further divided among individual legislators who would then receive personal lump-sum allocations and could, after the GAA is passed, effectively appropriate PDAF funds based on their own discretion. As these intermediate appropriations are made by legislators only after the GAA is passed and hence, outside of the law, it necessarily means that the actual items of PDAF appropriation would not have been written into the General Appropriations Bill and thus effectuated without veto consideration. This kind of lump-sum/post-enactment legislative identification budgeting system fosters the creation of a "budget within a budget" which subverts the prescribed procedure of presentment and consequently impairs the President's power of item veto. As petitioners aptly point out, the above-described system forces the President to decide between (a) accepting the entire P24.79 Billion PDAF allocation without knowing the specific projects of the legislators, which may or may not be consistent with his national agenda and (b) rejecting the whole PDAF to the detriment of all other legislators with legitimate projects.[215]

Moreover, even without its post-enactment legislative identification feature, the 2013 PDAF Article would remain constitutionally flawed since it would then operate as a prohibited form of lump-sum appropriation as above-characterized. In particular, the lump-sum amount of P24.79 Billion would be treated as a mere funding source allotted for multiple purposes of spending, i.e., scholarships, medical missions, assistance to indigents, preservation of historical materials, construction of roads, flood control, etc. This setup connotes that the appropriation law leaves the actual amounts and purposes of the appropriation for further determination and, therefore, does not readily indicate a discernible item which may be subject to the President's power of item veto.

In fact, on the accountability side, the same lump-sum budgeting scheme has, as the CoA Chairperson relays, "limit[ed] state auditors from obtaining relevant data and information that would aid in more stringently auditing the utilization of said Funds." [216] Accordingly, she recommends the adoption of a "line by line budget or amount per proposed program, activity or project, and per implementing agency." [217]

Hence, in view of the reasons above-stated, the Court finds the 2013 PDAF Article, as well as all Congressional Pork Barrel Laws of similar operation, to be unconstitutional. That such budgeting system provides for a greater degree of flexibility to account for future contingencies cannot be an excuse to defeat what the Constitution requires. Clearly, the first and essential truth of the matter is that unconstitutional means do not justify even commendable ends.[218]

c. Accountability.

Petitioners further relate that the system under which various forms of Congressional Pork Barrel operate defies public accountability as it renders Congress incapable of checking itself or its Members. In particular, they point out that the Congressional Pork Barrel "gives each legislator a direct, financial interest in the smooth, speedy passing of the yearly budget" which turns them "from fiscalizers" into "financially-interested partners." [219] They also claim that the system has an effect on re-election as "the PDAF excels in self-perpetuation of elective officials." Finally, they add that the "PDAF impairs the power of impeachment" as such "funds are indeed quite useful, 'to well, accelerate the decisions of senators.'" [220]

The Court agrees in part.

The aphorism forged under Section 1, Article XI of the 1987 Constitution, which states that "public office is a public trust," is an overarching reminder that every instrumentality of government should exercise their official functions only in accordance with the principles of the Constitution which embodies the parameters of the people's trust. The notion of a public trust connotes accountability,[221] hence, the various mechanisms in the Constitution which are designed to exact accountability from public officers.

Among others, an accountability mechanism with which the proper expenditure of public funds may be checked is the power of congressional oversight. As mentioned in *Abakada*,[222] congressional oversight may be performed either through: (a) scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation;[223] or (b) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.[224]

The Court agrees with petitioners that certain features embedded in some forms of Congressional Pork Barrel, among others the 2013 PDAF Article, has an effect on congressional oversight. The fact that individual legislators are given post-enactment roles in the implementation of the budget makes it difficult for them to become disinterested "observers" when scrutinizing, investigating or monitoring the implementation of the appropriation law. To a certain extent, the conduct of oversight would be tainted as said legislators, who are vested with post-enactment authority, would, in effect, be checking on activities in which they themselves participate. Also, it must be pointed out that this very same concept of post-enactment authorization runs afoul of Section 14, Article VI of the 1987 Constitution which provides that:

Sec. 14. No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office. (Emphasis supplied)

Clearly, allowing legislators to intervene in the various phases of project implementation – a matter before another office of government – renders them susceptible to taking undue advantage of their own office.

The Court, however, cannot completely agree that the same post-enactment authority and/or the individual legislator's control of his PDAF per se would allow him to perpetuate himself in office. Indeed, while the Congressional Pork Barrel and a legislator's use thereof may be linked to this area of interest, the use of his PDAF for re-election purposes is a matter which must be analyzed based on particular facts and on a case-to-case basis.

Finally, while the Court accounts for the possibility that the close operational proximity between legislators and the Executive department, through the former's post-enactment participation, may affect the process of impeachment, this matter largely borders on the domain of politics and does not strictly concern the Pork Barrel System's intrinsic constitutionality. As such, it is an improper subject of judicial assessment.

In sum, insofar as its post-enactment features dilute congressional oversight and violate Section 14, Article VI of the 1987 Constitution, thus impairing public accountability, the 2013 PDAF Article and other forms of Congressional Pork Barrel of similar nature are deemed as unconstitutional.

4. Political Dynasties.

One of the petitioners submits that the Pork Barrel System enables politicians who are members of political dynasties to accumulate funds to perpetuate themselves in power, in contravention of Section 26, Article II of the 1987 Constitution[225] which states that:

Sec. 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law. (Emphasis and underscoring supplied)

At the outset, suffice it to state that the foregoing provision is considered as not self-executing due to the qualifying phrase “as may be defined by law.” In this respect, said provision does not, by and of itself, provide a judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action.[226] Therefore, since there appears to be no standing law which crystallizes the policy on political dynasties for enforcement, the Court must defer from ruling on this issue.

In any event, the Court finds the above-stated argument on this score to be largely speculative since it has not been properly demonstrated how the Pork Barrel System would be able to propagate political dynasties.

5. Local Autonomy.

The State’s policy on local autonomy is principally stated in Section 25, Article II and Sections 2 and 3, Article X of the 1987 Constitution which read as follows:

ARTICLE II

Sec. 25. The State shall ensure the autonomy of local governments.

ARTICLE X

Sec. 2. The territorial and political subdivisions shall enjoy local autonomy.

Sec. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

Pursuant thereto, Congress enacted RA 7160,[227] otherwise known as the "Local Government Code of 1991" (LGC), wherein the policy on local autonomy had been more specifically explicated as follows:

Sec. 2. Declaration of Policy. – (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

x x x x

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people’s organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions. (Emphases and underscoring supplied)

The above-quoted provisions of the Constitution and the LGC reveal the policy of the State to empower local government units (LGUs) to develop and ultimately, become self-sustaining and effective contributors to the national economy. As explained by the Court in *Philippine Gamefowl Commission v. Intermediate Appellate Court*:^[228]

This is as good an occasion as any to stress the commitment of the Constitution to the policy of local autonomy which is intended to provide the needed impetus and encouragement to the development of our local political subdivisions as “self-reliant communities.” In the words of Jefferson, “Municipal corporations are the small republics from which the great one derives its strength.” The vitalization of local governments will enable their inhabitants to fully exploit their resources and more important, imbue them with a deepened sense of involvement in public affairs as members of the body politic. This objective could be blunted by undue interference by the national government in purely local affairs which are best resolved by the officials and inhabitants of such political units. The decision we reach today conforms not only to the letter of the pertinent laws but also to the spirit of the Constitution.^[229] (Emphases and underscoring supplied)

In the cases at bar, petitioners contend that the Congressional Pork Barrel goes against the constitutional principles on local autonomy since it allows district representatives, who are national officers, to substitute their judgments in utilizing public funds for local development.^[230]

The Court agrees with petitioners.

Philconsa described the 1994 CDF as an attempt “to make equal the unequal” and that “[i]t is also a recognition that individual members of Congress, far more than the President and their congressional colleagues, are likely to be knowledgeable about the needs of their respective constituents and the priority to be given each project.”^[231] Drawing strength from this pronouncement, previous legislators justified its existence by stating that “the relatively small projects implemented under [the Congressional Pork Barrel] complement and link the national development goals to the countryside and grassroots as well as to depressed areas which are overlooked by central agencies which are preoccupied with mega-projects.”^[232] Similarly, in his August 23, 2013 speech on the “abolition” of PDAF and budgetary reforms, President Aquino mentioned that the Congressional Pork Barrel was originally established for a worthy goal, which is to enable the representatives to identify projects for communities that the LGU concerned cannot afford.^[233]

Notwithstanding these declarations, the Court, however, finds an inherent defect in the system which actually belies the avowed intention of “making equal the unequal.” In particular, the Court observes that the gauge of PDAF and CDF allocation/division is based solely on the fact of office, without taking into account the specific interests and peculiarities of the district the legislator represents. In this regard, the allocation/division limits are clearly not based on genuine parameters of equality, wherein economic or geographic indicators have been taken into consideration. As a result, a district representative of a highly-urbanized metropolis gets the same amount of funding as a district representative of a far-flung rural province which would be relatively “underdeveloped” compared to the former. To add, what rouses graver scrutiny is that even Senators and Party-List Representatives – and in some years, even the Vice- President – who do not represent any locality, receive funding from the Congressional Pork Barrel as well. These certainly are anathema to the Congressional Pork Barrel’s original intent which is “to make equal the unequal.” Ultimately, the PDAF and CDF had become personal funds under the effective control of each legislator and given unto them on the sole account of their office.

The Court also observes that this concept of legislator control underlying the CDF and PDAF conflicts with the functions of the various Local Development Councils (LDCs) which are already legally mandated to “assist the corresponding sanggunian in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction.”^[234] Considering that LDCs are instrumentalities whose

functions are essentially geared towards managing local affairs,[235] their programs, policies and resolutions should not be overridden nor duplicated by individual legislators, who are national officers that have no law-making authority except only when acting as a body. The undermining effect on local autonomy caused by the post-enactment authority conferred to the latter was succinctly put by petitioners in the following wise:[236]

With PDAF, a Congressman can simply bypass the local development council and initiate projects on his own, and even take sole credit for its execution. Indeed, this type of personality-driven project identification has not only contributed little to the overall development of the district, but has even contributed to further weakening infrastructure planning and coordination efforts of the government.”

Thus, insofar as individual legislators are authorized to intervene in purely local matters and thereby subvert genuine local autonomy, the 2013 PDAF Article as well as all other similar forms of Congressional Pork Barrel is deemed unconstitutional.

With this final issue on the Congressional Pork Barrel resolved, the Court now turns to the substantive issues involving the Presidential Pork Barrel.

C. Substantive Issues on the Presidential Pork Barrel.

1. Validity of Appropriation.

Petitioners preliminarily assail Section 8 of PD 910 and Section 12 of PD1869 (now, amended by PD 1993), which respectively provide for the Malampaya Funds and the Presidential Social Fund, as invalid appropriations laws since they do not have the "primary and specific" purpose of authorizing the release of public funds from the National Treasury. Petitioners submit that Section 8 of PD 910 is not an appropriation law since the "primary and specific" purpose of PD 910 is the creation of an Energy Development Board and Section 8 thereof only created a Special Fund incidental thereto.[237] In similar regard, petitioners argue that Section 12 of PD 1869 is neither a valid appropriations law since the allocation of the Presidential Social Fund is merely incidental to the "primary and specific" purpose of PD 1869 which is the amendment of the Franchise and Powers of PAGCOR.[238] In view of the foregoing, petitioners suppose that such funds are being used without any valid law allowing for their proper appropriation in violation of Section 29(1), Article VI of the 1987 Constitution which states that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." [239]

The Court disagrees.

"An appropriation made by law" under the contemplation of Section 29(1), Article VI of the 1987 Constitution exists when a provision of law (a) sets apart a determinate or determinable[240] amount of money and (b) allocates the same for a particular public purpose. These two minimum designations of amount and purpose stem from the very definition of the word "appropriation," which means "to allot, assign, set apart or apply to a particular use or purpose," and hence, if written into the law, demonstrate that the legislative intent to appropriate exists. As the Constitution "does not provide or prescribe any particular form of words or religious recitals in which an authorization or appropriation by Congress shall be made, except that it be 'made by law,'" an appropriation law may – according to Philconsa – be "detailed and as broad as Congress wants it to be" for as long as the intent to appropriate may be gleaned from the same. As held in the case of Guingona, Jr.: [241]

[T]here is no provision in our Constitution that provides or prescribes any particular form of words or religious recitals in which an authorization or appropriation by Congress shall be made, except that it be "made by law," such as precisely the authorization or appropriation under the questioned presidential decrees. In other words, in terms of time horizons, an appropriation may be made impliedly (as by past but subsisting legislations) as well as expressly for the current fiscal year (as by enactment of laws by the present Congress), just as said appropriation may be made in general as well as in specific terms. The Congressional authorization may be

embodied in annual laws, such as a general appropriations act or in special provisions of laws of general or special application which appropriate public funds for specific public purposes, such as the questioned decrees. An appropriation measure is sufficient if the legislative intention clearly and certainly appears from the language employed (In re Continuing Appropriations, 32 P. 272), whether in the past or in the present. (Emphases and underscoring supplied)

Likewise, as ruled by the US Supreme Court in *State of Nevada v. La Grave*:^[242]

To constitute an appropriation there must be money placed in a fund applicable to the designated purpose. The word appropriate means to allot, assign, set apart or apply to a particular use or purpose. An appropriation in the sense of the constitution means the setting apart a portion of the public funds for a public purpose. No particular form of words is necessary for the purpose, if the intention to appropriate is plainly manifested. (Emphases supplied)

Thus, based on the foregoing, the Court cannot sustain the argument that the appropriation must be the "primary and specific" purpose of the law in order for a valid appropriation law to exist. To reiterate, if a legal provision designates a determinate or determinable amount of money and allocates the same for a particular public purpose, then the legislative intent to appropriate becomes apparent and, hence, already sufficient to satisfy the requirement of an "appropriation made by law" under contemplation of the Constitution.

Section 8 of PD 910 pertinently provides:

Section 8. Appropriations. x x x

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President. (Emphases supplied)

Whereas Section 12 of PD 1869, as amended by PD 1993, reads:

Sec. 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the Government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than P150,000,000.00 shall be set aside and shall accrue to the General Fund to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines. (Emphases supplied)

Analyzing the legal text vis-à-vis the above-mentioned principles, it may then be concluded that (a) Section 8 of PD 910, which creates a Special Fund comprised of "all fees, revenues, and receipts of the [Energy Development] Board from any and all sources" (a determinable amount) "to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President" (a specified public purpose), and (b) Section 12 of PD 1869, as amended by PD 1993, which similarly sets aside, "[a]fter deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the Government in the aggregate gross earnings of [PAGCOR], or 60%[,] if the aggregate gross earnings be less than P150,000,000.00" (also a determinable amount) "to finance the priority infrastructure development projects and x x x the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines" (also a specified public purpose), are legal appropriations under

Section 29(1), Article VI of the 1987 Constitution.

In this relation, it is apropos to note that the 2013 PDAF Article cannot be properly deemed as a legal appropriation under the said constitutional provision precisely because, as earlier stated, it contains post-enactment measures which effectively create a system of intermediate appropriations. These intermediate appropriations are the actual appropriations meant for enforcement and since they are made by individual legislators after the GAA is passed, they occur outside the law. As such, the Court observes that the real appropriation made under the 2013 PDAF Article is not the P24.79 Billion allocated for the entire PDAF, but rather the post-enactment determinations made by the individual legislators which are, to repeat, occurrences outside of the law. Irrefragably, the 2013 PDAF Article does not constitute an "appropriation made by law" since it, in its truest sense, only authorizes individual legislators to appropriate in violation of the non-delegability principle as afore-discussed.

2. Undue Delegation.

On a related matter, petitioners contend that Section 8 of PD 910 constitutes an undue delegation of legislative power since the phrase "and for such other purposes as may be hereafter directed by the President" gives the President "unbridled discretion to determine for what purpose the funds will be used." [243] Respondents, on the other hand, urged the Court to apply the principle of *ejusdem generis* to the same section and thus, construe the phrase "and for such other purposes as may be hereafter directed by the President" to refer only to other purposes related "to energy resource development and exploitation programs and projects of the government." [244]

The Court agrees with petitioners' submissions.

While the designation of a determinate or determinable amount for a particular public purpose is sufficient for a legal appropriation to exist, the appropriation law must contain adequate legislative guidelines if the same law delegates rule-making authority to the Executive [245] either for the purpose of (a) filling up the details of the law for its enforcement, known as supplementary rule-making, or (b) ascertaining facts to bring the law into actual operation, referred to as contingent rule-making. [246] There are two (2) fundamental tests to ensure that the legislative guidelines for delegated rule-making are indeed adequate. The first test is called the "completeness test." Case law states that a law is complete when it sets forth therein the policy to be executed, carried out, or implemented by the delegate. On the other hand, the second test is called the "sufficient standard test." Jurisprudence holds that a law lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. [247] To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy, and identify the conditions under which it is to be implemented. [248]

In view of the foregoing, the Court agrees with petitioners that the phrase "and for such other purposes as may be hereafter directed by the President" under Section 8 of PD 910 constitutes an undue delegation of legislative power insofar as it does not lay down a sufficient standard to adequately determine the limits of the President's authority with respect to the purpose for which the Malampaya Funds may be used. As it reads, the said phrase gives the President wide latitude to use the Malampaya Funds for any other purpose he may direct and, in effect, allows him to unilaterally appropriate public funds beyond the purview of the law. That the subject phrase may be confined only to "energy resource development and exploitation programs and projects of the government" under the principle of *ejusdem generis*, meaning that the general word or phrase is to be construed to include – or be restricted to – things akin to, resembling, or of the same kind or class as those specifically mentioned, [249] is belied by three (3) reasons: first, the phrase "energy resource development and exploitation programs and projects of the government" states a singular and general class and hence, cannot be treated as a statutory reference of

specific things from which the general phrase "for such other purposes" may be limited; second, the said phrase also exhausts the class it represents, namely energy development programs of the government;^[250] and, third, the Executive department has, in fact, used the Malampaya Funds for non-energy related purposes under the subject phrase, thereby contradicting respondents' own position that it is limited only to "energy resource development and exploitation programs and projects of the government."^[251] Thus, while Section 8 of PD 910 may have passed the completeness test since the policy of energy development is clearly deducible from its text, the phrase "and for such other purposes as may be hereafter directed by the President" under the same provision of law should nonetheless be stricken down as unconstitutional as it lies independently unfettered by any sufficient standard of the delegating law. This notwithstanding, it must be underscored that the rest of Section 8, insofar as it allows for the use of the Malampaya Funds "to finance energy resource development and exploitation programs and projects of the government," remains legally effective and subsisting. Truth be told, the declared unconstitutionality of the aforementioned phrase is but an assurance that the Malampaya Funds would be used – as it should be used – only in accordance with the avowed purpose and intention of PD 910.

As for the Presidential Social Fund, the Court takes judicial notice of the fact that Section 12 of PD 1869 has already been amended by PD 1993 which thus moots the parties' submissions on the same.^[252] Nevertheless, since the amendatory provision may be readily examined under the current parameters of discussion, the Court proceeds to resolve its constitutionality.

Primarily, Section 12 of PD 1869, as amended by PD 1993, indicates that the Presidential Social Fund may be used "to [first,] finance the priority infrastructure development projects and [second,] to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines." The Court finds that while the second indicated purpose adequately curtails the authority of the President to spend the Presidential Social Fund only for restoration purposes which arise from calamities, the first indicated purpose, however, gives him carte blanche authority to use the same fund for any infrastructure project he may so determine as a "priority". Verily, the law does not supply a definition of "priority infrastructure development projects" and hence, leaves the President without any guideline to construe the same. To note, the delimitation of a project as one of "infrastructure" is too broad of a classification since the said term could pertain to any kind of facility. This may be deduced from its lexicographic definition as follows: "[t]he underlying framework of a system, [especially] public services and facilities (such as highways, schools, bridges, sewers, and water-systems) needed to support commerce as well as economic and residential development."^[253] In fine, the phrase "to finance the priority infrastructure development projects" must be stricken down as unconstitutional since – similar to the above- assailed provision under Section 8 of PD 910 – it lies independently unfettered by any sufficient standard of the delegating law. As they are severable, all other provisions of Section 12 of PD 1869, as amended by PD 1993, remains legally effective and subsisting.

D. Ancillary Prayers.

1. Petitioners' Prayer to be Furnished Lists and Detailed Reports.

Aside from seeking the Court to declare the Pork Barrel System unconstitutional – as the Court did so in the context of its pronouncements made in this Decision – petitioners equally pray that the Executive Secretary and/or the DBM be ordered to release to the CoA and to the public: (a) "the complete schedule/list of legislators who have availed of their PDAF and VILP from the years 2003 to 2013, specifying the use of the funds, the project or activity and the recipient entities or individuals, and all pertinent data thereto" (PDAF Use Schedule/List);^[254] and (b) "the use of the Executive's [lump-sum, discretionary] funds, including the proceeds from the x x x Malampaya Fund[s] [and] remittances from the [PAGCOR] x x x from 2003 to 2013, specifying the x x x project or activity and the recipient entities or individuals, and all pertinent data thereto"^[255] (Presidential Pork Use

Report). Petitioners' prayer is grounded on Section 28, Article II and Section 7, Article III of the 1987 Constitution which read as follows:

ARTICLE II

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.

ARTICLE III

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.

The Court denies petitioners' submission.

Case law instructs that the proper remedy to invoke the right to information is to file a petition for mandamus. As explained in the case of *Legaspi v. Civil Service Commission*:^[256]

[W]hile the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern, and to afford access to public records cannot be discretionary on the part of said agencies. Certainly, its performance cannot be made contingent upon the discretion of such agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion. The constitutional duty, not being discretionary, its performance may be compelled by a writ of mandamus in a proper case.

But what is a proper case for Mandamus to issue? In the case before Us, the public right to be enforced and the concomitant duty of the State are unequivocally set forth in the Constitution. The decisive question on the propriety of the issuance of the writ of mandamus in this case is, whether the information sought by the petitioner is within the ambit of the constitutional guarantee. (Emphases supplied)

Corollarily, in the case of *Valmonte v. Belmonte Jr.*^[257] (*Valmonte*), it has been clarified that the right to information does not include the right to compel the preparation of "lists, abstracts, summaries and the like." In the same case, it was stressed that it is essential that the "applicant has a well-defined, clear and certain legal right to the thing demanded and that it is the imperative duty of defendant to perform the act required." Hence, without the foregoing substantiations, the Court cannot grant a particular request for information. The pertinent portions of *Valmonte* are hereunder quoted:^[258]

Although citizens are afforded the right to information and, pursuant thereto, are entitled to "access to official records," the Constitution does not accord them a right to compel custodians of official records to prepare lists, abstracts, summaries and the like in their desire to acquire information on matters of public concern.

It must be stressed that it is essential for a writ of mandamus to issue that the applicant has a well-defined, clear and certain legal right to the thing demanded and that it is the imperative duty of defendant to perform the act required. The corresponding duty of the respondent to perform the required act must be clear and specific [*Lemi v. Valencia*, G.R. No. L-20768, November 29, 1968, 126 SCRA 203; *Ocampo v. Subido*, G.R. No. L-28344, August 27, 1976, 72 SCRA 443.] The request of the petitioners fails to meet this standard, there being no duty on the part of respondent to prepare the list requested. (Emphases supplied)

In these cases, aside from the fact that none of the petitions are in the nature of mandamus actions, the Court finds that petitioners have failed to establish a "a well-defined, clear and certain legal right" to be furnished by the Executive Secretary and/or the DBM of their requested PDAF Use Schedule/List and Presidential Pork Use

Report. Neither did petitioners assert any law or administrative issuance which would form the bases of the latter's duty to furnish them with the documents requested. While petitioners pray that said information be equally released to the CoA, it must be pointed out that the CoA has not been impleaded as a party to these cases nor has it filed any petition before the Court to be allowed access to or to compel the release of any official document relevant to the conduct of its audit investigations. While the Court recognizes that the information requested is a matter of significant public concern, however, if only to ensure that the parameters of disclosure are properly foisted and so as not to unduly hamper the equally important interests of the government, it is constrained to deny petitioners' prayer on this score, without prejudice to a proper mandamus case which they, or even the CoA, may choose to pursue through a separate petition.

It bears clarification that the Court's denial herein should only cover petitioners' plea to be furnished with such schedule/list and report and not in any way deny them, or the general public, access to official documents which are already existing and of public record. Subject to reasonable regulation and absent any valid statutory prohibition, access to these documents should not be proscribed. Thus, in *Valmonte*, while the Court denied the application for mandamus towards the preparation of the list requested by petitioners therein, it nonetheless allowed access to the documents sought for by the latter, subject, however, to the custodian's reasonable regulations, viz.:^[259]

In fine, petitioners are entitled to access to the documents evidencing loans granted by the GSIS, subject to reasonable regulations that the latter may promulgate relating to the manner and hours of examination, to the end that damage to or loss of the records may be avoided, that undue interference with the duties of the custodian of the records may be prevented and that the right of other persons entitled to inspect the records may be insured [*Legaspi v. Civil Service Commission*, supra at p. 538, quoting *Subido v. Ozaeta*, 80 Phil. 383, 387.] The petition, as to the second and third alternative acts sought to be done by petitioners, is meritorious.

However, the same cannot be said with regard to the first act sought by petitioners, i.e., "to furnish petitioners the list of the names of the Batasang Pambansa members belonging to the UNIDO and PDP- Laban who were able to secure clean loans immediately before the February 7 election thru the intercession/marginal note of the then First Lady Imelda Marcos."

The Court, therefore, applies the same treatment here.

2. Petitioners' Prayer to Include Matters in Congressional Deliberations.

Petitioners further seek that the Court "[order] the inclusion in budgetary deliberations with the Congress of all presently, off-budget, lump sum, discretionary funds including but not limited to, proceeds from the x x x Malampaya Fund, remittances from the [PAGCOR] and the [PCSO] or the Executive's Social Funds[.]"^[260]

Suffice it to state that the above-stated relief sought by petitioners covers a matter which is generally left to the prerogative of the political branches of government. Hence, lest the Court itself overreach, it must equally deny their prayer on this score.

3. Respondents' Prayer to Lift TRO; Consequential Effects of Decision.

The final issue to be resolved stems from the interpretation accorded by the DBM to the concept of released funds. In response to the Court's September 10, 2013 TRO that enjoined the release of the remaining PDAF allocated for the year 2013, the DBM issued Circular Letter No. 2013-8 dated September 27, 2013 (DBM Circular 2013-8) which pertinently reads as follows:

3.0 Nonetheless, PDAF projects funded under the FY 2013 GAA, where a Special Allotment Release Order (SARO) has been issued by the DBM and such SARO has been obligated by the implementing agencies prior to the issuance of the TRO, may continually be implemented and disbursements thereto effected by the

agencies concerned.

Based on the text of the foregoing, the DBM authorized the continued implementation and disbursement of PDAF funds as long as they are: first, covered by a SARO; and, second, that said SARO had been obligated by the implementing agency concerned prior to the issuance of the Court's September 10, 2013 TRO.

Petitioners take issue with the foregoing circular, arguing that "the issuance of the SARO does not yet involve the release of funds under the PDAF, as release is only triggered by the issuance of a Notice of Cash Allocation [NCA]." [261] As such, PDAF disbursements, even if covered by an obligated SARO, should remain enjoined.

For their part, respondents espouse that the subject TRO only covers "unreleased and unobligated allotments." They explain that once a SARO has been issued and obligated by the implementing agency concerned, the PDAF funds covered by the same are already "beyond the reach of the TRO because they cannot be considered as 'remaining PDAF.'" They conclude that this is a reasonable interpretation of the TRO by the DBM. [262]

The Court agrees with petitioners in part.

At the outset, it must be observed that the issue of whether or not the Court's September 10, 2013 TRO should be lifted is a matter rendered moot by the present Decision. The unconstitutionality of the 2013 PDAF Article as declared herein has the consequential effect of converting the temporary injunction into a permanent one. Hence, from the promulgation of this Decision, the release of the remaining PDAF funds for 2013, among others, is now permanently enjoined.

The propriety of the DBM's interpretation of the concept of "release" must, nevertheless, be resolved as it has a practical impact on the execution of the current Decision. In particular, the Court must resolve the issue of whether or not PDAF funds covered by obligated SAROs, at the time this Decision is promulgated, may still be disbursed following the DBM's interpretation in DBM Circular 2013-8.

On this score, the Court agrees with petitioners' posturing for the fundamental reason that funds covered by an obligated SARO are yet to be "released" under legal contemplation. A SARO, as defined by the DBM itself in its website, is "[a] specific authority issued to identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated. It shall cover expenditures the release of which is subject to compliance with specific laws or regulations, or is subject to separate approval or clearance by competent authority." [263] Based on this definition, it may be gleaned that a SARO only evinces the existence of an obligation and not the directive to pay. Practically speaking, the SARO does not have the direct and immediate effect of placing public funds beyond the control of the disbursing authority. In fact, a SARO may even be withdrawn under certain circumstances which will prevent the actual release of funds. On the other hand, the actual release of funds is brought about by the issuance of the NCA, [264] which is subsequent to the issuance of a SARO. As may be determined from the statements of the DBM representative during the Oral Arguments: [265]

Justice Bernabe: Is the notice of allocation issued simultaneously with the SARO?

x x x x

Atty. Ruiz: It comes after. The SARO, Your Honor, is only the go signal for the agencies to obligate or to enter into commitments. The NCA, Your Honor, is already the go signal to the treasury for us to be able to pay or to liquidate the amounts obligated in the SARO; so it comes after. x x x The NCA, Your Honor, is the go signal for the MDS for the authorized government-disbursing banks to, therefore, pay the payees depending on the projects or projects covered by the SARO and the NCA.

Justice Bernabe: Are there instances that SAROs are cancelled or revoked?

Atty. Ruiz: Your Honor, I would like to instead submit that there are instances that the SAROs issued are withdrawn by the DBM.

Justice Bernabe: They are withdrawn?

Atty. Ruiz: Yes, Your Honor x x x. (Emphases and underscoring supplied)

Thus, unless an NCA has been issued, public funds should not be treated as funds which have been "released." In this respect, therefore, the disbursement of 2013 PDAF funds which are only covered by obligated SAROs, and without any corresponding NCAs issued, must, at the time of this Decision's promulgation, be enjoined and consequently reverted to the unappropriated surplus of the general fund. Verily, in view of the declared unconstitutionality of the 2013 PDAF Article, the funds appropriated pursuant thereto cannot be disbursed even though already obligated, else the Court sanctions the dealing of funds coming from an unconstitutional source.

This same pronouncement must be equally applied to (a) the Malampaya Funds which have been obligated but not released – meaning, those merely covered by a SARO – under the phrase "and for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of PD 910; and (b) funds sourced from the Presidential Social Fund under the phrase "to finance the priority infrastructure development projects" pursuant to Section 12 of PD 1869, as amended by PD 1993, which were altogether declared by the Court as unconstitutional. However, these funds should not be reverted to the general fund as afore-stated but instead, respectively remain under the Malampaya Funds and the Presidential Social Fund to be utilized for their corresponding special purposes not otherwise declared as unconstitutional.

E. Consequential Effects of Decision.

As a final point, it must be stressed that the Court's pronouncement anent the unconstitutionality of (a) the 2013 PDAF Article and its Special Provisions, (b) all other Congressional Pork Barrel provisions similar thereto, and (c) the phrases (1) "and for such other purposes as may be hereafter directed by the President" under Section 8 of PD 910, and (2) "to finance the priority infrastructure development projects" under Section 12 of PD 1869, as amended by PD 1993, must only be treated as prospective in effect in view of the operative fact doctrine.

To explain, the operative fact doctrine exhorts the recognition that until the judiciary, in an appropriate case, declares the invalidity of a certain legislative or executive act, such act is presumed constitutional and thus, entitled to obedience and respect and should be properly enforced and complied with. As explained in the recent case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,^[266] the doctrine merely "reflect[s] awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication."^[267] "In the language of an American Supreme Court decision: 'The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored.'"^[268]

For these reasons, this Decision should be heretofore applied prospectively.

Conclusion

The Court renders this Decision to rectify an error which has persisted in the chronicles of our history. In the final analysis, the Court must strike down the Pork Barrel System as unconstitutional in view of the inherent defects in the rules within which it operates. To recount, insofar as it has allowed legislators to wield, in varying gradations, non-oversight, post-enactment authority in vital areas of budget execution, the system has violated the principle of separation of powers; insofar as it has conferred unto legislators the power of appropriation by giving them

personal, discretionary funds from which they are able to fund specific projects which they themselves determine, it has similarly violated the principle of non-delegability of legislative power; insofar as it has created a system of budgeting wherein items are not textualized into the appropriations bill, it has flouted the prescribed procedure of presentment and, in the process, denied the President the power to veto items; insofar as it has diluted the effectiveness of congressional oversight by giving legislators a stake in the affairs of budget execution, an aspect of governance which they may be called to monitor and scrutinize, the system has equally impaired public accountability; insofar as it has authorized legislators, who are national officers, to intervene in affairs of purely local nature, despite the existence of capable local institutions, it has likewise subverted genuine local autonomy; and again, insofar as it has conferred to the President the power to appropriate funds intended by law for energy-related purposes only to other purposes he may deem fit as well as other public funds under the broad classification of "priority infrastructure development projects," it has once more transgressed the principle of non-delegability.

For as long as this nation adheres to the rule of law, any of the multifarious unconstitutional methods and mechanisms the Court has herein pointed out should never again be adopted in any system of governance, by any name or form, by any semblance or similarity, by any influence or effect. Disconcerting as it is to think that a system so constitutionally unsound has monumentally endured, the Court urges the people and its co-stewards in government to look forward with the optimism of change and the awareness of the past. At a time of great civic unrest and vociferous public debate, the Court fervently hopes that its Decision today, while it may not purge all the wrongs of society nor bring back what has been lost, guides this nation to the path forged by the Constitution so that no one may heretofore detract from its cause nor stray from its course. After all, this is the Court's bounden duty and no other's.

WHEREFORE, the petitions are PARTLY GRANTED. In view of the constitutional violations discussed in this Decision, the Court hereby declares as UNCONSTITUTIONAL: (a) the entire 2013 PDAF Article; (b) all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions, which authorize/d legislators – whether individually or collectively organized into committees – to intervene, assume or participate in any of the various post-enactment stages of the budget execution, such as but not limited to the areas of project identification, modification and revision of project identification, fund release and/or fund realignment, unrelated to the power of congressional oversight; (c) all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions, which confer/red personal, lump-sum allocations to legislators from which they are able to fund specific projects which they themselves determine; (d) all informal practices of similar import and effect, which the Court similarly deems to be acts of grave abuse of discretion amounting to lack or excess of jurisdiction; and (e) the phrases (1) "and for such other purposes as may be hereafter directed by the President" under Section 8 of Presidential Decree No. 910 and (2) "to finance the priority infrastructure development projects" under Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, for both failing the sufficient standard test in violation of the principle of non-delegability of legislative power.

Accordingly, the Court's temporary injunction dated September 10, 2013 is hereby declared to be PERMANENT. Thus, the disbursement/release of the remaining PDAF funds allocated for the year 2013, as well as for all previous years, and the funds sourced from (1) the Malampaya Funds under the phrase "and for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of Presidential Decree No. 910, and (2) the Presidential Social Fund under the phrase "to finance the priority infrastructure development projects" pursuant to Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, which are, at the time this Decision is promulgated, not covered by Notice of Cash Allocations (NCAs) but only

by Special Allotment Release Orders (SAROs), whether obligated or not, are hereby ENJOINED. The remaining PDAF funds covered by this permanent injunction shall not be disbursed/released but instead reverted to the unappropriated surplus of the general fund, while the funds under the Malampaya Funds and the Presidential Social Fund shall remain therein to be utilized for their respective special purposes not otherwise declared as unconstitutional.

On the other hand, due to improper recourse and lack of proper substantiation, the Court hereby DENIES petitioners' prayer seeking that the Executive Secretary and/or the Department of Budget and Management be ordered to provide the public and the Commission on Audit complete lists/schedules or detailed reports related to the availments and utilization of the funds subject of these cases. Petitioners' access to official documents already available and of public record which are related to these funds must, however, not be prohibited but merely subjected to the custodian's reasonable regulations or any valid statutory prohibition on the same. This denial is without prejudice to a proper mandamus case which they or the Commission on Audit may choose to pursue through a separate petition.

The Court also DENIES petitioners' prayer to order the inclusion of the funds subject of these cases in the budgetary deliberations of Congress as the same is a matter left to the prerogative of the political branches of government.

Finally, the Court hereby DIRECTS all prosecutorial organs of the government to, within the bounds of reasonable dispatch, investigate and accordingly prosecute all government officials and/or private individuals for possible criminal offenses related to the irregular, improper and/or unlawful disbursement/utilization of all funds under the Pork Barrel System.

This Decision is immediately executory but prospective in effect.

SO ORDERED.

Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, and Reyes, JJ., concur.

Sereno, C.J., Carpio, see concurring opinion.

Velasco, Jr., J., no part.

Leonardo-De Castro, J., I concur and also join the concurring opinion of Justice Carpio.

Brion, J., I join the opinion of Justice Carpio, subject to my concurring & dissenting opinion.

Abad, J., I join the concurring opinion of J. A.T. Carpio.

Leonen, J., see concurring opinion.

[*] Dropped as a party per Memorandum dated October 17, 2013 filed by counsel for petitioners Atty. Alfredo B. Molo III, et al. Rollo (G.R. No. 208566), p. 388.

[1] The Federalist Papers, Federalist No. 20.

[2] Rollo (G.R. No. 208566), pp. 3-51; rollo (G.R. No. 208493), pp. 3-11; and rollo (G.R. No. 209251), pp. 2-8.

[3] "[P]ork barrel spending, 'a term that traces its origins back to the era of slavery before the U.S. Civil War, when slave owners occasionally would present a barrel of salt pork as a gift to their slaves. In the modern usage, the term refers to congressmen scrambling to set aside money for pet projects in their districts.'" (Drudge, Michael W. "'Pork Barrel' Spending Emerging as Presidential Campaign Issue," August 1, 2008 [visited October 17, 2013].)

[4] Bernas, Joaquin G., S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003

Edition, p. 786, citing Bernas, "From Pork Barrel to Bronze Caskets," Today, January 30, 1994.

[5] Heaser, Jason, "Pulled Pork: The Three Part Attack on Non-Statutory Earmarks," Journal of Legislation, 35 J. Legis. 32 (2009). (visited October 17, 2013).

[6] Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" p. 2. (visited October 17, 2013).

[7] Chua, Yvonne T. and Cruz, Booma, B., "Pork is a Political, Not A Developmental, Tool." [visited October 22, 2013].) See also rollo (G.R. No. 208566), pp. 328-329.

[8] Morton, Jean, "What is a Pork Barrel?" Global Granary, Lifestyle Magazine and Common Place Book Online: Something for Everyone, August 19, 2013. (visited October 17, 2013).

[9] Jison, John Raymond, "What does the 'pork barrel' scam suggest about the Philippine government?" International Association for Political Science Students, September 10, 2013. (visited October 17, 2013). See also Llanes, Jonathan, "Pork barrel – Knowing the issue," Sunstar Baguio, October 23, 2013. (visited October 17, 2013).

[10] Entitled "AN ACT MAKING APPROPRIATIONS FOR PUBLIC WORKS," approved on March 10, 1922.

[11] "Act 3044, the first pork barrel appropriation, essentially divided public works projects into two types. The first type—national and other buildings, roads and bridges in provinces, and lighthouses, buoys and beacons, and necessary mechanical equipment of lighthouses—fell directly under the jurisdiction of the director of public works, for which his office received appropriations. The second group—police barracks, normal school and other public buildings, and certain types of roads and bridges, artesian wells, wharves, piers and other shore protection works, and cable, telegraph, and telephone lines—is the forerunner of the infamous pork barrel.

Although the projects falling under the second type were to be distributed at the discretion of the secretary of commerce and communications, he needed prior approval from a joint committee elected by the Senate and House of Representatives. The nod of either the joint committee or a committee member it had authorized was also required before the commerce and communications secretary could transfer unspent portions of one item to another item." (Emphases supplied) (Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. [visited October 14, 2013]).

[12] Sec. 3. The sums appropriated in paragraphs (c), (g), (l), and (s) of this Act shall be available for immediate expenditure by the Director of Public Works, but those appropriated in the other paragraphs shall be distributed in the discretion of the Secretary of Commerce and Communications, subject to the approval of a joint committee elected by the Senate and the House of Representatives. The committee from each House may authorize one of its members to approve the distribution made by the Secretary of Commerce and Communications, who with the approval of said joint committee, or of the authorized members thereof may, for the purposes of said distribution, transfer unexpended portions of any item of appropriation. (Emphases supplied)

[13] Those Section 1 (c), (g), (l), and (s) of Act 3044 "shall be available for immediate expenditure by the Director of Public Works."

[14] Section 3, Act 3044.

[15] Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. (visited October 14, 2013).

[16] Id.

[17] Id.

[18] Id.

[19] Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" (visited October 17, 2013). 20 Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. (visited October 14, 2013).

[21] Id.

[22] Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP), Special Audits Office Report No. 2012-03, August 14, 2013 (CoA Report), p. 2.

[23] Ilagan, Karol, "Data A Day; CIA, CDF, PDAF" Pork is pork is pork," Moneypolitics, A Date Journalism Project for the Philippine Center for Investigative Journalism, August 1, 2013 (visited October 14, 2013).

[24] Republic Act No. (RA) 6831.

[25] Special Provision 1, Article XLIV, RA 7078 (1991 CDF Article), and Special Provision 1, Article XLII (1992), RA 7180 (1992 CDF Article) are similarly worded as follows: Special Provision 1. Use and Release of Funds. The amount herein appropriated shall be used for infrastructure and other priority projects and activities upon approval by the President of the Philippines and shall be released directly to the appropriate implementing agency [(x x x for 1991)], subject to the submission of the required list of projects and activities. (Emphases supplied)

[26] Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. (visited October 14, 2013).

[27] Id.

[28] Special Provision 1, Article XXXVIII, RA 7645 (1993 CDF Article) provides: Special Provision

1. Use and Release of Funds. The amount herein appropriated shall be used for infrastructure and other priority projects and activities as proposed and identified by officials concerned according to the following allocations: Representatives, P12,500,000 each; Senators P18,000,000 each; Vice-President, P20,000,000.

The fund shall be automatically released quarterly by way of Advice of Allotment and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each quarter upon submission of the list of projects and activities by the officials concerned. (Emphases supplied)

[29] See Special Provision 1, 1993 CDF Article; id.

[30] Special Provision 1, Article XLI, RA 7663 (1994 CDF Article) provides:

Special Provisions

1. Use and Release of Funds. The amount herein appropriated shall be used for infrastructure, purchase of ambulances and computers and other priority projects and activities, and credit facilities to qualified beneficiaries as proposed and identified by officials concerned according to the following allocations: Representatives, P12,500,000 each; Senators P18,000,000 each; Vice-President, P20,000,000; PROVIDED, That, the said credit facilities shall be constituted as a revolving fund to be administered by a government financial institution (GFI) as a trust fund for lending operations. Prior years releases to local government units and national government agencies for this purpose shall be turned over to the government financial institution which shall be the sole administrator of credit facilities released from this fund.

The fund shall be automatically released quarterly by way of Advice of Allotments and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each quarter upon submission of the list of projects and activities by the officials concerned. (Emphases supplied)

[31] Special Provision 1, Article XLII, RA 7845 (1995 CDF Article) provides:

Special Provisions

1. Use and Release of Funds. The amount herein appropriated shall be used for infrastructure, purchase of equipment and other priority projects and activities as proposed and identified by officials concerned according to the following allocations: Representatives, P12,500,000 each; Senators P18,000,000 each; Vice-President, P20,000,000.

The fund shall be automatically released semi-annually by way of Advice of Allotment and Notice of Cash Allocation directly to the designated implementing agency not later than five (5) days after the beginning of each semester upon submission of the list of projects and activities by the officials concerned. (Emphases supplied)

[32] Special Provision 1, Article XLII, RA 8174 (1996 CDF Article) provides:

Special Provisions

1. Use and Release of Fund. The amount herein appropriated shall be used for infrastructure, purchase of equipment and other priority projects and activities, including current operating expenditures, except creation of new plantilla positions, as proposed and identified by officials concerned according to the following allocations: Representatives, Twelve Million Five Hundred Thousand Pesos (P12,500,000) each; Senators, Eighteen Million Pesos (P18,000,000) each; Vice-President, Twenty Million Pesos (P20,000,000).

The Fund shall be released semi-annually by way of Special Allotment Release Order and Notice of Cash Allocation directly to the designated implementing agency not later than thirty (30) days after the beginning of each semester upon submission of the list of projects and activities by the officials concerned. (Emphases supplied)

[33] Special Provision 2 of the 1994 CDF Article, Special Provision 2 of the 1995 CDF Article and Special Provision 2 of the 1996 CDF Article are similarly worded as follows:

2. Submission of [Quarterly (1994)/Semi-Annual (1995 and 1996)] Reports. The Department of Budget and Management shall submit within thirty (30) days after the end of each [quarter (1994)/semester (1995 and 1996)] a report to the House Committee on Appropriations and the Senate Committee on Finance on the releases made from this Fund. The report shall include the listing of the projects, locations, implementing agencies [stated (order of committees interchanged in 1994 and 1996)] and the endorsing officials. (Emphases supplied)

[34] Special Provision 2, Article XLII, RA 8250 (1997 CDF Article) provides:

Special Provisions

x x x x

2. Publication of Countrywide Development Fund Projects. Within thirty (30) days after the signing of this Act into law, the Members of Congress and the Vice-President shall, in consultation with the implementing agency concerned, submit to the Department of Budget and Management the list of fifty percent (50%) of projects to be funded from the allocation from the Countrywide Development Fund which shall be duly endorsed by the Senate President and the Chairman of the Committee on Finance in the case of the Senate and the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations in the case of the House of Representatives, and the remaining fifty percent (50%) within six (6) months thereafter. The list shall

identify the specific projects, location, implementing agencies, and target beneficiaries and shall be the basis for the release of funds. The said list shall be published in a newspaper of general circulation by the Department of Budget and Management. No funds appropriated herein shall be disbursed for projects not included in the list herein required. (Emphases supplied)

[35] See Special Provision 2, 1997 CDF Article; id.

[36] Special Provision 2, Article XLII, RA 8522 (1998 CDF Article) provides:

Special Provisions

x x x x

2. Publication of Countrywide Development Fund Projects. x x x PROVIDED, That said publication is not a requirement for the release of funds. x x x x (Emphases supplied)

[37] Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. (visited October 14, 2013).

[38] Id.

[39] Rollo (G.R. No. 208566), pp. 335-336, citing Parreño, Earl, "Perils of Pork," Philippine Center for Investigative Journalism, June 3-4, 1998. Available at

[40] Id.

[41] Id.

[42] RA 8745 entitled "AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY ONE, NINETEEN HUNDRED NINETY NINE, AND FOR OTHER PURPOSES."

[43] Special Provision 1, Article XLII, Food Security Program Fund, RA 8745 provides:

Special Provision

1. Use and Release of Fund. The amount herein authorized shall be used to support the Food Security Program of the government, which shall include farm-to-market roads, post harvest facilities and other agricultural related infrastructures. Releases from this fund shall be made directly to the implementing agency subject to prior consultation with the Members of Congress concerned. (Emphases supplied)

[44] Special Provision 1, Article XLIX, Lingap Para sa Mahihirap Program Fund, RA 8745 provides:

Special Provision

1. Use and Release of Fund. The amount herein appropriated for the Lingap Para sa Mahihirap Program Fund shall be used exclusively to satisfy the minimum basic needs of poor communities and disadvantaged sectors: PROVIDED, That such amount shall be released directly to the implementing agency upon prior consultation with the Members of Congress concerned. (Emphases supplied)

[45] Special Provision 1, Article L, Rural/Urban Development Infrastructure Program Fund, RA 8745 provides: Special Provision 1. Use and Release of Fund. The amount herein authorized shall be used to fund infrastructure requirements of the rural/urban areas which shall be released directly to the implementing agency upon prior consultation with the respective Members of Congress. (Emphases supplied)

[46] Special Provision 1, Article XLIX, RA 8760 (2000 PDAF Article) provides:

Special Provision

1. Use and release of the Fund. The amount herein appropriated shall be used to fund priority programs and

projects as indicated under Purpose 1: PROVIDED, That such amount shall be released directly to the implementing agency concerned upon prior consultation with the respective Representative of the District: PROVIDED, FURTHER, That the herein allocation may be realigned as necessary to any expense category: PROVIDED, FINALLY, That no amount shall be used to fund personal services and other personal benefits. (Emphases supplied)

[47] See Special Provision 1, 2000 PDAF Article; id.

[48] Section 25 (7), Article VI, of the 1987 Philippine Constitution (1987 Constitution) provides that "[i]f, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress." (Emphasis supplied)

[49] Special Provision 1, Article L, RA 9162 (2002 PDAF Article) provides:

1. Use and Release of the Fund. The amount herein appropriated shall be used to fund priority programs and projects or to fund counterpart for foreign-assisted programs and projects: PROVIDED, That such amount shall be released directly to the implementing agency or Local Government Unit concerned. (Emphases supplied)

[50] Special Provision 1, Article XLVII, RA 9206, 2003 GAA (2003 PDAF Article) provides:

Special Provision

1. Use and Release of the Fund. The amount herein appropriated shall be used to fund priority programs and projects or to fund the required counterpart for foreign-assisted programs and projects: PROVIDED, That such amount shall be released directly to the implementing agency or Local Government Unit concerned: PROVIDED, FURTHER, That the allocations authorized herein may be realigned to any expense class, if deemed necessary: PROVIDED, FURTHERMORE, That a maximum of ten percent (10%) of the authorized allocations by district may be used for the procurement of rice and other basic commodities which shall be purchased from the National Food Authority.

[51] Special Provision 1, Article XVIII, RA 9206 provides:

Special Provision No. 1 – Restriction on the Delegation of Project Implementation

The implementation of the projects funded herein shall not be delegated to other agencies, except those projects to be implemented by the Engineering Brigades of the AFP and inter- department projects undertaken by other offices and agencies including local government units with demonstrated capability to actually implement the projects by themselves upon consultation with the Members of Congress concerned. In all cases the DPWH shall exercise technical supervision over projects. (Emphasis supplied)

[52] Special Provision 3, Article XLII, RA 9206 provides:

Special Provision No. 3 – Submission of the List of School Buildings

Within 30 days after the signing of this Act into law, (DepEd) after consultation with the representative of the legislative district concerned, shall submit to DBM the list of 50% of school buildings to be constructed every municipality x x x. The list as submitted shall be the basis for the release of funds. (Emphasis supplied)

[53] Rollo (G.R. No. 208566), p. 557.

[54] Special Provision 1, Article L, RA 9336 (2005 PDAF Article) provides: Special Provision(s)

1. Use and Release of the Fund. The amount appropriated herein shall be used to fund priority programs and projects under the ten point agenda of the national government and shall be released directly to the implementing agencies as indicated hereunder, to wit:

PARTICULARS

PROGRAM/PROJECT

IMPLEMENTING AGENCY

A. Education

Purchase of IT
Equipment

DepEd/TESDA/ CHED/SUCs/LGUs

Scholarship

TESDA/CHED/ SUCs/LGUs

B. Health

Assistance to Indigent
Patients Confined at the
Hospitals Under DOH
Including Specialty
Hospitals

DOH/Specialty
Hospitals

Assistance to Indigent
Patients at the Hospitals
Devolved to LGUs and
RHUs

LGUs

Insurance Premium

Philhealth

C. Livelihood/ CIDSS

Small & Medium
Enterprise/Livelihood

DTI/TLRC/DA/
CDA

Comprehensive
Integrated Delivery of
Social Services

DSWD

D. Rural Electrification

Barangay/Rural Electrification

DOE/NEA

E. Water Supply

Construction of Water
System

DPWH

Installation of
Pipes/Pumps/Tanks

LGUs

F. Financial Assistance

Specific Programs and
Projects to Address the
Pro-Poor Programs of
Government

LGUs

G. Public Works

Construction/Repair/
Rehabilitation of the following:
Roads and Bridges/Flood
Control/School buildings
Hospitals Health Facilities/Public
Markets/Multi-Purpose
Buildings/Multi-Purpose
Pavements

DPWH

H. Irrigation

Construction/Repair/
Rehabilitation of
Irrigation Facilities

DA-NIA

(Emphasis supplied)

[55] Id.

[56] Rollo (G.R. No. 208566), p. 558.

[57] See Special Provision 1, Article XLVII, RA 9401.

[58] See Special Provision 1, Article XLVI, RA 9498.

[59] See Special Provision 1, Article XLIX, RA 9524.

[60] See Special Provision 1, Article XLVII, RA 9970.

[61] For instance, Special Provisions 2 and 3, Article XLIII, RA 9336 providing for the 2005 DepEd School Building Program, and Special Provisions 1 and 16, Article XVIII, RA 9401 providing for the 2007 DPWH Regular Budget respectively state:

2005 DepEd School Building Program Special Provision No. 2 – Allocation of School Buildings: The amount allotted under Purpose 1 shall be apportioned as follows: (1) fifty percent (50%) to be allocated pro-rata according to each legislative districts student population x x x; (2) forty percent (40%) to be allocated only among those legislative districts with classroom shortages x x x; (3) ten percent (10%) to be allocated in accordance x x x. Special Provision No. 3 – Submission of the List of School Buildings: Within 30 days after the signing of this Act into law, the DepEd after consultation with the representative of the legislative districts concerned, shall submit to DBM the list of fifty percent (50%) of school buildings to be constructed in every municipality x x x. The list as submitted shall be the basis for the release of funds x x x. (Emphases supplied) 2007 DPWH Regular Budget Special Provision No. 1 – Restriction on Delegation of Project Implementation: The implementation of the project funded herein shall not be delegated to other agencies, except those projects to be implemented by the AFP Corps of Engineers, and inter-department projects to be undertaken by other offices and agencies, including local government units (LGUs) with demonstrated capability to actually implement the project by themselves upon consultation with the representative of the legislative district concerned x x x. Special Provision No. 16 – Realignment of Funds: The Secretary of Public Works and Highways is authorized to realign funds released from appropriations x x x from one project/scope of work to another: PROVIDED, that x x x (iii) the request is with the concurrence of the legislator concerned x x x. (Emphasis supplied)

[62] Rollo (G.R. No. 208566), p. 559, citing Section 2.A of RA 9358, otherwise known as the "Supplemental Budget for 2006."

[63] Id. at 559-560.

[64] "As a primary aspect of the Philippine Government's public procurement reform agenda, the Government Procurement Policy Board (GPPB) was established by virtue of Republic Act No. 9184 (R.A. 9184) as an independent inter-agency body that is impartial, transparent and effective, with private sector representation. As established in Section 63 of R.A. 9184, the GPPB shall have the following duties and responsibilities: 1. To protect national interest in all matters affecting public procurement, having due regard to the country's regional and international obligations; 2. To formulate and amend public procurement policies, rules and regulations, and amend, whenever necessary, the implementing rules and regulations Part A (IRR-A); 3. To prepare a generic procurement manual and standard bidding forms for procurement; 4. To ensure the proper implementation by the procuring entities of the Act, its IRR-A and all other relevant rules and regulations pertaining to public procurement; 5. To establish a sustainable training program to develop the capacity of Government procurement officers and employees, and to ensure the conduct of regular procurement training programs by the procuring entities; and 6. To conduct an annual review of the effectiveness of the Act and recommend any amendments thereto, as may be necessary. x x x x" (visited October 23, 2013).

[65] Entitled "AMENDMENT OF SECTION 53 OF THE IMPLEMENTING RULES AND REGULATIONS

PART A OF REPUBLIC ACT 9184 AND PRESCRIBING GUIDELINES ON PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN PUBLIC PROCUREMENT,” approved June 29, 2007.

[66] Entitled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES.”

[67] Sec. 48. Alternative Methods. - Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

x x x x

(e) Negotiated Procurement - a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant. x x x x

[68] As defined in Section 5(o) of RA 9184, the term "Procuring Entity” refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or - controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.

[69] Rollo (G.R. No. 208566), p. 564, citing GPPB Resolution 12-2007. 70 Special Provision 2, Article XLIV, RA 10147 (2011 PDAF Article) provides:

2. Allocation of Funds. The total projects to be identified by legislators and the Vice- President shall not exceed the following amounts: a. Total of Seventy Million Pesos (P70,000,000) broken down into Forty Million Pesos (P40,000,000) for Infrastructure Projects and Thirty Million Pesos (P30,000,000) for soft projects of Congressional Districts or Party List Representatives; b. Total of Two Hundred Million Pesos (P200,000,000) broken down into One Hundred Million Pesos (P100,000,000) for Infrastructure Projects and One Hundred Million Pesos (P100,000,000) for soft projects of Senators and the Vice President.

[71] See Special Provision 4, 2011 PDAF Article.

[72] Special Provision 2, Article XLIV, RA 10155 (2012 PDAF Article) provides:

2. Project Identification. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency. Furthermore, preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the National Household Targeting System for Poverty Reduction by the DSWD. For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act . (Emphasis supplied)

[73] RA 10352, passed and approved by Congress on December 19, 2012 and signed into law by the President on December 19, 2012. Special Provision 2, Article XLIV, RA 10352 (2013 PDAF Article) provides:

2. Project Identification. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency: PROVIDED, That preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the NHTS-PR by the DSWD. For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act. (Emphasis supplied)

[74] The permissive treatment of the priority list requirement in practice was revealed during the Oral Arguments (TSN, October 10, 2013, p. 143):

Justice Leonen: x x x In Section 2 [meaning, Special Provision 2], it mentions priority list of implementing agencies. Have the implementing agencies indeed presented priority list to the Members of Congress before disbursement? Solicitor General Jardeleza: My understanding is, is not really, Your Honor. Justice Leonen: So, in other words, the PDAF was expended without the priority list requirements of the implementing agencies? Solicitor General Jardeleza: That is so much in the CoA Report, Your Honor.

[75] See Special Provision 3 of the 2012 PDAF Article and Special Provision 3 of the 2013 PDAF Article.

[76] Special Provision 6 of the 2012 PDAF Article provides:

6. Realignment of Funds. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Environment and Natural Resources, Health, Interior and Local Government, Public Works and Highways, and Social Welfare and Development are also authorized to approve realignment from one project/scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and same project category as the original project; (ii) allotment released has not yet been obligated for the original project/scope of work; and (iii) request is with the concurrence of the legislator concerned. The DBM must be informed in writing of any realignment approved within five (5) calendar days from its approval.

Special Provision 4 of the 2013 PDAF Article provides:

4. Realignment of Funds. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry are also authorized to approve realignment from one project/scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and same project category as the original project; (ii) allotment released has not yet been obligated for the original project/scope of work; and (iii) request is with the concurrence of the legislator concerned. The DBM must be informed in writing of any realignment approved within five (5) calendar days from approval thereof: PROVIDED, That any realignment under this Fund shall be limited within the same classification of soft or hard programs/projects listed under Special Provision 1 hereof: PROVIDED, FURTHER, That in case of realignments, modifications and revisions of projects to be implemented by LGUs, the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr. Any realignment, modification and revision of the project identification shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance, for favorable endorsement to the DBM or the implementing agency, as the case may be. (Emphases supplied)

[77] Special Provision 1 of the 2013 PDAF Article provides:

Special Provision(s)

1. Use of Fund. The amount appropriated herein shall be used to fund the following priority programs and projects to be implemented by the corresponding agencies:

x x x x

PROVIDED, That this Fund shall not be used for the payment of Personal Services expenditures: PROVIDED, FURTHER, That all procurement shall comply with the provisions of R.A. No. 9184 and its Revised Implementing Rules and Regulations: PROVIDED, FINALLY, That for infrastructure projects, LGUs may only be identified as implementing agencies if they have the technical capability to implement the same.

(Emphasis supplied)

[78] Special Provision 2 of the 2013 PDAF Article provides:

2. Project Identification. x x x.

x x x x

All programs/projects, except for assistance to indigent patients and scholarships, identified by a member of the House of Representatives outside of his/her legislative district shall have the written concurrence of the member of the House of Representatives of the recipient or beneficiary legislative district, endorsed by the Speaker of the House of Representatives.

[79] See Special Provision 4 of the 2013 PDAF Article; supra note 76.

[80] Sec. 8. Appropriations. The sum of Five Million Pesos out of any available funds from the National Treasury is hereby appropriated and authorized to be released for the organization of the Board and its initial operations. Henceforth, funds sufficient to fully carry out the functions and objectives of the Board shall be appropriated every fiscal year in the General Appropriations Act. All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President. (Emphasis supplied)

[81] Entitled "CREATING AN ENERGY DEVELOPMENT BOARD, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS, THEREFOR, AND FOR OTHER PURPOSES."

[82] See First Whereas Clause of PD 910.

[83] See (visited October 17, 2013).

[84] Sec. 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the Government in the aggregate gross earnings of the Corporation from this Franchise shall be immediately set aside and allocated to fund the following infrastructure and socio-civil projects within the Metropolitan Manila Area:

- (a) Flood Control
- (b) Sewerage and Sewage
- (c) Nutritional Control
- (d) Population Control
- (e) Tulungan ng Bayan Centers
- (f) Beautification
- (g) Kilusang Kabuhayan at Kaunlaran (KKK) projects; provided, that should the aggregate gross earning be less than P150,000,000.00, the amount to be allocated to fund the above- mentioned project shall be equivalent to sixty (60%) percent of the aggregate gross earning.

In addition to the priority infrastructure and socio-civic projects with the Metropolitan Manila specifically enumerated above, the share of the Government in the aggregate gross earnings derived by the Corporate from this Franchise may also be appropriated and allocated to fund and finance infrastructure and/or socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President of the Philippines.

[85] Entitled "CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)."

[86] Entitled "AMENDING SECTION TWELVE OF PRESIDENTIAL DECREE NO. 1869 - CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)." While the parties have confined their discussion to Section 12 of PD 1869, the Court takes judicial notice of its amendment and perforce deems it apt to resolve the constitutionality of the amendatory provision.

[87] Section 12 of PD 1869, as amended by PD 1993, now reads: Sec. 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than P150,000,000.00 shall immediately be set aside and shall accrue to the General Fund to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines.

[88] Rollo (G.R. No. 208566), p. 301.

[89] CDF/PDAF ALLOCATION FROM 1990 -2013.

1990.....	P2,300,000,000.00
1991.....	P 2,300,000,000.00
1992.....	P 2,480,000,000.00
1993.....	P 2,952,000,000.00
1994.....	P 2,977,000,000.00
1995.....	P 3,002,000,000.00
1996.....	P 3,014,500,000.00
1997.....	P 2,583,450,000.00
1998.....	P 2,324,250,000.00
1999.....	P 1,517,800,000.00 (Food Security Program Fund)
.....	P 2,500,000,000.00 (Lingap Para Sa Mahihirap Program Fund)
.....	P 5,458,277,000.00 (Rural/Urban Development Infrastructure Program Fund)
2000.....	P 3,330,000,000.00
2001.....	2000 GAA re-enacted
2002.....	P 5,677,500,000.00
2003.....	P 8,327,000,000.00
2004.....	2003 GAA re-enacted
2005.....	P 6,100,000,000.00
2006.....	2005 GAA re-enacted
2007.....	P 11,445,645,000.00
2008.....	P 7,892,500,000.00
2009.....	P 9,665,027,000.00
2010.....	P 10,861,211,000.00
2011.....	P 24,620,000,000.00
2012.....	P 24,890,000,000.00
2013.....	P 24,790,000,000.00

[90] "Pork as a tool for political patronage, however, can extend as far as the executive branch. It is no accident, for instance, that the release of the allocations often coincides with the passage of a Palace- sponsored bill.

That pork funds have grown by leaps and bounds in the last decade can be traced to presidents in need of Congress support. The rise in pork was particularly notable during the Ramos administration, when the president and House Speaker Jose de Venecia, Jr. used generous fund releases to convince congressmen to support Malacañang-initiated legislation. The Ramos era, in fact, became known as the 'golden age of pork.'

Through the years, though, congressmen have also taken care to look after their very own. More often than not, pork-barrel funds are funneled to projects in towns and cities where the lawmakers' own relatives have been elected to public office; thus, pork is a tool for building family power as well. COA has come across many instances where pork-funded projects ended up directly benefiting no less than the lawmaker or his or her relatives." (CHUA, YVONNE T. and CRUZ, BOOMA, "Pork is a Political, Not A Developmental, Tool." [visited October 22, 2013].) 91 With reports from Inquirer Research and Salaverria, Leila, "Candazo, first whistle-blower on pork barrel scam, dies; 61," Philippine Daily Inquirer, August 20, 2013, (visited October 21, 2013.)

[92] Id.

[93] Id.

[94] Id.

[95] *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 387.

[96] Carvajal, Nancy, "NBI probes P10-B scam," Philippine Daily Inquirer, July 12, 2013 (visited October 21, 2013).

[97] Id.

[98] See NBI Executive Summary. (visited October 22, 2013).

[99] Pursuant to Office Order No. 2010-309 dated May 13, 2010.

[100] During the Oral Arguments, the CoA Chairperson referred to the VILP as "the source of the so called HARD project, hard portion x x x "under the title the Budget of the DPWH." TSN, October 8, 2013, p. 69.

[101] These implementing agencies included the Department of Agriculture, DPWH and the Department of Social Welfare and Development (DSWD). The GOCCs included Technology and Livelihood Resource Center (TLRC)/Technology Resource Center (TRC), National Livelihood Development Corporation (NLDC), National Agribusiness Corporation (NABCOR), and the Zamboanga del Norte Agricultural College (ZNAC) Rubber Estate Corporation (ZREC). CoA Chairperson's Memorandum. Rollo (G.R. No. 208566), p. 546. See also CoA Report, p. 14.

[102] Id.

[103] Id. at 546-547.

[104] Carvajal, Nancy, "Malampaya fund lost P900M in JLN racket", Philippine Daily Inquirer, July 16, 2013 (visited October 21, 2013.)

[105] TSN, October 8, 2013, p. 119.

[106] Rollo (G.R. No. 208493), pp. 9 and 341.

[107] The Court observes that petitioners have not presented sufficient averments on the "remittances from the Philippine Charity Sweepstakes Office" nor have defined the scope of "the Executive's Lump Sum Discretionary Funds" (See rollo [G.R. No. 208566], pp. 47-49) which appears to be too broad and all-encompassing. Also, while Villegas filed a Supplemental Petition dated October 1, 2013 (Supplemental Petition, see rollo [G.R. No. 208566], pp. 213-220, and pp. 462-464) particularly presenting their arguments on the Disbursement Acceleration Program, the same is the main subject of G.R. Nos. 209135, 209136, 209155, 209164, 209260, 209287, 209442, 209517, and 209569 and thus, must be properly resolved therein. Hence, for these reasons, insofar as the Presidential Pork Barrel is concerned, the Court is constrained not to delve on any issue related to the above-mentioned funds and consequently confine its discussion only with respect to the issues pertaining to the Malampaya Funds and the Presidential Social Fund.

[108] Rollo (G.R. No. 208566), pp. 48-49.

[109] Id. at 48.

[110] To note, Villegas' Supplemental Petition was filed on October 2, 2013.

[111] Rollo (G.R. No. 208566), p. 342; and rollo (G.R. No. 209251), pp. 6-7.

[112] Re-docketed as G.R. No. 209251 upon Nepomuceno's payment of docket fees on October 16, 2013 as reflected on the Official Receipt No. 0079340. Rollo (G.R. No. 209251) p. 409.

[113] Rollo (G.R. No. 208566) p. 97.

[114] G.R. Nos. 113105, 113174, 113766 & 113888, August 19, 1994, 235 SCRA 506.

[115] Supra note 95.

[116] Entitled "CREATING AN ENERGY DEVELOPMENT BOARD, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS, THEREFOR, AND FOR OTHER PURPOSES."

[117] Joya v. Presidential Commission on Good Government, G.R. No. 96541, August 24, 1993, 225 SCRA 568, 575.

[118] Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 148.

[119] Joya v. Presidential Commission on Good Government, supra note 117, at 575.

[120] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, G.R. Nos. 178552, 178554, 178581, 178890, 179157, and 179461, October 5, 2010, 632 SCRA 146, 175.

[121] Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), G.R. Nos. 183591, 183752, 183893, 183951, and 183962, October 14, 2008, 568 SCRA 402, 450.

[122] Id. at 450-451.

[123] Francisco, Jr. v. Toll Regulatory Board, G.R. No. 166910, 169917, 173630, and 183599, October 19, 2010, 633 SCRA 470, 493, citing Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), G.R. Nos. 183591, 183752, 183893, 183951, and 183962, October 14, 2008, 568 SCRA 402, 405.

[124] Id. at 492, citing *Muskrat v. U.S.*, 219 U.S. 346 (1913).

[125] Baldo, Jr. v. Commission on Elections, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310.

[126] TSN, October 10, 2013, pp. 79-81.

[127] Section 17, Article VII of the 1987 Constitution reads:

Sec. 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

[128] Sec. 38. Suspension of Expenditure of Appropriations. – Except as otherwise provided in the General Appropriations Act and whenever in his judgment the public interest so requires, the President, upon notice to the head of office concerned, is authorized to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act, except for personal services appropriations used for permanent officials and employees.

[129] Mattel, Inc. v. Francisco, G.R. No. 166886, July 30, 2008, 560 SCRA 504, 514, citing Constantino v. Sandiganbayan (First Division), G.R. Nos. 140656 and 154482, September 13, 2007, 533 SCRA 205, 219-220.

[130] Rollo (G.R. No. 208566), p. 292.

[131] G.R. No. 198457, August 13, 2013.

[132] TSN, October 10, 2013, p. 134.

[133] Section 22, Article VII of the 1987 Constitution provides:

Sec. 22. The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

[134] Rollo (G.R. No. 208566), p. 294.

[135] Id. at 5.

[136] G.R. No. 159085, February 3, 2004, 421 SCRA 656.

[137] Id. at 665.

[138] See Francisco, Jr. v. Toll Regulatory Board, *supra* note 123, at 492.

[139] 369 US 186 82, S. Ct. 691, L. Ed. 2d. 663 [1962].

[140] Rollo (G.R. No. 208566), pp. 295-296.

[141] Tañada v. Cuenco, 100 Phil. 1101 (1957) unreported case.

[142] 406 Phil. 1 (2001).

[143] Id. at 42-43.

[144] Angara v. Electoral Commission, 63 Phil. 139, 158 (1936).

[145] La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos, 465 Phil. 860, 890 (2004).

[146] Rollo (G.R. No. 208566), p. 349.

[147] Public Interest Center, Inc. v. Honorable Vicente Q. Roxas, in his capacity as Presiding Judge, RTC of Quezon City, Branch 227, G.R. No. 125509, January 31, 2007, 513 SCRA 457, 470.

[148] *Social Justice Society (SJS) v. Dangerous Drugs Board*, G.R. No. 157870, November 3, 2008, 570 SCRA 410, 421.

[149] TSN, October 8, 2013, pp. 184-185.

[150] *People v. Vera*, 65 Phil. 56, 89 (1937).

[151] See *Lanuza v. CA*, G.R. No. 131394, March 28, 2005, 454 SCRA 54, 61-62.

[152] ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

[153] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, G.R. No. 159422, March 28, 2008, 550 SCRA 180, 197-198.

[154] *Philconsa v. Enriquez*, supra note 114, at 522.

[155] G.R. No. 166715, August 14, 2008, 562 SCRA 251.

[156] *Rollo* (G.R. No. 208566), p. 325.

[157] *Id.* 158 *Id.* at 329.

[159] *Id.* at 339.

[160] *Id.* at 338.

[161] See note 107.

[162] *Angara v. Electoral Commission*, supra note 144, at 139.

[163] *Id.* at 157.

[164] Section 1, Article VI, 1987 Constitution.

[165] Section 1, Article VII, 1987 Constitution.

[166] Section 1, Article VIII, 1987 Constitution.

[167] *Angara v. Electoral Commission*, supra note 144, at 156.

[168] *Government of the Philippine Islands v. Springer*, 277 U.S. 189, 203 (1928).

[169]

, A.M. No. 11-7-10-SC, July 31, 2012, 678 SCRA 1, 9-10, citing Carl Baar, *Separate But Subservient: Court Budgeting In The American States* 149-52 (1975), cited in Jeffrey Jackson, *Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers*, 52 Md. L. Rev. 217 (1993).

[170] *Id.* at 10, citing Jeffrey Jackson, *Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers*, 52 Md. L. Rev. 217 (1993).

[171] See *Nixon v. Administrator of General Services*, 433 U.S. 425, 441-446 and 451-452 (1977) and *United States v. Nixon*, 418 U.S. 683 (1974), cited in Justice Powell's concurring opinion in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).

[172] See *Youngstown Sheet & Tube Co. v. Sawyer* 343 U.S. 579, 587 (1952), *Springer v. Philippine Islands*, 277 U.S. 189, 203 (1928) cited in Justice Powell's concurring opinion in *Immigration and Naturalization Service v.*

Chadha, 462 U.S. 919 (1983).

[173] 273 Phil. 443 (1991).

[174] *Id.* at 461. "3. Budget Execution. Tasked on the Executive, the third phase of the budget process covers the various operational aspects of budgeting. The establishment of obligation authority ceilings, the evaluation of work and financial plans for individual activities, the continuing review of government fiscal position, the regulation of funds releases, the implementation of cash payment schedules, and other related activities comprise this phase of the budget cycle."

[175] *Biraogo v. Philippine Truth Commission* of 2010, *supra* note 118, at 158.

[176] *Guingona, Jr. v. Carague*, *supra* note 173, at 460-461.

[177] *Abakada Guro Party List v. Purisima*, *supra* note 155, at 294-296.

[178] *Id.* at 287.

[179] *Rollo* (G.R. No. 208566), p. 179.

[180] *Id.* at 29.

[181] *Id.* at 24.

[182] *Id.* at 86.

[183] *Id.* at 308.

[184] *Id.*

[185] See CDF Articles for the years 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998.

[186] See PDAF Article for the year 2000 which was re-enacted in 2001. See also the following 1999 CIAs: "Food Security Program Fund," the "Lingap Para Sa Mahihirap Program Fund," and the "Rural/Urban Development Infrastructure Program Fund." See further the 1997 DepEd School Building Fund.

[187] See PDAF Article for the years 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2013.

[188] Also, in Section 2.1 of DBM Circular No. 547 dated January 18, 2013 (DBM Circular 547-13), or the "Guidelines on the Release of Funds Chargeable Against the Priority Development Assistance Fund for FY 2013," it is explicitly stated that the "PDAF shall be used to fund priority programs and projects identified by the Legislators from the Project Menu." (Emphasis supplied)

[189] To note, Special Provision 4 cannot – as respondents submit – refer to realignment of projects since the same provision subjects the realignment to the condition that the "allotment released has not yet been obligated for the original project/scope of work". The foregoing proviso should be read as a textual reference to the savings requirement stated under Section 25(5), Article VI of the 1987 Constitution which pertinently provides that " x x x the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations. In addition, Sections 4.2.3, 4.2.4 and 4.3.3 of DBM Circular 547-13, the implementing rules of the 2013 PDAF Article, respectively require that: (a) "the allotment is still valid or has not yet lapsed"; (b) "[r]equests for realignment of unobligated allotment as of December 31, 2012 treated as continuing appropriations in FY 2013 shall be submitted to the DBM not later than June 30, 2013"; and (c) requests for realignment shall be

supported with, among others, a "[c]ertification of availability of funds." As the letter of the law and the guidelines related thereto evoke the legal concept of savings, Special Provision 4 must be construed to be a provision on realignment of PDAF funds, which would necessarily but only incidentally include the projects for which the funds have been allotted to. To construe it otherwise would effectively allow PDAF funds to be realigned outside the ambit of the foregoing provision, thereby sanctioning a constitutional aberration.

[190] Aside from the sharing of the executive's realignment authority with legislators in violation of the separation of powers principle, it must be pointed out that Special Provision 4, insofar as it confers fund realignment authority to department secretaries, is already unconstitutional by itself. As recently held in *Nazareth v. Villar* (Nazareth), G.R. No. 188635, January 29, 2013, 689 SCRA 385, 403-404, Section 25(5), Article VI of the 1987 Constitution, limiting the authority to augment, is "strictly but reasonably construed as exclusive" in favor of the high officials named therein. As such, the authority to realign funds allocated to the implementing agencies is exclusively vested in the President, viz.:

It bears emphasizing that the exception in favor of the high officials named in Section 25(5), Article VI of the Constitution limiting the authority to transfer savings only to augment another item in the GAA is strictly but reasonably construed as exclusive. As the Court has expounded in *Lokin, Jr. v. Commission on Elections*:

When the statute itself enumerates the exceptions to the application of the general rule, the exceptions are strictly but reasonably construed. The exceptions extend only as far as their language fairly warrants, and all doubts should be resolved in favor of the general provision rather than the exceptions. Where the general rule is established by a statute with exceptions, none but the enacting authority can curtail the former. Not even the courts may add to the latter by implication, and it is a rule that an express exception excludes all others, although it is always proper in determining the applicability of the rule to inquire whether, in a particular case, it accords with reason and justice.

The appropriate and natural office of the exception is to exempt something from the scope of the general words of a statute, which is otherwise within the scope and meaning of such general words. Consequently, the existence of an exception in a statute clarifies the intent that the statute shall apply to all cases not excepted. Exceptions are subject to the rule of strict construction; hence, any doubt will be resolved in favor of the general provision and against the exception. Indeed, the liberal construction of a statute will seem to require in many circumstances that the exception, by which the operation of the statute is limited or abridged, should receive a restricted construction. (Emphases and underscoring supplied)

The cogence of the Nazareth dictum is not enfeebled by an invocation of the doctrine of qualified political agency (otherwise known as the "alter ego doctrine") for the bare reason that the same is not applicable when the Constitution itself requires the President himself to act on a particular matter, such as that instructed under Section 25(5), Article VI of the Constitution. As held in the landmark case of *Villena v. Secretary of Interior* (67 Phil. 451 [1987]), constitutional imprimatur is precisely one of the exceptions to the application of the alter ego doctrine, viz.:

After serious reflection, we have decided to sustain the contention of the government in this case on the board proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. (Emphases

and underscoring supplied; citations omitted)

[191] *Abakada Guro Party List v. Purisima*, supra note 155, at 294-296.

[192] TSN, October 10, 2013, pp. 16, 17, 18, and 23.

[193] TSN, October 10, 2013, pp. 72-73.

[194] Aside from its conceptual origins related to the separation of powers principle, Corwin, in his commentary on Constitution of the United States made the following observations:

At least three distinct ideas have contributed to the development of the principle that legislative power cannot be delegated. One is the doctrine of separation of powers: Why go to the trouble of separating the three powers of government if they can straightway remerge on their own motion? The second is the concept of due process of law, which precludes the transfer of regulatory functions to private persons. Lastly, there is the maxim of agency "Delegata potestas non potest delegari," which John Locke borrowed and formulated as a dogma of political science . . . Chief Justice Taft offered the following explanation of the origin and limitations of this idea as a postulate of constitutional law: "The well-known maxim 'delegata potestas non potest delegari,' applicable to the law of agency in the general common law, is well understood and has had wider application in the construction of our Federal and State Constitutions than it has in private law . . . The Federal and State Constitutions than it has in private law . . . The Federal Constitution and State Constitutions of this country divide the governmental power into three branches . . . In carrying out that constitutional division . . . it is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or if by law it attempts to invest itself or its members with either executive power of judicial power. This is not to say that the three branches are not co-ordinate parts of one government and that each in the field of its duties may not invoke government and that each in the field of its duties may not invoke the action of the two other branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental coordination. (Emphases supplied) 195 Section 1, Article VI, 1987 Constitution.

[196] See *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 702 (1919).

[197] See Section 23(2), Article VI of the 1987 Constitution.

[198] See Section 28(2), Article VI of the 1987 Constitution.

[199] *Abakada Guro Party List v. Purisima*, supra note 155, at 288.

[200] 169 Phil. 437, 447-448 (1977).

[201] *Philippine Constitution Association v. Enriquez*, supra note 114, at 522.

[202] *Bengzon v. Secretary of Justice and Insular Auditor*, 62 Phil. 912, 916 (1936).

[203] *Angara v. Electoral Commission*, supra note 144, at 156.

[204] *Abakada Guro Party List v. Purisima*, supra note 155, at 287.

[205] *Id.* at 292.

[206] *Bengzon v. Secretary of Justice and Insular Auditor*, supra note 202, at 916-917.

[207] "Log-rolling legislation refers to the process in which several provisions supported by an individual legislator or minority of legislators are combined into a single piece of legislation supported by a majority of

legislators on a quid pro quo basis: no one provision may command majority support, but the total package will.” See Rollo (G.R. No. 208566), p. 420, citing Briffault, Richard, "The Item Veto in State Courts," 66 Temp. L. Rev. 1171, 1177 (1993).

[208] Passarello, Nicholas, "The Item Veto and the Threat of Appropriations Bundling in Alaska," 30 Alaska Law Review 128 (2013), citing Black's Law Dictionary 1700 (9[th] ed. 2009). (visited October 23, 2013).

[209] Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983).

[210] 299 U.S. 410 (1937).

[211] To note, in Gonzales v. Macaraig, Jr. (G.R. No. 87636, November 19, 1990, 191 SCRA 452, 465), citing Commonwealth v. Dodson (11 S.E., 2d 120, 176 Va. 281), the Court defined an item of appropriation as "an indivisible sum of money dedicated to a stated purpose." In this relation, Justice Carpio astutely explained that an "item" is indivisible because the amount cannot be divided for any purpose other than the specific purpose stated in the item.

[212] Rollo (G.R. No. 208566), p. 421.

[213] Id.

[214] Id. at 316.

[215] Id. at 421.

[216] Id. at 566.

[217] Id. at 567.

[218] "It cannot be denied that most government actions are inspired with noble intentions, all geared towards the betterment of the nation and its people. But then again, it is important to remember this ethical principle: 'The end does not justify the means.' No matter how noble and worthy of admiration the purpose of an act, but if the means to be employed in accomplishing it is simply irreconcilable with constitutional parameters, then it cannot still be allowed. The Court cannot just turn a blind eye and simply let it pass. It will continue to uphold the Constitution and its enshrined principles. "The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude."" (Biraogo v. Philippine Truth Commission of 2010, supra note 118, 177; citations omitted)

[219] Rollo (G.R. No. 208566), p. 406.

[220] Id. at 407.

[221] Bernas, Joaquin G., S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 Edition, p. 1108.

[222] Abakada Guro Party List v. Purisima, supra note 155.

[223] See Section 22, Article VI, 1987 Constitution.

[224] See Section 21, Article VI, 1987 Constitution.

[225] Rollo (G.R. No. 208493), p. 9.

[226] See Pamatong v. Commission on Elections, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-101.

[227] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991."

[228] 230 Phil. 379, 387-388 (1986).

[229] Id. 230 Rollo (G.R. No. 208566), pp. 95-96.

[231] *Philconsa v. Enriquez*, supra note 114, at 523.

[232] Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" (visited October 17, 2013).

[233] (visited October 22, 2013).

[234] Section 106 of the LGC provides:

Sec. 106. Local Development Councils. – (a) Each local government unit shall have a comprehensive multi-sectoral development plan to be initiated by its development council and approved by its sanggunian. For this purpose, the development council at the provincial, city, municipal, or barangal level, shall assist the corresponding sanggunian in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction.

[235] See Section 109 of the LGC.

[236] Rollo (G.R. No. 208566), p. 423.

[237] Id. at 427.

[238] Id. at 439-440.

[239] Id. at 434 and 441.

[240] See *Guingona, Jr. v. Carague*, supra note 173, where the Court upheld the constitutionality of certain automatic appropriation laws for debt servicing although said laws did not readily indicate the exact amounts to be paid considering that "the amounts nevertheless are made certain by the legislative parameters provided in the decrees"; hence, "[t]he Executive is not of unlimited discretion as to the amounts to be disbursed for debt servicing." To note, such laws vary in great degree with the way the 2013 PDAF Article works considering that: (a) individual legislators and not the executive make the determinations; (b) the choice of both the amount and the project are to be subsequently made after the law is passed and upon the sole discretion of the legislator, unlike in *Guingona, Jr.* where the amount to be appropriated is dictated by the contingency external to the discretion of the disbursing authority; and (c) in *Guingona, Jr.* there is no effective control of the funds since as long as the contingency arises money shall be automatically appropriated therefor, hence what is left is merely law execution and not legislative discretion.

[241] Id. at 462.

[242] 23 Nev. 25 (1895).

[243] Rollo (G.R. No. 208566), p. 438.

[244] Id. at 300.

[245] The project identifications made by the Executive should always be in the nature of law enforcement and, hence, for the sole purpose of enforcing an existing appropriation law. In relation thereto, it may exercise its rule-making authority to greater particularize the guidelines for such identifications which, in all cases, should not go beyond what the delegating law provides. Also, in all cases, the Executive's identification or rule-making

authority, insofar as the field of appropriations is concerned, may only arise if there is a valid appropriation law under the parameters as above-discussed.

[246] *Abakada Guro Party List v. Purisima*, supra note 155.

[247] See Bernas, Joaquin G., S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Edition, pp. 686-687, citing *Pelaez v. Auditor General*, 15 SCRA 569, 576-577 (1965).

[248] *Id.* at 277.

[249] § 438 *Ejusdem Generis* ("of the same kind"); specific words; 82 C.J.S. Statutes § 438.

[250] *Rollo* (G.R. No. 208566), p. 437, citing § 438 *Ejusdem Generis* ("of the same kind"); specific words; 82 C.J.S. Statutes § 438.

[251] Based on a July 5, 2011 posting in the government's website ; attached as Annex "A" to the Petitioners' Memorandum), the Malampaya Funds were also used for non-energy related projects, to wit:

The rest of the 98.73 percent or P19.39 billion was released for non-energy related projects: 1) in 2006, P1 billion for the Armed Forces Modernization Fund; 2) in 2008, P4 billion for the Department of Agriculture; 3) in 2009, a total of P14.39 billion to various agencies, including: P7.07 billion for the Department of Public Works and Highways; P2.14 billion for the Philippine National Police; P1.82 billion for [the Department of Agriculture]; P1.4 billion for the National Housing Authority; and P900 million for the Department of Agrarian Reform.

[252] For academic purposes, the Court expresses its disagreement with petitioners' argument that the previous version of Section 12 of PD 1869 constitutes an undue delegation of legislative power since it allows the President to broadly determine the purpose of the Presidential Social Fund's use and perforce must be declared unconstitutional. Quite the contrary, the 1st paragraph of the said provision clearly indicates that the Presidential Social Fund shall be used to finance specified types of priority infrastructure and socio-civic projects, namely, Flood Control, Sewerage and Sewage, Nutritional Control, Population Control, Tulungan ng Bayan Centers, Beautification and Kilusang Kabuhayan at Kaunlaran (KKK) projects located within the Metropolitan Manila area. However, with regard to the stated geographical-operational limitation, the 2nd paragraph of the same provision nevertheless allows the Presidential Social Fund to finance "priority infrastructure and socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President of the Philippines." It must, however, be qualified that the 2nd paragraph should not be construed to mean that the Office of the President may direct and authorize the use of the Presidential Social Fund to any kind of infrastructure and socio-civic project throughout the Philippines. Pursuant to the maxim of *noscitur a sociis*, (meaning, that a word or phrase's "correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated"; see *Chavez v. Judicial and Bar Council*, G.R. No. 202242, July 17, 2012, 676 SCRA 579, 598-599) the 2nd paragraph should be construed only as an expansion of the geographical-operational limitation stated in the 1st paragraph of the same provision and not a grant of *carte blanche* authority to the President to veer away from the project types specified thereunder. In other words, what the 2nd paragraph merely allows is the use of the Presidential Social Fund for Flood Control, Sewerage and Sewage, Nutritional Control, Population Control, Tulungan ng Bayan Centers, Beautification and Kilusang Kabuhayan at Kaunlaran (KKK) projects even though the same would be located outside the Metropolitan Manila area. To deem it otherwise would be tantamount to unduly expanding the rule-making authority of the President in violation of the sufficient standard test and, ultimately, the principle of non-delegability of legislative power.

[253] Black's Law Dictionary (7th Ed., 1999), p. 784.

[254] Rollo (G.R. No. 208566), pp. 48-49.

[255] Id.

[256] 234 Phil. 521, 533-534 (1987).

[257] 252 Phil. 264 (1989).

[258] Id. at 279.

[259] Id. at 278.

[260] Rollo (G.R. No. 208566), p. 463.

[261] Id. at 459-462.

[262] Id. at 304-305.

[263] (visited November 4, 2013).

[264] Notice of Cash Allocation (NCA). Cash authority issued by the DBM to central, regional and provincial offices and operating units through the authorized government servicing banks of the MDS,[*] to cover the cash requirements of the agencies.

[*] MDS stands for Modified Disbursement Scheme. It is a procedure whereby disbursements by NG agencies chargeable against the account of the Treasurer of the Philippines are effected through GSBs.[**]

[**] GSB stands for Government Servicing Banks. (Id.)

[265] TSN, October 10, 2013, pp. 35-36.

[266] Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. No. 187485, October 8, 2013, citing Serrano de Agbayani v. Philippine National Bank, 148 Phil. 443, 447-448 (1971).

[267] Id.

[268] Id.

CONCURRING OPINION

SERENO, CJ:

I concur in the result of the draft ponencia. In striking down the Priority Development Assistance Fund (PDAF) for being unconstitutional and violative of the principle of separation of powers, the Members of this Court have acted as one sober voice of reason amidst the multitude of opinions surrounding the present controversy. It is in the spirit of this need for sobriety and restraint – from which the Court draws its own legitimacy – that I must add essential, clarificatory points.

The Court does not deny that the PDAF had also benefited some of our countrymen who most need the government's assistance. Yet by striking it down, the Court has simply exercised its constitutional duty to re-emphasize the roles of the two political branches of government, in the matter of the needs of the nation and its citizens. The Decision has not denied health and educational assistance to Filipinos; rather, it has emphasized that it is the Executive branch which implements the State's duty to provide health and education, among others, to its citizens. This is the structure of government under the Constitution, which the Court has merely set aright.

Guided by the incisive Concurring Opinion penned by Justice Florentino Feliciano in the seminal case of *Oposa v. Factoran*, I suggest that the Court circumscribe what may be left for future determination in an appropriate case – lest we inflict what he termed “excessive violence” to the language of the Constitution. Any collegial success in our Decision is measurable by the discipline to rule only on defined issues, and to curb any excess against the mandated limitations of judicial review.

As Justice Feliciano has stated in *Oposa*, in certain areas, “our courts have no claim to special technical competence, experience and professional qualification. Where no specific, operable norms and standards are shown to exist, then the policy making departments — the legislative and executive departments — must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene.”[1] Otherwise, the drastic alternative would be “to propel courts into the uncharted ocean of social and economic policy making.”[2] Thus, I must address the dissonance between what is delineated in the fallo of the Decision, as opposed to what some may mistakenly claim to be the implicit consequences of the discussion.

The only question that appears to be a loose end in the ponencia was whether we still needed to have an extended discussion on lump-sums versus line-items for this Court to dispose of the main reliefs prayed for, i.e., to strike down portions of the 2013 General Appropriations Act (GAA) regarding the PDAF, the Malampaya Fund or P.D. No. 910, and the Presidential Social Fund or P.D. No. 1869 as amended by P.D. no. 1993 for unconstitutionality.

The remaining concern is founded on the need to adhere to the principle of judicial economy: for the Court to rule only on what it needs to rule on, lest unintended consequences be generated by its extensive discussion on certain long-held budgetary practices that have evolved into full-bodied statutory provisions, and that have even been validated by the Supreme Court in its prior decisions. After, however, it was clarified to the Court by the ponente herself that the effect of the fallo was only with respect to the appropriation type contained in Article XIV of the 2013 GAA, the unanimous vote of the Court was inevitable. The entire Court therefore supported the ponencia, without prejudice to the opinions of various Members, including myself.

As it stands now, the conceptual formulations on lump-sums, while not pronouncing doctrine could be premature and confusing. This is evidenced by the fact that different opinions had different definitions of lump-sum appropriations. Justice Carpio cites Sections 35 and 23 of the Administrative Code to say that the law does not authorize lump-sum appropriations in the GAA.[3] But Section 35 itself talks of how to deal with lump-sum appropriations. Justice Brion made no attempt to define the term. Justice Leonen recognized the fact that such discussion needs to be initiated by a proper case.[4]

Even the ponencia itself stated that Article XIV of the 2013 GAA is unconstitutional for being, among others, a “prohibited form of lump-sum,” which implies that there are allowable forms of lump-sum. This begs the question: what are allowable forms of lump-sum? In the first place, what are lump-sums? Administrative practice and congressional categories have always been liberal about the definition of lump-sums. Has this Court not neglected to accomplish its preliminary task, by first and foremost agreeing on the definition of a lump-sum?

Both Justice Brion[5] and Justice Leonen[6] warned against the possibility of the Court exceeding the bounds set by the actual case and controversy before us. That a total condemnation of lump-sum funding is an “extreme position that disregards the realities of national life,” as Justice Brion stated, and that it is by no means doctrinal and “should be clarified further in a more appropriate case,” as discussed by Justice Leonen, are correct. In the same spirit, I separately clarify the import of our decision, so that no unnecessary inferences are made.

As worded in the dispositive portion,[7] the following are unconstitutional: first, the entire 2013 PDAF Article; second, all legal provisions, of past and present Congressional Pork Barrel Laws, such as the previous PDAF and

CDF Articles and the various Congressional Insertions; and third, all informal practices of similar import and effect. The extent of their unconstitutionality has been defined as follows: (1) these authorize/d legislators – whether individually or collectively organized into committees – to intervene, assume or participate in any of the various post-enactment stages of the identification, modification and revision of project identification, fund release and/or fund realignment, unrelated to the power of congressional oversight; (2) these confer/red personal, lump-sum allocations from which they are able to fund specific projects which they themselves determine.

Given the circumscribed parameters of our decision, it is clear that this Court made no doctrinal pronouncement that all lump-sum appropriations per se are unconstitutional.

At most, the dispositive portion contained the term “lump-sum allocations” which was tied to the specific characterization of the PDAF system found in the body of the decision – that is, “a singular lump-sum amount to be tapped as a source of funding for multiple purposes x x x such appropriation type necessitat[ing] the further determination of both the actual amount to be expended and the actual purpose of the appropriation which must still be chosen from the multiple purposes stated in the law x x x x [by] individual legislators.”[8] The ponencia, in effect, considers that the PDAF’s infirmity is brought about by the confluence of (1) sums dedicated to multiple purposes; (2) requiring post-enactment measures; (3) participated in, not by the Congress, but by its individual Members.

For the Court, it is this three-tiered nature of the PDAF system – as a singular type of lump-sum appropriation for individual legislators – which makes it unconstitutional. Any other type, kind, form, or assortment beyond this aggregated formulation of “lump-sum allocation” is not covered by our declaration of unconstitutionality.

Although Commission on Audit Chairperson Maria Gracia M. Pulido Tan recommended the adoption of a “line by line budget or amount per proposed program, activity or project, and per implementing agency:” such remains a mere recommendation. Chairperson Tan made the recommendation to relay to the Court the operational problems faced by state auditors in the conduct of post-audit examination. A policy suggestion made to solve a current problem of budget implementation cannot be the legal basis upon which unwarranted legal conclusions are anchored.

Briefly, I fully support the following pronouncements:

First, that the 2013 Priority Development Assistance Fund (PDAF) is unconstitutional for violating the separation of powers, and;

Second, that the PDAF is unconstitutional for being an undue delegation of legislative functions.

However, I believe that the discussions on lump-sum appropriations, line-item appropriations, and item-veto power are premature.

These discussions were wrought, to my mind, by the blurring of the limits of the power of judicial review, the role of the judiciary in the constitutional landscape of the State, and of the basic principles of appropriation law. Above all, this Court must remember its constitutional mandate, which is to interpret the law and not to create it. We are given the power, during certain instances, to restate the constitutional allocation to the other two branches of government; but this power must be exercised with sufficient respect for the other powers. The Members of this Court are not elected by the people. We are not given the honoured privilege to represent the people in law-making, but are given the sacred duty to defend them by upholding the Constitution. This is the only path the judiciary can tread. We cannot advocate; we adjudicate.

To arrive at an unwarranted conclusion, i.e. that all lump-sum appropriations are invalid, whether in the 2013

GAA only or in all appropriation laws, is not sufficiently sensitive to the process of deliberation that the Members of this Court undertook to arrive at a significant resolution. More importantly, this inaccurate inference will jeopardize our constitutional limitation to rule only on actual cases ripe for adjudication fully litigated before the Court.

I. COEQUALITY OF THE THREE BRANCHES NECESSITATES JUDICIAL RESTRAINT

In any dispute before this Court,
judicial restraint is the general rule.

Since the ponencia crafted a ruling on a highly technical matter, it is only fitting that the nuances, implications, and conclusions on our pronouncement be elucidated. My views are guided by the inherent restraint on the judicial office; as unelected judges, we cannot haphazardly set aside the acts of the Filipino people's representatives. This is the import of the requirement for an actual case or controversy to exist before we may exercise judicial review, as aptly noted by the pre-eminent constitutionalist, former Associate Justice Vicente V. Mendoza:

Insistence on the existence of a case or controversy before the judiciary undertakes a review of legislation gives it the opportunity, denied to the legislature, of seeing the actual operation of the statute as it is applied to actual facts and thus enables it to reach sounder judgment.[9]

In fact, the guiding principle for the Court should not be to “anticipate a question of constitutional law in advance of the necessity of deciding it,”[10] but rather to treat the function of judicial review as a most important and delicate matter; after all, we cannot replace the wisdom of the elected using our own, by adding qualifications under the guise of constitutional “interpretation.” While it is true that the Constitution must be interpreted both in its written word and underlying intent, the intent must be reflected in taking the Constitution itself as one cohesive, functional whole.

A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.[11]

In other words, alongside deciding what the law is given a particular set of facts, we must decide “what not to decide.”[12] Justice Mendoza likens our Supreme Court to the U.S. Supreme Court, in that “its teachings...x x x have peculiar importance because it interprets principles of fact and of value, not merely in the abstract, but in their bearing upon the concrete, immediate problems which are at any given moment puzzling and dividing us... For this reason the court holds a unique place in the cultivation of our national intelligence.”[13]

Thus, in matters such as the modality to be employed in crafting the national budget, this Court must be sensitive of the extent and the limits of its pronouncements. As Justice Laurel instructively stated, the structure of government provided by the Constitution sets the general metes and bounds of the powers exercised by the different branches; the judiciary cannot traverse areas where the charter does not allow its entry. We cannot interpret the Constitution's silence in order to conform to a perceived preference on how the budget should be run. After all, it is the Constitution, not the Court, which has “blocked out with deft strokes and in bold lines,” the allotment of power among the different branches, viz:

(T)his power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the governments of the government.

But much as we might postulate on the internal checks of power provided in our Constitution, it ought not the less to be remembered that, in the language of James Madison, the system itself is not "the chief palladium of constitutional liberty . . . the people who are authors of this blessing must also be its guardians . . . their eyes must be ever ready to mark, their voice to pronounce . . . aggression on the authority of their constitution." In the last and ultimate analysis, then, must the success of our government in the unfolding years to come be tested in the crucible of Filipino minds and hearts than in consultation rooms and court chambers."^[14] (Emphasis supplied)

Wholesale rejection of lump-sum allocations contrives a rule of constitutional law broader than what is required by the precise facts in the case.

To conclude that a line-item budgeting scheme is a matter of constitutional requirement is to needlessly strain the Constitution's silence on the matter. Foremost among the duties of this Court is, as previously discussed, to proceed based only on what it needs to resolve. Hence, I see no need to create brand new doctrines on budgeting, especially not ones that needlessly restrict the hands of budget-makers according to an apparently indiscriminate condemnation of lump-sum funding. To further create a constitutional obligation of the Executive and Legislative to follow a line-item budgeting procedure, and - more dangerously - give it the strength of a fundamental norm, goes beyond what the petitioners were able to establish, and ascribes a constitutional intent where there is none.

Again, the Court's power of judicial review must be confined only to dispositions which are constitutionally supportable. Aside from the jurisdictional requirements for the exercise thereof, other guidelines are also mandated, i.e., that the question to be answered must be in a form capable of judicial resolution; that as previously discussed, the Court will not anticipate a question in advance of the necessity of deciding it; and, most relevant to the present case, that the Court "will not formulate a rule of constitutional law broader than is required by the precise facts on which it is to be applied."^[15]

Given a controversy that raises several issues, the tribunal must limit its constitutional construction to the precise facts which have been established. This rule is most applicable "in determining whether one, some or all of the remaining substantial issues should be passed upon."^[16] Thus, the Court is not authorized to take cognizance of an issue too far-removed from the other.

The above rule is bolstered by the fact that petitioners have raised other grounds more supportable by the text of the Constitution.

The *lis mota* or the relevant controversy^[17] in the present petitions concerns the principles of separation of

powers, non-delegability of legislative functions, and checks and balances in relation to the PDAF as applied only to Article XLIV of the 2013 General Appropriations Act or R.A. No. 10352.

In the main, the Court gave three reasons to support the conclusion that the PDAF is unconstitutional.

First, the ponencia held that post-enactment measures embedded in the PDAF – project identification, fund release, and fund realignment – are not related to legislative duties, and hence, are encroachments on duties that properly belong to the executive function of budget execution.[18]

The ponencia laid the demarcation between the three branches of government, and emphasized the relevant doctrine in *Abakada Guro Party List v. Purisima*,[19] namely : “the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional.” Undoubtedly, this holding determines the *lis mota* of the case as it squarely responded to petitioners’ claim that the PDAF violated the principle of separation of powers.[20]

Second, the ponencia made a finding that these post-enactment measures are effectively exercised by the individual legislators, and not by the Congress as a legislative body.[21]

The ponencia struck down the PDAF on the basis of the general principle of non-delegability of rule-making functions lodged in the Congress.[22] It then ruled that the individual participation of the Members of the Congress is an express violation of this principle. Again, this ruling is already determinative of the *lis mota* of the case, as it directly addressed petitioners’ principal claim that the PDAF unduly delegates legislative power.[23]

Given that the *lis mota* has been squarely disposed of on these thorough, responsive, and determinative constitutional grounds, it was unnecessary to stretch the discussion to include the propriety of lump-sum appropriations in the budget.

The questions surrounding lump-sum appropriations, in the context of how they arose during the interpellation, are not legal questions. Unlike the first two reasons advanced by the ponencia in finding for the unconstitutionality of the PDAF, the invalidity of lump-sum appropriations finds no textual support in the Constitution. By its very words, the Constitution does not prohibit lump-sum appropriations. In fact, the history of legislative appropriations suggests otherwise.

As it stands now, the plain text of the Constitution and the Revised Administrative Code renders the modality of budgeting to be a political question.

The Constitution contains provisions that regulate appropriation law, namely: it must originate from the House of Representatives,[24] its items can be vetoed by the President,[25] it is initiated by the Executive,[26] and money can only be paid out of the Treasury by virtue of appropriations provided by law.[27] Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget.[28]

The form, content, and manner of preparation of the budget must be prescribed by law, and no provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein, and such provision or enactment shall be limited in its operation to the appropriation to which it relates.[29] Procedures involving appropriations must be uniform.[30] A special appropriations bill must be specific in purpose and supported or supportable by funds.[31] Only the heads of the branches of government,

as well as the constitutional commissions and fiscally independent bodies may be authorized to augment items in appropriations.[32] Discretionary funds are regulated.[33] Appropriations of the previous year are automatically revived if Congress fails to pass a new law.[34] Appropriations for fiscally autonomous agencies are released automatically.[35] Furthermore, in relation to all this, the Constitution gives to the President the duty to faithfully execute the law.[36]

Beneath this framework runs a sea of options, from which the two political branches must carve a working, functioning fiscal system for the State. So long as these basic tenets are maintained, the political branches can ply the route of the way they deem appropriate to achieve the purpose of the government's budget. What are thus clearly set forth are requirements for appropriations, and not the modalities of budgeting which fall squarely under the technical domain of the Executive branch, namely, the Department of Budget and Management (DBM).

When the Constitution gives the political branches a "textually demonstrable constitutional commitment of the issue[,]"[37] or the lack of "judicially discoverable and manageable standards for resolving it[,]"[38] or even the "impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government[,]"[39] then there is a political question that this Court, in the absence of grave abuse of discretion, cannot conclude.[40]

Apart from the provisions already discussed, there are no constitutional restrictions on how the government should prepare and enact its budget. In fact, these restrictions are mostly procedural and not formal. If the Constitution does not impose a specific mode of budgeting, be it purely line-item budgeting, purely lump-sum budgeting, a mixture of the two, or something else entirely, e.g. zero balance lump-sum, loan repayment schemes, or even performance-informed budgeting, then neither should this Court impose the line-item budgeting formula on the Executive and Legislative branches.

This confusion appears to have stemmed from the highly limited exchanges in the oral arguments between one of the petitioners and the Chairperson of the Commission on Audit (COA), on one hand, and a Member of the Court, on the other. The argument progressed on the basis of the Member's own suggestion that the item-veto power of the President is negated by lump-sum budgeting despite the fact that it was not the very issue identified in the petitions. While it is true that the COA Chairperson opined that line-item is preferred, that statement is an operational standard, not a legal standard. It cannot be used to support a judicial edict that requires Congress to adopt an operational standard preferred, even if suggested by the COA Chairperson.

The Court never asked Congress what its response would be to a wholesale striking down of lump-sum budgeting. It never asked the DBM whether it could submit an expenditure proposal that has nothing but line-item budgets. To reject even very limited forms of lump-sum budgeting without asking whether it can even be operationally done within the very tight timeline of the Constitution for preparing, submitting, and passing into law a national budget is simply plain wrong and most unfair. It is as if this Court is trying to teach both political branches - who constitute the nation's top 300 elected officials - what they can and cannot do, in a manner that will completely take them by surprise, as lump-sum budgeting was never the *lis mota* in this case. At the very least, this is not the case for that matter, if eventually this matter were also to be decided.

II. MODALITIES UNDER THE APPROPRIATIONS LAW

Government accounting takes place through concurrent processes. First is the call to all agencies, including fiscally independent ones, such as the Supreme Court. The deadline for this is usually in March or April. Then the proposals are all collated in a comprehensive document, and vetted by the DBM, and submitted to the President for approval. Alongside this, the government makes a schedule of revenues, with all its economic assumptions and growth targets. Next is the budget formulation, which results in a proposed national expenditure program

(NEP) also from the Executive.

The duty to formulate the above documents is given by law to the DBM, in coordination with the National Economic Development Authority (NEDA), the Department of Finance (DOF), and all the various agencies of the government.[41] After the NEP is finalized, it is submitted to the House of Representatives' Committee on Appropriations no later than thirty days from the opening of every regular session.[42] Thereupon the Committee crafts a draft General Appropriations Act on the basis of the NEP for the specified fiscal year, which is passed on to the Senate Committee on Finance.[43] The Senate is given the power to propose amendments to the House bill under the 1987 Constitution.[44] Finally, after going through the committees involved, which potentially includes a bicameral conference committee for the national budget, the bill is passed into law through the usual course of legislation.

Once the appropriations law is passed, the day-to-day management of the national budget is left to the DBM and DOF, in accordance with the appropriate rules and regulations. Simultaneously, the COA is tasked to conduct auditing and post-auditing throughout the fiscal year, with a final audit report presented to the President and Congress at the end of such year.[45]

In this whole process, an appropriation can be made and has been made at the lump-sum level. While not initially broken down in the budget formulation aspect of the entire expenditure process, the individual expenditures sourced from these lump-sum appropriations are broken down in journal entries after the fact,[46] during the auditing process of the COA, which has the power to issue notices of disallowance should it find a particular expenditure to have been improper under law and accounting rules.

Consequently, a lump-sum appropriation can still be audited and accounted for properly. This recognizes the fact that lump-sum appropriating is a formal concern of the COA, and all other agencies and instrumentalities of the government that take part in the appropriations process. In fact, the Administrative Code gives formal discretion to the President, in the following manner:

Section 12. Form and Content of the Budget. – xxx The budget shall be presented to the Congress in such form and content as may be approved by the President and may include the following: xxx[47]

It thus appears from the perspective of this process, that the Legislature never considered the form of the budget as being constitutionally infirm for containing lump-sums, an attitude engendered from the birth of the 1987 Constitution, that has lasted up until this case was argued before this Court. It is perplexing to see any eager discussion at this opportunity to make pre-emptive declarations on the invalidity of the lump-sum budgeting form, when no party has raised the issue in the principal petitions.

Lump-sum appropriations are not
textually prohibited by the
Constitution.

The purported basis for this preference for line-item is that the item-veto power of the President is negated by the existence of lump-sum appropriations. This implication, however, oversimplifies the concept of the item-veto, as understood in the wording of the Constitution as well as jurisprudence.

In the first place, all cases in which this Court ruled on the item-veto power were generated by an actual controversy. In stark contrast, the veto power has never been raised as an issue in this case until raised as a possible issue in the oral arguments. Neither the President (who should be invoking a direct injury if the power were allegedly denied him) nor Congress (whose product would then be tampered with by a presidential veto) is complaining. It behooves this Court to step back and not needlessly create a controversy over the item-veto power

when there is none.

The item veto-power of the Governor-General in past appropriation laws originating from the United States was given to the President, Prime Minister, and President respectively in the 1935, 1973, and 1987 Constitutions.[48] The most recent incarnation is stated thusly:

The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.[49]

It is noteworthy that the veto refers to “any particular item or items” and not “line-items” or “earmarked appropriations.” In *Gonzales v. Macaraig*,[50] we declared that the term “item” in the Constitution referred to a specific appropriation of money, dedicated to a stated purpose, and not a general provision of law:

The terms item and provision in budgetary legislation and practice are concededly different. An item in a bill refers to the particulars, the details, the distinct and severable parts x x x of the bill. It is an indivisible sum of money dedicated to a stated purpose. The United States Supreme Court, in the case of *Bengzon v. Secretary of Justice* declared “that an ‘item’ of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law, which happens to be put into an appropriation bill.” (Citations omitted, emphasis supplied).[51]

The Constitution’s “item” is, therefore, an allocation of money for a stated purpose, as opposed to a general provision in the appropriations law that does not deal with the appropriation of money, or in the words of *Gonzales*, “inappropriate provisions.” Thus, a lump-sum appropriation is an item for purposes of the Presidential veto, considering the fact that it is an appropriation of money for a stated purpose. The constitutional provision does nothing to prohibit the appropriation apart from that. As will be discussed, this is the crucial point, because a lump-sum item as defined does not, as it stands, appear to violate the requirement of stated purpose and specificity.

This Court has, in fact, already ruled on the status of lump-sum appropriation. The vetoed item that was the subject of dispute in *Bengzon v. Drilon*[52] was a lump-sum appropriation for the “general fund adjustment,” and that it was “an item which appropriates P500,000,000.00 to enable the Government to meet certain unavoidable obligations which may have been inadequately funded by the specific items for the different branches, departments, bureaus, agencies, and offices of the government.”[53] Since the Court itself in *Bengzon* had defined lump-sum provisions to be constitutional “items,” then the item-veto power of the President against lump-sum funds remains intact.

It has been stated that the President’s item-veto power is hampered when the “pork barrel” is lumped together with beneficial programs, which thus destroys the check and balance between the Executive and Legislative. This view seems to confuse the actual definition of lump-sum items (as discussed *infra*, items with more than one object) with line-items (singular object). Lump-sum items are not items without a specific purpose. Their stated purpose simply allows the funds to be used on multiple objects. “Specific” should not be equated with “singular.” The former is an aspect of quality, the latter quantity.[54] Singularity and multiplicity qualify the word “object” and not purpose, which are wholly different since a purpose can refer to several objects, e.g., the use of the plural “projects” instead of “project.”

In fact, the law journal article cited in the Separate Opinion of Justice Carpio, which was cited to define the “pork barrel” as an “appropriation yielding rich patronage benefits,” itself acknowledges the validity of lump-sum budgeting, citing the United States’ own budgeting practice. It goes even further to highlight the disadvantages inherent in adopting a purely line-item budget, viz.:

Congress has traditionally budgeted appropriations so that each encompasses several projects or activities.

Such lump-sum budgeting allows the President and administrative agencies to determine how funds within and sometimes between budget accounts should be spent. Were Congress instead to appropriate narrowly by line-item the President would, in the absence of an item veto, lose much of the discretion and flexibility he modernly enjoys at the appropriation stage.

Lump-sum budgeting allows the President not only to selectively allocate lump sums, but also to transfer funds between budget accounts when necessary to save programs that might otherwise perish because Congress appropriated too little or was unable to anticipate unforeseen developments. More significantly for purposes of comparison with a line-item veto, lump-sum budgeting also authorizes the President to shift funds within a single appropriation account by reprogramming. Unlike a transfer of funds, which typically requires either statutory support or a national emergency, reprogramming is subject to mostly non-statutory controls “to be discovered in committee reports, committee hearings, agency directives, correspondence between subcommittee chairmen and agency officials, and also gentlemen’s agreements and understandings that are not part of the public record.” The justification for reprogramming is congressional recognition “that in most instances it is desirable to maintain executive flexibility to shift around funds within a particular lump-sum appropriation account so that agencies can make necessary adjustments for ‘unforeseen developments, changing requirements... and legislation enacted subsequent to appropriation.’”[55] (Emphasis supplied, citations omitted.)

To restate, Gonzales outlined the following legal requirements for valid appropriations on budget items:

First, that an item is “an indivisible sum of money dedicated to a stated purpose.”[56]

Second, that an item is in itself a “specific appropriation of money, not some general provision of law.” [57]

There is therefore no condition that the purpose be singular.[58] As will be demonstrated, the difference between a lump-sum and line-item is just the number of objects a lump-fund may have. After all, even if the purpose has multiple objects, it is still a stated purpose.

The use of the COA Memorandum[59] to buttress the argument that the Constitution requires line-item budgeting is misleading. Again, even if the COA Chairperson prefers line-item budgeting, such preference is not equivalent to a legal standard sufficient for this Court to strike down all forms of lump-sum budgeting.

At this point, there appears to be an attempted transformation of policy recommendations into legal imperatives. No matter how desirable these recommendations on adopting a purely line-item budget may sound – and they may turn out to be the best alternative – we cannot equate seeming consensus on good and desirable policy, with what the law states. The choice of policy is not ours to make, no matter how intelligent or practical we deem ourselves to be.

In any case, prevailing jurisprudence allows for the conclusion that the item-veto power of the President cannot be impaired.

The Court in Gonzales[60] described the three modes of veto available to the President. The first is the veto of an entire bill under Article VI, Section 27(1). The second is the item-veto in an appropriation, revenue, or tariff bill. The third is an iteration of the second, which is the veto of provisions as previously defined by the 1935 Constitution. With respect to the second mode of veto, Gonzales extends the application of the item veto power to “inappropriate provisions,” as we stated:

Consequently, Section 55 (FY '89) and Section 16 (FY '90) although labelled as "provisions," are actually inappropriate provisions that should be treated as items for the purpose of the President's veto power.[61]

(Emphasis supplied, citations omitted)

Thus, even if we were to assume that a lump-sum appropriation is not an “item” as defined by Gonzales, as previously expounded, for purposes of the Presidential veto, it is still an item, and the item-veto power appears to remain unimpaired by virtue of jurisprudential precedent.

To summarize, whether the appropriation is a line-item, as claimed by petitioners, or a lump-sum appropriation item, as proposed in an Opinion, or even a general provision of law that is unrelated to the appropriation law, the power of the President to exercise item-veto is intact. Whichever interpretation we accept as to the nature of lump-sum appropriations - though as I have shown, they are properly appropriation “items” – is irrelevant.

As will be discussed *infra*, an analysis of the nature of a lump-sum appropriation can clear the apparent misunderstanding on lump-sums.

History of Appropriations and the Federal Legacy

Historically, the constitutional provisions on appropriations were adopted from the United States’ Jones Law of 1916,[62] which governed the Philippines until its transition into a Commonwealth and, later on, a fully independent state. Section 3(m) of the law provides:

(m) How public funds to be spent.-That no money shall be paid out of the treasury except in pursuance of an appropriation by law.

Section 19(b) expressed what is now coined the “item-veto” power of the President, in this manner:

(b) The veto on appropriations.-The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the Legislature without his approval.

In fact, the present mechanism that retains the previous year’s appropriation law in case the Legislature fails to pass a new one was also based on the Jones Law, viz:

(d) Revisal of former appropriations.-If at the termination of any fiscal year the appropriations necessary for the support of Government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the Legislature shall act in such behalf the treasurer shall, when so directed by the Governor-General, make the payments necessary for the purposes aforesaid.

Even the NEP’s procedure was conceptualized long before the 1987 Constitution was drafted:

[The Governor-General] shall submit within ten days of the opening of each regular session of the Philippine Legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill.[63]

Clearly then, our current constitutional provisions on appropriations were derived from the United States’ own concept of federal appropriations. In adopting their budgetary methodology, we have also adopted the basic principles that govern how these appropriations are to be treated.

Principles of Federal Appropriations

The Red Book[64] on federal appropriations distinguishes a “lump-sum” appropriation from an earmark, or “line-item” appropriation. It defines a lump-sum appropriation as “one that is made to cover a number of specific programs, projects, or items[,]”[65] which may be as few as only two programs. In the language of appropriation

law, the essence of a lump-sum appropriation is that it is available for more than one object,[66] which refers to what the money allocated can be used for.

A line-item appropriation, on the other hand, is only for a single specific object described by the law.[67] This distinction is very precise. It is the singularity of the object for which the allocation is made that makes an appropriation “line-item,” and its plurality is what makes it “lump-sum.”

Taking the requirements of stated purpose and specificity of amount and applying them to this definition of lump-sum, we can easily conclude that a lump-sum falls within the parameters of Gonzales. Its purpose, although referring to more than one object, is stated by the text of the appropriation law. The amount of the appropriation is a specific amount.

The key factor that makes lump-sum appropriations desirable for the United States Legislature is the flexibility[68] in the use of the appropriation. As Justice Souter stated in *Lincoln v. Vigil*, a lump-sum appropriation’s purpose is to give the agency discretion, and allow it to remain flexible in meeting whatever contingencies arise:

The allocation of funds from a lump-sum appropriation is another administrative decision traditionally regarded as committed to agency discretion. After all, the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way.[69] (Emphasis supplied)

The use of lump-sum appropriations inherently springs from the reality that the government cannot completely predict at the beginning of a fiscal year where funds will be needed in certain instances. Since Congress is the source of the appropriation law in accordance with the principle of separation of powers, it can craft the law in such a way as to give the Executive enough fiscal tools to meet the exigencies of the year. Lump-sum appropriations are one such tool. After all, the different agencies of government are in the best position to determine where the allocated money might best be spent for their needs:

[A]n agency’s allocation of funds from a lump-sum appropriation requires “a complicated balancing of a number of factors which are peculiarly within its expertise”: whether its “resources are best spent” on one program or another; whether it “is likely to succeed” in fulfilling its statutory mandate; whether a particular program “best fits the agency’s overall policies”; and, “indeed, whether the agency has enough resources” to fund a program “at all.”[70]

Thus, the importance of allowing lump-sum appropriations for budgetary flexibility and good governance has been validated in other jurisdictions. The evolution of the government’s budgeting from a small amount in past decades, into what is now a massive undertaking that contains complexities, and involves an exponentially larger sum than before, suggests that a mixture of lump-sum and line-item budgeting within the same appropriation law could also be a feasible form of budgeting. At the very least, this Court owes it to Congress to ask it the question directly, on whether an exclusively line-item budgeting system is indeed feasible. Simply put, there appears, even in the United States, a necessity for the inclusion of lump-sum appropriations in the budget:

Congress has been making appropriations since the beginning of the Republic. In earlier times when the federal government was much smaller and federal programs were (or at least seemed) much simpler, very specific line-item appropriations were more common. In recent decades, however, as the federal budget has grown in both size and complexity, a lump-sum approach has become a virtual necessity.[71] (Emphasis supplied)

The Legislative Branch foresaw that these types of appropriations had to be regulated by law, since “a fundamental principle of appropriations law is that where Congress merely appropriates lump-sum amounts

without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions.”[72] Without statutory regulation, an untrammelled system of lump-sum appropriations would breed corruption, or at the very least, make the Executive less circumspect in preparing and proposing the budget to the Legislature. Hence, Congress promulgated the Administrative Code of 1987,[73] which regulates, in its provisions on budgeting, lump-sum funds:

Section 35. Special Budgets for Lump Sum Appropriations. - Expenditures from lump-sum appropriations authorized for any purpose or for any department, office or agency in any annual General Appropriations Act or other Act and from any fund of the National Government, shall be made in accordance with a special budget to be approved by the President, which shall include but shall not be limited to the number of each kind of position, the designations, and the annual salary proposed for which an appropriation is intended. This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for certain specific purposes, aids and donations for carrying out certain activities, or deposits made to cover the cost of special services to be rendered to private parties. Unless otherwise expressly provided by law, when any Board, head of department, chief of bureau or office, or any other official, is authorized to appropriate, allot, distribute or spend any lump-sum appropriation or special, bond, trust, and other funds, such authority shall be subject to the provisions of this section.

In case of any lump-sum appropriation for salaries and wages of temporary and emergency laborers and employees, including contractual personnel, provided in any General Appropriation Act or other Acts, the expenditure of such appropriation shall be limited to the employment of persons paid by the month, by the day, or by the hour.

x x x

Section 47. Administration of Lump Sum Funds. - The Department of Budget shall administer the Lump-Sum Funds appropriated in the General Appropriations Act, except as otherwise specified therein, including the issuance of Treasury Warrants covering payments to implementing agencies or other creditors, as may be authorized by the President.[74]

Additionally, the Administrative Code provides that certain items may be lump-sum funds, such as the budget for coordinating bodies,[75] the budget for the pool of Foreign Service officers,[76] and merit increases.[77]

As a result, this Court should not read from the text of the Constitution and the law, a mandate to craft the national budget in a purely line-item format. To do so would be equivalent to judicial legislation, because the Court would read into the law an additional requirement that is not supported by its text or spirit of the law, in accordance with its own perceived notion of how a government budget should be formulated. If we rule out lump-sum budgeting, what happens then to the various provisions of the law, principally the Administrative Code, that govern lump-sum funds? Is there such a thing as a collateral constitutional attack? Too many questionable effects will result from a sledgehammer denunciation of lump-sum appropriations. This Court does not even know how many lump-sum appropriation laws will be affected by such a ruling. Thus, it is important to emphasize that the fallo only afflicts the 2013 GAA, Article XIV.

Practical consequences of the
unwarranted conclusions on
lump-sums in the Separate
Opinion

The baseless conclusion that the lump-sum characteristic, taken alone, results in the unconstitutionality of the law that carries it, can create additional dangers as illustrated below.

Closer to today's events, the Executive would have immediately been prevented from using the lump-sum funds such as Calamity Funds – which under the Federal Appropriations Law is a 'lump-sum' – to alleviate the State of National Calamity[78] brought about by super typhoon Yolanda. With the intensity of a signal number four storm, the first one in 22 years[79] and considered the biggest super typhoon in world history,[80] Yolanda is one such unforeseen event for which lump-sum funds are intended. In other words, lump-sum appropriations are currently the form of preparation Congress saw fit to address these disasters. This is the point recognized precisely in the law journal article cited by Justice Carpio: there is congressional recognition that lump-sum appropriation allows the President and administrative agencies the executive flexibility to make necessary adjustments for "unforeseen developments, changing requirements . . . and legislation enacted subsequent to appropriations." [81] If the problem is a lack of a definition, or a confusion pertaining to the same, then let the Court define it when the definition itself becomes the legal issue before us.

In addition, the Executive and its line agencies would be deprived of the ability to make use of additional sources of funds. Suppose that a source of revenue was anticipated by government, the exact amount of which could not be determined during the budget preparation stage. Suppose also that Congress agreed upon items which had to be implemented once the funding materializes, and that this funding could support more than one budget item, as is usually the case with major financing arrangements negotiated with the World Bank, the Asian Development Bank and other development partners. Can Congress be prevented from deciding to include in the appropriations law a provision for these items, to be funded by the said additional sources? Should the Court thereby deprive the Legislature of its discretion to bestow leeway upon the Executive branch, so that it may effectively utilize the funds realized only later on? Congress, in this case, cannot be reasonably expected to predetermine all sources of revenue, and neither can it pinpoint the items to be prioritized with a rigid specificity, since it is only within the budget execution stage that the financing materialized.

It is also respectfully suggested that any discussion on "savings" and the power to augment under the Constitution is not an issue in this case and that said discussion might in fact demonstrate the unwarranted potential of over-extending this Court's reach into matters that are not *lis mota*. My misgivings on discussing "savings," which is the main issue of a pending matter before us involving the Disbursement Allocation Program (DAP), [82] impels me to caution the Court: a narrow approach to the PDAF better serves the interest of the rule of law. Any reformulation or redefinition of the powers under Article VI, Section 25(5) of the Constitution, i.e. transfer and augmentation of appropriations, is improper in this case, and better ventilated before us in the course of resolving DAP petitions.

In light of the above, I cast my vote to CONCUR in the ponencia, but with a strong emphasis that this Court has not thereby made an invalidation of any lump-sum appropriation except in the form that was described in the fallo.

[1] J. Feliciano stated: "The Court has also declared that the complaint has alleged and focused upon "one specific fundamental legal right — the right to a balanced and healthful ecology" (Decision, p. 14). There is no question that "the right to a balanced and healthful ecology" is "fundamental" and that, accordingly, it has been "constitutionalized." But although it is fundamental in character, I suggest, with very great respect, that it cannot be characterized as "specific," without doing excessive violence to language. It is in fact very difficult to fashion language more comprehensive in scope and generalized in character than a right to "a balanced and healthful ecology."

x x x x

When substantive standards as general as "the right to a balanced and healthy ecology" and "the right to health" are combined with remedial standards as broad ranging as "a grave abuse of discretion amounting to lack or excess of jurisdiction," the result will be, it is respectfully submitted, to propel courts into the uncharted ocean of social and economic policy making. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. Where no specific, operable norms and standards are shown to exist, then the policy making departments — the legislative and executive departments — must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene." G.R. No. 101083, 30 July 1993, 224 SCRA 792.

[2] Id.

[3] Carpio, J. (Concurring Opinion, pp. 22-24)

[4] Leonen, J. (Concurring Opinion, pp. 36-37).

[5] Brion, J., (Concurring and Dissenting Opinion, p. 17): "Lest this conclusion be misunderstood, I do not per se take the position that all lump sums should be disallowed as this would be an extreme position that disregards the realities of national life. But the use of lump sums, to be allowed, should be within reason acceptable under the processes of the Constitution, respectful of the constitutional safeguards that are now in place, and understandable to the people based on their secular understanding of what is happening in government."

[6] Leonen, J., Supra note 4 at 36-37: "I am of the view that our opinions on the generality of the stated purpose should be limited only to the PDAF as it is now in the 2013 General Appropriations Act. The agreement seems to be that that item has no discernible purpose. There may be no need, for now, to go as detailed as to discuss the fine line between "line" and "lump-sum" budgeting."

[7] Decision, pp. 69-70.

[8] Decision, pp. 49-50.

[9] VICENTE V. MENDOZA, JUDICIAL REVIEW, p. 92 [hereinafter MENDOZA].

[10] Id. at 94, citing *Ashwander v. Tennessee Valley Authority* 297 U.S. 288 (1936).

[11] *Civil Liberties Union v. Executive Secretary*, G.R. Nos. 83896 and 83815, 22 February 1991, 194 SCRA 317, 325.

[12] MENDOZA, citing Paul A. Freund, supra note 9 at 95.

[13] Id., citing Alexander Meiklejohn.

[14] *Angara v. Electoral Commission*, 63 Phil. 139, 156-159 (1936).

[15] *Demetria v. Alba*, 232 Phil. 222 (1987), citing *Liverpool. N.Y. & P.S.S. Co. v. Emigration Commissioners*, 113 U.S. 33, 39.

[16] Id.

[17] In *Macasiano v. National Housing Authority*, G.R. No. 107921, 1 July 1993, 224 SCRA 236: It is a rule firmly entrenched in our jurisprudence that the constitutionality of an act of the legislature will not be determined by the courts unless that, question is properly raised and presented in appropriate cases and is necessary to a determination of the case, i.e., the issue of constitutionality must be the very *lis mota* presented.

- [18] Decision, pp. 40-41.
- [19] 584 Phil. 246, 289-290 (2008).
- [20] Urgent Petition for Certiorari and Prohibition, pp. 3, 16.
- [21] Decision, p. 45.
- [22] Id. at 46.
- [23] Urgent Petition for Certiorari and Prohibition, pp. 4, 16.
- [24] 1987 CONSTITUTION, Article VI, Section 24.
- [25] Id., Article VI, Section 27 (2).
- [26] Id., Article VII, Section 22.
- [27] Id., Article VI, Section 29(1).
- [28] Id., Article VI, Section 25(1).
- [29] Id., Article VI, Section 25(1) & (2).
- [30] Id., Article VI, Section 25(3)
- [31] Id., Article VI, Section 25(4)
- [32] Id., Article VI, Section 25(5)
- [33] Id., Article VI, Section 25(6)
- [34] Id., Article VI, Section 25(7)
- [35] Id., Article X, Section 6; Article IX-A, Section 5; Article XIII, Section 17.
- [36] Id., Article VII, Sections 17 & 5.
- [37] Mendoza, supra note 9 at 314.
- [38] Id.
- [39] Id.
- [40] This has been exhaustively discussed by former Chief Justice, then-Associate Justice Puno, in his concurring opinion in Integrated Bar of the Philippines v. Zamora, 392 Phil. 618 (2000).
- [41] ADMINISTRATIVE CODE, Executive Order No. 292, Book VI.
- [42] 1987 CONSTITUTION, Article VII, Section 22.
- [43] SENATE RULES, Rule X, Section 13 (4).
- [44] 1987 CONSTITUTION, Article VI, Section 24.
- [45] Id., Article IX-D, Section 4.
- [46] See Generally Accepted Accounting Principles and International Financial Reporting Standards, adopted through the Philippine Financial Reporting Standards. See <http://www.picpa.com.ph/Financial-Reporting-Standards-Council/Philippine-Financial-Reporting-Standards/Phili>

ppine-Financial-Reporting-Standards.aspx (last accessed 17 November 2013).

[47] ADMINISTRATIVE CODE, Executive Order No. 292, Book VI, Sec. 12.

[48] 1935 CONSTITUTION, Article VI, Section 20(3); 1973 CONSTITUTION, Article VIII, Section 20(2); 1987 Constitution, Article VI, Section 27(2).

[49] 1987 CONSTITUTION, Article VI, Section 27(2).

[50] G.R. No. 87636, 19 November 1990, 191 SCRA 452.

[51] Id. at 465.

[52] G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[53] Id. at 144.

[54] Specific means “special or particular.” Accessible at <http://www.merriam-webster.com/dictionary/specific> (last accessed 18 November 2013); Singular means “showing or indicating no more than one thing.” Accessible at <http://www.merriam-webster.com/dictionary/singular> (last accessed 18 November 2013).

[55] DENISE C. TWOMEY, The Constitutionality of a Line-Item Veto: A Comparison with Other Exercises of Executive Discretion Not to Spend, 34 Golden Gate U.L. Rev. 305, 338 (1989).

[56] Supra note 52 at 144.

[57] Supra note 52 at 143-144.

[58] Decision, p. 48.

[59] COA Memorandum, dated 17 October 2013, pp. 22-23 & 25-26.

[60] Supra note 52.

[61] Supra note 52 at 467.

[62] AN ACT TO DECLARE THE PURPOSE OF THE PEOPLE OF THE UNITED STATES AS TO THE FUTURE POLITICAL STATUS OF THE PEOPLE OF THE PHILIPPINE ISLANDS, AND TO PROVIDE A MORE AUTONOMOUS GOVERNMENT FOR THOSE ISLANDS, Public Act No. 240, 29 August 1916 [hereinafter Jones Law]

[63] Jones Law, Section 21(b).

[64] PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, Vol. I, II, & III. GAO-04-261SP (2004); GAO-06-382SP (2006); GAO-08-978SP (2008)

[65] GAO-06-382SP Appropriations Law - Vol. II, pp. 6-5.

[66] Id.

[67] Id.

[68] Conference of Maritime Manning Agencies v. POEA, 313 Phil. 592 (1995).

[69] Lincoln v. Vigil, 508 U.S. 182 (1993).

[70] Id.

- [71] GAO-06-382SP Appropriations Law - Vol. II, p. 6-5.
- [72] *Lincoln v. Vigil*, 508 U.S. 182 (1993), citing *LTV Aerospace Corp.*, 55 Comp.Gen. 307, 319 (1975).
- [73] EXECUTIVE ORDER No. 292, “Administrative Code of 1987,” 25 July 1987.
- [74] *Id.*, Book VI, Chapter 5.
- [75] *Id.*, Book VI, Sec. 18.
- [76] *Id.*, Book IV. Sec. 56.
- [77] *Id.*, Book VI. Sec. 61.
- [78] Proclamation No. 682, Declaring a State of National Calamity, 11 November 2013.
- [79] <http://www.rappler.com/newsbreak/iq/43058-storm-signal-number-ph-history> (Last accessed 18 November 2013)
- [80] <http://edition.cnn.com/2013/11/08/world/asia/philippines-typhoon-destruction/> (Last accessed 18 November 2013)
- [81] *Supra* note 55 at 338-339.
- [82] *Syjuco, et al. v. Secretary Abad, et al.*, G.R. Nos. 209135-36.

CONCURRING OPINION

CARPIO, J.:

This is again another time in our nation’s history when this Court is called upon to resolve a grave national crisis. The corruption in the pork barrel system, as starkly documented in the Commission on Audit Report on the 2007-2009 Priority Development Assistance Fund,[1] has shown that there is something terribly wrong in the appropriation and expenditure of public funds. Taxes from the hard-earned wages of working class Filipinos are brazenly looted in the implementation of the annual appropriation laws. The Filipino people are in despair, groping for a way to end the pork-barrel system. The present petitions test the limits of our Constitution – whether this grave national crisis can be resolved within, or outside, the present Constitution.

For resolution in the present cases are the following threshold issues:

1. Whether Article XLIV of Republic Act No. 10352 or the 2013 General Appropriations Act (GAA), on the Priority Development Assistance Fund (PDAF), violates the principle of separation of powers;
2. Whether the lump-sum PDAF negates the President’s constitutional line-item veto power;^[2]
3. Whether the phrase “for such other purposes as may be hereafter directed by the President” in Section 8 of Presidential Decree No. 910, on the use of the Malampaya Fund, constitutes an undue delegation of legislative power; and
4. Whether the phrase “to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the x x x President,” in Section 12, Title IV of Presidential Decree No. 1869, as amended, on the use of the government’s share in the gross earnings of the Philippine Amusement and Gaming Corporation (PAGCOR), likewise constitutes an undue delegation of legislative power.

I.

Standing to Sue and Propriety of the Petitions

Petitioners filed the present petitions for certiorari and prohibition[3] in their capacity as taxpayers and Filipino citizens, challenging the constitutionality of the PDAF provisions in the 2013 GAA and certain provisions in Presidential Decree Nos. 910 and 1869.

As taxpayers and ordinary citizens, petitioners possess locus standi to bring these suits which indisputably involve the disbursement of public funds. As we held in *Pascual v. Secretary of Public Works*,[4] taxpayers, such as petitioners in the present petitions, have “sufficient interest in preventing the illegal expenditures of moneys raised by taxation and may therefore question the constitutionality of statutes requiring expenditure of public moneys.” Likewise, in *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*,[5] we declared that “taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law.”

The present petitions also raise constitutional issues of transcendental importance to the nation, justifying their immediate resolution by this Court.[6] Moreover, the special civil actions of certiorari and prohibition are proper remedial vehicles to test the constitutionality of statutes.[7]

II.

Special Provisions of the 2013 PDAF

Violate the Separation of Powers.

Under our Constitution, government power is divided among the three co-equal branches: Executive, Legislature, and Judiciary. Well-entrenched in our jurisdiction is the principle of separation of powers, which ordains that each of the three great branches of government is supreme in the exercise of its functions within its own constitutionally allocated sphere.[8] Lawmaking belongs to Congress, implementing the laws to the Executive, and settling legal disputes to the Judiciary.[9] Any encroachment on the functions of a co-equal branch by the other branches violates the principle of separation of powers, and is thus unconstitutional. In *Bengzon v. Drilon*,[10] this Court declared:

It cannot be overstressed that in a constitutional government such as ours, the rule of law must prevail. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons including the highest official of this land must defer. From this cardinal postulate, it follows that the three branches of government must discharge their respective functions within the limits of authority conferred by the Constitution. Under the principle of separation of powers, neither Congress, the President nor the Judiciary may encroach on fields allocated to the other branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws and the judiciary to their interpretation and application to cases and controversies.

In the present petitions, the Court is faced with issues of paramount importance as these issues involve the core powers of the Executive and the Legislature. Specifically, the petitions raise questions on the Executive’s constitutional power to implement the laws and the Legislature’s constitutional power to appropriate. The latter necessarily involves the President’s constitutional power to veto line-items in appropriation laws.[11]

Under the Constitution, the President submits every year a proposed national expenditures program (NEP) to Congress. The NEP serves as basis for the annual general appropriations act (GAA) to be enacted by Congress. This is provided in the Constitution, as follows:

The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts

from existing and proposed revenue measures.[12]

While the President proposes the expenditures program to Congress, it is Congress that exercises the power to appropriate and enact the GAA. The Constitution states that “all appropriation x x x shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.”[13] The Constitution likewise mandates, “No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”[14]

The Administrative Code of 1987 defines “appropriation” as “an authorization made by law or other legislative enactment directing payment out of government funds under specified conditions or for specified purposes.”[15] Thus, the power to appropriate is the exclusive legislative power to direct by law the payment of government funds under specified conditions or specified purposes. The appropriation must state the specific purpose of the payment of government funds. The appropriation must also necessarily state the specific amount since it is a directive to pay out government funds.

Once the appropriations bill is signed into law, its implementation becomes the exclusive function of the President. The Constitution states, “The executive power shall be vested in the President.” The Constitution has vested the executive power solely in the President and to no one else in government.[16] The Constitution also mandates that the President “shall ensure that the laws be faithfully executed.”[17] The President cannot refuse to execute the law not only because he is constitutionally mandated to ensure its execution, but also because he has taken a constitutionally prescribed solemn oath to “faithfully and conscientiously” execute the law.[18]

To exercise the executive power effectively, the President must necessarily control the entire Executive branch. Thus, the Constitution provides, “The President shall have control of all the executive departments, bureaus, and offices.”[19] The Constitution does not exempt any executive office from the President’s control.[20]

The GAA is a law. The implementation of the GAA belongs exclusively to the President, and cannot be exercised by Congress. The President cannot share with the Legislature, its committees or members the power to implement the GAA. The Legislature, its committees or members cannot exercise functions vested in the President by the Constitution; otherwise, there will be a violation of the separation of powers.

The Legislature, its committees or members cannot also exercise any veto power over actions or decisions of executive departments, bureaus or offices because this will divest the President of control over the executive agencies. Control means the power to affirm, modify or reverse, and even to pre-empt, the actions or decisions of executive agencies or their officials.[21] Any provision of law requiring the concurrence of the Legislature, its committees or members before an executive agency can exercise its functions violates the President’s control over executive agencies, and is thus unconstitutional.

In LAMP,[22] this Court declared:

Under the Constitution, the power of appropriation is vested in the Legislature, subject to the requirement that appropriation bills originate exclusively in the House of Representatives with the option of the Senate to propose or concur with the amendments. While the budgetary process commences from the proposal submitted by the President to Congress, it is the latter which concludes the exercise by crafting an appropriation act it may deem beneficial to the nation, based on its own judgment, wisdom and purposes. Like any other piece of legislation, the appropriation act may then be susceptible to objection from the branch tasked to implement it, by way of a Presidential veto. Thereafter, budget execution comes under the domain of the Executive branch which deals with the operational aspects of the cycle including the allocation and release of funds earmarked for various projects. Simply put, from the regulation of fund releases, the implementation of payment schedules and up to the actual spending of the funds specified in the law, the Executive takes the wheel. x x x.

The 2013 PDAF, or Article XLIV of Republic Act No. 10352, provides in part as follows:

XLIV. PRIORITY DEVELOPMENT ASSISTANCE FUND

For fund requirements of priority development programs and projects, as indicated hereunder
 P24,790,000,000

New Appropriations, by Purpose

Current Operating Expenditures
 Maintenance and
 other Operating

PERSONAL SERVICES

EXPENSES

CAPITAL OUTLAY

TOTAL

A. PURPOSE(S)

1. SUPPORT FOR PRIORITY

PROGRAMS AND PROJECTS

P7,657,000,000

P17,133,000,000

P24,790,000,000

TOTAL NEW APPROPRIATIONS

P7,657,000,000

P17,133,000,000

P24,790,000,000

Special Provision(s)

1. Use of Fund. The amount appropriated herein shall be used to fund the following priority programs and projects to be implemented by the corresponding agencies:

Program/Project

Implementing Agency

List of Requirements

A. Programs/Projects Chargeable
 against Soft Allocation

1. Education

Scholarship

TESDA/CHED/

NCIP /DAP
LGUs SUCs

x x x

Assistance to Students

x x x

DepEd

x x x

2. Health

x x x

Medical Mission including
provision of medicines and
immunization

LGUs

x x x

x x x

3. Livelihood

x x x

Specialty training/employment
program (community based
training program) including
acquisition of training supplies
and equipment

TESDA/LGUs

x x x

x x x

4. Social Services

x x x

Assistance to indigent
individuals/families

LGUs

x x x

x x x

5. Peace and Order and Security

x x x

Surveillance and Communication
equipment

LGUs/PNP

x x x

x x x

6. Arts and Culture

Preservation/Conservation,
including publication of
historical materials

NHCP (formerly NHI)/LGUs

x x x

7. Public Infrastructure Projects

Construction/Rehabilitation/Repair
/Improvement of the following:

Local roads and bridges

LGUs

x x x

Public Markets/Multi-Purpose

Buildings/Multi-Purpose

Pavements, Pathways and Footbridges

x x x

**B. INFRASTRUCTURE PROJECTS CHARGEABLE
AGAINST HARD ALLOCATION**

:

Construction/Rehabilitation/
Renovation of the following

Roads and bridges

DPWH

x x x

x x x

Flood Control

DPWH

x x x

x x x

PROVIDED, That this Fund shall not be used for the payment of Personal Services expenditures: PROVIDED, FURTHER, That all procurement shall comply with the provisions of R.A. No. 9184 and its Revised Implementing Rules and Regulations: PROVIDED, FINALLY, That for infrastructure projects, LGUs may only be identified as implementing agencies if they have the technical capability to implement the same.

2. Project Identification. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency: PROVIDED, That preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the MHTS-PR by the DSWD. For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act.

All programs/projects, except for assistance to indigent patients and scholarships, identified by a member of the House of Representatives outside of his/her legislative district shall have the written concurrence of the member of the House of Representatives of the recipient or beneficiary legislative district, endorsed by the Speaker of the House of Representatives.

3. Legislator's Allocation. The Total amount of projects to be identified by legislators shall be as follows:

a. For Congressional District or Party-List Representative: Thirty Million Pesos (P30,000,000) for soft programs and projects listed under Item A and Forty Million Pesos (P40,000,000) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1; and

b. For Senators: One Hundred Million Pesos (P100,000,000) for soft programs and projects listed under Item A and One Hundred Million Pesos (P100,000,000) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1.

Subject to the approved fiscal program for the year and applicable Special Provisions on the use and release of fund, only fifty percent (50%) of the foregoing amounts may be released in the first semester and the remaining

fifty percent (50%) may be released in the second semester.

4. Realignment of Funds. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry are also authorized to approve realignment from one project/scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and same project category as the original project; (ii) allotment released has not yet been obligated for the original project/scope of work; and (iii) request is with the concurrence of the legislator concerned. The DBM must be informed in writing of any realignment within five (5) calendar days from approval thereof: PROVIDED, That any realignment under this Fund shall be limited within the same classification of soft or hard programs/projects listed under Special Provision 1 hereof: PROVIDED, FURTHER, That in case of realignments, modifications and revisions of projects to be implemented by LGUs, the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr.

Any realignment, modification and revision of the project identification shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance, for favorable endorsement to the DBM or the implementing agency, as the case may be.

5. Release of Funds. All request for release of funds shall be supported by the documents prescribed under Special Provision No. 1 and favorably endorsed by the House Committee on Appropriations and the Senate Committee on Finance, as the case may be. Funds shall be released to the implementing agencies subject to the conditions under Special Provision No. 1 and the limits prescribed under Special Provision No. 3.

x x x x

Special Provision Nos. 2, 3, 4, and 5, Article XLIV of the 2013 GAA violate the principle of separation of powers enshrined in the Constitution. These provisions allow congressional committees and legislators not only to exercise in part the Executive's exclusive power to implement the appropriations law, they also grant congressional committees and legislators a veto power over the Executive's exclusive power to implement the appropriations law.

A. Special Provision Nos. 2 and 3 on identification of projects

While Special Provision No. 2 of the 2013 PDAF provides that projects shall be taken from a priority list provided by the Executive, legislators actually identify the projects to be financed under the PDAF. This is clear from Special Provision No. 3 which states that "the total amount of projects to be identified by the legislators shall be as follows: x x x." This identification of projects by legislators is mandatory on the Executive. This is clear from the second paragraph of Special Provision No. 4 which requires the "favorable endorsement" of the House Committee on Appropriations or the Senate Committee on Finance (Congressional Committees) in case of "any x x x revision and modification" of the project identified by the legislator. This requirement of "favorable endorsement" constitutes a veto power by either of the Congressional Committees on the exclusive power of the Executive to implement the law. This requirement also encroaches on the President's control over executive agencies.

It is the individual House member or individual Senator who identifies the project to be funded and implemented under the PDAF. This identification is made after the enactment into law of the GAA. Unless the individual legislator identifies the project, the Executive cannot implement the project. Any revision or modification of the project by the Executive requires the "favorable endorsement" of either of the Congressional Committees. The

Executive does not, and cannot, identify the project to be funded and implemented. Neither can the Executive, on its own, modify or revise the project identified by the legislator. This divests the President of control over the implementing agencies with respect to the PDAF. Clearly, the identification of projects by legislators under the 2013 PDAF, being mandatory on the Executive, is unconstitutional.

The Constitution states, “The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives.”[23] The legislative power can be exercised only by Congress, not by an individual legislator, not by a congressional committee, and not even by either the House of Representatives or the Senate.[24] Once the GAA becomes law, only Congress itself, and not its committees or members, can add, subtract, complete or modify the law by passing an amendatory law. The Congressional Committees or individual legislators, on their own, cannot exercise legislative power.

Respondents argue that this Court already upheld the authority of individual legislators to identify projects to be funded by the Countrywide Development Fund (CDF), later known as PDAF. In particular, respondents cite the decisions of this Court in *Philippine Constitution Association (PHILCONSA) v. Enriquez*[25] and in *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*. [26]

PHILCONSA and LAMP do not apply to the present cases because the mandatory identification of projects by individual legislators in the 2013 GAA is not present in the 1994 and 2004 GAAs. A comparison of Article XLI of the 1994 GAA, Article XLVII of the 2004 GAA, and Article XLIV of the 2013 GAA shows that only the 2013 GAA provides for the mandatory identification of projects by legislators.

In PHILCONSA, Republic Act No. 7663, or the 1994 GAA, authorized members of Congress to identify projects in the CDF allotted to them. Article XLI of the 1994 GAA provides:

Special Provisions

1. Use and Release of Funds. The amount herein appropriated shall be used for infrastructure, purchase of ambulances and computers and other priority projects and activities, and credit facilities to qualified beneficiaries as proposed and identified by officials concerned according to the following allocations: Representatives, P12,500,000 each; Senators, P18,000,000 each; Vice-President, P20,000,000; PROVIDED, That, the said credit facilities shall be constituted as a revolving fund to be administered by a government financial institution (GFI) as a trust fund for lending operations. Prior years releases to local government units and national government agencies for this purpose shall be turned over to the government financial institution which shall be the sole administrator of credit facilities released from this fund.

The fund shall be automatically released quarterly by way of Advice of Allotments and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each quarter upon submission of the list of projects and activities by the officials concerned.

2. Submission of Quarterly Reports. The Department of Budget and Management shall submit within thirty (30) days after the end of each quarter a report to the Senate Committee on Finance and the House Committee on Appropriations on the releases made from this Fund. The report shall include the listing of the projects, locations, implementing agencies and the endorsing officials.

It is clear from the CDF provisions of the 1994 GAA that the authority vested in legislators was limited to the mere identification of projects. There was nothing in the 1994 GAA that made identification of projects by legislators mandatory on the President. The President could change the projects identified by legislators without the favorable endorsement of any congressional committee, and even without the concurrence of the legislators who identified the projects. The Court ruled in PHILCONSA:

The authority given to the members of Congress is only to propose and identify projects to be implemented by

the President. Under Article XLI of the GAA of 1994, the President must perforce examine whether the proposals submitted by members of Congress fall within the specific items of expenditures for which the Fund was set up, and if qualified, he next determines whether they are in line with other projects planned for the locality. Thereafter, if the proposed projects qualify for funding under the Fund, it is the President who shall implement them. In short, the proposals and identifications made by members of Congress are merely recommendatory.[27] (Emphasis supplied)

LAMP is likewise not applicable to the cases before us. Article XLVII of the 2004 GAA, which was the subject matter in LAMP, only states the following on the PDAF:

Special Provision

1. Use and Release of the Fund. The amount herein appropriated shall be used to fund priority programs and projects or to fund the required counterpart for foreign-assisted programs and projects: PROVIDED, That such amount shall be released directly to the implementing agency or Local Government Unit concerned: PROVIDED, FURTHER, That the allocations authorized herein may be realigned to any expense class, if deemed necessary: PROVIDED FURTHERMORE, That a maximum of ten percent (10%) of the authorized allocations by district may be used for procurement of rice and other basic commodities which shall be purchased from the National Food Authority.

The PDAF provision in the 2004 GAA does not even state that legislators may propose or identify projects to be funded by the PDAF. The 2004 PDAF provision is completely silent on the role of legislators or congressional committees in the implementation of the 2004 PDAF. Indeed, the petitioner in LAMP even argued that the Special Provision of the 2004 GAA “does not empower individual members of Congress to propose, select and identify programs and projects to be funded out of PDAF,”[28] and thus “the pork barrel has become legally defunct under the present state of GAA 2004.”[29] The Court ruled in LAMP that there was no convincing proof that there were direct releases of funds to members of Congress. The Court also reiterated in LAMP that members of Congress may propose projects, which is merely recommendatory, and thus constitutional under case law.

Thus, PHILCONSA and LAMP are not applicable to the present cases before us.

B. Special Provision No. 4 on realignment of funds

The first paragraph of Special Provision No. 4 clearly states that the Executive’s realignment of funds under the PDAF is conditioned, among others, on the “concurrence of the legislator concerned.” Such concurrence allows the legislator not only to share with the Executive the implementation of the GAA, but also to veto any realignment of funds initiated by the Executive. Thus, the President cannot exercise his constitutional power to realign savings[30] without the “concurrence” of legislators. This violates the separation of powers, and is thus unconstitutional.

The second paragraph of Special Provision No. 4 states that “any realignment” of funds shall have the “favorable endorsement” of either of the Congressional Committees. The word “endorse” means to “declare one’s public approval or support.”[31] The word “favorable” stresses that there must be an affirmative action. Thus, the phrase “favorable endorsement,” as used in Special Provision No. 4 of the PDAF, means categorical approval, agreement, consent, or concurrence by the Congressional Committees. This means that the President cannot realign savings in the PDAF, which is an appropriation for the Executive branch, without the concurrence of either of the Congressional Committees, contrary to the constitutional provision that it is the President who can realign savings in the Executive branch. This violates the separation of powers, and is thus unconstitutional.

The Office of the Solicitor General (OSG) argues that Special Provision No. 4 involves not a realignment of funds but a realignment of projects, despite the clear wording of the heading in Special Provision No. 4 stating

“Realignment of Funds.” The OSG contends that realignment “happens when the project is no longer feasible such as when projects initially proposed by the legislator have already been accomplished by the national government or the LGU, or when projects as originally proposed cannot be accomplished due to certain contingencies.” None of the situations cited by the OSG is found in Special Provision No. 4. Even then, the situations cited by the OSG will actually result in the realignment of funds. If the project identified by the legislator has already been undertaken and completed with the use of other funds in the GAA, or if the identified project is no longer feasible due to contingencies, the funds allocated to the legislator under the PDAF will have to be logically realigned to another project to be identified by the same legislator.

Moreover, Special Provision No. 4 provides, as one of the conditions for the realignment, that the “allotment released has not yet been obligated for the original project/scope of work.” Special Provision No. 4 also states that “in case of realignments, modifications and revisions of projects to be implemented by LGUs, the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr (Bureau of Treasury).” Clearly, the realignment in Special Provision No. 4, as stated in its heading “Realignment of Funds”, refers to realignment of funds because the realignment speaks of “allotment” and “cash.” In any event, even if we assume that Special Provision No. 4 refers to realignment of projects and not realignment of funds, still the realignment of projects within the menu of projects authorized in the PDAF provision of the GAA is an Executive function. The “concurrence of the legislator concerned” and the “favorable endorsement” of either of the Congressional Committees to the realignment of projects will still violate the separation of powers.

Under Section 25(5), Article VI of the Constitution, the power to realign is lodged in the President for the Executive branch, the Speaker for the House of Representatives, the Senate President for the Senate, the Chief Justice for the Judiciary, and the Heads of the Constitutional Commissions for their respective constitutional offices. This constitutional provision reads:

(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations. (Boldfacing and italicization supplied)

The Constitution expressly states that what can be realigned are “savings” from an item in the GAA, and such savings can only be used to augment another existing “item” in the “respective appropriations” of the Executive, Legislature, Judiciary, and the Constitutional Commissions in the same GAA. The term “funds” in Special Provision No. 4 is not the same as “savings.” The term “funds” means appropriated funds, whether savings or not. The term “savings” is much narrower, and must strictly qualify as such under Section 53 of the General Provisions of the 2013 GAA, which is a verbatim reproduction of the definition of “savings” in previous GAAs. Section 53 of the 2013 GAA defines “savings” as follows:

Sec. 53. Meaning of Savings and Augmentation. Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriation balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriation balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost. (Emphasis supplied)

Indisputably, only “savings” can be realigned. Unless there are savings, there can be no realignment.

Funds, or “appropriations” as used in the first clause of Section 25(5) of Article VI, cannot be transferred from one branch to another branch or to a Constitutional Commission, or even within the same branch or Constitutional Commission. Thus, funds or appropriations for the Office of the President cannot be transferred to the Commission on Elections. Likewise, funds or appropriations for one department of the Executive branch cannot be transferred to another department of the Executive branch. The transfer of funds or appropriations is absolutely prohibited, unless the funds qualify as “savings,” in which case the savings can be realigned to an existing item of appropriation but only within the same branch or Constitutional Commission.

Special Provision No. 4 allows realignment of funds, not savings. That only savings, and not funds, can be realigned has already been settled in *Demetria v. Alba*,^[32] and again in *Sanchez v. Commission on Audit*.^[33] In *Demetria*, we distinguished between transfer of funds and transfer of savings for the purpose of augmenting an existing item in the GAA, the former being unconstitutional and the latter constitutional. Thus, in *Demetria*, we struck down as unconstitutional paragraph 1, Section 44 of Presidential Decree No. 1177,^[34] for authorizing the President to transfer funds as distinguished from savings. In *Demetria*, we ruled:

Paragraph 1 of Section 44 of P.D. No. 1177 unduly overextends the privilege granted under said Section 16(5) [of Article VIII of the 1973 Constitution]. It empowers the President to indiscriminately transfer funds from one department, bureau, office or agency of the Executive Department to any program, project or activity of any department, bureau or office included in the General Appropriations Act or approved after its enactment, without regard as to whether or not the funds to be transferred are actually savings in the item from which the same are to be taken, or whether or not the transfer is for the purpose of augmenting the item to which said transfer is to be made. It does not only completely disregard the standards set in the fundamental law, thereby amounting to an undue delegation of legislative powers, but likewise goes beyond the tenor thereof. Indeed, such constitutional infirmities render the provision in question null and void.^[35] (Emphasis supplied)

In *Sanchez*, we emphasized that “[a]ctual savings is a sine qua non to a valid transfer of funds.”^[36] We stated the two essential requisites in order that a realignment of savings may be legally effected: “First, there must be savings in the programmed appropriation of the transferring agency. Second, there must be an existing item, project or activity with an appropriation in the receiving agency to which the savings will be transferred.”^[37] The essential requisites for realignment of savings were discarded in Special Provision No. 4, which allows realignment of “funds,” and not “savings” as defined in Section 53 of the 2013 GAA. As in *Demetria* and *Sanchez*, the realignment of “funds” in Special Provision No. 4 is unconstitutional.

The President’s constitutional power to realign savings cannot be delegated to the Department Secretaries but must be exercised by the President himself. Under Special Provision No. 4, the President’s power to realign is delegated to Department Secretaries, which violates the Constitutional provision that it is the President who can realign savings. In *PHILCONSA*, we ruled that the power to realign cannot be delegated to the Chief of Staff of the Armed Forces of the Philippines because this power “can be exercised only by the President pursuant to a specific law.”^[38] In *Sanchez*, we rejected the transfer of funds because it was exercised by the Deputy Executive Secretary. We ruled in *Sanchez* that “[e]ven if the DILG Secretary had corroborated the initiative of the Deputy Executive Secretary, it does not even appear that the matter was authorized by the President.”^[39] Clearly, the power to realign savings must be exercised by the President himself.

National Budget Circular No. 547, entitled “Guidelines on the Release of Funds Chargeable Against the Priority Development Assistance Fund for FY 2013” dated 18 January 2013, reiterates Special Provision Nos. 2, 3 and 4 of the 2013 PDAF. The DBM Circular states that “[t]he PDAF shall be used to fund priority programs and projects to be undertaken by implementing agencies identified by the Legislators from the Project Menu of Fund hereby attached as Annex A.”

The DBM Circular requires that “requests for realignment x x x be supported with x x x [a] written request from the proponent legislator; in case the requesting party is the implementing agency, the concurrence of the proponent legislator shall be obtained.”[40] The DBM Circular also requires that “[r]equests for realignment, modification and revision of projects x x x be duly endorsed by the following: 4.4.1 For the Senate, the Senate President and the Chairman of the Committee on Finance and 4.4.2 For the House of Representatives, the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations.”[41] The DBM Circular’s additional requirement that the endorsement of the House Speaker and the Senate President should also be submitted administratively enlarges further the Legislature’s encroachment on Executive functions, including the President’s control over implementing agencies, in violation of the separation of powers.

These DBM guidelines, issued to implement the PDAF provisions of the 2013 GAA, sufficiently establish that (1) individual legislators actually identify the projects to be funded; (2) the consent of individual legislators is required for the realignment of funds; and (3) the Congressional Committees, the House Speaker and the Senate President control the realignment of funds, as well as the modification and revision of projects. In other words, National Budget Circular No. 547 establishes administratively the necessary and indispensable participation of the individual legislators and the Congressional Committees, as well as the House Speaker and the Senate President, in the implementation of the 2013 GAA in violation of the separation of powers.

C. Special Provision No. 5 on the release of funds

Under Special Provision No. 5, all requests for release of funds must be (1) supported by documents prescribed in Special Provision No. 1; and (2) “favorably endorsed” by either of the Congressional Committees. The use of the word “shall” in Special Provision No. 5 clearly makes it mandatory to comply with the two requisites for the release of funds. The absence of the favorable endorsement from either of the Congressional Committees will result in the non-release of funds. In effect, the Congressional Committees have a veto power over the Executive’s implementation of the PDAF.

DBM National Budget Circular No. 547 reiterates Special Provision No. 5 of the 2013 PDAF on the release of funds. This DBM Circular requires “all requests for issuance of allotment x x x be supported with the x x x [w]ritten endorsements by the following: x x x In case of the Senate, the Senate President and the Chairman of the Committee on Finance; and x x x In case of the House of Representatives, the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations.”[42] The DBM Circular again administratively enlarges further the Legislature’s encroachment on Executive functions, including the President’s control over implementing agencies, by requiring the “written endorsement” of the House Speaker or Senate President to the release of funds, in addition to the “favorable endorsement” of either of the Congressional Committees.

In her Comment[43] as amicus curiae, Chairperson Maria Gracia M. Pulido Tan of the Commission on Audit (COA) correctly observes:

As for the 2011-2013 GAAs, the requirement of a favorable endorsement by the House Committee on Appropriations and the Senate Committee on Finance for (a) release of Funds and (b) realignment, modification and revision of the project identification effectively amounts to a prohibited post-enactment measure, a legislative veto, under the terms of *Abakada*. It is not a matter of speculation but one of logic, that by a mere refusal to endorse, he can render the appropriation nugatory, impound the Funds, and prevent the Executive from carrying out its functions or otherwise tie its (the Executive’s) hands to a project that may prove to be not advantageous to the government. The practical effect of this requirement, therefore, is to shift to the legislator the power to spend. (Emphasis in the original)

The power to release public funds authorized to be paid under the GAA is an Executive function. However, under

Special Provision No. 5, prior approval of either of the Congressional Committees is required for the release of funds. Thus, the Congressional Committees effectively control the release of funds to implement projects identified by legislators. Unless the funds are released, the projects cannot be implemented. Without doubt, the Congressional Committees and legislators are exercising Executive functions in violation of the separation of powers. The Congressional Committees and the legislators are also divesting the President of control over the implementing agencies with respect to the PDAF.

A law that invests Executive functions on the Legislature, its committees or members is unconstitutional for violation of the separation of powers. In the 1928 case of *Springer v. Government of the Philippine Islands*,^[44] the U.S. Supreme Court held:

Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions. x x x.

Not having the power of appointment, unless expressly granted or incidental to its powers, the Legislature cannot ingraft executive duties upon a legislative office, since that would be to usurp the power of appointment by indirection, though the case might be different if the additional duties were devolved upon an appointee of the executive. Here the members of the Legislature who constitute a majority of the ‘board’ and ‘committee,’ respectively, are not charged with the performance of any legislative functions or with the doing of anything which is in aid of the performance of any such functions by the Legislature. Putting aside for the moment the question whether the duties devolved upon these members are vested by the Organic Act in the Governor General, it is clear that they are not legislative in character, and still more clear that they are not judicial. The fact that they do not fall within the authority of either of these two constitutes logical ground for concluding that they do fall within that of the remaining one of the three among which the powers of government are divided. (Boldfacing and italicization supplied; citations omitted)

What happens to the law after its enactment becomes the domain of the Executive and the Judiciary.^[45] The Legislature or its committees are limited to investigation in aid of legislation or oversight as to the implementation of the law. Certainly, the Legislature, its committees or members cannot implement the law, whether partly or fully. Neither can the Legislature, its committees or members interpret, expand, restrict, amend or repeal the law except through a new legislation. The Legislature or its committees cannot even reserve the power to approve the implementing rules of the law.^[46] Any such post-enactment intervention by the Legislature, its committees or members other than through legislation is an encroachment on Executive power in violation of the separation of powers.

III.

Lump Sum PDAF Negates the President’s

Exercise of the Line-Item Veto Power.

Section 27, Article VI of the Constitution provides for the presentment clause and the President’s veto power:

Section 27. (1) Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

(2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or

tariff bill, but the veto shall not affect the item or items to which he does not object. (Emphasis supplied)

In *Gonzales v. Macaraig, Jr.*,^[47] the Court explained the President's veto power, thus:

Paragraph (1) refers to the general veto power of the President and if exercised would result in the veto of the entire bill, as a general rule. Paragraph (2) is what is referred to as the item-veto power or the line-veto power. It allows the exercise of the veto over a particular item or items in an appropriation, revenue or tariff bill. As specified, the President may not veto less than all of an item of an Appropriations Bill. In other words, the power given the executive to disapprove any item or items in an Appropriations Bill does not grant the authority to veto a part of an item and to approve the remaining portion of the same item.

In *Gonzales*, the Court defined the term “item” as used in appropriation laws as “an indivisible sum of money dedicated to a stated purpose.”^[48] The amount in an item is “indivisible” because the amount cannot be divided for any purpose other than the specific purpose stated in the item. The item must be for a specific purpose so that the President can determine whether the specific purpose is wasteful or not. This is the “item” that can be the subject of the President's line-item veto power. Any other kind of item will circumvent or frustrate the President's line-item veto power in violation of the Constitution.

In contrast, a lump-sum appropriation is a single but divisible sum of money which is the source to fund several purposes in the same appropriation. For example, the 2013 PDAF provision appropriates a single amount – P24.79 billion – to be divided to fund several purposes of appropriation, like scholarships, roads, bridges, school buildings, medicines, livelihood training and equipment, police surveillance and communication equipment, flood control, school fences and stages, and a variety of other purposes.

In her Comment, COA Chairperson Tan stated:

For the most part, appropriations are itemized in the GAA, following line-item budgeting, which provides the line by line allocation of inputs defined as the amount of resources used to produce outputs. The resources are usually expressed in money.

The PDAF, on the other hand, is appropriated as a lump-sum amount, and is broken down by allotment class only. While the projects and programs to be funded and the corresponding agencies are specified, there is no allocation of specific amounts for each project or program, or per agency where there are multiple IAs (implementing agencies) for the same class of projects. (Emphasis supplied)

In place of lump-sum appropriations, COA Chairperson Tan recommends a “line by line budget or amount per proposed program, activity, or project, and per implementing agency.”

For the President to exercise his constitutional power to veto a particular item of appropriation, the GAA must provide line-item, instead of lump-sum, appropriations. This means Congress has the constitutional duty to present to the President a GAA containing items, instead of lump-sums, stating in detail the specific purpose for each amount of appropriation, precisely to enable the President to exercise his line-item veto power. Otherwise, the President's line-item veto power is negated by Congress in violation of the Constitution.

The President's line-item veto in appropriation laws^[49] is intended to eliminate “wasteful parochial spending,”^[50] primarily the pork-barrel. Historically, the pork-barrel meant “appropriation yielding rich patronage benefits.”^[51] In the Philippines, the pork-barrel has degenerated further as shown in the COA Audit Report on the 2007-2009 PDAF. The pork-barrel is mischievously included in lump-sum appropriations that fund much needed projects. The President is faced with the difficult decision of either vetoing the lump-sum appropriation that includes beneficial programs or approving the same appropriation that includes the wasteful pork-barrel.^[52] To banish the evil of the pork-barrel, the Constitution vests the President with the line-item veto

power, which for its necessary and proper exercise requires the President to propose, and Congress to enact, only line-item appropriations.

The President should not frustrate his own constitutional line-item veto power by proposing to Congress lump-sum expenditures in the NEP. Congress should not also negate the President's constitutional line-item veto power by enacting lump-sum appropriations in the GAA. When the President submits lump-sum expenditures in the NEP, and Congress enacts lump-sum appropriations in the GAA, both in effect connive to violate the Constitution. This wreaks havoc on the check-and-balance system between the Executive and Legislature with respect to appropriations. While Congress has the power to appropriate, that power should always be subject to the President's line-item veto power. If the President exercises his line-item veto power unreasonably, Congress can override such veto by two-thirds vote of the House of Representatives and the Senate voting separately.[53] This constitutional check-and-balance should at all times be maintained to avoid wastage of taxpayers' money.

The President has taken a constitutionally prescribed oath to "preserve and defend" the Constitution. Thus, the President has a constitutional duty to preserve and defend his constitutional line-item veto power by submitting to Congress only a line-item NEP without lump-sum expenditures, and then by demanding that Congress approve only a line-item GAA without lump-sum appropriations. Congress violates the Constitution if it circumvents the President's line-item veto power by enacting lump-sum appropriations in the GAA. To repeat, the President has a constitutional duty to submit to Congress only a line-item NEP without lump-sum expenditures, while Congress has a constitutional duty to enact only a line-item GAA without lump-sum appropriations.

In fact, the law governing the "content" of the GAA already mandates that there must be "corresponding appropriations for each program and project," or line-item budgeting, in the GAA. Section 23, Chapter 4, Book VI of the Administrative Code of 1987 provides:

Section 23. Content of the General Appropriations Act. - The General Appropriations Act shall be presented in the form of budgetary programs and projects for each agency of the government, with the corresponding appropriations for each program and project, including statutory provisions of specific agency or general applicability. The General Appropriations Act shall not contain any itemization of personal services, which shall be prepared by the Secretary after enactment of the General Appropriations Act, for consideration and approval of the President. (Emphasis supplied)

Under Section 23, "each program and project" in the GAA must have "corresponding appropriations." Indisputably, the Administrative Code mandates line-item appropriations in the GAA. There can be no lump-sum appropriations in the GAA because the Administrative Code requires "corresponding appropriations for each program and project." This means a corresponding appropriation for each program, and a corresponding appropriation for each project of the program. To repeat, lump-sum appropriations are not allowed in the GAA.

Appropriations for personal services need not be itemized further, as long as the specific purpose, which is personal services, has a specific corresponding amount. Section 35, Chapter 5, Book VI of the Administrative Code of 1987 explains how appropriations for personal services shall be itemized further, thus:

SECTION 35. Special Budgets for Lump-Sum Appropriations.—Expenditures from lump-sum appropriations authorized for any purpose or for any department, office or agency in any annual General Appropriations Act or other Act and from any fund of the National Government, shall be made in accordance with a special budget to be approved by the President, which shall include but shall not be limited to the number of each kind of position, the designations, and the annual salary proposed for which an appropriation is intended. This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for certain specific purposes, aids and donations for carrying out certain activities, or deposits made to cover to cost of special services to be rendered to private parties. Unless otherwise expressly provided

by law, when any Board, head of department, chief of bureau or office, or any other official, is authorized to appropriate, allot, distribute or spend any lump-sum appropriation or special, bond, trust, and other funds, such authority shall be subject to the provisions of this section.

In case of any lump-sum appropriation for salaries and wages of temporary and emergency laborers and employees, including contractual personnel, provided in any General Appropriation Act or other Acts, the expenditure of such appropriation shall be limited to the employment of persons paid by the month, by the day, or by the hour. (Boldfacing and italicization supplied)

Thus, appropriations for personal services need not be further itemized or broken down in the GAA as the purpose for such appropriation is sufficiently specific satisfying the constitutional requirement for a valid appropriation. The constitutional test for validity is not how itemized the appropriation is down to the project level but whether the purpose of the appropriation is specific enough to allow the President to exercise his line-item veto power. Section 23, Chapter 4, Book VI of the Administrative Code provides a stricter requirement by mandating that there must be a corresponding appropriation for each program and for each project. A project is a component of a program which may have several projects.[54] A program is equivalent to the specific purpose of an appropriation.[55] An item of appropriation for school-building is a program, while the specific schools to be built, being the identifiable outputs of the program, are the projects. The Constitution only requires a corresponding appropriation for a specific purpose or program, not for the sub-set of projects or activities.

All GAAs must conform to Section 23, Chapter 4, Book VI of the Administrative Code of 1987 because Section 23 implements the constitutional requirement that the “form, content, and manner of preparation of the budget shall be prescribed by law.” Section 25(1), Article VI of the Constitution states:

Section 25(1). The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law. (Emphasis supplied)

Since the Constitution mandates that the budget, or the GAA, must adopt the “content” prescribed by law, and that law is Section 23, Chapter 4, Book VI of the Administrative Code of 1987, then all GAAs must adopt only line-item appropriations, as expressly prescribed in Section 23. Any provision of the GAA that violates Section 23 also violates Section 25(1), Article VI of the Constitution, and is thus unconstitutional.

Section 25(1) of Article VI is similar to Section 10, Article X of the same Constitution which provides that a local government unit can be created, divided, merged or abolished only “in accordance with the criteria established in the local government code.” A law creating a new local government unit must therefore comply with the Local Government Code of 1991,[56] even if such law is later in time than the Local Government Code. In the same manner, all GAAs must comply with Section 23, Chapter 4, Book VI of the Administrative Code, even if the GAAs are later in time than the Administrative Code. GAAs that provide lump-sum appropriations, even though enacted after the effectivity of the Administrative Code of 1987, cannot prevail over Section 23, Chapter 4, Book VI of the Administrative Code.

The OSG maintains that “there is nothing in the Constitution that mandates Congress to pass only line-item appropriations.” In fact, according to the OSG, the Constitution allows the creation of “discretionary funds” and “special funds,” which are allegedly lump-sum appropriations.

This is plain error. The Constitution allows the creation of discretionary and special funds but with certain specified conditions. The Constitution requires that these funds must have specific purposes and can be used only for such specific purposes. As stated in the Constitution:

(6) Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be

supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.[57]

x x x x

(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.[58] (Boldfacing and italicization supplied)

The “discretionary funds” and “special funds” mentioned in the Constitution are sui generis items of appropriation because they are regulated by special provisions of the Constitution.

“Discretionary funds” are appropriated for particular officials who must use the funds only for public purposes in relation to the functions of their public office. The particular public officials must support the use of discretionary funds with appropriate vouchers under guidelines prescribed by law. “Discretionary funds” already existed in GAAs under the 1935 and 1973 Constitutions. They are items, and not lump-sums, with specified conditions and guidelines. A valid appropriation includes the payment of funds [59] The framers of the 1987 Constitution decided to regulate in the Constitution itself the disbursement of discretionary funds “to avoid abuse of discretion in the use of discretionary funds”[60] in the light of the experience during the Martial Law regime when discretionary funds “were spent for the personal aggrandizement of the First Family and some of their cronies.”[61]

The “special funds” mentioned in the Constitution do not come from the General Funds as in the case of ordinary special funds, but from a corresponding “tax levied for a special purpose.” Unlike ordinary special funds, the “special funds” mentioned in the Constitution cannot be commingled with other funds and must be “paid out for such (special) purpose only.” The “special funds” mentioned in the Constitution are also not subject to realignment because once the special purpose of the fund is accomplished or abandoned, any balance “shall be transferred to the general funds of the Government.”

It must be stressed that the “calamity fund,” “contingent fund,” and “intelligence fund” in the GAAs are not lump-sum appropriations because they have specific purposes and corresponding amounts. The “calamity fund” can be used only if there are calamities, a use of fund that is sufficiently specific. A “contingent fund” is ordinary and necessary in the operations of both the private and public sectors, and the use of such fund is limited to actual contingencies. The “intelligence fund” has a specific purpose – for use in intelligence operations. All these funds are the proper subject of line-item appropriations.

An appropriation must specify the purpose and the corresponding amount which will be expended for that specific purpose. The purpose of the appropriation must be sufficiently specific to allow the President to exercise his line-item veto power. The appropriation may have several related purposes that are by accounting and budgeting practice considered as one purpose, e.g. MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President’s line-item veto power. However, if the appropriation has several purposes which are normally divisible but there is only a single amount for all such purposes, and the President cannot veto the use of funds for one purpose without vetoing the entire appropriation, then the appropriation is a lump-sum appropriation.

In the 2013 GAA, the PDAF is a lump-sum appropriation, the purpose of which is the “support for priority programs and projects,” with a menu of programs and projects listed in the PDAF provision that does not itemize the amount for each listed program or project. Such non-itemization of the specific amount for each listed program or project fails to satisfy the requirement for a valid appropriation. To repeat, the PDAF merely provides a lump sum without stating the specific amount allocated for each listed program or project. The PDAF ties the

hands of the President since he has no choice except to accept the entire PDAF or to veto it entirely. Even if the PDAF undeniably contains pork-barrel projects, the President might hesitate to veto the entire PDAF for to veto it would result not only in rejecting the pork barrel projects, but also in denying financial support to legitimate projects. This dilemma is the evil in lump-sum appropriations. The President's line-item veto, which necessarily requires line-item appropriations from the Legislature, is intended precisely to exorcise this evil from appropriation laws.

Clearly, the PDAF negates the President's constitutional line-item veto power, and also violates the constitutional duty of Congress to enact a line-item GAA. Thus, Article XLIV, on the Priority Development Assistance Fund, of the 2013 GAA is unconstitutional. Whatever funds that are still remaining from this invalid appropriation shall revert to the unappropriated surplus or balances of the General Fund.

The balance of the 2013 PDAF, having reverted to the unappropriated surplus or balances of the General Fund, can be the subject of an emergency supplemental appropriation to aid the victims of Typhoon Yolanda as well as to fund the repair and reconstruction of facilities damaged by the typhoon. When the Gulf Coast of the United States was severely damaged by Hurricane Katrina on 29 August 2005, the U.S. President submitted to the U.S. Congress a request for an emergency supplemental budget on 1 September 2005.[62] The Senate passed the request on 1 September 2005 while the House approved the bill on 2 September 2005, and the U.S. President signed it into law on the same day.[63] It took only two days for the emergency supplemental appropriations to be approved and passed into law. There is nothing that prevents President Benigno S. Aquino III from submitting an emergency supplemental appropriation bill that could be approved on the same day by the Congress of the Philippines. The President can certify such bill for immediate enactment to meet the public calamity caused by Typhoon Yolanda.[64]

IV.

The phrase "for such other purposes as may be hereafter directed by the President" in PD No. 910 is an Undue Delegation of Legislative Power.

Presidential Decree No. 910, issued by former President Ferdinand E. Marcos, mandates that royalties and proceeds from the exploitation of energy resources shall form part of a special fund (Malampaya Fund) to finance energy development projects of the government. Section 8 of PD No. 910[65] reads:

SECTION 8. Appropriations. — The sum of Five Million Pesos out of any available funds from the National Treasury is hereby appropriated and authorized to be released for the organization of the Board and its initial operations. Henceforth, funds sufficient to fully carry out the functions and objectives of the Board shall be appropriated every fiscal year in the General Appropriations Act.

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President. (Emphasis supplied)

Petitioners assail the constitutionality of the phrase "for such other purposes as may be hereafter directed by the President" since it constitutes an undue delegation of legislative power. On the other hand, the OSG argues otherwise and invokes the statutory construction rule of ejusdem generis.

Such reliance on the ejusdem generis rule is misplaced.

For the rule of ejusdem generis to apply, the following must be present: (1) a statute contains an enumeration of particular and specific words, followed by a general word or phrase; (2) the particular and specific words constitute a class or are of the same kind; (3) the enumeration of the particular and specific words is not exhaustive or is not merely by examples; and (4) there is no indication of legislative intent to give the general words or phrases a broader meaning.[66]

There is no enumeration of particular and specific words, followed by a general word or phrase, in Section 8 of PD No. 910. The Malampaya Fund, created by PD No. 910, is to be used exclusively for a single object or purpose: to finance “energy resource development and exploitation programs and projects of the government.” The phrase “for such other purposes” does not follow an enumeration of particular and specific words, with each word constituting part of a class or referring to the same kind. In other words, the phrase “for such other purposes” is not preceded by an enumeration of purposes but by a designation of only a single purpose. The phrase “energy resource development and exploitation programs and projects of the government” constitutes only one of a class, and there is no other phrase or word to make an enumeration of the same class.

There is only a single subject to be financed by the Malampaya Fund – that is, the development and exploitation of energy resources. No other government program would be funded by PD No. 910, except the exploration, exploitation and development of indigenous energy resources as envisioned in the law’s Whereas clauses, to wit:

WHEREAS, there is need to intensify, strengthen, and consolidate government efforts relating to the exploration, exploitation and development of indigenous energy resources vital to economic growth;

WHEREAS, it is imperative that government accelerate the pace of, and focus special attention on, energy exploration, exploitation and development in the light of encouraging results in recent oil exploration and of world-wide developments affecting our continued industrial progress and well-being; x x x

The rule of ejusdem generis will apply if there is an enumeration of specific energy sources, such as gas, oil, geothermal, hydroelectric, and nuclear, and then followed by a general phrase “and such other energy sources,” in which case tidal, solar and wind power will fall under the phrase “other energy sources.” In PD No. 910, no such or similar enumeration can be found. Instead, what we find is the sole purpose for which the Malampaya Fund shall be used – that is, to finance “energy resource development and exploitation programs and projects of the government.”

The phrase “as may be hereafter directed by the President” refers to other purposes still to be determined by the President in the future. Thus, the other purposes to be undertaken could not as yet be determined at the time PD No. 910 was issued. When PD No. 910 was issued, then President Ferdinand E. Marcos exercised both executive and legislative powers. The President then, in the exercise of his law-making powers, could determine in the future the other purposes for which the Malampaya Fund would be used. This is precisely the reason for the phrase “as may be hereafter directed by the President.” Thus, in light of the executive and legislative powers exercised by the President at that time, the phrase “for such other purposes as may be hereafter directed by the President” has a broader meaning than the phrase “energy resource development and exploitation programs and projects of the government.”

This does not mean, however, that the phrase “energy resource development and exploitation programs and projects” should be unreasonably interpreted narrowly. To finance “energy resource development and exploitation programs and projects” includes all expenditures necessary and proper to carry out such development and exploitation – including expenditures to secure and protect the gas and oil fields in Malampaya from encroachment by other countries or from threats by terrorists. Indeed, the security of the gas and oil fields is

absolutely essential to the development and exploitation of such fields. Without adequate security, the gas and oil fields cannot be developed or exploited, thus generating no income to the Philippine government.

Under the 1987 Constitution, determining the purpose of the expenditure of government funds is an exclusive legislative power. The Executive can only propose, but cannot determine the purpose of an appropriation. An appropriation cannot validly direct the payment of government funds “for such other purposes as may be hereafter directed by the President,” absent the proper application of the ejusdem generis rule. Section 8 of PD No. 910 authorizes the use of the Malampaya Fund for other projects approved only by the President. To repeat, Congress has the exclusive power to appropriate public funds, and vesting the President with the power to determine the uses of the Malampaya Fund violates the exclusive constitutional power of Congress to appropriate public funds.

V.

The phrase “to finance the priority infrastructure development projects x x x, as may be directed and authorized by the x x x President” under Section 12, Title IV of PD No. 1869, relating to the Use of the Government’s Share in PAGCOR’s Gross Earnings, is Unconstitutional.

The assailed provision in PD No. 1869 refers to the President’s use of the government’s share in the gross earnings of PAGCOR. Section 12, Title IV of PD No. 1869, or the PAGCOR charter, as amended, provides:

Section 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the fifty (50%) percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than P150,000,000.00, shall immediately be set aside and shall accrue to the General Fund to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines.[67] (Emphasis supplied)

Similar to PD No. 910, PD No. 1869 was issued when then President Marcos exercised both executive and legislative powers. Under the 1987 Constitution, the President no longer wields legislative powers. The phrase that the government’s share in the gross earnings of PAGCOR shall be used “to finance the priority infrastructure development projects x x x as may be directed and authorized by the Office of the President of the Philippines,” is an undue delegation of the legislative power to appropriate.

An infrastructure is any of the “basic physical and organizational structures and facilities (e.g. buildings, roads, power supplies) needed for the operation of a society.”[68] An appropriation for any infrastructure, or for various infrastructures, to be determined by the President is certainly not a specific purpose since an infrastructure is any basic facility needed by society. This power granted to the President to determine what kind of infrastructure to prioritize and fund is a power to determine the purpose of the appropriation, an undue delegation of the legislative power to appropriate.

The appropriation in Section 12 has two divisible purposes: one to finance any infrastructure project, and the other to finance the restoration of damaged or destroyed facilities due to calamities. To be a valid appropriation, each divisible purpose must have a corresponding specific amount, whether an absolute amount, a percentage of an absolute amount, or a percentage or the whole of a revenue stream like periodic gross earnings or collections. Section 12 is a lump-sum appropriation in view of its two divisible purposes and its single lump-sum amount.

However, since the first appropriation purpose – to finance any infrastructure project as the President may determine – is unconstitutional, Section 12 has in effect only one appropriation purpose. That purpose, to finance the restoration of facilities damaged or destroyed by calamities, is a specific purpose because the facilities to be restored are only those damaged by calamities. This purpose meets the specificity required for an item to be a valid appropriation. The entire amount constituting the government’s share in PAGCOR’s gross earnings then

becomes the specific amount to finance a specific purpose – the restoration of facilities damaged or destroyed by calamities, which is a valid appropriation.

In sum, only the phrase “to finance the priority infrastructure development projects” in Section 12 of the PAGCOR Charter is unconstitutional for being an undue delegation of legislative power. The rest of Section 12 is constitutional.

A Final Word

The PDAF bluntly demonstrates how a breakdown in the finely crafted constitutional check-and-balance system could lead to gross abuse of power and to wanton wastage of public funds. When the Executive and the Legislature enter into a constitutionally forbidden arrangement - the former proposing lump-sum expenditures in negation of its own line-item veto power and the latter enacting lump-sum appropriations to implement with facility its own chosen projects – the result can be extremely detrimental to the Filipino people.

We have seen the outrage of the Filipino people to the revulsive pork-barrel system spawned by this forbidden Executive-Legislative arrangement. The Filipino people now realize that there are billions of pesos in the annual budget that could lift a large number of Filipinos out of abject poverty but that money is lost to corruption annually. The Filipino people are now desperately in search of a solution to end this blighted pork-barrel system.

The solution lies with this Court, which must rise to this historic challenge. The supreme duty of this Court is to restore the constitutional check-and-balance that was precisely intended to banish lump-sum appropriations and the pork-barrel system. The peaceful and constitutional solution to banish all forms of the pork-barrel system from our national life is for this Court to declare all lump-sum appropriations, whether proposed by the Executive or enacted by the Legislature, as unconstitutional.

Henceforth, as originally intended in the Constitution, the President shall submit to Congress only a line-item NEP, and Congress shall enact only a line-item GAA. The Filipino people can then see in the GAA for what specific purposes and in what specific amounts their tax money will be spent. This will allow the Filipino people to monitor whether their tax money is actually being spent as stated in the GAA.

ACCORDINGLY, I vote to GRANT the petitions and DECLARE Article XLIV, on the Priority Development Assistance Fund, of Republic Act No. 10352 UNCONSTITUTIONAL for violating the separation of powers, negating the President’s constitutional line-item veto power, violating the constitutional duty of Congress to enact a line-item General Appropriations Act, and violating the requirement of line-item appropriations in the General Appropriations Act as prescribed in the Administrative Code of 1987. Further, the last phrase of Section 8 of Presidential Decree No. 910, authorizing the use of the Malampaya Fund “for such other purposes as may hereafter be directed by the President,” and the phrase in Section 12, Title IV, of Presidential Decree No. 1869, as amended, authorizing the President to use the government’s share in PAGCOR’s gross earnings “to finance the priority infrastructure development projects” as the President may determine, are likewise declared UNCONSTITUTIONAL for being undue delegations of legislative power. I also vote to make permanent the temporary restraining order issued by this Court on 10 September 2013. I vote to deny petitioners’ prayer for the Executive Secretary, Department of Budget and Management and Commission on Audit to release reports and data on the funds subject of these cases, as it was not shown that they have properly requested these agencies for the pertinent data.

[1] Special Audits Office Report No. 2012-03, entitled Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP), http://coa.gov.ph/GWSPA/2012/SAO_Report2012-03_PDAF.pdf.

[2] The Court in its Resolution dated 10 October 2013, directed COA Chairperson Pulido Tan to submit her own memorandum “on matters with respect to which she was directed to expound in her memorandum, including but not limited to the parameters of line item budgeting.” The Court further directed the parties “to discuss this same issue in their respective memoranda, including the issue of whether there is a constitutional duty on the part of Congress to adopt line item budgeting.” The En Banc voted 12-2-1 to retain in the ponencia of Justice Estela M. Perlas-Bernabe the discussions on the President’s line-item veto power, line-item appropriations, and lump sum appropriations. (Emphasis supplied)

[3] G.R. No. 208566 is a petition for certiorari and prohibition; G.R. No. 208493 is a petition for prohibition; and G.R. No. 209251 is a petition for prohibition (this petition prayed for the issuance of a cease-and-desist order).

[4] 110 Phil. 331, 343 (1960), citing 11 Am. Jur. 761.

[5] G.R. No. 164987, 24 April 2012, 670 SCRA 373, 384.

[6] *Biraogo v. Philippine Truth Commission* of 2010, G.R. Nos. 192935 and 193036, 7 December 2010, 637 SCRA 78, 151-152; *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002); *Guingona, Jr. v. Gonzales*, G.R. No. 106971, 20 October 1992, 214 SCRA 789.

[7] *Magallona v. Ermita*, G.R. No. 187167, 16 August 2011, 655 SCRA 476.

[8] *Bureau of Customs Employees Association (BOCEA) v. Teves*, G.R. No. 181704, 6 December 2011, 661 SCRA 589.

[9] The 1987 Constitution provides:

Section 1, Article VI:

The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, x x x.

Section 1, Article VII:

The executive power shall be vested in the President of the Philippines.

Section 1, Article VIII:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[10] G.R. No. 103524, 15 April 1992, 208 SCRA 133, 142.

[11] Section 27(2), Article VI of the 1987 Constitution.

[12] Section 22, Article VII, 1987 Constitution.

[13] Section 24, Article VI, 1987 Constitution.

[14] Section 29(1), Article VI, 1987 Constitution.

[15] Section 2(1), Chapter 1, Book VI of the Administrative Code of 1987.

- [16] SANLAKAS v. Reyes, 466 Phil. 482 (2004).
- [17] Section 17, Article VII, 1987 Constitution.
- [18] Section 5, Article VII, 1987 Constitution.
- [19] Section 17, Article VII, 1987 Constitution.
- [20] Rufino v. Endriga, 528 Phil. 473 (2006).
- [21] Mondano v. Silvosa, 97 Phil. 143, 148 (1955); Echeche v. Court of Appeals, G.R. No. 89865, 27 June 1991, 198 SCRA 577, 584.
- [22] Supra note 5, at 389-390.
- [23] Section 1, Article VI, 1987 Constitution. This provision further states “except to the extent reserved to the people by the provision on initiative and referendum.”
- [24] See Abakada Guro Party List v. Purisima, 584 Phil. 246, 281 (2008), citing Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise, 501 U.S. 252 (1991).
- [25] G.R. No. 113105, 19 August 1994, 235 SCRA 506.
- [26] Supra note 5.
- [27] Supra note 25 at 523.
- [28] Supra note 5, at 379.
- [29] Supra note 5, at 379.
- [30] Section 25(5), Article VI, 1987 Constitution.
- [31] http://www.oxforddictionaries.com/us/definition/american_english/endorse (accessed 7 November 2013).
- [32] 232 Phil. 222 (1987).
- [33] G.R. No. 127545, 23 April 2008, 552 SCRA 471.
- [34] Entitled Revising the Budget Process in order to Institutionalize the Budgetary Innovations of the New Society, or “Budget Reform Decree of 1977.”
- [35] Supra note 32, at 229-230.
- [36] Supra note 33, at 497.
- [37] Supra note 33, at 497.
- [38] Supra note 25, at 544.
- [39] Supra note 33, at 494.
- [40] Guideline 4.3.
- [41] Guideline 4.4.
- [42] Guidelines 3.1, 3.1.2, 3.1.2.1 and 3.1.2.2.
- [43] Dated 17 October 2013.

[44] 277 U.S. 189, 202-203 (1928).

[45] Carpio, J., Separate Concurring Opinion in *Abakada Guro Party List v. Purisima*, 584 Phil. 246, 293-314 (2008).

[46] *Id.*; *Macalintal v. Commission on Elections*, 453 Phil. 586 (2003).

[47] G.R. No. 87636, 19 November 1990, 191 SCRA 452, 464.

[48] This definition was taken by the Court in *Gonzales v. Macaraig, Jr.* from American jurisprudence, in particular *Commonwealth v. Dodson*, 11 S.E., 2d 120, 176 Va. 281.

[49] Under Section 27(2), Article VI of the 1987 Constitution, the President's line-item veto power extends to revenue and tariff bills.

[50] Bernard L. Mcnamee, *Executive Veto: The Power of the Pen in Virginia*, 9 Regent U.L. Rev. 9, Fall 1997.

[51] <http://www.merriam-webster.com/dictionary/pork%20barrel> (accessed 7 November 2013); See footnote no. 13 in Denise C. Twomey, *The Constitutionality of a Line-Item Veto: A Comparison with Other Exercises of Executive Discretion Not to Spend*, 19 Golden Gate U. L. Rev. (1989).

<http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1454&context=ggulrev> (accessed 7 November 2013).

[52] See Catherine M. Lee, *The Constitutionality of the Line Item Veto Act of 1996: Three Potential Sources for Presidential Line Item Veto Power*, *Hastings Constitutional Law Quarterly*, V.25:119, p.123, Fall 1997, <http://www.hastingsconlawquarterly.org/archives/V25/11/Lee.pdf> (accessed 7 November 2013).

[53] Section 27(1), Article VI, 1987 Constitution.

[54] Section 2(12) and (13), Chapter 1, Book VI, Administrative Code of 1987.

SECTION 2. Definition of Terms.—When used in this Book:

x x x

(12) "Program" refers to the functions and activities necessary for the performance of a major purpose for which a government agency is established.

(13) "Project" means a component of a program covering a homogenous group of activities that results in the accomplishment of an identifiable output.

[55] *Id.*

[56] *Cawaling, Jr. v. Comelec*, 420 Phil. 524 (2001).

[57] Section 25(6), Article VI, 1987 Constitution.

[58] Section 29(3), Article VI, 1987 Constitution.

[59] Section 2, Chapter 1, Book VI, Administrative Code of 1987.

[60] *Journal of the Constitutional Commission*, Vol. 1, Journal No. 37, p. 391, 23 July 1986.

[61] *Id.*

[62] Jennifer E. Lake and Ralph M. Chite, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*, CRS Report for Congress, 7 September 2005. <http://www.fas.org/sgp/crs/misc/RS22239.pdf> (accessed 14

November 2013).

[63] Id.

[64] Section 26(2), Article VI, 1987 Constitution -

No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal. (Emphasis supplied)

[65] Entitled Creating An Energy Development Board, Defining its Powers and Functions, Providing Funds Therefor, and For Other Purposes.

[66] Agpalo, Ruben E., STATUTORY CONSTRUCTION, Fourth Edition, 1998, p. 217 citing Commissioner of Customs v. Court of Tax Appeals, 150 Phil. 222 (1972); Asturias Sugar Central, Inc. v. Commissioner of Customs, 140 Phil. 20 (1969); People v. Kottinger, 45 Phil. 352 (1923).

[67] As amended by Presidential Decree No. 1993. The pleadings of petitioners and respondents still referred to the original text in Section 12 as it first appeared in Presidential Decree No. 1869.

[68] Oxford Dictionary of English, Oxford University Press (2010).

CONCURRING AND DISSENTING OPINION

BRION, J.:

MY POSITIONS

I concur with the conclusions J. Estela Perlas-Bernabe reached in her ponencia on the unconstitutionality of the PDAF, but adopt the views and reasoning of J. Antonio T. Carpio in his Separate Concurring Opinion on the various aspects of PDAF, particularly on the need for the line-item approach in budget legislation.

I likewise agree with Justice Carpio's views on the unconstitutionality of the phrase "for such other purposes as may be directed by the President" in Section 8 of P.D. No. 910, but hold that the first part of this section relating to funds used for "energy resource development and exploitation programs and projects" is constitutionally infirm for being a discretionary lump sum appropriation whose purpose lacks specificity for the projects or undertakings contemplated, and that denies Congress of its constitutional prerogative to participate in laying down national policy on energy matters.

I submit my own reasons for the unconstitutionality of the portion relating to "priority infrastructure projects" under Section 12, P.D. No. 1869, which runs parallel to the positions of Justices Carpio and Perlas-Bernabe on the matter, and join in the result on the constitutionality of the financing of the "restoration of damaged or destroyed facilities due to calamities" but do so for a different reason.

Lastly I believe that this Court should DIRECT Secretary Florencio Abad of the Department of Budget and Management (DBM) to show cause why he should not be held in contempt of this Court and penalized for defying the TRO we issued on September 10, 2013.

THE CASE

The petitioners come to this Court to question practices that the two other branches of government – the executive and the legislative departments – have put in place in almost a decade and a half of budgeting process. They raise constitutional questions that touch on our basic principles of governance; they raise issues, too, involving practices that might have led to monumental corruption at the highest levels of our government. These issues, even singly, raise deeply felt and disturbing questions that we must address quickly and completely, leaving no nagging residues behind.

I contribute this Opinion to the Court with the thought and the hope that, through our collective efforts, we can resolve the present dispute and restore to its proper track our constitutional budgetary process in the manner expected from this Court by the framers of our Constitution and by our quiet but internally seething citizenry.

DISCUSSION OF THE ISSUES

I. The Doctrine of Separation of Powers

The powers of government are generally divided into the executive, the legislative and the judicial, and are distributed among these three great branches under carefully defined terms, to ensure that no branch becomes so powerful that it can dominate the others, all for the good of the people that the government serves.[1]

This power structure – which serves as the basic foundation for the governance of the State under our republican system of government – is essentially made operational by two basic doctrines: the doctrine of separation of powers[2] and the doctrine of checks and balances.[3] Governmental powers are distributed and made distinctly separate from one another so that these different branches may check and balance each other, again to ensure proper, balanced and accountable governance.[4]

A necessary corollary to this arrangement is that no branch of government may delegate its constitutionally-assigned powers and thereby disrupt the Constitution's carefully laid out plan of governance. Neither may one branch or any combination of branches deny the other or others their constitutionally mandated prerogatives – either through the exercise of sheer political dominance or through collusive practices – without committing a breach that must be addressed through our constitutional processes. To be sure, political dominance, whether the brazen or the benign kind, should be abhorred by our people for we should have learned our lessons by now.

Thus, Congress – the government's policy making body – may not delegate its constitutionally-assigned power to make laws and to alter and repeal them, in the same manner that the President – who enforces and implements the laws passed by Congress – cannot pass on to the Congress or to the Judiciary, its enforcement or implementation powers.

Nor can we in the Judiciary intrude into the domains of the other two branches except as called for by our assigned duties of interpreting the laws and dispensing justice. But when the call to duty is sounded, we cannot and should not shirk as no other entity in our system of governance except this Court is given the task of peacefully delineating governmental powers through constitutional interpretation.

In terms of congressional powers, the test to determine if an undue or prohibited delegation has been made is the completeness test which asks the question: is the law complete in all its terms and conditions when it leaves the legislature such that the delegate is confined to its implementation and has no need to determine for and by himself or herself what the terms or the conditions of the law should be?[5]

An aspect of implementation notably left for the delegate's determination is the question of how the law may be

enforced. To cover the gray area that seemingly arises as a law transits from formulation to implementation, jurisprudence has established the rule that for as long as the law has provided sufficient implementation standards to guide the delegate, the latter may fill in the details that the law needs for its prompt, efficient and orderly implementation. This is generally referred to as the sufficient standard test.[6]

The question in every case is whether there is or are adequate standards, guidelines or limitations in the law to map out the boundaries of the delegate's authority and thus prevent the delegation from spilling into the area that is essentially law or policy formulation. This statutory standard, which may be express or implied, defines legislative policy, marks its limits, maps out the boundaries of the law, and specifies the public agency to apply it; the standard indicates the circumstances or criterion under which the legislative purpose and command may be carried out.

II. Legislative Power of Appropriation

Under our system of government, part of the legislative powers of Congress is the power of the purse which, broadly described, is the power to determine the areas of national life where government shall devote its funds; to define the amount of these funds and authorize their expenditure; and to provide measures to raise revenues to defray the amounts to be spent.[7] This power is regarded as the "the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people." [8]

By granting Congress this power, the Constitution allows the Filipino people, through their representatives, to effectively shape the nation's future through the control of the funds that render the implementation of national plans possible. Consistent with the separation of powers and the check and balance doctrines, the power of the purse also allows Congress to control executive spending as the Executive actually disburses the money that Congress sets aside and determines to be available for spending.

Congress carries out the power of the purse through the appropriation of funds under a general appropriations law (titled as the General Appropriations Act or the GAA) that can easily be characterized as one of the most important pieces of legislation that Congress enacts each year. For this reason, the 1987 Constitution (and previous Constitutions) has laid down the general framework by which Congress and the Executive make important decisions on how public funds are raised and spent - from the policy-making phase to the actual spending phase, including the raising of revenues as source of government funds.

The Constitution expressly provides that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law." [9] The Administrative Code of 1987, on the other hand, defines "appropriation" as the authorization made by law or other legislative enactment, directing payment out of government funds under specified conditions or for specified purposes.[10] It is the legislative act of setting apart or assigning public funds to a particular use.[11] This power carries with it the power to specify the project or activity to be funded under the appropriation law and, necessarily, the amount that would be allocated for the purpose.

Significantly, the people themselves in their sovereign capacity, have cast in negative tenor the limitation on the executive's power over the budget when it provided in the Constitution that no money shall be paid out of the treasury, until their representatives, by law, have assigned and set aside the public revenues of the State for specific purposes.

The requirements – that Congress itself both identify a determined or determinable amount to be appropriated and the specific purpose or project to which the appropriation will be devoted – characterize an appropriations law to be purely legislative in nature. Consequently, to pass and allow an appropriation that fails to satisfy these requirements amounts to an illegal abdication of legislative power by Congress. For instance, when a law allows

the President to dictate his will on an appropriation matter and thereby displaces the power of Congress in this regard, the arrangement cannot but be constitutionally infirm. Presidential Decree No. 1177 (the Budget Reform Decree of 1977) concretely expresses these requirements when it provides that “[a]ll moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated.”[12]

III. Check and Balance Doctrine as Applied in the Budgeting Process

A. Budget Preparation & Proposal

The budgeting process demonstrates, not only how the Constitution canalizes governmental powers to achieve its purpose of effective governance, but also how this separation checks and balances the exercise of powers by the different branches of government.

In this process, the Executive initially participates through its role in budget preparation and proposal which starts the whole process. It is the Executive who lays out the budget proposal that serves as basis for Congress to act upon. This function is expressed under the Constitution in the following terms:[13]

Article VII, Section 22. The President shall submit to the Congress, within thirty days from the opening of every regular session as the basis for the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

A notable feature of this provision that impacts on the present case is the requirement that revenue sources be reported to Congress. Notably, too, the President’s recommended appropriations may not be increased by Congress pursuant to Section 25, Article VI of the Constitution[14] - a feature that immeasurably heightens the power and participation of the President in the budget process.

Arguably, Section 22 above refers only to the general appropriations bill[15] so that there may be no need to report all sources of government revenue, particularly those emanating from funds like the Malampaya Fund.[16] The power of Congress, however, will be less than plenary if this omission will happen as Congress would then be denied a complete picture of government revenues and would consequently be denied its rightful place in setting national policies on matters of national importance, among them energy matters. The Constitution would similarly be violated if Congress cannot also demand that the revenues of special funds (like the Malampaya Fund) be reported together with a listing of their items of expenditures. Since the denial would be by the Office of the President, the incapacity of Congress would be because of intrusive action by the Executive into what is otherwise a congressional preserve.

Already, it is reported that these funds (also called off-budget accounts) are sizeable and are not all subject to the annual appropriation exercise; have no need for annual appropriation by Congress; and whose receipts and expenditures are kept in separate book of accounts (357 accounts as of 2007) that are not commonly found in public records. While efforts have been made to consolidate them in a general account under the “one fund” concept, these efforts have not been successful. Attempts have been made as early as 1977 during the Marcos administration, and again during the Aquino and Estrada administrations without significant success up to the present time. Controls have reportedly not been very strict although the funds are already sizeable.[17]

Constitutionally, a disturbing aspect of these funds is that they are under the control of the President (as presidential pork barrel), as from this perspective, they are in defiance of what the Constitution prescribes under Section 25 and 27, Article VI, with respect to the handling of public funds, the authority of Congress to decide on the budget, and the congressional scrutiny and monitoring that should take place.[18]As of October 2013, the Malampaya Fund alone already amounts to Php137.288 billion.[19] The COA, despite assurances during the oral

arguments, have so far failed to provide a summary of the extent and utilization of the Malampaya Fund in the last three (3) years.

B. Budget Legislation

Actual appropriation or budget legislation is undertaken by Congress under the strict terms of Section 25, Article VI of the Constitution.[20] A theme that runs through the various subdivisions of this provision is the Constitution's strict treatment of the budget process, apparently in its desire to plug all holes that have appeared through our years of constitutional history and to ensure that funds are used according to congressional intent.

Of special interest in the present case are Sections 25(2) which speaks of the need for particularity in an appropriation; Section 25(4) on special appropriation bill and its purpose; and Section 25(6) on discretionary funds and the special purpose they require.

C. Line-Item Veto

Check and balance measures are evident in passing the budget as the President is constitutionally given the opportunity to exercise his line item veto, i.e., the authority to reject specific items in the budget bill while approving the whole bill.[21]

The check and balance measure, of course, runs both ways. In the same manner that Congress cannot deny the President his authority to exercise his line veto power except through an override of the veto,[22] the President cannot also deny Congress its share in national policymaking by including lump sum appropriations in its recommended expenditure program. Lump sum appropriations, in the words of J. Perlas-Bernabe, is wrong as it leaves the President with "no item" to act on and denies him the exercise of his line item veto power.[23] The option when this happens and if he rejects an appropriation, is therefore not the veto of a specific item but the veto of the whole lump sum appropriation.

A lump sum appropriation like the PDAF cannot and should not pass Congress unless the Executive and the Legislative branches collude, in which case, the turn of this Court to be an active constitutional player in the budget process comes into play. The PDAF, as explained in the Opinions of Justice Carpio and Bernabe, is a prime example of a lump sum appropriation that, over the years, for reasons beneficial to both branches of government, have successfully negotiated the congressional legislative process, to the detriment of the general public.

D. Budget Execution/Implementation

Budget action again shifts to the Executive during the budget execution phase; the Executive implements the budget (budget execution) by handling the allocated funds and managing their releases. This is likewise a closely regulated phase, subject not only to the terms of the Constitution, but to the Administrative Code as well, and to the implementing regulations issued by the Executive as implementing agency.

Constitutionally, Section 25(5) on the transfer of appropriation (a practice that would technically subvert the will of Congress through the use of funds on a project or activity other than that intended, unless a constitutional exception is made under this provision), and Section 25(6) on discretionary funds and its disbursement, assume critical materiality.

E. Budget Accountability, Scrutiny and Investigation

The last phase of the budgetary process is the budget accountability phase that Congress is empowered to enforce in order to check on compliance with its basic intents in allocating measured funds under the appropriation act.

At the budget hearings during the legislation phase, Congress already checks on the need for the recommended appropriations (as Congress may delete a recommended appropriation that it perceives to be unneeded), and on the propriety, efficiency and effectiveness of budget implementation, both past and impending. Technically, this portion of the budgetary exercise involves legislative scrutiny that is part of the overall oversight powers of Congress over the budget.

Another part of the oversight authority is legislative investigation. Former Chief Justice Puno expounded on this aspect of the budgetary process in his Separate Opinion in *Macalintal v. Commission on Elections*[24] and he best sums up the breadth and scope of this power, as follows:

Broadly defined, the power of oversight embraces all activities undertaken by Congress to enhance its understanding of and influence over the implementation of legislation it has enacted. Clearly, oversight concerns post-enactment measures undertaken by Congress: (a) to monitor bureaucratic compliance with program objectives, (b) to determine whether agencies are properly administered, (c) to eliminate executive waste and dishonesty, (d) to prevent executive usurpation of legislative authority, and (d) to assess executive conformity with the congressional perception of public interest.

The power of oversight has been held to be intrinsic in the grant of legislative power itself and integral to the checks and balances inherent in a democratic system of government. Xxx

Over the years, Congress has invoked its oversight power with increased frequency to check the perceived “exponential accumulation of power” by the executive branch. By the beginning of the 20th century, Congress has delegated an enormous amount of legislative authority to the executive branch and the administrative agencies. Congress, thus, uses its oversight power to make sure that the administrative agencies perform their functions within the authority delegated to them.

Compared with one another, the two modalities can be appreciated for their individual merits but operationally, the power of investigation[25] – which is a power mostly used after appropriations have been spent – cannot compare with legislative scrutiny made during budget hearings as all participating government officials in these hearings can attest. Legislative scrutiny is a timely intervention made at the point of budget deliberations and approval, and is consequently an effective intervention by Congress in the formulation of national policy. Legislative investigation, if at all and as the recent Napoles hearing at the Senate has shown, can at best examine compliance with legislative purposes and intent, with aid to future legislation as its goal, and may only possibly succeed if the legislators are truly minded to exercise their power of investigation purposefully, with firmness and political will.

If indeed specific monitoring is needed, two constitutional bodies readily fit the bill – the Commission on Audit which looks at specific expenditures from the perspective of legality, effectiveness and efficiency,[26] and the Ombudsman, from the point of view of administrative and criminal liability.[27]

IV. Assessment and Prognosis

On the whole, I believe the Constitution has provided the nation a reasonably effective and workable system of setting national policy through the budget process.

The President, true to constitutional intent, remains a powerful official who can respond to the needs of the nation through his significant participation on both national planning and implementation of policies; the budget process leaves him with the needed muscle to enforce the laws and implement policies without lacking funds, except only if revenue collection and the economy both falter.

Additionally, current practices that Congress has given him his own pork barrel – generally, lump sum funds that

he can utilize at his discretion without passing through the congressional mill and without meaningful congressional scrutiny. As I have stated, this is a constitutionally anomalous practice that requires Court intervention as the budgetary partners will allow matters to remain as they are unless externally restrained by legally binding actions.

Congress, for its part, is given significant authority to decide on the projects and activities that will take place, and to allocate funds for these national undertakings. It has not at all complained about the loss of its budgeting prerogatives to the President; it appeared to have surrendered these without resistance as it has been given its share in budget implementation as the current PDAF findings show. Thus, what confronts the Court is a situation where two partners happily scratch each other's back in the pork barrel system, although the Constitution prohibits, or at the very least, limits the practice.

If, as current newspaper headlines and accounts now vividly banner and narrate, irregularities have transpired as a consequence of the budgetary process, these anomalies are more attributable to the officials acting in the process than to the system the Constitution designed; the men and women who are charged with their constitutional duties have simply not paid close attention to what their duties require.

Thus, as things are now, the budgetary process the Constitution provided the nation can only be effective if the basic constitutionally-designed safeguards, particularly the doctrines of separation of powers and checks and balances, are observed. Or, more plainly stated, the aims of the budgetary process cannot be achieved, to the eventual detriment of the people the government serves, if intrusion into powers and the relaxation of built-in checks are allowed.

With these ground rules plainly stated as premises, I now proceed to discuss the concrete issues. In doing so, I shall not belabor the points that my colleagues – Justices Carpio and Perlas-Bernabe – have covered on the constitutional status of PDAF, except only to state my observations or disagreements. But as I also stated at the start, I agree largely with the conclusion reached that the PDAF is unconstitutional as it subverts and can fatally strike at our constitutional processes unless immediately stopped; it is, in my view, a villain that “must be slain at sight.”[28]

A. Constitutionality of Section 12 of P.D. No. 1869, as amended

P.D. No. 1869 – whether under the 1973 or the 1987 Constitutions – is an appropriation law as it sets aside a determinable amount of money to be disbursed and spent for a stated public purpose. This presidential decree, prior to its amendment, made allocations to fund the following: “infrastructure and socio-civic projects within the Metropolitan Manila Area: (a) Flood Control (b) Sewerage and Sewage (c) Nutritional Control (d) Population Control (e) Tulungang Bayan Centers (f) Beautification (g) Kilusang Kabuhayan at Kaunlaran (KKK) projects.” Additionally, it provided that the amount allocated “may also be appropriated and allocated to fund and finance infrastructure and/or socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President of the Philippines.”

As the decree then stood i.e., prior to its amendment, the above italicized portion already rendered the authority given to the Office of the President of the Philippines of doubtful validity as it gave the President authority to designate and specify the projects to be funded without any clear guiding standards and fixed parameters. Only two things, to my mind, would have saved this provision from unconstitutionality.

The first reason is the specification of the projects in Metro Manila to which the allocated funds could be devoted. This specification arguably identified the type of projects to which the President could apply the funds, limiting it to the types of infrastructure and socio-civic projects specified for Metro Manila. Thus, unconstitutionality would

have occurred only if the funds had been applied to the projects that did not fall within the general class of the listed projects.

The second reason, now part of Philippine and legal history, is the nature of the exercise of power of the Philippine President at that time. The decree was promulgated by then President Ferdinand E. Marcos in the exercise of his combined legislative and executive powers, which remained valid and binding even after the passage of the then 1973 Constitution. In strictly legal terms, there then existed a legal cover to justify its validity despite an arrangement where the delegating authority was himself the delegate.

Section 12 of P.D. No. 1869, however, has since been amended by P.D. No 1973 and now reads:

Sec. 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the fifty (50%) percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than P150,000,000.00, shall immediately be set aside and shall accrue to the General Fund to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines.

Unlike its earlier wording, P.D. No. 1869, as amended, no longer identifies and specifies the “infrastructure and socio-civic projects that can serve as a model for the structures to which the fund shall be devoted. Instead, the decree now generally refers to “priority infrastructure development projects,” unsupported by any listing that gave the previous unamended version a taint of specificity.

Thus, what these “priority infrastructure development projects” are, P.D. No. 1869 does not identify and state with particularity. This deficiency is rendered worse by the absence of defined legislative parameters, assuming that legislative purpose can be supplied through parameters. In fact, neither does P.D. No. 1869’s Whereas clauses sufficiently disclose the decree’s legislative purpose to save the objectionable portion of this law.

Even granting *arguendo* that these “infrastructure and development projects” may be validly determined by the President himself as part of his law-execution authority, the question of which “infrastructure and development projects” should receive “priority” treatment is a matter that the legislature itself has not determined. “Priority” is defined as a matter or concern that is more important than others, and that needs to be done or dealt with first. Which infrastructure development project must be prioritized is a question that the President alone cannot decide. Strictly, it is a matter appropriate for national policy consideration since national funds are involved, and must have the imprimatur of Congress which has the power of the purse and is the repository of plenary legislative power.

From another perspective, while Congress’ authority to identify the project or activity to be funded is indisputable. Contrary to the Court’s ruling in *Philippine Constitution Association v. Enriquez*[29](Philconsa), this authority cannot be “as broad as Congress wants it to be.” If the President can exercise the power to prioritize at all, such power is limited to his choice of which of the already identified projects must be given preferential attention in a situation when there are not enough funds to allocate for each project because of budgetary shortfall.[30]

Additionally, unlike President Marcos during his time, the present President, indisputably exercises only executive powers under the 1987 Constitution and now labors under the constitutional limits in the exercise of his executive powers, as discussed above. He cannot enjoy, therefore, the practically unlimited scope of governmental power that the former President enjoyed.

As matters now stand, the President would enjoy, under the amended P.D. No. 1869, the non-delegable aspect of

the legislative power of appropriation that is denied him by the Constitution. Consequently, we have to strike down this aspect of the law.

Unlike the first portion of the law, the second portion referring to “the restoration of damaged or restored facilities due to calamities” does not need to be stricken down because it refers to particular objects that must be funded only when the required specific instances occur. These instances are the “calamities” that now enjoy, not only a dictionary meaning, but a distinct instinctive meaning in the minds of Filipinos. The President can only spend the PAGCOR FUNDS when these calamities come; he is even limited to the items he can use the public funds for – to the restoration of damaged or destroyed facilities.

From this perspective, the presidential exercise of discretion approaches the level of insignificance; the President only has to undertake a fact-finding to operationalize the expenditure of the funds at his disposal. Nor can the appropriation be objected to for being a lump sum amount. In the sense everybody can understand, rather than a whole lump sum, the President is effectively given an advance or standby fund to be spent when calamities occur. This can in no way be understood as an objectionable discretionary lump sum.

B. Constitutionality of Section 8 of P.D. No. 910

The Section 8, P.D. No. 910 funds or the Malampaya Fund consist of two components: the funds “to be used to finance energy resource development and exploitation programs and projects,” and the funds “for such other purposes as may be...directed by the President.”

I join Justice Carpio in the view that the second “for such other purposes” component is a complete nullity as it is an undue delegation of legislative power. I submit that this is additionally objectionable for being a part of a constitutionally objectionable lump sum payment that violates the separation of powers doctrine. I will discuss this view under the first component of Section 8.

I vote to strike down the “energy” component of Section 8, P.D. No. 910 as it is a discretionary lump sum fund that is not saved at all by its energy development and exploitation purpose. It is a pure and simple pork barrel granted to the President under a martial law regime decree that could have escaped invalidity then under the 1973 Constitution and the prevailing unusual times, but should be struck down now for being out of step with the requirements of the 1987 Constitution.

As a fund, it is a prohibited lump sum because it consists of a fund of indefinite size that has now grown to gigantic proportions, whose accounts and accounting are far from the usual in government, and which is made available to the President for his disposition, from year to year, with very vague controls, and free from the legal constraints of the budget process now in place under the 1987 Constitution. Admittedly, it is a fund raised and intended for special purposes but the characterization “special purpose” is not reason enough and is not a magical abracadabra phrase that could whisk a fund out of the constitutional budget process, defying even common reason in the process.

While a provision exists in the Constitution providing for a special purpose fund, its main reason for being and its “special” appellation are traceable to its source and the intent to use its proceeds to replenish and replicate energy sources all over the country. This description at first blush can pass muster but must fail on deeper inspection and consideration.

As already mentioned, the legitimacy of the fund and its purpose were beyond question at the time the fund was created, but this status was mainly and largely due to the prevailing situation then. No reason exists to assume that its validity continued or would continue after the Marcos Constitution had been overtaken by the 1987 Constitution. Thus, now, it should be tested based on the new constitutional norms.

That it is a lump sum that escapes the year to year congressional budget review is indisputable. The fund is one indivisible amount that keeps accumulating from its source and from interests earned from year to year.

That it is intended and has been used for different projects, now existing and yet to exist if the fund is maintained, cannot also be disputed. It is not intended for one energy project alone but for many, including those to occur in the future and are as yet unknown. In short, it is one big fund supporting or intended to support multiple projects.

Who determines the projects or activities to which the funds will be devoted is plain from the law itself. It is subject to the sole discretion of the President, completely devoid of any participation from Congress. In other words, we have here with us now a major component of Philippine development – for it cannot be doubted that energy is a major component of national life and economic development – that is left to the will of one man in terms of its growth, economic trajectory and future development. That the discretion is given to the President of the Philippines is not at all a valid argument, and the existence of a law allowing the grant of discretion is likewise not valid, simply because that legal situation should no longer be allowed under the 1987 Philippine Constitution that requires a valid appropriation by Congress for every use of the public fund. In fact, even the argument that there has been no abuse in the exercise of discretion cannot be acceptable as the grant should have justified its existence when the 1987 Constitution took effect.

Of course, the magical word “energy” is there to justify the lump sum grant, but as I said, that “energy” purpose cannot, by and of itself, be a valid justification. The other circumstances surrounding the fund must also be known, read and taken into account, particularly the non-participation of Congress in the formulation of major national policy on energy.

How the purpose is served and under what conditions this purpose is served should also be considered. For example, is the President’s choice in the exercise of his discretion made under such neutral conditions that would approximate the choice and policy-making by Congress with policy inputs and recommendations from the President, or is it an exercise of discretion that can be made strictly along political lines with no effective control from anyone within the governmental hierarchy? To be sure, this situation of dominance and unlimited exercise of power, particularly over a very sizeable sum of money (reportedly in the hundreds of billions), is one that the framers of the 1987 Constitution have frowned upon and which our people continue to reject. We will be less than faithful to our duties as a Court if we do not raise these questions.

Why a very sizeable sum has to be kept under the control of one man also has to be explained. Considering the nature of energy development and exploitation projects, they are best discussed at many levels that take into account political, technical, and economic considerations, at the very least. Unlike calamities, these projects are subject to long gestation periods and do not at all require quick and ready responses in the way that a calamity does. There thus appears no reason why the Malampaya Fund are held as captive funds. The constitutional alternative of course is to subject this fund to regular budgetary process as this can be done without removing the “special” nature of the fund and while keeping it exclusive for particular uses, to be determined after due consideration by the constitutionally-assigned bodies. That we continue to accept the “energy” excuse, when the constitutional alternative is available and when the status quo has lapsed into illegality, remains a continuing enigma.

In sum, I question the legitimacy of the present status of the fund, particularly its purpose and lack of specificity; its lump sum nature and its disbursement solely at the discretion of one man, unchecked by any other; how and why a multi-project and multi-activity fund covering many projects and activities, now and in the future, should be held at the discretion of one man; and the legal situation where the power of Congress and its participation in national policymaking through the budget process is disregarded. All these can be encapsulated as violations of

the doctrines of separation of powers and checks and balances which can be addressed and remedied if only the fund can be subjected to the usual budget processes, with adjustments that circumstances of the fund and its use would require.

Lest this conclusion be misunderstood, I do not per se take the position that all lump sum appropriations should be disallowed as this would be an extreme position that disregards the realities of national life. But the use of lump sums, to be allowed, should be within reason acceptable under the processes of the Constitution, respectful of the constitutional safeguards that are now in place, and understandable to the people based on their secular understanding of what is happening in government.

To cite two obvious examples, a sizeable amount, set aside under the budget as contingent advance to be devoted to calamities, cannot be objectionable despite its size if it is set aside under the regular budget process; if it is in the nature of an advance, reportable at the end of the year if no calamities occur, and subject to replenishment if, from year to year, it goes below a certain predetermined level. Of course, this is without prejudice to identifiable expenditures for calamity preparedness that can already be identified and for restoration and reconstruction activities for which specific budgetary items can be appropriated.

Another example is intelligence funds that by practice, usages and nature are confidential in character and cannot but be entrusted to specific individuals in government who keep information to themselves, with limited checks on the specific uses and other circumstances of the fund. Subject to reasonable safeguards (for again, no grant can be unlimited), the grant of a lump sum appropriation for intelligence purposes can be understandable and reasonable unless the size and circumstances of use become scandalously unreasonable.

To recapitulate, the GAA is one of the most important pieces of legislation enacted by Congress each year. The constitutional grant to Congress of the power of appropriation; to scrutinize the budget submitted by the President; to prescribe the form, content, and manner of preparation of the budget; and to provide guidelines for the use of discretionary funds, all speak loudly of the Constitution's intent of preserving the corollary principle of checks and balances among the different branches of government to achieve a workable government for the ultimate benefit of the nation. All these considerations call for the striking down of Section 8 of P.D. No. 910.

V. Violation of the TRO

In a Resolution dated September 10, 2013, the Court issued a temporary restraining order (TRO) "enjoining the [DBM], the National Treasurer, the Executive Secretary, or any persons acting under their authority from releasing: (1) the remaining Priority Development Assistance Fund allocated to members of Congress under GAA of 2013..."

Despite the Court's TRO, the DBM issued Circular Letter dated September 27, 2013, authorizing implementing agencies to continue with the implementation of PDAF projects and the disbursement of PDAF funds where the DBM has already issued a Special Allotment Order (SARO) and where the implementing agencies have already obligated the funds.

According to the ponencia, the Circular Letter is inconsistent with the DBM's own definition of what a SARO. In its website the DBM stated that "the actual release of funds is brought about by the issuance of the [Notice of Cash Allocation or NCA]," not by the mere issuance of a SARO. Thus, unless an NCA has been issued, public funds [are not considered as] 'released.'"

While I agree with the ponencia that an NCA is necessary before funds could be treated as 'released,' I disagree with its conclusion that the release of funds covered by obligated SAROs should be forbidden only at the time of this Decision's promulgation.[31]

The fact that public funds are not considered released until they have been issued an NCA, coupled with the language of the Court's TRO prohibiting the release of the 2013 PDAF funds, should point to four logical consequences:

First, the disbursement of 2013 PDAF funds covered only by a SARO has been provisionally prohibited by the TRO that the Court had issued on September 10, 2013;

Second, since the Court now finds that this provisional order should be made permanent, then the disbursement of 2013 PDAF funds without any NCA, and regardless of whether it had already been issued a SARO, should be permanently prohibited from the time the TRO was issued and not at the time of this Decision's promulgation;

Third, the 2013 PDAF funds released in violation of the TRO should be returned to the government's coffers; and

Fourth, the DBM secretary, in issuing the DBM Letter Circular in contravention of the TRO, should be directed to explain why he should not be held in contempt for issuing the DBM Letter Circular and penalized for disregarding the Court's TRO.

In issuing the TRO, the Court is obviously aware that should it decide to rule against the constitutionality of the pork barrel system, the doctrine of operative fact will play a significant role in determining the consequences of its ruling. This doctrine, however, is never meant to weaken the force and effectivity of a provisional order the Court has issued. The purpose of the TRO is to preserve and protect rights and interests during the pendency of an action.

In the present case, these "rights and interests" range from the public's right to prevent the misapplication and waste of public funds, to the right to demand accountability from its public officials as an express constitutional tenet and as a necessary consequence of holding public office.

While the DBM Circular Letter's resulting violation of the Court's TRO may seem innocuous on paper, the Court must not forget that its finding of the unconstitutionality of the system that created these funds is anchored on its violation of the fundamental doctrines on which our Constitution and our nation, rest.

That the funds that may have been released by virtue of the DBM Circular Letter may involve measly sums of money is beside the point: public funds are merely held in trust by the government for the public good and must be handled in accordance with law. Additionally, that the apparent violation may have been made by a high-ranking official of the government cannot serve as an excuse, for no one is above the law and the Constitution.

To gloss over this violation despite a finding of the intrinsic unconstitutionality of the system from where funds (subject of the restraining order) came may not speak well of the Court's regard for the constitutional magnitude of this case and the staggering amounts that appear to have vanished.

The Court should be keenly aware that aside from its power, it also has the duty to enforce its authority, preserve its integrity, maintain its dignity, and ensure the effectiveness of the administration of justice. Specifically, courts have to penalize contempt, not simply because it has the power to do this, but because it carries this as a duty essential to its right to self-preservation.

Under the Rules of Court, contempt is classified into direct and indirect or constructive contempt. Direct contempt is misbehavior in the presence of or so near a court or judge as to obstruct or interrupt the proceedings before the same.^[32] Where the act of contumacy is not committed in *facie curiae*, or "in the presence of or so near a court or judge, i.e., perpetrated outside the sitting of the court, it is considered indirect or constructive contempt, and may include "disobedience of or resistance to a lawful writ, process, order judgment, or command of a court, or

injunction granted by a court or judge,” or “(a)ny abuse of or any unlawful interference with the process or proceedings of a court not constituting direct contempt,” or “any improper conduct tending, directly, or indirectly to impede, obstruct or degrade the administration of justice.”[33]

Based on this definition and classification, the issuance of the DBM Circular Letter is *prima facie* an indirect contempt for which the DBM Secretary himself should be liable unless he can show why he should not be punished.

As an element of due process, he must now be directed by resolution to explain why he should not be penalized for issuing and enforcing Circular Letter No. 2013-8 dated September 27, 2013 despite the Court’s TRO.

[1] *Angara v. The Electoral Commission*, 63 Phil. 139 (1936).

[2] “The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. “ *Angara v. The Electoral Commission*, 63 Phil. 139, 156 (1936).

[3] “But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.” *Angara v. The Electoral Commission*, 63 Phil. 139, 156 (1936).

[4] See *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 273-274 (1927).

[5] *Edu v. ERICTA*, 146 Phil. 469, 485-488 (1970).

[6] *Eastern Shipping Lines, Inc. v. Philippines Overseas Employment Administration (POEA)*, 248 Phil. 762, 772 (1988).

Administrative fact-finding is another activity that the Executive may undertake (See *Lovina v. Moreno*, G.R. No. L-17821, November 29, 1963) but has purposely not been mentioned for lack of materiality to the issues raised.

[7] *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 507, 522.

[8] *Federalist No. 58*, James Madison.

[9] Section 29 (1), Article VI, 1987 Constitution.

[10] Section 2, Chapter 1, Book VI, Executive Order No. 292.

[11] *Gonzales v. Raquiza*, 259 Phil. 736, 743 (1989).

[12] See Section 37 of P.D. No. 1177 or the Budget Reform Decree of 1977.

[13] Article VII. Section 22 of the 1987 Constitution.

[14] See footnote below.

[15] As contrasted to special purpose bills whose appropriations are not included in the general appropriations act.

[16] Section 8, P.D. No. 910

[17] Source: Off-Budget Accounts, July 2009, Management Systems International Corporate Services (the publication was made for the review of USAID). Accessed November 17, 2013 from

<http://incitegov.org/wp-content/uploads/2011/05/INCITEGov-Off-Budget-Accounts.pdf>

[18] In an unpublished study on the Public Expenditure and Financial Accountability (PEFA) on the Philippine public financial management system, the World Bank determined that OBAs represent less than 5% of the national budget. Among the major OBAs are the following:

1. Municipal Development Fund. This is a loan revolving fund set up to provide credit to local government units. Every year, the national government appropriates additional money to the equity of the Fund, and this added equity is properly reflected as expenditure of the national government and income of the Fund. Loan repayments, however, are retained as Fund Balance and used as credit assistance to LGUs without being included in the national budget. The average amount disbursed out of loan repayments in 2006-2007 was P 380 million.

2. President's Social Fund. This is funded by fixed percentage contributions from the income of two (2) government corporations, namely, the Philippine Amusements and Gaming Corporation and the Philippine Charity Sweepstakes.

The Fund is used as a discretionary purse for various social advocacies of the President, including direct assistance to the poor. The amount disbursed annually depends on actual receipts. In 2007, more than P600 million was disbursed from the Fund.

3. Manila Economic and Cultural Office (MECO). MECO is a government entity with a private character. It was created during the Aquino Administration to perform consular functions in Taiwan in behalf of the government. MECO reports directly to the Office of the President and its funds are supposed to be used for various economic and cultural purposes. There is no publicly available record of MECO financial accounts. It is reported, however, that Taiwan has one of the busiest consular operations in Asia, earning at least P100 million per year for the national government.

4. NABCOR Trust Funds. The National Agribusiness Corporation was created during the Marcos Administration as the business arm of the Department of Agriculture (DA). Subsequently, it was used as a conduit for various appropriations of the DA to implement various projects. The circuitous way by which DA funds are utilized through NABCOR have been the subject of curiosity among DA watchers. Specifically, determining the actual use of NABCOR-administered funds poses an interesting challenge to accountants and analysts in the absence of publicly available data.

Source: Off-Budget Accounts, July 2009, Management Systems International Corporate Services (the publication was made for the review of USAID). Accessed November 17, 2013 from <http://incitegov.org/wp-content/uploads/2011/05/INCITEGov-Off-Budget-Accounts.pdf>

[19] "Treasury: P137.3-B Malampaya Fund intact," October 9, 2013, accessed November 18, 2013 from <http://www.gov.ph/2013/10/09/btr-p137-3-b-malampaya-fund-intact/>

[20] Article VI, Section 25 of the 1987 Constitution provides:

Section 25.

(1)

THE CONGRESS MAY NOT INCREASE THE APPROPRIATIONS RECOMMENDED BY THE PRESIDENT FOR THE OPERATION OF THE GOVERNMENT AS SPECIFIED IN THE BUDGET. THE FORM, CONTENT, AND MANNER OF PREPARATION OF THE BUDGET SHALL BE PRESCRIBED BY LAW.

(2)

NO PROVISION OR ENACTMENT SHALL BE EMBRACED IN THE GENERAL APPROPRIATIONS BILL UNLESS IT RELATES SPECIFICALLY TO SOME PARTICULAR APPROPRIATION THEREIN. ANY SUCH PROVISION OR ENACTMENT SHALL BE LIMITED IN ITS OPERATION TO THE APPROPRIATION TO WHICH IT RELATES.

(3)

THE PROCEDURE IN APPROVING APPROPRIATIONS FOR THE CONGRESS SHALL STRICTLY FOLLOW THE PROCEDURE FOR APPROVING APPROPRIATIONS FOR OTHER DEPARTMENTS AND AGENCIES.

(4)

A SPECIAL APPROPRIATIONS BILL SHALL SPECIFY THE PURPOSE FOR WHICH IT IS INTENDED, AND SHALL BE SUPPORTED BY FUNDS ACTUALLY AVAILABLE AS CERTIFIED BY THE NATIONAL TREASURER, OR TO BE RAISED BY A CORRESPONDING REVENUE PROPOSAL THEREIN.

(5)

NO LAW SHALL BE PASSED AUTHORIZING ANY TRANSFER OF APPROPRIATIONS; HOWEVER, THE PRESIDENT, THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE CHIEF JUSTICE OF THE SUPREME COURT, AND THE HEADS OF CONSTITUTIONAL COMMISSIONS MAY, BY LAW, BE AUTHORIZED TO AUGMENT ANY ITEM IN THE GENERAL APPROPRIATIONS LAW FOR THEIR RESPECTIVE OFFICES FROM SAVINGS IN OTHER ITEMS OF THEIR RESPECTIVE APPROPRIATIONS.

(6)

DISCRETIONARY FUNDS APPROPRIATED FOR PARTICULAR OFFICIALS SHALL BE DISBURSED ONLY FOR PUBLIC PURPOSES TO BE SUPPORTED BY APPROPRIATE VOUCHERS AND SUBJECT TO SUCH GUIDELINES AS MAY BE PRESCRIBED BY LAW.

(7)

IF, BY THE END OF ANY FISCAL YEAR, THE CONGRESS SHALL HAVE FAILED TO PASS THE GENERAL APPROPRIATIONS BILL FOR THE ENSUING FISCAL YEAR, THE GENERAL APPROPRIATIONS LAW FOR THE PRECEDING FISCAL YEAR SHALL BE DEEMED RE-ENACTED AND SHALL REMAIN IN FORCE AND EFFECT UNTIL THE GENERAL APPROPRIATIONS BILL IS PASSED BY THE CONGRESS.

[21] Article VI, Section 27, paragraph 2 of the 1987 Constitution.

[22] Article VI, Section 27, paragraph 1 of the 1987 Constitution.

[23] As the ponencia points out in page 50:

Moreover, even without its post-enactment legislative identification feature, the 2013 PDAF Article would remain constitutionally flawed since it would then operate as a prohibited form of lump-sum appropriation as above-characterized. xxx. This setup connotes that the appropriation law leaves the actual amounts and purposes of the appropriation for further determination and, therefore, not readily indicate a discernible item which may be

subject to the President's power of item veto. Ponencia, p. 50.

[24] 453 Phil 586, 743-744, July 10, 2003.

[25] An example of this post-enactment authority is creation of a Joint Congressional Oversight Committee in the GAA of 2012 to "primarily monitor that government funds are spent in accordance with the law." The Senate created its version of this Committee under Senate Resolution No. 18 dated September 1, 2010, to establish Oversight Committee on Public Expenditures.

[26] Article IX-D, Section 2 of the 1987 Constitution provides:

Section 2. The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis:

- constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;
- autonomous state colleges and universities;
- other government-owned or controlled corporations and their subsidiaries; and
- such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

[27] Article XI, Section 13, paragraph 1 of the 1987 Constitution provides:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

[28] *Banco Español-Filipino v. Palanca*, 37 Phil. 921, 949, March 26, 1918.

[29] G.R. No. 113105, August 19, 1994, 235 SCRA 507.

[30] *Ibid.* at 522.

[31] Ponencia, p. 68.

[32] Rule 71, Section 1, Rules of Court.

[33] Rule 71, Section 3, Rules of Court.

CONCURRING OPINION

LEONEN, J.:

We do not just move on from a calamity caused by greed and abuse of power. We become better. We set things right.

We recover the public's trust.

We are again called to exercise our constitutional duty to ensure that every morsel of power of any incumbent in public office should only be exercised in stewardship. Privileges are not permanent; they are not to be abused. Rank is bestowed to enable public servants to accomplish their duties; it is not to aggrandize. Public office is for the public good; it is not a title that is passed on like a family heirloom.

It is solemn respect for the public's trust that ensures that government is effective and efficient. Public service suffers when greed fuels the ambitions of those who wield power. Our coffers are drained needlessly. Those who should pay their taxes will not properly pay their taxes. Some of the incumbents expand their experience in graft and corruption rather than in the knowledge and skills demanded by their office. Poverty, calamities, and other strife inordinately become monsters that a weakened government is unable to slay.

Greed, thus, undermines the ability of elected representatives to be real agents of their constituents. It substitutes the people's interest for the narrow parochial interest of the few. It serves the foundation of public betrayal while it tries to do everything to mask its illegitimacy.

The abuse of public office to enrich the incumbent at the expense of the many is sheer moral callousness. It is evil that is not easy to discover. However, the evil that men do cannot be hidden forever.

In time, courage, skill or serendipity reveals.

The time has come for what is loosely referred to as the "pork barrel system." We will allow no more evasion.

I am honored to be able to join with the ponencia of Justice Perlas-Bernabe and in part the Concurring Opinions of Chief Justice Sereno, Senior Associate Justice Carpio and Justice Arturo Brion. To their studied words and the strident voices of the millions who still have hope in an effective government with integrity, I add mine.

Title XLIV known as the Priority Development Assistance Fund (PDAF) in the 2013 General Appropriations Act (Republic Act No. 10352) is unconstitutional. We, thus, overturn the holdings of various cases starting with *Philippine Constitution Association v. Enriquez*[1] and *Sarmiento v. The Treasurer of the Philippines*. [2] Presidential Decree No. 910 does not sanction the unmitigated and unaccountable use of income derived from energy resources. The purpose of the Presidential Social Fund in Title IV, Section 12 of Presidential Decree No. 1869, as amended, "to finance the priority infrastructure development projects" is also unconstitutional.

I

What is involved in this case is the fundamental right of our peoples to have a truly representative government that upholds its stewardship and the public trust. It is none but their right to have a government worthy of their sovereignty.

Specifically, glossing over some of the lapses in the Petitions before us and specify that what is at issue in these cases is the constitutionality of the following:

- (a) Title XLIV of the 2013 General Appropriations Act (GAA) or Republic Act No. 10352;
- (b) The item referred to as the Various Infrastructure including Local Projects, Nationwide (VILP) located in Title XVIII (DPWH) in the same 2013 General Appropriations Act;

(c) The proviso in Presidential Decree No. 910, Section 8, which allows the use of the Malampaya Special Fund "for such other purposes as may be hereafter directed by the President;" and

(d) The Presidential Social Fund as described in Title IV, Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993.

II

Several procedural points contained in some of the pleadings filed in this case need to be clarified so that we are not deemed to have acquiesced.

II. A

The Solicitor General argues that the President cannot be made a respondent in this case. The President cannot be sued while he is in office.

I agree with the Solicitor General.[3]

The doctrine of the non-suability of the President is well settled.[4] This includes any civil or criminal cases. It is part of the Constitution by implication. Any suit will degrade the dignity necessary for the operations of the Office of the President. It will additionally provide either a hindrance or distraction from the performance of his official duties and functions. Also, any contrary doctrine will allow harassment and petty suits which can impair judgment. This does not mean, however, that the President cannot be made accountable. He may be impeached and removed.[5] Likewise, he can be made criminally and civilly liable in the proper case after his tenure as President.[6]

The Petition[7] that names the President as respondent should, thus, be either dismissed or deemed amended accordingly.

II. B

Also, we cannot declare a "system" as unconstitutional. The Judiciary is not the institution that can overrule ideas and concepts qua ideas and concepts. Petitioners should endeavor to specify the act complained of and the laws or provisions of laws that have been invoked. It is their burden to show to this Court how these acts or provisions of law violate any constitutional provision or principle embedded in its provisions.

An ambiguous petition culled only from sources in the mainstream or social media without any other particularity may be dismissed outright. Courts of law cannot be tempted to render advisory opinions.

Generally, we are limited to an examination of the legal consequences of law as applied. This presupposes that there is a specific act which violates a demonstrable duty on the part of the respondents. This demonstrable duty can only be discerned when its textual anchor in the law is clear. In cases of constitutional challenges, we should be able to compare the statutory provisions or the text of any executive issuance providing the putative basis of the questioned act vis-a-vis a clear constitutional provision. Petitioners carry the burden of filtering events and identifying the textual basis of the acts they wish to question before the court. This enables the respondents to tender a proper traverse on the alleged factual background and the legal issues that should be resolved.

Petitions filed with this Court are not political manifestos. They are pleadings that raise important legal and constitutional issues.

Anything short of this empowers this Court beyond the limitations defined in the Constitution. It invites us to use our judgment to choose which law or legal provision to tackle. We become one of the party's advisers defeating the necessary character of neutrality and objectivity that are some of the many characteristics of this Court's

legitimacy.

One of the petitioners has asked in its Petition to suspend the rules.[8] Another has questioned the general political and historical concept known as the "pork barrel system."

As stated in their pleadings filed before this Court:

x x x. Contrary to the position taken by the political branches, petitioners respectfully submit that the "Pork Barrel System" is repugnant to several constitutional provisions.[9]

Petitioners emphasize that what is being assailed in the instant Petition dated 27 August 2013 is not just the individual constitutionality of Legislative Pork Barrel and Presidential Pork Barrel. The interplay and dynamics of these two components form the Pork Barrel System, which is likewise being questioned as unconstitutional insofar as it undermines the principle of separation of powers and the corollary doctrine of checks and balances.[10]

None of the original Petitions point to the provisions of law that they wish this Court to strike down. Petitioners used the Priority Development Assistance Fund in the General Appropriations Act of 2013 merely as a concrete example of the "legislative pork barrel" which is assailed by the petitioners as unconstitutional. Thus,

This is a Petition for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction (the "instant Petition") filed under Rule 65 of the Rules of Court, seeking to annul and set aside the Pork Barrel System presently embodied in the provisions of the General Appropriations Act ("GAA") of 2013 providing for the Legislature's Priority Development Assistance Fund or any replacement thereto, and the Executive's various lump sum, discretionary funds colloquially referred to as the Special Purpose Funds.[11] (Underscoring supplied)

Petitioners consider the PDAF as it appears in the 2013 GAA as legislative pork barrel, considering that:

- a. It is a post-enactment measure and it allows individual legislators to wield a collective power;
- b. The PDAF gives lump-sum funds to Congressmen (PhP70 Million) and Senators (PhP200 Million);
- c. Despite the existence of a menu of projects, legislators have discretionary power to propose and identify the projects or beneficiaries that will be funded by their respective PDAF allocations;
- d. The legislative guidelines for the PDAF in the 2013 GAA are vague and overbroad insofar as the purpose for which the funds are to be used; and
- e. Legislators, specifically Congressmen, are generally directed to channel their PDAF to projects located in their respective districts, but are permitted to fund projects outside of his or her district, with permission of the local district representative concerned.[12]

For purposes of this litigation, we should focus on Title XV of the 2013 General Appropriations Act which now contains the Priority Development Assistance Fund (PDAF) item. The ponencia ably chronicles the history of this aspect of "pork barrel" and notes that the specific features of the present Priority Development Assistance Fund is different from its predecessors. To the extent that our pronouncements today affect the common features of all these forms of "pork barrel" is the extent to which we affect the "system."

II. C

Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that

reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.

The requirement of an “actual case,” thus, means that the case before this Court “involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic based on extra-legal or other similar considerations not cognizable by a court of justice.”[13] Furthermore, “the controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests.”[14] Thus, the adverse position of the parties must be sufficient enough for the case to be pleaded and for this Court to be able to provide the parties the proper relief/s prayed for.

The requirement of an ‘actual case’ will ensure that this Court will not issue advisory opinions. It prevents us from using the immense power of judicial review absent a party that can sufficiently argue from a standpoint with real and substantial interests.[15]

To support the factual backdrop of their case, petitioners rely primarily on the Commission on Audit's Special Audits Office Report No. 2012-03, entitled Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP) “x x x as definitive documentary proof that Congress has breached the limits of the power given it by the Constitution on budgetary matters, and together with the Executive, has been engaged in acts of grave abuse of discretion.”[16]

However, the facts that the petitioners present may still be disputable. These may be true, but those named are still entitled to legal process.

The Commission on Audit (COA) Report used as the basis by petitioners to impute illegal acts by the members of Congress is a finding that may show, prima facie, the factual basis that gives rise to concerns of grave irregularities. It is based upon the Commission on Audit's procedures on audit investigation as may be provided by law and their rules.[17] It may suggest the culpability of some public officers. Those named, however, still await notices of disallowance/charge, which are considered audit decisions, to be issued on the basis of the COA Report.[18]

This is provided in the procedures of the Commission on Audit, thus:

Audit Disallowances/Charges/Suspensions. - In the course of the audit, whenever there are differences arising from the settlement of accounts by reason of disallowances or charges, the audit shall issue Notices of Disallowance/Charge (ND/NC) which shall be considered as audit decisions. Such ND/NC shall be adequately established by evidence and the conclusions, recommendations, or dispositions shall be supported by applicable laws, regulations, jurisprudence and the generally accepted accounting and auditing principles. The Auditor may issue Notices of Suspension (NS) for transactions of doubtful legality/validity/propriety to obtain further explanation or documentation.[19]

Notices of Disallowance that will be issued will furthermore still be litigated.

However, prior to the filing of these Petitions, this Court promulgated *Delos Santos v. Commission on Audit*. In

that case, we dealt with the patent irregularity of the disbursement of the Priority Development Assistance Fund of then Congressman Antonio V. Cuenco.[20]

We have basis, therefore, for making the exception to an actual case. Taking together Delos Santos and the prima facie findings of fact in the COA Report, which must be initially respected by this Court sans finding of grave abuse of discretion,[21] there appears to be some indication that there may be widespread and pervasive wastage of funds by the members of the Congress who are tasked to check the President's spending. It appears that these leakages are not only imminent but ongoing.

We note that our findings on the constitutionality of this item in the General Appropriations Act is without prejudice to finding culpability for violation of other laws. None of the due process rights of those named in the report will, thus, be imperiled.

III

The Solicitor General, on behalf of respondents, argue that "[r]eforms are already underway"[22] and that "[t]he political branches are already in the process of dismantling the PDAF system and reforming the budgetary process x x x." [23] Thus, the Solicitor General urges this Court "not to impose a judicial solution at this stage, when a progressive political solution is already taking shape." [24]

He further alleges that Congress is on the verge of deleting the provisions of the Priority Development Assistance Fund. In his Memorandum, he avers that:

15. The present petitions should be viewed in relation to the backward- and forward-looking progressive, remedial, and responsive actions currently being undertaken by the political branches of government. We invite the Honorable Court to take judicial notice of the backward-looking responses of the government: the initial complaints for plunder that were recently filed by the Department of Justice before the Ombudsman. We also invite the Honorable Court to take judicial notice of the forward-looking responses of the government: the declared program of the political branches to eliminate the PDAF in the 2014 budget and the reforms of the budgetary process to respond to the problem of abuse of discretion in the use of so-called pork barrel funds. Given the wider space of the political departments in providing solutions to the current controversy, this Court should exercise its judicial review powers cautiously lest it interrupts an ongoing reform-oriented political environment.

x x x x

17. Reforms are underway. The President has officially declared his intent to abolish the PDAF and has specified his plan to replace the PDAF. Before the TRO was issued by this Honorable Court on 10 September 2013, the President had already withheld the release of the remaining PDAF under the 2013 GAA and outlined reforms to the budget.

18. The leadership of the Senate and of the House of Representatives have also officially declared their support for the intent to abolish the PDAF and replace it with a more transparent, accountable, and responsive system. The House of Representatives has already passed a PDAF-free budget on second reading and moved amounts from the current PDAF into the budget for line-item projects.

19. Congress is in the process of adopting more stringent qualifications for line-item projects in the 2014 budget. This means that projects will have to be approved within the budget process, and included as line-items in the appropriations of implementing agencies. x x x.[25]

III. A

The political question doctrine emerged as a corollary to the nature of judicial review. In the landmark case of *Angara v. Electoral Commission*, [26] the essence of the duty of judicial review was explained, thus:

But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

x x x x

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[27] (Emphasis provided)

This Court in *Angara*, however, expressed caution and a policy of hesitance in the exercise of judicial review. This Court was quick to point out that this power cannot be used to cause interference in the political processes by limiting the power of review in its refusal to pass upon "questions of wisdom, justice or expediency of legislation,"[28] thus:

x x x Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[29]

What were questions of wisdom and questions of legality that would be within the purview of the courts were earlier explained in *Tañada v. Cuenco*:[30]

As already adverted to, the objection to our jurisdiction hinges on the question whether the issue before us is political or not. In this connection, Willoughby lucidly states:

Elsewhere in this treatise the well-known and well-established principle is considered that it is not within the province of the courts to pass judgment upon the policy of legislative or executive action. Where, therefore, discretionary powers are granted by the Constitution or by statute, the manner in which those powers are exercised is not subject to judicial review. The courts, therefore, concern themselves only with the question as to the existence and extent of these discretionary powers.

As distinguished from the judicial, the legislative and executive departments are spoken of as the political departments of government because in very many cases their action is necessarily dictated by considerations of public or political policy. These considerations of public or political policy of course will not permit the legislature to violate constitutional provisions, or the executive to exercise authority not granted him by the Constitution or by statute, but, within these limits, they do permit the departments, separately or together, to recognize that a certain set of facts exists or that a given status exists, and these determinations, together with the consequences that flow therefrom, may not be traversed in the courts." (Willoughby on the Constitution of

the United States, Vol. 3, p. 1326; Emphasis supplied)

x x x x

It is not easy, however, to define the phrase 'political question,' nor to determine what matters fall within its scope. It is frequently used to designate all questions that lie outside the scope of the judicial questions, which under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. (16 C.J.S., 413; See also *Geauga Lake Improvement Ass'n. vs. Lozier*, 182 N. E. 491, 125 Ohio St. 565; *Sevilla vs. Elizalde*, 112 F. 2d 29, 72 App. D. C., 108; Emphasis supplied)

x x x x

x x x What is generally meant, when it is said that a question is political, and not judicial, is that it is a matter which is to be exercised by the people in their primary political capacity, or that it has been specifically delegated to some other department or particular officer of the government, with discretionary power to act. See *State vs. Cunningham*, 81 Wis. 497, 51 L. R. A. 561; *In Re Gunn*, 50 Kan. 155; 32 Pac. 470, 948, 19 L. R. A. 519; *Green vs. Mills*, 69 Fed. 852, 16, C. C. A. 516, 30 L. R. A. 90; *Fletcher vs. Tuttle*, 151 Ill. 41, 37 N. E. 683, 25 L. R. A. 143, 42 Am. St. Rep. 220. x x x.

In short, the phrase "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of *Corpus Juris Secundum* (supra), it refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government." It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.[31]

In *Casibang v. Judge Aquino*,[32] the definition of a political question was discussed, citing *Baker v. Carr*:

x x x The term "political question" connotes what it means in ordinary parlance, namely, a question of policy. It refers to those questions which under the Constitution, are to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure" (*Tañada vs. Cuenco*, L-1052, Feb. 28, 1957). A broader definition was advanced by U.S. Supreme Court Justice Brennan in *Baker vs. Carr* (369 U.S. 186 [1962]): "Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of the government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question" (p. 217). And Chief Justice Enrique M. Fernando, then an Associate Justice of this Court, fixed the limits of the term, thus: "The term has been made applicable to controversies clearly non-judicial and therefore beyond its jurisdiction or to an issue involved in a case appropriately subject to its cognizance, as to which there has been a prior legislative or executive determination to which deference must be paid (Cf. *Vera vs. Avelino*, 77 Phil. 192 [1946]; *Lopez vs. Roxas*, L-25716, July 28, 1966, 17 SCRA 756; *Gonzales vs. Commission on Elections*, L-28196, Nov. 9, 1967, 21 SCRA 774). It has likewise been employed loosely to characterize a suit where the party proceeded against is the President or Congress, or any branch thereof (Cf. *Planas vs. Gil*, 67 Phil. 62 [1937]; *Vera vs. Avelino*, 77 Phil. 192 [1946]). If to be delimited with accuracy; 'political questions' should refer to such as would under the Constitution be decided by the people in their sovereign capacity or in regard to which full discretionary authority is vested either in the President or Congress. It is thus beyond the competence of the judiciary to pass upon. x x x." (*Lansang vs.*

Garcia, 42 SCRA 448, 504-505 [1971]).[33] (Emphasis provided)

III. B

With this background and from our experience during Martial Law, the members of the Constitutional Commission clarified the power of judicial review through the second paragraph of Section 1 of Article VIII of the Constitution. This provides:

Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. (Emphasis provided)

This addendum was borne out of the fear that the political question doctrine would continue to be used by courts to avoid resolving controversies involving acts of the Executive and Legislative branches of government.[34] Hence, judicial power was expanded to include the review of any act of grave abuse of discretion on any branch or instrumentality of the government.

The Constitutional Commissioners were working with their then recent experiences in a regime of Martial Law. The examples that they had during the deliberations on the floor of the Constitutional Commission were naturally based on those experiences. It appears that they did not want a Court that had veto on any and all actions of the other departments of government. Certainly, the Constitutional Commissioners did not intend that this Court's discretion substitutes for the political wisdom exercised within constitutional parameters. However, they wanted the power of judicial review to find its equilibrium further than unthinking deference to political acts. Judicial review extends to review political discretion that clearly breaches fundamental values and principles congealed in provisions of the Constitution.

III. C

Grave abuse of discretion, in the context of the second paragraph of Section 1 of Article VIII of the Constitution, has been described in various cases.

In *Tañada v. Angara*,[35] the issue before this Court was whether the Senate committed grave abuse of discretion when it ratified the Agreement establishing the World Trade Organization. Although the ratification of treaties was undoubtedly a political act on the part of Congress, this Court treated it as a justiciable issue. This Court held that “[w]here an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute.”[36] In defining grave abuse of discretion as “x x x such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction” and “must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law,”[37] this Court found that the Senate, in the absence of proof to the contrary, did not commit grave abuse of discretion in the exercise of its power of concurrence granted to it by the Constitution.

In *Villarosa v. House of Representatives Electoral Tribunal*,[38] this Court's jurisdiction was invoked where petitioners assailed the acts of the House of Representatives Electoral Tribunal. Petitioners alleged that the House of Representatives Electoral Tribunal committed grave abuse of discretion when it treated the “JTV” votes as stray or invalid.

This Court, through Chief Justice Davide, defined grave abuse of discretion as “x x x such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; or, in other words, where the power is exercised in an arbitrary manner by reason of passion or personal hostility. It must be so patent and gross as to

amount to an evasion of positive duty or to a virtual refusal to perform the duly enjoined or to act at all in contemplation of law.”[39] After a review of the facts established in the case and application of the relevant provisions of law, it then held that the House of Representatives did not commit grave abuse of discretion.[40]

In *Sen. Defensor Santiago v. Sen. Guingona, Jr.*,[41] this Court was tasked to review the act of the Senate President. The assailed act was the Senate President's recognition of respondent as the minority leader despite the minority failing to arrive at a clear consensus during the caucus. This Court, while conceding that the Constitution does not provide for rules governing the election of majority and minority leaders in Congress, nevertheless ruled that the acts of its members are still subject to judicial review when done in grave abuse of discretion:

While no provision of the Constitution or the laws or the rules and even the practice of the Senate was violated, and while the judiciary is without power to decide matters over which full discretionary authority has been lodged in the legislative department, this Court may still inquire whether an act of Congress or its officials has been made with grave abuse of discretion. This is the plain implication of Section 1, Article VIII of the Constitution, which expressly confers upon the judiciary the power and the duty not only "to settle actual controversies involving rights which are legally demandable and enforceable," but likewise "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." [42] (Emphasis provided)

III. D

Post-EDSA, this Court has even on occasion found exceptional circumstances when the political question doctrine would not apply.

Thus, in *SANLAKAS v. Executive Secretary Reyes*,[43] this Court ruled that while the case has become moot, “[n]evertheless, courts will decide a question, otherwise moot, if it is “capable of repetition yet evading review.”[44]

In *SANLAKAS*, Petitions were filed to assail the issuance of Proclamation No. 427 declaring a state of rebellion during the so-called Oakwood occupation in 2003. While this Court conceded that the case was mooted by the issuance of Proclamation No. 435, which declared that the state of rebellion ceased to exist, it still decided the case. This Court pointed out that the issue has yet to be decided definitively, as evidenced by the dismissal of this Court of previous cases involving the same issue due to mootness:

Once before, the President on May 1, 2001 declared a state of rebellion and called upon the AFP and the PNP to suppress the rebellion through Proclamation No. 38 and General Order No. 1. On that occasion, “‘an angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons’ assaulted and attempted to break into Malacañang.” Petitions were filed before this Court assailing the validity of the President’s declaration. Five days after such declaration, however, the President lifted the same. The mootness of the petitions in *Lacson v. Perez* and accompanying cases precluded this Court from addressing the constitutionality of the declaration.

To prevent similar questions from reemerging, we seize this opportunity to finally lay to rest the validity of the declaration of a state of rebellion in the exercise of the President’s calling out power, the mootness of the petitions notwithstanding.[45] (Emphasis provided, citations omitted)

In *Funa v. Villar*,[46] a Petition was filed contesting the appointment of Reynaldo A. Villar as Chairman of the Commission on Audit. During the pendency of the case, Villar sent a letter to the President signifying his intention to step down from office upon the appointment of his replacement. Upon the appointment of the current Chairman, Ma. Gracia Pulido-Tan, the case became moot and academic. This Court, guided by the principles stated in *David v. Arroyo*, still gave due course to the Petition:

Although deemed moot due to the intervening appointment of Chairman Tan and the resignation of Villar, We consider the instant case as falling within the requirements for review of a moot and academic case, since it asserts at least four exceptions to the mootness rule discussed in *David*, namely: there is a grave violation of the Constitution; the case involves a situation of exceptional character and is of paramount public interest; the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; and the case is capable of repetition yet evading review. The situation presently obtaining is definitely of such exceptional nature as to necessarily call for the promulgation of principles that will henceforth “guide the bench, the bar and the public” should like circumstance arise. Confusion in similar future situations would be smoothed out if the contentious issues advanced in the instant case are resolved straightaway and settled definitely. There are times when although the dispute has disappeared, as in this case, it nevertheless cries out to be addressed. To borrow from *Javier v. Pacificador*, “Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint in the future.”[47] (Citations omitted)

III. E

Thus, the addendum in the characterization of the power of judicial review should not be seen as a full and blanket reversal of the policy of caution and courtesy embedded in the concept of political questions. It assumes that the act or acts complained of would appear initially to have been done within the powers delegated to the respondents. However, upon perusal or evaluation of its consequences, it may be shown that there are violations of law or provisions of the Constitution.

The use of the Priority Development Assistance Fund or the “pork barrel” itself is questioned. It is not the act of a few but the practice of members of Congress and the President. The current Priority Development Assistance Fund amounts to twenty four (24) billion pesos; the alternative uses of this amount have great impact. Its wastage also will have lasting effects. To get a sense of its magnitude, we can compare it with the proposed budgetary allocation for the entire Judiciary. All courts get a collective budget that is about eighteen (18) billion pesos. The whole system of adjudication is dwarfed by a system that allocates funds for unclear political motives.

The concepts of accountability and separation of powers are fundamental values in our constitutional democracy. The effect of the use of the Priority Development Assistance Fund can have repercussions on these principles. Yet, it is difficult to discover anomalies if any. It took the Commission on Audit some time to make its special report for a period ending in 2009. It is difficult to expect such detail from ordinary citizens who wish to avail their rights as taxpayers. Clearly, had it not been for reports in both mainstream and social media, the public would not have been made aware of the magnitude.

What the present Petitions present is an opportune occasion to exercise the expanded power of judicial review. Due course should be given because these Petitions suggest a case where (a) there may be indications that there are pervasive breaches of the Constitution; (b) there is no doubt that there is a large and lasting impact on our societies; (c) what are at stake are fundamental values of our constitutional order; (d) there are obstacles to timely discovering facts which would serve as basis for regular constitutional challenges; and (e) the conditions are such that any delay in our resolution of the case to await action by the political branches will not entirely address the violations. With respect to the latter, our Decision will prevent the repetition of the same acts which have been historically shown to be “capable of repetition” and yet “evading review.” Our Decision today will also provide guidance for bench and bar.

IV

Respondents also argued that we should continue to respect our precedents. They invoke the doctrine of stare decisis.

Stare decisis is a functional doctrine necessary for courts committed to the rule of law. It is not, however, an encrusted and inflexible canon.[48] Slavishly adhering to precedent potentially undermines the value of a Judiciary.

IV. A

Stare decisis is based on the logical concept of analogy.[49] It usually applies for two concepts. The first is the meaning that is authoritatively given to a text of a provision of law with an established set of facts.[50] The second may be the choices or methods of interpretation to arrive at a meaning of a certain kind of rule.

This case concerns itself with the first kind of stare decisis; that is, whether recommendations made by members of Congress with respect to the projects to be funded by the President continue to be constitutional.

Ruling by precedent assists the members of the public in ordering their lives in accordance with law and the authoritative meanings promulgated by our courts.[51] It provides reasonable expectations.[52] Ruling by precedent provides the necessary comfort to the public that courts will be objective. At the very least, courts will have to provide clear and lucid reasons should it not apply a given precedent in a specific case.[53]

IV. B

However, the use of precedents is never mechanical.[54]

Some assumptions normally creep into the facts established for past cases. These assumptions may later on prove to be inaccurate or to be accurate only for a given historical period. Sometimes, the effects assumed by justices who decide past cases do not necessarily happen.[55] Assumed effects are given primacy whenever the spirit or intent of the law is considered in the interpretation of a legal provision. Some aspect of the facts or the context of these facts would not have been fully considered. It is also possible that doctrines in other aspects of the law related to a precedent may have also evolved.[56]

In such cases, the use of precedents will unduly burden the parties or produce absurd or unworkable outcomes. Precedents will not be useful to achieve the purposes for which the law would have been passed.[57]

Precedents also need to be abandoned when this Court discerns, after full deliberation, that a continuing error in the interpretation of the spirit and intent of a constitutional provision exists, especially when it concerns one of the fundamental values or premises of our constitutional democracy.[58] The failure of this Court to do so would be to renege on its duty to give full effect to the Constitution.[59]

IV. C

PHILCONSA v. Enriquez held that the appropriation for the Countrywide Development Fund in the General Appropriations Act of 1994 is constitutional. This Court ruled that “the authority given to the members of Congress is only to propose and identify projects to be implemented by the President. x x x. The proposals made by the members of Congress are merely recommendatory.”[60]

Subsequent challenges to various forms of the “pork barrel system” were mounted after PHILCONSA.

In Sarmiento v. The Treasurer of the Philippines,[61] the constitutionality of the appropriation of the Countrywide Development Fund in the General Appropriations Act of 1996 was assailed. This Court applied the principle of stare decisis and found “no compelling justification to review, much less reverse, this Court's ruling on the

constitutionality of the CDF.”

The latest case was *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*.^[62] Petitioners in *LAMP* argue that in implementing the provisions of the Priority Development Assistance Fund in the General Appropriations Act of 2004, direct releases of the fund were made to members of Congress.^[63] However, this Court found that petitioners failed to present convincing proof to support their allegations.^[64] The presumption of constitutionality of the acts of Congress was not rebutted.^[65] Further, this Court applied the ruling in *PHILCONSA* on the authority of members of Congress to propose and identify projects.^[66] Thus, we upheld the constitutionality of the appropriation of the Priority Development Assistance Fund in the General Appropriations Act of 2004.

There are some indications that this Court’s holding in *PHILCONSA* suffered from a lack of factual context.

The ponencia describes a history of increasing restrictions on the prerogative of members of the House of Representatives and the Senate to recommend projects. There was no reliance simply on the dicta in *PHILCONSA*. This shows that successive administrations saw the need to prevent abuses.

There are indicators of the failure of both Congress and the Executive to stem these abuses.

Just last September, this Court’s *En Banc* unanimously found in *Delos Santos v. Commission on Audit*^[67] that there was irregular disbursement of the Priority Development Assistance Fund of then Congressman Antonio V. Cuenco.

In *Delos Santos*, Congressman Cuenco entered into a Memorandum of Agreement with Vicente Sotto Memorial Medical Center. The Memorandum of Agreement was for the purpose of providing medical assistance to indigent patients. The amount of P1,500,000.00 was appropriated from the Priority Development Assistance Fund of Congressman Cuenco. It may be noted that in the Memorandum of Agreement, Congressman Cuenco “shall identify and recommend the indigent patients who may avail of the benefits of the Tony N’ Tommy (TNT) Health Program x x x.”^[68]

The Special Audits Team of the Commission on Audit assigned to investigate the TNT Health Program had the following findings, which were upheld by us:

1. The TNT Program was not implemented by the appropriate implementing agency but by the office set up by Congressman Cuenco.
2. The medicines purchased did not go through the required public bidding in violation of applicable procurement laws and rules.
3. Specific provisions of the MOA itself setting standards for the implementation of the same program were not observed.^[69]

In the disposition of the case, this Court “referred the case to the Office of the Ombudsman for proper investigation and criminal prosecution of those involved in the irregular disbursement of then Congressman Antonio V. Cuenco’s Priority Development Assistance Fund.”^[70]

While the special report of the Commission on Audit may not definitively be used to establish the facts that it alleges, it may be one of the indicators that we should consider in concluding that the context of the Decision in *PHILCONSA* may have changed.

In addition, but no less important, is that *PHILCONSA* perpetuates an error in the interpretation of some of the fundamental premises of our Constitution.

To give life and fully live the values contained in the words of the Constitution, this Court must be open to timely re-evaluation of doctrine when the opportunity presents itself. We should be ready to set things right so that what becomes final is truly relevant to the lives of our people and consistent with our laws.

Mechanical application of stare decisis, at times, is not consistency with principle. At these times, consistency with principle requires that we reject what appears as stare decisis.

V

Nowhere is public trust so important than in the management and use of the finances of government.

V. A

One of the central constitutional provisions is Article VI, Section 29(1) which provides:

No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

The President first submits to Congress a “budget of expenditures and sources of financing” in compliance with Article VII, Section 22 which provides thus:

The President shall submit to the Congress, within thirty days from the opening of every regular session as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

This budget of expenditures and sources of financing (also called the National Expenditure Plan) is first filed with the House of Representatives and can only originate from there. Thus, in Article VI, Section 24:

All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills, shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

Thereafter, the General Appropriations Bill is considered by Congress in three readings like other pieces of legislation.[71] Should it become necessary, a bicameral committee is convened to harmonize the differences in the Third Reading copies of each Legislative chamber. This is later on submitted to both the House and the Senate for ratification.[72]

The bill as approved by Congress shall then be presented to the President for approval. The President, in addition to a full approval or veto, is granted the power of an item veto. Article VI, Section 27 (2) provides:

The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

We have had, in several cases, interpreted the power of item veto of the President.[73]

In *Bengzon v. Drilon*,[74] we said that a provision is different from an item. Thus,

We distinguish an item from a provision in the following manner:

The terms item and provision in budgetary legislations are concededly different. An item in a bill refers to the particulars, the details, the distinct and severable parts x x x of the bill. It is an indivisible sum of money dedicated to a stated purpose. The United States Supreme Court, in the case of *Bengzon v. Secretary of Justice*, declared ‘that an ‘item’ of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law, which happens to be put into an appropriation bill.[75]

A provision does not “directly appropriate funds x x x [but specifies] certain conditions and restrictions in the manner by which the funds to which they relate have to be spent.”[76]

In *PHILCONSA v. Enriquez*,^[77] we clarified that an unconstitutional provision is one that is inappropriate, and therefore, has no effect:

As the Constitution is explicit that the provision which Congress can include in an appropriations bill must "relate specifically to some particular appropriation therein" and "be limited in its operation to the appropriation to which it relates," it follows that any provision which does not relate to any particular item, or which extends in its operation beyond an item of appropriation, is considered "an inappropriate provision" which can be vetoed separately from an item. Also to be included in the category of "inappropriate provisions" are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kinds of laws have no place in an appropriations bill. These are matters of general legislation more appropriately dealt with in separate enactments. Former Justice Irene Cortes, as Amicus Curiae, commented that Congress cannot by law establish conditions for and regulate the exercise of powers of the President given by the Constitution for that would be an unconstitutional intrusion into executive prerogative.^[78]

V. B

What is readily apparent from the provisions of the Constitution is a clear distinction between the role of the Legislature and that of the Executive when it comes to the budget process.^[79]

The Executive is given the task of preparing the budget and the prerogative to spend from an authorized budget.^[80]

The Legislature, on the other hand, is given the power to authorize a budget for the coming fiscal year.^[81] This power to authorize is given to the Legislature collectively.

Nowhere in the Constitution does it allow specific members of the House of Representatives or the Senate to implement projects and programs. Their role is clear. Rather, it is the local government units that are given the prerogative to execute projects and programs.^[82]

Implicit in the power to authorize a budget for government is the necessary function of evaluating the past year's spending performance as well as the determination of future goals for the economy.^[83]

A budget provides the backbone of any plan of action. Every plan of action should have goals but should also be enriched by past failures. The deliberations to craft a budget that happen in Congress is informed by the inquiries made on the performance of every agency of government. The collective inquiries made by representatives of various districts should contribute to a clearer view of the mistakes or inefficiencies that have happened in the past. It should assist elected representatives to discern the plans, programs, and projects that work and do not work.

Evaluating the spending of every agency in government requires that the Legislature is able to exact accountability. Not only must it determine whether the expenditures were efficient. The Legislature must also examine whether there have been unauthorized leakages — or graft and corruption — that have occurred.

The members of the Legislature do not do the formal audit of expenditures. This is the principal prerogative of the Commission on Audit.^[84] Rather, they benefit from such formal audits. These formal audits assist the members of the House of Representatives and the Senators to do their constitutional roles. The formal audits also make public and transparent the purposes, methods used, and achievements and failures of each and every expenditure made on behalf of the government so that their constituencies can judge them as they go on to authorize another budget for another fiscal year.

Any system where members of Congress participate in the execution of projects in any way compromises them. It

encroaches on their ability to do their constitutional duties. The violation is apparent in two ways: their ability to efficiently make judgments to authorize a budget and the interference in the constitutional mandate of the President to be the Executive.

Besides, interference in any government project other than that of congressional activities is a direct violation of Article VI, Section 14 of the 1987 Constitution in so far as Title XLIV of the 2013 General Appropriations Act allows participation by Congress. Article VI, Section 14 provides:

No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including government owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.[85] (Emphasis provided)

V. C

Title XLIV of the General Appropriations Act of 2013 is the appropriation for the Priority Development Assistance Fund of a lump sum amount of P24,790,000,000.00.

The Special Provisions of the Priority Development Assistance Fund are:

1. Use of Fund. The amount appropriated herein shall be used to fund the following priority programs and projects to be implemented by the corresponding agencies:

[A project menu follows]

PROVIDED, That this Fund shall not be used for the payment of Personal Services expenditures: PROVIDED, FURTHER, That all procurement shall comply with the provisions of R.A. No. 9184 and its Revised Implementing Rules and Regulations: PROVIDED, FINALLY, That for infrastructure projects, LGUs may only be identified as implementing agencies if they have the technical capability to implement the same.

2. Project Identification. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency: PROVIDED, That preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the MHTS-PR by the DSWD. For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act.

All programs/projects, except for assistance to indigent patients and scholarships, identified by a member of the House of Representatives outside his/her legislative district shall have the written concurrence of the member of the House of Representatives of the recipient or beneficiary legislative district, endorsed by the Speaker of the House of Representatives.

3. Legislator's Allocation. The Total amount of projects to be identified by legislators shall be as follows:

- a. For Congressional District or Party-List Representative: Thirty Million Pesos (P30,000,000.00) for soft programs and projects listed under Item A and Forty Million Pesos (P40,000,000.00) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1; and
- b. For Senators: One Hundred Million Pesos (P100,000,000.00) for soft programs and projects listed under Item A and One Hundred Million Pesos (P100,000,000.00) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1.

Subject to the approved fiscal program for the year and applicable Special Provisions on the use and release of

fund, only fifty percent (50%) of the foregoing amounts may be released in the first semester and the remaining fifty percent (50%) may be released in the second semester.

4. Realignment of Funds. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry are also authorized to approve realignment from one project/scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and the same project category as the original concurrence of the legislator concerned. The DBM must be informed in writing of any realignment within five (5) calendar days from approval thereof: PROVIDED, That any realignment under this Fund shall be limited within the same classification of soft or hard programs/projects listed under Special Provision 1 hereof: PROVIDED, FURTHER, That in case of realignments, modifications and revisions of projects to be implemented by LGUs, the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr.

Any realignment, modification and revision of the project identification shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance, for favorable endorsement to the DBM or the implementing agency, as the case may be.

5. Release of Funds. All request for release of funds shall be supported by the documents prescribed under Special Provision No. 1 and favorably endorsed by the House Committee on Appropriations and the Senate Committee on Finance, as the case may be. Funds shall be released to the implementing agencies subject to the conditions under Special Provision No. 1 and the limits prescribed under Special Provision No. 3.

6. Posting Requirements. The DBM and respective heads of implementing agencies and their web administrator or equivalent shall be responsible for ensuring that the following information, as may be applicable, are posted on their respective official websites: (i) all releases and realignments under this Fund; (ii) priority list, standard and design submitted to Congress; (iii) projects identified and names of proponent legislator; (iv) names of project beneficiaries and/or recipients; (v) any authorized realignment; (vi) status of project implementation and (vii) program/project evaluation and/or assessment reports. Moreover, for any procurement to be undertaken using this Fund, implementing agencies shall likewise post on the Philippine Government Electronic Procurement System all invitations to bid, names of participating bidders with their corresponding bids, and awards of contract.

Once the General Appropriations Act is signed into law as explained above, the budget execution stage takes place.

x x x [B]udget execution comes under the domain of the Executive branch which deals with the operational aspects of the cycle including the allocation and release of funds earmarked for various projects. Simply put, from the regulation of fund releases, the implementation of payment schedules and up to the actual spending of the funds specified in the law, the Executive takes the wheel.[86]

Generally, the first step to budget execution is the issuance by the Department of Budget and Management of Guidelines on the Release of Funds. For the year 2013, the Department of Budget and Management issued National Budget Circular No. 545 entitled "Guidelines for the Release of Funds for FY 2013."

Under National Budget Circular No. 545, the appropriations shall be made available to the agency of the government upon the issuance by the Department of Budget and Management of either an Agency Budget Matrix or a Special Allotment Release Order.[87] The Agency Budget Matrix will act as a comprehensive release of allotment covering agency-specific budgets that do not need prior clearance.[88] The Special Allotment Release Order is required for those allotments needing clearance, among others.[89]

For the issuance of the Special Allotment Release Order, a request for allotment of funds (Special Budget Request)[90] shall be made by the head of the department or agency requesting for the allotment to the Department of Budget and Management.[91]

Once the Special Allotment Release Order is issued, disbursement authorities such as a Notice of Cash Allowance will be issued.

Applying the provisions of the Priority Development Assistance Fund in the General Appropriations Act of 2013 in accordance with the budget execution stage outlined above, we will readily see the difference.

The allotment for the appropriation of the Priority Development and Assistance Fund of 2013 needs clearance and, therefore, a Special Allotment Release Order must be issued by the Department of Budget and Management.[92]

Unlike other appropriations, the written endorsement of the Chairman of the Senate Committee on Finance or the Chairman of the Committee on Appropriations of the House of Representatives, as the case may be, is required.

A Special Budget Request is required for the issuance of the Special Allotment Release Order.[93] The Department of Budget and Management issued a National Budget Circular No. 547 for the Guidelines for the Release of the Priority Development Assistance Fund in the General Appropriations Act of 2013, which provides:

All requests for issuance of allotment shall be supported with the following: 3.1.1 List of priority programs/projects including the supporting documents in accordance with the PDAF Project Menu; 3.1.2 Written endorsements by the following: 3.1.2.1 In case of the Senate, the Senate President and the Chairman of the Committee on Finance; and 3.1.2.2 In case of the House of Representatives, the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations.[94]

The Department of Budget and Management National Budget Circular No. 547 has been amended by Department of Budget and Management National Budget Circular No. 547-A. The written endorsements of the Senate President and the Speaker of the House of Representatives are not required anymore. The amendment reconciled the special provisions of the Priority Development Assistance Fund under the General Appropriations Act of 2013 and the Guidelines for the Release of the Priority Development Assistance Fund 2013.

Even a textual reading of the Special Provisions of the Priority Development Assistance Fund under the General Appropriations Act of 2013 shows that the identification of projects and endorsements by the Chairman of the Senate Committee on Finance and the Chairman of the Committee on Appropriations of the House of Representatives are mandatory. The Special Provisions use the word, “shall.”

Respondents argue that the participation of members of Congress in the allocation and release of the Priority Development Assistance Fund is merely recommendatory upon the Executive. However, respondents failed to substantiate in any manner their arguments. During the oral arguments for this case, the Solicitor General was asked if he knew of any instance when the Priority Development Assistance Fund was released without the identification made by Congress. The Solicitor General did not know of any case.[95]

Besides, it is the recommendation itself which constitutes the evil. It is that interference which amounts to a constitutional violation.

This Court has implied that the participation of Congress is limited to the exercise of its power of oversight.

Any post-enactment congressional measure such as this should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following:

1. scrutiny based primarily on Congress’ power of appropriation and the budget hearings conducted in

connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation and

2. investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.[96]

x x x As such, it is only upon its effectivity that a law may be executed and the executive branch acquires the duties and powers to execute the said law. Before that point, the role of the executive branch, particularly of the President, is limited to approving or vetoing the law.

From the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional.[97]

Further, “x x x [t]o forestall the danger of congressional encroachment “beyond the legislative sphere,” the Constitution imposes two basic and related constraints on Congress. It may not vest itself, any of its committees or its members with either Executive or Judicial power. When Congress exercises its legislative power, it must follow the “single, finely wrought and exhaustively considered, procedures” specified under the Constitution, including the procedure for enactment of laws and presentment.”[98]

The participation of members of Congress — even if only to recommend — amounts to an unconstitutional post-enactment interference in the role of the Executive. It also defeats the purpose of the powers granted by the Constitution to Congress to authorize a budget.

V. D

Also, the Priority Development Assistance Fund has no discernable purpose.

The lack of purpose can readily be seen. This exchange during the oral arguments is instructive:

Justice Leonen: x x x First, can I ask you whether each legislative district will be getting the same amount under that title? Each legislator gets 70 Million, is that not correct?

Solicitor General Jardeleza: There will be no appropriation like that, Your Honor.

Justice Leonen: No, I mean in terms of Title XLIV right now, at present.

Solicitor General Jardeleza: Oh, I'm sorry.

Justice Leonen: Of the 24 Billion each Member of the House of Representatives and a party list gets 70 Million, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: Second, that each senator gets 200 Million, is that not correct?

Solicitor General: Yes, Your Honor.

Justice Leonen: Let's go to congressional districts, are they of the same size?

Solicitor General Jardeleza: No, Your Honor.

Justice Leonen: So there can be smaller congressional districts and very big congressional districts, is that not correct?

Solicitor General: Yes.

Justice Leonen: And there are congressional districts that have smaller populations and congressional districts that have a very large population?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: Batanes, for instance, has about [4,000] to 5,000 votes, is that not correct?

Solicitor General Jardeleza: I believed so.

Justice Leonen: Whereas, my district is District 4 of Quezon City has definitely more than that, is that not correct?

Solicitor General Jardeleza: I believed so, Your Honor.

Justice Leonen: And therefore there are differences in sizes?

Solicitor General Jardeleza: Yes.

Justice Leonen: Metro Manila congressional districts, each of them earn in the Million, is that not correct?

Solicitor General Jardeleza: I believed so, Your Honor.

Justice Leonen: Whereas there are poorer congressional districts that do not earn in the Millions or even Billions, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: So the pork barrel or the PDAF for that matter is allocated not on the basis of size, not on the basis of population, not on the basis of the amounts now available to the local government units, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: It is allocated on the basis of congressmen and senators, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: So, it's an appropriation for a congressman and a senator, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: Not as Members of the House or Members of the Senate because this is not their function but it is allocated to them simply because they are members of the House and members of the Senate?

Solicitor General Jardeleza: Well, it is allocated to them as Members, Your Honor, yes, as Members of the House and as Members of the Senate.

Justice Leonen: Can you tell us, Counsel, whether the allocation for the Office of the Solicitor General is for you or is it for the Office?

Solicitor General Jardeleza: For the Office, Your Honor.

Justice Leonen: The allocation for the Supreme Court, is it for anyone of the fifteen of us or is it for the entire Supreme Court?

Solicitor General: For the Office, Your Honor.

Justice Leonen: So you have here an item in the budget which is allocated for a legislator not for a congressional district, is that not correct?

Solicitor General Jardeleza: Well, for both, Your Honor.

Justice Leonen: Is this a valid appropriation?[99]

Had it been to address the developmental needs of the Legislative districts, then the amounts would have varied based on the needs of such districts. Hence, the poorest district would receive the largest share as compared to its well-off counterparts.

If it were to address the needs of the constituents, then the amounts allocated would have varied in relation to population. Thus, the more populous areas would have the larger allocation in comparison with areas which have a sparse population.

There is no attempt to do any of these. The equal allocation among members of the House of Representatives and more so among Senators shows the true color of the Priority Development Assistance Fund. It is to give a lump sum for each member of the House of Representatives and the Senate for them to spend on projects of their own choosing. This is usually for any purpose whether among their constituents and whether for the present or future.

In short, the Priority Development Assistance Fund is an appropriation for each Member of the House of Representative and each Senator.

This is why this item in the General Appropriations Act of 2013 is an invalid appropriation. It is allocated for use which is not inherent in the role of a member of Congress. The power to spend is an Executive constitutional discretion — not a Legislative one.

V. E

A valid item is an authorized amount that may be spent for a discernible purpose.

An item becomes invalid when it is just an amount allocated to an official absent a purpose. In such a case, the item facilitates an unconstitutional delegation of the power to authorize a budget. Instead of Congress acting collectively with its elected representatives deciding on the magnitude of the amounts for spending, it will be the officer who either recommends or spends who decides what the budget will be.

This is not what is meant when the Constitution provides that “no money shall be paid out of the Treasury except in pursuance of an appropriation made by law.” When no discernible purpose is defined in the law, money is paid out for a public official and not in pursuance of an appropriation.

This is exactly the nature of the Priority Development Assistance Fund.

Seventy million pesos of taxpayers’ money is appropriated for each member of the House of Representatives while two hundred million pesos is authorized for each Senator. The purpose is not discernible. The menu of options does not relate to each other in order to reveal a discernible purpose. Each legislator chooses the amounts that will be spent as well as the projects. The projects may not relate to each other. They will not be the subject of a purposive spending program envisioned to create a result. It is a kitty — a mini-budget — allowed to each legislator.

That each legislator has his or her own mini-budget makes the situation worse. Again, those who should check on the expenditures of all offices of government are compromised. They will not have the high moral ground to exact efficiency when there is none that can be evaluated from their allocation under the Priority Development Assistance Fund.

Purposes can be achieved through various programmed spending or through a series of related projects. In some

instances, like in the provision of farm to market roads, the purpose must be specific enough to mention where the road will be built. Funding for the Climate Change Commission can be in lump sums as it could be expected that its expenditures would be dependent on the proper activities that should be done in the next fiscal year and within the powers and purposes that the Commission has in its enabling charter. In other instances, like for calamity funds, the amounts will be huge and the purpose cannot be more general than for expenses that may have to be done in cases of calamities.

Parenthetically, the provision of Various Infrastructure and Local Projects in the Department of Public Works and Highways title of the 2013 General Appropriations Act is also a clear example of an invalid appropriation.

In some instances, the purpose of the funding may be general because it is a requirement of either constitutional or statutory autonomy. Thus, the ideal would be that this Court would have just one item with a bulk amount with the expenditures to be determined by this Court's En Banc. State universities and colleges may have just one lump sum for their institutions because the purposes for which they have been established are already provided in their charter.

While I agree generally with the view of the ponencia that "an item of appropriation must be an item characterized by a singular correspondence — meaning an allocation of a specified singular amount for a specified singular purpose," our opinions on the generality of the stated purpose should be limited only to the Priority Development Assistance Fund as it is now in the 2013 General Appropriations Act. The agreement seems to be that the item has no discernible purpose. [100]

There may be no need, for now, to go as detailed as to discuss the fine line between "line" and "lump sum" budgeting. A reading of the ponencia and the Concurring Opinions raises valid considerations about line and lump sum items. However, it is a discussion which should be clarified further in a more appropriate case.[101]

Our doctrine on unlawful delegation of legislative power does not fully square in cases of appropriations. Budgets are integral parts of plans of action. There are various ways by which a plan can be generated and fully understood by those who are to implement it. There are also many requirements for those who implement such plans to adjust to given realities which are not available through foresight.

The Constitution should not be read as a shackle that bounds creativity too restrictively. Rather, it should be seen as a framework within which a lot of leeway is given to those who have to deal with the fundamental vagaries of budget implementation. What it requires is an appropriation for a discernable purpose. The Priority Development Assistance Fund fails this requirement.

VI

The Constitution in Article VI, Section 29 (3) provides for another type of appropriations act, thus:

All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the government.

This provision provides the basis for special laws that create special funds and to this extent qualifies my concurrence with the ponencia's result in so far as Section 8 of Presidential Decree No. 910 is concerned. This provision states:

x x x All fees, revenues, and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and

penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President. (Emphasis provided)

It is true that it may be the current administration's view that the underscored provision should be read in relation to the specific purposes enumerated before it. However, there is no proscription to textually view it in any other way. Besides, there should have been no reason to provide this phrase had the intent of the law been as how the current administration reads and applies it.

As has been the practice in the past administration, monies coming from this special provision have been used for various purposes which do not in any way relate to "the energy resource development and exploitation programs and projects of the government." Some of these expenditures are embodied in Administrative Order No. 244 dated October 23, 2008;^[102] and Executive Orders 254, 254-A, and 405 dated December 8, 2003, March 3, 2004, and February 1, 2005, respectively.^[103]

The phrase "for such other purposes as may hereafter directed by the President" has, thus, been read as all the infinite possibilities of any project or program. Since it prescribes all, it prescribes none.

Thus, I concur with the ponencia in treating this portion of Section 8, Presidential Decree No. 910, which allows the expenditures of that special fund "for other purposes as may be hereafter directed by the President," as null and void.

The same vice infects a portion of the law providing for a Presidential Social Fund.^[104] Section 12 of Presidential Decree No. 1869 as amended by Presidential Decree No. 1993 provides that the fund may be used "to finance the priority infrastructure projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines."

Two uses are contemplated by the provision: one, to finance "priority infrastructure projects," and two, to provide the Executive with flexibility in times of calamities.

I agree that "priority infrastructure projects" may be too broad so as to actually encompass everything else. The questions that readily come to mind are which kinds of infrastructure projects are not covered and what kinds of parameters will be used to determine the priorities. These are not textually discoverable, and therefore, allow an incumbent to have broad leeway. This amounts to an unconstitutional delegation of the determination of the purpose for which the special levies resulting in the creation of the special fund. This certainly was not contemplated by Article VI, Section 29(3) of the Constitution.

I regret, however, that I cannot join Justice Brion in his view that even the phrase "to be used to finance energy resource development and exploitation programs and projects of the government" in Section 8 of Presidential Decree No. 910 is too broad. This is even granting that this phrase is likewise qualified with "as may be hereafter determined by the President."

The kinds of projects relating to energy resource development and exploitation are determinable. There are obvious activities that do not square with this intent, for instance, expenditures solely for agriculture. The extent of latitude that the President is given is also commensurate with the importance of the energy sector itself. Energy is fundamental for the functioning of government as well as the private sector. It is essential to power all projects whether commercial or for the public interest. The formulation, thus, reasonably communicates discretion but puts it within reasonable bounds. In my view, and with due respect to the opinion of Justice Brion, the challenge of this

phrase's unconstitutionality lacks the clarity that should compel us to strike it down.

VII

A member of the House of Representatives or a Senator is not an automated teller machine or ATM from which the public could withdraw funds for sundry private purposes. They should be honorable elected officials tasked with having a longer and broader view. Their role is to use their experience and their understanding of their constituents to craft policy articulated in laws. Congress is entrusted to work with political foresight.

Congress, as a whole, checks the spending of the President as it goes through the annual exercise of deciding what to authorize in the budget. A level of independence and maturity is required in relation to the passage of laws requested by the Executive. Poverty and inefficiencies in government are the result of lack of accountability. Accountability should no longer be compromised.

Pork barrel funds historically encourage dole-outs. It inculcates a perverse understanding of representative democracy. It encourages a culture that misunderstands the important function of public representation in Congress. It does not truly empower those who are impoverished or found in the margins of our society.

There are better, more lasting and systematic ways to help our people survive. A better kind of democracy should not be the ideal. It should be the norm.

We listen to our people as we read the Constitution. We watch as others do their part and are willing to do more. We note the public's message:

Politics should not be as it was. Eradicate greed. Exact accountability. Build a government that has a collective passion for real social justice.

ACCORDINGLY, I vote to GRANT the Petitions and DECLARE Title XLIV of the General Appropriations Act of 2013 UNCONSTITUTIONAL. The proviso in Section 8 of Presidential Decree No. 910, which states "for such other purposes as may hereafter be directed by the President" and the phrase in Section 12, Title IV of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, which states "to finance the priority infrastructure development projects," are likewise deemed UNCONSTITUTIONAL. I also vote to make permanent the Temporary Restraining Order issued by this Court on September 10, 2013.

[1] G.R. Nos. 113105, 113174, 113766, 113888, August 19, 1994, 235 SCRA 506.

[2] G.R. Nos. 125680 and 126313, September 4, 2001, Unsigned Resolution.

[3] Memorandum, respondents, rollo, p. 291.

[4] *David v. Arroyo*, 522 Phil. 705, 763-764 (2006).

[5] CONSTITUTION, Article XI, Section 2 et seq.

[6] *Estrada v. Desierto*, G.R. No. 146710-15, April 3, 2001, 356 SCRA 108, In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Noriel H. Rodriguez, G.R. No. 191805, November 15, 2011, 660 SCRA 84.

[7] This was docketed as G.R. No. 209251 [formerly UDK 14951] entitled *Nepomuceno v. President Benigno Simeon C. Aquino*.

[8] Petitioner Social Justice Society President Samson S. Alcantara in G.R. No. 208493, Petition, rollo, p. 2.

- [9] Urgent Petition for Certiorari and Prohibition, Belgica, et al., rollo, p. 5.
- [10] Memorandum, petitioners Belgica, et al. (by Atty. Alfredo B. Molo, III), rollo, pp. 339-340.
- [11] Urgent Petition for Certiorari and Prohibition, Belgica, et al., rollo, p. 7.
- [12] Memorandum, petitioners Belgica, et al. (by Atty. Alfredo B. Molo, III), rollo, p. 338-339.
- [13] Joya v. Presidential Commission on Good Governance, G.R. No. 96541, August 24, 1993, 225 SCRA 568, 579.
- [14] John Hay Peoples Alternative Coalition v. Lim, 460 Phil. 530, 545 (2003).
- [15] Garcia v. Drilon, G.R. No. 179267, June 25, 2013, Concurring Opinion of Justice Leonen.
- [16] Urgent Petition for Certiorari and Prohibition, Belgica, et al., rollo, p. 4.
- [17] Presidential Decree No. 1445 (1978).
- [18] Commission on Audit Revised Rules of Procedure (2009), Rule VI, Sec. 4.
- [19] Id.
- [20] See Delos Santos v. Commission on Audit, G.R. No. 198457, August 13, 2013.
- [21] Nazareth v. Villar, G.R. No. 188635, January 29, 2013, 689 SCRA 385, 407.
- [22] Memorandum, respondents, rollo, p. 294.
- [23] Id.
- [24] Memorandum, respondents, rollo, p. 296.
- [25] Memorandum, respondents, rollo, pp. 292-294.
- [26] 63 Phil. 139 (1936).
- [27] Id. at 157-158.
- [28] Id. at 158.
- [29] Id. at 158-159.
- [30] 103 Phil. 1051 (1957).
- [31] Id. at 1065-1067.
- [32] 181 Phil. 181 (1979).
- [33] Casibang v. Aquino, 181 Phil. 181, 192-193 (1979).
- [34] RECORDS OF THE CONSTITUTIONAL COMMISSION, Vol. I, July 10, 1986, No. 27
- “x x x [T]he role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the Solicitor General set up the defense of political questions and got away with it.”
- [35] 338 Phil. 546 (1997).
- [36] Id. at 574.

[37] Id. at 604.

[38] 394 Phil. 730 (2000).

[39] Id. at 752.

[40] Id. at 757-758.

[41] 359 Phil. 276 (1998).

[42] Id. at 301.

[43] 466 Phil. 482 (2004).

[44] Id. at 506.

[45] Id. at 505-506.

[46] G.R. No. 192791, April 24, 2012, 670 SCRA 579.

[47] Id. at 592-593.

[48] *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009, 582 SCRA 694, 707 citing the Dissenting Opinion of J. Puno in *Lambino v. COMELEC*, 536 Phil. 1, 281 (2006).

[49] See *Tung Chin Hui v. Rodriguez*, 395 Phil. 169, 177 (2000). This Court held that “[t]he principle cited by petitioner is an abbreviated form of the maxim “*Stare decisis, et non quieta movere*.” That is, “When the court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same.” This principle assures certainty and stability in our legal system.”

[50] An example to this is the application of the doctrine of *stare decisis* in the case of *Philippine National Bank v. Palma*, 503 Phil. 917 (2005).

[51] See Separate Opinion of Justice Imperial with whom concur Chief Justice Avanceña and Justice Villa-Real in *In the matter of the Involuntary Insolvency of Rafael Fernandez, Philippine Trust Company and Smith, Bell & Company Ltd v. L.P. Mitchell et al.*, 59 Phil. 30, 41 (1933). It was held that “[m]erchants, manufacturers, bankers and the public in general have relied upon the uniform decisions and rulings of this court and they have undoubtedly been guided in their transactions in accordance with what we then said to be the correct construction of the law. Now, without any new and powerful reason we try to substantially modify our previous rulings by declaring that the preferences and priorities above referred to are not recognized by the Insolvency Law.”

[52] See *Lazatin v. Desierto*, G.R. No. 147097, June 5, 2009, 588 SCRA 285, 294-295, where this Court held that “the doctrine [of *stare decisis*] has assumed such value in our judicial system that the Court has ruled that “[a]bandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished.”

[53] *Ting v. Velez-Ting*, *supra* at 707 citing Dissenting Opinion of J. Puno in *Lambino v. COMELEC*, 536 Phil. 1, 281 (2006) on its discussion on the factors that should be considered before overturning prior rulings.

[54] See *In the matter of the Involuntary Insolvency of Rafael Fernandez*, 59 Phil. 30, 36-37 (1933), this Court held that “but idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right. And particularly is it not wise to subordinate legal reason to case

law and by so doing perpetuate error when it is brought to mind that the views now expressed conform in principle to the original decision and that since the first decision to the contrary was sent forth there has existed a respectable opinion of non-conformity in the court. x x x Freeing ourselves from the incubus of precedent, we have to look to legislative intention.”

[55] *Ting v. Velez-Ting*, supra at 705 citing the Dissenting Opinion of J. Puno in *Lambino v. COMELEC*, 536 Phil.1, 281.

[56] *Id.* at 707.

[57] *Id.*

[58] See *Urbano v. Chavez*, 262 Phil. 374, 385 (1990) where this Court held that “[the] principle of stare decisis notwithstanding, it is well settled that a doctrine which should be abandoned or modified should be abandoned or modified accordingly. After all, more important than anything else is that this Court should be right.”

[59] See *Tan Chong v. Secretary of Labor*, 79 Phil. 249, 257 (1947), where this Court held that “The principle of stare decisis does not mean blind adherence to precedents. The doctrine or rule laid down, which has been followed for years, no matter how sound it may be, if found to be contrary to law, must be abandoned. The principle of stare decisis does not and should not apply when there is conflict between the precedent and the law. The duty of this Court is to forsake and abandon any doctrine or rule found to be in violation of the law in force.”

[60] G.R. No. 11310, August 19, 1994, 235 SCRA 506, 523.

[61] G.R. Nos. 125680 and 126313, September 4, 2001, Unsigned Resolution.

[62] G.R. No. 164987, April 24, 2012, 670 SCRA 373.

[63] *Id.* at 379.

[64] *Id.* at 387.

[65] *Id.* at 390-391.

[66] *Id.* at 390.

[67] G.R. No. 198457, August 13, 2013

< <http://sc.judiciary.gov.ph/jurisprudence/2013/august2013/198457.pdf> > (visited November 20, 2013).

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] Constitution, Art. VI, Sec. 26.

[72] The procedures and the effect of bicameral committee deliberations were discussed in the cases of *Abakada Guro Party List v. Executive Secretary*, 506 Phil. 1, 86-90 (2005), *Montesclaros v. Comelec*, 433 Phil. 620, 634 (2002).

[73] *Gonzales v. Macaraig*, G.R. No. 87636, November 19, 1990, 191 SCRA 452, 464-468; *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133, 143-144; *PHILCONSA v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, 532-544.

[74] G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[75] Id. at 143-144.

[76] *Attiw v. Zamora*, 508 Phil. 322, 335 (2005).

[77] G.R. No. 113105, August 19, 1994, 235 SCRA 506.

[78] Id. at 534.

[79] See *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 388-389 for an outline on the budget process.

[80] Budget preparation, the first stage of the national budget process, is an executive function, in accordance with Constitution, Article VII, Section 22.

See also *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 389, citing *Guingona v. Carague*, 273 Phil. 443, 460, (1991) which outlined the budget process. It provides that the third stage of the process, budget execution, is also tasked on the Executive.

[81] Legislative authorization, the second stage of the national budget process, is a legislative function. Constitution, Article VI, Sections 24 and 29(1) provide as follows:

Section 24. All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

In *LAMP*, this Court said:

“Under the Constitution, the power of appropriation is vested in the Legislature, subject to the requirement that appropriation bills originate exclusively in the House of Representatives with the option of the Senate to propose or concur with amendments. While the budgetary process commences from the proposal submitted by the President to Congress, it is the latter which concludes the exercise by crafting an appropriation act it may deem beneficial to the nation, based on its own judgment, wisdom and purposes. Like any other piece of legislation, the appropriation act may then be susceptible to objection from the branch tasked to implement it, by way of a Presidential veto.” (Underscoring supplied.)

[82] See CONSTITUTION, Article X, Section 3 in relation to Section 14.

[83] See *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 389 citing *Guingona v. Carague*, 273 Phil. 443, 460, (1991). This provides that the fourth and last stage of the national budget process is budget accountability which refers to “the evaluation of actual performance and initially approved work targets, obligations incurred, personnel hired and work accomplished are compared with the targets set at the time the agency budgets were approved.”

[84] CONSTITUTION, Art. IX, Sec. 2(1).

[85] CONSTITUTION, Art. VI, Sec. 14.

[86] *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 389-390.

[87] Item No. 3.5 of DBM NBC No. 545. The appropriations for the agency specific budgets under the FY 2013 GAA, including automatic appropriations, shall be made available to the agency through the issuance of Agency Budget Matrix (ABM) and/or Special Allotment Release Order (SARO).

[88] Item No. 3.7.1 of DBM NBC No. 545. ABM for the comprehensive release of allotment covering agency specific budgets that do not need prior clearance shall be issued by DBM based on the FY 2013 Financial Plan submitted by the OUs/agencies.

[89] Item No. 4.2.1 of DBM NBC No. 545. Issuance of SAROs shall be necessary for the following items:

- 4.2.1.1 Appropriation items categorized under the “NC” portion of the ABM;
- 4.2.1.2 Charges against multi-user SPFs; and,
- 4.2.1.3 Adjustment between the NNC and NC portions of the approved ABM.

[90] See Department of Budget and Management, National Budget Circular No. 545 (2013) Item No. 4.2.2.

[91] Executive Order No. 292 (1987), Book VI, Chapter 5, Section 33 (1-5).

[92] Department of Budget and Management, National Budget Circular No. 547 (2013) Item 3.1. Within the limits prescribed under item 2.7 hereof, the DBM shall issue the Special Allotment Release Order (SARO) to cover the release of funds chargeable against the PDAF which shall be valid for obligation until the end of FY 2013, pursuant to Section 63, General Provisions of the FY 2013 GAA (R.A. No. 10352).

[93] Department of Budget and Management, National Budget Circular No. 545 (2013) Item 4.2.2 Appropriation items categorized under the “NC” portion of the ABM shall be released upon submission of Special Budget Requests (SBRs) duly supported with separate detailed financial plan including MCP, physical plan and other documentary requirements.

[94] Department of Budget and Management, National Budget Circular No. 547 (2013) Item No. 3.1.2.

[95] TSN, October 10, 2013, p. 18.

Justice Bernabe: Now, would you know of specific instances when a project was implemented without the identification by the individual legislator?

Solicitor General Jardeleza: I do not know, Your Honor; I do not think so but I have no specific examples. I would doubt very much, Your Honor, because to implement, there is a need to be a SARO and the NCA. And the SARO and the NCA are triggered by an identification from the legislator.

[96] *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 287.

[97] *Id.* at 293-296.

[98] *Id.* at 286-287.

[99] TSN, October 10, 2013, pp. 146-149.

[100] Section 23 in Chapter 5 of Book VI of the Revised Administrative Code mentions “with the corresponding appropriations for each program and project.” However, lump sum is also mentioned in various contexts in Sections 35 and 47 of the same chapter. The Constitution in Article VI, Section 27(2) mentions item veto. It does not qualify whether the item is a “line” or “lump sum” item.

[101] During the En Banc deliberations, I voted for the ponencia as is so as to reflect the views of its writer. In view of the context of that discussion, I read it as necessary dicta which may not yet be doctrinal.

[102] Authorizing the Department of Agriculture the Use of P4.0 Billion from fees, Revenues, and Receipts from Service Contract No. 3 for the Rice Self-Sufficiency Programs of the Government.

[103] Authorizing the Use of Fees, Revenues, and Receipts from Service Contract No. 38 for the Implementation of Development Projects for the People of Palawan.

[104] Presidential Decree No. 1869 as amended by Presidential Decree No. 1993. I agree that although Presidential Decree No. 1993 was neither pleaded nor argued by the parties, we should take judicial notice of the amendment as a matter of law.

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