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ALYANSANG MAKABAYAN; JUDY M. TAGUIWALO, PROFESSOR,  
UNIVERSITY OF THE PHILIPPINES DILIMAN, CO-CHAIRPERSON,  
PAGBABAGO; HENRI KAHN, C...**

*G.R. No. 209287. February 03, 2015*

Ponente: BERSAMIN, J.

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**BERSAMIN, J.:**

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.[1]

Before the Court are the Motion for Reconsideration[2] filed by the respondents, and the Motion for Partial Reconsideration[3] filed by the petitioners in G.R. No. 209442.

In their Motion for Reconsideration, the respondents assail the decision[4] promulgated on July 1 2014 upon the following procedural and substantive errors, viz:

PROCEDURAL

I

WITHOUT AN ACTUAL CASE OR CONTROVERSY, ALLEGATIONS OF GRAVE ABUSE OF DISCRETION ON THE PART OF ANY INSTRUMENTALITY OF THE GOVERNMENT CANNOT CONFER ON THIS HONORABLE COURT THE POWER TO DETERMINE THE CONSTITUTIONALITY OF THE DAP AND NBC NO. 541

II

PETITIONERS' ACTIONS DO NOT PRESENT AN ACTUAL CASE OR CONTROVERSY AND THEREFORE THIS HONORABLE COURT DID NOT ACQUIRE JURISDICTION

III

PETITIONERS HAVE NEITHER BEEN INJURED NOR THREATENED WITH INJURY AS A RESULT OF THE OPERATION OF THE DAP AND THEREFORE SHOULD HAVE BEEN HELD TO HAVE NO STANDING TO BRING THESE SUITS FOR CERTIORARI AND PROHIBITION

IV

NOR CAN PETITIONERS' STANDING BE SUSTAINED ON THE GROUND THAT THEY ARE BRINGING THESE SUITS AS CITIZENS AND AS TAXPAYERS

V

THE DECISION OF THIS HONORABLE COURT IS NOT BASED ON A CONSIDERATION OF THE

ACTUAL APPLICATIONS OF THE DAP IN 116 CASES BUT SOLELY ON AN ABSTRACT CONSIDERATION OF NBC NO. 541[5]

SUBSTANTIVE

I

THE EXECUTIVE DEPARTMENT PROPERLY INTERPRETED “SAVINGS” UNDER THE RELEVANT PROVISIONS OF THE GAA

II

ALL DAP APPLICATIONS HAVE APPROPRIATION COVER

III

THE PRESIDENT HAS AUTHORITY TO TRANSFER SAVINGS TO OTHER DEPARTMENTS PURSUANT TO HIS CONSTITUTIONAL POWERS

IV

THE 2011, 2012 AND 2013 GAAS ONLY REQUIRE THAT REVENUE COLLECTIONS FROM EACH SOURCE OF REVENUE ENUMERATED IN THE BUDGET PROPOSAL MUST EXCEED THE CORRESPONDING REVENUE TARGET

V

THE OPERATIVE FACT DOCTRINE WAS WRONGLY APPLIED[6]

The respondents maintain that the issues in these consolidated cases were mischaracterized and unnecessarily constitutionalized; that the Court’s interpretation of savings can be overturned by legislation considering that savings is defined in the General Appropriations Act (GAA), hence making savings a statutory issue;[7] that the withdrawn unobligated allotments and unreleased appropriations constitute savings and may be used for augmentation;[8] and that the Court should apply legally recognized norms and principles, most especially the presumption of good faith, in resolving their motion.[9]

On their part, the petitioners in G.R. No. 209442 pray for the partial reconsideration of the decision on the ground that the Court thereby:

FAILED TO DECLARE AS UNCONSTITUTIONAL AND ILLEGAL ALL MONEYS UNDER THE DISBURSEMENT ACCELERATION PROGRAM (DAP) USED FOR ALLEGED AUGMENTATION OF APPROPRIATION ITEMS THAT DID NOT HAVE ACTUAL DEFICIENCIES[10]

They submit that augmentation of items beyond the maximum amounts recommended by the President for the programs, activities and projects (PAPs) contained in the budget submitted to Congress should be declared unconstitutional.

**Ruling of the Court**

We deny the motion for reconsideration of the petitioners in G.R. No. 209442, and partially grant the motion for reconsideration of the respondents.

The procedural challenges raised by the respondents, being a mere rehash of their earlier arguments herein, are dismissed for being already passed upon in the assailed decision.

As to the substantive challenges, the Court discerns that the grounds are also reiterations of the arguments that

were already thoroughly discussed and passed upon in the assailed decision. However, certain declarations in our July 1, 2014 Decision are modified in order to clarify certain matters and dispel further uncertainty.

1.

The Court's power of judicial review

The respondents argue that the Executive has not violated the GAA because savings as a concept is an ordinary species of interpretation that calls for legislative, instead of judicial, determination.[11]

This argument cannot stand.

The consolidated petitions distinctly raised the question of the constitutionality of the acts and practices under the DAP, particularly their non-conformity with Section 25(5), Article VI of the Constitution and the principles of separation of power and equal protection. Hence, the matter is still entirely within the Court's competence, and its determination does not pertain to Congress to the exclusion of the Court. Indeed, the interpretation of the GAA and its definition of savings is a foremost judicial function. This is because the power of judicial review vested in the Court is exclusive. As clarified in *Endencia and Jugo v. David*: [12]

Under our system of constitutional government, the Legislative department is assigned the power to make and enact laws. The Executive department is charged with the execution of carrying out of the provisions of said laws. But the interpretation and application of said laws belong exclusively to the Judicial department. And this authority to interpret and apply the laws extends to the Constitution. Before the courts can determine whether a law is constitutional or not, it will have to interpret and ascertain the meaning not only of said law, but also of the pertinent portion of the Constitution in order to decide whether there is a conflict between the two, because if there is, then the law will have to give way and has to be declared invalid and unconstitutional.

x x x x

We have already said that the Legislature under our form of government is assigned the task and the power to make and enact laws, but not to interpret them. This is more true with regard to the interpretation of the basic law, the Constitution, which is not within the sphere of the Legislative department. If the Legislature may declare what a law means, or what a specific portion of the Constitution means, especially after the courts have in actual case ascertain its meaning by interpretation and applied it in a decision, this would surely cause confusion and instability in judicial processes and court decisions. Under such a system, a final court determination of a case based on a judicial interpretation of the law of the Constitution may be undermined or even annulled by a subsequent and different interpretation of the law or of the Constitution by the Legislative department. That would be neither wise nor desirable, besides being clearly violative of the fundamental, principles of our constitutional system of government, particularly those governing the separation of powers.[13]

The respondents cannot also ignore the glaring fact that the petitions primarily and significantly alleged grave abuse of discretion on the part of the Executive in the implementation of the DAP. The resolution of the petitions thus demanded the exercise by the Court of its aforescribed power of judicial review as mandated by the Constitution.

2.

Strict construction on the accumulation and utilization of savings

The decision of the Court has underscored that the exercise of the power to augment shall be strictly construed by virtue of its being an exception to the general rule that the funding of PAPs shall be limited to the amount fixed by Congress for the purpose.[14] Necessarily, savings, their utilization and their management will also be strictly

construed against expanding the scope of the power to augment.[15] Such a strict interpretation is essential in order to keep the Executive and other budget implementors within the limits of their prerogatives during budget execution, and to prevent them from unduly transgressing Congress' power of the purse.[16] Hence, regardless of the perceived beneficial purposes of the DAP, and regardless of whether the DAP is viewed as an effective tool of stimulating the national economy, the acts and practices under the DAP and the relevant provisions of NBC No. 541 cited in the Decision should remain illegal and unconstitutional as long as the funds used to finance the projects mentioned therein are sourced from savings that deviated from the relevant provisions of the GAA, as well as the limitation on the power to augment under Section 25(5), Article VI of the Constitution. In a society governed by laws, even the best intentions must come within the parameters defined and set by the Constitution and the law. Laudable purposes must be carried out through legal methods.[17]

Respondents contend, however, that withdrawn unobligated allotments and unreleased appropriations under the DAP are savings that may be used for augmentation, and that the withdrawal of unobligated allotments were made pursuant to Section 38 Chapter 5, Book VI of the Administrative Code;[18] that Section 38 and Section 39, Chapter 5, Book VI of the Administrative Code are consistent with Section 25(5), Article VI of the Constitution, which, taken together, constitute "a framework for which economic managers of the nation may pull various levers in the form of authorization from Congress to efficiently steer the economy towards the specific and general purposes of the GAA;"[19] and that the President's augmentation of deficient items is in accordance with the standing authority issued by Congress through Section 39.

Section 25(5), Article VI of the Constitution states:

Section 25. x x x

x x x x

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.

x x x x

Section 38 and Section 39, Chapter 5, Book VI of the Administrative Code provide:

Section 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.

Section 39. Authority to Use Savings in Appropriations to Cover Deficits.—Except as otherwise provided in the General Appropriations Act, any savings in the regular appropriations authorized in the General Appropriations Act for programs and projects of any department, office or agency, may, with the approval of the President, be used to cover a deficit in any other item of the regular appropriations: Provided, that the creation of new positions or increase of salaries shall not be allowed to be funded from budgetary savings except when specifically authorized by law: Provided, further, that whenever authorized positions are transferred from one program or project to another within the same department, office or agency, the corresponding amounts appropriated for personal services are also deemed transferred, without, however increasing the total outlay for personal services of the department, office or agency concerned. (Bold underscoring supplied for emphasis)

In the Decision, we said that:

Unobligated allotments, on the other hand, were encompassed by the first part of the definition of “savings” in the GAA, that is, as “portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance.” But the first part of the definition was further qualified by the three enumerated instances of when savings would be realized. As such, unobligated allotments could not be indiscriminately declared as savings without first determining whether any of the three instances existed. This signified that the DBM’s withdrawal of unobligated allotments had disregarded the definition of savings under the GAAs.

x x x x

The respondents rely on Section 38, Chapter 5, Book VI of the Administrative Code of 1987 to justify the withdrawal of unobligated allotments. But the provision authorized only the suspension or stoppage of further expenditures, not the withdrawal of unobligated allotments, to wit:

x x x x

Moreover, the DBM did not suspend or stop further expenditures in accordance with Section 38, *supra*, but instead transferred the funds to other PAPs.[20]

We now clarify.

Section 38 refers to the authority of the President “to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act.” When the President suspends or stops expenditure of funds, savings are not automatically generated until it has been established that such funds or appropriations are free from any obligation or encumbrance, and that the work, activity or purpose for which the appropriation is authorized has been completed, discontinued or abandoned.

It is necessary to reiterate that under Section 5.7 of NBC No. 541, the withdrawn unobligated allotments may be:

5.7.1

Reissued for the original programs and projects of the agencies/OUs concerned, from which the allotments were withdrawn;

5.7.2

Realigned to cover additional funding for other existing programs and projects of the agency/OU; or

5.7.3

Used to augment existing programs and projects of any agency and to fund priority programs and projects not considered in the 2012 budget but expected to be started or implemented during the current year.

Although the withdrawal of unobligated allotments may have effectively resulted in the suspension or stoppage of expenditures through the issuance of negative Special Allotment Release Orders (SARO), the reissuance of withdrawn allotments to the original programs and projects is a clear indication that the program or project from which the allotments were withdrawn has not been discontinued or abandoned. Consequently, as we have pointed out in the Decision, “the purpose for which the withdrawn funds had been appropriated was not yet fulfilled, or did not yet cease to exist, rendering the declaration of the funds as savings impossible.”[21] In this regard, the withdrawal and transfer of unobligated allotments remain unconstitutional. But then, whether the withdrawn allotments have actually been reissued to their original programs or projects is a factual matter determinable by the proper tribunal.

Also, withdrawals of unobligated allotments pursuant to NBC No. 541 which shortened the availability of

appropriations for MOOE and capital outlays, and those which were transferred to PAPs that were not determined to be deficient, are still constitutionally infirm and invalid.

At this point, it is likewise important to underscore that the reversion to the General Fund of unexpended balances of appropriations – savings included – pursuant to Section 28 Chapter IV, Book VI of the Administrative Code[22] does not apply to the Constitutional Fiscal Autonomy Group (CFAG), which include the Judiciary, Civil Service Commission, Commission on Audit, Commission on Elections, Commission on Human Rights, and the Office of the Ombudsman. The reason for this is that the fiscal autonomy enjoyed by the CFAG –

x x x contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.

The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. x x x[23]

On the other hand, Section 39 is evidently in conflict with the plain text of Section 25(5), Article VI of the Constitution because it allows the President to approve the use of any savings in the regular appropriations authorized in the GAA for programs and projects of any department, office or agency to cover a deficit in any other item of the regular appropriations. As such, Section 39 violates the mandate of Section 25(5) because the latter expressly limits the authority of the President to augment an item in the GAA to only those in his own Department out of the savings in other items of his own Department's appropriations. Accordingly, Section 39 cannot serve as a valid authority to justify cross-border transfers under the DAP. Augmentations under the DAP which are made by the Executive within its department shall, however, remain valid so long as the requisites under Section 25(5) are complied with.

In this connection, the respondents must always be reminded that the Constitution is the basic law to which all laws must conform. No act that conflicts with the Constitution can be valid.[24] In *Mutuc v. Commission on Elections*,[25] therefore, we have emphasized the importance of recognizing and bowing to the supremacy of the Constitution:

x x x The concept of the Constitution as the fundamental law, setting forth the criterion for the validity of any public act whether proceeding from the highest official or the lowest functionary, is a postulate of our system of government. That is to manifest fealty to the rule of law, with priority accorded to that which occupies the topmost rung in the legal hierarchy. The three departments of government in the discharge of the functions with which it is [sic] entrusted have no choice but to yield obedience to its commands. Whatever limits it imposes must be observed. Congress in the enactment of statutes must ever be on guard lest the restrictions on its authority, whether substantive or formal, be transcended. The Presidency in the execution of the laws cannot ignore or disregard what it ordains. In its task of applying the law to the facts as found in deciding cases, the judiciary is called upon to maintain inviolate what is decreed by the fundamental law. Even its power of judicial review to pass upon the validity of the acts of the coordinate branches in the course of adjudication

is a logical corollary of this basic principle that the Constitution is paramount. It overrides any governmental measure that fails to live up to its mandates. Thereby there is a recognition of its being the supreme law.

Also, in *Biraogo v. Philippine Truth Commission* of 2010,[26] we have reminded that: –

The role of the Constitution cannot be overlooked. It is through the Constitution that the fundamental powers of government are established, limited and defined, and by which these powers are distributed among the several departments. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. Constitutional doctrines must remain steadfast no matter what may be the tides of time. It cannot be simply made to sway and accommodate the call of situations and much more tailor itself to the whims and caprices of government and the people who run it.[27]

3.

The power to augment cannot be used to fund non-existent provisions in the GAA

The respondents posit that the Court has erroneously invalidated all the DAP-funded projects by overlooking the difference between an item and an allotment class, and by concluding that they do not have appropriation cover; and that such error may induce Congress and the Executive (through the DBM) to ensure that all items should have at least P1 funding in order to allow augmentation by the President.[28]

At the outset, we allay the respondents' apprehension regarding the validity of the DAP funded projects. It is to be emphatically indicated that the Decision did not declare the en masse invalidation of the 116 DAP-funded projects. To be sure, the Court recognized the encouraging effects of the DAP on the country's economy,[29] and acknowledged its laudable purposes, most especially those directed towards infrastructure development and efficient delivery of basic social services.[30] It bears repeating that the DAP is a policy instrument that the Executive, by its own prerogative, may utilize to spur economic growth and development.

Nonetheless, the Decision did find doubtful those projects that appeared to have no appropriation cover under the relevant GAAs on the basis that: (1) the DAP funded projects that originally did not contain any appropriation for some of the expense categories (personnel, MOOE and capital outlay); and (2) the appropriation code and the particulars appearing in the SARO did not correspond with the program specified in the GAA.

The respondents assert, however, that there is no constitutional requirement for Congress to create allotment classes within an item. What is required is for Congress to create items to comply with the line-item veto of the President.[31]

After a careful reexamination of existing laws and jurisprudence, we find merit in the respondents' argument.

Indeed, Section 25(5) of the 1987 Constitution mentions of the term item that may be the object of augmentation by the President, the Senate President, the Speaker of the House, the Chief Justice, and the heads of the Constitutional Commissions. In *Belgica v. Ochoa*,[32] we said that an item that is the distinct and several part of the appropriation bill, in line with the item-veto power of the President, must contain "specific appropriations of money" and not be only general provisions, thus:

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*, 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.” 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. x x x (Emphasis supplied)[33]

Accordingly, the item referred to by Section 25(5) of the Constitution is the last and indivisible purpose of a program in the appropriation law, which is distinct from the expense category or allotment class. There is no specificity, indeed, either in the Constitution or in the relevant GAAs that the object of augmentation should be the expense category or allotment class. In the same vein, the President cannot exercise his veto power over an expense category; he may only veto the item to which that expense category belongs to.

Further, in *Nazareth v. Villar*,[34] we clarified that there must be an existing item, project or activity, purpose or object of expenditure with an appropriation to which savings may be transferred for the purpose of augmentation. Accordingly, so long as there is an item in the GAA for which Congress had set aside a specified amount of public fund, savings may be transferred thereto for augmentation purposes. This interpretation is consistent not only with the Constitution and the GAAs, but also with the degree of flexibility allowed to the Executive during budget execution in responding to unforeseeable contingencies.

Nonetheless, this modified interpretation does not take away the caveat that only DAP projects found in the appropriate GAAs may be the subject of augmentation by legally accumulated savings. Whether or not the 116 DAP-funded projects had appropriation cover and were validly augmented require factual determination that is not within the scope of the present consolidated petitions under Rule 65.

4.

Cross-border transfers are constitutionally impermissible

The respondents assail the pronouncement of unconstitutionality of cross-border transfers made by the President. They submit that Section 25(5), Article VI of the Constitution prohibits only the transfer of appropriation, not savings. They relate that cross-border transfers have been the practice in the past, being consistent with the President’s role as the Chief Executive.[35]

In view of the clarity of the text of Section 25(5), however, the Court stands by its pronouncement, and will not brook any strained interpretations.

5.

Unprogrammed funds may only be released upon proof that the total revenues exceeded the target

Based on the 2011, 2012 and 2013 GAAs, the respondents contend that each source of revenue in the budget proposal must exceed the respective target to authorize release of unprogrammed funds. Accordingly, the Court's ruling thereon nullified the intention of the authors of the unprogrammed fund, and renders useless the special provisions in the relevant GAAs.[36]

The respondents' contentions are without merit.

To recall, the respondents justified the use of unprogrammed funds by submitting certifications from the Bureau of Treasury and the Department of Finance (DOF) regarding the dividends derived from the shares of stock held by the Government in government-owned and controlled corporations.[37] In the decision, the Court has held that the requirement under the relevant GAAs should be construed in light of the purpose for which the unprogrammed funds were denominated as "standby appropriations." Hence, revenue targets should be considered as a whole, not individually; otherwise, we would be dealing with artificial revenue surpluses. We have even cautioned that the release of unprogrammed funds based on the respondents' position could be unsound fiscal management for disregarding the budget plan and fostering budget deficits, contrary to the Government's surplus budget policy.[38]

While we maintain the position that aggregate revenue collection must first exceed aggregate revenue target as a pre-requisite to the use of unprogrammed funds, we clarify the respondents' notion that the release of unprogrammed funds may only occur at the end of the fiscal year.

There must be consistent monitoring as a component of the budget accountability phase of every agency's performance in terms of the agency's budget utilization as provided in Book VI, Chapter 6, Section 51 and Section 52 of the Administrative Code of 1987, which state:

SECTION 51. Evaluation of Agency Performance.—The President, through the Secretary shall evaluate on a continuing basis the quantitative and qualitative measures of agency performance as reflected in the units of work measurement and other indicators of agency performance, including the standard and actual costs per unit of work.

SECTION 52. Budget Monitoring and Information System.—The Secretary of Budget shall determine accounting and other items of information, financial or otherwise, needed to monitor budget performance and to assess effectiveness of agencies' operations and shall prescribe the forms, schedule of submission, and other components of reporting systems, including the maintenance of subsidiary and other records which will enable agencies to accomplish and submit said information requirements: Provided, that the Commission on Audit shall, in coordination with the Secretary of Budget, issue rules and regulations that may be applicable when the reporting requirements affect accounting functions of agencies: Provided, further, that the applicable rules and regulations shall be issued by the Commission on Audit within a period of thirty (30) days after the Department of Budget and Management prescribes the reporting requirements.

Pursuant to the foregoing, the Department of Budget and Management (DBM) and the Commission on Audit (COA) require agencies under various joint circulars to submit budget and financial accountability reports (BFAR) on a regular basis,[39] one of which is the Quarterly Report of Income or Quarterly Report of Revenue and Other Receipts.[40] On the other hand, as Justice Carpio points out in his Separate Opinion, the Development Budget Coordination Committee (DBCC) sets quarterly revenue targets for a specific fiscal year.[41] Since information on both actual revenue collections and targets are made available every quarter, or at such time as the DBM may prescribe, actual revenue surplus may be determined accordingly and releases from the unprogrammed

fund may take place even prior to the end of the fiscal year.[42]

In fact, the eleventh special provision for unprogrammed funds in the 2011 GAA requires the DBM to submit quarterly reports stating the details of the use and releases from the unprogrammed funds, viz:

11. Reportorial Requirement. The DBM shall submit to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and purposes thereof, and the recipient departments, bureaus, agencies or offices, GOCCs and GFIs, including the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.

Similar provisions are contained in the 2012 and 2013 GAAs.[43]

However, the Court's construction of the provision on unprogrammed funds is a statutory, not a constitutional, interpretation of an ambiguous phrase. Thus, the construction should be given prospective effect.[44]

6.

The presumption of good faith stands despite the obiter pronouncement

The remaining concern involves the application of the operative fact doctrine.

The respondents decry the misapplication of the operative fact doctrine, stating:

110. The doctrine of operative fact has nothing to do with the potential liability of persons who acted pursuant to a then-constitutional statute, order, or practice. They are presumed to have acted in good faith and the court cannot load the dice, so to speak, by disabling possible defenses in potential suits against so-called "authors, proponents and implementors." The mere nullification are still deemed valid on the theory that judicial nullification is a contingent or unforeseen event.

111. The cases before us are about the statutory and constitutional interpretations of so-called acts and practices under a government program, DAP. These are not civil, administrative, or criminal actions against the public officials responsible for DAP, and any statement about bad faith may be unfairly and maliciously exploited for political ends. At the same time, any negation of the presumption of good faith, which is the unfortunate implication of paragraphs 3 and 4 of page 90 of the Decision, violates the constitutional presumption of innocence, and is inconsistent with the Honorable Court's recognition that "the implementation of the DAP yielded undeniably positive results that enhanced the economic welfare of the country."

112. The policy behind the operative fact doctrine is consistent with the idea that regardless of the nullification of certain acts and practices under the DAP and/or NBC No. 541, it does not operate to impute bad faith to authors, proponents and implementors who continue to enjoy the presumption of innocence and regularity in the performance of official functions and duties. Good faith is presumed, whereas bad faith requires the existence of facts. To hold otherwise would send a chilling effect to all public officers whether of minimal or significant discretion, the result of which would be a dangerous paralysis of bureaucratic activity.[45] (Emphasis supplied)

In the speech he delivered on July 14, 2014, President Aquino III also expressed the view that in applying the doctrine of operative fact, the Court has already presumed the absence of good faith on the part of the authors, proponents and implementors of the DAP, so that they would have to prove good faith during trial.[46]

Hence, in their Motion for Reconsideration, the respondents now urge that the Court should extend the presumption of good faith in favor of the President and his officials who co-authored, proposed or implemented the DAP.[47]

The paragraphs 3 and 4 of page 90 of the Decision alluded to by the respondents read:

Nonetheless, as Justice Brion has pointed out during the deliberations, the doctrine of operative fact does not always apply, and is not always the consequence of every declaration of constitutional invalidity. It can be invoked only in situations where the nullification of the effects of what used to be a valid law would result in inequity and injustice; but where no such result would ensue, the general rule that an unconstitutional law is totally ineffective should apply.

In that context, as Justice Brion has clarified, the doctrine of operative fact can apply only to the PAPs that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the DAP, but cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities.[48] (Bold underscoring is supplied)

The quoted text of paragraphs 3 and 4 shows that the Court has neither thrown out the presumption of good faith nor imputed bad faith to the authors, proponents and implementors of the DAP. The contrary is true, because the Court has still presumed their good faith by pointing out that “the doctrine of operative fact xxx cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities.” Note that the proper tribunals can make “concrete findings of good faith in their favor” only after a full hearing of all the parties in any given case, and such a hearing can begin to proceed only after according all the presumptions, particularly that of good faith, by initially requiring the complainants, plaintiffs or accusers to first establish their complaints or charges before the respondent authors, proponents and implementors of the DAP.

It is equally important to stress that the ascertainment of good faith, or the lack of it, and the determination of whether or not due diligence and prudence were exercised, are questions of fact.[49] The want of good faith is thus better determined by tribunals other than this Court, which is not a trier of facts.[50]

For sure, the Court cannot jettison the presumption of good faith in this or in any other case. The presumption is a matter of law. It has had a long history. Indeed, good faith has long been established as a legal principle even in the heydays of the Roman Empire.[51] In *Soriano v. Marcelo*,[52] citing *Collantes v. Marcelo*,[53] the Court emphasizes the necessity of the presumption of good faith, thus:

Well-settled is the rule that good faith is always presumed and the Chapter on Human Relations of the Civil Code directs every person, *inter alia*, to observe good faith which springs from the fountain of good conscience. Specifically, a public officer is presumed to have acted in good faith in the performance of his duties. Mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith. “Bad faith” does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.

The law also requires that the public officer’s action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. x x x

The Court has further explained in *Philippine Agila Satellite, Inc. v. Trinidad-Lichauco*:[54]

We do not doubt the existence of the presumptions of “good faith” or “regular performance of official duty”, yet these presumptions are disputable and may be contradicted and overcome by other evidence. Many civil actions are oriented towards overcoming any number of these presumptions, and a cause of action can certainly

be geared towards such effect. The very purpose of trial is to allow a party to present evidence to overcome the disputable presumptions involved. Otherwise, if trial is deemed irrelevant or unnecessary, owing to the perceived indisputability of the presumptions, the judicial exercise would be relegated to a mere ascertainment of what presumptions apply in a given case, nothing more. Consequently, the entire Rules of Court is rendered as excess verbiage, save perhaps for the provisions laying down the legal presumptions.

Relevantly, the authors, proponents and implementors of the DAP, being public officers, further enjoy the presumption of regularity in the performance of their functions. This presumption is necessary because they are clothed with some part of the sovereignty of the State, and because they act in the interest of the public as required by law.[55] However, the presumption may be disputed.[56]

At any rate, the Court has agreed during its deliberations to extend to the proponents and implementors of the DAP the benefit of the doctrine of operative fact. This is because they had nothing to do at all with the adoption of the invalid acts and practices.

7.

The PAPs under the DAP remain effective under the operative fact doctrine

As a general rule, the nullification of an unconstitutional law or act carries with it the illegality of its effects. However, in cases where nullification of the effects will result in inequity and injustice, the operative fact doctrine may apply.[57] In so ruling, the Court has essentially recognized the impact on the beneficiaries and the country as a whole if its ruling would pave the way for the nullification of the P144.378 Billions[58] worth of infrastructure projects, social and economic services funded through the DAP. Bearing in mind the disastrous impact of nullifying these projects by virtue alone of the invalidation of certain acts and practices under the DAP, the Court has upheld the efficacy of such DAP-funded projects by applying the operative fact doctrine. For this reason, we cannot sustain the Motion for Partial Reconsideration of the petitioners in G.R. No. 209442.

IN VIEW OF THE FOREGOING, and SUBJECT TO THE FOREGOING CLARIFICATIONS, the Court PARTIALLY GRANTS the Motion for Reconsideration filed by the respondents, and DENIES the Motion for Partial Reconsideration filed by the petitioners in G.R. No. 209442 for lack of merit.

ACCORDINGLY, the dispositive portion of the Decision promulgated on July 1, 2014 is hereby MODIFIED as follows:

WHEREFORE, the Court PARTIALLY GRANTS the petitions for certiorari and prohibition; and DECLARES the following acts and practices under the Disbursement Acceleration Program, National Budget Circular No. 541 and related executive issuances UNCONSTITUTIONAL for being in violation of Section 25(5), Article VI of the 1987 Constitution and the doctrine of separation of powers, namely:

- (a) The withdrawal of unobligated allotments from the implementing agencies, and the declaration of the withdrawn unobligated allotments and unreleased appropriations as savings prior to the end of the fiscal year without complying with the statutory definition of savings contained in the General Appropriations Acts; and
- (b) The cross-border transfers of the savings of the Executive to augment the appropriations of other offices outside the Executive.

The Court further DECLARES VOID the use of unprogrammed funds despite the absence of a certification by the National Treasurer that the revenue collections exceeded the revenue targets for non-compliance with the conditions provided in the relevant General Appropriations Acts.

**SO ORDERED.**

Sereno, (Chief Justice), Brion, Peralta, Villarama, Jr., Perez, Mendoza, Reyes, and Perlas-Bernabe, JJ., concur.  
Carpio, J., see separate opinion.

Velasco, Jr., I join the concurring and dissenting opinion of J. Del Castillo.

Leonardo-De Castro, J., no part. (due to close relations with one of the counsels of a party.)

Brion, J.,<sup>[\*\*]</sup> left his vote; see his separate opinion (qualified concurrence).

Del Castillo, J., see concurring and dissenting opinion.

Leonen, J., see concurring opinion

Jardeleza, J., no part prior action or solgen.

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[\*\*] On leave.

[1] Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935 and 193036, December 7, 2010, 637 SCRA 78, 177.

[2] Rollo (G.R. No. 209287), pp. 1431-1482.

[3] Id. at 1496-1520.

[4] Id. at 1135-1241.

[5] Id. at 1434-1435.

[6] Id.

[7] Id. at 1435-1438.

[8] Id. 1444-1449.

[9] Id. at 1432.

[10] Id. at 1496.

[11] Id. at 1435.

[12] Nos. L-6355-56, 93 Phil. 696 (1953).

[13] Id. at 700-702 (bold underscoring is supplied for emphasis).

[14] Rollo (G.R. No. 209287), pp. 1203-1204.

[15] Id. at 1208.

[16] Id.

[17] Brillantes, Jr. v. Commission on Elections, G.R. No. 163193, June 15, 2004, 432 SCRA 269, 307.

[18] Supra note 7, at 1448.

[19] Id. at 1449.

[20] Decision, pp. 60-67.

[21] Id. at 62.

[22] Id. at 67.

- [23] *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133.
- [24] *Social Justice Society (SJS) v. Dangerous Drugs Board*, G.R. Nos. 157870, 158633 and 161658, November 3, 2008, 570 SCRA 410, 422-423.
- [25] No. L-32717, November 26, 1970, 36 SCRA 228, 234-235.
- [26] G.R. No. 192935 and 193036, December 7, 2010, 637 SCRA 78.
- [27] *Id.* at 137-138.
- [28] *Supra* note 7, at 1450-1451.
- [29] Decision, p. 36.
- [30] *Id.* at 90.
- [31] Respondents' Motion for Reconsideration, p. 21.
- [32] G.R. No. 208566, November 19, 2013, 710 SCRA 1.
- [33] *Id.* at 126-127.
- [34] G.R. No. 188635, January 29, 2013, 689 SCRA 385.
- [35] *Supra* note 7, at 1455-1459.
- [36] *Id.* at 1459-1465.
- [37] *Rollo* (G.R. No. 209155), pp. 327, 337-339.
- [38] *Supra* note 14, at 1231-1232.
- [39] <http://budgetngbayan.com/budget-101/budget-accountability/#BAR> (Visited on January 28, 2015).
- [40] See also the DBM and COA's Joint Circular No. 2013-1, March 15, 2013 and Joint Circular No. 2014-1, July 2, 2014.
- [41] J. Carpio, Separate Opinion, p. 11.
- [42] In this regard, the ninth and tenth special provisions for unprogrammed funds in the 2011 GAA also provide the following:
9. Use of Income. In case of deficiency in the appropriations for the following business-type activities, departments, bureaus, offices and agencies enumerated hereunder and other agencies as may be determined by the Permanent Committee are hereby authorized to use their respective income collected during the year. Said income shall be deposited with the National Treasury, chargeable against Purpose 4 - General Fund Adjustments, to be used exclusively for the purposes indicated herein or such other purposes authorized by the Permanent Committee, as may be required until the end of the year, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E. O. No. 292, s. 1987:
- x x x x
- Implementation of this section shall be subject to guidelines to be issued by the DBM.
10. Use of Excess Income. Agencies collecting fees and charges as shown in the FY 2011 Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National

Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 4 - General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.

Implementation of this section shall be subject to guidelines jointly issued by the DBM and DOF

The 2012 and 2013 GAAs also contain similar provisions.

[43] 2012 GAA provides:

8. Reportorial Requirement. The DBM shall submit, either in printed form or by way of electronic document, to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and the purposes thereof, and the recipient departments, bureaus, agencies or offices, including GOCCs and GFIs, as well as the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.

2013 GAA reads:

8. Reportorial Requirement. The DBM shall submit, either in printed form or by way of electronic document, to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and the purposes thereof, and the recipient departments, bureaus, and offices, including GOCCs and GFIs, as well as the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.

[44] *Commission of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, 690 SCRA 336.

[45] *Supra* note 7, at 1466-1467.

[46]

<http://www.gov.ph/2014/07/14/english-national-address-of-president-aquino-on-the-supreme-courts-decision-on-dap/> Last visited on November 13, 2014.

[47] *Supra* note 7, at 1432.

[48] *Supra* note 14, at 1239.

[49] *Philippine National Bank v. Heirs of Estanislao Militar*, G.R. No. 164801 and 165165, June 30, 2006, 494 SCRA 308, 319.

[50] *Id.*

[51] See *Good Faith in European Contract Law*, R. Zimmermann, S. Whittaker, eds., Cambridge University Press, 2000, p. 16; <http://catdir.loc.gov/catdir/samples/cam032/99037679.pdf> (Visited on November 24, 2014).

[52] G.R. No. 160772, July 13, 2009, 592 SCRA 394.

[53] G.R. Nos. 167006-07, 14 August 2007, 530 SCRA 142.

[54] G.R. No. 142362, May 3, 2006, 489 SCRA 22.

[55] *Words And Phrases*, Vol. 35, p. 356, citing *Bender v. Cushing*, 14 Ohio Dec. 65, 70.

[56] Section 3(l), Rule 131, Rules of Court.

[57] Id.

[58] <http://www.gov.ph/2014/07/24/dap-presentation-of-secretary-abad-to-the-senate-of-the-philippines/>  
(November 27, 2014)

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## SEPARATE OPINION

### CARPIO, J.:

The Motion for Reconsideration filed by respondents must be denied for lack of merit.

I. Statutorily-defined “savings” does not make the issues raised in the petitions less constitutional.

In their Motion for Reconsideration, respondents contend, among others, that “the issues [in these consolidated cases] were mischaracterized and unnecessarily constitutionalized.” Respondents argue that “[w]hile “savings” is a constitutional term, its meaning is entirely legislatively determined. x x x.” Respondents assert that the question of “whether the Executive properly accumulated savings is a matter of statutory interpretation involving the question of administrative compliance with the parameters set by the GAA, not by the Constitution.”

Indeed, the term “savings,” as used in Section 25(5), Article VI of the Constitution, is defined by law, the General Appropriations Act (GAA).

However, the definition of the term “savings” by statute does not make the threshold issue in these petitions purely a question of statutory interpretation. Whether respondents violated the prohibition in Section 25(5), Article VI of the Constitution, regarding “savings” and “augmentation,” falls squarely within the category of a constitutional issue which in turn necessarily demands a careful examination of the definition of these terms under the relevant GAAs in relation to the use of these terms in the Constitution.

Significantly, aside from the term “savings,” there are other words found in several provisions of the Constitution which are defined by law. The terms “contract,” “capital” and “political dynasty,” found in the following provisions of the Constitution, are defined or to be defined either by law or jurisprudence.[1]

Art. III, Sec. 10

Section 10. No law impairing the obligation of contracts shall be passed.

Article XII, Sec. 11

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

Article II, Sec. 26

Section 26. The State shall guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law.

While these terms in the Constitution are statutorily defined, a case involving their usage does not automatically reduce the case into one of mere statutory interpretation. On the contrary, it highlights the dynamic process of scrutinizing the statutory definition of certain terms and determining whether such definition conforms to the intent and language of the Constitution.

II. The definition of the term “savings” has been consistent. Any redefinition of the term must not violate the Constitution.

Prior to 2003, the term “savings” has been consistently defined in the GAAs as “portions or balances of any programmed appropriation x x x free of any obligation or encumbrance still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized, or arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay.”

Beginning 2003, a third source of savings was added. Thus, “savings” has been defined in the GAAs as “portions or balances of any programmed appropriation x x x 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 appropriations balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriations balances realized from the implementation of collective negotiation agreements which resulted in improved systems and efficiencies and thus enabled an agency to meet and deliver the required or planned targets, programs and services x x x at a lesser cost.”

Assuming redefining the term “savings” is deemed necessary by Congress, such redefinition must be consistent with the Constitution. For example, “savings” cannot be declared at anytime, like on the first day of the fiscal year, since it will negate or render useless the power of Congress to appropriate. “Savings” cannot also be declared out of future Maintenance and Other Operating Expenses (MOOE) since such declaration will deprive a government agency of operating funds during the rest of the fiscal year, effectively abolishing the agency or paralyzing its operations. Any declaration of “savings” must be reasonable, that is, there must be appropriations that are no longer needed or can no longer be used for the purpose for which the appropriations were made by Congress.

III. Respondents’ consistent argument of mootness defeats their newly-raised contention of adverse effects as a result of the decision in this case.

In their Motion for Reconsideration, respondents allege that the DAP was a response to a fiscal emergency[2] and DAP had already become operationally dead.[3]

During the Oral Arguments, respondents asserted that the present petitions be dismissed on the ground of mootness. Respondents maintained that the DAP has become *functus officio*.

(1) Presentation of Secretary Abad

In conclusion, Your Honors, may I inform the Court that because the DAP has already fully served its purpose, the Administration’s economic managers have recommended its termination to the President. Thank you and good afternoon.[4]

(2) Presentation of the Solicitor General

Your Honors, what we have shown you is how the DAP was used as a mechanism for building the DREAM and other projects. This constitutional exercise, repeated 115 times, is the story of the DAP. As Secretary Abad showed you, the circumstances that justified the creation of DAP no longer obtained. The systematic issues

that slowed down public spending have been resolved, and line agencies now have normal levels of budget utilization. This is indicated by the diminishing use of DAP, which lapsed into complete disuse in the second half of 2013, and thus became legally functus officio. The President no longer has any use for DAP in 2014. This is a compelling fact and development that we respectfully submit undermines the viability of the present petitions and puts in issue the necessity of deciding these cases in the first place. The same constitutional authority used by the President to pump-rise the economy in the first half of his Administration has not transitioned to providing relief and rehabilitation in areas of our country struck by destructive calamities. This only emphasized our point that generic constitutional tools can take on different purposes depending on the exigencies of the moment.

DAP as a program, no longer exists, thereby mooting these present cases brought to challenge its constitutionality. Any constitutional challenge should no longer be at the level of the program, which is now extinct, but at the level of its prior applications or the specific disbursements under the now defunct policy.[5] x x x. (Emphasis supplied)

(3) Justice Leonen's questions

JUSTICE LEONEN:

Ok, you are now saying... Alright, I heard it twice: Once, by the DBM Secretary and second, by your representations that DAP is no longer there.

SOLICITOR GENERAL JARDELEZA:

That's right.

JUSTICE LEONEN:

Did I hear you correctly?

SOLICITOR GENERAL JARDELEZA:

That's correct, Your Honor.

JUSTICE LEONEN:

Is there an amendatory.... is there a document, an officially released document that would clearly say that there is no longer DAP?

SOLICITOR GENERAL JARDELEZA:

I do not believe so, Your Honor, but as the Secretary has said the economic managers have, in fact, already recommended to the President that there is no need for DAP.

JUSTICE LEONEN:

Is it because the case has been filed, or because of another reason?

SOLICITOR GENERAL JARDELEZA:

No, Your Honor, because the DAP 541 has become functus officio.

JUSTICE LEONEN:

So it was not applicable in fiscal year 2013, there was no DAP in 2013?

SOLICITOR GENERAL JARDELEZA:

There was still some diminishing DAP application up to the middle of 2013 but none in the second half, Your Honor.

JUSTICE LEONEN:

Again, can you enlighten us what is “diminishing” means, what project?

SOLICITOR GENERAL JARDELEZA:

For 2013, the DAP application was only.... in the first half of 2013, it was only 16.03 Billion, Your Honor.

JUSTICE LEONEN:

Still a large amount.

SOLICITOR GENERAL JARDELEZA:

Still a large amount but if we have given the total applications approved was a Hundred and Forty-Nine Million, Your Honor.

JUSTICE LEONEN:

Okay. The good Secretary mentioned the Disbursement Acceleration Program is more that just savings and more that just unprogrammed funds containing the GAA that it was a package of reforms meant to accelerate the spending of government so as to expand the economy by saying that the DAP is no longer there, do you mean the entire thing or only the portion that mean savings and the unprogrammed funds?

SOLICITOR GENERAL JARDELEZA:

By that we mean, Circular 51, Your Honor.

JUSTICE LEONEN:

Circular 541, therefore, is no longer existing.

SOLICITOR GENERAL JARDELEZA:

Yes, Your Honor.[6]

(4) Justice Abad’s questions

JUSTICE ABAD:

Yes. So, can we not presume from this, that this government know its departments and agencies whether it has capability to spend so much money before proposing it to Congress and that in five months you are going to say, “I just discovered they cannot do it and I’m going to abandon some of these projects and use the money for other things.” Is that.... that seems logical for a government that proposes budget to be spent for a specific purpose and then within five months abandon them. How can you explain that?

SOLICITOR GENERAL JARDELEZA:

Again, my explanation. Your Honor, is that logic and our wish may not be reality. The reality was: on 2010 the administration comes in, they have managers, the orders given, use it or lose it; there is slippage, there is delay. By the middle of 2013, they have gotten their act together, they are now spending to the tune, to the clip because the president wants them to do. Therefore, there is no more DAP.[7]

x x x x

JUSTICE ABAD:

It worked for you?

SOLICITOR GENERAL JARDELEZA:

It worked, Your Honor.

JUSTICE ABAD:

But why are you abandoning it already when....

SOLICITOR GENERAL JARDELEZA:

Because it worked, Your Honor.

JUSTICE ABAD:

...in the future such problems as calamities, etc., can take place, if it's not an admission that something is wrong with it?

SOLICITOR GENERAL JARDELEZA:

It has stopped because it worked, Your Honor.[8]

Likewise, in their Memorandum, respondents averred that “[t]he termination of the DAP has rendered these cases moot, leaving any question concerning the constitutionality of its prior applications a matter for lower courts to decide.” Respondents alleged:

1. DAP, as a program, no longer exists.

82. As respondents manifested before this Honorable Court during the second hearing, the DAP no longer exists. The President's economic advisers have reported to him that the systemic issues that had slowed down public spending have been resolved, and line agencies now had normal levels of budget utilization. This is indicated by the diminishing use of DAP, which downward shift continued in 2012 and 2013, and its total disuse by the last quarter of 2013. Thus, even before the various present petitions were filed, DAP had already become operationally dead. Contrary to what some have intimated, DAP was not stopped or withdrawn because there was “something wrong with it” - rather, it became *functus officio* because it had already worked. Petitioners are challenging the ghost of a program.

83. The President no longer has any use for DAP in 2014 and its total disuse means that [] there is no longer an ongoing program that the Honorable Court can enjoin. This is a compelling fact that undermines the viability of the present cases, and puts in issue the necessity of deciding these cases in the first place. Moreover, the same constitutional authority used by the President to pump-prime the economy in the first half of his administration has now transitioned to providing relief and rehabilitation to areas of our country struck by destructive calamities. This only emphasizes respondents' point that generic constitutional tools can take on different purposes depending on the exigencies of the moment.[9]

Clearly, respondents' argument of mootness on the ground that the DAP had served its purpose negates the government's fears of the “chilling effect” of the Decision to the economy and the rest of the country. If the DAP had already achieved its goal of stimulating the economy, as respondents repeatedly and consistently argued before the Court, then no adverse economic effects could possibly result in the declaration of unconstitutionality of the DAP and the practices undertaken under the DAP.

Hence, the grim scenario of prolonging assistance to victims in case of calamities due to this Court's decision has no basis precisely because to repeat, according to respondents, the DAP had already served its purpose. Significantly, the President has an almost unlimited resources that he can tap and juggle for reconstruction and

rehabilitation of affected areas in cases of emergencies and calamities. For these unforeseen tragic natural events, the President can certainly utilize the Calamity Fund or the Contingent Fund in the GAA, as well as his Discretionary Fund and Presidential Social Fund.

In the 2011 GAA, the Calamity Fund amounted to P5,000,000,000 while the Contingent Fund amounted to P1,000,000,000. In the 2012 GAA, the Calamity Fund amounted to P7,500,000,000 while the Contingent Fund amounted to P1,000,000,000. For 2013, the Calamity Fund amounted to P7,500,000,000 while the Contingent Fund amounted to P1,000,000,000. For 2014, the National Disaster Risk Reduction and Management Fund amounted to P13,000,000,000 while the Contingent Fund amounted to P1,000,000,000. In addition, the 2014 GAA provided for Rehabilitation and Reconstruction Program (for rehabilitation, repair and reconstruction works and activities of areas affected by disasters and calamities, both natural and man-made including the areas devastated by typhoons “Yolanda,” “Santi,” “Odette,” “Pablo,” “Sendong,” “Vinta” and “Labuyo,” the 7.2 magnitude earthquake in Bohol and Cebu and the siege and unrest in Zamboanga City) amounting to P20,000,000,000.

Moreover, the President has more than enough time to observe and comply with the law and request for a supplemental budget from Congress. In the PDAF cases, I pointed out:

x x x. 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. 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. 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. x x x.

IV. The earmarking of judiciary savings for the construction of the Manila Hall of Justice is not a cross-border transfer of funds.

In their Motion for Reconsideration, respondents point out that this Court itself committed a cross-border transfer of funds, citing the Court’s 17 July 2012 Resolution that approved the earmarking of P1,865,000,000 for the construction of the Manila Hall of Justice. Respondents allege that the construction of the Manila Hall of Justice was an item in the appropriations for Department of Justice in the 2012 GAA. Respondents assumed, obviously incorrectly, that this Court transferred the amount of P1,865,000,000 to augment the items appropriated to the DOJ for the construction of the Manila Hall of Justice.

Pursuant to its “fiscal autonomy”[10] under the Constitution, the Court on 17 July 2012 adopted a Resolution setting aside and earmarking from its savings P1,865,000,000 for the construction costs of the Manila Hall of Justice. The amount was earmarked for a particular purpose, specifically the construction of the Manila Hall of Justice. However, contrary to respondents’ allegation, the amount for this purpose was never transferred to the Department of Justice or to any agency under the Executive branch. In fact, the Court kept the entire amount in its own account because it intends to construct the Manila Hall of Justice by itself. There is nothing in the language of the 17 July 2012 Resolution transferring the amount to the DOJ.

Notably, under the 2013 GAA, the Construction/Repair/Rehabilitation of Halls of Justice was already placed under the budget of the Judiciary. Under the 2014 GAA, the provision on Capital Outlays (Buildings and Other Structures) remains under the Judiciary (Annex A of the 2014 GAA). There is no provision in the 2013 and 2014 GAAs for the construction of any Hall of Justice under the DOJ.

The construction and maintenance of the Halls of Justice are essentially among the responsibilities of the

Judiciary. As such, they should necessarily be included in the annual appropriations for the Judiciary. However, before 2013, Congress placed the construction and maintenance of the Halls of Justice under the DOJ. The inclusion of such item in the DOJ budget clearly creates an anomaly where the Judiciary will have to request the DOJ, an Executive department, to construct a Hall of Justice for the Judiciary. Not only does this undermine the independence of the Judiciary, it also violates ultimately the constitutional separation of powers because one branch is made to beg for the appropriations of another branch to be used in the operations of the former.

V. Various other local projects (VOLP) is not an item in the GAA.

As I stated in my Separate Concurring Opinion, “[a]ttached to DBM Secretary Abad’s Memorandum for the President, dated 12 October 2011, is a Project List for FY 2011 DAP. The last item on the list, item no. 22, is for PDAF augmentation in the amount of P6.5 billion, also listed as “various other local projects.”[11]

“Savings can augment any existing item in the GAA, provided such item is in the “respective appropriations” of the same branch or constitutional body. As defined in Section 60, Section 54, and Section 53 of the General Provisions of the 2011, 2012 and 2013 GAAs, respectively, “augmentation implies the existence x x x of a program, activity, or project with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. In no case shall a non-existent program, activity, or project, be funded by augmentation from savings x x x.”

It must be noted that the item “various other local projects” in the DBM’s Memorandum to the President is not an existing item in the 2011, 2012 and 2013 GAAs. In respondents’ Seventh Evidence Packet, the term “other various local projects” refers not to a specific item in the GAAs since no such term or item appears in the relevant GAAs. Rather, such term refers to various soft and hard projects to be implemented by various government offices or local government units. Therefore, to augment “various other local projects,” a non-existing item in the GAA, violates the Constitution which requires the existence of an item in the general appropriations law. Likewise, it defies the express provision of the GAA which states that “[i]n no case shall a non-existent program, activity, or project, be funded by augmentation from savings x x x.”

VI. Release of the Unprogrammed Fund

One of the sources of the DAP is the Unprogrammed Fund under the GAA. The 2011, 2012, and 2013 GAAs have a common condition on the Release of the [Unprogrammed] Fund: that the “amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution x x x.” The condition in these provisions is clear and thus needs no interpretation, but only application. In other words, this express condition, that actual revenue collections must exceed the original revenue targets for the release of the Unprogrammed Fund, must be strictly observed. It is not for this Court to interpret or lift this condition. To do so is tantamount to repealing these provisions in the GAA and giving the President unbridled discretion in the disbursement of the Unprogrammed Fund.

The disbursement of the Unprogrammed Fund is determined on a quarterly basis. The revenue targets are set by the Development Budget Coordination Committee (DBCC) for each quarter of a specific fiscal year. The DBCC bases its quarterly fiscal targets on historical cumulative revenue collections. For instance, in FY 2013, the quarterly fiscal targets are as follows:

**2013 QUARTERLY FISCAL PROGRAM[12]**

## PARTICULARS

LEVELS (in billion pesos)

% DISTRIBUTION

Q1

Q2

Q3

Q4

Total

Q1

Q2

Q3

Q4

Total

Revenues

378.8

482.2

434.2

450.6

1,745.9

21.7

27.6

24.9

25.8

100

Disbursements

452.7

493.0

494.0

544.2

1,983.9

22.8

24.9

24.9

27.4

100

Surplus/(Deficit)

(73.9)

(10.8)

(59.8)

(93.6)

(238.0)

31.0

4.5

25.1

39.3

100

Considering that revenue targets are determined quarterly, revenue collections are ascertained on a quarterly basis as well. Therefore, if the government determines that revenue collections for a certain quarter exceed the revenue target for the same quarter, the government can lawfully release the appropriations under the Unprogrammed Fund. In other words, the government need not wait for the end of the fiscal year to release and spend such funds if at the end of each quarter, it has already determined an excess in revenue collections.

There are two kinds of funds under the GAA – the programmed fund and the unprogrammed fund. Under the programmed fund, there is a definite amount of spending authorized in the GAA, regardless of whether the government collects the full amount of its revenue targets for the fiscal year. Any deficit can be funded from borrowings. Such deficit spending from the programmed fund is acceptable and is carefully calculated not to trigger excessive inflation. On the other hand, under the unprogrammed fund, the government can only spend what it collects; otherwise, it may trigger excessive inflation. That is why the GAA prohibits spending from the unprogrammed fund unless the corresponding amounts are actually collected. To allow the disbursement of the unprogrammed fund without complying with the express condition imposed under the GAA will send a negative signal to businessmen and creditors because the government will be spending beyond its means – in effect borrowing or printing money. This will adversely affect investments and interest rates. Compliance or non-compliance with the express condition reflects the government's fiscal discipline or lack of it.

#### VII. The applicability of the doctrine of operative fact

I reiterate my position that the operative fact doctrine never validates or constitutionalizes an unconstitutional law.[13]

An unconstitutional act confers no rights, imposes no duties, and affords no protection.[14] An unconstitutional act is inoperative as if it has not been passed at all.[15] The exception to this rule is the doctrine of operative fact. Under this doctrine, the law or administrative issuance is recognized as unconstitutional but the effects of the unconstitutional law or administrative issuance, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play.[16]

As a rule of equity, the doctrine of operative fact can be invoked only by those who relied in good faith on the law or the administrative issuance, prior to its declaration of nullity. Those who acted in bad faith or with gross negligence cannot invoke the doctrine. Likewise, those directly responsible for an illegal or unconstitutional act cannot invoke the doctrine. He who comes to equity must come with clean hands,[17] and he who seeks equity must do equity.[18] Only those who merely relied in good faith on the illegal or unconstitutional act, without any direct participation in the commission of the illegal or unconstitutional act, can invoke the doctrine.

To repeat, the power to realign savings is vested in the President with respect to 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.

In these cases, it was the President who approved NBC 541, and it was the DBM Secretary who issued and implemented it. NBC 541 directed the “withdrawal of unobligated allotments of agencies with low level of obligations as of June 30, 2012” to augment or fund “priority and/or fast moving programs/projects of the national government.” As discussed, unobligated allotments are not savings, which term has a specific and technical definition in the GAAs. Further, paragraph 5.7.3 of NBC 541 authorizing the augmentation of “projects not considered in the 2012 budget” is unconstitutional because under Section 25(5), Article VI of the Constitution, what is authorized is “to augment any item in the general appropriations law for their respective offices.”

Since the President and the DBM Secretary approved and issued NBC 541, they are considered the authors of the unconstitutional act. As a consequence, neither the President nor the DBM Secretary can invoke the equitable doctrine of operative fact although they may raise other defenses. As authors of the unconstitutional act, they have to answer for such act.

The proponents and implementors of the projects under the DAP are presumed to have relied in good faith that the source, or realignment, of the funds is valid. To illustrate, a governor, who proposes to the President or DBM to build a school house and receives funds for such project, simply accepts and spends the funds, and would have no idea if the funds were validly realigned or not by the President. Another example is a district engineer, who receives instructions to construct a bridge and receives funds for such project. The engineer is solely concerned with the implementation of the project, and thus would also have no idea whether the funds were validly realigned or not by the President. Clearly, the proponents and implementors, who had no direct participation in the commission of the unconstitutional act and merely relied in good faith that such funds were validly appropriated or realigned for the projects, cannot be held liable for the unconstitutional act, unless they themselves committed an illegal act, like pocketing the funds.

ACCORDINGLY, I vote to DENY the respondents’ Motion for Reconsideration.

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[1] Other terms in the Constitution that are defined or to be defined by statute or by jurisprudence:

- social justice (Article II, Sec. 10 and Art. XIII)
- due process and equal protection (Art. III, Sec. 1)

- taking of private property (Article III, Sec. 9)
- writ of habeas corpus (Article III, Sec. 15)
- ex-post facto law and bill of attainder (Article III, Sec. 22)
- naturalized citizen (Article IV, Sec. 1)
- martial law (Article VII, Sec. 18)
- reprieve, commutation and pardon (Article VII, Sec. 19)
- engaged in the practice of law (Article IX, Sec. 1)
- academic freedom (Article XIV, Sec. 5[2])

[2] Motion for Reconsideration, p. 9.

[3] Motion for Reconsideration, p. 11.

[4] TSN, 28 January 2014, p. 14.

[5] TSN, 28 January 2014, p. 23.

[6] TSN, 28 January 2014, pp. 81-83.

[7] TSN, 28 January 2014, p. 103.

[8] TSN, 28 January 2014, p. 105.

[9] Memorandum, p. 30.

[10] SECTION 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

[11] Rollo (G.R. No. 209287), p. 536.

[12]

[http://www.dbm.gov.ph/wp-content/uploads/DBCC\\_MATTERS/Fiscal\\_Program/FiscalProgramOfNGFy\\_2013.pdf](http://www.dbm.gov.ph/wp-content/uploads/DBCC_MATTERS/Fiscal_Program/FiscalProgramOfNGFy_2013.pdf) (visited on 20 January 2015).

[13] *League of Cities of the Philippines v. Commission on Elections*, G.R. Nos. 176951, et al., 24 August 2010, 628 SCRA 819.

[14] *Chavez v. Judicial and Bar Council*, G.R. No. 202242, 16 April 2013, 696 SCRA 496, 516.

[15] *Id.*

[16] *League of Cities of the Philippines v. Commission on Elections*, G.R. Nos. 176951, et al., 24 August 2010, 628 SCRA 819, 832; *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 8 October 2013, 707 SCRA 66.

[17] *Chemplex (Phils.), Inc. v. Pamatian*, 156 Phil. 408 (1974); *Spouses Alvendia v. Intermediate Appellate Court*, 260 Phil. 265 (1990).

[18] *Arcenas v. Cinco*, 165 Phil. 741 (1976).

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**SEPARATE OPINION****(Qualified Concurrence)****BRION, J.:**

I write this SEPARATE OPINION (Qualified Concurrence) to express my qualified agreement with the ponencia's DENIAL WITH FINALITY of the parties' respective motions for reconsideration of the Court's Decision in these consolidated cases, promulgated on July 1, 2014.

I qualify my concurrence as I do not completely agree with the ponencia's views on AUGMENTATION; our commonly held views on this topic should take effect in the present case and in all similar future cases. While I share the ponencia's views on the OPERATIVE FACT DOCTRINE, I believe that our ruling is direct, in point and is necessary to the full resolution of the present case. It is not at all an obiter dictum.

Last but not the least, I also offer my thoughts on the Court's exercise of judicial review in these cases, and its impact on the public funds and the participants involved.

The Decision under Consideration.

We declared in our Decision that the Executive's Disbursement Acceleration Program (DAP) is unconstitutional for violating the principle of separation of powers, as well as the ----prohibition against the transfers and augmentation of funds under Article VI, Section 25, paragraph 5[1] of the 1987 Constitution.

This cited constitutional provision states that no transfer of appropriations from one item to another may be made except within very narrow exceptions. The DAP, described by its proponents as a "mechanism to support high-impact and priority programs and projects using savings and unprogrammed funds,"[2] facilitated the transfer of appropriations without complying with the requirements to allow the exceptional transfer of appropriation that the Constitution imposes:

(1)

The General Appropriation Acts (GAAs) of 2011 and 2012 lacked the appropriate provisions authorizing the transfer of funds. Contrary to the constitutional provision limiting the transfer of savings within a single branch of government, the GAAs authorized the "cross-border" transfer of savings from appropriations in one branch of government to other branches;

(2)

Some of the funds used to finance DAP projects were not sourced from savings. Savings could be generated only when the purpose of the appropriation has been fulfilled, or when the need for the appropriation no longer exists. Under these standards, the unobligated allotments and unreleased appropriations, which the Executive used to fund the DAP, were not savings.

(3)

Some of the projects funded through the DAP do not have items in the GAA; hence, the Executive – in violation of the Constitution – usurped the Legislative's power of the purse by effectively allocating and spending funds on its own authority.

(4)

Funds that the DAP sourced from the Executive had been used to augment items in other branches of the

government, thus violating the rule against the transfer of funds from one branch of government to another.

(5)

The DAP unlawfully released and allowed the use of unprogrammed funds,[3] without complying with the prior requisite that the original revenue targets must have first been exceeded.

The Court's ruling also explained and clarified the application of the Doctrine of Operative Fact to the case. We pointed out the general rule (the void ab initio doctrine) that "an unconstitutional act is not a law and in legal contemplation, as inoperative as though it had never been passed." [4]

Without changing this rule of invalidity (i.e., without rendering the unconstitutional act valid), the effects of actions made pursuant to the unconstitutional act or statute prior to the declaration of its unconstitutionality, may be recognized if the strict application of the general rule would result in inequity and injustice, and if the prior reliance on the unconstitutional statute had been made in good faith.[5]

In the context of the case before us and as explained in my Separate Opinion supporting J. Lucas Bersamin's ponencia, the Doctrine of Operative Fact is a rule established in favor of those who relied in good faith on an unconstitutional law prior to the declaration of its invalidity. It is not a doctrine for those who did not rely on the law because they were the authors, proponents and implementers of the unconstitutional act.

#### I. My Concurrence

I agree with the majority that the points raised in the parties' motions for reconsideration no longer need to be further discussed as they had been raised and passed upon in the Court's original ruling. If I add my concurrence at all, the addition is only to clarify and explain my vote in my own terms, hoping thereby to explain as well the full import of the majority's ruling.

First, the Court did not "unnecessarily constitutionalize" the issues before it. As the majority concluded, the final determination of whether the provisions of the GAA (including its definition of "savings") adhere to the terms of the Constitution, is first and foremost a judicial function.

The issues raised and resolved, at their core, involve the question of whether the government gravely abused its discretion in its expenditure of funds. To answer this question through the exercise of the Court's power of judicial review, the Court had to look at both the relevant laws and the constitutional provisions governing the budget expenditure process, and to use them as standards in considering the acts alleged to have been committed with grave abuse of discretion.

The use of the Constitution in fact is rendered necessary by its provisions detailing how the national funds are to be safeguarded in the course of their allocation and expenditure.[6] These details are there for one primary and overriding purpose – to safeguard the funds and their integrity.[7]

Thus, we could not have fully fulfilled our judicial review task had we limited ourselves solely to the statutory interpretation of the Administrative Code of 1987. Incidentally, the petitioners themselves cited the same constitutional rules we cited and/or passed upon, to support and defend their positions; the parties fully argued the merits and demerits of their respective causes based on these cited constitutional rules. Thus, it appears too late in the day to argue that only the Administrative Code of 1987 should have been used as standard of review.

Second, The legislatively defined term "savings", although arrived at through the exercise of the congressional power of the purse, cannot and should not be understood as an overriding, exclusive and conclusive standard in determining the propriety of the use of public funds; the congressional definition cannot go against or undermine the standards set by the Constitution on the use of public funds. In other words, in defining "savings", the

Legislature cannot defy nor subvert the terms laid down by the Constitution.

Third, past executive practice does not and cannot legalize an otherwise unconstitutional act. While executive interpretation in the course of applying the law may have persuasive effect in considering the constitutionality of the law the Executive implements, executive interpretation is not the applicable nor the conclusive legal yardstick to test the law's validity.[8] The assailed law, first and foremost, should be consistent with the terms of the Constitution, as explained and interpreted by the Judiciary through its rulings.[9]

Precisely, a third branch of government – the Judiciary – has been made a co-equal component in the governmental structure, to pass upon the constitutionality and legality of the acts of the Executive and the Legislative branches when these acts are questioned.[10] In exercising this function, the Judiciary is always guided by the rule that the Constitution is the supreme law and all acts of government, including those of the Court, are subject to its terms.[11] The Executive, to be sure, has no basis to claim exception to this norm, based solely on the practice that it and the Legislative Branch of government have established in the past.

Fourth, Section 39,[12] Chapter 5, Book VI of the Administrative Code, in allowing the President to transfer funds from and to any regular appropriation – regardless of the branch of government to which the fund is allotted – violates Article VI, Section 25, paragraph 5, of the 1987 Constitution.

Fifth, The Court discussed the Operative Fact Doctrine in its ruling to clarify the effects of the declaration of the unconstitutionality of the DAP, given the rule that an unconstitutional act or statute is void from the beginning.

The Court's discussion clarifies the effects on the public funds already disbursed and spent, on the projects that can no longer be undone, and on the officials who disbursed and spent the unconstitutional DAP funds before the declaration of the DAP's unconstitutionality. This ruling is not an obiter dictum as it directly bears on the constitutional issues raised.

I shall discuss the Operative Fact Doctrine in greater detail, in relation with the points raised in the parties' motions, to remove all doubts and misgivings about this Doctrine and its application to the present case.

## II. The Court's Exercise of Judicial Review over the DAP

The respondents question the Court's exercise of judicial review on the DAP based on two grounds:

First, the Court cannot exercise its power of judicial review without an actual case or controversy. The second paragraph in Section 1, Article VIII of the 1987 Constitution did not expand the Court's jurisdiction, but instead added to its judicial power the authority to determine whether grave abuse of discretion had intervened in the course of governmental action.[13]

The respondents further posit that before this Court may exercise this additional aspect of judicial power, the petitioners must first comply with the requisites of an actual case or controversy; the petitioners failed to comply with this requirement and to show as well their standing to file their petitions in view of the absence of any injury or threatened injury resulting from the enforcement of the DAP.

Second, the issues resolving the DAP's legality had been unnecessarily constitutionalized. These questions should have been examined only against the statutes involving the national budget. Had this been done, the DBM's interpretation of these statutes is entitled to a heavy presumption of validity. The respondents consequently insist that the Court's interpretation of "savings" and the requisites for the release of "unprogrammed funds" is contrary to the established practices of past administrations, Congress, and even those of the Supreme Court.

The respondents assert that their cited past practices should be given weight in interpreting the relevant provisions

of the laws governing the national budget. The respondents cite, by way of example, the definition of savings. The Court's interpretation of savings, according to the respondents, can be overturned by subsequent legislation redefining "savings, thus proving that the issue involves statutory, and not constitutional interpretation." [14] The respondents similarly argue with respect to the President's release of the unprogrammed funds that the presidential action only involves the interpretation of relevant GAA provisions. [15]

I shall address these issues in the same order they are posed above.

A. The petitioners successfully established a prima facie case of grave abuse of discretion sufficient to trigger the Court's expanded jurisdiction.

The concept of judicial power under the 1987 Constitution recognizes the Court's (1) traditional jurisdiction to settle actual cases or controversies; and (2) its expanded jurisdiction to determine whether a government agency or instrumentality committed grave abuse of discretion in the course of its actions.

The exercise of either power involves the exercise of the Court's power of judicial review, i.e., the Court's authority to strike down acts – of the Legislative, the Executive, the constitutional bodies, and the administrative agencies – that are contrary to the Constitution. [16]

Judicial review under the Court's traditional jurisdiction requires the following justiciability requirements: (1) the existence of an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. [17]

In comparison, the exercise of the Court's expanded jurisdiction to determine whether grave abuse of discretion amounting to lack of or excess of jurisdiction has been committed by the government, is triggered by a prima facie showing of grave abuse of discretion in the course of governmental action. [18]

A reading of Section 1, Article VIII of the 1987 Constitution, quoted below, shows that textually, the commission of grave abuse of discretion by the government is the cause that triggers the Court's expanded judicial power and that gives rise to the actual case or controversy that the complaining petitioners (who had been at the receiving end of the governmental grave abuse) can invoke in filing their petitions. In other words, the commission of grave abuse takes the place of the actual case or controversy requirement under the Court's traditional judicial power.

Section 1. 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.

A textual examination of the definition of judicial power shows that two distinct and separate powers are involved over distinct and separate matters.

Under the Court's traditional jurisdiction, what are involved are controversies brought about by rights, whether public or private, which are demandable and enforceable against another. Thus, the "standing" that must be shown is based on the possession of rights that are demandable and enforceable or which have been violated, giving rise to damage or injury and to actual disputes or controversies between or among the contending parties.

In comparison, the expanded jurisdiction – while running along the same lines – involves a dispute of a totally different nature. It does not address the rights that a private party may demand of another party, whether public or private. It solely addresses the relationships of parties to any branch or instrumentality of the government, and allows direct but limited redress against the government; the redress is not for all causes and on all occasions, but only when a grave abuse of discretion on the part of government is alleged<sup>[19]</sup> to have been committed, to the petitioning party's prejudice. Thus, the scope of this judicial power is very narrow, but its focus also gives it strength as it is a unique remedy specifically fashioned to actualize an active means of redress against an all-powerful government.

These distinctions alone already indicate that the two branches of judicial power that the Constitution expressly defines should be distinguished from, and should not be confused with, one another.

The case or controversy falling under the Court's jurisdiction, whether traditional or expanded, relates to disputes under the terms the Constitution expressly requires. But because of their distinctions, the context of the required "case or controversy" under the Court's twin powers differs from one another. By the Constitution's own definition, the controversy under the Court's expanded jurisdiction must relate to the rights that a party may have against the government in the latter's exercise of discretion affecting the complaining party.

The immediate questions, under this view, are two-fold.

First, does the complaining party have a right to demand or claim action or inaction from a branch or agency of government? Second, is there grave abuse of discretion in the government's exercise of its powers, affecting the complaining party?

In the present consolidated cases, the petitions indisputably relate to the budget process that has been alleged (and proven under our assailed Decision) to be contrary to the Constitution; they likewise necessarily relate to the legality and constitutionality of the expenditure of public funds that government raised through taxation, i.e., from forced exactions from people subject to the government's taxing jurisdiction.

As I have separately discussed in my Separate Opinion to our Decision, the public funds involved are massive and, unfortunately, have not been fully accounted for, even with respect only to the portion that the present administration has administered since it was sworn to office on June 30, 2010.<sup>[20]</sup> This situation potentially carries with it grave and serious criminal, civil and administrative liabilities.

The petitions also alleged violations of constitutional principles that are critical to the continued viability of the country as a constitutional democracy, among them, the rule of law, the system of checks and balances, and the separation of powers.

That the complaining petitioners have a right to question the budget and expenditure processes and their implementation cannot be doubted as they are Filipino citizens and organizations of Filipinos who pay their taxes; who expect that public funds shall be spent pursuant to guidelines laid down by the Constitution and the laws; and who likewise expect that the country will be run as a constitutional democracy by upright leaders and responsible institutions, not by shattered institutions headed by misguided leaders and manned by subservient followers.<sup>[21]</sup>

To be sure, the unimpeded access that the DAP and the illegally diverted funds it made available to the country's political leaders, results not only in the opportunity for the misuse of public funds. Such misuse and the availability of funds in the wrong hands can destroy institutions – even this Court – against whom these funds may be or has been used; rig even the elections and destroy the integrity of the ballot that the nation badly needs for its continued stability; and ultimately convert the country – under the false façade of reform – into the caricature of a republic. These are the injuries that the petitioners wish to avert.

From these perspectives, I really cannot see how the respondents can claim with a straight face that there is no actual case or controversy and that the petitioners have no standing to bring their petitions before this Court.

Stated bluntly, the grounds for the petitions are the acts of grave abuse of discretion alleged to have been committed by the country's executive and legislative leaders in handling the national budget. This is the justiciable controversy that is before us, properly filed under the terms of the Constitution. As I already observed in my previous Separate Opinion in this case:

I note that aside from newspaper clippings showing the antecedents surrounding the DAP, the petitions are filled with quotations from the respondents themselves, either through press releases to the general public or as published in government websites. In fact, the petitions – quoting the press release published in the respondents' website – enumerated disbursements released through the DAP; it also included admissions from no less than Secretary Abad regarding the use of funds from the DAP to fund projects identified by legislators on top of their regular PDAF allocations.

Additionally, the respondents, in the course of the oral arguments, submitted details of the programs funded by the DAP, and admitted in Court that the funding of Congress' e-library and certain projects in the COA came from the DAP. They likewise stated in their submitted memorandum that the President "made available" to the Commission on Elections (COMELEC) the "savings" of his department upon request for fund.

All of these cumulatively and sufficiently lead to a prima facie case of grave abuse of discretion by the Executive in the handling of public funds. In other words, these admitted pieces of evidence, taken together, support the petitioners' allegations and establish sufficient basic premises for the Court's action on the merits. While the Court, unlike the trial courts, does not conduct proceedings to receive evidence, it must recognize as established the facts admitted or undisputedly represented by the parties themselves.

First, the existence of the DAP itself, the justification for its creation, the respondent's legal characterization of the source of DAP funds (i.e., unobligated allotments and unreleased appropriations for slow moving projects) and the various purposes for which the DAP funds would be used (i.e., for PDAF augmentation and for "aiding" other branches of government and other constitutional bodies) are clearly and indisputably shown.

Second, the respondents' undisputed realignment of funds from one point to another inevitably raised questions that, as discussed above, are ripe for constitutional scrutiny. (Citations omitted)[22]

I see no reason to change these views and observations.

B. The framework in reviewing acts alleged to constitute grave abuse of discretion under the Court's expanded jurisdiction.

I next address the respondents' arguments regarding the impropriety of the Court's exercise of judicial review because the issues presented before the Court could be better resolved through statutory interpretation, a process where the Executive's interpretation of the statute should be given great weight.

The present case involves the Court's expanded jurisdiction, involving the determination of whether grave abuse of discretion was committed by the government, specifically, by the Executive. Based on jurisprudence, such grave abuse must amount to lack or excess of jurisdiction by the Executive: otherwise stated, the assailed act must have been outside the powers granted to the Executive by law or by the Constitution, or must have been exercised in such a manner that he exceeded the power granted to him.[23]

In examining these cases, the Court necessarily has to look at the laws granting power to the government official or agency involved, to determine whether they acted outside of their lawfully-given powers.

And to determine whether the Executive gravely abused its discretion in creating and implementing the DAP, the

Court must necessarily also look at both the laws governing the budget expenditure process and the relevant constitutional provisions involving the national budget. In the course of reviewing these laws, the Court would have to compare these provisions, and in case of discrepancy between the statutory grant of authority and the constitutional standards governing them, rule that the latter must prevail.

The Constitution itself directly provides guidelines and standards that must be observed in creating, implementing, and even auditing the national budget.[24] It outlines what the government can and cannot do. Necessarily, the laws involving the national budget would have to comply with these standards, and any act or law that contravenes them is unconstitutional.

a. The definition of savings

The definition of savings is an aspect of the power of the purse that constitutionally belongs to Congress, i.e., the power to determine the what, how, how much and why of public spending,[25] and includes the determination of when spending may be stopped, as well as where these savings may be transferred. This explains why we looked at the definition of savings in the past GAAs in determining whether the DAP violated the general prohibition against transfers and augmentation in Section 25 (5), Article VI, of the 1987 Constitution.

While the power to define “savings” rightfully belongs to Congress as an aspect of its power of the purse, it is not an unlimited power; it is subject to the limitation that the national budget or the GAA is a law that must necessarily comply with the constitutional provisions governing the national budget, as well as with the jurisprudential interpretation of these constitutional provisions.

We declared, for instance, in *Sanchez v. Commission on Audit*[26] that before a transfer of savings under the narrow exception provided under Section 25 (5) may take place, there must be actual savings, viz:

Actual savings is a sine qua non to a valid transfer of funds from one government agency to another. The word “actual” denotes that something is real or substantial, or exists presently in fact as opposed to something which is merely theoretical, possible, potential or hypothetical.[27]

This jurisprudential interpretation of “actual savings” may not be violated by Congress in defining what constitutes “savings” in its yearly GAA; neither may Congress, in defining “savings”, contravene the text and purpose of Section 25 (5), Article VI.

Congress, for instance, is constitutionally prohibited from creating a definition of savings that makes it possible for hypothetical, or potential sources of savings to readily be considered as savings.

That there must be “actual” savings connotes tangibility or the character of being substantially real; savings must have first been realized before it may be used to augment other items of appropriation. In this sense, actual savings carry the commonsensical notion that there must first have been an amount left over from what was intended to be spent in compliance with an item in the GAA before funds may be considered as savings. Thus, Congress can provide for the means of determining how savings are generated, but this cannot be made in such a way that would allow the transfer of appropriations from one item to another before savings have actually been realized.

Congress, in defining savings, would have to abide by Article VI, Section 25 (5), among other constitutional provisions involving the national budget, as well as the jurisprudential interpretations of the Court involving these provisions.

Additionally, note that the general appropriations act is an annual exercise by the Congress of its power to appropriate or to determine how public funds should be spent. It involves a yearly act through which Congress

determines how the income for a particular year may be spent.

Necessarily, the provisions regarding the release of funds, the definition of savings, or the authority to augment contained in a GAA affect only the income and items for that year. These provisions cannot be made to extend beyond the appropriations made in that particular GAA; otherwise, they would be extraneous to that particular GAA and partake of the nature of a prohibited “rider”[28] that violates the “one subject-one title” rule under Section 26 (1), Article VI[29] of the Constitution.[30]

Once the provisions on release becomes effective with respect to appropriations other than those found in the GAA in which they have been written, they no longer pertain to the appropriations for that year, but to the process, rights and duties in general of public officers in the handling of funds. They would then already involve a separate and distinct subject matter from the current GAA and should thus be contained in a separate bill.[31] This is another constitutional standard that cannot be disregarded in passing a law like the GAA.[32] For the same reasons, the definition of savings cannot be made to retroact to past appropriations.

On the other hand, the Court’s statutory interpretation of “unprogrammed funds,” and its review of the Special Provisions for its release in the 2011 and 2012 GAAs, is in line with the constitutional command that money shall be paid out of the Treasury only in pursuance of an appropriation made by law.[33]

Likewise, while the Executive’s interpretation of the provisions governing unprogrammed funds is entitled to great weight, such interpretation cannot and should not be applied when it contravenes both the text and purpose of the provision.[34]

#### b. Unprogrammed Fund

In this light, I reiterate my support for the ponencia’s and Justice Antonio Carpio’s conclusion that the use of the Unprogrammed Fund under the DAP violated the special conditions for its release.

In our main Decision, we found that the proviso allowing the use of sources not considered in the original revenue targets to cover releases from the Unprogrammed Fund was not intended to prevail over the general provision requiring that revenue collections first exceed the original revenue targets.[35]

We there declared that releases from the Unprogrammed Fund through the DAP is void because they were made prematurely, i.e. before the original revenue targets had been reached and exceeded. We reached this conclusion because of the Republic’s failure to submit any document certifying that revenue collections had exceeded original targets for the Fiscal Years 2011, 2012, and 2013. We waited for this submission even beyond the last oral arguments for the case (held in January 2014) and despite the sufficient time given for the parties to file their respective memoranda.

Instead, the respondents submitted certifications of windfall income, and argued that the proviso on releases under the Unprogrammed Fund allows the Executive to use this windfall income to fund items in the Unprogrammed Fund.

The respondent’s Motion for Reconsideration argues that this kind of interpretation is absurd and renders nil the proviso allowing the use of income not otherwise considered in the original revenue targets, since actual revenue collections may be determined only by the next fiscal year.[36]

If the respondents’ argument (that the Court’s interpretation is absurd and cannot be implemented) were to be followed, the actual result would in fact be to render the entire provision on releases under the Unprogrammed Fund unimplementable.

It must be remembered that the general provision for releases for items under the Unprogrammed Fund requires

that revenue collections must first exceed the original targets before these collections may be released. Assuming in arguendo that the Executive can determine this only by March 31 of the next fiscal year, then no Unprogrammed Fund could be released at all because the requirement in the general provision cannot be timely complied with. In other words, the respondent's argument regarding the impracticality of the proviso directly impacts on, and negates, the general provision that the proviso qualifies.

To illustrate, assuming that the original revenue targets had been exceeded (without need for unexpected income), releases for items under the Unprogrammed Fund would still not be made based on the respondents' assertion that revenue collections can only be determined by the first quarter of the next fiscal year.

From the point of view of history, I do not think that this general provision on releases for items under the Unprogrammed Fund would have been in place as early as FY 2000 if it could not actually be implemented.[37] This improbability, as well as the consistent requirement that original revenue targets first be exceeded before funds may be released for items under the Unprogrammed Fund, clearly supports the Court's interpretation on the special conditions for releases under the Unprogrammed Fund. Additionally, as both the ponencia[38] and Justice Carpio[39] point out, total revenue targets may be determined on a quarterly basis. Thus, requiring that total revenue targets be first met before releases may be made under the Unprogrammed Funds is not as impracticable and absurd as the respondents picture them to be.

c. Qualification to the ponencia's prospective application of the Court's statutory interpretation on the release of the Unprogrammed Fund

I qualify, my concurrence, however, with respect to the ponencia's conclusion that the Court's statutory interpretation of the Unprogrammed Fund provision should be applied prospectively. Prospective application, to me, is application in the present and in all future similar cases.

The Court's statutory interpretation of a law applies prospectively if it does not apply to actions prior to the Court's decision. We have used this kind of application in several cases when we opted not to apply new doctrines to acts that transpired prior to the pronouncement of these new doctrines.

In *People v. Jabinal*,<sup>[40]</sup> for instance, we acquitted a secret agent found to be in possession of an unlicensed firearm prior to the Court's pronouncement in *People v. Mapa*<sup>[41]</sup> overturning several cases that declared secret agents to be exempt from the illegal possession of firearms provisions. *Jabinal* committed the crime of illegal possession of firearms at a time when the prevailing doctrine exempted secret agents, but the trial court found him guilty of illegal possession of firearms after the Court's ruling in *People v. Mapa*. The Court reversed *Jabinal*'s conviction, ruling that the *People v. Mapa* ruling cannot have retroactive application.

The Court explained the reason for the prospective application of its decisions interpreting a statute, under the following terms:

Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . ." The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim "*legis interpretatio legis vim obtinet*" — the interpretation placed upon the written law by a competent court has the force of law. The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence, of the law, of the land, at the time appellant was found in possession of the firearm in question and where he was arraigned by the trial court. It is true that the doctrine was overruled in the *Mapa* case in 1967, but when a

doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on, the old doctrine and acted on the faith thereof. This is especially true in the construction and application of criminal laws, where it is necessary that the punishment of an act be reasonably foreseen for the guidance of society.[42]

The prospective application of a statutory interpretation, however, does not extend to its application to the case in which the pronouncement or new interpretation was made. For this reason, we affirmed Mapa's conviction for illegal possession of firearms.[43]

In other words, the prospective application of a statutory interpretation of a law applies to the facts of the case in which the interpretation was made and to acts subsequent to this pronouncement. The prospective effect of a statutory interpretation cannot be made to apply only to acts after the Court's new interpretation; the interpretation applies also to the case in which the interpretation was laid down. Statutory interpretation, after all, is used to reach a decision on the immediate case under consideration.

For instance, in several cases[44] where we declared an administrative rule or regulation to be void for being contrary to the law it seeks to implement, we applied our interpretation to resolve the issue in the cases before us. We did not say that the application of our interpretation applies only to all cases after the pronouncement of illegality.

The present case poses to us the issue of whether the DAP made releases under the Unprogrammed Fund in violation of the special conditions for its release. In resolving this issue, we clarified the meaning of one of these conditions, and found that it had been violated. Thus, the Court's statutory interpretation of the release of unprogrammed funds applies to the present case, and to cases with similar facts thereafter. The release of unprogrammed funds under the DAP is void and illegal, for having violated the special conditions requisite to their release.

At this point, the funds have presumably been spent,[45] and are now being subjected to audit. Thus, it is up to the Commission on Audit[46] to issue the appropriate notice of disallowance for the illegal release of these funds, and to decide whether the officials behind its release should be liable for their return.[47] It is in these proceedings that the question of whether the officials acted in good faith or in bad faith would be relevant, as only officials who acted in bad faith in causing the unlawful release of public funds may be held liable for the return of funds illegally spent.[48]

### III. Reconsideration of what constitutes an item for augmentation purposes

Upon a close re-examination of the issue, I concur with the ponencia's decision to reverse its earlier conclusion that several PAPs funded by the DAP had no items, in violation of the constitutional requirement that savings may be transferred only to existing items in the GAA.

My concurrence, however, is subject to the qualifications I have made in the succeeding discussion on the need for a deficiency before an item may be augmented.

This change of position, too, does not, in any way, affect the unconstitutionality of the methods by which the DAP funds were sourced to augment these PAPs. The acts of using funds that were not yet savings to augment other items in the GAA remain contrary to the Constitution.

#### A. Jurisprudential standards for determining an item

For an augmentation to be valid, the savings should have been transferred to an item in the general appropriations act. This requirement reflects and is related to two other constitutional provisions regarding the use of public

funds, first, that no money from the public coffers may be spent except through an appropriation provided by law;<sup>[49]</sup> and second, that the President may veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the items to which he does not object.<sup>[50]</sup>

In my view, the power of augmentation cannot be exercised to circumvent or dilute these principles, such that an interpretation of what constitutes as an item for purposes of augmentation cannot be at odds with the exercise of the President's power to veto items in the GAA or Congress's exclusive, plenary power of the purse.

As early as 1936, the Court has defined an item, in the context of the President's veto power, as "the particulars, the details, the distinct severable parts of the appropriation bill."<sup>[51]</sup> An appropriation, on the other hand, is the setting apart by law of a certain sum from the public revenue for a specified purpose.<sup>[52]</sup> Thus, for purposes of an item veto, an item consists of a severable part of a sum of public money set aside for a particular purpose.

This definition, however, begs the question of how to determine when a part of the appropriation law is its distinct and severable part. Subsequent cases, still pertaining to the President's veto powers, gave us the opportunity to gradually expound and develop the applicable standard. In *Bengzon v. Drilon*,<sup>[53]</sup> in particular, we described an item as an "indivisible sum of money dedicated to a stated purpose," and as "specific appropriation of money, not some general provision of law, which happens to be put into an appropriation bill."<sup>[54]</sup>

We further refined this characterization in the recent case of *Belgica v. Executive Secretary*,<sup>[55]</sup> where we pointed 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."<sup>[56]</sup>

In the course of these succeeding cases, we have narrowed our description of the term "item" in an appropriation bill so that (1) it now must be indivisible; (2) that this indivisible amount be for a specific purpose; and (3) that there must exist a singular correspondence between the indivisible amount and the specified, singular purpose.

In *Nazareth v. Villar*,<sup>[57]</sup> a case we cited in *Belgica*, we even required, for augmentation purposes, that there must be an existing item, project, activity, purpose or object of expenditure with an appropriation to which the savings would be transferred.<sup>[58]</sup>

**B. Our original main Decision: an expenditure category that had no appropriation cannot be augmented**

Our main Decision, considering these jurisprudential standards, found that the allotment class (i.e., the expense category of an item of appropriation, classifying it either as a Capital Outlay (CO), Maintenance and Other Operating Expense (MOOE), or Personal Services (PS)) of several PAPs funded through the DAP had no appropriation.

Thus, it was then observed that the DAP funded the following expenditure items that had no appropriation cover, to wit: (i) personnel services and capital outlay under the DOST's Disaster Risk, Exposure, Assessment and Mitigation (DREAM) project; (ii) capital outlay for the COA's "IT Infrastructure Program and hiring of additional litigation experts"; (iii) capital outlay for the Philippine Air Force's "On-Base Housing Facilities and Communications Equipment"; and (iv) capital outlay for the Department of Finance's "IT Infrastructure Maintenance Project."

It must be emphasized, at this point, that these PAPs had been funded through items found in the GAA; the ponencia concluded that they had no appropriation cover because these items had no allocations for the expenditure categories that the DAP funded.

To illustrate, Department of Finance's IT Infrastructure Maintenance Project had been funded by increasing the appropriation for the "Electronic data management processing," an item which under the GAA only had funding

for PS and MOOE. The DAP, in funding the IT Infrastructure Maintenance Project, increased appropriation for this item by adding funds for its CO, when it initially had zero funding for them. It was concluded that the DAP's act of financing the CO of an item which had no funding for CO violated the requirement that only items found in the GAA may be augmented.

I supported this argument in the main decision because the jurisprudential standards to determine an item fit the expenditure category of a PAP. It is an indivisible sum of money, and it had been set aside for a specific, singular purpose of funding an aspect of a PAP. As I pointed out in my Separate Opinion:

Since Congress did not provide anything for personnel services and capital outlays under the appropriation "Generation of new knowledge and technologies and research capability building in priority areas identified as strategic to National Development," then these cannot be funded in the guise of a valid transfer of savings and augmentation of appropriations.[59]

I made this conclusion bearing in mind that the jurisprudential standards apply to an allotment class, and with due consideration as well of the complexity and dynamism of the budgetary process.

The budgetary process is a complex undertaking in which the Executive and Congress are given their constitutionally-assigned tasks, neither of whom can perform the function of the other. The budget proposal comes from the Executive, which initially makes the determination of the PAPs to be funded, and by how much each allotment class (i.e., the expense category of an item of appropriation, classifying it either as a Capital Outlay (CO), Maintenance and Other Operating Expense (MOOE), or Personal Services (PS)) will be funded. The proposal would then be given to the Congress for scrutiny and enactment into law during its legislative phase. At this point, Congress can amend the items in the budget proposal but cannot increase its total amount. These amendments may include increasing or decreasing the expense categories found in the proposal; it may, in its scrutiny of the budget, determine that certain PAPs need capital outlay or additional funds for personnel services, or even eliminate allotments for capital outlay for certain PAPs.[60]

In this light, I concluded then that when the Executive opts to augment an expenditure item that Congress had no intention of funding, then it usurped Congress's power to appropriate.

#### C. The motion for reconsideration: items, not their allotment classes, may be augmented

The respondents in their Motion for Reconsideration argue that the PAPs funded by the DAP had items in the GAA, and that the breakdown of its expenditure categories may be augmented even if the GAA did not fund them, so long as the PAPs themselves have items. The point of inquiry should be whether the PAP had an item, and not whether the expenditure category of a PAP was funded. In asserting this argument, the respondents pointed out that the Constitution requires the augmentation to an item, and not an allotment class.

The majority supports this argument, citing the need to give the Executive sufficient flexibility in the implementation of the budget, and noting that equating an item to an expense category or allotment class would mean that the President can veto an expense category without vetoing the PAP. It could lead to situation where a PAP would continue to exist, despite having no appropriation for PS or MOOE, because the President has vetoed these expense categories.

To be sure, the provisions in the Constitution do not exist in isolation from each other; they must be construed and interpreted in relation with other provisions and with other grants and limitations of power found in the Constitution. The Constitution, after all, provides the basic blueprint of how our government should be run, and in so doing, reflects the careful compromises and check-and-balancing mechanisms that we, as a nation, have agreed to.

As I have earlier pointed out, the power of augmentation, as an exception to the general rule against transfer of appropriations, must be construed in relation to both the President's item veto power and Congress's exclusive power to appropriate.

Considering that our interpretation of the meaning of what constitutes an item in the present case would necessarily affect what the President may veto in an appropriation law, I agree with the decision to clarify that the jurisprudential tests for determining an item pertains to a PAP, and not its expense categories.

Given, too, the interrelated nature of the President's veto power and his power to augment an item in the GAA, I agree that what may be vetoed (and consequently, what may be augmented) is the total appropriation for a PAP, and not each of its allotment class. Notably, past presidential vetoes show direct vetoes of items and special provisions, not of a specific allotment class of a PAP.

Thus, an appropriation for a PAP is the indivisible, specified purpose for which a public fund has been set aside for. The President, therefore, may validly augment the PAP representing an item in an appropriation law, including its expenditure categories that initially had no funding.

To illustrate, the CO of the item "Electronic data management processing" may be augmented, even if the GAA did not allocate funds for its CO.

D. Qualification: Augmentation requires that an item must have been deficient

But while I agree with the ponencia's decision to elevate the definition of an item to a particular PAP and not limit it to an expense category, I would like to point out that we are dealing with an augmentation, and not a veto – hence, aside from the consideration of the existence of an item, it must also be determined whether this augmented item had a deficiency.

The very nature of an augmentation points to the existence of a deficiency. An item must have been in existence, and must demonstrably need supplementation, before it may be validly augmented. Without a deficiency, an item cannot be augmented, otherwise, it would violate the constitutional prohibition against money being spent without an appropriation made by law. An item that has no deficiency does not need additional funding; thus, the funding of an item with no deficiency could only mean that an additional PAP, not otherwise considered in the GAA nor included in the item sought to be augmented, would be funded by public funds.

This interpretation finds support and statutory authority in the definition of augmentation in the GAA of 2011 and 2012, viz:

Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. In no case shall a non-existent program, activity, or project, be funded by augmentation from savings or by the use of appropriations otherwise authorized in this Act.[61]

Thus, a PAP that has no deficiency could not be augmented. Augmenting an otherwise sufficiently-funded PAP violates the constitutional command that public money should be spent only through an appropriation made by law; too, if committed during the implementation of the 2011 and 2012 GAA, it also contravenes the definition of augmentation found therein.

At this point, it is worth noting that the items that the main decision earlier found to be objectionable for having no appropriations have two common features: first, the augmentations massively increased their funding, and second, the massive increase went to expense categories that initially had no funding.

Although I have earlier pointed out that these expense categories may be augmented provided that the PAP itself

encounters a deficiency, the two commonalities in the abovementioned projects render their augmentations highly suspect. These commonalities do not indicate a deficiency, but rather, that PAPs not otherwise considered under their GAAs had been funded by the augmentations.

Allow me to illustrate my point in more concrete queries: If the Department of Finance's Electronic data management processing is indeed an existing, deficient item under the GAA, why would its appropriation need an additional augmentation of Php 192.64 million in CO, when its original appropriation had none at all?[62]

The Court, however, is not a trier of facts, and we cannot make a determination of whether there had been a deficiency in the present case. In the interest of ensuring that the law and the Constitution have been followed, however, I urge my colleagues in the Court to refer the records of the case to the Commission on Audit for the determination of whether the items augmented by the DAP, particularly the items previously declared unconstitutional, had been deficient prior to their augmentation.

#### IV. The impact of the Court's exercise of judicial review on existing laws involving the budgetary process

The majority, in denying the respondents' motion for reconsideration, points out that Section 39, Chapter 5, Book VI of the Administrative Code cannot be used to justify the transfer of funds through the DAP, because it contradicted the clear command of Section 25 (5), Article VI of the 1987 Constitution. Section 39 authorizes the President to augment any regular appropriation, regardless of the branch of government it is appropriated to, in clear contravention of the limitation in Section 25 (5) that transfers may be allowed only within the branch of government to which the appropriation has been made.

The practical effect of this ruling would be the need for a provision in the succeeding GAAs authorizing augmentation, if Congress would be so minded to authorize it, in accordance with the clear mandate of Section 25 (5) of the Constitution. To recall, Section 25 (5) of the Constitution requires that a law must first be in place before augmentation may be performed.

Arguably, the wordings of the Administrative Code and the GAAs of 2011 and 2012 (which, like the Administrative Code, allow the President to augment any appropriation) on the authority to augment funds, give credence to the respondents' contention that the President may, upon request, transfer the Executive's savings to items allotted to other branches of government.

In my view, they most certainly do not. No law may contravene the clear text and terms of the Constitution, and Section 25 (5), Article VI cannot be clearer in limiting the transfer of savings within the branch of government in which it had been generated. In other words, no cross-border transfer of funds may be allowed.

To begin with, what need is there for a law allowing for augmentation, if it may be done through more informal channels of requests? Further, a regime that allows transfers based solely on requests is inconsistent with the limited and exceptional nature of the power of augmentation. Note that the language of Article VI, Section 25 (5) begins with a general prohibition against the passage of law allowing for transfer of funds, and that the power to augment had been provided by way of exception, and with several qualifications.

Lastly, I cannot agree that past practice holds any persuasive value in legalizing the cross-border transfer of funds. Past practice, while expressive of the interpretation of the officers who implement a law, cannot prevail over the clear text and terms of the Constitution.[63]

Notably, the language of the past GAAs also show varying interpretation of Section 25 (5), Article VI of the 1987 Constitution. For instance, while the Administrative Code of 1987 contained faulty language in giving the President the authority to augment, such language was soon addressed by Congress, when as early as the 1990

GAA,[64] it granted the authority to use savings to the officials enumerated in Section 25 (5), Article VI of the 1987 Constitution, as expressed in this provision. The broader authority allowing them to augment any item in the appropriations act started only in the 2005 GAA, an unconstitutional practice in the annual GAA that should now be clipped.

## V. Operative Fact Doctrine

With the DAP's unconstitutionality, the next point of inquiry logically must be on this ruling's impact on the projects and programs funded under the DAP. This is only logical as our ruling necessarily must carry practical effects on the many sectors that the DAP has touched.

### A. The application of the doctrine of operative fact to the DAP

As I earlier pointed out, a declaration of unconstitutionality of a law renders it void: the unconstitutional law is not deemed to have ever been enacted, and no rights, obligations or any effect can spring from it.

The doctrine of operative fact mitigates the harshness of the declared total nullity and recognizes that the unconstitutional law, prior to the declaration of its nullity, was an operative fact that the citizenry followed or acted upon. This doctrine, while maintaining the invalidity of the nullified law, provides for an exceptional situation that recognizes that acts done in good faith and in reliance of the law prior to its invalidity, are effective and can no longer be undone.[65]

A lot of the misunderstanding exists in this case in considering the doctrine, apparently because of the term "good faith" and the confusion between the present case and future cases seeking to establish the criminal, civil or administrative liability of those who participated in the DAP affair.

The respondents, particularly, demonstrate their less than full understanding of the operative fact doctrine, as shown by their claim that it has nothing to do with persons who acted pursuant to the DAP prior to its declaration of invalidity and that "the court cannot load the dice, so to speak, by disabling possible defenses in potential suits against the so-called 'authors, proponents and implementors.'"[66]

The respondents likewise decry the use of the terms "good faith" and "bad faith" which may be exploited for political ends, and that any negation of good faith violates the constitutional presumption of innocence. Lastly, the nullification of certain acts under the DAP does not operate to impute bad faith on the DAP's authors, proponents and implementors.

A first point I wish to stress is that the doctrine is about the effects of the declaration of the unconstitutionality of an act, law or measure. It is not about the unconstitutionality itself or its underlying reasons. The doctrine in fact was formulated to address the situation of those who acted under an invalidated law prior to the declaration of invalidity.

Thus, while as a general rule, an unconstitutional law or act is a nullity and carries no effect at all, the operative fact doctrine holds that its effects may still be recognized (although the law or act remains invalid) with respect to those who had acted and relied in good faith on the unconstitutional act or law prior to the declaration of its invalidity; to reiterate what I have stated before, the invalidated law or act was then an operative fact and those who relied on it in good faith should not be prejudiced as a matter of equity and justice.[67] The key essential word under the doctrine is the fact of "reliance"; "good faith" only characterizes the reliance made.

It was in this manner and under this usage that "good faith" came into play in the present case. The clear reference point of the term was to the "reliance" by those who had acted under the unconstitutional act or law prior to the declaration of its invalidity. To again hark back to what has been mentioned above, all these refer to

the “effects” of an invalidated act or law. No reference at all is made of the term “good faith” (as used in the operative fact doctrine sense) to whatever criminal, civil or administrative liability a participant in the DAP may have incurred for his or her participation.[68]

Two reasons explain why the term “good faith” could not have referred to any potential criminal, civil or administrative liability of a DAP participant.

The first reason is that the determination of criminal, civil or administrative liability is not within the jurisdiction of this Court to pass upon at this point. The Court therefore has no business speaking of good faith in the context of any criminal, civil or administrative liability that might have been incurred; in fact, the Court never did. If it did at all, it was to explain that good faith in that context is out of place in the present proceedings because the issue of criminal, civil or administrative liability belongs to other tribunals in other proceedings. If the respondents still fail to comprehend this, I can only say – there can be none so blind as those who refuse to see.

The second reason, related to the first, is that cases touching on the criminal, civil or administrative liabilities incurred for participation in the DAP affair are cases that have to wait for another day at a forum other than this Court. These future cases may only be affected by our present ruling in so far as we clarified (1) the effects of an unconstitutional statute on those who relied in good faith, under the operative fact doctrine, on the unconstitutional act prior to the declaration of its unconstitutionality; and (2) that the authors, proponents and implementors of the unconstitutional DAP are not among those who can seek cover behind the operative fact doctrine as they did not rely on the unconstitutional act prior to the declaration of its nullity. They were in fact the parties responsible for establishing and implementing the DAP’s unconstitutional terms and in these capacities, cannot rely on the unconstitutionality or invalidity of the DAP as reason to escape potential liability for any unconstitutional act they might have committed.

For greater certainty and in keeping with the strict meaning of the operative fact doctrine, the authors, proponents and implementors of the DAP are those who formulated, made or approved the DAP as a budgetary policy instrument, including in these ranks the sub-cabinet senior officials who effectively recommended its formulation, promulgation or approval and who actively participated or collaborated in its implementation. They cannot rely on the terms of the DAP as in fact they were its originators and initiators.

In making this statement, the Court is not “loading the dice,” to use the respondents’ phraseology, against the authors, proponents and implementors of the DAP. We are only clarifying the scope of application of the operative fact doctrine by initially defining where and how it applies, and to whom, among those related to the DAP, the doctrine would and would not apply. By so acting, the Court is not cutting off possible lines of defenses that the authors, proponents and implementors of the unconstitutional DAP may have; it is merely stating a legal consequence of the constitutional invalidity that we have declared.

Apparently, the good and bad faith that the respondents mention and have in mind relate to the potential criminal, civil, and administrative cases that may be filed against the authors, proponents and implementors of the unconstitutional DAP. Since these are not issues in the petitions before us but are cases yet to come, we cannot and should not be heard about the presence of good faith or bad faith in these future cases. If I mentioned at all specific actions indicating bad faith, it was only to balance my statement that the Court should not be identified with a ruling that seemingly clears the respondents from liabilities for the constitutional transgression we found.[69]

I reiterate the above points by quoting the pertinent portion of my Separate Opinion:

Given the jurisprudential meaning of the operative fact doctrine, a first consideration to be made under the circumstances of this case is the application of the doctrine: (1) to the programs, works and projects the DAP

funded in relying on its validity; (2) to the officials who undertook the programs, works and projects; and (3) to the public officials responsible for the establishment and implementation of the DAP.

With respect to the programs, works and projects, I fully agree with J. Bersamin that the DAP-funded programs, works and projects can no longer be undone; practicality and equity demand that they be left alone as they were undertaken relying on the validity of the DAP funds at the time these programs, works and projects were undertaken.

The persons and officials, on the other hand, who merely received or utilized the budgetary funds in the regular course and without knowledge of the DAP's invalidity, would suffer prejudice if the invalidity of the DAP would affect them. Thus, they should not incur any liability for utilizing DAP funds, unless they committed criminal acts in the course of their actions other than the use of the funds in good faith.

The doctrine, on the other hand, cannot simply and generally be extended to the officials who never relied on the DAP's validity and who are merely linked to the DAP because they were its authors and implementors. A case in point is the case of the DBM Secretary who formulated and sought the approval of NBC No. 541 and who, as author, cannot be said to have relied on it in the course of its operation. Since he did not rely on the DAP, no occasion exists to apply the operative fact doctrine to him and there is no reason to consider his "good or bad faith" under this doctrine.

This conclusion should apply to all others whose only link to the DAP is as its authors, implementors or proponents. If these parties, for their own reasons, would claim the benefit of the doctrine, then the burden is on them to prove that they fall under the coverage of the doctrine. As claimants seeking protection, they must actively show their good faith reliance; good faith cannot rise on its own and self-levitate from a law or measure that has fallen due to its unconstitutionality. Upon failure to discharge the burden, then the general rule should apply – the DAP is a void measure which is deemed never to have existed at all.

The good faith under this doctrine should be distinguished from the good faith considered from the perspective of liability. It will be recalled from our above finding that the respondents, through grave abuse of discretion, committed a constitutional violation by withdrawing funds that are not considered savings, pooling them together, and using them to finance projects outside of the Executive branch and to support even the PDAF allocations of legislators.

When transgressions such as these occur, the possibility for liability for the transgressions committed inevitably arises. It is a basic rule under the law on public officers that public accountability potentially imposes a three-fold liability – criminal, civil and administrative against a public officer. A ruling of this kind can only come from a tribunal with direct or original jurisdiction over the issue of liability and where the good or bad faith in the performance of duty is a material issue. This Court is not that kind of tribunal in these proceedings as we merely decide the question of the DAP's constitutionality. If we rule beyond pure constitutionality at all, it is only to expound on the question of the consequences of our declaration of unconstitutionality, in the manner that we do when we define the application of the operative fact doctrine. Hence, any ruling we make implying the existence of the presumption of good faith or negating it, is only for the purpose of the question before us – the constitutionality of the DAP and other related issuances.

To go back to the case of Secretary Abad as an example, we cannot make any finding on good faith or bad faith from the perspective of the operative fact doctrine since, as author and implementor, he did not rely in good faith on the DAP.

Neither can we make any pronouncement on his criminal, civil or administrative liability, i.e., based on his performance of duty, since we do not have the jurisdiction to make this kind of ruling and we cannot do so without violating his due process rights. In the same manner, given our findings in this case, we should not identify this Court with a ruling that seemingly clears the respondents from liabilities for the transgressions we found in the DBM Secretary's performance of duties when the evidence before us, at the very least, shows that

his actions negate the presumption of good faith that he would otherwise enjoy in an assessment of his performance of duty.

To be specific about this disclaimer, aside from the many admissions outlined elsewhere in the Opinion, there are indicators showing that the DBM Secretary might have established the DAP knowingly aware that it is tainted with unconstitutionality.[70]

B. The application of the operative fact doctrine to the PAPs that relied on the DAP and to the DAP's authors, proponents and implementors, is not obiter dictum

While I agree with the ponencia's discussion of the application of the operative fact doctrine to the case, I cannot agree with its characterization of our ruling as an obiter dictum.

An unconstitutional act is not a law. It confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.[71]

In this light, the Court's declaration of the unconstitutionality of several aspects of the DAP necessarily produces two main effects: (1) it voids the acts committed through the DAP that are unconstitutional; and (2) the PAPs that have been funded or benefitted from these void acts are likewise void.

By way of exception, the operative fact doctrine recognizes that the DAP's operation had consequences, which would be iniquitous to undo despite the Court's declaration of the DAP's unconstitutionality.

Necessarily, the Court would have to specify the application of the operative fact doctrine, and in so doing, distinguish between the two main effects. In other words, given the unconstitutionality's two effects, the Court, logically, would have to distinguish which of these effects remains recognized by the operative fact doctrine.

This is the reason for the discussion distinguishing between the applicability of the operative fact doctrine to PAPs that relied in good faith to the DAP's existence, and its non-application to the DAP's authors, proponents and implementors. The operative fact doctrine, given its nature and definition, only applies to the PAPs, but cannot apply to the unconstitutional act itself. As the doctrine cannot apply to the act, with more strong reason can it not apply to the acts of its authors, proponents and implementors of the unconstitutional act.

It is in this sense and for these reasons that the Court distinguished between the PAPs that benefitted from the DAP, and the DAP's authors, proponents and implementors.

It is also in this sense that the Court pointed out that the DAP's authors, proponents and implementors cannot claim any reliance in good faith; the operative fact doctrine does not apply to them, as the nature of their participation in the DAP's conception is antithetical to any good faith reliance on its constitutionality.

Without the Court's discussion on the operative fact doctrine and its application to the case, the void ab initio doctrine applies to nullify both the acts and the PAPs that relied on these acts. Hence, the Court's discussion on the operative fact doctrine is integral to the Court's decision – it provides how the effect of the Court's declaration of unconstitutionality would be implemented. The discussion is not, as the ponente vaguely described it, an "obiter pronouncement."

In sum, I concur with the ponencia's legal conclusions denying the following issues raised by the motions for reconsideration:

(1)

That the following acts and practices under the Disbursement Acceleration Program, National Budget Circular No. 541 and related executive issuances are unconstitutional for violating Section 25(5), Article VI, of the 1987

Constitution and the doctrine of separation of powers, namely:

(a)

The withdrawal of unobligated allotments from the implementing agencies, and the declaration of withdrawn unobligated allotments and unreleased appropriations as savings prior to the end of the fiscal year and without complying with the statutory definition of savings contained in the General Appropriations Acts; and

(b)

The cross-border transfers of the savings of the Executive to augment the appropriations of other offices outside the Executive.

(2)

That the use of unprogrammed funds despite the absence of a certification by the National Treasurer that the revenue collections exceeded the revenue targets is VOID and ILLEGAL for non-compliance with the conditions provided in the relevant General Appropriations Acts.

Too, I join the ponencia in reversing its former conclusion that several projects, activities and programs funded by the DAP had not been covered by an item in the GAAs, but subject to the qualification that these items should be audited by the Commission on Audit to determine whether there had been a deficiency prior to the augmentation of said items. This is in line with my discussion that an item needs to be deficient before it may be augmented.

My concurrence in the ponencia is further qualified by my discussions on: (1) the prospective application of our statutory interpretation on the release of unprogrammed funds; and (2) the application of the operative fact doctrine as an integral aspect in reaching the Court's decision.

For all these reasons, I join the majority's conclusion, but subject to my opposition against the conclusion that the Court's discussion on the operative fact doctrine is obiter dictum, as well as to the qualification that an item must first be found to be deficient before it may be augmented.

Further, in light of my recommendations as regards the implementation of the Court's ruling on the release of unprogrammed funds and augmentation, I recommend that we provide the Commission on Audit with a copy of the Court's decision and the records of the case, and to direct it to immediately conduct the necessary audit of the projects funded by the DAP.

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[1] 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.

[2] Department of Budget and Management, The Disbursement Acceleration Program: What You Need to Know About DAP, <http://www.gov.ph/featured/dap/>.

[3] Unprogrammed Funds are standby appropriations authorized by Congress in the annual general appropriations act. Department of Budget and Management, A Brief on the Special Purpose Funds in the National Budget (Oct. 5, 2013), available at [http://www.dbm.gov.ph/wp-content/uploads/DAP/Note%20on%20the%20Special%20Purpose%20Funds%20Released%20-%20Oct%202013\\_.pdf](http://www.dbm.gov.ph/wp-content/uploads/DAP/Note%20on%20the%20Special%20Purpose%20Funds%20Released%20-%20Oct%202013_.pdf). Note, however, that this definition had been abbreviated to accommodate special provisions that may be required by Congress prior to the release of unprogrammed funds.

[4] The term *ab initio* doctrine was first used in the case *Norton v. Shelby Conty*, 118 US 425, 6 S. Ct. 1121, 30 L. Ed. 178 (1886).

[5] See the ponencia in the main decision in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014, pp. 85 – 90, Brion, J.'s Separate Concurring Opinion, pp. 52 – 62.

[6] See, for instance, Sections 24, 25, 27 (2), 29, Article VI of the 1987 Constitution.

[7] The Constitution, in specifying the process for and providing checks and balances in the formulation, enactment, implementation and audit of the national budget seeks to ensure that public funds shall be spent only for a public purpose, determined by Congress through a law.

[8] The interpretation of an administrative government agency xxx which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts. A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. xxx

“The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs*, the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are drafters of the law they interpret.”

As a general rule, contemporaneous construction is resorted to for certainty and predictability in the laws, especially those involving specific terms having technical meanings.

However, courts will not hesitate to set aside such executive interpretation when it is clearly erroneous, or when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily understandable to any ordinary reader.

Stated differently, when an administrative agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law and the administrative interpretation is at best advisory for it is the courts that finally determine what the law means. Thus, an action by an administrative agency may be set aside by the judicial department if there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law. *Energy Regulation Board v. Court of Appeals*, 409 Phil. 36, 47 – 48 (2001). citation omitted

[9] Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution. *De Agbayani v. Philippine National Bank*, 148 Phil. 443, 447 (1971).

x x x administrative interpretation of the law is at best merely advisory, for it is the courts that finally determine what the law means.' It cannot be otherwise as the Constitution limits the authority of the President, in whom all executive power resides, to take care that the laws be faithfully executed. No lesser administrative executive office or agency then can, contrary to the express language of the Constitution, assert for itself a more extensive prerogative. *Bautista v. Juinio*, 212 Phil. 307, 321 (1984), citing *Teoxon v. Member of the Board of*

Administrators, L-25619, June 30, 1970, 30 SCRA 585, *United States v. Barrias*, 11 Phil. 327 (1908); *United States v. Tupasi Molina*, 29 Phil. 119 (1914); *People v. Santos*, 63 Phil. 300 (1936); *Chinese Flour Importers Association v. Price Stabilization Board*, 89 Phil. 439, *Victorias Milling Co. v. Social Security Commission*, 114 Phil. 555 (1962). Cf. *People v. Maceren*, L-32166, October 18, 1977, 79 SCRA 450 (per Aquino, J.).

[10] The judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature. *Tañada v. Angara*, 338 Phil. 546, 574 – 575 (1997) former Chief Justice Roberto Concepcion’s discussion during the Constitutional Commission’s deliberations on judicial power.

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

[12] Section 39. Authority to Use Savings in Appropriations to Cover Deficits. - Except as otherwise provided in the General Appropriations Act, any savings in the regular appropriations authorized in the General Appropriations Act for programs and projects of any department, office or agency, may, with the approval of the President, be used to cover a deficit in any other item of the regular appropriations: provided, that the creation of new positions or increase of salaries shall not be allowed to be funded from budgetary savings except when specifically authorized by law: provided, further, that whenever authorized positions are transferred from one program or project to another within the same department, office or agency, the corresponding amounts appropriated for personal services are also deemed transferred, without, however increasing the total outlay for personal services of the department, office or agency concerned.

[13] Respondents’ Motion for Reconsideration, pp. 38 – 48.

[14] Respondents’ Motion for Reconsideration, pp. 5 – 8.

[15] Respondents’ Motion for Reconsideration, pp. 29 – 35.

[16] See the discussion of judicial supremacy in *Angara v. Electoral Commission*, *supra*, as juxtaposed with the discussion of the Court’s expanded certiorari jurisdiction in *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 882 – 883, 891 (2003):

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. x x x And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.

In the scholarly estimation of former Supreme Court Justice Florentino Feliciano, “x x x judicial review is essential for the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of government through the definition and maintenance of the boundaries of authority and control between them.” To him, “[j]udicial review is the chief, indeed the only, medium of participation – or instrument of intervention – of the judiciary in that balancing operation.”

To ensure the potency of the power of judicial review to curb grave abuse of discretion by “any branch or instrumentalities of government,” the afore-quoted Section 1, Article VIII of the Constitution engraves, for the first time into its history, into block letter law the so-called “expanded certiorari jurisdiction” of this Court x x x.

x x x x

There is indeed a plethora of cases in which this Court exercised the power of judicial review over congressional action. Thus, in *Santiago v. Guingona, Jr.*, this Court ruled that it is well within the power and jurisdiction of the Court to inquire whether the Senate or its officials committed a violation of the Constitution or grave abuse of discretion in the exercise of their functions and prerogatives. x x x

[17] *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35; and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003).

[18] See Justice Arturo D. Brion’s discussion on the requisites to trigger the Court’s expanded jurisdiction in his Separate Concurring Opinion on *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014.

[19] By virtue of the Court’s expanded certiorari jurisdiction, judicial power had been “extended over the very powers exercised by other branches or instrumentalities of government when grave abuse of discretion is present. In other words, the expansion empowers the judiciary, as a matter of duty, to inquire into acts of lawmaking by the legislature and into law implementation by the executive when these other branches act with grave abuse of discretion.” *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014 (Brion, J. separate concurring).

[20] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 (Brion J. separate concurring) pp. 2 – 4.

[21] Compare with requisites for standing as a citizen and as a taxpayer:

The question in standing is whether a party has “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Kilosbayan, Incorporated v. Morato*, 316 Phil. 652, 696 (1995), citing *Baker v. Carr*, 369 U.S. 186, 7 L.Ed.2d 633 (1962).

Standing as taxpayer requires that public funds are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed, and that the petitioner is directly affected by the alleged ultra vires act. *Bugnay Construction & Development Corp. v. Laron*, 257 Phil. 245, 256 – 257 (1989).

A citizen acquires standing only if he can establish that he has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action. *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*, 352 Phil. 153, 168 (1998).

[22] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014, (J. Brion, separate concurring) pp. 21 – 22.

[23] See, for instance, *Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78; *David v. Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160, and *Kilosbayan v. Guingona*, G.R. No. 113375, May 5, 1994, 232 SCRA 110.

[24] See Article VI, Sections 24, 25, 27 par. 2, 29, and Article IX-D, Sections 1 – 4, 1987 Constitution.

[25] Under the Constitution, the spending power called by James Madison as “the power of the purse,” belongs to Congress, subject only to the veto power of the President. The President may propose the budget, but still the final say on the matter of appropriations is lodged in the Congress.

The power of appropriation carries with it the power to specify the project or activity to be funded under the appropriation law. It can be as detailed and as broad as Congress wants it to be. *Philippine Constitutional Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, 522.

[26] 575 Phil. 428 (2008).

[27] *Id.* at 454.

[28] Where the subject of a bill is limited to a particular matter, the members of the legislature as well as the people should be informed of the subject of proposed legislative measures. This constitutional provision thus precludes the insertion of riders in legislation, a rider being a provision not germane to the subject matter of the bill. *Lidasan v. Comelec*, G.R. No. L-28089, October 25, 1967, 21 SCRA 479, 510 (Fernando, J. dissenting).

[29] Section 26, Article VI of the 1987 Constitution provides:

Section 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

[30] Note, too, that Congress cannot include in a general appropriations bill matters that should be more properly enacted in separate legislation, and if it does that, the inappropriate provisions inserted by it must be treated as “item”, which can be vetoed by the President in the exercise of his item-veto power. *Philippine Constitutional Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, 532.

[31] 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 kind of laws have no place in an appropriations bill. These are matters of general legislation more appropriately dealt with in separate enactments. *Philippine Constitutional Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, 534.

[32] Article VI, Section 25, paragraph 2 of the 1987 Constitution requires that “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.”

[33] Article VI, Section 29, paragraph 1 of the 1987 Constitution provides that:

29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

[34] *Bautista v. Juinio*, G.R. No. L-50908, January 31, 1984, 127 SCRA 329, 343.

[35] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014, pp. 77 – 83.

[36] Respondents’ Motion for Reconsideration, pp. 29 – 35.

[37] In as early as the 2000, the General Appropriations Act require, as a condition for the release of unprogrammed funds, that revenue collections first exceed the original revenue targets, in a similar language as the provisions in the 2011 and 2012 GAA, viz:

1. Release of Fund. The amounts herein appropriated shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22,

Article VII of the Constitution or when the corresponding funding or receipts for the purpose have been realized in the special cases covered by specific procedures in Special Provision Nos. 2, 3, 4, 5, 7, 8, 9, 13 and 14 herein: x x x

[38] See the ponencia's discussion on pp. 18 – 21.

[39] See Justice Carpio's discussion on the release of the Unprogrammed Fund in pp. 10 – 11 of his Separate Opinion.

[40] 154 Phil. 565 (1974).

[41] 127 Phil. 624 (1967).

[42] 154 Phil. 565, 571 (1974).

[43] 127 Phil. 624 (1967).

[44] See for instance, the following cases: (1) *People v. Maceren*, No. L-32166, October 18, 1977, 79 SCRA 450 where the Court acquitted Maceren, who was then charged with the violation of the Fisheries Administrative Order No. 84 for engaging in electro fishing. The AO No. 84 sought to implement the Fisheries Law, which prohibited "the use of any obnoxious or poisonous substance" in fishing. In acquitting Maceren, the Court held that AO no. 84 exceeded the prohibited acts in the Fisheries Law, and hence should not penalize electro-fishing. (2) *Conte v. Commission on Audit*, G.R. No. 116422, November 4, 1996, 264 SCRA 19 where the Court, in interpreting that SSS Resolution No. 56 is illegal for contravening Republic Act No. 660, and thus refused to reverse the Commission on Audit's disallowance of the petitioners' benefits under SSS Resolution No. 56. (3) *Insular Bank of Asia and Americas Employees Union v. Inciong*, 217 Phil 629 (1984), where the Court nullified Section 2, Rule IV, Book III of the Rules to implement the Labor Code and Policy instruction No. 9 for unduly enlarging the exclusions for holiday pay in the Labor Code, and thus ordered its payment to the petitioner; and (4) *Philippine Apparel Workers Union vs. National Labor Relations Commission*, G.R. No. L-50320, July 31, 1981, 106 SCRA 444 where the Court held that the implementing rules issued by the Secretary of Labor exceeded the authority it was granted under Presidential Decree No. 1123, and thus ordered the respondent employer company to pay its union the emergency cost of living allowance that PD No. 1123 requires.

[45] Ninety-six percent or P69.3 billion of the P72.11 billion Disbursement Acceleration Plan (DAP) has successfully been released to agencies and government-owned or -controlled corporations (GOCCs) as of end-December 2011. Department of Budget and Management, 96% of P72.11-B disbursement acceleration already released, 77.5% disbursed (Jan. 9, 2012), available at <http://www.gov.ph/2012/01/09/96-of-p72-11-b-disbursement-acceleration-already-released-77-5-disbursed/>.

[46] Article IX-D, Section 2, paragraph 1 provides:

(1) 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:

(a)

constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;

(b)

autonomous state colleges and universities;

(c)

other government-owned or controlled corporations and their subsidiaries; and

(d)

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.

[47] Pursuant to its mandate as the guardian of public funds, the COA is vested with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property. This includes the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations. The 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. *Veloso v. Commission on Audit*, G.R. No. 193677, September 6, 2011, 656 SCRA 767, 776.

[48] See *Blaquera v. Alcala*, 356 Phil. 678 (1998); *Casal v. Commission on Audit*, 538 Phil. 634 (2006).

[49] Article VI, Section 29, paragraph 1, 1987 Constitution.

[50] Article VI, Section 27, paragraph 2, 1987 Constitution.

[51] *Bengzon v. Secretary of Justice*, 62 Phil. 912, 916 (1936).

[52] *Id.*

[53] *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[54] *Id.* at 144.

[55] G.R. No. 208566, November 19, 2013.

[56] *Id.*

[57] G.R. No. 188635, January 29, 2013 689 SCRA 385.

[58] *Id.* at 405.

[59] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 (Brion, J., separate) p. 49.

[60] Article VI, Section 25, paragraph 1 of the 1987 Constitution, JOAQUIN G. BERNAS, S.J. *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 779 (2009).

[61] Section 60 of the General Provisions of Rep. Act No. 10147 (General Appropriations Act of 2011) and Section 54 of the General Provisions of Rep. Act No. 10155 (General Appropriations Act of 2012).

[62] The same query applies to the DAP's augmentation of the Commission on Audit's appropriation for "A1.a1. General Administration and Support", and the Philippine Airforce's appropriations for "A.II.a.2 Service Support

Activities, A.III.a.1 Air and Ground Combat Services, A.III.a.3 Combat Support Services and A.III.b.1 Territorial Defense Activities”

The DAP, in order to finance the “IT Infrastructure Program and hiring of additional expenses” of the Commission on Audit in 2011 increased the latter’s appropriation for General Administration and Support. DAP increased the appropriation by adding P5.8 million for MOOE and P137.9 million for CO. The COA’s appropriation for General Administration and Support, during the GAA of 2011, however, does not contain any item for CO.

In order to finance the Philippine Airforce’s “On-Base Housing Facilities and Communication Equipment,” the DAP augmented several appropriations of the Philippine Airforce with capital outlay totaling to Php29.8 million. None of these appropriations had an item for CO. (Respondents’ Seventh Evidence Packet)

[63] Supra note 9.

[64] Section 16 of the General Provisions of Rep. Act No. 6831 (the General Appropriations Act of 1990) provides:

Section 16. Use of Savings. - The President of the Philippines, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of Constitutional Commissions under Article IX of the Constitution, and the Ombudsman are hereby authorized to augment any item in this Act for their respective offices from savings in other items of their respective appropriations: provided, that no item of appropriation recommended by the President in the budget submitted to Congress pursuant to Article VII, Section 22 of the Constitution which has been disapproved or reduced by Congress shall be restored or increased by the use of appropriations authorized for other purposes in this Act by augmentation. Any item of appropriation for any purpose recommended by the President in the budget shall be deemed to have been disapproved by Congress if no corresponding appropriation for the specific purpose is provided in this Act.

[65] See *Municipality of Malabang, Lanao del Sur v. Benito*, 137 Phil. 360 (1969), *Serrano de Agbayani v. Philippine National Bank*, 148 Phil. 443, 447 - 448 (1971)., *Planters Products, Inc. v. Fertifil Corporation*, G.R. No. 166006, March 14, 2008, 548 SCRA 485.

[66] Respondents’ Motion for Reconsideration, p. 36.

[67] See Kristin Grenfell, *California Coastal Commission: Retroactivity of a Judicial Ruling of Unconstitutionality*, 14 *Duke Envtl. L & Policy F.* 245 (Fall 2003).

[68] See *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 (Brion, J., separate) pp. 55 – 58.

[69] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 (Brion, J., separate) p. 58.

[70] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 (Brion, J., separate) pp. 56 – 58.

[71] This is otherwise known as the void ab initio doctrine, first used in the case of *Norton v. Shelby County*, 118 US 425, 6 S. Ct. 1121, 30 L. Ed. 178 (1886).

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## CONCURRING AND DISSENTING OPINION

**DEL CASTILLO, J.:**

I submit this Opinion to reiterate the views that I expressed in my July 1, 2014 Concurring and Dissenting Opinion (July 1, 2014 Opinion, for brevity) in the context of the present arguments raised by petitioners in their Motion for Partial Reconsideration and by respondents in their Motion for Reconsideration as well as to address the new arguments raised therein.

**I.**

Petitioners argue that the augmentations made by the Executive Department under the DAP relative to specific items in the pertinent GAAs are many times over their original appropriations. Hence, they pray that the Court declare as unconstitutional and illegal the expenditures under the DAP which were used (1) to augment appropriation items over and above the maximum amount recommended by the President in the proposed budget submitted to Congress or (2) to augment appropriation items which were not deficient.

I find the argument unavailing. I already addressed this argument in my July 1, 2014 Opinion and reiterate, thus:

[T]he view has been expressed that the DAP was used to authorize the augmentations of items in the GAA many times over their original appropriations. While the magnitude of these supposed augmentations are, indeed, considerable, it must be recalled that Article VI, Section 25(5) of the Constitution purposely did not set a limit, in terms of percentage, on the power to augment of the heads of offices:

MR. SARMIENTO. I have one last question. Section 25, paragraph (5) authorizes the Chief Justice of the Supreme Court, the Speaker of the House of Representatives, the President, the President of the Senate to augment any item in the General Appropriations Law. Do we have a limit in terms of percentage as to how much they should augment any item in the General Appropriations Law?

MR. AZCUNA. The limit is not in percentage but “from savings.” So it is only to the extent of their savings.

Consequently, even if Congress appropriated only one peso for a particular PAP in the appropriations of the Executive Department, and the Executive Department, thereafter, generated savings in the amount of P1B, it is, theoretically, possible to augment the aforesaid one peso PAP appropriation with P1B. The intent to give considerable leeway to the heads of offices in the exercise of their power to augment allows this result.

Verily, the sheer magnitude of the augmentation, without more, is not a ground to declare it unconstitutional. For it is possible that the huge augmentations were legitimately necessitated by the prevailing conditions at the time of the budget execution. On the other hand, it is also possible that the aforesaid augmentations may have breached constitutional limitations. But, in order to establish this, the burden of proof is on the challenger to show that the huge augmentations were done with grave abuse of discretion, such as where it was merely a veiled attempt to defeat the legislative will as expressed in the GAA, or where there was no real or actual deficiency in the original appropriation, or where the augmentation was motivated by malice, ill will or to obtain illicit political concessions. Here, none of the petitioners have proved grave abuse of discretion nor have the beneficiaries of these augmentations been properly impleaded in order for the Court to determine the justifications for these augmentations, and thereafter, rule on the presence or absence of grave abuse of discretion.

The Court cannot speculate or surmise, by the sheer magnitude of the augmentations, that a constitutional breach occurred. Clear and convincing proof must be presented to nullify the challenged executive actions because they are presumptively valid. Concededly, it is difficult to mount such a challenge based on grave abuse of discretion, but it is not impossible. It will depend primarily on the particular circumstances of a case, hence, as previously noted, the necessity of remedial legislation making access to information readily available to the people relative to the justifications on the exercise of the power to augment.

Further, assuming that the power to augment has become prone to abuse, because it is limited only by the extent of actual savings, then the remedy is a constitutional amendment; or remedial legislation subjecting the power to augment to strict conditions or guidelines as well as strict real time monitoring. Yet, it cannot be discounted that limiting the power to augment, based on, say, a set percentage, would unduly restrict the effectivity of this fiscal management tool. As can be seen, these issues go into the wisdom of the subject constitutional provision which is not proper for judicial review. As it stands, the substantial augmentations in this case, without more, cannot be declared unconstitutional absent a clear showing of grave abuse of discretion for the necessity of such augmentations are presumed to have been legitimate and bona fide.[1]

## II.

I maintain that the President has the power to finally discontinue slow-moving projects pursuant to (1) Section 38,[2] Chapter 5, Book VI, of the Administrative Code and (2) the General Appropriations Act (GAA) definition of “savings,”[3] which implicitly recognizes the power to finally discontinue or abandon a work, activity or purpose. This power was impliedly exercised by the President, under National Budget Circular No. (NBC) 541, by ordering the withdrawal of unobligated allotments from slow-moving projects in order to spur economic growth. Absent proof to the contrary and the undisputed claim that this program, indeed, led to economic growth, the “public interest” standard, which circumscribes the power to permanently stop expenditure under Section 38, must be deemed satisfied. Hence, with the final discontinuance of slow-moving projects, “savings” were thereby generated, pursuant to the GAA definition of savings.

I noted, however, in my July 1, 2014 Opinion that, because the wording of NBC 541 is so broad, the amount of withdrawn allotments that may be reissued or ploughed back to the same project may be: (1) zero, (2) the same amount as the unobligated allotment previously withdrawn in that project, (3) more than the amount of the unobligated allotment previously withdrawn in that project, and (4) less than the amount of the unobligated allotment previously withdrawn in that project. In scenario 4, a constitutional breach would be present because the project would effectively not be finally discontinued but its withdrawn allotment would be treated as “savings.”

I now further clarify that when I stated that the “project would effectively not be finally discontinued” under scenario 4, I speak about the net effect of the operation of NBC 541. It should be noted that the withdrawal of the unobligated allotments as well as the reissuance or realignment, as the case may be, of the aforesaid allotments were done on a quarterly basis. Thus, the net effect of the operation of NBC 541 can only be determined after the period of its implementation. This is the reason why an in-depth or intensive factual determination is necessary prior to a declaration that scenario 4 occurred and, thus, breached the statutory definition of “savings” under the pertinent GAAs. Stated another way, it is equally possible that the net effect of the operation of NBC 541 would not result to the breach of the statutory definition of “savings.” It depends on the pivotal issue of whether the project, from which the unobligated allotments were withdrawn, was finally discontinued or abandoned; a matter which must be established and determined in a proper case. As I discussed in my July 1, 2014 Opinion, this ambiguity, in determining when a project is finally discontinued or abandoned, is a weak point of the GAAs which opens the doors to abuse:

[T]he third requisite of the first type of “savings” in the GAA deserves further elaboration. Note that the law contemplates, among others, the final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized. Implicit in this provision is the recognition of the possibility that the work, activity or purpose may be finally discontinued or abandoned. The law, however, does not state (1) who possesses the power to finally discontinue or abandon the work, activity or purpose, (2) how such power shall be exercised, and (3) when or under what circumstances such power shall or may be exercised.

Under the doctrine of necessary implication, it is reasonable to presume that the power to finally discontinue or

abandon the work, activity or purpose is vested in the person given the duty to implement the appropriation (i.e., the heads of offices), like the President with respect to the budget of the Executive Department.

As to the manner it shall be exercised, the silence of the law, as presently worded, allows the exercise of such power to be express or implied. Since there appears to be no particular form or procedure to be followed in giving notice that such power has been exercised, the Court must look into the particular circumstances of a case which tend to show, whether expressly or impliedly, that the work, activity or purpose has been finally abandoned or discontinued in determining whether the first type of “savings” arose in a given case.

This lack of form, procedure or notice requirement is, concededly, a weak point of this law because (1) it creates ambiguity when a work, activity or purpose has been finally discontinued or abandoned, and (2) it prevents interested parties from looking into the government’s justification in finally discontinuing or abandoning a work, activity or purpose. Indubitably, it opens the doors to abuse of the power to finally discontinue or abandon which may lead to the generation of illegal “savings.” Be that as it may, the Court cannot remedy the perceived weakness of the law in this regard for this properly belongs to Congress to remedy or correct. The particular circumstances of a case must, thus, be looked into in order to determine if, indeed, the power to finally discontinue or abandon the work, activity or purpose was validly effected.

In sum, I maintain that Sections 5.4, 5.5 and 5.7 of NBC 541 are only partially unconstitutional and illegal insofar as they (1) allowed the withdrawal of unobligated allotments from slow-moving projects, which were not finally discontinued or abandoned, and (2) authorized the use of such withdrawn unobligated allotments as “savings.”

The majority now acknowledges that the withdrawal of the unobligated allotments under NBC 541 may have effectively suspended or permanently stopped the expenditures on slow-moving projects, but maintains that the reissuance of the withdrawn allotments to the original programs or projects is a clear indication that the same were not discontinued or abandoned. In effect, the majority concedes that scenario 4 may have occurred in the course of the implementation of the DAP, however, the majority maintains that the withdrawal of the unobligated allotments under NBC 541 remains unconstitutional.

I disagree.

As I noted in my July 1, 2014 Opinion, whether scenario 4 (or scenarios 1 to 3 for that matter) actually occurred requires a factual determination that was not litigated in this case. Thus, it is premature to make a sweeping generalization that the “withdrawal and transfer of unobligated allotments remain unconstitutional.” Instead, a more limited declaration that, to repeat, Sections 5.4, 5.5 and 5.7 of NBC 541 are only partially unconstitutional and illegal, insofar as they (1) allowed the withdrawal of unobligated allotments from slow-moving projects, which were not finally discontinued or abandoned, and (2) authorized the use of such withdrawn unobligated allotments as “savings,” is apropos. A distinction must be made between the infirmity of the wording of NBC 541 and what actually happened during the course of the implementation of the DAP. The Court cannot assume facts that were not established in this case.

The majority further states that “withdrawals of unobligated allotments pursuant to NBC No. 541 which shortened the availability of appropriations for MOOE and capital outlays, and those which were transferred to PAPs that were not determined to be deficient, are still constitutionally infirm and invalid.”

I disagree for two reasons.

First, there appears to be no evidence which sufficiently established that there were transfers made to PAPs that were not deficient. As previously discussed, the sheer magnitude of augmentations does not, by itself, establish that the augmentations were illegal or unconstitutional.

Second, as I extensively discussed in my July 1, 2014 Opinion, the shortening of the availability of the MOOE

and capital outlays, through the withdrawal of the unobligated allotments, does not automatically result to illegality or unconstitutionality:

I do not subscribe to the view that the provisions in the GAAs giving the appropriations on Maintenance and Other Operating Expenses (MOOE) and Capital Outlays (CO) a life-span of two years prohibit the President from withdrawing the unobligated allotments covering such items.

The availability for release of the appropriations for the MOOE and CO for a period of two years simply means that the work or activity may be pursued within the aforesaid period. It does not follow that the aforesaid provision prevents the President from finally discontinuing or abandoning such work, activity or purpose, through the exercise of the power to permanently stop further expenditure, if public interest so requires, under the second phrase of Section 38 of the Administrative Code.

It should be emphasized that Section 38 requires that the power of the President to suspend or to permanently stop expenditure must be expressly abrogated by a specific provision in the GAA in order to prevent the President from stopping a specific expenditure:

SECTION 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. (Emphasis supplied)

This is the clear import and meaning of the phrase “except as otherwise provided in the General Appropriations Act.” Plainly, there is nothing in the afore-quoted GAA provision on the availability for release of the appropriations for the MOOE and CO for a period of two years which expressly provides that the President cannot exercise the power to suspend or to permanently stop expenditure under Section 38 relative to such items.

That the funds should be made available for two years does not mean that the expenditure cannot be permanently stopped prior to the lapse of this period, if public interest so requires. For if this was the intention, the legislature should have so stated in more clear and categorical terms given the proviso (i.e., “except as otherwise provided in the General Appropriations Act”) in Section 38 which requires that the power to suspend or to permanently stop expenditure must be expressly abrogated by a provision in the GAA. In other words, we cannot imply from the wording of the GAA provision, on the availability for release of appropriations for the MOOE and CO for a period of two years, that the power of the President under Section 38 to suspend or to permanently stop expenditure is specifically withheld. A more express and clear provision must so provide. The legislature must be presumed to know the wording of the proviso in Section 38 which requires an express abrogation of such power.

It should also be noted that the power to suspend or to permanently stop expenditure under Section 38 is not qualified by any timeframe for good reason. Fraud or other exceptional circumstances or exigencies are no respecters of time; they can happen in the early period of the implementation of the GAA which may justify the exercise of the President’s power to suspend or to permanently stop expenditure under Section 38. As a result, such power can be exercised at any time even a few days, weeks or months from the enactment of the GAA, when public interest so requires. Otherwise, this means that the release of the funds and the implementation of the MOOE and CO must continue until the lapse of the two-year period even if, for example, prior thereto, grave anomalies have already been uncovered relative to the execution of these items or their execution have become impossible.

An illustration may better highlight the point. Suppose Congress appropriates funds to build a bridge between island A and island B in the Philippine archipelago. A few days before the start of the project, when no portion of the allotment has yet to be obligated, the water level rises due to global warming. As a result, islands A and B are

completely submerged. If the two-year period is not qualified by Section 38, then the President cannot order the permanent stoppage of the expenditure, through the withdrawal of the unobligated allotment relative to this project, until after the lapse of the two-year period. Rather, the President must continue to make available and authorize the release of the funds for this project despite the impossibility of its accomplishment. Again, the law could not have intended such an absurdity.

In sum, the GAA provision on the availability for release and obligation of the appropriations relative to the MOOE and CO for a period of two years is not a ground to declare the DAP invalid because the power of the President to permanently stop expenditure under Section 38 is not expressly abrogated by this provision. Hence, the President's order to withdraw the unobligated allotments of slow-moving projects, pursuant to NBC 541 in conjunction with Section 38, did not violate the aforesaid GAA provision considering that, as previously discussed, the power to permanently stop expenditure was validly exercised in furtherance of public interest, absent sufficient proof to the contrary.

### III.

I also maintain that the phrase "to fund priority programs and projects not considered in the 2012 budget but expected to be started or implemented during the current year" in Section 5.7.3 of NBC 541 is void insofar as it allows the transfer of the withdrawn allotments to non-existent programs and projects in the 2012 GAA. This violates Article VI, Section 29(1)[4] of the Constitution and Section 54[5] of the 2012 GAA. However, it is premature, at this time, to conclude that, indeed, such transfer of savings to non-existent programs or projects did occur under the DAP on due process grounds.

The majority, however, in its July 1, 2014 Decision, used the DOST's DREAM project and the augmentation to the DOST-PCIEETRD to illustrate that there were augmentations of non-existent programs or projects under the DAP. I already noted in my July 1, 2014 Opinion that this finding is premature and violates respondents' right to due process because these specific issues were not litigated in a proper case, as they were merely deduced from the evidence packets submitted by the Solicitor General.

In their Motion for Reconsideration, respondents, through the Solicitor General, now explain at length why these augmentations have appropriation covers. In particular, they argue that the general prohibition on transfer of appropriations applies only to appropriation items and not allotment classes (or expense categories, i.e., PS, MOOE and CO).

The majority upholds the Solicitor General's interpretation of item of appropriation versus allotment class. I am in accord with the majority's position, for the reasons given by the majority. However, I note that, while the discussion on transfer of allotment classes and augmentation of appropriation items are consistent with judicial precedents, this should be understood in relation to the existing standards of efficiency, effectivity and economy in budget execution under the Administrative Code, as I extensively discussed in my July 1, 2014 Opinion. The exercise of the vast power to realign and to augment should be understood as being circumscribed by existing constitutional and legislative standards and limitations as well as safeguards that Congress may institute in the future, consistent with the Constitution, in order to prevent the abuse or misuse of this power.

I further note that the majority states that "whether the 116 DAP funded projects had appropriation cover and were validly augmented, require factual determination which is not within the scope of the present consolidated petitions under Rule 65." I am in accord with this finding. As I stated in my July 1, 2014 Opinion:

[T]he Solicitor General impliedly argues that, despite the defective wording of Section 5.7.3 of NBC 541, no non-existent program or project was ever funded through the DAP. Whether that claim is true necessarily

involves factual matters that are not proper for adjudication before this Court. In any event, petitioners may bring suit at the proper time and place should they establish that non-existent programs or projects were funded through the DAP by virtue of Section 5.7.3 of NBC 541.

#### IV.

The Solicitor General reiterates his novel theory that cross-border transfer of savings is allowed under Article VI, Section 25(5)[6] of the Constitution because this provision merely prohibits unilateral inter-departmental transfer of savings, and not those where the other department requested for the funds.

I maintain that this theory is unavailing.

As I explained at length in my July 1, 2014 Opinion, the subject constitutional provision is clear, absolute and categorical. If we allow the relaxation of this rule, to occasionally address certain exigencies, it will open the doors to abuse and defeat the laudable purposes of this provision that is an integral component of the system of checks and balances under our plan of government. Again, the proper recourse is for the other departments and constitutional bodies to request for additional funds through a supplemental budget duly passed and scrutinized by Congress.

The Solicitor General points out that even this Court has (1) approved the allocation of amounts from its savings to augment an item within the Executive, and (2) sought funds from the Executive for transfer to the Judiciary, to establish that cross-border transfer of savings is a long-standing practice not just of past administrations but by the Court as well.

In my July 1, 2014 Opinion, commenting on Article VI, Section 25(5), I stated:

[T]he principal motivation for the inclusion of the subject provision in the Constitution was to prevent the President from consolidating power by transferring appropriations to the other branches of government and constitutional bodies in exchange for undue or unwarranted favors from the latter. Thus, the subject provision is an integral component of the system of checks and balances under our plan of government. It should be noted though, based on the broad language of the subject provision, that the check is not only on the President, even though the bulk of the budget is necessarily appropriated to the Executive Department, because the other branches and constitutional bodies can very well commit the afore-described transgression although to a much lesser degree. (Emphasis supplied)

The prohibition on cross-border transfer of savings applies to all the branches of government and constitutional bodies, including the Court. If the Solicitor General thinks that the aforesaid transfer of funds involving the Court violates the subject constitutional provision, then the proper recourse is to have them declared unconstitutional, as was done in this case. But, certainly, it cannot change the clear and unequivocal language of the constitutional prohibition on cross-border transfer of savings.

In fine, if cross-border transfer of savings has, indeed, been a long-standing practice of the whole government bureaucracy, then the Court's ruling in this case should be a clear signal to put an end to this unconstitutional practice. Long-standing practices cannot justify or legitimize a continuing violation of the Constitution.

In another vein, I agree with the majority that Section 39, Chapter V, Book VI of the Administrative Code cannot be made a basis to justify the cross-border transfer of savings, for the reasons given by the majority.

## V.

On the legality of the releases from the Unprogrammed Fund and the use thereof under the DAP, the Solicitor General argues, thus:

87. The Honorable Court ruled that revenue collections must exceed the total of the revenue targets stated in the Budget for Expenditures and Sources of Financing (BESF) before expenditures under the Unprogrammed Fund can be made. This is incorrect not only because this is not what those who wrote the item—the DBM—intended, which intention was ratified by Congress over the years, but also because such interpretation defeats the purpose of creating the Unprogrammed Fund.

88. This interpretation is incorrect, for a simple reason: everybody knows that the government’s total revenue collections have never exceeded the total original revenue targets. Certainly, the government—the Executive and the Legislature—would never have created the Unprogrammed Fund as a revenue source if, apart from newly-approved loans for foreign-assisted project, it would have never been available for use. The effect of the Honorable Court’s interpretation is to effectively nullify the Unprogrammed Fund for the years 2011 to 2013. Certainly, the Executive would not have proposed billions of pesos under the Unprogrammed Fund in the NEP, and Congress would not have provided for said appropriation in the GAA, with the intention that it can never be implemented.

89. Because we are not interpreting the Constitution with respect to the meaning of the Unprogrammed Fund, with respect, it is incorrect for the Honorable Court to reject the interpretation placed by those who actually wrote the item for the Unprogrammed Fund. What is the purpose to be served in nullifying the intention of the authors of the Unprogrammed Fund, which intention was effectively ratified by Congress over the course of several years? In the absence of a violation of the Constitution, this Honorable Court should not reject the Executive department’s reading of the provisions of the Unprogrammed Fund which it co-authored with Congress.

90. The text is clear: excess revenue collections refer to the excess of actual revenue collections over estimated revenue targets, not the difference between revenue collections and expenditures. The 2011, 2012 and 2013 GAAs only require that revenue collections from each source of revenue enumerated in the budget proposal must exceed the corresponding revenue target.

91. To illustrate, under the 2011 BESF, the estimated revenues to be collected from dividends from shares of stock in government-owned and controlled corporations is P5.5 billion. By 31 January 2011, the National Government had already collected dividend income in the amount of P23.8 billion. In such case, the difference between the revenues collected (P23.8 billion) and the revenue target (P5.5) becomes excess revenue which can be used to fund the purposes under the Unprogrammed Fund.

x x x x

93. Apart from the fact that the Honorable Court’s interpretation would render much of the Unprogrammed Fund useless, the text of the special provision referring to the Unprogrammed Fund supports the government’s intention and interpretation: (1) if the provision was meant to refer to aggregate amounts, it would have used the word “total” or the phrase “only when the revenue collection exceeds the original revenue target;” (2) the phrase “original revenue targets” clearly indicates a plurality of revenue targets with which the revenue collections must be matched.[7] (Emphasis supplied; italics in the original)

The point is well-taken.

In my July 1, 2014 Opinion, I joined the majority in interpreting the phrase “when the revenue collections exceed the original revenue targets” as pertaining to the actual total revenue collections vis-à-vis original total revenue targets so much so that this provision would trigger the release of the Unprogrammed Fund only when there is a

budget surplus, which, as correctly pointed out by the Solicitor General, would render useless the billions of pesos appropriated by Congress under the Unprogrammed Fund because we can take judicial notice that the government operates under a budget deficit. The phrase also could have been specifically worded as using the term “total” if the purpose was, indeed, to refer to the aggregate actual revenue collections vis-à-vis the aggregate original revenue targets.

Although I note that these arguments are being raised for the first time by the Solicitor General, I find the same to be correct based on the familiar rule of statutory construction according great respect to the interpretation by officers entrusted with the administration of the law subject of judicial scrutiny. Because the law is ambiguous, as even the majority concedes, and, thus, susceptible to two interpretations, there is no obstacle to adopting the interpretation of those who were closely involved in the crafting of the law, for their interpretation is solidly founded on the wording of the law and the practical realities of its operation. It should not be forgotten that the Executive Department proposed the budget, including the provisions on the Unprogrammed Fund of the pertinent GAAs. Further, that this interpretation may result to budgetary deficit spending goes into the wisdom and policy of the law, which the Court cannot overturn in the guise of statutory construction.

I, therefore, modify my position in my July 1, 2014 Opinion and agree with the Solicitor General that the phrase “when the revenue collections exceed the original revenue targets” should be construed as merely requiring “that revenue collections from each source of revenue enumerated in the budget proposal must exceed the corresponding revenue target.”

The majority maintains its previous position in its July 1, 2014 Decision that the aforesaid phrase refers to total revenue collections versus total original revenue targets. It reasons that “revenue targets should be considered as a whole, not individually; otherwise, we would be dealing with artificial revenue surpluses. We have even cautioned that the release of unprogrammed funds based on the respondents’ position could be unsound fiscal management for disregarding the budget plan and fostering budget deficits, contrary to the Government’s surplus budget policy.”

I disagree.

As earlier stated, this reasoning goes into the wisdom and policy of the GAA provisions on the Unprogrammed Fund. It cannot, therefore, be considered controlling in interpreting the subject phrase unless it is shown that such a surplus budget policy was clearly and absolutely intended by the legislature.

It was not.

The wording of the GAA provisions on the Unprogrammed Fund point to the contrary. As I noted in my July 1, 2014 Opinion:

The Unprogrammed Fund provisions under the 2011, 2012 and 2013 GAAs, respectively, state:

2011 GAA (Article XLV):

1. Release of Fund. The amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution, including savings generated from programmed appropriations for the year: PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds: PROVIDED, FURTHERMORE, That if there are savings generated from the programmed appropriations for the first two quarters of the year,

the DBM may, subject to the approval of the President release the pertinent appropriations under the Unprogrammed Fund corresponding to only fifty percent (50%) of the said savings net of revenue shortfall: PROVIDED, FINALLY, That the release of the balance of the total savings from programmed appropriations for the year shall be subject to fiscal programming and approval of the President.

#### 2012 GAA (Article XLVI)

1. Release of Fund. The amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution: PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds.

#### 2013 GAA (Article XLV)

1. Release of Fund. The amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution, including collections arising from sources not considered in the original revenue targets, as certified by the Btr: PROVIDED, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds. (Emphasis supplied)

As may be gleaned from the afore-quoted provisions, in the 2011 GAA, there are three provisos, to wit:

1. PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund,
2. PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds,
3. PROVIDED, FURTHERMORE, That if there are savings generated from the programmed appropriations for the first two quarters of the year, the DBM may, subject to the approval of the President, release the pertinent appropriations under the Unprogrammed Fund corresponding to only fifty percent (50%) of the said savings net of revenue shortfall: PROVIDED, FINALLY, That the release of the balance of the total savings from programmed appropriations for the year shall be subject to fiscal programming and approval of the President.

In the 2012 GAA, there are two provisos, to wit:

1. PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund,
2. PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds.

And, in the 2013 GAA, there is one proviso, to wit:

1. PROVIDED, That in case of newly approved loans for foreign assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds.

If, indeed, a surplus budget policy is the overriding principle governing the Unprogrammed Fund, then Congress would not have authorized the release of the Unprogrammed Fund from (1) collections arising from sources not considered in the original revenue targets, (2) newly approved loans for foreign-assisted projects, and (3) savings

from programmed appropriations subject to certain conditions insofar as the 2011 GAA, instead, Congress should have specifically provided that the aforesaid sources of funds should be first used to cover any deficit in the entire budget before being utilized for unprogrammed appropriations.

Further, a special provision of the Unprogrammed Fund under the 2011, 2012 and 2013 GAAs uniformly provide:

Use of Excess Income. Agencies collecting fees and charges as shown in the FY [2011, 2012 or 2013] Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose [4, 3 or 3] - General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.

Implementation of this section shall be subject to guidelines jointly issued by the DBM and DOF. (Emphasis supplied)

The same reasoning may be applied to the above-quoted provision. Again, if a surplus budget policy was clearly and absolutely intended by Congress, then it would not have authorized the release of excess income, by the concerned agencies, for the purpose of “General Fund Adjustments” under the Unprogrammed Fund without specifically providing that such excess income be first utilized to cover any deficit in the entire budget before applying the same to the unprogrammed appropriations.

While the majority may have good reasons to employ an interpretation of the GAA provisions on the Unprogrammed Fund that seeks to prevent or mitigate budgetary deficit spending, it is not within the province of the Court to engage in policy-making. If the interpretation and application of the subject phrase by the Executive Department leads to dire or ill effects in the economy, then the remedy is with Congress and not this Court. (Parenthetically, after the majority’s July 1, 2014 Decision was issued by this Court, Congress repudiated the majority’s interpretation of the subject phrase by, among others, expressly providing in the 2015 GAA that releases from the Unprogrammed Fund may be authorized when “there are excess revenue collections in any one of the identified non-tax revenue sources from its corresponding revenue target,” subject to certain conditions.)

In sum, given the ambiguity of the subject phrase, the doubt should be resolved in favor of the interpretation of those who are entrusted with the administration of the law and who were closely involved in its enactment. The Court should not allow itself to be entangled with policy-making under the guise of statutory construction.

In any event, the foregoing will not alter my vote, relative to this issue, in this case. Instead, it merely allows the government to prove that, indeed, the revenue collections from each source of revenue enumerated in the budget proposal exceeded the corresponding revenue target to justify the release of funds under the Unprogrammed Fund, apart from the exceptive clauses which I already extensively discussed in my July 1, 2014 Opinion. Whether there is sufficient proof that the aforesaid scenario occurred to justify the release of the Unprogrammed Fund, which was used under the DAP, must be established and decided in a proper case.

In another vein, the majority further ruled that the release from the Unprogrammed Fund may occur prior to the end of the fiscal year provided that there are surpluses from the quarterly revenue collections versus the quarterly revenue targets set by the Development Budget Coordination Committee (DBCC).

I disagree insofar as the basis made for the releases is the revenue targets set by the DBCC.

The 2011, 2012 and 2013 GAA provisions on the Unprogrammed Fund uniformly provide that the release therefrom shall be authorized when “the revenue collections exceed the original revenue targets submitted by the

President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution.”[8] Section 22, Article VII of the Constitution provides:

The President shall submit to the Congress within thirty days from the opening of the 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. (Emphasis supplied)

The law is clear. The basis of the “original revenue targets” under the Unprogrammed Fund is the budget of expenditures and sources of financing submitted by the President to Congress. This is commonly known as the Budget for Expenditures and Sources of Financing (BESF).

As correctly noted by Justice Carpio, the DBCC set the 2013 total revenue target at P1,745.9B.[9] However, a comparison with the 2013 BESF shows that the total revenue target set therein is at P1,780.1B.[10] Revenue targets are normally adjusted downward due to developments in the economy as well as other internal and external factors. This appears to be the reason why the law uses the term “original” to qualify the phrase “revenue targets” under the Unprogrammed Fund. That is, the law recognizes that the government may adjust revenue targets downward during the course of budget execution due to unforeseen developments. By providing that the “original” revenue targets under the BESF shall be made the bases for the release of the Unprogrammed Fund, the Executive Department is, thus, prevented or precluded from “abusing” the Unprogrammed Fund by maneuvering increased releases therefrom through the downward adjustment of the revenue targets during the course of budget execution.

Hence, I find that the “original” revenue targets in the BESF are the proper bases for the release of the Unprogrammed Fund, by virtue of the clear provisions of the pertinent GAAs, and not the revenue targets set by the DBCC.

## VI.

In its July 1, 2014 Decision, the majority stated, thus:

Nonetheless, as Justice Brion has pointed out during the deliberations, the doctrine of operative fact does not always apply, and is not always the consequence of every declaration of constitutional validity. It can be invoked only in situations where the nullification of the effects of what used to be a valid law would result in inequity and injustice; but where no such result would ensue, the general rule that an unconstitutional law is totally ineffective should apply.

In that context, as Justice Brion has clarified, the doctrine of operative fact can apply only to the PAPs that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the DAP, but cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities.” (Emphasis supplied)

In response to this statement, and those in the other separate opinions in this case, relative to this issue, I stated that—

Because of the various views expressed relative to the impact of the operative fact doctrine on the potential administrative, civil and/or criminal liability of those involved in the implementation of the DAP, I additionally state that any discussion or ruling on the aforesaid liability of the persons who authorized and the persons who received the funds from the aforementioned unconstitutional cross-border transfers of savings, is premature. The doctrine of operative fact is limited to the effects of the declaration of unconstitutionality on the executive or legislative act that is declared unconstitutional. Thus, it is improper for this Court to discuss or rule on matters not squarely at issue or decisive in this case which affect or may affect their alleged liabilities

without giving them an opportunity to be heard and to raise such defenses that the law allows them in a proper case where their liabilities are properly at issue. Due process is the bedrock principle of our democracy. Again, we cannot run roughshod over fundamental rights.

The majority now clarifies that its statement that “the doctrine of operative fact x x x cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities” does not do away with the presumption of good faith, the presumption of innocence and the presumption of regularity in the performance of official duties.

I am in accord with this clarification.

Finally, I reiterate that the operative fact doctrine applies only to the cross-border transfers of savings actually proven in this case, i.e., the admitted cross-border transfers of savings from the Executive Department to the Commission on Audit, House of Representatives and Commission on Elections, respectively. Any ruling as to its applicability to the other DAP-funded projects is premature in view of the lack of sufficient proof, litigated in a proper case, that they were implemented in violation of the Constitution.

ACCORDINGLY, I vote to:

1. DENY petitioners’ Motion for Partial Reconsideration; and
2. PARTIALLY GRANT respondents’ Motion for Reconsideration. Consistent with my July 1, 2014 Opinion, I maintain that the Disbursement Acceleration Program is PARTIALLY UNCONSTITUTIONAL:

2.1 Sections 5.4, 5.5 and 5.7 of National Budget Circular No. 541 are VOID insofar as they (1) allowed the withdrawal of unobligated allotments from slow-moving projects which were not finally discontinued or abandoned, and (2) authorized the use of such withdrawn unobligated allotments as “savings” for violating the definition of “savings” under the 2011, 2012 and 2013 general appropriations acts.

2.2 The admitted cross-border transfers of savings from the Executive Department, on the one hand, to the Commission on Audit, House of Representatives and Commission on Elections, respectively, on the other, are VOID for violating Article VI, Section 25(5) of the Constitution.

2.3 The phrase “to fund priority programs and projects not considered in the 2012 budget but expected to be started or implemented during the current year” in Section 5.7.3 of National Budget Circular No. 541 is VOID for contravening Article VI, Section 29(1) of the Constitution and Section 54 of the 2012 General Appropriations Act.

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[1] Citations omitted.

[2] SECTION 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. (Emphasis supplied)

[3] [S]avings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrances 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 appropriations balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii)

from appropriations 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) [See Sections 60, 54 and 52 of the 2011, 2012 and 2013 GAAs, respectively]

[4] Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

[5] Section 54. x x x

Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. In no case shall a non-existent program, activity, or project, be funded by augmentation from savings or by the use of appropriations otherwise authorized by this Act. (Emphasis supplied)

[6] 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 the 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.

[7] Motion for Reconsideration, pp. 29-31.

[8] Emphasis supplied.

[9] [http://www.dbm.gov.ph/wp-content/uploads/DBCC\\_MATTERS/Fiscal\\_Program/FiscalProgramOfNGFy\\_2013.pdf](http://www.dbm.gov.ph/wp-content/uploads/DBCC_MATTERS/Fiscal_Program/FiscalProgramOfNGFy_2013.pdf) (last visited February 2, 2015)

[10] <http://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2013/C1.pdf> (last visited February 2, 2015)

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## CONCURRING OPINION

**LEONEN, J.:**

I concur, in the result, with the denial of the Motions for Reconsideration filed by petitioners. I concur with the partial grant of the Motion for Reconsideration filed by respondents clarifying (a) the concept of appropriation item as differentiated from allotment classes and (b) the effect of the interpretation of the statutory provisions on the use of unprogrammed funds. I vote to add that there are other situations when unprogrammed funds can be used without regard to whether the total quarterly or annual collections exceed the revenue targets.

I clarify these positions in this separate opinion.

### I

The General Appropriations Act authorizes, not compels, expenditures

The General Appropriations Act is the law required by the Constitution to authorize expenditures of public funds for specific purposes.[1] Each appropriation item provides for the limits of the amount that can be spent by any office, agency, bureau or department of government.[2] The provision of an appropriation item does not require that government must spend the full amount appropriated. In other words, the General Appropriations Act provides authority to spend; it does not compel actual expenditures.

By providing for the maximum that can be spent per appropriation item, the budget frames a plan of action. It is

enacted on the basis of projections of what will be needed within a future time frame — that is, the next year in the case of the General Appropriations Act. Both the Constitution and the law provide that the President initially proposes projects, activities, and programs to meet the projected needs for the next year.[3] Congress scrutinizes the proposed budget and is the constitutional authority that passes the appropriations act that authorizes expenditures of the entire budget through appropriation items[4] subject to the flexibilities provided in the Constitution,[5] existing law, and in the provisions of the General Appropriations Act[6] not inconsistent with the Constitution or existing law.[7]

To read the Constitution as requiring that every appropriation item be spent only in the full and exact amount provided in the appropriation item — and nothing less than the full amount — is absurd. Reality will not always be as predicted by the President and Congress as they deliberated on the budget. Obviously, reality is far richer than our plans.

The Constitution should be read as having intended reasonable outcomes on the basis of the values congealed in the text of its provisions enlightened by the precedents of this court.

Thus, there is nothing unconstitutional or illegal when the President establishes his priorities. He is expected to exhort and provide fiscal discipline for executive offices within his control.[8] He may, in line with public expectations, do things more effectively, economically, and efficiently. This is inherent in the executive power vested on him.[9] He is expected to fully and faithfully execute all laws.[10] This constitutional flexibility, while not unlimited, is fundamental for government to function.

Disagreements as to the priorities of a President are matters of political accountability. They do not necessarily translate into juridical necessities that can invoke the awesome power of judicial review. This court sits to ensure that political departments exercise their discretions within the boundaries set by the constitution and our laws.[11] We do not sit to replace their political wisdom with our own.[12]

## II

Withholding unobligated allotments is not unconstitutional per se

Setting priorities generally means that the President decides on which project, activity, or program within his department will be funded first or last within the period of effectivity of the appropriation items.

The Constitution provides for clear delineations of authority. Congress has the power to authorize the budget.[13] However, it is the President that generally decides on when and how to allocate funds, order or encourage agencies to obligate, and then cause the releases of the funds to contracted entities.[14] The process of obligation, which includes procurement as well as the requirements for the payment, or release of funds may be further limited by law.[15]

Thus, withholding unobligated allotments is not unconstitutional per se. It can be done legitimately for a variety of reasons. The revenues expected by government may not be forthcoming as expected. The office or agency involved may not have the capacity to spend due to organizational problems, corruption issues, or even fail to meet the expectations of the President himself. In my view, the President can withhold the unobligated allotment until the needed corrective measures are done within the office or agency. With the amount withheld, the President may also ensure that the other appropriations items are fully funded as authorized in the general or in any supplemental appropriations act.

This flexibility is subject to several constitutional constraints. First, he can only spend for a project, activity, or program whose expenditure is authorized by law.[16] Second, he cannot augment any appropriations item within

his department unless it comes from savings.[17]

### III

Withheld unobligated allotments are not necessarily “savings”

Savings is a term that has a constitutionally relevant meaning. The constitutional meaning of the term savings allows Congress to further refine its details.

To underscore the power of Congress to authorize appropriations items, the Constitution prohibits their augmentation. There is no authority to spend beyond the amounts set for any appropriations item.[18] Congress receives information from the executive as to the projected revenues prior to passing a budget. Members of Congress deliberate on whether they will agree to the amounts allocated per project, activity, or program and thus, the extent of their concurrence with the priorities set by the President with the latter’s best available estimates of what can happen the following year. The authorities that will eventually spend the amounts appropriated cannot undermine this congressional power of authorization.

However, the Constitution itself provides for an exception. Appropriated items may be augmented but only from savings and only if the law authorizes the heads of constitutional organs or departments to do so.[19] It is in this context that savings gains constitutional relevance.

From a constitutional perspective, I view “savings” as related only to the privilege to augment. As a constitutional concept, it cannot be endowed with a meaning that will practically undermine the constitutional grant of power to Congress to limit and authorize appropriations items. There must be a reasonable justification for the failure of the spending authority to spend the amount declared as savings from an appropriated item. This reasonable justification must be based on causes external to the authority deciding when to declare actual savings.

On the other hand, given that the power of Congress to determine when the heads of constitutional organs and departments may exercise the prerogative of augmentation,[20] Congress, too, may define the limits of the concept of savings but only within the parameters of its constitutional relevance.

In the General Appropriations Acts of 2011,[21] 2012,[22] and 2013,[23] savings was defined as:

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 appropriations balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriations 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.

Currently, the definition of savings in the General Appropriations Act of 2014[24] is as follows:

Sec. 68. 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.

Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. In no case shall a non-existent program, activity, or project, be funded by augmentation from savings or by the use of appropriations otherwise authorized in this Act.

Definitely, the difference between the actual expenditure and the authorized amount appropriated by law as a result of the completion of a project is already savings that can be used to augment other appropriations items within the same department.

Analogously, the expense category called Personnel Services (PS) within an appropriations item also creates savings during the year. Thus, for various reasons, when an executive office is able to hire less than the authorized plantilla funded by the appropriation item, the President may declare the compensation and benefits corresponding to the unfilled items after any payroll period as “savings” that can be used for augmentation.[25] Certainly, the monies that should have been paid for personnel services for positions that were unfilled for a certain period will no longer be used until the end of the year. Similarly, there is savings when the actual expenditure for Maintenance and Other Operating Expenses (MOOE) is less than what was planned for a given period. There is no need to wait until the end of the year to declare savings for purposes of augmentation.

The justification for projects, activities, and programs to be considered as “finally discontinued” and “abandoned” must be clear in order that their funds can be considered savings for purposes of augmentation. Thus, in my Concurring Opinion in the main Decision of this case, I clarified that this should be read in conjunction with the Government Accounting and Auditing Manual (GAAM)[26] provisions that state:

Sec. 162. Irregular expenditures.- The term “irregular expenditure” signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law. Irregular expenditures are incurred without conforming with prescribed usages and rules of discipline. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set, is deemed irregular. An anomalous transaction which fails to follow or violate appropriate rules of procedure is likewise irregular. Irregular expenditures are different from illegal expenditures since the latter would pertain to expenses incurred in violation of the law whereas the former in violation of applicable rules and regulations other than the law.

Sec. 163. Unnecessary expenditures.- The term “unnecessary expenditures” pertains to expenditures which could not pass the test of prudence or the obligation of a good father of a family, thereby non-responsiveness to the exigencies of the service. Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This could also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which cannot be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditure must be considered in determining whether or not the expenditure is necessary.

Sec. 164. Excessive expenditures.- The term “excessive expenditures” signifies unreasonable expense or expenses incurred at an immoderate quantity or exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.

Sec. 165. Extravagant expenditures.- The term “extravagant expenditures” signifies those incurred without restraint, judiciousness and economy. Extravagant expenditures exceed the bounds of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, wasteful, grossly excessive, and injudicious.

Sec. 166. Unconscionable expenditures.- The term “unconscionable expenditures” signifies expenses without a

knowledge or sense of what is right, reasonable and just and not guided or restrained by conscience. These are unreasonable and immoderate expenses incurred in violation of ethics and morality by one who does not have any feeling of guilt for the violation.

The President's power to suspend a project in order to declare savings for purposes of augmentation may be statutorily granted in Section 38 of the Revised Administrative Code, but it cannot be constitutional unless such grounds for suspension are reasonable and such reasonable grounds are statutorily provided. Under the present state of our laws, it will be reasonable when read in relation to the GAAM. As I explained in my Concurring Opinion[27] to the main Decision:

Of course, there are instances when the President must mandatorily withhold allocations and even suspend expenditure in an obligated item. This is in accordance with the concept of "fiscal responsibility": a duty imposed on heads of agencies and other government officials with authority over the finances of their respective agencies.

Section 25 (1) of Presidential Decree No. 1445, which defines the powers of the Commission on Audit, states:

Section 25. Statement of Objectives. –

....

(1) To determine whether or not the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged;

....

This was reiterated in Volume I, Book 1, Chapter 2, Section 13 of the Government Accounting and Auditing Manual, which states:

Section 13. The Commission and the fiscal responsibility of agency heads. – One primary objective of the Commission is to determine whether or not the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged.

The head of an agency and all those who exercise authority over the financial affairs, transaction, and operations of the agency, shall take care of the management and utilization of government resources in accordance with law and regulations, and safeguarded against loss or wastage to ensure efficient, economical, and effect operations of the government.

Included in fiscal responsibility is the duty to prevent irregular, unnecessary, excessive, or extravagant expenses. Thus:

Section 33. Prevention of irregular, unnecessary, excessive, or extravagant expenditures of funds or uses of property; power to disallow such expenditures. The Commission shall promulgate such auditing and accounting rules and regulations as shall prevent irregular, unnecessary, excessive, or extravagant expenditures or uses of government funds or property.

The provision authorizes the Commission on Audit to promulgate rules and regulations. But, this provision also guides all other government agencies not to make any expenditure that is "irregular, unnecessary, excessive, or extravagant." The President should be able to prevent unconstitutional or illegal expenditure based on any allocation or obligation of government funds.

....

The President can withhold allocations from items that he deems will be "irregular, unnecessary, excessive or extravagant." Viewed in another way, should the President be confronted with an expenditure that is clearly

“irregular, unnecessary, excessive or extravagant,” it may be an abuse of discretion for him not to withdraw the allotment or withhold or suspend the expenditure

For purposes of augmenting items — as opposed to realigning funds — the President should be able to treat such amounts resulting from otherwise “irregular, unnecessary, excessive or extravagant” expenditures as savings.[28] (Emphasis in the original, citations omitted)

#### IV

“Appropriation covers” does not always justify proper augmentation

Fundamental to a proper constitutional exercise of the prerogative to augment is the existence of an appropriations item.[29]

But it is not only the existence of an appropriation item that will make augmentation constitutional. It is likewise essential that it can be clearly and convincingly shown that it comes from legitimate savings in a constitutional and statutory sense.[30] In other words, having appropriation covers to the extent of showing that the item being funded is authorized is not enough. For each augmentation, the source in savings must likewise be shown.[31]

This is why constitutional difficulties arose in the kind of pooled funds done under the Disbursement Allocation Program (DAP). There was the wholesale assertion that all such funds came from savings coming from slow moving projects. This is not enough to determine whether the requirements of constitutionality have been met. For there to be valid savings of every centavo in the pooled funds, there must be a showing (a) that the activity has been completed, finally discontinued and abandoned;[32] and (b) why such activity was finally discontinued and abandoned and its consistency with existing statutes.[33] Pooled funds make it difficult, for purposes of this determination, to make this determination. DAP may be the mechanism to ensure that items that needed to be augmented be funded in order to allow efficiencies to occur. However, this mechanism should be grounded and limited by constitutional acts. The source of the funds in the pool called DAP should be shown to have come from legitimate savings in order that it can be used to augment appropriations items.

The amount of augmentation is not constitutionally limited when there are legitimate savings and statutory authority to modify an appropriations item.[34] Furthermore, there is a difference between an appropriations item and the expense categories within these items. The Constitution only mentions that the entire appropriations item may be augmented from savings.[35] Neither the Constitution nor any provision of law limits the expense category that may be used within the item that will be augmented. Thus, I agree with the ponencia that when an item is properly augmented, additional funds may be poured into Personnel Services, MOOE, or Capital Outlay even if originally the appropriations item may not have had a provision for any one of these expense categories.

#### V

Augmentation may only be within a constitutional department

The Solicitor General strains the meaning of Article VI, Section 25(5) to the point of losing its spirit.[36] He proposes that augmentation by the President is allowable when there is a request coming from another constitutional organ or department.[37] He parses the provision to show that one sentence is meant to contain two ideas: first, the transfer of appropriation and second, the power to augment.

This is a novel idea that is not consistent with existing precedents. Besides, such interpretation does not make sense in the light of the fundamental principle of separation of powers and the sovereign grant to Congress to authorize the budget. The proposed interpretation undermines these principles to the point of rendering them

meaningless.

Contemporaneous construction by the political departments aids this court's exercise of its constitutional duty of judicial review. Contemporaneous construction does not replace this power.

Parenthetically, the Solicitor General asserts in his Motion for Reconsideration that:

77. This understanding of the Constitution is not exclusive to the political branches of government. Documentary evidence exists to show that the Supreme Court itself has (1) approved the allocation of amounts from its savings to augment an item within the Executive and (2) sought funds from the Executive for transfer to the Judiciary. These practices validate respondents' theory of benign and necessary interdepartmental augmentations.

78. On 17 July 2012, when Justice Antonio T. Carpio was Acting Chief Justice, the Supreme Court en banc issued a Resolution in A.M. No. 12-7-14-SC, which reads:

The Court Resolved to APPROVE the allocation, from existing savings of the Court, of the following amounts for the construction of courthouses:

1. Manila Hall of Justice (120 courts)

P1,865,000,000.00

2. Cebu Court of Appeals Building

266,950,000.00

3. Cagayan de Oro Court of Appeals Building

251,270,000.00

TOTAL

P2,383,220,000.00

The foregoing amounts are hereby set aside and earmarked for the construction costs of the said buildings.

79. As can be gleaned from the above Resolution, the Supreme Court earmarked its existing savings of P1.865 billion to augment the P100 million budget for the Manila Hall of Justice, which is an item (B.I.d.—“Civil Works and Construction Design for the Manila Hall of Justice”) in the 2012 budget of the Department of Justice-Office of the Secretary, which is within the Executive Department. This is an example of the benign and necessary interaction between interdependent departments. Obviously, the Supreme Court has an interest in the construction of Halls of Justice, and no one can say that this cross-border augmentation was a means by which the judiciary tried to co-opt the Executive.

80. Moreover, on 05 March 2013, the Supreme Court en banc issued a Resolution in A.M. No. 13-1-4-SC, the dispositive portion of which reads:

WHEREFORE, the Court hereby requests the Department of Budget and Management to approve the transfer of the amount of One Hundred Million Pesos (P100,000,000.00) which was included in the DOJ-JUSIP budget

for Fiscal Year 2012 for the Manila Hall of Justice to the budget of the Judiciary, subject to existing budget policies and procedures, to be used for the construction of the Malabon Hall of Justice.

81. In the above Resolution, the Supreme Court requested the DBM to transfer the P100 million in the budget of the DOJ for the Manila Hall of Justice to the Judiciary, which it intended to utilize to fund the construction of the Malabon Hall of Justice. This means that the P100 million allocation will be taken away from the Manila Hall of Justice, which has an item in the 2012 GAA under the Executive, and used instead to fund the construction of the Malabon Hall of Justice, which has no item in the 2012 or the 2013 GAA.

82. When the petitions were filed and while they were being heard, Chief Justice Sereno, in a letter dated 23 December 2013, informed the DBM that the Supreme Court was withdrawing its request to realign the P100 million intended for the Manila Hall of Justice to the budget of the Judiciary. These two instances show both cross-border transfers on the part of the Supreme Court—(a) the augmentation of an item in the Executive from funds in the Judiciary; and (b) the “transfer” of funds from the Executive to the Supreme Court, whether or not for purposes of augmentation.

83. With all due respect, this is by no means a disapprobation of the Honorable Court. But it does serve to highlight the fact that the Honorable Court’s practice was based on an understanding of the constitutional provision that coincides with the government’s.[38] (Citations omitted)

I concur with Justice Carpio’s observations in his Separate Opinion resolving the present Motions for Reconsideration. Earmarking savings for a particular purpose without necessarily spending it is not augmentation.[39] It is a prerogative that can be exercised within the judiciary’s prerogative of fiscal autonomy. With respect to the alleged request to allocate funds from the Department of Justice for the judiciary’s construction of the Malabon Halls of Justice, suffice it to say that this resolution was not implemented. The Chief Justice withdrew the request seasonably. This withdrawal was confirmed by a Resolution issued by this court. Decisions of this court En Banc are subject to limited reconsideration. Reconsideration presupposes that this court also has the ability to correct itself in a timely fashion.

The more salient question is why both the President and Congress insist that the items for renovation, repair and construction of court buildings should not be put under the judiciary. Instead it is alternatively provided in the General Appropriations Act under the budget of either the Department of Justice or the Department of Public Works and Highways. Both of these agencies are obviously under the executive.[40] This produces excessive entanglements between the judiciary and the executive and undermines the constitutional requirement of independence. In my view, these appropriation items are valid but its location (under the executive) is unconstitutional. These items should be read and deemed a part of the judiciary’s budget.

## VI

The liabilities of any party were not issues in these cases

I fully concur with the ponencia’s characterization that the pronouncements of good faith or bad faith of authors, proponents, and implementors of the DAP are obiter. Obiter dictum is part of the flourish of writing an opinion. They serve the purpose of elucidation but should not be read as binding rule of the case (*ratio decidendi*). This is so because the parties did not litigate them as issues. They are not essential to arrive at a resolution of the issues enumerated by this court as fundamental to reach the disposition of this case.[41]

There was neither a declaration of illegality or unconstitutionality of any of or all of the 116 projects identified to have benefitted from the DAP mechanism nor was there a declaration that the DAP mechanism per se was unconstitutional. That the administration chose to stop or suspend all these projects was not called for by the

decision. The dispositive of the decision (fallo) only declared acts or practices under the DAP[42] as unconstitutional, e.g. cross-border transfers, funding of programs not covered by any appropriation under the General Appropriations Act, and the declaration of savings without complying with the requirements under the General Appropriations Act. Unless all the DAP projects were considered by the executive as having elements of the unconstitutional acts, the decision to stop or suspend was theirs alone.

Anxiety for the party losing a case is natural. These anxieties are normally assuaged by better legal advice. Sobriety follows good legal advice. After all, our opinions form part of jurisprudence, which are principal sources for the bar to give good legal advice and the bench to decide future cases. Bad legal advice given to the President as to the import of our rulings may have dire consequences, but it does not change what we have declared or proclaimed. We can only do so much in our opinions.

## VII

### Release of unprogrammed funds

The Office of the Solicitor General points out that this court is mistaken in ruling that:

[R]evenue collections must exceed the total of the revenue targets stated in the Budget for Expenditures and Sources of Financing (BESF) before expenditures under the Unprogrammed Fund can be made.[43] (Citation omitted)

The Office of the Solicitor General argues that in reality, “the government’s total revenue collections have never exceeded the total original revenue targets”[44] and that the proper interpretation is:

[E]xcess revenue collections refer to the excess of actual revenue collections over estimated revenue targets, not the difference between revenue collections and expenditures.[45]

In my Concurring Opinion to the July 1, 2014 Decision, I initially agreed with the majority decision that “[s]ourcing the DAP from unprogrammed funds despite the original revenue targets not having been exceeded was invalid”[46] referred to total revenue targets, not revenue target per income class.

The interpretation of the article on Unprogrammed Funds covered by the period when DAP was in place deserves closer scrutiny. The resolution of whether authorization to spend income only upon a showing that total collected revenues exceed total targeted revenues requires examination of the entire structure of the article and not only its first provision.

In the original Decision, we focused on the first special provision. In the FY 2011 General Appropriations Act, this provision states:

#### Special Provision(s)

1. Release of Fund. The amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution, including savings generated from programmed appropriations for the year: PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds: PROVIDED, FURTHERMORE, That if there are savings generated from the programmed appropriations for the first two quarters of the year, the DBM may, subject to the approval of the President, release the pertinent [sic] appropriations under the Unprogrammed Fund corresponding to only fifty percent (50%) of the said savings net of revenue shortfall:

PROVIDED, FINALLY, That the release of the balance of the total savings from programmed appropriations for the year shall be subject to fiscal programming and approval of the President.[47]

However, this is not the only special provision for this appropriations item.

## A

### Use of savings in programmed funds for purposes enumerated for Unprogrammed Funds

The article on Unprogrammed Funds is generally the appropriations item that allows expenditures from income arising from collected revenues exceeding those targeted. Starting from the General Appropriations Act of 2012, the applicable laws consistently no longer included the clause, “including savings generated from programmed appropriations for the year”, found in the General Appropriations Act of 2011 from the common first special provision. This manifests the clear intention that none of the savings from programmed appropriation will be used for any of the purposes enumerated in the article on Unprogrammed Funds. These purposes are:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Strategic Government Reforms
3. Support to Foreign-Assisted Projects
4. General Fund Adjustments
5. Support for Infrastructure Projects and Social Programs
6. Support for Pre-School Education
7. Collective Negotiation Agreement
8. Payment of Total Administrative Disability Pension[48]

Starting FY 2012, therefore, expenditures from the purposes enumerated in Unprogrammed Funds using “savings” from programmed appropriations would be void for lack of statutory authority to spend for such purposes in such manner.

### Use of excess revenue collections

Generally, revenue collections in excess of targeted revenues cannot be considered as “savings” in the concept of Article VI, Section 25(5) of the Constitution. However, the disposition of these funds may also be provided in the General Appropriations Act or in a supplemental budget. This is consistent with the basic principle that Congress authorizes expenditures of public funds as found in Article VI, Section 29(1) of the Constitution, to wit:

- (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

Thus, apart from the first special provision, the ninth provision states:

9. Use of Income. In case of deficiency in the appropriations for the following business-type activities, departments, bureaus, offices and agencies enumerated hereunder and other agencies as may be determined by the Permanent Committee are hereby authorized to use their respective income collected during the year. Said income shall be deposited with the National Treasury, chargeable against Purpose 4 - General Fund Adjustments, to be used exclusively for the purposes indicated herein or such other purposes authorized by the Permanent Committee, as may be required until the end of the year, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292, s. 1987:

DEPARTMENT / AGENCY

## SOURCE OF INCOME

## PURPOSE

## ENVIRONMENT AND NATURAL RESOURCES

National Mapping and Resource Information Authority Proceeds from Sales of Maps and Charts For reproduction of maps and charts and printing publications

## FINANCE

Bureau of Customs Sale of Accountable Forms For the printing of accountable forms

## FOREIGN AFFAIRS

Office of the Secretary Issuance of Passport Booklets For the procurement of additional passport booklets

## JUSTICE

National Bureau of Investigation Urine Drug Testing and DNA Analysis For the purchase of reagents, drug testing kits and other consumables

Issuance of Clearance For the procurement of additional materials and payment of rentals for the laser photo system used in the issuance of NBI clearance

## TRANSPORTATION AND COMMUNICATIONS

Land Transportation Office Issuance of Driver's License, Plates, Tags and Stickers

For the production of additional driver's license, plates, tags and stickers[49]

The deficiency referred to in this special provision refers to the inadequacy of the amount already appropriated. The purpose of addressing the deficiency is to ensure that the income generating activities of the offices and agencies continue. It grants flexibility in as much as the actual demand for the government services enumerated might not be exactly as predicted. To achieve this flexibility, this special provision does not require that there be a showing that total collected revenue for all sources of funds exceed total targeted revenue.

The tenth special provision for Unprogrammed Funds in the General Appropriations Act of 2011 more specifically addresses the use of excess income for revenue generating agencies and offices:

10. Use of Excess Income. Agencies collecting fees and charges as shown in the FY 2011 Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 4 - General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.[50]

This special provision specifically authorizes the use of the excess in collected revenue over targeted revenue for the collecting agency. This flexibility in the budget allows government to continually ensure that income-generating activities of government do not come to a standstill for lack of funds. More than an expense, this funding can be seen as an investment into the operations of these special offices and agencies.

Again, similar to the ninth special provision, there is no need to show that the total revenue collections of government exceed their submitted total targeted collections.

Other than these statutory authorities, Unprogrammed Funds or revenue collected in excess of the submitted targets may not be used to augment programmed appropriations. Any such expenditure will be void for lack of statutory authority required by the Constitution.

## B

Apart from these special provisions, the absolute and universal requirement that expenditures from Unprogrammed Funds will only be allowed when the total revenue collected exceeds the submitted targets may not be supported even by the text of the first special provision.

The text of the first special provision reads: “Release of Funds . . . shall be released only when the revenue collections exceed the original revenue targets submitted by the President[.]”[51] Revenue targets are in plural form. The provision also fails to qualify that the basis for reckoning whether the excess is the total “original revenue target[s]”. The absence of the adjective “total” is palpable and unmistakable.

The ponencia proposes that we discover an unequivocal intent on the part of this statute that the authority to spend for any purpose covered by this title (Unprogrammed Funds) is present only when the actual revenue collection exceeds the total revenue target submitted by the President. While this interpretation may have its own reasonable merit, it is not the only interpretation possible. There can be other interpretations that would be fully supported by the text of the provision. There can be other interpretations which will not require that this court make generalizations and surmises.

At best, therefore, the universal qualifier for the use of Unprogrammed Funds may just be one interpretation; but, it is not the only one.

The text of this statutory provision can also be reasonably interpreted as allowing expenditures for the purposes enumerated when it can be shown that the actual revenue collection in an income source exceeds the target for that source as submitted by the President in his National Expenditure Program. There is no need to show that the total revenue collection exceeds the total revenue targets.

This alternative interpretation, apart from being plainly supported by the text, is also reasonable to achieve discernable state interests.

For instance, different departments and agencies are responsible for varying sources of revenue. The Bureau of Internal Revenue ensures a viable tax collection rate. The Bureau of Customs oversees the collection of tariffs and other customs duties. Each of these agencies is faced with their own ambient and organizational challenges. The leadership styles of those given charge of these offices will be different resulting in varying results in terms of their collection efforts. Similarly, the problems of government financial institutions (GFIs) and government-owned and controlled corporations (GOCC) may require different interventions to improve their profitability and efficiencies. Thus, when each of these agencies and offices actually exceed their revenue collection over their targets is dependent on a lot of factors, many of which are not common to all of them.

It is as reasonable to infer that Congress may have intended to provide incentives — and its corresponding flexibility — to the President as his team is able to solve the challenges of each of the agencies involved in generating revenues. It is reasonable also to assume that members of Congress were pragmatic and that they expected that the problems of collection (including leakages) in some agencies, such as the Bureau of Customs, would be difficult to solve as compared with GFIs and GOCCs. Thus, authority to spend for the purposes enumerated in the article on Unprogrammed Funds will depend on the success of each of the agencies involved.

The provision in question is sufficiently broad to carry either or both interpretations: (a) targeted revenues refer to

total revenues, and (b) that targeted revenues refer to revenues per income class. Both can be supported by their own set of reasons, but the first option — that of considering targeted revenues as total revenues — carries the potential of being absurd. Thus, the real question is whether it is within our power to choose which interpretation is the more pragmatic and sound policy. This decision is different from whether the provision itself or its application is consistent with a provision in the Constitution. It is a choice of the wiser or more politically palatable route. It is a question of wisdom.

Judicial review should take a more deferential temperament when the interpretation of a statutory provision involves political choices. At the very least, these questions should be deferred until parties in the proper case using the appropriate remedy are able to lay down the ambient facts that can show that one interpretation adopted by government respondents clearly and categorically runs afoul of any law or constitutional provision. In my separate opinion in *Umali v. Commission on Elections*,<sup>[52]</sup> I noted:

Our power to strike down an act of co-equal constitutional organs is not unlimited. When we nullify a governmental act, we are required “to determine whether 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.”

No less than three constitutional organs have interpreted the law and the relevant provision of the Constitution. I am of the view that our power to strike down that interpretation should not be on the basis of the interpretation we prefer. Rather, Governor Umali should bear the burden of proving that the interpretation of the law and the Constitution in the actual controversy it presents is not unreasonable and not attended by any proven clear and convincing democratic deficit. We should wield the awesome power of judicial review awash with respectful deference that the other constitutional organs are equally conscious of the mandate of our people through our Constitution.<sup>[53]</sup> (Emphasis and citation omitted)

When judicial review is being applied to check on the powers of other constitutional departments or organs, it should require deference as a constitutional duty. This proceeds from the idea that the Constitution, as a fundamental legal document, contains norms that should also be interpreted by other public officers as they discharge their functions within the framework of their constitutional powers.

To this extent, I qualify my concurrence to the declaration that the expenditures under DAP from Unprogrammed Funds is void without conditions. I suspend judgment for the more appropriate case where facts have been properly adjudicated in the proper forum. Perhaps, this will be a certiorari or prohibition case arising out of an actual disallowance of the Commission on Audit of an expenditure claimed under Unprogrammed Funds.

Assuming without conceding that the interpretation that Unprogrammed Funds can only be sourced from the excess over the total revenue targets is a new construction on a statutory provision. It is not a finding that there is a constitutional violation. Thus, fairness to concerned parties requires that it be prospective in its effect. In this regard, I concur with the ponencia’s view that the majority’s interpretation should be prospective without conceding the points I have made in this Opinion.

My concurrence relating to the three acts and practices under the DAP that are considered unconstitutional and the application of the operative fact doctrine for third-party beneficiaries remains vigorously unaltered.

## C

During the deliberation in this case, Justice Carpio suggested that the value of the article on Unprogrammed Funds was to assure all actors in our economy that government will not print money just to be able to make expenditures. Printing money or increasing money supply generally has inflationary effects. That is, the prices of all goods and services may increase not because of the scarcity of these items but because there is a surplus of

currency floating in the economy. Thus, the title on Unprogrammed Funds require actual revenue collections vis-à-vis a fixed base such as submitted revenue targets that cannot be further modified.

I agree. The entire discussion thus far requires actual collection and an excess of these actual collections over revenue targets.

Justice Carpio next pointed out the consequences of the special provision on reportorial requirements. This provides:

11. Reportorial Requirement. The DBM shall submit to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and purposes thereof, and the recipient departments, bureaus, agencies or offices, GOCCs and GFIs, including the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.[54]

I agree that this special provision debunks the Solicitor General's argument that Unprogrammed Funds using the interpretation of this court's original majority opinion will never be used because it can only be assessed the following year. The provision clearly allows use of the funds within the year because it contemplates quarterly reports, which it requires to be made with Congress.

However, I regret that I cannot agree that this special provision implies a resolution of the basis for construing what targeted revenue means. On a quarterly basis, government can assess either total quarterly revenue or quarterly revenue per income source. There is also need for quarterly reports in view of the ninth and tenth special provision in the article on Unprogrammed Funds in the General Appropriations Act of 2011, which are similar to the corresponding special provisions in subsequent General Appropriations Acts.

ACCORDINGLY, with these clarifications, I vote:

(a)

to DENY the Motions for Reconsideration of petitioners for lack of merit;

(b)

to PARTIALLY GRANT the Motion for Reconsideration of respondents in relation to the concept of expense classes as opposed to appropriation items; and

(c)

with respect to Unprogrammed Funds, to DECLARE that the use of Unprogrammed Funds to augment programmed appropriations is VOID unless consistent with the special provisions. However, this interpretation on the use of Unprogrammed Funds should be applied prospectively.

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[1] CONST., art. VI, sec. 29(1).

[2] CONST., art. VI, sec. 29(1).

[3] CONST., art. VII, sec. 22; Exec. Order No. 292 (1987), book I, ch. 3, sec. 11; Exec. Order No. 292 (1987), book VI, ch. 2, sec. 3; Exec. Order No. 292 (1987), book VI, ch. 1, sec. 2(3).

[4] CONST., art. VI, secs. 24 and 26.

[5] CONST., art. VI, sec. 25(5).

[6] Rep. Act No. 10155, GAA Fiscal Year 2012, General Provisions, sec. 54; Rep. Act No. 10352, GAA Fiscal Year 2013, General Provisions, sec. 53; Rep. Act No. 10147, GAA Fiscal Year 2011, General Provisions, sec. 60.

[7] See also 1 GOVERNMENT ACCOUNTING AND AUDITING MANUAL Book III, Title 3, art. 2, secs. 162–166.

[8] CONST., art. VII, sec. 17.

[9] CONST., art. VII, sec. 1.

[10] CONST., art. VII, sec. 5.

[11] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936) [Per J. Laurel, En Banc].

[12] *Id.*

[13] CONST., art. VI, sec. 24.

[14] As discussed in my concurring opinion to the main decision, “The president’s power or discretion to spend up to the limits provided by law is inherent in executive power.” J. Leonen, concurring opinion in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 7 [Per J. Bersamin, En Banc]. See also CONST., art. VII, sec. 17.

[15] See for example Rep. Act No. 9184 (2003).

[16] CONST., art. VI, sec. 29(1).

[17] CONST., art. VI, sec. 25(5).

[18] CONST., art. VI, sec. 25(1).

[19] CONST., art. VI, sec. 25(5).

[20] See CONST., art. VI, sec. 25(5).

[21] Rep. Act No. 10147, GAA Fiscal Year 2011, General Provisions, sec. 60.

[22] Rep. Act No. 10155, GAA Fiscal Year 2012, General Provisions, sec. 54.

[23] Rep. Act No. 10352, GAA Fiscal Year 2013, General Provisions, sec. 53.

[24] Rep. Act No. 10633, GAA Fiscal Year 2014, General Provisions, sec. 68.

[25] See the definition of savings under the general provisions of the General Appropriations Act in a given year.

[26] The Government Accounting and Auditing Manual (GAAM) was issued pursuant to Commission on Audit Circular No. 91-368 dated December 19, 1991. The GAAM is composed of three volumes: Volume I – Government Auditing Rules and Regulations; Volume II – Government Accounting; and Volume III – Government Auditing Standards and Principles and Internal Control System. In 2002, Volume II of the GAAM was replaced by the New Government Accounting System as per Commission on Audit Circular No. 2002-002 dated June 18, 2002.

[27] J. Leonen, concurring opinion in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 [Per J. Bersamin, En Banc].

[28] J. Leonen, concurring opinion in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 <

[http://sc.judiciary.gov.ph/jurisprudence/2014/july2014/209287\\_leonen.pdf](http://sc.judiciary.gov.ph/jurisprudence/2014/july2014/209287_leonen.pdf)> 15–18 [Per J. Bersamin, En Banc].

[29] CONST., art. VI, sec. 25(5).

[30] CONST., art. VI, sec. 25(5).

[31] CONST., art. VI, sec. 25(5).

[32] Rep. Act No. 10155, GAA Fiscal Year 2012, General Provisions, sec. 54. See also Rep. Act No. 10352, GAA Fiscal Year 2013, General Provisions, sec. 53 and Rep. Act No. 10147, GAA Fiscal Year 2011, General Provisions, sec. 60.

[33] See also 1 GOVERNMENT ACCOUNTING AND AUDITING MANUAL Book III, Title 3, art. 2, secs. 162–166; Exec. Order No. 292, book VI, ch. 5, sec. 38.

[34] CONST., art. VI, sec. 25(5).

[35] CONST., art. VI, sec. 25(5).

[36] Respondents' Motion for Reconsideration, pp. 25–29.

[37] Id. at 26.

[38] Id. at 26–28.

[39] See J. Carpio, separate opinion, pp. 9–10.

[40] CONST., art. VII, sec. 17.

[41] *The City of Manila v. Entote*, 156 Phil. 498, 510–511 (1974) [Per J. Muñoz Palma, First Division], citing *Morales v. Paredes*, 55 Phil. 565, 567 [Per J. Ostrand, En Banc], states: “A remark made, or opinion expressed, by a judge, in his decision upon a cause, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, is an obiter dictum and as such it lacks the force of an adjudication and is not to be regarded as such.”

[42] (a) The withdrawal of unobligated allotments from the implementing agencies, and the declaration of the withdrawn unobligated allotments and unreleased appropriations as savings prior to the end of the fiscal year and without complying with the statutory definition of savings contained in the General Appropriations Acts;

(b) The cross-border transfers of the savings of the Executive to augment the appropriations of other offices outside the Executive; and

(c) The funding of projects, activities and programs that were not covered by any appropriation in the General Appropriations Act.

[43] Respondent's Motion for Reconsideration, p. 29.

[44] Id.

[45] Id. at 29–30.

[46] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 77 [Per J. Bersamin, En Banc].

[47] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV. Similar provisions are found in art. XLVI of Rep. Act No. 10155, GAA Fiscal Year 2012 and art. XLV of Rep. Act No. 10352, GAA Fiscal Year 2013. In the 2014 GAA, the purposes and specific allocations are found in art. [X]LVI, Annex A and the special provisions are in

art. XLVI of Rep. Act No. 10633, GAA Fiscal Year 2014. For FY 2011, total Unprogrammed Funds authorized was P66.9 B; in 2012, P152.8 B; in 2013, P117.6 B; and in 2014, P139.9.

[48] In the 2012 GAA, only four (4) of the eight (8) purposes enumerated in the 2011 GAA were retained. The 2012 GAA also introduced two (2) purposes not contemplated in the 2011 GAA. The authorized purposes in the 2012 GAA were:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Support to Foreign-Assisted Projects
3. General Fund Adjustments
4. Support for Infrastructure Projects and Social Programs
5. Disaster Risk Reduction and Management
6. Debt Management Program

The 2013 GAA retained the four (4) purposes retained by the 2012 GAA from the 2011 GAA and reinstated a fifth purpose from the 2011 GAA. It retained one (1) of the two (2) purposes introduced by the 2012 GAA and introduced two new purposes. The authorized purposes in the 2013 GAA were:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Support to Foreign-Assisted Projects
3. General Fund Adjustments
4. Support for Infrastructure Projects and Social Programs
5. AFP Modernization Program
6. Debt Management Program
7. Payment of Total Administrative Disability Pension
8. People’s Survival Fund

The 2014 GAA retained all the purposes indicated in the 2013 GAA and added three (3) others. The authorized purposes in the 2014 GAA were:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Support to Foreign-Assisted Projects
3. General Fund Adjustments
4. Support for Infrastructure Projects and Social Programs
5. AFP Modernization Program
6. Debt Management Program
7. Risk Management Program
8. Disaster Relief and Mitigation Fund
9. Reconstruction and Rehabilitation Program

## 10. Total Administrative Disability Pension

## 11. People's Survival Fund

[49] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV, Unprogrammed Fund, Special Provision(s) (compare with provisions in the rest of the GAAs). Exec. Order No. 292 (1987), book VI, ch. 5, sec. 35, contains the procedure for expenditures from Lump Sum Appropriations, 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.

[50] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV (compare with similar provisions in GAAs for 2012, 2013, 2014).

The counterpart provision in the 2012 GAA reads:

4. Use of Excess Income. Agencies collecting fees and charges as shown in the FY 2012 Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 3 – General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292; PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.

Implementation of this section shall be subject to guidelines issued by the DBM.

The counterpart provision in the 2013 GAA reads:

4. Use of Excess Income. Departments, bureaus and offices authorized to collect fees and charges as shown in the FY 2013 BESF may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 3-General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.

Implementation of this provision shall be subject to the guidelines issued by the DBM.

The counterpart provision in the 2014 GAA reads:

5. Use of Excess Income. Departments, bureaus and offices authorized to collect fees and charges as shown in the FY 2014 BESF may be allowed to use their income realized and deposited with the National Treasury: PROVIDED, That said income shall be in excess of the collection targets presented in the BESF: PROVIDED, FURTHER, That it shall be chargeable against Purpose 3: PROVIDED, FURTHERMORE, That it shall only be used to augment their respective current appropriations during the year: PROVIDED, FINALLY, That said income shall not be used to augment Personnel Services appropriations including payment of discretionary and representation expenses.

Releases from said income shall be subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292.

Implementation of this provision shall be subject to the guidelines issued by the DBM.

[51] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV, Special Provision(s)(1).

[52] G.R. No. 203974, April 22, 2014 [Per J. Velasco, Jr., En Banc].

[53] J. Leonen, dissenting opinion in *Umali v. Commission on Elections*, G.R. No. 203974, April 22, 2014 8 [Per J. Velasco, Jr., En Banc].

[54] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV, Special Provision(s)(11). Similar provisions are found in art. XLVI of Rep. Act No. 10155, GAA Fiscal Year 2012, art. XLV of Rep. Act No. 10352, GAA Fiscal Year 2013, and art. XLVI of Rep. Act No. 10633, GAA Fiscal Year 2014.

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