

**THE SENATE OF THE PHILIPPINES, REPRESENTED BY SENATE
PRESIDENT VICENTE C. SOTTO III, SENATE PRESIDENT PRO
TEMPORE RALPH G. RECTO, SENATE MAJORITY FLOOR LEADER
JUAN MIGUEL F. ZUB...**

G.R. No. 257608. July 05, 2022

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

In this Petition for Certiorari and Prohibition,[1] the Senate of the Philippines, represented by Senate President Vicente C. Sotto, III, Senate President Pro Tempore Ralph G. Recto, Senate Majority Floor Leader Juan Miguel F. Zubiri, Senate Minority Floor Leader Franklin M. Drilon, and Chairperson Richard J. Gordon of the Senate Committee on Accountability of Public Officers and Investigations seek to nullify Memorandum[2] dated October 4, 2021, Re: Attendance in the Senate Blue Ribbon Committee Hearings on the 2020 Commission on Audit Report issued by President Rodrigo R. Duterte (President Duterte) through Executive Secretary Salvador C. Medialdea (Executive Secretary Medialdea).

Antecedents

The facts are undisputed.

The Covid-19 pandemic caused the stoppage of commerce and trade. People suddenly found themselves in the comfort of their homes on a daily basis. Their daily hustle suddenly stopped. Most citizens lost their sources of income. Inevitably, the State had to promptly step in. The Congress itself passed unprecedented appropriations to address the adverse effects of the pandemic.

The Department of Health (DOH) alone received seventy-seven billion pesos (P77,000,000,000.00) to address the health crisis. Of the said fund, thirty-seven billion pesos (P37,000,000,000.00) was allotted for the procurement of Personal Protective Equipment (PPE).[3]

In its 2020 Annual Audit Report, the Commission on Audit (COA) noted a deficiency of P67,323,186,570.57 in public funds intended for the government's Covid-19 response. This spurred an investigation by the Senate Blue Ribbon Committee on the budget utilization of the DOH.[4]

Meantime, several senators authored resolutions directing various committees of the Senate to conduct inquiries relative to the disbursement of funds to address the Covid-19 pandemic, viz.:

1. Senate Resolution No. 858 entitled Resolution Directing the Senate Committee of the Whole on the Vaccination Program to Conduct an Inquiry on the Procurement of COVID-19 Vaccines by Local Government Units and the Private Sector Through the Multi-Party Agreements, with the End in View of Ramping Up Vaccination in the Rural Areas and in the Private Sector, and Achieving Herd Immunity Against COVID-19 for the Country authored by Senator Juan Miguel F. Zubiri.[5]

2. Senate Resolution No. 859 entitled Resolution Directing the Appropriate Senate Committee to Conduct an Inquiry, in Aid of Legislation, on the Findings of Commission on Audit (COA) Report on the Department of Health (DOH) on the Reported Unspent Funds, Misstatements, Irregularities[,] and Deficiencies, with the End View of Addressing Recurrent Issues that has Plagued its Services, as well as the Persistent Faults and Lapses that Gave Rise to Wastage Even Amidst Times of Scarcity and Shortage, and Identifying and Holding Accountable Those Responsible for the Same authored by Senator Leila M. De Lima.[6]

3. Senate Resolution No. 880 entitled Resolution Directing the Appropriate Senate Committee to Conduct an Investigation in Aid of Legislation on the Payment Claims issues between PhilHealth and Private Hospitals with the End in View of Ensuring Uninterrupted Health Care and Social Protection for Filipinos authored by Senator Risa Hontiveros.[7]

The Senate Blue Ribbon Committee claims it had been undertaking an inquiry in aid of legislation on the following matters:

- DOH's underutilization of its 2020 budget;
- Inquiries on the procurement of COVID-19 vaccines by local government units and the private sector.
- Unspent funds, misstatements, irregularities, and deficiencies of the DOH, as noted in the COA findings; and
- Payment claims issues between Philippine Health Insurance Corporation and private hospitals.[8]

Questions propounded during the inquiry included but were not limited to:

- Did key purchases undergo any public bidding?
- How did the government spend the appropriations made by Congress for healthcare workers?
- How expensive were government purchases of personal protective equipment (PPE) in relation to alternatives?
- Did executive officials perform due diligence on prospective suppliers?
- How did procurement contracts end up with foreign companies instead of Filipino suppliers[?][9]

The inquiry had been taking place for several hearings already when President Duterte initially complained of the alleged browbeating of Executive Department officials appearing as resource persons at these hearings.

The President's reaction came to a head when, through Executive Secretary Medialdea, he authorized the issuance of the subject Memorandum dated October 4, 2021 prohibiting all officials and employees of the Executive Department from appearing and attending the inquiry, viz.:

The Senate Blue Ribbon Committee hearings on the 2020 Audit Report of the Commission on Audit have been going on for nearly two months now. The Executive has been showing due respect to such Committee, through the faithful attendance and participation of its officials and employees in the aforesaid hearings. However, the point has been reached where the participation of the Executive is already greatly affecting its ability to fulfill its core mandates in the Constitution and laws, most of all[,] the protection of our people's right to health in this time of pandemic.

Moreover, given the manner that the inquiry has been conducted, and clear indications that the hearings are meant to go on indefinitely, it has become evident that the said hearings are conducted not in aid of legislation, but to identify persons to hold accountable for alleged irregularities already punishable under existing laws. In so doing, the Senate Blue Ribbon Committee has stepped into the mandates of other branches of government, and has deprived itself of the only basis to compel attendance to its hearings.

Thus, on the premise that the principle of separation of powers requires mutual respect among the different

branches of government, and in view of Article II, Section 15 of the 1987 Constitution on the protection and promotion by the State of the right to health of the people, the President has DIRECTED all officials and employees of the Executive Department to no longer appear before or attend the abovementioned Senate Blue Ribbon Committee hearings, effective immediately. Instead, they shall focus all their time and effort on the implementation of measures to address the current State of Calamity on account of COVID-19, and in carrying out their other functions.

All officials and employees of the Executive Department are reminded to perform their functions in accordance with the Constitution and laws, and observe utmost responsibility, integrity and efficiency. This Administration shall continue and shall not hesitate to investigate and file charges against corrupt officials and employees in the proper forum.

For strict compliance.

By order of the President:

Sgd.

SALVADOR C. MEDIALDEA[10]

As worded, the Memorandum bore an instruction "[f]or strict compliance."

It did not bear though the initial ground of the President for objecting to the appearance and attendance of Executive Department officials at the hearings. Instead, the Memorandum complained of their inability to fulfil their duties in relation to the people's right to health during the pandemic and contested the purpose of the inquiry as being in aid of legislation. The Memorandum further asserted that the inquiry has turned into a preliminary investigation of sorts meant to identify the person or persons allegedly liable for irregularities that existing statutes already define and punish –

However, the point has been reached where the participation of the Executive is already greatly affecting its ability to fulfil its core mandates in the Constitution and laws, most of all the violation of our people's right to health in this time of pandemic.

Moreover, given the manner that the inquiry has been conducted, and clear indications that the hearings are meant to go on indefinitely, it has become evident that the said hearings are conducted not in aid of legislation, but to identify persons to hold accountable for alleged irregularities already punishable under existing laws. In so doing, the Senate Blue Ribbon Committee has stepped into the mandates of other branches of government, and has deprived itself of the only basis to compel attendance to its hearings.[11]

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The Senate noted that after the issuance of the Memorandum, Executive Department officials invited to attend the inquiry had begged off citing the prohibition. This Senate invitation uniformly stated:

In accordance with Rule X, Section 13 (2) of the Senate Rules, please be informed that the Committee on Accountability of Public Officers and Investigations (Blue Ribbon), *motu proprio*...

In this connection, may we request your presence during the [_____] NTH] public hearing thereon (via videoconferencing) on [_____] day], [_____] at [_____]]. The Committee will be using the CISCO Webex as virtual platform. Please send to blueribbon.hearings@gmail.com the email addresses that Your Honor and your staff will be using for the link.

For your Honors' information and guidance. Thank you.[12]

x x x x

Executive officials, including DOH Secretary Francisco T. Duque, III (DOH Secretary Duque), who initially graced the hearings, had ceased to attend the subsequent hearings on the inquiry. In his Letter[13] dated October 5, 2021 addressed to Senator Gordon, Secretary Duque stated:

5 October 2021

HON. RICHARD J. GORDON
Chairperson
Committee on Accountability of
Public Officers and Investigation
Senate of the Philippines
GSIS Building, Financial Center,
Roxas Boulevard, Pasay City

Dear Senator Gordon:

The Department of Health extends our gratitude to the Committee on Accountability of Public Officers and Investigations for your vigilance and resolve to surface the truth, particularly in matters that relate to the use of government funds during the course of our pandemic response.

In as much as we would like to maintain our faithful attendance and participation as we have in the past ten hearings, the DOH family extends our sincere regrets for being unable to send representative officials and employees to attend today's hearing. We have been directed to give way to equally important COVID-19 response activities, as communicated through the Memorandum from the Executive Secretary dated October 4, 2021 on the Attendance in the Senate Blue Ribbon Committee Hearings on the 2020 Commission on Audit Report. The said memorandum is attached for your reference.

We give you our firm assurances that we remain cooperative with the Committee and commit to submit any and all documents that may aid the good Committee over the course of their investigations.

Once again, we thank you and we are one with you in your pursuit of truth and integrity in public service.

Thank you very much.

Very truly yours,

Sgd.

FRANCISCO T. DUQUE III, MD, MSc

Secretary of Health[14]

DOH Secretary Duque referenced the Memorandum as the reason he had to excuse himself.

Viewing the subject Memorandum as an obstruction to their constitutional function to conduct inquiries in aid of legislation, the Senate, through Resolution no. 131[15] dated November 9, 2021, resolved to challenge it before the Court, viz.:

RESOLUTION AUTHORIZING AND DIRECTING THE FILING OF THE APPROPRIATE PETITION IN THE SUPREME COURT TO ASSERT THE POWER OF THE SENATE IN INQUIRES IN AID OF LEGISLATION AS PROVIDED UNDER ARTICLE VI, SECTION 21 OF THE CONSTITUTION

Whereas, Article VI, Section 21 of the Constitution provides, in part, '[T]he Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance

with its duly published rules of procedure';

Whereas, on October 4, 2021, the Executive Secretary issued a memorandum directing all officials and employees of the Executive Department to 'stop attending the Senate Blue Ribbon Committee hearings on the 2020 Commission on Audit Report effective immediately';

Whereas, it is the inherent right and solemn duty of the Senate to preserve, uphold and protect its and its committees' constitutional mandate to conduct inquiries in aid of legislation, including the power to issue compulsory processes, and to accordingly seek judicial relief and affirmation of its rights and prerogatives under the Constitution if and when challenged or interfered with by any branch, department agency, or instrumentality of the government or by any individual: Now, therefore be it.

Resolved by the Senate of the Philippines, To authorize and direct, as it hereby authorizes and directs the filing of the appropriate petition in the Supreme Court to assert the power of the Senate in inquiries in aid of legislation.[16]

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Invoking *Senate of the Philippines Executive v. Executive Secretary Ermita (Senate v. Ermita)*[17] and related case law, the petition seeks to declare the Memorandum as unconstitutional and further to –

- (i) require the invited Executive Department officials to attend the hearings of the Senate Blue Ribbon Committee and its other committees;
- (ii) restrain the enforcement of the Memorandum and all other issuances that would prevent invited Executive Department officials from attending hearings of the various committees of the Senate;
- (iii) restrain the Executive Department from issuing directives preventing invited Executive Department officials from attending hearings of the various committees of the Senate;
- (iv) restrain the Executive Department from issuing directives to law enforcement agencies to obstruct Senate proceedings or withhold assistance in the enforcement of the Senate's compulsory processes; and
- (v) restrain Executive Department officials, especially the Secretary of Health, from complying with the Memorandum.

The petition does not mention that the Senate or any of its Committee had ruled on the jurisdictional challenge raised in the Memorandum. We therefore infer that this jurisdictional challenge has prudently remained unresolved.

Finally, petitioner repleads the aforesaid allegations in support of their application for a writ of preliminary injunction.

In their Comment,[18] respondents Executive Secretary Medialdea and DOH Secretary Duque, through the Office of the Solicitor General (OSG), pray that the petition be immediately dismissed. They essentially argue:

One. Petitioner failed to prove the existence of an actual case or controversy. It mischaracterized the subject hearings as inquiries in aid of legislation. In reality, petitioner conducted the subject hearings in the exercise of its oversight functions (that is, to confront and exact accountability, to use the words of *Senate v. Ermita* itself when it distinguished the power to inquire in aid of legislation under Section 21[19] of Article VI of the 1987 Constitution and the power to inquire in aid of confrontation to seek accountability of the officers of the Executive Branch under Section 22 of Article VI of the Constitution). For the focal point of the inquiries was not the 2020 COA Report but the alleged anomalies in the measures undertaken for the Covid-19 pandemic response, specifically:

- a. To identify persons whom the Committee finds as accountable and responsible in the alleged anomalies pertaining to the procurement of PPEs, face masks, and face shields during the pandemic; and
- b. To find out whether the laws in relation to the benefits of the healthcare workers were executed accordingly.

Jurisdiction over the above matters properly pertained to the Joint Congressional Oversight Committee created under the Bayanihan Acts[20] and vested with the power to investigate the use of funds in the implementation of the said laws. Special law by nature - the Bayanihan Acts superseded the Senate Rules and divested the Senate Blue Ribbon Committee of its oversight functions, relative to their implementation and allotted funds.

As the hearings were conducted in the exercise of an oversight function under Section 22, Article VI of the 1987 Constitution, the presence of the Executive Officials may not be compelled without the consent of the President. Besides, the Senate does not stand to be directly injured by the issuance of the Memorandum considering that in the first place, it lacked jurisdiction to conduct the hearings in question.

Respondents next posit that the petition is moot. For one, bills[21] had already been filed seeking to address non-payment of or low allowances for health workers. For another, the Senate not only reached a conclusion but in fact, a Committee Report had already been prepared with specific recommendations on the crimes allegedly committed and the persons probably liable therefor. The adoption of the Committee Report, though denominated as a partial report - terminated the legislative inquiry.

Two. Apart from conducting the hearings without jurisdiction, the Senate even violated not only its own rules but also the rights of the Executive Officials attending the hearings. The Senate transgressed its own Rules when:

1. The Notice of Public Hearings sent to the DOH did not specify until what time each hearing date would end – leaving the DOH Officials at the mercy of the Senate;
2. The conduct of the hearings was unparliamentary; and
3. The Senate did not provide the DOH Officials a copy of the questions in advance.

Meanwhile, the Senate Blue Ribbon Committee, particularly its Chairperson, Senator Gordon allegedly acted in an offensive or unparliamentary manner and degraded the dignity of the resource persons. The Executive Officials who graced the invitations to the hearings were subjected to humiliation, bullying, and belittlement. Worse, the witnesses were not apprised of the possibility of being charged with violations of the Bayanihan Acts.

If anomalies were indeed existent, the Senate should leave the same to the prosecutorial bodies of the government and the courts for a proper determination of whether the persons allegedly involved are guilty.

Three. The President issued the Memorandum pursuant to his power of control and the emergency powers granted him under the Bayanihan Acts. It is an affirmation of the commitment of the Executive Department to fulfill its Constitutional duties, and consequently, address the adverse impacts of the Covid-19 pandemic. It is within the discretion of the Executive Department to prioritize pandemic response following its full participation in the subject hearings. The Memorandum merely keeps the separation of powers in place as it reminds the Executive Officials of their primary duty to attend to their responsibilities vis-a-vis the government's Covid-19 response. On this score, the Senate failed to show that the issuance of the Memorandum was tainted with grave abuse of discretion.

Four. The petition should have been filed with the Regional Trial Court of Manila considering that first, Executive Secretary Medialdea and DOH Secretary Duque hold their respective offices within its territorial jurisdiction; and second, in deference to the hierarchy of courts.

Five. The discretion of the President on how to combat the Covid-19 pandemic and implement the Bayanihan Acts is a political question. As such, the wisdom of this exercise cannot be questioned by the Senate nor by this Court.

Six. The Memorandum does not violate the constitutional right of the people to information. For there is no showing that respondents withheld or attempted to withhold any piece of information from the public. On the contrary, pertinent data on the government's Covid-19 response are readily available at the Official Gazette Website.

Lastly, courts are enjoined from issuing a writ of injunction or temporary restraining order on the ground alone that the law, ordinance, administrative regulation, circular, or memorandum is claimed to be invalid, otherwise, there would be a premature disposition of the main case. The right to be free from obstruction only attaches to the power of the Senate to conduct inquiries in aid of legislation. Since jurisdiction over the subject hearings properly pertains to the Joint Congressional Oversight Committee, the Senate cannot invoke a right in esse to compel the attendance of the DOH officials during the hearings in question, let alone, claim an irreparable injury arising from the assailed Memorandum of the President.

The Threshold Issue

Is direct resort to the Supreme Court via a Petition for Certiorari and Prohibition the proper remedy to compel the attendance of officials of the Executive Department following the President's jurisdictional challenge to the legislative inquiry?

Our Ruling

Under Section 1, Rule 65[22] of the Rules of Court, a petition for certiorari is an extraordinary remedy that is available only upon showing that a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[23]

The writ of certiorari is not issued to correct every error that may have been committed by lower courts and tribunals. It is a remedy specifically to keep lower courts and tribunals within the bounds of their jurisdiction. In our judicial system, the writ is issued to prevent lower courts and tribunals from committing grave abuse of discretion in excess of their jurisdiction.[24]

For certiorari to prosper, the following requisites must concur:

1. The writ is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions;
2. Such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and
3. There is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[25]

We focus on the third requisite.

The Blue Ribbon Committee of the Senate is required by its own Rules of Procedure Governing Inquiries in Aid of Legislation to first resolve the jurisdictional challenge before proceeding with its legislative inquiry.

It is basic that Rule 65 may be availed of only when there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Thus, where this remedy actually exists but the same is peremptorily omitted, a Rule 65 petition will not prosper.

We look back on the events leading to the filing of the petition. In its 2020 Annual Audit Report, the COA noted a deficiency of P67,323,186,570.57 in public funds intended for the government's Covid-19 response which spurred the Senate hearings.

The hearings initially went smoothly. Invited officials from the Executive Department attended these initial hearings. It was not until the subject Memorandum got issued on October 4, 2021 that these officials stopped attending the subsequent hearings, viz.:

The Senate Blue Ribbon Committee hearings on the 2020 Audit Report of the Commission on Audit have been going on for nearly two months now. The Executive has been showing due respect to such Committee, through the faithful attendance and participation of its officials and employees in the aforesaid hearings. However, the point has been reached where the participation of the Executive is already greatly affecting its ability to fulfill its core mandates in the Constitution and laws, most of all[,] the protection of our people's right to health in this time of pandemic.

Moreover, given the manner that the inquiry has been conducted, and clear indications that the hearings are meant to go on indefinitely, it has become evident that the said hearings are conducted not in aid of legislation, but to identify persons to hold accountable for alleged irregularities already punishable under existing laws. In so doing, the Senate Blue Ribbon Committee has stepped into the mandates of other branches of government, and has deprived itself of the only basis to compel attendance to its hearings.

Thus, on the premise that the principle of separation of powers requires mutual respect among the different branches of government, and in view of Article II, Section 15 of the 1987 Constitution on the protection and promotion by the State of the right to health of the people, the President has DIRECTED all officials and employees of the Executive Department to no longer appear before or attend the abovementioned Senate Blue Ribbon Committee hearings, effective immediately. Instead, they shall focus all their time and effort on the implementation of measures to address the current State of Calamity on account of COVID-19, and in carrying out their other functions.

All officials and employees of the Executive Department are reminded to perform their functions in accordance with the Constitution and laws, and observe utmost responsibility, integrity[,] and efficiency. This Administration shall continue and shall not hesitate to investigate and file charges against corrupt officials and employees in the proper forum.

For strict compliance. (Emphases supplied)

By order of the President:

Sgd.

SALVADOR C. MEDIALDEA[26]

For the Senate, the Memorandum was an affront to its Constitutional duty to conduct inquiries in aid of legislation.

We expound.

The power of Congress to conduct inquiries in aid of legislation is inherent in its power to legislate.[27] It is

broad-based as it was on the proposition that a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.[28] Section 21, Article VI of the 1987 Constitution empowers the Congress to conduct inquiries in aid of legislation, thus:

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

Specifically, Section 1 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation states:

SECTION 1. Power to Conduct Formal Inquiries or Investigations. The Senate or any of its Committees may conduct formal inquiries or investigations in aid of legislation in accordance with these Rules.

Such inquiries may refer to the implementation or re-examination of any law or appropriation, or in connection with any proposed legislation or the formulation of, or in connection with future legislation, or will aid in the review or formulation of a new legislative policy or enactment. They may also extend to any and all matters vested by the Constitution in Congress and/or in the Senate alone.

Inquiries in aid of legislation serve as tools to enable the legislative body to gather information and, thus, legislate wisely and effectively; and to determine whether there is a need to improve existing laws or enact new or remedial legislation, albeit the inquiry need not result in any potential legislation.[29] To be within the jurisdiction of the legislative body making it, the inquiry must be material or necessary to the exercise of a power vested in it by the Constitution, such as to legislate or to expel a member.[30]

Respondents, on the other hand, argue that the Senate Blue Ribbon Committee did not have jurisdiction to conduct the hearings in question. The focal point of the inquiries, according to them, was not the 2020 COA Report but the alleged anomalies in the measures undertaken for the Covid-19 pandemic response — matters which fall within the jurisdiction of the Joint Congressional Oversight Committee created under the Bayanihan Acts.

Section 5 of RA 11469 or the Bayanihan to Heal as One Act indeed created an oversight committee composed of four (4) members of each house to be appointed by the Senate President and the House Speaker, respectively. Said Committee was tasked to determine whether the acts, orders, rules, and regulations of the President were within the restrictions provided in the law.

SECTION 5. Reports to Congress and Creation of an Oversight Committee. — The President, during Monday of every week, shall submit a weekly report to Congress of all acts performed pursuant to this Act during the immediately preceding week. The report shall likewise include the amount and corresponding utilization of the funds used, augmented, reprogrammed, reallocated and realigned pursuant to this Act.

For this purpose, the Congress shall establish a Joint Congressional Oversight Committee composed of four (4) members of each house to be appointed by the Senate President and the House Speaker, respectively. This Committee shall determine whether such acts, orders, rules and regulations are within the restrictions provided herein.

The oversight committee was retained in RA 11494 or the Bayanihan to Recover as One Act, viz.:

SECTION 14. Reportorial Requirement and Creation of an Oversight Committee. — The President, every first Monday of the month, shall submit a monthly report to Congress and to the Commission on Audit (COA) of all acts performed pursuant to this Act during the immediately preceding month including a report on the targets and actual accomplishments of government programs, strategies, plans, and efforts relative to the COVID-19 pandemic as well as relevant and more granulated health-related data, and such other information which Congress and COA may require. The terms and conditions of any loan entered into by the government to finance the programs and projects to implement this law shall likewise be included in the Report. The Report

shall also contain detailed BESF tables for COVID-19, similar to the BESF tables submitted to Congress by the Development Budget Coordination Committee.

For this purpose, the Congress shall establish a Joint Congressional Oversight Committee composed of four (4) members of each House to be appointed by the Senate President and the House Speaker, respectively. This Committee shall determine whether such acts, orders, rules and regulations are within the restrictions provided herein.

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Respondents assert that the hearings in question were conducted in the exercise of the Senate's oversight function under Section 22, Article VI of the 1987 Constitution, viz.:

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

Verily, the Memorandum is founded on a jurisdictional challenge – whether the subject inquiry of the Senate Blue Ribbon Committee properly falls within its jurisdiction or the within the jurisdiction of the Joint Congressional Oversight Committee created under the Bayanihan Acts.

In asserting that the subject inquiry falls within the jurisdiction of the Joint Congressional Oversight Committee created under the Bayanihan Acts, may the President object to the inquiry as not being in aid of legislation? *Senate v. Ermita*[31] has ruled in the affirmative:

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

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

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

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

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

even if they belong to the executive branch. Nonetheless, there may be exceptional circumstances, none appearing to obtain at present, wherein a clear pattern of abuse of the legislative power of inquiry might be established, resulting in palpable violations of the rights guaranteed to members of the executive department under the Bill of Rights. In such instances, depending on the particulars of each case, attempts by the Executive Branch to forestall these abuses may be accorded judicial sanction.[32] (Emphasis supplied)

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Notably, the forum to address such jurisdictional claim is the Senate and its committees themselves. This recognition is meant to accord the highest respect for the Senate's own Rules of Procedure Governing Inquiries in Aid of Legislation, viz.:

SECTION 3. Jurisdictional Challenge. If the jurisdiction of the Committee is challenged on any ground, the said issue must first be resolved by the Committee before proceeding with the inquiry.

If the Committee, by a majority vote of its members present there being a quorum, decides that its inquiry is pertinent or relevant to the implementation or re-examination of any law or appropriation or in connection with any pending or proposed legislation or will aid in the review or formulation of a new legislative policy or enactment, or extends to any and all matters vested by the Constitution in Congress and/or in the Senate alone, it shall overrule such objection and proceed with the investigation.

Only one challenge on the same ground shall be permitted.

The filing or pendency of any prosecution of criminal or administrative action shall not stop or abate any inquiry to carry out a legislative purpose.

Undeniably, therefore, the Blue Ribbon Committee of the Senate has a remedy within its office to resolve the jurisdictional challenge raised by the President.

To be sure, the Court cannot exercise the power on behalf of the Blue Ribbon Committee of the Senate lest the sacred principle of separation of powers where mutual respect by and between the three departments of the government be unduly violated.[33]

We consequently defer to the remedy found within the Senate's own lofty jurisdiction. The availability of this remedy under Section 3 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation effectively proscribes a premature resort to the present special civil action for certiorari.

In the same breadth, we cannot rule that there exists an actual case or controversy that is ripe for judicial adjudication. There is no immediate or threatened injury to the power of the Senate because it has yet to exercise the same. Hence, we still cannot tell whether this power, despite its proper exercise, has been disobeyed by the President as a result of his Memorandum.

Unless and until the Senate has resolved with finality the jurisdictional challenge of the President, there can be no actual case or controversy to speak of yet.

In sum, the resolution of the petition does not hinge ultimately on the constitutionality or unconstitutionality of the Memorandum. The Constitutional challenge may be resolved on some other ground – here, by referencing the aforementioned power of the Senate under its own Rules of Procedure Governing Inquiries in Aid of Legislation.

The petition is easily differentiated from *Senate v. Ermita*. The present case presents a direct jurisdictional challenge to the subject inquiry and its characterization. The President asserts – the inquiry falls within the jurisdiction of the Joint Congressional Oversight Committee created under the Bayanihan Acts, hence, beyond the power of legislative inquiry of the Senate and its Committees. The Senate has yet to resolve this claim and the

arising challenge in the manner set forth in the Rules of Procedure Governing Inquiries in Aid of Legislation. On the other hand, *Ermita* involved a challenge on the ground of executive privilege and a blanket prohibition that did not reject any subject inquiry as one in aid of legislation.

All told, the Court is constrained to dismiss the petition for having been prematurely filed. The Court deems it no longer necessary to resolve the other issues raised by the parties.

ACCORDINGLY, the petition is DISMISSED, and the application for preliminary injunction, DENIED.

SO ORDERED.

Gesmundo, C.J., Hernando, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, Kho, Jr., and Singh, JJ., concur.

Leonen, SAJ., see separate opinion.

Caguioa, J., see dissenting opinion.

[1] Rollo, pp. 3-81.

[2] *Id.* at 86. HEADS OF DEPARTMENTS, AGENCIES, OFFICES, AND INSTRUMENTALITIES OF THE GOVERNMENT, GOVERNMENT-OWNED -OR CONTROLLED CORPORATIONS, AND GOVERNMENT FINANCIAL INSTITUTIONS.

[3] *Id.* at 9.

[4] *Id.*

[5] *Id.* at 262-263.

[6] *Id.* at 265-271.

[7] *Id.* at 273-274.

[8] *Id.* at 13.

[9] *Id.* at 58-59.

[10] *Id.* at 86.

[11] *Id.*

[12] *Id.* 286.

[13] *Id.* at 88.

[14] *Id.*

[15] *Id.* at 296.

[16] *Id.*

[17] 522 Phil. 1 (2006).

[18] Rollo, pp. 322-541.

[19] Sec. 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons

appearing in or affected by such inquiries shall be respected.

[20] REPUBLIC ACT NO. 11469, entitled: "AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONA VIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECLARED NATIONAL POLICY AND FOR OTHER PURPOSES" otherwise known as "Bayanihan to Heal as One Act," Approved on March 24, 2020; REPUBLIC ACT NO. 11494, otherwise known as "Bayanihan to Recover as One Act, Republic Act No. 11494, Approved on September 11, 2020.

[21] Senate Bill No. 2371, introduced by Senators Richard J. Gordon, Sonny Angara, Imee R. Marcos, Maria Lourdes Nancy S. Binay, Risa Hontiveros, Joel Villanueva, and Juan Miguel F. Zubiri, entitled "AN ACT GRANTING CONTINUING COVID-19 BENEFITS TO PUBLIC AND PRIVATE HEALTH WORKERS DURING THE PERIOD OF THE COVID-19 PANDEMIC, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES;" Senate Bill No. 2398 introduced by Senator Christopher Lawrence T. Go, entitled "AN ACT PROVIDING FOR ALLOWANCES AND BENEFITS FOR HEALTHCARE WORKERS DURING THE COVID-19 PANDEMIC, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES;" Senate Bill No. 2406 introduced by Senator Ronald "Bato" Dela Rosa, entitled "AN ACT PROVIDING FOR ALLOWANCES AND BENEFITS FOR HEALTH WORKERS DURING THE PERIOD OF THE COVID-19 PANDEMIC, APPROPRIATING FUNDS THEREFOR".

[22] Rules of Court, Rule 65, Certiorari, Prohibition and Mandamus.

Sec. 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46(1a).

[23] See Tolentino v. Senate Electoral Tribunal, G.R. No. 248005, May 11, 2021.

[24] Id.

[25] Aquino v. Municipality of Malay, Aklan, 744 Phil. 497, 510-511 (2014).

[26] Rollo, p. 86.

[27] Supra note 17 at 33-34.

[28] Neri v. Senate Committee on Accountability of Public Officers and Investigations, 572 Phil. 554, 643 (2008).

[29] Romero II v. Senator Estrada, 602 Phil. 312, 321 (2009).

[30] Bengzon Jr. v. Senate Blue Ribbon Committee, 280 Phil. 829, 841-842 (1991).

[31] Supra note 17.

[32] Id. at 35-36.

[33] See *Celendro v. Court of Appeals*, 369 Phil. 1102, 1112 (1999).

CONCURRING AND DISSENTING OPINION

LEONEN, SAJ:

I concur in the ponencia written by Justice Amy Lazaro-Javier. The Petition was filed prematurely because the jurisdictional challenge posed by the October 4, 2021 Memorandum was not resolved by the Blue Ribbon Committee. Therefore, there is no actual case or controversy for this Court to resolve.

Still, I dissent as to the actions of then President Rodrigo Duterte (President Duterte). The grant of emergency powers, coupled with the Commission on Audit Report stating that there were anomalies in the disbursement of public funds to address the COVID-19 national emergency, is a legitimate subject of Senate inquiry. Prohibiting all officials and employees of the Executive from appearing and attending the Blue Ribbon Committee hearings deprived the Senate of its right to information for purposes of legislation. Ultimately, the people were deprived of access to information on a matter of public concern.

I

This Court exercises its power of judicial review^[1] only when there is an actual case or controversy, or one where the assertion of opposite legal claims is susceptible of judicial resolution.^[2] A conflict is said to be ripe for adjudication when the challenged act is a "completed action"^[3] that has a "direct, concrete, and adverse effect"^[4] on the petitioner. This is to prevent this Court from wasting time over "conjectural or anticipatory"^[5] disputes that may not even come to reality.

Here, the dispute is still anticipatory because the Senate Blue Ribbon Committee has yet to rule on the jurisdictional challenge posed by the October 4, 2021 Memorandum. To recall, the President claimed that the conduct of the Senate Blue Ribbon Committee hearings were no longer in aid of legislation but to "identify persons to hold accountable for alleged irregularities already punishable under existing laws."^[6] As such, according to the President, "the Senate Blue Ribbon Committee has stepped into the mandates of other branches of government and has deprived itself of the only basis to compel attendance to its hearings."^[7] Under Section 3 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation, the Blue Ribbon Committee should rule on the jurisdictional challenge before proceeding with the inquiry:

Section 3. Jurisdictional Challenge. If the jurisdiction of the Committee is challenged on any ground, the said issue must first be resolved by the Committee before proceeding with the inquiry.

If the Committee, by a majority vote of its members present being a quorum, decides that its inquiry is pertinent or relevant to the implementation or re-examination of any law or appropriation or in connection with any pending or proposed legislation or will aid in the review or formulation of a new legislative policy or enactment, or extends to any and all matters vested by the Constitution in Congress and/or in the Senate alone, it shall overrule such objection and proceed with the investigation.

Only one challenge on the same ground shall be permitted.

The filing or pendency or any prosecution of criminal or administrative action shall not stop or abate any inquiry to carry out a legislative purpose.

I would have taken a contrary view had some members of the Blue Ribbon Committee joined then Senate President Vicente Sotto III, Senate President Pro Tempore Ralph G. Recto, Senate Majority Floor Leader Juan

Miguel F. Zubiri, Senate Minority Floor Leader Franklin M. Drilon, and Senate Blue Ribbon Committee Chairperson Richard J. Gordon in filing the Petition. Directly filing the Petition before this Court would have overruled the jurisdictional challenge, but only if the Petition was filed by at least six members of the Blue Ribbon Committee.

The Blue Ribbon Committee, formally called the Committee on Accountability of Public Officers and Investigations, is empowered to make inquiries in aid of legislation on all matters relating to malfeasance, misfeasance, and nonfeasance in office by officers and employees of the government, its branches, agencies, subdivisions, and instrumentalities. It also has the power to investigate any matter of public interest on its own initiative or brought to its attention by any member of the Senate.[8]

Under the 2020 Rules of the Senate that was in effect when the challenged inquiries were conducted, the Blue Ribbon Committee has 17 regular members[9] and three ex officio members: the senate president pro tempore, and the majority and minority leaders.[10] And as provided in Section 3 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation, a majority vote of the members present, there being a quorum, is required to determine whether an inquiry is in aid of legislation. In turn, under Section 4 of the same Rules, there is a quorum when one-third of all the regular members of the committee are present. For purposes of determining the existence of a quorum, the presence of ex officio members may be considered.[11]

Based on the foregoing, there is a quorum in the Blue Ribbon Committee when at least six members – one-third of the 17 regular members – are present. Thus, the majority required to overrule a challenge to the jurisdiction of the Blue Ribbon Committee only needs four votes when there are at least six members present.

The Petition could have overruled the jurisdictional challenge had at least two more members of the Blue Ribbon Committee joined in the filing of the Petition. In *Senate v. Ermita*,^[12] this Court took cognizance of the Petition filed by the Senate Committee of the Whole, despite a lack of resolution on the jurisdictional challenge posed by Executive Order No. 464 because, according to this Court:

As the implementation of the challenged order has already resulted in the absence of officials invited to the hearings of petitioner Senate of the Philippines, it would make no sense to wait for any further event before considering the present case ripe for adjudication. Indeed, it would be sheer abandoning of duty if this Court would not refrain from passing on the constitutionality of E.O. 464.^[13]

In *Ermita*, it was the Senate Committee of the Whole conducting the inquiries when Executive Order No. 464 was issued by then President Gloria Macapagal Arroyo. Out of the Senate's 24 members, 16 joined in the filing of the Petition before this Court.^[14] The 1995 Senate Rules of Procedure Governing Inquiries in Aid of Legislation then in effect had the same quorum and voting requirements^[15] for overruling a jurisdictional challenge as that in the 2020 Rules. Thus, in *Ermita*, a majority of the members had resolved to overrule the jurisdictional challenge posed by the issuance of Executive Order No. 464, and that there was a quorum because more than one-third of the 24 Senators joined the filing of the petition.

Unlike in *Ermita*, only the chairperson of the Blue Ribbon Committee, Senator Richard J. Gordon, joined in filing the Petition. While a total of four members of the Blue Ribbon Committee filed the present Petition, which can be considered a majority vote had there been a quorum, there is no certainty as to whether there was a quorum when these four members decided to file the Petition in the first place. Consequently, the filing of the Petition cannot be considered a resolution overruling the jurisdictional challenge posed by the October 4, 2021 Memorandum issued by President Duterte.

In sum, the Blue Ribbon Committee has yet to decide the jurisdictional challenge posed by the October 4, 2021 Memorandum. As such, the Petition was filed prematurely and there was no actual case or controversy for this

Court to resolve.

II

The prematurity of the filing of the present Petition notwithstanding, I express my dissent as to the President's issuance of the October 4, 2021 Memorandum.

In the 1950 case of *Arnault v. Nazareno*,^[16] this Court recognized that the Legislative's power of inquiry is "an essential and appropriate auxiliary to the legislative function":^[17]

Our form of government being patterned after the American system—the framers of our Constitution having been drawn largely from American institution and practices—we can, in this case[,] properly draw also from American precedents in interpreting analogous provisions of our Constitution, as we have done in other cases in the past.

Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which is not infrequently true—recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. . . . The fact that the Constitution expressly gives to Congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt any other person[.][18] (Citations omitted)

As an express constitutional grant, the power of inquiry first appeared in Article VIII, Section 12(2) of the 1973 Constitution and was granted to the unicameral Batasang Pambansa and its committees. The provision was retained in the present Constitution, albeit now granted to the two chambers of Congress and their respective committees. Article VI, Section 21 of the Constitution states:

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

Section 21 provides the limits to the exercise of the Legislative's power of inquiry, the first of which is that it must be conducted "in aid of legislation." Furthermore, the inquiry must be conducted in accordance with the published rules of the chamber or committee conducting the inquiry.^[19] Lastly, the rights of the persons appearing in or affected by the inquiry shall be respected. In as much as the power of inquiry is implied in the power of legislation, the limits were nevertheless provided in the Constitution to prevent similar abuses in the past such as intimidating witnesses, grandstanding, or gathering information on purely private matters.^[20]

What is considered an "inquiry in aid of legislation" depends on the Senate rules in effect at the time of the controversy.^[21] When the inquiries on the alleged anomalies in the disbursement of COVID-19 funds were being conducted, the 2010 Senate Rules of Procedure Governing Inquiries in Aid of Legislation was in effect. Section 1 of the Rules defines an inquiry in aid of legislation as one "[referring] to the implementation or re-examination of any law or appropriation, or in connection with any proposed legislation or the formulation of, or in connection with future legislation, or will aid in the review or formulation of a new legislative policy or enactment." The inquiry may even "extend to any and all matters vested by the Constitution in Congress and/or in the Senate

alone."

As can be gleaned from Section 1, the definition is broad, reflecting the wide latitude Congress has in conducting inquiries in aid of legislation.[22] The inquiry need not even result in the enactment of a statute. So long as the inquiry can be related to a matter vested by the Constitution in Congress or any of its chambers, the inquiry is deemed to be in aid of legislation.[23]

Taking these into consideration, the inquiries conducted by the Senate were in aid of legislation. Consequently, the issuance of the October 4, 2021 Memorandum impeded the investigative powers of the Blue Ribbon Committee.

It is undisputed that the following matters were taken up during the committee hearings: (1) the Department of Health's underutilization of its 2020 budget; (2) the procurement of COVID-19 vaccines by local government units; (3) unspent funds, misstatements, irregularities, and deficiencies of the Department of Health, as found by the Commission on Audit; and, (4) payment claims issues between the Philippine Health Insurance Corporation and private hospitals.[24] These matters are obviously related to the implementation of laws, specifically, Republic Act No. 11469 or the Bayanihan to Heal as One Act, and Republic Act No. 11494, or the Bayanihan to Recover as One Act.

Moreover, Republic Act No. 11469 and Republic Act No. 11494 both delegated emergency powers to the President.[25] The grant of emergency powers being legislative in nature,[26] the Senate has even greater reason to investigate how the Executive exercised the delegated powers, especially considering the Commission on Audit Report on the alleged misuse of public funds of which Congress is the constitutional guardian.[27]

That an oversight committee was created under Republic Act Nos. 11469 and 11494 cannot prevent the Senate from conducting inquiries in aid of legislation. Nothing in Republic Act Nos. 11469 and 11494 provides that the oversight committee shall have exclusive jurisdiction to investigate the allegedly anomalous implementation of these statutes. Besides, statutes cannot supersede constitutional rights, with the Constitution being superior to all statutes.

It is true that the President has "executive privilege" or "the power of Government to withhold information from the public, the courts, and the Congress." [28] There are three kinds of executive privilege, the first being "state secrets privilege" that prevents the disclosure of crucial military or diplomatic objectives.[29] There is also "informer's privilege" or "the privilege of the Government not to disclose the identity of persons who furnish information of violations of law to officers charged with the enforcement of that law." [30] Lastly, there is the "generic privilege" accorded to internal deliberations and which "attach to intragovernmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." [31] All of these exempt the Executive from disclosing information as these are considered sensitive, hence, "necessary to the discharge of highly important executive responsibilities involved in maintaining governmental operations." [32]

Still, executive privilege, "being a claim of exemption from an obligation to disclose information[,] must. . . be clearly asserted." [33] An implied claim of privilege "renders an assessment of the potential harm resulting from disclosure impossible, thereby preventing the Court from balancing such harm against plaintiffs' needs to determine whether to override any claims of privilege." [34] Without an express claim of privilege, this Court is bound to "presume that the action of the legislative body was with a legitimate object if it was capable of being so construed," [35] and the Court has "no right to assume that the contrary was intended." [36] In *Ermita*, this Court voided provisions of Executive Order No. 464 issued by President Arroyo for being implied claims of executive privilege, thus:

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

The infirm provisions of [Executive Order 464], however, allow the executive branch to evade congressional requests for information without need of clearly asserting a right to do so and/or proffering its reasons therefor. By the mere expedient of invoking said provisions, the power of Congress to conduct inquiries in aid of legislation is frustrated. That is impermissible. For

[w]hat republican theory did accomplish . . . was to reverse the old presumption in favor of secrecy, based on the divine right of kings and nobles, and replace it with a presumption in favor of publicity, based on the doctrine of popular sovereignty.[37] (Emphasis in the original)

The President's October 4, 2021 Memorandum reads, in part:

The Senate Blue Ribbon Committee hearings on the 2020 Audit Report of the Commission on Audit have been going on for nearly two months now. The Executive has been showing due respect to such Committee, through the faithful attendance and participation of its officials and employees in the aforesaid hearings. However, the point has been reached where the participation of the Executive is already greatly affecting its ability to fulfill its core mandates in the Constitution and laws, most of all[,] the protection of our people's right to health in this time of pandemic.

Moreover, given the manner that the inquiry has been conducted, and clear indications that the hearings are meant to go on indefinitely, it has become evident that the said hearings are conducted not in aid of legislation, but to identify persons to hold accountable for alleged irregularities already punishable under existing laws. In so doing, the Senate Blue Ribbon Committee has stepped into the mandates of other branches of government and has deprived itself of the only basis to compel attendance to its hearings.

Thus, on the premise that the principle of separation of powers requires mutual respect among the different branches of government, and in view of Article II, Section 15 of the 1987 Constitution on the protection and promotion by the State of the right to health of the people, the President has DIRECTED all officials and employees of the Executive Department to no longer appear before or attend the abovementioned Senate Blue Ribbon Committee hearings, effective immediately. Instead, they shall focus all their time and effort on the implementation of measures to address the current State of Calamity on account of COVID-19, and in carrying out their other functions.

All officials and employees of the Executive Department are reminded to perform their functions in accordance with the Constitution and laws, and observe utmost responsibility, integrity[,] and efficiency. This Administration shall continue and shall not hesitate to investigate and file charges against corrupt officials and employees in the proper forum.

For strict compliance.

By order of the President:

SALVADOR C. MEDIALDEA[38]

(Emphasis supplied)

Reading the Memorandum, it does not appear that there was an express claim of executive privilege. Instead, the President determined for himself that the hearings were no longer conducted in aid of legislation but done to "identify persons to hold accountable for alleged irregularities already punishable under existing laws." [39] This is not a valid claim of privilege as it was made not to protect crucial military or diplomatic objectives. Neither is it an informer's privilege invoked to protect the identity of those who inform the government of violations of laws. There is also no claim of generic privilege to protect internal deliberations in the Executive.

For these reasons, it must be assumed that the inquiries were conducted in aid of legislation. It is not for this Court to assume the contrary.

III

The more important reason why I dissent as to the actions of President Duterte is because they ultimately deprive the people of vital information as to the government's response to the pandemic. Again, in *Ermita*:

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

It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people's will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently. Only when the participants in the discussion are aware of the issues and have access to information relating thereto can such bear fruit. [40]

Given that emergency powers were granted to the President under Republic Act Nos. 11469 and 11494, all the more should the people be informed of how the Executive utilized these delegated powers. It is during times when the President gains more power, even if temporary, that the people should be more vigilant and actively take part in checking the actions of government.

ACCORDINGLY, I vote to DISMISS the Petition and DENY the application for preliminary injunction.

[1] CONST., art. VIII, sec. 1, provides:

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.

[2] See *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 244 (2018) [Per J. Leonen, En Banc], citing *Information Technology Foundation of the Philippines v. Commission on Elections*, 499 Phil. 281, 304 (2005) [Per C.J. Panganiban, En Banc].

[3] *Kilusang Mayo Uno, et al. v. Aquino, et al.*, 850 Phil. 1168, 1191 (2019) [Per J. Leonen, En Banc], citing *Abakada Guro Party List v. Purisima*, 584 Phil. 246 (2008) [Per J. Corona, En Banc].

[4] Id.

[5] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 245 (2018) [Per J. Leonen, En Banc], citing *Southern Hemisphere Engagement Network v. Anti-Terrorism Council*, 646 Phil. 452, 479 (2010) [Per J. Carpio-Morales, En Banc].

[6] Ponencia, p. 4.

[7] Id.

[8] 2022 Rules of the Senate, rule X, sec. 13(2).

[9] 2020 Rules of the Senate, rule X, sec. 13(2).

[10] 2020 Rules of the Senate, rule X, sec. 20.

[11] Section 4. Quorum. — One third of all the regular members of the Committee shall constitute a quorum but in no case shall it be less than two. The presence of ex officio members may be considered in determining the existence of a quorum.

[12] 522 Phil. 1 (2006) [Per J. Carpio Morales, En Banc].

[13] Id. at 33.

[14] Id. at 1. Senators Franklin M. Drilon, Juan M. Flavier, Francis N. Pangilinan, Aquilino Q. Pimentel, Jr., Rodolfo G. Biazon, Pia S. Cayetano, Jinggoy Ejercito Estrada, Luisa Ejercito Estrada, Juan Ponce Enrile, Richard J. Gordon, Panfilo M. Lacson, Alfredo S. Lim, M.A. Madrigal, Sergio Osmeña III, Ralph G. Recto, and Mar Roxas joined in the filing of the Petition.

[15] 1995 Senate Rules of Procedure Governing Inquiries in Aid of Legislation provides:

SECTION 3. Jurisdictional Challenge. —

If the jurisdiction of the Committee is challenged on any ground, the said issue must first be resolved by the Committee before proceeding with the inquiry.

If the Committee, by a majority vote of its members present there being a quorum, decides that its inquiry is pertinent or relevant to the implementation or re-examination of any law or appropriation or in connection with any pending or proposed legislation or will aid in the review or formulation of a new legislative policy or enactment, or extends to any and all matters vested by the Constitution in Congress and/or in the Senate alone, it shall overrule such objection and proceed with the investigation.

Only one challenge on the same ground shall be permitted.

The filing or pendency or any prosecution of criminal or administrative action shall not stop or abate any inquiry to carry out a legislative purpose.

SECTION 4. Quorum. —

One third of all the regular members of the Committee shall constitute a quorum but in no case shall it be less than two. The presence of ex officio members may be considered in determining the existence of a quorum.

[16] 87 Phil. 29 (1950) [Per J. Ozaeta, En Banc].

[17] Id. at 45.

[18] Id.

[19] *Garcillano v. House of Representatives*, 595 Phil. 775, 797 (2008) [Per J. Nachura, En Banc].

[20] *Bengzon, Jr. v. Senate Blue Ribbon Committee*, 280 Phil. 829, 840 (1991) [Per J. Padilla, En Banc].

[21] *Id.* at 842.

[22] See *Arnault v. Nazareno*, 87 Phil. 29, 46 (1950) [Per J. Ozaeta, En Banc].

[23] *Id.* at 48.

[24] Ponencia, p. 3.

[25] Republic Act No. 11469 (2020), sec. 4 and Republic Act No. 11494 (2020), sec. 4.

[26] CONST., art. VI, sec. 23(2) provides:

(2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

[27] *Arnault v. Nazareno*, 87 Phil. 29, 46 (1950) [Per J. Ozaeta, En Banc].

[28] *Senate v. Ermita*, 522 Phil. 1, 37 (2006) [Per J. Carpio Morales, En Banc].

[29] *Id.* at 38, citing I L. TRIBE, AMERICAN CONSTITUTIONAL LAW 770-1 (3[rd] ed., 2000).

[30] *Id.*

[31] *Id.*

[32] *Id.* at 38-39, citing BLACK'S LAW DICTIONARY 569-570 (6[th] ed., 1991).

[33] *Id.* at 54.

[34] *Id.* at 54-55, citing *A.O. Smith v. Federal Trade Commission*, 403 F.Supp. 1000, 20 Fed.R.Serv.2d 1382 (1975).

[35] *Arnault v. Nazareno*, 87 Phil. 29, 49 (1950) [Per J. Ozaeta, En Banc] citing *People ex rel Mc. Donald vs. Keeler* 99 N. Y., 463; 52 Am. Rep., 49; 2 N. E., 615.

[36] *Id.*

[37] 522 Phil. 1, 62 (2006) [Per J. Carpio Morales, En Banc].

[38] Ponencia, pp. 4-5.

[39] *Id.* at 4.

[40] 522 Phil. 1, 60 (2006) [Per J. Carpio Morales, En Banc].

DISSENTING OPINION

In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

– *Angara v. Electoral Commission*[1]

CAGUIOA, J.:

The President, through Executive Secretary Salvador C. Medialdea, issued a Memorandum[2] dated October 4, 2021 (subject Memorandum) directing all officials and employees of the Executive Department to cease from attending the Senate Blue Ribbon Committee (SBRC) inquiries on the government's disbursement of the Coronavirus Disease 2019 (COVID-19) funds. After the issuance of the subject Memorandum, the executive officials invited to attend the inquiries begged off from the hearings, citing the said directive from the President.[3]

Thus, the Senate of the Philippines (Senate) filed the instant petition for certiorari and prohibition which primarily seeks to declare the subject Memorandum null and void for being unconstitutional.[4]

The ponencia dismisses the petition on procedural grounds. Ultimately, it finds that there is no actual case or controversy ripe for judicial adjudication.[5] This finding is premised on the availability of a remedy under the Senate Rules of Procedure Governing Inquiries in Aid of Legislation (Senate Rules), which, according to the ponencia, the Senate should have first resorted to prior to filing the present petition for certiorari.[6] The ponencia posits that the subject Memorandum is actually a jurisdictional objection which the Senate should have first overruled based on Section 3[7] of the Senate Rules. Likewise, the ponencia submits that there is no immediate or threatened injury to the powers of the Senate because it has not exercised them.[8]

I vigorously dissent.

I.

It is true that even with the expanded power of judicial review, courts are required under Section 1, Article VIII of the Constitution "to settle actual controversies involving rights which are legally demandable and enforceable." Thus, in order to be justiciable, there should be an existing case or controversy that is appropriate or ripe for determination. It should not be conjectural or anticipatory, as courts do not give out advisory opinions on hypothetical or assumed facts.[9]

The Court has repeatedly recognized that an actual case or controversy exists when the parties to the proceeding assert conflicting legal rights, or when there is "a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence." [10] The issue must also be ripe for adjudication or it must pose an "immediate or threatened injury to [the petitioner] as a result of the challenged action." [11] Without a complete action on the part of the respondent, or a concrete threat of injury to the petitioning party, there is no controversy ripe for judicial review.[12]

These procedural requirements for the exercise of the power of judicial review is particularly relevant in cases such as the present petition, as these prevent the Court from unnecessarily intruding into areas committed to other branches of the government.[13] But while these requirements are essential to the Court's exercise of its judicial power, the majority should not resort to these technicalities to conveniently justify the dismissal of the present petition, and ultimately, evade its obligation to be the final arbiter on questions involving the validity of the legislative or executive's exercise of its authority.

The Court's expanded power of judicial review is, at its core, predicated on the "duty to settle actual controversies x x x 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." [14] Thus, more than a power or authority to settle disputes, the Court has a duty to fulfill its role in the system of checks and balances. In the seminal case of *Francisco, Jr. v. House of Representatives*, [15] the Court acknowledged the significance of this task:

As indicated in *Angara v. Electoral Commission*, judicial review is indeed an integral component of the delicate system of checks and balances which, together with the corollary principle of separation of powers, forms the bedrock of our republican form of government and insures that its vast powers are utilized only for the benefit of the people for which it serves.

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government 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." [16] (Emphasis supplied)

While the Court's duty has often been emphasized in relation to the political question doctrine, there is no reason to discount its significance in relation to the requirement of a justiciable controversy. In fact, the Court has repeatedly echoed this duty when rejecting arguments that raise the prematurity of a petition where the Court is asked to clarify the boundaries of the constitutional authority of its co-equal branches. [17]

In *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)* [18] (Province of North Cotabato), the Court rejected the Solicitor General's argument that there was no justiciable controversy because the Memorandum of Agreement on the Ancestral Domain was only a proposal that did not create demandable rights and obligations. The Court reasoned: "[t]hat the law or act in question is not yet effective does not negate ripeness." [19] Since the petitions therein alleged that a branch of government has infringed the Constitution, a justiciable controversy was deemed to exist, which the judiciary "not only [has] the right but in fact the duty x x x to settle." [20]

Later, in *Spouses Imbong v. Ochoa, Jr.*, [21] the Court reiterated its ruling in *Province of North Cotabato* that a singular violation of the law or the Constitution is sufficient to "awaken judicial duty." [22] Thus, the mere enactment of the Reproductive Health Law [23] and its implementing rules and regulations, which were alleged as unconstitutional for a variety of reasons, was deemed adequate for purposes of establishing that the case is ripe for judicial review, to wit:

In this case, the Court is of the view that an actual case or controversy exists and that the same is ripe for judicial determination. Considering that the RH Law and its implementing rules have already taken effect and that budgetary measures to carry out the law have already been passed, it is evident that the subject petitions present a justiciable controversy. As stated earlier, when an action of the legislative branch is seriously alleged to have infringed the Constitution, it not only becomes a right, but also a duty of the Judiciary to settle the dispute. [24] (Emphasis supplied)

Here, following the issuance of the subject Memorandum, Department of Health (DOH) Secretary Francisco Duque III (Secretary Duque) sent a letter dated October 5, 2021 to the SBRC, [25] extending his regrets for not being able to send representatives to the scheduled hearing. He cited the subject Memorandum as basis for not

attending the SBRC inquiry. In his subsequent letters to the SBRC, DOH Secretary Duque repeatedly cited the subject Memorandum to justify his absence during the hearings.[26] It is noteworthy that up until the issuance of the subject Memorandum, officials from the concerned departments of the executive, including DOH Secretary Duque, regularly attended the hearings.[27] Naturally, the queries of some Senators during the inquiry remained unanswered since the appropriate official was not present to respond.[28]

Thus, it is completely illogical to claim that "[t]here is no immediate or threatened injury to the powers of the Senate." [29] The issuance of the subject Memorandum, coupled with the glaring absence of the concerned officials of the executive department during the hearings, clearly contradicts this proposition. In fact, the injury, i.e., that the inquiry did not move forward, was already inflicted — no longer simply "threatened" — when the executive officials did not attend the hearings. I therefore disagree with the pretextual dismissal of the petition because of the supposed absence of an actual case or controversy before the Court. This is simply not the case.

To be sure, the issue before the Court is not novel. In *Senate v. Ermita* [30] (*Ermita*), various committees of the Senate conducted inquiries in aid of legislation, which called for the attendance of officials and employees from the executive department, including those employed in the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). Former President Gloria Macapagal-Arroyo issued Executive Order (E.O.) No. 464, [31] directing all heads of departments to "secure the consent of the President prior to appearing before either House of Congress." [32]

Thereafter, the officials invited to appear at the Senate expressed that they would not be able to attend as they had not secured the consent of the President, pursuant to E.O. No. 464. This constrained the Senate, and several other groups, to file a petition before the Court assailing the constitutionality of E.O. No. 464. [33]

The respondents in *Ermita* argued that there was no case or controversy, there being no showing that the President had actually withheld her consent or prohibited the officials from attending the inquiry. The Court categorically rejected this argument, holding that it was "immaterial" to the determination of whether there is a justiciable controversy:

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

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

As the implementation of the challenged order has already resulted in the absence of officials invited to the hearings of petitioner Senate of the Philippines, it would make no sense to wait for any further event before considering the present case ripe for adjudication. Indeed, it would be sheer abandonment of duty if this Court would now refrain from passing on the constitutionality of E.O. 464. [34] (Emphasis and underscoring supplied)

Clearly, *Ermita* ruled that the issue was ripe for adjudication because the officials invited to attend the hearings already failed to attend following E.O. No. 464 — regardless of whether the President actually withheld her consent.

After *Ermita*, the Court was faced with another controversy surrounding E.O. No. 464, this time involving military personnel. In *Gudani v. Senga*, [35] the Court clarified the remedy for the legislature in instances when it requires the attendance of military personnel in any of its hearings in aid of legislation and the President withholds

his or her consent — i.e., file a case in court. Thus:

x x x At the same time, we also hold that any chamber of Congress which seeks the appearance before it of a military officer against the consent of the President has adequate remedies under law to compel such attendance. Any military official whom Congress summons to testify before it may be compelled to do so by the President. If the President is not so inclined, the President may be commanded by judicial order to compel the attendance of the military officer. Final judicial orders have the force of the law of the land which the President has the duty to faithfully execute.[36] (Emphasis and underscoring supplied)

Considering these, it is therefore untenable to argue that the present petition does not satisfy the requirement of having an actual case or controversy. If the Court, in *Ermita*, found that there was a justiciable issue when the former President issued E.O. No. 464, which did not even explicitly prohibit cabinet officials from appearing in Congress, there should be more reason for the Court to take cognizance of this case. To emphasize, herein subject Memorandum did not merely require prior consent from the President to attend the inquiry in aid of legislation. It directly prohibited officials from attending the SBRC hearings. Worse, the invited officials heeded the directive in the subject Memorandum by not actually attending the hearings. By these undisputed circumstances, there is simply no reason for the Court to shirk its duty and refuse to settle the controversy.

Furthermore, by dismissing the petition on the ground of prematurity, the Court deliberately closed its eyes to the public statements of the President prior to and contemporaneous with the issuance of the subject Memorandum.

As aptly pointed out in the Petition, President Duterte publicly directed his Cabinet members and officials not to attend the hearing, even under pain of contempt:

3.14. In the same 30 September 2021 address, the President (a) challenged the Senate to exercise its contempt power at their peril, [i.e.], at the risk that the President will himself order the arrest of the Senate [sergeant-at-arms]; (b) instructed the [PNP] and the [AFP] to disobey any arrest orders from the SBRC; and (c) threatened a full-blown "constitutional crisis", with the AFP and the PNP backing him up:

x x x x

x x x So ngayon, I'm sure that you will use your contempt powers. Hanggang diyan ka lang. Sergeant-at-arms mo? Susmaryosep, ipaaresto ko 'yan eh.

x x x x

3.23. On 06 October 2021, the President reiterated his orders (1) for Cabinet members and other Executive Branch officials and employees not to attend the Subject Hearings; and (2) for the PNP and AFP not to cooperate in case the SBRC exercises its power of contempt, belittling the Senate – an organ of the Legislative Department, the Executive's co-equal branch – and threatening it with physical harm in the process:

x x x x

Ang problema lang niyan kay may kaunting powers (sic) pero huwag kayong matakot kasi sabi ko wala naman silang mauutusan. Iyong sergeant-at-arms nila it's an office, maybe they have one or two or three assistants there. Iyan lang ang matawagan nila para i-detain kayo. Pero 'pag nangyari 'yan, I am giving this warning to the Senate: ayaw ko ng gulo. We recognize your power to cite people to help you in aid of legislation. Baka 'yang inyong 'in aid' maging first aid 'yan.[37]

There is therefore no doubt as to whether the President would eventually allow the invited cabinet officials to attend the SBRC hearings. This statement also further establishes that far from being premature, the challenged action is complete and ripe at the time of the filing of the petition.

There being an assertion by the Senate that the subject Memorandum is unconstitutional for infringing on its authority to conduct inquiries in aid of legislation, and an opposite claim on the part of the executive, it cannot be concluded that there is no actual case or controversy before the Court. The controversy involves two co-equal branches no less and raises a question on the application or interpretation of the Senate's constitutionally mandated authority.

II.

I disagree with the ponencia's characterization of the subject petition. The Court, in *Padlan v. Spouses Dinglasan*,^[38] held that:

x x x The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted.^[39] (Emphasis supplied)

Respectfully, a perusal of the petition would show that the instant certiorari is not and should not be treated as one filed by the executive for the purpose of challenging the jurisdiction of the SBRC.^[40] In fact, the executive never filed such a petition even before the Senate and simply proceeded with the issuance of the subject Memorandum prohibiting the concerned officials from attending the hearings. The subject Memorandum was also only addressed to the executive officials, not to the Senate or the SBRC. Without a jurisdictional challenge lodged with the Senate, it is incongruous to argue that the Senate should wield its power provided under Section 3 of the Senate Rules. Verily, contrary to the presuppositions advanced by the ponencia, there is no other plain, speedy, and adequate remedy available to the Senate.

In any case, I stress that the Senate itself filed the petition before the Court mainly to question the constitutionality of the subject Memorandum of the President.^[41] Ergo, the Senate maintains that the subject hearings in response to the findings of the Commission on Audit were conducted pursuant to its authority to conduct an investigation in aid of legislation. Thus, even assuming that the issuance of the subject Memorandum presented a jurisdictional challenge before the Senate, to require the Senate to first rule on it under Section 3 of its own rules before filing the instant petition will just be a trivial and vain exercise.

To be sure, the Senate alleges that by issuing the subject Memorandum, the Executive Secretary, under the authority of the President, blatantly frustrated the exercise of its constitutional power.^[42] This bone of contention presented by the Senate is already beyond and above a mere assertion of its jurisdiction to conduct the inquiries and to compel the executive officials to again attend the hearings. This time, the Senate is already questioning the constitutionality of the action of a co-equal branch.

These issues are evidently outside the purview of the Senate's own rules. Therefore, the instant petition is not premature. By constitutional design, the task to determine whether the issuance of a co-equal branch of government is violative of the Constitution falls on the Court. As the Court in *Angara v. Electoral Commission* put it, "[i]n cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof."^[43] In other words, when there is a perceived encroachment by one branch of the government on the mandate and functions of the other, there is no other arbiter than the Court itself.

Finally, as in *Ermita*, the Senate was able to establish that the requirements for judicial review are present in this case. The majority's rigid application of the procedural rules does not give due regard to the legal implication of the petition's dismissal — which is to effectively cloak the President's actions with some semblance of legitimacy. I

submit that when the question presented to the Court is justiciable — i.e., whether the President's directive prohibiting executive officials from attending the Senate hearings on the government's disbursement of COVID-19 funds violates the Constitution — the majority should not hide behind these procedural requirements and refuse to rule on the issue. The Court has the duty to adjudicate, not just to settle conflicts between the executive and the legislative, but more importantly for the people and the discerning electorate. To rule otherwise could possibly lay the groundwork for the Court to easily evade this constitutionally mandated duty.

In view of the foregoing, I strongly dissent from the majority. The petition should NOT be dismissed based merely on procedural grounds. Instead, the Court should decide on the constitutionality of the October 4, 2021 Memorandum of the President based on established jurisprudence.

[1] 63 Phil. 139, 157 (1936).

[2] Re: Attendance in the Senate Blue Ribbon Committee Hearings on the 2020 Commission on Audit Report, issued by President Rodrigo R. Duterte through Executive Secretary Salvador C. Medialdea.

[3] Rollo, Vol. 1, p. 18.

[4] Id. at 3-81.

[5] Ponencia, p. 18.

[6] Id. at 12-19.

[7] Sec. 3. Jurisdictional Challenge. If the jurisdiction of the Committee is challenged on any ground, the said issue must first be resolved by the Committee before proceeding with the inquiry.

If the Committee, by a majority vote of its members present there being a quorum, decides that its inquiry is pertinent or relevant to the implementation or re-examination of any law or appropriation or in connection with any pending or proposed legislation or will aid in the review or formulation of a new legislative policy or enactment, or extends to any and all matters vested by the Constitution in Congress and/or in the Senate alone, it shall overrule such objection and proceed with the investigation.

Only one challenge on the same ground shall be permitted.

The filing or pendency or any prosecution of criminal or administrative action shall not stop or abate any inquiry to carry out a legislative purpose.

[8] Ponencia, p. 18.

[9] *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 123 (2014).

[10] *Belgica v. Ochoa*, 721 Phil. 416, 519 (2013), citing *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 589 Phil. 387 (2008).

[11] Id. at 520.

[12] See *AMCOW v. GAMCA*, 802 Phil. 116, 146 (2016).

[13] *Belgica v. Ochoa*, supra note 10, at 525, citing *Francisco, Jr. v. Toll Regulatory Board*, 648 Phil. 54 (2010).

[14] CONSTITUTION, Art. VIII, Sec. 1. (Emphasis supplied)

[15] 460 Phil. 830 (2003).

[16] Id. at 882-883.

[17] See also *Pimentel, Jr. v. Aguirre*, 391 Phil. 84 (2000).

[18] *Supra* note 10.

[19] *Id.* at 484.

[20] *Id.* at 486.

[21] *Supra* note 9.

[22] *Id.* at 124.

[23] Republic Act No. 10354, AN ACT PROVIDING FOR A NATIONAL POLICY ON RESPONSIBLE PARENTHOOD AND REPRODUCTIVE HEALTH, approved on December 21, 2012.

[24] *Sps. Imbong v. Ochoa*, *supra* note 9, at 124.

[25] *Rollo*, Vol. 1, p. 88.

[26] *Id.* at 276, 283.

[27] *Id.* at 102-171.

[28] See *id.* at 229-231.

[29] *Ponencia*, p. 18.

[30] 522 Phil. 1 (2006).

[31] "Ensuring Observance of the Principle of Separation of Powers, Adherence to the Rule on Executive Privilege and Respect for the Rights of Public Officials Appearing in Legislative Inquiries in Aid of Legislation Under the Constitution, and For Other Purposes," issued on September 26, 2005.

[32] *Senate v. Ermita*, *supra* note 30, at 42-43.

[33] See *id.*

[34] *Id.* at 32-33.

[35] 530 Phil. 398 (2006).

[36] *Id.* at 427.

[37] *Rollo*, Vol. 1, pp. 15-19.

[38] 707 Phil. 83 (2013).

[39] *Id.* at 91.

[40] *Ponencia*, p. 18.

[41] *Rollo*, Vol. 1, p. 66; *rollo*, Vol. 3, no pagination, *Petitioner's Reply*, p. 4.

[42] *Rollo*, Vol. 1, pp. 43-46.

[43] *Angara v. Electoral Commission*, *supra* note 1.

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