Republic of the Philippines
Supreme Court
Manila

EN BANC

GRECO ANTONIOUS BEDA B. BELGICA, JOSE M. VILLEGAS, JR., JOSE L. GONZALEZ, REUBEN M. ABANTE, and QUINTIN PAREDES SAN DIEGO, Petitioners, - versus - **HONORABLE EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., SECRETARY OF BUDGET AND MANAGEMENT FLORENCIO B. ABAD, NATIONAL TREASURER ROSALIA V. DE LEON, SENATE OF THE PHILIPPINES, represented by FRANKLIN M. DRILON in his capacity as SENATE PRESIDENT, and HOUSE OF REPRESENTATIVES, represented by FELICIANO S. BELMONTE, JR. in his capacity as SPEAKER OF THE HOUSE,** Respondents.	**G.R. No. 208566**
x----------x	
SOCIAL JUSTICE SOCIETY (SJS) PRESIDENT SAMSON S. ALCANTARA, Petitioner, - versus - **HONORABLE FRANKLIN M. DRILON, in his capacity as SENATE PRESIDENT, and HONORABLE FELICIANO S.**	**G.R. No. 208493**

BELMONTE, JR., in his capacity as SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Respondents.
x----------x

PEDRITO M. NEPOMUCENO, Former Mayor-Boac, Marinduque Former Provincial Board Member – Province of Marinduque,
Petitioner,

- versus -

PRESIDENT BENIGNO SIMEON C. AQUINO III[*] and SECRETARY FLORENCIO "BUTCH" ABAD, DEPARTMENT OF BUDGET AND MANAGEMENT,
Respondents.

G.R. No. 209251

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,[**]
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

Promulgated:
NOVEMBER 19, 2013
x----------x

DECISION

PERLAS-BERNABE, *J.*:

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

- James Madison

Before the Court are consolidated petitions[2] taken under Rule 65 of the Rules of Court, all of which assail the constitutionality of the Pork Barrel System. Due to the complexity of the subject matter, the Court shall

---

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

** No part.

1 The Federalist Papers, Federalist No. 20.

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

heretofore discuss the system's conceptual underpinnings before detailing the particulars of the constitutional challenge.

The Facts

I. Pork Barrel: General Concept.

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

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

---

3 "'[P]ork barrel spending,' a term that traces its origins back to the era of slavery before the U.S. Civil War, when slave owners occasionally would present a barrel of salt pork as a gift to their slaves. In the modern usage, the term refers to congressmen scrambling to set aside money for pet projects in their districts." (Drudge, Michael W. "'Pork Barrel' Spending Emerging as Presidential Campaign Issue," August 1, 2008 <http://iipdigital.usembassy.gov/st/english/article/2008/08/20080801181504lcnirellep0.1261713.html#axzz2iQrI8mHM> [visited October 17, 2013].)

4 Bernas, Joaquin G., S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 Edition, p. 786, citing Bernas, "From Pork Barrel to Bronze Caskets," *Today*, January 30, 1994.

5 Heaser, Jason, "Pulled Pork: The Three Part Attack on Non-Statutory Earmarks," *Journal of Legislation*, 35 J. Legis. 32 (2009). <http://heinonline.org/HOL/LandingPage?collection=&handle=hein.journals/jleg35&div=6&id=&page=> (visited October 17, 2013).

6 Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" p. 2.<http://www.congress.gov.ph/download/14th/pork_barrel.pdf> (visited October 17, 2013).

7 Chua, Yvonne T. and Cruz, Booma, B., "Pork is a Political, Not A Developmental, Tool." <http://pcij.org/stories/2004/pork.html> [visited October 22, 2013].) See also *rollo* (G.R. No. 208566), pp. 328-329.

8 Morton, Jean, "What is a Pork Barrel?" *Global Granary*, Lifestyle Magazine and Common Place Book Online: Something for Everyone, August 19, 2013. <http://www.globalgranary.org/2013/08/19/what-is-a-pork-barrel/#.UnrnhFNavcw > (visited October 17, 2013).

9 Jison, John Raymond, "What does the 'pork barrel' scam suggest about the Philippine government?" *International Association for Political Science Students*, September 10, 2013. <http://www.iapss.org/index.php/articles/item/93-what-does-the-pork-barrel-scam-suggest-about-the-philippine-government> (visited October 17, 2013). See also Llanes, Jonathan, "Pork barrel – Knowing the issue," Sunstar Baguio, October 23, 2013. <http://www.sunstar.com.ph/ baguio/opinion/2013/09/05/llanes-pork-barrel-knowing-issue-301598> (visited October 17, 2013).

II. History of Congressional Pork Barrel in the Philippines.

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

Act 3044,[10] or the Public Works Act of **1922**, is considered[11] as the earliest form of "Congressional Pork Barrel" in the Philippines since the utilization of the funds appropriated therein were subjected to post-enactment legislator approval. Particularly, in the area of fund release, Section 3[12] provides that the sums appropriated for certain public works projects[13] "shall be **distributed** x x x **subject to the approval of a joint committee elected by the Senate and the House of Representatives**." "[T]he committee from each House may [also] authorize one of its **members to approve the distribution** made by the Secretary of Commerce and Communications."[14] Also, in the area of fund realignment, the same section provides that the said secretary, "**with the approval of said joint committee, or of the authorized members thereof**, may, for the purposes of said distribution, **transfer unexpended portions** of any item of appropriation under this Act to any other item hereunder."

In **1950**, it has been documented[15] that post-enactment legislator participation broadened from the areas of fund release and realignment to the area of project identification. During that year, the mechanics of the public works act was modified to the extent that the discretion of choosing projects was transferred from the Secretary of Commerce and Communications to legislators. "For the first time, the law carried a list of projects selected by Members of Congress, they 'being the representatives of the people, either

---

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

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

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

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

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

14 Section 3, Act 3044.

15 Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA *Files*, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

on their own account or by consultation with local officials or civil leaders.'"[16] During this period, the pork barrel process commenced with local government councils, civil groups, and individuals appealing to Congressmen or Senators for projects. Petitions that were accommodated formed part of a legislator's allocation, and the amount each legislator would eventually get is determined in a caucus convened by the majority. The amount was then integrated into the administration bill prepared by the Department of Public Works and Communications. Thereafter, the Senate and the House of Representatives added their own provisions to the bill until it was signed into law by the President – the Public Works Act.[17] In the **1960**'s, however, pork barrel legislation reportedly ceased in view of the stalemate between the House of Representatives and the Senate.[18]

B. Martial Law Era (1972-1986).

While the previous "Congressional Pork Barrel" was apparently discontinued in **1972** after Martial Law was declared, an era when "one man controlled the legislature,"[19] the reprieve was only temporary. By **1982**, the Batasang Pambansa had already introduced a new item in the General Appropriations Act (GAA) called the "**Support for Local Development Projects**" (SLDP) under the article on "National Aid to Local Government Units". Based on reports,[20] it was under the SLDP that **the practice of giving lump-sum allocations to individual legislators began**, with each assemblyman receiving ₱500,000.00. Thereafter, assemblymen would **communicate their project preferences** to the Ministry of Budget and Management for approval. Then, the said ministry would release the allocation papers to the Ministry of Local Governments, which would, in turn, issue the checks to the city or municipal treasurers in the assemblyman's locality. It has been further reported that "Congressional Pork Barrel" projects under the SLDP also began to cover not only public works projects, or so-called "hard projects", but also "soft projects",[21] or non-public works projects such as those which would fall under the categories of, among others, education, health and livelihood.[22]

C. Post-Martial Law Era: Corazon Cojuangco Aquino Administration (1986-1992).

---

16 Id.
17 Id.
18 Id.
19 Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" <http://www.congress.gov.ph/download/ 14th/pork_barrel.pdf> (visited October 17, 2013).
20 Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," *VERA Files*, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).
21 Id.
22 Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP), Special Audits Office Report No. 2012-03, August 14, 2013 (CoA Report), p. 2.

After the EDSA People Power Revolution in 1986 and the restoration of Philippine democracy, "Congressional Pork Barrel" was revived in the form of the "**Mindanao Development Fund**" and the "**Visayas Development Fund**" which were created with **lump-sum appropriations** of ₱480 Million and ₱240 Million, respectively, for the funding of development projects in the Mindanao and Visayas areas in **1989**. It has been documented[23] that the clamor raised by the Senators and the Luzon legislators for a similar funding, prompted the creation of the "**Countrywide Development Fund**" (CDF) which was integrated into the **1990** GAA[24] with an initial funding of ₱2.3 Billion to cover "small local infrastructure and other priority community projects."

Under the GAAs for the years **1991** and **1992**,[25] CDF funds were, with the approval of the President, to be released directly to the implementing agencies but "**subject to the submission of the required list of projects and activities**." Although the GAAs from 1990 to 1992 were silent as to the amounts of allocations of the individual legislators, as well as their participation in the identification of projects, it has been reported[26] that by **1992**, Representatives were receiving ₱12.5 Million each in CDF funds, while Senators were receiving ₱18 Million each, without any limitation or qualification, and that **they could identify any kind of project**, from hard or infrastructure projects such as roads, bridges, and buildings to "soft projects" such as textbooks, medicines, and scholarships.[27]

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

The following year, or in **1993**,[28] the GAA explicitly stated that the release of CDF funds was to be made **upon the submission of the list of**

---

[23] Ilagan, Karol, "Data A Day; CIA, CDF, PDAF? Pork is pork is pork," *Moneypolitics, A Date Journalism Project for the Philippine Center for Investigative Journalism*, August 1, 2013 <http://moneypolitics.pcij.org/data-a-day/cia-cdf-pdaf-pork-is-pork-is-pork/> (visited October 14, 2013).

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

[25] Special Provision 1, Article XLIV, RA 7078 (1991 CDF Article), and Special Provision 1, Article XLII (1992), RA 7180 (1992 CDF Article) are **similarly worded** as follows:

> Special Provision
>
> 1. **Use and Release of Funds**. The amount herein appropriated shall be used for infrastructure and other priority projects and activities upon approval by the President of the Philippines and shall be released directly to the appropriate implementing agency [(x x x for 1991)], **subject to the submission of the required list of projects and activities.** (Emphases supplied)

[26] Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," *VERA Files*, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

[27] Id.

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

> Special Provision
>
> 1. **Use and Release of Funds.** The amount herein appropriated shall be used for infrastructure and other priority projects and activities **as proposed and identified by officials concerned according to the following allocations: Representatives, ₱12,500,000 each; Senators ₱18,000,000 each; Vice-President, ₱20,000,000**.
>
> The fund shall be automatically released quarterly by way of Advice of Allotment and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each quarter **upon submission of the list of projects and activities by the officials concerned**. (Emphases supplied)

projects and activities identified by, among others, individual legislators. For the first time, the 1993 CDF Article **included an allocation for the Vice-President**.[29] As such, Representatives were allocated ₱12.5 Million each in CDF funds, Senators, ₱18 Million each, and the Vice-President, ₱20 Million.

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

---

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

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

> Special Provisions
>
> 1. **Use and Release of Funds.** The amount herein appropriated shall be used for infrastructure, purchase of ambulances and computers and other priority projects and activities, and credit facilities to qualified beneficiaries **as proposed and identified by officials concerned according to the following allocations: Representatives, ₱12,500,000 each; Senators ₱18,000,000 each**; Vice-President, ₱20,000,000; PROVIDED, That, the said credit facilities shall be constituted as a revolving fund to be administered by a government financial institution (GFI) as a trust fund for lending operations. Prior years releases to local government units and national government agencies for this purpose shall be turned over to the government financial institution which shall be the sole administrator of credit facilities released from this fund.
>
> The fund shall be automatically released quarterly by way of Advice of Allotments and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each quarter upon submission of the list of projects and activities by the officials concerned. (Emphases supplied)

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

> Special Provisions
>
> 1. **Use and Release of Funds.** The amount herein appropriated shall be used for infrastructure, purchase of equipment and other priority projects and activities **as proposed and identified by officials concerned according to the following allocations: Representatives, ₱12,500,000 each; Senators ₱18,000,000 each**; Vice-President, ₱20,000,000.
>
> The fund shall be automatically released semi-annually by way of Advice of Allotment and Notice of Cash Allocation directly to the designated implementing agency not later than five (5) days after the beginning of each semester **upon submission of the list of projects and activities by the officials concerned**. (Emphases supplied)

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

> Special Provisions
>
> 1. **Use and Release of Fund.** The amount herein appropriated shall be used for infrastructure, purchase of equipment and other priority projects and activities, including current operating expenditures, except creation of new plantilla positions, **as proposed and identified by officials concerned according to the following allocations: Representatives, Twelve Million Five Hundred Thousand Pesos (₱12,500,000) each; Senators, Eighteen Million Pesos (₱18,000,000) each**; Vice-President, Twenty Million Pesos (₱20,000,000).
>
> The Fund shall be released semi-annually by way of Special Allotment Release Order and Notice of Cash Allocation directly to the designated implementing agency not later than thirty (30) days after the beginning of each semester **upon submission of the list of projects and activities by the officials concerned**. (Emphases supplied)

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

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

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

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

The CDF was not, however, the lone form of "Congressional Pork Barrel" at that time. Other forms of "Congressional Pork Barrel" were reportedly fashioned and inserted into the GAA (called "**Congressional Insertions**" or "CIs") in order to perpetuate the administration's political agenda.[37] It has been articulated that since CIs "formed **part and parcel of the budgets of executive departments**, they were **not easily identifiable and were thus harder to monitor**." Nonetheless, the lawmakers themselves as well as the finance and budget officials of the implementing agencies, as well as the DBM, purportedly knew about the insertions.[38] Examples of these CIs are the Department of Education (DepEd) School Building Fund,

---

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

> Special Provisions
>
> x x x x
>
> 2. **Publication of Countrywide Development Fund Projects.** Within thirty (30) days after the signing of this Act into law, the **Members of Congress and the Vice-President shall, in consultation with the implementing agency concerned, submit to the Department of Budget and Management the list of fifty percent (50%) of projects to be funded from the allocation from the Countrywide Development Fund which shall be duly endorsed by the Senate President and the Chairman of the Committee on Finance in the case of the Senate and the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations in the case of the House of Representatives, and the remaining fifty percent (50%) within six (6) months thereafter.** The list shall identify the specific projects, location, implementing agencies, and target beneficiaries and **shall be the basis for the release of funds**. The said list shall be published in a newspaper of general circulation by the Department of Budget and Management. **No funds appropriated herein shall be disbursed for projects not included in the list herein required.** (Emphases supplied)

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

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

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

[37] Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," *VERA Files*, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

[38] Id.

the Congressional Initiative Allocations, the Public Works Fund, the El Niño Fund, and the Poverty Alleviation Fund.[39] The allocations for the School Building Fund, particularly, "shall be made upon **prior consultation with the representative of the legislative district** concerned."[40] Similarly, **the legislators had the power to direct how, where and when** these appropriations were to be spent.[41]

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

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

It was in the year **2000**[46] that the "**Priority Development Assistance Fund**" (PDAF) appeared in the GAA. The requirement of "**prior consultation with the respective Representative of the District**" before

---

39 *Rollo* (G.R. No. 208566), pp. 335-336, citing Parreño, Earl, "Perils of Pork," *Philippine Center for Investigative Journalism*, June 3-4, 1998. Available at <http://pcij.org/stories/1998/pork.html>

40 Id.

41 Id.

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

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

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

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

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

45 Special Provision 1, Article L, Rural/Urban Development Infrastructure Program Fund, RA 8745 provides:

> Special Provision
>
> 1. **Use and Release of Fund.** The amount herein authorized shall be used to fund infrastructure requirements of the rural/urban areas which shall be released directly to the implementing agency **upon prior consultation with the respective Members of Congress**. (Emphases supplied)

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

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

PDAF funds were directly released to the implementing agency concerned was explicitly stated in the 2000 PDAF Article. Moreover, **realignment of funds** to any expense category was expressly allowed, with the sole condition that no amount shall be used to fund personal services and other personnel benefits.[47] The succeeding PDAF provisions remained the same in view of the re-enactment[48] of the 2000 GAA for the year **2001**.

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

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

---

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

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

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

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

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

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

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

> Special Provision No. 1 – Restriction on the Delegation of Project Implementation
>
> The implementation of the projects funded herein shall not be delegated to other agencies, except those projects to be implemented by the Engineering Brigades of the AFP and inter-department projects undertaken by other offices and agencies including local government units with demonstrated capability to actually implement the projects by themselves **upon consultation with the Members of Congress concerne**d. In all cases the DPWH shall exercise technical supervision over projects. (Emphasis supplied)

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

> Special Provision No. 3 – Submission of the List of School Buildings
>
> Within 30 days after the signing of this Act into law, (DepEd) **after consultation with the representative of the legislative district concerned**, shall submit to DBM the list of 50% of school buildings to be constructed every municipality x x x. The list as submitted shall be the basis for the release of funds. (Emphasis supplied)

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

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

---

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

Special Provision(s)

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

PARTICULARS	**PROGRAM/PROJECT**	**IMPLEMENTING AGENCY**
A. Education	Purchase of IT Equipment	DepEd/TESDA/ CHED/SUCs/LGUs
	Scholarship	TESDA/CHED/ SUCs/LGUs
B. Health	Assistance to Indigent Patients Confined at the Hospitals Under DOH Including Specialty Hospitals	DOH/Specialty Hospitals
	Assistance to Indigent Patients at the Hospitals Devolved to LGUs and RHUs	LGUs
	Insurance Premium	Philhealth
C. Livelihood/ CIDSS	Small & Medium Enterprise/Livelihood	DTI/TLRC/DA/ CDA
	Comprehensive Integrated Delivery of Social Services	DSWD
D. Rural Electrification	Barangay/Rural Electrification	DOE/NEA
E. Water Supply	Construction of Water System	DPWH
	Installation of Pipes/Pumps/Tanks	LGUs
F. Financial Assistance	Specific Programs and Projects to Address the Pro-Poor Programs of Government	LGUs
G. Public Works	Construction/Repair/ Rehabilitation of the following: Roads and Bridges/Flood Control/School buildings Hospitals Health Facilities/Public Markets/Multi-Purpose Buildings/Multi-Purpose Pavements	DPWH
H. Irrigation	Construction/Repair/ Rehabilitation of Irrigation Facilities	DA-NIA

(Emphasis supplied)

[55] Id.

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

was consistently integrated into the **2007**,[57] **2008**,[58] **2009**,[59] and **2010**[60] GAAs.

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

Significantly, it was during this era that provisions which **allowed formal participation of non-governmental organizations (NGO) in the implementation of government projects** were introduced. In the Supplemental Budget for 2006, with respect to the appropriation for school buildings, NGOs were, by law, encouraged to participate. For such purpose, the law stated that "the amount of at least ₱250 Million of the ₱500 Million allotted for the construction and completion of school buildings **shall be made available to NGOs** including the Federation of Filipino-Chinese Chambers of Commerce and Industry, Inc. for its "Operation Barrio School" program[,] with capability and proven track records in the construction of public school buildings x x x."[62] The same allocation was made available to NGOs in the 2007 and 2009 GAAs under the DepEd Budget.[63] Also, it was

---

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

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

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

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

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

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

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

63 Id. at 559-560.

in 2007 that the **Government Procurement Policy Board**[64] (GPPB) issued **Resolution No. 12-2007 dated June 29, 2007** (GPPB Resolution 12-2007), amending the implementing rules and regulations[65] of RA 9184,[66] the Government Procurement Reform Act, to include, as a form of negotiated procurement,[67] the procedure whereby the Procuring Entity[68] (the implementing agency) may enter into a **memorandum of agreement** with an NGO, **provided** that "an appropriation law or ordinance earmarks an amount to be specifically contracted out to NGOs."[69]

G. Present Administration (2010-Present).

Differing from previous PDAF Articles but similar to the CDF Articles, the **2011**[70] PDAF Article included an express statement on lump-sum amounts allocated for individual legislators and the Vice-President: Representatives were given ₱70 Million each, broken down into ₱40 Million

---

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

x x x x" <http://www.gppb.gov.ph/about_us/gppb.html> (visited October 23, 2013).

65 Entitled "AMENDMENT OF SECTION 53 OF THE IMPLEMENTING RULES AND REGULATIONS PART A OF REPUBLIC ACT 9184 AND PRESCRIBING GUIDELINES ON PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN PUBLIC PROCUREMENT," approved June 29, 2007.

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

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

x x x x

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

x x x x

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

69 *Rollo* (G.R. No. 208566), p. 564, citing GPPB Resolution 12-2007.

70 Special Provision 2, Article XLIV, RA 10147 (2011 PDAF Article) provides:

2. Allocation of Funds. The total projects to be identified by legislators and the Vice-President shall not exceed the following amounts:

a. Total of Seventy Million Pesos (₱70,000,000) broken down into Forty Million Pesos (₱40,000,000) for Infrastructure Projects and Thirty Million Pesos (₱30,000,000) for soft projects of Congressional Districts or Party List Representatives;

b. Total of Two Hundred Million Pesos (₱200,000,000) broken down into One Hundred Million Pesos (₱100,000,000) for Infrastructure Projects and One Hundred Million Pesos (₱100,000,000) for soft projects of Senators and the Vice President.

for "hard projects" and ₱30 Million for "soft projects"; while ₱200 Million was given to each Senator as well as the Vice-President, with a ₱100 Million allocation each for "hard" and "soft projects." Likewise, a provision on realignment of funds was included, but with the qualification that it may be allowed only once. The same provision also allowed the Secretaries of Education, Health, Social Welfare and Development, Interior and Local Government, Environment and Natural Resources, Energy, and Public Works and Highways to realign PDAF Funds, with the further conditions that: (*a*) realignment is within the same implementing unit and same project category as the original project, for infrastructure projects; (*b*) allotment released has not yet been obligated for the original scope of work, and (*c*) **the request for realignment is with the concurrence of the legislator concerned**.[71]

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

Provisions on legislator allocations[75] as well as fund realignment[76] were included in the 2012 and 2013 PDAF Articles; but the allocation for

---

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

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

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

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

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

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

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

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

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

> 6. Realignment of Funds. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Environment and Natural Resources, Health, Interior and Local Government, Public Works and Highways, and Social Welfare and

the Vice-President, which was pegged at ₱200 Million in the 2011 GAA, had been deleted. In addition, the 2013 PDAF Article now **allowed LGUs to be identified as implementing agencies** if they have the technical capability to implement the projects.[77] Legislators were also allowed to identify programs/projects, except for assistance to indigent patients and scholarships, **outside of his legislative district** provided that he secures the written concurrence of the legislator of the intended outside-district, endorsed by the Speaker of the House.[78] Finally, **any realignment of PDAF funds, modification and revision of project identification**, as well as **requests for release of funds**, were all required to be **favorably endorsed by the House Committee on Appropriations and the Senate Committee on Finance**, as the case may be.[79]

Development are also authorized to approve realignment from one project/scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and same project category as the original project; (ii) allotment released has not yet been obligated for the original project/scope of work; and (iii) **request is with the concurrence of the legislator concerned**. The DBM must be informed in writing of any realignment approved within five (5) calendar days from its approval.

Special Provision 4 of the 2013 PDAF Article provides:

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

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

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

Special Provision(s)

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

x x x x

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

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

2. Project Identification. x x x.

x x x x

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

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

III. History of Presidential Pork Barrel in the Philippines.

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

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

On the other hand the Presidential Social Fund was created under Section 12, Title IV[84] of PD 1869,[85] or the Charter of the Philippine

---

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

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

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

82 See First Whereas Clause of PD 910.

83 See <http://malampaya.com/> (visited October 17, 2013).

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

(a) Flood Control
(b) Sewerage and Sewage
(c) Nutritional Control
(d) Population Control
(e) Tulungan ng Bayan Centers
(f) Beautification
(g) Kilusang Kabuhayan at Kaunlaran (KKK) projects; provided, that should the aggregate gross earning be less than ₱150,000,000.00, the amount to be allocated to fund the above-mentioned project shall be equivalent to sixty (60%) percent of the aggregate gross earning.

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

Amusement and Gaming Corporation (PAGCOR). PD 1869 was similarly issued by Marcos on July 11, 1983. **More than two (2) years after, he amended PD 1869 and accordingly issued PD 1993 on October 31, 1985,[86] amending Section 12[87] of the former law.** As it stands, the Presidential Social Fund has been described as a special funding facility managed and administered by the Presidential Management Staff through which the President provides direct assistance to priority programs and projects not funded under the regular budget. It is sourced from the share of the government in the aggregate gross earnings of PAGCOR.[88]

IV. Controversies in the Philippines.

Over the decades, "pork" funds in the Philippines have increased tremendously,[89] owing in no small part to previous Presidents who

---

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

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

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

> Sec. 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱150,000,000.00 shall immediately be set aside and shall accrue to the General Fund to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines.

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

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

reportedly used the "Pork Barrel" in order to gain congressional support.[90] It was in 1996 when the first controversy surrounding the "Pork Barrel" erupted. Former Marikina City Representative Romeo Candazo (Candazo), then an anonymous source, "blew the lid on the huge sums of government money that regularly went into the pockets of legislators in the form of kickbacks."[91] He said that "the kickbacks were 'SOP' (standard operating procedure) among legislators and ranged from a low 19 percent to a high 52 percent of the cost of each project, which could be anything from dredging, rip rapping, asphalting, concreting, and construction of school buildings."[92] "Other sources of kickbacks that Candazo identified were public funds intended for medicines and textbooks. A few days later, the tale of the money trail became the banner story of the [Philippine Daily] Inquirer issue of [August] 13, 1996, accompanied by an illustration of a roasted pig."[93] "The publication of the stories, including those about congressional initiative allocations of certain lawmakers, including ₱3.6 [B]illion for a [C]ongressman, sparked public outrage."[94]

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

Recently, or in July of the present year, the National Bureau of Investigation (NBI) began its probe into allegations that "the government has been defrauded of some ₱10 Billion over the past 10 years by a syndicate using funds from the pork barrel of lawmakers and various

---

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

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

Through the years, though, congressmen have also taken care to look after their very own. More often than not, pork-barrel funds are funneled to projects in towns and cities where the lawmakers' own relatives have been elected to public office; thus, pork is a tool for building family power as well. COA has come across many instances where pork-funded projects ended up directly benefiting no less than the lawmaker or his or her relatives." (CHUA, YVONNE T. and CRUZ, BOOMA, "Pork is a Political, Not A Developmental, Tool." <http://pcij.org/stories/2004/pork.html> [visited October 22, 2013].)

91 With reports from Inquirer Research and Salaverria, Leila, "Candazo, first whistle-blower on pork barrel scam, dies; 61," Philippine Daily Inquirer, August 20, 2013, <http://newsinfo.inquirer.net/469439/candazo-first-whistle-blower-on-pork-barrel-scam-dies-61> (visited October 21, 2013.)

92 Id.

93 Id.

94 Id.

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

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

On August 16, 2013, the Commission on Audit (CoA) released the results of a three-year audit investigation[99] covering the use of legislators' PDAF from 2007 to 2009, or during the last three (3) years of the Arroyo administration. The purpose of the audit was to determine the propriety of releases of funds under PDAF and the Various Infrastructures including Local Projects (VILP)[100] by the DBM, the application of these funds and the implementation of projects by the appropriate implementing agencies and several government-owned-and-controlled corporations (GOCCs).[101] The total releases covered by the audit amounted to ₱8.374 Billion in PDAF and ₱32.664 Billion in VILP, representing 58% and 32%, respectively, of the total PDAF and VILP releases that were found to have been made nationwide during the audit period.[102] Accordingly, the CoA's findings contained in its Report No. 2012-03 (CoA Report), entitled "Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)," were made public, the highlights of which are as follows:[103]

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

---

96 Carvajal, Nancy, "NBI probes P10-B scam," Philippine Daily Inquirer, July 12, 2013 <http://newsinfo.inquirer.net/443297/nbi-probes-p10-b-scam> (visited October 21, 2013).

97 Id.

98 See NBI Executive Summary. <http://www.gov.ph/2013/09/16/executive-summary-by-the-nbi-on-the-pdaf-complaints-filed-against-janet-lim-napoles-et-al/> (visited October 22, 2013).

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

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

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

102 Id.

103 Id. at 546-547.

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

As for the "Presidential Pork Barrel", whistle-blowers alleged that "[a]t least ₱900 Million from royalties in the operation of the Malampaya gas project off Palawan province intended for agrarian reform beneficiaries has gone into a dummy [NGO]."[104] According to incumbent CoA Chairperson Maria Gracia Pulido Tan (CoA Chairperson), the CoA is, as of this writing, in the process of preparing "one consolidated report" on the Malampaya Funds.[105]

V. The Procedural Antecedents.

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

On August 28, 2013, petitioner Samson S. Alcantara (Alcantara), President of the Social Justice Society, filed a Petition for Prohibition of even date under Rule 65 of the Rules of Court (Alcantara Petition), seeking that the "Pork Barrel System" be declared unconstitutional, and a writ of prohibition be issued permanently restraining respondents Franklin M.

---

[104] Carvajal, Nancy, "Malampaya fund lost P900M in JLN racket", Philippine Daily Inquirer, July 16, 2013 <http://newsinfo.inquirer.net/445585/malampaya-fund-lost-p900m-in-jln-racket> (visited October 21, 2013.)

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

Drilon and Feliciano S. Belmonte, Jr., in their respective capacities as the incumbent Senate President and Speaker of the House of Representatives, from further taking any steps to enact legislation appropriating funds for the "Pork Barrel System," in whatever form and by whatever name it may be called, and from approving further releases pursuant thereto.[106] The Alcantara Petition was docketed as **G.R. No. 208493**.

On September 3, 2013, petitioners Greco Antonious Beda B. Belgica, Jose L. Gonzalez, Reuben M. Abante, Quintin Paredes San Diego (Belgica, et al.), and Jose M. Villegas, Jr. (Villegas) filed an Urgent Petition For *Certiorari* and Prohibition With Prayer For The Immediate Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction dated August 27, 2013 under Rule 65 of the Rules of Court (Belgica Petition), seeking that the annual "Pork Barrel System," presently embodied in the provisions of the GAA of 2013 which provided for the 2013 PDAF, and the Executive's lump-sum, discretionary funds, such as the Malampaya Funds and the Presidential Social Fund,[107] be declared unconstitutional and null and void for being acts constituting grave abuse of discretion. Also, they pray that the Court issue a TRO against respondents Paquito N. Ochoa, Jr., Florencio B. Abad (Secretary Abad) and Rosalia V. De Leon, in their respective capacities as the incumbent Executive Secretary, Secretary of the Department of Budget and Management (DBM), and National Treasurer, or their agents, for them to immediately cease any expenditure under the aforesaid funds. Further, they pray that the Court order the foregoing respondents to release to the CoA and to the public: (*a*) "the complete schedule/list of legislators who have availed of their PDAF and VILP from the years 2003 to 2013, specifying the use of the funds, the project or activity and the recipient entities or individuals, and all pertinent data thereto"; and (*b*) "the use of the Executive's [lump-sum, discretionary] funds, including the proceeds from the x x x Malampaya Fund[s] [and] remittances from the [PAGCOR] x x x from 2003 to 2013, specifying the x x x project or activity and the recipient entities or individuals, and all pertinent data thereto."[108] Also, they pray for the "inclusion in budgetary deliberations with the Congress of all presently off-budget, [lump-sum], discretionary funds including, but not limited to, proceeds from the Malampaya Fund[s] [and] remittances from the [PAGCOR]."[109] The Belgica Petition was docketed as **G.R. No. 208566**.[110]

---

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

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

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

109 Id. at 48.

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

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

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

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

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

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

---

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

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

113 *Rollo* (G.R. No. 208566) p. 97.

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

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

The Issues Before the Court

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

I. Procedural Issues.

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

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

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

---

[114] G.R. Nos. 113105, 113174, 113766 & 113888, August 19, 1994, 235 SCRA 506.
[115] Supra note 95.

(*d*) accountability; (*e*) political dynasties; and (*f*) local autonomy.

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

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

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

The Court's Ruling

The petitions are partly granted.

I. Procedural Issues.

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

---

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

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

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

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

A. Existence of an Actual Case or Controversy.

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

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

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

---

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

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

122 Id. at 450-451.

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

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

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

> Justice Carpio: [T]**he President has taken an oath to faithfully execute the law**,[127] correct?
>
> Solicitor General Jardeleza: Yes, Your Honor.
>
> Justice Carpio: And so the President cannot refuse to implement the General Appropriations Act, correct?
>
> Solicitor General Jardeleza: Well, that is our answer, Your Honor. In the case, for example of the PDAF, **the President has a duty to execute the laws** but in the face of the outrage over PDAF, the President was saying, "I am not sure that I will continue the release of the soft projects," and that started, Your Honor. Now, whether or not that … (interrupted)
>
> Justice Carpio: Yeah. I will grant the President if there are anomalies in the project, he has the power to stop the releases in the meantime, to investigate, and that is Section [38] of Chapter 5 of Book 6 of the Revised Administrative Code[128] x x x. So at most the President can suspend, now if the President believes that the PDAF is unconstitutional, can he just refuse to implement it?
>
> Solicitor General Jardeleza: No, Your Honor, as we were trying to say in the specific case of the PDAF because of the CoA Report, because of the reported irregularities and this Court can take judicial notice, even outside,

---

125 *Baldo, Jr. v. Commision on Elections*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310.

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

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

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

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

> outside of the COA Report, you have the report of the whistle-blowers, the President was just exercising precisely the duty ….
>
> x x x x
>
> Justice Carpio: Yes, and that is correct. You've seen the CoA Report, there are anomalies, you stop and investigate, and prosecute, he has done that. **But, does that mean that PDAF has been repealed**?
>
> Solicitor General Jardeleza: No, Your Honor x x x.
>
> x x x x
>
> Justice Carpio: **So that PDAF can be legally abolished only in two (2) cases. Congress passes a law to repeal it, or this Court declares it unconstitutional, correct?**
>
> Solictor General Jardeleza: Yes, Your Honor.
>
> Justice Carpio: **The President has no power to legally abolish PDAF.** (Emphases supplied)

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

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

The applicability of the **second exception** is also apparent from the nature of the interests involved – the constitutionality of the very system within which significant amounts of public funds have been and continue to be utilized and expended undoubtedly presents a situation of exceptional character as well as a matter of paramount public interest. The present petitions, in fact, have been lodged at a time when the system's flaws have never before been magnified. To the Court's mind, the coalescence of the CoA Report, the accounts of numerous whistle-blowers, and the

---

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

government's own recognition that reforms are needed "to address the reported abuses of the PDAF"[130] **demonstrates a *prima facie* pattern of abuse** which only underscores the importance of the matter. It is also by this finding that the Court finds petitioners' claims as not merely theorized, speculative or hypothetical. Of note is the weight accorded by the Court to the findings made by the CoA which is the constitutionally-mandated audit arm of the government. In *Delos Santos v. CoA*,[131] a recent case wherein the Court upheld the CoA's disallowance of irregularly disbursed PDAF funds, it was emphasized that:

> **[T]he CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary**, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. **The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government**.
>
> [I]t is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, **not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce**. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x. (Emphases supplied)

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

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

---

130 *Rollo* (G.R. No. 208566), p. 292.
131 G.R. No. 198457, August 13, 2013.
132 TSN, October 10, 2013, p. 134.

guided on how public funds should be utilized in accordance with constitutional principles.

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

B. Matters of Policy: the Political Question Doctrine.

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

The Court must deny respondents' submission.

---

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

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

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

135 Id. at 5.

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

137 Id. at 665.

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

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

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

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

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

It must also be borne in mind that "when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; does not in reality nullify or invalidate an act of the legislature [or the executive], but only asserts the solemn and sacred obligation assigned to it by the Constitution."[144] To a great extent, the Court is laudably cognizant of the reforms undertaken by its co-equal branches of

---

141 *Tañada v. Cuenco*, 100 Phil. 1101 (1957) unreported case.
142 406 Phil. 1 (2001).
143 Id. at 42-43.
144 *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

government. But it is by constitutional force that the Court must faithfully perform its duty. Ultimately, it is the Court's avowed intention that a resolution of these cases would not arrest or in any manner impede the endeavors of the two other branches but, in fact, help ensure that the pillars of change are erected on firm constitutional grounds. After all, it is in the best interest of the people that each great branch of government, within its own sphere, contributes its share towards achieving a holistic and genuine solution to the problems of society. For all these reasons, the Court cannot heed respondents' plea for judicial restraint.

C. *Locus Standi*.

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

Petitioners have come before the Court in their respective capacities as citizen-taxpayers and accordingly, assert that they "dutifully contribute to the coffers of the National Treasury."[146] Clearly, as taxpayers, they possess the requisite standing to question the validity of the existing "Pork Barrel System" under which the taxes they pay have been and continue to be utilized. It is undeniable that petitioners, as taxpayers, are bound to suffer from the unconstitutional usage of public funds, if the Court so rules. Invariably, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law,[147] as in these cases.

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

---

145 *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos*, 465 Phil. 860, 890 (2004).
146 *Rollo* (G.R. No. 208566), p. 349.
147 *Public Interest Center, Inc. v. Honorable Vicente Q. Roxas, in his capacity as Presiding Judge, RTC of Quezon City, Branch 227*, G.R. No. 125509, January 31, 2007, 513 SCRA 457, 470.
148 *Social Justice Society (SJS) v. Dangerous Drugs Board*, G.R. No. 157870, November 3, 2008, 570 SCRA 410, 421.
149 TSN, October 8, 2013, pp. 184-185.

fundamental law by the enforcement of an invalid statute.[150] All told, petitioners have sufficient *locus standi* to file the instant cases.

D. *Res Judicata* and *Stare Decisis*.

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

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

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

---

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

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

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

similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to re-litigate the same issue.[153]

Philconsa was the first case where a constitutional challenge against a Pork Barrel provision, *i.e.*, the 1994 CDF Article, was resolved by the Court. To properly understand its context, petitioners' posturing was that "the power given to the [M]embers of Congress to propose and identify projects and activities to be funded by the [CDF] is an encroachment by the legislature on executive power, since said power in an appropriation act is in implementation of the law" and that "the proposal and identification of the projects do not involve the making of laws or the repeal and amendment thereof, the only function given to the Congress by the Constitution."[154] In deference to the foregoing submissions, the Court reached the following main conclusions: **one**, under the Constitution, the power of appropriation, or the "power of the purse," belongs to Congress; **two**, the power of appropriation carries with it the power to specify the project or activity to be funded under the appropriation law and it can be detailed and as broad as Congress wants it to be; and, **three**, the proposals and identifications made by Members of Congress are merely recommendatory. At once, it is apparent that the *Philconsa* resolution was **a limited response to a separation of powers problem**, specifically on the **propriety of conferring post-enactment identification authority to Members of Congress**. On the contrary, the present cases call for a more holistic examination of (*a*) the **inter-relation** between the CDF and PDAF Articles with each other, formative as they are of the entire "Pork Barrel System" as well as (*b*) the **intra-relation** of post-enactment measures contained within a particular CDF or PDAF Article, including not only those related to the area of project identification but also to the areas of fund release and realignment. The complexity of the issues and the broader legal analyses herein warranted may be, therefore, considered as a powerful countervailing reason against a wholesale application of the *stare decisis* principle.

In addition, the Court observes that the *Philconsa* ruling was actually riddled with inherent constitutional inconsistencies which similarly countervail against a full resort to *stare decisis*. As may be deduced from the main conclusions of the case, *Philconsa*'s fundamental premise in allowing Members of Congress to propose and identify of projects would be that the said identification authority is but an aspect of the power of appropriation which has been constitutionally lodged in Congress. From this premise, the contradictions may be easily seen. If the authority to identify projects is **an aspect of appropriation** and the power of appropriation is **a form of legislative power** thereby lodged in **Congress**, then it follows that: **(*a*)** it is Congress which should exercise such authority, and not its individual Members; **(*b*)** such authority must be exercised within the prescribed

---

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

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

procedure of law passage and, hence, should not be exercised after the GAA has already been passed; and **(*c*)** such authority, as embodied in the GAA, has the force of law and, hence, cannot be merely recommendatory. Justice Vitug's Concurring Opinion in the same case sums up the *Philconsa* quandary in this wise: "Neither would it be objectionable for Congress, by law, to appropriate funds for such specific projects as it may be minded; to give that authority, however, to the individual members of Congress in whatever guise, I am afraid, would be constitutionally impermissible." As the Court now largely benefits from hindsight and current findings on the matter, among others, the CoA Report, the Court must partially abandon its previous ruling in *Philconsa* **insofar as it validated the post-enactment identification authority of Members of Congress on the guise that the same was merely recommendatory**. This postulate raises serious constitutional inconsistencies which cannot be simply excused on the ground that such mechanism is "imaginative as it is innovative." Moreover, it must be pointed out that the recent case of *Abakada Guro Party List v. Purisima*[155] (*Abakada*) has effectively overturned *Philconsa*'s allowance of post-enactment legislator participation in view of the separation of powers principle. These constitutional inconsistencies and the *Abakada* rule will be discussed in greater detail in the ensuing section of this Decision.

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

II. Substantive Issues.

A. Definition of Terms.

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

Petitioners define the term "Pork Barrel System" as the "collusion between the Legislative and Executive branches of government to accumulate lump-sum public funds in their offices with unchecked discretionary powers to determine its distribution as political largesse."[156] They assert that the following elements make up the Pork Barrel System: (*a*) lump-sum funds are allocated through the appropriations process to an individual officer; (*b*) the officer is given sole and broad discretion in determining how the funds will be used or expended; (*c*) the guidelines on how to spend or use the funds in the appropriation are either vague,

---

[155] G.R. No. 166715, August 14, 2008, 562 SCRA 251.
[156] *Rollo* (G.R. No. 208566), p. 325.

overbroad or inexistent; and (*d*) projects funded are intended to benefit a definite constituency in a particular part of the country and to help the political careers of the disbursing official by yielding rich patronage benefits.[157] They further state that the Pork Barrel System is comprised of two (2) kinds of discretionary public funds: first, the Congressional (or Legislative) Pork Barrel, currently known as the PDAF;[158] and, second, the Presidential (or Executive) Pork Barrel, specifically, the Malampaya Funds under PD 910 and the Presidential Social Fund under PD 1869, as amended by PD 1993.[159]

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

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

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

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

B. Substantive Issues on the Congressional Pork Barrel.

1. Separation of Powers.

a. Statement of Principle.

---

157 Id.
158 Id. at 329.
159 Id. at 339.
160 Id. at 338.
161 See note 107.

The principle of separation of powers refers to the constitutional demarcation of the three fundamental powers of government. In the celebrated words of Justice Laurel in *Angara v. Electoral Commission*,[162] it means that the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government."[163] To the legislative branch of government, through Congress,[164] belongs the power to make laws; to the executive branch of government, through the President,[165] belongs the power to enforce laws; and to the judicial branch of government, through the Court,[166] belongs the power to interpret laws. Because the three great powers have been, by constitutional design, ordained in this respect, "[e]ach department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere."[167] Thus, "the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law."[168] The principle of separation of powers and its concepts of autonomy and independence stem from the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry.[169] To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates. Lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others.[170]

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

---

162 *Angara v. Electoral Commission*, supra note 144, at 139.
163 Id. at 157.
164 Section 1, Article VI, 1987 Constitution.
165 Section 1, Article VII, 1987 Constitution.
166 Section 1, Article VIII, 1987 Constitution.
167 *Angara v. Electoral Commission*, supra note 144, at 156.
168 *Government of the Philippine Islands v. Springer*, 277 U.S. 189, 203 (1928).
169 *Re: COA Opinion on the Computation of the Appraised Value of the Properties Purchased by the Retired Chief/Associate Justices of the Supreme Court*, A.M. No. 11-7-10-SC, July 31, 2012, 678 SCRA 1, 9-10, citing Carl Baar, Separate But Subservient: Court Budgeting In The American States 149-52 (1975), cited in Jeffrey Jackson, Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers, 52 Md. L. Rev. 217 (1993).
170 Id. at 10, citing Jeffrey Jackson, Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers, 52 Md. L. Rev. 217 (1993).
171 See *Nixon v. Administrator of General Services*, 433 U.S. 425, 441-446 and 451-452 (1977) and *United States v. Nixon*, 418 U.S. 683 (1974), cited in Justice Powell's concurring opinion in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).

is entrusted to another."[172] In other words, there is a violation of the principle when there is impermissible (*a*) **interference** with and/or (*b*) **assumption** of another department's functions.

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

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

The foregoing cardinal postulates were definitively enunciated in *Abakada* where the Court held that "[**f]rom the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the**

---

172 See *Youngstown Sheet & Tube Co. v. Sawyer* 343 U.S. 579, 587 (1952), *Springer v. Philippine Islands*, 277 U.S. 189, 203 (1928) cited in Justice Powell's concurring opinion in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).

173 273 Phil. 443 (1991).

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

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

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

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

> **[A]ny post-enactment congressional measure x x x should be limited to scrutiny and investigation**. In particular, congressional oversight must be confined to the following:
>
> (1) scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation; and
>
> (2) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.
>
> **Any action or step beyond that will undermine the separation of powers guaranteed by the Constitution**. (Emphases supplied)

b. Application.

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

For their part, respondents counter that the separations of powers principle has not been violated since the President maintains "ultimate

---

177 *Abakada Guro Party List v. Purisima*, supra note 155, at 294-296.
178 Id. at 287.
179 *Rollo* (G.R. No. 208566), p. 179.
180 Id. at 29.
181 Id. at 24.

authority to control the execution of the GAA" and that he "retains the final discretion to reject" the legislators' proposals.[182] They maintain that the Court, in *Philconsa*, "upheld the constitutionality of the power of members of Congress to propose and identify projects so long as such proposal and identification are recommendatory."[183] As such, they claim that "[e]verything in the Special Provisions [of the 2013 PDAF Article] follows the *Philconsa* framework, and hence, remains constitutional."[184]

The Court rules in favor of petitioners.

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

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

---

182 Id. at 86.
183 Id. at 308.
184 Id.
185 See CDF Articles for the years 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998.
186 See PDAF Article for the year 2000 which was re-enacted in 2001. See also the following 1999 CIAs: "Food Security Program Fund," the "*Lingap Para Sa Mahihirap* Program Fund," and the "Rural/Urban Development Infrastructure Program Fund." See further the 1997 DepEd School Building Fund.
187 See PDAF Article for the years 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2013.
188 Also, in Section 2.1 of DBM Circular No. 547 dated January 18, 2013 (DBM Circular 547-13), or the "Guidelines on the Release of Funds Chargeable Against the Priority Development Assistance Fund for FY 2013," it is explicitly stated that the "PDAF shall be used to fund priority programs and projects **identified by the Legislators** from the Project Menu." (Emphasis supplied)

seriously doubted that legislators have been accorded post-enactment authority to identify PDAF projects.

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

---

[189] To note, Special Provision 4 cannot – as respondents submit – refer to realignment of projects since the same provision subjects the realignment to the condition that the "**allotment released has not yet been obligated** for the original project/scope of work". The foregoing proviso should be read as a textual reference to the savings requirement stated under Section 25(5), Article VI of the 1987 Constitution which pertinently provides that " x x x the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from **savings** in other items of their respective appropriations. In addition, Sections 4.2.3, 4.2.4 and 4.3.3 of DBM Circular 547-13, the implementing rules of the 2013 PDAF Article, respectively require that: (*a*) "the **allotment** is still valid or has not yet lapsed"; (*b*) "[r]equests for realignment of **unobligated allotment** as of December 31, 2012 treated as continuing appropriations in FY 2013 shall be submitted to the DBM not later than June 30, 2013"; and (*c*) requests for realignment shall be supported with, among others, a "[c]ertification of availability of funds." As the letter of the law and the guidelines related thereto evoke the legal concept of **savings**, Special Provision 4 must be construed to be a provision on realignment of PDAF funds, which would necessarily but only incidentally include the projects for which the funds have been allotted to. To construe it otherwise would effectively allow PDAF funds to be realigned outside the ambit of the foregoing provision, thereby sanctioning a constitutional aberration.

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

> **It bears emphasizing that the exception in favor of the high officials named in Section 25(5), Article VI of the Constitution limiting the authority to transfer savings only to augment another item in the GAA is strictly but reasonably construed as exclusive**. As the Court has expounded in *Lokin, Jr. v. Commission on Elections*:
>
> **When the statute itself enumerates the exceptions to the application of the general rule, the exceptions are strictly but reasonably construed**. The exceptions extend only as far as their language fairly warrants, and all doubts should be resolved in favor of the general provision rather than the exceptions. Where the general rule is established by a statute with exceptions, none but the enacting authority can curtail the former. Not even the courts may add to the latter by implication, and it is a rule that an express exception excludes all others,

another within the allotment received from this Fund, subject to [among others] (iii) the request is with the concurrence of the legislator concerned."

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

---

although it is always proper in determining the applicability of the rule to inquire whether, in a particular case, it accords with reason and justice.

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

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

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

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

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

> Justice Bernabe: Now, **without the individual legislator's identification of the project, can the PDAF of the legislator be utilized**?
>
> Solicitor General Jardeleza: **No**, Your Honor.
>
> Justice Bernabe: It cannot?
>
> Solicitor General Jardeleza: It cannot… (interrupted)
>
> Justice Bernabe: **So meaning you should have the identification of the project by the individual legislator**?
>
> Solicitor General Jardeleza: **Yes, Your Honor**.
>
> x x x x
>
> Justice Bernabe: In short, the act of identification is **mandatory**?
>
> Solictor General Jardeleza: **Yes, Your Honor. In the sense that if it is not done and then there is no identification**.
>
> x x x x
>
> Justice Bernabe: Now, would you know of specific instances when a project was implemented without the identification by the individual legislator?
>
> Solicitor General Jardeleza: I do not know, Your Honor; I do not think so but I have no specific examples. I would doubt very much, Your Honor, because to implement, there is a need [for] a SARO and the NCA. And **the SARO and the NCA are triggered by an identification from the legislator**.
>
> x x x x
>
> Solictor General Jardeleza: What we mean by mandatory, Your Honor, is we were replying to a question, "How can a legislator make sure that he is able to get PDAF Funds?" It is mandatory in the sense that he must identify, in that sense, Your Honor. Otherwise, if he does not identify, he cannot avail of the PDAF Funds and his district would not be able to have PDAF Funds, only in that sense, Your Honor. (Emphases supplied)

---

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

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

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

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

2. Non-delegability of Legislative Power.

a. Statement of Principle.

As an adjunct to the separation of powers principle,[194] legislative power shall be exclusively exercised by the body to which the Constitution

---

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

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

> At least **three distinct ideas** have contributed **to the development of the principle that legislative power cannot be delegated.** One is the doctrine of **separation of powers**: Why go to the trouble of separating the three powers of government if they can straightway remerge on their own motion? The second is the concept of **due process of law**, which precludes the transfer of regulatory functions to private persons. Lastly, there is the maxim of agency "***Delegata potestas non potest delegari***," which John Locke borrowed and formulated as a dogma of political science . . . Chief Justice Taft offered the following explanation of the origin and limitations of this idea as a postulate of constitutional law: "The well-known

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

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

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

---

maxim '*delegata potestas non potest delefari*,' applicable to the law of agency in the general common law, is well understood and has had wider application in the construction of our Federal and State Constitutions than it has in private law . . . The Federal and State Constitutions than it has in private law . . . The Federal Constitution and State Constitutions of this country divide the governmental power into three branches . . . In carrying out that constitutional division . . . it is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or **if by law it attempts to invest itself or its members** with either executive power of judicial power. This is not to say that the three branches are not co-ordinate parts of one government and that each in the field of its duties may not invoke government and that each in the field of its duties may not invoke the action of the two other branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental coordination. (Emphases supplied)

195 Section 1, Article VI, 1987 Constitution.

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

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

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

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

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

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

b. Application.

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

3. Checks and Balances.

a. Statement of Principle; Item-Veto Power.

The fact that the three great powers of government are intended to be kept separate and distinct does not mean that they are absolutely unrestrained and independent of each other. The Constitution has also

---

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

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

provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.[203]

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

> Sec. 27. x x x.
>
> x x x x
>
> (2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

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

> The former Organic Act and the present Constitution of the Philippines make the Chief Executive an integral part of the law-making power. **His disapproval of a bill, commonly known as a veto, is essentially a legislative act**. The questions presented to the mind of the Chief Executive are precisely the same as those the legislature must determine in passing a bill, except that his will be a broader point of view.
>
> **The Constitution is a limitation upon the power of the legislative department of the government, but in this respect it is a grant of power to the executive department**. The Legislature has the affirmative power to enact laws; the **Chief Executive has the negative power by the constitutional exercise of which he may defeat the will of the Legislature**. It follows that the Chief Executive must find his authority in the Constitution. But in exercising that authority he may not be confined to rules of strict construction or hampered by the unwise interference of the judiciary. The courts will indulge every intendment in favor of the constitutionality of a veto [in the same manner] as they will presume the constitutionality of an act as originally passed by the Legislature. (Emphases supplied)

---

203 *Angara v. Electoral Commission*, supra note 144, at 156.
204 *Abakada Guro Party List v. Purisima*, supra note 155, at 287.
205 Id. at 292.
206 *Bengzon v. Secretary of Justice and Insular Auditor*, supra note 202, at 916-917.

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

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

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

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

Further, it is significant to point out that an item of appropriation must be an item characterized by **singular correspondence** – meaning an allocation of **a specified singular amount for a specified singular purpose**, otherwise known as a "**line-item**."[211] This treatment not only allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly

---

207 "Log-rolling legislation refers to the process in which several provisions supported by an individual legislator or minority of legislators are combined into a single piece of legislation supported by a majority of legislators on a *quid pro quo* basis: no one provision may command majority support, but the total package will." See *Rollo* (G.R. No. 208566), p. 420, citing Briffault, Richard, "The Item Veto in State Courts," 66 Temp. L. Rev. 1171, 1177 (1993).

208 Passarello, Nicholas, "The Item Veto and the Threat of Appropriations Bundling in Alaska," 30 Alaska Law Review 128 (2013), citing Black's Law Dictionary 1700 (9th ed. 2009). <http://scholarship.law.duke.edu/alr/vol30/iss1/5> (visited October 23, 2013).

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

210 299 U.S. 410 (1937).

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

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

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

b. Application.

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

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

The Court agrees with petitioners.

Under the 2013 PDAF Article, the amount of ₱24.79 Billion only appears as a collective allocation limit since the said amount would be further divided among individual legislators who would then receive personal lump-sum allocations and could, after the GAA is passed, effectively appropriate PDAF funds based on their own discretion. As these intermediate appropriations are made by legislators only after the GAA is passed and hence, outside of the law, it necessarily means that the actual items of PDAF appropriation would not have been written into the General Appropriations Bill and thus effectuated without veto consideration. This kind of **lump-sum/post-enactment legislative identification budgeting system** fosters the creation of a "budget within a budget" which subverts the prescribed procedure of presentment and consequently impairs the President's power of item veto. As petitioners aptly point out, the above-described system forces the President to decide between (*a*) accepting the entire ₱24.79 Billion PDAF allocation without knowing the specific projects of the legislators, which may or may not be consistent with his national agenda and (*b*) rejecting the whole PDAF to the detriment of all other legislators with legitimate projects.[215]

Moreover, even without its post-enactment legislative identification feature, the 2013 PDAF Article would remain constitutionally flawed since it would then operate as a prohibited form of lump-sum appropriation as

---

212 *Rollo* (G.R. No. 208566), p. 421.
213 Id.
214 Id. at 316.
215 Id. at 421.

above-characterized. In particular, the lump-sum amount of ₱24.79 Billion would be treated as a mere funding source allotted for multiple purposes of spending, *i.e.*, scholarships, medical missions, assistance to indigents, preservation of historical materials, construction of roads, flood control, etc. This setup connotes that the appropriation law leaves the actual amounts and purposes of the appropriation for further determination and, therefore, does not readily indicate a discernible item which may be subject to the President's power of item veto.

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

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

c. Accountability.

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

---

[216] Id. at 566.
[217] Id. at 567.
[218] "It cannot be denied that most government actions are inspired with noble intentions, all geared towards the betterment of the nation and its people. But then again, it is important to remember this ethical principle: 'The end does not justify the means.' No matter how noble and worthy of admiration the purpose of an act, but if the means to be employed in accomplishing it is simply irreconcilable with constitutional parameters, then it cannot still be allowed. The Court cannot just turn a blind eye and simply let it pass. It will continue to uphold the Constitution and its enshrined principles. 'The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude.'" (*Biraogo v. Philippine Truth Commission of 2010*, supra note 118, 177; citations omitted)
[219] *Rollo* (G.R. No. 208566), p. 406.
[220] Id. at 407.

The Court agrees in part.

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

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

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

> Sec. 14. No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its

---

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

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

223 See Section 22, Article VI, 1987 Constitution.

224 See Section 21, Article VI, 1987 Constitution.

> subsidiary, during his term of office. **He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office**. (Emphasis supplied)

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

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

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

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

4. Political Dynasties.

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

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

At the outset, suffice it to state that the foregoing provision is considered as **not self-executing due to the qualifying phrase "as may be defined by law."** In this respect, said provision does not, by and of itself, provide a judicially enforceable constitutional right but merely specifies a

---

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

guideline for legislative or executive action.[226] Therefore, since there appears to be no standing law which crystallizes the policy on political dynasties for enforcement, the Court must defer from ruling on this issue.

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

5. Local Autonomy.

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

> ARTICLE II
>
> Sec. 25. The State shall ensure the autonomy of local governments.
>
> ARTICLE X
>
> Sec. 2. The territorial and political subdivisions shall enjoy local autonomy.
>
> Sec. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

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

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

---

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

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

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

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

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

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

The Court agrees with petitioners.

Philconsa described the 1994 CDF as an attempt "to make equal the unequal" and that "[i]t is also a recognition that individual members of Congress, far more than the President and their congressional colleagues, are likely to be knowledgeable about the needs of their respective constituents and the priority to be given each project."[231] Drawing strength from this pronouncement, previous legislators justified its existence by stating that "the relatively small projects implemented under [the Congressional Pork Barrel] complement and link the national development goals to the countryside and grassroots as well as to depressed areas which are overlooked by central agencies which are preoccupied with mega-

---

228 230 Phil. 379, 387-388 (1986).
229 Id.
230 *Rollo* (G.R. No. 208566), pp. 95-96.
231 *Philconsa v. Enriquez*, supra note 114, at 523.

projects.[232] Similarly, in his August 23, 2013 speech on the "abolition" of PDAF and budgetary reforms, President Aquino mentioned that the Congressional Pork Barrel was originally established for a worthy goal, which is to enable the representatives to identify projects for communities that the LGU concerned cannot afford.[233]

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

The Court also observes that this concept of legislator control underlying the CDF and PDAF conflicts with the functions of the various Local Development Councils (LDCs) which are already legally mandated to "assist the corresponding *sanggunian* in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction."[234] Considering that LDCs are instrumentalities whose functions are essentially geared towards managing local affairs,[235] their programs, policies and resolutions should not be overridden nor duplicated by individual legislators, who are national officers that have no law-making authority except only when acting as a body. The undermining

---

[232] Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" <http://www.congress.gov.ph/download/ 14th/pork_barrel.pdf> (visited October 17, 2013).

[233] <http://www.gov.ph/2013/08/23/english-statement-of-president-aquino-on-the-abolition-of-pdaf-august-23-2013/> (visited October 22, 2013).

[234] Section 106 of the LGC provides:

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

[235] See Section 109 of the LGC.

effect on local autonomy caused by the post-enactment authority conferred to the latter was succinctly put by petitioners in the following wise:[236]

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

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

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

C. Substantive Issues on the Presidential Pork Barrel.

1. Validity of Appropriation.

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

The Court disagrees.

---

236 *Rollo* (G.R. No. 208566), p. 423.
237 Id. at 427.
238 Id. at 439-440.
239 Id. at 434 and 441.

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

> [**T]here is no provision in our Constitution that provides or prescribes any particular form of words or religious recitals in which an authorization or appropriation by Congress shall be made, except that it be "made by law,"** such as precisely the authorization or appropriation under the questioned presidential decrees. In other words, in terms of time horizons, an appropriation may be made impliedly (as by past but subsisting legislations) as well as expressly for the current fiscal year (as by enactment of laws by the present Congress), just as said appropriation may be made in general as well as in specific terms. The Congressional authorization may be embodied in annual laws, such as a general appropriations act or in special provisions of laws of general or special application which appropriate public funds for specific public purposes, such as the questioned decrees. **An appropriation measure is sufficient if the legislative intention clearly and certainly appears from the language employed** (In re Continuing Appropriations, 32 P. 272), whether in the past or in the present. (Emphases and underscoring supplied)

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

> To constitute an appropriation there must be money placed in a fund applicable to the designated purpose. **The word appropriate means to allot, assign, set apart or apply to a particular use or purpose**. An appropriation in the sense of the constitution means the **setting apart a portion of the public funds for a public purpose**. **No particular form**

---

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

[241] Id. at 462.

[242] 23 Nev. 25 (1895).

> **of words is necessary for the purpose, if the intention to appropriate is plainly manifested**. (Emphases supplied)

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

Section 8 of PD 910 pertinently provides:

> Section 8. *Appropriations.* x x x
>
> **All fees, revenues and receipts of the Board from any and all sources** including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used **to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President**. (Emphases supplied)

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

> Sec. 12. Special Condition of Franchise. — **After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the Government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱150,000,000.00** shall be set aside and shall accrue to the General Fund **to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines**. (Emphases supplied)

Analyzing the legal text vis-à-vis the above-mentioned principles, it may then be concluded that (*a*) Section 8 of PD 910, which creates a Special Fund comprised of "all fees, revenues, and receipts of the [Energy Development] Board from any and all sources" (**a determinable amount**) "to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President" (**a specified public purpose**), and (*b*) Section 12 of PD 1869, as amended by PD 1993, which similarly sets aside, "[a]fter deducting five (5%) percent as Franchise Tax, the Fifty (50%)

percent share of the Government in the aggregate gross earnings of [PAGCOR], or 60%[,] if the aggregate gross earnings be less than ₱150,000,000.00" **(also a determinable amount)** "to finance the priority infrastructure development projects and x x x the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines" **(also a specified public purpose)**, are legal appropriations under Section 29(1), Article VI of the 1987 Constitution.

In this relation, it is apropos to note that the 2013 PDAF Article cannot be properly deemed as a legal appropriation under the said constitutional provision precisely because, as earlier stated, it contains post-enactment measures which effectively create a system of intermediate appropriations. These intermediate appropriations are the actual appropriations meant for enforcement and since they are made by individual legislators after the GAA is passed, they occur outside the law. As such, the Court observes that the real appropriation made under the 2013 PDAF Article is not the ₱24.79 Billion allocated for the entire PDAF, but rather the post-enactment determinations made by the individual legislators which are, to repeat, occurrences outside of the law. Irrefragably, the 2013 PDAF Article does not constitute an "appropriation made by law" since it, in its truest sense, only **authorizes individual legislators to appropriate** in violation of the non-delegability principle as afore-discussed.

2. Undue Delegation.

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

The Court agrees with petitioners' submissions.

While the designation of a determinate or determinable amount for a particular public purpose is sufficient for a legal appropriation to exist, the appropriation law must contain **adequate legislative guidelines** if the same law delegates rule-making authority to **the Executive**[245] either for the

---

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

244 Id. at 300.

245 The project identifications made by the Executive should always be in the nature of law enforcement and, hence, for the sole purpose of enforcing an existing appropriation law. In relation thereto, it may exercise its rule-making authority to greater particularize the guidelines for such identifications which,

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

In view of the foregoing, the Court agrees with petitioners that the phrase "and for such other purposes as may be hereafter directed by the President" under **Section 8 of PD 910** constitutes an undue delegation of legislative power insofar as it does not lay down a sufficient standard to adequately determine the limits of the President's authority with respect to the **purpose** for which the Malampaya Funds may be used. **As it reads, the said phrase gives the President wide latitude to use the Malampaya Funds for any other purpose he may direct and, in effect, allows him to unilaterally appropriate public funds beyond the purview of the law**. That the subject phrase may be confined only to "energy resource development and exploitation programs and projects of the government" under the principle of *ejusdem generis*, meaning that the general word or phrase is to be construed to include – or be restricted to – things akin to, resembling, or of the same kind or class as those specifically mentioned,[249] is belied by three (3) reasons: **first**, the phrase "energy resource development and exploitation programs and projects of the government" states **a singular and general class** and hence, cannot be treated as a statutory reference of specific things from which the general phrase "for such other purposes" may be limited; **second**, the said phrase also exhausts the class it represents, namely energy development programs of the government;[250] and, **third**, the Executive department has, in fact, used the Malampaya Funds for non-energy related purposes under the subject phrase, thereby contradicting respondents' own position that it is limited only to

---

in all cases, should not go beyond what the delegating law provides. Also, in all cases, the Executive's identification or rule-making authority, insofar as the field of appropriations is concerned, may only arise if there is a valid appropriation law under the parameters as above-discussed.

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

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

248 Id. at 277.

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

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

"energy resource development and exploitation programs and projects of the government."[251] Thus, while Section 8 of PD 910 may have passed the completeness test since the policy of energy development is clearly deducible from its text, the phrase "and for such other purposes as may be hereafter directed by the President" under the same provision of law should nonetheless be stricken down as unconstitutional as it lies independently unfettered by any sufficient standard of the delegating law. This notwithstanding, it must be underscored that the rest of Section 8, insofar as it allows for the use of the Malampaya Funds "to finance energy resource development and exploitation programs and projects of the government," remains legally effective and subsisting. Truth be told, the declared unconstitutionality of the aforementioned phrase is but an assurance that the Malampaya Funds would be used – as it should be used – only in accordance with the avowed purpose and intention of PD 910.

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

---

[251] Based on a July 5, 2011 posting in the government's website <http://www.gov.ph/2011/07/05/budget-secretary-abad-clarifies-nature-of-malampaya-fund/>; attached as Annex "A" to the Petitioners' Memorandum), the Malampaya Funds were also used for non-energy related projects, to wit:

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

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

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

D. Ancillary Prayers.

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

Aside from seeking the Court to declare the Pork Barrel System unconstitutional – as the Court did so in the context of its pronouncements made in this Decision – petitioners equally pray that the Executive Secretary and/or the DBM be ordered to release to the CoA and to the public: (*a*) "the complete schedule/list of legislators who have availed of their PDAF and VILP from the years 2003 to 2013, specifying the use of the funds, the project or activity and the recipient entities or individuals, and all pertinent data thereto" (PDAF Use Schedule/List);[254] and (*b*) "the use of the Executive's [lump-sum, discretionary] funds, including the proceeds from the x x x Malampaya Fund[s] [and] remittances from the [PAGCOR] x x x from 2003 to 2013, specifying the x x x project or activity and the recipient entities or individuals, and all pertinent data thereto"[255] (Presidential Pork Use Report). Petitioners' prayer is grounded on Section 28, Article II and Section 7, Article III of the 1987 Constitution which read as follows:

---

253 Black's Law Dictionary (7th Ed., 1999), p. 784.
254 *Rollo* (G.R. No. 208566), pp. 48-49.
255 Id.

ARTICLE II

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

ARTICLE III

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

The Court denies petitioners' submission.

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

> [W]hile the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern, and to afford access to public records cannot be discretionary on the part of said agencies. Certainly, its performance cannot be made contingent upon the discretion of such agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion. The constitutional duty, not being discretionary, **its performance may be compelled by a writ of mandamus in a *proper case***.
>
> But what is a proper case for Mandamus to issue? In the case before Us, the public right to be enforced and the concomitant duty of the State are unequivocably set forth in the Constitution. **The decisive question on the propriety of the issuance of the writ of mandamus in this case is, whether the information sought by the petitioner is within the ambit of the constitutional guarantee**. (Emphases supplied)

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

> Although citizens are afforded the right to information and, pursuant thereto, are entitled to "access to official records," **the Constitution does not accord them a right to compel custodians of official records to**

---

256 234 Phil. 521, 533-534 (1987).
257 252 Phil. 264 (1989).
258 Id. at 279.

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

In these cases, aside from the fact that none of the petitions are in the nature of mandamus actions, the Court finds that petitioners have failed to establish a "a well-defined, clear and certain legal right" to be furnished by the Executive Secretary and/or the DBM of their requested PDAF Use Schedule/List and Presidential Pork Use Report. Neither did petitioners assert any law or administrative issuance which would form the bases of the latter's duty to furnish them with the documents requested. While petitioners pray that said information be equally released to the CoA, it must be pointed out that the CoA has not been impleaded as a party to these cases nor has it filed any petition before the Court to be allowed access to or to compel the release of any official document relevant to the conduct of its audit investigations. While the Court recognizes that the information requested is a matter of significant public concern, however, if only to ensure that the parameters of disclosure are properly foisted and so as not to unduly hamper the equally important interests of the government, it is constrained to deny petitioners' prayer on this score, without prejudice to a proper mandamus case which they, or even the CoA, may choose to pursue through a separate petition.

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

> In fine, petitioners are entitled to access to the documents evidencing loans granted by the GSIS, subject to reasonable regulations that the latter may promulgate relating to the manner and hours of

[259] Id. at 278.

> examination, to the end that damage to or loss of the records may be avoided, that undue interference with the duties of the custodian of the records may be prevented and that the right of other persons entitled to inspect the records may be insured [*Legaspi v. Civil Service Commission*, *supra* at p. 538, quoting *Subido v. Ozaeta*, 80 Phil. 383, 387.] The petition, as to the second and third alternative acts sought to be done by petitioners, is meritorious.
>
> However, the same cannot be said with regard to the first act sought by petitioners, i.e., "to furnish petitioners the list of the names of the Batasang Pambansa members belonging to the UNIDO and PDP-Laban who were able to secure clean loans immediately before the February 7 election thru the intercession/marginal note of the then First Lady Imelda Marcos."

The Court, therefore, applies the same treatment here.

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

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

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

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

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

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

---

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

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

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

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

The Court agrees with petitioners in part.

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

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

On this score, the Court agrees with petitioners' posturing for the fundamental reason that funds covered by an obligated SARO are yet to be "released" under legal contemplation. A SARO, as defined by the DBM itself in its website, is "[a]specific authority issued to identified **agencies to incur obligations** not exceeding a given amount during a specified period for the purpose indicated. It shall cover expenditures **the release of which is subject to compliance** with specific laws or regulations, or is **subject to**

---

[261] Id. at 459-462.
[262] Id. at 304-305.

separate approval or clearance by competent authority."[263] Based on this definition, it may be gleaned that a SARO only evinces the existence of an obligation and not the directive to pay. Practically speaking, the SARO does not have the direct and immediate effect of placing public funds beyond the control of the disbursing authority. In fact, a SARO may even be withdrawn under certain circumstances which will prevent the actual release of funds. On the other hand, the actual release of funds is brought about by the issuance of the NCA,[264] which is subsequent to the issuance of a SARO. As may be determined from the statements of the DBM representative during the Oral Arguments:[265]

> Justice Bernabe: Is the notice of allocation issued simultaneously with the SARO?
>
> x x x x
>
> Atty. Ruiz: It comes after. **The SARO, Your Honor, is only the go signal for the agencies to obligate or to enter into commitments. The NCA, Your Honor, is already the go signal to the treasury for us to be able to pay or to liquidate the amounts obligated in the SARO; so it comes after**. x x x The NCA, Your Honor, is the go signal for the MDS for the authorized government-disbursing banks to, therefore, pay the payees depending on the projects or projects covered by the SARO and the NCA.
>
> Justice Bernabe: Are there instances that SAROs are cancelled or revoked?
>
> Atty. Ruiz: Your Honor, I would like to instead submit **that there are instances that the SAROs issued are withdrawn by the DBM**.
>
> Justice Bernabe: They are withdrawn?
>
> Atty. Ruiz: Yes, Your Honor x x x. (Emphases and underscoring supplied)

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

---

[263] <http://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2013/Glossary.pdf> (visited November 4, 2013).

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

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

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

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

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

E. Consequential Effects of Decision.

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

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

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

---

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

[267] Id.

[268] Id.

Conclusion

The Court renders this Decision to rectify an error which has persisted in the chronicles of our history. In the final analysis, the Court must strike down the Pork Barrel System as **unconstitutional** in view of the inherent defects in the rules within which it operates. To recount, insofar as it has allowed legislators to wield, in varying gradations, non-oversight, post-enactment authority in vital areas of budget execution, the system has violated the **principle of separation of powers**; insofar as it has conferred unto legislators the power of appropriation by giving them personal, discretionary funds from which they are able to fund specific projects which they themselves determine, it has similarly violated the **principle of non-delegability of legislative power**; insofar as it has created a system of budgeting wherein items are not textualized into the appropriations bill, it has flouted the **prescribed procedure of presentment** and, in the process, **denied the President the power to veto items**; insofar as it has diluted the effectiveness of congressional oversight by giving legislators a stake in the affairs of budget execution, an aspect of governance which they may be called to monitor and scrutinize, the system has equally impaired **public accountability**; insofar as it has authorized legislators, who are national officers, to intervene in affairs of purely local nature, despite the existence of capable local institutions, it has likewise subverted genuine **local autonomy**; and again, insofar as it has conferred to the President the power to appropriate funds intended by law for energy-related purposes only to other purposes he may deem fit as well as other public funds under the broad classification of "priority infrastructure development projects," it has once more transgressed the principle of **non-delegability**.

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

WHEREFORE, the petitions are **PARTLY GRANTED**. In view of the constitutional violations discussed in this Decision, the Court hereby declares as **UNCONSTITUTIONAL**: (***a***) the entire 2013 PDAF Article; (***b***) all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional

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

Accordingly, the Court's temporary injunction dated September 10, 2013 is hereby declared to be **PERMANENT**. Thus, the disbursement/release of the remaining PDAF funds allocated for the year 2013, as well as for all previous years, and the funds sourced from (1) the Malampaya Funds under the phrase "and for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of Presidential Decree No. 910, and (2) the Presidential Social Fund under the phrase "to finance the priority infrastructure development projects" pursuant to Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, which are, at the time this Decision is promulgated, not covered by Notice of Cash Allocations (NCAs) but only by Special Allotment Release Orders (SAROs), whether obligated or not, are hereby **ENJOINED**. The remaining PDAF funds covered by this permanent injunction shall not be disbursed/released but instead reverted to the unappropriated surplus of the general fund, while the funds under the Malampaya Funds and the Presidential Social Fund shall remain therein to be utilized for their respective special purposes not otherwise declared as unconstitutional.

On the other hand, due to improper recourse and lack of proper substantiation, the Court hereby **DENIES** petitioners' prayer seeking that the Executive Secretary and/or the Department of Budget and Management be ordered to provide the public and the Commission on Audit complete lists/schedules or detailed reports related to the availments and utilization of the funds subject of these cases. Petitioners' access to official documents already available and of public record which are related to these funds must, however, not be prohibited but merely subjected to the custodian's reasonable regulations or any valid statutory prohibition on the same. This

denial is without prejudice to a proper mandamus case which they or the Commission on Audit may choose to pursue through a separate petition.

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

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

This Decision is immediately executory but prospective in effect.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR: See Concurring Opinion

MARIA LOURDES P. A. SERENO
Chief Justice

See Concurring Opinion

ANTONIO T. CARPIO
Associate Justice

NO PART

PRESBITERO J. VELASCO, JR.
Associate Justice

I concur and also join the concurring opinion of Justice Carpio.
Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

I join the Opinion of Justice Carpio, subject to my Concurring & Dissenting Opinion

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

I join the concurring opinion of J. A.T. Carpio & the ponencia

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

See concurring opinion

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice