EN BANC

G.R. No. 208566: Greco Antonious Beda B. Belgica, et al. *v.* Honorable Executive Secretary Paquito N. Ochoa, Jr., et al.; G.R. No. 208493: Social Justice Society (SJS) President Samson S. Alcantara *v.* Senate President Franklin M. Drilon and Speaker of the House Feliciano S. Belmonte, Jr.; and G.R. No 209251: Pedrito M. Nepomuceno *v.* President Benigno S. Aquino III and Secretary Florencio Abad of the Department of Budget and Management.

Promulgated:
NOVEMBER 19, 2013

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CONCURRING OPINION

CARPIO, *J.*:

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

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

1. Whether Article XLIV of Republic Act No. 10352 or the 2013 General Appropriations Act (GAA), on the Priority Development Assistance Fund (PDAF), violates the principle of separation of powers;

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[1] Special Audits Office Report No. 2012-03, entitled Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP), http://coa.gov.ph/GWSPA/2012/SAO Report2012-03 PDAF.pdf.

2. Whether the lump-sum PDAF negates the President's constitutional line-item veto power;[2]

3. Whether the phrase "for such other purposes as may be hereafter directed by the President" in Section 8 of Presidential Decree No. 910, on the use of the Malampaya Fund, constitutes an undue delegation of legislative power; and

4. Whether the phrase "to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the x x x President," in Section 12, Title IV of Presidential Decree No. 1869, as amended, on the use of the government's share in the gross earnings of the Philippine Amusement and Gaming Corporation (PAGCOR), likewise constitutes an undue delegation of legislative power.

I.
Standing to Sue and Propriety of the Petitions

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

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

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[2] The Court in its Resolution dated 10 October 2013, directed COA Chairperson Pulido Tan to submit her own memorandum "on matters with respect to which she was directed to expound in her memorandum, including but not limited to the parameters of line item budgeting." The Court further directed the parties "to discuss this same issue in their respective memoranda, **including the issue of whether there is a consitutional duty on the part of Congress to adopt line item budgeting**." The En Banc voted 12-2-1 to retain in the *ponencia* of Justice Estela M. Perlas-Bernabe the discussions on the President's line-item veto power, line-item appropriations, and lump sum appropriations. (Emphasis supplied)

[3] G.R. No. 208566 is a petition for certiorari and prohibition; G.R. No. 208493 is a petition for prohibition; and G.R. No. 209251 is a petition for prohibition (this petition prayed for the issuance of a cease-and-desist order).

[4] 110 Phil. 331, 343 (1960), citing 11 Am. Jur. 761.

[5] G.R. No. 164987, 24 April 2012, 670 SCRA 373, 384.

or that public funds are wasted through the enforcement of an invalid or unconstitutional law."

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

II.
Special Provisions of the 2013 PDAF Violate the Separation of Powers.

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

> It cannot be overstressed that in a constitutional government such as ours, the rule of law must prevail. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons including the highest official of this land must defer. From this

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6 *Biraogo v. Philippine Truth Commission of 2010*, G.R. Nos. 192935 and 193036, 7 December 2010, 637 SCRA 78, 151-152; *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002); *Guingona, Jr. v. Gonzales*, G.R. No. 106971, 20 October 1992, 214 SCRA 789.

7 *Magallona v. Ermita*, G.R. No. 187167, 16 August 2011, 655 SCRA 476.

8 *Bureau of Customs Employees Association (BOCEA) v. Teves*, G.R. No. 181704**,** 6 December 2011, 661 SCRA 589.

9 The 1987 Constitution provides:

> Section 1, Article VI:
> The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, x x x.
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> Section 1, Article VII:
> The executive power shall be vested in the President of the Philippines.
>
> Section 1, Article VIII:
> The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
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> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

10 G.R. No. 103524, 15 April 1992, 208 SCRA 133, 142.

> cardinal postulate, it follows that the three branches of government must discharge their respective functions within the limits of authority conferred by the Constitution. Under the principle of separation of powers, neither Congress, the President nor the Judiciary may encroach on fields allocated to the other branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws and the judiciary to their interpretation and application to cases and controversies.

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

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

> The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.[12]

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

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

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11 Section 27(2), Article VI of the 1987 Constitution.
12 Section 22, Article VII, 1987 Constitution.
13 Section 24, Article VI, 1987 Constitution.
14 Section 29(1), Article VI, 1987 Constitution.
15 Section 2(1), Chapter 1, Book VI of the Administrative Code of 1987.

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

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

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

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

In *LAMP*,[22] this Court declared:

> Under the Constitution, the power of appropriation is vested in the Legislature, subject to the requirement that appropriation bills originate exclusively in the House of Representatives with the option of the Senate to propose or concur with the amendments. While the budgetary process

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16 *SANLAKAS v. Reyes*, 466 Phil. 482 (2004).
17 Section 17, Article VII, 1987 Constitution.
18 Section 5, Article VII, 1987 Constitution.
19 Section 17, Article VII, 1987 Constitution.
20 *Rufino v. Endriga*, 528 Phil. 473 (2006).
21 *Mondano v. Silvosa*, 97 Phil. 143, 148 (1955); *Echeche v. Court of Appeals*, G.R. No. 89865, 27 June 1991, 198 SCRA 577, 584.
22 Supra note 5, at 389-390.

> commences from the proposal submitted by the President to Congress, it is the latter which concludes the exercise by crafting an appropriation act it may deem beneficial to the nation, based on its own judgment, wisdom and purposes. Like any other piece of legislation, the appropriation act may then be susceptible to objection from the branch tasked to implement it, by way of a Presidential veto. Thereafter, budget execution comes under the domain of the Executive branch which deals with the operational aspects of the cycle including the allocation and release of funds earmarked for various projects. Simply put, from the regulation of fund releases, the implementation of payment schedules and up to the actual spending of the funds specified in the law, the Executive takes the wheel. x x x.

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

> XLIV. **PRIORITY DEVELOPMENT ASSISTANCE FUND**
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> For fund requirements of priority development programs and projects, as indicated hereunder ..... ₱24,790,000,000
> New Appropriations, by Purpose

	Current Operating Expenditures			
	Personal Services	Maintenance and other Operating Expenses	Capital Outlay	Total
A. PURPOSE(S)				
1. Support for Priority Programs and Projects	₱7,657,000,000		₱17,133,000,000	₱24,790,000,000
TOTAL NEW APPROPRIATIONS	₱7,657,000,000		₱17,133,000,000	₱24,790,000,000

> Special Provision(s)
>
> 1. **Use of Fund**. The amount appropriated herein shall be used to fund the following priority programs and projects to be implemented by the corresponding agencies:

Program/Project	Implementing Agency	List of Requirements
A. Programs/Projects Chargeable against Soft Allocation		
1. Education		
Scholarship	TESDA/CHED/NCIP/ DAP LGUs SUCs	x x x
Assistance to Students x x x	DepEd	x x x

2. Health		
x x x		
Medical Mission including provision of medicines and immunization	LGUs	x x x
x x x		
3. Livelihood		
x x x		
Specialty training/employment program (community based training program) including acquisition of training supplies and equipment	TESDA/LGUs	x x x
x x x		
4. Social Services		
x x x		
Assistance to indigent individuals/ families	LGUs	x x x
x x x		
5. Peace and Order and Security		
x x x		
Surveillance and Communication equipment	LGUs/PNP	
x x x		x x x
6. Arts and Culture		
Preservation/Conservation, including publication of historical materials	NHCP (formerly NHI)/ LGUs	x x x
7. Public Infrastructure Projects		
Construction/Rehabilitation/ Repair/Improvement of the following:		
Local roads and bridges	LGUs	x x x
Public Markets/Multi-Purpose Buildings/Multi-Purpose Pavements, Pathways and Footbridges		
x x x		
B. INFRASTRUCTURE PROJECTS CHARGEABLE AGAINST HARD ALLOCATION		
Construction/Rehabilitation/ Renovation of the following:		
Roads and bridges	DPWH	x x x
x x x		
Flood Control	DPWH	x x x
x x x		

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

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

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

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

a. For Congressional District or Party-List Representative: Thirty Million Pesos (₱30,000,000) for soft programs and projects listed under Item A and Forty Million Pesos (₱40,000,000) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1; and

b. For Senators: One Hundred Million Pesos (₱100,000,000) for soft programs and projects listed under Item A and One Hundred Million Pesos (₱100,000,000) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1.

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

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

> hard programs/projects listed under Special Provision 1 hereof: PROVIDED, FURTHER, That in case of realignments, modifications and revisions of projects to be implemented by LGUs, the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr.
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> 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.
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> 5. **Release of Funds**. All request for release of funds shall be supported by the documents prescribed under Special Provision No. 1 and favorably endorsed by the House Committee on Appropriations and the Senate Committee on Finance, as the case may be. Funds shall be released to the implementing agencies subject to the conditions under Special Provision No. 1 and the limits prescribed under Special Provision No. 3.
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> x x x x

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

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

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

It is the individual House member or individual Senator who identifies the project to be funded and implemented under the PDAF. This identification is made after the enactment into law of the GAA. Unless the individual legislator identifies the project, the Executive cannot implement the project. Any revision or modification of the project by the Executive requires the "favorable endorsement" of either of the Congressional Committees. The Executive does not, and cannot, identify the project to be funded and implemented. Neither can the Executive, on its own, modify or revise the project identified by the legislator. This divests the President of control over the implementing agencies with respect to the PDAF. Clearly, the identification of projects by legislators under the 2013 PDAF, being mandatory on the Executive, is unconstitutional.

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

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

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

In *PHILCONSA*, Republic Act No. 7663, or the 1994 GAA, authorized members of Congress to identify projects in the CDF allotted to

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[23] Section 1, Article VI, 1987 Constitution. This provision further states "except to the extent reserved to the people by the provision on initiative and referendum."

[24] See *Abakada Guro Party List v. Purisima*, 584 Phil. 246, 281 (2008), citing *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252 (1991).

[25] G.R. No. 113105, 19 August 1994, 235 SCRA 506.

[26] Supra note 5.

them. Article XLI of the 1994 GAA provides:

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

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

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

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[27] Supra note 25 at 523.

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

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

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

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

B. Special Provision No. 4 on realignment of funds

The first paragraph of Special Provision No. 4 clearly states that the Executive's **realignment of funds** under the PDAF is conditioned, among others, on the "**concurrence of the legislator concerned**." Such concurrence allows the legislator not only to share with the Executive the implementation of the GAA, but also to veto any realignment of funds initiated by the Executive. Thus, the President cannot exercise his

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[28] Supra note 5, at 379.
[29] Supra note 5, at 379.

constitutional power to realign savings[30] without the "**concurrence**" of legislators. This violates the separation of powers, and is thus unconstitutional.

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

The Office of the Solicitor General (OSG) argues that Special Provision No. 4 involves not a realignment of funds but a realignment of projects, despite the clear wording of the heading in Special Provision No. 4 stating "**Realignment of Funds**." The OSG contends that realignment "happens when the project is no longer feasible such as when projects initially proposed by the legislator have already been accomplished by the national government or the LGU, or when projects as originally proposed cannot be accomplished due to certain contingencies." None of the situations cited by the OSG is found in Special Provision No. 4. Even then, the situations cited by the OSG will actually result in the realignment of funds. If the project identified by the legislator has already been undertaken and completed with the use of other funds in the GAA, or if the identified project is no longer feasible due to contingencies, the funds allocated to the legislator under the PDAF will have to be logically realigned to another project to be identified by the same legislator.

Moreover, Special Provision No. 4 provides, as one of the conditions for the realignment, that the "***allotment released has not yet been obligated for the original project/scope of work***." Special Provision No. 4 also states that "**in case of realignments, modifications and revisions of projects to be implemented by LGUs, *the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr*** (Bureau of Treasury)." Clearly, the realignment in Special Provision No. 4, as stated in its heading "Realignment of Funds", refers to realignment of funds because the realignment speaks of "allotment" and "cash." In any

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[30] Section 25(5), Article VI, 1987 Constitution.

[31] http://www.oxforddictionaries.com/us/definition/american_english/endorse (accessed 7 November 2013).

event, even if we assume that Special Provision No. 4 refers to realignment of projects and not realignment of funds, still the realignment of projects within the menu of projects authorized in the PDAF provision of the GAA is an Executive function. The "**concurrence of the legislator concerned**" and the "**favorable endorsement**" of either of the Congressional Committees to the realignment of projects will still violate the separation of powers.

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

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

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

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

Indisputably, only "**savings**" can be realigned. Unless there are savings, there can be no realignment.

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

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

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

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32 232 Phil. 222 (1987).

33 G.R. No. 127545, 23 April 2008, 552 SCRA 471.

34 Entitled *Revising the Budget Process in order to Institutionalize the Budgetary Innovations of the New Society, or "Budget Reform Decree of 1977*."

35 Supra note 32, at 229-230.

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

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

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

The DBM Circular requires that "requests for realignment x x x be supported with x x x [a] written request from the proponent legislator; **in case the requesting party is the implementing agency, the *concurrence* of the proponent legislator shall be obtained**."[40] The DBM Circular also requires that "[r]equests for realignment, modification and revision of

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36 Supra note 33, at 497.
37 Supra note 33, at 497.
38 Supra note 25, at 544.
39 Supra note 33, at 494.
40 Guideline 4.3.

projects x x x be **duly endorsed** by the following: 4.4.1 For the Senate, the Senate President and the Chairman of the Committee on Finance and 4.4.2 For the House of Representatives, the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations."[41] The DBM Circular's additional requirement that the endorsement of the **House Speaker and the Senate President** should also be submitted ***administratively enlarges*** further the Legislature's encroachment on Executive functions, including the President's control over implementing agencies, in violation of the separation of powers.

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

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

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

DBM National Budget Circular No. 547 reiterates Special Provision No. 5 of the 2013 PDAF on the release of funds. This DBM Circular requires "all requests for issuance of allotment x x x be supported with the x x x [**w**]**ritten endorsements** by the following: x x x In case of the Senate, the Senate President and the Chairman of the Committee on Finance; and x x x In case of the House of Representatives, the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations."[42]

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41 Guideline 4.4.

42 Guidelines 3.1, 3.1.2, 3.1.2.1 and 3.1.2.2.

The DBM Circular again ***administratively enlarges*** further the Legislature's encroachment on Executive functions, including the President's control over implementing agencies, by requiring the "**written endorsement**" of the House Speaker or Senate President to the release of funds, in addition to the "favorable endorsement" of either of the Congressional Committees.

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

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

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

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

> **Legislative power, as distinguished from executive power, is the authority to make laws, *but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions.*** x x x.
>
> Not having the power of appointment, unless expressly granted or incidental to its powers, the Legislature cannot ingraft executive duties upon a legislative office, since that would be to usurp the power of

[43] Dated 17 October 2013.
[44] 277 U.S. 189, 202-203 (1928).

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

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

III.
Lump Sum PDAF Negates the President's Exercise of the Line-Item Veto Power.

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

> Section 27. (1) Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes

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[45] Carpio, J., *Separate Concurring Opinion in Abakada Guro Party List v. Purisima*, 584 Phil. 246, 293-314 (2008).

[46] Id.; *Macalintal v. Commission on Elections*, 453 Phil. 586 (2003).

> of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.
>
> (2) **The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object**. (Emphasis supplied)

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

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

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

In contrast, a lump-sum appropriation is a **single but *divisible* sum of money** which is the source to fund **several purposes** in the same appropriation. For example, the 2013 PDAF provision appropriates a **single** amount – ₱24.79 billion – **to be divided to fund several purposes** of appropriation, like scholarships, roads, bridges, school buildings, medicines, livelihood training and equipment, police surveillance and communication equipment, flood control, school fences and stages, and a variety of other purposes.

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47 G.R. No. 87636, 19 November 1990, 191 SCRA 452, 464.

48 This definition was taken by the Court in *Gonzales v. Macaraig, Jr.* from American jurisprudence, in particular *Commonwealth v. Dodson*, 11 S.E., 2d 120, 176 Va. 281.

In her Comment, COA Chairperson Tan stated:

> For the most part, appropriations are itemized in the GAA, following line-item budgeting, which provides the line by line allocation of inputs defined as the amount of resources used to produce outputs. The resources are usually expressed in money.
>
> **The PDAF, on the other hand, is appropriated as a lump-sum amount**, and is broken down by allotment class only. While the projects and programs to be funded and the corresponding agencies are specified, **there is no allocation of specific amounts for each project or program**, or per agency where there are multiple IAs (implementing agencies) for the same class of projects. (Emphasis supplied)

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

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

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

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[49] Under Section 27(2), Article VI of the 1987 Constitution, the President's line-item veto power extends to revenue and tariff bills.

[50] Bernard L. Mcnamee, *Executive Veto: The Power of the Pen in Virginia*, 9 Regent U.L. Rev. 9, Fall 1997.

[51] http://www.merriam-webster.com/dictionary/pork%20barrel (accessed 7 November 2013); See footnote no. 13 in Denise C. Twomey, *The Constitutionality of a Line-Item Veto: A Comparison with Other Exercises of Executive Discretion Not to Spend*, 19 Golden Gate U. L. Rev. (1989). http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1454&context=ggulrev (accessed 7 November 2013).

[52] See Catherine M. Lee, *The Constitutionality of the Line Item Veto Act of 1996: Three Potential Sources for Presidential Line Item Veto Power*, Hastings Constitutional Law Quarterly, V.25:119, p.123, Fall 1997, http://www.hastingsconlawquarterly.org/archives/V25/I1/Lee.pdf (accessed 7 November 2013).

the evil of the pork-barrel, the Constitution vests the President with the line-item veto power, **which for its necessary and proper exercise** requires the President to propose, and Congress to enact, only line-item appropriations.

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

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

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

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

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[53] Section 27(1), Article VI, 1987 Constitution.

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

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

> SECTION 35. **Special Budgets** for Lump-Sum Appropriations.— Expenditures from lump-sum appropriations authorized for any purpose or for any department, office or agency in any annual General Appropriations Act or other Act and from any fund of the National Government, shall be made in accordance with a **special budget** to be approved by the President, which **shall include but shall not be limited to the *number of each kind of position, the designations, and the annual salary* proposed for which an appropriation is intended.** This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for **certain *specific* purposes, aids and donations for carrying out *certain* activities**, or deposits made to cover to cost of special services to be rendered to private parties. Unless otherwise expressly provided by law, when any Board, head of department, chief of bureau or office, or any other official, is authorized to appropriate, allot, distribute or spend any lump-sum appropriation or special, bond, trust, and other funds, such authority shall be subject to the provisions of this section.
>
> In case of any lump-sum appropriation for *salaries and wages* of temporary and emergency laborers and employees, including contractual personnel, provided in any General Appropriation Act or other Acts, the expenditure of such appropriation shall be limited to the employment of persons paid by the month, by the day, or by the hour. (Boldfacing and italicization supplied)

Thus, appropriations for **personal services** need not be further itemized or broken down in the GAA as the purpose for such appropriation is sufficiently specific satisfying the constitutional requirement for a valid appropriation. The constitutional test for validity is not how itemized the appropriation is down to the project level but whether the purpose of the appropriation is specific enough to allow the President to exercise his line-item veto power. Section 23, Chapter 4, Book VI of the Administrative Code provides a **stricter requirement** by mandating that there must be a

corresponding appropriation for each program and for each project. A project is a component of a program which may have several projects.[54] A program is equivalent to the specific purpose of an appropriation.[55] An item of appropriation for school-building is a program, while the specific schools to be built, being the **identifiable outputs** of the program, are the projects. The Constitution only requires a corresponding appropriation for a specific purpose or program, not for the sub-set of projects or activities.

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

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

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

Section 25(1) of Article VI is similar to Section 10, Article X of the same Constitution which provides that a local government unit can be created, divided, merged or abolished only "in accordance with the criteria established in the local government code." A law creating a new local government unit must therefore comply with the Local Government Code of 1991,[56] even if such law is later in time than the Local Government Code. In the same manner, all GAAs must comply with Section 23, Chapter 4, Book VI of the Administrative Code, even if the GAAs are later in time than the Administrative Code. GAAs that provide lump-sum appropriations, even though enacted after the effectivity of the Administrative Code of 1987,

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[54] Section 2(12) and (13), Chapter 1, Book VI, Administrative Code of 1987.

> SECTION 2. Definition of Terms.—When used in this Book:
> x x x
>
> (12) "Program" refers to the functions and activities necessary for the performance of a major purpose for which a government agency is established.
>
> (13) "Project" means a component of a program covering a homogenous group of activities that results in the accomplishment of an identifiable output.

[55] Id.

[56] *Cawaling, Jr. v. Comelec*, 420 Phil. 524 (2001).

cannot prevail over Section 23, Chapter 4, Book VI of the Administrative Code.

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

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

> (6) **Discretionary funds** appropriated for particular officials **shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law**.[57]
>
> x x x x
>
> (3) All money collected on any tax levied for a **special purpose** shall be treated as **a special fund and paid out *for such purpose only***. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.[58] (Boldfacing and italicization supplied)

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

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

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57 Section 25(6), Article VI, 1987 Constitution.
58 Section 29(3), Article VI, 1987 Constitution.
59 Section 2, Chapter 1, Book VI, Administrative Code of 1987.
60 Journal of the Constitutional Commission, Vol. 1, Journal No. 37, p. 391, 23 July 1986.
61 Id.

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

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

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

In the 2013 GAA, the PDAF is a lump-sum appropriation, the purpose of which is the "support for priority programs and projects," with a menu of programs and projects listed in the PDAF provision that does not itemize the amount for each listed program or project. **Such *non-itemization* of the specific amount for each listed program or project fails to satisfy the requirement for a valid appropriation**. To repeat, the PDAF merely provides a lump sum without stating the specific amount allocated for each listed program or project. The PDAF ties the hands of the President since he has no choice except to accept the entire PDAF or to veto it entirely. Even if the PDAF undeniably contains pork-barrel projects, the President might hesitate to veto the entire PDAF for to veto it would result not only in

rejecting the pork barrel projects, but also in denying financial support to legitimate projects. This dilemma is the evil in lump-sum appropriations. The President's line-item veto, which necessarily requires line-item appropriations from the Legislature, is intended precisely to exorcise this evil from appropriation laws.

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

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

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62 Jennifer E. Lake and Ralph M. Chite, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*, CRS Report for Congress, 7 September 2005. http://www.fas.org/sgp/crs/misc/RS22239.pdf (accessed 14 November 2013).

63 Id.

64 Section 26(2), Article VI, 1987 Constitution -

> No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, **except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency**. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the *yeas* and *nays* entered in the Journal. (Emphasis supplied)

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

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

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

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

Such reliance on the *ejusdem generis* rule is misplaced.

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

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[65] Entitled *Creating An Energy Development Board, Defining its Powers and Functions, Providing Funds Therefor, and For Other Purposes*.

or phrases a broader meaning.[66]

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

There is only a single subject to be financed by the Malampaya Fund – that is, the development and exploitation of energy resources. No other government program would be funded by PD No. 910, except the exploration, exploitation and development of indigenous energy resources as envisioned in the law's Whereas clauses, to wit:

> WHEREAS, there is need to intensify, strengthen, and consolidate government efforts relating to the exploration, exploitation and development of indigenous energy resources vital to economic growth;
>
> WHEREAS, it is imperative that government accelerate the pace of, and focus special attention on, energy exploration, exploitation and development in the light of encouraging results in recent oil exploration and of world-wide developments affecting our continued industrial progress and well-being; x x x

The rule of *ejusdem generis* will apply if there is an enumeration of specific energy sources, such as gas, oil, geothermal, hydroelectric, and nuclear, and then followed by a general phrase "and such other energy sources," in which case tidal, solar and wind power will fall under the phrase "other energy sources." In PD No. 910, no such or similar enumeration can be found. Instead, what we find is the sole purpose for which the Malampaya Fund shall be used – that is, to finance "*energy resource development and exploitation programs and projects of the government*."

The phrase "**as may be *hereafter directed* by the President**" refers to other purposes still to be determined by the President in the future. Thus, the other purposes to be undertaken could not as yet be determined at the time PD No. 910 was issued. When PD No. 910 was issued, then President

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[66] Agpalo, Ruben E., STATUTORY CONSTRUCTION, Fourth Edition, 1998, p. 217 citing *Commissioner of Customs v. Court of Tax Appeals*, 150 Phil. 222 (1972); *Asturias Sugar Central, Inc. v. Commissioner of Customs*, 140 Phil. 20 (1969); *People v. Kottinger*, 45 Phil. 352 (1923).

Ferdinand E. Marcos exercised both executive and legislative powers. The President then, in the exercise of his law-making powers, could determine in the future the other purposes for which the Malampaya Fund would be used. This is precisely the reason for the phrase "as may be *hereafter directed* by the President." Thus, in light of the executive and legislative powers exercised by the President at that time, the phrase "for such other purposes as may be hereafter directed by the President" has a **broader meaning** than the phrase "energy resource development and exploitation programs and projects of the government."

This does not mean, however, that the phrase "energy resource development and exploitation programs and projects" should be unreasonably interpreted narrowly. To finance "energy resource development and exploitation programs and projects" includes all expenditures necessary and proper to carry out such development and exploitation – including expenditures to secure and protect the gas and oil fields in Malampaya from encroachment by other countries or from threats by terrorists. Indeed, the security of the gas and oil fields is absolutely essential to the development and exploitation of such fields. Without adequate security, the gas and oil fields cannot be developed or exploited, thus generating no income to the Philippine government.

Under the 1987 Constitution, determining the purpose of the expenditure of government funds is an exclusive legislative power. The Executive can only propose, but cannot determine the purpose of an appropriation. An appropriation cannot validly direct the payment of government funds "for such other purposes as may be hereafter directed by the President," absent the proper application of the *ejusdem generis* rule. Section 8 of PD No. 910 authorizes the use of the Malampaya Fund for other projects approved only by the President. To repeat, Congress has the exclusive power to appropriate public funds, and vesting the President with the power to determine the uses of the Malampaya Fund violates the exclusive constitutional power of Congress to appropriate public funds.

V.
The phrase "to finance the priority infrastructure development projects x x x, as may be directed and authorized by the x x x President" under Section 12, Title IV of PD No. 1869, relating to the Use of the Government's Share in PAGCOR's Gross Earnings, is Unconstitutional.

The assailed provision in PD No. 1869 refers to the President's use of the government's share in the gross earnings of PAGCOR. Section 12, Title

IV of PD No. 1869, or the PAGCOR charter, as amended, provides:

> Section 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the fifty (50%) percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱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**.[67] (Emphasis supplied)

Similar to PD No. 910, PD No. 1869 was issued when then President Marcos exercised both executive and legislative powers. Under the 1987 Constitution, the President no longer wields legislative powers. The phrase that the government's share in the gross earnings of PAGCOR shall be used "**to finance the priority infrastructure development projects x x x as may be directed and authorized by the Office of the President of the Philippines,"** is an undue delegation of the legislative power to appropriate.

An infrastructure is any of the "basic physical and organizational structures and facilities (e.g. buildings, roads, power supplies) needed for the operation of a society."[68] An appropriation for any infrastructure, or for various infrastructures, to be determined by the President is certainly not a specific purpose since an infrastructure is **any basic facility needed by society**. This power granted to the President to determine what kind of infrastructure to prioritize and fund is a power to determine the purpose of the appropriation, an undue delegation of the legislative power to appropriate.

The appropriation in Section 12 has **two divisible purposes**: one to finance any infrastructure project, and the other to finance the restoration of damaged or destroyed facilities due to calamities. To be a valid appropriation, each divisible purpose must have a corresponding specific amount, whether an absolute amount, a percentage of an absolute amount, or a percentage or the whole of a revenue stream like periodic gross earnings or collections. Section 12 is a lump-sum appropriation in view of its two divisible purposes and its single lump-sum amount.

However, since the first appropriation purpose – to finance any infrastructure project as the President may determine – is unconstitutional, Section 12 has in effect only one appropriation purpose. That purpose, to finance the restoration of facilities damaged or destroyed by calamities, is a

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[67] As amended by Presidential Decree No. 1993. The pleadings of petitioners and respondents still referred to the original text in Section 12 as it first appeared in Presidential Decree No. 1869.

[68] Oxford Dictionary of English, Oxford University Press (2010).

specific purpose because the facilities to be restored are only those damaged by calamities. This purpose meets the specificity required for an item to be a valid appropriation. The entire amount constituting the government's share in PAGCOR's gross earnings then becomes the specific amount to finance a specific purpose – the restoration of facilities damaged or destroyed by calamities, which is a valid appropriation.

In sum, only the phrase "to finance the priority infrastructure development projects" in Section 12 of the PAGCOR Charter is unconstitutional for being an undue delegation of legislative power. The rest of Section 12 is constitutional.

A Final Word

The PDAF bluntly demonstrates how a breakdown in the finely crafted constitutional check-and-balance system could lead to gross abuse of power and to wanton wastage of public funds. When the Executive and the Legislature enter into a constitutionally forbidden arrangement - the former proposing lump-sum expenditures in negation of its own line-item veto power and the latter enacting lump-sum appropriations to implement with facility its own chosen projects – the result can be extremely detrimental to the Filipino people.

We have seen the outrage of the Filipino people to the revulsive pork-barrel system spawned by this forbidden Executive-Legislative arrangement. The Filipino people now realize that there are billions of pesos in the annual budget that could lift a large number of Filipinos out of abject poverty but that money is lost to corruption annually. The Filipino people are now desperately in search of a solution to end this blighted pork-barrel system.

The solution lies with this Court, which must rise to this historic challenge. **The supreme duty of this Court is to restore the constitutional check-and-balance that was precisely intended to banish lump-sum appropriations and the pork-barrel system**. The peaceful and constitutional solution to banish all forms of the pork-barrel system from our national life is for this Court to declare all lump-sum appropriations, whether proposed by the Executive or enacted by the Legislature, as unconstitutional.

Henceforth, as originally intended in the Constitution, the President shall submit to Congress only a line-item NEP, and Congress shall enact only a line-item GAA. The Filipino people can then see in the GAA for what specific purposes and in what specific amounts their tax money will be spent. This will allow the Filipino people to monitor whether their tax money is actually being spent as stated in the GAA.

ACCORDINGLY, I vote to **GRANT** the petitions and **DECLARE** Article XLIV, on the Priority Development Assistance Fund, of Republic Act No. 10352 **UNCONSTITUTIONAL** for violating the separation of powers, negating the President's constitutional line-item veto power, violating the constitutional duty of Congress to enact a line-item General Appropriations Act, and violating the requirement of line-item appropriations in the General Appropriations Act as prescribed in the Administrative Code of 1987. Further, the last phrase of Section 8 of Presidential Decree No. 910, authorizing the use of the Malampaya Fund "for such other purposes as may hereafter be directed by the President," and the phrase in Section 12, Title IV, of Presidential Decree No. 1869, as amended, authorizing the President to use the government's share in PAGCOR's gross earnings "to finance the priority infrastructure development projects" as the President may determine, are likewise declared **UNCONSTITUTIONAL** for being undue delegations of legislative power. I also vote to make permanent the temporary restraining order issued by this Court on 10 September 2013. I vote to deny petitioners' prayer for the Executive Secretary, Department of Budget and Management and Commission on Audit to release reports and data on the funds subject of these cases, as it was not shown that they have properly requested these agencies for the pertinent data.

ANTONIO T. CARPIO
Associate Justice