EN BANC

G.R. No. 208566 – GRECO ANTONIOUS BEDA B. BELGICA, JOSE M. VILLEGAS JR., JOSE L. GONZALEZ, REUBEN M. ABANTE AND QUINTIN PAREDES SAN DIEGO, Petitioners, **v. THE HONORABLE EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., THE SECRETARY OF BUDGET AND MANAGEMENT FLORENCIO B. ABAD, THE NATIONAL TREASURER ROSALIA V. DE LEON, THE SENATE OF THE PHILIPPINES, REPRESENTED BY FRANKLIN M. DRILON, IN HIS CAPACITY AS SENATE PRESIDENT, THE HOUSE OF REPRESENTATIVES REPRESENTED BY FELICIANO BELMONTE IN HIS CAPACITY AS SPEAKER OF THE HOUSE,** Respondents.

G.R. No. 208493 – SOCIAL JUSTICE SOCIETY (SJS) PRESIDENT SAMSON S. ALCANTARA, Petitioner, **v. HONORABLE FRANKLIN DRILON, IN HIS CAPACITY AS SENATE PRESIDENT, AND HONORABLE FELICIANO BELMONTE, JR., IN HIS CAPACITY AS SPEAKER OF THE HOUSE OF REPRESENTATIVES,** Respondents.

G.R. No. 209251 – PEDRITO M. NEPOMUCENO, Petitioner, **v. PRESIDENT BENIGNO SIMEON C. AQUINO III AND SECRETARY FLORENCIO "BUTCH" ABAD,** Respondents.

Promulgated:

NOVEMBER 19, 2013

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CONCURRING OPINION

LEONEN, *J.*:

We do not just move on from a calamity caused by greed and abuse of power. We become better. We set things right.

We recover the public's trust.

We are again called to exercise our constitutional duty to ensure that every morsel of power of any incumbent in public office should only be exercised in stewardship. Privileges are not permanent; they are not to be abused. Rank is bestowed to enable public servants to accomplish their duties; it is not to aggrandize. Public office is for the public good; it is not a

title that is passed on like a family heirloom.

It is solemn respect for the public's trust that ensures that government is effective and efficient. Public service suffers when greed fuels the ambitions of those who wield power. Our coffers are drained needlessly. Those who should pay their taxes will not properly pay their taxes. Some of the incumbents expand their experience in graft and corruption rather than in the knowledge and skills demanded by their office. Poverty, calamities, and other strife inordinately become monsters that a weakened government is unable to slay.

Greed, thus, undermines the ability of elected representatives to be real agents of their constituents. It substitutes the people's interest for the narrow parochial interest of the few. It serves the foundation of public betrayal while it tries to do everything to mask its illegitimacy.

The abuse of public office to enrich the incumbent at the expense of the many is sheer moral callousness. It is evil that is not easy to discover. However, the evil that men do cannot be hidden forever.

In time, courage, skill or serendipity reveals.

The time has come for what is loosely referred to as the "pork barrel system." We will allow no more evasion.

I am honored to be able to join with the *ponencia* of Justice Perlas-Bernabe and in part the Concurring Opinions of Chief Justice Sereno, Senior Associate Justice Carpio and Justice Arturo Brion. To their studied words and the strident voices of the millions who still have hope in an effective government with integrity, I add mine.

Title XLIV known as the Priority Development Assistance Fund (PDAF) in the 2013 General Appropriations Act (Republic Act No. 10352) is unconstitutional. We, thus, overturn the holdings of various cases starting with *Philippine Constitution Association v. Enriquez*[1] and *Sarmiento v. The Treasurer of the Philippines*.[2] Presidential Decree No. 910 does not sanction the unmitigated and unaccountable use of income derived from energy resources. The purpose of the Presidential Social Fund in Title IV, Section 12 of Presidential Decree No. 1869, as amended, "to finance the priority infrastructure development projects" is also unconstitutional.

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1 G.R. Nos. 113105, 113174, 113766, 113888, August 19, 1994, 235 SCRA 506.
2 G.R. Nos. 125680 and 126313, September 4, 2001, Unsigned Resolution.

I

What is involved in this case is the fundamental right of our peoples to have a truly representative government that upholds its stewardship and the public trust. It is none but their right to have a government worthy of their sovereignty.

Specifically, glossing over some of the lapses in the Petitions before us and specify that what is at issue in these cases is the constitutionality of the following:

(a) Title XLIV of the 2013 General Appropriations Act (GAA) or Republic Act No. 10352;

(b) The item referred to as the Various Infrastructure including Local Projects, Nationwide (VILP) located in Title XVIII (DPWH) in the same 2013 General Appropriations Act;

(c) The proviso in Presidential Decree No. 910, Section 8, which allows the use of the Malampaya Special Fund "for such other purposes as may be hereafter directed by the President;" and

(d) The Presidential Social Fund as described in Title IV, Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993.

II

Several procedural points contained in some of the pleadings filed in this case need to be clarified so that we are not deemed to have acquiesced.

II. A

The Solicitor General argues that the President cannot be made a respondent in this case. The President cannot be sued while he is in office.

I agree with the Solicitor General.[3]

The doctrine of the non-suability of the President is well settled.[4] This includes any civil or criminal cases. It is part of the Constitution by

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[3] Memorandum, respondents, *rollo*, p. 291.
[4] *David v. Arroyo,* 522 Phil. 705, 763-764 (2006).

implication. Any suit will degrade the dignity necessary for the operations of the Office of the President. It will additionally provide either a hindrance or distraction from the performance of his official duties and functions. Also, any contrary doctrine will allow harassment and petty suits which can impair judgment. This does not mean, however, that the President cannot be made accountable. He may be impeached and removed.[5] Likewise, he can be made criminally and civilly liable in the proper case after his tenure as President.[6]

The Petition[7] that names the President as respondent should, thus, be either dismissed or deemed amended accordingly.

II. B

Also, we cannot declare a "system" as unconstitutional. The Judiciary is not the institution that can overrule ideas and concepts *qua* ideas and concepts. Petitioners should endeavor to specify the act complained of and the laws or provisions of laws that have been invoked. It is their burden to show to this Court how these acts or provisions of law violate any constitutional provision or principle embedded in its provisions.

An ambiguous petition culled only from sources in the mainstream or social media without any other particularity may be dismissed outright. Courts of law cannot be tempted to render advisory opinions.

Generally, we are limited to an examination of the legal consequences of law as applied. This presupposes that there is a specific act which violates a demonstrable duty on the part of the respondents. This demonstrable duty can only be discerned when its textual anchor in the law is clear. In cases of constitutional challenges, we should be able to compare the statutory provisions or the text of any executive issuance providing the putative basis of the questioned act *vis-a-vis* a clear constitutional provision. Petitioners carry the burden of filtering events and identifying the textual basis of the acts they wish to question before the court. This enables the respondents to tender a proper traverse on the alleged factual background and the legal issues that should be resolved.

Petitions filed with this Court are not political manifestos. They are pleadings that raise important legal and constitutional issues.

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5 CONSTITUTION, Article XI, Section 2 et seq.

6 *Estrada v. Desierto*, G.R. No. 146710-15, April 3, 2001, 356 SCRA 108, *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Noriel H. Rodriguez*, G.R. No. 191805, November 15, 2011, 660 SCRA 84.

7 This was docketed as G.R. No. 209251 [*formerly* UDK 14951] entitled *Nepomuceno v. President Benigno Simeon C. Aquino*.

Anything short of this empowers this Court beyond the limitations defined in the Constitution. It invites us to use our judgment to choose which law or legal provision to tackle. We become one of the party's advisers defeating the necessary character of neutrality and objectivity that are some of the many characteristics of this Court's legitimacy.

One of the petitioners has asked in its Petition to suspend the rules.[8] Another has questioned the general political and historical concept known as the "pork barrel system."

As stated in their pleadings filed before this Court:

> x x x. Contrary to the position taken by the political branches, petitioners respectfully submit that the "Pork Barrel System" is repugnant to several constitutional provisions.[9]
>
> Petitioners emphasize that what is being assailed in the instant *Petition* dated 27 August 2013 is not just the individual constitutionality of Legislative Pork Barrel and Presidential Pork Barrel. The interplay and dynamics of these two components form the Pork Barrel System, which is likewise being questioned as unconstitutional insofar as it undermines the principle of separation of powers and the corollary doctrine of checks and balances.[10]

None of the original Petitions point to the provisions of law that they wish this Court to strike down. Petitioners used the Priority Development Assistance Fund in the General Appropriations Act of 2013 merely as a concrete example of the "legislative pork barrel" which is assailed by the petitioners as unconstitutional. Thus,

> This is a Petition for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction (the "instant Petition") filed under Rule 65 of the Rules of Court, <u>seeking to annul and set aside the Pork Barrel System presently embodied in the provisions of the General Appropriations Act ("GAA") of 2013</u> providing for the Legislature's Priority Development Assistance Fund or any replacement thereto, and the Executive's various lump sum, discretionary funds colloquially referred to as the Special Purpose Funds.[11] (Underscoring supplied)
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> Petitioners consider the PDAF as it appears in the 2013 GAA as legislative pork barrel, considering that:

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8 Petitioner Social Justice Society President Samson S. Alcantara in G.R. No. 208493, Petition, *rollo*, p. 2.

9 Urgent Petition for *Certiorari* and Prohibition, Belgica, et al., *rollo*, p. 5.

10 Memorandum, petitioners Belgica, et al. (by Atty. Alfredo B. Molo, III), *rollo*, pp. 339-340.

11 Urgent Petition for *Certiorari* and Prohibition, Belgica, et al., *rollo*, p. 7.

> a. It is a post-enactment measure and it allows individual legislators to wield a collective power;
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> b. The PDAF gives lump-sum funds to Congressmen (PhP70 Million) and Senators (PhP200 Million);
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> c. Despite the existence of a menu of projects, legislators have discretionary power to propose and identify the projects or beneficiaries that will be funded by their respective PDAF allocations;
>
> d. The legislative guidelines for the PDAF in the 2013 GAA are vague and overbroad insofar as the purpose for which the funds are to be used; and
>
> e. Legislators, specifically Congressmen, are generally directed to channel their PDAF to projects located in their respective districts, but are permitted to fund projects outside of his or her district, with permission of the local district representative concerned.[12]

For purposes of this litigation, we should focus on Title XVIV of the 2013 General Appropriations Act which now contains the Priority Development Assistance Fund (PDAF) item. The *ponencia* ably chronicles the history of this aspect of "pork barrel" and notes that the specific features of the present Priority Development Assistance Fund is different from its predecessors. To the extent that our pronouncements today affect the common features of all these forms of "pork barrel" is the extent to which we affect the "system."

II. C

Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted any and all acts that would remedy any perceived violation of right. The rationale that

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[12] Memorandum, petitioners Belgica, et al. (by Atty. Alfredo B. Molo, III), *rollo*, p. 338-339.

defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.

The requirement of an "actual case," thus, means that the case before this Court "involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic based on extra-legal or other similar considerations not cognizable by a court of justice."[13] Furthermore, "the controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests."[14] Thus, the adverse position of the parties must be sufficient enough for the case to be pleaded and for this Court to be able to provide the parties the proper relief/s prayed for.

The requirement of an 'actual case' will ensure that this Court will not issue advisory opinions. It prevents us from using the immense power of judicial review absent a party that can sufficiently argue from a standpoint with real and substantial interests.[15]

To support the factual backdrop of their case, petitioners rely primarily on the Commission on Audit's Special Audits Office Report No. 2012-03, entitled *Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)* "x x x as definitive documentary proof that Congress has breached the limits of the power given it by the Constitution on budgetary matters, and together with the Executive, has been engaged in acts of grave abuse of discretion."[16]

However, the facts that the petitioners present may still be disputable. These may be true, but those named are still entitled to legal process.

The Commission on Audit (COA) Report used as the basis by petitioners to impute illegal acts by the members of Congress is a finding that may show, *prima facie*, the factual basis that gives rise to concerns of grave irregularities. It is based upon the Commission on Audit's procedures on audit investigation as may be provided by law and their rules.[17] It may

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13 *Joya v. Presidential Commission on Good Governance*, G.R. No. 96541, August 24, 1993, 225 SCRA 568, 579.
14 *John Hay Peoples Alternative Coalition v. Lim*, 460 Phil. 530, 545 (2003).
15 *Garcia v. Drilon*, G.R. No. 179267, June 25, 2013, *Concurring Opinion of Justice Leonen.*
16 Urgent Petition for *Certiorari* and Prohibition, Belgica, et al., *rollo*, p. 4.
17 Presidential Decree No. 1445 (1978).

suggest the culpability of some public officers. Those named, however, still await notices of disallowance/charge, which are considered audit decisions, to be issued on the basis of the COA Report.[18]

This is provided in the procedures of the Commission on Audit, thus:

> ***Audit Disallowances/Charges/Suspensions.*** – In the course of the audit, whenever there are differences arising from the settlement of accounts by reason of disallowances or charges, the audit shall issue Notices of Disallowance/Charge (ND/NC) which shall be considered as audit decisions. Such ND/NC shall be adequately established by evidence and the conclusions, recommendations, or dispositions shall be supported by applicable laws, regulations, jurisprudence and the generally accepted accounting and auditing principles. The Auditor may issue Notices of Suspension (NS) for transactions of doubtful legality/validity/propriety to obtain further explanation or documentation.[19]

Notices of Disallowance that will be issued will furthermore still be litigated.

However, prior to the filing of these Petitions, this Court promulgated *Delos Santos v. Commission on Audit.* In that case, we dealt with the patent irregularity of the disbursement of the Priority Development Assistance Fund of then Congressman Antonio V. Cuenco.[20]

We have basis, therefore, for making the exception to an actual case. Taking together *Delos Santos* and the *prima facie* findings of fact in the COA Report, which must be initially respected by this Court sans finding of grave abuse of discretion,[21] there appears to be some indication that there may be widespread and pervasive wastage of funds by the members of the Congress who are tasked to check the President's spending. It appears that these leakages are not only imminent but ongoing.

We note that our findings on the constitutionality of this item in the General Appropriations Act is without prejudice to finding culpability for violation of other laws. None of the due process rights of those named in the report will, thus, be imperiled.

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18 Commission on Audit Revised Rules of Procedure (2009), Rule VI, Sec. 4.
19 Id.
20 See *Delos Santos v. Commission on Audit*, G.R. No. 198457, August 13, 2013.
21 *Nazareth v. Villar,* G.R. No. 188635, January 29, 2013, 689 SCRA 385, 407.

III

The Solicitor General, on behalf of respondents, argue that "[r]eforms are already underway"[22] and that "[t]he political branches are already in the process of dismantling the PDAF system and reforming the budgetary process x x x."[23] Thus, the Solicitor General urges this Court "not to impose a judicial solution at this stage, when a progressive political solution is already taking shape."[24]

He further alleges that Congress is on the verge of deleting the provisions of the Priority Development Assistance Fund. In his Memorandum, he avers that:

> 15. The present petitions should be viewed in relation to the backward- and forward-looking progressive, remedial, and responsive actions currently being undertaken by the political branches of government. We invite the Honorable Court to take judicial notice of the backward-looking responses of the government: the initial complaints for plunder that were recently filed by the Department of Justice before the Ombudsman. We also invite the Honorable Court to take judicial notice of the forward-looking responses of the government: the declared program of the political branches to eliminate the PDAF in the 2014 budget and the reforms of the budgetary process to respond to the problem of abuse of discretion in the use of so-called pork barrel funds. Given the wider space of the political departments in providing solutions to the current controversy, this Court should exercise its judicial review powers cautiously lest it interrupts an ongoing reform-oriented political environment.
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> x x x x
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> 17. Reforms are underway. The President has officially declared his intent to abolish the PDAF and has specified his plan to replace the PDAF. Before the TRO was issued by this Honorable Court on 10 September 2013, the President had already withheld the release of the remaining PDAF under the 2013 GAA and outlined reforms to the budget.
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> 18. The leadership of the Senate and of the House of Representatives have also officially declared their support for the intent to abolish the PDAF and replace it with a more transparent, accountable, and responsive system. The House of Representatives has already passed a PDAF-free budget on second reading and moved amounts from the current PDAF into the budget for line-item projects.

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22 Memorandum, respondents, *rollo*, p. 294.
23 Id.
24 Memorandum, respondents, *rollo,* p. 296.

> 19. Congress is in the process of adopting more stringent qualifications for line-item projects in the 2014 budget. This means that projects will have to be approved within the budget process, and included as line-items in the appropriations of implementing agencies. x x x.[25]

III. A

The political question doctrine emerged as a corollary to the nature of judicial review. In the landmark case of *Angara v. Electoral Commission*,[26] the essence of the duty of judicial review was explained, thus:

> But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. **In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.**
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> x x x x
>
> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And **when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.** This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[27] (Emphasis provided)

This Court in *Angara,* however, expressed caution and a policy of hesitance in the exercise of judicial review. This Court was quick to point out that this power cannot be used to cause interference in the political processes by limiting the power of review in its refusal to pass upon "questions of wisdom, justice or expediency of legislation,"[28] thus:

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25 Memorandum, respondents, *rollo*, pp. 292-294.
26 63 Phil. 139 (1936).
27 Id. at 157-158.
28 Id. at 158.

> x x x **Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented.** Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, **the judiciary does not pass upon questions of wisdom, justice or expediency of legislation.** More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[29]

What were questions of wisdom and questions of legality that would be within the purview of the courts were earlier explained in *Tañada v. Cuenco*:[30]

> As already adverted to, the objection to our jurisdiction hinges on the question whether the issue before us is political or not. In this connection, Willoughby lucidly states:
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> > Elsewhere in this treatise the well-known and well-established principle is considered that it is not within the province of the courts to pass judgment upon *the policy* of legislative or executive action. Where, therefore, *discretionary* powers are granted by the Constitution or by statute, the *manner* in which those powers are exercised is not subject to judicial review. The courts, therefore, concern themselves only with the question as to the *existence and extent of these discretionary powers*.
> >
> > As distinguished from the judicial, the legislative and executive departments are spoken of as the *political* departments of government because in very many cases their action is necessarily dictated by considerations of public or political policy. *These considerations of public or political policy of course will not permit the legislature to violate constitutional provisions, or the executive to exercise authority not granted him by the Constitution or by statute,* but, *within these limits,* they do permit the departments, separately or together, to *recognize that a certain set of facts exists or that a given status exists*, and these determinations, together with the consequences that flow therefrom, may not be traversed in the courts." (Willoughby on the Constitution of the United States, Vol.

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29 Id. at 158-159.
30 103 Phil. 1051 (1957).

3, p. 1326; Emphasis supplied)

x x x x

It is not easy, however, to define the phrase 'political question,' nor to determine what matters fall within its scope. It is frequently used to designate all questions that lie outside the scope of the judicial questions, which under the Constitution, are to be *decided by the people in their sovereign capacity*, or in regard to which *full discretionary authority* has been delegated to the *legislative or* executive branch of the government. (16 C.J.S., 413; *See also* Geauga Lake Improvement Ass'n. vs. Lozier, 182 N. E. 491, 125 Ohio St. 565; Sevilla vs. Elizalde, 112 F. 2d 29, 72 App. D. C., 108; Emphasis supplied)

x x x x

x x x What is generally meant, when it is said that a question is political, and not judicial, is that *it is a matter which is to be exercised by the people in their primary political capacity*, or that it has been specifically delegated to some other department or particular officer of the government, *with discretionary power to act. See* State vs. Cunningham, 81 Wis. 497, 51 L. R. A. 561; *In Re* Gunn, 50 Kan. 155; 32 Pac. 470, 948, 19 L. R. A. 519; Green vs. Mills, 69 Fed. 852, 16, C. C. A. 516, 30 L. R. A. 90; Fletcher vs. Tuttle, 151 Ill. 41, 37 N. E. 683, 25 L. R. A. 143, 42 Am. St. Rep. 220. x x x.

In short, the phrase "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of Corpus Juris Secundum (*supra*), it refers to "those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the Legislature or executive branch of the Government." It is concerned with issues dependent upon the *wisdom*, not legality, of a particular measure.[31]

In *Casibang v. Judge Aquino,*[32] the definition of a political question was discussed, citing *Baker v. Carr*:

x x x The term "political question" connotes what it means in ordinary parlance, namely, a question of policy. It refers to those questions which under the Constitution, are to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure" (Tañada vs. Cuenco, L-1052, Feb. 28, 1957). A broader definition was advanced by U.S. Supreme Court Justice Brennan in *Baker vs. Carr* (369 U.S. 186 [1962]): "**Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and**

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31 Id. at 1065-1067.

32 181 Phil. 181 (1979).

> **manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of the government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question**" (p. 217). And Chief Justice Enrique M. Fernando, then an Associate Justice of this Court, fixed the limits of the term, thus: "The term has been made applicable to controversies clearly non-judicial and therefore beyond its jurisdiction or to an issue involved in a case appropriately subject to its cognizance, as to which there has been a prior legislative or executive determination to which deference must be paid (Cf. *Vera vs. Avelino*, 77 Phil. 192 [1946]; *Lopez vs. Roxas*, L-25716, July 28, 1966, 17 SCRA 756; *Gonzales vs. Commission on Elections*, L-28196, Nov. 9, 1967, 21 SCRA 774). It has likewise been employed loosely to characterize a suit where the party proceeded against is the President or Congress, or any branch thereof (Cf. *Planas vs. Gil*, 67 Phil. 62 [1937]; *Vera vs. Avelino*, 77 Phil. 192 [1946]). If to be delimited with accuracy; 'political questions' should refer to such as would under the Constitution be decided by the people in their sovereign capacity or in regard to which full discretionary authority is vested either in the President or Congress. It is thus beyond the competence of the judiciary to pass upon. x x x." (*Lansang vs. Garcia*, 42 SCRA 448, 504-505 [1971]).[33] (Emphasis provided)

III. B

With this background and from our experience during Martial Law, the members of the Constitutional Commission clarified the power of judicial review through the second paragraph of Section 1 of Article VIII of the Constitution. This provides:

> Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable ***and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government***. (Emphasis provided)

This addendum was borne out of the fear that the political question doctrine would continue to be used by courts to avoid resolving controversies involving acts of the Executive and Legislative branches of government.[34] Hence, judicial power was expanded to include the review of any act of grave abuse of discretion on ***any*** branch or instrumentality of the

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[33] *Casibang v. Aquino*, 181 Phil. 181, 192-193 (1979).

[34] RECORDS OF THE CONSTITUTIONAL COMMISSION, Vol. I, July 10, 1986, No. 27
"x x x [T]he role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the Solicitor General set up the defense of political questions and got away with it."

government.

The Constitutional Commissioners were working with their then recent experiences in a regime of Martial Law. The examples that they had during the deliberations on the floor of the Constitutional Commission were naturally based on those experiences. It appears that they did not want a Court that had veto on any and all actions of the other departments of government. Certainly, the Constitutional Commissioners did not intend that this Court's discretion substitutes for the political wisdom exercised within constitutional parameters. However, they wanted the power of judicial review to find its equilibrium further than unthinking deference to political acts. Judicial review extends to review political discretion that clearly breaches fundamental values and principles congealed in provisions of the Constitution.

III. C

Grave abuse of discretion, in the context of the second paragraph of Section 1 of Article VIII of the Constitution, has been described in various cases.

In *Tañada v. Angara*,[35] the issue before this Court was whether the Senate committed grave abuse of discretion when it ratified the Agreement establishing the World Trade Organization. Although the ratification of treaties was undoubtedly a political act on the part of Congress, this Court treated it as a justiciable issue. This Court held that "[w]here an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute."[36] In defining grave abuse of discretion as "x x x such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction" and "must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law,"[37] this Court found that the Senate, in the absence of proof to the contrary, did not commit grave abuse of discretion in the exercise of its power of concurrence granted to it by the Constitution.

In *Villarosa v. House of Representatives Electoral Tribunal,*[38] this Court's jurisdiction was invoked where petitioners assailed the acts of the House of Representatives Electoral Tribunal. Petitioners alleged that the House of Representatives Electoral Tribunal committed grave abuse of discretion when it treated the "JTV" votes as stray or invalid.

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35 338 Phil. 546 (1997).
36 Id. at 574.
37 Id. at 604.
38 394 Phil. 730 (2000).

This Court, through Chief Justice Davide, defined grave abuse of discretion as "x x x such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; or, in other words, where the power is exercised in an arbitrary manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duly enjoined or to act at all in contemplation of law."[39] After a review of the facts established in the case and application of the relevant provisions of law, it then held that the House of Representatives did not commit grave abuse of discretion.[40]

In *Sen. Defensor Santiago v. Sen. Guingona, Jr.,*[41] this Court was tasked to review the act of the Senate President. The assailed act was the Senate President's recognition of respondent as the minority leader despite the minority failing to arrive at a clear consensus during the caucus. This Court, while conceding that the Constitution does not provide for rules governing the election of majority and minority leaders in Congress, nevertheless ruled that the acts of its members are still subject to judicial review when done in grave abuse of discretion:

> **While no provision of the Constitution or the laws or the rules and even the practice of the Senate was violated, and while the judiciary is without power to decide matters over which full discretionary authority has been lodged in the legislative department, this Court may still inquire whether an act of Congress or its officials has been made with grave abuse of discretion**. This is the plain implication of Section 1, Article VIII of the Constitution, which expressly confers upon the judiciary the power and the duty not only "to settle actual controversies involving rights which are legally demandable and enforceable," but likewise "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[42] (Emphasis provided)

III. D

Post-EDSA, this Court has even on occasion found exceptional circumstances when the political question doctrine would not apply.

Thus, in *SANLAKAS v. Executive Secretary Reyes*,[43] this Court ruled that while the case has become moot, "[n]evertheless, courts will decide a

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39 Id. at 752.
40 Id. at 757-758.
41 359 Phil. 276 (1998).
42 Id. at 301.
43 466 Phil. 482 (2004).

question, otherwise moot, if it is "capable of repetition yet evading review."[44]

In *SANLAKAS*, Petitions were filed to assail the issuance of Proclamation No. 427 declaring a state of rebellion during the so-called Oakwood occupation in 2003. While this Court conceded that the case was mooted by the issuance of Proclamation No. 435, which declared that the state of rebellion ceased to exist, it still decided the case. This Court pointed out that the issue has yet to be decided definitively, as evidenced by the dismissal of this Court of previous cases involving the same issue due to mootness:

> Once before, the President on May 1, 2001 declared a state of rebellion and called upon the AFP and the PNP to suppress the rebellion through Proclamation No. 38 and General Order No. 1. On that occasion, "'an angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons' assaulted and attempted to break into Malacañang." Petitions were filed before this Court assailing the validity of the President's declaration. Five days after such declaration, however, the President lifted the same. The mootness of the petitions in *Lacson v. Perez* and accompanying cases precluded this Court from addressing the constitutionality of the declaration.
>
> **To prevent similar questions from reemerging, we seize this opportunity to finally lay to rest the validity of the declaration of a state of rebellion in the exercise of the President's calling out power, the mootness of the petitions notwithstanding**.[45] (Emphasis provided, citations omitted)

In *Funa v. Villar*,[46] a Petition was filed contesting the appointment of Reynaldo A. Villar as Chairman of the Commission on Audit. During the pendency of the case, Villar sent a letter to the President signifying his intention to step down from office upon the appointment of his replacement. Upon the appointment of the current Chairman, Ma. Gracia Pulido-Tan, the case became moot and academic. This Court, guided by the principles stated in *David v. Arroyo,* still gave due course to the Petition:

> Although deemed moot due to the intervening appointment of Chairman Tan and the resignation of Villar, We consider the instant case as falling within the requirements for review of a moot and academic case, since it asserts at least four exceptions to the mootness rule discussed in *David*, namely: there is a grave violation of the Constitution; the case involves a situation of exceptional character and is of paramount public interest; the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; and the case is capable of repetition yet evading review. The situation presently

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44 Id. at 506.
45 Id. at 505-506.
46 G.R. No. 192791, April 24, 2012, 670 SCRA 579.

> obtaining is definitely of such exceptional nature as to necessarily call for the promulgation of principles that will henceforth "guide the bench, the bar and the public" should like circumstance arise. Confusion in similar future situations would be smoothed out if the contentious issues advanced in the instant case are resolved straightaway and settled definitely. There are times when although the dispute has disappeared, as in this case, it nevertheless cries out to be addressed. To borrow from *Javier v. Pacificador*, "Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint in the future."[47] (Citations omitted)

III. E

Thus, the addendum in the characterization of the power of judicial review should not be seen as a full and blanket reversal of the policy of caution and courtesy embedded in the concept of political questions. It assumes that the act or acts complained of would appear initially to have been done within the powers delegated to the respondents. However, upon perusal or evaluation of its consequences, it may be shown that there are violations of law or provisions of the Constitution.

The use of the Priority Development Assistance Fund or the "pork barrel" itself is questioned. It is not the act of a few but the practice of members of Congress and the President. The current Priority Development Assistance Fund amounts to twenty four (24) billion pesos; the alternative uses of this amount have great impact. Its wastage also will have lasting effects. To get a sense of its magnitude, we can compare it with the proposed budgetary allocation for the entire Judiciary. All courts get a collective budget that is about eighteen (18) billion pesos. The whole system of adjudication is dwarfed by a system that allocates funds for unclear political motives.

The concepts of accountability and separation of powers are fundamental values in our constitutional democracy. The effect of the use of the Priority Development Assistance Fund can have repercussions on these principles. Yet, it is difficult to discover anomalies if any. It took the Commission on Audit some time to make its special report for a period ending in 2009. It is difficult to expect such detail from ordinary citizens who wish to avail their rights as taxpayers. Clearly, had it not been for reports in both mainstream and social media, the public would not have been made aware of the magnitude.

What the present Petitions present is an opportune occasion to exercise the expanded power of judicial review. Due course should be given

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[47] Id. at 592-593.

because these Petitions suggest a case where (a) there may be indications that there are pervasive breaches of the Constitution; (b) there is no doubt that there is a large and lasting impact on our societies; (c) what are at stake are fundamental values of our constitutional order; (d) there are obstacles to timely discovering facts which would serve as basis for regular constitutional challenges; and (e) the conditions are such that any delay in our resolution of the case to await action by the political branches will not entirely address the violations. With respect to the latter, our Decision will prevent the repetition of the same acts which have been historically shown to be "capable of repetition" and yet "evading review." Our Decision today will also provide guidance for bench and bar.

IV

Respondents also argued that we should continue to respect our precedents. They invoke the doctrine of *stare decisis*.

Stare decisis is a functional doctrine necessary for courts committed to the rule of law. It is not, however, an encrusted and inflexible canon.[48] Slavishly adhering to precedent potentially undermines the value of a Judiciary.

IV. A

Stare decisis is based on the logical concept of analogy.[49] It usually applies for two concepts. The first is the meaning that is authoritatively given to a text of a provision of law with an established set of facts.[50] The second may be the choices or methods of interpretation to arrive at a meaning of a certain kind of rule.

This case concerns itself with the first kind of *stare decisis*; that is, whether recommendations made by members of Congress with respect to the projects to be funded by the President continue to be constitutional.

Ruling by precedent assists the members of the public in ordering their lives in accordance with law and the authoritative meanings

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48 *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009, 582 SCRA 694, 707 citing the Dissenting Opinion of J. Puno in *Lambino v. COMELEC*, 536 Phil. 1, 281 (2006).

49 See *Tung Chin Hui v. Rodriguez,* 395 Phil. 169, 177 (2000). This Court held that "[t]he principle cited by petitioner is an abbreviated form of the maxim "*Stare decisis, et non quieta movere*." That is, "When the court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same." This principle assures certainty and stability in our legal system."

50 An example to this is the application of the doctrine of stare decisis in the case of *Philippine National Bank v. Palma,* 503 Phil. 917 (2005).

promulgated by our courts.[51] It provides reasonable expectations.[52] Ruling by precedent provides the necessary comfort to the public that courts will be objective. At the very least, courts will have to provide clear and lucid reasons should it not apply a given precedent in a specific case.[53]

IV. B

However, the use of precedents is never mechanical.[54]

Some assumptions normally creep into the facts established for past cases. These assumptions may later on prove to be inaccurate or to be accurate only for a given historical period. Sometimes, the effects assumed by justices who decide past cases do not necessarily happen.[55] Assumed effects are given primacy whenever the spirit or intent of the law is considered in the interpretation of a legal provision. Some aspect of the facts or the context of these facts would not have been fully considered. It is also possible that doctrines in other aspects of the law related to a precedent may have also evolved.[56]

In such cases, the use of precedents will unduly burden the parties or produce absurd or unworkable outcomes. Precedents will not be useful to achieve the purposes for which the law would have been passed.[57]

Precedents also need to be abandoned when this Court discerns, after

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51 *See* Separate Opinion of Justice Imperial with whom concur Chief Justice Avanceña and Justice Villa-Real in *In the matter of the Involuntary Insolvency of Rafael Fernandez, Philippine Trust Company and Smith, Bell & Company Ltd v. L.P. Mitchell et al.,* 59 Phil. 30, 41 (1933). It was held that "[m]erchants, manufacturers, bankers and the public in general have relied upon the uniform decisions and rulings of this court and they have undoubtedly been guided in their transactions in accordance with what we then said to be the correct construction of the law. Now, without any new and powerful reason we try to substantially modify our previous rulings by declaring that the preferences and priorities above referred to are not recognized by the Insolvency Law."

52 *See Lazatin v. Desierto,* G.R. No. 147097, June 5, 2009, 588 SCRA 285, 294-295, where this Court held that "the doctrine [of stare decisis] has assumed such value in our judicial system that the Court has ruled that "[a]bandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished."

53 *Ting v. Velez-Ting*, supra at 707 citing Dissenting Opinion of *J*. Puno in *Lambino v. COMELEC*, 536 Phil. 1, 281 (2006) on its discussion on the factors that should be considered before overturning prior rulings.

54 *See In the matter of the Involuntary Insolvency of Rafael Fernandez,* 59 Phil. 30, 36-37 (1933), this Court held that "but idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right. And particularly is it not wise to subordinate legal reason to case law and by so doing perpetuate error when it is brought to mind that the views now expressed conform in principle to the original decision and that since the first decision to the contrary was sent forth there has existed a respectable opinion of non-conformity in the court. x x x Freeing ourselves from the incubus of precedent, we have to look to legislative intention."

55 *Ting v. Velez-Ting*, supra at 705 citing the Dissenting Opinion of *J*. Puno in *Lambino v. COMELEC*, 536 Phil.1, 281.

56 Id. at 707.

57 Id.

full deliberation, that a continuing error in the interpretation of the spirit and intent of a constitutional provision exists, especially when it concerns one of the fundamental values or premises of our constitutional democracy.[58] The failure of this Court to do so would be to renege on its duty to give full effect to the Constitution.[59]

IV. C

PHILCONSA v. Enriquez held that the appropriation for the Countrywide Development Fund in the General Appropriations Act of 1994 is constitutional. This Court ruled that "the authority given to the members of Congress is only to propose and identify projects to be implemented by the President. x x x. The proposals made by the members of Congress are merely recommendatory."[60]

Subsequent challenges to various forms of the "pork barrel system" were mounted after *PHILCONSA*.

In *Sarmiento v. The Treasurer of the Philippines,*[61] the constitutionality of the appropriation of the Countrywide Development Fund in the General Appropriations Act of 1996 was assailed. This Court applied the principle of *stare decisis* and found "no compelling justification to review, much less reverse, this Court's ruling on the constitutionality of the CDF."

The latest case was *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*.[62] Petitioners in *LAMP* argue that in implementing the provisions of the Priority Development Assistance Fund in the General Appropriations Act of 2004, direct releases of the fund were made to members of Congress.[63] However, this Court found that petitioners failed to present convincing proof to support their allegations.[64] The presumption of constitutionality of the acts of Congress was not rebutted.[65]

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58 *See Urbano v. Chavez,* 262 Phil. 374, 385 (1990) where this Court held that "[the] principle of stare decisis notwithstanding, it is well settled that a doctrine which should be abandoned or modified should be abandoned or modified accordingly. After all, more important than anything else is that this Court should be right."

59 *See Tan Chong v. Secretary of Labor*, 79 Phil. 249, 257 (1947), where this Court held that "The principle of *stare decisis* does not mean blind adherence to precedents. The doctrine or rule laid down, which has been followed for years, no matter how sound it may be, if found to be contrary to law, must be abandoned. The principle of *stare decisis* does not and should not apply when there is conflict between the precedent and the law. The duty of this Court is to forsake and abandon any doctrine or rule found to be in violation of the law in force."

60 G.R. No. 11310, August 19, 1994, 235 SCRA 506, 523.

61 G.R. Nos. 125680 and 126313, September 4, 2001, Unsigned Resolution.

62 G.R. No. 164987, April 24, 2012, 670 SCRA 373.

63 Id. at 379.

64 Id. at 387.

65 Id. at 390-391.

Further, this Court applied the ruling in *PHILCONSA* on the authority of members of Congress to propose and identify projects.[66] Thus, we upheld the constitutionality of the appropriation of the Priority Development Assistance Fund in the General Appropriations Act of 2004.

There are some indications that this Court's holding in *PHILCONSA* suffered from a lack of factual context.

The *ponencia* describes a history of increasing restrictions on the prerogative of members of the House of Representatives and the Senate to recommend projects. There was no reliance simply on the dicta in *PHILCONSA*. This shows that successive administrations saw the need to prevent abuses.

There are indicators of the failure of both Congress and the Executive to stem these abuses.

Just last September, this Court's *En Banc* unanimously found in *Delos Santos v. Commission on Audit*[67] that there was irregular disbursement of the Priority Development Assistance Fund of then Congressman Antonio V. Cuenco.

In *Delos Santos*, Congressman Cuenco entered into a Memorandum of Agreement with Vicente Sotto Memorial Medical Center. The Memorandum of Agreement was for the purpose of providing medical assistance to indigent patients. The amount of ₱1,500,000.00 was appropriated from the Priority Development Assistance Fund of Congressman Cuenco. It may be noted that in the Memorandum of Agreement, Congressman Cuenco "shall identify and recommend the indigent patients who may avail of the benefits of the Tony N' Tommy (TNT) Health Program x x x."[68]

The Special Audits Team of the Commission on Audit assigned to investigate the TNT Health Program had the following findings, which were upheld by us:

> 1. The TNT Program was not implemented by the appropriate implementing agency but by the office set up by Congressman Cuenco.
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> 2. The medicines purchased did not go through the required public

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66 Id. at 390.

67 G.R. No. 198457, August 13, 2013 < http://sc.judiciary.gov.ph/jurisprudence/2013/august2013/198457.pdf> (visited November 20, 2013).

68 Id.

bidding in violation of applicable procurement laws and rules.

3. Specific provisions of the MOA itself setting standards for the implementation of the same program were not observed.[69]

In the disposition of the case, this Court "referred the case to the Office of the Ombudsman for proper investigation and criminal prosecution of those involved in the irregular disbursement of then Congressman Antonio V. Cuenco's Priority Development Assistance Fund."[70]

While the special report of the Commission on Audit may not definitively be used to establish the facts that it alleges, it may be one of the indicators that we should consider in concluding that the context of the Decision in *PHILCONSA* may have changed.

In addition, but no less important, is that *PHILCONSA* perpetuates an error in the interpretation of some of the fundamental premises of our Constitution.

To give life and fully live the values contained in the words of the Constitution, this Court must be open to timely re-evaluation of doctrine when the opportunity presents itself. We should be ready to set things right so that what becomes final is truly relevant to the lives of our people and consistent with our laws.

Mechanical application of *stare decisis*, at times, is not consistency with principle. At these times, consistency with principle requires that we reject what appears as *stare decisis*.

V

Nowhere is public trust so important than in the management and use of the finances of government.

V. A

One of the central constitutional provisions is Article VI, Section 29(1) which provides:

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69 Id.
70 Id.

> No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

The President first submits to Congress a "budget of expenditures and sources of financing" in compliance with Article VII, Section 22 which provides thus:

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

This budget of expenditures and sources of financing (also called the National Expenditure Plan) is first filed with the House of Representatives and can only originate from there. Thus, in Article VI, Section 24:

> All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills, shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

Thereafter, the General Appropriations Bill is considered by Congress in three readings like other pieces of legislation.[71] Should it become necessary, a bicameral committee is convened to harmonize the differences in the Third Reading copies of each Legislative chamber. This is later on submitted to both the House and the Senate for ratification.[72]

The bill as approved by Congress shall then be presented to the President for approval. The President, in addition to a full approval or veto, is granted the power of an item veto. Article VI, Section 27 (2) provides:

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

We have had, in several cases, interpreted the power of item veto of the President.[73]

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[71] CONSTITUTION, Art. VI, Sec. 26.

[72] The procedures and the effect of bicameral committee deliberations were discussed in the cases of *Abakada Guro Party List v. Executive Secretary,* 506 Phil. 1, 86-90 (2005), *Montesclaros v. Comelec*, 433 Phil. 620, 634 (2002).

[73] *Gonzales v. Macaraig*, G.R. No. 87636, November 19, 1990, 191 SCRA 452, 464-468; *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133, 143-144; *PHILCONSA v. Enriquez,* G.R. No. 113105, August 19, 1994, 235 SCRA 506, 532-544.

In *Bengzon v. Drilon*,[74] we said that a provision is different from an item. Thus,

> We distinguish an item from a provision in the following manner:
>
> The terms *item* and *provision* in budgetary legislations are concededly different. An *item* in a bill refers to the particulars, the details, the distinct and severable parts x x x of the bill. It is an indivisible sum of money dedicated to a stated purpose. The United States Supreme Court, in the case of *Bengzon v. Secretary of Justice*, declared 'that an 'item' of an appropriation bill obviously means an *item* which in itself is a specific appropriation of money, not some *general provision of law*, which happens to be put into an appropriation bill.[75]

A *provision* does not "directly appropriate funds x x x [but specifies] certain conditions and restrictions in the manner by which the funds to which they relate have to be spent."[76]

In *PHILCONSA v. Enriquez,*[77] we clarified that an unconstitutional provision is one that is inappropriate, and therefore, has no effect:

> As the Constitution is explicit that the provision which Congress can include in an appropriations bill must "relate specifically to some particular appropriation therein" and "be limited in its operation to the appropriation to which it relates," it follows that any provision which does not relate to any particular item, or which extends in its operation beyond an item of appropriation, is considered "an inappropriate provision" which can be vetoed separately from an item. Also to be included in the category of "inappropriate provisions" are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kinds of laws have no place in an appropriations bill. These are matters of general legislation more appropriately dealt with in separate enactments. Former Justice Irene Cortes, as *Amicus Curiae,* commented that Congress cannot by law establish conditions for and regulate the exercise of powers of the President given by the Constitution for that would be an unconstitutional intrusion into executive prerogative.[78]

V. B

What is readily apparent from the provisions of the Constitution is a clear distinction between the role of the Legislature and that of the Executive

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74 G.R. No. 103524, April 15, 1992, 208 SCRA 133.
75 Id. at 143-144.
76 *Attiw v. Zamora,* 508 Phil. 322, 335 (2005).
77 G.R. No. 113105, August 19, 1994, 235 SCRA 506.
78 Id. at 534.

when it comes to the budget process.[79]

The Executive is given the task of preparing the budget and the prerogative to spend from an authorized budget.[80]

The Legislature, on the other hand, is given the power to authorize a budget for the coming fiscal year.[81] This power to authorize is given to the Legislature collectively.

Nowhere in the Constitution does it allow specific members of the House of Representatives or the Senate to implement projects and programs. Their role is clear. Rather, it is the local government units that are given the prerogative to execute projects and programs.[82]

Implicit in the power to authorize a budget for government is the necessary function of evaluating the past year's spending performance as well as the determination of future goals for the economy.[83]

A budget provides the backbone of any plan of action. Every plan of action should have goals but should also be enriched by past failures. The

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79 *See Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management,* G.R. No. 164987, April 24, 2012, 670 SCRA 373, 388-389 for an outline on the budget process.

80 Budget preparation, the first stage of the national budget process, is an executive function, in accordance with CONSTITUTION, Article VII, Section 22.
See also Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 389, *citing Guingona v. Carague,* 273 Phil. 443, 460, (1991) which outlined the budget process. It provides that the third stage of the process, budget execution, is also tasked on the Executive.

81 Legislative authorization, the second stage of the national budget process, is a legislative function. CONSTITUTION, Article VI, Sections 24and 29(1) provide as follows:
Section 24. All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.
Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.
In *LAMP,* this Court said:

> "Under the Constitution, the power of appropriation is vested in the Legislature, subject to the requirement that appropriation bills originate exclusively in the House of Representatives with the option of the Senate to propose or concur with amendments. While the budgetary process commences from the proposal submitted by the President to Congress, it is the latter which concludes the exercise by crafting an appropriation act it may deem beneficial to the nation, based on its own judgment, wisdom and purposes. Like any other piece of legislation, the appropriation act may then be susceptible to objection from the branch tasked to implement it, by way of a Presidential veto." (Underscoring supplied.)

82 *See* CONSTITUTION, Article X, Section 3 in relation to Section 14.

83 *See Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 389 *citing Guingona v. Carague,* 273 Phil. 443, 460, (1991). This provides that the fourth and last stage of the national budget process is budget accountability which refers to "the evaluation of actual performance and initially approved work targets, obligations incurred, personnel hired and work accomplished are compared with the targets set at the time the agency budgets were approved."

deliberations to craft a budget that happen in Congress is informed by the inquiries made on the performance of every agency of government. The collective inquiries made by representatives of various districts should contribute to a clearer view of the mistakes or inefficiencies that have happened in the past. It should assist elected representatives to discern the plans, programs, and projects that work and do not work.

Evaluating the spending of every agency in government requires that the Legislature is able to exact accountability. Not only must it determine whether the expenditures were efficient. The Legislature must also examine whether there have been unauthorized leakages — or graft and corruption — that have occurred.

The members of the Legislature do not do the formal audit of expenditures. This is the principal prerogative of the Commission on Audit.[84] Rather, they benefit from such formal audits. These formal audits assist the members of the House of Representatives and the Senators to do their constitutional roles. The formal audits also make public and transparent the purposes, methods used, and achievements and failures of each and every expenditure made on behalf of the government so that their constituencies can judge them as they go on to authorize another budget for another fiscal year.

Any system where members of Congress participate in the execution of projects ***in any way*** compromises them. It encroaches on their ability to do their constitutional duties. The violation is apparent in two ways: their ability to efficiently make judgments to authorize a budget and the interference in the constitutional mandate of the President to be the Executive.

Besides, interference in any government project other than that of congressional activities is a direct violation of Article VI, Section 14 of the 1987 Constitution in so far as Title XLIV of the 2013 General Appropriations Act allows participation by Congress. Article VI, Section 14 provides:

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

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[84] CONSTITUTION, Art. IX, Sec. 2(1).

> controlled corporation, or its subsidiary, during his term of office. ***He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.***[85] (Emphasis provided)

V. C

Title XLIV of the General Appropriations Act of 2013 is the appropriation for the Priority Development Assistance Fund of a lump sum amount of ₱24,790,000,000.00.

The Special Provisions of the Priority Development Assistance Fund are:

> 1. Use of Fund. The amount appropriated herein shall be used to fund the following priority programs and projects to be implemented by the corresponding agencies:
>
> [A project menu follows]
>
> PROVIDED, That this Fund shall not be used for the payment of Personal Services expenditures: PROVIDED, FURTHER, That all procurement shall comply with the provisions of R.A. No. 9184 and its Revised Implementing Rules and Regulations: PROVIDED, FINALLY, That for infrastructure projects, LGUs may only be identified as implementing agencies if they have the technical capability to implement the same.
>
> 2. Project Identification. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency: PROVIDED, That preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the MHTS-PR by the DSWD. For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act.
>
> All programs/projects, except for assistance to indigent patients and scholarships, identified by a member of the House of Representatives outside his/her legislative district shall have the written concurrence of the member of the House of Representatives of the recipient or beneficiary legislative district, endorsed by the Speaker of the House of Representatives.
>
> 3. Legislator's Allocation. The Total amount of projects to be identified by legislators shall be as follows:
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> > a. For Congressional District or Party-List Representative: Thirty Million Pesos (₱30,000,000.00) for soft programs

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[85] CONSTITUTION, Art. VI, Sec. 14.

> and projects listed under Item A and Forty Million Pesos (₱40,000,000.00) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1; and
>
> b. For Senators: One Hundred Million Pesos (₱100,000,000.00) for soft programs and projects listed under Item A and One Hundred Million Pesos (₱100,000,000.00) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1.

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

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

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

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

6. Posting Requirements. The DBM and respective heads of implementing agencies and their web administrator or equivalent shall be responsible for ensuring that the following information, as may be applicable, are posted on their respective official websites:

> (i) all releases and realignments under this Fund; (ii) priority list, standard and design submitted to Congress; (iii) projects identified and names of proponent legislator; (iv) names of project beneficiaries and/or recipients; (v) any authorized realignment; (vi) status of project implementation and (vii) program/project evaluation and/or assessment reports. Moreover, for any procurement to be undertaken using this Fund, implementing agencies shall likewise post on the Philippine Government Electronic Procurement System all invitations to bid, names of participating bidders with their corresponding bids, and awards of contract.

Once the General Appropriations Act is signed into law as explained above, the budget execution stage takes place.

> x x x [B]udget execution comes under the domain of the Executive branch which deals with the operational aspects of the cycle including the allocation and release of funds earmarked for various projects. Simply put, from the regulation of fund releases, the implementation of payment schedules and up to the actual spending of the funds specified in the law, the Executive takes the wheel.[86]

Generally, the first step to budget execution is the issuance by the Department of Budget and Management of Guidelines on the Release of Funds. For the year 2013, the Department of Budget and Management issued National Budget Circular No. 545 entitled "Guidelines for the Release of Funds for FY 2013."

Under National Budget Circular No. 545, the appropriations shall be made available to the agency of the government upon the issuance by the Department of Budget and Management of either an Agency Budget Matrix or a Special Allotment Release Order.[87] The Agency Budget Matrix will act as a comprehensive release of allotment covering agency-specific budgets that do not need prior clearance.[88] The Special Allotment Release Order is required for those allotments needing clearance, among others.[89]

For the issuance of the Special Allotment Release Order, a request for

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[86] *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management,* G.R. No. 164987, April 24, 2012, 670 SCRA 373, 389-390.

[87] Item No. 3.5 of DBM NBC No. 545. The appropriations for the agency specific budgets under the FY 2013 GAA, including automatic appropriations, shall be made available to the agency through the issuance of Agency Budget Matrix (ABM) and/or Special Allotment Release Order (SARO).

[88] Item No. 3.7.1 of DBM NBC No. 545. ABM for the comprehensive release of allotment covering agency specific budgets that do not need prior clearance shall be issued by DBM based on the FY 2013 Financial Plan submitted by the OUs/agencies.

[89] Item No. 4.2.1 of DBM NBC No. 545. Issuance of SAROs shall be necessary for the following items:
4.2.1.1 Appropriation items categorized under the "NC" portion of the ABM;
4.2.1.2 Charges against multi-user SPFs; and,
4.2.1.3 Adjustment between the NNC and NC portions of the approved ABM.

allotment of funds (Special Budget Request)[90] shall be made by the head of the department or agency requesting for the allotment to the Department of Budget and Management.[91]

Once the Special Allotment Release Order is issued, disbursement authorities such as a Notice of Cash Allowance will be issued.

Applying the provisions of the Priority Development Assistance Fund in the General Appropriations Act of 2013 in accordance with the **budget execution stage** outlined above, we will readily see the difference.

The allotment for the appropriation of the Priority Development and Assistance Fund of 2013 needs clearance and, therefore, a Special Allotment Release Order must be issued by the Department of Budget and Management.[92]

Unlike other appropriations, the written endorsement of the Chairman of the Senate Committee on Finance or the Chairman of the Committee on Appropriations of the House of Representatives, as the case may be, is required.

A Special Budget Request is required for the issuance of the Special Allotment Release Order.[93] The Department of Budget and Management issued a National Budget Circular No. 547 for the Guidelines for the Release of the Priority Development Assistance Fund in the General Appropriations Act of 2013, which provides:

> All requests for issuance of allotment shall be supported with the following: 3.1.1 List of priority programs/projects including the supporting documents in accordance with the PDAF Project Menu; 3.1.2 Written endorsements by the following: 3.1.2.1 In case of the Senate, the Senate President and the Chairman of the Committee on Finance; and 3.1.2.2 In case of the House of Representatives, the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations.[94]

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90 *See* Department of Budget and Management, National Budget Circular No. 545 (2013) Item No. 4.2.2.

91 Executive Order No. 292 (1987), Book VI, Chapter 5, Section 33 (1-5).

92 Department of Budget and Management, National Budget Circular No. 547 (2013) Item 3.1. Within the limits prescribed under item 2.7 hereof, the DBM shall issue the Special Allotment Release Order (SARO) to cover the release of funds chargeable against the PDAF which shall be valid for obligation until the end of FY 2013, pursuant to Section 63, General Provisions of the FY 2013 GAA (R.A. No. 10352).

93 Department of Budget and Management, National Budget Circular No. 545 (2013) Item 4.2.2 Appropriation items categorized under the "NC" portion of the ABM shall be released upon submission of Special Budget Requests (SBRs) duly supported with separate detailed financial plan including MCP, physical plan and other documentary requirements.

94 Department of Budget and Management, National Budget Circular No. 547 (2013) Item No. 3.1.2.

The Department of Budget and Management National Budget Circular No. 547 has been amended by Department of Budget and Management National Budget Circular No. 547-A. The written endorsements of the Senate President and the Speaker of the House of Representatives are not required anymore. The amendment reconciled the special provisions of the Priority Development Assistance Fund under the General Appropriations Act of 2013 and the Guidelines for the Release of the Priority Development Assistance Fund 2013.

Even a textual reading of the Special Provisions of the Priority Development Assistance Fund under the General Appropriations Act of 2013 shows that the identification of projects and endorsements by the Chairman of the Senate Committee on Finance and the Chairman of the Committee on Appropriations of the House of Representatives are mandatory. The Special Provisions use the word, "shall."

Respondents argue that the participation of members of Congress in the allocation and release of the Priority Development Assistance Fund is merely recommendatory upon the Executive. However, respondents failed to substantiate in any manner their arguments. During the oral arguments for this case, the Solicitor General was asked if he knew of any instance when the Priority Development Assistance Fund was released without the identification made by Congress. The Solicitor General did not know of any case.[95]

Besides, it is the recommendation itself which constitutes the evil. It is that interference which amounts to a constitutional violation.

This Court has implied that the participation of Congress is limited to the exercise of its power of oversight.

> Any post-enactment congressional measure such as this should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following:
>
> > 1. scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of

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[95] TSN, October 10, 2013, p. 18.

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

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

> confirmation and
>
> 2. investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.[96]
>
> x x x As such, it is only upon its effectivity that a law may be executed and the executive branch acquires the duties and powers to execute the said law. Before that point, the role of the executive branch, particularly of the President, is limited to approving or vetoing the law.
>
> From the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional.[97]

Further, "x x x [t]o forestall the danger of congressional encroachment "beyond the legislative sphere," the Constitution imposes two basic and related constraints on Congress. It may not vest itself, any of its committees or its members with either Executive or Judicial power. When Congress exercises its legislative power, it must follow the "single, finely wrought and exhaustively considered, procedures" specified under the Constitution, including the procedure for enactment of laws and presentment."[98]

The participation of members of Congress — even if only to recommend — amounts to an unconstitutional post-enactment interference in the role of the Executive. It also defeats the purpose of the powers granted by the Constitution to Congress to authorize a budget.

V. D

Also, the Priority Development Assistance Fund has no discernable purpose.

The lack of purpose can readily be seen. This exchange during the oral arguments is instructive:

> Justice Leonen: x x x First, can I ask you whether each legislative district will be getting the same amount under that title? Each legislator gets 70 Million, is that not correct?
>
> Solicitor General Jardeleza: There will be no appropriation like that, Your Honor.

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96 *Abakada Guro Party List v. Purisima,* G.R. No. 166715, August 14, 2008, 562 SCRA 251, 287.
97 Id. at 293-296.
98 Id. at 286-287.

Justice Leonen: No, I mean in terms of Title XLIV right now, at present.

Solicitor General Jardeleza: Oh, I'm sorry.

Justice Leonen: Of the 24 Billion each Member of the House of Representatives and a party list gets 70 Million, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: Second, that each senator gets 200 Million, is that not correct?

Solicitor General: Yes, Your Honor.

Justice Leonen: Let's go to congressional districts, are they of the same size?

Solicitor General Jardeleza: No, Your Honor.

Justice Leonen: So there can be smaller congressional districts and very big congressional districts, is that not correct?

Solicitor General: Yes.

Justice Leonen: And there are congressional districts that have smaller populations and congressional districts that have a very large population?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: Batanes, for instance, has about [4,000] to 5,000 votes, is that not correct?

Solicitor General Jardeleza: I believed so.

Justice Leonen: Whereas, my district is District 4 of Quezon City has definitely more than that, is that not correct?

Solicitor General Jardeleza: I believed so, Your Honor.

Justice Leonen: And therefore there are differences in sizes?

Solicitor General Jardeleza: Yes.

Justice Leonen: Metro Manila congressional districts, each of them earn in the Million, is that not correct?

Solicitor General Jardeleza: I believed so, Your Honor.

Justice Leonen: Whereas there are poorer congressional districts that do not earn in the Millions or even Billions, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

> Justice Leonen: So the pork barrel or the PDAF for that matter is allocated not on the basis of size, not on the basis of population, not on the basis of the amounts now available to the local government units, is that not correct?
>
> Solicitor General Jardeleza: Yes, Your Honor.
>
> Justice Leonen: It is allocated on the basis of congressmen and senators, is that not correct?
>
> Solicitor General Jardeleza: Yes, Your Honor.
>
> Justice Leonen: So, it's an appropriation for a congressman and a senator, is that not correct?
>
> Solicitor General Jardeleza: Yes, Your Honor.
>
> Justice Leonen: Not as Members of the House or Members of the Senate because this is not their function but it is allocated to them simply because they are members of the House and members of the Senate?
>
> Solicitor General Jardeleza: Well, it is allocated to them as Members, Your Honor, yes, as Members of the House and as Members of the Senate.
>
> Justice Leonen: Can you tell us, Counsel, whether the allocation for the Office of the Solicitor General is for you or is it for the Office?
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> Solicitor General Jardeleza: For the Office, Your Honor.
>
> Justice Leonen: The allocation for the Supreme Court, is it for anyone of the fifteen of us or is it for the entire Supreme Court?
>
> Solicitor General: For the Office, Your Honor.
>
> Justice Leonen: So you have here an item in the budget which is allocated for a legislator not for a congressional district, is that not correct?
>
> Solicitor General Jardeleza: Well, for both, Your Honor.
>
> Justice Leonen: Is this a valid appropriation?[99]

Had it been to address the developmental needs of the Legislative districts, then the amounts would have varied based on the needs of such districts. Hence, the poorest district would receive the largest share as compared to its well-off counterparts.

If it were to address the needs of the constituents, then the amounts allocated would have varied in relation to population. Thus, the more

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[99] TSN, October 10, 2013, pp. 146-149.

populous areas would have the larger allocation in comparison with areas which have a sparse population.

There is no attempt to do any of these. The equal allocation among members of the House of Representatives and more so among Senators shows the true color of the Priority Development Assistance Fund. It is to give a lump sum for each member of the House of Representatives and the Senate for them to spend on projects of their own choosing. This is usually for any purpose whether among their constituents and whether for the present or future.

In short, the Priority Development Assistance Fund is an appropriation for each Member of the House of Representative and each Senator.

This is why this item in the General Appropriations Act of 2013 is an invalid appropriation. It is allocated for use which is not inherent in the role of a member of Congress. The power to spend is an Executive constitutional discretion — not a Legislative one.

V. E

A valid item is an authorized amount that may be spent for a discernible purpose.

An item becomes invalid when it is just an amount allocated to an official absent a purpose. In such a case, the item facilitates an unconstitutional delegation of the power to authorize a budget. Instead of Congress acting collectively with its elected representatives deciding on the magnitude of the amounts for spending, it will be the officer who either recommends or spends who decides what the budget will be.

This is not what is meant when the Constitution provides that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law." When no discernible purpose is defined in the law, money is paid out for a public official and not in pursuance of an appropriation.

This is exactly the nature of the Priority Development Assistance Fund.

Seventy million pesos of taxpayers' money is appropriated for each

member of the House of Representatives while two hundred million pesos is authorized for each Senator. The purpose is not discernible. The menu of options does not relate to each other in order to reveal a discernible purpose. Each legislator chooses the amounts that will be spent as well as the projects. The projects may not relate to each other. They will not be the subject of a purposive spending program envisioned to create a result. It is a kitty — a mini-budget — allowed to each legislator.

That each legislator has his or her own mini-budget makes the situation worse. Again, those who should check on the expenditures of all offices of government are compromised. They will not have the high moral ground to exact efficiency when there is none that can be evaluated from their allocation under the Priority Development Assistance Fund.

Purposes can be achieved through various programmed spending or through a series of related projects. In some instances, like in the provision of farm to market roads, the purpose must be specific enough to mention where the road will be built. Funding for the Climate Change Commission can be in lump sums as it could be expected that its expenditures would be dependent on the proper activities that should be done in the next fiscal year and within the powers and purposes that the Commission has in its enabling charter. In other instances, like for calamity funds, the amounts will be huge and the purpose cannot be more general than for expenses that may have to be done in cases of calamities.

Parenthetically, the provision of Various Infrastructure and Local Projects in the Department of Public Works and Highways title of the 2013 General Appropriations Act is also a clear example of an invalid appropriation.

In some instances, the purpose of the funding may be general because it is a requirement of either constitutional or statutory autonomy. Thus, the ideal would be that this Court would have just one item with a bulk amount with the expenditures to be determined by this Court's *En Banc*. State universities and colleges may have just one lump sum for their institutions because the purposes for which they have been established are already provided in their charter.

While I agree generally with the view of the *ponencia* that "an item of appropriation must be an item characterized by a singular correspondence — meaning an allocation of a specified singular amount for a specified singular purpose," our opinions on the generality of the stated purpose should be limited only to the Priority Development Assistance Fund as it is now in the 2013 General Appropriations Act. The agreement seems to be that the item

has no discernible purpose.[100]

There may be no need, for now, to go as detailed as to discuss the fine line between "line" and "lump sum" budgeting. A reading of the *ponencia* and the Concurring Opinions raises valid considerations about line and lump sum items. However, it is a discussion which should be clarified further in a more appropriate case.[101]

Our doctrine on unlawful delegation of legislative power does not fully square in cases of appropriations. Budgets are integral parts of plans of action. There are various ways by which a plan can be generated and fully understood by those who are to implement it. There are also many requirements for those who implement such plans to adjust to given realities which are not available through foresight.

The Constitution should not be read as a shackle that bounds creativity too restrictively. Rather, it should be seen as a framework within which a lot of leeway is given to those who have to deal with the fundamental vagaries of budget implementation. What it requires is an appropriation for a discernable purpose. The Priority Development Assistance Fund fails this requirement.

VI

The Constitution in Article VI, Section 29 (3) provides for another type of appropriations act, thus:

> All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the government.

This provision provides the basis for special laws that create special funds and to this extent qualifies my concurrence with the *ponencia*'s result in so far as Section 8 of Presidential Decree No. 910 is concerned. This provision states:

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[100] Section 23 in Chapter 5 of Book VI of the Revised Administrative Code mentions "with the corresponding appropriations for each program and project." However, lump sum is also mentioned in various contexts in Sections 35 and 47 of the same chapter. The Constitution in Article VI, Section 27(2) mentions item veto. It does not qualify whether the item is a "line" or "lump sum" item.

[101] During the *En Banc* deliberations, I voted for the *ponencia* as is so as to reflect the views of its writer. In view of the context of that discussion, I read it as necessary dicta which may not yet be doctrinal.

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

It is true that it may be the current administration's view that the underscored provision should be read in relation to the specific purposes enumerated before it. However, there is no proscription to textually view it in any other way. Besides, there should have been no reason to provide this phrase had the intent of the law been as how the current administration reads and applies it.

As has been the practice in the past administration, monies coming from this special provision have been used for various purposes which do not in any way relate to "the energy resource development and exploitation programs and projects of the government." Some of these expenditures are embodied in Administrative Order No. 244 dated October 23, 2008;[102] and Executive Orders 254, 254-A, and 405 dated December 8, 2003, March 3, 2004, and February 1, 2005, respectively.[103]

The phrase "for such other purposes as may hereafter directed by the President" has, thus, been read as all the infinite possibilities of any project or program. ***Since it prescribes all, it prescribes none***.

Thus, I concur with the *ponencia* in treating this portion of Section 8, Presidential Decree No. 910, which allows the expenditures of that special fund "for other purposes as may be hereafter directed by the President," as null and void.

The same vice infects a portion of the law providing for a Presidential Social Fund.[104] Section 12 of Presidential Decree No. 1869 as amended by

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[102] Authorizing the Department of Agriculture the Use of P4.0 Billion from fees, Revenues, and Receipts from Service Contract No. 3 for the Rice Self-Sufficiency Programs of the Government.

[103] Authorizing the Use of Fees, Revenues, and Receipts from Service Contract No. 38 for the Implementation of Development Projects for the People of Palawan.

[104] Presidential Decree No. 1869 as amended by Presidential Decree No. 1993. I agree that although Presidential Decree No. 1993 was neither pleaded nor argued by the parties, we should take judicial notice of the amendment as a matter of law.

Presidential Decree No. 1993 provides that the fund may be used "to finance the priority infrastructure projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines."

Two uses are contemplated by the provision: one, to finance "priority infrastructure projects," and two, to provide the Executive with flexibility in times of calamities.

I agree that "priority infrastructure projects" may be too broad so as to actually encompass everything else. The questions that readily come to mind are which kinds of infrastructure projects are not covered and what kinds of parameters will be used to determine the priorities. These are not textually discoverable, and therefore, allow an incumbent to have broad leeway. This amounts to an unconstitutional delegation of the determination of the purpose for which the special levies resulting in the creation of the special fund. This certainly was not contemplated by Article VI, Section 29(3) of the Constitution.

I regret, however, that I cannot join Justice Brion in his view that even the phrase "to be used to finance energy resource development and exploitation programs and projects of the government" in Section 8 of Presidential Decree No. 910 is too broad. This is even granting that this phrase is likewise qualified with "as may be hereafter determined by the President."

The kinds of projects relating to energy resource development and exploitation are determinable. There are obvious activities that do not square with this intent, for instance, expenditures solely for agriculture. The extent of latitude that the President is given is also commensurate with the importance of the energy sector itself. Energy is fundamental for the functioning of government as well as the private sector. It is essential to power all projects whether commercial or for the public interest. The formulation, thus, reasonably communicates discretion but puts it within reasonable bounds. In my view, and with due respect to the opinion of Justice Brion, the challenge of this phrase's unconstitutionality lacks the clarity that should compel us to strike it down.

VII

A member of the House of Representatives or a Senator is not an automated teller machine or ATM from which the public could withdraw funds for sundry private purposes. They should be honorable elected officials tasked with having a longer and broader view. Their role is to use

their experience and their understanding of their constituents to craft policy articulated in laws. Congress is entrusted to work with political foresight.

Congress, as a whole, checks the spending of the President as it goes through the annual exercise of deciding what to authorize in the budget. A level of independence and maturity is required in relation to the passage of laws requested by the Executive. Poverty and inefficiencies in government are the result of lack of accountability. Accountability should no longer be compromised.

Pork barrel funds historically encourage dole-outs. It inculcates a perverse understanding of representative democracy. It encourages a culture that misunderstands the important function of public representation in Congress. It does not truly empower those who are impoverished or found in the margins of our society.

There are better, more lasting and systematic ways to help our people survive. A better kind of democracy should not be the ideal. It should be the norm.

We listen to our people as we read the Constitution. We watch as others do their part and are willing to do more. We note the public's message:

Politics should not be as it was. Eradicate greed. Exact accountability. Build a government that has a collective passion for real social justice.

ACCORDINGLY, I vote to **GRANT** the Petitions and **DECLARE** Title XLIV of the General Appropriations Act of 2013 **UNCONSTITUTIONAL**. The proviso in Section 8 of Presidential Decree No. 910, which states "for such other purposes as may hereafter be directed by the President" and the phrase in Section 12, Title IV of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, which states "to finance the priority infrastructure development projects," are likewise deemed **UNCONSTITUTIONAL**. I also vote to make permanent the Temporary Restraining Order issued by this Court on September 10, 2013.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice