EN BANC

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

Promulgated:

NOVEMBER 19, 2013

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CONCURRING OPINION

SERENO, *CJ*:

I concur in the result of the draft *ponencia*. In striking down the Priority Development Assistance Fund (PDAF) for being unconstitutional and violative of the principle of separation of powers, the Members of this Court have acted as one sober voice of reason amidst the multitude of opinions surrounding the present controversy. It is in the spirit of this need for sobriety and restraint – from which the Court draws its own legitimacy – that I must add essential, clarificatory points.

The Court does not deny that the PDAF had also benefited some of our countrymen who most need the government's assistance. Yet by striking it down, the Court has simply exercised its constitutional duty to re-emphasize the roles of the two political branches of government, in the matter of the needs of the nation and its citizens. The Decision has not denied health and educational assistance to Filipinos; rather, it has emphasized that it is the Executive branch which implements the State's duty to provide health and education, among others, to its citizens. This is the structure of government under the Constitution, which the Court has merely set aright.

Guided by the incisive Concurring Opinion penned by Justice Florentino Feliciano in the seminal case of *Oposa v. Factoran,* I suggest that the Court circumscribe what may be left for future determination in an appropriate case – lest we inflict what he termed "excessive violence" to the language of the Constitution. Any collegial success in our Decision is measurable by the discipline to rule only on defined issues, and to curb any excess against the mandated limitations of judicial review.

As Justice Feliciano has stated in *Oposa,* in certain areas, "our courts have no claim to special technical competence, experience and professional qualification. Where no specific, operable norms and standards are shown to exist,

then the policy making departments — the legislative and executive departments — must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene."[1] Otherwise, the drastic alternative would be "to propel courts into the uncharted ocean of social and economic policy making."[2] Thus, I must address the dissonance between what is delineated in the *fallo* of the Decision, as opposed to what some may mistakenly claim to be the implicit consequences of the discussion.

The only question that appears to be a loose end in the *ponencia* was whether we still needed to have an extended discussion on lump-sums versus line-items for this Court to dispose of the main reliefs prayed for, i.e., to strike down portions of the 2013 General Appropriations Act (GAA) regarding the PDAF, the Malampaya Fund or P.D. No. 910, and the Presidential Social Fund or P.D. No. 1869 as amended by P.D. no. 1993 for unconstitutionality.

The remaining concern is founded on the need to adhere to the principle of judicial economy: for the Court to rule only on what it needs to rule on, lest unintended consequences be generated by its extensive discussion on certain long-held budgetary practices that have evolved into full-bodied statutory provisions, and that have even been validated by the Supreme Court in its prior decisions. After, however, it was clarified to the Court by the *ponente* herself that the effect of the *fallo* was only with respect to the appropriation type contained in Article XIV of the 2013 GAA, the unanimous vote of the Court was inevitable. The entire Court therefore supported the *ponencia,* without prejudice to the opinions of various Members, including myself.

As it stands now, the conceptual formulations on lump-sums, while not pronouncing doctrine could be premature and confusing. This is evidenced by the fact that different opinions had different definitions of lump-sum appropriations. Justice Carpio cites Sections 35 and 23 of the Administrative Code to say that the law does not authorize lump-sum appropriations in the GAA.[3] But Section 35 itself talks of how to deal with lump-sum appropriations. Justice Brion made no attempt to define the term. Justice Leonen recognized the fact that such discussion needs to be initiated by a proper case.[4]

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[1] J. Feliciano stated: "The Court has also declared that the complaint has alleged and focused upon "one specific fundamental legal right — the right to a balanced and healthful ecology" (Decision, p. 14). There is no question that "the right to a balanced and healthful ecology" is "fundamental" and that, accordingly, it has been "constitutionalized." But although it is fundamental in character, I suggest, with very great respect, that it cannot be characterized as "specific," without doing excessive violence to language. It is in fact very difficult to fashion language more comprehensive in scope and generalized in character than a right to "a balanced and healthful ecology."

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When substantive standards as general as "the right to a balanced and healthy ecology" and "the right to health" are combined with remedial standards as broad ranging as "a grave abuse of discretion amounting to lack or excess of jurisdiction," the result will be, it is respectfully submitted, to propel courts into the uncharted ocean of social and economic policy making. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. Where no specific, operable norms and standards are shown to exist, then the policy making departments — the legislative and executive departments — must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene." G.R. No. 101083, 30 July 1993, 224 SCRA 792.

[2] Id.

[3] Carpio, J. (*Concurring Opinion, pp. 22-24)*

[4] Leonen, J. *(Concurring Opinion, pp. 36-37).*

Even the *ponencia* itself stated that Article XIV of the 2013 GAA is unconstitutional for being, among others, a "prohibited form of lump-sum," which implies that there are allowable forms of lump-sum. This begs the question: what are allowable forms of lump-sum? In the first place, what are lump-sums? Administrative practice and congressional categories have always been liberal about the definition of lump-sums. Has this Court not neglected to accomplish its preliminary task, by first and foremost agreeing on the definition of a lump-sum?

Both Justice Brion[5] and Justice Leonen[6] warned against the possibility of the Court exceeding the bounds set by the actual case and controversy before us. That a total condemnation of lump-sum funding is an "extreme position that disregards the realities of national life," as Justice Brion stated, and that it is by no means doctrinal and "should be clarified further in a more appropriate case," as discussed by Justice Leonen, are correct. In the same spirit, I separately clarify the import of our decision, so that no unnecessary inferences are made.

As worded in the dispositive portion,[7] the following are unconstitutional: first, the entire 2013 PDAF Article; second, all legal provisions, of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions; and third, all informal practices of similar import and effect. The extent of their unconstitutionality has been defined as follows: (1) these authorize/d legislators – whether individually or collectively organized into committees – to intervene, assume or participate in any of the various post-enactment stages of the identification, modification and revision of project identification, fund release and/or fund realignment, unrelated to the power of congressional oversight; (2) these confer/red personal, lump-sum allocations from which they are able to fund specific projects which they themselves determine.

Given the circumscribed parameters of our decision, it is clear that this Court made no doctrinal pronouncement that **all lump-sum appropriations *per se* are unconstitutional.**

At most, the dispositive portion contained the term "lump-sum allocations" which was tied to the specific characterization of the PDAF system found in the body of the decision – that is, "a singular lump-sum amount to be tapped as a source of funding for multiple purposes x x x such appropriation type necessitat[ing] the further determination of **both** the actual amount to be expended **and** the actual purpose of the appropriation which must still be chosen from the

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[5] Brion, J., (*Concurring and Dissenting Opinion, p. 17*): "Lest this conclusion be misunderstood, I do not *per se* take the position that all lump sums should be disallowed as this would be an extreme position that disregards the realities of national life. But the use of lump sums, to be allowed, should be within reason acceptable under the processes of the Constitution, respectful of the constitutional safeguards that are now in place, and understandable to the people based on their secular understanding of what is happening in government."

[6] Leonen, J., Supra note 4 at 36-37: "I am of the view that our opinions on the generality of the stated purpose should be limited only to the PDAF as it is now in the 2013 General Appropriations Act. The agreement seems to be that that item has no discernible purpose. There may be no need, for now, to go as detailed as to discuss the fine line between "line" and "lump-sum" budgeting."

[7] *Decision*, pp. 69-70.

multiple purposes stated in the law x x x x **[by] individual legislators.**"[8] The *ponencia*, in effect, considers that the PDAF's infirmity is brought about by the confluence of (1) sums dedicated to multiple purposes; (2) requiring post-enactment measures; (3) participated in, not by the Congress, but by its individual Members.

For the Court, it is this three-tiered nature of the PDAF system – as a singular type of lump-sum appropriation for individual legislators – which makes it unconstitutional. Any other type, kind, form, or assortment beyond this aggregated formulation of "lump-sum allocation" is not covered by our declaration of unconstitutionality.

Although Commission on Audit Chairperson Maria Gracia M. Pulido Tan recommended the adoption of a "line by line budget or amount per proposed program, activity or project, and per implementing agency:" such remains a mere recommendation. Chairperson Tan made the recommendation to relay to the Court the operational problems faced by state auditors in the conduct of post-audit examination. A policy suggestion made to solve a current problem of budget implementation cannot be the legal basis upon which unwarranted legal conclusions are anchored.

Briefly, I fully support the following pronouncements:

First, that the 2013 Priority Development Assistance Fund (PDAF) is unconstitutional for violating the separation of powers, and;

Second, that the PDAF is unconstitutional for being an undue delegation of legislative functions.

However, I believe that the discussions on lump-sum appropriations, line-item appropriations, and item-veto power are premature.

These discussions were wrought, to my mind, by the blurring of the limits of the power of judicial review, the role of the judiciary in the constitutional landscape of the State, and of the basic principles of appropriation law. Above all, this Court must remember its constitutional mandate, which is to interpret the law and not to create it. We are given the power, during certain instances, to restate the constitutional allocation to the other two branches of government; but this power must be exercised with sufficient respect for the other powers. The Members of this Court are not elected by the people. We are not given the honoured privilege to represent the people in law-making, but are given the sacred duty to defend them by upholding the Constitution. This is the only path the judiciary can tread. We cannot advocate; we adjudicate.

To arrive at an unwarranted conclusion, i.e. that all lump-sum appropriations are invalid, whether in the 2013 GAA only or in all appropriation laws, is not sufficiently sensitive to the process of deliberation that the Members of this Court

[8] *Decision,* pp. 49-50.

undertook to arrive at a significant resolution. More importantly, this inaccurate inference will jeopardize our constitutional limitation to rule only on actual cases ripe for adjudication fully litigated before the Court.

I. COEQUALITY OF THE THREE BRANCHES NECESSITATES JUDICIAL RESTRAINT

In any dispute before this Court, judicial restraint is the general rule.

Since the *ponencia* crafted a ruling on a highly technical matter, it is only fitting that the nuances, implications, and conclusions on our pronouncement be elucidated. My views are guided by the inherent restraint on the judicial office; as unelected judges, we cannot haphazardly set aside the acts of the Filipino people's representatives. This is the import of the requirement for an actual case or controversy to exist before we may exercise judicial review, as aptly noted by the pre-eminent constitutionalist, former Associate Justice Vicente V. Mendoza:

> Insistence on the existence of a case or controversy before the judiciary undertakes a review of legislation gives it the opportunity, denied to the legislature, of seeing the actual operation of the statute as it is applied to actual facts and thus enables it to reach sounder judgment.[9]

In fact, the guiding principle for the Court should not be to "anticipate a question of constitutional law in advance of the necessity of deciding it,"[10] but rather to treat the function of judicial review as a most important and delicate matter; after all, we cannot replace the wisdom of the elected using our own, by adding qualifications under the guise of constitutional "interpretation." While it is true that the Constitution must be interpreted both in its written word and underlying intent, the intent must be reflected in taking the Constitution itself as one cohesive, functional whole.

> A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.[11]

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[9] VICENTE V. MENDOZA, JUDICIAL REVIEW, p. 92 [hereinafter MENDOZA].
[10] Id. at 94, citing *Ashwander v. Tennessee Valley Authority* 297 U.S. 288 (1936).
[11] *Civil Liberties Union v. Executive Secretary*, G.R. Nos. 83896 and 83815, 22 February 1991, 194 SCRA 317, 325.

In other words, alongside deciding what the law is given a particular set of facts, **we must decide "what not to decide."**[12] Justice Mendoza likens our Supreme Court to the U.S. Supreme Court, in that "its teachings…x x x have peculiar importance because it interprets principles of fact and of value, not merely in the abstract, but in their bearing upon the concrete, immediate problems which are at any given moment puzzling and dividing us… For this reason the court holds a unique place in the cultivation of our national intelligence."[13]

Thus, in matters such as the modality to be employed in crafting the national budget, this Court must be sensitive of the extent and the limits of its pronouncements. As Justice Laurel instructively stated, the structure of government provided by the Constitution sets the general metes and bounds of the powers exercised by the different branches; the judiciary cannot traverse areas where the charter does not allow its entry. We cannot interpret the Constitution's silence in order to conform to a perceived preference on how the budget should be run. After all, it is the Constitution, not the Court, which has "blocked out with deft strokes and in bold lines," the allotment of power among the different branches, *viz*:

> (T)his 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 governments of the government.**
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> But much as we might postulate on the internal checks of power provided in our Constitution, it ought not the less to be remembered that, in the language of James Madison, the system itself is not "the chief palladium of constitutional liberty . . . the people who are authors of this blessing must also be its guardians . . . their eyes must be ever ready to mark, their voice to pronounce . . . aggression on the authority of their constitution." In the last and ultimate analysis, then, must the success of our government in the unfolding years to come be tested in the crucible of Filipino minds and hearts than in consultation rooms and court chambers."[14] (Emphasis supplied)

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[12] MENDOZA, citing Paul A. Freund, supra note 9 at 95.
[13] Id., citing Alexander Meiklejohn.
[14] *Angara v. Electoral Commission*, 63 Phil. 139, 156-159 (1936).

Wholesale rejection of lump-sum allocations contrives a rule of constitutional law broader than what is required by the precise facts in the case.

To conclude that a line-item budgeting scheme is a matter of constitutional requirement is to needlessly strain the Constitution's silence on the matter. Foremost among the duties of this Court is, as previously discussed, to proceed based only on what it needs to resolve. Hence, I see no need to create brand new doctrines on budgeting, especially not ones that needlessly restrict the hands of budget-makers according to an apparently indiscriminate condemnation of lump-sum funding. To further create a constitutional obligation of the Executive and Legislative to follow a line-item budgeting procedure, and - more dangerously - give it the strength of a fundamental norm, goes beyond what the petitioners were able to establish, and ascribes a constitutional intent where there is none.

Again, the Court's power of judicial review must be confined only to dispositions which are constitutionally supportable. Aside from the jurisdictional requirements for the exercise thereof, other guidelines are also mandated, i.e., that the question to be answered must be in a form capable of judicial resolution; that as previously discussed, the Court will not anticipate a question in advance of the necessity of deciding it; and, most relevant to the present case, that **the Court "will not formulate a rule of constitutional law broader than is required by the precise facts on which it is to be applied."**[15]

Given a controversy that raises several issues, the tribunal must limit its constitutional construction to the precise facts which have been established. This rule is most applicable "in determining whether one, some or all of the remaining substantial issues should be passed upon."[16] Thus, the Court is not authorized to take cognizance of an issue too far-removed from the other.

The above rule is bolstered by the fact that petitioners have raised other grounds more supportable by the text of the Constitution.

The *lis mota* or the relevant controversy[17] in the present petitions concerns the principles of separation of powers, non-delegability of legislative functions,

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[15] *Demetria v. Alba,* 232 Phil. 222 (1987), citing *Liverpool. N.Y. & P.S.S. Co. v. Emigration Commissioners*, 113 U.S. 33, 39.
[16] Id.
[17] In *Macasiano v. National Housing Authority,* G.R. No. 107921, 1 July 1993, 224 SCRA 236: It is a rule firmly entrenched in our jurisprudence that the constitutionality of an act of the legislature will not be determined by the courts unless that, question is properly raised and presented in appropriate cases and is necessary to a determination of the case, i.e., the issue of constitutionality must be the very *lis mota* presented.

and checks and balances in relation to the PDAF as applied only to Article XLIV of the 2013 General Appropriations Act or R.A. No. 10352.

In the main, the Court gave three reasons to support the conclusion that the PDAF is unconstitutional.

First, the *ponencia* held that post-enactment measures embedded in the PDAF – project identification, fund release, and fund realignment – are not related to legislative duties, and hence, are encroachments on duties that properly belong to the executive function of budget execution.[18]

The *ponencia* laid the demarcation between the three branches of government, and emphasized the relevant doctrine in *Abakada Guro Party List v. Purisima,*[19] namely : "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." Undoubtedly, this holding determines the *lis mota* of the case as it squarely responded to petitioners' claim that the PDAF violated the principle of separation of powers.[20]

Second, the *ponencia* made a finding that these post-enactment measures are effectively exercised by the individual legislators, and not by the Congress as a legislative body.[21]

The *ponencia* struck down the PDAF on the basis of the general principle of non-delegability of rule-making functions lodged in the Congress.[22] It then ruled that the individual participation of the Members of the Congress is an express violation of this principle. Again, this ruling is already determinative of the *lis mota* of the case, as it directly addressed petitioners' principal claim that the PDAF unduly delegates legislative power.[23]

Given that the *lis mota* has been squarely disposed of on these thorough, responsive, and determinative constitutional grounds, it was unnecessary to stretch the discussion to include the propriety of lump-sum appropriations in the budget.

The questions surrounding lump-sum appropriations, in the context of how they arose during the interpellation, are not legal questions. Unlike the first two reasons advanced by the *ponencia* in finding for the unconstitutionality of the PDAF, the invalidity of lump-sum appropriations finds no textual support in the Constitution. By its very words, the Constitution does not prohibit lump-sum appropriations. In fact, the history of legislative appropriations suggests otherwise.

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[18] *Decision,* pp. 40-41.
[19] 584 Phil. 246, 289-290 (2008).
[20] Urgent Petition for Certiorari and Prohibition, pp. 3, 16.
[21] *Decision,* p. 45.
[22] Id. at 46.
[23] Urgent Petition for Certiorari and Prohibition, pp. 4, 16.

As it stands now, the plain text of the Constitution and the Revised Administrative Code renders the modality of budgeting to be a political question.

The Constitution contains provisions that regulate appropriation law, namely: it must originate from the House of Representatives,[24] its items can be vetoed by the President,[25] it is initiated by the Executive,[26] and money can only be paid out of the Treasury by virtue of appropriations provided by law.[27] Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget.[28]

The form, content, and manner of preparation of the budget must be prescribed by law, and no provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein, and such provision or enactment shall be limited in its operation to the appropriation to which it relates.[29] Procedures involving appropriations must be uniform.[30] A special appropriations bill must be specific in purpose and supported or supportable by funds.[31] Only the heads of the branches of government, as well as the constitutional commissions and fiscally independent bodies may be authorized to augment items in appropriations.[32] Discretionary funds are regulated.[33] Appropriations of the previous year are automatically revived if Congress fails to pass a new law.[34] Appropriations for fiscally autonomous agencies are released automatically.[35] Furthermore, in relation to all this, the Constitution gives to the President the duty to faithfully execute the law.[36]

Beneath this framework runs a sea of options, from which the two political branches must carve a working, functioning fiscal system for the State. So long as these basic tenets are maintained, the political branches can ply the route of the way they deem appropriate to achieve the purpose of the government's budget. What are thus clearly set forth are requirements for appropriations, and not the modalities of budgeting which fall squarely under the technical domain of the Executive branch, namely, the Department of Budget and Management (DBM).

When the Constitution gives the political branches a "textually demonstrable constitutional commitment of the issue[,]"[37] or the lack of "judicially discoverable

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[24] 1987 CONSTITUTION, Article VI, Section 24.
[25] Id., Article VI, Section 27 (2).
[26] Id., Article VII, Section 22.
[27] Id., Article VI, Section 29(1).
[28] Id., Article VI, Section 25(1).
[29] Id., Article VI, Section 25(1) & (2).
[30] Id., Article VI, Section 25(3)
[31] Id., Article VI, Section 25(4)
[32] Id., Article VI, Section 25(5)
[33] Id., Article VI, Section 25(6)
[34] Id., Article VI, Section 25(7)
[35] Id., Article X, Section 6; Article IX-A, Section 5; Article XIII, Section 17.
[36] Id., Article VII, Sections 17 & 5.
[37] MENDOZA, supra note 9 at 314.

and manageable standards for resolving it[,]"[38] or even the "impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government[,]"[39] then there is a political question that this Court, in the absence of grave abuse of discretion, cannot conclude.[40]

Apart from the provisions already discussed, there are no constitutional restrictions on how the government should prepare and enact its budget. In fact, these restrictions are mostly procedural and not formal. If the Constitution does not impose a specific mode of budgeting, be it purely line-item budgeting, purely lump-sum budgeting, a mixture of the two, or something else entirely, e.g. zero balance lump-sum, loan repayment schemes, or even performance-informed budgeting, then neither should this Court impose the line-item budgeting formula on the Executive and Legislative branches.

This confusion appears to have stemmed from the highly limited exchanges in the oral arguments between one of the petitioners and the Chairperson of the Commission on Audit (COA), on one hand, and a Member of the Court, on the other. The argument progressed on the basis of the Member's own suggestion that the item-veto power of the President is negated by lump-sum budgeting despite the fact that it was not the very issue identified in the petitions. While it is true that the COA Chairperson opined that line-item is preferred, that statement is an operational standard, not a legal standard. It cannot be used to support a judicial edict that requires Congress to adopt an operational standard preferred, even if suggested by the COA Chairperson.

The Court never asked Congress what its response would be to a wholesale striking down of lump-sum budgeting. It never asked the DBM whether it could submit an expenditure proposal that has nothing but line-item budgets. To reject even very limited forms of lump-sum budgeting without asking whether it can even be operationally done within the very tight timeline of the Constitution for preparing, submitting, and passing into law a national budget is simply plain wrong and most unfair. *It is as if this Court is trying to teach both political branches - who constitute the nation's top 300 elected officials - what they can and cannot do, in a manner that will completely take them by surprise, as lump-sum budgeting was never the* lis mota *in this case.* At the very least, this is not the case for that matter, if eventually this matter were also to be decided.

II. MODALITIES UNDER THE APPROPRIATIONS LAW

Government accounting takes place through concurrent processes. First is the call to all agencies, including fiscally independent ones, such as the Supreme Court. The deadline for this is usually in March or April. Then the proposals are all collated in a comprehensive document, and vetted by the DBM, and submitted to

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[38] Id.
[39] Id.
[40] This has been exhaustively discussed by former Chief Justice, then-Associate Justice Puno, in his concurring opinion in *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618 (2000).

the President for approval. Alongside this, the government makes a schedule of revenues, with all its economic assumptions and growth targets. Next is the budget formulation, which results in a proposed national expenditure program (NEP) also from the Executive.

The duty to formulate the above documents is given by law to the DBM, in coordination with the National Economic Development Authority (NEDA), the Department of Finance (DOF), and all the various agencies of the government.[41] After the NEP is finalized, it is submitted to the House of Representatives' Committee on Appropriations no later than thirty days from the opening of every regular session.[42] Thereupon the Committee crafts a draft General Appropriations Act on the basis of the NEP for the specified fiscal year, which is passed on to the Senate Committee on Finance.[43] The Senate is given the power to propose amendments to the House bill under the 1987 Constitution.[44] Finally, after going through the committees involved, which potentially includes a bicameral conference committee for the national budget, the bill is passed into law through the usual course of legislation.

Once the appropriations law is passed, the day-to-day management of the national budget is left to the DBM and DOF, in accordance with the appropriate rules and regulations. Simultaneously, the COA is tasked to conduct auditing and post-auditing throughout the fiscal year, with a final audit report presented to the President and Congress at the end of such year.[45]

In this whole process, an appropriation can be made and has been made at the lump-sum level. While not initially broken down in the budget formulation aspect of the entire expenditure process, the individual expenditures sourced from these lump-sum appropriations are broken down in journal entries after the fact,[46] during the auditing process of the COA, which has the power to issue notices of disallowance should it find a particular expenditure to have been improper under law and accounting rules.

Consequently, a lump-sum appropriation can still be audited and accounted for properly. This recognizes the fact that lump-sum appropriating is a <u>formal</u> concern of the COA, and all other agencies and instrumentalities of the government that take part in the appropriations process. In fact, the Administrative Code gives formal discretion to the President, in the following manner:

> Section 12. Form and Content of the Budget. – xxx The budget shall be presented to the Congress in such form and content as may be approved by the President and may include the following: xxx[47]

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[41] ADMINISTRATIVE CODE, Executive Order No. 292, Book VI.
[42] 1987 CONSTITUTION, Article VII, Section 22.
[43] SENATE RULES, Rule X, Section 13 (4).
[44] 1987 CONSTITUTION, Article VI, Section 24.
[45] Id., Article IX-D, Section 4.
[46] See Generally Accepted Accounting Principles and International Financial Reporting Standards, adopted through the Philippine Financial Reporting Standards. *See* http://www.picpa.com.ph/Financial-Reporting-Standards-Council/Philippine-Financial-Reporting-Standards/Philippine-Financial-Reporting-Standards.aspx (last accessed 17 November 2013).
[47] ADMINISTRATIVE CODE, Executive Order No. 292, Book VI, Sec. 12.

It thus appears from the perspective of this process, that the Legislature never considered the form of the budget as being constitutionally infirm for containing lump-sums, an attitude engendered from the birth of the 1987 Constitution, that has lasted up until this case was argued before this Court. It is perplexing to see any eager discussion at this opportunity to make pre-emptive declarations on the invalidity of the lump-sum budgeting form, when no party has raised the issue in the principal petitions.

Lump-sum appropriations are not textually prohibited by the Constitution.

The purported basis for this preference for line-item is that the item-veto power of the President is negated by the existence of lump-sum appropriations. This implication, however, oversimplifies the concept of the item-veto, as understood in the wording of the Constitution as well as jurisprudence.

In the first place, all cases in which this Court ruled on the item-veto power were generated by an actual controversy. In stark contrast, the veto power has *never* been raised as an issue in this case until raised as a possible issue in the oral arguments. Neither the President (who should be invoking a direct injury if the power were allegedly denied him) nor Congress (whose product would then be tampered with by a presidential veto) is complaining. It behooves this Court to step back and not needlessly create a controversy over the item-veto power when there is none.

The item veto-power of the Governor-General in past appropriation laws originating from the United States was given to the President, Prime Minister, and President respectively in the 1935, 1973, and 1987 Constitutions.[48] The most recent incarnation is stated thusly:

> 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.[49]

It is noteworthy that the veto refers to "any particular item or items" and not "line-items" or "earmarked appropriations." In *Gonzales v. Macaraig*,[50] we declared that the term "item" in the Constitution referred to a specific appropriation of money, dedicated to a stated purpose, and not a general provision of law:

> The terms item and provision in budgetary legislation and practice are concededly different. **An item in a bill refers to the particulars, the details,**

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[48] 1935 CONSTITUTION, Article VI, Section 20(3); 1973 CONSTITUTION, Article VIII, Section 20(2); 1987 CONSTITUTION, Article VI, Section 27(2).
[49] 1987 CONSTITUTION, Article VI, Section 27(2).
[50] G.R. No. 87636, 19 November 1990, 191 SCRA 452.

> **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." (Citations omitted, emphasis supplied).[51]

The Constitution's "item" is, therefore, an allocation of money for a stated purpose, as opposed to a general provision in the appropriations law that does not deal with the appropriation of money, or in the words of *Gonzales,* "inappropriate provisions." Thus, a lump-sum appropriation is an item for purposes of the Presidential veto, considering the fact that it is an appropriation of money for a stated purpose. The constitutional provision does nothing to prohibit the appropriation apart from that. As will be discussed, this is the crucial point, because a lump-sum item as defined does not, as it stands, appear to violate the requirement of stated purpose and specificity.

This Court has, in fact, already ruled on the status of lump-sum appropriation. The vetoed item that was the subject of dispute in *Bengzon v. Drilon*[52] was a lump-sum appropriation for the "general fund adjustment," and that it was "**an item** which appropriates P500,000,000.00 to enable the Government to meet certain unavoidable obligations which may have been inadequately funded by the specific items for the different branches, departments, bureaus, agencies, and offices of the government."[53] Since the Court itself in *Bengzon* had defined lump-sum provisions to be constitutional "items," then the item-veto power of the President against lump-sum funds remains intact.

It has been stated that the President's item-veto power is hampered when the "pork barrel" is lumped together with beneficial programs, which thus destroys the check and balance between the Executive and Legislative. This view seems to confuse the actual definition of lump-sum items (as discussed *infra*, items with more than one object) with line-items (singular object). Lump-sum items are not items without a specific purpose. Their stated purpose simply allows the funds to be used on multiple objects. "Specific" should not be equated with "singular." The former is an aspect of quality, the latter quantity.[54] Singularity and multiplicity qualify the word "object" and not purpose, which are wholly different since a purpose can refer to several objects, e.g., the use of the plural "projects" instead of "project."

In fact, the law journal article cited in the Separate Opinion of Justice Carpio, which was cited to define the "pork barrel" as an "appropriation yielding rich patronage benefits," *itself* acknowledges the validity of lump-sum budgeting, citing the United States' own budgeting practice. It goes even further to highlight the disadvantages inherent in adopting a purely line-item budget, *viz.:*

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[51] Id. at 465.
[52] G.R. No. 103524, April 15, 1992, 208 SCRA 133.
[53] Id. at 144.
[54] Specific means "special or particular." Accessible at http://www.merriam-webster.com/dictionary/specific (last accessed 18 November 2013); Singular means "showing or indicating no more than one thing." Accessible at http://www.merriam-webster.com/dictionary/singular (last accessed 18 November 2013).

> Congress has traditionally budgeted appropriations so that each encompasses several projects or activities. Such lump-sum budgeting allows the President and administrative agencies to determine how funds within and sometimes between budget accounts should be spent. Were Congress instead to appropriate narrowly by line-item the President would, in the absence of an item veto, lose much of the discretion and flexibility he modernly enjoys at the appropriation stage.
>
> **Lump-sum budgeting allows the President not only to selectively allocate lump sums, but also to transfer funds between budget accounts when necessary to save programs that might otherwise perish because Congress appropriated too little or was unable to anticipate unforeseen developments. More significantly for purposes of comparison with a line-item veto, lump-sum budgeting also authorizes the President to shift funds within a single appropriation account by reprogramming. Unlike a transfer of funds, which typically requires either statutory support or a national emergency, reprogramming is subject to mostly non-statutory controls "to be discovered in committee reports, committee hearings, agency directives, correspondence between subcommittee chairmen and agency officials, and also gentlemen's agreements and understandings that are not part of the public record."** The justification for reprogramming is congressional recognition "that in most instances it is desirable to maintain executive flexibility to shift around funds within a particular lump-sum appropriation account so that agencies can make necessary adjustments for 'unforeseen developments, changing requirements... and legislation enacted subsequent to appropriation.'"[55] (Emphasis supplied, citations omitted.)

To restate, *Gonzales* outlined the following legal requirements for valid appropriations on budget items:

First, that an item is "an indivisible sum of money dedicated to a **stated purpose**."[56]

Second, that an item is in itself is a "**specific appropriation** of money, not some general provision of law."[57]

There is therefore no condition that the purpose be singular.[58] As will be demonstrated, the difference between a lump-sum and line-item is just the number of objects a lump-fund may have. After all, even if the purpose has multiple objects, it is still a stated purpose.

The use of the COA Memorandum[59] to buttress the argument that the Constitution requires line-item budgeting is misleading. Again, even if the COA Chairperson prefers line-item budgeting, such preference is not equivalent to a legal standard sufficient for this Court to strike down all forms of lump-sum budgeting.

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[55] DENISE C. TWOMEY, *The Constitutionality of a Line-Item Veto: A Comparison with Other Exercises of Executive Discretion Not to Spend,* 34 GOLDEN GATE U.L. REV. 305, 338 (1989).
[56] Supra note 52 at 144.
[57] Supra note 52 at 143-144.
[58] *Decision*, p. 48.
[59] COA Memorandum, dated 17 October 2013, pp. 22-23 & 25-26.

At this point, there appears to be an attempted transformation of policy recommendations into legal imperatives. No matter how desirable these recommendations on adopting a purely line-item budget may sound – and they may turn out to be the best alternative – we cannot equate seeming consensus on good and desirable policy, with what the law states. The choice of policy is not ours to make, no matter how intelligent or practical we deem ourselves to be.

In any case, prevailing jurisprudence allows for the conclusion that the item-veto power of the President cannot be impaired.

The Court in *Gonzales*[60] described the three modes of veto available to the President. The first is the veto of an entire bill under Article VI, Section 27(1). The second is the item-veto in an appropriation, revenue, or tariff bill. The third is an iteration of the second, which is the veto of provisions as previously defined by the 1935 Constitution. With respect to the second mode of veto, *Gonzales* extends the application of the item veto power to "inappropriate provisions," as we stated:

> Consequently, Section 55 (FY '89) and Section 16 (FY '90) although labelled as "provisions," are actually inappropriate provisions that **should be treated as items for the purpose of the President's veto power**.[61] (Emphasis supplied, citations omitted)

Thus, even if we were to assume that a lump-sum appropriation is not an "item" as defined by *Gonzales,* as previously expounded, for purposes of the Presidential veto, it is still an item, and the item-veto power appears to remain unimpaired by virtue of jurisprudential precedent.

To summarize, whether the appropriation is a line-item, as claimed by petitioners, or a lump-sum appropriation item, as proposed in an Opinion*,* or even a general provision of law that is unrelated to the appropriation law, the power of the President to exercise item-veto is intact. Whichever interpretation we accept as to the nature of lump-sum appropriations - though as I have shown, they are properly appropriation "items" – is irrelevant.

As will be discussed *infra,* an analysis of the nature of a lump-sum appropriation can clear the apparent misunderstanding on lump-sums.

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[60] Supra note 52.
[61] Supra note 52 at 467.

History of Appropriations and the Federal Legacy

Historically, the constitutional provisions on appropriations were adopted from the United States' Jones Law of 1916,[62] which governed the Philippines until its transition into a Commonwealth and, later on, a fully independent state. Section 3(m) of the law provides:

> (m) *How public funds to be spent.*—That no money shall be paid out of the treasury except in pursuance of an appropriation by law.

Section 19(b) expressed what is now coined the "item-veto" power of the President, in this manner:

> (b) *The veto on appropriations.*—The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the Legislature without his approval.

In fact, the present mechanism that retains the previous year's appropriation law in case the Legislature fails to pass a new one was also based on the Jones Law, *viz*:

> (d) *Revisal of former appropriations.*—If at the termination of any fiscal year the appropriations necessary for the support of Government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the Legislature shall act in such behalf the treasurer shall, when so directed by the Governor-General, make the payments necessary for the purposes aforesaid.

Even the NEP's procedure was conceptualized long before the 1987 Constitution was drafted:

> [The Governor-General] shall submit within ten days of the opening of each regular session of the Philippine Legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill.[63]

Clearly then, our current constitutional provisions on appropriations were derived from the United States' own concept of federal appropriations. In adopting their budgetary methodology, we have also adopted the basic principles that govern how these appropriations are to be treated.

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[62] AN ACT TO DECLARE THE PURPOSE OF THE PEOPLE OF THE UNITED STATES AS TO THE FUTURE POLITICAL STATUS OF THE PEOPLE OF THE PHILIPPINE ISLANDS, AND TO PROVIDE A MORE AUTONOMOUS GOVERNMENT FOR THOSE ISLANDS, Public Act No. 240, 29 August 1916 [hereinafter Jones Law]

[63] Jones Law, Section 21(b).

Principles of Federal Appropriations

The Red Book[64] on federal appropriations distinguishes a "lump-sum" appropriation from an earmark, or "line-item" appropriation. It defines a lump-sum appropriation as "one that is made to cover a number of **specific programs, projects, or items**[,]"[65] which may be as few as only two programs. In the language of appropriation law, the essence of a lump-sum appropriation is that it is available for more than one object,[66] which refers to what the money allocated can be used for.

A line-item appropriation, on the other hand, is only for a single specific object described by the law.[67] This distinction is very precise. It is the singularity of the object for which the allocation is made that makes an appropriation "line-item," and its plurality is what makes it "lump-sum."

Taking the requirements of stated purpose and specificity of amount and applying them to this definition of lump-sum, we can easily conclude that a lump-sum falls within the parameters of *Gonzales*. Its purpose, although referring to more than one object, is stated by the text of the appropriation law. The amount of the appropriation is a specific amount.

The key factor that makes lump-sum appropriations desirable for the United States Legislature is the flexibility[68] in the use of the appropriation. As Justice Souter stated in *Lincoln v. Vigil*, a lump-sum appropriation's purpose is to give the agency discretion, and allow it to remain flexible in meeting whatever contingencies arise:

> The allocation of funds from a lump-sum appropriation is another administrative decision traditionally regarded as committed to agency discretion. **After all, the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way.**[69] (Emphasis supplied)

The use of lump-sum appropriations inherently springs from the reality that the government cannot completely predict at the beginning of a fiscal year where funds will be needed in certain instances. Since Congress is the source of the appropriation law in accordance with the principle of separation of powers, it can craft the law in such a way as to give the Executive enough fiscal tools to meet the exigencies of the year. Lump-sum appropriations are one such tool. After all, the different agencies of government are in the best position to determine where the allocated money might best be spent for their needs:

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[64] PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, Vol. I, II, & III. GAO-04-261SP (2004); GAO-06-382SP (2006); GAO-08-978SP (2008)
[65] GAO-06-382SP Appropriations Law - Vol. II, pp. 6-5.
[66] Id.
[67] Id.
[68] *Conference of Maritime Manning Agencies v. POEA,* 313 Phil. 592 (1995).
[69] *Lincoln v. Vigil*, 508 U.S. 182 (1993).

> [A]n agency's allocation of funds from a lump-sum appropriation requires "a complicated balancing of a number of factors which are peculiarly within its expertise": whether its "resources are best spent" on one program or another; whether it "is likely to succeed" in fulfilling its statutory mandate; whether a particular program "best fits the agency's overall policies"; and, "indeed, whether the agency has enough resources" to fund a program "at all."[70]

Thus, the importance of allowing lump-sum appropriations for budgetary flexibility and good governance has been validated in other jurisdictions. The evolution of the government's budgeting from a small amount in past decades, into what is now a massive undertaking that contains complexities, and involves an exponentially larger sum than before, suggests that a mixture of lump-sum and line-item budgeting within the same appropriation law could also be a feasible form of budgeting. At the very least, this Court owes it to Congress to ask it the question directly, on whether an exclusively line-item budgeting system is indeed feasible. Simply put, there appears, even in the United States, a necessity for the inclusion of lump-sum appropriations in the budget:

> Congress has been making appropriations since the beginning of the Republic. In earlier times when the federal government was much smaller and federal programs were (or at least seemed) much simpler, very specific line-item appropriations were more common. In recent decades, however, as the federal budget has grown in both size and complexity, **a lump-sum approach has become a virtual necessity**.[71] (Emphasis supplied)

The Legislative Branch foresaw that these types of appropriations had to be regulated by law, since "a fundamental principle of appropriations law is that where Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions."[72] Without statutory regulation, an untrammelled system of lump-sum appropriations would breed corruption, or at the very least, make the Executive less circumspect in preparing and proposing the budget to the Legislature. Hence, Congress promulgated the Administrative Code of 1987,[73] which regulates, in its provisions on budgeting, lump-sum funds:

> **Section 35.** *Special Budgets for Lump Sum Appropriations.* - Expenditures from lump-sum appropriations authorized for any purpose or for any department, office or agency in any annual General Appropriations Act or other Act and from any fund of the National Government, shall be made in accordance with a special budget to be approved by the President, which shall include but shall not be limited to the number of each kind of position, the designations, and the annual salary proposed for which an appropriation is intended. This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for certain specific purposes, aids and donations for carrying out certain activities, or deposits made to cover the cost of special services to be rendered to private parties. Unless otherwise expressly provided by law, when any Board, head of department, chief of bureau

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[70] Id.
[71] GAO-06-382SP Appropriations Law - Vol. II, p. 6-5.
[72] *Lincoln v. Vigil*, 508 U.S. 182 (1993), citing *LTV Aerospace Corp.,* 55 Comp.Gen. 307, 319 (1975).
[73] EXECUTIVE ORDER NO. 292, "Administrative Code of 1987," 25 July 1987.

> or office, or any other official, is authorized to appropriate, allot, distribute or spend any lump-sum appropriation or special, bond, trust, and other funds, such authority shall be subject to the provisions of this section.
>
> In case of any lump-sum appropriation for salaries and wages of temporary and emergency laborers and employees, including contractual personnel, provided in any General Appropriation Act or other Acts, the expenditure of such appropriation shall be limited to the employment of persons paid by the month, by the day, or by the hour.
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> x xx
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> **Section 47.** *Administration of Lump Sum Funds.* - The Department of Budget shall administer the Lump-Sum Funds appropriated in the General Appropriations Act, except as otherwise specified therein, including the issuance of Treasury Warrants covering payments to implementing agencies or other creditors, as may be authorized by the President.[74]

Additionally, the Administrative Code provides that certain items may be lump-sum funds, such as the budget for coordinating bodies,[75] the budget for the pool of Foreign Service officers,[76] and merit increases.[77]

As a result, this Court should not read from the text of the Constitution and the law, a mandate to craft the national budget in a purely line-item format. To do so would be equivalent to judicial legislation, because the Court would read into the law an additional requirement that is not supported by its text or spirit of the law, in accordance with its own perceived notion of how a government budget should be formulated. If we rule out lump-sum budgeting, what happens then to the various provisions of the law, principally the Administrative Code, that govern lump-sum funds? Is there such a thing as a collateral constitutional attack? Too many questionable effects will result from a sledgehammer denunciation of lump-sum appropriations. This Court does not even know how many lump-sum appropriation laws will be affected by such a ruling. Thus, it is important to emphasize that the *fallo* only afflicts the 2013 GAA, Article XIV.

Practical consequences of the unwarranted conclusions on lump-sums in the Separate Opinion

The baseless conclusion that the lump-sum characteristic, taken alone, results in the unconstitutionality of the law that carries it, can create additional dangers as illustrated below.

Closer to today's events, the Executive would have immediately been prevented from using the lump-sum funds such as Calamity Funds – which under

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[74] Id., Book VI, Chapter 5.
[75] Id., Book VI, Sec. 18.
[76] Id., Book IV. Sec. 56.
[77] Id., Book VI. Sec. 61.

the Federal Appropriations Law is a 'lump-sum' – to alleviate the State of National Calamity[78] brought about by super typhoon Yolanda. With the intensity of a signal number four storm, the first one in 22 years[79] and considered the biggest super typhoon in world history,[80] Yolanda is one such unforeseen event for which lump-sum funds are intended. In other words, lump-sum appropriations are currently the form of preparation Congress saw fit to address these disasters. This is the point recognized precisely in the law journal article cited by Justice Carpio: there is congressional recognition that lump-sum appropriation allows the President and administrative agencies the executive flexibility to make necessary adjustments for "unforeseen developments, changing requirements . . . and legislation enacted subsequent to appropriations."[81] If the problem is a lack of a definition, or a confusion pertaining to the same, then let the Court define it when the definition itself becomes the legal issue before us.

In addition, the Executive and its line agencies would be deprived of the ability to make use of *additional* sources of funds. Suppose that a source of revenue was anticipated by government, the exact amount of which could not be determined during the budget preparation stage. Suppose also that Congress agreed upon items which had to be implemented once the funding materializes, and that this funding could support more than one budget item, as is usually the case with major financing arrangements negotiated with the World Bank, the Asian Development Bank and other development partners. Can Congress be prevented from deciding to include in the appropriations law a provision for these items, to be funded by the said additional sources? Should the Court thereby deprive the Legislature of its discretion to bestow leeway upon the Executive branch, so that it may effectively utilize the funds realized only later on? Congress, in this case, cannot be reasonably expected to predetermine all sources of revenue, and neither can it pinpoint the items to be prioritized with a rigid specificity, since it is only within the budget execution stage that the financing materialized.

It is also respectfully suggested that any discussion on "savings" and the power to augment under the Constitution is not an issue in this case and that said discussion might in fact demonstrate the unwarranted potential of over-extending this Court's reach into matters that are not *lis mota*. My misgivings on discussing "savings," which is the main issue of a pending matter before us involving the Disbursement Allocation Program (DAP),[82] impels me to caution the Court: a narrow approach to the PDAF better serves the interest of the rule of law. Any reformulation or redefinition of the powers under Article VI, Section 25(5) of the Constitution, i.e. transfer and augmentation of appropriations, is improper in this case, and better ventilated before us in the course of resolving DAP petitions.

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[78] Proclamation No. 682, Declaring a State of National Calamity, 11 November 2013.
[79] http://www.rappler.com/newsbreak/iq/43058-storm-signal-number-ph-history (Last accessed 18 November 2013)
[80] http://edition.cnn.com/2013/11/08/world/asia/philippines-typhoon-destruction/ (Last accessed 18 November 2013)
[81] Supra note 55 at 338-339.
[82] *Syjuco, et al. v. Secretary Abad, et al.,* G.R. Nos. 209135-36.

In light of the above, I cast my vote to **CONCUR** in the *ponencia*, but with a strong emphasis that this Court has not thereby made an invalidation of any lump-sum appropriation except in the form that was described in the *fallo*.

MARIA LOURDES P. A. SERENO
Chief Justice