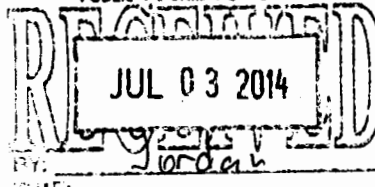


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G.R. No. 209287 - MARIA CAROLINA P. ARAULLO, ET AL., Petitioners, v. BENIGNO SIMEON C. AQUINO III, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, ET AL., Respondents; G.R. No. 209135 - AUGUSTO L. SYJUCO, JR., Ph.D., Petitioner, v. FLORENCIO B. ABAD, IN HIS CAPACITY AS THE SECRETARY OF DEPARTMENT OF BUDGET AND MANAGEMENT, ET AL., Respondents; G.R. No. 209136 - MANUELITO R. LUNA, Petitioner, v. SECRETARY FLORENCIO ABAD, IN HIS OFFICIAL CAPACITY AS HEAD OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, ET AL., Respondents; G.R. No. 209155 - ATTY. JOSE MALVAR VILLEGAS, JR., Petitioner, v. THE HONORABLE EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., ET AL., Respondents; G.R. No. 209164 - PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), REPRESENTED BY DEAN FROILAN M. BACUNGAN, ET AL., Petitioners, v. DEPARTMENT OF BUDGET AND MANAGEMENT AND/OR HON. FLORENCIO B. ABAD, Respondents; G.R. No. 209260 - INTEGRATED BAR OF THE PHILIPPINES (IBP), Petitioner, v. SECRETARY FLORENCIO B. ABAD OF THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM), Respondent; G.R. No. 209442 - GRECO ANTONIOUS BEDA B. BELGICA, ET AL., Petitioners, v. PRESIDENT BENIGNO SIMEON C. AQUINO III, THE SENATE OF THE PHILIPPINES, ET AL., Respondents; G.R. No. 209517 - CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), ET AL., Petitioners, v. BENIGNO SIMEON C. AQUINO III, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, ET AL., Respondents; G.R. No. 209569 - VOLUNTEERS AGAINST CRIME AND CORRUPTION (VACC), REPRESENTED BY DANTE LA. JIMENEZ, Petitioner, v. PAQUITO N. OCHOA, EXECUTIVE SECRETARY, ET AL., Respondents.

Promulgated:

July 1, 2014

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur in the *ponencia*'s result, but find it necessary to clarify certain points surrounding the concepts of appropriation, realignment, and augmentation in relation to the Disbursement Acceleration* Program (DAP).

* As corrected.

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This Opinion essentially stems from perceived misconceptions in the usage of the term “augmentation.” The actions and/or practices taken under the DAP should not entirely be taken as augmentations. This is because the “withdrawal of allotments” and “pooling of funds” by the Executive Department for realignment (in case of suspension under Section 38 *infra*) and/or simple utilization for projects without sufficient funding due to fiscal deficits (in case of stoppage under Section 38 *infra*) is not “augmentation” in the constitutional sense of the word. The concept of augmentation pertains to the delegated legislative authority, conferred **by law** (as Section 25[5], Article VI of the 1987 Philippine Constitution [Constitution] cited below reads), to the various heads of government to **transfer appropriations** within their respective offices:

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

The term “appropriation” merely relates to the authority given by legislature to proper officers to apply a distinctly specified sum from a designated fund out of the treasury in a given year for a specific object or demand against the State. In other words, it is “**nothing more than the legislative authorization prescribed by the Constitution that money be paid out of the Treasury.**”¹ Borne from this core premise that an appropriation is essentially a legislative concept, the process of a “transfer of appropriations” should then be understood to pertain to **changes in the legislative parameters** found in selected items of appropriations, whereby the statutory value of one increases, and another decreases.

To expound, it is first essential to remember that an appropriation is basically made up of two (2) legislative parameters, namely: (a) the amount to be spent (or, in other words, the statutory value); and (b) the purpose for which the amount is to be spent (or, in other words, the statutory purpose). The word “augmentation,” in common parlance, means “[t]he action or process of making or becoming greater in size or amount.”² Accordingly, by the import of this word “augmentation,” the process under Section 25(5) *supra* would then connote changes in the selected appropriation items’ statutory values, and not of its statutory purposes. As earlier stated, augmentation would lead to the increase of the statutory value of one appropriation item, and a decrease in another.

¹ *Gonzalez v. Raquiza*, G.R. No. 29627, December 19, 1989, 180 SCRA 254, 260. See also *Ponencia*, pp. 48-49.

² <<http://www.oxforddictionaries.com/definition/english/augmentation>> (last visited June 11, 2014).

How does the increase and decrease of statutory values work in the process of augmentation?

The query brings us to the concept of savings.

The incremental value coming from one appropriation item to effectively and actually increase the statutory value of another appropriation item is what Section 25(5) *supra* refers to as “savings.” The General Appropriations Acts (GAA)³ define savings as those “portions or balances of any programmed appropriation x x x **free from any obligation or encumbrance** x x x.” A programmed appropriation item produces “portions or balances” “free from any obligation and encumbrance” when the said item becomes defunct, thereby “freeing-up” either totally or partially the funds initially allotted thereto. Because an appropriation item is passed at the beginning of the year, the reality and effect of supervening events hardly figure into the initial budget picture. According to the GAAs,⁴ the following supervening events would render an appropriation item defunct: (a) completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized (this may happen, when, take for instance, a project, activity or program [PAP] is determined to be illegal or involves irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties); (b) regarding employee compensation, vacancy of positions and leaves of absence without pay; and (c) implementation of measures resulting in improved systems and efficiencies, thus enabling agencies to meet and deliver required or planned targets, programs, and services. When any of these events happen, an appropriation item – meaning, the statutory license to spend – becomes defunct and the funds allotted therefor become idle. Envisioning this predicament, the Constitution allows augmentation as a form of re-appropriation so that the various heads of government may, **by law**, work with existing but defunct items of appropriation and practically utilize the funds allotted therefor as “savings” in order to augment another appropriation item which has been established to be deficient – meaning, the statutory license to spend is not enough to carry out or achieve the purposes of the PAP to be implemented or under implementation. The requirement that an item be deficient for it to be augmented may be gleaned from the GAA’s definition of augmentation which “**implies** the existence x x x of program, activity or project with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be **deficient**.”⁵

³ See General Provisions of 2011 GAA, Section 60; 2012 GAA, Section 54; and 2013 GAA, Section 53.

⁴ See *id.*

⁵ See *id.*

As earlier stated, the term “appropriation” properly refers to the statutory authority to spend. Although practically related, said term is conceptually different from the term “funds” which refers to the tangible public money that are allotted, disbursed, and spent. Appropriation is the province of Congress. The President, in full control of the executive arm of government, in turn, implements the legislative command in the form of appropriation items pursuant to his constitutional mandate to faithfully execute the laws.⁶ The Executive Department controls all phases of budget execution;⁷ it acts according to and carries out the directive of Congress. Hence, the constitutional mandate that “[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”⁸ It is hornbook principle that when the appropriation law is passed, the role and participation of Congress, except for the function of legislative oversight, ends, and the Executive’s begins.⁹ Based on the foregoing, it is then clear that it is the Executive’s job to deal with the actual allotment and disbursement of public funds, whereas Congress’ job is to pass the statutory license sanctioning the Executive’s courses of action.

When the Executive Department exercises its power of fiscal management through, for instance, withdrawing unobligated allotments and pooling them under Sections 38 and 39, Chapter 5, Book VI of the Administrative Code of 1987¹⁰ (Administrative Code), which respectively state that:

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

SECTION 39. Authority to Use Savings in Appropriations to Cover Deficits.—Except as otherwise provided in the General Appropriations Act, any **savings** in the regular appropriations authorized in the General Appropriations Act for programs and projects of any department, office or agency, may, with the approval of the President, be used to **cover a deficit** in any other item of the regular appropriations: Provided, that the creation of new positions or increase of salaries shall not be allowed to be funded from budgetary savings except when specifically authorized by law:

⁶ See CONSTITUTION, Art. VII, Sec. 17.

⁷ “3. *Budget Execution*. Tasked on the Executive, the third phase of the budget process covers the various *operational* aspects of budgeting. The establishment of obligation authority ceilings, the evaluation of work and financial plans for individual activities, the continuing review of government fiscal position, the regulation of funds releases, the implementation of cash payment schedules, and other related activities comprise this phase of the budget cycle.” (*Guingona, Jr. v. Carague*, 273 Phil. 443, 461 [1991].)

⁸ CONSTITUTION, Art. VI, Sec. 29(1).

⁹ See *Belgica v. Executive Secretary*, G.R. No. 208566, G.R. No. 208493, and G.R. No. 209251, November 19, 2013.

¹⁰ Executive Order No. 292 (dated July 25, 1987).

Provided, further, that whenever authorized positions are transferred from one program or project to another within the same department, office or agency, the corresponding amounts appropriated for personal services are also deemed transferred, without, however increasing the total outlay for personal services of the department, office or agency concerned. (Emphases supplied)

the President acts within his sphere of authority for he is merely managing the execution of the budget taking into account existing fiscal deficits as well as the circumstances that occur during actual PAP implementation (the matter of fiscal deficits and implementation circumstances will be expounded on in the succeeding discussion). However, he must always observe and comply with existing constitutional and statutory limitations when doing so – that is, his directives in such respect should not authorize or allow expenditures for an un-appropriated purpose nor sanction overspending or the modification of the purpose of the appropriation item, or even the suspension or stoppage of any expenditure without satisfying the public interest requirement, else he would be substituting his will over that of Congress and thereby violate the separation of powers principle, not to mention, act against his mandate to faithfully execute the laws.

An appropriation item's statutory value is a threshold limit to spend. Meaning, the Executive can allot, disburse, and/or spend x amount of money for x project for as long as the allotment, disbursement or expenditure is within the value limit and only for the project provided in the appropriation item. When the Executive implements an appropriation item, it is not always the case that it automatically and completely allots, disburses, and spends the specified amount of public funds to the full extent of that statutory limit. There are two reasons for this: first, the usual existence of fiscal deficits; and, second, the present circumstances surrounding the implementation of the PAP for which the appropriation item authorizes the Executive's allotment, disbursement, and expenditure of public funds. Fiscal deficits connote that not all appropriation items are automatically matched with corresponding available funding. The circumstances of implementation determine whether actual allotments, disbursements, and expenditures would be needed to be made either immediately or at a later time (in case of suspension), or not at all (in case of stoppage). Being part of budget execution, the President, after the GAA is passed, deals with these two realities by exercising his discretion of fiscal management which must always be consistent with his constitutional mandate to faithfully execute the laws. In the execution of the budget, he is guided by Section 3, Chapter 2, Book VI of the Administrative Code which states:

SECTION 3. Declaration of Policy.—It is hereby declared the policy of the State to formulate and implement a National Budget that is an instrument of national development, reflective of national objectives, strategies and plans. The budget shall be supportive of and consistent with the socio-economic development plan and shall be oriented towards the achievement of explicit objectives and expected results, to ensure that

funds are utilized and operations are conducted effectively, economically and efficiently. The national budget shall be formulated within the context of a regionalized government structure and of the totality of revenues and other receipts, expenditures and borrowings of all levels of government and of government-owned or controlled corporations. The budget shall likewise be prepared within the context of the national long-term plan and of a long-term budget program.

When conducting fiscal management through suspending and realigning expenditures under Section 38 *supra*, the President is not technically “augmenting” according to Section 25(5) *supra* since he is not changing the legislative parameters of the appropriation items (through decreasing and increasing their statutory values). This is because, despite the suspension of expenditures and their realignment (which are matters that connote temporariness), the legislative parameters of the appropriation items still remain the same; hence, no savings are generated nor are savings needed. On the contrary, when he permanently stops expenditures under Section 38 *supra* in the interest of the public, he, in relation to the first GAA parameter on completion, final discontinuance and abandonment, generates savings. The permanent stoppage of expenditures may then be treated as a precursor act for either: (a) augmentation, when the statutory value of the target appropriation item resultantly increases (in this case, savings are used under Section 39 *supra* in relation to Section 25[5] *supra* to address a deficiency in the appropriation item itself, and not only the funds allocated therefor) ; or (b) for simple utilization, when the statutory value of the target appropriation item is not increased and the PAP covered by the said item only needs sufficient funding (in this case, savings are used under Section 39 *supra* only to address a fiscal deficit – that is, the actual funds allocated for the item to be implemented or under implementation were initially inadequate, which is why the funds allocated to the defunct item [now, as savings] would be utilized for the former). Notably, the budget deliberations prior to the GAA’s passage only account for projected revenues, and, hence, do not reflect the government’s actual financial position throughout the course of the year. This is why **when the public interest so requires** – taking cue, for instance, from the realities of fiscal deficits and implementation circumstances – the President, under the authority of Section 38 *supra*, is given the power to suspend/stop expenditures which, to stress a previous crucial point, **must always be exercised consistent with his constitutional mandate to faithfully execute the laws**. Any arbitrary or capricious exercise of the same will effectively negate Congress’ power of control over the purse and, hence, can never be warranted.

When the President approves the wholesale withdrawal of unobligated allotments by invoking the **blanket authority** of Section 38 *supra* vis-à-vis the **general** policy impetus to ramp up government spending, without any discernible explanation behind a **particular** PAP expenditure’s suspension or stoppage, or any clarification as to whether the funds withdrawn then pooled would be used either for realignment or only to cover a fiscal deficit,

or for augmentation (in this latter case, necessitating therefor the determination of whether said funds are savings or not), a constitutional conundrum arises. What results is a pooling of funds, from which a multitude of executive options is opened. Under its broad context and the government's presentment thereof, the observation I make is that the DAP actually constitutes an amalgam of executive actions and/or practices whereby augmentations may be undertaken, and/or funds realigned or utilized to address fiscal deficits. Thus, with this in mind, I concur with the *ponencia*'s limited conclusion that the withdrawal of unobligated allotments not considered as savings for the purposes of augmentation, or, despite the funds being considered as savings, the augmentation of items cross-border or the funding of PAPs without an existing appropriation cover are unconstitutional acts and/or practices taken under the DAP. I also maintain a similar position with respect to the *ponencia*'s pronouncement on the Unprogrammed Fund considering the absence of any proof that the general or exceptive conditions¹¹ for its use had been duly complied with. Ultimately, notwithstanding any confusion as to the DAP's actual workings or the laudable intentions behind the same, the one guiding principle to which the Executive should be respectfully minded is that no policy or program of government can be adopted as an avenue to wrest control of the power of the purse from Congress, for to do so would amount to a violation of the provisions on appropriation and augmentation as well as an aberration of the faithful execution clause engraved and enshrined in our Constitution.

ACCORDINGLY, I concur with the *ponencia* that the following acts and/or practices taken under the Disbursement Acceleration** Program, implemented through National Budget Circular No. 541 and other related executive issuances, are **UNCONSTITUTIONAL**:

¹¹ Special Provisions, Item 1 of 2011 GAA and 2012 GAA respectively state:


1. Release of Fund. The amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution, including savings generated from programmed appropriations for the year: PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds: PROVIDED, FURTHERMORE, That if there are savings generated from the programmed appropriations for the first two quarters of the year, the DBM may, subject to the approval of the President, release the pertinent appropriations under the Unprogrammed Fund corresponding to only fifty percent (50%) of the said savings net of revenue shortfall: PROVIDED FINALLY, That the release of the balance of the total savings from programmed appropriations for the year shall be subject to fiscal programming and approval of the president.

1. Release of Fund. The amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution, including savings generated from programmed appropriations for the year: PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds.

** As corrected.

(a) the withdrawal of unobligated allotments from the implementing agencies not considered as savings for the purposes of augmentation, the transfer of the savings of the Executive to augment appropriations of other offices outside the Executive, and the augmentation of items without any existing appropriation covers to the extent that said acts and/or practices violated Section 25(5) of the 1987 Philippine Constitution; and

(b) the use of the Unprogrammed Fund despite the absence of any proof that the general condition for its use under the relevant GAAs, *i.e.*, revenue collections were in excess of the original revenue targets, was complied with, and without any justification that the exceptive conditions for such use did concur.


ESTELA M. PERLAS-BERNABE
Associate Justice