Constitutional Law Review

Case Digest

UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

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3. Movie and Television Review and Classification Board (MTRCB) v. ABS-CBN Broadcasting Corporation, 448 SCRA 575 (2005)
4. Packingham v. North Carolina, 582 U.S. ___ (No. 15-1194, 19 June 2017)
5. Osmeña v. Commission on Elections, 288 SCRA 447 (1998)
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7. Social Weather Stations, Inc. v. Commission on Elections, 755 SCRA 124 (2015)
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9. Diocese of Bacolod v. Commission on Elections, 747 SCRA 1 (2015)
10. 1-United Transport Koalisyon (1-Utak) v. Commission on Elections, 755 SCRA 441 (2015)
11. Reno v. American Civil Liberties Union, 521 U. S. 844 (1997)
12. Social Weather Stations, Inc. v. Asuncion, 228 SCRA xi (1993)
13. Re: Letter of the UP Law Faculty Entitled "Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court," 644 SCRA 543 (2011)
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15. Pharmaceutical and Health Care Association of the Philippines v. Duque III, 535 SCRA 265 (2007) {See Separate Opinion of C.J. Puno}
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7. Republic v. Lim, 462 SCRA 265 (2005)
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3. Razon, Jr. v. Tagitis, 606 SCRA 598 (2009) ☜☜☜ ✍ ☞☞☞ 612 SCRA 685 (2010)
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7. Liang v. People, 323 SCRA 692 (2000) ☜ ✍ ☞ 355 SCRA 125 (2001) {See Justice Puno's Concurring Opinion}
8. Minucher v. Court of Appeals, 397 SCRA 244 (2003)
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12. Medellin v. Texas, 552 U.S. 491 (2008)
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I. POLITICAL ORGANIZATION AND GOVERNMENT STRUCTURE

A. GENERAL CONSIDERATIONS
A.1 PRELIMINARY MATTERS

REPUBLIC OF THE PHILIPPINES, Petitioner, vs. SANDIGANBAYAN, MAJOR GENERAL JOSEPHUS Q. RAMAS and ELIZABETH DIMAANO, Respondents.
G.R. No. 104768, EN BANC, July 21, 2003, CARPIO, J.

The Bill of Rights under the 1973 Constitution was not operative during the interregnum. However, the protection accorded to individuals under the Covenant on Civil and Political Rights and the Declaration of Human Rights remained in effect during the interregnum.

During the interregnum when no constitution or Bill of Rights existed, directives and orders issued by government officers were valid so long as these officers did not exceed the authority granted them by the revolutionary government. In this case, the revolutionary government presumptively sanctioned the warrant since the revolutionary government did not repudiate it. The warrant, issued by a judge upon proper application, specified the items to be searched and seized. The warrant is thus valid with respect to the items specifically described in the warrant.

FACTS:
Based on the mandate of President Corazon Aquino's E.O. No. 1 creating the Presidential Commission on Good Government which was tasked to recover all ill-gotten wealth of former President Marcos , the AFP Anti-Graft Board investigated various reports of alleged unexplained wealth of respondent Major General Josephus Q. Ramas. The AFP Board issued a Resolution on its findings and recommendation on the reported unexplained wealth of Ramas, finding ill-gotten and unexplained wealth in the amount of ₱2,974,134.00 and $50,000 US Dollars.

The PCGG filed a petition for forfeiture under Republic Act No. 1379 against Ramas.
The Amended Complaint alleged that Ramas was the Commanding General of the Philippine Army until 1986. On the other hand, Dimaano was a confidential agent of the Military Security Unit, Philippine Army, assigned as a clerk-typist at the office of Ramas. It alleged that Ramas "acquired funds, assets and properties manifestly out of proportion to his salary as an army officer and his other income from legitimately acquired property by taking undue advantage of his public office and/or using his power, authority and influence as such officer of the Armed Forces of the Philippines and as a subordinate and close associate of the deposed President Ferdinand Marcos. It prayed for forfeiture of respondents' properties, funds and equipment in favor of the State.

In his Answer, Ramas contended that his property consisted only of a residential house at La Vista Subdivision, Quezon City, valued at ₱700,000, which was not out of proportion to his salary and other legitimate income. He denied ownership of any mansion in Cebu City and the cash, communications equipment and other items confiscated from the house of Dimaano.

Admitting her employment as a clerk-typist in the office of Ramas from January-November 1978 only, Dimaano claimed ownership of the monies, communications equipment, jewelry and land titles taken from her house by the Philippine Constabulary raiding team.
The Sandiganbayan dismissed the Amended Complaint on the ground that there was an illegal search and seizure of the items confiscated. The counterclaims are likewise dismissed for lack of merit, but

the confiscated sum of money, communications equipment, jewelry and land titles are ordered returned to Elizabeth Dimaano.

Petitioner filed its Motion for Reconsideration, which was denied.

Petitioner argues that the exclusionary right arising from an illegal search applies only beginning 2 February 1987, the date of ratification of the 1987 Constitution. Petitioner contends that all rights under the Bill of Rights had already reverted to its embryonic stage at the time of the search. Therefore, the government may confiscate the monies and items taken from Dimaano and use the same in evidence against her since at the time of their seizure, private respondents did not enjoy any constitutional right.

ISSUES:
1. Whether the revolutionary government was bound by the Bill of Rights of the 1973 Constitution during the interregnum, that is, after the actual and effective take-over of power by the revolutionary government following the cessation of resistance by loyalist forces up to 24 March 1986, immediately before the adoption of the Provisional Constitution
2. Whether the protection accorded to individuals under the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights remained in effect during the interregnum.

RULING:
We hold that the Bill of Rights under the 1973 Constitution was not operative during the interregnum. However, we rule that the protection accorded to individuals under the Covenant and the Declaration remained in effect during the interregnum.

During the interregnum, the directives and orders of the revolutionary government were the supreme law because no constitution limited the extent and scope of such directives and orders. With the abrogation of the 1973 Constitution by the successful revolution, there was no municipal law higher than the directives and orders of the revolutionary government. Thus, during the interregnum, a person could not invoke any exclusionary right under a Bill of Rights because there was neither a constitution nor a Bill of Rights during the interregnum.

To hold that the Bill of Rights under the 1973 Constitution remained operative during the interregnum would render void all sequestration orders issued by the PCGG before the adoption of the Freedom Constitution. The sequestration orders, which direct the freezing and even the take-over of private property by mere executive issuance without judicial action, would violate the due process and search and seizure clauses of the Bill of Rights.

During the interregnum, the government in power was concededly a revolutionary government bound by no constitution. No one could validly question the sequestration orders as violative of the Bill of Rights because there was no Bill of Rights during the interregnum. However, upon the adoption of the Freedom Constitution, the sequestered companies assailed the sequestration orders as contrary to the Bill of Rights of the Freedom Constitution.

If any doubt should still persist in the face of the foregoing considerations as to the validity and propriety of sequestration, freeze and takeover orders, it should be dispelled by the fact that these particular remedies and the authority of the PCGG to issue them have received constitutional approbation and sanction. As already mentioned, the Provisional or "Freedom" Constitution

recognizes the power and duty of the President to enact "measures to achieve the mandate of the people to recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts." And as also already adverted to, Section 26, Article XVIII of the 1987 Constitution treats of, and ratifies the "authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986."

Even during the interregnum the Filipino people continued to enjoy, under the Covenant and the Declaration, almost the same rights found in the Bill of Rights of the 1973 Constitution.

The revolutionary government, after installing itself as the de jure government, assumed responsibility for the State's good faith compliance with the Covenant to which the Philippines is a signatory. Article 2(1) of the Covenant requires each signatory State "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant." Under Article 17(1) of the Covenant, the revolutionary government had the duty to insure that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.

The Declaration, to which the Philippines is also a signatory, provides in its Article 17(2) that "no one shall be arbitrarily deprived of his property." Although the signatories to the Declaration did not intend it as a legally binding document, being only a declaration, the Court has interpreted the Declaration as part of the generally accepted principles of international law and binding on the State. Thus, the revolutionary government was also obligated under international law to observe the rights of individuals under the Declaration.

The revolutionary government did not repudiate the Covenant or the Declaration during the interregnum. The Court considers the Declaration as part of customary international law, and that Filipinos as human beings are proper subjects of the rules of international law laid down in the Covenant. As the de jure government, the revolutionary government could not escape responsibility for the State's good faith compliance with its treaty obligations under international law.
It was only upon the adoption of the Provisional Constitution on 25 March 1986 that the directives and orders of the revolutionary government became subject to a higher municipal law that, if contravened, rendered such directives and orders void.

During the interregnum when no constitution or Bill of Rights existed, directives and orders issued by government officers were valid so long as these officers did not exceed the authority granted them by the revolutionary government. The directives and orders should not have also violated the Covenant or the Declaration. In this case, the revolutionary government presumptively sanctioned the warrant since the revolutionary government did not repudiate it. The warrant, issued by a judge upon proper application, specified the items to be searched and seized. The warrant is thus valid with respect to the items specifically described in the warrant.

However, the Constabulary raiding team seized items not included in the warrant. Clearly, the raiding team exceeded its authority when it seized these items. The seizure of these items was therefore void, and unless these items are contraband per se, and they are not, they must be returned to the person from whom the raiding seized them, Dimaano.

MANILA PRINCE HOTEL vs. GSIS, MANILA HOTEL CORPORATION, COMMITTEE ON PRIVATIZATION, OFFICE OF THE GOVERNMENT CORPORATE COUNSEL
G.R. No. 122156, February 3, 1997, BELLOSILLO, J.

Adhering to the doctrine of constitutional supremacy, the subject constitutional provision is, as it should be, impliedly written in the bidding rules issued by respondent GSIS, lest the bidding rules be nullified for being violative of the Constitution.

FACTS:
GSIS, pursuant to the privatization program of the Philippine Government decided to sell through public bidding issued and outstanding shares of respondent Manila Hotel Corporation (MHC). Two bidders participated: Manila Prince Hotel Corporation, a Filipino corporation, which offered to buy the shares at P41.58 per share, and Renong Berhad, a Malaysian firm, which bid for the same number of shares at P44.00 per share.

Pending the declaration of Renong Berhard as the winning bidder/strategic partner and the execution of the necessary contracts, Manila Prince matched the bid price of P44.00 per share. Perhaps apprehensive that GSIS has disregarded the tender of the matching bid, Manila Prince came to the Supreme Court on prohibition and mandamus.

ISSUE:
Whether GSIS is mandated to abide the dictates of the Constitution on National Economy and Patrimony.

RULING:
YES. It should be stressed that while the Malaysian firm offered the higher bid it is not yet the winning bidder. The bidding rules expressly provide that the highest bidder shall only be declared the winning bidder after it has negotiated and executed the necessary contracts, and secured the requisite approvals. Since the Filipino First Policy provision of the Constitution bestows preference on qualified Filipinos the mere tending of the highest bid is not an assurance that the highest bidder will be declared the winning bidder. Resultantly, respondents are not bound to make the award yet, nor are they under obligation to enter into one with the highest bidder. For in choosing the awardee, respondents are mandated to abide by the dictates of the 1987 Constitution the provisions of which are presumed to be known to all the bidders and other interested parties.

Adhering to the doctrine of constitutional supremacy, the subject constitutional provision is, as it should be, impliedly written in the bidding rules issued by respondent GSIS, lest the bidding rules be nullified for being violative of the Constitution. It is a basic principle in constitutional law that all laws and contracts must conform with the fundamental law of the land. Those which violate the Constitution lose their reason for being.

Certainly, the constitutional mandate itself is reason enough not to award the block of shares immediately to the foreign bidder notwithstanding its submission of a higher, or even the highest, bid. In fact, we cannot conceive of a stronger reason than the constitutional injunction itself.

KNIGHTS OF RIZAL, Petitioner. vs. DMCI HOMES, INC., DMCI PROJECT DEVELOPERS, INC., CITY OF MANILA, NATIONAL COMMISSION FOR CULTURE AND THE ARTS, NATIONAL HISTORICAL COMMISSION OF THE PHILIPPINES, Respondents.
G.R. No. 213948, EN BANC, April 18, 2017, CARPIO, J.:

In cases where the question of constitutionality of a governmental action is raised, the judicial power that the courts exercise is likewise identified as the power of judicial review - the power to review the constitutionality of the actions of other branches of government. The judicial review that the courts undertake requires: 1) there be an actual case or controversy calling for the exercise of judicial power; 2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; 3) the question of constitutionality must be raised at the earliest possible opportunity; and 4) the issue of constitutionality must be the very lismota of the case.

There is, however, no clear legal duty on the City of Manila to consider the provisions of Ordinance No. 8119 for applications for permits to build outside the protected areas of the Rizal Park.
It is the policy of the courts not to interfere with the discretionary executive acts of the executive branch unless there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction.

FACTS:
DMCI Project Developers, Inc. acquired a 7,716.60-square meter lot in the City of Manila, located near Taft Avenue, Ermita, beside the former Manila Jai-Alai Building and Adamson University. The lot was earmarked for the construction of DMCI-PDI's Torre de Manila condominium project.
DMCI-PDI secured its Barangay Clearance to start the construction of its project. It then obtained a Zoning Permit and Building Permit.

The City Council of Manila issued Resolution No. 121 enjoining the Office of the Building Official to temporarily suspend the Building Permit of DMCI-PDI, citing among others, that "the Torre de Manila Condominium, based on their development plans, upon completion, will rise up high above the back of the national monument, to clearly dwarf the statue of our hero, and with such towering heights, would certainly ruin the line of sight of the Rizal Shrine from the frontal Roxas Boulevard vantage point.

Subsequently, both the City of Manila and DMCI-PDI sought the opinion or the National Historical Commission of the Philippines on the matter. The NHCP maintained that the Torre de Manila project site is outside the boundaries of the Rizal park and well to the rear of the Rizal Monument, and thus, cannot possibly obstruct the frontal view of the National Monument.

Following an online petition against the Torre de Manila project that garnered about 7,800 signatures, the City Council of Manila issued Resolution No. 146, reiterating its directive enjoining the City of Manila's building officials to temporarily suspend the Building Permit.
The City Council of Manila a resolution ratifying and confirming all previously issued permits, licenses and approvals issued by the City.

The KOR, a "civic, patriotic, cultural, nonpartisan, non-sectarian and non-profit organization" created under Republic Act No. 646, filed a Petition for Injunction seeking a temporary restraining I order, and later a permanent injunction, against the construction of DMCIPDI's Torre de Manila condominium project. The KOR argues that the subject matter of the present suit is one of

"transcendental importance, paramount public interest, of overarching significance to society, or with far-reaching implication" involving the desecration of the Rizal Monument.

Further, the KOR argues that the Rizal Monument, as a National Treasure, is entitled to "full protection of the law" and the national government must abate the act or activity that endangers the nation's cultural heritage "even against the wishes of the local government hosting it."
Next, the KOR contends that the project is a nuisance per se because "the despoliation of the sight view of the Rizal Monument is a situation that annoy's or offends the senses' of every Filipino who honors the memory of the National Hero Jose Rizal. It is a present, continuing, worsening and aggravating status or condition. Hence, the PROJECT is a nuisance per se. It deserves to be abated summarily, even without need of judicial proceeding. "

The KOR also claims that the Torre de Manila project violates the NHCP's Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages, which state that historic monuments should assert a visual "dominance" over its surroundings, as well as the country's commitment under the International Charter for the Conservation and Restoration of Monuments and Sites, otherwise known as the Venice Charter.

DMCI-PDI argues that the KOR's petition should be dismissed on the following grounds: that this honorable court has no jurisdiction over this action; that KOR has no legal right or interest to file or prosecute this action; that Torre de Manila is not a nuisance per se; that DMCI acted in good faith in constructing Torre de Manila; and that KOR is not entitled to a temporary restraining order and/or a writ of preliminary injunction.

The City of Manila also asserts that the "issuance and revocation of a Building Permit undoubtedly fall under the category of a discretionary act or duty performed by the proper officer in light of his meticulous appraisal and evaluation of the pertinent supporting documents of the application in accordance with the rules laid out under the National Building Code [and] Presidential Decree No. 1096," while the mandamus is available only to compel the performance of a ministerial duty.

ISSUE:
Whether or not the Court can issue a writ of mandamus against the officials of the City of Manila to stop the construction of DMCI-PDI's Torre de Manila project

RULING:
No. There is no law prohibiting the construction of the Torre de Manila. The Court has allowed or upheld actions that were not expressly prohibited by statutes when it determined that these acts were not contrary to morals, customs, and public order, or that upholding the same would lead to a more equitable solution to the controversy. However, it is the law itself - Articles 130655 and 1409(1)56 of the Civil Code - which prescribes that acts not contrary to morals, good customs, public order, or public policy are allowed if also not contrary to law.
In this case, there is no allegation or proof that the Torre de Manila project is "contrary to morals, customs, and public order" or that it brings harm, danger, or hazard to the community. There is no law prohibiting the construction of the Torre de Manila due to its effect on the background "view, vista, sightline, or setting" of the Rizal Monument.
Mandamus does not lie against the City of Manila. The Rules on Civil Procedure are clear that mandamus only issues when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking mandamus has a clear legal right to the performance of such act.

In the present case, nowhere is it found in Ordinance No. 8119 or in any law, ordinance, or rule for that matter, that the construction of a building outside the Rizal Park is prohibited if the building is within the background sightline or view of the Rizal Monument. Thus, **there is no legal duty on the part of the City of Manila "to consider," in the words of the Dissenting Opinion, "the standards set under Ordinance No. 8119" in relation to the applications of DMCI-PDI for the Torre de Manila since under the ordinance these standards can never be applied outside the boundaries of Rizal Park**.

The KOR also invokes this Court's exercise of its extraordinary certiorari power of review under Section 1, Article VIII65 of the Constitution. However**, this Court can only exercise its extraordinary certiorari power if the City of Manila, in issuing the required permits and licenses, gravely abused its discretion amounting to lack or excess of jurisdiction**. Tellingly, neither the majority nor minority opinion in this case has found that the City of Manila committed grave abuse of discretion in issuing the permits and licenses to DMCI-PDI.

In cases where the question of constitutionality of a governmental action is raised, the judicial power that the courts exercise is likewise identified as the power of judicial review - the power to review the constitutionality of the actions of other branches of government. The judicial review that the courts undertake requires:

1) there be an actual case or controversy calling for the exercise of judicial power;
2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
3) the question of constitutionality must be raised at the earliest possible opportunity; and
4) the issue of constitutionality must be the very lismota of the case.

There is, however, no clear legal duty on the City of Manila to consider the provisions of Ordinance No. 8119 for applications for permits to build outside the protected areas of the Rizal Park.

It is the policy of the courts not to interfere with the discretionary executive acts of the executive branch unless there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction. Mandamus does not lie against the legislative and executive branches or their members acting in the exercise of their official discretionary functions. This emanates from the respect accorded by the judiciary to said branches as co-equal entities under the principle of separation of powers.
It can easily be gleaned that the Torre de Manila is not a nuisance per se. The Torre de Manila project cannot be considered as a "direct menace to I public health or safety."

MIRIAM DEFENSOR SANTIAGO, ALEXANDER PADILLA, and MARIA ISABEL ONGPIN v. **Comelec, JESUS DELFIN, ALBERTO & CARMEN PEDROSA, as founding members of PIRMA**
G.R. No. 127325, March 19, 1997, DAVIDE, JR., *J.*

Section 2 of Article XVII of the Constitution is not self-executory. While the Constitution has recognized or granted that right, the people cannot exercise it if Congress, for whatever reason, does not provide for its implementation.

FACTS:
Jesus Delfin filed with a petition with Comelec to amend the Constitution so as to lift the term limits of elective officials via People's Initiative. Senator Miriam Defensor-Santiago and others opposed the petition on the ground that the constitutional provision on people's initiative can only be implemented by law to be passed by Congress and no such law has been passed. They also argued that RA No. 6735, which was relied upon by Delfin, contained no provision regarding amendments to the Constitution.

ISSUE:
Whether or not RA No. 6735 which intended to include the system of initiative on amendments to the Constitution is inadequate to cover that system.

RULING:
Yes. Section 2 of Article XVII of the Constitution is not self-executory. While the Constitution has recognized or granted that right, the people cannot exercise it if Congress, for whatever reason, does not provide for its implementation. There is, of course, no other better way for Congress to implement the exercise of the right than through the passage of a statute or legislative act. This is the essence or rationale of the last minute amendment by the Constitutional Commission to substitute the last paragraph of Section 2 of Article XVII. Moreover, RA No. 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned.

RAUL L. LAMBINO and ERICO B. AUMENTADO, TOGETHER WITH 6,327,952 REGISTERED VOTERS v. COMELEC
G.R. No. 174153, October 25, 2006, CARPIO, *J.*

Two essential elements must be present: the people must author and sign the entire proposal and it must be embodied in a petition. These are present only if the full text of the proposed amendments is first shown to the people who express their assent by signing such complete proposal in a petition. Thus, an amendment is "directly proposed by the people through initiative upon a petition" only if the people sign on a petition that contains the full text of the proposed amendments.

FACTS:
Lambino Group, commenced gathering signatures for an initiative petition to change the 1987 Constitution. They filed a petition with the COMELEC to hold a plebiscite that will ratify their initiative petition under Sec 5(b) and (c) and Sec 7 of RA No. 6735. They alleged that their petition had the support of 6,327,952 individuals constituting at least 12% of all registered voters, with each legislative district represented by at least 3% of its registered voters. COMELEC denied the petition.

ISSUE:
Whether the Lambino Group's initiative petition complies with Section 2, Article XVII of the Constitution.

RULING:
NO. The framers intended that the "draft of the proposed constitutional amendment" should be "ready and shown" to the people "before" they sign such proposal, before they sign there is already a draft shown to them and that the people should sign on the proposal itself because the proponents must "prepare that proposal and pass it around for signature."The essence of amendments "directly proposed by the people through initiative upon a petition" is that the entire proposal on its face is a petition by the people. Two essential elements must be present: the people must author and sign the entire proposal andit must be embodied in a petition. These are present only if the full text of the proposed amendments is first shown to the people who express their assent by signing such complete proposal in a petition. Thus, an amendment is "directly proposed by the people through initiative upon a petition" only if the people sign on a petition that contains the full text of the proposed amendments. The full text of the proposed amendments may be either written on the face of the petition, or attached to it. If so attached, the petition must state such fact. This is an assurance that every one of the several millions of signatories had seen the full text of the proposed amendments before signing. Otherwise, it is physically impossible to prove.

The Lambino Group did not attach to their present petition, a copy of the paper that the people signed as their initiative petition. The Lambino Group submitted a copy of a signature sheet after the oral arguments. The signature sheet merely asks a question whether the people approve a shift from the Bicameral-Presidential to the Unicameral-Parliamentary system of government. The signature sheet does not show to the people the draft of the proposed changes before they are asked to sign the signature sheet. Clearly, the signature sheet is not the "petition" that the framers of the Constitution envisioned when they formulated the initiative clause in Section 2, Article XVII of the Constitution.

Indeed, it is basic in American jurisprudence that the proposed amendment must be incorporated with, or attached to, the initiative petition signed by the people. In the present initiative, the Lambino Group's proposed changes were not incorporated with, or attached to, the signature sheets. The Lambino Group's citation of Corpus Juris Secundum pulls the rug from under their feet. With only 100,000 printed copies of the petition, it would be physically impossible for all or a great majority of the 6.3 million signatories to have seen the petition before they signed the signature sheets. The inescapable conclusion is that the Lambino Group failed to show to the 6.3 million signatories the full text of the proposed changes. If ever, not more than one million signatories saw the petition before they signed the signature sheets.

PROF. MERLIN M. MAGALLONA vs EDUARDO ERMITA
G.R No. 187167, July 16, 2011, Carpio

RA 9522 is a Statutory Tool to Demarcate the Country's Maritime Zones and Continental Shelf Under UNCLOS III, not to Delineate Philippine Territory.

FACTS:
R.A. 3046 was passed demarcating the maritime baselines of the Philippines. After five decades, RA 9552 was passed, amending RA 3046 to comply with the terms of the United Nations Convention on the Law of the Sea (UNCLOS). The new law shorterned one baseline, optimized the location of some basepoints around the Philippine archipelago and classified adjacent territories, namely, the Kalayaan Island Group and the Scarborough Shoal, as regimes of islands whose islands generate their own applicable maritime zones.

Petitioners assailed the constitutionality of the new law on the ground that: it reduces the Philippine maritime territory, in violation of Article 1 of the Constitution and it opens the country's waters to maritime passage by all vessels, thus undermining Philippine sovereignty. Respondents, on the other hand, defended the new law as the country's compliance with the terms of UNCLOS. Respondents stressed that RA 9522 does not relinquish the country's claim over Sabah.

ISSUE:
Whether RA 9522 is unconstitutional.

RULING:
NO. UNCLOS III has nothing to do with the acquisition (or loss) of territory. It is a multilateral treaty regulating, among others, sea-use rights over maritime zones (*i.e.*, the territorial waters [12 nautical miles from the baselines], contiguous zone [24 nautical miles from the baselines], exclusive economic zone [200 nautical miles from the baselines]), and continental shelves that UNCLOS III delimits. UNCLOS III was the culmination of decades-long negotiations among United Nations members to codify norms regulating the conduct of States in the world's oceans and submarine areas, recognizing coastal and archipelagic States graduated authority over a limited span of waters and submarine lands along their coasts.

UNCLOS III and its ancillary baselines laws play no role in the acquisition, enlargement or, as petitioners claim, diminution of territory. Under traditional international law typology, States acquire (or conversely, lose) territory through occupation, accretion, cession and prescription, not by executing multilateral treaties on the regulations of sea-use rights or enacting statutes to comply with the treatys terms to delimit maritime zones and continental shelves. Territorial claims to land features are outside UNCLOS III, and are instead governed by the rules on general international law.

In the Matter of the South China Sea Arbitration Before an Arbitral Tribunal Constituted under Annex VII to the 1982 UNCLOS between the Republic of the Philippines and the People's Republic of China

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A.2 STATE IMMUNITY

DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), Petitioner, v. SPOUSES VICENTE ABECINA AND MARIA CLEOFE ABECINA, Respondents.
G.R. No. 206484, SECOND DIVISION, June 29, 2016, BRION, J.:

When the DOTC constructed the encroaching structures and subsequently entered into the FLA with Digitel for their maintenance, it was carrying out a sovereign function. These are acts jure imperii that fall within the cloak of state immunity.

However, as the respondents repeatedly pointed out, this Court has long established that the doctrine of state immunity cannot serve as an instrument for perpetrating an injustice to a citizen. the Department's entry into and taking of possession of the respondents' property amounted to an implied waiver of its governmental immunity from suit.

FACTS:

Respondent spouses Vicente and Maria Cleofe Abecina are the registered owners of five parcels of land in Sitio Paltik, Barrio Sta. Rosa, Jose Panganiban, Camarines Norte.

In February 1993, the DOTC awarded Digitel Telecommunications Philippines, Inc. a contract for the management, operation, maintenance, and development of a Regional Telecommunications Development Project under the National Telephone Program, Phase I, Tranche 1.

The DOTC and Digitel subsequently entered into several Facilities Management Agreements for Digitel to manage, operate, maintain, and develop the RTDP and NTPI-1 facilities comprising local telephone exchange lines in various municipalities in Luzon. The FMAs were later converted into Financial Lease Agreements in 1995.

Later on, the municipality of Jose Panganiban, Camarines Norte, donated a one thousand two hundred square-meter parcel of land to the DOTC for the implementation of the RDTP in the municipality. However, the municipality erroneously included portions of the respondents' property in the donation. Pursuant to the FLAs, Digitel constructed a telephone exchange on the property which encroached on the properties of the respondent spouses.

Subsequently, the spouses Abecina discovered Digitel's occupation over portions of their properties. They required Digitel to vacate their properties and pay damages, but the latter refused, insisting that it was occupying the property of the DOTC pursuant to their FLA.

The respondent spouses sent a final demand letter to both the DOTC and Digitel to vacate the premises and to pay unpaid rent/damages in the amount of one million two hundred thousand pesos (P1,200,000.00). Neither the DOTC nor Digitel complied with the demand.

The respondent spouses filed an accion publiciana complaint against the DOTC and Digitel for recovery of possession and damages. The complaint was docketed as Civil Case No. 7355.

In its answer, the DOTC claimed immunity from suit and ownership over the subject properties. Nevertheless, during the pre-trial conference, the DOTC admitted that the Abecinas were the rightful owners of the properties and opted to rely instead on state immunity from suit.

The respondent spouses and Digitel executed a Compromise Agreement and entered into a Contract of Lease. The RTC rendered a partial decision and approved the Compromise Agreement.

The RTC rendered its decision against the DOTC. It held that government immunity from suit could not be used as an instrument to perpetuate an injustice on a citizen. The RTC ordered the Department - as a builder in bad faith -to forfeit the improvements and vacate the properties; and awarded the spouses with P1,200,000.00 as actual damages, P200,000.00 as moral damages, and P200,000.00 as exemplary damages plus attorney's fees and costs of suit.

The DOTC elevated the case to the CA, which affirmed the RTC's decision but deleted the award of exemplary damages.

The DOTC filed the present petition for review on certiorari.

ISSUE:
Whether or not DOTC may invoke state immunity

RULING:
No. The State may not be sued without its consent. This fundamental doctrine stems from the principle that there can be no legal right against the authority which makes the law on which the right depends. This generally accepted principle of law has been explicitly expressed in both the 1973 and the present Constitutions. But as the principle itself implies, the doctrine of state immunity is not absolute. The State may waive its cloak of immunity and the waiver may be made expressly or by implication.

Over the years, the State's participation in economic and commercial activities gradually expanded beyond its sovereign function as regulator and governor. The evolution of the State's activities and degree of participation in commerce demanded a parallel evolution in the traditional rule of state immunity. Thus, it became necessary to distinguish between the State's sovereign and governmental acts (jure imperii) and its private, commercial, and proprietary acts (jure gestionis). Presently, state immunity restrictively extends only to acts jure imperii while acts jure gestionis are considered as a waiver of immunity.

The Philippines recognizes the vital role of information and communication in nation building. As a consequence, we have adopted a policy environment that aspires for the full development of communications infrastructure to facilitate the flow of information into, out of, and across the country. To this end, the DOTC has been mandated with the promotion, development, and regulation of dependable and coordinated networks of communication.

The DOTC encroached on the respondents' properties when it constructed the local telephone exchange in Daet, Camarines Norte. The exchange was part of the RTDP pursuant to the National Telephone Program. We have no doubt that when the DOTC constructed the encroaching structures and subsequently entered into the FLA with Digitel for their maintenance, it was carrying out a sovereign function. Therefore, we agree with the DOTC's contention that these are acts jure imperii that fall within the cloak of state immunity.

However, as the respondents repeatedly pointed out, this Court has long established in Ministerio v CFI, Amigable v. Cuenca, the 2010 case Heirs of Pidacan v. ATO, and more recently in Vigilar v. Aquino that the doctrine of state immunity cannot serve as an instrument for perpetrating an injustice to a citizen.

The Constitution identifies the limitations to the awesome and near-limitless powers of the State. Chief among these limitations are the principles that no person shall be deprived of life, liberty, or property without due process of law and that private property shall not be taken for public use without just compensation. These limitations are enshrined in no less than the Bill of Rights that guarantees the citizen protection from abuse by the State.

Consequently, our laws require that the State's power of eminent domain shall be exercised through expropriation proceedings in court. Whenever private property is taken for public use, it becomes the ministerial duty of the concerned office or agency to initiate expropriation proceedings. By necessary implication, the filing of a complaint for expropriation is a waiver of State immunity.
If the DOTC had correctly followed the regular procedure upon discovering that it had encroached on the respondents' property, it would have initiated expropriation proceedings instead of insisting on its immunity from suit. The petitioners would not have had to resort to filing its complaint for reconveyance.

We hold, therefore, that the Department's entry into and taking of possession of the respondents' property amounted to an implied waiver of its governmental immunity from suit.
We also find no merit in the DOTC's contention that the RTC should not have ordered the reconveyance of the respondent spouses' property because the property is being used for a vital governmental function, that is, the operation and maintenance of a safe and efficient communication system.

The exercise of eminent domain requires a genuine necessity to take the property for public use and the consequent payment of just compensation. The property is evidently being used for a public purpose. However, we also note that the respondent spouses willingly entered into a lease agreement with Digitel for the use of the subject properties.

If in the future the factual circumstances should change and the respondents refuse to continue the lease, then the DOTC may initiate expropriation proceedings. But as matters now stand, the respondents are clearly willing to lease the property. Therefore, we find no genuine necessity for the DOTC to actually take the property at this point.

REPUBLIC OF THE PHILIPPINES vs. HON. VICENTE A. HIDALGO, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 37, CARMELO V. CACHERO, in his capacity as Sheriff IV, Regional Trial Court of Manila, and TARCILA LAPERAL MENDOZA, G.R. No. 161657, October 4, 2007,GARCIA , J.

The State generally operates merely to liquidate and establish the plaintiffs claim in the absence of express provision; otherwise, they can not be enforced by processes of law.

FACTS:
Tarcila Mendoza filed a suit with the RTC of Manila for reconveyance and the corresponding declaration of nullity of a deed of sale and title against the Republic, the Register of Deeds of Manila and one Atty. Fidel Vivar, alleging that he was the owner of the Arlegui property and that the Republic used the property for public use without just compensation. The trial court ruled that defendant Republic must pay the plaintiff the sum of P1,480,627,688.00 representing the reasonable rental for the use of the subject property, the interest thereon at the legal rate, and the opportunity cost at the rate of three (3%) per cent per annum, commencing July 1975 continuously up to July 30, 2003, plus an additional interest at the legal rate, commencing from this date until the whole amount is paid in full;

ISSUE:
Whether or not the Republic should be held liable by the assessment.

RULING:
NO. The assessment of costs of suit against the petitioner is, however, nullified, costs not being allowed against the Republic, unless otherwise provided by law. The assailed trial courts issuance of the writ of execution against government funds to satisfy its money judgment is also nullified. It is basic that government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments.

Albeit title to the Arlegui property remains in the name of the petitioner Republic, it is actually the Office of the President which has beneficial possession of and use over it since the 1975 takeover. Accordingly, and in accord with the elementary sense of justice, it behooves that office to make the appropriate budgetary arrangements towards paying private respondent what is due her under the premises. This, to us, is the right thing to do. The imperatives of fair dealing demand no less. And the Court would be remiss in the discharge of its duties as dispenser of justice if it does not exhort the Office of the President to comply with what, in law and equity, is its obligation.

UNIVERSITY OF THE PHILIPPINES, ET.AL. VS. HON. AGUSTIN S. DIZON, ET. AL.
G.R. No. 171182, August 23, 2012, BERSAMIN, J.

All the funds going into the possession of the UP, including any interest accruing from the deposit of such funds in any banking institution, constitute a "special trust fund," the disbursement of which should always be aligned with the UP's mission and purpose, and should always be subject to auditing by the COA. Hence, the funds subject of this action could not be validly made the subject of the RTC's writ of execution or garnishment. The adverse judgment rendered against the UP in a suit to which it had impliedly consented was not immediately enforceable by execution against the UP, because suability of the State did not necessarily mean its liability.

FACTS:
UP failed to pay in a contract it entered with Stern Builders Corporation. The RTC ruled in favour of Stern Builders Corporation. Consequently, the RTC authorized eventually the release of the garnished funds of the UP directing DBP to release the funds. While UP brought a petition for certiorari in the CA to challenge the jurisdiction of the RTC in issuing the order averring that the UP funds, being government funds and properties, could not be seized by virtue of writs of execution or garnishment.

ISSUE:
Whether UP funds are subject to garnishment.

RULING:
NO. The UP is a government instrumentality, performing the State's constitutional mandate of promoting quality and accessible education. Presidential Decree No. 1445 defines a "trust fund" as a fund that officially comes in the possession of an agency of the government or of a public officer as trustee, agent or administrator, or that is received for the fulfillment of some obligation. A trust fund may be utilized only for the "specific purpose for which the trust was created or the funds received."

The funds of the UP are government funds that are public in character. They include the income accruing from the use of real property ceded to the UP that may be spent only for the attainment of its institutional objectives. Hence, the funds subject of this action could not be validly made the subject of the RTC's writ of execution or garnishment. The adverse judgment rendered against the UP in a suit to which it had impliedly consented was not immediately enforceable by execution against the UP, because suability of the State did not necessarily mean its liability.
A marked distinction exists between suability of the State and its liability. As the Court succinctly stated in Municipality of San Fernando, La Union v. Firme:

A distinction should first be made between suability and liability. "Suability depends on the consent of the state to be sued, liability on the applicable law and the established facts. The circumstance that a state is suable does not necessarily mean that it is liable; on the other hand, it can never be held liable if it does not first consent to be sued. Liability is not conceded by the mere fact that the state

has allowed itself to be sued. When the state does waive its sovereign immunity, it is only giving the plaintiff the chance to prove, if it can, that the defendant is liable.

The CA and the RTC thereby unjustifiably ignored the legal restriction imposed on the trust funds of the Government and its agencies and instrumentalities to be used exclusively to fulfill the purposes for which the trusts were created or for which the funds were received except upon express authorization by Congress or by the head of a government agency in control of the funds, and subject to pertinent budgetary laws, rules and regulations.Indeed, an appropriation by Congress was required before the judgment that rendered the UP liable for moral and actual damages (including attorney's fees) would be satisfied considering that such monetary liabilities were not covered by the "appropriations earmarked for the said project." The Constitution strictly mandated that "(n)o money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

REPUBLIC OF THE PHILIPPINES REPRESENTED BY PRIVATIZATION AND MANAGEMENT OFFICE, Petitioners, v. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND NACUSIP/BISUDECO CHAPTER/GEORGE EMATA, DOMINGO REBANCOS, NELSON BERINA, ROBERTO TIRAO, AMADO VILLOTE, AND BIENVENIDO FELINA, Respondents.
G.R. No. 174747, SECOND DIVISION, March 09, 2016, LEONEN, J.:

Money claims against government include money judgments by courts, which must be brought before the Commission on Audit before it can be satisfied.

Petitioner's Board of Trustees already issued the Resolution on September 23, 1992 for the release of funds to pay separation benefits to terminated employees of Bicolandia Sugar Development Corporation.. Under these circumstances, it is presumed that the funds to be used for private respondents' separation benefits have already been appropriated and disbursed. This would account for why private respondents' co-complainants were able to claim their checks without need of filing a separate claim before the Commission on Audit.

FACTS:
Asset Privatization Trust was a government entity created 1986 for the purpose of conserving, provisionally managing, and disposing of assets that have been identified for privatization or disposition. NACUSIP/BISUDECO Chapter is the exclusive bargaining agent for the rank-and-file employees of Bicolandia Sugar Development Corporation, a corporation engaged in milling and producing sugar.

Bicolandia Sugar Development Corporation had been incurring heavy losses. It obtained loans from Philippine Sugar Corporation and Philippine National Bank, secured by its assets and properties. Subsequently, the Philippine National Bank ceded its rights and interests over Bicolandia Sugar Development Corporation's loans to the government through Asset Privatization Trust.

The Asset Privatization Trust, pursuant to its mandate to dispose of government properties for privatization, decided to sell the assets and properties of Bicolandia Sugar Development Corporation. It issued a Notice of Termination to Bicolandia Sugar Development Corporation's employees, advising them that their services would be terminated within 30 days. NASUCIP/BISUDECO Chapter received the Notice under protest.
After the employees' dismissal from service, Bicolandia Sugar Development Corporation's assets and properties were sold to Bicol Agro-Industrial Producers Cooperative, Incorporated-Peñafrancia Sugar Mill.

As a result, several members of the NACUSIP/BISUDECO Chapter filed a charging Asset Privatization Trust, Bicolandia Sugar Development Corporation, Philippine Sugar Corporation, and Bicol Agro-Industrial Producers Cooperative, Incorporated-Peñafrancia Sugar Mill with unfair labor practice, union busting, and claims for labor standard benefits.

The Labor Arbiter dismissed the Complaint and ruled that there was no union busting.
However, the Labor Arbiter found that although Asset Privatization Trust previously released funds for separation pay, 13th month pay, and accrued vacation and sick leave credits for 1992, Emata, et. al. refused to receive their checks "on account of their protested dismissal." Their refusal to receive their checks was premised on their Complaint that Asset Privatization Trust's sale of Bicolandia Sugar Development Corporation violated their Collective Bargaining Agreement and was a method of union busting.

While the Labor Arbiter acknowledged that Emata, et al.'s entitlement to these benefits had already prescribed under Article 291 of the Labor Code, he nevertheless ordered Asset Privatization Trust to pay Emata, et al. their benefits since their co-complainants were able to claim their checks.
Asset Privatization Trust deposited with the National Labor Relations Commission a Cashier's Check in the amount of P116,182.20. It filed a Notice of Partial Appeal, together with a Memorandum of Partial Appeal, before the National Labor Relations Commission.
Under Executive Order No. 323 dated December 6, 2000, Asset Privatization Trust was succeeded by Privatization and Management Office.

The NLRC dismissed the Partial Appeal for failure to perfect the appeal within the statutory period of appeal. Privatization and Management Office moved for reconsideration, which was denied.
Privatization and Management Office filed before the Court of Appeals a Petition for Certiorari which was denied. The CA ruled that the grant of separation pay to Emata, et al. was anchored on the finding that Privatization and Management Office had already granted the same benefits to the other complainants in the labor case.

Privatization and Management Office moved for reconsideration, but the Motion was denied.
Hence, this Petition was filed.

ISSUE:
Whether or not private respondents' separation benefits may be released to them without filing a separate money claim before the Commission on Audit

RULING:
Yes.
This case is unique, however, in that **though private respondents' separation benefits were already released by petitioner, they refused to collect their checks "on account of their protested dismissal." Their refusal to receive their checks was** premised on their Complaint that petitioner's sale of Bicolandia Sugar Development Corporation violated their Collective Bargaining Agreement and was a method of union busting. It **was not because of negligence or malice. It was because of their honest belief that their rights as laborers were violated and the grant of separation benefits would not be enough compensation for it.** While private respondents' allegations have not been properly substantiated, it would be unjust to deprive them of their rightful claim to their separation benefits.

Moreover, private respondents' co-complainants were able to collect their checks for their separation benefits during the pendency of the Complaint without having to go through the Commission on Audit.

Under Section 26 of the State Auditing Code, the Commission on Audit has jurisdiction over the settlement of debts and claims "of any sort" against government.
The purpose of requiring a separate process with the Commission on Audit for money claims against government is under the principle that public funds may only be released upon proper appropriation and disbursement.

Money claims against government include money judgments by courts, which must be brought before the Commission on Audit before it can be satisfied.
Petitioner's Board of Trustees already issued the Resolution on September 23, 1992 for the release of funds to pay separation benefits to terminated employees of Bicolandia Sugar Development Corporation. Private respondents' checks were released by petitioner to the Arbitration Branch of the Labor Arbiter in 1992. Under these circumstances, it is presumed that **the funds to be used for private respondents' separation benefits have already been appropriated and disbursed**. This would account for why **private respondents' co-complainants were able to claim their checks without need of filing a separate claim before the Commission on Audit**.
In this instance, private respondents' separation benefits may be released to them without filing a separate money claim before the Commission on Audit. It would be unjust and a violation of private respondents' right to equal protection if they were not allowed to claim, under the same conditions as their fellow workers, what is rightfully due to them.

NPC DRIVERS AND MECHANICS ASSOCIATION, (NPC DAMA), represented by Its President ROGER S. SAN JUAN, SR., NPC EMPLOYEES & WORKERS UNION (NEWU) NORTHERN LUZON REGIONAL CENTER, represented by its Regional President JIMMY D. SALMAN, in their own individual capacities and in behalf of the members of the associations and all affected officers and employees of National Power Corporation (NPC), ZOL D. MEDINA, NARCISO M. MAGANTE, VICENTE B. CIRIO, JR., NECITAS B. CAMAMA, in their individual capacities as employees of National Power Corporation*v.* THE NATIONAL POWER CORPORATION (NPC), NATIONAL POWER BOARD OF DIRECTORS (NPB), JOSE ISIDRO N. CAMACHO as Chairman of the National Power Board of Directors (NPB), ROLANDO S. QUILALA, as President Officer-in-charge/CEO of National Power Corporation and Member of National Power Board, and VINCENT S. PEREZ, JR., EMILIA T. BONCODIN, MARIUS P. CORPUS, RUBEN S. REINOSO, JR., GREGORY L. DOMINGO and NIEVES L. OSORIO
G.R. No. 156208, September 26, 2006, Chico-Nazario, J.

In those cases in which the proper execution of the office requires, on the part of the officer, the exercise of judgment or discretion, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his duties to another. However, a delegate may exercise his authority through persons he appoints to assist him in his functions provided that ***the judgment and discretion finally exercised are those of the officer authorized by law.***

FACTS:
On 8 June 2001, Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law), was approved and signed into law by then President Gloria Macapagal-Arroyo. Under the EPIRA Law a new National Power Board of Directors was constituted composed of the

Secretary of Finance as Chairman, with the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation as members. Subsequently thereafter, the NPB passed NPB Resolution No. 2002-124 which provided for the Guidelines on the Separation Program of the NPC and the Selection and Placement of Personnel in the NPC Table of Organization. Under said Resolution, all NPC personnel shall be legally terminated on 31 January 2003, and shall be entitled to separation benefits. On the same day, the NPB approved NPB Resolution No. 2002-125, whereby a Transition Team was constituted to manage and implement the NPCs Separation Program.

Arguing that NPB Resolution Nos. 2002-124 and 2002-125 are void for having been issued by only three members of the Board of Directors of the NPC, petitioners filed the present Petition for Injunction praying that the implementation of the said Resolutions be enjoined. According to the petitioners although there were seven board members who were present during the meeting where the assailed Board Resolutions were passed, four of the board members who were present therein and signed the questioned resolutions were not the secretaries of their respective departments but were merely representatives or designated alternates of the officials who were named under the EPIRA Law to sit as members of the NPB. Petitioners claim that the acts of these representatives are violative of the well-settled principle that delegated power cannot be further delegated.

ISSUE:
Whether or not NPB Resolution Nos. 2002-124 and 2002-125 are void.

RULING:
YES. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Discretion may be defined as the act or the liberty to decide according to the principles of justice and ones ideas of what is right and proper under the circumstances, without willfulness or favor. Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility.

NATIONAL HOUSING AUTHORITY, Petitioner vs. ERNESTO ROXAS, Respondent.
G.R. No. 171953, FIRST DIVISION, October 21, 2015, BERSAMIN, J.:

The National Housing Authority a government-owned and - controlled corporation created and existing under Presidential Decree No. 757, may sue and be sued. However, no court should issue a writ of execution upon any monetary judgment rendered against the NHA unless such monetary judgment is first submitted to and passed upon by the Commission on Audit.
The NHA possessed the legal competence and authority to directly afford the main relief without Roxas needing to first submit to the COA the contract to sell for review and approval. However, settling or

paying off the secondary relief for the attorney's fees of ₱30,000.00, being a monetary obligation of the NHA should be brought to the COA for enforcement against NHA.

FACTS:
The NHA is charged, among others, with the development of the Dagat-dagatan Development Project situated in Navotas, Metro Manila.

Roxas applied for commercial lots in the project, particularly Lot 9 and Lot 10 in Block 11, Area 3, Phase III A/B, with an area of 176 square meters, for the use of his business of buying and selling gravel, sand and cement products. The NHA approved his application and issued the order of payment respecting the lots. The NHA issued the notice of award for the lots in favor of Roxas, at ₱1,500.00/square meter. Roxas made his downpayment of ₱79,200.00. A relocation survey resulted in the renumbering of Lot 9 to Lot 5 and Lot 10 to Lot 6. He completed his payment for said lots.

The NHA conducted a final subdivision project survey, causing the increase in the area of the subject lots from 176 to 320 square meters. The NHA informed Roxas about the increase in the area of the subject lots and approved the award of the additional area of 144 square meters to him at ₱3,500.00/square meter.

Although manifesting his interest in acquiring the additional area, he appealed for the reduction of the price to ₱1,500.00/square meter, pointing out that Lot 5 and Lot 6 were a substitution unilaterally imposed by the NHA that resulted in the increase of 144 square meters and that although he desired to purchase the increased area, the purchase must be in accordance with the terms and conditions contained in the order of payment and notice of award issued to him.

After the NHA rejected his appeal, he commenced in the RTC this action for specific performance and damages, with prayer for the issuance of a writ of preliminary injunction. He amended the complaint to compel the NHA to comply with the terms and conditions of the order of payment.
The NHA countered in its answer that Roxas' prayer to include in the original contract the increase in lot measurement of 144 square meters was contrary to its existing rules and regulation; that he could not claim more than what had been originally awarded to him; and that at the very least, his right in the additional area was limited only to first refusal.

The RTC rendered judgment declaring plaintiff Ernesto Roxas the legal awardee of subject lots 5 and 6 in the full total area thereof of 320 sq. meters; and ordering defendant NHA, thru its General Manager Robert P. Balao and the project Manager for its Dagat-dagatan Development Project Evelyn V. Ramos, or whoever shall be the incumbents of the positions at the time of the enforcement hereof to execute the corresponding Contract to Sell for the entire area of subject lots 5 and 6 totaling to 320 sq. meters at the cost of P1,500.00 per sq. meter under the same terms and conditions as that provided for in the Order of Payment and Notice of Award respectively, deducting whatever has already been paid by plaintiff. It also awarded attorney's fees to Roxas.

The NHA appealed in due course, but the CA affirmed the judgment of the RTC, prompting the NHA to seek to undo the adverse decision of the CA through its petition for certiorari. The Court dismissed the petition for certiorari. It later denied the NHA's motion for reconsideration.
Roxas filed his motion for the issuance of the writ of execution, which the RTC granted. The NHA sought reconsideration, but its motion was denied. The RTC issued the writ of execution.
To prevent the execution, the NHA brought another petition for certiorari in the CA, which was dismissed.

The NHA insists that the judgment of the RTC did not lie against it because its submission to the litigation did not necessarily imply that the Government had thereby given its consent to liability; and that the money judgment awarded to Roxas could not be recovered by motion for execution but should have been first filed in the COA.

Roxas counters argues that the Government abandons its sovereign capacity and is treated like any other corporations whenever it enters into a commercial transaction.

ISSUE:
Whether or not the writ of execution can be granted against NHA

RULING:
First of all, the mantle of the State's immunity from suit did not extend to the NHA despite its being a government-owned and -controlled corporation. Under Section 6(i) of Presidential Decree No. 757, which was its charter, the NHA could sue and be sued.

Secondly, for the purposes of the implementation of the writ of execution, **it is necessary to distinguish between, on the one hand, the main relief adjudicated in the judgment of July 15, 1994, which was the decree of specific performance as to the right of Roxas to acquire the subject lots at ₱1,500.00/square meter as stated in the original agreement between the parties, and, on the other, the secondary relief for the attorney's fees** of ₱30,000.00.
Section 12 of P.D. 757 has authorized the NHA to "determine, establish and maintain the most feasible and effective program for the management or disposition of specific housing or resettlement projects undertaken by it," and "unless otherwise decided by the Board, completed housing or resettlement projects shall be managed and administered by it". The execution of the contract to sell by the NHA conformably with the main relief under the judgment would be in the ordinary course of the management or disposition of the Dagat-dagatan Development Project undertaken by the NHA. **In other words, the NHA possessed the legal competence and authority to directly afford the main relief without Roxas needing to first submit to the COA the contract to sell for review and approval.** To maintain otherwise is to unconstitutionally grant to the COA the power of judicial review in respect of the decision of a court.

However**, settling or paying off the secondary relief for the attorney's fees of ₱30,000.00, being a monetary obligation of the NHA**, would not be in the usual course of the activities of the NHA under its charter. That such relief was the consequence of the suit that granted the main relief did not matter. Pursuant to Section 26 of Presidential Decree No. 1445**, Roxas should first bring it to the COA prior to its enforcement against the NHA**. Indeed, Section 26 specifically vested in the COA the power, authority and duty to examine, audit and settle "all debts and claims of any sort" due from or owing to the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters.
There is no question that the NHA could sue or be sued, and thus could be held liable under the judgment rendered against it. But the universal rule remains to be that the State, although it gives its consent to be sued either by general or special law, may limit the claimant's action only up to the completion of proceedings anterior to the stage of execution. In other words, **the power of the court ends when the judgment is rendered because government funds and property may not be seized pursuant to writs of execution or writs of garnishment to satisfy such judgments**. The functions and public services of **the State cannot be allowed to be paralyzed or disrupted by the diversion of public fund from their legitimate and specific objects**, and as appropriated by law.

The rule is based on obvious considerations of public policy. Indeed, the disbursements of public funds must be covered by the corresponding appropriation as required by law.

MOST REV. PEDRO ARIGO et al *v.* SCOTT H. SWIFT, in his capacity as Commander of the US 7th Fleet et al
G.R. No. 206510 September 16, 2014, Villarama, Jr., J.

While the doctrine [of state immunity from suit] appears to prohibit only suits against the state without its consent, it is also applicable to complaints filed against officials of the state for acts allegedly performed by them in the discharge of their duties.

FACTS:
In 2013, the USS Guardian, a US ship, was on its way to Indonesia when it ran aground the northwest side of South Shoal of the Tubbataha Reefs. Vice Admiral Scott Swift, US 7th Fleet Commander expressed regret for the incident in a press statement. Three months later, the US Navy-led salvage team had finished removing the last piece of the grounded ship from the coral reef. The petitioners then filed this petition for the issuance of a Writ of Kalikasan against Swift and other officials, claiming that the grounding and salvaging operations caused and continue to cause environmental damage of such magnitude as to affect several provinces in the Visayas and Mindanao. They also seek a directive from this Court for the institution of civil, administrative and criminal suits for acts committed in violation of environmental laws and regulations in connection with the grounding incident. Only the Philippine respondents filed a comment to the petition.

ISSUE:
Whether or not the Supreme Court has jurisdiction over the US respondents who did not submit any pleading or manifestation in the case

RULING:
No. Under the Constitution, the State may not be sued without its consent. While the doctrine appears to prohibit only suits against the state without its consent, it is also applicable to complaints filed against officials of the state for acts allegedly performed by them in the discharge of their duties. The rule is that if the judgment against such officials will require the state itself to perform an affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state itself although it has not been formally impleaded. In such a situation, the state may move to dismiss the complaint on the ground that it has been filed without its consent.

In this case, the US respondents were sued in their official capacity as commanding officers of the US Navy who had control and supervision over the USS Guardian and its crew. The alleged act or omission resulting in the unfortunate grounding of the USS Guardian on the TRNP was committed while they were performing official military duties. Considering that the satisfaction of a judgment against said officials will require remedial actions and appropriation of funds by the US government, the suit is deemed to be one against the US itself. The principle of State immunity therefore bars the exercise of jurisdiction by this Court over the persons of respondents Swift, Rice and Robling.

A.3 SEPARATION OF POWERS AND CHECKS AND BALANCES

SENATE OF THE PHILIPPINES, *et al.* v. EDUARDO R. ERMITA
G.R. Nos. 169777, 169659, 169660, 169667, 169834 & 171246, April 20, 2006, CARPIO-MORALES, *J.*

Congress has a right to information from the executive branch whenever it is sought in aid of legislation. If the executive branch withholds such information on the ground that it is privileged, it must so assert it and state the reason therefor and why it must be respected.

FACTS:
The Senate invited several executive officials as resource speakers for public hearings involving the alleged overpricing of the North Rail Projects and the massive electoral fraud in the presidential elections of May 2005. Thereafter, the President issued Executive Order No. (EO) 464 which requires that all heads of departments of the Executive Branch of the government shall secure the consent of the President prior to appearing before either House of Congress. Because of the EO, many of those who were invited were not able to go to the inquiry because of lack of approval from the President. Hence, the Senate of the Philippines filed a petition to Supreme Court to question the validity of EO 464.

ISSUE:
Whether EO 464 is void on the ground that it contravenes the power of inquiry vested in Congress.

RULING:
Sections 2(b) and 3 of EO 464 are void while sections 1 and 2 (a) are valid.

Congress has a right to information from the executive branch whenever it is sought in aid of legislation. If the executive branch withholds such information on the ground that it is privileged, it must so assert it and state the reason therefor and why it must be respected.

Section 3 of E.O. 464 requires all official mentioned in Sec. 2 (b) to obtain the consent of the president before they can appear before congress. This enumeration is broad and when the officials concerned invokes this as a basis for not attending the inquiries there is already an implied claim of privilege. Executive privilege is properly invoked in relation to specific categories of information and not to categories of person.

Sections 2(b) and 3 of E.O. 464 are void because they are too broad and would frustrate the power of Congress to conduct inquiries in aid of legislation because it allows the executive branch to evade congressional requests for information without need of clearly asserting a right to do so and or pro-offering its reasons therefor.

KILUSANG MAYO UNO v. THE DIRECTOR-GENERAL, NATIONAL ECONOMIC DEVELOPMENT AUTHORITY
G.R. No. 167798, APRIL 19, 2006, Carpio, J.

The right to privacy does not bar the adoption of reasonable ID systems by government entities.

FACTS:

President Arroyo issued EO 420 that directs a unified ID system among government agencies and GOCCs in order to have a uniform ID for all government agencies. Kilusang Mayo Uno and others assailed this executive order for being a "usurpation of legislative powers by the president" and it infringes the citizens' right to privacy.

ISSUE:
Whether EO 420 infringes on the citizens right to privacy

RULING:

No. All these years, the GSIS, SSS, LTO, Philhealth and other government entities have been issuing ID cards in the performance of their governmental functions. There have been no complaints from citizens that the ID cards of these government entities violate their right to privacy. There have also been no complaints of abuse by these government entities in the collection and recording of personal identification data.

With the exception of eight specific data shown on the ID card, the personal data collected and recorded under EO 420 are treated as strictly confidential under Sec. 6(d) of EO 420. These data are not only strictly confidential but also personal matters. Section 7, Article III of the 1987 Constitution grants the right of the people to information on matters of public concern. Personal matters are exempt or outside the coverage of the people's right to information on matters of public concern. The data treated as strictly confidential under EO 420 being private matters and not matters of public concern, these data cannot be released to the public or the press.

Petitioners have not shown how EO 420 will violate their right to privacy. Petitioners cannot show such violation by a mere facial examination of EO 420 because EO 420 narrowly draws the data collection, recording and exhibition while prescribing comprehensive safeguards. Moreover, EO 420 applies only to government entities that already maintain ID systems and issue ID cards pursuant to their regular functions under existing laws. EO 420 does not grant such government entities any power that they do not already possess under existing laws. In contrast, the assailed executive issuance in *Ople v. Torres* sought to establish a National Computerized Identification Reference System, a national ID system that did not exist prior to the assailed executive issuance. Obviously, a national ID card system requires legislation because it creates a new national data collection and card issuance system where none existed before.

In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses under the Subpoenas of February 10, 2012 and the Various Letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012
February 14, 2012

ROMMEL JACINTO DANTES SILVERIO, v. **REPUBLIC OF THE PHILIPPINES**
G.R. No. 174689, October 22, 2007, **CORONA, *J.*:**

The determination of a person's gender appearing in his birth certificate is a legal issue and the court must look to the statutes.

FACTS:

Rommel Jacinto Dantes Silverio filed a petition for the change of his first name and sex in his birth certificate in the RTC. He prays that his name to Mely and gender be changed to female since he underwent sex reassignment surgery. Trial court rendered a decision in favor of Silverio. Republic of the Philippines, thru the OSG, filed a petition for certiorari in the CA. OSG alleges that there is no law allowing the change of entries in the birth certificate by reason of sex alteration. Court of Appeals rendered a decision in favor of the Republic.

ISSUE:
Whether it is within the power of the court to change Silverio's gender and name on the ground of sex reassignment.

RULING:
NO. It is within the power of the legislative to determine what guidelines should govern the recognition of the effects of sex reassignment. The need for legislative guidelines becomes particularly important in this case where the claims asserted are statute-based. It is the statutes that defines who may file petitions for change of first name and for correction or change of entries in the civil registry, where they may be filed, what grounds may be invoked, what proof must be presented and what procedures shall be observed. If the legislature intends to confer on a person who has undergone sex reassignment the privilege to change his name and sex to conform with his reassigned sex, it has to enact legislation laying down the guidelines in turn governing the conferment of that privilege.

REPUBLIC OF THE PHILIPPINES, Represented by Executive Secretary Eduardo R. Ermita, the DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), and the MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), Petitioners,vs.HON. HENRICK F. GINGOYON, In his capacity as Presiding Judge of the Regional Trial Court, Branch 117, Pasay City and PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., Respondents.
G.R. No. 166429, EN BANC December 19, 2005, TINGA, J.:

Unlike in the case of Rule 67, the application of Rep. Act No. 8974 will not contravene the 2004 Resolution, which requires the payment of just compensation before any takeover of the NAIA 3 facilities by the Government.

FACTS:
The present controversy has its roots with the promulgation of the Court's decision in Agan v. PIATCO, promulgated in 2003. This decision nullified the "Concession Agreement for the Build-Operate-and-Transfer Arrangement of the Ninoy Aquino International Airport Passenger Terminal III entered into between the Philippine Government and the Philippine International Air Terminals Co., Inc. as well as the amendments and supplements thereto.

The agreement had authorized PIATCO to build a new international airport terminal (NAIA 3), as well as a franchise to operate and maintain the said terminal during the concession period of 25 years. The contracts were nullified and that the agreement was contrary to public policy. At the time of the promulgation of the 2003 Decision, the NAIA 3 facilities had already been built by PIATCO and were nearing completion. However, the ponencia was silent as to the legal status of the NAIA 3 facilities following the nullification of the contracts, as well as whatever rights of PIATCO for reimbursement for its expenses in the construction of the facilities.

After the promulgation of the rulings in Agan, the NAIA 3 facilities have remained in the possession of PIATCO, despite the avowed intent of the Government to put the airport terminal into immediate operation. The Government and PIATCO conducted several rounds of negotiation regarding the NAIA 3 facilities.

In 2004, the Government filed a Complaint for expropriation with the Pasay RTC. The Government sought upon the filing of the complaint the issuance of a writ of possession authorizing it to take immediate possession and control over the NAIA 3 facilities. The Government also declared that it had deposited the amount of P3,002,125,000.00 in Cash with the Land Bank of the Philippines, representing the NAIA 3 terminal's assessed value for taxation purposes.

The Government insists that Rule 67 of the Rules of Court governs the expropriation proceedings in this case to the exclusion of all other laws. On the other hand, PIATCO claims that it is Rep. Act No. 8974 which does apply.

ISSUE:
Whether or not Rule 67 of the Rules of Court or Rep. Act No. 8974 governs the expropriation proceedings in this case

HELD:
RA 8974 governs. Application of Rule 67 violates the 2004 Agan Resolution.
Rule 67 outlines the procedure under which eminent domain may be exercised by the Government. Yet by no means does it serve at present as the solitary guideline through which the State may expropriate private property. For example, Section 19 of the Local Government Code governs as to the exercise by local government units of the power of eminent domain through an enabling ordinance. And then there is Rep. Act No. 8974, which covers expropriation proceedings intended for national government infrastructure projects.

Rep. Act No. 8974, which provides for a procedure eminently more favorable to the property owner than Rule 67, inescapably applies in instances when the national government expropriates property "for national government infrastructure projects." Thus, if expropriation is engaged in by the national government for purposes other than national infrastructure projects, the assessed value standard and the deposit mode prescribed in Rule 67 continues to apply.

Under both Rule 67 and Rep. Act No. 8974, the Government commences expropriation proceedings through the filing of a complaint. Unlike in the case of local governments which necessitate an authorizing ordinance before expropriation may be accomplished, there is no need under Rule 67 or Rep. Act No. 8974 for legislative authorization before the Government may proceed with a particular exercise of eminent domain. The most crucial difference between Rule 67 and Rep. Act No. 8974 concerns the particular essential step the Government has to undertake to be entitled to a writ of possession.

Rule 67 merely requires the Government to deposit with an authorized government depositary the assessed value of the property for expropriation for it to be entitled to a writ of possession. On the other hand, Rep. Act No. 8974 requires that the Government make a direct payment to the property owner before the writ may issue. Moreover, such payment is based on the zonal valuation of the BIR in the case of land, the value of the improvements or structures under the replacement cost method,

or if no such valuation is available and in cases of utmost urgency, the proffered value of the property to be seized.

It is quite apparent why the Government would prefer to apply Rule 67 in lieu of Rep. Act No. 8974. Under Rule 67, it would not be obliged to immediately pay any amount to PIATCO before it can obtain the writ of possession since all it need do is deposit the amount equivalent to the assessed value with an authorized government depositary.

It is the finding of this Court that the staging of expropriation proceedings in this case with the exclusive use of Rule 67 would allow for the Government to take over the NAIA 3 facilities in a fashion that directly rebukes our 2004 Resolution in Agan. This Court cannot sanction deviation from its own final and executory orders.

Section 2 of Rule 67 provides that the State "shall have the right to take or enter upon the possession of the real property involved if [the plaintiff] deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court." It is thus apparent that under the provision, all the Government need do to obtain a writ of possession is to deposit the amount equivalent to the assessed value with an authorized government depositary.

Would the deposit under Section 2 of Rule 67 satisfy the requirement laid down in the 2004 Resolution that "[f]or the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures"? Evidently not.

If Section 2 of Rule 67 were to apply, PIATCO would be enjoined from receiving a single centavo as just compensation before the Government takes over the NAIA 3 facility by virtue of a writ of possession. Such an injunction squarely contradicts the letter and intent of the 2004 Resolution. Hence, the position of the Government sanctions its own disregard or violation the prescription laid down by this Court that there must first be just compensation paid to PIATCO before the Government may take over the NAIA 3 facilities.

Thus, at the very least, Rule 67 cannot apply in this case without violating the 2004 Resolution. Even assuming that Rep. Act No. 8974 does not govern in this case, it does not necessarily follow that Rule 67 should then apply. After all, adherence to the letter of Section 2, Rule 67 would in turn violate the Court's requirement in the 2004 Resolution that there must first be payment of just compensation to PIATCO before the Government may take over the property.

Rep. Act No. 8974 Fit sto the Situation at Bar and Complements the 2004 Agan Resolution

Rep. Act No. 8974 is entitled "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes." Obviously, the law is intended to cover expropriation proceedings intended for national government infrastructure projects.

As acknowledged in the 2003 Decision, the development of NAIA 3 was made pursuant to a build-operate-and-transfer arrangement pursuant to Republic Act No. 6957, as amended, which pertains to infrastructure or development projects normally financed by the public sector but which are now wholly or partly implemented by the private sector. Under the build-operate-and-transfer scheme, it is the project proponent which undertakes the construction, including the financing, of a given infrastructure facility.

There can be no doubt that PIATCO has ownership rights over the facilities which it had financed and constructed. The 2004 Resolution squarely recognized that right when it mandated the payment of just compensation to PIATCO prior to the takeover by the Government of NAIA 3. The fact that the Government resorted to eminent domain proceedings in the first place is a concession on its part of PIATCO's ownership. Indeed, if no such right is recognized, then there should be no impediment for the Government to seize control of NAIA 3 through ordinary ejectment proceedings.

Thus, the property subject of expropriation, the NAIA 3 facilities, are real property owned by PIATCO. This point is critical, considering the Government's insistence that the NAIA 3 facilities cannot be deemed as the "right-of-way", "site" or "location" of a national government infrastructure project, within the coverage of Rep. Act No. 8974.

Even as the provisions of Rep. Act No. 8974 call for that law's application in this case, the threshold test must still be met whether its implementation would conform to the dictates of the Court in the 2004 Resolution. Unlike in the case of Rule 67, the application of Rep. Act No. 8974 will not contravene the 2004 Resolution, which requires the payment of just compensation before any takeover of the NAIA 3 facilities by the Government.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant,* -versus- FLORENCIO M. REYES, Officer-in-Charge, and RENE DE GUZMAN, Clerk, Regional Trial Court, Branch 31, Guimba, Nueva Ecija, *Respondents.*
A.M. No. P-08-2535, EN BANC, June 23, 2010, PER CURIAM.

Legislative policy as embodied in Republic Act No. 9165 in deterring dangerous drug use by resort to sustainable programs of rehabilitation and treatment must be considered in light of this Court's constitutional power of administrative supervision over courts and court personnel.Hence, De Guzman must be sanctioned despite the underlying policy under Republic Act No. 9165.

FACTS:
A complaint for gross misconduct against Rene de Guzman, Clerk, RTC of Guimba, Nueva Ecija by Atty. Hugo B. Sansano, Jr. alleged incompetence/inefficiency in the transmittal of the records of Criminal Case No. 1144-G to the Court of Appeals. De Guzman was also asked to comment on the allegation that he is using illegal drugs and had been manifesting irrational and queer behavior while at work. Thereafter, Nueva Ecija Provincial Crime Laboratory Office after mandatory drug testing found de Guzman positive for "marijuana" and "shabu." As a result, OCA recommended that de Guzman be held guilty of two counts of gross misconduct. Majority of the SC adopts the OCA's recommendation. On the other hand, the minority opines that the SC's action in this case contravenes an express public policy, under Republic Act No. 9165 "imprisonment for drug dealers and pushers, rehabilitation for their victims." They also posit that De Guzman's failure to properly perform his duties and promptly respond to Court orders precisely springs from his drug addiction that requires rehabilitation.

ISSUE:
Whether De Guzman must be sanctioned despite the underlying policy under Republic Act No. 9165. (YES)

RULING:
The legislative power imposing policies through laws is not unlimited and is subject to the substantive and constitutional limitations that set parameters both in the exercise of the power itself

and the allowable subjects of legislation. As such, it cannot limit the Court's power to impose disciplinary actions against erring justices, judges and court personnel. Neither should such policy be used to restrict the Court's power to preserve and maintain the Judiciary's honor, dignity and integrity and public confidence that can only be achieved by imposing strict and rigid standards of decency and propriety governing the conduct of justices, judges and court employees.

Finally, it must be emphasized at this juncture that De Guzman's dismissal is not grounded only on his being a drug user. His outright dismissal from the service is likewise anchored on his contumacious and repeated acts of not heeding the directives of this Court. As we have already stated, such attitude betrays not only a recalcitrant streak of character, but also disrespect for the lawful orders and directives of the Court.

BAGUAN M. MAMISCAL, *Complainant,*-versus- CLERK OF COURT MACALINOG S. ABDULLAH, SHARI'A CIRCUIT COURT, MARAWI CITY, *Respondent.*
A.M. No. SCC-13-18-J, SECOND DIVISION, July 1, 2015, MENDOZA, *J.*

Unless jurisdiction has been conferred by some legislative act, no court or tribunal can act on a matter submitted to it.

The power of administrative supervision over civil registrars rests on the municipal and city mayors of the respective local government units.While Abdullah is undoubtedly a member of the Judiciary as Clerk of Court of the Sharia Circuit Court, he is being charged pursuant to his function as local civil registrar of Muslim divorces. Hence, the Supreme Court has no jurisdiction to impose administrative sanction against him.

FACTS:
Baguan Mamiscal had a heated argument with his wife, Adelaidah Lomondot. In the heat of anger, Baguan decided to divorce his wife by repudiating her (talaq). The repudiation was embodied in an agreement (kapasdan) signed by Baguan and Adelaidah. A few days later however, Baguan had a change of heart and decided to make peace with his wife but efforts proved futile. Five months later, Adelaidah filed a Certificate of Divorce (COD) with the office of Macalinog Abdullah, acting as local civil registrar for muslim divorces, for registration. Abdullah issued a Certificate of Registration of Divorce (CRD) to finalize the divorce between Baguan and Adelaidah. Thereafter, Baguan filed an administrative complaint against Abdullah alleging that the latter should not have acted upon the COD because according to Muslim law, only males are allowed to file a COD.

ISSUE:
Whether the Supreme Court has jurisdiction to impose administrative sanction against Abdullah. (NO)

RULING:
CA No. 3753 is the primary law that governs the registry of civil status of persons. With the promulgation of the Local Government Code, the power of administrative supervision over civil registrars was devolved to the municipal and city mayors of the respective local government units. While Abdullah is undoubtedly a member of the Judiciary as Clerk of Court of the Sharia Circuit Court, he is being charged pursuant to his function as local civil registrar of Muslim divorces. Well-settled is the rule that what controls is not the designation of the offense but the actual facts recited in the complaint. Verily, unless jurisdiction has been conferred by some legislative act, no court or tribunal can act on a matter submitted to it.

A.4 DELEGATION OF POWERS

DATU ZALDY UY AMPATUAN, ANSARUDDIN ADIONG, REGIE SAHALI-GENERALE, *Petitioners,* - versus- HON. RONALDO PUNO, in his capacity as Secretary of the Department of the Interior and Local Government and alter-ego of President Gloria Macapagal-Arroyo, and anyone acting in his stead and on behalf of the President of the Philippines, ARMED FORCES OF THE PHILIPPINES (AFP), or any of their units operating in the Autonomous Region in Muslim Mindanao (ARMM), and PHILIPPINE NATIONAL POLICE, or any of their units operating in ARMM, *Respondents.*
G.R. No. 190259, EN BANC, June 7, 2011, ABAD, *J.*

President Arroyo validly exercised emergency powers when she called out the AFP and the PNP to prevent and suppress all incidents of lawless violence in Maguindanao, Sultan Kudarat, and Cotabato City.

The calling out of the armed forces to prevent or suppress lawless violence in such places is a power that the Constitution directly vests in the President. She did not need a congressional authority to exercise the same. Moreover, the President's call on the armed forces to prevent or suppress lawless violence springs from the power vested in her under Section 18, Article VII of the Constitution. While it is true that the Court may inquire into the factual bases for the President's exercise of the above power, it would generally defer to her judgment on the matter.

FACTS:
The day after the gruesome massacre of 57 men and women, including some news reporters, then President Gloria Macapagal-Arroyo issued Proclamation 1946, placing the Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato under a state of emergency. She directed the AFP and the PNP to undertake measures as may be allowed by the Constitution and by law to prevent and suppress all incidents of lawless violence. Petitioner ARMM officials claimed that the President had no factual basis for declaring a state of emergency, especially in the Province of Sultan Kudarat and the City of Cotabato, where no critical violent incidents occurred. Petitioners contended that the President unlawfully exercised emergency powers when she ordered the deployment of AFP and PNP personnel in the places mentioned in the proclamation.

ISSUE:
Whether President Arroyo invalidly exercised emergency powers when she called out the AFP and the PNP to prevent and suppress all incidents of lawless violence in Maguindanao, Sultan Kudarat, and Cotabato City. (NO)

RULING:
The deployment of AFP and PNP personnel is not by itself an exercise of emergency powers as understood under Section 23 (2), Article VI of the Constitution. The President did not proclaim a national emergency, only a state of emergency in the three places mentioned. And she did not act pursuant to any law enacted by Congress that authorized her to exercise extraordinary powers. The calling out of the armed forces to prevent or suppress lawless violence in such places is a power that the Constitution directly vests in the President. She did not need a congressional authority to exercise the same. Moreover, the President's call on the armed forces to prevent or suppress lawless violence springs from the power vested in her under Section 18, Article VII of the Constitution. While it is true that the Court may inquire into the factual bases for the President's exercise of the above power, it

would generally defer to her judgment on the matter. As the Court acknowledged in Integrated Bar of the Philippines v. Hon. Zamora, it is clearly to the President that the Constitution entrusts the determination of the need for calling out the armed forces to prevent and suppress lawless violence. Unless it is shown that such determination was attended by grave abuse of discretion, the Court will accord respect to the President's judgment.

SOUTHERN CROSS CEMENT CORPORATION, *Petitioner*, -versus- THE PHILIPPINE CEMENT MANUFACTURERS CORP.,THE SECRETARY OF THE DEPARTMENT OF TRADE & INDUSTRY, THE SECRETARY OF THE DEPARTMENT OF FINANCE, and THE COMMISSIONER OF THE BUREAU OF CUSTOMS, *Respondents.*
G.R. No. 158540, SECOND DIVISION, July 8, 2004, TINGA, *J.*

This delegation of the taxation power by the legislative to the executive is authorized by the Constitution itself. At the same time, the Constitution also grants the delegating authority (Congress) the right to impose restrictions and limitations on the taxation power delegated to the President.

Here, the DTI Secretary's authority is derived from the SMA; it does not flow from any inherent executive power. Hence, it may not impose provisional remedies in violation of the SMA.

FACTS:
Philippine Cement Manufacturers Corporation is an association of domestic cement manufacturers. It contended that because of the importation of Gray Portland cement, it affected caused declines in domestic production, capacity utilization, market share, sales and employment; as well as caused depressed local prices. It sought the imposition of provisional remedies but the Tariff Commissioner did not grant such imposition. DTI then imposed the provisional remedies in violation of the Safeguard Measures (SMA). This was then alleged by South Cement that DTI cannot impose provisional remedies since Tariff Commissioner did not approve such. It was contended by South Cement that the power delegated by Congress to President in case of tariff and customs is absolute.

ISSUE:
Whether the power of the President delegated by the Congress in case of tariffs and customs code is absolute and not subject to limitation. (NO)

RULING:
Section 28(2), Article VI of the 1987 Constitution confirms the delegation of legislative power, yet ensures that the prerogative of Congress to impose limitations and restrictions on the executive exercise of this power:

> The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

This delegation of the taxation power by the legislative to the executive is authorized by the Constitution itself. At the same time, the Constitution also grants the delegating authority (Congress) the right to impose restrictions and limitations on the taxation power delegated to the President. The

restrictions and limitations imposed by Congress take on the mantle of a constitutional command, which the executive branch is obliged to observe.

The SMA empowered the DTI Secretary, as alter ego of the President, to impose definitive general safeguard measures, which basically are tariff imposts of the type spoken of in the Constitution. However, the law did not grant him full, uninhibited discretion to impose such measures. The DTI Secretary authority is derived from the SMA; it does not flow from any inherent executive power. Thus, the limitations imposed by Section 5 are absolute, warranted as they are by a constitutional fiat.

NOTE: The 2005 Motion for Reconsideration was denied with finality.

BAI SANDRA S. A. SEMA, *Petitioner*, -versus- COMMISSION ON ELECTIONS and DIDAGEN P. DILANGALEN, *Respondents.*
G.R. No. 177597, EN BANC, July 16, 2008, CARPIO, *J.*

Section 19, Article VI of RA 9054delegating to the ARMM National Assembly the power to create provincesis unconstitutional. Only Congress can create provinces and cities because the creation of provinces and cities necessarily includes the creation of legislative districts – a power only Congress can exercise.

FACTS:
The Autonomous Region in Muslim Mindanao (ARMM) was created by RA 9054. Section 19, Article VI of RA 9054 allows ARMM's legislature, the ARMM National Assembly, to create provinces. Thus it enacted Muslim Mindanao Autonomy Act No. 201 (MMA Act 201) creating the province of Shariff Kabunsuan composed of eight municipalities in the first district of Maguindanao. Comelec and Didagen Dilanganen (Dilanganen) now questions the constitutionality of Section 19, Article VI of RA 9054. They alleged that such law entitles a province to have one representative in the House of Representatives without need of a national law creating a legislative district.

ISSUE:
Whether Section 19, Article VI of RA 9054, delegating to the ARMM National Assembly the power to create provinces is constitutional. (NO)

RULING:
Section 19, Article VI of RA 9054 is unconstitutional. Section 19, Article VI of RA 9054, insofar as it grants to the ARMM Regional Assembly the power to create provinces, is void for being contrary to Section 5 of Article VI and Section 20 of Article X of the Constitution. Only Congress can create provinces and cities because the creation of provinces and cities necessarily includes the creation of legislative districts, a power only Congress can exercise under Section 5, Article VI of the Constitution. The ARMM Regional Assembly cannot create a province without a legislative district because the Constitution mandates that every province shall have a legislative district.

NPC DRIVERS AND MECHANICS ASSOCIATION, (NPC DAMA), represented by Its President ROGER S. SAN JUAN, SR., NPC EMPLOYEES & WORKERS UNION (NEWU) — NORTHERN LUZON REGIONAL CENTER, represented by its Regional President JIMMY D. SALMAN, in their own individual capacities and in behalf of the members of the associations and all affected officers and employees of National Power Corporation (NPC), ZOL D. MEDINA, NARCISO M.

MAGANTE, VICENTE B. CIRIO, JR., NECITAS B. CAMAMA, in their individual capacities as employees of National Power Corporation, *Petitioners,* -versus- THE NATIONAL POWER CORPORATION (NPC), NATIONAL POWER BOARD OF DIRECTORS (NPB), JOSE ISIDRO N. CAMACHO as Chairman of the National Power Board of Directors (NPB), ROLANDO S. QUILALA, as President — Officer-in-charge/CEO of National Power Corporation and Member of National Power Board, and VINCENT S. PEREZ, JR., EMILIA T. BONCODIN, MARIUS P. CORPUS, RUBEN S. REINOSO, JR., GREGORY L. DOMINGO and NIEVES L. OSORIO, *Respondents.* G.R. No. 156208, FIRST DIVISION, September 26, 2006, CHICO-NAZARIO, *J.*

In those cases in which the proper execution of the office requires, on the part of the officer, the exercise of judgment or discretion, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his duties to another. A delegate may exercise his authority through persons he appoints to assist him in his functions provided that the judgment and discretion finally exercised are those of the officer authorized by law.

Here, NPB Resolution Nos. 2002-124 and 2002-125 were issued by only three members of the Board of Directors of the NPC. Although there were seven board members who were present during the meeting where the assailed Board Resolutions were passed, four of the board members who were present therein and signed the questioned resolutions were not the secretaries of their respective departments but were merely representatives or designated alternates of the officials who were named under the EPIRA Law to sit as members of the NPB. Hence, NPB Resolution Nos. 2002-124 and 2002-125 are void.

FACTS:
On 8 June 2001, Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law), was approved and signed into law by then President Gloria Macapagal-Arroyo. Under the EPIRA Law a new National Power Board of Directors was constituted composed of the Secretary of Finance as Chairman, with the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation as members. Subsequently thereafter, the NPB passed NPB Resolution No. 2002-124 which provided for the Guidelines on the Separation Program of the NPC and the Selection and Placement of Personnel in the NPC Table of Organization. Under said Resolution, all NPC personnel shall be legally terminated on 31 January 2003, and shall be entitled to separation benefits. On the same day, the NPB approved NPB Resolution No. 2002-125, whereby a Transition Team was constituted to manage and implement the NPCs Separation Program.

Arguing that NPB Resolution Nos. 2002-124 and 2002-125 are void for having been issued by only three members of the Board of Directors of the NPC, petitioners filed the present Petition for Injunction praying that the implementation of the said Resolutions be enjoined. According to the petitioners although there were seven board members who were present during the meeting where the assailed Board Resolutions were passed, four of the board members who were present therein and signed the questioned resolutions were not the secretaries of their respective departments but were merely representatives or designated alternates of the officials who were named under the EPIRA Law to sit as members of the NPB. Petitioners claim that the acts of these representatives are violative of the well-settled principle that delegated power cannot be further delegated.

ISSUE:

Whether NPB Resolution Nos. 2002-124 and 2002-125 are void. (YES)

RULING:
In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Discretion may be defined as the act or the liberty to decide according to the principles of justice and ones ideas of what is right and proper under the circumstances, without willfulness or favor. Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility.

A.5 STATE PRINCIPLES AND POLICIES

AIR CANADA, *Petitioner*, -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 169507, SECOND DIVISION, January 11, 2016, LEONEN, *J.*

The Philippines "adopts the generally accepted principles of international law as part of the law of the land." Hence, pursuant to Article 8 of the Republic of the Philippines-CanadaTax Treaty, Air Canada may only be imposed a maximum tax of 1 ½ % of its gross revenues earnedfrom the sale of its tickets in the Philippines.

FACTS:
Air Canada is a foreign corporation organized and existing under the laws of Canada. It was grantedan authority to operate as an offline carrier by the Civil Aeronautics Board. As an off-line carrier,Air Canada does not have flights originating from or coming to the Philippines and does not operateany airplane in the Philippines. Air Canada engaged the services of Aerotel Ltd., Corp. (Aerotel) asits general sales agent in the Philippines. Aerotel sells Air Canada's passage documents in thePhilippines.

For the period ranging from the third quarter of 2000 to the second quarter of 2002, Air Canada,through Aerotel, filed quarterly and annual income tax returns and paid the income tax on GrossPhilippine Billings in the total amount of ₱5,185,676.77.

On November 28, 2002, Air Canada filed a written claim for refund of alleged erroneously paidincome taxes. It found basis from the revised definition of Gross Philippine Billings under Section28(A)(3)(a) of the Tax Code.

To prevent the running of the prescriptive period, Air Canada filed a Petition for Review before theCourt of Tax Appeals on November 29, 2002. On December 22, 2004, the Court of Tax Appeals FirstDivision rendered its Decision denying the Petition for Review and, hence, the claim for refund. AirCanada seasonably filed a Motion for Reconsideration, but the Motion was denied. On May 9, 2005,Air Canada appealed to the Court of Tax Appeals En Banc. In the Decision dated August 26,

2005,theCourt of Tax Appeals En Banc affirmed the findings of the First Division. Hence, this Petitionfor Review.

ISSUE:
Whether Air Canada is subject to the 2½ % tax on Gross Philippine Billings pursuant to Section28(A)(3) of the Tax Code. (NO)

RULING:
An offline international air carrier selling passage tickets in the Philippines, through a general salesagent, is a resident foreign corporation doing business in the Philippines. As such, it is taxable underSection 28(A)(l), and not Section 28(A)(3) of the Tax Code, subject to any applicable tax treaty towhich the Philippines is a signatory. Pursuant to Article 8 of the Republic of the Philippines-CanadaTax Treaty, Air Canada may only be imposed a maximum tax of 1 ½ % of its gross revenues earnedfrom the sale of its tickets in the Philippines.

Petitioner is undoubtedly "doing business" or "engaged in trade or business" in the Philippines.Aerotel performs acts or works or exercises functions that are incidental and beneficial to thepurpose of petitioner's business. The activities of Aerotel bring direct receipts or profits topetitioner. There is nothing on record to show that Aerotel solicited orders alone and for its ownaccount and without interference from, let alone direction of, petitioner. On the contrary, Aerotelcannot "enter into any contract on behalf of [petitioner Air Canada] without the express writtenconsent of [the latter,]" and it must perform its functions according to the standards required bypetitioner. Through Aerotel, petitioner is able to engage in an economic activity in the Philippines.Petitioner is, therefore, a resident foreign corporation that is taxable on its income derived fromsources within the Philippines.

International air carrier[s] maintaining flights to and from the Philippines shall be taxed at the rateof 2 ½ % of its Gross Philippine Billings while international air carriers that do not have flights toand from the Philippines but nonetheless earn income from other activities in the country [like saleof airline tickets] will be taxed at the regular income tax rate.

However, the application of the regular tax rate under Section 28(A)(1) of the Tax Code mustconsider the existence of an effective tax treaty between the Philippines and the home country ofthe foreign air carrier.

In this case, there is a tax treaty that must be taken into consideration to determine the proper taxrate. While petitioner is taxable as a resident foreign corporation under Section 28(A)(1) of the TaxCode on its taxable income from sale of airline tickets in the Philippines, it could only be taxed at amaximum of 1 ½ % of gross revenues, pursuant to Article VIII of the Republic of the Philippines-Canada Tax Treaty that applies to petitioner as a "foreign corporation organized and existing underthe laws of Canada.

The P5,185,676.77 Gross Philippine Billings tax paid by petitioner was computed at the rate of 1 ½ %of its gross revenues amounting to P345,711,806.08. It is quite apparent that the tax imposable underSection 28(A)(l) of the Tax Code will exceed the maximum ceiling of 1 ½ % of gross revenues asdecreed in Article VIII of the Republic of the Philippines-Canada Tax Treaty. Hence, no refund isforthcoming.

ANG LADLAD LGBT PARTY represented herein by its Chair, DANTON REMOTO, *Petitioner*, -versus- COMMISSION ON ELECTIONS, *Respondent.*
G.R. No. 190582, EN BANC, April 8, 2010, DEL CASTILLO, *J.*

Rather than relying on religious belief, the government must act for secular purposes and in ways that have primarily secular effects. Here, Ang Ladlad has sufficiently demonstrated its compliance with the legal requirements for accreditation. Hence, its application as a party-list should be granted.

FACTS:
Ang Ladlad is an organization of people who identify themselves as lesbians, gays, bisexuals or trans-genders. It filed a petition for registration with the Comelec as a party-list. The Comelec dismissed the petition on moral grounds as "the definition of the LGBT sector makes it crystal clear that petitioner tolerates immorality which offends religious beliefs," even citing passages from the Bible and Koran. In its petition with the Supreme Court, Ang Ladlad argued that the denial of accreditation, insofar as it justified the exclusion by using religious dogma, violated the constitutional guarantees against the establishment of religion. It also claimed that the assailed Comelec Resolutions contravened its constitutional rights to privacy, freedom of speech and assembly, and equal protection of laws, as well as constituted violations of the Philippines' international obligations against discrimination based on sexual orientation.

ISSUE:
Whether Ang Ladlad's application as a party-list should be granted. (YES)

RULING:
Ang Ladlad has sufficiently demonstrated its compliance with the legal requirements for accreditation. Rather than relying on religious belief, the legitimacy of the Assailed Resolutions should depend, instead, on whether the Comelec is able to advance some justification for its rulings beyond mere conformity to religious doctrine. Otherwise stated, government must act for secular purposes and in ways that have primarily secular effects.

The Court also discussed Ang Ladlad's invocation of the Yogyakarta Principles (The Application of International Human Rights Law In Relation to Sexual Orientation and Gender Identity) as a binding principle of international law. The Court said that it was not prepared to declare that the Yogyakarta Principles contain norms obligatory on the Philippines, because they are not reflective of the current state of international law and do not find basis in any of the sources of international law enumerated under Article 38(1) of the Statute of the International Court of Justice. Petitioner has not undertaken any objective and rigorous analysis of these alleged principles of international law to ascertain their true status. Using even the most liberal of lenses, these Yogyakarta Principles, consisting of a declaration formulated by various international law professors, are–at best–de lege ferenda–and do not constitute binding obligations on the Philippines. Indeed, so much of contemporary international law is characterized by the "soft law" nomenclature, i.e., international law is full of principles that promote international cooperation, harmony, and respect for human rights, most of which amount to no more than well-meaning desires, without the support of either State practice or opinio juris.

JAMES M. IMBONG and LOVELY-ANN C. IMBONG, for themselves and in behalf of their minor children, LUCIA CARLOS IMBONG and BERNADETTE CARLOS IMBONG and MAGNIFICAT CHILD DEVELOPMENT CENTER, INC., *Petitioners*, -versus- HON. PAQUITO N. OCHOA, JR., Executive Secretary, HON. FLORENCIO B. ABAD, Secretary, Department of Budget and Management, HON. ENRIQUE T. ONA, Secretary, Department of Health, HON. ARMIN A.

LUISTRO, Secretary, Department of Education, Culture and Sports and HON. MANUEL A. ROXAS II, Secretary, Department of the Interior and Local Government, *Respondents.*
G.R. No. 204819, EN BANC, April 8, 2014, MENDOZA, *J.*

The clear and unequivocal intent of the Framers of the 1987 Constitution in protecting the life of the unborn from conception was to prevent the Legislature from enacting a measure legalizing abortion. A reading of the RH Law would show that it is in line with this intent and actually proscribes abortion. While the Court has opted not to make any determination, at this stage, when life begins, it finds that the RH Law itself clearly mandates that protection be afforded from the moment of fertilization.

FACTS:
Petitioners assailed the constitutionality of the Reproductive Health Law (RH Law), because, among others, it violates the right to life of the unborn. Notwithstanding its declared policy against abortion, the implementation of the RH Law would authorize the purchase of hormonal contraceptives, intra-uterine devices and injectables which are abortives, in violation of Section 12, Article II of the Constitution which guarantees protection of both the life of the mother and the life of the unborn from conception.

ISSUE:
Whether or RH Law violates the right to life of the unborn. (NO)

RULING:
The Framers of the Constitution did not intend to ban all contraceptives for being unconstitutional. Contraceptives that kill or destroy the fertilized ovum should be deemed an abortive and thus prohibited. Conversely, contraceptives that actually prevent the union of the male sperm and the female ovum, and those that similarly take action prior to fertilization should be deemed non-abortive, and thus, constitutionally permissible. The clear and unequivocal intent of the Framers of the 1987 Constitution in protecting the life of the unborn from conception was to prevent the Legislature from enacting a measure legalizing abortion. A reading of the RH Law would show that it is in line with this intent and actually proscribes abortion. While the Court has opted not to make any determination, at this stage, when life begins, it finds that the RH Law itself clearly mandates that protection be afforded from the moment of fertilization.

However, the section of the RH-IRR allows "contraceptives" and recognizes as "abortifacient" only those that primarily induce abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb. This cannot be done. Evidently, with the addition of the word "primarily," in Section 3.0l(a) and G) of the RH-IRR is indeed ultra vires. It contravenes Section 4(a) of the RH Law and should, therefore, be declared invalid.

Section 15, Article II of the Constitution provides: The State shall protect and promote the right to health of the people and instill health consciousness among them. Contrary to the OSG's position, these provisions are self-executing. At this point, the Court is of the strong view that Congress cannot legislate that hormonal contraceptives and intra-uterine devices are safe and non-abortifacient. The provision in Section 9 covering the inclusion of hormonal contraceptives, intra-uterine devices, injectables, and other safe, legal, non-abortifacient and effective family planning products and supplies by the National Drug Formulary in the EDL is not mandatory. There must first be a determination by the FDA that they are in fact safe, legal, non-abortifacient and effective family planning products and supplies. There can be no predetermination by Congress that the gamut of

contraceptives are "safe, legal, non-abortifacient and effective" without the proper scientific examination.

NOTE: We recommend reading the full text of this case as it involves many issues aside from general principles and state policies.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- LIBERTY D. ALBIOS, *Respondent.*
G.R. No. 198780, THIRD DIVISION, October 16, 2013, MENDOZA, *J.*

No less than our Constitution declares that marriage, as an in violable social institution, is the foundation of the family and shall be protected by the State. It must, therefore, be safeguarded from the whims and caprices of the contracting parties. Hence, the marriage between Fringer and Albios, despite being done solely for the purpose of acquiring an American citizenship, should not be declared void.

FACTS:
David Lee Fringer, an American citizen, and Liberty Albios were married. Two years later, Albios filed a petition for declaration of nullity of marriage, alleging that the marriage was one made in jest as they never really had any intention of entering into a married state, thus null and void. Fringer did not attend any proceedings. The RTC declared the marriage null and void as the marriage was to enable Albios to obtain American citizenship for $2,000. It ruled that when marriage was entered into for a purpose other than the establishment of a conjugal and family life, such was a farce and should not be recognized from inception.

ISSUE:
Whether the marriage between Fringer and Albios "made in jest" is void. (NO)
RULING:
There was real consent between the parties. That their consent was freely given is best evidenced by their conscious purpose of acquiring American citizenship through marriage. There was a clear intention to enter into a real and valid marriage so as to fully comply with the requirements of an application for citizenship. The possibility that the parties in a marriage might have no real intention to establish a life together is, however, insufficient to nullify a marriage freely entered into in accordance with law. There is no law that declares a marriage void if it is entered into for purposes other than what the Constitution or law declares, such as the acquisition of foreign citizenship. Therefore, so long as all the essential and formal requisites prescribed by law are present, and it is not void or voidable under the grounds provided by law, it shall be declared valid.

Albios has indeed made a mockery of the sacred institution of marriage. Allowing her marriage with Fringer to be declared void would only further trivialize this inviolable institution. Albios already misused a judicial institution to enter into a marriage of convenience; she should not be allowed to again abuse it to get herself out of an inconvenient situation. No less than our Constitution declares that marriage, as an in violable social institution, is the foundation of the family and shall be protected by the State. It must, therefore, be safeguarded from the whims and caprices of the contracting parties. This Court cannot leave the impression that marriage may easily be entered into when it suits the needs of the parties, and just as easily nullified when no longer needed.

B. LEGISLATURE

THE CITY OF DAVAO, CITY TREASURER AND THE CITY ASSESSOR OF DAVAO CITY, *Petitioners,* -versus- THE REGIONAL TRIAL COURT, BRANCH XII, DAVAO CITY AND THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *Respondents.*
G.R. No. 127383, SECOND DIVISION, August 18, 2005, TINGA, *J.*

Only the Constitution may preclude or restrict the power to amend or repeal laws, and not a prior statute.Like irrepealable laws, those laws which impose conditions for its future repeal effectively restricts on the competency of Congress to enact future legislation. Here, Sec. 33 of PD 1146 provides that the"exemptions shall continue unless expressly and specifically revoked." These conditions for repeal are invalid.

FACTS:
GSIS enjoyed tax-exempt status by virtue of Presidential Decree No. 1146. With the enactment of the Local Government Code (LGC), the City of Davao thought that Sec. 193 of the said law withdrew the tax exemption privileges of GSIS. Thus, the City of Davao sent a Notice of Public Auction to the GSIS Davao City branch office due to non-payment of realty taxes. GSIS protested, claiming that since the LGC failed to comply with the conditions set forth in Sec. 33 of PD 1146 to withdraw the tax exemption privileges of GSIS, the subsequent enactment of the LGC did not repeal the tax exemptions of GSIS.

ISSUE:
Whether a law may validly impose conditions for its future repeal. (NO)

RULING:
Like irrepealable laws, those laws which impose conditions for its future repeal effectively restricts on the competency of Congress to enact future legislation. It restrains the plenary power of the legislature to amend or repeal laws. Only the Constitution may preclude or restrict the power to amend or repeal laws, and not a prior statute. Since the past, present, and future legislative assemblies are regarded with equal footing with the same plenary powers, it would be anathema to democratic principles to allow one legislative body to restrain or bind the actions of the future legislative body.

In this case, President Marcos cannot bind the future legislature to a particular mode of repeal. He cannot, like all legislative bodies, declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes. Thus, the conditions for repeal imposed by Sec. 33 of PD 1146 is invalid.

GOVERNMENT SERVICE INSURANCE SYSTEM, *Petitioner,*-versus- CITY TREASURER and CITY ASSESSOR of the CITY OF MANILA, *Respondents.*
G.R. No. 186242, THIRD DIVISION, December 23, 2009, VELASCO, JR., *J.*

An express repeal by a subsequent law would not suffice to affect the full exemption benefits granted the GSIS, unless the following conditionalities are met: (1) The repealing clause must expressly, specifically, and categorically revoke or repeal Sec. 39; and (2) a provision is enacted to substitute or replace the exemption referred to herein as an essential factor to maintain or protect the solvency of the fund. These restrictions for a future express repeal, notwithstanding, do not make the proviso an irrepealable law, for such restrictions do not impinge or limit the carte blanche legislative authority of the legislature to so amend it. The restrictions merely enhance other provisos in the law ensuring the solvency of the GSIS fund.

FACTS:
The City Treasurer of Manila addressed a letter to GSIS President and General Manager Winston F. Garcia informing him of the unpaid real property taxes due on its properties for years 1992 to 2002. The letter warned of the inclusion of the subject properties in the scheduled public auction of all delinquent properties in Manila should the unpaid taxes remain unsettled before that date.

Subsequently, the City Treasurer of Manila issued separate Notices of Realty Tax Delinquencyfor thesubject properties, with the usual warning of seizure and/or sale. GSIS, through its legal counsel, wrote back emphasizing the GSIS' exemption from all kinds of taxes, including realty taxes, under RA 8291.

ISSUE:
Whether GSIS is exempt from real property tax. (YES)

RULING:
GSIS' full tax exemption was reenacted through RA 8291. Prominently added in GSIS' present charter is a paragraph precluding any implied repeal of the tax-exempt clause so as to protect the solvency of GSIS funds. Moreover, an express repeal by a subsequent law would not suffice to affect the full exemption benefits granted the GSIS, unless the following conditionalities are met: (1) The repealing clause must expressly, specifically, and categorically revoke or repeal Sec. 39; and (2) a provision is enacted to substitute or replace the exemption referred to herein as an essential factor to maintain or protect the solvency of the fund. These restrictions for a future express repeal, notwithstanding, do not make the proviso an irrepealable law, for such restrictions do not impinge or limit the carte blanche legislative authority of the legislature to so amend it. The restrictions merely enhance other provisos in the law ensuring the solvency of the GSIS fund.

Given the foregoing perspectives, the following may be assumed: (1) Pursuant to Sec. 33 of PD 1146, GSIS enjoyed tax exemption from real estate taxes, among other taxGovernment Service Insurance System vs. City Treasurer of the City of Manilaburdens, until January 1, 1992 when the LGC took effect and withdrew exemptions from payment of real estate taxes privileges granted under PD 1146;(2) RA 8291 restored in 1997 the tax exempt status of GSIS by reenacting under its Sec. 39 what was once Sec. 33 of P.D. 1146;and (3) If any real estate tax is due to the City of Manila, it is, following City of Davao, only for the interim period, or from 1992 to 1996, to be precise.

While recognizing the exempt status of GSIS owing to the reenactment of the full tax exemption clause under Sec. 39 of RA 8291 in 1997, the *ponencia* in City of Davao appeared to have failed to take stock of and fully appreciate the all-embracing condoning proviso in the very same Sec. 39 which, for all intents and purposes, considered as paid "any assessment against the GSIS as of the approval of this Act." Hence, real property taxes assessed and due from GSIS are considered paid.

SOCIAL JUSTICE SOCIETY (SJS), *Petitioner,*-versus- DANGEROUS DRUGS BOARD and PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA), *Respondents.*
G.R. No. 157870, EN BANC, November 3, 2008, VELASCO, JR., *J.*

Congress may not amend or enlarge the qualification requirements for senatorial candidates as enumerated in Section 3, Article VI of the Constitution. Hence, neither Congress nor the COMELEC mayrequire a senatorial candidate to be certified illegal-drug clean.

FACTS:
Section 36 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002 requires mandatory drug testing of candidates for public office. Pursuant to the said legal provision, COMELEC issued a Resolution which required "all candidates for public office, both national and local, in the May 10, 2004 Synchronized National and Local Elections" to undergo mandatory drug tests. Senator Aquilino Pimentel, Jr., a candidate for re-election, claims that the mandatory drug tests are unconstitutional since these impose a qualification for candidates for senators in addition to those already provided for in the 1987 Constitution.

ISSUE:
Whether mandatory drug tests may be validly imposed as an additional qualification for senatorial candidates. (NO)

RULING:
Congress' inherent legislative powers, broad as they may be, are subject to certain substantive and constitutional limitations, which circumscribe both the exercise of the power itself and the allowable subjects of legislation. One such limitation is found in Section 3, Article VI of the Constitution prescribing the qualifications of candidates for senators.

In this case, neither Congress nor the COMELEC may enlarge the qualification requirements enumerated in the aforesaid constitutional provision. To require a senatorial candidate to be certified illegal-drug clean would add another qualification layer to what the 1987 Constitution, at the minimum, requires for membership in the Senate. Hence, the mandatory drug test requirement for senatorial candidates is unconstitutional.

RIZALITO Y. DAVID, *Petitioner*, -versus- SENATE ELECTORAL TRIBUNAL and MARY GRACE POE-LLAMANZARES, *Respondents.*
G.R. No. 221538, EN BANC, September 20, 2016, LEONEN, *J.*

Exclusive, original jurisdiction over contests relating to the election, returns, and qualifications of the elective officials falling within the scope of their powers is vested in electoral tribunals. The review of these judgments is limited to a determination of whether there has been an error in jurisdiction, not an error in judgment. Here, the SET arrived at conclusions in a manner in keeping with the degree of proof required in proceedings before a quasi-judicial body: not absolute certainty, not proof beyond reasonable doubt or preponderance of evidence, but "substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

FACTS:
A Petition for Certiorari was filed by petitioner Rizalito Y. David. He prays for the nullification of the assailed Decision and Resolution of public respondent SET. The assailed Decisiondismissed the Petition for Quo Warranto filed by David, which sought to unseat private respondent Mary Grace Poe-Llamanzares as a Senator for allegedly not being a natural-born citizen of the Philippines and, therefore, not being qualified to hold such office under Article VI, Section 34 of the 1987 Constitution. The assailed Resolutiondenied David's Motion for Reconsideration.

ISSUE:
Whether the SET committed grave abuse of discretion amounting to lack orexcess of jurisdiction in dismissing petitioner's Petition for Quo Warranto based on its finding that private respondent is a

natural-born Filipino citizen, qualified to hold a seat as Senator under Article VI, Section 3 of the 1987 Constitution. (NO)

RULING:
Exclusive, originaljurisdiction over contests relating to the election, returns, and qualifications of the elective officials falling within the scope of their powers isvested in electoral tribunals. It is only before them that post-election challenges against the election, returns, and qualifications of Senators and Representatives (as well asof the President and the Vice President, in the case of the Presidential Electoral Tribunal) may be initiated.The judgments of these tribunals are not beyond the scope of any review. However, this review is not in the exercise of appellate jurisdiction. The review is limited to a determination of whether there has been an error in jurisdiction, not an error in judgment.

There is no basis for concluding that the SET acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.The SET's conclusions are in keeping with a faithful and exhaustive reading of the Constitution, one that proceeds from an intent to give life to all the aspirations of all its provisions.It did not insist on burdening private respondent with conclusively proving, within the course of the few short months, the one thing that she has never been in a position to know throughout her lifetime. Instead, it conscientiously appreciated the implications of all other facts known about her finding. Therefore, it arrived at conclusions in a manner in keeping with the degree of proof required in proceedings before a quasi-judicial body: not absolute certainty, not proof beyond reasonable doubt or preponderance of evidence, but "substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

SENATOR BENIGNO SIMEON C. AQUINO III and MAYOR JESSE ROBREDO, *Petitioners*, -versus- COMMISSION ON ELECTIONS represented by its Chairman JOSE A.R. MELO and its Commissioners, RENE V. SARMIENTO, NICODEMO T. FERRER, LUCENITO N. TAGLE, ARMANDO VELASCO, ELIAS R. YUSOPH AND GREGORIO LARRAZABAL, *Respondents.*
G.R. No. 189793, EN BANC, April 7, 2010, PEREZ, *J.*

The Constitution requires a 250,000 minimum population only for a city to be entitled to a representative, but not so for a province. Hence, the reapportionment or the re-composition of the first and second legislative districts in the Province of Camarines Sur that resulted in the creation of a new legislative district is valid even if the population of the new district is less than 250,000.

FACTS:
Pursuant to RA 9716 (An Act Reapportioning the Composition of the First and Second Legislative Districts in the Province of Camarines Sur and Thereby Creating a New Legislative District from Such Reapportionment), the first and second districts of Camarines Sur were reconfigured in order to create an additional legislative district for the province. Hence, the first district municipalities of Libmanan, Minalabac, Pamplona, Pasacao, and San Fernando were combined with the second district municipalities of Milaor and Gainza to form a new second legislative district.

Petitioners (President Aquino and Secretary Jesse Robredo) sought the nullification of RA 9716, contending that it is contrary to Section 5(3), Article VI of the 1987 Constitution prescribing a minimum population of 250,000 for the creation of a legislative district. Accordingly, petitioners contend the reapportionment by RA 9716 will leave the first district of Camarines Sur with less than 250,000 in population. On its part, respondents contend that the 250,000 population requirement applies only to the creation of legislative districts in a city, and not in provinces.

ISSUE:
Whether RA 9716 is Constitutional. (YES)

RULING:

The second sentence of Section 5(3), Article VI of the Constitution, provides: Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative. The provision draws a plain and clear distinction between the entitlement of a city to a district on one hand, and the entitlement of a province to a district on the other. For while a province is entitled to at least a representative, with nothing mentioned about population, a city must first meet a population minimum of 250,000 in order to be similarly entitled. Section 5(3) of the Constitution requires a 250,000 minimum population only for a city to be entitled to a representative, but not so for a province. The reapportionment or the re-composition of the first and second legislative districts in the Province of Camarines Sur that resulted in the creation of a new legislative district is valid even if the population of the new district is less than 250,000. Population is not the only factor but is just one of several other factors in the composition of the additional district.

VICTORINO B. ALDABA, CARLO JOLETTE S. FAJARDO, JULIO G. MORADA, and MINERVA ALDABA MORADA, *Petitioners,*-versus- COMMISSION ON ELECTIONS, *Respondent.*
G.R. No. 188078, EN BANC, March 15, 2010, CARPIO, *J.*

The passage of apportionment acts is not so exclusively within the political power of the legislature as to preclude a court from inquiring into their constitutionality when the question is properly brought before it. Hence, the population indicators for the creation of a legislative district of Malolos City can be subject to judicial review.

FACTS:
RA 9591 was enacted to create the legislative district of Malolos City. As population indicators to satisfy the constitutional requirement as provided by Article VI of the 1987 Constitution, the congress relied on the Certification of Alberto Miranda, Region III Director, of the NSO, projecting that Malolos City's population in 2010 will reach more than 250,000. The congress also used 2007 Census of Population Progress Enumeration Report and Certification of the City of Malolos Water District, dated 31 July 2008, and Certification of the Liga ng Barangay, dated 22 August 2008. The Comelec insists that these population indicators are reliable and authoritative and thus cannot be subject to judicial review.

ISSUE:
Whether the population indicators can be subject to judicial review. (YES)

RULING:
If laws creating legislative districts are unquestionably within the ambit of SC's judicial review, then there is more reason to hold justiciable subsidiary questions impacting on their constitutionality, such as their compliance with a specific constitutional limitation under Section 5(3), Article VI of the 1987 Constitution that only cities with at least 250,000 constituents are entitled to representation in Congress. To fulfill this obligation, the Court must inquire into the authoritativeness and reliability of the population indicators Congress used to comply with the constitutional limitation. It is well settled that the passage of apportionment acts is not so exclusively within the political power of the

legislature as to preclude a court from inquiring into their constitutionality when the question is properly brought before it. To deny the Court the exercise of its judicial review over RA 9591 is to contend that the Court has no power 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, a duty mandated under Section 1, Article VIII of the Constitution.

RODOLFO G. NAVARRO, VICTOR F. BERNAL, and RENE O. MEDINA, *Petitioners*, -versus- EXECUTIVE SECRETARY EDUARDO ERMITA, representing the President of the Philippines; Senate of the Philippines, represented by the SENATE PRESIDENT; House of Representatives, represented by the HOUSE SPEAKER; GOVERNOR ROBERT ACE S. BARBERS, representing the mother province of Surigao del Norte; GOVERNOR GERALDINE ECLEO VILLAROMAN, representing the new Province of Dinagat Islands, *Respondents*.
G.R. No. 180050, EN BANC, April 12, 2011,NACHURA, *J.*

The central policy considerations in the creation of local government units are economic viability, efficient administration, and capability to deliver basic services to their constituents.A perusal of the congressional debate for the matter reveals that economic viability is the primordial criterion. Hence, land area, while considered as an indicator of viability of a local government unit, is not conclusive in showing that Dinagat cannot become a province, taking into account its average annual income of P82,696,433.23 at the time of its creation, which is four times more than the minimum requirement of P20,000,000.00 for the creation of a province.

FACTS:
Pursuant to RA 9355, a law creating the province of Dinagat Islands, the Comelec conducted the mandatory plebiscite for the ratification of the creation of the province of Dinagat under the Local Government Code. The plebiscite resulted in the approval by the people from the mother province Surigao del Norte and the province of Dinagat. Thereafter, petitioners challenged the constitutionality of RA 9355, contending that the province of Dinagat did not meet the population and land area requisite for the creation of a province under the Local Government Code. They alleged that Dinagat had a land area of 802.12 square kilometers only and a population of only 106,951, whereas, the LGC requires, among others, that the territory should atleast be 2000 square kilometers with 250,000 inhabitants.

ISSUE:
Whether RA 9355 is constitutional. (YES)

RULING:
The central policy considerations in the creation of local government units are economic viability, efficient administration, and capability to deliver basic services to their constituents. The criteria prescribed by the Local Government Code, i.e., income, population and land area, are all designed to accomplish these results. A perusal of the congressional debate for the matter reveals that economic viability is the primordial criterion. Land area, while considered as an indicator of viability of a local government unit, is not conclusive in showing that Dinagat cannot become a province, taking into account its average annual income of P82,696,433.23 at the time of its creation, which is four times more than the minimum requirement of P20,000,000.00 for the creation of a province. The delivery of basic services to its constituents has been proven possible and sustainable. The spirit rather than the letter of the law. A statute must be read according to its spirit or intent, for what is within the spirit is within the statute although it is not within its letter, and that which is within the letter but not within the spirit is not within the statute. Put a bit differently, that which is within the intent of

the lawmaker is as much within the statute as if within the letter, and that which is within the letter of the statute is not within the statute unless within the intent of the lawmakers. Withal, courts ought not to interpret and should not accept an interpretation that would defeat the intent of the law and its legislators.

ANGEL G. NAVAL, *Petitioner*, -versus- COMMISSION ON ELECTIONS and NELSON B. JULIA, *Respondents.*
G.R. No. 207851, EN BANC, July 8, 2014, REYES, *J.*

The three-term limit rule provided by the Constitution is inflexible.Here, Naval was elected by the same inhabitants in the same territorial jurisdiction. While RA 9716 created a new second district for Camarines Sur, it merely renamed the third district which elected Naval into the position. Hence, her election for the year 2013 is not valid.

FACTS:
From 2004 to 2010, Angel Naval had been elected and had served as a member of Sanggunian, Second district, Camarines Sur. Sometime in 2009, RA 9716, which reapportioned the legislative districts of Camarines, was enacted. Eight out of ten towns were taken from the second district of Camarines Sur to create a third district. The second district was composed of the remaining two towns, plus the town of Gainza and Milaor from the first district. In the 2010 elections, Naval ran and won as a member of the Sanggunian of the third district. In 2013, she ran again and was re-elected for the same position. When Naval's election was question on the ground of the three-term rule, she argued that she only served as a member of the Sanggunian for two terms. Her theory is that because of the reapportionment of the province of Camarines Sur, she was, elected by another territorial jurisdiction and by different inhabitants.

ISSUE:
Whether Naval's election for the year 2013 is valid. (NO)

RULING:
RA 9716 created a new second district for Camarines Sur, but it merely renamed the third district which elected Naval into the position. Therefore, she was elected by the same inhabitants in the same territorial jurisdiction. The three-term limit rule provided by the Constitution is inflexible. The rule answers the need to prevent the consolidation of political power in the hands of the few, while at the same time giving to the people the freedom to call back to public service those who are worthy to be called statesmen.

BARANGAY ASSOCIATION FOR NATIONAL ADVANCEMENT AND TRANSPARENCY (BANAT), *Petitioner,* -versus- COMMISSION ON ELECTIONS (sitting as the National Board of Canvassers), *Respondent.*
G.R. No. 179271, EN BANC, April 21, 2009, CARPIO,*J.*

The 20% allocation for party-list representatives is a mere ceiling. It is not mandatory that the 20% shall be filled.

The 2% rule should mean that if a party-list garners 2% of the votes cast, then it is guaranteed a seat, and not "qualified."There is no constitutional basis to say that only party-lists which garnered 2% of the votes cast arequalified for a seat and those which garnered less than 2% are disqualified. Further, the

2% threshold creates a mathematical impossibility to attain the ideal 80-20 apportionment. Hence, Section 11b of RA 7941 is unconstitutional.

FACTS:
In July and August 2007, the Comelec, sitting as the National Board of Canvassers, made a partial proclamation of the winners in the party-list elections which was held in May 2007. In proclaiming the winners and apportioning their seats, the Comelec considered the following rules: (1) In the lower house, 80% shall comprise the seats for legislative districts, while the remaining 20% shall come from party-list representatives (Sec. 5, Article VI, 1987 Constitution); (2) Pursuant to Sec. 11b of R.A. 7941 or the Party-List System Act, a party-list which garners at least 2% of the total votes cast in the party-list elections shall be entitled to one seat; (3) If a party-list garners at least 4%, then it is entitled to 2 seats; if it garners at least 6%, then it is entitled to 3 seats – this is pursuant to the 2-4-6 rule or the Panganiban Formula from the case of Veterans Federation Party vs Comelec; (4) In no way shall a party be given more than three seats even if if garners more than 6% of the votes cast for the party-list election (3 seat cap rule, same case).

The Barangay Association for National Advancement and Transparency (BANAT), a party-list candidate, questioned the proclamation as well as the formula being used. BANAT averred that the 2% threshold is invalid; Sec. 11 of RA 7941 is void because its provision that a party-list, to qualify for a congressional seat, must garner at least 2% of the votes cast in the party-list election, is not supported by the Constitution. Further, the 2% rule creates a mathematical impossibility to meet the 20% party-list seat prescribed by the Constitution. BANAT also questioned if the 20% rule is a mere ceiling or is it mandatory. If it is mandatory, then with the 2% qualifying vote, there would be instances when it would be impossible to fill the prescribed 20% share of party-lists in the lower house. BANAT also proposes a new computation (which would be discuss later on).

On the other hand, BAYAN MUNA, another party-list candidate, questions the validity of the 3 seat rule (Section 11a of RA 7941). It also raised the issue of whether or not major political parties are allowed to participate in the party-list elections or is the said elections limited to sectoral parties.

ISSUES:
1. Whetherthe 20% allocation for party-list representatives is mandatory. (NO)

2. Whether the 2% threshold to qualify for a seat is valid. (NO)

RULINGS:
1. The 20% allocation for party-list representatives is a mereceiling, which means that the number of party-list representatives shall not exceed 20% of the total number of the members of the lower house. However, it is not mandatory that the 20% shall be filled.

2. Section 11b of RA 7941 is unconstitutional. There is no constitutional basis to allow that only party-lists which garnered 2% of the votes cast a requalified for a seat and those which garnered less than 2% are disqualified. Further, the 2% threshold creates a mathematical impossibility to attain the ideal 80-20 apportionment. Instead, the 2% rule should mean that if a party-list garners 2% of the votes cast, then it is guaranteed a seat, and not "qualified."

NOTE: Please refer to the discussion below on how party-list seats are allocated.

First, the parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections. Then, the parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each. Those garnering sufficient number of votes, according to the ranking in paragraph 1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated. Each party, organization, or coalition shall be entitled to not more than three (3) seats. There shall be two rounds in determining the allocation of the seats. In the first round, all party-lists which garnered at least 2% of the votes cast (called the two-percenters) are given their one seat each. The total number of seats given to these two-percenters are then deducted from the total available seats for party-lists. In this case, 17 party-lists were able to garner 2% each. There are a total 55 seats available for party-lists hence, 55 minus 17 = 38 remaining seats. (Please refer to the full text of the case for the tabulation). The number of remaining seats, in this case 38, shall be used in the second round, particularly, in determining, first, the additional seats for the two-percenters, and second, in determining seats for the party-lists that did not garner at least 2% of the votes cast, and in the process filling up the 20% allocation for party-list representatives.

ATONG PAGLAUM, INC., represented by its President, Mr. Alan Igot v. COMMISSION ON ELECTIONS
G.R. No. 203766, April 2, 2013, Carpio, *J.*

Sectoral parties or organizations may either be "marginalized and underrepresented" or lacking in "well-defined political constituencies." It is enough that their principal advocacy pertains to the special interest and concerns of their sector.

FACTS:
52 party-list groups and organizations filed separate petitions with the SC in an effort to reverse various resolutions by the Comelec disqualifying them from the May 2013 party-list race. The Comelec, in its assailed resolutions issued in October, November and December of 2012, ruled, among others, that these party-list groups and organizations failed to represent a marginalized and underrepresented sector, their nominees did not come from a marginalized and underrepresented sector, and/or some of the organizations or groups were not truly representative of the sector they intend to represent in Congress.

ISSUE:
Whether COMELEC committed grave abuse of discretion in disqualifying petitioners from participating in the May 2013 party-list election.

RULING:
NO. COMELEC merely followed the guidelines set in the cases of *Ang Bagong Bayani* and *BANAT*. However, cases were remanded back to the COMELEC because petitioners may now possibly qualify to participate in the coming 13 May 2013 party-list elections under the new parameters prescribed by this Court.

In determining who may participate in the party-list elections, the COMELEC shall adhere to the following parameters:

1. Three different groups may participate in the party-list system: (1) national parties or organizations, (2) regional parties or organizations, and (3) sectoral parties or organizations.

2. National parties or organizations and regional parties or organizations do not need to organize along sectoral lines and do not need to represent any "marginalized and underrepresented" sector.

3. Political parties can participate in party-list elections provided they register under the party-list system and do not field candidates in legislative district elections. A political party, whether major or not, that fields candidates in legislative district elections can participate in party-list elections only through its sectoral wing that can separately register under the party-list system. The sectoral wing is by itself an independent sectoral party, and is linked to a political party through a coalition.

4. Sectoral parties or organizations may either be "marginalized and underrepresented" or lacking in "well-defined political constituencies." It is enough that their principal advocacy pertains to the special interest and concerns of their sector. The sectors that are "marginalized and underrepresented" include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. The sectors that lack "well-defined political constituencies" include professionals, the elderly, women, and the youth.

5. A majority of the members of sectoral parties or organizations that represent the "marginalized and underrepresented" must belong to the "marginalized and underrepresented" sector they represent. Similarly, a majority of the members of sectoral parties or organizations that lack "well-defined political constituencies" must belong to the sector they represent. The nominees of sectoral parties or organizations that represent the "marginalized and underrepresented," or that represent those who lack "well-defined political constituencies," either must belong to their respective sectors, or must have a track record of advocacy for their respective sectors. The nominees of national and regional parties or organizations must be bona-fide members of such parties or organizations.

National, regional, and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remains qualified

ANG LADLAD LGBT PARTY represented herein by its Chair, DANTON REMOTO *v.*
COMMISSION ON ELECTIONS
G.R. No. 190582 April 8, 2010, Del Castillo, J.

At this time, we are not prepared to declare that these Yogyakarta Principles contain norms that are obligatory on the Philippines.

FACTS:
Ang Ladlad is an organization of people who identify themselves as lesbians, gays, bisexuals or trans-genders. It filed a petition for registration with the Comelec as a party-list. The Comelec dismissed the petition on moral grounds as "the definition of the LGBT sector makes it crystal clear that petitioner tolerates immorality which offends religious beliefs", even citing passages from the Bible and Koran. In its petition with the Supreme Court, *Ang Ladlad* argued that the denial of accreditation, insofar as it justified the exclusion by using religious dogma, violated the constitutional guarantees against the establishment of religion. It also claimed that the assailed Comelec Resolutions contravened its constitutional rights to privacy, freedom of speech and assembly, and equal protection of laws, as well as constituted violations of the Philippines' international obligations against discrimination based on sexual orientation.

ISSUE:
Whether or not *Ang Ladlad*'s application as a party-list should be granted

RULING:
Yes. *Ang Ladlad* has sufficiently demonstrated its compliance with the legal requirements for accreditation. Rather than relying on religious belief, the legitimacy of the Assailed Resolutions should depend, instead, on whether the Comelec is able to advance some justification for its rulings beyond mere conformity to religious doctrine. Otherwise stated, government must act for secular purposes and in ways that have primarily secular effects.

The Court also discussed *Ang Ladlad*'s invocation of the Yogyakarta Principles (The Application of International Human Rights Law In Relation to Sexual Orientation and Gender Identity) as a binding principle of international law. The Court said that it was not prepared to declare that the Yogyakarta Principles contain norms obligatory on the Philippines, because they are not reflective of the current state of international law and do not find basis in any of the sources of international law enumerated under Article 38(1) of the Statute of the International Court of Justice. Petitioner has not undertaken any objective and rigorous analysis of these alleged principles of international law to ascertain their true status. Using even the most liberal of lenses, these *Yogyakarta Principles*, consisting of a declaration formulated by various international law professors, are–at best–*de lege ferenda*–and do not constitute binding obligations on the Philippines. Indeed, so much of contemporary international law is characterized by the "soft law" nomenclature, i.e., international law is full of principles that promote international cooperation, harmony, and respect for human rights, most of which amount to no more than well-meaning desires, without the support of either State practice or opinio juris.

MILAGROS E. AMORES v. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and EMMANUEL JOEL J. VILLANUEVA
G.R. No. 189600, June 29, 2010, Carpio Morales. *J.*

The law states in unequivocal terms that a nominee of the youth sector must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election, so it must be that a candidate who is more than 30 on election day is not qualified to be a youth sector nominee.

FACTS:
In her Petition for Quo Warranto, petitioner alleged that private respondent was disqualified to be a nominee of the youth sector of CIBAC since, at the time of the filing of his certificates of nomination and acceptance, he was already 31 years old or beyond the age limit of 30 pursuant to Section 9 of RA No. 7941, the Party-List System Act and that since his change of affiliation from CIBACs youth sector to its overseas Filipino workers and their families sector was not effected at least six months prior to the May 14, 2007 elections, he is not qualified to represent the new sector pursuant to Section 15 of the same law. Public respondent countered that the age limit applied only to those nominated as such during the first three congressional terms after the ratification of the Constitution.

ISSUE:
Whether or not respondent, 31 years of age, can still be a nominee of a youth sector.

RULING:
NO. The law states in unequivocal terms that a nominee of the youth sector must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election, so it must be that a candidate who is more than 30 on election day is not qualified to be a youth sector nominee. Since

this mandate is contained in RA No. 7941, it covers ALL youth sector nominees vying for party-list representative seats. The Court finds that private respondent was not qualified to be a nominee of either the youth sector or the overseas Filipino workers and their families sector in the May, 2007 elections. The records disclose that private respondent was already more than 30 years of age in May, 2007, it being stipulated that he was born in August, 1975

COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC. (SENIOR CITIZENS PARTY-LIST), represented herein by its Chairperson and First Nominee, FRANCISCO G. DATOL, Jr. v. COMMISSION ON ELECTIONS
G.R. Nos. 206844-45, July 23, 2013, Leonardo-De Castro, *J.*

If the term-sharing agreement was not actually implemented by the parties thereto, it appears that SENIOR CITIZENS, as a party-list organization, had been unfairly and arbitrarily penalized by the COMELEC En Banc. There can be no disobedience on the part of SENIOR CITIZENS when its nominees, in fact, desisted from carrying out their agreement.

FACTS:
On May 2010, the nominees of SENIOR CITIZENS signed an agreement, entitled Irrevocable Covenant, which contains the list of their candidates and terms on sharing of their powers. It contained an agreement on who among the candidates will serve the terms according to the power sharing agreement. By virtue of the term-sharing agreement, the term of Kho as member of the HR was cut short to 1 yr and 6 mos. In line with this, Kho tendered his resignation to be effective on December 31, 2011.

In the interim, COMELEC Resolution was promulgated on February 21, 2012. Pertinently, Section 7 of Rule 4 thereof provided that filing of vacancy as a result of term sharing agreement among nominees of winning party-list groups/organizations shall not be allowed. On March 12, 2012, the Board of Trustees of SENIOR CITIZENS issued recalled the resignation of Kho and allowed him to continue to represent the party-list. Despite of the recall of resignation, COMELEC found the term-sharing agreement contrary to public policy and hence resolved to CANCEL the registration of SENIOR CITIZENS under the Party-List System of Representation.

ISSUE:
Whether the COMELEC can disqualify and cancel the registration and accreditation of SENIOR CITIZENS solely on account of its purported violation of the prohibition against term-sharing.

RULING:
NO. There was no indication that the nominees of SENIOR CITIZENS still tried to implement, much less succeeded in implementing, the term-sharing agreement. Before this Court, the Arquiza Group and the Datol Group insist on this fact of non-implementation of the agreement. Thus, for all intents and purposes, Rep. Kho continued to hold his seat and served his term as a member of the House of Representatives.

Indubitably, if the term-sharing agreement was not actually implemented by the parties thereto, it appears that SENIOR CITIZENS, as a party-list organization, had been unfairly and arbitrarily

penalized by the COMELEC En Banc. Verily, how can there be disobedience on the part of SENIOR CITIZENS when its nominees, in fact, desisted from carrying out their agreement? Hence, there was no violation of an election law, rule, or regulation to speak of. Clearly then, the disqualification of SENIOR CITIZENS and the cancellation of its registration and accreditation have no legal leg to stand on.

DARYL GRACE J. ABAYON *v.* THE HONORABLE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL, PERFECTO C. LUCABAN, JR., RONYL S. DE LA CRUZ and AGUSTIN C. DOROGA
G.R. No. 189466, February 11, 2010, Abad, J.

CONGRESSMAN JOVITO S. PALPARAN, JR. *v.* HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET), DR. REYNALDO LESACA, JR., CRISTINA PALABAY, RENATO M. REYES, JR., ERLINDA CADAPAN, ANTONIO FLORES and JOSELITO USTAREZ
G.R. No. 189506, February 11, 2010, Abad, J.

Since party-list nominees are "elected members" of the House of Representatives no less than the district representatives are, the HRET has jurisdiction to hear and pass upon their qualifications.

FACTS:
Daryl Grace Abayon and Jovito Palparan were both first nominees of Aangat Tayo party-list organization and Bantayparty-list group respectively that won seats in the House of Representatives in the 2007 elections. In two separate petitions for quo warranto, respondents questioned the eligibility of Abayon and Palparan and their respective party-list groups. Abayon and Palparan both questioned the jurisdiction of the HRET contending that it is the party-list that was elected in the House of Representatives and not them who were just its nominees. The HRET, on both petitions, issued an order dismissing the petition against against the party-list groups for the reason that the issue of the qualification of the party-list group fell within the jurisdiction of the COMELEC pursuant to the Party-List System Act. However, it defended its jurisdiction over the question of the qualifications of Abayon and Palparan.

ISSUE:
Whether the HRET has jurisdiction to pass upon the eligibilities of the nominees of the party-list groups that won seats in the lower house of Congress.

RULING:
YES. The members of the House of Representatives are of two kinds: "members x x x who shall be elected from legislative districts" and "those who x x x shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations." This means that, from the Constitution's point of view, it is the party-list representatives who are "elected" into office, not their parties or organizations. Once elected, both the district representatives and the party-list representatives are treated in like manner.

Sec. 17, Art. VI of the Constitution provides that the HRET shall be the sole judge of all contests relating to, among other things, the qualifications of the members of the House of Representatives. Since, as pointed out above, party-list nominees are "elected members" of the House of Representatives no less than the district representatives are, the HRET has jurisdiction to hear and pass upon their qualifications. By analogy with the cases of district representatives, once the party

or organization of the party-list nominee has been proclaimed and the nominee has taken his oath and assumed office as member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his qualifications ends and the HRET's own jurisdiction begins

ABANG LINGKOD PARTY-LIST *v.* COMMISSION ON ELECTIONS
G.R. No. 206952, October 22, 2013, REYES, *J.*

Sectoral parties or organizations, such as ABANG LINGKOD, are no longer required to adduce evidence showing their track record. It is sufficient that the ideals represented by the sectoral organizations are geared towards the cause of the sector/s, which they represent.

FACTS:
Comelec cancelled ABANG LINGKOD's registration as a party-list group. It pointed out that ABANG LINGKOD failed to establish its track record in uplifting the cause of the marginalized and underrepresented; that it merely offered photographs of some alleged activities it conducted after the May 2010 elections. It further opined that ABANG LINGKOD failed to show that its nominees are themselves marginalized and underrepresented or that they have been involved in activities aimed at improving the plight of the marginalized and underrepresented sectors it claims to represent.

ISSUE:
Whether or not Comelec gravely abused its discretion in cancelling ABANG LINGKOD's registration under the party-list system for the latter's failure to prove its track record.

RULING:
Yes. Contrary to the Comelec's claim, sectoral parties or organizations, such as ABANG LINGKOD, are no longer required to adduce evidence showing their track record, i.e. proof of activities that they have undertaken to further the cause of the sector they represent. Indeed, it is enough that their principal advocacy pertains to the special interest and concerns of their sector. Otherwise stated, it is sufficient that the ideals represented by the sectoral organizations are geared towards the cause of the sector/s, which they represent.

There is thus no basis in law and established jurisprudence to insist that groups seeking registration under the party-list system still comply with the track record requirement. Indeed, nowhere in R.A. No. 7941 is it mandated that groups seeking registration thereunder must submit evidence to show their track record as a group

ATTY. ISIDRO Q. LICO *v.* THE COMMISSION ON ELECTIONS EN BANC AND THE SELF-STYLED SHAM ATING KOOP PARTYLIST
G.R. No. 205505 September 29, 2015 SERENO, *J.*

In the case of party-list representatives, the HRET acquires jurisdiction over a disqualification case upon proclamation of the winning party-list group, oath of the nominee, and assumption of office as member of the House of Representatives.

FACTS:

After Comelec proclaimed Ating Koop as one of the winning party-list groups, Isidro Lico who was the first nominee, subsequently took his oath of office. Several months prior to its proclamation as one of the winning party-list organisations, Ating Koop issued a Resolution which incorporated a term-sharing agreement signed by its nominees. Under the agreement, petitioner Lico was to serve as Party-list Representative for the first year of the three-year term. Then when held its Second National Convention, it introduced amendments which would short the three-year term of the incumbent members then was replaced by the Rimas group. Almost one year after petitioner Lico had assumed office, a petition was filed expelling him from Ating Koop for disloyalty. Apart from allegations of malversation and graft and corruption, the Committee cited petitioner Lico's refusal to honor the term-sharing agreement as factual basis for disloyalty and as cause for his expulsion under Ating Koop's Amended Constitution and By-laws. Comelec Second Division upheld the expulsion of petitioner while Comelec en banc dismissed the petition holding that it had no jurisdiction to expel Congressman Lico from the House of Representatives, considering that his expulsion from Ating Koop affected his qualifications as member of the House, and therefore it was the House of Representatives Electoral Tribunal (HRET) that had jurisdiction over the petition. However, it upheld the validity of his expulsion.

ISSUE:
Whether or not Comelec has jurisdiction over the expulsion of a Member of the House of Representatives from his party-list organization.

RULING:
No. Section 17, Article VI of the 1987 Constitution endows the HRET with jurisdiction to resolve questions on the qualifications of members of Congress. In the case of party-list representatives, the HRET acquires jurisdiction over a disqualification case upon proclamation of the winning party-list group, oath of the nominee, and assumption of office as member of the House of Representatives. In this case, the Comelec proclaimed Ating Koop as a winning party-list group; petitioner Lico took his oath; and he assumed office in the House of Representatives. Thus, it is the HRET, and not the Comelec, that has jurisdiction over the disqualification case

DR. HANS CHRISTIAN M. SEÑERES v. COMMISSION ON ELECTIONS and MELQUIADES A. ROBLES
G.R. No. 178678, April 16, 2009, Velasco, Jr. *J.*

Since no successor was ever elected or qualified, Robles remained the President of BUHAY in a "hold-over" capacity. By fiction of law, the acts of such de facto officer are considered valid and effective.

FACTS:
In 1999, private respondent Robles was elected president and chairperson of BUHAY party-list. The constitution of BUHAY provides for a three-year term for all its party officers, without re-election. BUHAY participated in the 2001 and 2004 elections, with Robles as its president. On March 2007, Robles signed and filed a Certificate of Nomination of BUHAY's nominees for the 2007 elections. Earlier, however, petitioner Hans Christian Seneres, holding himself up as acting president and secretary-general of BUHAY, also filed a Certificate of Nomination.

Seneres, in his Petition to Deny Due Course to Certificates of Nomination, claims that the nominations made by Robles were, for lack of authority, null and void owing to the expiration of the latter's term as party president. Seneres also contends that Robles, acting as BUHAY President and nominating

officer, as well as being the Administrator of the LRTA, was engaging in electioneering or partisan political campaign, hence, in violation of Civil Service Law and Omnibus Election Code.

ISSUES:
1. Whether Robles' term as President of BUHAY had already expired, thus effectively nullifying the Certificate of Nomination and the nomination process.
2. Whether Robles was engaging in electioneering or partisan political campaign.

RULING:
1. **NO.** As a general rule, officers and directors of a corporation hold over after the expiration of their terms until such time as their successors are elected or appointed. The voting members of BUHAY duly elected Robles as party President in October 1999. And although his regular term as such President expired in October 2002, no election was held to replace him and the other original set of officers. Further, the constitution and by-laws of BUHAY do not expressly or impliedly prohibit a hold-over situation. As such, since no successor was ever elected or qualified, Robles remained the President of BUHAY in a "hold-over" capacity. By fiction of law, the acts of such de facto officer are considered valid and effective.

NO. The twin acts of signing and filing a Certificate of Nomination are purely internal processes of the party or organization and are not designed to enable or ensure the victory of the candidate in the elections. The act of Robles of submitting the certificate nomination and others was merely in compliance with the COMELEC requirements for nomination of party-list representatives and, hence, cannot be treated as electioneering or partisan political activity proscribed under by Sec. 2(4) of Art. IX(B) of the Constitution for civil servants

REGINA ONGSIAKO REYES V. COMMISSION ON ELECTIONS AND JOSEPH SOCORRO B. TAN
G.R. No. 207264 October 22, 2013, Perez, J.

A member of the House of Representatives becomes so, only upon a duly and legally based proclamation

FACTS:
Regina Ongsiako Reyes won the elections and was proclaimed as the representative of Marinduque. However, before the elections, Comelec cancelled her certificate of candidacy for not being qualified to run for the position as she was not a Filipino citizen. Regina opposed the jurisdiction of the Comelec alleging that it is the House of Representatives Electoral Tribunal (HRET) that has exclusive jurisdiction to pass upon her qualifications.

ISSUE:
Whether or not the HRET has jurisdiction to look into Regina's qualifications as representative of Marinduque

RULING:
No. HRET's constitutional authority opens, over the qualification of its member, who becomes so, only upon a duly and legally based proclamation. HRET has exclusive and original jurisdiction over the qualifications of its members. However, Regina's proclamation is not valid since prior to the elections, the decision of Comelec cancelling her certificate of candidacy became final. Hence, there is no basis for her proclamation and thus she did not become a member of the House of Representatives

LORD ALLAN JAY Q. VELASCO V. HON. SPEAKER FELICIANO R. BELMONTE, JR., SECRETARY GENERAL MARILYN B. BARUA-YAP AND REGINA ONGSIAKO REYES
G.R. No. 211140 January 12, 2016, Leonardo-De Castro, J.

The decision of the Comelec which attained finality, and that of the Supreme Court, made the administering of oath of Velasco, and removal of Reyes' name in the roll of members of House of Representatives, a ministerial duty, which may be compelled by Mandamus.

FACTS:
Lord Allan Jay Velasco filed a petition for Mandamus against Hon. Speaker Feliciano Belmonte, Jr. and Secretary General Marilyn Barua-Yap to order them, respectively, to administer the oath of Velasco in the House of Representatives, and to remove the name of Regina Ongsiako Reyes in the roll of the members of the House of Representatives and replace it with Velasco's name. Before this petition was filed, a Comelec decision was promulgated cancelling the certificate of candidacy of Reyes because she lacks the citizenship requirement to be able to qualify to run for the representative of Marinduque in the House of Representatives. Subsequently, a petition was filed by Reyes with the Suprme Court, questioning Comelec's jurisdiction to pass upon her qualifications as a member of the House of Representatives. The Supreme Court ruled against Reyes and enunciated that her certificate of candidacy was validly cancelled and therefore there was no basis for her proclamation in the House of Representatives, thus the Comelec has jurisdiction to question her qualifications.

ISSUE:
Whether or not Speaker Belmonte and Sec Gen Yap can be compelled by mandamus.

RULING:
Yes. A petition for mandamus will prosper if it is shown that the subject thereof is a ministerial act or duty, and not purely discretionary on the part of the board, officer or person, and that the petitioner has a well-defined, clear and certain right to warrant the grant thereof. The decision of the Comelec which attained finality, and that of the Supreme Court, made the administering of oath of Velasco, and removal of Reyes' name in the roll of members of House of Representatives, a ministerial duty. The administration of oath and the registration of Velasco in the Roll of Members of the House of Representatives for the Lone District of the Province of Marinduque are no longer a matter of discretion or judgment on the part of Speaker Belmonte, Jr. and Sec Gen Yap. They are legally bound to recognize Velasco as the duly elected Member of the House of Representatives for the Lone District of Marinduque in view of the ruling rendered by SC and the Comelec's ruling, now both final and executory

HARLIN C. ABAYON, Petitioner, vs. **HOUSE OF REPRESENTATIVES ELECTOLRAL TRIBUNAL (HRET) and RAUL A. DAZA,** Respondents. **G.R. No. 223032HARLIN C. ABAYON,** Petitoner, vs. **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) and RAUL A. DAZA, Respondent.**
G.R. No. 222236, G.R. No. 223032, SPECIAL EN BANC, May 3, 2016, MENDOZA, *J.*

An Election Protest proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds or irregularities. It aims to determine who between them has actually obtained the majority of the legal votes cast and, therefore, entitled to hold the office.

FACTS:
The HRET annulled the election results in five (5) clustered precincts in the municipalities of Lavezares and Victoria because of the commission of massive terrorism.
HRET highlighted that Daza presented testimonial and documentary evidence showing that: (1) prior to the May 13, 2013 elections, the National Democratic Front-Eastern Visayas (NDF-EV) had already shown its animosity and hostility towards him and his then incumbent governor son through the posting on the NDF-EV website and in conspicuous places statements declaring them as enemies of the people of Northern Samar; (2) comic magazines vilifying them were distributed; (3) "pulong-pulongs" were held in the concerned barangays where the NDF-EV exhorted the resident-attendees to vote against him and in favor of Abayon, threatening to comeback if the result were otherwise; (4) his supporters and/or fellow Liberal Party candidates were prohibited from campaigning for him, and also from mounting tarpaulins/posters and distributing sample ballots; (5) Abayon had meetings with NDF-EV officials, during which times, he gave them money and guns; and (6) NDF-EV armed partisans were deployed around the school premises in the concerned precincts on election day.
The HRET found that Daza had adduced convincing evidence to establish that fear was instilled in the minds of hundreds of resident-voters in the protested clustered precincts from the time they had attended the "pulong-pulongs" up until the election day itself when armed partisans were deployed to the schools to ensure that the voters would not vote for him but for Abayon.

ISSUES:
Whether the HRET had jurisdiction to annul the elections in the contested precincts in the municipalities of Lavezares and Victoria; (NO)
Whether the HRET committed grave abuse of discretion in dismissing the counter-protest filed by Abayon (YES)

RULING:
The Court agrees that the power of the HRET to annul elections differ from the power granted to the COMELEC to declare failure of elections. The Constitution no less, grants the HRET with exclusive jurisdiction to decide all election contests involving the members of the House of Representatives, which necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections. To deprive the HRET the prerogative to annul elections would undermine its constitutional fiat to decide election contests.
The power granted to the HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature.[28] Thus, the HRET, as the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, may annul election results if in its determination, fraud, terrorism or other electoral irregularities existed to warrant the annulment.

To the Court's mind, the HRET had jurisdiction to determine whether there was terrorism in the contested precincts. In the event that the HRET would conclude that terrorism indeed existed in the said precincts, then it could annul the election results in the said precincts to the extent of deducting the votes received by Daza and Abayon in order to remain faithful to its constitutional mandate to determine who among the candidates received the majority of the valid votes cast.

Thus, the COMELEC exercises its quasi-judicial function when it decides election contests not otherwise reserved to other electoral tribunals by the Constitution.

As discussed above, the decision of the HRET was clearly unsupported by clear and convincing evidence. Thus, the HRET committed grave abuse of discretion in annulling the elections in the contested precincts and disregarding the respective number of votes received by Abayon and Daza from the precincts, which led to its conclusion that Daza was the one elected by the majority of voters in the First Legislative District of Northern Samar to be their Representative in Congress. Hence, Abayon should be reinstated as the duly elected Representative of the said legislative district.

REPRESENTATIVE TEDDY BRAWNER BAGUILAT, JR., REPRESENTATIVE EDCEL C. LAGMAN, REPRESENTATIVE RAUL A. DAZA, REPRESENTATIVE EDGAR R. ERICE, REPRESENTATIVE EMMANUEL A. BILLONES, REPRESENTATIVE TOMASITO S. VILLARIN, and REPRESENTATIVE GARY C. ALEJANO,Petitioners vs.
SPEAKER PANTALEON D. ALVAREZ, MAJORITY LEADER RODOLFO C. FARINAS, and REPRESENTATIVE DANILO E. SUAREZ, Respondents
G.R. No. 227757, EN BANC, July 25, 2017, PERLAS-BERNABE, *J.*

Mandamus is an extraordinary relief to one who has a CLEAR legal right to the performance of the act to be compelled which is not attendant in this case. The election proceeded without anyone objecting to the agreement between Fariñas and Atienza stating that all who voted for the winning speaker shall be members of Majority and all who will abstain or vote in favor of other candidates will be members of the minority. This unobjected procession was reflected in the Journal of the house, which according to jurisprudence is conclusive.

FACTS:
Prior to the opening of the 17th Congress on July 2017, news surfaced that Rep. Suarez sought endorsement from President Duterte for his appointment as Minority Leader in the House. That to this effect, some members of the House Majority coalition feigned membership in the Minority to ensure appointment of Rep. Suarez. Prior to the election of the House Speaker, then-acting floor Leader Rep. Fariñas and Rep. Atienza agreed that all who voted for the winning speaker shall be members of Majority and all who will abstain or vote in favor of other candidates will be members of the minority, no one objected. Rep. Alvarez won the election of House Speaker with 252 votes. Rep. Baguilat got eight votes, Rep. Suarez got 7 and 21 abstained.
Herein petitioners hoped that the long-standing tradition where the second candidate who garnered the second highest vote automatically becomes Minority Leader, in this case, Rep. Baguilat. Despite numerous follow-ups from House Speaker Alvarez, Baguilat was never recognized as such.

One of the abstentionists, Rep. Abayon, manifested that all those who did not vote for Alvarez have voted for Suarez as minority leader. Fariñas moved for the recognition of Suarez but Rep. Lagman opposed on the ground that Suarez is a majority member, hence cannot be voted in the minority and that those who voted for him are independent members.

Petitioners filed herein Petition for Mandamus to the Supreme Court for the recognition of Baguilat as minority leader on the ground of the aforementioned long-standing tradition and irregularities in the election of Suarez.

Suarez maintains that the court has no jurisdiction as the election of Minority is an internal matter to the HoR. The OSG, in behalf of the respondents insisted that the principle of separation of powers and political question applies to the instant question.

ISSUE:
Whether or not respondents may be compelled via mandamus to recognize Rep. Baguilat as the Minority leader. (NO)

RULING:
Mandamus is an extraordinary relief to one who has a CLEAR legal right to the performance of the act to be compelled which is not attendant in this case. The election proceeded without anyone objecting to the agreement between Fariñas and Atienza stating that all who voted for the winning speaker shall be members of Majority and all who will abstain or vote in favor of other candidates will be members of the minority. This unobjected procession was reflected in the Journal of the house, which according to jurisprudence is conclusive.

Moreover, Section 16, (1), Article VI of the 1987 Constitution provides that: 1. The Senate shall elect its President and the House of Representatives, its Speaker, by a majority vote of all its respective Members. Each House shall choose such other officers as it may deem necessary.

Under this provision, the house may decide to have officers other than the Speaker and that the method and manner as to how these officers are chosen is something within its sole control. In the case of Defensor-Santiago vs Guingona, the court observed that the Constitution is dead silent on how the election of all leaders except the House Speaker must be done.

Corollary, paragraph 3 of the same section in Article 16 vests in the HoR the sole Authority to determine the rules of proceedings, as they are subject to revocation, modification or waiver at the pleasure of the House. As a general rule, the court has no authority to interfere and unilaterally intrude into that exclusive realm. As an exception, it may strike down such determination in case of grave abuse of discretion, which is not present herein. As may be gleaned from the circumstances of the case as to how the house conducted the questioned proceedings, such grave abuse of discretion is absent. To rule otherwise will not only embroil this court to the real of Politics but will will breach the separation of powers doctrine. Wherefore, the petition is DISMISSED.

ANTERO J. POBRE *v*. Sen. MIRIAM DEFENSOR-SANTIAGO
A.C. No. 7399, August 25, 2009, Velasco, Jr., J.

No member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof.

FACTS:
Antero Pobre filed an administrative complaint against Senator Miriam Defensor-Santiago regarding the speech she delivered on the Senate floor. In the said speech, she said the following:

"I am not angry. I am irate. I am foaming in the mouth. I am homicidal. I am suicidal. I am humiliated, debased, degraded. And I am not only that, I feel like throwing up to be living my middle years in a country of this nature. I am nauseated. I spit on the face of Chief Justice Artemio Panganiban and his cohorts in the Supreme Court, I am no longer interested in the position [of Chief Justice] if I was to be

surrounded by idiots. I would rather be in another environment but not in the Supreme Court of idiots."

In her comment, Senator Santiago, through counsel, does not deny making the aforequoted statements. However, she invoked parliamentary immunity contending that it was delivered in the discharge of her duty as member of Congress or its committee.

ISSUE:
Whether Santiago can be subject to a disciplinary action.

RULING:
NO. Indeed, her privilege speech is not actionable criminally or in a disciplinary proceeding under the Rules of Court.

The immunity Senator Santiago claims is rooted primarily on the provision of Art. VI, Sec. 11 of the Constitution, which provides: "A Senator or Member of the House of Representative shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session. No member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof."

The Court is aware of the need and has in fact been in the forefront in upholding the institution of parliamentary immunity and promotion of free speech. Neither has the Court lost sight of the importance of the legislative and oversight functions of the Congress that enable this representative body to look diligently into every affair of government, investigate and denounce anomalies, and talk about how the country and its citizens are being served. Courts do not interfere with the legislature or its members in the manner they perform their functions in the legislative floor or in committee rooms. Any claim of an unworthy purpose or of the falsity and mala fides of the statement uttered by the member of the Congress does not destroy the privilege. The disciplinary authority of the assembly and the voters, not the courts, can properly discourage or correct such abuses committed in the name of parliamentary immunity

ANTONIO F. TRILLANES IV, *Petitioner*, -versus- HON. EVANGELINE C. CASTILLO-MARIGOMEN, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, QUEZON CITY, BRANCH 101 AND ANTONIO L. TIU, *Respondents.*
G.R. No. 223451, FIRST DIVISION, March 14, 2018, TIJAM, *J.*

Parliamentary immunity refers to utterances made by Congressmen ***in the performance of their official functions****, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the* ***official discharge of their duties as members of Congress and of Congressional Committees duly authorized to perform its functions as such****, at the time of the performance of the acts in question.*

It is, thus, clear that parliamentary non-accountability cannot be invoked when the lawmaker's speech or utterance is made outside sessions, hearings or debates in Congress, extraneous to the "due functioning of the legislative process."To participate in or respond to media interviews is not an official function of any lawmaker; it is not demanded by his sworn duty nor is it a component of the process of enacting laws. Indeed, a lawmaker may well be able to discharge his duties and legislate without having

to communicate with the press. A lawmaker's participation in media interviews is not a legislative act, but is "political in nature," outside the ambit of the immunity conferred under the Speech or Debate Clause in the 1987 Constitution.

In this case, petitioner admits that he uttered the questioned statements, describing private respondent as former VP Binay's "front" or "dummy" in connection with the so-called Hacienda Binay, in response to media interviews during gaps and breaks in plenary and committee hearings in the Senate.Contrary to petitioner's stance, therefore, he cannot invoke parliamentary immunity to cause the dismissal of private respondent's Complaint. The privilege arises not because the statement is made by a lawmaker, but because it is uttered in furtherance of legislation.

FACTS:
Petitioner, as a Senator of the Republic of the Philippines, filed Proposed Senate Resolution No. 826 (P.S. Resolution No. 826) directing the Senate's Committee on Accountability of Public Officials and Investigations to investigate, in aid of legislation, the alleged P1.601 Billion overpricing of the new 11-storey Makati City Hall II Parking Building, the reported overpricing of the 22-storey Makati City Hall Building at the average cost of P240,000.00 per square meter, and related anomalies purportedly committed by former and local government officials.

Petitioner alleged that at the October 8, 2014 Senate Blue Ribbon Sub-Committee (SBRS) hearing on P.S. Resolution No. 826, former Makati Vice Mayor Ernesto Mercado (Mercado) testified on how he helped former Vice President Jejomar Binay (VP Binay) acquire and expand what is now a 350-hectare estate in Barangay Rosario, Batangas, which has been referred to as the *Hacienda* Binay.
Petitioner averred that private respondent thereafter claimed "absolute ownership" of the estate, albeit asserting that it only covered 145 hectares, through his company called Sunchamp Real Estate Corporation, which purportedly entered into a Memorandum of Agreement (MOA) with a certain Laureano R. Gregorio, Jr., the alleged owner of the consolidated estate and its improvements.

Petitioner admitted that during media interviews at the Senate, particularly during gaps and breaks in the plenary hearings as well as committee hearings, and in reply to the media's request to respond to private respondent's claim over the estate, he expressed his opinion that based on his office's review of the documents, private respondent appears to be a "front" or "nominee" or is acting as a "dummy" of the actual and beneficial owner of the estate, VP Bina
On October 22, 2014, private respondent filed a Complaint for Damagesagainst petitioner for the latter's alleged defamatory statements before the media from October 8 to 14, 2014, specifically his repeated accusations that private respondent is a mere "dummy" of VP Binay.

Private respondent alleged that he is a legitimate businessman engaged in various businesses primarily in the agricultural sector, and that he has substantial shareholdings, whether in his own name or through his holding companies, in numerous corporations and companies, globally, some of which are publicly listed. He averred that because of petitioner's defamatory statements, his reputation was severely tarnished as shown by the steep drop in the stock prices of his publicly listed companies.

Petitioner in his Answer with Motion to Dismiss contended that his statements, having been made in the course of the performance of his duties as a Senator, are covered by his parliamentary immunity under Article VI, Section 11 of the 1987 Constitution.
On May 19, 2015, public respondent issued the Orderdenying petitioner's motion to dismiss.

In his Comment, private respondent contends that petitioner cannot invoke parliamentary immunity as his utterances were made in various media interviews, beyond the scope of his official duties as Senator, and that the constitutional right to free speech can be raised only against the government, not against private individuals.

ISSUE:
Whether or not the statements made by the petitioner in media interviews are covered by parliamentary immunity. (NO)

RULING:
Parliamentary immunity refers to utterances made by Congressmen **in the performance of their official functions**, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the **official discharge of their duties as members of Congress and of Congressional Committees duly authorized to perform its functions as such**, at the time of the performance of the acts in question.

> In *Jimenez*, a civil action for damages was filed against a member of the House of Representatives for the publication, in several newspapers of general circulation, of an open letter to the President which spoke of operational plans of some ambitious officers of the Armed Forces of the Philippines (AFP) involving a "massive political build-up" of then Secretary of National Defense Jesus Vargas to prepare him to become a presidential candidate, a *coup d'etat*, and a speech from General Arellano challenging Congress' authority and integrity to rally members of the AFP behind him and to gain civilian support.
>
> Holding that the open letter did not fall under the privilege of speech or debate under the Constitution, the Court declared:
>
> The publication involved in this case does not belong to this category. According to the complaint herein, it was an open letter to the President of the Philippines, dated November 14, 1958, when Congress presumably was not in session, and defendant caused said letter to be published in several newspapers of general circulation in the Philippines, on or about said date. It is obvious that, in thus causing the communication to be so published, he was **not performing his official duty, either as a member of Congress or as officer or any Committee thereof**. Hence, contrary to the finding made by His Honor, the trial Judge, said communication is **not absolutely privileged**.

In this case, petitioner admits that he uttered the questioned statements, describing private respondent as former VP Binay's "front" or "dummy" in connection with the so-called *Hacienda* Binay, in response to media interviews during gaps and breaks in plenary and committee hearings in the Senate. With *Jimenez* as our guidepost, it is evident that petitioner's remarks fall outside the privilege of speech or debate under Section 11, Article VI of the 1987 Constitution. The statements were clearly not part of any speech delivered in the Senate or any of its committees. They were also not spoken in the course of any debate in said fora. It cannot likewise be successfully contended that they were made in the official discharge or performance of petitioner's duties as a Senator, as the remarks were not part of or integral to the legislative process.

Legislative acts are not all-encompassing. **The heart of the Clause is speech or debate in either House. Insofar as the Clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.**

It is, thus, clear that parliamentary non-accountability cannot be invoked when the lawmaker's speech or utterance is made outside sessions, hearings or debates in Congress, extraneous to the "due functioning of the legislative process."To participate in or respond to media interviews is not an official function of any lawmaker; it is not demanded by his sworn duty nor is it a component of the process of enacting laws. Indeed, a lawmaker may well be able to discharge his duties and legislate without having to communicate with the press. A lawmaker's participation in media interviews is not a legislative act, but is "political in nature," outside the ambit of the immunity conferred under the Speech or Debate Clause in the 1987 Constitution. Contrary to petitioner's stance, therefore, he cannot invoke parliamentary immunity to cause the dismissal of private respondent's Complaint. The privilege arises not because the statement is made by a lawmaker, but because it is uttered in furtherance of legislation.

DANTE V. LIBAN, REYNALDO M. BERNARDO, and SALVADOR M. VIARI *v.* RICHARD J. GORDON
G.R. No. 175352, July 15, 2009, Carpio, J.

The office of the PNRC Chairman is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution.

FACTS:
On February 23, 2006, Senator Richard Gordon was elected as Chairman of the Philippine National Red Cross during his incumbency as a member of the Senate. Petitioners then filed a petition to declare Senator Gordon as having forfeited his seat in the Senate. They allege that by accepting the chairmanship of the PNRC Board of Governors, he has ceased to be a member of the Senate as provided in Sec. 13, Art. VI of the Constitution. In his Comment, Senator Gordon asserted that petitioners have no standing to file this petition which appears to be an action for quo warranto and that it was already barred by prescription. He further insisted that the PNRC is not a government-owned or controlled corporation and that the prohibition under Sec. 13, Art. VI of the Constitution does not apply in the present case since volunteer service to the PNRC is neither an office nor an employment.

ISSUE:
Whether the office of the PNRC Chairman is a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Sec. 13, Art.VI of the Constitution.

RULING:
NO. The office of the PNRC Chairman is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution.

The PNRC is not government-owned but privately owned. The vast majority of the thousands of PNRC members are private individuals, including students. Under the PNRC Charter, those who contribute

to the annual fund campaign of the PNRC are entitled to membership in the PNRC for one year. Thus, any one between 6 and 65 years of age can be a PNRC member for one year upon contributing P35, P100, P300, P500 or P1,000 for the year. Even foreigners, whether residents or not, can be members of the PNRC. Sec. 5 of the PNRC Charter, as amended by P.D. No. 1264, provides that membership in the PNRC shall be open to the entire population in the Philippines regardless of citizenship. Thus, the PNRC is a privately owned, privately funded, and privately run charitable organization. The PNRC is not a government-owned or controlled corporation

ROMULO L. NERI v. SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS, *et al.*
G.R. No. 180643, September 4, 2008, LEONARDO-DE CASTRO, *J.*

The presumption of executive privilege can only be overturned by a showing of compelling need for disclosure of the information covered by the privilege.

FACTS:
Respondent Senate Committees filed a motion for reconsideration of the March 25, 2008 Decision of the Court wherein the Senate cited in contempt Romulo Neri for his refusal to answer three specific questions involving the controversial ZTE-NBN deal. The Court held that the communications elicited by the three questions are covered by the presidential communications privilege, hence, the contempt order issued by respondents was void. Respondents now contend that the information elicited by the three questions are necessary in the discharge of their legislative functions.

ISSUE:
Whether respondent Committees have shown that the communications elicited by the three questions are critical to the exercise of their functions.

RULING:
NO. The Court recognizes respondent Committees' power to investigate the NBN Project in aid of legislation. However, the Court cannot uphold the view that when a constitutionally guaranteed privilege or right is validly invoked by a witness in the course of a legislative investigation, the legislative purpose of respondent Committees' questions can be sufficiently supported by the expedient of mentioning statutes and/or pending bills to which their inquiry as a whole may have relevance. The jurisprudential test laid down by the Court in past decisions on executive privilege is that the presumption of privilege can only be overturned by **a showing of compelling need** for disclosure of the information covered by executive privilege.

The presumption in favor of Presidential communications puts the burden on the respondent Senate Committees to overturn the presumption by demonstrating their specific need for the information to be elicited by the answers to the three (3) questions subject of this case, to enable them to craft legislation. Here, there is simply a generalized assertion that the information is pertinent to the exercise of the power to legislate and a broad and non-specific reference to pending Senate bills. It is not clear what matters relating to these bills could not be determined without the said information sought by the three (3) questions.

The general thrust and the tenor of the three (3) questions is to trace the alleged bribery to the Office of the President. While it may be a worthy endeavor to investigate the potential culpability of high government officials, including the President, in a given government transaction, it is simply not a task for the Senate to perform. The role of the Legislature is to make laws, not to determine anyone's

guilt of a crime or wrongdoing. Our Constitution has not bestowed upon the Legislature the latter role. Just as the Judiciary cannot legislate, neither can the Legislature adjudicate or prosecute.

REGHIS M. ROMERO II, EDMOND Q. SESE, LEOPOLDO T. SANCHEZ, REGHIS M. ROMERO III, MICHAEL L. ROMERO, NATHANIEL L. ROMERO, and JEROME R. CANLAS, *Petitioners*, *v.* **SENATOR JINGGOY E. ESTRADA and SENATE COMMITTEE ON LABOR, EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT,** *Respondents*.
G.R. NO. 174105, EN BANC, April 2, 2009, VELASCO, JR., *J*

The same directors and officers contend that the Senate is barred from inquiring into the same issues being litigated before the Court of Appeals and the Sandiganbayan. Suffice it to state that the Senate Rules of Procedure Governing Inquiries in Aid of Legislation provide that the filing or pendency of any prosecution or administrative action should not stop or abate any inquiry to carry out a legislative purpose inquiries in aid of legislation are, inter alia, undertaken as tools to enable the legislative body to gather information and, thus, legislate wisely and effectively; and to determine whether there is a need to improve existing laws or enact new or remedial legislation, albeit the inquiry need not result in any potential legislation.

FACTS:
Petitioner Reghis Romero II, as owner of R-II Builders, Inc., received from the Committee an invitation, signed by the Legislative Committee Secretary, the Committee on Labor, Employment and Human Resources Development chaired by Sen. Jinggoy Ejercito Estrada will conduct a public hearing at 1:00 p.m. on the 23rd day of August 2006 at

The inquiry/investigation is specifically intended to aid the Senate in the review and possible amendments to the pertinent provisions of R.A. 8042, "the Migrant Workers Act" and to craft a much needed legislation relative to the stated subject matter petitioner Romero II requested to be excused from appearing and testifying before the Committee at its scheduled hearings of the subject matter and purpose of Philippine Senate (PS) Resolution Nos. 537 and 543 his request, being unmeritorious, was denied
Senator Jinggoy Estrada, as Chairperson of the Committee, caused the service of a subpoena ad testificandum on petitioner Romero II directing him to appear and testify before the Committee at its hearing on September 4, 2006 relative to the aforesaid Senate resolutions.

On August 30, 2006, petitioners filed the instant petition, docketed as G.R. No. 174105, seeking to bar the Committee from continuing with its inquiry and to enjoin it from compelling petitioners to appear before it pursuant to the invitations thus issued.

Observing that the Senate's motives in calling for an investigation in aid of legislation were a political question. The respondents averred that the subject matter of the investigation focused on the alleged dissipation of OWWA funds and the purpose of the probe was to aid the Senate determine the propriety of amending Republic Act No. 8042 or The Migrant Workers Act of 1995 and enacting laws to protect OWWA funds in the future.

ISSUES:
Whether or not the subject matter of the Committee's inquiry is subjudice? (NO)

RULING:

The same directors and officers contend that the Senate is barred from inquiring into the same issues being litigated before the Court of Appeals and the Sandiganbayan. Suffice it to state that the Senate Rules of Procedure Governing Inquiries in Aid of Legislation provide that the filing or pendency of any prosecution or administrative action should not stop or abate any inquiry to carry out a legislative purpose inquiries in aid of legislation are, inter alia, undertaken as tools to enable the legislative body to gather information and, thus, legislate wisely and effectively; and to determine whether there is a need to improve existing laws or enact new or remedial legislation, albeit the inquiry need not result in any potential legislation.

On-going judicial proceedings do not preclude congressional hearings in aid of legislation.
[T]he mere filing of a criminal or an administrative complaint before a court or quasi-judicial body should not automatically bar the conduct of legislative investigation. Otherwise, it would be extremely easy to subvert any intended inquiry by Congress through the convenient ploy of instituting a criminal or an administrative complaint. Surely, the exercise of sovereign legislative authority, of which the power of legislative inquiry is an essential component, cannot be made subordinate to a criminal or administrative investigation.

All pending matters and proceedings, i.e., unpassed bills and even legislative investigations, of the Senate of a particular Congress are considered terminated upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time when the Committee issued invitations and subpoenas to petitioners to appear before it in connection with its investigation of the aforementioned investments, it did so pursuant to its authority to conduct inquiries in aid of legislation. This is clearly provided in Art. VI, Sec. 21 of the Constitution, which was quoted at the outset. And the Court has no authority to prohibit a Senate committee from requiring persons to appear and testify before it in connection with an inquiry in aid of legislation in accordance with its duly published rules of procedure.

The unremitting obligation of every citizen is to respond to subpoena, to respect the dignity of the Congress and its Committees, and to testify fully with respect to matters within the realm of proper investigation. There is no more investigation to be continued by virtue of said resolutions; there is no more investigation the constitutionality of which is subject to a challenge.

ARVIN R. BALAG, *Petitioner*, *v.* SENATE OF THE PHILIPPINES, SENATE COMMITTEE ON PUBLIC ORDER AND DANGEROUS DRUGS, SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS, SENATE COMMITTEE ON CONSTITUTIONAL AMENDMENTS AND REVISION OF CODES AND MGEN. JOSE V. BALAJADIA, JR. (RET.) IN HIS CAPACITY AS SENATE SERGEANT-AT-ARMS, *Respondents*.
G.R. No. 234608, EN BANC, July 03, 2018, GESMUNDO, *J.*

The Court finds that there is a genuine necessity to place a limitation on the period of imprisonment that may be imposed by the Senate pursuant to its inherent power of contempt during inquiries in aid of legislation. ***Section 21, Article VI of the Constitution states that Congress, in conducting inquiries in aid of legislation, must respect the rights of persons appearing in or affected therein.***

The Court finds that the period of imprisonment under the inherent power of contempt by the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry under which the said power is invoked.

In Arnault, it was stated that obedience to its process may be enforced by the Senate Committee if the subject of investigation before it was within the range of legitimate legislative inquiry and the proposed testimony called relates to that subject.Accordingly, ***as long as there is a legitimate legislative inquiry, then the inherent power of contempt by the Senate may be properly exercised****. Conversely,* ***once the said legislative inquiry concludes, the exercise of the inherent power of contempt ceases*** *and there is no more genuine necessity to penalize the detained witness.*

FACTS:
On September 17, 2017, Horacio III,a first year law student of the UST, died allegedly due to hazing conducted by the Aegis Juris Fraternity. On September 19, 2017, SR No. 504,was filed by Senator Zubiri condemning the death of Horacio III and directing the appropriate Senate Committee to conduct an investigation, **in aid of legislation**, to hold those responsible accountable.

On September 20, 2017, SR No. 510, entitled: "A Resolution Directing the Appropriate Senate Committees to Conduct An Inquiry, In Aid of Legislation, into the Recent Death of Horacio Tomas Castillo III Allegedly Due to Hazing-Related Activities" was filed by Senator Aquino IV. The Senate Committee on Public Order and Dangerous Drugs chaired by Senator Lacson together with the Committees on Justice and Human Rights and Constitutional Amendment and Revision of Codes, invited petitioner and several other persons to the Joint Public Hearing.

Petitioner attended the senate hearing. In the course of the proceedings, Senator Poe asked petitioner if he was the president of Aegis Juris Fraternity but he refused to answer the question and invoked his right against self-incrimination. She manifested that petitioner's signature appeared on the application for recognition of the AJ Fraternity and on the organizational sheet, indicating that he was the president. Petitioner, again, invoked his right against self-incrimination.

Senator Poe then **moved to cite him in contempt**, which was seconded by Senators Villanueva and Zubiri. Senator Lacson ruled that the motion was properly seconded, hence, the Senate Sergeant-at-arms was ordered to place petitioner in detention after the committee hearing. Thereafter, petitioner apologized for his earlier statement and moved for the lifting of his contempt. He admitted that he was a member of the AJ Fraternity but he was not aware as to who its president was because, at that time, he was enrolled in another school. Senator Villanueva repeated his question to petitioner but the latter, again, invoked his right against self-incrimination. Thus, petitioner was **placed under the custody of the Senate Sergeant-at-arms**.

In its Resolutiondated December 12, 2017, the Court ordered in the interim the **immediate release** of petitioner pending resolution of the instant petition.

ISSUES:
I. Whether or not the petition is moot and academic. (YES)

II. Whether or not the period of detention under the senate's inherent power of contempt is indefinite. (NO)

RULING:
I. The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for

judicial resolution. In this case, the Court finds that there is no more justiciable controversy. Petitioner essentially alleges that respondents unlawfully exercised their power of contempt and that his detention was invalid.

As discussed earlier, in its resolution dated December 12, 2017, the Court ordered in the interim the immediate release of petitioner pending resolution of the instant petition. Thus, petitioner was no longer detained under the Senate's authority. Evidently, respondent committees have terminated their legislative inquiry. The Senate even went further by approving on its 3rd reading the proposed bill, Senate Bill No. 1662, the result of the inquiry in aid of legislation. Indeed, the petition has become moot and academic.

Nevertheless, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot and academic. This Court may assume jurisdiction over a case that has been rendered moot and academic by supervening events when any of the following instances are present:

(1) Grave constitutional violations;
(2) Exceptional character of the case;
(3) Paramount public interest;
(4) The case presents an opportunity to guide the bench, the bar, and the public; or
(5) The case is capable of repetition yet evading review.

In this case, the petition presents a critical and decisive issue that must be addressed by Court: what is the duration of the detention for a contempt ordered by the Senate? This issue must be threshed out as the Senate's exercise of its power of contempt without a definite period is capable of repetition. Moreover, the indefinite detention of persons cited in contempt impairs their constitutional right to liberty. Thus, paramount public interest requires the Court to determine such issue to ensure that the constitutional rights of the persons appearing before a legislative inquiry of the Senate are protected.

The contempt order issued against petitioner simply stated that he would be arrested and detained until such time that he gives his true testimony, or otherwise purges himself of the contempt. It does not provide any definite and concrete period of detention. Neither does the Senate Rules specify a precise period of detention when a person is cited in contempt.

II. The Court finds that there is a genuine necessity to place a limitation on the period of imprisonment that may be imposed by the Senate pursuant to its inherent power of contempt during inquiries in aid of legislation. **Section 21, Article VI of the Constitution states that Congress, in conducting inquiries in aid of legislation, must respect the rights of persons appearing in or affected therein.**

Congress' power of contempt rests solely upon the **right of self-preservation** and does not extend to the infliction of punishment as such. It is a means to an end and not the end itself.Even *arguendo* that detention under the legislative's inherent power of contempt is not entirely punitive in character because it may be used by Congress only to secure information from a recalcitrant witness or to remove an obstruction, it is still a **restriction to the liberty** of the said witness. It is when the restrictions during detention are arbitrary and purposeless that courts will infer intent to punish. **An indefinite and unspecified period of detention will amount to excessive restriction and will certainly violate any person's right to liberty.**

Nevertheless, it is recognized that the **Senate's inherent power of contempt is of utmost importance**. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations are intended to affect or change.

Thus, the Court must strike a balance between the interest of the Senate and the rights of persons cited in contempt during legislative inquiries. The **balancing of interest** requires that the Court take a conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation. These interests usually consist in the exercise by an individual of his basic freedoms on the one hand, and the government's promotion of fundamental public interest or policy objectives on the other.

The Court finds that the period of imprisonment under the inherent power of contempt by the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry under which the said power is invoked.

In *Arnault*, it was stated that obedience to its process may be enforced by the Senate Committee if the subject of investigation before it was within the range of legitimate legislative inquiry and the proposed testimony called relates to that subject.Accordingly, **as long as there is a legitimate legislative inquiry, then the inherent power of contempt by the Senate may be properly exercised**. Conversely, **once the said legislative inquiry concludes, the exercise of the inherent power of contempt ceases** and there is no more genuine necessity to penalize the detained witness.

In fine, the interests of the Senate and the witnesses appearing in its legislative inquiry are balanced. The Senate can continuously and effectively exercise its power of contempt during the legislative inquiry against recalcitrant witnesses, even during recess. Such power can be exercised by the Senate immediately when the witness performs a contemptuous act, subject to its own rules and the constitutional rights of the said witness. In addition, if the Congress decides to extend the period of imprisonment for the contempt committed by a witness beyond the duration of the legislative inquiry, then it may file a criminal case under the existing statute or enact a new law to increase the definite period of imprisonment.

GRECO BELGICA, *et al.* –versus- EXECUTIVE SECRETARY PAQUITO OCHOA, JR., *et al.*
G.R. No. 208566, EN BANC, November 19, 2013, Perlas-Bernabe, J.

The grant of the rule-making power to administrative agencies must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned.

Facts:
Starting 2004, several concerned citizens sought the nullification of the PDAF for being unconstitutional and the likely source of the congressmen's kickbacks. Unfortunately, for lack of "any pertinent evidentiary support that illegal misuse of PDAF has been a common exercise of unscrupulous members of the congress," the petition was dismissed. In July 2013, the National Bureau of Investigation began its probe into the allegations that "the government has been defrauded of some P10 Billion over the past 10 years by a syndicate using funds from the pork barrel." After criminal investigations were filed following the Napoles controversy, the Commission on Audit released its own results of a three-year audit covering the legislators' PDAF from 2007 to 2009. The

total releases amounting to billions of pesos spurred several petitions to be lodged before the SC to declare the "Pork Barrel System" as unconstitutional.

ISSUE:
Whether or not the 2013 PDAF Article and all other Congressional Pork Barrel Laws similar thereto are unconstitutional considering that they violate the constitutional provision on the non-delegability of legislative power. (YES)

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

MARIA CAROLINA ARAULLO, *et al.* –versus- BENIGNO AQUINO III, *et al.*
G.R. No. 209287, EN BANC, July 1, 2014, Bersamin, *J.*

Appropriation has been defined as nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the Treasury.

FACTS:
Responding to Senator Jinggoy Estrada's revelation that some senators, including himself, had been allotted millions as an incentive for voting in favor of Chief Justice Renato Corona's impeachment, Secretary Florencio Abad explained in a statement that the funds released to the senators had been part of the DAP, a program designed by the DBM to accelerate economic expansion. The DBM further listed the legal bases for the DAP's use of savings and that it had been sourced from savings generated by the government and from unprogrammed funds.

ISSUE:
Whether or not the DAP violates Sec. 29, Art. VI of the 1987 Constitution, which provides that "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." (NO)

RULING:
The DAP was a government policy or strategy designed to stimulate the economy through accelerated spending. In the context of the DAP's adoption and implementation being a function pertaining to the Executive as the main actor during the Budget Execution Stage under its constitutional mandate to

faithfully execute the laws, including the GAAs, Congress did not need to legislate to adopt or to implement the DAP. Congress could appropriate but would have nothing more to do during the Budget Execution Stage. Appropriation is the act by which Congress designates a particular fund, or sets apart a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object of governmental expenditure, or to some individual purchase or expense. In a strict sense, appropriation has been defined as nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the Treasury, while appropriation made by law refers to "the act of the legislature setting apart or assigning to a particular use a certain sum to be used in the payment of debt or dues from the State to its creditors."

The President, in keeping with his duty to faithfully execute the laws, had sufficient discretion during the execution of the budget to adapt the budget to changes in the country's economic situation. The pooling of savings pursuant to the DAP, and the identification of the PAPs to be funded under the DAP did not involve appropriation in the strict sense because the money had been already set apart from the public treasury by Congress through the GAAs. In such actions, the Executive did not usurp the power vested in Congress under Section 29(1), Article VI of the Constitution.

NB: Notwithstanding the above discussion, certain DAP practices were declared unconstitutional based on other grounds.

TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA) –versus-THE COMMISSION ON AUDIT; CHAIRMAN REYNALDO A. VILLAR; COMMISSIONER JUANITO G. ESPINO, JR.; AND COMMISSIONER EVELYN R. SAN BUENAVENTURA
G.R. No. 196418, EN BANC, February 10, 2015, Bersamin, *J.*

The petitioner contends that COA gravely abused its discretion when it ordered the disallowance of the release of health benefits to its employees. The Supreme Court ruled that the mere approval by Congress of the GAA does not instantly make the funds available for spending by the Executive Department. The funds authorized for disbursement under the GAA are usually still to be collected during the fiscal year. The revenue collections of the Government, mainly from taxes, may fall short of the approved budget, as has been the normal occurrence almost every year. Hence, it is important that the release of funds be duly authorized, identified, or sanctioned to avert putting the legitimate programs, projects, and activities of the Government in fiscal jeopardy.

FACTS:
The TESDA, an instrumentality of the Government established under Republic Act No. 7796, is an attached agency of the Department of Labor and Employment (DOLE). In view of the inadequate policy on basic health and safety conditions of work experienced by government personnel, then DOLE Secretary Patricia Sto. Tomas issued Administrative Order (AO) No. 430, series of 2003, authorizing the payment of healthcare maintenance allowance of P5,000.00 to all officials and employees of the DOLE, including its bureaus and attached agencies. AO No. 430 was purportedly based on Civil Service Commission (CSC) Memorandum Circular (MC) No. 33, series of 1997, and Section 34 of the General Provisions of the 2003 General Appropriations Act.

Atty. Rebecca Mislang, Officer In-Charge of the COA LAO-National, subsequently issued Notice of Disallowance (ND) No. 2006-015 dated May 26, 2006,7 addressed to then TESDA Director General Augusto Syjuco, indicating that the payment of the allowance had no legal basis, it being contrary to Republic Act No. 6758 (Salary Standardization Law of 1989). The TESDA filed an appeal before the COA Commission Proper, assailing the disallowance by the LAO-National. However, the COA

Commission Proper promulgated the now assailed decision dated March 23, 2010, denying the appeal for lack of merit. Hence, the current petition.

The TESDA maintains that there was sufficient legal basis for the release of the healthcare maintenance allowance of P5,000.00 to its employees; that such payment was only in compliance with the DOLE directive issued pursuant to MC No. 33 to afford all government employees a health program that would include hospitalization services and/or annual mental, medical-physical examinations; and that such payment was also based on the authority granted by the 2003 GAA on the giving of personnel benefits to be charged against the corresponding fund from which basic salaries were drawn.

ISSUE:
Whether or not the disallowance indicating that the payment of the allowance had no legal basis. (NO)

RULING:
The COA did not act without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction because it properly exercised its powers and discretion in disallowing the payment of the P5,000.00 as healthcare maintenance allowance.

The COA is endowed with latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended by law. The Constitution has made the COA "the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations." Thus, the COA is generally accorded complete discretion in the exercise of its constitutional duty and responsibility to examine and audit expenditures of public funds, particularly those which are perceptibly beyond what is sanctioned by law.

Verily, the Court has sustained the decisions of administrative authorities like the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also upon the recognition that such administrative authorities held the expertise as to the laws they are entrusted to enforce. The Court has accorded not only respect but also finality to their findings especially when their decisions are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. Only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain and grant a petition for *certiorari* brought to assail its actions. However, we find no grave abuse of discretion on the part of the COA in issuing the assailed decision.

MC No. 33 and its precursor were worded in a plain and straightforward manner to the effect that the "(h)ealth program for employees shall include any or all of the following: 1) Hospitalization services, and 2) Annual mental, medical-physical examinations." Whatever latitude was afforded to a government agency extended only to the determination of which services to include in the program, not to the choice of an alternative to such health program or to authorizing the conversion of the benefits into cash. The giving of health care maintenance allowance of P5,000.00 to the TESDA's employees was not among any of the hospitalization services or examinations listed in the circular.

It bears reminding that pursuant to Article VI Section 29 (1) of the 1987 Constitution, no money shall be paid out of the Treasury except in pursuance of an appropriation made by law. Hence, the GAA should be purposeful, deliberate, and precise in its contents and stipulations. Also, the COA was correct when it held that the provisions of the GAA were not self-executory. This meant that the execution of the GAA was still subject to a program of expenditure to be approved by the President, and such approved program of expenditure was the basis for the release of funds. For that matter, Section 34, Chapter 5, Book VI of the Administrative Code (Executive Order No. 292) states that –

Section 34. Program of Expenditure - The Secretary of Budget shall recommend to the President the year's program of expenditure for each agency of the government on the basis of authorized appropriations. The approved expenditure program shall constitute the basis for fund release during the fiscal period, subject to such policies, rules and regulations as may be approved by the President.

The rules on National Government Budgeting as prescribed by the Administrative Code are not idle or empty exercises. The mere approval by Congress of the GAA does not instantly make the funds available for spending by the Executive Department. The funds authorized for disbursement under the GAA are usually still to be collected during the fiscal year. The revenue collections of the Government, mainly from taxes, may fall short of the approved budget, as has been the normal occurrence almost every year. Hence, it is important that the release of funds be duly authorized, identified, or sanctioned to avert putting the legitimate programs, projects, and activities of the Government in fiscal jeopardy**.**

ABAKADA GURO PARTY LIST, *et al.* –versus- CESAR PURISIMA, *et al.*
G.R. No. 166715, EN BANC, August 14, 2008, Corona, *J.*

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.

FACTS:
The core of this issue is the enactment of R.A. 9335, a law optimizing the revenue-generation capability and collection of the BIR and the BOC. This law intends encourage the bureau officials and employees to exceed their revenue targets by providing a system of rewards and sanctions. The DOF, DBM, NEDA, BIR, BOC, and CSC were tasked to promulgate and issue IRRs of R.A. 9335, which is to be approved by a congressional oversight committee created for the purpose. The ABAKADA GURO PARTY LIST, *et al.* invoke their rights as taxpayers in filing this petition to challenge the validity of R.A. 9335, a tax reform legislation. Among other contentions, they assail the creation of the oversight committee on the ground that it violates the doctrine of separation of powers. While the legislative function is deemed accomplished and completed upon the enactment and approval of the law, the committee's creation permits legal participation in an otherwise executive function.

ISSUE:
Whether or not the creation of a congressional oversight committee violates the doctrine of separation of powers as its permits legislative participation in the implementation and enforcement of the law. (YES)

RULING:
Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and

regulations partake of the nature of a statuteand are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court. Congress, in the guise of assuming the role of an overseer, may not pass upon their legality by subjecting them to its stamp of approval without disturbing the calculated balance of powers established by the Constitution. In exercising discretion to approve or disapprove the IRR based on a determination of whether or not they conformed with the provisions of RA 9335, Congress arrogated judicial power unto itself, a power exclusively vested in this Court by the Constitution.

C. PRESIDENCY

AQUILINO Q. PIMENTEL, JR. –VERSUS- JOINT COMMITTEE OF CONGRESS TO CANVASS THE VOTES CAST FOR PRESIDENT AND VICE-PRESIDENT IN THE MAY 10, 2004 ELECTIONS.
G.R. No. 163783, EN BANC, June 22, 2004, Puno, *J.*

The Senate shall convene in joint session during any voluntary or compulsory recess to canvass the votes for President and Vice-President not later than thirty days after the day of the elections in accordance with Section 4, Article VII of the Constitution.

FACTS:

Senator Pimentel Jr. seeks to declare null and void the continued existence of the Joint Committee and prohibit it with its continuous action. He claims that with the adjournment on June 11, 2004 by the 12th Congress of its last regular session, its legal existence has ended thus all pending matters and proceedings end upon the expiration of the Congress.

ISSUE:
Whether Senator Pimentel's action will prosper. (NO)

RULING:
Petitioner's claim that his arguments are buttressed by legislative procedure, precedent or practice as borne out by the rules of both Houses of Congress is directly contradicted by Section 42 of Rule XIV of the Rules adopted by the Senate, of which he is an incumbent member. This section clearly provides that the Senate shall convene in joint session during any voluntary or compulsory recess to canvass the votes for President and Vice-President not later than thirty days after the day of the elections in accordance with Section 4, Article VII of the Constitution.

Moreover, as pointed out in the Comment filed by the Senate Panel for respondent Joint Committee and that of the Office of the Solicitor General, the precedents set by the 1992 and 1998 Presidential Elections do not support the move to stop the ongoing canvassing by the Joint Committee, they citing the observations of former Senate President Jovito Salonga.

Thus, during the 1992 Presidential elections, both Houses of Congress adjourned sine die on May 25, 1992. On June 16, 1992, the Joint Committee finished tallying the votes for President and Vice-President. Thereafter, on June 22, 1992, the Eighth Congress convened in joint public session as the National Board of Canvassers, and on even date proclaimed Fidel V. Ramos and Joseph Ejercito Estrada as President and Vice-President, respectively.

Upon the other hand, during the 1998 Presidential elections, both Houses of Congress adjourned sine die on May 25, 1998. The Joint Committee completed the counting of the votes for President and Vice-President on May 27, 1998. The Tenth Congress then convened in joint public session on May 29, 1998 as the National Board of Canvassers and proclaimed Joseph Ejercito Estrada as President and Gloria Macapagal-Arroyo as President and Vice-President, respectively.

ATTY. ROMULO MACALINTAL, *Petitioner,* –versus- PRESIDENTIAL ELECTORAL TRIBUNAL, *Respondent.*
G.R. No. 191618, EN BANC, June 7, 2011, Nachura, *J.*

The conferment of additional jurisdiction to the Supreme Court, with the duty characterized as an "awesome" task, includes the means necessary to carry it into effect under the doctrine of necessary implication.

FACTS:
In his petition to declare the establishment of the PET unconstitutional, Atty. Romulo Macalintal invoked the Supreme Court's ruling on the unconstitutionality of the Philippine Truth Commission (PTC). He stated therein that if the president cannot create the PTC, the Supreme Court cannot likewise create the PET in the absence of an act of legislature.

ISSUE:
Whether or not the establishment of the PET is unconstitutional. (NO)

RULING:
The conferment of additional jurisdiction to the Supreme Court, with the duty characterized as an "awesome" task, includes the means necessary to carry it into effect under the doctrine of necessary implication. We cannot overemphasize that the abstraction of the PET from the explicit grant of power to the Supreme Court, given our abundant experience, is not unwarranted. A plain reading of Article VII, Section 4, paragraph 7, of the Constitution readily reveals a grant of authority to the Supreme Court sitting *en* banc. In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, the grant of power does not contain any limitation on the Supreme Court's exercise thereof.

The Supreme Court's method of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision. Thus, the subsequent directive in the provision for the Supreme Court to "promulgate its rules for the purpose." The conferment of full authority to the Supreme Court, as a PET, is equivalent to the full authority conferred upon the electoral tribunals of the Senate and the House of Representatives, *i.e.,* the Senate Electoral Tribunal (SET) and the House of Representatives Electoral Tribunal (HRET), which We have affirmed on numerous occasions.

CLINTON –VERSUS- JONES
520 U.S. 681, May 27, 1997, Stevens, *J.*

Immunity of the President from civil damages covers only official acts. In this case, the US President's immunity from suits for money damages arising out of their official acts is inapplicable to unofficial conduct.

FACTS:

According to former Arkansas state employee Paula Jones, U.S. President Bill Clinton had propositioned her during his tenure as Governor of Arkansas. She also alleged that Arkansas Police Officer Danny Ferguson had taken her to Clinton's hotel room and told Clinton that Jones had offered to be his mistress. (Apparently, another state employee named David Brock had started a rumor that someone working for the Arkansas government named Paula had said this.)

When Jones brought her sexual harassment claim in federal district court, the judge postponed the trial until after Clinton had left the Presidency under the theory that the President is immune from civil suit during his or her time in office. The discovery procedure prior to trial was allowed to proceed so that the trial could unfold as soon as Clinton had left office.

ISSUE:
Is a serving President, for separation of powers reasons, entitled to absolute immunity from civil litigation arising out of events which transpired prior to his taking office? (NO)

RULING:
The Court held that the Constitution does not grant a sitting President immunity from civil litigation except under highly unusual circumstances. After noting the great respect and dignity owed to the Executive office, the Court held that neither separation of powers nor the need for confidentiality of high-level information can justify an unqualified Presidential immunity from judicial process. While the independence of our government's branches must be protected under the doctrine of separation of powers, the Constitution does not prohibit these branches from exercising any control over one another. This, the Court added, is true despite the procedural burdens which Article III jurisdiction may impose on the time, attention, and resources of the Chief Executive.

LOURDES D. RUBRICO, JEAN RUBRICO APRUEBO, and MARY JOY RUBRICO CARBONEL, Petitioners, -versus- GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, P/DIR. GEN. AVELINO RAZON, MAJ. DARWIN SY a.k.a. DARWIN REYES, JIMMY SANTANA, RUBEN ALFARO, CAPT. ANGELO CUARESMA, a certain JONATHAN, P/SUPT. EDGAR B. ROQUERO, ARSENIO C. GOMEZ, and OFFICE OF THE OMBUDSMAN, Respondents.
G.R. No. 183871, EN BANC, February 18, 2010, VELASCO, JR., *J.*

While there are several pending bills on command responsibility, there is still no Philippine law that provides for criminal liability under that doctrine; It would be inappropriate to apply to amparo proceedings the doctrine of command responsibility as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of amparo—the Court does not rule in such proceedings on any issue of criminal culpability, even if incidentally a crime or an infraction of an administrative rule may have been committed.

FACTS:
On 03 April 2007, Lourdes Rubrico, chair of *Ugnayan ng Maralita para sa Gawa Adhikan*, was abducted by armed men belonging to the 301st Air Intelligence and Security Squadron (AISS) based in Lipa City while attending a Lenten *pabasa* in Dasmarinas, Cavite. She was brought to and detained at the air base without charges. She was released a week after relentless interrogation, but only after she signed a statement that she would be a military asset.

Despite her release, she was tailed on at least 2 occasions. Hence, Lourdes filed a complaint with the Office of the Ombudsman a criminal complaint for kidnapping and arbitrary detention and grave misconduct against

Cuaresma, Alfaro, Santana, and Jonathan, but nothing has happened. She likewise reported the threats and harassment incidents to the Dasmarinas municipal and Cavite provincial police stations , but nothing eventful resulted from their investigation.

Meanwhile, the human rights group *Karapatan* conducted an investigation which indicated that men belonging to the Armed Forces of the Philippines (AFP) led the abduction of Lourdes. Based on such information, Rubrico filed a petition for the writ of amparo with the Supreme Court on 25 October 2007, praying that respondents be ordered to desist from performing any threatening act against the security of petitioners and for the Ombudsman to immediately file an information for kidnapping qualified with the aggravating circumstance of gender of the offended party. Rubrico also prayed for damages and for respondents to produce documents submitted to any of them on the case of Lourdes.

The Supreme Court issued the desired writ and then referred the petition to the Court of Appeals (CA) for summary hearing and appropriate action. At the hearing conducted on 20 November 2007, the CA granted petitioner's motion that the petition and wri t be served on Darwin Sy/Reyes, Santana, Alfaro, Cuaresma, and Jonathan. By a separate resolution, the CA dropped the President as respondent in the case.

On 31 July 2008, after due proceedings, the CA rendered its partial judgment, dismissing the petition with respect to Esperon, Razon, Roquero, Gomez, and Ombudsman. Hence, the petitioners filed a Peti tion for Review on Certiorari with the Supreme Court.

ISSUES:

1. Whether the CA erred in dropping President Gloria Macapagal-Arroyo as party respondent. (NO)
2. Whether the Doctrine of Command Responsibility is applicable in Amparo proceedings to determine criminal liability. (NO)

RULING:

Presidential immunity from suit

Petitioners first take issue on the President's purported lack of immunity from suit during her term of office. The 1987 Constitution, so they claim, has removed such immunity heretofore enjoyed by the chief executive under the 1935 and 1973 Constitutions. Petitioners are mistaken. The presidential immunity from suit remains preserved under our system of government, albeit not expressly reserved in the present constitution. Addressing a concern of his co-members in the 1986 Constitutional Commission on the absence of an express provision on the matter, Fr. Joaquin Bernas, S.J. observed that it was already understood in jurisprudence that the President may not be sued during his or her tenure.

The Court subsequently made it abundantly clear in *David v. Macapagal-Arroyo*, a case likewise resolved under the umbrella of the 1987 Constitution, that indeed the President enjoys immunity during her incumbency, and why this must be so: Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such.

Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.

Applicability of command responsibility in amparo proceedings to determine criminal liability

While there are several pending bills on command responsibility, there is still no Philippine law that provides for criminal liability under that doctrine. It may plausibly be contended that command responsibility, as legal basis to hold military/police commanders liable for extra-legal killings, enforced disappearances, or threats, may be made applicable to this jurisdiction on the theory that the command responsibility doctrine now constitutes a principle of international law or customary international law in accordance with the incorporation clause of the Constitution. Still, it would be inappropriate to apply to these proceedings the doctrine of command responsibility, as the CA seemed to have done, as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of amparo. In other words, the Court does not rule in such proceedings on any issue of criminal culpability, even if incidentally a crime or an infraction of an administrative rule may have been committed.

If command responsibility were to be invoked and applied to these proceedings, it should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of amparo. As intimated earlier, however, the determination should not be pursued to fix criminal liability on respondents preparatory to criminal prosecution, or as a prelude to administrative disciplinary proceedings under existing administrative issuances, if there be any.

IN THE MATTER OF THE PETITION FOR THE WRIT OF AMPARO AND HABEAS DATA IN FAVOR OF NORIEL H. RODRIGUEZ, NORIEL H. RODRIGUEZ, *Petitioner*, -versus- GLORIA MACAPAGAL-ARROYO, GEN. VICTOR S. IBRADO, PDG JESUS AME VERSOZA, LT. GEN. DELFIN BANGIT, MAJ. GEN. NESTOR Z. OCHOA, P/CSUPT. AMETO G. TOLENTINO, P/SSUPT. JUDE W. SANTOS, COL. REMIGIO M. DE VERA, an officer named MATUTINA, LT. COL. MINA, CALOG, GEORGE PALACPAC under the name "HARRY," ANTONIO CRUZ, ALDWIN "BONG" PASICOLAN and VINCENT CALLAGAN, *Respondents.*

IN THE MATTER OF THE PETITION FOR THE WRIT OF AMPARO AND HABEAS DATA IN FAVOR OF NORIEL H. RODRIGUEZ, POLICE DIR. GEN. JESUS A. VERSOZA, P/SSUPT. JUDE W. SANTOS, BGEN. REMEGIO M. DE VERA, 1ST LT. RYAN S. MATUTINA, LT. COL. LAURENCE E. MINA, ANTONIO C. CRUZ, ALDWIN C. PASICOLAN and VICENTE A. CALLAGAN, *Petitioners,* -versus- NORIEL H. RODRIGUEZ, *Respondent.*
G.R. No. 191805 & G.R. No. 193160, EN BANC, November 15, 2011, Sereno, J.

To hold someone liable under the doctrine of command responsibility, the following elements must obtain: a) the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; b) the superior knew or had reason to know that the crime was about to be or had been committed; and, c) the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof. The president, being the

commander-in-chief of all armed forces, necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine.

FACTS:
Noriel Rodriguez (petitioner) is a member of Alyansa Dagiti Mannalon Iti Cagayan, a peasant organization affiliated with Kilusang Magbubukid ng Pilipinas (KMP).
Under the Oplan Bantay Laya, the military tagged KMP members as an enemy of the state, making its members an easy target of extra-judicial killings and enforced disappearances.
On September 6, 2009, Rodriguez just alighted from a tricycle driven by Hermie Antonio Carlos in Brgy. Tapel, Cagayan, when 4 men forcibly took him and forced him to get inside a car where more men in civilian clothing were waiting (1 was holding a .45 caliber pistol).
The men started punching Rodriguez inside the car, and forced him to confess that he is a member of the New People's Army (NPA). Rodriguez remained silent until they reached a military camp belonging to the 17th Infantry Battalion of the Philippine Army.

Rodriguez was then subjected to beatings and torture by members of the Philippine Army. Members of the army wanted him to admit that he is an NPA member and then pinpoint other NPA members and camp locations. Since Rodriguez cannot answer, he is repeatedly beaten and tortured. Rodriguez was also coerced to sign several documents to declare that he is a surenderree.
On September 17, 2009, Rodriguez's mother and brother came to see him (accompanied by members of the CHR – Pasicolan, Cruz and Callagan). They insisted to take Rodriguez home with them to Manila. Rodriguez arrived in Manila on September 18. Callagan and 2 military members went inside their house and took pictures for around 30 minutes despite Rodriguez's effort to stop them.

On November 3, Rodriguez and his girlfriend notices that several suspicious-looking men are following them on the streets, jeepney and MRT.
On December 7, Rodriguez filed a Petition for the Writ of Amparo and Petition for the Writ of Habeas Data with Prayers for Protection Orders, Inspection of Place, and Production of Documents and Personal Properties dated 2 December 2009.

The petition was filed against former President Arroyo, Gen. Ibrado, PDG. Versoza, Lt. Gen. Bangit, Major General (Maj. Gen.) Nestor Z. Ochoa, P/CSupt. Tolentino, P/SSupt. Santos, Col. De Vera, 1st Lt. Matutina, Calog, George Palacpac, Cruz, Pasicolan and Callagan.
Respondents contend that Rodriguez is a double agent, and had been working as their informant/infiltrator in the fight against NPA rebels.

Then President Gloria Macapagal-Arroyo, through the solicitor-general, insisted on her immunity from suits (by virtue of her position as president).
Supreme Court granted the writs after finding that the petition sufficiently alleged the abduction and torture of Rodriguez by members of the Philippine Army. SC directed the Court of Appeals to hear the petition.

CA ruled in favor of Rodriguez and found Ibrado, Versoza, Bangit, Ochoa, Tolentino, Santos, De Vera and Matutina liable for his abduction and torture. As to Calog and Palacpac, the case was dismissed for lack of merit. On President Arroyo, the case was dismissed on account of her immunity from suits.

ISSUES:
1) Whether former President Arroyo should be dropped as a respondent on the basis of the presidential immunity from suit. (NO)

2) Whether the doctrine of command responsibility can be used in amparo and habeas data cases. (YES)

RULING:
Presidential Immunity from Suit

Since there is no determination of administrative, civil or criminal liability in amparo and habeas data proceedings, courts *can only go as far as ascertaining responsibility or accountability* for the enforced disappearance or extrajudicial killing

In *Razon v. Tagitis*, the court held that *responsibility* refers to the extent the actors have been established by substantial evidence to have *participated* in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. On the other hand, *Accountability*, refers to the measure of remedies that should be addressed to those:

a) who exhibited *involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility* defined above; or
b) who are *imputed with knowledge* relating to the enforced disappearance and who carry the burden of disclosure; or
c) those who *carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance.

In all these cases, the issuance of the Writ of Amparo is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.

In the case at bar, the CA found respondents the exception of Calog, Palacpac or Harry to be accountable for the violations of Rodriguezs right to life, liberty and security committed by the 17th Infantry Battalion. The Court of Appeals dismissed the petition with respect to former President Arroyo on account of her presidential immunity from suit.Rodriguez contends, though, that she should remain a respondent in this case to enable the courts to determine whether she is responsible or accountable therefor. In this regard, it must be clarified that the *CA rationale for dropping her from the list of respondents no longer stands since her presidential immunity is limited only to her incumbency.*

In *Estrada v. Desierto*, we clarified the doctrine that a non-sitting President does not enjoy immunity from suit, even for acts committed during the latter's tenure. We emphasize our ruling therein that courts should look with disfavor upon the presidential privilege of immunity, especially when it impedes the search for truth or impairs the vindication of a right.

In *US v. Nixon*, US President Nixon, a sitting President, was subpoenaed to produce certain recordings and documents relating to his conversations with aids and advisers. SC concluded that when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice.

In *Nixon v. Fitzgerald*, the US SC further held that the immunity of the President from civil damages covers only official acts. Recently, the US Supreme Court had the occasion to reiterate this doctrine

in the case of Clinton v. Jones where it held that the US President's immunity from suits for money damages arising out of their official acts is inapplicable to unofficial conduct.

Applying the foregoing rationale to the case at bar, it is clear that former President Arroyo cannot use the presidential immunity from suit to shield herself from judicial scrutiny that would assess whether, within the context of *amparo* proceedings, she was responsible or accountable for the abduction of Rodriguez.

Command Responsibility in Amparo and Habeas Data Cases

The doctrine of command responsibility may be used to determine whether respondents are accountable for and have the duty to address the abduction of Rodriguez in order to enable the courts to devise remedial measures to protect his rights.

Proceedings under the Rule on the Writ of Amparo do not determine criminal, civil or administrative liability, but this should not abate the applicability of the doctrine of command responsibility.

"In the context of amparo proceedings, responsibility may refer to the participation of the respondents, by action or omission, in enforced disappearance. Accountability, on the other hand, may attach to respondents who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance."

"Despite maintaining former President Arroyo in the list of respondents in G.R. No. 191805, and allowing the application of the command responsibility doctrine to amparo and habeas data proceedings, Rodriguez failed to prove through substantial evidence that former President Arroyo was responsible or accountable for the violation of his rights to life, liberty and property. He likewise failed to prove through substantial evidence the accountability or responsibility of respondents Maj. Gen. Ochoa, Cruz, Pasicolan and Callagan."

SC affirmed the decision of the CA, but with modifications. The case is dismissed with respect to respondents former President Gloria Macapagal-Arroyo, P/CSupt. Ameto G. Tolentino, and P/SSupt. Jude W. Santos, Calog, George Palacpac, Antonio Cruz, Aldwin Pasicolan and Vicent Callagan for lack of merit.

DENNIS A. B. FUNA, *Petitioner,* -versus- EXECUTIVE SECRETARY EDUARDO R. ERMITA, Office of the President, SEC. LEANDRO R. MENDOZA, in his official capacity as Secretary of the Department of Transportation and Communications, USEC. MARIA ELENA H. BAUTISTA, in her official capacities as Undersecretary of the Department of Transportation and Communications and as Officer-in-Charge of the Maritime Industry Authority (MARINA), *Respondents.*
G.R. No. 184740, EN BANC, February 11, 2010, Villarama, Jr., *J.*

The disqualification laid down in Section 13, Article VII of the 1987 Philippine Constitution is aimed at preventing the concentration of powers in the Executive Department officials, specifically the President, Vice-President, Members of the Cabinet and their deputies and assistants. This practice of holding multiple offices or positions in the government led to abuses by unscrupulous public officials, who took advantage of this scheme for purposes of self-enrichment.

FACTS:
Dennis Funa argues in his petition that respondent Elena Bautista's concurrent positions as DOTC Undersecretary and MARINA OIC is in violation of Section 13, Article VII of the Constitution, as explained in various cases. In their defense, respondents aver that Bautista was merely designated as the acting head of MARINA, and not appointed as the MARINA Administrator. Her designation as OIC in a temporary capacity is for the purpose of preventing a hiatus in the discharge of the post's official functions.

ISSUE:
Whether or not the designation of Bautista as OIC of MARINA, concurrent with the position of DOTC Undersecretary for Maritime Transport to which she had been appointed, violates the constitutional proscription against dual or multiple offices for Cabinet Members and their deputies and assistants. (YES)

RULING:
Since the evident purpose of the framers of the Constitution is to impose a stricter prohibition on the President, Vice-President, members of the Cabinet, their deputies and assistants with respect to holding multiple offices or employment in the government during their tenure, the exception to this prohibition must be read with equal severity. On its face, the language of Section 13, Article VII is prohibitory so that it must be understood as intended to be a positive and unequivocal negation of the privilege of holding multiple government offices or employment. Verily, wherever the language used in the constitution is prohibitory, it is to be understood as intended to be a positive and unequivocal negation. The phrase "unless otherwise provided in this Constitution" must be given a literal interpretation to refer only to those particular instances cited in the Constitution itself.

Respondent Bautista being then the appointed Undersecretary of DOTC, she was thus covered by the stricter prohibition under Section 13, Article VII and consequently she cannot invoke the exception provided in Section 7, paragraph 2, Article IX-B where holding another office is allowed by law or the primary functions of the position. Neither was she designated OIC of MARINA in an ex-officio capacity, which is the exception recognized in Civil Liberties Union. Given the vast responsibilities and scope of administration of the Authority, We are hardly persuaded by respondents' submission that respondent Bautista's designation as OIC of MARINA was merely an imposition of additional duties related to her primary position as DOTC Undersecretary for Maritime Transport. It appears that the DOTC Undersecretary for Maritime Transport is not even a member of the Maritime Industry Board.

DENNIS A.B. FUNA, *Petitioner,* -versus- ACTING SECRETARY OF JUSTICE ALBERTO C. AGRA, IN HIS OFFICIAL CONCURRENT CAPACITIES AS ACTING SECRETARY OF THE DEPARTMENT OF JUSTICE AND AS ACTING SOLICITOR GENERAL, EXECUTIVE SECRETARY LEANDRO R. MENDOZA, OFFICE OF THE PRESIDENT, *Respondents.*
G.R. No. 191644, EN BANC, February 19, 2013, Bersamin, *J.*

The prohibition against dual or multiple offices being held by one official must be construed as to apply to all appointments or designations, whether permanent or temporary.

FACTS:
Dennis Funa alleged that President Gloria Macapagal-Arroyo appointed Alberto Agra as the Acting Secretary of Justice following the resignation of Agnes Devanadera. Four days after which, President Arroyo designated Agra as the Acting Solicitor General in a concurrent capacity. After two days, Funa

commenced this suit to challenge the constitutionality of Agra's concurrent appointments or designations.

ISSUE:
Whether or not the designation of Agra as Acting Secretary of Justice concurrently with his position of Acting Solicitor General was unconstitutional and void for being in violation of Section 13, Article VII of the Constitution. (YES)

RULING:
It was of no moment that Agra's designation was in an acting or temporary capacity. The text of Section 13 plainly indicates that the intent of the Framers of the Constitution was to impose a stricter prohibition on the President and the Members of his Cabinet in so far as holding other offices or employments in the Government or in government-owned or government controlled-corporations was concerned.In this regard, to hold an officemeans to possess or to occupy the office, or to be in possession and administration of the office, which implies nothing less than the actual discharge of the functions and duties of the office. Indeed, in the language of Section 13 itself, the Constitution makes no reference to the nature of the appointment or designation. The prohibition against dual or multiple offices being held by one official must be construed as to apply to all appointments or designations, whether permanent or temporary, for it is without question that the avowed objective of Section 13, is to prevent the concentration of powers in the Executive Department officials, specifically the President, the Vice-President, the Members of the Cabinet and their deputies and assistants. To construe differently is to "open the veritable floodgates of circumvention of an important constitutional disqualification of officials in the Executive Department and of limitations on the President's power of appointment in the guise of temporary designations of Cabinet Members, undersecretaries and assistant secretaries as officers-in-charge of government agencies, instrumentalities, or government-owned or controlled corporations."

AQUILINO Q. PIMENTEL, JR., EDGARDO J. ANGARA, JUAN PONCE ENRILE, LUISA P. EJERCITO-ESTRADA, JINGGOY E. ESTRADA, PANFILO M. LACSON, ALFREDO S. LIM, JAMBY A.S. MADRIGAL, and SERGIO R. OSMEÑA III, *Petitioners,* -versus- EXEC. SECRETARY EDUARDO R. ERMITA, FLORENCIO B. ABAD, AVELINO J. CRUZ, JR., MICHAEL T. DEFENSOR, JOSEPH H. DURANO, RAUL M. GONZALEZ, ALBERTO G. ROMULO, RENE C. VILLA, and ARTHUR C. YAP, *Respondents.*
G.R. No. 164978, EN BANC, October 13, 2005, Carpio, *J.*

Being an alter ego of the president, a department secretary may be appointed in an acting capacity even when the congress is in session in line with its purpose as a stop-gap measure intended to fill an office for a limited time until the appointment of a permanent occupant to the office.

FACTS:
This is a petition to declare unconstitutional the appointments issued by President Gloria Macapagal-Arroyo to respondents Abad et al as Department Secretaries in an acting capacity while the Congress is in session. Nonetheless, when Congress adjourned on 22 September 2004. On 23 September 2004, President Arroyo issued ad interim appointments to respondents as secretaries of the departments to which they were previously appointed in an acting capacity.

ISSUE:
Whether the appointment of respondents Abad et.al as acting secretaries without the consent of the Commission on Appointments while Congress is in session is unconstitutional. (NO)

RULING:
The essence of an appointment in an acting capacity is its temporary nature. It is a stop-gap measure intended to fill an office for a limited time until the appointment of a permanent occupant to the office. In case of vacancy in an office occupied by an alter ego of the President, such as the office of a department secretary, the President must necessarily appoint an alter ego of her choice as acting secretary before the permanent appointee of her choice could assume office. The office of a department secretary may become vacant while Congress is in session. Since a department secretary is the alter ego of the President, the acting appointee to the office must necessarily have the Presidents confidence. Thus, by the very nature of the office of a department secretary, the President must appoint in an acting capacity a person of her choice even while Congress is in session. That person may or may not be the permanent appointee, but practical reasons may make it expedient that the acting appointee will also be the permanent appointee.

Further, contrary to the claims of petitioner members of congress, we find no abuse in the present case. In addition to the 1 year limit of effectivity of temporary appointments the absence of abuse is readily apparent from President Arroyo's issuance of ad interim appointments to respondents immediately upon the recess of Congress, way before the lapse of one year.

HON. PHILIP A. AGUINALDO, HON. REYNALDO A. ALHAMBRA, HON. DANILO S. CRUZ, HON. BENJAMIN T. POZON, HON. SALVADOR V. TIMBANG, JR., and the INTEGRATED BAR OF THE PHILIPPINES (IBP), *Petitioners,* -versus- HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III, HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, HON. MICHAEL FREDERICK L. MUSNGI, HON. MA. GERALDINE FAITH A. ECONG, HON. DANILO S. SANDOVAL, HON. WILHELMINA B. JORGE-WAGAN, HON. ROSANA FE ROMERO-MAGLAYA, HON. MERIANTHE PACITA M. ZURAEK, HON. ELMO M. ALAMEDA, and HON. VICTORIA C. FERNANDEZ-BERNARDO, *Respondents.*
G.R. No. 224302, EN BANC, November 29, 2016, Leonardo-De Castro, *J.*

The power to recommend of the Judicial and Bar Council (JBC) cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount. The President's power to appoint members of a collegiate court, such as the Sandiganbayan, is the power to determine the seniority or order of preference of such newly appointed members by controlling the date and order of issuance of said members' appointment or commission papers.

In this case, By designating the numerical order of the vacancies, the Judicial and Bar Council (JBC) would be establishing the seniority or order of preference of the new Sandiganbayan Associate Justices even before their appointment by the President and, thus, unduly arrogating unto itself a vital part of the President's power of appointment. The clustering by the Judicial and Bar Council (JBC) of the qualified nominees for the six (6) vacancies for Sandiganbayan Associate Justice appears to have been done arbitrarily, there being no clear basis, standards, or guidelines for the same.

FACTS:
Former President Marcos issued PD 1486 (creating Sandiganbayan), then PD 1606 (elevated members of Sandigan from Judges to Justices, then RA 7975 (increasing the members from nine to

fifteen Justices), RA 10660 (creating two more divisions of Sandigan with 3 Justices each, thereby resulting 6 vacant positions)

In 2015, the JBC published in newspapers and posted on the JBC website an announcement calling for applications or recommendations for the six newly created positions of Associate Justice of the Sandigan. After screening and selection of applicants, the JBC submitted to former President Aquino six shortlists contained in six separate letters including petitioners and respondents.

President Aquino issued the appointment papers for the six new Sandiganbayan Associate Justices, namely: (1) **respondent Musngi**; (2) Justice Reynaldo P. Cruz (R. Cruz); (3) **respondent Econg**; (4) Justice Maria Theresa V. Mendoza-Arcega (Mendoza-Arcega); (5) Justice Karl B. Miranda (Miranda); and (6) Justice Zaldy V. Trespeses (Trespeses).

The appointment papers were transmitted on January 25, 2016 to the six new Sandiganbayan Associate Justices, who took their oaths of office on the same day all at the Supreme Court Dignitaries Lounge. Respondent Econg, with Justices Mendoza-Arcega and Trespeses, took their oaths of office before Supreme Court Chief Justice Maria Lourdes P. A. Sereno (Sereno); while respondent Musngi, with Justices R. Cruz and Miranda, took their oaths of office before Supreme Court Associate Justice Francis H. Jardeleza (Jardeleza)

ARGUMENTS OF THE PETITIONERS

Petitioners Aguinaldo, Alhambra, D. Cruz, Pozon, and Timbang were all nominees in the shortlist for the 16th Sandiganbayan Associate Justice. **They assert that they possess the legal standing or *locus standi* to file the instant Petition since they suffered a direct injury from President Aquino's failure to appoint any of them as the 16th Sandiganbayan Associate Justice.**

Petitioner IBP also maintains that it has *locus standi* considering that the present Petition involves an issue of transcendental importance to the people as a whole, an assertion of a public right, and a subject matter of public interest. Lastly, petitioner IBP contends that as the association of all lawyers in the country, with the fundamental purpose of safeguarding the administration of justice, it has a direct interest in the validity of the appointments of the members of the Judiciary.

- According to petitioners, the JBC was created under the 1987 Constitution **to reduce the politicization of the appointments to the Judiciary,** *i.e.*, "to rid the process of appointments to the Judiciary from the political pressure and partisan activities."

- **Article VIII, Section 9 of the 1987 Constitution** contains the mandate of the JBC, as well as the limitation on the President's appointing power to the Judiciary, thus:

Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

- It is the function of the JBC to search, screen, and select nominees recommended for appointment to the Judiciary. It shall prepare a list with at least three qualified nominees for a particular vacancy in the Judiciary to be submitted to the President, who, in turn, shall appoint from the shortlist for said specific vacancy. Petitioners emphasize that Article VIII, Section 9 of the 1987 Constitution is clear and unambiguous as to the mandate of the JBC to submit a shortlist of nominees to the President for "every vacancy" to the Judiciary, as well as the limitation on the President's authority to appoint members of the Judiciary from among the nominees named in the shortlist submitted by the JBC.

Petitioners observe the following infirmities in President Aquino's appointments:

a) Michael Frederick L. **Musngi,** nominated for the vacancy of the 21st Associate Justice, was appointed as the 16th Associate Justice;

b) Reynaldo P. Cruz, nominated for the vacancy of the 19th Associate Justice, was appointed as the 17th Associate Justice;
c) Geraldine Faith A. **Econg,** also nominated for the vacancy of the 21st Associate Justice, but was appointed as the 18th Associate Justice;
d) Maria Theresa V. Mendoza[-Arcega], nominated for the vacancy of the 17th Associate Justice, but was appointed as the 19thAssociate Justice;

e) Zaldy V. Trespeses, nominated for the vacancy of the 18th Associate Justice, but was appointed as the 21st Associate Justice.

Only the appointment of Karl B. Miranda as the 20th Associate Justice is in accordance with his nomination.

- Petitioners insist that President Aquino could only choose one nominee from each of the six separate shortlists submitted by the JBC for each specific vacancy, and no other; and any appointment made in deviation of this procedure is a violation of the Constitution. Hence, petitioners pray, among other reliefs, **that the appointments of respondents Musngi and Econg, who belonged to the same shortlist for the position of 21st Associate Justice, be declared null and void** for these were made in violation of Article VIII, Section 9 of the 1987 Constitution.

ARGUMENTS OF RESPONDENTS
The OSG addresses the **substantive issues**.

The OSG submits that the **core argument of petitioners stems from their erroneous premise** that there are existing numerical positions in the Sandiganbayan: the *1st* being the Presiding Justice, and the succeeding 2nd to the 21st being the Associate Justices. It is the assertion of the OSG that the Sandiganbayan is composed of a Presiding Justice and 20 Associate Justices, without any numerical designations. Presidential Decree No. 1606 and its amendments do not mention vacancies for the positions of "2nd Associate Justice," "3rd Associate Justice," *etc*. There are no such items in the Judiciary because such numerical designations are only used to refer to the seniority or order of precedence of Associate Justices in collegiate courts such as the Supreme Court, Court of Appeals, Court of Tax Appeals, and Sandiganbayan.

The OSG further contends that the **power to determine the order of precedence of the Associate**

Justices of the Sandiganbayan is reposed in the President, as part of his constitutional power to appoint. Citing Section 1, third paragraph of PD 1606 and Rule II, Section 1 of the Revised Internal Rules of the Sandiganbayan, the OSG explains that the order of precedence of the Associate Justices of the Sandiganbayan shall be according to the order of their appointments, that is, according to the dates of their respective commissions, or, when two or more commissions bear the same date, according to the order in which their commissions had been issued by the President. **It is the averment of the OSG that the constitutional power of the JBC to recommend nominees for appointment to the Judiciary does not include the power to determine their seniority**. President Aquino correctly disregarded the order of precedence in the shortlists submitted by the JBC and exercised his statutory power to determine the seniority of the appointed Sandiganbayan Associate Justices.

The OSG interprets Article VIII, Section 9 of the 1987 Constitution differently from petitioners. According to the OSG, said provision neither requires nor allows the JBC to cluster nominees for every vacancy in the Judiciary; it only mandates that for every vacancy, the JBC shall present at least three nominees, among whom the President shall appoint a member of the Judiciary. As a result, if there are six vacancies for Sandiganbayan Associate Justice, the JBC shall present, for the President's consideration, at least 18 nominees for said vacancies. In the case at bar, the JBC submitted 37 nominees for the six vacancies in the Sandiganbayan; and from said pool of 37 nominees, the President appointed the six Sandiganbayan Associate Justices, in faithful compliance with the Constitution.

It is also the position of the OSG that the President has the absolute discretion to determine who is best suited for appointment among all the qualified nominees. The very narrow reading of Article VIII, Section 9 of the 1987 Constitution proposed by petitioners unreasonably restricts the President's choices to only a few nominees even when the JBC recognized 37 nominees qualified for the position of Sandiganbayan Associate Justice. **This gives the JBC, apart from its power to recommend qualified nominees, the power to dictate upon the President which among the qualified nominees should be contending for a particular vacancy**. By dividing nominees into groups and artificially designating each group a numerical value, the JBC creates a substantive qualification to various judicial posts, which potentially impairs the President's prerogatives in appointing members of the Judiciary.

The OSG additionally points out that the JBC made a categorical finding that respondents Musngi and Econg were "suitably best" for appointment as Sandiganbayan Associate Justice. The functions of the 16th Sandiganbayan Associate Justice are no different from those of the 17th, 18th, 19th, 20th, or 21st Sandiganbayan Associate Justice. Since respondents Musngi and Econg were indubitably qualified and obtained sufficient votes, **it was the ministerial duty of the JBC to include them as nominees for any of the six vacancies in the Sandiganbayan presented for the President's final consideration.**

Furthermore, the OSG alleges that it is highly unjust to remove respondents Musngi and Econg from their current positions on the sole ground that the nominees were divided into six groups. The JBC announced "the opening/reopening, for application or recommendation" of "[s]ix (6) newly-created positions of Associate Justice of the Sandiganbayan." Respondents Musngi and Econg applied for the vacancy of "Associate Justice of the Sandiganbayan." In its announcements for interview, the JBC stated that it would be interviewing applicants for "six (6) newly created positions of Associate Justice of the Sandiganbayan."

It was only on October 26, 2015, the date of submission of the shortlists, when the nominees had been clustered into six groups. The OSG notes that there are no JBC rules on the division of nominees in cases where there are several vacancies in a collegiate court. In this case, the OSG observes that there were no measurable standards or parameters for dividing the 37 nominees into the six groups. The clustering of nominees was not based on the number of votes the nominees had garnered. The nominees were not evenly distributed among the six groups, *i.e.*, there were five nominees for 17thSandiganbayan Associate Justice; six nominees for 16th, 18th, and 19th Sandiganbayan Associate Justices; and seven nominees for the 20th and 21st Sandiganbayan Associate Justices.

ISSUE:
Whether President Aquino, under the circumstances, was limited to appoint only from the nominees in the shortlist submitted by the JBC for each specific vacancy. (NO)

RULING:
President Aquino did not violate the Constitution or commit grave abuse of discretion in disregarding the clustering of nominees into six separate shortlists for the six vacancies for Sandiganbayan Associate Justice.

Article VIII, Section 9 of the 1987 Constitution provides that "[t]he Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy."

The appointment process for the Judiciary seems simple enough if there is only one vacancy to consider at a time. The power of the President to appoint members of the Judiciary is beyond question, **subject to the limitation that the President can only appoint from a list of at least three nominees submitted by the JBC for every vacancy.** However, the controversy in this case arose because by virtue of Republic Act No. 10660, creating two new divisions of the Sandiganbayan with three members each, there were six simultaneous vacancies for Associate Justice of said collegiate court; and that the JBC submitted six separate shortlists for the vacancies for the 16th to the 21st Sandiganbayan Associate Justices.

The JBC was created under the 1987 Constitution with the principal function of recommending appointees to the Judiciary.It is a body, representative of all the stakeholders in the judicial appointment process, intended to rid the process of appointments to the Judiciary of the evils of political pressure and partisan activities.The extent of the role of the JBC in recommending appointees vis-a-vis the power of the President to appoint members of the Judiciary was discussed during the deliberations of the Constitutional Commission (CONCOM) on July 10, 1986.

It is apparent from the CONCOM deliberations that **nomination by the JBC shall be a qualification for appointment to the Judiciary,but this only means that the President cannot appoint an individual who is not nominated by the JBC.** It cannot be disputed herein that respondents Musngi and Econg were indeed nominated by the JBC and, hence, qualified to be appointed as Sandiganbayan Associate Justices.

It should be stressed that the power to recommend of the JBC cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount.

As long as in the end, the President appoints someone nominated by the JBC, the appointment is valid. On this score, the Court finds herein that President Aquino was not obliged to appoint one new Sandiganbayan Associate Justice from each of the six shortlists submitted by the JBC, especially when the clustering of nominees into the six shortlists encroached on President Aquino's power to appoint members of the Judiciary from all those whom the JBC had considered to be qualified for the same positions of Sandiganbayan Associate Justice.

Moreover, in the case at bar, there were six simultaneous vacancies for the position of Sandiganbayan Associate Justice, and the JBC cannot, by clustering of the nominees, designate a numerical order of seniority of the prospective appointees. The Sandiganbayan, a collegiate court, is composed of a Presiding Justice and 20 Associate Justices divided into seven divisions, with three members each. The numerical order of the seniority or order of preference of the 20 Associate Justices is determined pursuant to law by the date and order of their commission or appointment by the President.
Evidently, based on law, rules, and jurisprudence, the numerical order of the Sandiganbayan Associate Justices cannot be determined until their actual appointment by the President.

It bears to point out that part of the President's power to appoint members of a collegiate court, such as the Sandiganbayan, is the power to determine the seniority or order of preference of such newly appointed members by controlling the date and order of issuance of said members' appointment or commission papers. By already designating the numerical order of the vacancies, the JBC would be establishing the seniority or order of preference of the new Sandiganbayan Associate Justices even before their appointment by the President and, thus, unduly arrogating unto itself a vital part of the President's power of appointment.

There is also a legal ground why the simultaneous vacant positions of Sandiganbayan Associate Justice should not each be assigned a specific number by the JBC. The Sandiganbayan Associate Justice positions were created without any distinction as to rank in seniority or order of preference in the collegiate court. The President appoints his choice nominee to the post of Sandiganbayan Associate Justice, but not to a Sandiganbayan Associate Justice position with an identified rank, which is automatically determined by the order of issuance of appointment by the President. The appointment does not specifically pertain to the 16th, 17th, 18th, 19th, 20th, or 21st Sandiganbayan Associate Justice, because the Sandiganbayan Associate Justice's ranking is temporary and changes every time a vacancy occurs in said collegiate court. In fact, by the end of 2016, there will be two more vacancies for Sandiganbayan Associate Justice.[51] These vacancies will surely cause movement in the ranking within the Sandiganbayan. At the time of his/her appointment, a Sandiganbayan Associate Justice might be ranked 16th, but because of the two vacancies occurring in the court, the same Sandiganbayan Associate Justice may eventually be higher ranked.

Furthermore, the JBC, in sorting the qualified nominees into six clusters, one for every vacancy, could influence the appointment process beyond its constitutional mandate of recommending qualified nominees to the President. Clustering impinges upon the President's power of appointment, as well as restricts the chances for appointment of the qualified nominees, because (1) the President's option for every vacancy is limited to the five to seven nominees in the cluster; and (2) once the President has appointed from one cluster, then he is proscribed from considering the other nominees in the same cluster for the other vacancies. The said limitations are utterly without legal basis and in contravention of the President's appointing power.

In view of the foregoing, **President Aquino validly exercised his discretionary power to appoint members of the Judiciary when he disregarded the clustering of nominees into six separate**

shortlists for the vacancies for the 16th, 17th, 18th, 19th, 20th and 21stSandiganbayan Associate Justices. President Aquino merely maintained the well-established practice, consistent with the paramount Presidential constitutional prerogative, to appoint the six new Sandiganbayan Associate Justices from the 37 qualified nominees, as if embodied in one JBC list. This does not violate Article VIII, Section 9 of the 1987 Constitution which requires the President to appoint from a list of at least three nominees submitted by the JBC for every vacancy. To meet the minimum requirement under said constitutional provision of three nominees per vacancy, there should at least be 18 nominees from the JBC for the six vacancies for Sandiganbayan Associate Justice; but the minimum requirement was even exceeded herein because the JBC submitted for the President's consideration a total of 37 qualified nominees. All the six newly appointed Sandiganbayan Associate Justices met the requirement of nomination by the JBC under Article VIII, Section 9 of the 1987 Constitution. Hence, the appointments of respondents Musngi and Econg, as well as the other four new Sandiganbayan Associate Justices, are valid and do not suffer from any constitutional infirmity.

The ruling of the Court in this case shall similarly apply to the situation wherein there are closely successive vacancies in a collegiate court, to which the President shall make appointments on the same occasion, regardless of whether the JBC carried out combined or separate application process/es for the vacancies. **The President is not bound by the clustering of nominees by the JBC and may consider as one the separate shortlists of nominees concurrently submitted by the JBC.** As the Court already ratiocinated herein, the requirements and qualifications, as well as the power, duties, and responsibilities are the same for all the vacant posts in a collegiate court; and if an individual is found to be qualified for one vacancy, then he/she is also qualified for all the other vacancies. It is worthy of note that the JBC, in previous instances of closely successive vacancies in collegiate courts, such as the Court of Appeals and the Supreme Court, faithfully observed the practice of submitting only a single list of nominees for all the available vacancies, with at least three nominees for every vacancy, from which the President made his appointments on the same occasion. This is in keeping with the constitutional provisions on the President's exclusive power to appoint members of the Judiciary and the mandate of the JBC to recommend qualified nominees for appointment to the Judiciary.

HON. PHILIP A. AGUINALDO, HON. REYNALDO A. ALHAMBRA, HON. DANILO S. CRUZ, HON. BENJAMIN T. POZON, HON. SALVADOR V. TIMBANG, JR., and the INTEGRATED BAR OF THE PHILIPPINES (IBP), *Petitioners*, -versus- HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III, HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, HON. MICHAEL FREDERICK L. MUSNGI, HON. MA. GERALDINE FAITH A. ECONG, HON. DANILO S. SANDOVAL, HON. WILHELMINA B. JORGE-WAGAN, HON. ROSANA FE ROMERO-MAGLAYA, HON. MERIANTHE PACITA M. ZURAEK, HON. ELMO M. ALAMEDA, and HON. VICTORIA C. FERNANDEZ-BERNARDO, *Respondents,* JUDICIAL AND BAR COUNCIL, *Intervenor.*
G.R. No. 224302, EN BANC, February 21, 2017, LEONARDO-DE CASTRO, *J.*

The Judicial and Bar Council (JBC) cannot impair the President's power to appoint members of the Judiciary and his statutory power to determine the seniority of the newly-appointed Sandiganbayan Associate Justices. As long as in the end, the President appoints someone nominated by the Judicial and Bar Council (JBC), the appointment is valid, and he, not the JBC, determines the seniority of appointees to a collegiate court.

FACTS:

The Judicial and Bar Council (JBC) successively filed a Motion for Reconsideration (with Motion for the Inhibition of the *Ponente)* on and a Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016).

At the outset, the Court notes the revelation of the JBC in its Motion for Reconsideration-in-Intervention that it is not taking any position in this particular case on President Aquino's appointments to the six newly-created positions of Sandiganbayan Associate Justice.

Nonetheless, the JBC did not categorically withdraw the arguments raised in its previous Motions, and even reiterated and further discussed said arguments, and raised additional points in its Motion for Reconsideration-in-Intervention. Hence, the Court is still constrained to address said arguments in this Resolution.

On the merits of the case, the JBC asserts that in submitting six short lists for six vacancies**, it was only acting in accordance with the clear and unambiguous mandate of Article VIII, Section 9 of the 1987 Constitution for the JBC to submit a list for every vacancy.** Considering its independence as a constitutional body, the JBC has the discretion and wisdom to perform its mandate in any manner as long as it is consistent with the Constitution.

According to the JBC, **its new practice of "clustering,"** in fact, is more in accord with the purpose of the JBC to rid the appointment process to the Judiciary from political pressure as the President has to choose only from the nominees for one particular vacancy. Otherwise, the President can choose whom he pleases, and thereby completely disregard the purpose for the creation of the JBC. The JBC clarifies that it numbered the vacancies, not to influence the order of precedence, but for practical reasons, *i.e.,* to distinguish one list from the others and to avoid confusion. The JBC also points out that the acts invoked against the JBC are based on practice or custom, but "practice, no matter how long continued, cannot give rise to any vested right." The JBC, as a constitutional body, enjoys independence, and as such, it may change its practice from time to time in accordance with its wisdom.

The JBC likewise disputes the *ponente's* observation that clustering is a totally new practice of the JBC. The JBC avers that even before Chief Justice Sereno's Chairmanship, the JBC has generally followed the rule of one short list for every vacancy in all first and second level trial courts. **The JBC has followed the "one list for every vacancy" rule even for appellate courts since 2013.** The JBC even recalls that it submitted on August 17, 2015 to then President Aquino four separate short lists for four vacancies in the CA; and present during the JBC deliberations were the *ponente* and Supreme Court Associate Justice Velasco as consultants, who neither made any comment on the preparation of the short lists.

On the merits of the Petition, **the JBC maintains that it did not exceed its authority and, in fact, it only faithfully complied with the literal language of Article VIII, Section 9 of the 1987 Constitution**, when it prepared six short lists for the six vacancies in the Sandiganbayan. It cites the cases of *Atong Paglaum, Inc. v. Commission on Elections* and *Ocampo v. Enriquez,* wherein the Court allegedly adopted the textualist approach of constitutional interpretation.

The JBC renounces any duty to increase the chances of appointment of every candidate it adjudged to have met the minimum qualifications. It asserts that while there might have been favorable experiences with the past practice of submitting long consolidated short lists, past practices cannot

be used as a source of rights and obligations to override the duty of the JBC to observe a straightforward application of the Constitution.

The JBC posits that clustering is a matter of legal and operational necessity for the JBC and the only safe standard operating procedure for making short lists. It presents different scenarios which demonstrate the need for clustering, *viz.,* (a) There are two different sets of applicants for the vacancies; (b) There is a change in the JBC composition during the interval in the deliberations on the vacancies as the House of Representatives and the Senate alternately occupy the *ex officio* seat for the Legislature; (c) The applicant informs the JBC of his/her preference for assignment in the Cebu Station or Cagayan de Oro Station of the Court of Appeals because of the location or the desire to avoid mingling with certain personalities; (d) The multiple vacancies in newly-opened first and second level trial courts; and (e) The dockets to be inherited in the appellate court are overwhelming so the JBC chooses nominees for those particular posts with more years of service as against those near retirement.

To the JBC, it seems that the Court was in a hurry to promulgate its Decision on November 29, 2016, which struck down the practice of clustering by the JBC. The JBC supposes that it was in anticipation of the vacancies in the Court as a result of the retirements of Supreme Court Associate Justices Perez and Brion. The JBC then claims that it had no choice but to submit two separate short lists for said vacancies in the Court because there were two sets of applicants for the same, *i.e.,* there were 14 applicants for the seat vacated by Justice Perez and 17 applicants for the seat vacated by Justice Brion.

The JBC further contends that since each vacancy creates discrete and possibly unique situations, there can be no general rule against clustering. Submitting separate, independent short lists for each vacancy is the only way for the JBC to observe the constitutional standards of (a) one list for every vacancy, and (b) choosing candidates of competence, independence, probity, and integrity for every such vacancy.

It is also the asseveration of the JBC that it did not encroach on the President's power to appoint members of the Judiciary.

ISSUE:
Whether the clustering made by the JBC impaired the President's power to appoint. (YES)

RULING:
The clustering of nominees for the six vacancies in the Sandiganbayan by the JBC impaired the President's power to appoint members of the Judiciary and to determine the seniority of the newly-appointed Sandiganbayan Associate Justices.

The JBC acted beyond its constitutional mandate in clustering the nominees into six separate short lists and President Aquino did not commit grave abuse of discretion in disregarding the said clustering.

The JBC invokes its independence, discretion, and wisdom, and maintains that it deemed it wiser and more in accord with Article VIII, Section 9 of the 1987 Constitution to cluster the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice into six separate short lists. The independence and discretion of the JBC, however, is not without limits. **It cannot impair the President's power to appoint members of the Judiciary and his statutory power to determine the seniority of the newly-appointed Sandiganbayan Associate Justices.** The Court cannot

sustain the strained interpretation of Article VIII, Section 9 of the 1987 Constitution espoused by the JBC, which ultimately curtailed the President's appointing power.

In its Decision, **Court ruled that the clustering impinged upon the President's appointing power** in the following ways: The President's option for every vacancy was limited to the five to seven nominees in each cluster. Once the President had appointed a nominee from one cluster, then he was proscribed from considering the other nominees in the same cluster for the other vacancies. All the nominees applied for and were found to be qualified for appointment to any of the vacant Associate Justice positions in the Sandiganbayan, but the JBC failed to explain why one nominee should be considered for appointment to the position assigned to one specific cluster only. Correspondingly, the nominees' chance for appointment was restricted to the consideration of the one cluster in which they were included, even though they applied and were found to be qualified for all the vacancies. Moreover, by designating the numerical order of the vacancies, the JBC established the seniority or order of preference of the new Sandiganbayan Associate Justices, a power which the law (Section 1, paragraph 3 of Presidential Decree No. 1606), rules (Rule II, Section 1 (b) of the Revised Internal Rules of the Sandiganbayan), and jurisprudence

Clustering can be used as a device to favor or prejudice a qualified nominee.

The JBC avers that it has no duty to increase the chances of appointment of every candidate it has adjudged to have met the minimum qualifications for a judicial post. The Court does not impose upon the JBC such duty, it only requires that the JBC gives all qualified nominees fair and equal opportunity to be appointed. The clustering by the JBC of nominees for simultaneous or closely successive vacancies in collegiate courts can actually be a device to favor or prejudice a particular nominee. A favored nominee can be included in a cluster with no other strong contender to ensure his/her appointment; or conversely, a nominee can be placed in a cluster with many strong contenders to minimize his/her chances of appointment.

Without casting aspersion or insinuating ulterior motive on the part of the JBC - which would only be highly speculative on the part of the Court - hereunder are different scenarios, using the very same circumstances and nominees in this case, to illustrate how clustering could be used to favor or prejudice a particular nominee and subtly influence President Aquino's appointing power, had President Aquino faithfully observed the clustering.

There are no objective criteria, standards, or guidelines for the clustering of nominees by the JBC.

The problem is that the **JBC has so far failed to present a legal, objective, and rational basis for determining which nominee shall be included in a cluster**. Simply saying that it is the result of the deliberation and voting by the JBC for every vacancy is unsatisfactory. A review of the voting patterns by the JBC Members for the six simultaneous vacancies for Sandiganbayan Associate Justice only raises more questions and doubts than answers. It would seem, to the casual observer, that the Chief Justice and the four regular JBC Members exercised block voting most of the time. Out of the 89 candidates for the six vacancies, there were a total of 3 7 qualified nominees spread across six separate short lists. Out of the 37 qualified nominees, the Chief Justice and the four regular JBC Members coincidentally voted for the same 28 nominees in precisely the same clusters, only varying by just one vote for the other nine nominees.

It is also interesting to note that all the nominees were listed only once in just one cluster, and all the nominees subsequently appointed as Sandiganbayan Associate Justice were distributed among the different clusters, except only for respondents Econg and Musngi.

The Court emphasizes that the requirements and qualifications, as well as the powers, duties, and responsibilities are the same for all vacant posts in a collegiate court, such as the Sandiganbayan; and if an individual is found to be qualified for one vacancy, then he/she is found to be qualified for all the other vacancies - there are no distinctions among the vacant posts. It is improbable that the nominees expressed their desire to be appointed to only a specific vacant position and not the other vacant positions in the same collegiate court, when neither the Constitution nor the law provides a specific designation or distinctive description for each vacant position in the collegiate court. The JBC did not cite any cogent reason in its Motion for Reconsideration-in-Intervention for assigning a nominee to a particular cluster/vacancy. The Court highlights that without objective criteria, standards, or guidelines in determining which nominees are to be included in which cluster, the clustering of nominees for specific vacant posts seems to be at the very least, totally arbitrary. The lack of such criteria, standards, or guidelines may open the clustering to manipulation to favor or prejudice a qualified nominee.

The designation by the JBC of numbers to the vacant Sandiganbayan Associate Justice posts encroached on the President's power to determine the seniority of the justices appointed to the said court.

The JBC contends in its Motion for Reconsideration-in-Intervention that its individual members have different reasons for designating numbers to the vacant Sandiganbayan Associate Justice posts. The varying reason/s of each individual JBC Members raises the concern whether they each fully appreciated the constitutional and legal consequences of their act, i.e., **that it encroached on the power, solely vested in the President, to determine the seniority of the justices appointed to a collegiate court**. Each of the six short lists submitted by the JBC to President Aquino explicitly stated that the nominees were for the Sixteenth (16th), Seventeenth (17th), Eighteenth (18th), Nineteenth (19th), Twentieth (20th), and Twenty-First (2 Pt) Sandiganbayan Associate Justice, respectively; and on the faces of said short lists, it could only mean that President Aquino was to make the appointments in the order of seniority pre-determined by the JBC, and that nominees who applied for any of the vacant positions, requiring the same qualifications, were deemed to be qualified to be considered for appointment only to the one vacant position to which his/her cluster was specifically assigned. Whatever the intentions of the individual JBC Members were, they cannot go against what has been clearly established by law, rules, and jurisprudence

It is also not clear to the Court how, as the JBC avowed in its Motion for Reconsideration, the clustering of nominees for simultaneous vacancies in collegiate courts into separate short lists can rid the appointment process to the Judiciary of political pressure; or conversely, how the previous practice of submitting a single list of nominees to the President for simultaneous vacancies in collegiate courts, requiring the same qualifications, made the appointment process more susceptible to political pressure. The 1987 Constitution itself, by creating the JBC and requiring that the President can only appoint judges and Justices from the nominees submitted by the JBC, already sets in place the mechanism to protect the appointment process from political pressure. By arbitrarily clustering the nominees for appointment to the six simultaneous vacancies for Sandiganbayan Associate Justice into separate short lists, the JBC influenced the appointment process and encroached on the President's power to appoint members of the Judiciary and determine seniority in the said court, beyond its mandate under the 1987 Constitution. As the Court pronounced in its Decision dated

November 29, 2016, the power to recommend of the JBC cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount. As long as in the end, the President appoints someone nominated by the JBC, the appointment is valid, and he, not the JBC, determines the seniority of appointees to a collegiate court.

The declaration of the Court that the clustering of nominees by the JBC for the simultaneous vacancies that occurred by the creation of six new positions of Associate Justice of the Sandiganbayan is unconstitutional was only incidental to its ruling that President Aquino is not bound by such clustering in making his appointments to the vacant Sandiganbayan Associate Justice posts. Other than said declaration, the Court did not require the JBC to do or to refrain from doing something insofar as the issue of clustering of the nominees to the then six vacant posts of Sandiganbayan Associate Justice was concerned.

Nota bene: The Court has agreed not to issue a ruling herein on the separate short lists of nominees submitted by the Judicial and Bar Council to President Rodrigo Roa Duterte for the present vacancies in the Supreme Court resulting from the compulsory retirements of Associate Justices Jose P. Perez and Arturo D. Brion because these were not in issue nor deliberated upon in this case, and in order not to preempt the decision the President may take on the said separate short lists in the exercise of his power to appoint members of the Judiciary under the Constitution.

ARMITA B. RUFINO, ZENAIDA R. TANTOCO, LORENZO CALMA, RAFAEL SIMPAO, JR., and FREDDIE GARCIA, *Petitioners*, -versus- BALTAZAR N. ENDRIGA, MA. PAZ D. LAGDAMEO, PATRICIA C. SISON, IRMA PONCE-ENRILE POTENCIANO, and DOREEN FERNANDEZ, *Respondents.*
BALTAZAR N. ENDRIGA, MA. PAZ D. LAGDAMEO, PATRICIA C. SISON, IRMA PONCE-ENRILE POTEN-CIANO, and DOREEN FERNANDEZ, *Petitioners*, -versus- ARMITA B. RUFINO, ZENAIDA R. TANTOCO, LORENZO CALMA, RAFAEL SIMPAO, JR., and FREDDIE GARCIA, *Respondents.*
G.R. No. 139554 and G.R. No. 139565, EN BANC, July 21, 2006, Carpio, *J.*

The power to appoint is the prerogative of the President, except in those instances when the Constitution provides otherwise. Usurpation of this fundamentally Executive power by the Legislative and Judicial branches violates the system of separation of powers that inheres in our democratic republican government.

Section 16, Article VII of the 1987 Constitution allows heads of departments, agencies, commissions, or boards to appoint only "officers lower in rank" than such "heads of departments, agencies, commissions, or boards"—this excludes a situation where the appointing officer appoints an officer equal in rank as him; Insofar as it authorizes the trustees of the CCP Board to elect their co-trustees, Section 6(b) and (c) of PD 15 is unconstitutional.

FACTS:
On 25 June 1966, then President Ferdinand E. Marcos issued ***Executive Order No. 30 (EO 30)*** creating the ***Cultural Center of the Philippines*** as a trust governed by a Board of Trustees of seven members to preserve and promote Philippine culture.

On 5 October 1972, or soon after the declaration of Martial Law, President Marcos ***issued PD 15, the CCPs charter***, which converted the CCP under EO 30 into a *non-municipal public corporation* free from the pressure or influence of politics.

After the People Power Revolution in 1986, then President Corazon C. Aquino asked for the *courtesy resignations* of the then incumbent CCP trustees and appointed new trustees to the Board. Eventually, during the term of President Fidel V. Ramos, the CCP Board included Endriga, Lagdameo, Sison, Potenciano, Fernandez, Lenora A. Cabili (Cabili), and Manuel T. Maosa (Maosa).

On 22 December 1998, then President Joseph E. Estrada appointed seven new trustees to the CCP Board for a term of four years to replace the Endriga group as well as two other incumbent trustees. The seven new trustees were:

1. Armita B. Rufino - President, vice Baltazar N. Endriga
2. Zenaida R. Tantoco - Member, vice Doreen Fernandez
3. Federico Pascual - Member, vice Lenora A. Cabili
4. Rafael Buenaventura - Member, vice Manuel T. Maosa
5. Lorenzo Calma - Member, vice Ma. Paz D. Lagdameo
6. Rafael Simpao, Jr. - Member, vice Patricia C. Sison
7. Freddie Garcia - Member, vice Irma Ponce-Enrile
Potenciano

Except for Tantoco, the Rufino group took their respective oaths of office and assumed the performance of their duties in early January 1999.

On 6 January 1999, the Endriga group filed a petition for quo warranto before this Court ***questioning President Estradas appointment of seven new members to the CCP Board***. The Endriga group alleged that under Section 6(b) of PD 15, *vacancies in the CCP Board shall be filled by election by a vote of a majority of the trustees held at the next regular meeting.* In case only one trustee survive[s], the vacancies shall be filled by the surviving trustee acting in consultation with the ranking officers of the [CCP]. The Endriga group claimed that ***it is only when the CCP Board is entirely vacant may the President of the Philippines fill such vacancies***, acting in consultation with the ranking officers of the CCP.

The Endriga group asserted that when former President Estrada appointed the Rufino group, only one seat was vacant due to the expiration of Maosas term.

Endrigas term was to expire on 26 July 1999, while the terms of Lagdameo, Sison, Potenciano, and Fernandez were to expire on 6 February 1999. The Endriga group maintained that under the CCP Charter, the *trustees fixed four-year term* ***could only be terminated by reason of resignation, incapacity, death, or other cause***. Presidential action was neither necessary nor justified since the CCP Board then still had 10 incumbent trustees who had the statutory power to fill by election any vacancy in the Board.

The Endriga group refused to accept that the CCP was under the supervision and control of the President. The Endriga group cited Section 3 of PD 15, which states that the CCP shall enjoy autonomy of policy and operation.

CA RULING:

On 14 May 1999, the Court of Appeals declared the Endriga group lawfully entitled to hold office as CCP trustees. On the other hand, the appellate courts Decision ousted the Rufino group from the CCP Board.

In their motion for reconsideration, the Rufino group asserted that the ***law could only delegate to the CCP Board the power to appoint officers lower in rank than the trustees of the Board.*** The law may not validly confer on the CCP trustees the authority to appoint or elect their fellow trustees, for the latter would be officers of equal rank and not of lower rank. Section 6(b) of PD 15 authorizing the CCP trustees to elect their fellow trustees should be declared unconstitutional being repugnant to Section 16, Article VII of the 1987 Constitution allowing the appointment only of officers lower in rank than the appointing power.

The Court of Appeals held that ***Section 6(b) of PD 15 providing for the manner of filling vacancies in the CCP Board*** is clear, plain, and free from ambiguity. Section 6(b) of PD 15 mandates the remaining trustees to fill by election vacancies in the CCP Board. Only when the Board is entirely vacant, which is not the situation in the present case, may the President exercise his power to appoint.

The Court of Appeals stated that the legislative history of PD 15 shows a clear intent to insulate the position of trustee from the pressure or influence of politics by abandoning appointment by the President of the Philippines as the mode of filling vacancies in the CCP Board. The Court of Appeals held that until Section 6(b) of PD 15 is declared unconstitutional in a proper case, it remains the law. The Court of Appeals also clarified that PD 15 vests on the CCP Chairperson the power to appoint all officers, staff, and personnel of the CCP, subject to confirmation by the Board.

ISSUE:
Whether or not PD 15, Section 6 allowing appointments made by trustees of their fellow members is constitutional. (NO)

RULING:
The power of appointment

The source of the Presidents power to appoint, as well as the Legislatures authority to delegate the power to appoint, is found in Section 16, Article VII of the 1987 Constitutionwhich provides:

The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.

The ***power to appoint is the prerogative of the President***, except in those instances when the Constitution provides otherwise. *Usurpation of this fundamentally Executive power by the Legislative and Judicial branches violates the system of separation of powers that inheres in our democratic republican government.*

Under Section 16, the President appoints the first group of officers with the consent of the Commission on Appointments. The President appoints the second and third groups of officers without the consent of the Commission on Appointments. The President appoints the third group of officers if the law is silent on who is the appointing power, or if the law authorizing the head of a department, agency, commission, or board to appoint is declared unconstitutional. Thus, ***if Section 6(b) and (c) of PD 15 is found unconstitutional, the President shall appoint the trustees of the CCP Board because the trustees fall under the third group of officers.***

The 1987 provision has the evident intent of allowing Congress to give to officers other than the President the authority to appoint. To that extent therefore reference to the President is pointless. And by using the word alone, copying the tenor of the 1935 provision, it implies, it is submitted, that the general rule in the 1935 Constitution of requiring confirmation by the Commission on Appointments had not been changed.

The framers of the 1987 Constitution clearly intended that Congress could by law vest the appointment of lower-ranked officers in the heads of departments, agencies, commissions, or boards.

The framers of the 1987 Constitution changed the qualifying word inferior to the less disparaging phrase lower in rank purely for style. However, t***he clear intent remained that these inferior or lower in rank officers are the subordinates of the heads of departments, agencies, commissions, or boards who are vested by law with the power to appoint.*** The express language of the Constitution and the clear intent of its framers point to only one conclusion the officers whom the heads of departments, agencies, commissions, or boards may appoint must be of lower rank than those vested by law with the power to appoint.

Congress may vest the authority to appoint only in the heads of the named offices

Further, Section 16, Article VII of the 1987 Constitution ***authorizes Congress to vest in the heads of departments, agencies, commissions, or boards the power to appoint lower-ranked officers.*** Section 16 provides:

The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

In a department in the Executive branch, the head is the Secretary. ***The law may not authorize the Undersecretary,*** acting as such Undersecretary, ***to appoint lower-ranked officers in the Executive department.*** In an agency, the power is vested in the head of the agency for it would be preposterous to vest it in the agency itself. In a commission, the ***head is the chairperson of the commission***. In a board, the ***head is also the chairperson of the board.*** In the last three situations, the law may not also authorize officers other than the heads of the agency, commission, or board to appoint lower-ranked officers.

The grant of the power to appoint to the heads of agencies, commissions, or boards is a matter of legislative grace. This is in contrast to the Presidents power to appoint which is a self-executing power vested by the Constitution itself and thus not subject to legislative limitations or conditions. The power to appoint conferred directly by the Constitution on the Supreme Court en banc and on the Constitutional Commissions[30] is also self-executing and not subject to legislative limitations or conditions.

The Constitution ***authorizes Congress to vest the power to appoint lower-ranked officers specifically in the heads of the specified offices, and in no other person***. The word heads refers to the chairpersons of the commissions or boards and not to their members.

The chairperson of the CCP board is the head of CCP
The head of the CCP is the Chairperson of its Board. PD 15 and its various amendments constitute the Chairperson of the Board as the head of CCP. Thus, Section 8 of PD 15 provides:

Appointment of Personnel. The Chairman, with the confirmation of the Board, shall have the power to appoint all officers, staff and personnel of the Center with such compensation as may be fixed by the Board, who shall be residents of the Philippines. The Center may elect membership in the Government Service Insurance System and if it so elects, its officers and employees who qualify shall have the same rights and privileges as well as obligations as those enjoyed or borne by persons in the government service. Officials and employees of the Center shall be exempt from the coverage of the Civil Service Law and Rules.

Under PD 15, the CCP is a public corporation governed by a Board of Trustees. Section 6 of PD 15, as amended, states:

Board of Trustees. The governing powers and authority of the corporation shall be vested in, and exercised by, a Board of eleven (11) Trustees who shall serve without compensation.

The CCP, being governed by a board, is not an agency but a board for purposes of Section 16, Article VII of the 1987 Constitution.

Section 6(b) and (c) of PD 15 repugnant to Section 16, Article VII of the 1987 Constitution

Section 6(b) and (c) of PD 15 is thus ***irreconcilably inconsistent with Section 16, Article VII of the 1987 Constitution.*** Section 6(b) and (c) of PD 15 ***empowers the remaining trustees of the CCP Board to fill vacancies in the CCP Board***, **allowing them to elect their fellow trustees.** On the other hand, Section 16, Article VII of the 1987 Constitution allows heads of departments, agencies, commissions, or boards to appoint only officers lower in rank than such heads of departments, agencies, commissions, or boards. This excludes a situation where the appointing officer appoints an officer equal in rank as him. Thus, insofar as it authorizes the trustees of the CCP Board to elect their co-trustees, Section 6(b) and (c) of PD 15 is unconstitutional because it violates Section 16, Article VII of the 1987 Constitution.

It does not matter that Section 6(b) of PD 15 empowers the remaining trustees to elect and not appoint their fellow trustees for the effect is the same, which is to fill vacancies in the CCP Board. ***A statute cannot circumvent the constitutional limitations on the power to appoint by filling vacancies in a public office through election by the co-workers in that office.*** **Such manner of filling vacancies in a public office has no constitutional basis.**

Further, Section 6(b) and (c) of PD 15 makes the CCP trustees the independent appointing power of their fellow trustees. ***The creation of an independent appointing power inherently conflicts with the Presidents power to appoint.*** This inherent conflict has spawned recurring controversies in the appointment of CCP trustees every time a new President assumes office.

In the present case, the incumbent President appointed the Endriga group as trustees, while the remaining CCP trustees elected the same Endriga group to the same positions. This has been the modus vivendi in filling vacancies in the CCP Board, allowing the President to appoint and the CCP Board to elect the trustees. In effect, there are two appointing powers over the same set of officers in the Executive branch. Each appointing power insists on exercising its own power, even if the two powers are irreconcilable. The Court must put an end to this recurring anomaly.

Section 6(b) and (c) of PD 15, which authorizes the trustees of the CCP Board to fill vacancies in the Board, ***runs afoul with the Presidents power of control under Section 17, Article VII of the 1987 Constitution.*** The intent of Section 6(b) and (c) of PD 15 is to insulate the CCP from political influence and pressure, specifically from the President.[44] Section 6(b) and (c) of PD 15 makes the CCP a self-perpetuating entity, virtually outside the control of the President. Such a public office or board cannot legally exist under the 1987 Constitution.

Section 3 of PD 15, as amended, states that the CCP shall enjoy autonomy of policy and operation x x x.[45] This provision does not free the CCP from the Presidents control, for if it does, then it would be unconstitutional. This provision may give the CCP Board a free hand in initiating and formulating policies and undertaking activities, but ultimately these policies and activities are all subject to the Presidents power of control.

The CCP is part of the Executive branch. No law can cut off the Presidents control over the CCP in the guise of insulating the CCP from the Presidents influence. By stating that the President shall have control of all the executive x x x offices, the 1987 Constitution empowers the President not only to influence but even to control all offices in the Executive branch, including the CCP. Control is far greater than, and subsumes, influence.

ARTURO M. DE CASTRO, *Petitioner,* -versus- JUDICIAL AND BAR COUNCIL (JBC) and PRESIDENT GLORIA MACAPAGAL - ARROYO, *Respondents.*
G.R. No. 191002, EN BANC, April 20, 2010, Bersamin, *J.*

In reversing the Valenzuela ruling, the prohibition under Section 15, Article VII is now deemed inapplicable to the appointments in the judiciary.

FACTS:
In the consolidated petitions, the petitioners De Castro, with the exception of Soriano, Tolentino and Inting, submit that the incumbent President can appoint the successor of Chief Justice Puno upon his retirement on May 17, 2010, on the ground that the prohibition against presidential appointments under Section 15, Article VII does not extend to appointments in the Judiciary. In support thereof, the OSG contends that the incumbent President may appoint the next Chief Justice, because the prohibition under Section 15, Article VII of the Constitution does not apply to appointments in the Supreme Court.

ISSUE:
Whether Section 15, Article VII applies to appointments to the Judiciary (specifically in this case the upcoming Chief Justice position). (NO)

RULING:
We reverse Valenzuela. As can be seen, Article VII is devoted to the Executive Department, and, among others, it lists the powers vested by the Constitution in the President. The presidential power

of appointment is dealt with in Sections 14, 15 and 16 of the Article.Article VIII is dedicated to the Judicial Department and defines the duties and qualifications of Members of the Supreme Court, among others. Section 4(1) and Section 9 of this Article are the provisions specifically providing for the appointment of Supreme Court Justices. In particular, Section 9 states that the appointment of Supreme Court Justices can only be made by the President upon the submission of a list of at least three nominees by the JBC; Section 4(1) of the Article mandates the President to fill the vacancy within 90 days from the occurrence of the vacancy.

Had the framers intended to extend the prohibition contained in Section 15, Article VII to the appointment of Members of the Supreme Court, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions. They would have easily and surely written the prohibition made explicit in Section 15, Article VII as being equally applicable to the appointment of Members of the Supreme Court in Article VIII itself, most likely in Section 4 (1), Article VIII. That such specification was not done only reveals that the prohibition against the President or Acting President making appointments within two months before the next presidential elections and up to the end of the Presidents or Acting Presidents term does not refer to the Members of the Supreme Court.

Although Valenzuela came to hold that the prohibition covered even judicial appointments, it cannot be disputed that the Valenzuela dictum did not firmly rest on the deliberations of the Constitutional Commission. Thereby, the confirmation made to the JBC by then Senior Associate Justice Florenz D. Regalado of this Court, a former member of the Constitutional Commission, about the prohibition not being intended to apply to the appointments to the Judiciary, which confirmation Valenzuela even expressly mentioned, should prevail.

Moreover, the usage in Section 4(1), Article VIII of the word shall an imperative, operating to impose a duty that may be enforced should not be disregarded. Thereby, Sections 4(1) imposes on the President the imperative duty to make an appointment of a Member of the Supreme Court within 90 days from the occurrence of the vacancy. The failure by the President to do so will be a clear disobedience to the Constitution.

The 90-day limitation fixed in Section 4(1), Article VIII for the President to fill the vacancy in the Supreme Court was undoubtedly a special provision to establish a definite mandate for the President as the appointing power, and cannot be defeated by mere judicial interpretation in Valenzuela to the effect that Section 15, Article VII prevailed because it was couched in stronger negative language. Such interpretation even turned out to be conjectural, in light of the records of the Constitutional Commissions deliberations on Section 4 (1), Article VIII.

Consequently, prohibiting the incumbent President from appointing a Chief Justice on the premise that Section 15, Article VII extends to appointments in the Judiciary cannot be sustained. A misinterpretation like Valenzuela should not be allowed to last after its false premises have been exposed. It will not do to merely distinguish Valenzuela from these cases, for the result to be reached herein is entirely incompatible with what Valenzuela decreed. Consequently, Valenzuela now deserves to be quickly sent to the dustbin of the unworthy and forgettable.

SEPARATE OPINION:
J. BRION, CONCURRING AND DISSENTING OPINION
The Disputed Provisions

In my view, the provisions of the Constitution cannot be read in isolation from what the whole contains. In considering the interests of the Executive and the Judiciary, a holistic approach starts from the premise that the constitutional scheme is to grant the President the power of appointment, subject to the limitation provided under Article VII, Section 15. At the same time, the Judiciary is assured, without qualifications under Article VIII, Section 4(1), of the immediate appointment of Members of the Supreme Court, i.e., within 90 days from the occurrence of the vacancy. If both provisions would be allowed to take effect, as I believe they should, the limitation on the appointment power of the President under Article VII, Section 15 should itself be limited by the appointment of Members of the Court pursuant to Article VIII, Section 4(1), so that the provision applicable to the Judiciary can be given full effect without detriment to the President's appointing authority. This harmonization will result in restoring to the President the full authority to appoint Members of the Supreme Court pursuant to the combined operation of Article VII, Section 15 and Article VIII, Section 4(1).

Viewed in this light, there is essentially no conflict, in terms of the authority to appoint, between the Executive and Judiciary; the President would effectively be allowed to exercise the Executive's traditional presidential power of appointment while respecting the Judiciary's own prerogative. In other words, the President retains full powers to appoint Members of the Court during the election period, and the Judiciary is assured of a full membership within the time frame given.

I concluded that the appointment of a Member of the Court even during the election period per se implies no adverse effect on the integrity of the election; a full Court is ideal during this period in light of the Court's unique role during elections. I maintain this view and fully concur in this regard with the majority.

On the Valenzuela Decision

In any case, let me repeat what I stressed about Valenzuela which rests on the reasoning that the evils Section 15 seeks to remedy – vote buying, midnight appointments and partisan reasons to influence the elections – exist, thus justifying an election appointment ban. In particular, the "midnight appointment" justification, while fully applicable to the more numerous vacancies at the lower echelons of the Judiciary (with an alleged current lower court vacancy level of 537 or a 24.5% vacancy rate), should not apply to the Supreme Court which has only a total of 15 positions that are not even vacated at the same time. The most number of vacancies for any one year occurred only last year (2009) when seven (7) positions were vacated by retirement, but this vacancy rate is not expected to be replicated at any time within the next decade. Thus "midnight appointments" to the extent that they were understood in Aytona will not occur in the vacancies of this Court as nominations to its vacancies are all processed through the JBC under the public's close scrutiny. The institutional integrity of the Court is hardly an issue. If at all, only objections personal to the individual Members of the Court or against the individual applicants can be made, but these are matters addressed in the first place by the JBC before nominees are submitted. There, too, are specific reasons, likewise discussed above, explaining why the election ban should not apply to the Supreme Court. These exempting reasons, of course, have yet to be shown to apply to the lower courts. Thus, on the whole, the reasons justifying the election ban in Valenzuela still obtain in so far as the lower courts are concerned, and have yet to be proven otherwise in a properly filed case. Until then, Valenzuela, except to the extent that it mentioned Section 4(1), should remain an authoritative ruling of this Court.

ATTY. CHELOY E. VELICARIA-GARAFIL,*Petitioner*, -versus- OFFICE OF THE PRESIDENT and HON. SOLICITOR GENERAL JOSE ANSELMO I. CADIZ,*Respondents.*

G.R. No. 203372, EN BANC, June 16, 2015, CARPIO, *J.*

The concurrence of all the elements of a valid appointment should always apply, regardless of when the appointment is made, whether outside, just before, or during the appointment ban.

FACTS:
Prior to the May 2010 elections, President Gloria Macapagal-Arroyo issued more than 800 appointments including the petitioners in several government offices. Section 15, Article VII of the 1987 Constitution provides for a ban on midnight appointments. For purposes of the 2010 elections, March 10, 2010 was the cutoff date for valid appointments and the next day, 11 March 2010, was the start of the ban. An exception is provided under such provision which allows temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. None of the petitioners claim that their appointments fall under this exception. President Aquino issued EO 2 recalling, withdrawing, and revoking appointments issued by President Macapagal-Arroyo which violated the constitutional ban. The officers and employees who were affected by EO 2 were informed that they were terminated from service effective the next day. Several petitions were filed seeking to declare the executive order as unconstitutional and for the declaration of their appointment as legal.

ISSUE:
Whether or not petitioners' appointments are valid. (NO)

RULING:
The following elements should always concur in the making of a valid (which should be understood as both complete and effective) appointment: (1) authority to appoint and evidence of the exercise of the authority; (2) transmittal of the appointment paper and evidence of the transmittal; (3) a vacant position at the time of appointment; and (4) receipt of the appointment paper and acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications. The concurrence of all these elements should always apply, regardless of when the appointment is made, whether outside, just before, or during the appointment ban. These steps in the appointment process should always concur and operate as a single process. There is no valid appointment if the process lacks even one step.

ATTY. MA. ROSARIO MANALANG-DEMIGILLO, *Petitioner,* -versus- TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES (TIDCORP), and its BOARD OF DIRECTORS, *Respondents.*

TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES, *Petitioner,* -versus- MA. ROSARIO S. MANALANG-DEMIGILLO, *Respondent.*
G.R. No. 168613 &G.R. No. 185571, EN BANC, March 5, 2013, J. Bersamin

When there is reorganization conducted pursuant to an authority granted to the Board of Directors (BOD) of a government-owned and controlled corporation, an officer reassigned to a new position cannot claim that she was illegally removed from the previous one on the claim that the BOD has no authority to conduct reorganization. The BOD of a government-owned and controlled corporation may be granted by law the authority to effect reorganization therein.

FACTS:

In 1998, petitioner Demigillo was appointed as Senior Vice President with permanent status and was assigned to the Legal and Corporate Services Department (LCSD) of Trade and Investment Corporation (TIDCORP) pursuant to RA 8494 which reorganized the structure of the said corporation.

In 2002, TIDCORP Board of Directors passed Resolution No. 1365, Series of 2002, to approve a restructuring plan to implement a new organizational structure and staffing pattern, a position classification system, and a new set of qualification standards. During its implementation, the LCSD was abolished. Demigillo retained her position as a Senior Vice President but was assigned to head the Remedial and Credit Management Support Sector (RCMSS).

Demigillo challenged before the Board of Directors the validity of the resolution and of her assignment to the RCMSS stating that she has been illegally removed from her position and that the board of directors were not authorized to conduct reorganization. Pending determination of her challenge by the Board of Directors, Demigillo appealed to the Civil Service Commission (CSC), raising the same issues.

Meanwhile, the President of TIDCORP informed Demigillo of her poor performance rating for failure to cooperate and adapt to the position given to her. After several notices and failure to improve her performance, Demigillo was removed from her position.

The CSC ruled that the reorganization conducted was valid as it is expressly provided in the powers of the Board of Directors of TIDCORP. However, it ruled that there was demotion of Demigillo in her functions and authority and the subsequent removal was invalid. In the appeal, the CA ruled that the reoragnization was valid as it was exercised under the doctrine of political agency with the Board of Directors acting as the alter ego of the President of the Philippines and at affirmed the decision of the CSC with regard to the demotion and removal of Demigillo. Hence, this petition.

ISSUE:
Whether or not the reorganization conducted was valid. (YES)

RULING:
We deny the petition for review of Demigillo (G.R. No. 168613) for its lack of merit, but grant the petition for review of TIDCORP (G.R. No. 185571).

The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.

But the doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet. Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, they were acting as the responsible members of the Board of Directors

of TIDCORP constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the alter egos of the President. We cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred.

Nonetheless, we uphold the 2002 reorganization and declare it valid for being done in accordance with the exclusive and final authority expressly granted under Republic Act No. 8494, further amending Presidential Decree No. 1080, the law creating TIDCORP itself, to wit:

Section 7. The Board of Directors shall provide for an organizational structure and staffing pattern for officers and employees of the Trade and Investment Development Corporation of the Philippines (TIDCORP) and upon recommendation of its President, appoint and fix their remuneration, emoluments and fringe benefits: Provided, That the Board shall have exclusive and final authority to appoint, promote, transfer, assign and re-assign personnel of the TIDCORP, any provision of existing law to the contrary notwithstanding.

Worthy to stress, lastly, is that the reorganization was not arbitrary and whimsical. It had been formulated following lengthy consultations and close coordination with the affected offices within TIDCORP in order for them to come up with various functional statements relating to the new organizational setup.

ABAKADA GURO PARTY LIST (Formerly AASJAS) OFFICERS SAMSON S. ALCANTARA and ED VINCENT S. ALBANO –versus- THE HONORABLE EXECUTIVE SECRETARY EDUARDO ERMITA et al.
G.R. NO. 168056, EN BANC, September 1, 2005, AUSTRIA-MARTINEZ. *J.*

When the act of the Secretary of Finance is in pursuance of a mandate as an agent of the congress and not as the president's alter ego the President cannot alter or modify or nullify, or set aside the findings of the Secretary of Finance and to substitute the judgment of the former for that of the latter.

FACTS:
R.A. No. 9337 or the VAT law provides that the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or
(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 %).

Petitioner Escudero, *et al.* claims that any recommendation by the Secretary of Finance can easily be brushed aside by the President since the former is a mere alter ego of the latter.

ISSUE:
Whether the President notwithstanding the mandate of R.A. 9337 can easily brushed aside the recommendation by the Secretary of Finance on the assumption that the latter is a mere alter ego of the President. (NO)

RULING:

When one speaks of the Secretary of Finance as the alter ego of the President, it simply means that as head of the Department of Finance he is the assistant and agent of the Chief Executive. The multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, such as the Department of Finance, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. The Secretary of Finance, as such, occupies a political position and holds office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" and, in the language of Attorney-General Cushing, is subject to the direction of the President."

In the present case, in making his recommendation to the President on the existence of either of the two conditions, the Secretary of Finance is not acting as the alter ego of the President or even her subordinate. In such instance, he is not subject to the power of control and direction of the President. He is acting as the agent of the legislative department, to determine and declare the event upon which its expressed will is to take effect. The Secretary of Finance becomes the means or tool by which legislative policy is determined and implemented, considering that he possesses all the facilities to gather data and information and has a much broader perspective to properly evaluate them. His function is to gather and collate statistical data and other pertinent information and verify if any of the two conditions laid out by Congress is present. His personality in such instance is in reality but a projection of that of Congress. Thus, being the agent of Congress and not of the President, the President cannot alter or modify or nullify, or set aside the findings of the Secretary of Finance and to substitute the judgment of the former for that of the latter.

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, *Petitioner,* -versus-
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 198146, EN BANC, August 8, 2017, Carpio, *J.*

Under the President's constitutional power of control, the President decides the dispute between the two (2) executive offices. The judiciary cannot substitute its decision over that of the President. Only after the President has decided or settled the dispute can the courts' jurisdiction be invoked.
It is only proper that intragovernmental disputes be settled administratively since the opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision.

FACTS:
Petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) is a GOCC created under Republic Act No. 9136 (RA 9136), also known as the Electric Power Industry Reform Act of 2001 (EPIRA).4 Section 50 of RA 9136 states that the principal purpose of PSALM is to manage the orderly sale, disposition, and privatization of the National Power Corporation (NPC) generation assets, real estate and other disposable assets, and Independent Power Producer (IPP) contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

PSALM conducted public biddings for the privatization of the Pantabangan-Masiway Hydroelectric Power Plant (Pantabangan-Masiway Plant) and Magat Hydroelectric Power Plant (Magat Plant) on 8 September 2006 and 14 December 2006, respectively. First Gen Hydropower Corporation with its $129 Million bid and SN Aboitiz Power Corporation with its $530 Million bid were the winning bidders for the PantabanganMasiway Plant and Magat Plant, respectively. NPC received a letter5 dated 14 August 2007 from the Bureau of Internal Revenue (BIR) demanding immediate

payment of ₱3,813,080,4726 deficiency value-added tax (VAT) for the sale of the Pantabangan-Masiway Plant and Magat Plant. The NPC indorsed BIR's demand letter to PSALM.

BIR, NPC, and PSALM executed a Memorandum of Agreement (MOA). In compliance with the MOA, PSALM remitted under protest to the BIR the amount of ₱3, 813, 080, 472, representing the total basic VAT due.

On 21 September 2007, PSALM filed with the Department of Justice (DOJ) a petition for the adjudication of the dispute with the BIR to resolve the issue of whether the sale of the power plants should be subject to VAT.

On 13 March 2008, the DOJ ruled in favor of PSALM. The BIR moved for reconsideration, alleging that the DOJ had no jurisdiction since the dispute involved tax laws administered by the BIR and therefore within the jurisdiction of the Court of Tax Appeals (CTA). Furthermore, the BIR stated that the sale of the subject power plants by PSALM to private entities is in the course of trade or business, as contemplated under Section 105 of the National Internal Revenue Code (NIRC) of 1997, which covers incidental transactions. Thus, the sale is subject to VAT. On 14 January 2009, the DOJ denied BIR's Motion for Reconsideration.

On 7 April 2009, the BIR Commissioner (Commissioner of Internal Revenue) filed with the Court of Appeals a petition for *certiorari*, seeking to set aside the DOJ's decision for lack of jurisdiction. The Court of Appeals ruled that the CIR is the proper body to resolve cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR. The Court of Appeals stressed that jurisdiction is conferred by law or by the Constitution; the parties, such as in this case, cannot agree or stipulate on it by conferring jurisdiction in a body that has none. Hence, the present petition.

ISSUE:
Whether the Secretary of Justice has jurisdiction over the case.(YES)

RULING:
This case involves a dispute between PSALM and NPC, which are both wholly government owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants. There is no question that original jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled· corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved. Secretary of Justice who has jurisdiction.

The law is clear and covers *"all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements." When the law says "all disputes, claims and controversies solely" among government agencies, the law means all, without exception.

The purpose of PD 242 is to provide for a speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts. As explained by the Court in *Philippine Veterans Investment Development Corp.* (PHIVIDEC) v. Judge Velez PD 242 is only applicable to disputes, claims, and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations. Since this case is a dispute between PSALM and NPC, both government owned and controlled corporations, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case.

This case is different from the case of *Philippine National Oil Company v. Court of Appeals*, *(PNOC v. CA)* which involves not only the BIR (a government bureau) and the PNOC and PNB (both government-owned or controlled corporations), but also respondent Tirso Savellano, a private citizen. Clearly, PD 242 is not applicable to the case of *PNOCv.CA.* Even the *ponencia* in PNOC v. CA stated that the dispute in that case is not covered by PD 242, thus: While the BIR is obviously a government bureau, and both PNOC and PNB are government-owned and controlled corporations, respondent Savellano is a private citizen.

It is only proper that intra-governmental disputes be settled administratively since the opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision. Section 17, Article VII of the Constitution states unequivocally that: "The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed." In *Carpio v. Executive Secretary,* the Court expounded on the President's control over all the executive departments, bureaus and offices, thus:

"the President's power of control is directly exercised by him over the members of the Cabinet who, in turn, and by his authority, control the bureaus and other offices under their respective jurisdictions in the executive department. "
This power of control vested by the Constitution in the President cannot be diminished by law. As held in *Rufino v. Endriga,* Congress cannot by law deprive the President of his power of control, thus: If the office is part of the Executive branch, it must remain subject to the control of the President. Otherwise, the Legislature can deprive the President of his constitutional power of control over "all the executive x x x offices." If the Legislature can do this with the Executive branch, then the Legislature can also deal a similar blow to the Judicial branch by enacting a law putting decisions of certain lower courts beyond the review power of the Supreme Court.

This constitutional power of control of the President cannot be diminished by the CTA. Thus, if two executive offices or agencies cannot agree, it is only proper and logical that the President, as the sole Executive who under the Constitution has control over both offices or agencies in dispute, should resolve the dispute instead of the courts. The judiciary should not intrude in this executive function of determining which is correct between the opposing government offices or agencies, which are both under the sole control of the President. Under his constitutional power of control, the President decides the dispute between the two executive offices. The judiciary cannot substitute its decision over that of the President. Only after the President has decided or settled the dispute can the courts' jurisdiction be invoked. Until such time, the judiciary should not interfere since the issue is not yet ripe for judicial adjudication. Otherwise, the judiciary would infringe on the President's exercise of his constitutional power of control over all the executive departments, bureaus, and offices.

Furthermore, under the doctrine of exhaustion of administrative remedies, it is mandated that where a remedy before an administrative body is provided by statute, relief must be sought by exhausting this remedy prior to bringing an action in court in order to give the administrative body every opportunity to decide a matter that comes within its jurisdiction. A litigant cannot go to court without first pursuing his administrative remedies; otherwise, his action is premature and his case is not ripe for judicial determination. PD 242 (now Chapter 14, Book IV of Executive Order No. 292), provides for such administrative remedy.

The first paragraph of Section 4 of the 1997 NIRC provides that the power of the CIR to interpret the NIRC provisions and other tax laws is subject to review by the Secretary of Finance, who is the alter ego of the President. Thus, the constitutional power of control of the President over all the executive departments, bureaus, and offices is still preserved. The President's power of control, which cannot be limited or withdrawn by Congress, means the power of the President to alter, modify, nullify, or set aside the judgment or action of a subordinate in the performance of his duties.

The second paragraph of Section 4 of the 1997 NIRC, providing for the exclusive appellate jurisdiction of the CTA as regards the CIR's decisions on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC, is in conflict with PD 242. Under PD 242, all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards private entities and the BIR, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the. BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are all public entities (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.

PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities. Since the amount involved in this case is more than one million pesos, the DOJ Secretary's decision may be appealed to the Office of the President in accordance with Section 70, Chapter 14, Book IV of EO 292 and Section 552 of PD 242. If the appeal to the Office of the President is denied, the aggrieved party can still appeal to the Court of Appeals under Section 1, Rule 43 of the 1997 Rules of Civil Procedure.

LOUIS BAROK C. BIRAOGO, *Petitioner*, -versus- THE PHILIPPINE TRUTH COMMISSION OF 2010, *Respondent.*
G.R. No. 192935, EN BANC, December 7, 2010, MENDOZA, *J.*

As held in Buklod ng Kawaning EIIB v. Hon. Executive Secretary,

> *But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very source of the power - that which constitutes an express grant of power. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), "the President, subject to the policy in the Executive Office and in order to achieve simplicity,*

economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the President." For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President. In Canonizado v. Aguirre [323 SCRA 312 (2000)], we ruled that reorganization "involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions." It takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them. The EIIB is a bureau attached to the Department of Finance. It falls under the Office of the President. Hence, it is subject to the President's continuing authority to reorganize.

The P.D. 1416, as amended by P.D. No. 1772, granted the President the continuing authority to reorganize the national government, including the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities, transfer appropriations, and to standardize salaries and materials.

In this case, however, the Court declines to recognize P.D. No. 1416 as a justification for the President to create a public office. Clearly, as it was only for the purpose of providing manageability and resiliency during the interim, P.D. No. 1416, as amended by P.D. No. 1772, became functus oficio upon the convening of the First Congress, as expressly provided in Section 6, Article XVIII of the 1987 Constitution.

FACTS:
This is a consolidated petition assailing Executive Order No.1 dated July 30, 2010, entitled Creating the Philippine Truth Commission of 2010, a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the previous administration. Petitioners Louis Biraogo assails Executive Order No. 1 for being violative of the legislative power of Congress under Section 1, Article VI of the Constitution as it usurps the constitutional authority of the legislature to create a public office and to appropriate funds therefor. In addition, Biraogo claims that it is unconstitutional for it is not under the President's continuing authority to reorganize the Office of the President. Finally, E.O. No. 1 accordingly, violates the equal protection clause as it selectively targets for investigation and prosecution officials and personnel of the previous administration.

In defense, the Office of the Solicitor General claims that, E.O. No. 1 does not arrogate the powers of Congress to create a public office because the Presidents executive power and power of control necessarily include the inherent power to conduct investigations to ensure that laws are faithfully executed. Also, E.O. No. 1 does not usurp the power of Congress to appropriate funds because there is no appropriation but a mere allocation of funds already appropriated by Congress. And that the Truth Commission does not violate the equal protection clause because it was validly created for laudable purposes.

ISSUE:
Whether the Creation of the Truth Commission of 2010's basis is the President's power of control.

RULING:
NO. To say that the PTC is borne out of a restructuring of the Office of the President under Section 31 is a misplaced supposition, even in the plainest meaning attributable to the term "restructure"- an "alteration of an existing structure." Evidently, the PTC was not part of the structure of the Office of the President prior to the enactment of Executive Order No. 1.
As held in Buklod ng Kawaning EIIB v. Hon. Executive Secretary**,**

> But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very source of the power - that which constitutes an express grant of power. UnderSection 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), "the President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the President." For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President. In Canonizado v. Aguirre [323 SCRA 312 (2000)], we ruled that reorganization "involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions." It takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them. The EIIB is a bureau attached to the Department of Finance. It falls under the Office of the President. Hence, it is subject to the President's continuing authority to reorganize.

The creation of the PTC is not justified by the Presidents power of control. Control is essentially the power to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter. Clearly, the power of control is entirely different from the power to create public offices. The former is inherent in the Executive, while the latter finds basis from either a valid delegation from Congress, or his inherent duty to faithfully execute the laws.

According to the OSG, the power to create a truth commission pursuant to the above provision finds statutory basis under P.D. 1416, as amended by P.D. No. 1772.The said law granted the President the continuing authority to reorganize the national government, including the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities, transfer appropriations, and to standardize salaries and materials. This decree, in relation toSection 20, Title I, Book III of E.O. 292 has been invoked in several cases such as Larin v. Executive Secretary. The Court, however, declines to recognize P.D. No. 1416 as a justification for the President to create a public office. Clearly, as it was only for the purpose of providing manageability and resiliency during the interim, P.D. No. 1416, as amended by P.D. No. 1772, became functus oficio upon the convening of the First Congress, as expressly provided in Section 6, Article XVIII of the 1987 Constitution.

While the power to create a truth commission cannot pass muster on the basis of P.D. No. 1416 as amended by P.D. No. 1772, the creation of the PTC finds justification under Section 17, Article VII of the Constitution, imposing upon the President the duty to ensure that the laws are faithfully executed. Section 17 reads:

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

As correctly pointed out by the respondents, the allocation of power in the three principal branches of government is a grant of all powers inherent in them. The President's power to conduct investigations to aid him in ensuring the faithful execution of laws - in this case, fundamental laws on public accountability and transparency - is inherent in the President's powers as the Chief Executive. That the authority of the President to conduct investigations and to create bodies to execute this

power is not explicitly mentioned in the Constitution or in statutes does not mean that he is bereft of such authority. As explained in the landmark case of Marcos v. Manglapus:

> The 1987 Constitution, however, brought back the presidential system of government and restored the separation of legislative, executive and judicial powers by their actual distribution among three distinct branches of government with provision for checks and balances.
>
> It would not be accurate, however, to state that "executive power" is the power to enforce the laws, for the President is head of state as well as head of government and whatever powers inherent in such positions pertain to the office unless the Constitution itself withholds it. Furthermore, the Constitution itself provides that the execution of the laws is only one of the powers of the President. It also grants the President other powers that do not involve the execution of any provision of law, e.g., his power over the country's foreign relations.
>
> On these premises, we hold the view that although the 1987 Constitution imposes limitations on the exercise of specific powers of the President, it maintains intact what is traditionally considered as within the scope of "executive power." Corollarily, the powers of the President cannot be said to be limited only to the specific powers enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated.
>
> It has been advanced that whatever power inherent in the government that is neither legislative nor judicial has to be executive. x x x.

Indeed, the Executive is given much leeway in ensuring that our laws are faithfully executed. As stated above, the powers of the President are not limited to those specific powers under the Constitution. One of the recognized powers of the President granted pursuant to this constitutionally-mandated duty is the power to create ad hoc committees. This flows from the obvious need to ascertain facts and determine if laws have been faithfully executed. Thus, in Department of Health v. Camposano, the authority of the President to issue Administrative Order No. 298, creating an investigative committee to look into the administrative charges filed against the employees of the Department of Health for the anomalous purchase of medicines was upheld. In said case, it was ruled that The Chief Executive's power to create the Ad hoc Investigating Committee cannot be doubted. Having been constitutionally granted full control of the Executive Department, to which respondents belong, the President has the obligation to ensure that `all executive officials and employees faithfully comply with the law.

NATIONAL ARTIST FOR LITERATURE VIRGILIO ALMARIO, CONCERNED ARTISTS OF THE PHILIPPINES (CAP), et al, *Petitioners,* -versus- THE EXECUTIVE SECRETARY, THE SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, THE CULTURAL CENTER OF THE PHILIPPINES, THE NATIONAL COMMISSION ON CULTURE AND THE ARTS, et al., *Respondents.*
G.R. No. 189028, EN BANC, July 16, 2013, Leonardo-De Castro, *J.*

It has been clearly explained in Cojuangco, Jr. v. Atty. Palma that:

> *The "power to recommend" includes the power to give "advice, exhortation or indorsement, which is essentially persuasive in character, not binding upon the party to whom it is made."*

Thus, as in this case, in the matter of the conferment of the Order of National Artists, the President may or may not adopt the recommendation or advice of the NCCA and the CCP Boards. In other words, the advice of the NCCA and the CCP is subject to the President's discretion.

Nevertheless, the President's discretion on the matter is not totally unfettered, nor the role of the NCCA and the CCP Boards meaningless.

FACTS:
The Board of Trustees of the Cultural Center of the Philippines (CCP) and the National Commission for Culture and the Arts (NCCA) were bodies responsible for administering the National Artists Award. They also review the guidelines for the nomination, selection and administration of the National Artists Award.

In 2007, the Board of Trustees of CCP and the NCCA Board of Commissioners opened the evaluation of the 2009 Order of National Artists and the nomination period was set. After due deliberations, the bodies recommended to the President the granting of National Artist Award to Manuel Conde, Ramon Santos, Lazaro Francisco and Frederico Aguilar-Alcuaz. Meanwhile, the Office of the President allegedly received nominations from various sectors, cultural groups and individuals recommending Cecile Guidote-Alvarez, Carlo Caparas, Francisco Mañosa and Jose Moreno.

President Gloria Macapagal-Arroyo conferred the Order of National Artists on Manuel Conde, Lazaro Francisco, Frederico Aguilar-Alcuaz, Guidote-Alvarez, Caparas, Mañosa and Moreno.

The petitioners filed the present petition claiming that it is the exclusive province of the NCCA Board of Commissioners and the CCP Board of Trustees to select those who will be conferred the Order of National Artists and to set the standard for entry into that select group. The petitioners pray that the conferment of Order of National Artists on respondents Guidote-Alvarez, Caparas, Mañosa and Moreno be enjoined and declared to have been rendered in grave abuse of discretion.

ISSUE:
Whether or not the conferment of Order of National Artists on the private respondents have been rendered in grave abuse of discretion?

RULING:
The respective powers of the CCP Board of Trustees and of the NCCA Board of Commissioners with respect to the conferment of the Order of National Artists are clear. They jointly administer the said award and, upon their recommendation or advice, the President confers the Order of National Artists.

To "recommend" and to "advise" are synonymous. To "recommend" is "to advise or counsel." To "advise" is "to give an opinion or counsel, or recommend a plan or course of action; also to give notice. To encourage, inform or acquaint." "Advise" imports that it is discretionary or optional with the person addressed whether he will act on such advice or not. This has been clearly explained in Cojuangco, Jr. v. Atty. Palma:

> The "power to recommend" includes the power to give "advice, exhortation or indorsement, which is essentially persuasive in character, not binding upon the party to whom it is made."

Thus, in the matter of the conferment of the Order of National Artists, the President may or may not adopt the recommendation or advice of the NCCA and the CCP Boards. In other words, the advice of the NCCA and the CCP is subject to the President's discretion.

Nevertheless, the President's discretion on the matter is not totally unfettered, nor the role of the NCCA and the CCP Boards meaningless.

Discretion is not a free-spirited stallion that runs and roams wherever it pleases but is reined in to keep it from straying. In its classic formulation, "discretion is not unconfined and vagrant" but "canalized within banks that keep it from overflowing."

The President's power must be exercised in accordance with existing laws. Section 17, Article VII of the Constitution prescribes faithful execution of the laws by the President:

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

The President's discretion in the conferment of the Order of National Artists should be exercised in accordance with the duty to faithfully execute the relevant laws. The faithful execution clause is best construed as an obligation imposed on the President, not a separate grant of power. It simply underscores the rule of law and, corollarily, the cardinal principle that the President is not above the laws but is obliged to obey and execute them. This is precisely why the law provides that "administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."

In this connection, the powers granted to the NCCA and the CCP Boards in connection with the conferment of the Order of National Artists by executive issuances were institutionalized by two laws, namely, Presidential Decree No. 208 dated June 7, 1973 and Republic Act No. 7356. In particular, Proclamation No. 1144 dated May 15, 1973 constituted the CCP Board as the National Artists Awards Committee and tasked it to "administer the conferment of the category of National Artist" upon deserving Filipino artists with the mandate to "draft the rules to guide its deliberations in the choice of National Artists.
We have held that an administrative regulation adopted pursuant to law has the force and effect of law. Thus, the rules, guidelines and policies regarding the Order of National Artists jointly issued by the CCP Board of Trustees and the NCCA pursuant to their respective statutory mandates have the force and effect of law. Until set aside, they are binding upon executive and administrative agencies, including the President himself/herself as chief executor of laws.

Furthermore, with respect to respondent Guidote-Alvarez who was the Executive Director of the NCCA at that time, the Guidelines expressly provides:

> 6.5 NCCA and CCP Board members and consultants and NCCA and CCP officers and staff are automatically disqualified from being nominated.

Respondent Guidote-Alvarez could not have even been nominated, hence, she was not qualified to be considered and conferred the Order of National Artists at that time. The President's discretion on the matter does not extend to removing a legal impediment or overriding a legal restriction.

From the foregoing, the advice or recommendation of the NCCA and the CCP Boards as to the conferment of the Order of National Artists on Conde, Dr. Santos, Francisco and Alcuaz was not binding on the former President but only discretionary or optional for her whether or not to act on such advice or recommendation. Also, by virtue of the power of control, the President had the

authority to alter or modify or nullify or set aside such recommendation or advice. It was well within the President's power and discretion to proclaim all, or some or even none of the recommendees of the CCP and the NCCA Boards, without having to justify his or her action. Thus, the exclusion of Santos did not constitute grave abuse of discretion on the part of the former President.

The conferment of the Order of National Artists on respondents Guidote-Alvarez, Caparas, Mañosa and Moreno was an entirely different matter.

There is grave abuse of discretion when an act is (1) done contrary to the Constitution, the law or jurisprudence or (2) executed whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias.

There was a violation of the equal protection clause of the Constitution when the former President gave preferential treatment to respondents Guidote-Alvarez, Caparas, Mañosa and Moreno. The former President's constitutional duty to faithfully execute the laws and observe the rules, guidelines and policies of the NCCA and the CCP as to the selection of the nominees for conferment of the Order of National Artists proscribed her from having a free and uninhibited hand in the conferment of the said award. The manifest disregard of the rules, guidelines and processes of the NCCA and the CCP was an arbitrary act that unduly favored respondents Guidote-Alvarez, Caparas, Mañosa and Moreno. The conferment of the Order of National Artists on said respondents was therefore made with grave abuse of discretion and should be set aside.

ATTY. ALICIA RISOS-VIDAL, *Petitioner*, -versus- COMMISSION ON ELECTIONS and JOSEPH EJERCITO ESTRADA, *Respondents.*
G.R. No. 206666, EN BANC, January 21, 2015, Leonardo-De Castro, *J.*

In Cristobal v. Labrador and Pelobello v. Palatino, which were decided under the 1935 Constitution, wherein the provision granting pardoning power to the President shared similar phraseology with what is found in the present 1987 Constitution, the Court then unequivocally declared that "subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by legislative action." The Court reiterated this pronouncement in Monsanto v. Factoran, Jr. thereby establishing that, under the present Constitution, "a pardon, being a presidential prerogative, should not be circumscribed by legislative action." Thus, it is unmistakably the long-standing position of this Court that the exercise of the pardoning power is discretionary in the President and may not be interfered with by Congress or the Court, except only when it exceeds the limits provided for by the Constitution.

A close scrutiny of the text of the pardon extended to former President Estrada shows that both the principal penalty of reclusion perpetua and its accessory penalties are included in the pardon. The first sentence refers to the executive clemency extended to former President Estrada who was convicted by the Sandiganbayan of plunder and imposed a penalty of reclusion perpetua. The latter is the principal penalty pardoned which relieved him of imprisonment. The sentence that followed, which states that "(h)e is hereby restored to his civil and political rights," expressly remitted the accessory penalties that attached to the principal penalty of reclusion perpetua. Hence, even if we apply Articles 36 and 41 of the RPC, it is indubitable from the text of the pardon that the accessory penalties of civil interdiction and perpetual absolute disqualification were expressly remitted together with the principal penalty of reclusion perpetua. From both law and jurisprudence, the right to seek public elective office is unequivocally considered as a political right.

Hence, the Court in this case reiterates its earlier statement that the pardon granted to former President Estrada admits no other interpretation other than to mean that, upon acceptance of the pardon granted to him, he regained his full civil and political rights – including the right to seek elective office. Furthermore, the disqualification of former President Estrada under Section 40 of the LGC in relation to Section 12 of the OEC was removed by his acceptance of the absolute pardon granted to him.

FACTS:
The Sandiganbayan convicted former President Estrada for the crime of plunder in criminal case. Thereafter, however, former President Gloria Macapagal Arroyo (former President Arroyo) extended executive clemency, by way of pardon, to former President Estrada. Former President Estrada "received and accepted" the pardon by affixing his signature beside his handwritten notation thereon.

On 2009, former President Estrada filed a Certificate of Candidacy for the position of President. During that time, his candidacy earned three oppositions, however, in separate resolutions, all three petitions were effectively dismissed on the uniform grounds that (i) the Constitutional proscription on reelection applies to a sitting president; and (ii) the pardon granted to former President Estrada by former President Arroyo restored the former's right to vote and be voted for a public office. The subsequent motions for reconsideration thereto were denied by the COMELEC En banc. After the conduct of the May 10, 2010 synchronized elections, however, former President Estrada only managed to garner the second highest number of votes. On petition for certiorari, Supreme Court dismissed the aforementioned petition on the ground of mootness considering that former President Estrada lost his presidential bid.

On 2012, former President Estrada once more ventured into the political arena, and filed a Certificate of Candidacy, this time vying for a local elective post, that of the Mayor of the City of Manila. Subsequently, Atty. Alicia Risos-Vidal (Risos-Vidal), filed a Petition for Disqualification against former President Estrada before the COMELEC, anchoring her petition on the theory that "[Former President Estrada] is Disqualified to Run for Public Office because of his Conviction for Plunder by the Sandiganbayan Sentencing Him to Suffer the Penalty of Reclusion Perpetua with Perpetual Absolute Disqualification." She relied on Section 40 of the Local Government Code (LGC), in relation to Section 12 of the Omnibus Election Code (OEC)."

In a Resolution, the COMELEC, Second Division, dismissed the petition for disqualification for lack of merit as Risos-Vidal failed to present cogent proof sufficient to reverse the standing pronouncement of this Commission declaring categorically that [former President Estrada's] right to seek public office has been effectively restored by the pardon vested upon him by former President Gloria M. Arroyo. The subsequent motion for reconsideration filed by Risos-Vidal was denied. Hence, this petition. While the case was pending before the Court, former President Estrada was elected into the said office. Alfredo S. Lim (Lim), one of former President Estrada's opponents for the position of Mayor, moved for leave to intervene in this case and was subsequently granted. Lim subscribed to Risos-Vidal's theory that former President Estrada is disqualified to run for and hold public office as the pardon granted to the latter failed to expressly remit his perpetual disqualification.

ISSUE:
Whether former President Estrada is qualified to vote and be voted for in public office as a result of the pardon granted to him by former President Arroyo?

RULING:

The petition for certiorari lacks merit. The pardoning power of the President cannot be limited by legislative action.

The 1987 Constitution, specifically Section 19 of Article VII and Section 5 of Article IX-C, provides that the President of the Philippines possesses the power to grant pardons. It is apparent from the constitutional provisions that the only instances in which the President may not extend pardon remain to be in: (1) impeachment cases; (2) cases that have not yet resulted in a final conviction; and (3) cases involving violations of election laws, rules and regulations in which there was no favorable recommendation coming from the COMELEC. Therefore, it can be argued that any act of Congress by way of statute cannot operate to delimit the pardoning power of the President.

In Cristobal v. Labrador and Pelobello v. Palatino, which were decided under the 1935 Constitution, wherein the provision granting pardoning power to the President shared similar phraseology with what is found in the present 1987 Constitution, the Court then unequivocally declared that "subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by legislative action." The Court reiterated this pronouncement in Monsanto v. Factoran, Jr. thereby establishing that, under the present Constitution, "a pardon, being a presidential prerogative, should not be circumscribed by legislative action." Thus, it is unmistakably the long-standing position of this Court that the exercise of the pardoning power is discretionary in the President and may not be interfered with by Congress or the Court, except only when it exceeds the limits provided for by the Constitution.

This doctrine of non-diminution or non-impairment of the President's power of pardon by acts of Congress, specifically through legislation, was strongly adhered to by an overwhelming majority of the framers of the 1987 Constitution when they flatly rejected a proposal to carve out an exception from the pardoning power of the President in the form of "offenses involving graft and corruption" that would be enumerated and defined by Congress through the enactment of a law.
The Articles 36 and 41 of the of the Revised Penal Code cannot, in any way, serve to abridge or diminish the exclusive power and prerogative of the President to pardon persons convicted of violating penal statutes. The Court cannot subscribe to Risos-Vidal's interpretation that the said Articles contain specific textual commands which must be strictly followed in order to free the beneficiary of presidential grace from the disqualifications specifically prescribed by them.

It is well-entrenched in this jurisdiction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. Verba legis non est recedendum. From the words of a statute there should be no departure. It is this Court's firm view that the phrase in the presidential pardon at issue which declares that former President Estrada "is hereby restored to his civil and political rights" substantially complies with the requirement of express restoration."

A close scrutiny of the text of the pardon extended to former President Estrada shows that both the principal penalty of reclusion perpetua and its accessory penalties are included in the pardon. The first sentence refers to the executive clemency extended to former President Estrada who was convicted by the Sandiganbayan of plunder and imposed a penalty of reclusion perpetua. The latter is the principal penalty pardoned which relieved him of imprisonment. The sentence that followed, which states that "(h)e is hereby restored to his civil and political rights," expressly remitted the accessory penalties that attached to the principal penalty of reclusion perpetua. Hence, even if we apply Articles 36 and 41 of the RPC, it is indubitable from the text of the pardon that the

accessory penalties of civil interdiction and perpetual absolute disqualification were expressly remitted together with the principal penalty of reclusion perpetua.

In this jurisdiction, the right to seek public elective office is recognized by law as falling under the whole gamut of civil and political rights. From both law and jurisprudence, the right to seek public elective office is unequivocally considered as a political right. Hence, the Court reiterates its earlier statement that the pardon granted to former President Estrada admits no other interpretation other than to mean that, upon acceptance of the pardon granted to him, he regained his FULL civil and political rights – including the right to seek elective office. Furthermore, the disqualification of former President Estrada under Section 40 of the LGC in relation to Section 12 of the OEC was removed by his acceptance of the absolute pardon granted to him.

Risos-Vidal maintains that former President Estrada's conviction for plunder disqualifies him from running for the elective local position of Mayor of the City of Manila under Section 40(a) of the LGC. However, the subsequent absolute pardon granted to former President Estrada effectively restored his right to seek public elective office. This is made possible by reading Section 40(a) of the LGC in relation to Section 12 of the OEC.

While it may be apparent that the proscription in Section 40(a) of the LGC is worded in absolute terms, Section 12 of the OEC provides a legal escape from the prohibition – a plenary pardon or amnesty. In other words, the latter provision allows any person who has been granted plenary pardon or amnesty after conviction by final judgment of an offense involving moral turpitude, inter alia, to run for and hold any public office, whether local or national position.

The third preambular clause of the pardon did not operate to make the pardon conditional. Contrary to Risos-Vidal's declaration, the third preambular clause of the pardon, i.e., "[w]hereas, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office," neither makes the pardon conditional, nor militate against the conclusion that former President Estrada's rights to suffrage and to seek public elective office have been restored.

This is especially true as the pardon itself does not explicitly impose a condition or limitation, considering the unqualified use of the term "civil and political rights" as being restored. Jurisprudence educates that a preamble is not an essential part of an act as it is an introductory or preparatory clause that explains the reasons for the enactment, usually introduced by the word "whereas." Whereas clauses do not form part of a statute because, strictly speaking, they are not part of the operative language of the statute.

In this case, the whereas clause at issue is not an integral part of the decree of the pardon, and therefore, does not by itself alone operate to make the pardon conditional or to make its effectivity contingent upon the fulfilment of the aforementioned commitment nor to limit the scope of the pardon. A preamble is really not an integral part of a law. It is merely an introduction to show its intent or purposes. It cannot be the origin of rights and obligations. Where the meaning of a statute is clear and unambiguous, the preamble can neither expand nor restrict its operation much less prevail over its text.

If former President Arroyo intended for the pardon to be conditional on Respondent's promise never to seek a public office again, the former ought to have explicitly stated the same in the text of the pardon itself. Since former President Arroyo did not make this an integral part of

the decree of pardon, the Commission is constrained to rule that the 3rd preambular clause cannot be interpreted as a condition to the pardon extended to former President Estrada.

Absent any contrary evidence, former President Arroyo's silence on former President Estrada's decision to run for President in the May 2010 elections against, among others, the candidate of the political party of former President Arroyo, after the latter's receipt and acceptance of the pardon speaks volume of her intention to restore him to his rights to suffrage and to hold public office.

Where the scope and import of the executive clemency extended by the President is in issue, the Court must turn to the only evidence available to it, and that is the pardon itself. From a detailed review of the four corners of said document, nothing therein gives an iota of intimation that the third Whereas Clause is actually a limitation, proviso, stipulation or condition on the grant of the pardon, such that the breach of the mentioned commitment not to seek public office will result in a revocation or cancellation of said pardon. To the Court, what it is simply is a statement of fact or the prevailing situation at the time the executive clemency was granted. It was not used as a condition to the efficacy or to delimit the scope of the pardon.

Therefore, there can be no other conclusion but to say that the pardon granted to former President Estrada was absolute in the absence of a clear, unequivocal and concrete factual basis upon which to anchor or support the Presidential intent to grant a limited pardon. To reiterate, insofar as its coverage is concerned, the text of the pardon can withstand close scrutiny even under the provisions of Articles 36 and 41 of the Revised Penal Code. The COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolutions.

PROF. RANDOLF S. DAVID, LORENZO TAÑADA III, RONALD LLAMAS, H. HARRY L. ROQUE, JR., JOEL RUIZ BUTUYAN, ROGER R. RAYEL, GARY S. MALLARI, ROMEL REGALADO BAGARES, CHRISTOPHER F.C. BOLASTIG, *Petitioners*, -versus- GLORIA MACAPAGAL-ARROYO, AS PRESIDENT AND COMMANDER-IN-CHIEF, EXECUTIVE SECRETARY EDUARDO ERMITA, HON. AVELINO CRUZ II, SECRETARY OF NATIONAL DEFENSE, GENERAL GENEROSO SENGA, CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, DIRECTOR GENERAL ARTURO LOMIBAO, CHIEF, PHILIPPINE NATIONAL POLICE, *Respondents.*
G.R. No. 171396, EN BANC, May 03, 2006, SANDOVAL-GUTIERREZ, *J.*

Citing Integrated Bar of the Philippines v. Zamora, the Court ruled that the only criterion for the exercise of the calling-out power is that "whenever it becomes necessary," the President may call the armed forces "to prevent or suppress lawless violence, invasion or rebellion."

President Arroyo's declaration of a "state of rebellion" was merely an act declaring a status or condition of public moment or interest, a declaration allowed under Section 4 cited above. Such declaration, in the words of Sanlakas, is harmless, without legal significance, and deemed not written. In these cases, PP 1017 is more than that. In declaring a state of national emergency, President Arroyo did not only rely on Section 18, Article VII of the Constitution, a provision calling on the AFP to prevent or suppress lawless violence, invasion or rebellion. She also relied on Section 17, Article XII, a provision on the State's extraordinary power to take over privately-owned public utility and business affected with public interest. Indeed, PP 1017 calls for the exercise of an awesome power. Obviously, such Proclamation cannot be deemed harmless, without legal significance, or not written, as in the case of Sanlakas. It is plain therein that what the President invoked was her calling-out power.

FACTS:

On February 24, 2006, as the nation celebrated the 20th Anniversary of the Edsa People Power I, President Arroyo issued PP 1017 declaring a state of national emergency. On the same day, the President issued G. O. No. 5 implementing PP 1017.

On March 3, 2006, exactly one week after the declaration of a state of national emergency and after all these petitions had been filed, the President lifted PP 1017. She issued Proclamation No. 1021

In their presentation of the factual bases of PP 1017 and G.O. No. 5, respondents stated that the proximate cause behind the executive issuances was the conspiracy among some military officers, leftist insurgents of the New People's Army (NPA), and some members of the political opposition in a plot to unseat or assassinate President Arroyo. They considered the aim to oust or assassinate the President and take-over the reigns of government as a clear and present danger.

The Solicitor General argued that the intent of the Constitution is to give full discretionary powers to the President in determining the necessity of calling out the armed forces. He emphasized that none of the petitioners has shown that PP 1017 was without factual bases.

On January 17, 2006, Captain Nathaniel Rabonza and First Lieutenants Sonny Sarmiento, Lawrence San Juan and Patricio Bumidang, members of the Magdalo Group indicted in the Oakwood mutiny, escaped their detention cell in Fort Bonifacio, Taguig City. In a public statement, they vowed to remain defiant and to elude arrest at all costs. They called upon the people to "show and proclaim our displeasure at the sham regime.

On February 17, 2006, the authorities got hold of a document entitled "Oplan Hackle I" which detailed plans for bombings and attacks during the Philippine Military Academy Alumni Homecoming in Baguio City. The plot was to assassinate selected targets including some cabinet members and President Arroyo herself. Upon the advice of her security, President Arroyo decided not to attend the Alumni Homecoming. The next day, at the height of the celebration, a bomb was found and detonated at the PMA parade ground.

On February 21, 2006, Lt. San Juan was recaptured in a communist safehouse in Batangas province. Found in his possession were two (2) flash disks containing minutes of the meetings between members of the Magdalo Group and the National People's Army (NPA), a tape recorder, audio cassette cartridges, diskettes, and copies of subversive documents. Prior to his arrest, Lt. San Juan announced through DZRH that the "Magdalo's D-Day would be on February 24, 2006, the 20th Anniversary of Edsa I."

On February 23, 2006, PNP Chief Arturo Lomibao intercepted information that members of the PNP-Special Action Force were planning to defect. Thus, he immediately ordered SAF Commanding General Marcelino Franco, Jr. to "disavow" any defection. The latter promptly obeyed and issued a public statement.
On the same day, at the house of former Congressman Peping Cojuangco, President Cory Aquino's brother, businessmen and mid-level government officials plotted moves to bring down the Arroyo administration. Nelly Sindayen of TIME Magazine reported that Pastor Saycon, longtime Arroyo critic, called a U.S. government official about his group's plans if President Arroyo is ousted. Saycon also phoned a man code-named Delta. Saycon identified him as B/Gen. Danilo Lim, Commander of the Army's elite Scout Ranger. Lim said "it was all systems go for the planned movement against Arroyo."

B/Gen. Danilo Lim and Brigade Commander Col. Ariel Querubin confided to Gen. Generoso Senga, Chief of Staff of the Armed Forces of the Philippines (AFP), that a huge number of soldiers would join the rallies to provide a critical mass and armed component to the Anti-Arroyo protests to be held on February 24, 2005.

According to these two (2) officers, there was no way they could possibly stop the soldiers because they too, were breaking the chain of command to join the forces foist to unseat the President. However, Gen. Senga has remained faithful to his Commander-in-Chief and to the chain of command. He immediately took custody of B/Gen. Lim and directed Col. Querubin to return to the Philippine Marines Headquarters in Fort Bonifacio. Respondents further claimed that the bombing of telecommunication towers and cell sites in Bulacan and Bataan was also considered as additional factual basis for the issuance of PP 1017 and G.O. No. 5.

By midnight of February 23, 2006, the President convened her security advisers and several cabinet members to assess the gravity of the fermenting peace and order situation. She directed both the AFP and the PNP to account for all their men and ensure that the chain of command... remains solid and undivided. To protect the young students from any possible trouble that might break loose on the streets, the President suspended classes in all levels in the entire National Capital Region.

For their part, petitioners cited the events that followed after the issuance of PP 1017 and G.O. No. 5. Immediately, the Office of the President announced the cancellation of all programs and activities related to the 20th anniversary celebration of Edsa People Power I; and revoked the permits to hold rallies issued earlier by the local governments. Justice Secretary Raul Gonzales stated that political rallies, which to the President's mind were organized for purposes of destabilization, are cancelled. Presidential Chief of Staff Michael Defensor announced that "warrantless arrests and take-over of facilities, including media, can already be implemented."

Undeterred by the announcements that rallies and public assemblies would not be allowed, groups of protesters (members of Kilusang Mayo Uno [KMU] and National Federation of Labor Unions-Kilusang Mayo Uno [NAFLU-KMU]), marched from various parts of Metro Manila with the intention of converging at the EDSA shrine. Those who were already near the EDSA site were violently dispersed by huge clusters of anti-riot police. The well-trained policemen used truncheons, big fiber glass shields, water cannons, and tear gas to stop and break... up the marching groups, and scatter the massed participants. The same police action was used against the protesters marching forward to Cubao, Quezon City and to the corner of Santolan Street and EDSA. That same evening, hundreds of riot policemen broke up an EDSA celebration... rally held along Ayala Avenue and Paseo de Roxas Street in Makati City.

According to petitioner Kilusang Mayo Uno, the police cited PP 1017 as the ground for the dispersal of their assemblies. During the dispersal of the rallyists along EDSA, police arrested (without warrant) petitioner Randolf S. David, a professor at the University of the Philippines and newspaper columnist. Also arrested was his companion, Ronald Llamas, president of party-list Akbayan.

At around 12:20 in the early morning of February 25, 2006, operatives of the Criminal Investigation and Detection Group (CIDG) of the PNP, on the basis of PP 1017 and G.O. No. 5, raided the Daily Tribune offices in Manila. The raiding team confiscated news stories by reporters, documents, pictures, and mock-ups of the Saturday issue. Policemen from Camp Crame in Quezon City were stationed inside the editorial and business offices of the newspaper; while policemen from the Manila Police District were stationed outside the building.

A few minutes after the search and seizure at the Daily Tribune offices, the police surrounded the premises of another pro-opposition paper, Malaya, and its sister publication, the tabloid Abante. The raid, according to Presidential Chief of Staff Michael Defensor, is "meant to show a 'strong presence,' to tell media outlets not to connive or do anything that would help the rebels in bringing down this government." Director General Lomibao stated that "if they do not follow the standards - and the standards are - if they would contribute to instability in the government, or if they do not subscribe to what is in General Order No. 5 and Proc. No. 1017 - we will recommend a 'takeover.'"

On March 3, 2006, President Arroyo issued PP 1021 declaring that the state of national emergency has ceased to exist.

On March 7, 2006, the Court conducted oral arguments and heard the parties/

ISSUES:
Whether PP 1017 and G.O. No. 5 are unconstitutional?

RULING:
The operative portion of PP 1017 may be divided into three important provisions, thus:

First Provision: Calling-out Power
The first provision pertains to the President's calling-out power. In Sanlakas v. Executive Secretary, this Court, through Mr. Justice Dante O. Tinga, held that Section 18, Article VII of the Constitution reproduced as follows:

> Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of... invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the... proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or... special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual bases of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within... thirty days from its filing.
>
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of

> jurisdiction on military courts and agencies over civilians where civil courts are able to... function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The Constitution grants the President, as Commander-in-Chief, a "sequence" of graduated powers. From the most to the least benign, these are: the calling-out power, the power to suspend the privilege of the writ of habeas corpus, and the power to declare Martial Law.

Citing Integrated Bar of the Philippines v. Zamora, the Court ruled that the only criterion for the exercise of the calling-out power is that "whenever it becomes necessary," the President may call the armed forces "to prevent or suppress lawless violence, invasion or rebellion."

As stated earlier, considering the circumstances then prevailing, President Arroyo found it necessary to issue PP 1017. Owing to her Office's vast intelligence network, she is in the best position to determine the actual condition of the country. Under the calling-out power, the President may summon the armed forces to aid him in suppressing lawless violence, invasion and rebellion. This involves ordinary police action. But every act that goes beyond the President's calling-out power is considered illegal or ultra vires. For this reason, a President must be careful in the exercise of his powers. He cannot invoke a greater power when he wishes to act under a lesser power. There lies the wisdom of our Constitution, the greater the power, the greater are the limitations.

It is pertinent to state, however, that there is a distinction between the President's authority to declare a "state of rebellion" (in Sanlakas) and the authority to proclaim a state of national emergency. President Arroyo's declaration of a "state of rebellion" was merely an act declaring a status or condition of public moment or interest, a declaration allowed under Section 4 cited above. Such declaration, in the words of Sanlakas, is harmless, without legal significance, and deemed not written. In these cases, PP 1017 is more than that. In declaring a state of national emergency, President Arroyo did not only rely on Section 18, Article VII of the Constitution, a provision calling on the AFP to prevent or suppress lawless violence, invasion or rebellion. She also relied on Section 17, Article XII, a provision on the State's extraordinary power to take over privately-owned public utility and business affected with public interest. Indeed, PP 1017 calls for the exercise of an awesome power. Obviously, such Proclamation cannot be deemed harmless, without legal significance, or not written, as in the case of Sanlakas. It is plain therein that what the President invoked was her calling-out power.

Second Provision: "Take Care" Power
The second provision pertains to the power of the President to ensure that the laws be faithfully executed. This is based on Section 17, Article VII which reads:

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

We all know that it was PP 1081 which granted President Marcos legislative power. Its enabling clause states: "to enforce obedience to all the laws and decrees, orders and regulations promulgated

by me personally or upon my direction." Upon the other hand, the enabling clause of PP 1017 issued by President Arroyo is: to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction." PP 1017 states in part: "to enforce obedience to all the laws and decrees x x x promulgated by me personally or upon my direction."

The President is granted an Ordinance Power under Chapter 2, Book III of Executive Order No. 292 (Administrative Code of 1987). It is stated therein that the President may issue any of the following:

> Sec. 2. Executive Orders. --- Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.
>
> Sec. 3. Administrative Orders. --- Acts of the President which relate to particular aspect of governmental operations in pursuance of his duties as administrative head shall be promulgated in administrative orders.
>
> Sec. 4. Proclamations. --- Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which... shall have the force of an executive order.
> Sec. 5. Memorandum Orders. --- Acts of the President on matters of administrative detail or of subordinate or temporary interest which only concern a particular officer or office of the Government shall be embodied in memorandum orders.
>
> Sec. 6. Memorandum Circulars. --- Acts of the President on matters relating to internal administration, which the President desires to bring to the attention of all or some of the departments, agencies, bureaus or offices of the Government, for information or... compliance, shall be embodied in memorandum circulars.
>
> Sec. 7. General or Special Orders. --- Acts and commands of the President in his capacity as Commander-in-Chief of the Armed Forces of the Philippines shall be issued as general or special orders.

President Arroyo's ordinance power is limited to the foregoing issuances. She cannot issue decrees similar to those issued by Former President Marcos under PP 1081. Presidential Decrees are laws which are of the same category and binding force as statutes because they were issued by the President in the exercise of his legislative power during the period of Martial Law under the 1973 Constitution.

As this Court stated earlier, President Arroyo has no authority to enact decrees. It follows that these decrees are void and, therefore, cannot be enforced. With respect to "laws," she cannot call the military to enforce or implement certain laws, such as customs laws, laws governing family and property relations, laws on obligations and contracts and the like. She can only order the military, under PP 1017, to enforce laws pertinent to its duty to suppress lawless violence.

Third Provision: Power to Take Over
The pertinent provision of PP 1017 states:

> x x x and to enforce obedience to all the laws and to all decrees, orders, and regulations promulgated by me personally or upon my direction; and as provided in Section 17, Article XII of the Constitution do hereby declare a state of national emergency.

The import of this provision is that President Arroyo, during the state of national emergency under PP 1017, can call the military not only to enforce obedience "to all the laws and to all decrees x x x" but also to act pursuant to the provision of Section 17, Article XII which reads:

> Sec. 17. In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately-owned public utility or... business affected with public interest.

A distinction must be drawn between the President's authority to declare "a state of national emergency" and to exercise emergency powers. To the first, as elucidated by the Court, Section 18, Article VII grants the President such power, hence, no legitimate constitutional objection can be raised. But to the second, manifold constitutional issues arise.

Section 23, Article VI of the Constitution reads:

> (1) The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.
>
> (2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national... policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

It may be pointed out that the second paragraph of the above provision refers not only to war but also to "other national emergency." If the intention of the Framers of our Constitution was to withhold from the President the authority to declare a "state of national emergency" pursuant to Section 18, Article VII (calling-out power) and grant it to Congress (like the declaration of the existence of a state of war), then the Framers could have provided so. Clearly, they did not intend that Congress should first authorize the President before... he can declare a "state of national emergency." The logical conclusion then is that President Arroyo could validly declare the existence of a state of national emergency even in the absence of a Congressional enactment.

Let it be emphasized that while the President alone can declare a state of national emergency, however, without legislation, he has no power to take over privately-owned public utility or business affected with public interest. The President cannot decide whether exceptional circumstances exist warranting the take over of privately-owned public utility or business affected with public interest. Nor can he determine when such exceptional circumstances have ceased. Likewise, without legislation, the President has no power to point out the types of businesses affected with public interest that should be taken over. In short, the President has no absolute authority to exercise all the powers of the State under Section 17, Article VII in the absence of an emergency powers act passed by Congress.

FRANCISCO V. GUDANI AND LT. COL. ALEXANDER F. BALUTAN, *Petitioners,* -versus- LT./GEN. GENEROSO S. SENGA, *Respondent.*
G.R. No. 170165, EN BANC, August 15, 2006, TINGA, *J.*

As evidenced by Arnault v. Nazareno and Bengzon v. Senate Blue Ribbon Committee, among others, the Court has not shirked from reviewing the exercise by Congress of its power of legislative inquiry. Arnault recognized that the legislative power of inquiry and the process to enforce it, "is an essential and appropriate auxiliary to the legislative function. On the other hand, Bengzon acknowledged that the power of both houses of Congress to conduct inquiries in aid of legislation is not "absolute or unlimited", and its exercise is circumscribed by Section 21, Article VI of the Constitution. From these premises, the Court enjoined the Senate Blue Ribbon Committee from requiring the petitioners in Bengzon from testifying and producing evidence before the committee, holding that the inquiry in question did not involve any intended legislation.

In this case, the Senate affirmed both the Arnault and Bengzon rulings. It elucidated on the constitutional scope and limitations on the constitutional power of congressional inquiry. In Senate, the Court ruled that the President could not impose a blanket prohibition barring executive officials from testifying before Congress without the President's consent notwithstanding the invocation of executive privilege to justify such prohibition.

FACTS:
The petitioners are high-ranking officers of the Armed Forces of the Philippines (AFP). Both petitioners, Brigadier General Francisco Gudani (Gen. Gudani) and Lieutenant Colonel Alexander Balutan (Col. Balutan), belonged to the Philippine Marines. At the time of the subject incidents, both Gen. Gudani and Col. Balutan were assigned to the Philippine Military Academy (PMA) in Baguio City, the former as the PMA Assistant Superintendent, and the latter as the Assistant Commandant of Cadets.

On 22 September 2005, Senator Rodolfo Biazon (Sen. Biazon) invited several senior officers of the AFP to appear at a public hearing before the Senate Committee on National Defense and Security (Senate Committee) scheduled on 28 September 2005. The hearing was scheduled after topics concerning the conduct of the 2004 elections emerged in the public eye, particularly allegations of massive cheating and the surfacing of copies of an audio excerpt purportedly of a phone conversation between President Gloria Macapagal Arroyo and an official of the Commission on Elections (COMELEC) widely reputed as then COMELEC Commissioner Virgilio Garcillano. At the time of the 2004 elections, Gen. Gudani had been designated as commander, and Col. Balutan a member, of "Joint Task Force Ranao" by the AFP Southern Command. "Joint Task Force Ranao" was tasked with the maintenance of peace and order during the 2004 elections in the provinces of Lanao del Norte and Lanao del Sur.

Gen. Gudani, Col. Balutan, and AFP Chief of Staff Lieutenant General Generoso Senga (Gen. Senga) were among the several AFP officers who received a letter invitation from Sen. Biazon to attend the 28 September 2005 hearing.

On 23 September 2005, Gen. Senga replied through a letter to Sen. Biazon that he would be unable to attend the hearing due to a previous commitment in Brunei, but he nonetheless "directed other officers from the AFP who were invited to attend the hearing."

On 26 September 2005, the Office of the Chief of Staff of the AFP issued a Memorandum addressed to the Superintendent of the PMA Gen. Cristolito P. Baloing (Gen. Baloing). It was signed by Lt. Col. Hernando DCA Iriberri in behalf of Gen. Senga. Noting that Gen. Gudani and Col. Balutan had been invited to attend the Senate Committee hearing on 28 September 2005, the Memorandum directed

the two officers to attend the hearing. Conformably, Gen. Gudani and Col. Balutan filed their respective requests for travel authority addressed to the PMA Superintendent.

On 27 September 2005, Gen. Senga wrote a letter to Sen. Biazon, requesting the postponement of the hearing scheduled for the following day, since the AFP Chief of Staff was himself unable to attend said hearing, and that some of the invited officers also could not attend as they were "attending to other urgent operational matters." By this time, both Gen. Gudani and Col. Balutan had already departed Baguio for Manila to attend the hearing. Then on the evening of 27 September 2005, at around 10:10 p.m., a message was transmitted to the PMA Superintendent from the office of Gen. Senga, stating as follows:

> PER INSTRUCTION OF HER EXCELLENCY PGMA, NO AFP PERSONNEL SHALL APPEAR BEFORE ANY CONGRESSIONAL OR SENATE HEARING WITHOUT HER APPROVAL. INFORM BGEN FRANCISCO F GUDANI AFP AND LTC ALEXANDER BALUTAN PA (GSC) ACCORDINGLY.

The following day, Gen. Senga sent another letter to Sen. Biazon, this time informing the senator that "no approval has been granted by the President to any AFP officer to appear" before the hearing scheduled on that day. Nonetheless, both Gen. Gudani and Col. Balutan were present as the hearing started, and they both testified as to the conduct of the 2004 elections.

The Office of the Solicitor General (OSG), representing the respondents before this Court, has offered additional information surrounding the testimony of Gen. Gudani and Col. Balutan. The OSG manifests that the couriers of the AFP Command Center had attempted to deliver the... radio message to Gen. Gudani's residence in a subdivision in Parañaque City late in the night of 27 September 2005, but they were not permitted entry by the subdivision guards. The next day, 28 September 2005, shortly before the start of the hearing, a copy of Gen. Senga's letter to Sen. Biazon sent earlier that day was handed at the Senate by Commodore Amable B. Tolentino of the AFP Office for Legislative Affairs to Gen. Gudani, who replied that he already had a copy. Further, Gen. Senga called Commodore Tolentino on the latter's cell phone and... asked to talk to Gen. Gudani, but Gen. Gudani refused. In response, Gen. Senga instructed Commodore Tolentino to inform Gen. Gudani that "it was an order," yet Gen. Gudani still refused to take Gen. Senga's call.

On the very day of the hearing, 28 September 2005, President Gloria-Macapagal-Arroyo issued Executive Order No. 464 (E.O. 464). The OSG notes that the E.O. "enjoined officials of the executive department including the military establishment from appearing in any legislative inquiry without her approval."

In the meantime, on 30 September 2005, petitioners were directed by General Senga, through Col. Henry A. Galarpe of the AFP Provost Marshal General, to appear before the Office of the Provost Marshal General (OPMG) on 3 October 2005 for investigation. During their appearance before Col. Galarpe, both petitioners invoked their right to remain silent. In an Investigation Report dated 6 October 2005, the OPMG recommended that petitioners be charged with violation of Article of War 65, on willfully disobeying a superior officer, in relation to Article of War 97, on conduct prejudicial to the good order and military discipline.

As recommended, the case was referred to a Pre-Trial Investigation Officer (PTIO) preparatory to trial by the General Court Martial (GCM). Consequently, on 24 October 2005, petitioners were separately served with Orders respectively addressed to them and signed by respondent Col. Gilbert Jose C. Roa, the Pre-Trial Investigating Officer of the PTIO.

ISSUE:
Whether the president may prevent a member of the armed forces from testifying before a legislative inquiry?

RULING:
YES. The vitality of the tenet that the President is the commander-in-chief of the Armed Forces is most crucial to the democratic way of life, to civilian supremacy over the military, and to the general stability of our representative system of government. The Constitution reposes final authority, control and supervision of the AFP to the President, a civilian who is not a member of the armed forces, and whose duties as commander-in- chief represent only a part of the organic duties imposed upon the office, the other functions being clearly civil in nature. Civilian supremacy over the military also countermands the notion that the military may bypass civilian authorities, such as civil courts, on matters such as conducting warrantless searches and seizures.

The President has constitutional authority to do so, by virtue of her power as commander-in-chief, and that as a consequence a military officer who defies such injunction is liable under military justice. At the same time, any chamber of Congress which seeks the appearance before it of a military officer against the consent of the President has adequate remedies under law to compel such attendance. Any military official whom Congress summons to testify before it may be compelled to do so by the President. If the President is not so inclined, the President may be commanded by judicial order to compel the attendance of the military officer. Final judicial orders have the force of the law of the land which the President has the duty to faithfully execute.

The Court's ruling that the President could, as a general rule, require military officers to seek presidential approval before appearing before Congress is based foremost on the notion that a contrary rule unduly diminishes the prerogatives of the President as commander-in-chief. Congress holds significant control over the armed forces in matters such as budget appropriations and the approval of higher-rank promotions, yet it is on the President that the Constitution vests the title as commander-in-chief and all the prerogatives and functions appertaining to the position. Again, the exigencies of military discipline and the chain of command mandate that the President's ability to control the individual members of the armed forces be accorded the utmost respect. Where a military officer is torn between obeying the President and obeying the Senate, the Court will without hesitation affirm that the officer has to choose the President. After all, the Constitution prescribes that it is the President, and not the Senate, who is the commander-in-chief of the armed forces.

We believe and hold that our constitutional and legal order sanctions a modality by which members of the military may be compelled to attend legislative inquiries even if the President desires otherwise, a modality which does not offend the Chief Executive's prerogatives as commander-in-chief. The remedy lies with the courts.

As evidenced by Arnault v. Nazareno and Bengzon v. Senate Blue Ribbon Committee, among others, the Court has not shirked from reviewing the exercise by Congress of its power of legislative inquiry. Arnault recognized that the legislative power of inquiry and the process to enforce it, "is an essential and appropriate auxiliary to the legislative function. On the other hand, Bengzon acknowledged that the power of both houses of Congress to conduct inquiries in aid of legislation is not "absolute or unlimited", and its exercise is circumscribed by Section 21, Article VI of the Constitution. From these premises, the Court enjoined the Senate Blue Ribbon Committee from requiring the petitioners in Bengzon from testifying and producing evidence before the committee, holding that the inquiry in question did not involve any intended legislation.

Senate affirmed both the Arnault and Bengzon rulings. It elucidated on the constitutional scope and limitations on the constitutional power of congressional inquiry. In Senate, the Court ruled that the President could not impose a blanket prohibition barring executive officials from testifying before Congress without the President's consent notwithstanding the invocation of executive privilege to justify such prohibition.

Following these principles, it is clear that if the President or the Chief of Staff refuses to allow a member of the AFP to appear before Congress, the legislative body seeking such testimony may seek judicial relief to compel the attendance. Such judicial action should be directed at the heads of the executive branch or the armed forces, the persons who wield authority and control over the actions of the officers concerned. The legislative purpose of such testimony, as well as any defenses against the same whether grounded on executive privilege, national security or similar concerns would be accorded due judicial evaluation. All the constitutional considerations pertinent to either branch of government may be raised, assessed, and ultimately weighed against each other. And once the courts speak with finality, both branches of government have no option but to comply with the decision of the courts, whether the effect of the decision is to their liking or disfavor.
Courts are empowered, under the constitutional principle of judicial review, to arbitrate disputes between the legislative and executive branches of government on the proper constitutional parameters of power. And if emphasis be needed, if the courts so rule, the duty falls on the shoulders of the President, as commander-in-chief, to authorize the appearance of the military officers before Congress. Even if the President has earlier disagreed with the notion of officers appearing before the legislature to testify, the Chief Executive is nonetheless obliged to comply with the final orders of the courts.

Petitioners may have been of the honest belief that they were defying a direct order of their Commander-in-Chief and Commanding General in obeisance to a paramount idea formed within their consciences, which could not be lightly ignored. Still, the Court, in turn, is guided by the superlative principle that is the Constitution, the embodiment of the national conscience. The Constitution simply does not permit the infraction which petitioners have allegedly committed, and moreover, provides for an orderly manner by which the same result could have been achieved without offending constitutional principles.

JAMAR M. KULAYAN, TEMEN S. TULAWIE, HJI. MOH. YUSOP ISMI, JULHAJAN AWADI, AND SPO1 SATTAL H. JADJULI, *Petitioner*, -versus- GOV. ABDUSAKUR M. TAN, IN HIS CAPACITY AS GOVERNOR OF SULU; GEN. JUANCHO SABAN, COL. EUGENIO CLEMEN PN, P/SUPT. JULASIRIM KASIM AND P/SUPT. BIENVENIDO G. LATAD, IN THEIR CAPACITY AS OFFICERS OF THE PHIL. MARINES AND PHIL. NATIONAL POLICE, RESPECTIVELY, *Respondents.*
G.R. No. 187298, EN BANC, July 3, 2012, Sereno, *J.*

As emphasized by Justice Jose P. Laurel, in his ponencia in Villena:

With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other.

Corollarily, it is only the President, as Executive, who is authorized to exercise emergency powers as provided under Section 23, Article VI, of the Constitution, as well as what became known as the calling-out powers under Section 7, Article VII thereof.

Hence, the framers never intended for local chief executives to exercise unbridled control over the police in emergency situations. This is without prejudice to their authority over police units in their jurisdiction, and their prerogative to seek assistance from the police in day to day situations.

FACTS:

On 15 January 2009, three members from the International Committee of the Red Cross (ICRC) were kidnapped in the vicinity of the Provincial Capitol in Patikul, Sulu. Andres Notter, a Swiss national and head of the ICRC in Zamboanga City, Eugenio Vagni, an Italian national and ICRC delegate, and Marie Jean Lacaba, a Filipino engineer, were purportedly inspecting a water and inspecting a water sanitation project for the the Sulu Provincial Jail when inspecting a water and sanitation project for the Sulu Provincial Jail when they were seized by three armed men who were later confirmed to be members of the Abu Sayyaf Group (ASG). The leader of the alleged kidnappers was identified as Raden Abu, a former guard at the Sulu Provincial Jail. News reports linked Abu to Albader Parad, one of the known leaders of the Abu Sayyaf.

On 21 January 2009, a task force was created by the ICRC and the Philippine National Police (PNP), which then organized a parallel local group known as the Local Crisis Committee. The local group, later renamed Sulu Crisis Management Committee, convened under the leadership of respondent Abdusakur Mahail Tan, the Provincial Governor of Sulu. Its armed forces component was headed by respondents General Juancho Saban, and his deputy, Colonel Eugenio Clemen. The PNP component was headed by respondent Police Superintendent Bienvenido G. Latag, the Police Deputy Director for Operations of the Autonomous Region of Muslim Mindanao (ARMM).

Governor Tan organized the Civilian Emergency Force (CEF), a group of armed male civilians coming from different municipalities, who were redeployed to surrounding areas of Patikul. The organization of the CEF was embodied in a "Memorandum of Understanding" entered into between three parties: the provincial government of Sulu, represented by Governor Tan; the Armed Forces of the Philippines, represented by Gen. Saban; and the Philippine National Police, represented by P/SUPT. Latag. The Whereas clauses of the Memorandum alluded to the extraordinary situation in Sulu, and the willingness of civilian supporters of the municipal mayors to offer their services in order that "the early and safe rescue of the hostages may be achieved."

Meanwhile, Ronaldo Puno, then Secretary of the Department of Interior and Local Government, announced to the media that government troops had cornered some one hundred and twenty (120) Abu Sayyaf members along with the three (3) hostages.

However, the ASG made contact with the authorities and demanded that the military pull its troops back from the jungle area. The government troops yielded and went back to their barracks; the Philippine Marines withdrew to their camp, while police and civilian forces pulled back from the terrorists' stronghold by ten (10) to fifteen (15) kilometers. Threatening that one of the hostages will be beheaded, the ASG further demanded the evacuation of the military camps and bases in the different barangays in Jolo. The authorities were given no later than 2:00 o'clock in the afternoon of 31 March 2009 to comply.

On 31 March 2009, Governor Tan issued Proclamation No. 1, Series of 2009 (Proclamation 1-09), declaring a state of emergency in the province of Sulu. On 1 April 2009, SPO1 Sattal Jadjuli was instructed by his superior to report to respondent P/SUPT. Julasirim Kasim. On 4 April 2009, the office of Governor Tan distributed to civic organizations, copies of the "Guidelines for the Implementation of Proclamation No. 1, Series of 2009 Declaring a State of Emergency in the Province of Sulu.

On 16 April 2009, Jamar M. Kulayan, Temogen S. Tulawie, Hadji Mohammad Yusop Ismi, Ahajan Awadi, and SPO1 Sattal H. Jadjuli, residents of Patikul, Sulu, filed the present Petition for Certiorari and Prohibition... claiming that Proclamation 1-09 was issued with grave abuse of discretion amounting to lack or excess of jurisdiction, as it threatened fundamental freedoms guaranteed under Article III of the 1987 Constitution.

ISSUE:
Whether Proclamation 1-09 is valid?

RULING:
No.

As early as Villena v. Secretary of Interior, it has already been established that there is one repository of executive powers, and that is the President of the Republic. This means that when Section 1, Article VII of the Constitution speaks of executive power, it is granted to the President and no one else. As emphasized by Justice Jose P. Laurel, in his ponencia in Villena:

> With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other.

Corollarily, it is only the President, as Executive, who is authorized to exercise emergency powers as provided under Section 23, Article VI, of the Constitution, as well as what became known as the calling-out powers under Section 7, Article VII thereof.

The power to declare a state of martial law is subject to the SC's authority to review the factual basis thereof. The calling-out powers, which is of lesser gravity than the power to declare martial law, is bestowed upon the President alone. As noted in Villena, "(t)here are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of habeas corpus and proclaim martial law x x x.

Indeed, while the President is still a civilian, Article II, Section 3 of the Constitution mandates that civilian authority is, at all times, supreme over the military, making the civilian president the nation's supreme military leader. The net effect of Article II, Section 3, when read with Article VII, Section 18, is that a civilian President is the ceremonial, legal and administrative head of the armed forces. The Constitution does not require that the President must be possessed of military training and talents,

but as Commander-in-Chief, he has the power to direct military operations and to determine military strategy. Normally, he would be expected to delegate the actual command of the armed forces to military experts; but the ultimate power is his. As Commander-in-Chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual.

Hence, the framers never intended for local chief executives to exercise unbridled control over the police in emergency situations. This is without prejudice to their authority over police units in their jurisdiction, and their prerogative to seek assistance from the police in day to day situations. However, the police is subject to the exercise by the President of the power of executive control.

It is the clear intent of the framers that in all situations involving threats to security, it is still the President who possesses the sole authority to exercise calling-out powers.

The LGC does not involve the diminution of central powers inherently vested in the National Government, especially not the prerogatives solely granted to the President. The intent behind the powers granted to LGUs is fiscal, economic, and administrative. The LGC is concerned only with powers that would make the delivery of basic services more effective and should not be unduly stretched to confer calling-out powers.

PHILIP SIGFRID A. FORTUN AND ALBERT LEE G. ANGELES, *Petitioners*, -versus- GLORIA MACAPAGAL-ARROYO, AS COMMANDER-IN-CHIEF AND PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, EDUARDO ERMITA, EXECUTIVE SECRETARY, ARMED FORCES OF THE PHILIPPINES (AFP), OR ANY OF THEIR UNITS, PHILIPPINE NATIONAL POLICE (PNP), OR ANY OF THEIR UNITS, JOHN DOES AND JANE DOES ACTING UNDER THEIR DIRECTION AND CONTROL, *Respondents.*
G.R. No. 190293, EN BANC, March 20, 2012, Abad, *J.*

In Lansang v. Garcia, the Court received evidence in executive session to determine if President Marcos' suspension of the privilege of the writ of habeas corpus in 1971 had sufficient factual basis. In Aquino, Jr. v. Enrile, while the Court took judicial notice of the factual bases for President Marcos' proclamation of martial law in 1972, it still held hearings on the petitions for habeas corpus to determine the constitutionality of the arrest and detention of the petitioners.

Here, however, the Court has not bothered to examine the evidence upon which President Arroyo acted in issuing Proclamation 1959, precisely because it felt no need to, the proclamation of martial law and suspension of the privilege of the writ of habeas corpus having been withdrawn in just eight days. The military did not take over the operation and control of local government units in Maguindanao. The President did not issue any law or decree affecting Maguindanao that should ordinarily be enacted by Congress.

FACTS:

The essential background facts are not in dispute. On November 23, 2009 heavily armed men, believed led by the ruling Ampatuan family, gunned down and buried under shoveled dirt 57 innocent civilians on a highway in Maguindanao. In response to this carnage, on November 24 President Arroyo issued Presidential Proclamation 1946, declaring a state of emergency in Maguindanao, Sultan Kudarat, and Cotabato City to prevent and suppress similar lawless violence in Central Mindanao.

Believing that she needed greater authority to put order in Maguindanao and secure it from large groups of persons that have taken up arms against the constituted authorities in the province, on December 4, 2009 President Arroyo issued Presidential Proclamation 1959 declaring martial law and suspending the privilege of the writ of habeas corpus in that province except for identified areas of the Moro Islamic Liberation Front.

Two days later or on December 6, 2009 President Arroyo submitted her report to Congress in accordance with Section 18, Article VII of the 1987 Constitution which required her, within 48 hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, to submit to that body a report in person or in writing of her action.

In her report, President Arroyo said that she acted based on her finding that lawless men have taken up arms in Maguindanao and risen against the government. The President described the scope of the uprising, the nature, quantity, and quality of the rebels' weaponry, the movement of their heavily armed units in strategic positions, the closure of the Maguindanao Provincial Capitol, Ampatuan Municipal Hall, Datu Unsay Municipal Hall, and 14 other municipal halls, and the use of armored vehicles, tanks, and patrol cars with unauthorized "PNP/Police" markings.

On December 9, 2009 Congress, in joint session, convened pursuant to Section 18, Article VII of the 1987 Constitution to review the validity of the President's action. But, two days later or on December 12 before Congress could act, the President issued Presidential Proclamation 1963, lifting martial law and restoring the privilege of the writ of habeas corpus in Maguindanao.

ISSUE:
Whether Proclamation 1959 is constitutional?

RULING:
The issue of the constitutionality of Proclamation 1959 is not unavoidable for two reasons:

First. President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of habeas corpus before the joint houses of Congress could fulfill their automatic duty to review and validate or invalidate the same. The pertinent provisions of Section 18, Article VII of the 1987 Constitution state:

> Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or

> suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

Although the above vests in the President the power to proclaim martial law or suspend the privilege of the writ of habeas corpus, he shares such power with the Congress. Thus:

1. The President's proclamation or suspension is temporary, good for only 60 days;
2. He must, within 48 hours of the proclamation or suspension, report his action in person or in writing to Congress;
3. Both houses of Congress, if not in session must jointly convene within 24 hours of the proclamation or suspension for the purpose of reviewing its validity; and
4. The Congress, voting jointly, may revoke or affirm the President's proclamation or suspension, allow their limited effectivity to lapse, or extend the same if Congress deems warranted.

It is evident that under the 1987 Constitution the President and the Congress act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of habeas corpus. They exercise the power, not only sequentially, but in a sense jointly since, after the President has initiated the proclamation or the suspension, only the Congress can maintain the same based on its own evaluation of the situation on the ground, a power that the President does not have.
Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of habeas corpus is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court.

Here, President Arroyo withdrew Proclamation 1959 before the joint houses of Congress, which had in fact convened, could act on the same. Consequently, the petitions in these cases have become moot and the Court has nothing to review. The lifting of martial law and restoration of the privilege of the writ of habeas corpus in Maguindanao was a supervening event that obliterated any justiciable controversy.

Second. Since President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of habeas corpus in just eight days, they have not been meaningfully implemented. The military did not take over the operation and control of local government units in Maguindanao. The President did not issue any law or decree affecting Maguindanao that should ordinarily be enacted by Congress. No indiscriminate mass arrest had been reported. Those who were arrested during the period were either released or promptly charged in court. Indeed, no petition for habeas corpus had been filed with the Court respecting arrests made in those eight days. The point is that the President intended by her action to address an uprising in a relatively small and sparsely populated province. In her judgment, the rebellion was localized and swiftly disintegrated in the face of a determined and amply armed government presence.

In Lansang v. Garcia, the Court received evidence in executive session to determine if President Marcos' suspension of the privilege of the writ of habeas corpus in 1971 had sufficient factual basis. In Aquino, Jr. v. Enrile, while the Court took judicial notice of the factual bases for President Marcos' proclamation of martial law in 1972, it still held hearings on the petitions for habeas corpus to determine the constitutionality of the arrest and detention of the petitioners. Here, however, the Court has not bothered to examine the evidence upon which President Arroyo acted in issuing Proclamation 1959, precisely because it felt no need to, the proclamation having been withdrawn within a few days of its issuance.

Notably, under Section 18, Article VII of the 1987 Constitution, the Court has only 30 days from the filing of an appropriate proceeding to review the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus. Thus –

> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

More than two years have passed since petitioners filed the present actions to annul Proclamation 1959. When the Court did not decide it then, it actually opted for a default as was its duty, the question having become moot and academic.

The problem in this case is that the President aborted the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus in Maguindanao in just eight days. In a real sense, the proclamation and the suspension never took off. The Congress itself adjourned without touching the matter, it having become moot and academic.

Of course, the Court has in exceptional cases passed upon issues that ordinarily would have been regarded as moot. But the present cases do not present sufficient basis for the exercise of the power of judicial review. The proclamation of martial law and the suspension of the privilege of the writ of habeas corpus in this case, unlike similar Presidential acts in the late 60s and early 70s, appear more like saber-rattling than an actual deployment and arbitrary use of political power.

REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, GARY C. ALEJAÑO, EMMANUEL A. BILLONES, AND TEDDY BRAWNER BAGUILAT, JR., *Petitioners*, -versus- HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY; HON. DELFIN N. LORENZANA, SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE AND MARTIAL LAW ADMINISTRATOR; AND GEN. EDUARDO AÑO, CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND MARTIAL LAW IMPLEMENTOR, *Respondents.*
G.R No. 231658, EN BANC, July 04, 2017, DEL CASTILLO, *J.*

To recall, the Court, in the case of In the Matter of the Petition for Habeas Corpus of Lansang, which was decided under the 1935 Constitution, held that it can inquire into, within proper bounds, whether there has been adherence to or compliance with the constitutionally-imposed limitations on the Presidential power to suspend the privilege of the writ of habeas corpus. "Lansang limited the review function of the Court to a very prudentially narrow test of arbitrariness."

Lansang, however, was decided under the 1935 Constitution. The 1987 Constitution, by providing only for judicial review based on the determination of the sufficiency of the factual bases, has in fact done

away with the test of arbitrariness as provided in Lansang. Thus, the phrase "sufficiency of factual basis" in Section 18, Article VII of the Constitution should be understood as the only test for judicial review of the President's power to declare martial law and suspend the privilege of the writ of habeas corpus under Section 18, Article VII of the Constitution.

In this case, the Court held that it does not need to satisfy itself that the President's decision is correct, rather it only needs to determine whether the President's decision had sufficient factual bases. Therefore, that Section 18, Article VII limits the scope of judicial review by the introduction of the "sufficiency of the factual basis" test.

As Commander-in-Chief, the President has the sole discretion to declare martial law and/or to suspend the privilege of the writ of habeas corpus, subject to the revocation of Congress and the review of this Court. Since the exercise of these powers is a judgment call of the President, the determination of this Court as to whether there is sufficient factual basis for the exercise of such, must be based only on facts or information known by or available to the President at the time he made the declaration or suspension, which facts or information are found in the proclamation as well as the written Report submitted by him to Congress. Verily, the Court upholds the validity of the declaration of martial law and suspension of the privilege of the writ of habeas corpus in the entire Mindanao region.

FACTS:
Effective May 23, 2017, and for a period not exceeding 60 days, President Rodrigo Roa Duterte issued Proclamation No. 216 declaring a state of martial law and suspending the privilege of the writ of habeas corpus in the whole of Mindanao.

Within the timeline set by Section 18, Article VII of the Constitution, the President submitted to Congress on May 25, 2017, a written Report on the factual basis of Proclamation No. 216.The Report pointed out that for decades, Mindanao has been plagued with rebellion and lawless violence which only escalated and worsened with the passing of time.

The President went on to explain that on May 23, 2017, a government operation to capture the high-ranking officers of the Abu Sayyaf Group (ASG) and the Maute Group was conducted. These groups, which have been unleashing havoc in Mindanao, however, confronted the government operation by intensifying their efforts at sowing violence aimed not only against the government authorities and its facilities but likewise against civilians and their properties.

In particular, the President chronicled in his Report the events which took place on May 23, 2017 in Marawi City which impelled him to declare a state of martial law and suspend the privilege of writ of habeas corpus.

The unfolding of these events, as well as the classified reports he received, led the President to conclude that -These activities constitute not simply a display of force, but a clear attempt to establish the groups' seat of power in Marawi City for their planned establishment of a DAESH wilayat or province covering the entire Mindanao.The cutting of vital lines for transportation and power; the recruitment of young Muslims to further expand their ranks and strengthen their force; the armed consolidation of their members throughout Marawi City; the decimation of a segment of the city population who resist; and the brazen display of DAESH flags constitute a clear, pronounced, and unmistakable intent to remove Marawi City, and eventually the rest of Mindanao, from its allegiance

to the Government. There exists no doubt that lawless armed groups are attempting to deprive the President of his power, authority, and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao, in an attempt to undermine his control over executive departments, bureaus, and offices in said area; defeat his mandate to ensure that all laws are faithfully executed; and remove his supervisory powers over local governments.

According to the Report, the lawless activities of the ASG, Maute Group, and other criminals, brought about undue constraints and difficulties to the military and government personnel, particularly in the performance of their duties and functions, and untold hardships to the civilians.

The Report highlighted the strategic location of Marawi City and the crucial and significant role it plays in Mindanao, and the Philippines as a whole. In addition, the Report pointed out the possible tragic repercussions once Marawi City falls under the control of the lawless groups.

The President ended his Report in this wise:While the government is presently conducting legitimate operations to address the on-going rebellion, if not the seeds of invasion, public safety necessitates the continued implementation of martial law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao until such time that the rebellion is completely quelled.

In addition to the Report, representatives from the Executive Department, the military and police authorities conducted briefings with the Senate and the House of Representatives relative to the declaration of martial law.

After the submission of the Report and the briefings, the Senate issued P.S. Resolution No. 388 expressing full support to the martial law proclamation and finding Proclamation No. 216 "to be satisfactory, constitutional and in accordance with the law". In the same Resolution, the Senate declared that it found "no compelling reason to revoke the same".

The Senate's counterpart in the lower house shared the same sentiments. The House of Representatives likewise issued House Resolution No. 1050 "EXPRESSING THE FULL SUPPORT OF THE HOUSE OF REPRESENTATIVES TO PRESIDENT RODRIGO DUTERTE AS IT FINDS NO REASON TO REVOKE PROCLAMATION NO. 216, ENTITLED 'DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE WHOLE OF MINDANAO'"

The OSG acknowledges that Section 18, Article VII of the Constitution vests the Court with the authority or power to review the sufficiency of the factual basis of the declaration of martial law

The Petitions:
A) G.R. No. 231658 (Lagman Petition)

First, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis because there is no rebellion or invasion in Marawi City or in any part of Mindanao.

It argues that acts of terrorism in Mindanao do not constitute rebellion since there is no proof that its purpose is to remove Mindanao or any part thereof from allegiance to the Philippines, its laws, or its territory.

The Lagman Petition insists that during the briefing, representatives of the military and defense authorities did not categorically admit nor deny the presence of an ISIS threat in the country but that they merely gave an evasive answer that "there is ISIS in the Philippines".

Based on said statement, it concludes that the objective of the Maute Group's armed resistance was merely to shield Hapilon and the Maute brothers from the government forces, and not to lay siege on Marawi City and remove its allegiance to the Philippine Republic. It then posit that if at all, there is only a threat of rebellion in Marawi City which is akin to "imminent danger" of rebellion, which is no longer a valid ground for the declaration of martial law.

Second, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis because the President's Report contained "false, inaccurate, contrived and hyperbolic accounts".

Third, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis since the President's Report mistakenly included the attack on the military outpost in Butig, Lanao del Sur in February 2016, the mass jailbreak in Marawi City in August 2016, the Zamboanga siege, the Davao market bombing, the Mamasapano carnage and other bombing incidents in Cotabato, Sultan Kudarat, and Basilan, as additional factual bases for the proclamation of martial law. It contends that these events either took place long before the conflict in Marawi City began, had long been resolved, or with the culprits having already been arrested.

Fourth, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis considering that the President acted alone and did not consult the military establishment or any ranking official before making the proclamation.

Finally, the Lagman Petition claims that the President's proclamation of martial law lacks sufficient factual basis owing to the fact that during the presentation before the Committee of the Whole of the House of Representatives, it was shown that the military was even successful in pre-empting the ASG and the Maute Group's plan to take over Marawi City and other parts of Mindanao; there was absence of any hostile plan by the Moro Islamic Liberation Front; and the number of foreign fighters allied with ISIS was "undetermined" which indicates that there are only a meager number of foreign fighters who can lend support to the Maute Group.

Based on the foregoing argumentation, the Lagman Petition asks the Court to: (1)"exercise its specific and special jurisdiction to review sufficiency of the factual basis of Proclamation No. 216"; and (2) render "a Decision voiding and nullifying Proclamation No. 216" for lack of sufficient factual basis.

B) G.R. No. 231771 (Cullamat Petition)
The Cullamat Petition, "anchored on Section 18, Article VII" of the Constitution, likewise seeks the nullification of Proclamation No. 216 for being unconstitutional because it lacks sufficient factual basis that there is rebellion in Mindanao and that public safety warrants its declaration. In particular, it avers that the supposed rebellion described in Proclamation No. 216 relates to events happening in Marawi City only an not in the entire region of Mindanao.

The Cullamat Petition claims that the alleged "capability of the Maute Group and other rebel groups to sow terror and cause death and damage to property" does not rise to the level of rebellion sufficient to declare martial law in the whole of Mindanao. It also posits that there is no lawless violence in other parts of Mindanao similar to that in Marawi City.

In fine, the Cullamat Petition prays for the Court to declare Proclamation No. 216 as unconstitutional or in the alternative, should the Court find justification for the declaration of martial law and suspension of the privilege of the writ of habeas corpus in Marawi City, to declare the same as unconstitutional insofar as its inclusion of the other parts of Mindanao.

C) G.R. No. 231774 (Mohamad Petition)
The Mohamad Petition posits that martial law is a measure of last resort and should be invoked by the President only after exhaustion of less severe remedies. It contends that the extraordinary powers of the President should be dispensed sequentially, i.e., first, the power to call out the armed forces; second, the power to suspend the privilege of the writ of habeas corpus; and finally, the power to declare martial law. It maintains that the President has no discretion to choose which extraordinary power to use; moreover, his choice must be dictated only by, and commensurate to, the exigencies of the situation.

The Mohamad Petition posits that immediately after the declaration of martial law, and without waiting for a congressional action, a suit may already be brought before the Court to assail the sufficiency of the factual basis of Proclamation No. 216.

Finally, in invoking this Court's power to review the sufficiency of the factual basis for the declaration of martial law and the suspension of the privilege of the writ of habeas corpus, the Mohamad Petition insists that the Court may "look into the wisdom of the [President's] actions, [and] not just the presence of arbitrariness". Further, it asserts that since it is making a negative assertion, then the burden to prove the sufficiency of the factual basis is shifted to and lies on the respondents.

The Consolidated Comment
The OSG acknowledges that Section 18, Article VII of the Constitution vests the Court with the authority or power to review the sufficiency of the factual basis of the declaration of martial law. The OSG, however, posits that although Section 18, Article VII lays the basis for the exercise of such authority or power, the same constitutional provision failed to specify the vehicle, mode or remedy through which the "appropriate proceeding" mentioned therein may be resorted to. The OSG suggests that the "appropriate proceeding" referred to in Section 18, Article VII may be availed of using the vehicle, mode or remedy of a certiorari petition, either under Section 1 or 5, of Article VIII. Corollarily, the OSG maintains that the review power is not mandatory, but discretionary only, on the part of the Court. The Court has the discretion not to give due course to the petition.

Prescinding from the foregoing, the OSG contends that the sufficiency of the factual basis of Proclamation No. 216 should be reviewed by the Court "under the lens of grave abuse of discretion" and not the yardstick of correctness of the facts.

The OSG maintains that the burden lies not with the respondents but with the petitioners to prove that Proclamation No. 216 is bereft of factual basis.

Likewise, the OSG posits that the sufficiency of the factual basis must be assessed from the trajectory or point of view of the President and based on the facts available to him at the time the decision was made. It argues that the sufficiency of the factual basis should be examined not based on the facts discovered after the President had made his decision to declare martial law because to do so would subject the exercise of the President's discretion to an impossible standard.

It is also the assertion of the OSG that the President could validly rely on intelligence reports coming from the Armed Forces of the Philippines; and that he could not be expected to personally determine the veracity of the contents of the reports. Also, since the power to impose martial law is vested solely on the President as Commander-in-Chief, the lack of recommendation from the Defense Secretary, or any official for that matter, will not nullify the said declaration, or affect its validity, or compromise the sufficiency of the factual basis.

Finally, the OSG points out that it has no duty or burden to prove that Proclamation No. 216 has sufficient factual basis. It maintains that the burden rests with the petitioners. However, the OSG still endeavors to lay out the factual basis relied upon by the President "if only to remove any doubt as to the constitutionality of Proclamation No. 216".

ISSUES:

1. Whether or not the petitions docketed as G.R. Nos. 231658, 231771, and 231774 are the "appropriate proceeding" covered by Paragraph 3, Section 18, Article VII of the Constitution sufficient to invoke the mode of review required of this Court when a declaration of martial law or the suspension of the privilege of the writ of habeas corpus is promulgated;
2. Whether or not the President in declaring martial law and suspending the privilege of the writ of habeas corpus: is required to be factually correct or only not arbitrary in his appreciation of facts; is required to obtain the favorable recommendation thereon the Secretary of National Defense; is required to take into account only the situation at the time of the proclamation, even if subsequent events prove the situation to have not been accurately reported;
3. Whether or not the power of this Court to review the sufficiency of the factual basis [of] the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus is independent of the actual actions that have been taken by Congress jointly or separately;
4. Whether or not there were sufficient factual [basis] for the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus;
    a. What are the parameters for review?
    b. Who has the burden of proof?
    c. What is the threshold of evidence?
5. Whether the exercise of the power of judicial review by this Court involves the calibration of graduated powers granted the President a Commander-in-Chief, namely calling out powers, suspension of the privilege of the writ of habeas corpus, and declaration of martial law;
6. Whether or not Proclamation No. 216 of 23 May 2017 may be considered vague and thus null and void:
7. Whether or not the armed hostilities mentioned in Proclamation No. 216 and in the Report of the President to Congress are sufficient [bases]:
    a. for the existence of actual rebellion; or
    b. for a declaration of martial law or the suspension of the privilege of the writ of habeas corpus in the entire Mindanao region;

RULING:

I. Locus standi of petitioners.

One of the requisites for judicial review is locus standi, i.e., "the constitutional question is brought before [the Court] by a party having the requisite 'standing' to challenge it." As a general rule, the challenger must have "a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement."

Over the years, there has been a trend towards relaxation of the rule on legal standing, a prime example of which is found in Section 18 of Article VII which provides that any citizen may file the appropriate proceeding to assail the sufficiency of the factual basis of the declaration of martial law or the suspension of the privilege of the writ of habeas corpus. "[T]he only requisite for standing to challenge the validity of the suspension is that the challenger be a citizen. He need not even be a taxpayer."

Considering, however, the trend towards relaxation of the rules on legal standing, as well as the transcendental issues involved in the present Petitions, the Court will exercise judicial self-restraint and will not venture into this matter.

II. Whether or not the petitions are the "appropriate proceeding" covered by paragraph 3, Section 18, Article VII of the Constitution sufficient to invoke the mode of review required by the Court. During the oral argument, the petitioners theorized that the jurisdiction of this Court under the third paragraph of Section 18, Article VII is sui generis. It is a special and specific jurisdiction of the Supreme Court different from those enumerated in Sections 1 and 5 of Article VIII.

The Court agrees.
a) Jurisdiction must be specifically conferred by the Constitution or by law.

It is settled that jurisdiction over the subject matter is conferred only by the Constitution or by the law. Unless jurisdiction has been specifically conferred by the Constitution or by some legislative act, no body or tribunal has the power to act or pass upon a matter brought before it for resolution. It is likewise settled that in the absence of a clear legislative intent, jurisdiction cannot be implied from the language of the Constitution or a statute. It must appear clearly from the law or it will not be held to exist.

A plain reading of the afore-quoted Section 18, Article VII reveals that it specifically grants authority to the Court to determine the sufficiency of the factual basis of the proclamation of martial law or suspension of the privilege of the writ of habeas corpus.

b) "In an appropriate proceeding" does not refer to a petition for certiorari filed under Section 1 or 5 of Article VIII.

The standard of review in a petition for certiorari is whether the respondent has committed any grave abuse of discretion amounting to lack or excess of jurisdiction in the performance of his or her functions.

Thus, it is not the proper tool to review the sufficiency of the factual basis of the proclamation or suspension. It must be emphasized that under Section 18, Article VII, the Court is tasked to review the sufficiency of the factual basis of the President's exercise of emergency powers.

c) Purpose/significance of Section 18, Article VII is to constitutionalize the pre-Marcos martial law ruling in In the Matter of the Petition for Habeas Corpus of Lansang.

The third paragraph of Section 18, Article VII was inserted by the framers of the 1987 Constitution to constitutionalize the pre-Marcos martial law ruling of this Court in In the Matter of the Petition for Habeas Corpus of Lansang, to wit: that the factual basis of the declaration of martial law or the

suspension of the privilege of the writ of habeas corpus is not a political question but precisely within the ambit of judicial review.

Fr. Joaquin G. Bernas, S.J. (Fr. Bernas), a member of the Constitutional Commission that drafted the 1987 Constitution, explained:

> The Commander-in-Chief provisions of the 1935 Constitution had enabled President Ferdinand Marcos to impose authoritarian rule on the Philippines from 1972 to 1986. Supreme Court decisions during that period upholding the actions taken by Mr. Marcos made authoritarian rule part of Philippine constitutional jurisprudence. The members of the Constitutional Commission, very much aware of these facts, went about reformulating the Commander-in-Chief powers with a view to dismantling what had been constructed during the authoritarian years. The new formula included revised grounds for the activation of emergency powers, the manner of activating them, the scope of the powers, and review of presidential action.

To recall, the Court held in the 1951 case of Montenegro v. Castañeda that the authority to decide whether there is a state of rebellion requiring the suspension of the privilege of the writ of habeas corpus is lodged with the President and his decision thereon is final and conclusive upon the courts. This ruling was reversed in the 1971 case of Lansang where it was held that the factual basis of the declaration of martial law and the suspension of the privilege of the writ of habeas corpus is not a political question and is within the ambit of judicial review. However, in 1983, or after the declaration of martial law by former President Ferdinand E. Marcos, the Court, in Garcia-Padilla v. Enrile, abandoned the ruling in Lansang and reverted to Montenegro. According to the Supreme Court, the constitutional power of the President to suspend the privilege of the writ of habeas corpus is not subject to judicial inquiry.

Thus, by inserting Section 18 in Article VII which allows judicial review of the declaration of martial law and suspension of the privilege of the writ of habeas corpus, the framers of the 1987 Constitution in effect constitutionalized and reverted to the Lansang doctrine.

d) Purpose of Section 18, Article VII is to provide additional safeguard against possible abuse by the President on the exercise of the extraordinary powers.

This is clear from the records of the Constitutional Commission when its members were deliberating on whether the President could proclaim martial law even without the concurrence of Congress. Thus –

> MR. MONSOD. Yes, Madam President, in the case of Mr. Marcos, he is undoubtedly an aberration in our history and national consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. As I said, it is not really true, as the Gentleman has mentioned, that there is an exclusive right to determine the factual basis because the paragraph beginning on line 9 precisely tells us that the Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision on the same within 30 days from its filing.

To give more teeth to this additional safeguard, the framers of the 1987 Constitution not only placed the President's proclamation of martial law or suspension of the privilege of the writ of habeas corpus

within the ambit of judicial review, it also relaxed the rule on standing by allowing any citizen to question before this Court the sufficiency of the factual basis of such proclamation or suspension.

It further designated this Court as the reviewing tribunal to examine, in an appropriate proceeding, the sufficiency of the factual basis and to render its decision thereon within a limited period of 30 days from date of filing.

e) Purpose of Section 18, Article VII is to curtail the extent of the powers of the President.

The most important objective, however, of Section 18, Article VII is the curtailment of the extent of the powers of the Commander-in-Chief. This is the primary reason why the provision was not placed in Article VIII or the Judicial Department but remained under Article VII or the Executive Department.
f) To interpret "appropriate proceeding" as filed under Section 1 of Article VIII would be contrary to the intent of the Constitution.

To conclude that the "appropriate proceeding" refers to a Petition for Certiorari filed under the expanded jurisdiction of this Court would, therefore, contradict the clear intention of the framers of the Constitution to place additional safeguards against possible martial law abuse for, invariably, the third paragraph of Section 18, Article VII would be subsumed under Section I of Article VIII.

g) Jurisdiction of the Court is not restricted to those enumerated in Sections 1 and 5 of Article VIII.

h) Unique features of the third paragraph of Section 18, Article VII make it sui generis.

The unique features of the third paragraph of Section 18, Article VII clearly indicate that it should be treated as sui generis separate and different from those enumerated in Article VIII.

Under the third paragraph of Section 18, Article VII, a petition filed pursuant therewith will follow a different rule on standing as any citizen may file it.

Said provision of the Constitution also limits the issue to the sufficiency of the factual basis of the exercise by the Chief Executive of his emergency powers.

The usual period for filing pleadings in Petition for Certiorari is likewise not applicable under the third paragraph of Section 18, Article VII considering the limited period within which this Court has to promulgate its decision.

In fine, the phrase "in an appropriate proceeding" appearing on the third paragraph of Section 18, Article VII refers to any action initiated by a citizen for the purpose of questioning the sufficiency of the factual basis of the exercise of the Chief Executive's emergency powers, as in these cases. It could be denominated as a complaint, a petition, or a matter to be resolved by the Court.

III. The power of the Court to review the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege, of the writ of habeas corpus under Section 18, Article VII of the 1987 Constitution is independent of the actions taken by Congress.

The framers of the 1987 Constitution reformulated the scope of the extraordinary powers of the President as Commander-in-Chief and the review of the said presidential action. In particular, the

President's extraordinary powers of suspending the privilege of the writ of habeas corpus and imposing martial law are subject to the veto powers of the Court and Congress.

a) The judicial power to review versus the congressional power to revoke.

The Court may strike down the presidential proclamation in an appropriate proceeding filed by any citizen on the ground of lack of sufficient factual basis. On the other hand, Congress may revoke the proclamation or suspension, which revocation shall not be set aside by the President.

In reviewing the sufficiency of the factual basis of the proclamation o suspension, the Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to "undertake an independent investigation beyond the pleadings."

On the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration.

In addition, the Court's review power is passive; it is only initiated by the filing of a petition "in an appropriate proceeding" by a citizen. On the other hand, Congress' review mechanism is automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension was made.

Thus, the power to review by the Court and the power to revoke by Congress are not only totally different but likewise independent from each other although concededly, they have the same trajectory, which is, the nullification of the presidential proclamation.

b) The framers of the 1987 Constitution intended the judicial power to review to be exercised independently from the congressional power to revoke.

c) Re-examination of the Court's pronouncement in Fortun v. President Macapagal-Arroyo.

Considering the above discussion, the Court finds it imperative to re-examine, reconsider, and set aside its pronouncement in Fortun v. President Macapagal-Arroyo to the effect that:

> The constitutional validity of the President's proclamation of martial law or suspension of the writ of habeas corpus is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court.

By the above pronouncement, the Court willingly but unwittingly clipped its own power and surrendered the same to Congress as well as, abdicated from its bounden duty to review. Worse, the Court considered itself just on stand-by, waiting and willing to act as a substitute in case Congress "defaults."

We, therefore, hold that the Court can simultaneously exercise its power of review with, and independently from, the power to revoke by Congress. Corollary, any perceived inaction or default on the part of Congress does not deprive or deny the Court of its power to review.

IV. The judicial power to review the sufficiency of factual basis of the declaration of martial law or the suspension of the privilege of the writ of habeas corpus does not extend to the calibration of the President's decision of which among his graduated powers he will avail of in a given situation.

The President as the Commander-in-Chief wields the extraordinary powers of: a) calling out the armed forces; b) suspending the privilege of the writ of habeas corpus; and c) declaring martial law. These powers may be resorted to only under specified conditions.

a) Extraordinary powers of the President distinguished.

Among the three extraordinary powers, the calling out power is the most benign and involves ordinary police action.

The President may resort to this extraordinary power whenever it becomes necessary to prevent or suppress lawless violence, invasion, or rebellion. "[T]he power to call is fully discretionary to the President;" the only limitations being that he acts within permissible constitutional boundaries or in a manner not constituting grave abuse of discretion.

The extraordinary powers of suspending the privilege of the writ of habeas corpus and/or declaring martial law may be exercised only when there is actual invasion or rebellion, and public safety requires it.

The 1987 Constitution imposed the following limits in the exercise of these powers: "(1) a time limit of sixty days; (2) review and possible revocation by Congress; [and] (3) review and possible nullification by the Supreme Court."

The powers to declare martial law and to suspend the privilege of the writ of habeas corpus involve curtailment and suppression of civil rights and individual freedom. Thus, the declaration of martial law serves as a warning to citizens that the Executive Department has called upon the military to assist in the maintenance of law and order, and while the emergency remains, the citizens must, under pain of arrest and punishment, not act in a manner that will render it more difficult to restore order and enforce the law. As such, their exercise requires more stringent safeguards by the Congress, and review by the Court.

b) What really happens during martial law?

A state of martial law does not suspend the operation of the Constitution; therefore, it does not suspend the principle of separation of powers.

In actual war when there is fighting in an area, the President as the commanding general has the authority to issue orders which have the effect of law but strictly in a theater of war, not in the situation we had during the period of martial law.

This phrase was precisely put here because we have clarified the meaning of martial law; meaning, limiting it to martial law as it has existed in the jurisprudence in international law, that it is a law for the theater of war. In a theater of war, civil courts are unable to function. If in the actual theater of war civil courts, in fact, are unable to function, then the military commander is authorized to give jurisdiction even over civilians to military courts precisely because the civil courts are closed in that area. But in the general area where the civil courts are open then in no case can the military courts be given jurisdiction over civilians. This is in reference to a theater of war where the civil courts, in fact, are unable to function.

This is because martial law does not suspend the operation of the Constitution, neither does it supplant the operation of civil courts or legislative assemblies. Moreover, the guarantees under the Bill of Rights remain in place during its pendency. And in such instance where the privilege of the writ of habeas corpus is also suspended, such suspension applies only to those judicially charged with rebellion or offensed connected with invasion.

c) "Graduation" of powers refers to hierarchy based on scope and effect (it does not refer to a sequence) order, or arrangement by which the Commander-in-Chief must adhere to.

Indeed, the 1987 Constitution gives the "President, as Commander-in-Chief, a 'sequence' of 'graduated power[s]'. From the most to the least benign, these are: the calling out power, the power to suspend the privilege of the writ of habeas corpus, and the power to declare martial law."

It must be stressed, however, that the graduation refers only to hierarchy based on scope and effect. It does not in any manner refer to a sequence, arrangement, or order which the Commander-in-Chief must follow. This so-called "graduation of powers" does not dictate or restrict the manner by which the President decides which power to choose.

d) The framers of the 1987 Constitution intended the Congress not to interfere a priori in the decision-making process of the President.

The elimination by the framers of the 1987 Constitution of the requirement of prior concurrence of the Congress in the initial imposition of martial law or suspension of the privilege of the writ of habeas corpus further supports the conclusion that judicial review does not include the calibration of the President's decision of which of his graduated powers will be availed of in a given situation.

e) The Court must similarly and necessarily refrain from calibrating the President's decision of which among his extraordinary powers to avail given a certain situation or condition.

It was precisely this time element that prompted the Constitutional Commission to eliminate the requirement of concurrence of the Congress in the initial imposition by the President of martial law or suspension of the privilege of the writ of habeas corpus.

Considering that the proclamation of martial law or suspension of the privilege of the writ of habeas corpus is now anchored on actual invasion or rebellion and when public safety requires it, and is no longer under threat or in imminent danger thereof, there is a necessity and urgency for the President to act quickly to protect the country.

f) The recommendation of the Defense Secretary is not a condition for the declaration of martial law or suspension of the privilege of the writ of habeas corpus.

Even the recommendation of, or consultation with, the Secretary of National Defense, or other high-ranking military officials, is not a condition for the President to declare martial law. A plain reading of Section 18, Article VII of the Constitution shows that the President's power to declare martial law is not subject to any condition except for the requirements of actual invasion or rebellion and that public safety requires it.

g) In any event, the President initially employed the most benign action - the calling out power - before he declared martial law and suspended the privilege of the writ of habeas corpus.

As the initial and preliminary step towards suppressing and preventing the armed hostilities in Mindanao, the President decided to use his calling out power first. Unfortunately, the situation did not improve; on the contrary, it only worsened. Thus, exercising his sole and exclusive prerogative, the President decided to impose martial law an suspend the privilege of the writ of habeas corpus on the belief that the armed hostilities in Mindanao already amount to actual rebellion and public safety requires it.

V. Whether or not Proclamation No. 216 may be considered vague and thus void because of (a) its inclusion of "other rebel groups"; and (b) the absence of any guideline specifying its actual operational parameters within the entire Mindanao region.

This argument lacks legal basis.

a) Void-for-vagueness doctrine.

The void-for-vagueness doctrine holds that a law is facially invalid if "men of common intelligence must necessarily guess at its meaning and differ as to its application."

[In such instance, the statute] is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle."

b) Vagueness doctrine applies only in free speech cases.

The vagueness doctrine is an analytical tool developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. A facial challenge is allowed to be made to a vague statute and also to one which is overbroad because of possible "'chilling effect' on protected speech that comes from statutes violating free speech.

It is best to stress that the vagueness doctrine has a special application only to free-speech cases. They are not appropriate for testing the validity of penal statutes.

A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible 'chilling effect' upon protected speech

The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

This rationale does not apply to penal statutes. Criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.

In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing 'on their faces' statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute.

c) Proclamation No. 216 cannot be facially challenged using the vagueness doctrine.

Clearly, facial review of Proclamation No. 216 on the grounds of vagueness is unwarranted. Proclamation No. 216 does not regulate speech, religious freedom, and other fundamental rights that may be facially challenged. What it seeks to penalize is conduct, not speech.

d) Inclusion of "other rebel groups" does not make Proclamation No. 216 vague.

But the act must be utterly vague on its face, that is to say, it cannot be clarified by either a saving clause or by construction.

Coates highlights what has been referred to as a 'perfectly vague' act whose obscurity is evident on its face. It is to be distinguished, however, from legislation couched in imprecise language - but which nonetheless specifies a standard though defectively phrased - in which case, it may be 'saved' by proper construction.

The term "other rebel groups" in Proclamation No. 216 is not at all vague when viewed in the context of the words that accompany it. Verily, the text of Proclamation No. 216 refers to "other rebel groups" found in Proclamation No. 55, which it cited by way of reference in its Whereas clauses.

e) Lack of guidelines/operational parameters does not make Proclamation No. 216 vague.

Neither could Proclamation No. 216 be described as vague, and thus void, on the ground that it has no guidelines specifying its actual operational parameters within the entire Mindanao region. Besides, operational guidelines will serve only as mere tools for the implementation of the proclamation.

Clearly, therefore, there is no need for the Court to determine the constitutionality of the implementing and/or operational guidelines, general orders, arrest orders and other orders issued after the proclamation for being irrelevant to its review. Thus, any act committed under the said orders in violation of the Constitution and the laws, such as criminal acts or human rights violations, should be resolved in a separate proceeding.

VI. Whether or not nullifying Proclamation No. 216 will (a) have the effect of recalling Proclamation No. 55; or (b) also nullify the acts of the President in calling out the armed forces to quell lawless violence in Marawi and other parts of the Mindanao region.

a) The calling out power is in a different category from the power to declare martial law and the power to suspend the privilege of the writ of habeas corpus; nullification of Proclamation No. 216 will not affict Proclamation No. 55.

In other words, the President may exercise the power to call out the Armed Forces independently of the power to suspend the privilege of the writ of habeas corpus and to declare martial law, although, of course, it may also be a prelude to a possible future exercise of the latter powers, as in this case.

b) The operative fact doctrine.

Neither would the nullification of Proclamation No. 216 result in the nullification of the acts of the President done pursuant thereto. Under the "operative fact doctrine," the unconstitutional statute is recognized as an "operative fact" before it is declared unconstitutional.

However, it must also be stressed that this "operative fact doctrine" is not a fool-proof shield that would repulse any challenge to acts performed during the effectivity of martial law or suspension of the privilege of the writ of habeas corpus, purportedly in furtherance of quelling rebellion or invasion, and promotion of public safety, when evidence shows otherwise.

VII. The Scope of the Power to Review.

a) The scope of the power of review under the 1987 Constitution refers only to the determination of the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of habeas corpus.

To recall, the Court, in the case of In the Matter of the Petition for Habeas Corpus of Lansang, which was decided under the 1935 Constitution, held that it can inquire into, within proper bounds, whether there has been adherence to or compliance with the constitutionally-imposed limitations on the Presidential power to suspend the privilege of the writ of habeas corpus. "Lansang limited the review function of the Court to a very prudentially narrow test of arbitrariness." Fr. Bernas described the "proper bounds" in Lansang as follows:

> What, however, are these 'proper bounds' on the power of the courts? The Court first gave the general answer that its power was 'merely to check not to supplant the Executive, or to ascertain merely whether he has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act. More specifically, the Court said that its power was not 'even comparable with its power over civil or criminal cases elevated thereto by appeal . . . in which cases the appellate court has all the powers of the court of origin,' nor to its power of quasi-judicial administrative decisions where the Court is limited to asking whether 'there is some evidentiary basis' for the administrative finding. Instead, the Court accepted the Solicitor General's suggestion that it 'go no further than to satisfy [itself] not that the President's decision is correct and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act arbitrarily.'

Lansang, however, was decided under the 1935 Constitution. The 1987 Constitution, by providing only for judicial review based on the determination of the sufficiency of the factual bases, has in fact done away with the test of arbitrariness as provided in Lansang.

b) The "sufficiency of factual basis test".

Similarly, under the doctrine of contemporaneous construction, the framers of the 1987 Constitution are presumed to know the prevailing jurisprudence at the time they were drafting the Constitution.

Thus, the phrase "sufficiency of factual basis" in Section 18, Article VII of the Constitution should be understood as the only test for judicial review of the President's power to declare martial law and suspend the privilege of the writ of habeas corpus under Section 18, Article VII of the Constitution. The Court does not need to satisfy itself that the President's decision is correct, rather it only needs to determine whether the President's decision had sufficient factual bases.

We conclude, therefore, that Section 18, Article VII limits the scope of judicial review by the introduction of the "sufficiency of the factual basis" test.

As Commander-in-Chief, the President has the sole discretion to declare martial law and/or to suspend the privilege of the writ of habeas corpus, subject to the revocation of Congress and the review of this Court. Since the exercise of these powers is a judgment call of the President, the determination of this Court as to whether there is sufficient factual basis for the exercise of such, must be based only on facts or information known by or available to the President at the time he made the declaration or suspension, which facts or information are found in the proclamation as well as the written Report submitted by him to Congress.
In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation.

Corollary, as the President is expected to decide quickly on whether there is a need to proclaim martial law even only on the basis of intelligence reports, it is irrelevant, for purposes of the Court's review, if subsequent events prove that the situation had not been accurately reported to him.

After all, the Court's review is confined to the sufficiency, not accuracy, of the information at hand during the declaration or suspension; subsequent events do not have any bearing insofar as the Court's review is concerned

Hence, the maxim falsus in uno, falsus in omnibus finds no application in this case. Falsities of and/or inaccuracies in some of the facts stated in the proclamation and the written report are not enough reasons for the Court to invalidate the declaration and/or suspension as long as there are other facts in the proclamation and the written Report that support the conclusion that there is an actual invasion or rebellion and that public safety requires the declaration and/or suspension.

VIII. The parameters for determining the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of habeas corpus.

a) Actual invasion or rebellion, and public safety requirement.

Section 18, Article VII itself sets the parameters for determining the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of habeas corpus, "namely (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power." Without the concurrence of the two conditions, the President's declaration of martial law and/or suspension of the privilege of the writ of habeas corpus must be struck down.

As a general rule, a word used in a statute which has a technical or legal meaning, is construed to have the same technical or legal meaning. Since the Constitution did not define the term "rebellion," it must be understood to have the same meaning as the crime of "rebellion" in the Revised Penal Code (RPC).

Thus, rebellion as mentioned in the Constitution could only refer to rebellion as defined under Article 134 of the RPC.

Art. 134. Rebellion or insurrection; How committed. - The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.
Thus, for rebellion to exist, the following elements must be present, to wit: "(1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives."

b) Probable cause is the allowable standard of proof for the President.

In determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers.

Along this line, Justice Carpio, in his Dissent in Fortun v. President Macapagal-Arroyo, concluded that the President needs only to satisfy probable cause as the standard of proof in determining the existence of either invasion or rebellion for purposes of declaring martial law, and that probable cause is the most reasonable, most practical and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion necessary for a declaration of martial law or suspension of the writ.

To summarize, the parameters for determining the sufficiency of factual basis are as follows: 1) actual rebellion or invasion; 2) public safety requires it; the first two requirements must concur; and 3) there is probable cause for the President to believe that there is actual rebellion or invasion.

IX. There is sufficient factual basis for the declaration of martial law and the suspension of the writ of habeas corpus.

At this juncture, it bears to emphasize that the purpose of judicial review is not the determination of accuracy or veracity of the facts upon which the President anchored his declaration of martial law or suspension of the privilege of the writ of habeas corpus; rather, only the sufficiency of the factual basis as to convince the President that there is probable cause that rebellion exists. It must also be reiterated that martial law is a matter of urgency and much leeway and flexibility should be accorded the President. As such, he is not expected to completely validate all the information he received before declaring martial law or suspending the privilege of the writ of habeas corpus.

We restate the elements of rebellion for reference:1. That there be (a) public uprising, and (b) taking up arms against the Government; and 2. That the purpose of the uprising or movement is either: (a) to remove from the allegiance to said Government or its laws the territory of the Philippines or any part thereof, or any body of land, naval or other armed forces or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.

a) Facts, events and information upon which the President anchored his decision to declare martial law and suspend the privilege of the writ of habeas corpus.

Since the President supposedly signed Proclamation No. 216 on May 23, 2017 at 10:00 PM, the Court will consider only those facts and/or events which were known to or have transpired on or before that time, consistent with the scope of judicial review.

b) The President's Conclusion

Thus, the President deduced from the facts available to him that there was an armed public uprising, the culpable purpose of which was to remove from the allegiance to the Philippine Government a portion of its territory and to deprive the Chief Executive of any of his powers and prerogatives, leading the President to believe that there was probable cause that the crime of rebellion was and is being committed and that public safety requires the imposition of martial law and suspension of the privilege of the writ of habeas corpus.

A review of the aforesaid facts similarly leads the Court to conclude that the President, in issuing Proclamation No. 216, had sufficient factual bases tending to show that actual rebellion exists.

The President's conclusion, that there was an armed public uprising, the culpable purpose of which was the removal from the allegiance of the Philippine Government a portion of its territory and the deprivation of the President from performing his powers and prerogatives, was reached after a tactical consideration of the facts. In fine, the President satisfactorily discharged his burden of proof.

After all, what the President needs to satisfy is only the standard of probable cause for a valid declaration of martial law and suspension of the privilege of the writ of habeas corpus.

c) Inaccuracies, simulations, falsities, and hyperboles.

The allegation in the Lagman Petition that the facts stated in Proclamation No. 216 and the Report are false, inaccurate, simulated, and/or hyperbolic, does not persuade. As mentioned, the Court is not concerned about absolute correctness, accuracy, or precision of the facts because to do so would unduly tie the hands of the President in responding to an urgent situation.

However, the so-called counter-evidence were derived solely from unverified news articles on the internet, with neither the authors nor the sources shown to have affirmed the contents thereof. It was not even shown that efforts were made to secure such affirmation albeit the circumstances proved futile. As the Court has consistently ruled, news articles are hearsay evidence, twice removed, and are thus without any probative value, unless offered for a purpose other than proving the truth of the matter asserted. This pronouncement applies with equal force to the Cullamat Petition which likewise submitted online news articles as basis for their claim of insufficiency of factual basis.

d) Ruling in Bedol v. Commission on Elections not applicable.

The Court in Bedol made it clear that the doctrine of independent relevant statement, which is an exception to the hearsay rule, applies in cases "where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial." Here, the question is not whether such statements were made by Saber, et al., but rather whether what they said are true. Thus, contrary to the view of petitioners, the exception in Bedol finds no application here.

e) There are other independent facts which support the finding that, more likely than not, rebellion exists and that public safety requires it.

X. Public safety requires the declaration of martial law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao.
For a declaration of martial law or suspension of the privilege of the writ of habeas corpus to be valid, there must be a concurrence of actual rebellion or invasion and the public safety requirement.
In his Report, the President noted that the acts of violence perpetrated by the ASG and the Maute Group were directed not only against government forces or establishments but likewise against civilians and their properties.

These particular scenarios convinced the President that the atrocities had already escalated to a level that risked public safety and thus impelled him to declare martial law and suspend the privilege of the writ of habeas corpus.

Based on the foregoing, we hold that the parameters for the declaration of martial law and suspension of the privilege of the writ of habeas corpus have been properly and fully complied with. Proclamation No. 216 has sufficient factual basis there being probable cause to believe that rebellion exists and that public safety requires the martial law declaration and the suspension of the privilege of the writ of habeas corpus.

XI. Whole of Mindanao

a) The overriding and paramount concern of martial law is the protection of the security of the nation and the good and safety of the public.

Indeed, martial law and the suspension of the privilege of the writ of habeas corpus are necessary for the protection of the security of the nation; suspension of the privilege of the writ of habeas corpus is "precautionary, and although it might [curtail] certain rights of individuals, [it] is for purpose of defending and protecting the security of the state or the entire country and our sovereign people". Commissioner Ople referred to the suspension of the privilege of the writ of habeas corpus as a "form of immobilization" or "as a means of immobilizing potential internal enemies" "especially in areas like Mindanao."

Aside from protecting the security of the country, martial law also guarantees and promotes public safety. It is worthy of mention that rebellion alone does not justify the declaration of martial law or suspension of the privilege of the writ of habeas corpus; the public safety requirement must likewise be present.
b) As Commander-in-Chief, the President receives vital, relevant, classified, and live information which equip and assist him in making decisions.

At this juncture, it may not be amiss to state that as Commander-in-Chief, the President has possession of documents and information classified as "confidential", the contents of which cannot be included in the Proclamation or Report for reasons of national security.

It is beyond cavil that the President can rely on intelligence reports and classified documents. "It is for the President as [C]ommander-in--[C]hief of the Armed Forces to appraise these [classified evidence or documents/] reports and be satisfied that the public safety demands the suspension of the writ." Significantly, respect to these so-called classified documents is accorded even "when [the] authors of or witnesses to these documents may not be revealed."

c) The Court has no machinery or tool equal to that of the Commander-in-Chief to ably and properly assess the ground conditions.

In contrast, the Court does not have the same resources available to the President. However, this should not be considered as a constitutional lapse. On the contrary, this is in line with the function of the Court, particularly in this instance, to determine the sufficiency of factual basis of Proclamation No. 216.

d) The 1987 Constitution grants to the President, as Commander-in-Chief the discretion to determine the territorial coverage or application of martial law or suspension of the privilege of the writ of habeas corpus.

This is both an acknowledgement and a recognition that it is the Executive Department, particularly the President as Commander-in-Chief, who is the repository of vital, classified, and live information necessary for and relevant in calibrating the territorial application of martial law and the suspension of the privilege of the writ of habeas corpus. It, too, is a concession that the President has the tactical and military support, and thus has a more informed understanding of what is happening on the ground. Thus, the Constitution imposed a limitation on the period of application, which is 60 days, unless sooner nullified, revoked or extended, but not on the territorial scope or area of coverage; it merely stated "the Philippines or any part thereof," depending on the assessment of the President.

e) The Constitution has provided sufficient safeguards against possible abuses of Commander-in-Chief's powers; further curtailment of Presidential powers should not only be discouraged but also avoided.

The significance of martial law should not be undermined by unjustified fears and past experience. After all, martial law is critical and crucial to the promotion of public safety, the preservation of the nation's sovereignty and ultimately, the survival of our country. It is vital for the protection of the country not only against internal enemies but also against those enemies lurking from beyond our shores. As such, martial law should not be cast aside, or its scope and potency limited and diluted, based on bias and unsubstantiated assumptions.

Conscious of these fears and apprehensions, the Constitution placed several safeguards which effectively watered down the power to declate martial law. The 1987 Constitution "[clipped] the powers of [the] Commander-in-Chief because of [the] experience with the previous regime." Not only were the grounds limited to actual invasion or rebellion, but its duration was likewise fixed at 60 days, unless sooner revoked, nullified, or extended; at the same time, it is subject to the veto powers of the Court and Congress.

At this juncture, it bears to stress that it was the collective sentiment of the framers of the 1987 Constitution that sufficient safeguards against possible misuse and abuse by the Commander-in-Chief of his extraordinary powers are already in place and that no further emasculation of the presidential powers is called for in the guise of additional safeguards. The Constitution recognizes that any further curtailment, encumbrance, or emasculation of the presidential powers would not generate any good among the three co-equal branches, and to the country and its citizens as a whole.

f) Rebellion and public safety; nature, scope, and range.

It has been said that the "gravamen of the crime of rebellion is an armed public uprising against the govemment;" and that by nature, "rebellion is x x x a crime of masses or multitudes, involving crowd action, that cannot be confined a priori, within predetermined bounds."

However, it must be pointed out that for the crime of rebellion to be consummated, it is not required that all armed participants should congregate in one place, in this case, the Court's compound, and publicly rise in arms against the government for the attainment of their culpable purpose. It suffices that a portion of the contingent gathered and formed a mass or a crowd and engaged in an army public uprising against the government. Similarly, it cannot be validly concluded that the grounds on which the armed public uprising actually took place should be the measure of the extent, scope or range, of the actual rebellion.

To answer this question, we revert back to the premise that the discretion to determine the territorial scope of martial law lies with the President. The Constitution grants him the prerogative whether to put the entire Philippines or any part thereof under martial law. There is no constitutional edict that martial law should be confined only in the particular place where the armed public uprising actually transpired. This is not only practical but also logical. Martial law is an urgent measure since at stake is the nation's territorial sovereignty and survival. As such, the President has to respond quickly.

Public safety, which is another component element for the declaration of martial law, "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters." Public safety is an abstract term; it does not take any physical form. Plainly, its range, extent or scope could not be physically measured by metes and bounds.

In fine, it is difficult, if not impossible, to fix the territorial scope of martial law in direct proportion to the "range" of actual rebellion and public safety simply because rebellion and public safety have no fixed physical dimensions. Their transitory and abstract nature defies precise measurements; hence, the determination of the territorial scope of mart al law could only be drawn from arbitrary, not fixed, variables. The Constitution must have considered these limitations when it granted the President wide leeway and flexibility in determining the territorial scope of martial law.

Moreover, the President's duty to maintain peace and public safety is not limited only to the place where there is actual rebellion; it extends to other areas where the present hostilities are in danger of spilling over. It is not intended merely to prevent the escape of lawless elements from Marawi City, but also to avoid enemy reinforcements and to cut their supply lines coming from different parts of Mindanao. Thus, limiting the proclamation and/or suspension to the place where there is actual rebellion would not only defeat the purpose of declaring martial law, it will make the exercise thereof ineffective and useless.

g) The Court must stay within the confines of its power.

For the Court to overreach is to infringe upon another's territory. Clearly, the power to determine the scope of territorial application belongs to the President. "The Court cannot indulge in judicial legislation without violating the principle of separation of powers, and, hence, undermining the foundation of our republican system."[281]... h) Several local armed groups have formed linkages aimed at committing rebellion and acts in furtherance thereof in the whole of Mindanao.

Marawi lies in the heart of Mindanao.

Thus, there is reasonable basis to believe that Marawi is only the staging point of the rebellion, both for symbolic and strategic reasons. , Marawi may not be the target but the whole of Mindanao. As mentioned in the Report, "[l]awless armed groups have historically used provinces adjoining Marawi City as escape routes, supply lines, and backdoor passages;" there is also the plan to establish a wilayat in Mindanao by staging the siege of Marawi.

Moreover, considering the widespread atrocities in Mindanao and tbe linkages established among rebel groups, the armed uprising that was initially staged in Marawi cannot be justified as confined only to Marawi. The Court therefore will not simply disregard the events that happened during the Davao City bombing, the Mamasapano massacre, the Zamboanga City siege, and the countless bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others. The Court cannot simply take the battle of Marawi in isolation. As a crime without predetermined bounds, the President has reasonable basis to believe that the declaration of martial law, as well as the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao, is most necessary, effective, and called for by the circumstances.

i) Terrorism neither negates nor absorbs rebellion.

In determining what crime was committed, we have to look into the main objective of the malefactors. If it is political, such as for the purpose of severing the allegiance of Mindanao to the Philippine Government to establish a wilayat therein, the crime is rebellion. If, on the other hand, the primary objective is to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand, the crime is terrorism. Here, we have already explained and ruled that the President did not err in believing that what is going on in Marawi City is one contemplated under the crime of rebellion.

In any case, even assuming that the insurgency in Marawi City can also be characterized as terrorism, the same will not in any manner affect Proclamation No. 216. Section 2 of Republic Act (RA) No. 9372, otherwise known as the Human Security Act of 2007 expressly provides that "[n]othing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government." Thus, as long as the President complies with all the requirements of Section 18, Article VII, the existence of terrorism cannot prevent him from exercising his extraordinary power of proclaiming martial law or suspending the privilege of the writ of habeas corpus. After all, the extraordinary powers of the President are bestowed on him by the Constitution. No act of Congress can, therefore, curtail or diminish such powers.

Besides, there is nothing in Art. 134 of the RPC and RA 9372 which states that rebellion and terrorism are mutuality exclusive of each other or that they cannot co-exist together. RA 9372 does not expressly or impliedly repeal Art. 134 of the RPC. And while rebellion is one of the predicate crimes of terrorism, one cannot absorb the other as they have different elements.

Verily, the Court upholds the validity of the declaration of martial law and suspension of the privilege of the writ of habeas corpus in the entire Mindanao region.

WHEREFORE, the Court FINDS sufficient factual bases for the issuance of Proclamation No. 216 and DECLARES it as CONSTITUTIONAL. Accordingly, the consolidated Petitions are hereby DISMISSED.

ALEXANDER A. PADILLA, RENE A.V. SAGUISAG, CHRISTIAN S. MONSOD, LORETTA ANN P. ROSALES, RENE B. GOROSPE, AND SENATOR LEILA M. DE LIMA, *Petitioners,* -versus- CONGRESS OF THE PHILIPPINES, CONSISTING OF THE SENATE OF THE PHILIPPINES, AS REPRESENTED BY SENATE PRESIDENT AQUILINO "KOKO" PIMENTEL III, AND THE HOUSE OF REPRESENTATIVES, AS REPRESENTED BY HOUSE SPEAKER PANTALEON D. ALVAREZ, *Respondents*.
G.R. No. 231671, EN BANC, July 25, 2017, LEONARDO-DE CASTRO, *J.*

In Funa v. Chairman Villar, the Court also applied the verba legis rule in constitutional construction, thus:

> *The rule is that if a statute or constitutional provision is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is known as the plain meaning rule enunciated by the maxim verba legis non est recedendum, or from the words of a statute there should be no departure.*
>
> *The primary source whence to ascertain constitutional intent or purpose is the language of the provision itself. If possible, the words in the Constitution must be given their ordinary meaning, save where technical terms are employed.*

In this case, it is worthy to stress that provision in Article VII, Section 18 of the 1987 Constitution *does not actually refer to a "joint session." While it may be conceded, subject to the discussions below, that the phrase "voting jointly" shall already be understood to mean that the joint voting will be done "in joint session," notwithstanding the absence of clear language in the Constitution still, the requirement that "[t]he Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, x x x" explicitly applies only to the situation when the Congress revokes the President's proclamation of martial law and/or suspension of the privilege of the writ of habeas corpus. Simply put, the provision only requires Congress to vote jointly on the revocation of the President's proclamation and/or suspension.*

Hence, the clear meaning of the relevant provision in Article VII, Section 18 of the 1987 Constitution is that the Congress is only required to vote jointly on the revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of habeas corpus.

FACTS:
On May 23, 2017, President Duterte issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of habeas corpus in the Mindanao group of islands on the grounds of rebellion and necessity of public safety pursuant to Article VII, Section 18 of the 1987 Constitution. Within forty-eight (48) hours after the proclamation, or on May 25, 2017, and while the Congress was in session, President Duterte transmitted his "Report relative to Proclamation No. 216 dated 23 May 2017" (Report) to the Senate, through Senate President Pimentel, and the House of Representatives, through House Speaker Pantaleon D. Alvarez (House Speaker Alvarez).According to President Duterte's Proclamation No. 216 and his Report to the Congress, the declaration of a state of martial law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao ensued from the series of armed attacks, violent acts, and atrocities directed against civilians and government authorities, institutions, and establishments perpetrated by the Abu Sayyaf and Maute terrorist groups, in complicity with other local and foreign armed affiliates, who have pledged allegiance to the Islamic State of Iraq and Syria (ISIS), to sow lawless violence, terror, and political disorder over the said region for the ultimate purpose of establishing a DAESH wilayah or Islamic Province in Mindanao.

On May 29, 2017, the briefing before the Senate was conducted, which lasted for about four (4) hours, by Secretary of National Defense Delfin N. Lorenza (Secretary Lorenzana), National Security Adviser and Director General of the National Security Council Hermogenes C. Esperon, Jr. (Secretary Esperon), and Chief of Staff of the Armed Forces of the Philippines (AFP) General Eduardo M. Año (General Año)

The following day, May 30, 2017, the Senate deliberated on these proposed resolutions: (a) Proposed Senate (P.S.) Resolution No. 388, which expressed support for President Duterte's Proclamation No. 216; and (b) P.S. Resolution No. 390, which called for the convening in joint session of the Senate and the House of Representatives to deliberate on President Duterte's Proclamation No. 216.

P.S. Resolution No. 388 was approved, after receiving seventeen (17) affirmative votes as against five (5) negative votes, and was adopted as Senate Resolution No. 49 entitled "Resolution Expressing the Sense of the Senate Not to Revoke, at this Time, Proclamation No. 216, Series of 2017, Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao.'"

P.S. Resolution No. 390, on the other hand, garnered only nine (9) votes from the senators who were in favor of it as opposed to twelve (12) votes from the senators who were against its approval and adoption.

On May 31, 2017, the House of Representatives, having previously constituted itself as a Committee of the Whole House, was briefed by Executive Secretary Salvador C. Medialdea (Executive Secretary Medialdea), Secretary Lorenzana, and other security officials for about six (6) hours. After the closed-door briefing, the House of Representatives resumed its regular meeting and deliberated on House Resolution No. 1050 entitled "Resolution Expressing the Full Support of the House of Representatives to President Rodrigo Duterte as it Finds No Reason to Revoke Proclamation No. 216, Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao.'"

The House of Representatives proceeded to divide its members on the matter of approving said resolution through viva voce voting. The result shows that the members who were in favor of passing the subject resolution secured the majority vote.
The House of Representatives also purportedly discussed the proposal calling for a joint session of the Congress to deliberate and vote on President Duterte's Proclamation No. 216. After the debates, however, the proposal was rejected.

On July 14, 2017, petitioners in G.R. No. 231671, the Padilla Petition, filed a Manifestation, calling the attention of the Court to the imminent expiration of the sixty (60)-day period of validity of Proclamation No. 216 on July 22, 2017. Despite the lapse of said sixty (60)-day period, petitioners exhort the Court to still resolve the instant cases for the guidance of the Congress, State actors, and all Filipinos.

On July 22, 2017, the Congress convened in joint session and, with two hundred sixty-one (261) votes in favor versus eighteen (18) votes against, overwhelmingly approved the extension of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus in Mindanao until December 31, 2017.

ISSUE:

Whether or not the Congress has the mandatory duty to convene jointly upon the President's proclamation of martial law or the suspension of the privilege of the writ of habeas corpus under Article VII, Section 18 of the 1987 Constitution?

RULING:
The Court answers in the negative. The Congress is not constitutionally mandated to convene in joint session except to vote jointly to revoke the President's declaration or suspension.

By the language of Article VII, Section 18 of the 1987 Constitution, the Congress. is only required to vote jointly to revoke the President's proclamation of martial law and/or suspension of the privilege of the writ of habeas corpus. Article VII, Section 18 of the 1987 Constitution fully reads:

> Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.
>
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

Outside explicit constitutional limitations, the Commander-in-Chief clause in Article VII, Section 18 of the 1987 Constitution vests on the President, as Commander-in-Chief, absolute authority over the persons and actions of the members of the armed forces, in recognition that the President, as Chief Executive, has the general responsibility to promote public peace, and as Commander-in-Chief, the more specific duty to prevent and suppress rebellion and lawless violence.

However, to safeguard against possible abuse by the President of the exercise of his power to proclaim martial law and/or suspend the privilege of the writ of habeas corpus, the 1987 Constitution, through the same provision, institutionalized checks and balances on the President's power through the two other co-equal and independent branches of government, i.e., the Congress and the Judiciary. In particular, Article VII, Section 18 of the 1987 Constitution requires the President to submit a report to the Congress after his proclamation of martial law and/or suspension of the privilege of the writ of habeas corpus and grants the Congress the power to revoke, as well as extend, the proclamation and/or suspension; and vests upon the Judiciary the power to review the sufficiency of the factual basis tor such proclamation and/or suspension.

There is no question herein that the first provision was complied with, as within forty-eight (48) hours from the issuance on May 23, 2017 by President Duterte of Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of habeas corpus in Mindanao, copies of President Duterte's Report relative to Proclamation No. 216 was transmitted to and received by the Senate and the House of Representatives on May 25, 2017.The Court will not touch upon the third and fourth provisions as these concern factual circumstances which are not availing in the instant petitions. The petitions at bar involve the initial proclamation of martial law and suspension of the privilege of the writ of habeas corpus, and not their extension; and the 17th Congress was still in session when President Duterte issued Proclamation No. 216 on May 23, 2017.It is the second provision that is under judicial scrutiny herein: "The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President."

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. According to the plain--meaning rule or verba legis, when the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. It is expressed in the maxims index animi sermo or "speech is the index of intention[,]" and verba legis non est recedendum or "from the words of a statute there should be no departure.

In Funa v. Chairman Villar, the Court also applied the verba legis rule in constitutional construction, thus:

> The rule is that if a statute or constitutional provision is clear, plain and free from ambiguity, it must he given its literal meaning and applied without attempted interpretation. This is known as the plain meaning rule enunciated by the maxim verba legis non est recedendum, or from the words of a statute there should be no departure.
>
> The primary source whence to ascertain constitutional intent or purpose is the language of the provision itself. If possible, the words in the Constitution must be given their ordinary meaning, save where technical terms are employed. J.M. Tuason & Co., Inc. v. Land Tenure Administration illustrates the verbal legis rule in this wise:
>
> > We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law

> to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum.

The provision in question is clear, plain, and unambiguous. In its literal and ordinary meaning, the provision grants the Congress the power to revoke the President's proclamation of martial law or the suspension of the privilege of the writ of habeas corpus and prescribes how the Congress may exercise such power, i.e., by a vote of at least a majority of all its Members, voting jointly, in a regular or special session. The use of the word "may" in the provision - such that "[t]he Congress x x x may revoke such proclamation or suspension x x x" - is to be construed as permissive and operating to confer discretion on the Congress on whether or not to revoke... but in order to revoke, the same provision sets the requirement that at least a majority of the Members of the Congress, voting jointly, favor revocation.

It is worthy to stress that the provision does not actually refer to a "joint session." While it may be conceded, subject to the discussions below, that the phrase "voting jointly" shall already be understood to mean that the joint voting will be done "in joint session," notwithstanding the absence of clear language in the Constitution still, the requirement that "[t]he Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, x x x" explicitly applies only to the situation when the Congress revokes the President's proclamation of martial law and/or suspension of the privilege of the writ of habeas corpus. Simply put, the provision only requires Congress to vote jointly on the revocation of the President's proclamation and/or suspension.

Hence, the plain language of the subject constitutional provision does not support the petitioners' argument that it is obligatory for the Congress to convene in joint session following the President's proclamation of martial law and/or suspension of the privilege of the writ of habeas corpus, under all circumstances.

As the Court established in its preceding discussion, the clear meaning of the relevant provision in Article VII, Section 18 of the 1987 Constitution is that the Congress is only required to vote jointly on the revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of habeas corpus.

REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, EDGAR R. ERICE, TEDDY BRAWNER BAGUILAT, JR., GARY C. ALEJANO, AND EMMANUEL A. BILLONES*, Petitioners*, - versus- SENATE PRESIDENT AQUILINO PIMENTEL III, SPEAKER PANTALEON D. ALVAREZ, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN N. LORENZANA, BUDGET SECRETARY BENJAMIN E. DIOKNO AND ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL REY LEONARDO GUERRERO, *Respondents.*
G.R. No. 235935, EN BANC, February 6, 2018, TIJAM, *J.*

In Lagman v. Medialdea, the Court sustained the constitutionality of Proclamation No. 216, holding that the President had probable cause to believe that actual rebellion exists and public safety required the Proclamation. The Court held:

> *A review of the aforesaid facts similarly leads the Court to conclude that the President, in issuing Proclamation No. 216, had sufficient factual bases tending to show that actual rebellion exists. The President's conclusion, that there was an armed public uprising, the culpable purpose of which was the removal from the allegiance of the Philippine Government a portion of its territory and the deprivation of the President from performing his powers and prerogatives, was reached after a tactical consideration of the facts. In fine, the President satisfactorily discharged his burden of proof.*
>
> *After all, what the President needs to satisfy is only the standard of probable cause for a valid declaration of martial law and suspension of the privilege of the writ of habeas corpus. x x x*

In this case, the reasons cited by the President in his request for further extension indicate that the rebellion, which caused him to issue Proclamation No. 216, continues to exist and its "remnants" have been resolute in establishing a DAESH/ISIS territory in Mindanao, carrying on through the recruitment and training of new members, financial and logistical build-up, consolidation of forces and continued attacks. In recommending the one-year extension of Proclamation No. 216 to the President, AFP General Guerrero cited, among others, the continued armed resistance of the DAESH-inspired DIWM and their allies.

As to public safety, the rising number of these rebel groups, their training in and predilection to terrorism, and their resoluteness in wresting control of Mindanao from the government, pose a serious danger to Mindanao. In a short period after the Marawi crisis was put under control, said rebel groups have managed to increase their number by 400, almost the same strength as the group that initially stormed Marawi. Their current number is now more than half the 1,010 rebels in Marawi which had taken the AFP five months to neutralize. To wait until a new battleground is chosen by these rebel groups before We consider them a significant threat to public safety is neither sound nor prudent.

FACTS:
On May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of habeas corpus in the whole of Mindanao for a period not exceeding sixty (60) days, to address the rebellion mounted by members of the Maute Group and Abu Sayyaf Group (ASG).

Within the 48-hour period set in Section 18, Article VII of the Constitution, the President submitted to the Senate and the House of Representatives his written Report, citing the events and reasons that impelled him to issue Proclamation No. 216. Thereafter, both Houses expressed full support to the Proclamation and finding no cause to revoke the same.

On July 18, 2017, the President requested the Congress to extend the effectivity of Proclamation No. 216. In a Special Joint Session on July 22, 2017, the Congress adopted Resolution of Both Houses No. 2, extending Proclamation No. 216 until December 31, 2017. In a letter to the President, through Defense Secretary Lorenzana, the Armed Forces of the Philippines (AFP) Chief of Staff, General Rey Leonardo Guerrero (General Guerrero), recommended the further extension of martial law and suspension of the privilege of the writ of habeas corpus in the entire Mindanao for one year beginning January 1, 2018. Acting on said recommendations, the President, in a letter dated December 8, 2017,

asked both the Senate and the House of Representatives to further extend the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus in the entire Mindanao for one year, from January 1, 2018 to December 31, 2018, or for such period as the Congress may determine. In granting the President's request, the Congress stated:

> "WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government…"
>
> "WHEREAS, Section 18, Article VII of the 1987 Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, such proclamation or suspension for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;"
>
> "WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao"

Based on their respective petitions and memoranda and their oral arguments before this Court on January 16, 2018 and January 17, 2018, petitioners' arguments are:

(a) The Congress committed grave abuse of discretion for precipitately and perfunctorily approving the extension of martial law despite the absence of sufficient factual basis. In G.R. No. 235935, petitioners impute grave abuse of discretion specifically against the "leadership and supermajority" of both Chambers of Congress, arguing that the extension was approved with inordinate haste as the Congress' deliberation was unduly constricted to an indecent 3 hours and 35 minutes.

(b) The Constitution allows only a one-time extension of martial law and/or suspension of the privilege of the writ of habeas corpus, not a series of extensions amounting to perpetuity. In addition, the period of extension of martial law should satisfy the standards of necessity and reasonableness.

(c) The one-year extension of the proclamation of martial law and suspension of the privilege of the writ of habeas corpus lacked sufficient factual basis because there is no actual rebellion in Mindanao. The Marawi siege and the other grounds under Proclamation No. 216 that were used as the alleged bases to justify the extension have already been resolved and no longer persist.

(d) Since the framers of the 1987 Constitution removed the phrase "imminent danger" as one of the grounds for declaring martial law, the President can no longer declare or extend martial law on the basis of mere threats of an impending rebellion.

(e) The alleged rebellion in Mindanao does not endanger public safety. The threat to public safety contemplated under Section 18, Article VII of the Constitution is one where the government cannot sufficiently or effectively govern, as when the courts or government offices cannot operate or perform their functions.

(f) There is no need to extend martial law to suppress or defeat remnants of vanquished terrorist groups, as these may be quelled and addressed using lesser extraordinary powers (i.e., calling out powers) of the President.
(g) Petitioners in G.R. No. 235935 allege that martial law and the suspension of the writ trigger the commission of human rights violations and suppression of civil liberties. In fact, the implementation of the same resulted to intensified human rights violations in Mindanao.

Respondents, through the Office of the Solicitor General, argue that:

(a) The period for deliberation on the President's request for further extension was not unduly constricted. The extension or revocation of martial law cannot be equated with the process of ordinary legislation. Given the time-sensitive nature of martial law or its extension, the time cap was necessary in the interest of expediency.
(b) The Constitution does not limit the period for which Congress can extend the proclamation and the suspension, nor does it prohibit Congress from granting further extension. In the absence of any express or implied prohibition in the Constitution, the Court cannot prevent Congress from granting further extensions.
(c) Although the leadership of the Mautes was decimated in Marawi, the rebellion in Mindanao persists as the surviving members of the militant group have not laid down their arms. The remnants remain a formidable force to be reckoned with, especially since they have established linkage with other rebel groups. With the persistence of rebellion in the region, the extension of martial law is, therefore, not just for preventive reasons. The extension is premised on the existence of an ongoing rebellion.
(d) Under the Constitution, the extension of martial law and the suspension of the privilege of the writ of habeas corpus are justified as long as there is rebellion and public safety requires it. The provision does not require that the group that started the rebellion should be the same group that should continue the uprising. Thus, the violence committed by other groups, such as the BIFF, AKP, ASG, DI Maguid, and DI Toraype (Turaifie) should be taken into consideration in determining whether the rebellion has been completely quelled, as they are part of the rebellion.
(e) The President has the sole prerogative to choose which of the extraordinary commander-in-chief powers to use against the rebellion plaguing Mindanao. Thus, petitioners cannot insist that the Court impose upon the President the proper measure to defeat a rebellion.
(f) The alleged human rights violations are irrelevant in the determination of whether Congress had sufficient factual basis to further extend martial law and suspend the privilege of the writ of habeas corpus. As ruled in Lagman, petitioners' claim of alleged human rights violations should be resolved in a separate proceeding and should not be taken cognizance of by the Court.
(g) Martial law does not automatically equate to curtailment and suppression of civil liberties and individual freedom. A state of martial law does not suspend the operation of the Constitution, including the Bill of Rights. The Constitution lays down safeguards to protect human rights during martial law. Civil courts are not supplanted.

ISSUE:
Whether or not the President and the Congress had sufficient factual basis to extend Proclamation No. 216?

RULING:
Section 18, Article VII of the 1987 Constitution provides:

> SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.**

Section 18, Article VII of the 1987 Constitution requires **two factual bases for the extension** of the proclamation of martial law or of the suspension of the privilege of the writ of habeas corpus: (a) the **invasion or rebellion persists**; and (b) **public safety requires** the extension.

In Lagman v. Medialdea, the Court sustained the constitutionality of Proclamation No. 216, holding that the President had probable cause to believe that actual rebellion exists and public safety required the Proclamation. The Court held:

> A review of the aforesaid facts similarly leads the Court to conclude that the President, in issuing Proclamation No. 216, had sufficient factual bases tending to show that actual rebellion exists. The President's conclusion, that there was an armed public uprising, the culpable purpose of which was the removal from the allegiance of the Philippine Government a portion of its territory and the deprivation of the President from performing his powers and prerogatives, was reached after a tactical consideration of the facts. In fine, the President satisfactorily discharged his burden of proof.
>
> After all, what the President needs to satisfy is only the standard of probable cause for a valid declaration of martial law and suspension of the privilege of the writ of habeas corpus. x x x

A. Rebellion persists.
The reasons cited by the President in his request for further extension indicate that the rebellion, which caused him to issue Proclamation No. 216, continues to exist and its "remnants" have been resolute in establishing a DAESH/ISIS territory in Mindanao, carrying on through the recruitment and training of new members, financial and logistical build-up, consolidation of forces and continued attacks.

In recommending the one-year extension of Proclamation No. 216 to the President, AFP General Guerrero cited, among others, the continued armed resistance of the DAESH-inspired DIWM and their allies. The rebellion that spawned the Marawi crisis persists, and that its remaining members have regrouped, substantially increased in number, and are no less determined to turn Mindanao into a DAESH/ISIS territory.

Petitioners in G.R. No. 235935 argue that "remnants" or a residue of a rebel group cannot possibly mount a rebellion. The argument, however, fails to take into account the 185 persons identified in the Martial Law Arrest Orders who are still at large; the 400 new members whom said remnants were

able to recruit; the influx of 48 FTFs who are training the new recruits in their ways of terrorism; and the financial and logistical build-up which the group is currently undertaking with their sympathizers and protectors.

The termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. As noted in Aquino, Jr. v. Enrile, modern day rebellion has other facets than just the taking up of arms, including financing, recruitment and propaganda, that may not necessarily be found or occurring in the place of the armed conflict. Furthermore, as We explained in Lagman, "(t)he crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots."

The Court, thus, finds that the government has sufficiently established the persistence of the DAESH/ISIS rebellion.

B. Public safety requires the extension
The rising number of these rebel groups, their training in and predilection to terrorism, and their resoluteness in wresting control of Mindanao from the government, pose a serious danger to Mindanao. In a short period after the Marawi crisis was put under control, said rebel groups have managed to increase their number by 400, almost the same strength as the group that initially stormed Marawi. Their current number is now more than half the 1,010 rebels in Marawi which had taken the AFP five months to neutralize. To wait until a new battleground is chosen by these rebel groups before We consider them a significant threat to public safety is neither sound nor prudent.

The magnitude of the atrocities already perpetrated by these rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.

The facts as provided by the Executive and considered by Congress amply establish that rebellion persists in Mindanao and public safety is significantly endangered by it. The Court, thus, holds that there exists sufficient factual basis for the further extension sought by the President and approved by the Congress in its Resolution of Both Houses No. 4.

The determination of which among the constitutionally given military powers should be exercised in a given set of factual circumstances is a prerogative of the President. The Court's power of review, as provided under Section 18, Article VII do not empower the Court to advise, nor dictate its own judgment upon the President, as to which and how these military powers should be exercised.

Petitioners' fear that the one-year extension of martial law will only intensify the human rights violations committed by government forces against civilians. However, the possibility of abuse and even the country's martial law experience under the Marcos regime did not prevent the framers of the 1987 Constitution from including it among the Commander-in-Chief powers of the President. This is in recognition of the fact that during critical times when the security or survival of the state is greatly imperiled, an equally vast and extraordinary measure should be available for the President to protect and defend it. Nevertheless, cognizant of such possibility of abuse, the framers of the 1987

Constitution endeavored to institute a system of checks and balances to limit the President's exercise of the martial law and suspension powers, and to establish safeguards to protect civil liberties.

Human rights violations and abuses in the implementation of martial law and suspension powers cannot by any measure be condoned. However, as the Court settled in Lagman, alleged human rights violations committed during the implementation of martial law or the suspension of the privilege of the writ of habeas corpus should be resolved in a separate proceeding.

This Court has likewise promulgated rules aimed at enforcing human rights. In A.M. No. 07-9-12-SC, this Court made available the **remedy of a writ of amparo** to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. Similarly, in A.M. No. 08-1-16-SC, this Court also crafted the rule on the **writ of habeas data** to provide a remedy for any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

AKBAYAN CITIZENS ACTION PARTY*, Petitioner,* -versus. THOMAS G. AQUINO, *Respondent.*
G.R. No. 170516, EN BANC, July 16, 2008, CARPIO MORALES, *J.*

In Chavez v. PCGG, the Court held that information on inter-government exchanges prior to the conclusion of treaties and executive agreements may be subject to reasonable safeguards for the sake of national interest. Also, in PMPF v. Manglapus, the therein petitioners were seeking information from the Presidents representatives on the state of the then on-going negotiations of the RP-US Military Bases Agreement.

In this case, the Court denied the petition, stressing that secrecy of negotiations with foreign countries is not violative of the constitutional provisions of freedom of speech or of the press nor of the freedom of access to information. Verily, while the Court should guard against the abuse of executive privilege, it should also give full recognition to the validity of the privilege whenever it is claimed within the proper bounds of executive power, as in this case.

FACTS:
Petitioners non-government organizations, Congresspersons, citizens and taxpayers seek via the present petition for mandamus and prohibition to obtain from respondents the full text of the Japan-Philippines Economic Partnership Agreement (JPEPA) including the Philippine and Japanese offers submitted during the negotiation process and all pertinent attachments and annexes thereto.

Petitioners Congressmen Lorenzo R. Tañada III and Mario Joyo Aguja filed on January 25, 2005 House Resolution No. 551 calling for an inquiry into the bilateral trade agreements then being negotiated by the Philippine government, particularly the JPEPA. The Resolution became the... basis of an inquiry subsequently conducted by the House Special Committee on Globalization (the House Committee) into the negotiations of the JPEPA.

In the course of its inquiry, the House Committee requested herein respondent Undersecretary Tomas Aquino (Usec. Aquino), Chairman of the Philippine Coordinating Committee created under Executive Order No. 213 ("Creation of A Philippine Coordinating Committee to Study the

Feasibility of the Japan-Philippines Economic Partnership Agreement") to study and negotiate the proposed JPEPA, and to furnish the Committee with a copy of the latest draft of the JPEPA. Usec. Aquino did not heed the request, however Congressman Aguja later requested for the same document, but Usec. Aquino, by letter of November 2, 2005, replied that the Congressman shall be provided with a copy thereof "once the negotiations are completed and as soon as a thorough legal review of the proposed agreement has been conducted."

In a separate move, the House Committee, through Congressman Herminio G. Teves, requested Executive Secretary Eduardo Ermita to furnish it with "all documents on the subject including the latest draft of the proposed agreement, the requests and offers etc."

Acting on the request, Secretary Ermita, by letter of June 23, 2005, wrote Congressman Teves as follows:

> In its letter dated 15 June 2005 (copy enclosed), [the] D[epartment of] F[oreign] A[ffairs] explains that the Committee's request to be furnished all documents on the JPEPA may be difficult to accomplish at this time, since the proposed Agreement has been a work in progress for about three years.

Congressman Aguja also requested NEDA Director-General Romulo Neri and Tariff Commission Chairman Edgardo Abon, by letter of July 1, 2005, for copies of the latest text of the JPEPA.

Chairman Abon replied, however, by letter of July 12, 2005 that the Tariff Commission does not have a copy of the documents being requested, albeit he was certain that Usec. Aquino would provide the Congressman with a copy "once the negotiation is completed." And by letter of July 18, 2005, NEDA Assistant Director-General Margarita R. Songco informed the Congressman that his request addressed to Director-General Neri had been forwarded to Usec. Aquino who would be "in the best position to respond" to the request.

In its third hearing conducted on August 31, 2005, the House Committee resolved to issue a subpoena for the most recent draft of the JPEPA, but the same was not pursued because by Committee Chairman Congressman Teves' information, then House Speaker Jose de Venecia had requested him to hold in abeyance the issuance of the subpoena until the President gives her consent to the disclosure of the documents.

Amid speculations that the JPEPA might be signed by the Philippine government within December 2005, the present petition was filed on December 9, 2005. The agreement was to be later signed on September 9, 2006 by President Gloria Macapagal-Arroyo and Japanese Prime Minister Junichiro Koizumi in Helsinki, Finland, following which the President endorsed it to the Senate for its concurrence pursuant to Article VII, Section 21 of the Constitution. To date, the JPEPA is still being deliberated upon by the Senate.

The JPEPA, which will be the first bilateral free trade agreement to be entered into by the Philippines with another country in the event the Senate grants its consent to it, covers a broad range of topics which respondents enumerate as follows: trade in goods, rules of... origin, customs procedures, paperless trading, trade in services, investment, intellectual property rights, government procurement, movement of natural persons, cooperation, competition policy, mutual recognition, dispute avoidance and settlement, improvement of the business environment, and general and final provisions.

While the final text of the JPEPA has now been made accessible to the public since September 11, 2006, respondents do not dispute that, at the time the petition was filed up to the filing of petitioners' Reply - when the JPEPA was still being negotiated - the initial drafts thereof were kept from public view.

ISSUE:
Whether the information sought by the petitioners are of public concern and are still covered by the doctrine of executive privilege?

RULING:
YES. It is well-established in jurisprudence that neither the right to information nor the policy of full public disclosure is absolute, there being matters which, albeit of public concern or public interest, are recognized as privileged in nature.

The privileged character of diplomatic negotiations has been recognized in this jurisdiction. In discussing valid limitations on the right to information, the Court in Chavez v. PCGG held that information on inter-government exchanges prior to the conclusion of treaties and executive agreements may be subject to reasonable safeguards for the sake of national interest. Even earlier, the same privilege was upheld in Peoples Movement for Press Freedom (PMPF) v. Manglapus wherein the Court discussed the reasons for the privilege in more precise terms.

In PMPF v. Manglapus, the therein petitioners were seeking information from the Presidents representatives on the state of the then on-going negotiations of the RP-US Military Bases Agreement. The Court denied the petition, stressing that secrecy of negotiations with foreign countries is not violative of the constitutional provisions of freedom of speech or of the press nor of the freedom of access to information. Verily, while the Court should guard against the abuse of executive privilege, it should also give full recognition to the validity of the privilege whenever it is claimed within the proper bounds of executive power, as in this case. Otherwise, the Court would undermine its own credibility, for it would be perceived as no longer aiming to strike a balance, but seeking merely to water down executive privilege to the point of irrelevance.

ISABELITA C. VINUYA, *Petitioner,* -versus- EXECUTIVE SECRETARY ALBERTO G. ROMULO, et al., *Respondents.*
G.R. No. 162230, EN BANC, April 28, 2010, Del Castillo, *J.*

In the seminal case of US v. Curtiss-Wright Export Corp., the US Supreme Court held that "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign relations."

> *It is quite apparent that if, in the maintenance of our international relations, embarrassment -- perhaps serious embarrassment -- is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible where domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials.*

In this case, the Executive Department has determined that taking up petitioners cause would be inimical to our country's foreign policy interests, and could disrupt our relations with Japan, thereby creating serious implications for stability in this region. For this Court to overturn the Executive Departments determination would mean an assessment of the foreign policy judgments by a coordinate political branch to which authority to make that judgment has been constitutionally committed. Indeed, except as an agreement might otherwise provide, international settlements generally wipe out the underlying private claims, thereby terminating any recourse under domestic law.

FACTS:
Petitioners are all members of the MALAYA LOLAS, a non-stock, non-profit organization registered with the Securities and Exchange Commission, established for the purpose of providing aid to the victims of rape by Japanese military forces in the Philippines during the Second World War. Petitioners narrate that during the Second World War, the Japanese army attacked villages and systematically raped the women as part of the destruction of the village. Their communities were bombed, houses were looted and burned, and civilians were publicly tortured, mutilated, and slaughtered. Japanese soldiers forcibly seized the women and held them in houses or cells, where they were repeatedly raped, beaten, and abused by Japanese soldiers. As a result of the actions of their Japanese tormentors, the petitioners have spent their lives in misery, having endured physical injuries, pain and disability, and mental and emotional suffering.

Petitioners claim that since 1998, they have approached the Executive Department through the DOJ, DFA, and OSG, requesting assistance in filing a claim against the Japanese officials and military officers who ordered the establishment of the comfort women stations in the Philippines. However, officials of the Executive Department declined to assist the petitioners, and took the position that the individual claims of the comfort women for compensation had already been fully satisfied by Japans compliance with the Peace Treaty between the Philippines and Japan. Hence, this petition where petitioners pray for this court to (a) declare that respondents committed grave abuse of discretion amounting to lack or excess of discretion in refusing to espouse their claims for the crimes against humanity and war crimes committed against them; and (b) compel the respondents to espouse their claims for official apology and other forms of reparations against Japan before the International Court of Justice (ICJ) and other international tribunals.

Petitioners argue that the general waiver of claims made by the Philippine government in the Treaty of Peace with Japan is void. They allege that the prohibition against these international crimes is jus cogens norms from which no derogation is possible; as such, in waiving the claims of Filipina comfort women and failing to espouse their complaints against Japan, the Philippine government is in breach of its legal obligation not to afford impunity for crimes against humanity. Respondents maintain that all claims of the Philippines and its nationals relative to the war were dealt with in the San Francisco Peace Treaty of 1951 and the bilateral Reparations Agreement of 1956.

ISSUE:
Whether or not the Executive Department committed grave abuse of discretion in not espousing petitioners' claims for official apology and other forms of reparations against Japan?

RULING:
No, Executive Department did not commit grave abuse of discretion.

From a Domestic Law Perspective, the Executive Department has the exclusive prerogative to determine whether to espouse petitioner's claims against Japan. Political questions refer "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." Certain types of cases often have been found to present political questions. One such category involves questions of foreign relations. It is well-established that the conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative--'the political'--departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.

To be sure, not all cases implicating foreign relations present political questions, and courts certainly possess the authority to construe or invalidate treaties and executive agreements. However, the question whether the Philippine government should espouse claims of its nationals against a foreign government is a foreign relations matter, the authority for which is demonstrably committed by our Constitution not to the courts but to the political branches.

In this case, the Executive Department has already decided that it is to the best interest of the country to waive all claims of its nationals for reparations against Japan in the Treaty of Peace of 1951. The wisdom of such decision is not for the courts to question. Neither could petitioners herein assail the said determination by the Executive Department via the instant petition for certiorari.

In the seminal case of US v. Curtiss-Wright Export Corp., the US Supreme Court held that "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign relations."

> It is quite apparent that if, in the maintenance of our international relations, embarrassment -- perhaps serious embarrassment -- is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible where domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials.

The Executive Department has determined that taking up petitioners cause would be inimical to our country's foreign policy interests, and could disrupt our relations with Japan, thereby creating serious implications for stability in this region. For this Court to overturn the Executive Departments determination would mean an assessment of the foreign policy judgments by a coordinate political branch to which authority to make that judgment has been constitutionally committed. Indeed, except as an agreement might otherwise provide, international settlements generally wipe out the underlying private claims, thereby terminating any recourse under domestic law. Respondents explain that the Allied Powers concluded the Peace Treaty with Japan not necessarily for the complete atonement of the suffering caused by Japanese aggression during the war, not for the payment of adequate reparations, but for security purposes. The treaty sought to prevent the spread of communism in Japan, which occupied a strategic position in the Far East. Thus, the Peace Treaty compromised individual claims in the collective interest of the free world.

The Philippines is not under any international obligation to espouse petitioners claims. In the international sphere, traditionally, the only means available for individuals to bring a claim within

the international legal system has been when the individual is able to persuade a government to bring a claim on the individuals behalf. Even then, it is not the individuals rights that are being asserted, but rather, the states own rights. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own right to ensure, in the person of its subjects, respect for the rules of international law.

It has been argued, as petitioners argue now, that the State has a duty to protect its nationals and act on his/her behalf when rights are injured. However, there is no sufficient evidence to establish a general international obligation for States to exercise diplomatic protection of their own nationals abroad. Though, perhaps desirable, neither state practice nor opinio juris has evolved in such a direction. If it is a duty internationally, it is only a moral and not a legal duty, and there is no means of enforcing its fulfillment. Even the invocation of jus cogens norms and erga omnes obligations will not alter this analysis. Even if the Court sidesteps the question of whether jus cogens norms existed in 1951, petitioners have not deigned to show that the crimes committed by the Japanese army violated jus cogens prohibitions at the time the Treaty of Peace was signed, or that the duty to prosecute perpetrators of international crimes is an erga omnes obligation or has attained the status of jus cogens.

RENE A.V. SAGUISAG, *Petitioner,* -versus-. EXECUTIVE PAQUITO N. DEPARTMENT DEFENSE VOLTAIRE DEPARTMENT SECRETARY OCHOA
G.R. No. 212426, EN BANC, January 12, 2016, SERENO, *C.J.*

In Ang Bagong Bayani-OFW v. Commission on Elections, we reiterated this guiding principle:

> *it [is] safer to construe the Constitution from what appears upon its face. The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof.*

In this case, the phrase being construed is "shall not be allowed in the Philippines" and not the preceding one referring to "the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities." It is explicit in the wording of the provision itself that any interpretation goes beyond the text itself and into the discussion of the framers, the context of the Constitutional Commission's time of drafting, and the history of the 1947 MBA. Without reference to these factors, a reader would not understand those terms. However, for the phrase "shall not be allowed in the Philippines," there is no need for such reference. The law is clear. No less than the Senate understood this when it ratified the VFA.

FACTS:
The presence of the U.S. military forces in the country can be traced to their pivotal victory in the 1898 Battle of Manila Bay during the Spanish-American War. Spain relinquished its sovereignty over the Philippine Islands in favor of the U.S. upon its formal surrender a few months later. By 1899, the Americans had consolidated a military administration in the archipelago.
When it became clear that the American forces intended to impose colonial control over the Philippine Islands, General Emilio Aguinaldo immediately led the Filipinos into an all- out war against the U.S. The Filipinos were ultimately defeated in the Philippine- American War, which lasted until 1902 and led to the downfall of the first Philippine Republic. The Americans henceforth began to strengthen their foothold in the country. They took over and expanded the former Spanish Naval Base in Subic Bay, Zambales, and put up a cavalry post called Fort Stotsenberg in Pampanga, now known as Clark Air Base.

When talks of the eventual independence of the Philippine Islands gained ground, the U.S. manifested the desire to maintain military bases and armed forces in the country. The U.S. Congress later enacted the Hare-Hawes-Cutting Act of 1933, which required that the proposed constitution of an independent Philippines recognize the right of the U.S. to maintain the latter's armed forces and military bases. The Philippine Legislature rejected that law, as it also gave the U.S. the power to unilaterally designate any part of Philippine territory as a permanent military or naval base of the U.S. within two years from complete independence.

The U.S. Legislature subsequently crafted another law called the Tydings-McDuffie Act or the Philippine Independence Act of 1934. Compared to the old Hare-Hawes-Cutting Act, the new law provided for the surrender to the Commonwealth Government of "all military and other reservations" of the U.S. government in the Philippines, except "naval reservations and refueling stations." Furthermore, the law authorized the U.S. President to enter into negotiations for the adjustment and settlement of all questions relating to naval reservations and fueling stations within two years after the Philippines would have gained independence. Under the Tydings-McDuffie Act, the U.S. President would proclaim the American withdrawal and surrender of sovereignty over the islands 10 years after the inauguration of the new government in the Philippines. This law eventually led to the promulgation of the 1935 Philippine Constitution.

The original plan to surrender the military bases changed. At the height of the Second World War, the Philippine and the U.S. Legislatures each passed resolutions authorizing their respective Presidents to negotiate the matter of retaining military bases in the country after the planned withdrawal of the U.S. Subsequently, in 1946, the countries entered into the Treaty of General Relations, in which the U.S. relinquished all control and sovereignty over the Philippine Islands, except the areas that would be covered by the American military bases in the country. This treaty eventually led to the creation of the post-colonial legal regime on which would hinge the continued presence of U.S. military forces until 1991: the Military Bases Agreement (MBA) of 1947, the Military Assistance Agreement of 1947, and the Mutual Defense Treaty (MDT) of 1951.

Soon after the Philippines was granted independence, the two countries entered into their first military arrangement pursuant to the Treaty of General Relations - the 1947 MBA. The Senate concurred on the premise of "mutuality of security interest," which provided for the presence and operation of 23 U.S. military bases in the Philippines for 99 years or until the year 2046. The treaty also obliged the Philippines to negotiate with the U.S. to allow the latter to expand the existing bases or to acquire new ones as military necessity might require.

A number of significant amendments to the 1947 MBA were made. With respect to its duration, the parties entered into the Ramos-Rusk Agreement of 1966, which reduced the term of the treaty from 99 years to a total of 44 years or until 1991. Concerning the number of U.S. military bases in the country, the Bohlen-Serrano Memorandum of Agreement provided for the return to the Philippines of 17 U.S. military bases covering a total area of 117,075 hectares. Twelve years later, the U.S. returned Sangley Point in Cavite City through an exchange of notes. Then, through the Romulo-Murphy Exchange of Notes of 1979, the parties agreed to the recognition of Philippine sovereignty over Clark and Subic Bases and the reduction of the areas that could be used by the U.S. military. The agreement also provided for the mandatory review of the treaty every five years. In 1983, the parties revised the 1947 MBA through the Romualdez-Armacost Agreement. The revision pertained to the operational use of the military bases by the U.S. government within the context of Philippine sovereignty, including the need for prior consultation with the Philippine government

on the former' s use of the bases for military combat operations or the establishment of long-range missiles.

Pursuant to the legislative authorization granted under Republic Act No. 9, the President also entered into the 1947 Military Assistance Agreement with the U.S. This executive agreement established the conditions under which U.S. military assistance would be granted to the Philippines, particularly the provision of military arms, ammunitions, supplies, equipment, vessels, services, and training for the latter's defense forces. An exchange of notes in 1953 made it clear that the agreement would remain in force until terminated by any of the parties.

To further strengthen their defense and security relationship, the Philippines and the U.S. next entered into the MDT in 1951. Concurred in by both the Philippine and the U.S. Senates, the treaty has two main features: first, it allowed for mutual assistance in maintaining and developing their individual and collective capacities to resist an armed attack; and second, it provided for their mutual self-defense in the event of an armed attack against the territory of either party. The treaty was premised on their recognition that an armed attack on either of them would equally be a threat to the security of the other.

In view of the impending expiration of the 1947 MBA in 1991, the Philippines and the U.S. negotiated for a possible renewal of their defense and security relationship. Termed as the Treaty of Friendship, Cooperation and Security, the countries sought to recast their military ties by providing a new framework for their defense cooperation and the use of Philippine installations. One of the proposed provisions included an arrangement in which U.S. forces would be granted the use of certain installations within the Philippine naval base in Subic. On 16 September 1991, the Senate rejected the proposed treaty.

The consequent expiration of the 1947 MBA and the resulting paucity of any formal agreement dealing with the treatment of U.S. personnel in the Philippines led to the suspension in 1995 of large-scale joint military exercises. In the meantime, the respective governments of the two countries agreed to hold joint exercises at a substantially reduced level. The military arrangements between them were revived in 1999 when they concluded the first Visiting Forces Agreement (VFA).

As a "reaffirm[ation] [of the] obligations under the MDT," the VFA has laid down the regulatory mechanism for the treatment of U.S. military and civilian personnel visiting the country. It contains provisions on the entry and departure of U.S. personnel; the purpose, extent, and limitations of their activities; criminal and disciplinary jurisdiction; the waiver of certain claims; the importation and exportation of equipment, materials, supplies, and other pieces of property owned by the U.S. government; and the movement of U.S. military vehicles, vessels, and aircraft into and within the country. The Philippines and the U.S. also entered into a second counterpart agreement (VFA II), which in turn regulated the treatment of Philippine military and civilian personnel visiting the U.S. The Philippine Senate concurred in the first VFA on 27 May 1999.

Beginning in January 2002, U.S. military and civilian personnel started arriving in Mindanao to take part in joint military exercises with their Filipino counterparts. Called Balikatan, these exercises involved trainings aimed at simulating joint military maneuvers pursuant to the MDT.

In the same year, the Philippines and the U.S. entered into the Mutual Logistics Support Agreement to "further the interoperability, readiness, and effectiveness of their respective military forces" in accordance with the MDT, the Military Assistance Agreement of 1953, and the VFA. The new

agreement outlined the basic terms, conditions, and procedures for facilitating the reciprocal provision of logistics support, supplies, and services between the military forces of the two countries. The phrase "logistics support and services" includes billeting, operations support, construction and use of temporary structures, and storage services during an approved activity under the existing military arrangements. Already extended twice, the agreement will last until 2017.

EDCA authorizes the U.S. military forces to have access to and conduct activities within certain "Agreed Locations" in the country. It was not transmitted to the Senate on the executive's understanding that to do so was no longer necessary. Accordingly, in June 2014, the Department of Foreign Affairs (DFA) and the U.S. Embassy exchanged diplomatic notes confirming the completion of all necessary internal requirements for the agreement to enter into force in the two countries.

According to the Philippine government, the conclusion of EDCA was the result of intensive and comprehensive negotiations in the course of almost two years. After eight rounds of negotiations, the Secretary of National Defense and the U.S. Ambassador to the Philippines signed the agreement on 28 April 2014. President Benigno S. Aquino III ratified EDCA on 6 June 2014. The OSG clarified during the oral arguments that the Philippine and the U.S. governments had yet to agree formally on the specific sites of the Agreed Locations mentioned in the agreement.

Two petitions for certiorari were thereafter filed before us assailing the constitutionality of EDCA. They primarily argue that it should have been in the form of a treaty concurred in by the Senate, not an executive agreement.

On 10 November 2015, months after the oral arguments were concluded and the parties ordered to file their respective memoranda, the Senators adopted Senate Resolution No. (SR) 105. The resolution expresses the "strong sense" of the Senators that for EDCA to become valid and effective, it must first be transmitted to the Senate for deliberation and concurrence.

ISSUE:

Whether the President may enter into an executive agreement on foreign military bases, troops, or facilities?

RULING:

The plain meaning of the Constitution prohibits the entry of foreign military bases, troops or facilities, except by way of a treaty concurred in by the Senate - a clear limitation on the President's dual role as defender of the State and as sole authority in foreign relations.

Despite the President's roles as defender of the State and sole authority in foreign relations, the 1987 Constitution expressly limits his ability in instances when it involves the entry of foreign military bases, troops or facilities. The initial limitation is found in Section 21 of the provisions on the Executive Department: "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." The specific limitation is given by Section 25 of the Transitory Provisions, the full text of which reads as follows:

> SECTION 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

It is quite plain that the Transitory Provisions of the 1987 Constitution intended to add to the basic requirements of a treaty under Section 21 of Article VII. This means that both provisions must be read as additional limitations to the President's overarching executive function in matters of defense and foreign relations.

The President, however, may enter into an executive agreement on foreign military bases, troops, or facilities, if (a) it is not the instrument that allows the presence of foreign military bases, troops, or facilities; or (b) it merely aims to implement an existing law or treaty.

Again we refer to Section 25, Article XVIII of the Constitution:

> SECTION 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, **foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires,** ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

It is only in those instances in which the constitutional provision is unclear, ambiguous, or silent that further construction must be done to elicit its meaning. In Ang Bagong Bayani-OFW v. Commission on Elections, we reiterated this guiding principle:

> it [is] safer to construe the Constitution from what appears upon its face. The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof.

In this case, the phrase being construed is "shall not be allowed in the Philippines" and not the preceding one referring to "the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities." It is explicit in the wording of the provision itself that any interpretation goes beyond the text itself and into the discussion of the framers, the context of the Constitutional Commission's time of drafting, and the history of the 1947 MBA. Without reference to these factors, a reader would not understand those terms. However, for the phrase "shall not be allowed in the Philippines," there is no need for such reference. The law is clear. No less than the Senate understood this when it ratified the VFA.

Lastly, the President may generally enter into executive agreements subject to limitations defined by the Constitution and may be in furtherance of a treaty already concurred in by the Senate.

It would be helpful to put into context the contested language found in Article XVIII, Section 25. Its more exacting requirement was introduced because of the previous experience of the country when its representatives felt compelled to consent to the old MBA. They felt constrained to agree to the MBA in fulfilment of one of the major conditions for the country to gain independence from the U.S. As a result of that experience, a second layer of consent for agreements that allow military bases, troops and facilities in the country is now articulated in Article XVIII of our present Constitution.

The power of the President to enter into binding executive agreements without Senate concurrence is already well-established in this jurisdiction. That power has been alluded to in our present and past Constitutions, in various statutes, in Supreme Court decisions, and during the deliberations of the Constitutional Commission. They cover a wide array of subjects with varying scopes and purposes, including those that involve the presence of foreign military forces in the country.

As the sole organ of our foreign relations and the constitutionally assigned chief architect of our foreign policy, the President is vested with the exclusive power to conduct and manage the country's interface with other states and governments. Being the principal representative of the Philippines, the Chief Executive speaks and listens for the nation; initiates, maintains, and develops diplomatic relations with other states and governments; negotiates and enters into international agreements; promotes trade, investments, tourism and other economic relations; and settles international disputes with other states.

One of the distinguishing features of executive agreements is that their validity and effectivity are not affected by a lack of Senate concurrence. This distinctive feature was recognized as early as in Eastern Sea Trading (1961), viz:

> Treaties are formal documents which require ratification with the approval of two-thirds of the Senate. Executive agreements become binding through executive action without the need of a vote by the Senate or by Congress.
>
> [T]he right of the Executive to enter into binding agreements without the necessity of subsequent Congressional approval has been confirmed by long usage. From the earliest days of our history we have entered into executive agreements covering such subjects as commercial and consular relations, most-favored-nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. The validity of these has never been seriously questioned by our courts.

That notion was carried over to the present Constitution. In fact, the framers specifically deliberated on whether the general term "international agreement" included executive agreements, and whether it was necessary to include an express proviso that would exclude executive agreements from the requirement of Senate concurrence. After noted constitutionalist Fr. Joaquin Bernas quoted the Court's ruling in Eastern Sea Trading, the Constitutional Commission members ultimately decided that the term "international agreements" as contemplated in Section 21, Article VII, does not include executive agreements, and that a proviso is no longer needed.

SATURNINO C. OCAMPO, et al. vs. REAR ADMIRAL ERNESTO C. ENRIQUEZ, et al.
G.R. No. 225973, EN BANC, November 8, 2016, Peralta, *J.*

In Belgica, et al., v. Han. Exec. Sec. Ochoa, Jr, the Court provides that the requisites for judicial inquiry are: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very lis mota of the case.

In this case, the absence of the first two requisites, which are the most essential, renders the discussion of the last two superfluous.

The Court agrees with the OSG that President Duterte's decision to have the remains of Marcos interred at the LNMB involves a political question that is not a justiciable controversy. In allowing the interment of Marcos at the LNMB, a land of public domain devoted for national military cemetery and military shrine purposes, President Duterte decided a question of policy based on his wisdom that it shall promote national healing and forgiveness. There being no taint of grave abuse in the exercise of such discretion, as discussed below, President Duterte's decision on that political question is outside the ambit of judicial review.

FACTS:
Before winning the Election, President Duterte publicly announce that he would allow burial of President Marcos at the Libingan ng mga Bayani (LNMB).

On August 7, 2016, public respondent Secretary of National Defense Delfin N. Lorenzana issued a Memorandum to the public respondent Chief of Staff of the Armed Forces of the Philippines (AFP), General Ricardo R. Visaya, regarding the interment of Marcos at the Libingan ng mga Bayani (LNMB).

On August 9, 2016, respondent AFP Rear Admiral Ernesto C. Enriquez issued the directives to the Philippine Army (PA) Commanding General for the funeral honors and Service and other courtesies for the late President.

Hence this petition for Certiorari and Prohibition.

ISSUES:
1. Whether President Duterte's determination to have the remains of Marcos interred at the LNMB poses a justiciable controversy. NO.
2. Whether petitioners have locus standi to file the instant petitions. NO.
3. Whether petitioners violated the doctrines of exhaustion of administrative remedies and hierarchy of courts. YES.
4. Whether the respondents Secretary of National Defense and AFP Rear Admiral committed grave abuse of discretion. NO.
5. Whether the issuance of the assailed memorandum and directive violate the Constitution and domestic and international laws37. NO.
6. Whether historical facts, laws enacted to recover ill-gotten wealth from the Marcoses and their cronies, and the pronouncements of the Court on the Marcos regime have nullified his entitlement as a soldier and former President to interment at the LNMB. NO.
7. Whether the Marcos family is deemed to have waived the burial of the remains of former President Marcos at the LNMB after they entered into an agreement with the Government of the Republic of the Philippines as to the conditions and procedures by which his remains shall be brought back to and interred in the Philippines. NO.

RULING:
Procedural Grounds
No Justiciable controversy. In Belgica, et al., v. Han. Exec. Sec. Ochoa, Jr, the Court provides that the requisites for judicial inquiry are: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the

earliest opportunity; and (d) the issue of constitutionality must be the very lis mota of the case. In this case, the absence of the first two requisites, which are the most essential, renders the discussion of the last two superfluous.

An "actual case or controversy" is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. Related to the requisite of an actual case or controversy is the requisite of "ripeness," which means that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. Those areas pertain to 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. As they are concerned with questions of policy and issues dependent upon the wisdom, not legality of a particular measure,26 political questions used to be beyond the ambit of judicial review.

However, the scope of the political question doctrine has been limited by Section 1 of Article VIII of the 1987 Constitution when it vested in the judiciary the power to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The Court agrees with the OSG that President Duterte's decision to have the remains of Marcos interred at the LNMB involves a political question that is not a justiciable controversy. In allowing the interment of Marcos at the LNMB, a land of public domain devoted for national military cemetery and military shrine purposes, President Duterte decided a question of policy based on his wisdom that it shall promote national healing and forgiveness. There being no taint of grave abuse in the exercise of such discretion, as discussed below, President Duterte's decision on that political question is outside the ambit of judicial review.

Unless a person has sustained or is in imminent danger of sustaining an injury as a result of an act complained of, such proper party has no standing. Petitioners have no legal standing to file such petitions because they failed to show that they have suffered or will suffer direct and personal injury as a result of the interment of Marcos at the LNMB.

As taxpayers, petitioners merely claim illegal disbursement of public funds, without showing that Marcos is disqualified to be interred at the LNMB by either express or implied provision of the Constitution, the laws or jurisprudence.

For IBP members, suffice it to state that the averments in their petition-in-intervention failed to disclose such injury, and that their interest in this case is too general and shared by other groups, such that their duty to uphold the rule of law, without more, is inadequate to clothe them with requisite legal standing.

As concerned citizens, petitioners are also required to substantiate that the issues raised are of transcendental importance, of overreaching significance to society, or of paramount public interest. The interment have no profound effect on the political, economic and other aspects of our national life after 27 years from his death and 30 years from his ouster. Significantly, petitioners failed to demonstrate a clear and imminent threat to their fundamental constitutional rights.

As human rights violations victims during the Martial Law regime, some of petitioners decry re-traumatization, historical revisionism, and disregard of their state recognition as heroes. Petitioners' argument is founded on the wrong premise that the LNMB is the National Pantheon intended by law to perpetuate the memory of all Presidents, national heroes and patriots.

As for the Legislators, they failed to specifically claim that it will encroach on their prerogatives as legislators. Violated exhaustion of administrative remedies principle. Petitioners violated the doctrines of exhaustion of administrative remedies and hierarchy of courts. Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, one should have availed first of all the means of administrative processes available.

Contrary to their claim of lack of plain, speedy, adequate remedy in the ordinary course of law, petitioners should be faulted for failing to seek reconsideration of the assailed memorandum and directive before the Secretary of National Defense. If petitioners would still be dissatisfied with the decision of the Secretary, they could elevate the matter before the Office of the President which has control and supervision over the Department of National Defense (DND).

In the same vein, while direct resort to the Court through petitions for the extraordinary writs of certiorari, prohibition and mandamus are allowed under exceptional cases, which are lacking in this case, petitioners cannot simply brush aside the doctrine of hierarchy of courts that requires such to be filed first in RTC who can try not only facts but also questions of Law.

Substantive Grounds

President's decision is in accordance with Constitution, Law or jurisprudence. Petitioners argued that the burial of Marcos at LNMB not only rewrites history but also condones abuses during Martial Law. Moreover, they argued that ratification of the Constitution is a clear condemnation of the Marcos' alleged heroism.

Tanada v. Angara already ruled that the provisions in Article II of the Constitution are not self-executing. In the same vein, Sec. 1 of Art. XI of the Constitution is not a self-executing provision considering that a law should be passed by the Congress. Petitioners' reliance on Sec. 3(2) of Art. XIV and Sec. 26 of Art. XVIII of the Constitution is also misplaced. Sec. 3(2) of Art. XIV refers to the constitutional duty of educational institutions in teaching the values of patriotism and nationalism and respect for human rights, while Sec. 26 of Art. XVIII is a transitory provision on sequestration or freeze orders in relation to the recovery of Marcos' ill-gotten wealth. Clearly, with respect to these provisions, there is no direct or indirect prohibition to Marcos' interment at the LNMB.

The second sentence of Sec. 17 of Art. VII pertaining to the duty of the President to "ensure that the laws be faithfully executed, " which is identical to Sec. 1, Title I, Book III of the Administrative Code of 1987, is likewise not violated by public respondents. Under the Faithful Execution Clause, the President has the power to take "necessary and proper steps" to carry into execution the law.

The mandate is self-executory by virtue of its being inherently executive in nature and is intimately related to the other executive functions. It is best construed as an imposed obligation, not a separate grant of power.

Consistent with Sect. 17, Art. VII, the burial does not contravene R.A. No. 289, R.A. No. 10368, and the international human rights laws cited by petitioners.

a. On R.A. 289
R.A. No. 289 authorized the construction of a National Pantheon as the burial place of the mortal remains of all the Presidents of the Philippines, national heroes and patriots. It created a Board to implement the law. President Quirino approved its site in East Avenue, Quezon city but this was later revoked by President Magsaysay in Proclamation No. 42 and declared said lot for national park purposes.

Petitioners argued that due to his human right violations etc, of Marcos he cannot be a source of inspiration and emulation to future generations as required for internment in the LNMB under R.A. 289 and that AFP Regulations G 161-375 merely implements the law and should not violate its spirit and intent. Moreover, petitioners maintain that public respondents are not members of the Board on National Pantheon, which is authorized by the law to cause the burial at the LNMB of the deceased Presidents of the Philippines, national heroes, and patriots.

Petitioners are mistaken since failed to provide for legal and historical basis that LNMB and National Pantheon is the same. This is not at all unexpected because the LNMB is distinct and separate from the burial place envisioned in R.A. No 289. The parcel of land subject matter of President Quirino's Proclamation No. 431, which was later on revoked by President Magsaysay's Proclamation No. 42, is different from that covered by Marcos' Proclamation No. 208. The National Pantheon does not exist at present. To date, the Congress has deemed it wise not to appropriate any funds for its construction or the creation of the Board on National Pantheon.

Even if the Court treats R.A. No. 289 as relevant to the issue, still, petitioners' allegations must fail. To apply the standard that the LNMB is reserved only for the "decent and the brave" or "hero" would be violative of public policy as it will put into question the validity of the burial of each and every mortal remains resting therein, and infringe upon the principle of separation of powers since the allocation of plots at the LNMB is based on the grant of authority to the President under existing laws and regulations. The act in itself does not confer upon him the status of a "hero." (a misnomer) Lastly, petitioners' repeated reference to a "hero's burial" and "state honors," without showing proof as to what kind of burial or honors that will be accorded to the remains of Marcos, is speculative

b. On R.A. No. 10368
Petitioners argued that R.A. No. 10368 modified AFP Regulations G 161-375 by implicitly disqualifying Marcos' burial at the LNMB because the legislature, which is a co-equal branch of the government, has statutorily declared his tyranny as a deposed dictator.

This Court cannot subscribe to petitioners' logic that the beneficial provisions of R.A. No. 10368 are not exclusive as it includes the prohibition on Marcos' burial at the LNMB. It would be undue to extend the law beyond what it actually contemplates. With its victim- oriented perspective, our legislators could have easily inserted a provision specifically proscribing Marcos' interment at the LNMB as a "reparation" for the HRVV s, but they did not. As it is, the law is silent and should remain to be so. This Court cannot read into the law what is simply not there. It is irregular, if not unconstitutional, for Us to presume the legislative will by supplying material details into the law. That would be tantamount to judicial legislation.

It must be emphasized that R.A. No. 10368 does not amend or repeal, whether express or implied, the provisions of the Administrative Code or AFP Regulations G 161-375: It is a well-settled rule of statutory construction that repeals by implication are not favored. In order to effect a repeal by implication, the later statute must be so irreconcilably inconsistent and repugnant with the

existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of implied repeal may be drawn, for inconsistency is never presumed. There must be a showing of repugnance clear and convincing in character.

c. On International Human Rights Laws

Petitioners argue that the burial of Marcos at the LNMB will violate the rights of the HRVV s to "full" and "effective" reparation, which is provided under the International Covenant on Civil and Political Rights (ICCPR), the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity.

The ICCPR, as well as the U.N. principles on reparation and to combat impunity, call for the enactment of legislative measures, establishment of national programmes, and provision for administrative and judicial recourse, in accordance with the country's constitutional processes, that are necessary to give effect to human rights embodied in treaties, covenants and other international laws. They do not entail new international or domestic legal obligation.

The Philippines, through its Constitution and judicial remedies i.e. writs of habeas corpus, amparo and habeas data, is compliant with its international obligations. Even the Executive Branch issued administrative and executive orders to this effect.

Contrary to petitioners' postulation, our nation's history will not be instantly revised by single resolve if President Duterte to bury Marcos at LNMB. Together complementing the powers and functions of Human Rights Victim's Claim Board and the HRVV Memorial Commissions, the National Historical Commission is mandated to determine all factual matters relating to official Philippine history and popularize it.

The President's decision to bury Marcos at the LNMB is not done whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias.

Petitioners contend that the burial will desecrate the revered national shrine where remains of country's great citizens are interred for inspiration and emulation.

a. National Shrines

As one of the cultural properties of the Philippines, national historical shrines (or historical shrines) refer to sites or structures hallowed and revered for their history or association as declared by the NHCP. P.D. No. 105 strictly prohibits and punishes by imprisonment and/or fine the desecration of national shrines by disturbing their peace and serenity through digging, excavating, defacing, causing unnecessary noise, and committing unbecoming acts within their premises. R.A. No. 10066 also makes it punishable to intentionally modify, alter, or destroy the original features of, or undertake construction or real estate development in any national shrine, monument, landmark and other historic edifices and structures, declared, classified, and marked by the NHCP as such, without the prior written permission from the National Commission for Culture and the Arts.

As one of the cultural agencies attached to the NCAA, the NHCP manages, maintains and administers national shrines, monuments, historical sites, edifices and landmarks of significant historico-cultural value. Excluded, however, from the jurisdiction of the NHCP are the military memorials and battle

monuments declared as national shrines, which have been under the administration, maintenance and development of the Philippine Veterans Affairs Office (PVAO) of the DND. This includes the LNMB.

b. LNMB
LNMB was created after World War II. President Magsaysay issued Proclamation No. 86, which changed the name of Republic Memorial Cemetery to Libingan Ng Mga Bayani. On July 12, 1957, President Carlos P. Garcia issued Proclamation No. 423, which reserved for military purposes, under the administration of the AFP Chief of Staff, the land where LNMB is located. On May 28, 1967, Marcos issued Proclamation No. 208, which excluded the LNMB from the Fort Bonifacio military reservation and reserved the LNMB for national shrine purposes under the administration of the National Shrines Commission (NSC) under the DND. Under PD. 1076 the PVAO - through the Military Shrines Service (MSS), which was created to perform the functions of the abolished NSC. President Aquino issued the Administrative Code and retained the PVAO under DND. PVAO shall administer, develop and maintain military shrines.

Contrary to the dissent, P.D. No. 105 does not apply to the LNMB. Despite the fact that P.D. No. 208 predated P.D. No. 105, the LNMB was not expressly included in the national shrines enumerated in the latter. The proposition that the LNMB is implicitly covered in the catchall phrase "and others which may be proclaimed in the future as National Shrines" is erroneous because: PD 208 predated PD 105; following the canon of statutory construction known as ejusdem generis, 138 the LNMB is not a site "of the birth, exile, imprisonment, detention or death of great and eminent leaders of the nation." (P.D. 105); Since its establishment, the LNMB has been a military shrine under the jurisdiction of the PVAO. While P.D. No. 1 dated September 24, 1972 transferred the administration, maintenance and development of national shrines to the NHI under the DEC, it never actually materialized. Pending the organization of the DEC, its functions relative to national shrines were tentatively integrated into the PVAO in July 1973. Eventually, on January 26, 1977, Marcos issued P.D. No. 1076.

Assuming that P.D. No. 105 is applicable, the descriptive words "sacred and hallowed" refer to the LNMB as a place and not to each and every mortal remains interred therein. The "nation's esteem and reverence for her war dead, " as originally contemplated by President Magsaysay in issuing Proclamation No. 86, still stands unaffected. That being said, the interment of Marcos, therefore, does not constitute a violation of the physical, historical, and cultural integrity of the LNMB as a national military shrine.

LNMB is similar to and patterned from Arlington National Cemetary. As one of the U.S. Army national military cemeteries, the Arlington is under the jurisdiction of the Department of the Army.

Similar to the Philippines, the U.S. national cemeteries are established as national shrines in tribute to the gallant dead who have served in the U.S. Armed Forces. The areas are protected, managed and administered as suitable and dignified burial grounds and as significant cultural resources. As such, the authorization of activities that take place therein is limited to those that are consistent with applicable legislation and that are compatible with maintaining their solemn commemorative and historic character.

The presidential power of control over the Executive Branch of Government is a self- executing provision of the Constitution and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature. This is why President Duterte is not bound

by the alleged 1992 Agreement between former President Ramos and the Marcos family to have the remains of Marcos interred in Batac, Ilocos Norte and free to amend, revoke or rescind it.

Moreover, under the Administrative Code, the President has the power to reserve for public use and for specific public purposes any of the lands of the public domain and that the reserved land shall remain subject to the specific public purpose indicated until otherwise provided by law or proclamation. At present, there is no law or executive issuance specifically excluding the land in which the LNMB is located from the use it was originally intended by the past Presidents. The allotment of a cemetery plot at the LNMB for Marcos as a former President and Commander-in-Chief, a legislator, a Secretary of National Defense, military personnel, a veteran, and a Medal of Valor awardee, whether recognizing his contributions or simply his status as such, satisfies the public use requirement. The disbursement of public funds to cover the expenses incidental to the burial is granted to compensate him for valuable public services rendered. Likewise, President Duterte's determination to have Marcos' remains interred at the LNMB was inspired by his desire for national healing and reconciliation. Presumption of regularity in the performance of official duty prevails over petitioners' highly disputed factual allegation that, in the guise of exercising a presidential prerogative, the Chief Executive is actually motivated by utang na loob (debt of gratitude) and bayad utang (payback) to the Marcoses. As the purpose is not self-evident, petitioners have the burden of proof to establish the factual basis of their claim.

c. AFP Regulations on LNMB

AFP Regulations G 161-375 provided, the following persons eligible for interment at the LNMB. The absence of any executive issuance or law to the contrary, the AFP Regulations G 161-375 remains to be the sole authority in determining who are entitled and disqualified to be interred at the LNMB. Interestingly, even if they were empowered to do so, former Presidents Corazon C. Aquino and Benigno Simeon C. Aquino III, who were themselves aggrieved at the Martial Law, did not revise the rules by expressly prohibiting the burial of Marcos at the LNMB. The validity of AFP Regulations G 161-375 must, therefore, be sustained for having been issued by the AFP Chief of Staff acting under the direction of the Secretary of National Defense, who is the alter ego of the President.

It has been held that an administrative regulation adopted pursuant to law has the force and effect of law and, until set aside, is binding upon executive and administrative agencies, including the President as the chief executor of laws.

c.1. Qualifications

AFP Regulations G 161-375 should not be stricken down in the absence of clear and unmistakable showing that it has been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Neither could it be considered ultra vires for purportedly providing incomplete, whimsical, and capricious standards for qualification for burial at the LNMB.

To compare, the SC referred to the U.S. Army regulations on Arlington. In the U.S., the Secretary of the Army, with the approval of the Secretary of Defense, determines eligibility for interment or inurnment in the Army national military cemeteries

As a national military cemetery, eligibility standards for interment, inurnment, or memorialization in Arlington are based on honorable military service. Exceptions to the eligibility standards for new

graves, which are rarely granted, are for those persons who have made significant contributions that directly and substantially benefited the U.S. military.

It is not contrary to the "well-established custom," as the dissent described it, to argue that the word "bayani" in the LNMB has become a misnomer since while a symbolism of heroism may attach to the LNMB as a national shrine for military memorial, the same does not automatically attach to its feature as a military cemetery and to those who were already laid or will be laid therein. As stated, the purpose of the LNMB, both from the legal and historical perspectives, has neither been to confer to the people buried there the title of "hero" nor to require that only those interred therein should be treated as a "hero." In fact, the privilege of internment at the LNMB has been loosen up through the years. Since 1986, the list of eligible includes not only those who rendered active military service or military- related activities but also non-military personnel who were recognized for their significant contributions to the Philippine society (such as government dignitaries, statesmen, national artists, and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or Secretary of National Defense). Whether or not the extension of burial privilege to civilians is unwarranted and should be restricted in order to be consistent with the original purpose of the LNMB is immaterial and irrelevant to the issue at bar since it is indubitable that Marcos had rendered significant active military service and military-related activities.

Petitioners did not dispute that Marcos was a former President and Commander-in-Chief, a legislator, a Secretary of National Defense, a military personnel, a veteran, and a Medal of Valor awardee. For his alleged human rights abuses and corrupt practices, we may disregard Marcos as a President and Commander-in-Chief, but we cannot deny him the right to be acknowledged based on the other positions he held or the awards he received.

While he was not all good, he was not pure evil either. Certainly, just a human who erred like us. Our laws give high regard to Marcos as a Medal of Valor awardee and a veteran.

R.A. No. 6948, as amended, grants our veterans and their dependents or survivors with pension (old age, disability, total administrative disability, and death) and non-pension (burial, education, hospitalization, and medical care and treatment) benefits as well as provisions from the local governments. Under the law, the benefits may be withheld if the Commission on Human Rights certifies to the AFP General Headquarters that the veteran has been found guilty by final judgment of a gross human rights violation while in the service, but this factor shall not be considered taken against his next of kin.

C.2. Disqualification

Aside from being eligible for burial at the LNMB, Marcos possessed none of the disqualifications stated in AFP Regulations. He was neither convicted by final judgment of the offense involving moral turpitude nor dishonorably separated/reverted/discharged from active military service. Despite all these ostensibly persuasive arguments, the fact remains that Marcos was not convicted by final judgment of any offense involving moral turpitude. No less than the 1987 Constitution mandates that a person shall not be held to answer for a criminal offense without due process of law and that, "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be hear himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf " Even the U.N. principles on reparation and to combat impunity cited by petitioners

unequivocally guarantee the rights of the accused. The various cases cited by petitioners, which were decided with finality by courts here and abroad, have no bearing in this case since they are merely civil in nature; hence, cannot and do not establish moral turpitude.

Also, the equal protection clause is not violated. Generally, there is no property right to safeguard because even if one is eligible to be buried at the LNMB, such fact would only give him or her the privilege to be interred therein. Unless there is a favorable recommendation from the Commander-in-Chief, the Congress or the Secretary of National Defense, no right can be said to have ripen. Until then, such inchoate right is not legally demandable and enforceable.

Assuming that there is a property right to protect, the requisites of equal protection clause are not met. In this case, there is a real and substantial distinction between a military personnel and a former President. The conditions of dishonorable discharge under the Articles of War attach only to the members of the military. There is also no substantial distinction between Marcos and the three Philippine Presidents buried at the LNMB (Presidents Quirino, Garcia, and Macapagal). All of them were not convicted of a crime involving moral turpitude. In addition, the classification between a military personnel and a former President is germane to the purposes of Proclamation No. 208 and P.D. No. 1076. While the LNMB is a national shrine for military memorials, it is also an active military cemetery that recognizes the status or position held by the persons interred therein.

Likewise, Marcos was honorably discharged from military service. PVAO expressly recognized him as a retired veteran pursuant to R.A. No. 6948, as amended. Petitioners have not shown that he was dishonourably discharged from military service.

To my mind, the word "service" should be construed as that rendered by a military person in the AFP, including civil service, from the time of his/her commission, enlistment, probation, training or drafting, up to the date of his/her separation or retirement from the AFP. Hence, it cannot be conveniently claimed that Marcos' ouster from the presidency during the EDSA Revolution is tantamount to his dishonourable separation, reversion or discharge from the military service. The fact that the President is the Commander-in-Chief of the AFP under the 1987 Constitution only enshrines the principle of supremacy of civilian authority over the military. Dishonorable discharge through a successful revolution is an extra-constitutional and direct sovereign act of the people which is beyond the ambit of judicial review, let alone a mere administrative regulation.

D. JUDICIARY

THE CITY OF MANILA, REPRESENTED BY MAYOR JOSE L. ATIENZA, JR., AND MS. LIBERTY M. TOLEDO, IN HER CAPACITY AS THE CITY TREASURER OF MANILA, *Petitioners,* -versus- HON. CARIDAD H. GRECIA-CUERDO, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 112, PASAY CITY; SM MART, INC.; SM PRIME HOLDINGS, INC.; STAR APPLIANCES CENTER; SUPERVALUE, INC.; ACE HARDWARE PHILIPPINES, INC.; WATSON PERSONAL CARE STORES, PHILS., INC.; JOLLIMART PHILS., CORP.; SURPLUS MARKETING CORPORATION AND SIGNATURE LINES, *Respondents.*
G.R. No. 175723, EN BANC, February 04, 2014, PERALTA, *J.*

As held in Santiago v. Vasquez, indeed, the courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration

of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, in this case, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates."

Based on the foregoing disquisitions, it can be reasonably concluded that the authority of the CTA to take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.

FACTS:
Petitioner City of Manila, through its treasurer, assessed taxes against private respondents SM Mart, Inc., SM Prime Holdings, Inc., Star Appliances Center, Supervalue, Inc., Ace Hardware Philippines, Inc., Watsons Personal Care Stores Phils., Inc., Jollimart Philippines Corp., Surplus Marketing Corp. and Signature Lines. In addition to the taxes purportedly due from private respondents pursuant to Section 14, 15, 16, 17 of the Revised Revenue Code of Manila, said assessment covered the local business taxes petitioners were authorized to collect under Section 21 of the same Code. Because payment of the taxes assessed was a precondition for the issuance of their business permits, private respondents were constrained to pay assessment under protest. However, private respondents filed a complaint denominated for Refund or Recovery of Illegally and/or Erroneously-Collected Local Business Tax, Prohibition with Prayer to Issue TRO and Writ of Preliminary Injunction. They further averred that petitioner city's Ordinance No. 8011 which amended pertinent portions of the RRCM had already been declared to be illegal and unconstitutional by the Department of Justice.

RTC granted private respondents' application for a writ of preliminary injunction causing petitioners to file a Motion for Reconsideration, which the RTC denied. Thereafter, petitioners filed a special civil action for certiorari with the CA assailing the RTC orders, but the CA dismissed petitioners' petition for certiorari holding that it has no jurisdiction over the said petition, since appellate jurisdiction over private respondents' complaint for tax refund, which was filed with the RTC, is vested in the Court of Tax Appeals.

ISSUE:
Whether the CTA has jurisdiction over a special civil action for certiorari assailing an interlocutory order issued by the RTC in a local tax case?

RULING:
The prevailing doctrine is that the authority to issue writs of certiorari involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law and cannot be implied from the mere existence of appellate jurisdiction. Thus, in the cases of Pimentel v. COMELEC, Garcia v. De Jesus, Veloria v. COMELEC, Department of Agrarian Reform Adjudication Board v. Lubrica, and Garcia v. Sandiganbayan, this Court has ruled against the jurisdiction of courts or tribunals over petitions for certiorari on the ground that there is no law which expressly gives these tribunals such power. It must be observed, however, that with the exception of Garcia v. Sandiganbayan, these rulings pertain not to regular courts but to tribunals exercising quasi-judicial powers. With respect

to the Sandiganbayan, Republic Act No. 8249 now provides that the special criminal court has exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction.

In the same manner, Section 5 (1), Article VIII of the 1987 Constitution grants power to the Supreme Court, in the exercise of its original jurisdiction, to issue writs of certiorari, prohibition and mandamus. With respect to the Court of Appeals, Section 9 (1) of BP 129 gives the appellate court, also in the exercise of its original jurisdiction, the power to issue, among others, a writ of certiorari, whether or not in aid of its appellate jurisdiction. As to Regional Trial Courts, the power to issue a writ of certiorari, in the exercise of their original jurisdiction, is provided under Section 21 of BP 129.

The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases.

Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

As held in Santiago v. Vasquez, indeed, the courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

Based on the foregoing disquisitions, it can be reasonably concluded that the authority of the CTA to take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.

ATTY. OLIVER O. LOZANO and ATTY. EVANGELINE J. LOZANO-ENDRIANO, *Petitioners*, -versus- SPEAKER PROSPERO C. NOGRALES, *Respondent.*
G.R. No. 187883, EN BANC, June 16, 2009, PUNO, *C.J.*

In Abbott Laboratories v. Gardner, another approach for the aspect of the "case-or-controversy" requirement is the evaluation of the twofold aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration.

In the present case, the fitness of petitioners' case for the exercise of judicial review is grossly lacking. In the first place, petitioners have not sufficiently proven any adverse injury or hardship from the act complained of. In the second place, House Resolution No. 1109 only resolved that the House of Representatives shall convene at a future time for the purpose of proposing amendments or revisions to the Constitution. No actual convention has yet transpired and no rules of procedure have yet been adopted. More importantly, no proposal has yet been made, and hence, no usurpation of power or gross abuse of discretion has yet taken place. In short, House Resolution No. 1109 involves a quintessential example of an uncertain contingent future event that may not occur as anticipated, or indeed may not occur at all. The House has not yet performed a positive act that would warrant an intervention from this Court.

FACTS:
The two petitions, filed by their respective petitioners in their capacities as concerned citizens and taxpayers, prayed for the nullification of House Resolution No. 1109 entitled "A Resolution Calling upon the Members of Congress to Convene for the Purpose of Considering Proposals to Amend or Revise the Constitution, Upon a Three-fourths Vote of All the Members of Congress." In essence, both petitions seek to trigger a justiciable controversy that would warrant a definitive interpretation by this Court of Section 1, Article XVII, which provides for the procedure for amending or revising the Constitution.

ISSUE:
Whether the court rule on the constitutionality of the said House Resolution?

RULING:

NO. Unfortunately, this Court cannot indulge petitioners' supplications. While some may interpret petitioners' moves as vigilance in preserving the rule of law, a careful perusal of their petitions would reveal that they cannot hurdle the bar of justiciability set by this Court before it will assume jurisdiction over cases involving constitutional disputes.

It is well settled that it is the duty of the judiciary to say what the law is. The determination of the nature, scope and extent of the powers of government is the exclusive province of the judiciary, such that any mediation on the part of the latter for the allocation of constitutional boundaries would amount, not to its supremacy, but to its mere fulfillment of its "solemn and sacred obligation" under the Constitution. This Court's power of review may be awesome, but it is limited to actual cases and controversies dealing with parties having adversely legal claims, 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. The "case-or-controversy" requirement bans this court from deciding "abstract, hypothetical or contingent questions," lest the court give opinions in the nature of advice concerning legislative or executive action.

An aspect of the "case-or-controversy" requirement is the requisite of "ripeness." In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. In Abbott Laboratories v. Gardner, another approach for the aspect of the "case-or-controversy" requirement is the evaluation of the twofold aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.

In the present case, the fitness of petitioners' case for the exercise of judicial review is grossly lacking. In the first place, petitioners have not sufficiently proven any adverse injury or hardship from the act complained of. In the second place, House Resolution No. 1109 only resolved that the House of Representatives shall convene at a future time for the purpose of proposing amendments or revisions to the Constitution. No actual convention has yet transpired and no rules of procedure have yet been adopted. More importantly, no proposal has yet been made, and hence, no usurpation of power or gross abuse of discretion has yet taken place. In short, House Resolution No. 1109 involves a quintessential example of an uncertain contingent future event that may not occur as anticipated, or indeed may not occur at all. The House has not yet performed a positive act that would warrant an intervention from this Court.

Yet another requisite rooted in the very nature of judicial power is locus standi or standing to sue. Thus, generally, a party will be allowed to litigate only when he can demonstrate that (1) he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought. In the cases at bar, petitioners have not shown the elemental injury in fact that would endow them with the standing to sue. Locus standi requires a personal stake in the outcome of a controversy for significant reasons. It assures adverseness and sharpens the presentation of issues for the illumination of the Court in resolving difficult constitutional questions. The lack of petitioners' personal stake in this case is no more evident than in Lozano's three-page petition that is devoid of any legal or jurisprudential basis.

Neither can the lack of locus standi be cured by the claim of petitioners that they are instituting the cases at bar as taxpayers and concerned citizens. A taxpayer's suit requires that the act complained of directly involves the illegal disbursement of public funds derived from taxation. It is undisputed that there has been no allocation or disbursement of public funds in this case as of yet. To be sure, standing as a citizen has been upheld by this Court in cases where a petitioner is able to craft an issue of transcendental importance or when paramount public interest is involved. While the Court recognizes the potential far-reaching implications of the issue at hand, the possible consequence of House Resolution No. 1109 is yet unrealized and does not infuse petitioners with locus standi under the "transcendental importance" doctrine.

The rule on locus standi is not a plain procedural rule but a constitutional requirement derived from Section 1, Article VIII of the Constitution, which mandates courts of justice to settle only "actual controversies involving rights which are legally demandable and enforceable."

A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.
Moreover, while the Court has taken an increasingly liberal approach to the rule of locus standi, evolving from the stringent requirements of "personal injury" to the broader "transcendental importance" doctrine, such liberality is not to be abused. It is not an open invitation for the ignorant and the ignoble to file petitions that prove nothing but their cerebral deficit.

JELBERT B. GALICTO, *Petitioner,* -versus- H.E. PRESIDENT BENIGNO SIMEON C. AQUINO III et al., *Respondents.*
G.R. No. 193978, EN BANC, February 28, 2012, BRION, *J.*

In Liga ng mga Barangay National v. City Mayor of Manila, the Court dismissed the petition for certiorari to set aside an EO issued by a City Mayor and insisted that a petition for declaratory relief should have been filed with the RTC. It also dismissed the petition for certiorari because:

> *First, the respondents neither acted in any judicial or quasi-judicial capacity nor arrogated unto themselves any judicial or quasi-judicial prerogatives. A petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is a special civil action that may be invoked only against a tribunal, board, or officer exercising judicial or quasi-judicial functions.*
>
> *Second, although the instant petition is styled as a petition for certiorari, in essence, it seeks the declaration by this Court of the unconstitutionality or illegality of the questioned ordinance and executive order. It, thus, partakes of the nature of a petition for declaratory relief over which this Court has only appellate, not original, jurisdiction. Section 5, Article VIII of the Constitution provides:*
>
> > *Sec. 5. The Supreme Court shall have the following powers:*

> *(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.*
>
> *(2) Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:*
>
> *(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.*

In this case, the Court resolved to DISMISS the petition for its patent formal and procedural infirmities, and for having been mooted by subsequent events. The petition certiorari must necessarily fail although it has power to exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, ***and over petitions for certiorari****, prohibition, mandamus, quo warranto, and habeas corpus. Under the Rules of Court, petitions for Certiorari and Prohibition are availed of to question judicial, quasi-judicial and mandatory acts. Since the issuance of an EO is not judicial, quasi-judicial or a mandatory act, a petition for certiorari and prohibition is an incorrect remedy.*

FACTS:
Aiming to curb the grant of unwarranted and excessive allowances, bonuses and other benefits given to GOCCs and government financial institutions, President Aquino issued EO 7, entitled "Directing the Rationalization of the Compensation and Position Classification System in the GOCCs and GFIs, and for Other Purposes." The Executive Order precluded the Board of Directors, Trustees and/or Officers of GOCCs from granting and releasing bonuses and allowances to members of the board of directors, and from increasing salary rates of and granting new or additional benefits and allowances to their employees.

Later, Jelbert Galicto, a Court Attorney of the Philippine Health Insurance Corporation, filed a Petition for Certiorari and Prohibition with Application for Writ of Preliminary Injunction and/or Temporary Restraining Order seeking to nullify and enjoin the implementation of Executive Order No. 7 for being unconstitutional for having been issued beyond the powers of the President and for being in breach of existing laws.

ISSUE:
Whether the issuance of the Executive Order be made subject to a petition for certiorari?

RULING:
NO. Certiorari is not the proper remedy.

Under the Rules of Court, petitions for Certiorari and Prohibition are availed of to question judicial, quasi-judicial and mandatory acts. Since the issuance of an EO is not judicial, quasi-judicial or a mandatory act, a petition for certiorari and prohibition is an incorrect remedy; instead a petition for declaratory relief under Rule 63 of the Rules of Court, filed with the Regional Trial Court (RTC), is the proper recourse to assail the validity of EO 7:

> Section 1. Who may file petition. Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof,

> bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

Liga ng mga Barangay National v. City Mayor of Manila is a case in point. In Liga, we dismissed the petition for certiorari to set aside an EO issued by a City Mayor and insisted that a petition for declaratory relief should have been filed with the RTC. We painstakingly ruled:

> After due deliberation on the pleadings filed, we resolve to dismiss this petition for certiorari.
>
> First, the respondents neither acted in any judicial or quasi-judicial capacity nor arrogated unto themselves any judicial or quasi-judicial prerogatives. A petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is a special civil action that may be invoked only against a tribunal, board, or officer exercising judicial or quasi-judicial functions.
>
> Section 1, Rule 65 of the 1997 Rules of Civil Procedure provides:
>
> > SECTION 1. Petition for certiorari. When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> A respondent is said to be exercising judicial function where he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function, on the other hand, is "a term which applies to the actions, discretion, etc., of public administrative officers or bodies … required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature."
>
> Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the respective rights of the contending parties.
>
> The respondents do not fall within the ambit of tribunal, board, or officer exercising judicial or quasi-judicial functions. As correctly pointed out by the respondents, the enactment by the City Council of Manila of the assailed ordinance and the issuance by respondent Mayor of the questioned executive order were done in the exercise of legislative and executive functions, respectively, and not of judicial or quasi-judicial functions. On this score alone, certiorari will not lie.
>
> Second, although the instant petition is styled as a petition for certiorari, in essence, it seeks the declaration by this Court of the unconstitutionality or illegality of the questioned ordinance and executive order. It, thus, partakes of the nature of a petition for declaratory

relief over which this Court has only appellate, not original, jurisdiction. Section 5, Article VIII of the Constitution provides:

> Sec. 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.
>
> (2) Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

MOLDEX REALTY, INC., *Petitioner,* -versus- HOUSING AND LAND USE REGULATORY BOARD, OFFICE OF APPEALS, ADJUDICATION AND LEGAL AFFAIRS et al, *Respondents.*
G.R. No. 149719, SECOND DIVISION, June 21, 2007, TINGA, *J.*

In Drilon v. Lim, it was clearly stated that the lower courts also have jurisdiction to resolve the constitutionality at the first instance, thus:

> *We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. x x x Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.*

The instant petition does not allege circumstances and issues of transcendental importance to the public requiring their prompt and definite resolution and the brushing aside of technicalities of procedure. Neither is the Court convinced that the issues presented in this petition are of such nature that would nudge the lower courts to defer to the higher judgment of this Court. The application of the assailed HUDCC resolution mainly affects the proprietary interests of the parties involved and can hardly be characterized as overriding to the general well-being of the people. Ultimately, the Court is called upon to resolve the question of who bears the obligation of paying electricity cost, a question that the lower courts undoubtedly have the competence to resolve.

FACTS:
Moldex Realty, Inc. is the owner-developer of Metrogate Complex Phase I Subdivision while private respondent is the association of homeowners in the said subdivision. The controversy arose when Moldex stopped paying the electric bills for the operation of streetlights in the subdivision and advised the association that it should assume such obligation. The association objected ad refused to pay. Consequently, Meralco discontinued its services which prompted the Association to apply for a preliminary injunction and preliminary mandatory injunction with the HLURB against petitioner. The HLURB granted the application and issued a writ of preliminary mandatory injunction. Moldex filed a motion for reconsideration but the same was denied.

Aggrieved, Moldex filed a petition for certiorari and prohibition with the CA against the decision of HLURB and it seeks the nullification of the HUDCC Resolution No. R-562. The CA dismissed the petition holding that the question of constitutionality of the Resolution should be lodged before the SC and not to the CA. As such, Moldex filed this present petition. The Solicitor General opposed the petition arguing that it is the Regional Trial Court, and not the SC nor the CA, which has jurisdiction over the present petition.

ISSUE:
Whether the doctrine of hierarchy of courts was violated?

RULING:
YES. It must be emphasized that this Court does not have exclusive original jurisdiction over petitions assailing the constitutionality of a law or an administrative regulation. In Drilon v. Lim, it was clearly stated that the lower courts also have jurisdiction to resolve the constitutionality at the first instance, thus:

> We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. x x x Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

The general rule is that this Court shall exercise only appellate jurisdiction over cases involving the constitutionality of a statute, treaty or regulation, except in circumstances where the Court believes that resolving the issue of constitutionality of a law or regulation at the first instance is of paramount importance and immediately affects the social, economic and moral well-being of the people. Thus, the Court of Appeals erred in ruling that a question on the constitutionality of a regulation may be brought only to this Court.

The instant petition does not allege circumstances and issues of transcendental importance to the public requiring their prompt and definite resolution and the brushing aside of technicalities of procedure. Neither is the Court convinced that the issues presented in this petition are of such nature that would nudge the lower courts to defer to the higher judgment of this Court. The application of the assailed HUDCC resolution mainly affects the proprietary interests of the parties involved and can hardly be characterized as overriding to the general well-being of the people. Ultimately, the Court is called upon to resolve the question of who bears the obligation of paying electricity cost, a question that the lower courts undoubtedly have the competence to resolve.

However, it is also a well-established rule that a court should not pass upon a constitutional question and decide a law, or an administrative regulation as in the instant case, to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court may raise its judgment, that course will be adopted and the constitutional question will be left for consideration until such question will be unavoidable. In other words, the Court will not touch the issue of unconstitutionality unless it is the very lis mota of the case.

ANTONIO M. SERRANO, *Petitioner,* -versus- GALLANT MARITIME SERVICES, *Respondent.*
G.R. No. 167614, EN BANC, March 24, 2009, AUSTRIA-MARTINEZ, *J.*

In Central Bank (now Bangko Sentral ng Pilipinas) Employee Association, Inc. v. Bangko Sentral ng Pilipinas, the constitutionality of a provision in the charter of the Bangko Sentral ng Pilipinas (BSP), a government financial institution (GFI), was challenged for maintaining its rank-and-file employees under the Salary Standardization Law (SSL), even when the rank-and-file employees of other GFIs had been exempted from the SSL by their respective charters. Finding that the disputed provision contained a suspect classification based on salary grade, the Court deliberately employed the standard of strict judicial scrutiny in its review of the constitutionality of said provision.
Imbued with the same sense of "obligation to afford protection to labor," the Court in the present case also employs the standard of strict judicial scrutiny, for it perceives in the subject clause a suspect classification prejudicial to OFWs.

FACTS:
Petitioner was hired by Gallant Maritime Services, Inc. and Marlow Navigation Co., Ltd. (respondents) under a POEA-approved Contract of Employment. On March 19, 1998, the date of his departure, petitioner was constrained to accept a downgraded employment contract for the position of Second Officer with a monthly salary of US$1,000.00, upon the assurance and representation of respondents that he would be made Chief Officer by the end of April. However, respondents did not deliver on their promise to make petitioner Chief Officer. Hence, petitioner refused to stay on as Second Officer and was repatriated to the Philippines on May.

Petitioner's employment contract was for a period of 12 months or from March 19, 1998 up to March 19, 1999, but at the time of his repatriation on May 26, 1998, he had served only two (2) months and seven (7) days of his contract, leaving an unexpired portion of nine(9) months and twenty-three(23)days.

Petitioner filed with the Labor Arbiter (LA) a Complaint against respondents for constructive dismissal and for payment of his money claims. LA rendered the dismissal of petitioner illegal and awarding him monetary benefits. Respondents appealed to the NLRC to question the finding of the LA. Likewise, petitioner also appealed to the NLRC on the sole issue that the LA erred in not applying the ruling of the Court in Triple Integrated Services, Inc. v. National Labor Relations Commission that in case of illegal dismissal, OFWs are entitled to their salaries for the unexpired portion of their contracts.

Petitioner also appealed to the NLRC on the sole issue that the LA erred in not applying the ruling of the Court in Triple Integrated Services, Inc. v. National Labor Relations Commission that in case of illegal dismissal, OFWs are entitled to their salaries for the unexpired portion of their contracts. Petitioner filed a Motion for Partial Reconsideration; he questioned the constitutionality of the subject clause. Petitioner filed a Petition for Certiorari with the CA, reiterating the constitutional challenge against the subject clause. CA affirmed the NLRC ruling on the reduction of the applicable salary rate; however, the CA skirted the constitutional issue raised by petitioner.

The last clause in the 5th paragraph of Section10, Republic Act (R.A.)No.8042, to wit:

> Sec. 10. Money Claims. - x x x In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum,

plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

Applying the subject clause, the NLRC and the CA computed the lump-sum salary of petitioner at the monthly rate of US$1,400.00 covering the period of three months out of the unexpired portion of nine months and 23 days of his employment contract or a total of US$4,200.00.

Impugning the constitutionality of the subject clause, petitioner contends that, in addition to the US$4,200.00 awarded by the NLRC and the CA, he is entitled to US$21,182.23 more or a total of US$25,382.23, equivalent to his salaries for the entire nine months and 23 days left of his employment contract, computed at the monthly rate of US$2,590.00

ISSUE:
Whether or not the Court of Appeals gravely erred in law when it failed to discharge its judicial duty to decide questions of substance not theretofore determined by the Honorable Supreme Court, particularly, the constitutional issues raised by the petitioner on the constitutionality of said law, which unreasonably, unfairly and arbitrarily limits payment of the award for back wages of overseas workers to three (3) months?

RULING:
When the Court is called upon to exercise its power of judicial review of the acts of its co-equals, such as the Congress, it does so only when these conditions obtain: (1) that there is an actual case or controversy involving a conflict of rights susceptible of judicial determination; (2) that the constitutional question is raised by a proper party and at the earliest opportunity; and (3) that the constitutional question is the very lis mota of the case otherwise the Court will dismiss the case or decide the same on some other ground.

Without a doubt, there exists in this case an actual controversy directly involving petitioner who is personally aggrieved that the labor tribunals and the CA computed his monetary award based on the salary period of three months only as provided under the subject clause.

The constitutional challenge is also timely. It should be borne in mind that the requirement that a constitutional issue be raised at the earliest opportunity entails the interposition of the issue in the pleadings before a competent court, such that, if the issue is not raised in the pleadings before that competent court, it cannot be considered at the trial and, if not considered in the trial, it cannot be considered on appeal.

Records disclose that the issue on the constitutionality of the subject clause was first raised, not in petitioner's appeal with the NLRC, but in his Motion for Partial Reconsideration with said labor tribunal, and reiterated in his Petition for Certiorari before the CA.

Nonetheless, the issue is deemed seasonably raised because it is not the NLRC but the CA which has the competence to resolve the constitutional issue. The NLRC is a labor tribunal that merely performs a quasi-judicial function - its function in the present case is limited to determining questions of fact to which the legislative policy of R.A. No. 8042 is to be applied and to resolving such questions in accordance with the standards laid down by the law itself; thus, its foremost function is to administer and enforce R.A. No. 8042, and not to inquire into the validity of its provisions. The CA, on the other hand, is vested with the power of judicial review or the power to declare unconstitutional a law or a provision thereof, such as the subject clause.

Petitioner's interposition of the constitutional issue before the CA was undoubtedly seasonable. The CA was therefore remiss in failing to take up the issue in its decision.

The third condition that the constitutional issue be critical to the resolution of the case likewise obtains because the monetary claim of petitioner to his lump-sum salary for the entire unexpired portion of his 12-month employment contract, and not just for a period of three months, strikes at the very core of the subject clause.

Thus, the stage is all set for the determination of the constitutionality of the subject clause.

There are three levels of scrutiny at which the Court reviews the constitutionality of a classification embodied in a law:
a) the deferential or rational basis scrutiny in which the challenged classification needs only be shown to be rationally related to serving a legitimate state interest;
b) the middle-tier or intermediate scrutiny in which the government must show that the challenged classification serves an important state interest and that the classification is at least substantially related to serving that interest; and
c) strict judicial scrutiny in which a legislative classification which impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class is presumed unconstitutional, and the burden is upon the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest.

Under American jurisprudence, strict judicial scrutiny is triggered by suspect classifications based on race or gender but not when the classification is drawn along income categories.

It is different in the Philippine setting. In Central Bank (now Bangko Sentral ng Pilipinas) Employee Association, Inc. v. Bangko Sentral ng Pilipinas, the constitutionality of a provision in the charter of the Bangko Sentral ng Pilipinas (BSP), a government financial institution (GFI), was challenged for maintaining its rank-and-file employees under the Salary Standardization Law (SSL), even when the rank-and-file employees of other GFIs had been exempted from the SSL by their respective charters. Finding that the disputed provision contained a suspect classification based on salary grade, the Court deliberately employed the standard of strict judicial scrutiny in its review of the constitutionality of said provision.

More significantly, it was in this case that the Court revealed the broad outlines of its judicial philosophy, to wit:

> Admittedly, the view that prejudice to persons accorded special protection by the Constitution requires a stricter judicial scrutiny finds no support in American or English jurisprudence. Nevertheless, these foreign decisions and authorities are not per se controlling in this jurisdiction.
>
> Further, the quest for a better and more "equal" world calls for the use of equal protection as a tool of effective judicial intervention.
>
> Our present Constitution has gone further in guaranteeing vital social and economic rights to marginalized groups of society, including labor. Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane

justification that those with less privilege in life should have more in law. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice calls for the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.

Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.

But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.

In the case at bar, the challenged proviso operates on the basis of the salary grade or officer-employee status. It is akin to a distinction based on economic class and status, with the higher grades as recipients of a benefit specifically withheld from the lower grades.

Considering that majority, if not all, the rank-and-file employees consist of people whose status and rank in life are less and limited, especially in terms of job marketability, it is they - and not the officers - who have the real economic and financial need for the adjustment. This is in accord with the policy of the Constitution "to free the people from poverty, provide adequate social services, extend to them a decent standard of living, and improve the quality of life for all." Any act of Congress that runs counter to this constitutional desideratum deserves strict scrutiny by this Court before it can pass muster.

Imbued with the same sense of "obligation to afford protection to labor," the Court in the present case also employs the standard of strict judicial scrutiny, for it perceives in the subject clause a suspect classification prejudicial to OFWs.

SAMEER OVERSEAS PLACEMENT AGENCY, INC., *Petitioner*, -versus- JOY C. CABILES, *Respondent.*
G.R. No. 170139, EN BANC, August 05, 2014, LEONEN, J.

In Serrano, we identified the classifications made by the reinstated clause. It distinguished between fixed-period overseas workers and fixed-period local workers. It also distinguished between overseas workers with employment contracts of less than one year and overseas workers with employment contracts of at least one year. Within the class of overseas workers with at least one-year employment contracts, there was a distinction between those with at least a year left in their contracts and those with less than a year left in their contracts when they were illegally dismissed.

The Congress' classification may be subjected to judicial review. In Serrano, there is a "legislative classification which impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class."

Under the Constitution, labor is afforded special protection. Thus, this court in Serrano, "[i]mbued with the same sense of 'obligation to afford protection to labor,' . . . employ[ed] the standard of strict judicial scrutiny, for it perceive[d] in the subject clause a suspect classification prejudicial to OFWs."

FACTS:
Respondent Joy Cabiles was hired by Wacoal Taiwan, Inc., through petitioner agency Sameer Overseas Placement Agency as a cutter. Subsequently, Cabiles was informed that her services are already terminated and that she must report to their head office for her immediate repatriation. Because of this, Cabiles filed a complaint for illegal dismissal against Sameer and Wacoal.

The SC found Cabiles to have been illegally dismissed, and is entitled to her salary for the unexpired portion of the employment contract that was violated together with attorney's fees and reimbursement of amounts withheld from her salary.

Sec 10 of RA 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, states that overseas workers who were terminated without just, valid, or authorized cause "shall be entitled to the full reimbursement of his placement fee with interest of twelve (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less."

However, in *Serrano v. Gallant Maritime Services, Inc. and Marlow Navigation Co., Inc.*, the SC ruled that the clause "or for three (3) months for every year of the unexpired term, whichever is less" is unconstitutional for violating the equal protection clause and substantive due process.

Yet again, the clause *"or for three (3) months for every year of the unexpired term, whichever is less"* was reinstated by Congress in RA 8042 upon promulgation of Republic Act No. 10022 in 2010.

However, we are confronted with a unique situation. The law passed incorporates the exact clause already declared as unconstitutional, without any perceived substantial change in the circumstances.

Respondent argued that the clause was unconstitutional because it infringed on workers' right to contract.

ISSUE:
Whether Congress' classification may be subjected to judicial review. (YES)

RULING:
In *Serrano*, we identified the classifications made by the reinstated clause. It distinguished between fixed-period overseas workers and fixed-period local workers. It also distinguished between overseas workers with employment contracts of less than one year and overseas workers with employment contracts of at least one year. Within the class of overseas workers with at least one-year employment contracts, there was a distinction between those with at least a year left in their contracts and those with less than a year left in their contracts when they were illegally dismissed.
The Congress' classification may be subjected to judicial review. In *Serrano*, there is a "legislative classification which impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class."
Under the Constitution, labor is afforded special protection. Thus, this court in *Serrano*, "[i]mbued with the same sense of 'obligation to afford protection to labor,' . . . employ[ed] the standard of strict judicial scrutiny, for it perceive[d] in the subject clause a suspect classification prejudicial to OFWs."
We also noted in *Serrano* that before the passage of RA 8042, the money claims of illegally terminated overseas and local workers with fixed-term employment were computed in the same manner. Their money claims were computed based on the "unexpired portions of their contracts." The adoption of

the reinstated clause in RA 8042 subjected the money claims of illegally dismissed overseas workers with an unexpired term of at least a year to a cap of three months' worth of their salary. There was no such limitation on the money claims of illegally terminated local workers with fixed-term employment.

We observed that illegally dismissed overseas workers whose employment contracts had a term of less than one year were granted the amount equivalent to the unexpired portion of their employment contracts. Meanwhile, illegally dismissed overseas workers with employment terms of at least a year were granted a cap equivalent to three months of their salary for the unexpired portions of their contracts.

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS, CITY OF ILOILO REPRESENTED BY MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO, AND JERRY P. TREÑAS IN HIS PERSONAL CAPACITY AS TAXPAYER, *Petitioners*, -versus- COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; AND MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON, *Respondents.* CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, AND CITY OF TAGUM, *Petitioners-in-Intervention.*

G.R. No. 176951, EN BANC, December 21, 2009, VELASCO JR., J

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS, CITY OF ILOILO REPRESENTED BY MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO, AND JERRY P. TREÑAS IN HIS PERSONAL CAPACITY AS TAXPAYER, *Petitioners*, -versus- COMMISSION ON ELECTIONS; MUNICIPALITY OF LAMITAN, PROVINCE OF BASILAN; MUNICIPALITY OF TABUK, PROVINCE OF KALINGA; MUNICIPALITY OF BAYUGAN, PROVINCE OF AGUSAN DEL SUR; MUNICIPALITY OF BATAC, PROVINCE OF ILOCOS NORTE; MUNICIPALITY OF MATI, PROVINCE OF DAVAO ORIENTAL; AND MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL, *Respondents.* CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, AND CITY OF TAGUM, *Petitioners-in-Intervention.*

G.R. No. 177499, EN BANC, December 21, 2009, VELASCO JR., J

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS, CITY OF ILOILO REPRESENTED BY MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO, AND JERRY P. TREÑAS IN HIS PERSONAL CAPACITY AS TAXPAYER, PETITIONERS, *Petitioners*, -versus- COMMISSION ON ELECTIONS; MUNICIPALITY OF CABADBARAN, PROVINCE OF AGUSAN DEL NORTE;

MUNICIPALITY OF CARCAR, PROVINCE OF CEBU; AND MUNICIPALITY OF EL SALVADOR, MISAMIS ORIENTAL, *Respondents.* CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, AND CITY OF TAGUM, *Petitioners-in-Intervention.*
G.R. No. 178056, EN BANC, December 21, 2009, VELASCO JR., J

It ought to be clear that a deadlocked vote does not reflect the "majority of the Members" contemplated in Sec. 4 (2) of Art. VIII of the Constitution, which requires that:

> *All cases involving the constitutionality of a treaty, international or executive agreement, or law shall be heard by the Supreme Court en banc, x x x shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.*

Webster defines "majority" as "a number greater than half of a total." In plain language, this means 50% plus one. In Lambino v. Commission on Elections, Justice, now Chief Justice, Puno, in a separate opinion, expressed the view that "a deadlocked vote of six (6) is not a majority and a non-majority cannot write a rule with precedential value."

As may be noted, the aforequoted Sec. 4 of Art. VIII, as couched, exacts a majority vote in the determination of a case involving the constitutionality of a statute, without distinguishing whether such determination is made on the main petition or thereafter on a motion for reconsideration. This is as it should be, for, to borrow from the late Justice Ricardo J. Francisco: "x x x [E]ven assuming x x x that the constitutional requirement on the concurrence of the `majority' was initially reached in the x x x ponencia, the same is inconclusive as it was still open for review by way of a motion for reconsideration."

To be sure, the Court has taken stock of the rule on a tie-vote situation, i.e., Sec. 7, Rule 56 and the complementary A.M. No. 99-1-09- SC, respectively, providing that:

> *SEC. 7. Procedure if opinion is equally divided. - Where the court en banc is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.*
>
> *A.M. No. 99-1-09-SC - x x x A motion for reconsideration of a decision or resolution of the Court En Banc or of a Division may be granted upon a vote of a majority of the En Banc or of a Division, as the case may be, who actually took part in the deliberation of the motion.*
>
> *If the voting results in a tie, the motion for reconsideration is deemed denied.*

But since the instant cases fall under Sec. 4 (2), Art. VIII of the Constitution, the aforequoted provisions ought to be applied in conjunction with the prescription of the Constitution that the cases "shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations

on the issues in the instant cases and voted thereon." To repeat, the last vote on the issue of the constitutionality of the cityhood bills is that reflected in the April 28, 2009 Resolution--a 6-6 deadlock.

FACTS:
The consolidated petitions for prohibition commenced by the League of Cities of the Philippines (LCP) assail the constitutionality of the sixteen laws, each converting the municipality covered thereby into a city (cityhood laws, hereinafter).

In its November 18, 2008 Decision, the SC *en banc*, by a 6-5 vote, granted the petitions and nullified the sixteen cityhood laws for being violative of the Constitution, specifically its Sec 10, Art X and the equal protection clause.

Subsequently, respondent local government units (LGUs) moved for reconsideration. By Resolution of March 31, 2009, a divided Court denied the motion for reconsideration. A second motion for reconsideration followed.

Per Resolution dated April 28, 2009, the SC, voting 6-6, disposed of the motion as follows:

> By a vote of 6-6, the Motion for Reconsideration of the Resolution of 31 March 2009 is DENIED for lack of merit. The motion is denied since there is no majority that voted to overturn the Resolution of 31 March 2009.

On May 14, 2009, respondent LGUs filed a *Motion to Amend the Resolution of April 28, 2009 by Declaring Instead that Respondents' "Motion for Reconsideration of the Resolution of March 31, 2009" and "Motion for Leave to File and to Admit Attached `Second Motion for Reconsideration of the Decision Dated November 18, 2008' Remain Unresolved and to Conduct Further Proceedings Thereon*."

Per its Resolution of June 2, 2009, the SC declared the May 14, 2009 motion adverted to as expunged in light of the entry of judgment made on May 21, 2009. Justice Leonardo-De Castro, however, taking common cause with Justice Bersamin to grant the motion for reconsideration of the April 28, 2009 Resolution and to recall the entry of judgment, stated the observation, and with reason, that the entry was effected "before the Court could act on the aforesaid motion which was filed within the 15-day period counted from receipt of the April 28, 2009 Resolution."

Forthwith, respondent LGUs filed a *Motion for Reconsideration of the Resolution of June 2, 2009* to which some of the petitioners and petitioners-in-intervention filed their respective comments. The Court will now rule on this incident.

ISSUE:
Whether the required vote set forth in Sec. 4(2), Art. VIII is limited only to the initial vote on the petition or also to the subsequent voting on the motion for reconsideration where the Court is called upon and actually votes on the constitutionality of a law or like issuances/Whether a minute resolution dismissing, on a tie vote, a motion for reconsideration on the sole stated ground--that the "basic issues have already been passed"-- suffice to hurdle the voting requirement required for a declaration of the unconstitutionality of the cityhood laws in question. (No)

RULING:

The 6-6 vote on the motion to reconsider the Resolution of March 31, 2009, which denied the initial motion on the sole ground that "the basic issues had already been passed upon" betrayed an evenly divided Court on the issue of whether or not the underlying Decision of November 18, 2008 had indeed passed upon the issues raised in the motion for reconsideration of the said decision. But at the end of the day, the single issue that matters and the vote that really counts really turn on the constitutionality of the cityhood laws. And be it remembered that the inconclusive 6-6 tie vote reflected in the April 28, 2009 Resolution was the last vote on the issue of whether or not the cityhood laws infringe the Constitution. Accordingly, the motions of the respondent LGUs, in light of the 6-6 vote, should be deliberated anew until the required concurrence on the issue of the validity or invalidity of the laws in question is, on the merits, secured.

It ought to be clear that a deadlocked vote does not reflect the "majority of the Members" contemplated in Sec. 4 (2) of Art. VIII of the Constitution, which requires that:

> All cases involving the constitutionality of a treaty, international or executive agreement, or law shall be heard by the Supreme Court *en banc*, x x x shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Webster defines "majority" as "a number greater than half of a total." In plain language, this means 50% plus one. In *Lambino v. Commission on Elections*, Justice, now Chief Justice, Puno, in a separate opinion, expressed the view that "a deadlocked vote of six (6) is not a majority and a non-majority cannot write a rule with precedential value."

As may be noted, the aforequoted Sec. 4 of Art. VIII, as couched, exacts a majority vote in the determination of a case involving the constitutionality of a statute, without distinguishing whether such determination is made on the main petition or thereafter on a motion for reconsideration. This is as it should be, for, to borrow from the late Justice Ricardo J. Francisco: "x x x [E]ven assuming x x x that the constitutional requirement on the concurrence of the `majority' was initially reached in the x x x *ponencia*, the same is inconclusive as it was still open for review by way of a motion for reconsideration."

To be sure, the Court has taken stock of the rule on a tie-vote situation, i.e., Sec. 7, Rule 56 and the complementary A.M. No. 99-1-09- SC, respectively, providing that:

> SEC. 7. *Procedure if opinion is equally divided*. - Where the court en banc is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.
>
> A.M. No. 99-1-09-SC - x x x A motion for reconsideration of a decision or resolution of the Court *En Banc* or of a Division may be granted upon a vote of a majority of the *En Banc* or of a Division, as the case may be, who actually took part in the deliberation of the motion.
>
> If the voting results in a tie, the motion for reconsideration is deemed denied.

But since the instant cases fall under Sec. 4 (2), Art. VIII of the Constitution, the aforequoted provisions ought to be applied in conjunction with the prescription of the Constitution that the cases

"shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the instant cases and voted thereon." To repeat, the last vote on the issue of the constitutionality of the cityhood bills is that reflected in the April 28, 2009 Resolution--a 6-6 deadlock.

On the postulate then that *first*, the finality of the November 18, 2008 Decision has yet to set in, the issuance of the precipitate entry of judgment notwithstanding, and *second*, the deadlocked vote on the second motion for reconsideration did not definitely settle the constitutionality of the cityhood laws, the Court is inclined to take another hard look at the underlying decision. Without belaboring in their smallest details the arguments for and against the procedural dimension of this disposition, it bears to stress that the Court has the power to suspend its own rules when the ends of justice would be served thereby. In the performance of their duties, courts should not be shackled by stringent rules which would result in manifest injustice. Rules of procedure are only tools crafted to facilitate the attainment of justice. Their strict and rigid application must be eschewed, if they result in technicalities that tend to frustrate rather than promote substantial justice. Substantial rights must not be prejudiced by a rigid and technical application of the rules in the altar of expediency. When a case is impressed with public interest, a relaxation of the application of the rules is in order. Time and again, this Court has suspended its own rules or excepted a particular case from their operation whenever the higher interests of justice so require.

The Court, by a vote of 6-4, grants the respondent LGUs' motion for reconsideration of the Resolution of June 2, 2009, as well as their May 14, 2009 motion to consider the second motion for reconsideration of the November 18, 2008 Decision unresolved, and also grants said second motion for reconsideration.

RE: COA OPINION ON THE COMPUTATION OF THE APPRAISED VALUE OF THE PROPERTIES PURCHASED BY THE RETIRED CHIEF/ASSOCIATE JUSTICES OF THE SUPREME COURT.
A.M. No. 11-7-10-SC, EN BANC, July 31, 2012, PER CURIAM

Under this administrative authority, the Court has the power to administer the Judiciary's internal affairs, and this includes the authority to handle and manage the retirement applications and entitlements of its personnel as provided by law and by its own grants.

Thus, under the guarantees of the Judiciary's fiscal autonomy and its independence, the Chief Justice and the Court En Banc determine and decide the who, what, where, when and how of the privileges and benefits they extend to justices, judges, court officials and court personnel within the parameters of the Court's granted power; they determine the terms, conditions and restrictions of the grant as grantor.

In the context of the grant now in issue, the use of the formula provided in CFAG Joint Resolution No. 35 is a part of the Court's exercise of its discretionary authority to determine the manner the granted retirement privileges and benefits can be availed of. Any kind of interference on how these retirement privileges and benefits are exercised and availed of, not only violates the fiscal autonomy and independence of the Judiciary, but also encroaches upon the constitutional duty and privilege of the Chief Justice and the Supreme Court En Banc to manage the Judiciary's own affair.

FACTS:

The Legal Services Sector, Office of the General Counsel of the Commission on Audit (*COA*) found an underpayment amounting to P221,021 which resulted when five (5) retired SC justices purchased from the SC the personal properties assigned to them during their incumbency.

The COA attributed this underpayment to the use by the Property Division of the SC of the wrong formula in computing the appraisal value of the purchased vehicles. According to the COA, the Property Division erroneously appraised the subject motor vehicles by applying Constitutional Fiscal Autonomy Group (*CFAG*) Joint Resolution No. 35 dated April 23, 1997 and its guidelines, in compliance with the Resolution of the Court *En Banc* dated March 23, 2004 in A.M. No. 03-1201, when it should have applied the formula found in COA Memorandum No. 98-569-A dated August 5, 1998.

In her Memorandum, Atty. Candelaria recommended that the SC advise the COA to respect the in-house computation based on the CFAG formula, noting that this was the first time that the COA questioned the authority of the Court in using CFAG Joint Resolution No. 35 and its guidelines in the appraisal and disposal of government property since these were issued in 1997. As a matter of fact, in two previous instances involving two (2) retired CA Associate Justices, the COA upheld the in-house appraisal of government property using the formula found in the CFAG guidelines.

More importantly, the Constitution itself grants the Judiciary fiscal autonomy in the handling of its budget and resources. Full autonomy, among others, contemplates the guarantee of full flexibility in the allocation and utilization of the Judiciary's resources, based on its own determination of what it needs. The Court thus has the recognized authority to allocate and disburse such sums as may be provided or required by law in the course of the discharge of its functions. To allow the COA to substitute the Court's policy in the disposal of its property would be tantamount to an encroachment into this judicial prerogative.

ISSUE:
Whether the COA should respect the in-house computation based on the CFAG formula. (YES)

RULING:
The COA's authority to conduct post-audit examinations on constitutional bodies granted fiscal autonomy is provided under Section 2(1), Article IX-D of the 1987 Constitution. This authority, however, must be read not only in light of the Court's fiscal autonomy, but also in relation with the constitutional provisions on judicial independence and the existing jurisprudence and Court rulings on these matters.

Recognizing the vital role that the Judiciary plays in our system of government as the sole repository of judicial power, with the power to determine whether any act of any branch or instrumentality of the government is attended with grave abuse of discretion, no less than the Constitution provides a number of safeguards to ensure that judicial independence is protected and maintained.

The Constitution expressly prohibits Congress from depriving the SC of its jurisdiction, as enumerated in Section 5, Article VII of the Constitution, or from passing a law that undermines the security of tenure of the members of the judiciary. The Constitution also mandates that the judiciary shall enjoy fiscal autonomy, and grants the Supreme Court administrative supervision over all courts and judicial personnel. Jurisprudence has characterized administrative supervision as exclusive, noting that only the Supreme Court can oversee the judges and court personnel's compliance with all laws, rules and regulations. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers.

The Constitution protects as well the salaries of the Justices and judges by prohibiting any decrease in their salary during their continuance in office, and ensures their security of tenure by providing that "Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office." With these guarantees, justices and judges can administer justice undeterred by any fear of reprisals brought on by their judicial action. They can act inspired solely by their knowledge of the law and by the dictates of their conscience, free from the corrupting influence of base or unworthy motives.

One of the most important aspects of judicial independence is the constitutional grant of fiscal autonomy. Just as the Executive may not prevent a judge from discharging his or her judicial duty (for example, by physically preventing a court from holding its hearings) and just as the Legislature may not enact laws removing all jurisdiction from courts, the courts may not be obstructed from their freedom to use or dispose of their funds for purposes germane to judicial functions. While, as a general proposition, the authority of legislatures to control the purse in the first instance is unquestioned, any form of interference by the Legislative or the Executive on the Judiciary's fiscal autonomy amounts to an improper check on a co-equal branch of government. If the judicial branch is to perform its primary function of adjudication, it must be able to command adequate resources for that purpose. This authority to exercise (or to compel the exercise of) legislative power over the national purse (which at first blush appears to be a violation of concepts of separateness and an invasion of legislative autonomy) is necessary to maintain judicial independence and is expressly provided for by the Constitution through the grant of fiscal autonomy under Section 3, Article VIII.

In *Bengzon v. Drilon*, we had the opportunity to define the scope and extent of fiscal autonomy in the following manner:

> As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates **a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require**. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.
>
> **Fiscal autonomy means freedom from outside control**. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.
>
> The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. **The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.** In the interest of comity and cooperation, the Supreme Court, Constitutional Commissions,

> and the Ombudsman have so far limited their objections to constant reminders. We now agree with the petitioners that this grant of autonomy should cease to be a meaningless provision.

The Judiciary's fiscal autonomy is realized through the actions of the Chief Justice, as its head, and of the Supreme Court *En Banc*, in the exercise of administrative control and supervision of the courts and its personnel. As the Court *En Banc's* Resolution (dated March 23, 2004) in A.M. No. 03-12 01 reflects, the fiscal autonomy of the Judiciary serves as the basis in allowing the sale of the Judiciary's properties to retiring Justices of the Supreme Court and the appellate courts.

By way of a long standing tradition, partly based on the intention to reward long and faithful service, the sale to the retired Justices of specifically designated properties *that they used during their incumbency* has been recognized both as a privilege and a benefit. This has become an established practice within the Judiciary that even the COA has previously recognized. The *En Banc* Resolution also deems the grant of the privilege as a form of additional retirement benefit that the Court can grant its officials and employees in the exercise of its power of administrative supervision. Under this administrative authority, the Court has the power to administer the Judiciary's internal affairs, and this includes the authority to handle and manage the retirement applications and entitlements of its personnel as provided by law and by its own grants.

Thus, under the guarantees of the Judiciary's fiscal autonomy and its independence, the Chief Justice and the Court *En Banc* determine and decide the *who, what, where, when* and *how* of the privileges and benefits they extend to justices, judges, court officials and court personnel within the parameters of the Court's granted power; they determine the terms, conditions and restrictions of the grant as grantor.

In the context of the grant now in issue, the use of the formula provided in CFAG Joint Resolution No. 35 is a part of the Court's exercise of its discretionary authority to determine the manner the granted retirement privileges and benefits can be availed of. Any kind of interference on how these retirement privileges and benefits are exercised and availed of, not only violates the fiscal autonomy and independence of the Judiciary, but also encroaches upon the constitutional duty and privilege of the Chief Justice and the Supreme Court *En Banc* to manage the Judiciary's own affair.

RE: REQUEST FOR GUIDANCE/CLARIFICATION ON SECTION 7, RULE III OF REPUBLIC ACT NO. 10154 REQUIRING RETIRING GOVERNMENT EMPLOYEES TO SECURE A CLEARANCE OF PENDENCY/NON-PENDENCY OF CASE/S FROM THE CIVIL SERVICE COMMISSION.
A.M. No. 13-09-08-SC, EN BANC, October 01, 2013, PERLAS-BERNABE, J

Section 6, Article VIII of the Constitution exclusively vests in the Court administrative supervision over all courts and court personnel. As such, it oversees the court personnel's compliance with all laws and takes the proper administrative action against them for any violation thereof. As an adjunct thereto, it keeps in its custody records pertaining to the administrative cases of retiring court personnel.

In view of the foregoing, the Court rules that the subject provision – which requires retiring government employees to secure a prior clearance of pendency/non-pendency of administrative case/s from, among others, the CSC – should not be made to apply to employees of the Judiciary. To deem it otherwise would disregard the Court's constitutionally-enshrined power of administrative supervision over its personnel. Besides, retiring court personnel are already required to secure a prior clearance of the pendency/non-

pendency of administrative case/s from the Court which makes the CSC clearance a superfluous and non-expeditious requirement contrary to the declared state policy of RA 10154.

FACTS:
Before the Court is a Memorandum dated September 18, 2013 from Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, Office of Administrative Services of the Supreme Court, requesting guidance/clarification on the applicability to the Judiciary of Section 7, Rule III of the Implementing Rules and Regulations of RA 10154 which states:

> Section 7. **Notice of Pendency of Case**. The retiring employee shall seek Clearance of Pendency/Non-Pendency of Administrative Case from his/her employer agency, Civil Service Commission (CSC), Office of the Ombudsman, or in case of presidential appointees, from the Office of the President.

ISSUE:
Whether the requirement of seeking a Clearance of Pendency/Non-Pendency of Administrative Case from the CSC embodied in Section 7, Rule III of the IRR of RA 10154 is inapplicable to retiring employees of the Judiciary. (YES)

RULING:
Section 6, Article VIII of the Constitution exclusively vests in the Court administrative supervision over all courts and court personnel. As such, it oversees the court personnel's compliance with all laws and takes the proper administrative action against them for any violation thereof. As an adjunct thereto, it keeps in its custody records pertaining to the administrative cases of retiring court personnel.

In view of the foregoing, the Court rules that the subject provision – which requires retiring government employees to secure a prior clearance of pendency/non-pendency of administrative case/s from, among others, the CSC – should not be made to apply to employees of the Judiciary. To deem it otherwise would disregard the Court's constitutionally-enshrined power of administrative supervision over its personnel. Besides, retiring court personnel are already required to secure a prior clearance of the pendency/non-pendency of administrative case/s from the Court which makes the CSC clearance a superfluous and non-expeditious requirement contrary to the declared state policy of RA 10154.

To further clarify the matter, the same principles dictate that a prior clearance of pendency/non-pendency of administrative case/s from the Office of the President (albeit some court personnel are presidential appointees, *e.g.*, Supreme Court Justices) or the Office of the Ombudsman should not equally apply to retiring court personnel. Verily, the administrative supervision of court personnel and all affairs related thereto fall within the exclusive province of the Judiciary.

It must, however, be noted that since the Constitution only accords the Judiciary administrative supervision over its personnel, a different treatment of the clearance requirement obtains with respect to criminal cases. As such, a clearance requirement which pertains to criminal cases may be imposed by the appropriate government agency, *i.e.*, the Office of the Ombudsman, on retiring court personnel as it is a matter beyond the ambit of the Judiciary's power of administrative supervision.

FRANCIS H. JARDELEZA, *Petitioner*, -versus- CHIEF JUSTICE MARIA LOURDES P. A. SERENO, THE JUDICIAL AND BAR COUNCIL AND EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., *Respondents.*
G.R. No. 213181, EN BANC, August 19, 2014, MENDOZA, J.

What precisely set off the protest of lack of due process was the circumstance of requiring Jardeleza to appear before the Council [JBC] and to instantaneously provide those who are willing to listen an intelligent defense. Was he given the opportunity to do so? The answer is yes, in the context of his physical presence during the meeting. Was he given a reasonable chance to muster a defense? No, because he was merely asked to appear in a meeting where he would be, right then and there, subjected to an inquiry. It would all be too well to remember that the allegations of his extra-marital affair and acts of insider trading sprung up only during the June 30, 2014 meeting. While the said issues became the object of the JBC discussion on June 16, 2014, Jardeleza was not given the idea that he should prepare to affirm or deny his past behavior. These circumstances preclude the very idea of due process in which the right to explain oneself is given, not to ensnare by surprise, but to provide the person a reasonable opportunity and sufficient time to intelligently muster his response. Otherwise, the occasion becomes an idle and futile exercise.

FACTS:
Last May 22, 2014, Associate Justice Roberto Abad had his compulsory retirement. As such, JBC announced the opening for the application or recommendation for the said vacated position. Dean Danilo Concepcion of the University of the Philippines nominated Francis H. Jardeleza (Jardeleza), incumbent Solicitor General of the Republic, for the said position.

Jardeleza received telephone calls informing him that during the meetings of JBC, Chief Justice and JBC ex-officio Chairperson, Maria Lourdes P.A. Sereno (Chief Justice Sereno), manifested that she would be invoking Section 2, Rule 10 of JBC-0094 against him. Jardeleza was then directed to "make himself available" before the JBC on June 30, 2014, during which he would be informed of the objections to his integrity.

Consequently, Jardeleza filed a letter-petition praying that the Court, in the exercise of its constitutional power of supervision over the JBC to be given prior notice to any proceedings relating to his application, to allow him to cross-examine witnesses presented against him, to reschedule the hearing and to disallow Chief Justice Sereno from participating in the voting for the replacement of Justice Abad.

Associate Justice Antonio T. Carpio appeared as a resource person to shed light on a classified legal memorandum that would clarify the objection to Jardeleza's integrity as posed by Chief Justice Sereno. According to the JBC, Chief Justice Sereno questioned Jardeleza's ability to discharge the duties of his office as shown in a confidential legal memorandum over his handling of an international arbitration case for the government. Secretary Leila de Lima then informed Jardeleza of the appearance of Justice Carpio.

Jardeleza was then asked by Chief Justice Sereno if he wanted to defend himself. He answered in the affirmative provided that due process will be observed. Jardeleza then put into record a written statement expressing his views on the situation and requested the JBC to defer its meeting considering that the Court *en banc* would meet the next day to act on his pending letter-petition.

Later in the afternoon of the same day, and apparently denying Jardeleza's request for deferment of the proceedings, the JBC continued its deliberations and proceeded to vote for the nominees to be included in the shortlist. Thereafter, the JBC released the subject shortlist of four (4) nominees. Jardeleza was not included in the said list.

A newspaper article was later published stating that the Court's Spokesman, Atty. Theodore Te, revealed that there were actually five (5) nominees, but one (1) nominee could not be included because of the invocation of Rule 10, Section 2 of the JBC rules.

Jardeleza filed the present petition for *certiorari* and mandamus under Rule 65 of the Rules of Court with prayer for the issuance of a Temporary Restraining Order (TRO), seeking to compel the JBC to include him in the list of nominees for the replacement for the position of Justice Abad, on the grounds that the JBC and Chief Justice Sereno acted in grave abuse of discretion amounting to lack or excess of jurisdiction in excluding him, despite having garnered a sufficient number of votes to qualify for the position.

An in-depth perusal of Jardeleza's petition would reveal that his resort to judicial intervention hinges on the alleged illegality of his exclusion from the shortlist due to: 1) the deprivation of his constitutional right to due process; and 2) the JBC's erroneous application, if not direct violation, of its own rules. Suffice it to say, Jardeleza directly ascribes the supposed violation of his constitutional rights to the acts of Chief Justice Sereno in raising objections against his integrity and the manner by which the JBC addressed this challenge to his application, resulting in his arbitrary exclusion from the list of nominees.

On August 11, 2014, the JBC filed its comment contending that Jardeleza's petition lacked procedural and substantive bases that would warrant favorable action by the Court. For the JBC, *certiorari* is only available against a tribunal, a board or an officer exercising judicial or quasi-judicial functions. Anent the substantive issues, the JBC mainly denied that Jardeleza was deprived of due process.

In his Comment, Executive Secretary Paquito N. Ochoa Jr. (Executive Secretary) raised the possible unconstitutionality of Section 2, Rule 10 of JBC-009, particularly the imposition of a higher voting threshold in cases where the integrity of an applicant is challenged.

ISSUE:
Whether the right to due process is available in the course of JBC proceedings. (YES)

RULING:
After a tedious review of the parties' respective arguments, the Court concludes that the right to due process is available and thereby demandable as a matter of right.

In JBC proceedings, an aspiring judge or justice justifies his qualifications for the office when he presents proof of his scholastic records, work experience and laudable citations. His goal is to establish that he is qualified for the office applied for. The JBC then takes every possible step to verify an applicant's track record for the purpose of determiningwhether or not he is qualified for nomination. It ascertains the factors which entitle an applicant to become a part of the roster from which the President appoints.

The fact that a proceeding is sui generis and is impressed with discretion, however, does not automatically denigrate an applicant's entitlement to due process. It is well-established in

jurisprudence that disciplinary proceedings against lawyers are sui generis in that they are neither purely civil nor purely criminal; they involve investigations by the Court into the conduct of one of its officers, not the trial of an action or a suit.

Notwithstanding being "a class of its own," the right to be heard and to explain one's self is availing. Where an objection to an applicant's qualifications is raised, the observance of due process neither negates nor renders illusory the fulfillment of the duty of JBC to recommend. This holding is not an encroachment on its discretion in the nomination process. When an applicant, who vehemently denies the truth of the objections, is afforded the chance to protest, the JBC is presented with a clearer understanding of the situation it faces, thereby guarding the body from making an unsound and capricious assessment of information brought before it. The JBC is not expected to strictly apply the rules of evidence in its assessment of an objection against an applicant.

As applied in the case of Jardeleza and after careful calibration of the case, the Court has reached the determination that the application of the "unanimity rule" on integrity resulted in Jardeleza's deprivation of his right to due process.

Any complaint or opposition against a candidate may be filed with the Secretary within ten (10) days from the publication of the notice and a list of candidates. Surely, this notice is all the more conspicuous to JBC members. Granting *ex argumenti*, that the 10-day period is only applicable to the public, excluding the JBC members themselves, this does not discount the fact that the invocation of the first ground in the June 5, 2014 meeting would have raised procedural issues. To be fair, several members of the Council expressed their concern and desire to hear out Jardeleza but the application of JBC-010 did not form part of the agenda then. It was only during the next meeting on June 16, 2014, that the Council agreed to invite Jardeleza, by telephone, to a meeting that would be held on the same day when a resource person would shed light on the matter.

What precisely set off the protest of lack of due process was the circumstance of requiring Jardeleza to appear before the Council and to instantaneously provide those who are willing to listen an intelligent defense. Was he given the opportunity to do so? The answer is yes, in the context of his physical presence during the meeting. Was he given a reasonable chance to muster a defense? No, because he was merely asked to appear in a meeting where he would be, right then and there, subjected to an inquiry. It would all be too well to remember that the allegations of his extra-marital affair and acts of insider trading sprung up only during the June 30, 2014 meeting. While the said issues became the object of the JBC discussion on June 16, 2014, Jardeleza was not given the idea that he should prepare to affirm or deny his past behavior. These circumstances preclude the very idea of due process in which the right to explain oneself is given, not to ensnare by surprise, but to provide the person a reasonable opportunity and sufficient time to intelligently muster his response. Otherwise, the occasion becomes an idle and futile exercise.

FRANCISCO I. CHAVEZ, *Petitioner*, -versus- JUDICIAL AND BAR COUNCIL, SEN. FRANCIS JOSEPH G. ESCUDERO AND REP. NIEL C. TUPAS, JR., *Respondent.*
G.R. No. 202242, EN BANC, April 16, 2013, MENDOZA, J.

Thus, to say that the Framers simply failed to adjust Section 8, Article VIII, by sheer inadvertence, to their decision to shift to a bicameral form of the legislature, is not persuasive enough. Respondents cannot just lean on plain oversight to justify a conclusion favorable to them. It is very clear that the

Framers were not keen on adjusting the provision on congressional representation in the JBC because it was not in the exercise of its primary function – to legislate. JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function.

In checkered contrast, there is essentially no interaction between the two Houses in their participation in the JBC. No mechanism is required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Rather, in the creation of the JBC, the Framers arrived at a unique system by adding to the four (4) regular members, three (3) representatives from the major branches of government - the Chief Justice as ex-officio Chairman (representing the Judicial Department), the Secretary of Justice (representing the Executive Department), and a representative of the Congress (representing the Legislative Department). The total is seven (7), not eight. In so providing, the Framers simply gave recognition to the Legislature, not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government.

FACTS:
The Judicial and Bar Council (JBC) is an independent body responsible for giving recommendations of eligible candidates to be selected by the President for appointment to the Judiciary. The Framers carefully worded Section 8, Article VIII of the 1987 Constitution in this wise:

> Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

Pursuant to the constitutional provision that Congress is entitled to one (1) representative, each House sent a representative to the JBC, not together, but alternately or by rotation. In 1994, two (2) representatives from Congress began sitting simultaneously in the JBC, with each having one-half (1/2) of a vote. In 2001, the JBC En Banc decided to allow the representatives from the Senate and the House of Representatives one full vote each.

The Supreme Court ruled in 2012 that the new composition of the JBC is in violation of the Constitution, thus, unconstitutional. In the present motion, the respondents argue that allowing only one representative from Congress in the JBC would lead to absurdity considering its bicameral nature; 2] that the failure of the Framers to make the proper adjustment when there was a shift from unilateralism to bicameralism was a plain oversight; 3] that two representatives from Congress would not subvert the intention of the Framers to insulate the JBC from political partisanship; and 4] that the rationale of the Court in declaring a seven-member composition would provide a solution should there be a stalemate is not exactly correct.

ISSUE:
Whether the new composition of the JBC can be justified considering the bicameral nature of the Congress. (No)

RULING:
The petition is denied.

A reading of the 1987 Constitution would reveal that several provisions were indeed adjusted as to be in tune with the shift to bicameralism. In several provisions, the bicameral nature of Congress was recognized and, clearly, the corresponding adjustments were made as to how a matter would be handled and voted upon by its two Houses.

Thus, to say that the Framers simply failed to adjust Section 8, Article VIII, by sheer inadvertence, to their decision to shift to a bicameral form of the legislature, is not persuasive enough. Respondents cannot just lean on plain oversight to justify a conclusion favorable to them. It is very clear that the Framers were not keen on adjusting the provision on congressional representation in the JBC because it was not in the exercise of its primary function – to legislate. JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function.

In checkered contrast, there is essentially no interaction between the two Houses in their participation in the JBC. No mechanism is required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Rather, in the creation of the JBC, the Framers arrived at a unique system by adding to the four (4) regular members, three (3) representatives from the major branches of government - the Chief Justice as ex-officio Chairman (representing the Judicial Department), the Secretary of Justice (representing the Executive Department), and a representative of the Congress (representing the Legislative Department). The total is seven (7), not eight. In so providing, the Framers simply gave recognition to the Legislature, not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government.

In this regard, the scholarly dissection on the matter by retired Justice Consuelo Ynares-Santiago, a former JBC consultant, is worth reiterating. Thus:

> A perusal of the records of the Constitutional Commission reveals that the composition of the JBC reflects the Commission's desire "to have in the Council a representation for the major elements of the community." xxx The ex-officio members of the Council consist of representatives from the three main branches of government while the regular members are composed of various stakeholders in the judiciary. The unmistakeable tenor of Article VIII, Section 8(1) was to treat each ex-officio member as representing one co-equal branch of government. xxx Thus, the JBC was designed to have seven voting members with the three ex-officio members having equal say in the choice of judicial nominees.

FRANCISCO I. CHAVEZ, *Petitioner*, -versus- JUDICIAL AND BAR COUNCIL, SEN. FRANCIS JOSEPH G. ESCUDERO AND REP. NIEL C. TUPAS, JR., *Respondent.*
G.R. No. 202242, EN BANC, July 17, 2012, MENDOZA, J.

It is worthy to note that the seven-member composition of the JBC serves a practical purpose, that is, to provide a solution should there be a stalemate in voting. This underlying reason leads the Court to conclude that a single vote may not be divided into half (1/2), between two representatives of Congress, or among any of the sitting members of the JBC for that matter. This unsanctioned practice can possibly cause disorder and eventually muddle the JBC's voting process, especially in the event a tie is reached.

The aforesaid purpose would then be rendered illusory, defeating the precise mechanism which the Constitution itself created. While it would be unreasonable to expect that the Framers provide for every possible scenario, it is sensible to presume that they knew that an odd composition is the best means to break a voting deadlock.

It is evident that the definition of "Congress" as a bicameral body refers to its primary function in government – to legislate. In the passage of laws, the Constitution is explicit in the distinction of the role of each house in the process. The same holds true in Congress' non-legislative powers. An inter-play between the two houses is necessary in the realization of these powers causing a vivid dichotomy that the Court cannot simply discount. This, however, cannot be said in the case of JBC representation because no liaison between the two houses exists in the workings of the JBC. No mechanism is required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Hence, the term "Congress" must be taken to mean the entire legislative department. A fortiori, a pretext of oversight cannot prevail over the more pragmatic scheme which the Constitution laid with firmness, that is, that the JBC has a seat for a single representative of Congress, as one of the co-equal branches of government.

FACTS:
The case is in relation to the process of selecting the nominees for the vacant seat of Supreme Court Chief Justice following Renato Corona's unexpected departure.

Prompted by the clamor to rid the process of appointments to the Judiciary from political pressure and partisan activities, the members of the Constitutional Commission saw the need to create a separate, competent and independent body to recommend nominees to the President. Thus, it conceived of a body representative of all the stakeholders in the judicial appointment process and called it the Judicial and Bar Council (JBC).

In particular, Section 8, Article VIII of the Constitution states that "(1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law,a retired Member of the Supreme Court, and a representative of the private sector. xxx" In compliance therewith, Congress, from the moment of the creation of the JBC, designated one representative from the Congress to sit in the JBC to act as one of the ex officio members.

In 1994, however, the composition of the JBC was substantially altered. Instead of having only seven (7) members, an eighth (8th) member was added to the JBC as two (2) representatives from Congress began sitting in the JBC – one from the House of Representatives and one from the Senate, with each having one-half (1/2) of a vote. Then, curiously, the JBC En Banc, in separate meetings held in 2000 and 2001, decided to allow the representatives from the Senate and the House of Representatives one full vote each. During the existence of the case, Sen. Escudero and Cong. Tupas, Jr. (respondents) simultaneously sat in JBC as representatives of the legislature. It is this practice that petitioner has questioned in this petition.

ISSUE:
Whether JBC's practice of having members from the Senate and the House of Representatives making 8 instead of 7 sitting members unconstitutional. (YES)

RULING:

From a simple reading of the Section 8, Article VIII of the 1987 Constitution, it can readily be discerned that the provision is clear and unambiguous. The first paragraph calls for the creation of a JBC and places the same under the supervision of the Court. Then it goes to its composition where the regular members are enumerated: a representative of the Integrated Bar, a professor of law, a retired member of the Court and a representative from the private sector. On the second part lies the crux of the present controversy. It enumerates the ex officio or special members of the JBC composed of the Chief Justice, who shall be its Chairman, the Secretary of Justice and "a representative of Congress."

The use of the singular letter "a" preceding "representative of Congress" is unequivocal and leaves no room for any other construction. It is indicative of what the members of the Constitutional Commission had in mind, that is, Congress may designate only one (1) representative to the JBC. Had it been the intention that more than one (1) representative from the legislature would sit in the JBC, the Framers could have, in no uncertain terms, so provided.

It is a well-settled principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed. As much as possible, the words of the Constitution should be understood in the sense they have in common use. *Verba legis non est recedendum* – from the words of a statute there should be no departure.

Moreover, under the maxim *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated.

Applying the foregoing principle to this case, it becomes apparent that the word "Congress" used in Article VIII, Section 8(1) of the Constitution is used in its generic sense. No particular allusion whatsoever is made on whether the Senate or the House of Representatives is being referred to, but that, in either case, only a singular representative may be allowed to sit in the JBC.

It is worthy to note that the seven-member composition of the JBC serves a practical purpose, that is, to provide a solution should there be a stalemate in voting. This underlying reason leads the Court to conclude that a single vote may not be divided into half (1/2), between two representatives of Congress, or among any of the sitting members of the JBC for that matter. This unsanctioned practice can possibly cause disorder and eventually muddle the JBC's voting process, especially in the event a tie is reached. The aforesaid purpose would then be rendered illusory, defeating the precise mechanism which the Constitution itself created. While it would be unreasonable to expect that the Framers provide for every possible scenario, it is sensible to presume that they knew that an odd composition is the best means to break a voting deadlock.

It is evident that the definition of "Congress" as a bicameral body refers to its primary function in government – to legislate. In the passage of laws, the Constitution is explicit in the distinction of the role of each house in the process. The same holds true in Congress' non-legislative powers. An inter-play between the two houses is necessary in the realization of these powers causing a vivid dichotomy that the Court cannot simply discount. This, however, cannot be said in the case of JBC representation because no liaison between the two houses exists in the workings of the JBC. No mechanism is required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Hence, the term "Congress" must be taken to mean the *entire* legislative department. *A fortiori,* a pretext of oversight cannot prevail over the more pragmatic

scheme which the Constitution laid with firmness, that is, that the JBC has a seat for a single representative of Congress, as one of the co-equal branches of government.

Notwithstanding its finding of unconstitutionality in the current composition of the JBC, all its prior official actions are nonetheless valid. In the interest of fair play under the *doctrine of operative facts,* actions previous to the declaration of unconstitutionality are legally recognized. They are not nullified.

REP. REYNALDO V. UMALI, IN HIS CAPACITY AS CHAIRMAN OF THE HOUSE OF REPRESENTATIVES COMMITTEE ON JUSTICE AND EX OFFICIO MEMBER OF THE JBC, *Petitioner*, -versus- THE JUDICIAL AND BAR COUNCIL, CHAIRED BY THE HON. MARIA LOURDES P.A. SERENO, CHIEF JUSTICE AND EX OFFICIO CHAIRPERSON, *Respondent.*
G.R. No. 228628, EN BANC, July 25, 2017, VELASCO JR., J.

Here, it is beyond question that the JBC does not fall within the scope of a tribunal, board, or officer exercising judicial or quasi-judicial functions. Neither did it act in any judicial or quasi-judicial capacity nor did it assume any performance of judicial or quasi-judicial prerogative in adopting the rotational scheme of Congress, which was the reason for not counting the votes of the petitioner in its En Banc deliberations last December 2 and 9, 2016. But, despite this, its act is still not beyond this Court's reach as the same is correctible by certiorari if it is tainted with grave abuse of discretion even if it is not exercising judicial and quasi-judicial functions. Now, did the JBC abuse its discretion in adopting the six-month rotational arrangement and in not counting the votes of the petitioner? This Court answers in the negative. As correctly pointed out by the JBC, in adopting the said arrangement, it merely acted pursuant to the Constitution and the Chavez ruling, which both require only one representative from Congress in the JBC. It cannot, therefore, be faulted for simply complying with the Constitution and jurisprudence. Moreover, said arrangement was crafted by both Houses of Congress and the JBC merely adopted the same. By no stretch of imagination can it be regarded as grave abuse of discretion on the part of the JBC.

FACTS:
This Petition for *Certiorari* and Mandamus under Rule 65 of the Rules of Court filed directly with this Court by herein petitioner Rep. Reynaldo V. Umali, current Chair of the House of Representatives Committee on Justice, impugns the present-day practice of six-month rotational representation of Congress in the Judicial and Bar Council (JBC) for it unfairly deprives both Houses of Congress of their full participation in the said body. The aforementioned practice was adopted by the JBC in light of the ruling in *Chavez v. Judicial and Bar Council*.
As an overview, in *Chavez*, the constitutionality of the practice of having two representatives from both houses of Congress with one vote each in the JBC, thus, increasing its membership from seven to eight, was challenged. With that, this Court examined the constitutional provision that states the composition of the JBC, that is, Section 8(1), Article VIII of the 1987 Constitution.
Following a painstaking analysis, this Court, in a Decision dated July 17, 2012, declared the said practice of having two representatives from Congress with one vote each in the JBC unconstitutional. The subsequent motion for reconsideration thereof was denied in a Resolution dated April 16, 2013, where this Court reiterated that Section 8(1), Article VIII of the 1987 Constitution providing for "*a representative of the Congress*" in the JBC is clear and unambiguous and does not need any further interpretation.
In light of these Decision and Resolution, both Houses of Congress agreed on a six-month rotational representation in the JBC, wherein the House of Representatives will represent Congress from January to June and the Senate from July to December.

ISSUE:
Whether the JBC acted with grave abuse of discretion in adopting the six-month rotational scheme of both Houses of Congress. (No)

RULING:

The petitioner ascribed grave abuse of discretion on the part of the JBC in its adoption of the rotational scheme, which led to the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016, as it deprives Congress of its full representation therein. The JBC, on the other hand, believes otherwise for it merely acted in accordance with the mandate of the Constitution and with the ruling in *Chavez*. Also, such rotational scheme was a creation of Congress, which it merely adopted.

Certiorari and Prohibition under Rule 65 of the present Rules of Court are the two special civil actions used for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which necessarily includes the commission of grave abuse of discretion amounting to lack of jurisdiction. The burden is on the petitioner to prove that the respondent tribunal committed not merely a reversible error but also a grave abuse of discretion amounting to lack or excess of jurisdiction. Showing mere abuse of discretion is not enough, for the abuse must be shown to be grave. Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. But, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach before this Court as the writs may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. Thus, they are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

Here, it is beyond question that the JBC does not fall within the scope of a tribunal, board, or officer exercising judicial or quasi-judicial functions. Neither did it act in any judicial or quasi-judicial capacity nor did it assume any performance of judicial or quasi-judicial prerogative in adopting the rotational scheme of Congress, which was the reason for not counting the votes of the petitioner in its En Banc deliberations last December 2 and 9, 2016. But, despite this, its act is still not beyond this Court's reach as the same is correctible by *certiorari* if it is tainted with grave abuse of discretion even if it is not exercising judicial and quasi-judicial functions. Now, did the JBC abuse its discretion in adopting the six-month rotational arrangement and in not counting the votes of the petitioner? This Court answers in the negative. As correctly pointed out by the JBC, in adopting the said arrangement, it merely acted pursuant to the Constitution and the *Chavez* ruling, which both require only one representative from Congress in the JBC. It cannot, therefore, be faulted for simply complying with the Constitution and jurisprudence. Moreover, said arrangement was crafted by both Houses of Congress and the JBC merely adopted the same. By no stretch of imagination can it be regarded as grave abuse of discretion on the part of the JBC.

With the foregoing, despite this Court's previous declaration that *certiorari* is the plain, speedy and adequate remedy available to petitioner, still the same cannot prosper for the petitioner's failure to prove that the JBC acted with grave abuse of discretion in adopting the rotational scheme.

FERDINAND R. VILLANUEVA, PRESIDING JUDGE, MCTC, COMPOSTELA-NEW BATAAN, COMPOSTELA VALLEY PROVINCE, *Petitioner*, -versus- JUDICIAL AND BAR COUNCIL, *Respondent.*
G.R. No. 211833, EN BANC, April 07, 2015, REYES, J.

Formulating policies which streamline the selection process falls squarely under the purview of the JBC. No other constitutional body is bestowed with the mandate and competency to set criteria for applicants that refer to the more general categories of probity, integrity and independence.

The assailed criterion or consideration for promotion to a second-level court, which is five years experience as judge of a first-level court, is a direct adherence to the qualities prescribed by the Constitution. Placing a premium on many years of judicial experience, the JBC is merely applying one of the stringent constitutional standards requiring that a member of the judiciary be of "proven competence." In determining competence, the JBC considers, among other qualifications, experience and performance.

Based on the JBC's collective judgment, those who have been judges of first-level courts for five (5) years are better qualified for promotion to second-level courts. It deems length of experience as a judge as indicative of conversance with the law and court procedure. Five years is considered as a sufficient span of time for one to acquire professional skills for the next level court, declog the dockets, put in place improved procedures and an efficient case management system, adjust to the work environment, and gain extensive experience in the judicial process.

FACTS:
Petitioner Ferdinand Villanueva was appointed in 2012 as the Presiding Judge of the MCTC of Compostela-New Bataan, Poblacion, Compostela Valley Province, Region XI, which is a first-level court. In 2013, he applied for the vacant position of Presiding Judge in different RTCs.

The JBC's Office of Recruitment, Selection and Nomination, informed the petitioner that he was not included in the list of candidates for the said stations. Petitioner sent a letter, seeking reconsideration of his non-inclusion in the list of considered applicants.

The petitioner was informed by the JBC Executive Officer that his protest and reconsideration was duly noted by the JBC *en banc*. However, its decision not to include his name in the list of applicants was upheld due to the JBC's long-standing policy of opening the chance for promotion to second-level courts to, among others, incumbent judges who have served in their current position for at least five years, and since the petitioner has been a judge only for more than a year, he was excluded from the list.

In his petition, he argued that: (1) the Constitution already prescribed the qualifications of an RTC judge, and the JBC could add no more; (2) the JBC's five-year requirement violates the equal protection and due process clauses of the Constitution; and (3) the JBC's five-year requirement violates the constitutional provision on Social Justice and Human Rights for Equal Opportunity of Employment.

ISSUE:
Whether the policy of JBC requiring five years of service as judges of first-level courts before they can qualify as applicant to second-level courts is constitutional. (No)

RULING:
As an offspring of the 1987 Constitution, the JBC is mandated to recommend appointees to the judiciary and only those nominated by the JBC in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary. Thus, the JBC is burdened with a great responsibility that is imbued with public interest as it determines the men and women who will sit on the judicial bench. While the 1987 Constitution has provided the qualifications of members of the judiciary, this does not preclude the JBC from having its own set of rules and procedures and providing policies to effectively ensure its mandate.

The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President. However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the judiciary, subject only to the minimum qualifications required by the Constitution and law for every position. The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants. Thus, the JBC has sufficient but not unbridled license to act in performing its duties.

JBC's ultimate goal is to recommend nominees and not simply to fill up judicial vacancies in order to promote an effective and efficient administration of justice. Given this pragmatic situation, the JBC had to establish a set of uniform criteria in order to ascertain whether an applicant meets the minimum constitutional qualifications and possesses the qualities expected of him and his office. Thus, the adoption of the five-year requirement policy applied by JBC to the petitioner's case is necessary and incidental to the function conferred by the Constitution to the JBC.
There is no question that JBC employs standards to have a rational basis to screen applicants who cannot be all accommodated and appointed to a vacancy in the judiciary, to determine who is best qualified among the applicants, and not to discriminate against any particular individual or class
Formulating policies which streamline the selection process falls squarely under the purview of the JBC. No other constitutional body is bestowed with the mandate and competency to set criteria for applicants that refer to the more general categories of probity, integrity and independence.
The assailed criterion or consideration for promotion to a second-level court, which is five years experience as judge of a first-level court, is a direct adherence to the qualities prescribed by the Constitution. Placing a premium on many years of judicial experience, the JBC is merely applying one of the stringent constitutional standards requiring that a member of the judiciary be of "**proven competence**." In determining competence, the JBC considers, among other qualifications, **experience** and performance.

Based on the JBC's collective judgment, those who have been judges of first-level courts for five (5) years are better qualified for promotion to second-level courts. It deems length of experience as a judge as indicative of conversance with the law and court procedure. Five years is considered as a sufficient span of time for one to acquire professional skills for the next level court, declog the dockets, put in place improved procedures and an efficient case management system, adjust to the work environment, and gain extensive experience in the judicial process.

A five-year stint in the Judiciary can also provide evidence of the **integrity, probity,** and **independence** of judges seeking promotion. To merit JBC's nomination for their promotion, they must have had a "record of, and reputation for, honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards." Likewise, their decisions must be reflective of the soundness of their judgment, courage, rectitude, cold neutrality and strength of character.

RE: PETITION FOR RECOGNITION OF THE EXEMPTION OF THE GOVERNMENT SERVICE INSURANCE SYSTEM FROM PAYMENT OF LEGAL FEES. GOVERNMENT SERVICE INSURANCE SYSTEM, *Petitioner*.
A.M. No. 08-2-01-0, EN BANC, February 11, 2010, CORONA, J.

Since the payment of legal fees is a vital component of the rules promulgated by this Court concerning pleading, practice and procedure, it cannot be validly annulled, changed or modified by Congress. As one of the safeguards of this Court's institutional independence, the power to promulgate rules of pleading, practice and procedure is now the Court's exclusive domain. That power is no longer shared by this Court with Congress, much less with the Executive.

The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by this Court. Viewed from this perspective, the claim of a legislative grant of exemption from the payment of legal fees under Section 39 of RA 8291 necessarily fails.

FACTS:
The GSIS seeks exemption from the payment of legal fees imposed on government-owned or controlled corporations under Section 22, Rule 141 (Legal Fees) of the Rules of Court. The said provision states:

> SEC. 22. *Government exempt.* - The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in this Rule. Local government corporations and **government-owned or controlled corporations with or without independent charter are not exempt from paying such fees**.
> However, all court actions, criminal or civil, instituted at the instance of the provincial, city or municipal treasurer or assessor under Sec. 280 of the Local Government Code of 1991 shall be exempt from the payment of court and sheriff's fees.

The GSIS anchors its petition on Section 39 of its charter, RA 8291 (The GSIS Act of 1997):

> SEC. 39. *Exemption from Tax, Legal Process and Lien.* - It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. **Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act**. Accordingly, notwithstanding any laws to the contrary, **the GSIS, its assets, revenues**

> **including accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. These exemptions shall continue unless expressly and specifically revoked and **any assessment against the GSIS as of the approval of this Act are hereby considered paid**.Consequently, **all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect**.

The GSIS then avers that courts still assess and collect legal fees in actions and proceedings instituted by the GSIS notwithstanding its exemption from taxes, assessments, fees, charges, or duties of all kinds under Section 39. For this reason, the GSIS urges this Court to recognize its exemption from payment of legal fees.

According to the GSIS, the purpose of its exemption is to preserve and maintain the actuarial solvency of its funds and to keep the contribution rates necessary to sustain the benefits provided by RA 8291 as low as possible. Like the terms "taxes," "assessments," "charges," and "duties," the term "fees" is used in the law in its generic and ordinary sense as any form of government imposition. The word "fees," defined as "charge[s] fixed by law for services of public officers or for the use of a privilege under control of government," is qualified by the phrase "of all kinds." Hence, it includes the legal fees prescribed by this Court under Rule 141. Moreover, no distinction should be made based on the kind of fees imposed on the GSIS or the GSIS' ability to pay because the law itself does not distinguish based on those matters.

ISSUE:
Whether Congress may exempt the GSIS from the payment of legal fees? (No)

RULING:
Rule 141 (on Legal Fees) of the Rules of Court was promulgated by this Court in the exercise of its rule-making powers under Section 5(5), Article VIII of the Constitution. The power to promulgate rules concerning pleading, practice and procedure in all courts is a traditional power of this Court. It necessarily includes the power to address all questions arising from or connected to the implementation of the said rules.

The Rules of Court was promulgated in the exercise of the Court's rule-making power. It is essentially procedural in nature as it does not create, diminish, increase or modify substantive rights. Corollarily, Rule 141 is basically procedural. It does not create or take away a right but simply operates as a means to implement an existing right. In particular, it functions to regulate the procedure of exercising a right of action and enforcing a cause of action. In particular, it pertains to the procedural requirement of paying the prescribed legal fees in the filing of a pleading or any application that initiates an action or proceeding.

Clearly, therefore, the payment of legal fees under Rule 141 of the Rules of Court is an integral part of the rules promulgated by this Court pursuant to its rule-making power under Section 5(5), Article VIII of the Constitution. In particular, it is part of the rules concerning pleading, practice and procedure in courts. Indeed, payment of legal (or docket) fees is a jurisdictional requirement. It is not simply the filing of the complaint or appropriate initiatory pleading but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject-matter or nature of

the action. Appellate docket and other lawful fees are required to be paid within the same period for taking an appeal. Payment of docket fees in full within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.
Since the payment of legal fees is a vital component of the rules promulgated by this Court concerning pleading, practice and procedure, it cannot be validly annulled, changed or modified by Congress. As one of the safeguards of this Court's institutional independence, the power to promulgate rules of pleading, practice and procedure is now the Court's exclusive domain. That power is no longer shared by this Court with Congress, much less with the Executive.

The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by this Court. Viewed from this perspective, the claim of a legislative grant of exemption from the payment of legal fees under Section 39 of RA 8291 necessarily fails.

Congress could not have carved out an exemption for the GSIS from the payment of legal fees without transgressing another equally important institutional safeguard of the Court's independence -- fiscal autonomy. Fiscal autonomy recognizes the power and authority of the Court to levy, assess and collect fees, including legal fees. Moreover, legal fees under Rule 141 have two basic components, the Judiciary Development Fund (JDF) and the Special Allowance for the Judiciary Fund (SAJF). The laws which established the JDF and the SAJF expressly declare the identical purpose of these funds to "guarantee the independence of the Judiciary as mandated by the Constitution and public policy." Legal fees therefore do not only constitute a vital source of the Court's financial resources but also comprise an essential element of the Court's fiscal independence. Any exemption from the payment of legal fees granted by Congress to government-owned or controlled corporations and local government units will necessarily reduce the JDF and the SAJF. Undoubtedly, such situation is constitutionally infirm for it impairs the Court's guaranteed fiscal autonomy and erodes its independence.

SALVADOR ESTIPONA, JR. Y ASUELA, *Petitioner*, -versus- HON. FRANK E. LOBRIGO, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 3, LEGAZPI CITY, ALBAY, AND PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 226679, EN BANC, August 15, 2017, PERALTA, J.

The power to promulgate rules of pleading, practice and procedure is now the exclusive domain of the SC and no longer shared with the Executive and Legislative departments. The Supreme Court's sole prerogative to issue, amend, or repeal procedural rules is limited to the preservation of substantive rights, i.e., the former should not diminish, increase or modify the latter.
Just recently, Carpio-Morales v. Court of Appeals (Sixth Division) further elucidated:

> *While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress,* ***the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court.*** *Section 5 (5), Article VIII of the 1987 Constitution reads:*
>
> *In Echegaray v. Secretary of Justice (Echegaray), the Court traced the evolution of its rule-making authority, which, under the 1935 and 1973 Constitutions, had been priorly subjected to*

> *a power-sharing scheme with Congress. As it now stands, the 1987 Constitution* ***textually altered the old provisions by deleting the concurrent power of Congress to amend the rules, thus solidifying in one body the Court's rule-making powers, in line with the Framers' vision of institutionalizing a "[s]tronger and more independent judiciary."***
> *XXX*
> ***The changes were approved, thereby leading to the present lack of textual reference to any form of Congressional participation in Section 5 (5), Article VIII, supra. The prevailing consideration was that "both bodies, the Supreme Court and the Legislature, have their inherent powers."***
> *Thus, as it now stands, Congress has no authority to repeal, alter, or supplement rules concerning pleading, practice, and procedure. x x x.*

FACTS:
Petitioner Salvador Estipona Jr. was charged for violation of Sec 11, Art II of RA 9165 (*Possession of Dangerous Drugs*).
Estipona filed a *Motion to Allow the Accused to Enter into a Plea Bargaining Agreement*, praying to withdraw his not guilty plea and, instead, to enter a plea of guilty for violation of Section 12, Article II of RA 9165 (*Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*) with a penalty of rehabilitation in view of his being a first-time offender and the minimal quantity of the dangerous drug seized in his possession.
He argued that Section 23 of RA 9165 violates: (1) the intent of the law expressed in paragraph 3, Section 2 thereof; (2) the rule-making authority of the Supreme Court under Section 5(5), Article VIII of the 1987 Constitution; and (3) the principle of separation of powers among the three equal branches of the government.
The accused posited in his motion that Sec. 23 of RA 9165, which prohibits plea bargaining, encroaches on the exclusive constitutional power of the SC to promulgate rules of procedure because plea bargaining is a "rule of procedure." Without saying so, the accused implies that Sec. 23 of Republic Act No. 9165 is unconstitutional because it, in effect, suspends the operation of Rule 118 of the Rules of Court insofar as it allows plea bargaining as part of the mandatory pre-trial conference in criminal cases.

ISSUE:
Whether Sec 23 of RA 9165 is unconstitutional as it encroached upon the power of the SC to promulgate Rules of Procedure. (Yes)

RULING:
The power to promulgate rules of pleading, practice and procedure is now the exclusive domain of the SC and no longer shared with the Executive and Legislative departments. The Supreme Court's sole prerogative to issue, amend, or repeal procedural rules is limited to the preservation of substantive rights, *i.e.*, the former should not diminish, increase or modify the latter.
Just recently, Carpio-Morales v. Court of Appeals (Sixth Division) further elucidated:

> While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress, **the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court.** Section 5 (5), Article VIII of the 1987 Constitution reads:
> In Echegaray v. Secretary of Justice (Echegaray), the Court traced the evolution of its rule-making authority, which, under the 1935 and 1973 Constitutions, had been priorly subjected to a power-sharing scheme with Congress. As it now stands, the 1987 Constitution **textually**

> **altered the old provisions by deleting the concurrent power of Congress to amend the rules, thus solidifying in one body the Court's rule-making powers, in line with the Framers' vision of institutionalizing a "[s]tronger and more independent judiciary."**
> The records of the deliberations of the Constitutional Commission would show that the Framers debated on whether or not the Court's rule¬ making powers should be shared with Congress. There was an initial suggestion to insert the sentence "The National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court," right after the phrase "Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged[,]" in the enumeration of powers of the Supreme Court. Later, Commissioner Felicitas S. Aquino proposed to delete the former sentence and, instead, after the word "[under]privileged," place a comma(,) to be followed by "the phrase with the concurrence of the National Assembly." Eventually, a compromise formulation was reached wherein (a) the Committee members agreed to Commissioner Aquino's proposal to delete the phrase "the National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court" and (b) in turn, Commissioner Aquino agreed to withdraw his proposal to add "the phrase with the concurrence of the National Assembly." **The changes were approved, thereby leading to the present lack of textual reference to any form of Congressional participation in Section 5 (5), Article VIII, supra. The prevailing consideration was that "both bodies, the Supreme Court and the Legislature, have their inherent powers."**
> Thus, as it now stands, Congress has no authority to repeal, alter, or supplement rules concerning pleading, practice, and procedure. x x x.

The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by the Court.

E. CONSTITUTIONAL COMMISSIONS

DENNIS A. B. FUNA, *Petitioner*, -versus- THE CHAIRMAN, COMMISSION ON AUDIT, REYNALDO A. VILLAR, *Respondent*.
G.R. No. 192791, EN BANC, April 24, 2012, VELASCO JR., J

The Court is…unable to sustain Villar's proposition that his promotional appointment as COA Chairman gave him a completely fresh 7- year term––from February 2008 to February 2015––given his four (4)-year tenure as COA commissioner devalues all the past pronouncements made by this Court. While there had been divergence of opinion as to the import of the word "reappointment," there has been unanimity on the dictum that in no case can one be a COA member, either as chairman or commissioner, or a mix of both positions, for an aggregate term of more than 7 years. A contrary view would allow a circumvention of the aggregate 7-year service limitation and would be constitutionally offensive as it would wreak havoc to the spirit of the rotational system of succession.
In net effect, then President Macapagal-Arroyo could not have had, under any circumstance, validly appointed Villar as COA Chairman, for a full 7- year appointment, as the Constitution decrees, was not legally feasible in light of the 7-year aggregate rule. Villar had already served 4 years of his 7-year term as COA Commissioner. A shorter term, however, to comply with said rule would also be invalid as the corresponding appointment would effectively breach the clear purpose of the Constitution of giving to

every appointee so appointed subsequent to the first set of commissioners, a fixed term of office of 7 years. To recapitulate, a COA commissioner like respondent Villar who serves for a period less than seven (7) years cannot be appointed as chairman when such position became vacant as a result of the expiration of the 7-year term of the predecessor (Caragues). Such appointment to a full term is not valid and constitutional, as the appointee will be allowed to serve more than seven (7) years under the constitutional ban.

FACTS:
On February 15, 2001, President Arroyo appointed Guillermo Carague (Carague) as Chairman of the Commission on Audit (COA) for a term of seven (7) years, pursuant to the 1987 Constitution. Carague's term of office started on February 2, 2001 to end on February 2, 2008.

Meanwhile, on February 7, 2004, President Macapagal-Arroyo appointed Reynaldo Villar (Villar) as the third member of the COA for a term of seven (7) years starting February 2, 2004 until February 2, 2011.

Following the retirement of Carague on February 2, 2008 and during the fourth year of Villar as COA Commissioner, Villar was designated as Acting Chairman of COA from February 4, 2008 to April 14, 2008. Subsequently, on April 18, 2008, Villar was nominated and appointed as Chairman of the COA. Shortly thereafter, on June 11, 2008, the Commission on Appointments confirmed his appointment. He was to serve as Chairman of COA, as expressly indicated in the appointment papers, until the expiration of the original term of his office as COA Commissioner or on February 2, 2011. Challenged in this recourse, Villar, in an obvious bid to lend color of title to his hold on the chairmanship, insists that his appointment as COA Chairman accorded him a fresh term of seven (7) years which is yet to lapse. He would argue, in fine, that his term of office, as such chairman, is up to February 2, 2015, or 7 years reckoned from February 2, 2008 when he was appointed to that position.

ISSUE:
Whether Villar's appointment as COA Chairman, while sitting in that body and after having served for 4 years of his 7 year term as COA commissioner, is valid in light of the term limitations imposed under, and the circumscribing concepts tucked in, Sec. 1 (2), Art. IX(D) of the Constitution. (No)

RULING:
Sec. 1 (2), Art. IX(D) of the Constitution provides that:

> (2) The Chairman and Commissioners [on Audit] shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one commissioner for five years, and the other commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any member be appointed or designated in a temporary or acting capacity.

Petitioner now asseverates the view that Sec. 1(2), Art. IX(D) of the 1987 Constitution proscribes reappointment of any kind within the commission, the point being that a second appointment, be it for the same position (commissioner to another position of commissioner) or upgraded position (commissioner to chairperson) is a prohibited reappointment and is a nullity ab initio.
The Court finds petitioner's position bereft of merit. The flaw lies in regarding the word "reappointment" as, in context, embracing any and all species of appointment. The rule is that if a

statute or constitutional provision is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.
The first sentence is unequivocal enough. The COA Chairman shall be appointed by the President for a term of seven years, and if he has served the full term, then he can no longer be reappointed or extended another appointment. In the same vein, a Commissioner who was appointed for a term of seven years who likewise served the full term is barred from being reappointed. In short, once the Chairman or Commissioner shall have served the full term of seven years, then he can no longer be reappointed to either the position of Chairman or Commissioner. The obvious intent of the framers is to prevent the president from "dominating" the Commission by allowing him to appoint an additional or two more commissioners.

On the other hand, the provision, on its face, does not prohibit a promotional appointment from commissioner to chairman as long as the commissioner has not served the full term of seven years, further qualified by the third sentence of Sec. 1(2), Article IX (D) that "the appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor." In addition, such promotional appointment to the position of Chairman must conform to the rotational plan or the staggering of terms in the commission membership such that the aggregate of the service of the Commissioner in said position and the term to which he will be appointed to the position of Chairman must not exceed seven years so as not to disrupt the rotational system in the commission prescribed by Sec. 1(2), Art. IX(D).

In conclusion, there is nothing in Sec. 1(2), Article IX(D) that explicitly precludes a promotional appointment from Commissioner to Chairman, provided it is made under the aforestated circumstances or conditions.

The Court is likewise unable to sustain Villar's proposition that his promotional appointment as COA Chairman gave him a completely fresh 7- year term––from February 2008 to February 2015––given his four (4)-year tenure as COA commissioner devalues all the past pronouncements made by this Court. While there had been divergence of opinion as to the import of the word "reappointment," there has been unanimity on the dictum that in no case can one be a COA member, either as chairman or commissioner, or a mix of both positions, for an aggregate term of more than 7 years. A contrary view would allow a circumvention of the aggregate 7-year service limitation and would be constitutionally offensive as it would wreak havoc to the spirit of the rotational system of succession. In net effect, then President Macapagal-Arroyo could not have had, under any circumstance, validly appointed Villar as COA Chairman, for a full 7- year appointment, as the Constitution decrees, was not legally feasible in light of the 7-year aggregate rule. Villar had already served 4 years of his 7-year term as COA Commissioner. A shorter term, however, to comply with said rule would also be invalid as the corresponding appointment would effectively breach the clear purpose of the Constitution of giving to every appointee so appointed subsequent to the first set of commissioners, a fixed term of office of 7 years. To recapitulate, a COA commissioner like respondent Villar who serves for a period less than seven (7) years cannot be appointed as chairman when such position became vacant as a result of the expiration of the 7-year term of the predecessor (Caragues). Such appointment to a full term is not valid and constitutional, as the appointee will be allowed to serve more than seven (7) years under the constitutional ban.

To sum up, the Court restates its ruling on Sec. 1(2), Art. IX(D) of the Constitution, viz:
1. The appointment of members of any of the three constitutional commissions, after the expiration of the uneven terms of office of the first set of commissioners, shall always be for a fixed term of seven (7) years; an appointment for a lesser period is void and unconstitutional. The appointing authority

cannot validly shorten the full term of seven (7) years in case of the expiration of the term as this will result in the distortion of the rotational system prescribed by the Constitution.
2. Appointments to vacancies resulting from certain causes (death, resignation, disability or impeachment) shall only be for the unexpired portion of the term of the predecessor, but such appointments cannot be less than the unexpired portion as this will likewise disrupt the staggering of terms laid down under Sec. 1(2), Art. IX(D).
3. Members of the Commission, e.g. COA, COMELEC or CSC, who were appointed for a full term of seven years and who served the entire period, are barred from reappointment to any position in the Commission. Corollarily, the first appointees in the Commission under the Constitution are also covered by the prohibition against reappointment.
4. A commissioner who resigns after serving in the Commission for less than seven years is eligible for an appointment to the position of Chairman for the unexpired portion of the term of the departing chairman. Such appointment is not covered by the ban on reappointment, provided that the aggregate period of the length of service as commissioner and the unexpired period of the term of the predecessor will not exceed seven (7) years and provided further that the vacancy in the position of Chairman resulted from death, resignation, disability or removal by impeachment. The Court clarifies that "reappointment" found in Sec. 1(2), Art. IX(D) means a movement to one and the same office (Commissioner to Commissioner or Chairman to Chairman). On the other hand, an appointment involving a movement to a different position or office (Commissioner to Chairman) would constitute a new appointment and, hence, not, in the strict legal sense, a reappointment barred under the Constitution.
5. Any member of the Commission cannot be appointed or designated in a temporary or acting capacity.

DENNIS A. B. FUNA, *Petitioner*, -versus- THE CHAIRMAN, CIVIL SERVICE COMMISSION, FRANCISCO T. DUQUE III, EXECUTIVE SECRETARY LEANDRO R. MENDOZA, OFFICE OF THE PRESIDENT, *Respondents.*
G.R. No. 191672, EN BANC, November 25, 2014, BERSAMIN, J.

Funa filed the instant petition questioning the designation of Duque as a member of the Board of Directors or Trustees of the GSIS, PHIC, ECC and HDMF for being violative of Sections 1 and 2 of Article IX-A of the 1987 Constitution which prohibits the Chairmen and Members of the Constitutional Commissions from holding any other office or employment during their tenure. Ruling in favor of Funa the SC ruled that Section 14, Chapter 3, Title I-A, Book V of EO 292 is clear that the CSC Chairman's membership in a governing body is dependent on the condition that the functions of the government entity where he will sit as its Board member must affect the career development, employment status, rights, privileges, and welfare of government officials and employees.

The concerned GOCCs are vested by their respective charters with various powers and functions to carry out the purposes for which they were created. While powers and functions associated with appointments, compensation and benefits affect the career development, employment status, rights, privileges, and welfare of government officials and employees, the concerned GOCCs are also tasked to perform other corporate powers and functions that are not personnel-related. All of these powers and functions, whether personnel-related or not, are carried out and exercised by the respective Boards of the concerned GOCCs. Hence, when the CSC Chairman sits as a member of the governing Boards of the concerned GOCCs, he may exercise these powers and functions, which are not anymore derived from his position as CSC Chairman. Such being the case, the designation of Duque was unconstitutional.

FACTS:

On January 11, 2010, then President Gloria Macapagal-Arroyo appointed respondent Duque as Chairman of the CSC. The Commission on Appointments confirmed Duque's appointment on February 3, 2010. Thereafter, on February 22, 2010, President Arroyo issued EO 864 which designated Duque as an *Ex-Officio* member of the Board of Trustees of the GSIS, ECC and the HDMF and the Board of Directors of the PHILHEALTH pursuant to Section 14, Chapter 3, Title I-A, Book V of EO 292 also known as the Administrative Code of 1987.

Subsequently, petitioner Dennis A.B. Funa, in his capacity as taxpayer, concerned citizen and lawyer, filed the instant petition challenging the constitutionality of EO 864, as well as Section 14, Chapter 3, Title I-A, Book V of EO 292 and the designation of Duque as a member of the Board of Directors or Trustees of the GSIS, PHIC, ECC and HDMF for being clear violations of Section 1 and Section 2, Article IX-A of the 1987 Constitution.

Funa asserts that EO 864 and Section 14, Chapter 3, Title I-A, Book V of EO 292 violate the independence of the CSC, which was constitutionally created to be protected from outside influences and political pressures due to the significance of its government functions. He further asserts that such independence is violated by the fact that the CSC is not a part of the Executive Branch of Government while the concerned GOCCs are considered instrumentalities of the Executive Branch of the Government. In this situation, the President may exercise his power of control over the CSC considering that the GOCCs in which Duque sits as Board member are attached to the Executive Department.

Funa further argues that EO 864 and Section 14, Chapter 3, Title I-A, Book V of EO 292 violate the prohibition imposed upon members of constitutional commissions from holding any other office or employment. A conflict of interest may arise in the event that a Board decision of the GSIS, PHILHEALTH, ECC and HDMF concerning personnel-related matters is elevated to the CSC considering that such GOCCs have original charters, and their employees are governed by CSC laws, rules and regulations.

Respondents on the other hand argue that the prohibition against holding any other office or employment under Section 2, Article IX-A of the 1987 Constitution does not cover positions held without additional compensation in *ex officio* capacities. Relying on the pronouncement in *Civil Liberties Union v. Executive Secretary*, they assert that since the 1987 Constitution, which provides a stricter prohibition against the holding of multiple offices by executive officials, allows them to hold positions in *ex officio* capacities, the same rule is applicable to members of the Constitutional Commissions. Moreover, the mandatory tenor of Section 14, Chapter 3, Title I-A, Book V of EO 292 clearly indicates that the CSC Chairman's membership in the governing bodies mentioned therein merely imposes additional duties and functions as an incident and necessary consequence of his appointment as CSC Chairman.

ISSUE:
Whether the designation of Duque as member of the Board of Directors or Trustees of the GSIS, PHILHEALTH, ECC and HDMF, in an *ex officio* capacity, impair the independence of the CSC and violate the constitutional prohibition against the holding of dual or multiple offices for the Members of the Constitutional Commissions. (YES)

RULING:
The Court partially grants the petition. The Court upholds the constitutionality of Section 14, Chapter 3, Title I-A, Book V of EO 292, but declares unconstitutional EO 864 and the designation of Duque in

an *ex officio* capacity as a member of the Board of Directors or Trustees of the GSIS, PHILHEALTH, ECC and HDMF.

The underlying principle for the resolution of the present controversy rests on the correct application of Section 1 and Section 2, Article IX-A of the 1987 Constitution, which independent." Although their respective functions are essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of such functions. Each of the Constitutional Commissions conducts its own proceedings under the applicable laws and its own rules and in the exercise of its own discretion. Its decisions, orders and rulings are subject only to review on *certiorari* by the Court as provided by Section 7, Article IX-A of the 1987 Constitution. To safeguard the independence of these Commissions, the 1987 Constitution, among others, imposes under Section 2, Article IX-A of the Constitution certain inhibitions and disqualifications upon the Chairmen and members to strengthen their integrity, to wit:

(a) Holding any other office or employment during their tenure;
(b) Engaging in the practice of any profession;
(c) Engaging in the active management or control of any business which in any way may be affected by the functions of his office; and
(d) Being financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies or instrumentalities, including government-owned or –controlled corporations or their subsidiaries.

The issue herein involves the first disqualification abovementioned, which is the disqualification from holding any other office or employment during Duque's tenure as Chairman of the CSC. The Court finds it imperative to interpret this disqualification in relation to Section 7, paragraph (2), Article IX-B of the Constitution and the Court's pronouncement in *Civil Liberties Union v. Executive Secretary*. Section 7, paragraph (2), Article IX-B reads:

Section 7. xxx
Unless otherwise allowed by law or the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

In *Funa v. Ermita*, where Funa challenged the concurrent appointment of Elena H. Bautista as Undersecretary of the Department of Transportation and Communication and as Officer-in-Charge of the Maritime Industry Authority, the Court reiterated the pronouncement in *Civil Liberties Union v. The Executive Secretary* on the intent of the Framers on the foregoing provision of the 1987 Constitution, to wit:

Thus, while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself. In other words, Section 7, Article IX-B is meant to lay down the general rule applicable to all elective and appointive public officials and employees, while Section 13, Article VII is meant to be the exception applicable only to the President, the Vice-President, Members of the Cabinet, their deputies and assistants.

Being an appointive public official who does not occupy a Cabinet position (*i.e.*, President, the Vice-President, Members of the Cabinet, their deputies and assistants), Duque was thus covered by the

general rule enunciated under Section 7, paragraph (2), Article IX-B. He can hold any other office or employment in the Government during his tenure if such holding is allowed by law or by the primary functions of his position.

The term *ex officio* means "from office; by virtue of office." It refers to an "authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position." *Ex officio* likewise denotes an "act done in an official character, or as a consequence of office, and without any other appointment or authority other than that conferred by the office." An *ex officio* member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment.

The *ex officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office.
Section 3, Article IX-B of the 1987 Constitution describes the CSC as the central personnel agency of the government and is principally mandated to establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service; to strengthen the merit and rewards system; to integrate all human resources development programs for all levels and ranks; and to institutionalize a management climate conducive to public accountability. Section 14, Chapter 3, Title I-A, Book V of EO 292 is clear that the CSC Chairman's membership in a governing body is dependent on the condition that the functions of the government entity where he will sit as its Board member must affect the career development, employment status, rights, privileges, and welfare of government officials and employees. Based on this, the Court finds no irregularity in Section 14, Chapter 3, Title I-A, Book V of EO 292 because matters affecting the career development, rights and welfare of government employees are among the primary functions of the CSC and are consequently exercised through its Chairman. The CSC Chairman's membership therein must, therefore, be considered to be derived from his position as such. Accordingly, the constitutionality of Section 14, Chapter 3, Title I-A, Book V of EO 292 is upheld.

However, there is a need to determine further whether Duque's designation as Board member of the GSIS, PHILHEALTH, ECC and HDMF is in accordance with the 1987 Constitution and the condition laid down in Section 14, Chapter 3, Title I-A, Book V of EO 292.

The GSIS, PHILHEALTH, ECC and HDMF are vested by their respective charters with various powers and functions to carry out the purposes for which they were created. While powers and functions associated with appointments, compensation and benefits affect the career development, employment status, rights, privileges, and welfare of government officials and employees, the GSIS, PHILHEALTH, ECC and HDMF are also tasked to perform other corporate powers and functions that are not personnel-related. All of these powers and functions, whether personnel-related or not, are carried out and exercised by the respective Boards of the GSIS, PHILHEALTH, ECC and HDMF. Hence, when the CSC Chairman sits as a member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF, he may exercise these powers and functions, which are not anymore derived from his position as CSC Chairman, such as imposing interest on unpaid or unremitted contributions, issuing guidelines for the accreditation of health care providers, or approving restructuring proposals in the payment of unpaid loan amortizations.

The Court also notes that Duque's designation as member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF entitles him to receive *per diem*, a form of additional compensation

that is disallowed by the concept of an *ex officio* position by virtue of its clear contravention of the proscription set by Section 2, Article IX-A of the 1987 Constitution. This situation goes against the principle behind an *ex officio* position, and must, therefore, be held unconstitutional.

Apart from violating the prohibition against holding multiple offices, Duque's designation as member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF impairs the independence of the CSC. Under Section 17, Article VII of the Constitution, the President exercises control over all government offices in the Executive Branch.

As provided in their respective charters, PHILHEALTH and ECC have the status of a government corporation and are deemed attached to the Department of Health and the Department of Labor, respectively. On the other hand, the GSIS and HDMF fall under the Office of the President. The corporate powers of the GSIS, PHILHEALTH, ECC and HDMF are exercised through their governing Boards, members of which are all appointed by the President of the Philippines. Undoubtedly, the GSIS, PHILHEALTH, ECC and HDMF and the members of their respective governing Boards are under the control of the President. As such, the CSC Chairman cannot be a member of a government entity that is under the control of the President without impairing the independence vested in the CSC by the 1987 Constitution.

CIVIL SERVICE COMMISSION, *Petitioner*, -versus- NITA P. JAVIER, *Respondent.*
G.R. No. 173264, EN BANC, February 22, 2008, AUSTRIA-MARTINEZ, J.

Jurisprudence establishes that the Court is not bound by the classification of positions in the civil service made by the legislative or executive branches, or even by a constitutional body like the CSC. The Court is expected to make its own determination as to the nature of a particular position, such as whether it is a primarily confidential position or not, without being bound by prior classifications made by other bodies. The findings of the other branches of government are merely considered initial and not conclusive to the Court. Moreover, it is well-established that in case the findings of various agencies of government, such as the petitioner and the CA in the instant case, are in conflict, the Court must exercise its constitutional role as final arbiter of all justiciable controversies and disputes.
Presently, it is still the rule that executive and legislative identification or classification of primarily confidential, policy-determining or highly technical positions in government is no more than mere declarations, and does not foreclose judicial review, especially in the event of conflict. Far from what is merely declared by executive or legislative fiat, it is the nature of the position which finally determines whether it is primarily confidential, policy determining or highly technical, and no department in government is better qualified to make such an ultimate finding than the judicial branch

FACTS:
Respondent Nita Javier was first employed as Private Secretary in the GSIS, a government owned and controlled corporation in 1960, on a "*confidential*" status. In, 1962, respondent was promoted to Tabulating Equipment Operator with "permanent" status. The "*permanent*" status stayed with respondent throughout her career. She spent her entire career with GSIS, earning several more promotions, until in 1986, she was appointed Corporate Secretary of the Board of Trustees of the corporation.

In, 2001, respondent opted for early retirement and received the corresponding monetary benefits. In 2002, respondent was reappointed as Corporate Secretary, the same position she left and retired from barely a year earlier. In its Resolution, the Board of Trustees classified her appointment as "confidential in nature and the tenure of office is at the pleasure of the Board."

Later in 2002, the CSC issued Resolution No. 021314, invalidating the reappointment of respondent as Corporate Secretary, on the ground that the position is a permanent, career position and not primarily confidential.

CSC ratiocinated that the position of Corporate Secretary is a permanent (career) position, and not primarily confidential (non-career); thus, it was wrong to appoint respondent to this position since she no longer complies with eligibility requirements for a permanent career status. More importantly, as respondent by then has reached compulsory retirement at age 65, respondent was no longer qualified for a permanent career position. With the denial of respondent's plea for reconsideration, she filed a Petition for Review with the CA.

The CA set aside the resolution of the CSC invalidating respondent's appointment. The CA ruled that in determining whether a position is primarily confidential or otherwise, the nature of its functions, duties and responsibilities must be looked into, and not just its formal classification. Examining the functions, duties and responsibilities of the GSIS Corporate Secretary, the CA concluded that indeed, such a position is primarily confidential in nature.

The petition assails the CA Decision, contending that the position of Corporate Secretary is a career position and not primarily confidential in nature. Further, it adds that the power to declare whether any position in government is primarily confidential, highly technical or policy determining rests solely in the CSC by virtue of its constitutional power as the central personnel agency of the government.

ISSUE:
Whether the courts may determine the proper classification of a position in government. (Yes)

RULING:
Under Executive Order No. 292, or the Administrative Code of 1987, civil service positions are currently classified into either 1) career service and 2) non-career service positions.
Career positions are characterized by: (1) entrance based on **merit and fitness to be determined as far as practicable by competitive examinations,** or based on **highly technical qualifications;** (2) **opportunity for advancement** to higher career positions; and (3) **security of tenure**.
Positions that do not fall under the career service are considered non-career positions, which are characterized by: (1) **entrance on bases other than those of the usual tests of merit and fitness** utilized for the career service; and (2) **tenure which is limited to a period** specified by law, or which is **co-terminous** with that of the appointing authority or **subject to his pleasure**, or **which is limited to the duration of a particular project** for which purpose employment was made.
A strict reading of the law reveals that primarily confidential positions fall under the non-career service. However at present, there is no law enacted by the legislature that defines or sets definite criteria for determining primarily confidential positions in the civil service. Neither is there a law that gives an enumeration of positions classified as primarily confidential.

What is available is only the CSC's own classification of civil service positions, as well as jurisprudence which describe or give examples of confidential positions in government.

Jurisprudence establishes that the Court is not bound by the classification of positions in the civil service made by the legislative or executive branches, or even by a constitutional body like the CSC. The Court is expected to make its own determination as to the nature of a particular position, such as whether it is a primarily confidential position or not, without being bound by prior classifications

made by other bodies. The findings of the other branches of government are merely considered initial and not conclusive to the Court. Moreover, it is well-established that in case the findings of various agencies of government, such as the petitioner and the CA in the instant case, are in conflict, the Court must exercise its constitutional role as final arbiter of all justiciable controversies and disputes.

Piñero v. Hechanova, interpreting RA 2260, or the Civil Service Act of 1959, emphasized how the legislature refrained from declaring which positions in the bureaucracy are primarily confidential, policy determining or highly technical in nature, and declared that such a determination is better left to the judgment of the courts. The Court, with the *ponencia* of Justice J.B.L. Reyes, expounded, thus:

> The change from the original wording of the bill (expressly declared by law x x x to be policy determining, etc.) to that finally approved and enacted ("or which are policy determining, etc. in nature") came about **because of the observations of Senator Tañada, that as originally worded the proposed bill gave Congress power to declare by fiat of law a certain position as primarily confidential or policy determining, which should not be the case.** The Senator urged that since the Constitution speaks of positions which are "primarily confidential, policy determining or highly technical in nature," **it is not within the power of Congress to declare what positions are primarily confidential or policy determining. "It is the nature alone of the position that determines whether it is policy determining or primarily confidential."** Hence, the Senator further observed, the matter should be left to the "proper implementation of the laws, depending upon the nature of the position to be filled", and if the position is "highly confidential" then the President and the Civil Service Commissioner must implement the law.
>
> **To a question of Senator Tolentino, "But in positions that involved both confidential matters and matters which are routine, x x x who is going to determine whether it is primarily confidential?" Senator Tañada replied:**
>
> > **"SENATOR TAÑADA: Well. at the first instance, it is the appointing power that determines that: the nature of the position. <u>In case of conflict then it is the Court that determines whether the position is primarily confidential or not</u>**
>
> Senator Tañada, therefore, proposed an amendment to section 5 of the bill, deleting the words "to be" and inserting in lieu thereof the words "Positions which are by their nature" policy determining, etc., and deleting the last words "in nature". Subsequently, Senator Padilla presented an amendment to the Tañada amendment by adopting the very words of the Constitution, i.e., "those which are policy determining, primarily confidential and highly technical in nature". The Padilla amendment was adopted, and it was this last wording with which section 5 was passed and was enacted (Senate Journal, May 10, 1959, Vol. 11, No. 32, pp. 679-681).
>
> It is plain that, at least since the enactment of the 1959 Civil Service Act (R. A. 2260), **it is the nature of the position which finally determines whether a position is primarily confidential, policy determining or highly technical. <u>Executive pronouncements can be no more than initial determinations that are not conclusive in case of conflict.</u>** And it must be so, or else it would then lie within the discretion of title Chief Executive to deny to any officer, by executive fiat, the protection of section 4, Article XII, of the Constitution.

This doctrine in *Piñero* was reiterated in several succeeding cases.

Presently, it is still the rule that executive and legislative identification or classification of primarily confidential, policy-determining or highly technical positions in government is no more than mere declarations, and does not foreclose judicial review, especially in the event of conflict. Far from what is merely declared by executive or legislative fiat, it is the nature of the position which finally determines whether it is primarily confidential, policy determining or highly technical, and no

department in government is better qualified to make such an ultimate finding than the judicial branch.

MARY LOU GETURBOS TORRES, *Petitioner*, -versus- CORAZON ALMA G. DE LEON, IN HER CAPACITY AS SECRETARY GENERAL OF THE PHILIPPINE NATIONAL RED CROSS AND THE BOARD OF GOVERNORS OF THE PHILIPPINE NATIONAL RED CROSS, NATIONAL HEADQUARTERS, *Respondents.*
G.R. No. 199440, THIRD DIVISION, January 18, 2016, PERALTA, J.

As ruled by this Court in Liban v. Gordon, the PNRC, although not a GOCC, is sui generis in character, thus, requiring this Court to approach controversies involving the PNRC on a case-to-case basis.
In this particular case, the CA did not err in ruling that the CSC has jurisdiction over the PNRC because the issue at hand is the enforcement of labor laws and penal statutes, thus, in this particular matter, the PNRC can be treated as a GOCC, and as such, it is within the ambit of Rule I, Section 1 of the Implementing Rules of Republic Act 6713, stating that:

> *Section 1. These Rules shall cover all officials and employees in the government, elective and appointive, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.*

Thus, having jurisdiction over the PNRC, the CSC had authority to modify the penalty and order the dismissal of petitioner from the service. Under the Administrative Code of 1987, as well as decisions of this Court, the CSC has appellate jurisdiction on administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty (30) days, or fine in an amount exceeding thirty (30) days salary. The CA, therefore, did not err when it agreed with the CSC that the latter had appellate jurisdiction.

FACTS:
The Philippine National Red Cross (PNRC) Internal Auditing Office conducted an audit of the funds and accounts of the PNRC, General Santos City Chapter for the period November 6, 2002 to March 14, 2006, and based on the audit report, petitioner incurred a "technical shortage" in the amount of P4,306,574.

Hence, petitioner Mary Lou De Leon, chapter administrator of PNRC General Santos, was formally charged with Grave Misconduct for violating PNRC Financial Policies on Oversubscription, Remittances and Disbursement of Funds.

Petitioner filed a Notice of Appeal addressed to the Board of Governors of the PNRC and furnished a copy thereof to the CSC. Petitioner addressed her appeal memorandum to the CSC and sent copies thereof to the PNRC and the CSC.

The CSC dismissed the appeal and imposed upon petitioner the penalty of dismissal from service. Petitioner filed a motion for reconsideration with the CSC, but the same was denied.

According to petitioner, the SC has decided that PNRC is not a government-owned and controlled corporation (*GOCC*), hence, the CSC has no jurisdiction or authority to review the appeal that she herself filed.

ISSUE:
Whether the CSC has appellate jurisdiction over the case. (YES)

RULING:

As ruled by this Court in *Liban v. Gordon*, the PNRC, although not a GOCC, is sui generis in character, thus, requiring this Court to approach controversies involving the PNRC on a case-to-case basis. As discussed:

> A closer look at the nature of the PNRC would show that there is none like it not just in terms of structure, but also in terms of history, public service and official status accorded to it by the State and the international community. There is merit in PNRC's contention that its structure is ***sui generis***.
>
> > x x x x
> >
> > National Societies such as the PNRC act as auxiliaries to the public authorities of their own countries in the humanitarian field and provide a range of services including disaster relief and health and social programmes.
> >
> > xxx
> >
> > **A National Society partakes of a *sui generis* character.** It is a protected component of the Red Cross movement under Articles 24 and 26 of the First Geneva Convention, especially in times of armed conflict. These provisions require that the staff of a National Society shall be respected and protected in all circumstances. Such protection is not ordinarily afforded by an international treaty to ordinary private entities or even non-governmental organizations (NGOs). This *sui generis* character is also emphasized by the Fourth Geneva Convention which holds that an Occupying Power cannot require any change in the personnel or structure of a National Society. National societies are therefore organizations that are directly regulated by international humanitarian law, in contrast to other ordinary private entities, including NGOs.
> >
> > x x x x
>
> Based on the above, the *sui generis* status of the PNRC is now sufficiently established. Although it is neither a subdivision, agency, or instrumentality of the government, nor a government-owned or -controlled corporation or a subsidiary thereof, as succinctly explained in the Decision of July 15, 2009, so much so that respondent, under the Decision, was correctly allowed to hold his position as Chairman thereof concurrently while he served as a Senator, such a conclusion does not *ipso facto* imply that the PNRC is a "private corporation" within the contemplation of the provision of the Constitution, that must be organized under the Corporation Code. As correctly mentioned by Justice Roberto A. Abad, **the *sui generis* character of PNRC requires us to approach controversies involving the PNRC on a case-to-case basis**.

In this particular case, the CA did not err in ruling that the CSC has jurisdiction over the PNRC because the issue at hand is the enforcement of labor laws and penal statutes, thus, in this particular matter, the PNRC can be treated as a GOCC, and as such, it is within the ambit of Rule I, Section 1 of the Implementing Rules of Republic Act 6713, stating that:

> Section 1. These Rules shall cover all officials and employees in the government, elective and appointive, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

Thus, having jurisdiction over the PNRC, the CSC had authority to modify the penalty and order the dismissal of petitioner from the service. Under the Administrative Code of 1987, as well as decisions of this Court, the CSC has appellate jurisdiction on administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty (30) days, or fine in an amount exceeding

thirty (30) days salary. The CA, therefore, did not err when it agreed with the CSC that the latter had appellate jurisdiction.

CAREER EXECUTIVE SERVICE BOARD REPRESENTED BY CHAIRPERSON BERNARDO P. ABESAMIS, EXECUTIVE DIRECTOR MA. ANTHONETTE VELASCO-ALLONES, AND DEPUTY EXECUTIVE DIRECTOR ARTURO M. LACHICA, *Petitioner*, -versus- CIVIL SERVICE COMMISSION REPRESENTED BY CHAIRMAN FRANCISCO T. DUQUE III AND PUBLIC ATTORNEY'S OFFICE, CHIEF PUBLIC ATTORNEY PERSIDA V. RUEDA-ACOSTA, DEPUTY CHIEF PUBLIC ATTORNEYS MACAPANGCAT A. MAMA, SYLVESTRE A. MOSING, REGIONAL PUBLIC ATTORNEYS CYNTHIA M. VARGAS, FRISCO F. DOMALSIN, TOMAS B. PADILLA, RENATO T. CABRIDO, SALVADOR S. HIPOLITO, ELPIDIO C. BACUYAG, DIOSDADO S. SAVELLANO, RAMON N. GOMEZ, MARIE G-REE R. CALINAWAN, FLORENCIO M. DILOY, EDGARDO D. GONZALEZ, NUNILA P. GARCIA, FRANCIS A. CALATRAVA, DATUMANONG A. DUMAMBA, EDGAR Q. BALANSAG, PUBLIC ATTORNEY IV MARVIN R. OSIAS, PUBLIC ATTORNEY IV HOWARD B. AREZA, PUBLIC ATTORNEY IV IMELDA C. ALFORTE-GANANCIAL, *Respondents.*
G.R. No. 197762, EN BANC, March 07, 2017, SERENO, C.J.

The CSC, as the central personnel agency of the government, is given the comprehensive mandate to administer the civil service under Article IX-B, Section 3 of the 1987 Constitution; and Section 12, Items (4), (5), and (14) of the Administrative Code. It has also been expressly granted the power to promulgate policies, standards, and guidelines for the civil service; and to render opinions and rulings on all personnel and other civil service matters.

The question of whether the subject PAO positions belong to the CES is clearly a civil service matter falling within the comprehensive jurisdiction of the CSC. It must likewise be emphasized that the CSC has been granted the authority to review the decisions of agencies attached to it under Section 12(11), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code. Since the CESB is an attached agency of the CSC, the former's decisions are expressly subject to the CSC's review on appeal.

It must likewise be emphasized that the CSC has been granted the authority to review the decisions of agencies attached to it under Section 12(11), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code:

FACTS:
The Public Attorney's Office (PAO) received a copy of the report of Career Executive Service Board(CESB) which stated, among others, that out of 35 filled positions in the PAO, 33 were occupied by persons without the required CES eligibility. The PAO Deputy Chief sent a letter to CESB, informing the latter that the subject positions are permanent in nature pursuant to Section 6 of RA 9406 which accorded security of tenure to its occupants and as such, may only be removed in accordance with law. The CSC opined that for purposes of permanent appointment to the subject positions, no third level eligibility is required but only RA 1080 (BAR) civil service eligibility.

The CESB issued Resolution No. 918 denying the PAO's request to declassify the subject positions. The CESB noted that the positions in question "require leadership and managerial competence" and were thus part of the CES. Hence, the appointment of persons without third-level eligibility for these

posts cannot be considered permanent. The PAO assailed the said resolution before the Civil Service Commission (CSC). Ruling in favor of PAO, the CSC declared that the CESB would be in violation of R.A. 9406 if the latter would require an additional qualification - in this case, third-level eligibility - for purposes of permanent appointments to certain PAO positions.

ISSUE:
Whether CSC has jurisdiction to reverse CESB Resolution No. 918. (YES)

RULING:
The CSC acted within its jurisdiction when it resolved the PAO's appeal and reversed CESB Resolution No. 918. Article IX-B of the 1987 Constitution entrusts to the CSC the administration of the civil service, which is comprised of "all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters."
The CSC, as the central personnel agency of the government, is given the comprehensive mandate to administer the civil service under Article IX-B, Section 3 of the 1987 Constitution; and Section 12, Items (4), (5), and (14) of the Administrative Code. It has also been expressly granted the power to promulgate policies, standards, and guidelines for the civil service; and to render opinions and rulings on all personnel and other civil service matters.
The question of whether the subject PAO positions belong to the CES is clearly a civil service matter falling within the comprehensive jurisdiction of the CSC. It must likewise be emphasized that the CSC has been granted the authority to review the decisions of agencies attached to it under Section 12(11), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code. Since the CESB is an attached agency of the CSC, the former's decisions are *expressly* subject to the CSC's review on appeal.
It must likewise be emphasized that the CSC has been granted the authority to review the decisions of agencies attached to it under Section 12(11), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code:

> SECTION 12. Powers and Functions.-The Commission shall have the following powers and functions:
> (11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Its decisions, orders, or rulings shall be final and executory. Such decisions, orders, or rulings may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof;

Since the CESB is an attached agency of the CSC, the former's decisions are *expressly* subject to the CSC's review on appeal.

HILARION F. DIMAGIBA, IRMA MENDOZA, AND ELLEN RASCO, PRESENT, *Petitioners*, -versus- JULITA ESPARTERO, MA. BERNARDITA L. CARREON AND MELINA SAN PEDRO, *Respondents.*
G.R. No. 154952, THIRD DIVISION, July 16, 2012, PERALTA, J.

The gratuity pay being given to petitioners by the HSDC Board was by reason of the satisfactory performance of their work under the trust agreement. It is considered a bonus and by its very nature, a bonus partakes of an additional remuneration or compensation. Granting them another gratuity pay for the works done in HSDC under the trust agreement would be indirectly giving them additional compensation for services rendered in another position which is an extension or is connected with his basic work which is prohibited. This can only be allowed if there is a law which specifically authorizes

them to receive an additional payment of gratuity. The HSDC Board Resolution No. 05-19-A granting petitioners' gratuity pay is not a law which would exempt them from the Constitutional proscription against additional, double or indirect compensation.

FACTS:
Petitioners were employees of The Livelihood Corporation (LIVECOR), a government-owned and controlled corporation created under Executive Order No. 866.
In 1990, LIVECOR and the Human Settlement Development Corporation (HSDC), also a government-owned and controlled corporation, entered into a Trust Agreement whereby the former would undertake the task of managing, administering, disposing and liquidating the corporate assets, projects and accounts of HSDC. In HSDC Board Resolution No. 326- A dated March 26, 1990, it was provided that in order to carry out the trust agreement, LIVECOR personnel must be designated concurrently to operate certain basic HSDC/SIDCOR functions. The same resolution provided for the designees' monthly honoraria and commutable reimbursable representation allowances (CRRA).
In 1997, the Department of Budget and Management informed LIVECOR of the approval of its organization/staffing pattern modifications which resulted in the abolition of petitioners' positions. The HSDC resolved to terminate petitioners' services because the latter's separation from LIVECOR would no longer allow them to perform their functions at the HSDC. However, the HSDC wrote the Office of the Government Corporate Counsel (OGCC) and sought its opinion on the legality of HSDC's granting gratuity pay to petitioners.

The OGCC rendered Opinion No. 078, series of 1998, which resolved among others the grant of gratuity pay to petitioners. The OGCC found that it is within the power of the Board to grant reasonable Gratuity Pay/Package to petitioners subject to the usual rules of the Commission on Audit (COA) pertaining to allowances/benefits and disbursements of funds.
In a Memorandum dated July 17, 1998 issued by LIVECOR Administrator Manuel Portes (Portes), it was stated that any payment of gratuities by the HSDC/SIDCOR to LIVECOR officers concurrently performing HSDC functions shall not be processed without prior clearance from him as the same shall be first cleared with the COA and OGCC to avoid any legal problem.

In October 1998, Portes was replaced by Atty. Salvador C. Medialdea (Atty. Medialdea) to whom petitioners subsequently referred the matter of their gratuity payment. In a letter dated June 14, 1999, Atty. Medialdea sought clarification from the OGCC regarding its Opinion No. 078. The OGCC responded with the issuance of its Opinion No. 019, s. 2000 on January 31, 2000, where it declared that HSDC Resolution No. 05-19-A, granting gratuities in favor of petitioners, could not be implemented as the intended beneficiaries were prohibited by law from receiving the same, citing Section 8 of Article IX-B of the Constitution, *i.e.*, proscription on double compensation.

ISSUE:
Whether the gratuities granted to petitioners by HSDC constitute double compensation prohibited under Article IX (b), Sec 8 of the constitution. (Yes)

RULING:
As provided under Section 8 of Article IX-B of the 1987 Constitution:

> Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

> Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Clearly, the only exception for an employee to receive additional, double and indirect compensation is where the law allows him to receive extra compensation for services rendered in another position which is an extension or is connected with his basic work. The prohibition against additional or double compensation, except when specifically authorized by law, is considered a "constitutional curb" on the spending power of the government. In *Peralta v. Mathay*, we stated the purpose of the prohibition, to wit:

> x x x This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the ideal. There is then to be awareness on the part of an officer or employee of the government that he is to receive only such compensation as may be fixed by law. With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position. x x x

The gratuity pay being given to petitioners by the HSDC Board was by reason of the satisfactory performance of their work under the trust agreement. It is considered a bonus and by its very nature, a bonus partakes of an additional remuneration or compensation. Granting them another gratuity pay for the works done in HSDC under the trust agreement would be indirectly giving them additional compensation for services rendered in another position which is an extension or is connected with his basic work which is prohibited. This can only be allowed if there is a law which specifically authorizes them to receive an additional payment of gratuity. The HSDC Board Resolution No. 05-19-A granting petitioners' gratuity pay is not a law which would exempt them from the Constitutional proscription against additional, double or indirect compensation.

Neither does the HSDC law under P.D. 1396 contain a provision allowing the grant of such gratuity pay to petitioners. Section 9 of P.D. 1396 provides:

> Section 9.*Appointment, Control and Discipline of Personnel*. – The Board, upon recommendation of the General Manager of the Corporation, shall appoint the officers, and employees of the Corporation and its subsidiaries; fix their compensation, allowances and benefits, their working hours and such other conditions of employment as it may deem proper; grant them leaves of absence under such regulations as it may promulgate; discipline and/or remove them for cause; and establish and maintain a recruitment and merit system for the Corporation and its affiliates and subsidiaries.

The above-quoted provision applies to the persons appointed as employees of the HSDC and does not extend to petitioners who were LIVECOR employees merely designated in HSDC under a trust agreement. The fact that they were not HSDC employees was emphatically stated in Resolution No. 3-26-A passed by the HSDC Board of Directors on March 26, 1990, where it was provided that "in order to carry out the trust agreement, LIVECOR personnel must be designated/elected concurrently to operate certain basic SIDCOR corporate offices and positions."

PHILIPPINE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, *Petitioners*, -versus- COMMISSION ON AUDIT, DIR. RODULFO J. ARIESGA (IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE COMMISSION ON AUDIT), MS. MERLE M. VALENTIN AND MS. SUSAN GUARDIAN (IN THEIR OFFICIAL CAPACITIES AS TEAM LEADER AND TEAM MEMBER, RESPECTIVELY, OF THE AUDIT TEAM OF THE COMMISSION ON AUDIT), *Respondents.*
G.R. No. 169752, EN BANC, September 25, 2007, AUSTRIA-MARTINEZ, J.

The respondents contend that the petitioner is a "body politic" because its primary purpose is to secure the protection and welfare of animals which, in turn, redounds to the public good.
This argument, is, at best, specious. The fact that a certain juridical entity is impressed with public interest does not, by that circumstance alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good. This class of corporations may be considered quasi-public corporations, which are private corporations that render public service, supply public wants, or pursue other eleemosynary objectives.

The true criterion, therefore, to determine whether a corporation is public or private is found in the totality of the relation of the corporation to the State. If the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is considered public; otherwise, it is private. Applying the above test, provinces, chartered cities, and barangays can best exemplify public corporations. They are created by the State as its own device and agency for the accomplishment of parts of its own public works.

FACTS:
Petitioner Philippine Society for the Prevention of Cruelty to Animals (PSPCA) was incorporated as a juridical entity by virtue of Act No. 1285, enacted in 1905, by the Philippine Commission.
For the purpose of enhancing its powers in promoting animal welfare and enforcing laws for the protection of animals, the petitioner was initially imbued under its charter with the power to apprehend violators of animal welfare laws. In addition, the petitioner was to share one-half (1/2) of the fines imposed and collected through its efforts for violations of the laws related thereto.
Subsequently, however, the power to make arrests as well as the privilege to retain a portion of the fines collected for violation of animal-related laws were recalled by virtue of Commonwealth Act (C.A.) No. 148.
In 2003, an audit team from the Commission on Audit visited the office of the petitioner to conduct an audit survey. The petitioner demurred on the ground that it was a private entity not under the jurisdiction of COA, citing Section 2(1) of Article IX of the Constitution which specifies the general jurisdiction of the COA.

ISSUE:
Whether PSPCA qualifies as a government agency that may be subject to audit by the COA. (No)

RULING:
First, the Court agrees with the petitioner that the "charter test" cannot be applied. Essentially, the "charter test" as it stands today provides:

> [T]he test to determine whether a corporation is government owned or controlled, or private in nature is simple. *Is it created by its own charter for the exercise of a public function, or by incorporation under the general corporation law? Those with special charters are government*

> *corporations subject to its provisions*, and its employees are under the jurisdiction of the Civil Service Commission, and are compulsory members of the Government Service Insurance System.

The petitioner is correct in stating that the charter test is predicated, at best, on the legal regime established by the 1935 Constitution, Section 7, Article XIII, which states:

> Sec. 7. The National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.

The foregoing proscription has been carried over to the 1973 and the 1987 Constitutions. Section 16 of Article XII of the present Constitution provides:

> Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

Section 16 is essentially a re-enactment of Section 7 of Article XVI of the 1935 Constitution and Section 4 of Article XIV of the 1973 Constitution.
During the formulation of the 1935 Constitution, the Committee on Franchises recommended the foregoing proscription to prevent the pressure of special interests upon the lawmaking body in the creation of corporations or in the regulation of the same.
And since the underpinnings of the charter test had been introduced by the 1935 Constitution and not earlier, it follows that the test cannot apply to the petitioner, which was incorporated by virtue of Act No. 1285, enacted on January 19, 1905. Settled is the rule that laws in general have no retroactive effect, unless the contrary is provided. All statutes are to be construed as having only a prospective operation, unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. In case of doubt, the doubt must be resolved against the retrospective effect.

The general principle of prospectivity of the law likewise applies to Act No. 1459, otherwise known as the Corporation Law, which had been enacted by virtue of the plenary powers of the Philippine Commission on March 1, 1906, a little over a year after January 19, 1905, the time the petitioner emerged as a juridical entity. Even the Corporation Law respects the rights and powers of juridical entities organized beforehand, viz:

> SEC. 75. Any corporation or *sociedad anonima* formed, organized, and existing under the laws of the Philippine Islands and lawfully transacting business in the Philippine Islands on the date of the passage of this Act, shall be subject to the provisions hereof so far as such provisions may be applicable and *shall be entitled at its option either to continue business as such corporation or to reform and organize under and by virtue of the provisions of this Act*, transferring all corporate interests to the new corporation which, if a stock corporation, is authorized to issue its shares of stock at par to the stockholders or members of the old corporation according to their interests.

As pointed out by the OSG, both the 1935 and 1987 Constitutions contain transitory provisions maintaining all laws issued not inconsistent therewith until amended, modified or repealed.
In a legal regime where the charter test doctrine cannot be applied, the mere fact that a corporation has been created by virtue of a special law does not necessarily qualify it as a public corporation.

What then is the nature of the petitioner as a corporate entity? What legal regime governs its rights, powers, and duties? As stated, at the time the petitioner was formed, the applicable law was the Philippine Bill of 1902, and, emphatically, as also stated above, no proscription similar to the charter test can be found therein.

The textual foundation of the charter test, which placed a limitation on the power of the legislature, first appeared in the 1935 Constitution. However, the petitioner was incorporated in 1905 by virtue of Act No. 1258, a law antedating the Corporation Law (Act No. 1459) by a year, and the 1935 Constitution, by thirty years. There being neither a general law on the formation and organization of private corporations nor a restriction on the legislature to create private corporations by direct legislation, the Philippine Commission at that moment in history was well within its powers in 1905 to constitute the petitioner as a private juridical entity.

The amendments introduced by C.A. No. 148 made it clear that the petitioner was a private corporation and not an agency of the government. This was evident in Executive Order No. 63, issued by then President Manuel Quezon, declaring that the revocation of the powers of the petitioner to appoint agents with powers of arrest "corrected a serious defect" in one of the laws existing in the statute books.

As a curative statute, and based on the doctrines so far discussed, C.A. No. 148 has to be given retroactive effect, thereby freeing all doubt as to which class of corporations the petitioner belongs, that is, it is a quasi-public corporation, a kind of private domestic corporation, which the Court will further elaborate on under the *fourth* point.
Second, a reading of petitioner's charter shows that it is not subject to control or supervision by any agency of the State, unlike government-owned and -controlled corporations. No government representative sits on the board of trustees of the petitioner. Like all private corporations, the successors of its members are determined voluntarily and solely by the petitioner in accordance with its by-laws, and may exercise those powers generally accorded to private corporations, such as the powers to hold property, to sue and be sued, to use a common seal, and so forth. It may adopt by-laws for its internal operations: the petitioner shall be managed or operated by its officers "in accordance with its by-laws in force."

Third. The employees of the petitioner are registered and covered by the SSS at the latter's initiative, and not through the GSIS, which should be the case if the employees are considered government employees. This is another indication of petitioner's nature as a private entity
Fourth. The respondents contend that the petitioner is a "body politic" because its primary purpose is to secure the protection and welfare of animals which, in turn, redounds to the public good.
This argument, is, at best, specious. The fact that a certain juridical entity is impressed with public interest does not, by that circumstance alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good. This class of corporations may be considered quasi-public corporations, which are private corporations that render public service, supply public wants, or pursue other eleemosynary objectives.

The true criterion, therefore, to determine whether a corporation is public or private is found in the totality of the relation of the corporation to the State. If the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is considered public; otherwise, it is private. Applying the above test, provinces,

chartered cities, and *barangays* can best exemplify public corporations. They are created by the State as its own device and agency for the accomplishment of parts of its own public works.
Fifth. The respondents argue that since the charter of the petitioner requires the latter to render periodic reports to the Civil Governor, whose functions have been inherited by the President, the petitioner is, therefore, a government instrumentality.

This contention is inconclusive. By virtue of the fiction that all corporations owe their very existence and powers to the State, the reportorial requirement is applicable to all corporations of whatever nature, whether they are public, quasi-public, or private corporations--as creatures of the State, there is a reserved right in the legislature to investigate the activities of a corporation to determine whether it acted within its powers. In other words, the reportorial requirement is the principal means by which the State may see to it that its creature acted according to the powers and functions conferred upon it.

F. NATIONAL ECONOMY AND PATRIMONY

LA BUGAL-B'LAAN TRIBAL ASSOCIATION, INC., REPRESENTED BY ITS CHAIRMAN F'LONG MIGUEL M. LUMAYONG; WIGBERTO E. TAÑADA; PONCIANO BENNAGEN; JAIME TADEO; RENATO R. CONSTANTINO JR.; F'LONG AGUSTIN M. DABIE; ROBERTO P. AMLOY; RAQIM L. DABIE; SIMEON H. DOLOJO; IMELDA M. GANDON; LENY B. GUSANAN; MARCELO L. GUSANAN; QUINTOL A. LABUAYAN; LOMINGGES D. LAWAY; BENITA P. TACUAYAN; MINORS JOLY L. BUGOY, REPRESENTED BY HIS FATHER UNDERO D. BUGOY AND ROGER M. DADING; REPRESENTED BY HIS FATHER ANTONIO L. DADING; ROMY M. LAGARO, REPRESENTED BY HIS FATHER TOTING A. LAGARO; MIKENY JONG B. LUMAYONG, REPRESENTED BY HIS FATHER MIGUEL M. LUMAYONG; RENE T. MIGUEL, REPRESENTED BY HIS MOTHER EDITHA T. MIGUEL; ALDEMAR L. SAL, REPRESENTED BY HIS FATHER DANNY M. SAL; DAISY RECARSE, REPRESENTED BY HER MOTHER LYDIA S. SANTOS; EDWARD M. EMUY; ALAN P. MAMPARAIR; MARIO L. MANGCAL; ALDEN S. TUSAN; AMPARO S. YAP; VIRGILIO CULAR; MARVIC M.V.F. LEONEN; JULIA REGINA CULAR, GIAN CARLO CULAR, VIRGILIO CULAR JR., REPRESENTED BY THEIR FATHER VIRGILIO CULAR; PAUL ANTONIO P. VILLAMOR, REPRESENTED BY HIS PARENTS JOSE VILLAMOR AND ELIZABETH PUA-VILLAMOR; ANA GININA R. TALJA, REPRESENTED BY HER FATHER MARIO JOSE B. TALJA; SHARMAINE R. CUNANAN, REPRESENTED BY HER FATHER ALFREDO M. CUNANAN; ANTONIO JOSE A. VITUG III, REPRESENTED BY HIS MOTHER ANNALIZA A. VITUG, LEAN D. NARVADEZ, REPRESENTED BY HIS FATHER MANUEL E. NARVADEZ JR.; ROSERIO MARALAG LINGATING, REPRESENTED BY HER FATHER RIO OLIMPIO A. LINGATING; MARIO JOSE B. TALJA; DAVID E. DE VERA; MARIA MILAGROS L. SAN JOSE; SR. SUSAN O. BOLANIO, OND; LOLITA G. DEMONTEVERDE; BENJIE L. NEQUINTO; ROSE LILIA S. ROMANO; ROBERTO S. VERZOLA; EDUARDO AURELIO C. REYES; LEAN LOUEL A. PERIA, REPRESENTED BY HIS FATHER ELPIDIO V. PERIA; GREEN FORUM PHILIPPINES; GREEN FORUM WESTERN VISAYAS (GF-WV); ENVIRONMENTAL LEGAL ASSISTANCE CENTER (ELAC); KAISAHAN TUNGO SA KAUNLARAN NG KANAYUNAN AT REPORMANG PANSAKAHAN (KAISAHAN); PARTNERSHIP FOR AGRARIAN REFORM AND RURAL DEVELOPMENT SERVICES, INC. (PARRDS); PHILIPPINE PARTNERSHIP FOR THE DEVELOPMENT OF HUMAN RESOURCES IN THE RURAL AREAS, INC. (PHILDHRRA); WOMEN'S LEGAL BUREAU (WLB); CENTER FOR ALTERNATIVE DEVELOPMENT INITIATIVES, INC. (CADI); UPLAND DEVELOPMENT INSTITUTE (UDI); KINAIYAHAN FOUNDATION, INC.; SENTRO NG ALTERNATIBONG LINGAP PANLIGAL (SALIGAN); AND LEGAL RIGHTS AND NATURAL RESOURCES CENTER, INC. (LRC), *Petitioners*, -versus- VICTOR O. RAMOS, SECRETARY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR); HORACIO RAMOS,

DIRECTOR, MINES AND GEOSCIENCES BUREAU (MGB-DENR); RUBEN TORRES, EXECUTIVE SECRETARY; AND WMC (PHILIPPINES), INC., *Respondents.*
G.R. No. 127882, EN BANC, December 01, 2004, PANGANIBAN, J.

The constitutional provision allowing the President to enter into FTAAs is an exception to the rule that participation in the nation's natural resources is reserved exclusively to Filipinos. Accordingly, such provision must be construed strictly against their enjoyment by non-Filipinos. With the foregoing discussion, the SC found that RA 7942 is invalid insofar as the said act authorizes service contracts. Although RA 7942 employs the phrase —financial and technical agreements in accordance with the 1987 Constitution, its pertinent provisions actually treat these agreements as service contracts that grant beneficial ownership to foreign contractors contrary to the fundamental law.

Furthermore, Chapter XII of the Act grants foreign contractors in FTAAs the same auxiliary mining rights that it grants contractors in mineral agreements. Parenthetically, Sections 72 to 75 use the term "contractor," without distinguishing between FTAA and mineral agreement contractors. And so does "holders of mining rights" in Section 76. A foreign contractor may even convert its FTAA into a mineral agreement if the economic viability of the contract area is found to be inadequate to justify large-scale mining operations, provided that it reduces its equity in the corporation, partnership, association or cooperative to forty percent (40%).

By allowing foreign contractors to manage or operate all the aspects of the mining operation, RA 7942 has in effect conveyed beneficial ownership over the nation's mineral resources to these contractors, leaving the State with nothing but bare title thereto.

FACTS:
EO 279, issued by former President Aquino in 1987, authorizes the DENR to accept, consider and evaluate proposals from foreign owned corporations or foreign investors for contracts or agreements involving wither technical or financial assistance for large scale exploration, development and utilization of minerals which upon appropriate recommendation of the [DENR] Secretary, the President may execute with the foreign proponent. WMCP likewise contended that the annulment of the FTAA would violate a treaty between the Philippines and Australia which provides for the protection of Australian investments.

On April 9, 1995, the Philippine Mining Act (RA 7942) took effect. RA 7942 governs "the exploration, development, utilization and processing of all mineral resources." R.A. No. 7942 also defines the modes of mineral agreements for mining operations, outlines the procedure for their filing and approval, assignment/transfer and withdrawal, and fixes their terms.

Before the effectivity of RA 7942, or on March 30, 1995, President Fidel Ramos signed a Financial and Technical Assistance Agreement (FTAA) with WMCP, a corporation organized under Philippine laws, covering close to 100,000 hectares of land in Mindanao. WMCP is owned by WMC, publicly listed major Australian mining and exploration company.

Petitioners pray that RA 7942, its implementing rules, and the FTAA between the government and WMCP be declared unconstitutional on ground that they allow fully foreign owned corporations like WMCP to exploit, explore and develop Philippine mineral resources in contravention of Article XII Section 2 paragraphs 2 and 4 of the Constitution.

WMC, however, sold all of its shares to Sagittarius Mines, 60% of which is owned by Filipinos while 40% of which is owned by Indophil Resources, an Australian company. By virtue of such sale, the DENR Secretary approved the transfer and registration of the FTAA in Sagittarius' name.

ISSUE:
Whether the Philippine Mining Act is unconstitutional for allowing fully foreign owned corporations to exploit the Philippine mineral resources. (YES)

RULING:
The 1987 Constitution retained the Regalian doctrine. The first sentence of Section 2, Article XII states "All lands of the public domain, waters, minerals, coal, petroleum, and other minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State." The same section also states that "the exploration and development and utilization of natural resources shall be under the full control and supervision of the State."

Conspicuously absent in Section 2 is the provision in the 1935 and 1973 Constitution authorizing the State to grant licenses, concessions, or leases for the exploration, exploitation, development, or utilization of natural resources. By such omission, the utilization of inalienable lands of the public domain through license, concession or lease is no longer allowed under the 1987 Constitution.

The 1987 Constitution, moreover, has deleted the phrase —management or other forms of assistance in the 1973 Charter. The present Constitution allows only —technical and financial assistance. The management and the operation of the mining activities by foreign contractors, the primary feature of the service contracts was precisely the evil the drafters of the 1987 Constitution sought to eradicate.

The constitutional provision allowing the President to enter into FTAAs is an exception to the rule that participation in the nation's natural resources is reserved exclusively to Filipinos. Accordingly, such provision must be construed strictly against their enjoyment by non-Filipinos. With the foregoing discussion, the SC found that RA 7942 is invalid insofar as the said act authorizes service contracts. Although RA 7942 employs the phrase —financial and technical agreements in accordance with the 1987 Constitution, its pertinent provisions actually treat these agreements as service contracts that grant beneficial ownership to foreign contractors contrary to the fundamental law.

Section 33 (Financial or Technical Assistance Agreement) of RA 7942 states that:

> Any qualified person with technical and financial capability **to undertake large-scale exploration, development, and utilization of mineral resources** in the Philippines may enter into a financial or technical assistance agreement directly with the Government through the Department.

The underlying assumption in the provisions of the law is that the foreign contractor manages the mineral resources just like the foreign contractor in a service contract.

Furthermore, Chapter XII of the Act grants foreign contractors in FTAAs the same auxiliary mining rights that it grants contractors in mineral agreements. Parenthetically, Sections 72 to 75 use the term "contractor," without distinguishing between FTAA and mineral agreement contractors. And so does "holders of mining rights" in Section 76. A foreign contractor may even convert its FTAA into a mineral agreement if the economic viability of the contract area is found to be inadequate to justify

large-scale mining operations, provided that it reduces its equity in the corporation, partnership, association or cooperative to forty percent (40%).

By allowing foreign contractors to manage or operate all the aspects of the mining operation, RA 7942 has in effect conveyed beneficial ownership over the nation's mineral resources to these contractors, leaving the State with nothing but bare title thereto.

Moreover, the same provisions, whether by design or inadvertence, permit a circumvention of the constitutionally ordained 60-40% capitalization requirement for corporations or associations engaged in the exploitation, development and utilization of Philippine natural resources.
When parts of a statute are so mutually dependent and connected as conditions, considerations, inducements or compensations for each other as to warrant a belief that the legislature intended them as a whole, then if some parts are unconstitutional, all provisions that are thus dependent, conditional or connected, must fail with them. There can be little doubt that the WMCP FTAA itself is a service contract.

**WILSON P. GAMBOA, *Petitioner*, -versus- FINANCE SECRETARY MARGARITO B. TEVES, FINANCE UNDERSECRETARY JOHN P. SEVILLA, AND COMMISSIONER RICARDO ABCEDE OF THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) IN THEIR CAPACITIES AS CHAIR AND MEMBERS, RESPECTIVELY, OF THE PRIVATIZATION COUNCIL, CHAIRMAN ANTHONI SALIM OF FIRST PACIFIC CO., LTD. IN HIS CAPACITY AS DIRECTOR OF METRO PACIFIC ASSET HOLDINGS INC., CHAIRMAN MANUEL V. PANGILINAN OF PHILIPPINE LONG DISTANCE TELEPHONE COMPANY (PLDT) IN HIS CAPACITY AS MANAGING DIRECTOR OF FIRST PACIFIC CO., LTD., PRESIDENT NAPOLEON L. NAZARENO OF PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, CHAIR FE BARIN OF THE SECURITIES EXCHANGE COMMISSION, AND PRESIDENT FRANCIS LIM OF THE PHILIPPINE STOCK EXCHANGE, *Respondents.* PABLITO V. SANIDAD AND ARNO V. SANIDAD, *Petitioners-in-Intervention.*
G.R. No. 176579, EN BANC, June 28, 2011, CARPIO, J.**

Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation. In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as common shares. However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the preferred shareholders are merely investors in the corporation for income in the same manner as bondholders. In fact, under the Corporation Code only preferred or redeemable shares can be deprived of the right to vote. Common shares cannot be deprived of the right to vote in any corporate meeting, and any provision in the articles of incorporation restricting the right of common shareholders to vote is invalid.

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term capital in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term capital shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term capital in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.

FACTS:
In 1928, the Philippine Legislature enacted Act No. 3436 which granted PLDT a franchise and the right to engage in telecommunications business.

In 1969, General Telephone and Electronics Corporation (GTE), an American company and a major PLDT stockholder, sold 26 percent of the outstanding common shares of PLDT to Philippine Telecommunications Investment Corporation (PTIC).

In 1977, Prime Holdings, Inc. (PHI) was incorporated by several persons, including Roland Gapud and Jose Campos, Jr. Subsequently, PHI became the owner of 111,415 shares of stock of PTIC by virtue of three Deeds of.

In 1986, the 111,415 shares of stock of PTIC held by PHI were sequestered by the Presidential Commission on Good Government (PCGG). The 111,415 PTIC shares, which represent about 46.125 percent of the outstanding capital stock of PTIC, were later declared by this Court to be owned by the Republic of the Philippines.

Since PTIC is a stockholder of PLDT, the sale by the Philippine Government of 46.125 percent of PTIC shares is actually an indirect sale of 12 million shares or about 6.3 percent of the outstanding common shares of PLDT. **With the sale, First Pacific's common shareholdings in PLDT increased from 30.7 percent to 37 percent, thereby increasing the common shareholdings of foreigners in PLDT to about 81.47 percent.** This violates Section 11, Article XII of the 1987 Philippine Constitution which limits foreign ownership of the capital of a public utility to not more than 40 percent.

In 2007, petitioner filed the instant petition for prohibition, injunction, declaratory relief, and declaration of nullity of sale of the 111,415 PTIC shares.

ISSUE:
Whether the term "capital" in Section 11, Article XII of the Constitution refers to the total common shares only and not to the total outstanding capital stock (combined total of common and non-voting preferred shares) of PLDT, a public utility. (Yes)

RULING:
Section 11, Article XII (National Economy and Patrimony) of the 1987 Constitution mandates the Filipinization of public utilities, to wit:

> *Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.*

Any citizen or juridical entity desiring to operate a public utility must therefore meet the minimum nationality requirement prescribed in Section 11, Article XII of the Constitution. Hence, for a corporation to be granted authority to operate a public utility, at least 60 percent of its capital must be owned by Filipino citizens.

In the earlier case of *Fernandez v. Cojuangco*, petitioner Fernandez who claimed to be a stockholder of record of PLDT, contended that the term "capital" in the 1987 Constitution refers to shares entitled to vote or the common shares. *Fernandez* explained thus:

> The forty percent (40%) foreign equity limitation in public utilities prescribed by the Constitution refers to ownership of shares of stock entitled to vote, i.e., common shares, considering that it is through voting that control is being exercised. x x x
> Obviously, the intent of the framers of the Constitution in imposing limitations and restrictions on fully nationalized and partially nationalized activities is for Filipino nationals to be always in control of the corporation undertaking said activities. Otherwise, if the Trial Court's ruling upholding respondents' arguments were to be given credence, it would be possible for the ownership structure of a public utility corporation to be divided into one percent (1%) common stocks and ninety-nine percent (99%) preferred stocks. Following the Trial Court's ruling adopting respondents' arguments, the common shares can be owned entirely by foreigners thus creating an absurd situation wherein foreigners, who are supposed to be minority shareholders, control the public utility corporation.
> Thus, the 40% foreign ownership limitation should be interpreted to apply to both the beneficial ownership and the controlling interest.
> Clearly, therefore, the forty percent (40%) foreign equity limitation in public utilities prescribed by the Constitution refers to ownership of shares of stock entitled to vote, i.e., common shares. Furthermore, ownership of record of shares will not suffice but it must be shown that the legal and beneficial ownership rests in the hands of Filipino citizens. Consequently, in the case of petitioner PLDT, since it is already admitted that the voting interests of foreigners which would gain entry to petitioner PLDT by the acquisition of SMART shares through the Questioned Transactions is equivalent to 82.99%, and the nominee arrangements between the foreign principals and the Filipino owners is likewise admitted, there is, therefore, a violation of Section 11, Article XII of the Constitution

Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation. In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as common shares. However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the preferred shareholders are merely investors in the corporation for income in the same manner as bondholders. In fact, under the Corporation Code only preferred or redeemable shares can be deprived of the right to vote. Common shares cannot be deprived of the right to vote in any corporate meeting, and any provision in the articles of incorporation restricting the right of common shareholders to vote is invalid.
Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term capital in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term capital shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to

vote in the election of directors. In short, the term capital in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.

JOSE M. ROY III, *Petitioner,* -versus – CHAIRPERSON TERESITA HERBOSA, et al., *Respondents.*
G.R. No. 207246, EN BANC, November 22, 2016, CAGUIOA, J.:

Clarification of Gamboa Decision/Resolution: the pronouncement of the Court in the Gamboa Resolution - the constitutional requirement to "apply uniformly and across the board to ***all*** *classes of shares, regardless of nomenclature and category, comprising the capital of a corporation - is clearly an* ***obiter dictum*** *that cannot override the Court's unequivocal definition of the term "capital" in both the Gamboa Decision and Resolution. To revisit or even clarify the unequivocal definition of the term "capital" as referring "only to shares of stock entitled to vote in the election of directors" and apply the 60% Filipino ownership requirement to each class of share is effectively and unwarrantedly amending or changing the Gamboa Decision and Resolution.*

FACTS:
The petitions before the Court are special civil actions for *certiorari* under Rule 65 of the Rules of Court seeking to annul Memorandum Circular No. 8, Series of 2013 ("SEC-MC No. 8") issued by the Securities and Exchange Commission ("SEC") for allegedly being in violation of the Court's Decision *("Gamboa* Decision") and Resolution *("Gamboa* Resolution") in *Gamboa v. Finance Secretary Teves,* G.R. No. 176579, respectively promulgated on June 28, 2011, and October 9, 2012, which jurisprudentially established the proper interpretation of Section 11, Article XII of the Constitution.
Petitioner Roy seeks to apply the 60-40 Filipino ownership requirement separately to each class of shares of a public utility corporation, whether common, preferred nonvoting, preferred voting or any other class of shares. Petitioner Roy also questions the ruling of the SEC that respondent Philippine Long Distance Telephone Company ("PLDT") is compliant with the constitutional rule on foreign ownership. He prays that the Court declare SEC-MC No. 8 unconstitutional and direct the SEC to issue new guidelines regarding the determination of compliance with Section 11, Article XII of the Constitution in accordance with *Gamboa.* The Petition-in-Intervention filed by intervenors Gamboa, et al. mirrored the issues, arguments and prayer of petitioner Roy.

ISSUES:
I. Whether the SEC gravely abused its discretion in issuing SEC-MC No. 8 in light of the *Gamboa* Decision and *Gamboa* Resolution. (NO)
II. Whether the SEC gravely abused its discretion in ruling that PLDT is compliant with the constitutional limitation on foreign ownership. (NO)

RULING:
Procedural Issues

The Court may exercise its power of judicial review and take cognizance of a case when the following specific requisites are met: (1) there is an actual case or controversy calling for the exercise of judicial power; (2) the petitioner has standing to question the validity of the subject act or issuance, *i.e.,* he has a personal and substantial interest in the case that he has sustained, or will sustain, direct injury as a result of the enforcement of the act or issuance; (3) the question of constitutionality is raised at the earliest opportunity; and (4) the constitutional question is the very *lis mota* of the case.

Petitioners' failure to sufficiently allege, much less establish, the existence of the first two requisites for the exercise of judicial review warrants the perfunctory dismissal of the petitions. Petitioners'

hypothetical illustration as to how SEC-MC No. 8 "practically encourages circumvention of the 60-40 ownership rule" is evidently speculative and fraught with conjectures and assumptions.

The personal and substantial interest that enables a party to have legal standing is one that is both **material,** an interest in issue and to be affected by the government action, as distinguished from mere interest in the issue involved, or a mere incidental interest, and **real,** which means a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest.

As to injury, the party must show that (1) he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action. If the asserted injury is more imagined than real, or is merely superficial and insubstantial, an excursion into constitutional adjudication by the courts is not warranted.

The Court has previously emphasized that the locus standi requisite is not met by the expedient invocation of one's citizenship or membership in the bar who has an interest in ensuring that laws and orders of the Philippine government are legally and validly issued as these supposed interests are too general, which are shared by other groups and by the whole citizenry.

Petitioners' status as taxpayers is also of no moment. As often reiterated by the Court, a taxpayer's suit is allowed only when the petitioner has demonstrated the direct correlation of the act complained of and the disbursement of public funds in contravention of law or the Constitution, or has shown that the case involves the exercise of the spending or taxing power of Congress. SEC-MC No. 8 does not involve an additional expenditure of public funds and the taxing or spending power of Congress.

An indiscriminate disregard of the requisites every time "transcendental or paramount importance or significance" is invoked would result in an unacceptable corruption of the settled doctrine of *locus standi,* as every worthy cause is an interest shared by the general public. While the Court has taken an increasingly liberal approach to the rule of *locus standi,* evolving from the stringent requirements of personal injury to the broader transcendental importance doctrine, such liberality is not to be abused.

The petitioners failed to implead indispensable parties. Other than PLDT, the petitions failed to join or implead other public utility corporations subject to the same restriction imposed by Section 11, Article XII of the Constitution. These corporations are in danger of losing their franchise and property if they are found not compliant with the restrictive interpretation of the constitutional provision under review which is being espoused by petitioners. They should be afforded due notice and opportunity to be heard, lest they be deprived of their property without due process.

Substantive Issue

The decretal portion of the *Gamboa* Decision follows the definition of the term "capital" in the body of the decision, to wit: "x x x we x x x rule that the term 'capital' in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares)."

The *"Final Word''* of the *Gamboa* Resolution put to rest the Court's interpretation of the term "capital", to wit:

XII. Final Word
The Constitution expressly declares as State policy the development of an economy "effectively controlled" by Filipinos. Consistent with such State policy, the Constitution explicitly reserves the ownership and operation of public utilities to Philippine nationals, who are defined in the Foreign Investments Act of 1991 as Filipino citizens, or corporations or associations at least 60 percent of whose capital with voting rights belongs to Filipinos. The FIA's implementing rules explain that "[f]or stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of stocks, coupled with appropriate voting rights is essential." In effect, the FIA clarifies, reiterates and confirms the interpretation that the term "capital" in Section 11, Article XII of the 1987 Constitution refers to shares with voting rights, as well as with full beneficial ownership. This is precisely because the right to vote in the election of directors, coupled with full beneficial ownership of stocks, translates to effective control of a corporation.

The Court, in both the *Gamboa* Decision and *Gamboa* Resolution, finally settled with the FIA's definition of "Philippine national" as expounded in the FIA-IRR in construing the term "capital" in Section 11, Article XII of the 1987 Constitution.
The assailed SEC-MC No. 8
Section 2 of SEC-MC No. 8 clearly incorporates the Voting Control Test or the controlling interest requirement. In fact, Section 2 goes beyond requiring a 60-40 ratio in favor of Filipino nationals in the voting stocks; it moreover requires the 60-40 percentage ownership in the total number of outstanding shares of stock, whether voting or not. The SEC formulated SEC-MC No. 8 to adhere to the Court's unambiguous pronouncement that "[f]ull beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights is required." Clearly, SEC-MC No. 8 cannot be said to have been issued with grave abuse of discretion.

While SEC-MC No. 8 does not expressly mention the Beneficial Ownership Test or full beneficial ownership of stocks requirement in the FIA, this will not, as it does not, render it invalid - meaning, it does not follow that the SEC will not apply this test in determining whether the shares claimed to be owned by Philippine nationals are Filipino, *i.e.,* are held by them by mere title or in full beneficial ownership. To be sure, the SEC takes its guiding lights also from the FIA and its implementing rules, the Securities Regulation Code (Republic Act No. 8799; "SRC") and its implementing rules.
The definition of "beneficial owner" or "beneficial ownership" in the Implementing Rules and Regulations of the Securities Regulation Code ("SRC-IRR") is consistent with the concept of "full beneficial ownership" in the FIA-IRR.

The FIA-IRR states:

> *"Compliance with the required Filipino ownership of a corporation shall* be determined on the basis of outstanding capital stock whether fully paid or not, but only such stocks which are generally entitled to vote are considered.
> *For stocks to he deemed owned and held by Philippine citizens or Philippine nationals,* mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals. "

The emphasized portions in the foregoing provision is the equivalent of the so-called "beneficial ownership test".

Mere legal title is not enough to meet the required Filipino equity, which means that it is not sufficient that a share is registered in the name of a Filipino citizen or national, *i.e.,* he should also have full beneficial ownership of the share. If the voting right of a share held in the name of a Filipino citizen or national is assigned or transferred to an alien, that share is not to be counted in the determination of the required Filipino equity. In the same vein, if the dividends and other fruits and accessions of the share do not accrue to a Filipino citizen or national, then that share is also to be excluded or not counted.

Given that beneficial ownership of the outstanding capital stock of the public utility corporation has to be determined for purposes of compliance with the 60% Filipino ownership requirement, the definition in the SRC-IRR can now be applied to resolve only the question of who is the beneficial owner or who has beneficial ownership of each "specific stock" of the said corporation.

Thus, if a "specific stock" is owned by a Filipino in the books of the corporation, but the stock's voting power or disposing power belongs to a foreigner, then that "specific stock" will not be deemed as "beneficially owned" by a Filipino. **The "beneficial owner or beneficial ownership" definition in the SRC-IRR is understood only in determining the respective nationalities *of the outstanding capital stock* of a public utility corporation in order to determine its compliance with the percentage of Filipino ownership required by the Constitution.**

Petitioners' insistence that the 60% Filipino equity requirement must be applied to each class of shares is simply beyond the literal text and contemplation of Section 11, Article XII of the 1987 Constitution.

As worded, *effective control* by Filipino citizens of a public utility is already assured in the provision. With respect to a stock corporation engaged in the business of a public utility, the constitutional provision mandates three safeguards: (1) 60% of its capital must be owned by Filipino citizens; (2) participation of foreign investors in its board of directors is limited to their proportionate share in its capital; and (3) all its executive and managing officers must be citizens of the Philippines.

In the exhaustive review made by the Court in the *Gamboa* Resolution of the deliberations of the Constitutional Commission, the opinions of the framers of the 1987 Constitution, the opinions of the SEC and the DOJ as well as the provisions of the FIA, its implementing rules and its predecessor statutes, the intention to apply the voting control test and the beneficial ownership test was not mentioned in reference to "each class of shares." Even the *Gamboa* Decision was silent on this point.

The *Gamboa* Decision held that preferred shares are to be factored in only if they are entitled to vote in the election of directors. As to the right of nonvoting preferred shares to vote in the 8 instances enumerated in Section 6 of the Corporation Code, the *Gamboa* Decision considered them but, in the end, did not find them significant in resolving the issue of the proper interpretation of the word "capital" in Section 11, Article XII of the Constitution.

Therefore, to now insist in the present case that preferred shares be regarded differently from their unambiguous treatment in the *Gamboa* Decision is enough proof that the *Gamboa* Decision, which had attained finality more than 4 years ago, is being drastically changed or expanded.

In this regard, it should be noted that the 8 corporate matters enumerated in Section 6 of the Corporation Code require, at the outset, a favorable recommendation by the management to the board. As mandated by Section 11, Article XII of the Constitution, all the executive and managing officers of a public utility company must be Filipinos. Thus, the all-Filipino management team must first be convinced that any of the 8 corporate actions in Section 6 will be to the best interest of the company. Then, when the all Filipino management team recommends this to the board, a majority of the board has to approve the recommendation - and, as required by the Constitution, foreign participation in the board cannot exceed 40% of the total number of board seats. Since the Filipino directors comprise the majority, they, if united, do not even need the vote of the foreign directors to approve the intended corporate act. After approval by the board, all the shareholders (with and without voting rights) will vote on the corporate action. The required vote in the shareholders' meeting is 2/3 of the outstanding capital stock. Given the super majority vote requirement, foreign shareholders cannot dictate upon their Filipino counterpart.
However, foreigners (if owning at least a third of the outstanding capital stock) must agree with Filipino shareholders for the corporate action to be approved. The 2/3 voting requirement applies to all corporations, given the significance of the 8 corporate actions contemplated in Section 6 of the Corporation Code. **In short, if the Filipino officers, directors and shareholders will not approve of the corporate act, the foreigners are helpless. The right to vote in the 8 instances enumerated in Section 6 is more in furtherance of the stockholder's right of ownership rather than as a mode of control.**

The pronouncement of the Court in the *Gamboa* Resolution -the constitutional requirement to "apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation - is clearly an *obiter dictum* that cannot override the Court's unequivocal definition of the term "capital" in both the *Gamboa* Decision and Resolution.

To revisit or even clarify the unequivocal definition of the term "capital" as referring "only to shares of stock entitled to vote in the election of directors" and apply the 60% Filipino ownership requirement to each class of share is effectively and unwarrantedly amending or changing the *Gamboa* Decision and Resolution. The *Gamboa* Decision and Resolution Doctrine did NOT make any definitive ruling that the 60% Filipino ownership requirement was intended to apply to each class of share.

Because the SEC acted pursuant to the Court's pronouncements in both the *Gamboa* Decision and *Gamboa* Resolution, then it could not have gravely abused its discretion. That portion found in the body of the *Gamboa* Resolution which the petitioners rely upon is nothing more than an *obiter dictum* and the SEC could not be expected to apply it as it was not - ***is not*** a binding pronouncement of the Court.

Furthermore, as opined by *Justice Bersamin* during the deliberations, the doctrine of immutability of judgment precludes the Court from reexamining the definition of "capital" under Section 11, Article XII of the Constitution. Under the doctrine of finality and immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and even if the modification is made by the court that rendered it or by the Highest Court of the land. Any act that violates the principle must be immediately stricken down. The petitions have not succeeded in pointing to any exceptions to the doctrine of finality of judgments, under which the present case falls, to wit: (1) the correction of clerical errors; (2) the so-called *nunc pro tune* entries which cause no

prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

With the foregoing disquisition, the Court rules that SEC-MC No. 8 is ***not*** contrary to the Court's definition and interpretation of the term "capital". Accordingly, the petitions must be denied for failing to show grave abuse of discretion in the issuance of SEC-MC No. 8.

INITIATIVE FOR DIALOGUE AND EMPOWERMENT THROUGH ALTERNATIVE LEGAL SERVICES, INC., et al, *Petitioners,* -versus – POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, et al, *Respondents.*
G.R. No. 192088, EN BANC, October 9, 2012, VILLARAMA, J.:

There is nothing in the EPIRA which declared that it is mandatory for PSALM or NPC to transfer or assign NPC's water rights to buyers of its multi-purpose hydropower facilities as part of the privatization process. While PSALM was mandated to transfer the ownership of all hydropower plants except those mentioned in Sec 47, any transfer of possession, operation and control of the multipurpose hydropower facilities, the intent to preserve water resources under the full supervision and control of the State is evident when PSALM was obligated to prescribed safeguards to enable the national government to direct water usage to domestic and other requirements "imbued with public interest." There is no express requirement for the transfer of water rights in all cases where the operation of hydropower facilities in a multipurpose dam complex is turned over to the private sector.

FACTS:
The Power Sector Assets and Liabilities Management (PSALM) is a government-owned and controlled corporation created by virtue of the Electric Power Industry Reform Act of 2001 (EPIRA). The EPIRA provided for the privatization of the assets of the National Power Corporation (NPC) thereby mandating PSALM to commence with the auction of the Angat-Hydro-Electric Power Plant (AHEPP). PSALM received the highest bid from K-Water. After the post-bid evaluation, PSALM's board of directors approved and confirmed the issuance of the Notice of Award to K-Water.

Thereafter, Initiative for Dialogue and Empowerment through Alternative Legal Services, Inc. (IDEALS et al) filed a petition alleging that PSALM violated the people's right to information since the bidding was commenced by PSALM without having previously released to the public critical information and their refusal to divulge the same to IDEALS, et al. The said bidding was alleged to have been conducted not in an open and transparent manner. IDEALS, et al also assail that PSALM cannot offer the sale of AHEPP without the consent of its co-owners MWSS and NIA. Furthermore, IDEALS et al contend that PSALM violated Section 2, Article XII of the Constitution in offering the sale of the AHEPP to K-Water. Water, being a natural resource, shall not be alienated from the State. Also, as provided in the Water Code of the Philippines, water rights should be limited to Filipino citizens and corporations which are at least 60% Filipino-owned. Lastly, in unilaterally offering the sale of the said hydro-complex, PSALM violated the Civil Code rules in co-ownership and Section 47 (e) of the EPIRA.

ISSUES:
(I) Was there a violation of Right to Information by PSALM when they did not conduct the bidding in an open and transparent manner? (NO)
(II) Was there a violation of Sec 2, Art XII of the Cosntitution by the approval and confirmation of the Notice of Award of bidding to the Korean corporation, K-Water? (NO)
(III) Was there a violation of the Water Code provisions on the grant of water rights? (NO)

(IV) Did PSALM comply with Sec 47 (e) of the EPIRA Law? (YES)

RULING:

(I)

The Court distinguished the duty to disclose information from the duty to permit access to information on matters of public concern under Sec 7, Art III of the Constitution. Unlike the disclosure of information which is mandatory under the Constitution, the other aspect of the people's right to know requires a demand or request for one to gain access to documents and paper of the particular agency. The duty to disclose covers only transactions involving public interest. The information, however, must constitute definite propositions by the government and should not cover recognized exceptions like privileged information, military and diplomatic secrets and similar matters affecting national security and public order. In addition, Congress has prescribed other limitations on the right to information in several legislations. The duty to disclose covers only transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions involving public interest, but any matter contained in official communications and public documents of the government agency. Such relief must be granted to the party requesting access to official records, documents and papers relating to official acts, transactions and decisions that are relevant to a government contract.

(II)

The sale of the government-owned AHEPP to a foreign corporation is not prohibited. Filipino citizens and corporations 60% of whose capital is owned by Filipinos may be granted water rights.

(III)

Under the Water Code concept of appropriation, a foreign company may not be said to be "appropriating" our natural resources if it utilizes the waters collected in the damn and converts the same into electricity through artificial devices. Since the NPC remains in control of the operation of the dam by virtue of water rights granted to it, as determined under DOJ opinion 122, S. 1998, there is no legal impediment to foreign owned companies undertake g the generation of electrical power using waters already appropriated by NPC, the holder of water permit. However in case the facility requires a public utility franchise, the facility operator must be a Filipino corporation or at least 60% owned by a Filipino.

(IV)

There is nothing in the EPIRA which declared that it is mandatory for PSALM or NPC to transfer or assign NPC's water rights to buyers of its multi-purpose hydropower facilities as part of the privatization process. While PSALM was mandated to transfer the ownership of all hydropower plants except those mentioned in Sec 47, any transfer of possession, operation and control of the multipurpose hydropower facilities, the intent to preserve water resources under the full supervision and control of the State is evident when PSALM was obligated to prescribed safeguards to enable the national government to direct water usage to domestic and other requirements "imbued with public interest." There is no express requirement for the transfer of water rights in all cases where the operation of hydropower facilities in a multipurpose dam complex is turned over to the private sector.

NARRA NICKEL MINING AND DEVELOPMENT CORPORATION, TESORO MINING AND DEVELOPMENT INC., and MCARTHUR MINING INC. *Petitioners,* -versus – REDMONT CONSOLIDATED MINES CORPORATION, *Respondent.*
G.R. No. 202877, FIRST DIVISION, December 9, 2015, PERLAS-BERNABE, J.:

The basis for the State, through the President, to enter into an FTAA with another contracting party is found in the fourth paragraph of Section 2, Article XII of the 1987 Constitution. An FTAA is explicitly characterized as a contract in Section 3 (r) of RA 7942. Since an FTAA is entered into by the President

on the State's behalf, and it involves a matter of public concern in that it covers the large-scale exploration, development, and utilization of mineral resources, it is properly classified as a government or public contract, which is, according to jurisprudence, "generally subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals."

In this case, the OP cancelled/revoked the subject FTAA based on its finding that petitioners misrepresented, inter alia, that they were Filipino corporations qualified to engage in mining activities. The scenario at hand does not involve a complaint for cancellation/revocation commenced before the ordinary courts of law. Hence, Redmont's recourse to the OP was, by and of itself, done outside the correct course procedure. Thus, at least with respect to cases affecting an FTAA's validity, the Court holds that the OP has no quasi-judicial power to adjudicate the propriety of its cancellation/revocation.

FACTS:
On November 8, 2006, respondent Redmont Consolidated Mines Corporation (Redmont) filed an Application for an Exploration Permit over mining areas located in the Municipalities of Rizal, Bataraza, and Narra Palawan. Redmont learned that said areas were already covered by existing Mineral Production Sharing Agreements (MPSA) and an EP, which were initially applied for by petitioners' respective predecessors-in-interest with the Mines and Geosciences Bureau (MGB), Region IV-B, Office of the DENR.

Petitioner Narra Nickel Mining and Development Corporation (Narra Nickel) acquired the application of MPSA-IV-I-12, covering an area of 3,277 hectares (ha.) in Barangays Calategas and San Isidro, Narra, Palawan, from Alpha Resources and Development Corporation and Patricia Louise Mining and Development Corporation. For its part, petitioner Tesoro Mining and Development, Inc. (Tesoro) acquired the application of MPSA-AMA-IVB-154 (formerly EPA-IVB-47), covering an area of 3,402 has. in Barangays Malinao and Princesa Urduja, Narra, Palawan, from Sara Marie Mining, Inc. (SMMI). In the same vein, petitioner McArthur Mining, Inc. (McArthur) acquired the application of MPSA-AMA-IVB-153, as well as EPA-IVB-44, covering the areas of 1,782 has. and 3,720 has. in Barangays Sumbiling and Malatagao, Bataraza, Palawan from Madridejos Mining Corporation, an SMMI assignee.

Upon the recommendation of then DENR Secretary Jose L. Atienza, Jr., through a memorandum dated November 9, 2009, petitioners' FTAA applications were all approved on April 5, 2010. Prior to the grant of petitioners' applications for FTAA conversion, and the execution of the above-stated FTAA, Redmont filed on January 2007 three separate petitions for the denial of petitioners' respective MPSA and/or EP applications before the Panel of Arbitrators (POA) of the DENR-MGB. Redmont's primary argument was that petitioners were all controlled by their common majority stockholder, MBMI Resources, Inc. (MBMI) — a 100% Canadian-owned corporation and, thus, disqualified from being grantees of MPSAs and/or EPs. In the Court's April 21, 2014 Decision, petitioners were declared to be foreign corporations under the application of the "Grandfather Rule.

Meanwhile, Redmont separately sought the cancellation and/or revocation of the executed FTAA. The OP granted Redmont's petition. It declared that the OP has the authority to cancel the FTAA because the grant of exclusive power to the President of the Philippines to enter into agreements, including FTAAs. , the CA affirmed the OP Ruling.

ISSUE:
Whether or not the CA correctly affirmed on appeal the OP's cancellation and/or revocation of the FTAA. (NO)

RULING:
The Court finds that the CA improperly took cognizance of the case on appeal under Rule 43 of the Rules of Court for the reason that the OP's cancellation and/or revocation of the FTAA was not one which could be classified as an exercise of its quasi-judicial authority, thus negating the CA's jurisdiction over the case.

Quasi-judicial or administrative adjudicatory power is the power of the administrative agency to adjudicate the rights of persons before it. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially executive or administrative in nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.

The OP's cancellation and/or revocation of the FTAA is obviously not an "adjudication" in the sense above-described.

The basis for the State, through the President, to enter into an FTAA with another contracting party is found in the fourth paragraph of Section 2, Article XII of the 1987 Constitution. An FTAA is explicitly characterized as a contract in Section 3 (r) of RA 7942. Since an FTAA is entered into by the President on the State's behalf, and it involves a matter of public concern in that it covers the large-scale exploration, development, and utilization of mineral resources, it is properly classified as a government or public contract, which is, according to jurisprudence, "generally subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals."

Similar to private contracts, an FTAA involves terms, conditions, and warranties to be followed by the contracting parties, which are expressly stated in Section 35 48 of RA 7942.

In Celestial *Nickel Mining Exploration Corporation v. Macroasia Corporation*, the Court answered the question on who between the DENR Secretary, as one of the functionaries of the President under the Executive Department, and the POA had the authority to cancel mineral agreements. In Celestial, it was pronounced that the DENR Secretary, and not the POA, has the jurisdiction to cancel existing mineral lease contracts or mineral agreements. "The power of the DENR Secretary to cancel mineral agreements emanates from his administrative authority, supervision, management, and control over mineral resources under [Section 2,] Chapter I, Title XIV of Book IV of the Revised Administrative Code of 1987.
With the legal treatment and parameters of an FTAA in mind, it becomes apparent that the OP's cancellation and/or revocation of the FTAA is an exercise of a contractual right that is purely administrative in nature, and thus, cannot be treated as an adjudication, again, in the sense above-discussed.

In this case, the OP cancelled/revoked the subject FTAA based on its finding that petitioners misrepresented, inter alia, that they were Filipino corporations qualified to engage in mining activities. The scenario at hand does not involve a complaint for cancellation/revocation commenced before the ordinary courts of law. Hence, Redmont's recourse to the OP was, by and of itself, done outside the correct course procedure. Thus, at least with respect to cases affecting an FTAA's validity, the Court holds that the OP has no quasi-judicial power to adjudicate the propriety of its cancellation/revocation. At the risk of belaboring the point, the FTAA is a contract to which the OP itself represents a party, i.e., the Republic. It merely exercised a contractual right by

cancelling/revoking said agreement, a purely administrative action which should not be considered quasi-judicial in nature. Thus, absent the OP's proper exercise of a quasi-judicial function, the CA had no appellate jurisdiction over the case, and its Decision is, perforce, null and void.

RESIDENT MARINE MAMMALS OF THE PROTECTED SEASCAPE TANON STRAIT, E.G., TOOTHED WHALES, DOLPHINS, PORPOISES, AND OTHER CETACEAN SPECIES, JOINED IN AND REPRESENTED HEREIN BY HUMAN BEINGS GLORIA ESTENZO RAMOS AND ROSE-LIZA EISMA-OSORIO, IN THEIR CAPACITY AS LEGAL GUARDIANS OF THE LESSER LIFE-FORMS AND AS RESPONSIBLE STEWARDS OF GOD'S CREATIONS, *Petitioners,* -versus – SECRETARY ANGELO REYES, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENERGY (DOE), SECRETARY JOSE L. ATIENZA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), LEONARDO R. SIBBALUCA, DENR REGIONAL DIRECTOR-REGION VII AND IN HIS CAPACITY AS CHAIRPERSON OF THE TANON STRAIT PROTECTED SEASCAPE MANAGEMENT BOARD, BUREAU OF FISHERIES AND AQUATIC RESOURCES (BFAR), DIRECTOR MALCOLM I. SARMIENTO, JR., BFAR REGIONAL DIRECTOR FOR REGION VII ANDRES M. BOJOS, JAPAN PETROLEUM EXPLORATION CO., LTD. (JAPEX), AS REPRESENTED BY ITS PHILIPPINE AGENT, SUPPLY OILFIELD SERVICES, INC, *Respondents.* G.R. No. 180771, EN BANC, April 21, 2015, LEONARDO-DE CASTRO, J.:

As this Court has held in La Bugal*, our Constitution requires that the* ***President himself*** *be the signatory of service agreements with foreign-owned corporations involving the exploration, development, and utilization of our minerals, petroleum, and other mineral oils. This power cannot be taken lightly.*

In this case, the public respondents have ***failed to show that the President had any participation*** *in SC-46. Their argument that their acts are actually the acts of then President Macapagal-Arroyo, absent proof of her disapproval, must fail as the requirement that the President herself enter into these kinds of contracts is embodied not just in any ordinary statute, but in the Constitution itself. These service contracts involving the exploitation, development, and utilization of our natural resources are of paramount interest to the present and future generations. Hence, safeguards were put in place to insure that the guidelines set by law are meticulously observed and likewise to eradicate the corruption that may easily penetrate departments and agencies by ensuring that the President has authorized or approved of these service contracts herself.*

FACTS:

On June 13, 2002, the Government of the Philippines, acting through the DOE, entered into a Geophysical Survey and Exploration Contract-102 (GSEC-102) with JAPEX. This contract involved geological and geophysical studies of the Tañon Strait.

JAPEX committed to drill one exploration well during the second sub-phase of the project. Since the well was to be drilled in the marine waters of Aloguinsan and Pinamungajan, where the Tañon Strait was declared a protected seascape in 1988, JAPEX agreed to comply with the Environmental Impact Assessment requirements pursuant to Presidential Decree No. 1586, entitled "Establishing An Environmental Impact Statement System, Including Other Environmental Management Related Measures And For Other Purposes."

The EMB of DENR Region VII granted an ECC to the DOE and JAPEX for the offshore oil and gas exploration project in Tañon Strait. Months later, on November 16, 2007, JAPEX began to drill an

exploratory well, with a depth of 3,150 meters, near Pinamungajan town in the western Cebu Province.

It was in view of the foregoing state of affairs that petitioners applied to this Court for redress, via two separate original petitions wherein they commonly seek that respondents be enjoined from implementing SC-46 for, among others, violation of the 1987 Constitution.

Protesting the adverse ecological impact of JAPEX's oil exploration activities in the Tañon Strait, petitioners Resident Marine Mammals and Stewards aver that a study made after the seismic survey showed that the fish catch was reduced drastically by 50 to 70 percent. They claim that before the seismic survey, the average harvest per day would be from 15 to 20 kilos; but after the activity, the fisherfolk could only catch an average of 1 to 2 kilos a day.

Public respondents, through the Solicitor General, contend that petitioners Resident Marine Mammals and Stewards have no legal standing to file the present petition; that SC-46 does not violate the 1987 Constitution and the various laws cited in the petitions; that the ECC was issued in accordance with existing laws and regulations; that public respondents may not be compelled by *mandamus* to furnish petitioners copies of all documents relating to SC-46; and that all the petitioners failed to show that they are entitled to injunctive relief. They further contend that the issues raised in these petitions have been rendered moot and academic by the fact that SC-46 had been mutually terminated by the parties thereto effective June 21, 2008.

ISSUES:

(I) Whether or not petitioners have *locus standi* to file the instant petition

(II) Whether or not service contract no. 46 is violative of the 1987 Philippine Constitution and statutes. (YES)

RULING:

(I)

In our jurisdiction, *locus standi* in environmental cases has been given a more liberalized approach. Recently, the Court passed the landmark **Rules of Procedure for Environmental Cases** which allow for a "citizen suit," and permit any Filipino citizen to file an action before our courts for violations of our environmental laws.

Moreover, even before the Rules of Procedure for Environmental Cases became effective, this Court had already taken a permissive position on the issue of *locus standi* in environmental cases. In *Oposa*, we allowed the suit to be brought in the name of generations yet unborn "based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned."

In light of the foregoing, the need to give the Resident Marine Mammals legal standing has been eliminated by our Rules, which allow any Filipino citizen, as a steward of nature, to bring a suit to enforce our environmental laws. It is worth noting here that the Stewards are joined as real parties in the Petition and not just in representation of the named cetacean species.

(II)

This Court has previously settled the issue of whether service contracts are still allowed under the 1987 Constitution. In *La Bugal*, we held that the deletion of the words "service contracts" in the 1987 Constitution did not amount to a ban on them *per se*. In fact, in that decision, we quoted in length, portions of the deliberations of the members of the Constitutional Commission (ConCom) to show

that in deliberating on paragraph 4, Section 2, Article XII, they were actually referring to service contracts as understood in the 1973 Constitution, albeit with safety measures to eliminate or minimize the abuses prevalent during the martial law regime.

In summarizing the matters discussed in the ConCom, **we established that paragraph 4, with the safeguards in place, is the exception to paragraph 1, Section 2 of Article XII**. The following are the safeguards this Court enumerated in *La Bugal*:

> "Such service contracts may be entered into only with respect to minerals, petroleum and other mineral oils. The grant thereof is subject to several safeguards, among which are these requirements:
>
> (1) The service contract shall be crafted in accordance with a general law that will set standard or uniform terms, conditions and requirements, presumably to attain a certain uniformity in provisions and avoid the possible insertion of terms disadvantageous to the country.
>
> (2) The President shall be the signatory for the government because, supposedly before an agreement is presented to the President for signature, it will have been vetted several times over at different levels to ensure that it conforms to law and can withstand public scrutiny.
>
> (3) Within thirty days of the executed agreement, the President shall report it to Congress to give that branch of government an opportunity to look over the agreement and interpose timely objections, if any."

Adhering to the aforementioned guidelines, this Court finds that SC-46 is indeed **null and void** for noncompliance with the requirements of the 1987 Constitution.
Paragraph 4, Section 2, Article XII of the 1987 Constitution requires that the President himself enter into any service contract for the exploration of petroleum. SC-46 appeared to have been entered into and signed only by the DOE through its then Secretary, Vicente S. Perez, Jr., contrary to the said constitutional requirement. Moreover, public respondents have neither shown nor alleged that Congress was subsequently notified of the execution of such contract.

While the requirements in executing service contracts in paragraph 4, Section 2 of Article XII of the 1987 Constitution seem like mere formalities, they, in reality, take on a much bigger role. As we have explained in *La Bugal*, they are the safeguards put in place by the framers of the Constitution to "eliminate or minimize the abuses prevalent during the martial law regime." Thus, they are not just mere formalities, which will only render a contract unenforceable but not void, if not complied with. They are requirements placed, not just in an ordinary statute, but in the fundamental law, the non-observance of which will nullify the contract.

As this Court has held in *La Bugal*, our Constitution requires that the President himself be the signatory of service agreements with foreign-owned corporations involving the exploration, development, and utilization of our minerals, petroleum, and other mineral oils. This power cannot be taken lightly.

In this case, the public respondents have failed to show that the President had any participation in SC-46. Their argument that their acts are actually the acts of then President Macapagal-Arroyo, absent proof of her disapproval, must fail as the requirement that the President herself enter into

these kinds of contracts is embodied not just in any ordinary statute, but in the Constitution itself. These service contracts involving the exploitation, development, and utilization of our natural resources are of paramount interest to the present and future generations. Hence, safeguards were put in place to insure that the guidelines set by law are meticulously observed and likewise to eradicate the corruption that may easily penetrate departments and agencies by ensuring that the President has authorized or approved of these service contracts herself.

Although we have already established above that SC-46 is null and void for being violative of the 1987 Constitution, it is our duty to still rule on the legality of SC-46 *vis-a-vis* other pertinent laws, to serve as a guide for the Government when executing service contracts involving not only the Tañon Strait, but also other similar areas.

The Tañon Strait, pursuant to Proclamation No. 1234, was set aside and declared a protected area under the category of Protected Seascape. The NIPAS Act defines a Protected Seascape to be an area of national significance characterized by the harmonious interaction of man and land while providing opportunities for public enjoyment through recreation and tourism within the normal lifestyle and economic activity of this areas; thus a management plan for each area must be designed to protect and enhance the permanent preservation of its natural conditions. Consistent with this endeavor is the requirement that an Environmental Impact Assessment (EIA) be made prior to undertaking any activity outside the scope of the management plan. Unless an ECC under the EIA system is obtained, no activity inconsistent with the goals of the NIPAS Act shall be implemented.

Under Proclamation No. 2146, the Tañon Strait is an environmentally critical area, having been declared as a protected area in 1998; therefore, any activity outside the scope of its management plan may only be implemented pursuant to an ECC secured after undergoing an EIA to determine the effects of such activity on its ecological system. It is true that the restrictions found under the NIPAS Act are not without exceptions. However, **while an exploration done for the purpose of surveying for energy resources is allowed under Section 14 of the NIPAS Act, this does *not* mean that it is exempt from the requirement to undergo an EIA under Section 12**.

The public respondents themselves admitted that JAPEX only started to secure an ECC prior to the second sub-phase of SC-46, which required the drilling of an oil exploration well. This means that when the seismic surveys were done in the Tañon Strait, no such environmental impact evaluation was done. Unless seismic surveys are part of the management plan of the Tañon Strait, such surveys were done in violation of Section 12 of the NIPAS Act and Section 4 of Presidential Decree No. 1586. The respondents' subsequent compliance with the EISS for the second sub-phase of SC-46 cannot and will not cure this violation.

While Presidential Decree No. 87 may serve as the general law upon which a service contract for petroleum exploration and extraction may be authorized, the exploitation and utilization of this energy resource in the present case may be allowed only through a law passed by Congress, since the Tañon Strait is a NIPAS area. Since there is no such law specifically allowing oil exploration and/or extraction in the Tañon Strait, no energy resource exploitation and utilization may be done in said protected seascape.

METROPOLITAN CEBU WATER DISTRICT, *Petitioner,* -versus – MARGARITA A. ADALA, *Respondent.*
G.R. No. 168914, EN BANC, July 4, 2007, CARPIO MORALES, J.:

Petitioner's position that an overly strict construction of the term "franchise" as used in Section 47 of P.D. 198 would lead to an absurd result impresses. If franchises, in this context, were strictly understood to mean an authorization issuing directly from the legislature, it would follow that, while Congress cannot issue franchises for operating waterworks systems without the water district's consent, the NWRB may keep on issuing CPCs authorizing the very same act even without such consent. In effect, not only would the NWRB be subject to less constraints than Congress in issuing franchises. The exclusive character of the franchise provided for by Section 47 would be illusory.
Moreover, this Court, in Philippine Airlines, Inc. v. Civil Aeronautics Board *as construed the term "franchise" broadly so as to include, not only authorizations issuing directly from Congress in the form of statute, but also those granted by administrative agencies to which the power to grant franchises has been delegated by Congress.*
P.D. 198 itself, in harmony with Philippine Airlines, Inc. v. Civil Aeronautics Board *gives the name "franchise" to an authorization that does not proceed directly from the legislature.*
It would thus be incongruous to adopt in this instance the strict interpretation proffered by respondent and exclude from the scope of the term "franchise" the CPCs issued by the NWRB.

FACTS:
Respondent filed on October 24, 2002 an application with the NWRB for the issuance of a Certificate of Public Convenience (CPC) to operate and maintain waterworks system in sitios San Vicente, Fatima, and Sambag in Barangay Bulacao, Cebu City.

At the initial hearing of December 16, 2002 during which respondent submitted proof of compliance with jurisdictional requirements of notice and publication, herein petitioner Metropolitan Cebu Water District, a government-owned and controlled corporation created pursuant to P.D. 198which took effect upon its issuance by then President Marcos on May 25, 1973, as amended, appeared through its lawyers to oppose the application.

In its Opposition, petitioner prayed for the denial of respondent's application on the following grounds: (1) petitioner's Board of Directors had not consented to the issuance of the franchise applied for, such consent being a mandatory condition pursuant to P.D. 198, (2) the proposed waterworks would interfere with petitioner's water supply which it has the right to protect, and (3) the water needs of the residents in the subject area was already being well served by petitioner.

The NWRB dismissed petitioner's Opposition "for lack of merit and/or failure to state the cause of action". The RTC denied the appeal and upheld the Decision of the NWRB.

ISSUES:
Whether the term franchise as used in Section 47 of Presidential Decree 198, as amended means a franchise granted by Congress through legislation only or does it also include in its meaning a Certificate of Public Convenience issued by the National Water Resources Board for the maintenance of waterworks system or water supply service.

RULING:
In support of its contention that the consent of its Board of Directors is a condition *sine qua non* for the grant of the CPC applied for by respondent, petitioner cites Section 47 of P.D. 198 which states:

> "Sec. 47. **Exclusive Franchise**. - No **franchise** shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion

> thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration."

There being no such consent on the part of its board of directors, petitioner concludes that respondent's application for CPC should be denied.
Both parties' arguments center, in the main, on the scope of the word "franchise" as used in the above-quoted provision.

Petitioner contends that "franchise" should be broadly interpreted, such that the prohibition against its grant to other entities without the consent of the district's board of directors extends to the issuance of CPCs. Respondent, on the other hand, proffers that the same prohibition only applies to franchises in the strict sense - those granted by Congress by means of statute - and does not extend to CPCs granted by agencies such as the NWRB.

Petitioner's position that an overly strict construction of the term "franchise" as used in Section 47 of P.D. 198 would lead to an absurd result impresses. If franchises, in this context, were strictly understood to mean an authorization issuing directly from the legislature, it would follow that, while Congress cannot issue franchises for operating waterworks systems without the water district's consent, the NWRB may keep on issuing CPCs authorizing the very same act even without such consent. In effect, not only would the NWRB be subject to less constraints than Congress in issuing franchises. The exclusive character of the franchise provided for by Section 47 would be illusory.
Moreover, this Court, in *Philippine Airlines, Inc. v. Civil Aeronautics Board* as construed the term "franchise" broadly so as to include, not only authorizations issuing directly from Congress in the form of statute, but also those granted by administrative agencies to which the power to grant franchises has been delegated by Congress.

P.D. 198 itself, in harmony with *Philippine Airlines, Inc. v. Civil Aeronautics Board* gives the name "franchise" to an authorization that does not proceed directly from the legislature.
It would thus be incongruous to adopt in this instance the strict interpretation proffered by respondent and exclude from the scope of the term "franchise" the CPCs issued by the NWRB.
Nonetheless, while the prohibition in Section 47 of P.D. 198 applies to the issuance of CPCs for the reasons discussed above, the same provision must be deemed void *ab initio* for being irreconcilable with Article XIV Section 5 of the 1973 Constitution which was ratified on January 17, 1973, the constitution in force when P.D. 198 was issued on May 25, 1973. Thus, Section 5 of Art. XIV of the 1973 Constitution reads:

> "SECTION 5. No franchise, certificate, or any other form of authorization for the operation of a **public utility** shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens**, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years.** Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Batasang Pambansa when the public interest so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in the capital thereof."

This provision has been substantially reproduced in Article XII Section 11 of the 1987 Constitution, including the prohibition against exclusive franchises. In view of the purposes for which they are established, water districts fall under the term "public utility".
Since Section 47 of P.D. 198, which vests an "exclusive franchise" upon public utilities, is clearly repugnant to Article XIV, Section 5 of the 1973 Constitution, it is unconstitutional and may not, therefore, be relied upon by petitioner in support of its opposition against respondent's application for CPC and the subsequent grant thereof by the NWRB.

MANILA INTERNATIONAL AIRPORT AUTHORITY, *Petitioner,* -versus – COURT OF APPEALS, CITY OF PARANAQUE, CITY MAYOR OF PARANAQUE, SANGGUNIANG PANGLUNGSOD NG PARANAQUE, CITY ASSESSOR OF PARANAQUE, and CITY TREASURER OF PARANAQUE, *Respondents.*
G.R. No. 155650, EN BANC, July 20, 2006, CARPIO, J.:

*A government-owned or controlled corporation must be "**organized as a stock or non-stock corporation**." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has **no capital stock divided into shares**. MIAA has no stockholders or voting shares. MIAA is also not a non-stock corporation because it has no members.*

*MIAA is a **government instrumentality** vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.*

FACTS:
Petitioner Manila International Airport Authority (MIAA) operates the Ninoy Aquino International Airport (NAIA) Complex in Parañaque City under Executive Order No. 903. As operator of the international airport, MIAA administers the land, improvements and equipment within the NAIA Complex.

On 21 March 1997, the Office of the Government Corporate Counsel (OGCC) issued Opinion No. 061. The OGCC opined that the Local Government Code of 1991 withdrew the exemption from real estate tax granted to MIAA under Section 21 of the MIAA Charter. Thus, MIAA negotiated with respondent City of Parañaque to pay the real estate tax imposed by the City. MIAA then paid some of the real estate tax already due.

On 28 June 2001, MIAA received Final Notices of Real Estate Tax Delinquency from the City of Parañaque for the taxable years 1992 to 2001.
On 17 July 2001, the City of Parañaque, through its City Treasurer, issued notices of levy and warrants of levy on the Airport Lands and Buildings. The Mayor of the City of Parañaque threatened to sell at public auction the Airport Lands and Buildings should MIAA fail to pay the real estate tax delinquency. MIAA thus sought a clarification of OGCC Opinion No. 061.

On 9 August 2001, the OGCC issued Opinion No. 147 clarifying OGCC Opinion No. 061. The OGCC pointed out that Section 206 of the Local Government Code requires persons exempt from real estate tax to show proof of exemption. The OGCC opined that Section 21 of the MIAA Charter is the proof that MIAA is exempt from real estate tax.

MIAA filed with the Court of Appeals an original petition for prohibition and injunction, with prayer for preliminary injunction or temporary restraining order. the Court of Appeals dismissed the petition because MIAA filed it beyond the 60-day reglementary period.
The City of Parañaque posted notices of auction sale. MIAA filed before this Court an Urgent *Ex-Parte* and Reiteratory Motion for the Issuance of a Temporary Restraining Order. On 7 February 2003, this Court issued a temporary restraining order (TRO) effective immediately.

MIAA admits that the MIAA Charter has placed the title to the Airport Lands and Buildings in the name of MIAA. However, MIAA points out that it cannot claim ownership over these properties since the real owner of the Airport Lands and Buildings is the Republic of the Philippines. MIAA also points out that Section 21 of the MIAA Charter specifically exempts MIAA from the payment of real estate tax.

Respondents invoke Section 193 of the Local Government Code, which **expressly withdrew** the tax exemption privileges of "**government-owned and-controlled corporations**" upon the effectivity of the Local Government Code. Respondents also cite the ruling of this Court in ***Mactan International Airport v. Marcos*** where we held that the Local Government Code has withdrawn the exemption from real estate tax granted to international airports.

ISSUE:
Whether the Airport Lands and Buildings of MIAA are exempt from real estate tax under existing laws. (YES)

RULING:
First, MIAA is not a government-owned or controlled corporation but an **instrumentality** of the National Government and thus exempt from local taxation.

A government-owned or controlled corporation must be "**organized as a stock or non-stock corporation**." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has **no capital stock divided into shares**. MIAA has no stockholders or voting shares. MIAA is also not a non-stock corporation because it has no members.
Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

MIAA is a **government instrumentality** vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.

There is also no reason for local governments to tax national government instrumentalities for rendering essential public services to inhabitants of local governments. **The only exception is when the legislature clearly intended to tax government instrumentalities for the delivery of essential public services for sound and compelling policy considerations**. There must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments.

Second, the real properties of MIAA are **owned by the Republic** of the Philippines and thus exempt from real estate tax.

The Airport Lands and Buildings of MIAA are property of **public dominion and therefore owned by the State or the Republic of the Philippines**. No one can dispute that properties of public dominion mentioned in Article 420 of the Civil Code, like "**roads, canals, rivers, torrents, ports and bridges constructed by the State**," are owned by the State. **The term "ports" includes seaports and airports**. The MIAA Airport Lands and Buildings constitute a "**port**" constructed by the State. Under Article 420 of the Civil Code, the MIAA Airport Lands and Buildings are properties of public dominion and thus owned by the State or the Republic of the Philippines.

As properties of public dominion, the Airport Lands and Buildings are outside the commerce of man. The Court has ruled repeatedly that properties of public dominion are outside the commerce of man. As early as 1915, this Court already ruled in ***Municipality of Cavite v. Rojas*** that properties devoted to public use are outside the commerce of man.

Unless the President issues a proclamation withdrawing the Airport Lands and Buildings from public use, these properties remain properties of public dominion and are **inalienable**.

MIAA is merely holding title to the Airport Lands and Buildings in trust for the Republic. Section 48, Chapter 12, Book I of **the Administrative Code allows instrumentalities like MIAA to hold title to real properties owned by the Republic.**

The transfer of the Airport Lands and Buildings from the Bureau of Air Transportation to MIAA was not meant to transfer beneficial ownership of these assets from the Republic to MIAA. The purpose was merely to **reorganize a division in the Bureau of Air Transportation into a separate and autonomous body**. The Republic remains the beneficial owner of the Airport Lands and Buildings. MIAA itself is owned solely by the Republic. No party claims any ownership rights over MIAA's assets adverse to the Republic.

However, portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax. For example, the land area occupied by hangars that MIAA leases to private corporations is subject to real estate tax. In such a case, MIAA has granted the beneficial use of such land area for a consideration to a **taxable person** and therefore such land area is subject to real estate tax.

DANTE V. LIBAN, et al, *Petitioners,* -versus – RICHARD GORDON, *Respondent.*
G.R. No. 175352, EN BANC, January 18, 2011, LEONARDO-DE CASTRO, J.:

Although the PNRC is neither a subdivision, agency, or instrumentality of the government, nor a GOCC or a subsidiary thereof, such a conclusion does not ipso facto imply that the PNRC is a "private corporation" within the contemplation of the provision of the Constitution that must be organized under the Corporation Code.

The PNRC enjoys a special status as an important ally and auxiliary of the government in the humanitarian field in accordance with its commitments under international law.

FACTS:

Liban, et al. filed with the Supreme Court a Petition to Declare Richard J. Gordon as Having Forfeited His Seat in the Senate for having been elected Chairman of the Philippine National Red Cross (PNRC) Board of Governors during his incumbency as Senator in violation of Sec. 3, Article VI of the Constitution. It was advanced by Liban, et al. that the PNRC is a GOCC. Formerly, the Court held that the office of the PNRC Chairman is NOT a government office or an office in a GOCC for purposes of the prohibition in Sec. 13, Article VI of the 1987 Constitution. Therefore, Gordon did not forfeit his legislative seat. The Court, however, held further that the PNRC Charter (R.A 95) is void insofar as it creates the PNRC as a private corporation which the Congress cannot create. Hence, it directed the PNRC to incorporate under the Corporation Code and register with the Securities and Exchange Commission.

ISSUE:
What is the nature of PNRC?

RULING:
The PNRC's structure is sui generis. Although the PNRC is neither a subdivision, agency, or instrumentality of the government, nor a GOCC or a subsidiary thereof, such a conclusion does not ipso facto imply that the PNRC is a "private corporation" within the contemplation of the provision of the Constitution that must be organized under the Corporation Code. In sum, the PNRC enjoys a special status as an important ally and auxiliary of the government in the humanitarian field in accordance with its commitments under international law. This Court cannot all of a sudden refuse to recognize its existence, especially since the issue of the constitutionality of the PNRC Charter was never raised by the parties.

BOY SCOUTS OF THE PHILIPPINES, *Petitioner,* -versus – COMMISSION ON AUDIT, *Respondent.*
G.R. No. 177131, EN BANC, June 7, 2011, LEONARDO-DE CASTRO, J.:

The BSP, under its amended charter, continues to be a public corporation or a government instrumentality subject to the exercise by the COA of its audit jurisdiction in the manner consistent with the provisions of the BSP Charter.

As presently constituted, the BSP still remains an instrumentality of the national government. It is a public corporation created by law for a public purpose, attached to the DECS pursuant to its Charter and the Administrative Code of 1987. It is not a private corporation which is required to be owned or controlled by the government and be economically viable to justify its existence under a special law.

FACTS:
The Commission on Audit (COA) issued a Resolution with the subject "Defining the Commission's policy with respect to the audit of the Boy Scouts of the Philippines (BSP)". In its whereas clauses, the COA Resolution stated that the BSP was created as a public corporation under Commonwealth Act No. 111, as amended by Presidential Decree No. 460 and Republic Act No. 7278; that in *Boy Scouts of the Philippines v. National Labor Relations Commission*, the Supreme Court ruled that the BSP, as constituted under its charter, was a "government-controlled corporation within the meaning of Article IX (B)(2)(1) of the Constitution"; and that "the BSP is appropriately regarded as a government instrumentality under the 1987 Administrative Code.

The BSP sought reconsideration of the COA Resolution in a letter signed by the BSP National President Jejomar C. Binay. BSP alleged that Republic Act No. 7278 (R.A. No. 7278), which amended the BSP's charter after the cited case was decided, amended the composition of the National Executive Board of the BSP. RA 7287 virtually eliminated the substantial government participation in the National Executive Board. BSP contends that it is not a government-owned or controlled corporation; neither is it an instrumentality, agency, or subdivision of the government.

The Corporate Audit Officer of the COA furnished BSP with a Memorandum of the COA General Counsel which opined that R.A. No. 7278 did not supersede the Court's ruling in Boy Scouts of the Philippines v. National Labor Relations Commission, even though said law eliminated the substantial government participation in the selection of members of the National Executive Board of the BSP. Thereafter, the COA informed the BSP that a preliminary survey of its organizational structure, operations and accounting system/records shall be conducted on November 21 to 22, 2000.

Upon the BSP's request, the audit was deferred for thirty days. The BSP then filed a Petition for Review with Prayer for Preliminary Injunction and/or Temporary Restraining Order before the COA. This was denied by the COA in its questioned Decision, which held that the BSP is under its audit jurisdiction. The BSP moved for reconsideration but this was likewise denied under its questioned Resolution. BSP then filed a petition for prohibition with preliminary injunction and temporary restraining order against the COA.

ISSUE:
Whether the BSP falls under the COA's audit jurisdiction. (YES)

RULING:
The BSP is a public corporation and its funds are subject to the COA's audit jurisdiction. Assuming for the sake of argument that the BSP ceases to be owned or controlled by the government because of reduction of the number of representatives of the government in the BSP Board, it does not follow that it also ceases to be a government instrumentality as it still retains all the characteristics of the latter as an attached agency of the DECS under the Administrative Code. Vesting corporate powers to an attached agency or instrumentality of the government is not constitutionally prohibited and is allowed by the above-mentioned provisions of the Civil Code and the 1987 Administrative Code.

As presently constituted, the BSP still remains an instrumentality of the national government. It is a public corporation created by law for a public purpose, attached to the DECS pursuant to its Charter and the Administrative Code of 1987. It is not a private corporation which is required to be owned or controlled by the government and be economically viable to justify its existence under a special law. Even though the amended BSP charter did away with most of the governmental presence in the BSP Board, this was done to more strongly promote the BSPs objectives, which were not supported under Presidential Decree No. 460. The BSP objectives, as pointed out earlier, are consistent with the public purpose of the promotion of the well-being of the youth, the future leaders of the country. The amendments were not done with the view of changing the character of the BSP into a privatized corporation. The BSP remains an agency attached to a department of the government, the DECS, and it was not at all stripped of its public character.

Since the BSP, under its amended charter, continues to be a public corporation or a government instrumentality, we come to the inevitable conclusion that it is subject to the exercise by the COA of its audit jurisdiction in the manner consistent with the provisions of the BSP Charter.

II.. ADMINISTRATIVE LAW

A. ADMINISTRATIVE ORGANIZATION

OSCAR R. BADILLO, GIOVANNI C. ONG, EDGAR A. RAGASA represented by heirs CYNTHIA G. RAGASA, and their children JOSEPH, CATHERINE and CHARMAINE all surnamed RAGASA, ROLANDO SANCADA, and DIONISIO UMBALIN, *Petitioners,* -versus – COURT OF APPEALS, REGISTER OF DEEDS OF QUEZON CITY, GOLDKEY DEVELOPMENT CORPORATION, JOSEFA CONEJERO, IGNACIO D. SONORON, PEDRO DEL ROSARIO, and DOWAL REALTY AND MANAGEMENT SYSTEM COMPANY, *Respondents.*
G.R. No. 131903, FIRST DIVISION, June 26, 2008, CARPIO, J.:

Clearly, the scope and limitation of the HLURB's jurisdiction are well-defined. The HLURB's jurisdiction to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved, and the parties.

In the present case, petitioners are the registered owners of several lots adjoining a subdivision road lot connecting their properties to the main road. Petitioners allege that the subdivision lot owners sold the road lot to a developer who is now constructing cement fences, thus blocking the passageway from their lots to the main road. In sum, petitioners are enforcing their statutory and contractual rights against the subdivision owners. This is a specific performance case which falls under the HLURB's exclusive jurisdiction.

FACTS:
Petitioners alleged that they are the registered owners of several lots adjoining a road lot known as Lot 369-A-29 or Apollo Street of subdivision plan Psd-37971. RT-20895 is a court-ordered Entry No. 605/T-22655 which reads as follows: "It is hereby made of record that as per order of the Court, the street lot covered by this title shall not be closed or disposed of by the registered owner without previous approval of the court."

Petitioners alleged that in gross violation of the court order, del Rosario sold an unsegregated portion of the road lot to his co-respondents Josefa Conejero (Conejero) and Ignacio Sonoron (Sonoron) without obtaining prior court approval. Del Rosario, Conejero, and Sonoron then entered into a partition agreement to divide the road lot into four lots.
Petitioners alleged that the Register of Deeds violated the court order when it allowed the registration of the sales and the subsequent issuance of new titles without first obtaining judicial approval.

Petitioners prayed that the sales made in favor of Conejero, Sonoron, and Goldkey and the partition of the road lot be declared void. Goldkey alleged that the Housing and Land Use Regulatory Board (HLURB) has exclusive jurisdiction over the cases mentioned in Section 1 of Presidential Decree No. (PD) 1344.
On 10 September 1991, the HLURB issued a Development Permit to Goldkey allowing it to develop the land into residential townhouse units.

Petitioners filed a case for Annulment of Title and Damages with the RTC of Quezon City. The trial court dismissed petitioners' case for lack of jurisdiction over the subject matter. The Court of Appeals dismissed the appeal on the ground that it has no jurisdiction to entertain the same.

ISSUE:
Whether the appellate court acted without or in excess of jurisdiction or with grave abuse of discretion by dismissing petitioners' appeal on the ground that jurisdiction does not lie with the regular courts but with the HLURB. (NO)

RULING:
The HLURB is the sole regulatory body for housing and land development. The extent to which an administrative agency may exercise its powers depends on the provisions of the statute creating such agency. PD 957, otherwise known as "The Subdivision and Condominium Buyers' Protective Decree," granted the National Housing Authority (NHA) the exclusive jurisdiction to regulate the real estate business.

EO 90 renamed the Human Settlement Regulatory Commission the Housing and Land Use Regulatory Board. The HLURB retained the regulatory and adjudicatory functions of the NHA.

Clearly, the scope and limitation of the HLURB's jurisdiction are well-defined. The HLURB's jurisdiction to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved, and the parties.In the present case, petitioners are the registered owners of several lots adjoining a subdivision road lot connecting their properties to the main road. Petitioners allege that the subdivision lot owners sold the road lot to a developer who is now constructing cement fences, thus blocking the passageway from their lots to the main road. In sum, petitioners are enforcing their statutory and contractual rights against the subdivision owners. This is a specific performance case which falls under the HLURB's exclusive jurisdiction.

THE CITY OF MANILA, REPRESENTED BY MAYOR JOSE L. ATIENZA, JR., AND MS. LIBERTY M. TOLEDO, IN HER CAPACITY AS THE CITY TREASURER OF MANILA, *Petitioner,* -versus – HON. CARIDAD H. GRECIA–CUERDO, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 112, PASAY CITY; SM MART, INC.; SM PRIME HOLDINGS, INC.; STAR APPLIANCES CENTER; SUPERVALUE, INC.; ACE HARDWARE PHILIPPINES, INC.; WATSON PERSONAL CARE STORES, PHILS., INC.; JOLLIMART PHILS., CORP.; SURPLUS MARKETING CORPORATION AND SIGNATURE LINES, *Respondents.*
G.R. No. 175723, EN BANC, February 4, 2014, PERALTA, J.:

It can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari *in these cases.*

Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari*. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.*

FACTS:
Petitioner City of Manila, through its treasurer, petitioner Liberty Toledo, assessed taxes for the taxable period from January to December 2002 against private respondents. In addition to the taxes purportedly due from private respondents pursuant to Section 14, 15, 16, 17 of the ***Revised Revenue Code of Manila (RRCM)***, said assessment covered the local business taxes petitioners were authorized to collect under Section 21 of the same Code. Because payment of the taxes assessed was a precondition for the issuance of their business permits, private respondents were constrained to pay the P 19,316,458.77 assessment under protest.

Private respondents filed [with the Regional Trial Court of Pasay City] the complaint before public respondent's ***sala*** [at Branch 112]. In the amended complaint they filed on February 16, 2004, private respondents alleged that, in relation to Section 21 thereof, Sections 14, 15, 16, 17, 18, 19 and 20 of the *RRCM* were violative of the limitations and guidelines under Section 143 (h) of Republic Act. No. 7160 [Local Government Code] on double taxation. They further averred that petitioner city's Ordinance No. 8011 which amended pertinent portions of the ***RRCM*** had already been declared to be illegal and unconstitutional by the Department of Justice.

The RTC granted private respondents' application for a writ of preliminary injunction. The CA dismissed petitioners' petition for *certiorari* holding that it has no jurisdiction over the said petition. The CA ruled that since appellate jurisdiction over private respondents' complaint for tax refund, which was filed with the RTC, is vested in the Court of Tax Appeals (CTA), pursuant to its expanded jurisdiction under Republic Act No. 9282 (RA 9282), it follows that a petition for *certiorari* seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the CTA.

ISSUE:
Whether or not the CTA has jurisdiction over a special civil action for *certiorari* assailing an interlocutory order issued by the RTC in a local tax case. (YES)

RULING:
On March 30, 2004, the Legislature passed into law Republic Act No. 9282 (RA 9282) amending RA 1125 by expanding the jurisdiction of the CTA, enlarging its membership and elevating its rank to the level of a collegiate court with special jurisdiction.
While it is clearly stated that the CTA has exclusive appellate jurisdiction over decisions, orders or resolutions of the RTCs in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction, there is no categorical statement under RA 1125 as well as the amendatory RA 9282, which provides that the CTA has jurisdiction over petitions for *certiorari* assailing interlocutory orders issued by the RTC in local tax cases filed before it.
While there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**.

It can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the

RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases.

Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.
Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer. A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction.

B. ADMINISTRATIVE RULE-MAKING

SECURITIES AND EXCHANGE COMMISSION, *Petitioner,* -versus – GMA NETWORK, INC, *Respondent.*
G.R. No. 164026, SECOND DIVISION, December 23, 2008, TINGA, J.:

However, we agree with the Court of Appeals that the questioned ***memorandum circular is invalid as itdoes not appear from the records that it has been published in the Official Gazette or in a newspaper of general circulation.*** *The questioned memorandum circular, furthermore, has not been filed with the Office of the National Administrative Register of the University of the Philippines Law Center as required in the Administrative Code of 1987.*

The questioned memorandum circular, it should be emphasized, cannot be construed as simply interpretative of R.A. No. 3531. This administrative issuance is an implementation of the mandate of R.A. No. 3531 and indubitably regulates and affects the public at large. It cannot, therefore, be considered a mere internal rule or regulation, nor an interpretation of the law, but a rule which must be declared ineffective as it was neither published nor filed with the Office of the National Administrative Register.

FACTS:
On August 19, 1995, the petitioner, GMA NETWORK, INC., (GMA, for brevity), a domestic corporation, filed an application for collective approval of various amendments to its Articles of Incorporation and By-Laws with the respondent Securities and Exchange Commission. Upon such filing, the petitioner had been assessed by the SEC's Corporate and Legal Department a separate filing fee for the application for extension of corporate term.

On March 19, 1996, the petitioner requested for an official opinion/ruling from the SEC on the validity and propriety of the assessment for application for extension of its corporate term.
Consequently, the respondent SEC, through Associate Commissioner Fe Eloisa C. Gloria, on April 18, 1996, issued its ruling upholding the validity of the questioned assessment. The respondent SEC En Banc issued the assailed order dismissing the petitioner's appeal.

The appellate court agreed with the SEC's submission that an extension of the corporate term is a grant of a fresh license for a corporation to act as a juridical being endowed with the powers expressly bestowed by the State. As such, it is not an ordinary amendment but is analogous to the filing of new articles of incorporation.

However, the Court of Appeals ruled that Memorandum Circular No. 2, Series of 1994 is legally invalid and ineffective for not having been published in accordance with law. The challenged memorandum circular, according to the appellate court, is not merely an internal or interpretative rule, but affects the public in general. Hence, its publication is required for its effectivity.

ISSUE:
Whether the imposition of the fees and charges on the basis of the memorandum circular is valid. (NO)

RULING:
Republic Act No. 3531 (R.A. No. 3531) provides that where the amendment consists in extending the term of corporate existence, the SEC "shall be entitled to collect and receive for the filing of the amended articles of incorporation the same fees collectible under existing law as the filing of articles of incorporation."

As is clearly the import of this law, the SEC shall be entitled to collect and receive the same fees it assesses and collects both for the filing of articles of incorporation and the filing of an amended articles of incorporation for purposes of extending the term of corporate existence.

The SEC, effectuating its mandate under the aforequoted law and other pertinent laws, issued SEC Memorandum Circular No. 1, Series of 1986. Several years after, the SEC issued Memorandum Circular No. 2, Series of 1994, imposing new fees and charges and deleting the maximum filing fee set forth in SEC Circular No. 1, Series of 1986.

A reading of the two circulars readily reveals that they indeed pertain to different matters, as GMA points out. SEC Memorandum Circular No. 1, Series of 1986 refers to the filing fee for the amendment of articles of incorporation to extend corporate life, while Memorandum Circular No. 2, Series of 1994 pertains to the filing fee for articles of incorporation. Thus, as GMA argues, the former circular, being squarely applicable and, more importantly, being more favorable to it, should be followed.
However, we agree with the Court of Appeals that the questioned memorandum circular is invalid as it does not appear from the records that it has been published in the Official Gazette or in a newspaper of general circulation. The questioned memorandum circular, furthermore, has not been filed with the Office of the National Administrative Register of the University of the Philippines Law Center as required in the Administrative Code of 1987.

The questioned memorandum circular, it should be emphasized, cannot be construed as simply interpretative of R.A. No. 3531. This administrative issuance is an implementation of the mandate of

R.A. No. 3531 and indubitably regulates and affects the public at large. It cannot, therefore, be considered a mere internal rule or regulation, nor an interpretation of the law, but a rule which must be declared ineffective as it was neither published nor filed with the Office of the National Administrative Register.

Rate-fixing is a legislative function which concededly has been delegated to the SEC by R.A. No. 3531 and other pertinent laws. The due process clause, however, permits the courts to determine whether the regulation issued by the SEC is reasonable and within the bounds of its rate-fixing authority and to strike it down when it arbitrarily infringes on a person's right to property.

THE CHAIRMAN AND EXECUTIVE DIRECTOR, PALAWAN COUNCIL FOR SUSTAINABLE DEVELOPMENT, AND THE PALAWAN COUNCIL FOR SUSTAINABLE DEVELOPMENT, *Petitioners,* -versus – EJERCITO LIM, DOING BUSINESS AS BONANZA AIR SERVICES, AS REPRESENTED BY HIS ATTORNEY-IN-FACT, CAPT. ERNESTO LIM, *Respondent.*
G.R. No. 183173, FIRST DIVISION, August 24, 2016, BERSAMIN, J.:

Accordingly, the PCSD had the explicit authority to fill in the details as to how to carry out the objectives of R.A. No. 7611 in protecting and enhancing Palawan's natural resources consistent with the SEP. In that task, the PCSD could establish a methodology for the effective implementation of the SEP. Moreover, the PCSD was expressly given the authority to impose penalties and sanctions in relation to the implementation of the SEP and the other provisions of R.A. No. 7611. As such, the PCSD's issuance of A.O. No. 00-95 and Resolution No. 03-211 was well within its statutory authority.

FACTS:
PCSD issued A.O. No. 00-05 on February 25, 2002 to ordain that the transport of live fish from Palawan would be allowed only through traders and carriers who had sought and secured accreditation from the PCSD. On September 4, 2002, the Air Transportation Office (ATO) sent to the PCSD its communication to the effect that ATO-authorized carriers were considered common carriers, and, as such, should be exempt from the PCSD accreditation requirement. It attached to the communication a list of its authorized carriers, which included the respondent's air transport service. Respondent asserted that he had continued his trade without securing the PCSD-required accreditation; that the PCSD Chairman had started harassing his clients by issuing Memorandum Circular No. 02, Series of 2002, which contained a penal clause imposing sanctions on the availment of transfer services by unaccredited aircraft carriers such as cancellation of the PCSD accreditation and perpetual disqualification from engaging in live fish trading in Palawan; that due to the serious effects of the memorandum, the respondent had sent a grievance letter to the Office of the President; and that the PCSD Chairman had nonetheless maintained that the respondent's business was not a common carrier, and should comply with the requirement for PCSD accreditation.

In disregard of the prohibition, the respondent continued his business operation in Palawan until a customer showed him the Notice of Violation and Show Cause Order issued by the PCSD to the effect that he had still made 19 flights in October 2002 despite his failure to secure accreditation from the PCSD; and that he should explain his actuations within 15 days, otherwise, he would be sanctioned with a fine of P50,000.00. According to the respondent, he had not received the Notice of Violation and Show Cause Order.

The respondent filed a petition for prohibition in the CA, which issued a temporary restraining order. The petitioners countered that the petition for prohibition should have been dismissed because A.O. No. 00-05 was in accord with the mandate of the Constitution and of Republic Act No. 7611., that

Resolution No. 03-211 had meanwhile amended or repealed portions of A.O. No. 00-05, thereby rendering the issues raised by the petition for prohibition moot and academic;[10] that by virtue of such developments, the PCSD accreditation was now required for all carriers, except those belonging to the Government; that on August 18, 2003, the respondent had received another notice regarding the enactment of Resolution No. 03-211; and that they had subsequently dispatched to the respondent on September 9, 2003 another show cause order in view of his continued non-compliance with Resolution No. 03-211.

The CA promulgated its assailed decision on May 28, 2008, granting the petition.

ISSUE:
Whether or not the CA erred in declaring A.O. No. 00-05, Series of 2002; Resolution No. 03-211; and the the Notice of Violation and Show Cause Order null and void for having been issued in excess of the PCSD's authority. (YES)

RULING:
R.A. No. No. 7611 has adopted the Strategic Environmental Plan (SEP) for Palawan consistent with the declared policy of the State to protect, develop, and conserve its natural resources. The PCSD was established as the administrative machinery for the SEP's implementation. The creation of the PCSD has been set forth in Section 16 of R.A. No. 7611.
Accordingly, the PCSD had the explicit authority to fill in the details as to how to carry out the objectives of R.A. No. 7611 in protecting and enhancing Palawan's natural resources consistent with the SEP. In that task, the PCSD could establish a methodology for the effective implementation of the SEP. Moreover, the PCSD was expressly given the authority to impose penalties and sanctions in relation to the implementation of the SEP and the other provisions of R.A. No. 7611. As such, the PCSD's issuance of A.O. No. 00-95 and Resolution No. 03-211 was well within its statutory authority.

C. ADMINISTRATIVE ADJUDICATION AND JUDICIAL REVIEW

NATIONAL HOUSING AUTHORITY, *Petitioner*, -versus – SEGUNDA ALMEIDA, COURT OF APPEALS and RTC OF SAN PEDRO, LAGUNA, BRANCH 31, *Respondents.*
G.R. No. 162784, FIRST DIVISION, June 22, 2007, PUNO, J.:

In fine, it should be remembered that ***quasi-judicial powers will always be subject to true judicial power—that which is held by the courts****. Quasi-judicial power is defined as that power of adjudication of an administrative agency for the "formulation of a final order." This function applies to the actions, discretion and similar acts of public administrative officers or bodies who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.*
However, administrative agencies are not considered courts, in their strict sense. The doctrine of separation of powers reposes the three great powers into its three (3) branches—the legislative, the executive, and the judiciary. Each department is co-equal and coordinate, and supreme in its own sphere. Accordingly, the executive department may not, by its own fiat, impose the judgment of one of its agencies, upon the judiciary. Indeed, under the expanded jurisdiction of the Supreme Court, it is empowered to "determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Courts have an expanded role under the 1987 Constitution in the resolution of societal conflicts under the grave abuse clause of Article VIII which includes that duty to check whether the other branches of government

committed an act that falls under the category of grave abuse of discretion amounting to lack or excess of jurisdiction.

FACTS:
June 28, 1959, the Land Tenure Administration (LTA) awarded to Margarita Herrera several portions of land which are part of the Tunasan Estate in San Pedro, Laguna. The award is evidenced by an Agreement to Sell No. 3787. By virtue of Republic Act No. 3488, the LTA was succeeded by the Department of Agrarian Reform (DAR). On July 31, 1975, the DAR was succeeded by the NHA by virtue of Presidential Decree No. 757. NHA as the successor agency of LTA is the petitioner in this case.

The records show that Margarita Herrera had two children: Beatriz Herrera-Mercado (the mother of private respondent) and Francisca Herrera. Beatriz Herrera-Mercado predeceased her mother and left heirs. Margarita Herrera died on October 27, 1971.

On August 22, 1974, Francisca Herrera, the remaining child of the late Margarita Herrera executed a Deed of Self-Adjudication claiming that she is the only remaining relative, being the sole surviving daughter of the deceased. She also claimed to be the exclusive legal heir of the late Margarita Herrera. The surviving heirs of Beatriz Herrera-Mercado filed a case for annulment of the Deed of Self-Adjudication before the then Court of First Instance of Laguna, Branch 1 in Binan, Laguna (now, Regional Trial Court Branch 25).

Decision in the Case (questioning the Deed of Self-Adjudication) was rendered and the deed was declared null and void.

During trial on the merits of the case assailing the Deed of Self-Adjudication, Francisca Herrera filed an application with the NHA to purchase the same lots submitting therewith a copy of the "Sinumpaang Salaysay" executed by her mother. Private respondent Almeida, as heir of Beatriz Herrera-Mercado, protested the application. The NHA found that protestee has a better preferential right to purchase the lots in question.
Private respondent Almeida appealed to the Office of the President. The NHA Resolution was affirmed by the Office of the President in a Decision dated January 23, 1987.

On February 1, 1987, Francisca Herrera died. Her heirs executed an extrajudicial settlement of her estate which they submitted to the NHA. Said transfer of rights was approved by the NHA. The NHA executed several deeds of sale in favor of the heirs of Francisca Herrera and titles were issued in their favor.Thereafter, the heirs of Francisca Herrera directed Segunda Mercado-Almeida to leave the premises that she was occupying.

Feeling aggrieved by the decision of the Office of the President and the resolution of the NHA, private respondent Segunda Mercado-Almeida sought the cancellation of the titles issued in favor of the heirs of Francisca. She filed a Complaint for "**Nullification of Government Lot's Award**," with the Regional Trial Court of San Pedro, Laguna, Branch 31.

In her complaint, private respondent Almeida invoked her forty-year occupation of the disputed properties, and re-raised the fact that Francisca Herrera's declaration of self-adjudication has been adjudged as a nullity because the other heirs were disregarded. The defendant heirs of Francisca Herrera alleged that the complaint was barred by laches and that the decision of the Office of the President was already final and executory. They also contended that the transfer of purchase of the

subject lots is perfectly valid as the same was supported by a consideration and that Francisca Herrera paid for the property with the use of her own money. Further, they argued that plaintiff's occupation of the property was by mere tolerance and that they had been paying taxes thereon.
RTC dismissed case for lack of jurisdiction. CA reversed the RTC decision. Case was remanded to RTC. The Regional Trial Court ruled that the "Sinumpaang Salaysay" was not an assignment of rights but a disposition of property which shall take effect upon death. It then held that the said document must first be submitted to probate before it can transfer property. Both the NHA and the heirs of Francisca Herrera appealed to the Court of Appeals. On August 28, 2003, the Court of Appeals affirmed the decision of the Regional Trial Court.

ISSUE:
Whether administrative res judicata has set in the case.

RULING:
Res judicata is a concept applied in review of lower court decisions in accordance with the hierarchy of courts. But jurisprudence has also recognized the rule of administrative *res judicata*: "the rule which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial facts of public, executive or administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers .

. . It has been declared that whenever final adjudication of persons invested with power to decide on the property and rights of the citizen is examinable by the Supreme Court, upon a writ of error or a certiorari, such final adjudication may be pleaded as *res judicata*."

To be sure, early jurisprudence were already mindful that the doctrine *of res judicata* cannot be said to apply exclusively to decisions rendered by what are usually understood as courts without unreasonably circumscribing the scope thereof and that the more equitable attitude is to allow extension of the defense to decisions of bodies upon whom judicial powers have been conferred.
In fine, it should be remembered that quasi-judicial powers will always be subject to true judicial power—that which is held by the courts. Quasi-judicial power is defined as that power of adjudication of an administrative agency for the "formulation of a final order." This function applies to the actions, discretion and similar acts of public administrative officers or bodies who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.

However, administrative agencies are not considered courts, in their strict sense. The doctrine of separation of powers reposes the three great powers into its three (3) branches—the legislative, the executive, and the judiciary. Each department is co-equal and coordinate, and supreme in its own sphere. Accordingly, the executive department may not, by its own fiat, impose the judgment of one of its agencies, upon the judiciary. Indeed, under the expanded jurisdiction of the Supreme Court, it is empowered to "determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Courts have an expanded role under the 1987 Constitution in the resolution of societal conflicts under the grave abuse clause of Article VIII which includes that duty to check whether the other branches of government committed an act that falls under the category of grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner cites Batas Pambansa Blg. 129 or the Judiciary Reorganization Act of 1980 where it is therein provided that the Intermediate Appellate Court (now, Court of Appeals) shall exercise the

"exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards, of the Regional Trial Courts and Quasi-Judicial agencies, instrumentalities, boards or commissions, except those falling within the jurisdiction of the Supreme Court in accordance with the Constitution…" and contends that the Regional Trial Court has no jurisdiction to rule over awards made by the NHA.

> Well-within its jurisdiction, the Court of Appeals, in its decision of August 28, 2003, already ruled that the issue of the trial court's authority to hear and decide the instant case has already been settled in the decision of the Court of Appeals dated June 26, 1989 (which has become final and executory on August 20, 1989 as per entry of judgment dated October 10, 1989). We find no reason to disturb this ruling. Courts are duty-bound to put an end to controversies. The system of judicial review should not be misused and abused to evade the operation of a final and executory judgment. The appellate court's decision becomes the law of the case which must be adhered to by the parties by reason of policy.

MAYOR FELIPE K. CONSTANTINO, *Petitioners,* -versus – HON. SANDIGANBAYAN (FIRST DIVISION) and THE PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 140656, SECOND DIVISION, September 13, 2007, TINGA, J.:

Undoubtedly, the standard of culpability imposed by Section 3 of R.A. No. 3019 is quite high which, in this case, was not hurdled by the evidence presented against Constantino. Verily, the prosecution failed to satisfy the requisite proof to demonstrate Constantino's guilt beyond reasonable doubt. While Constantino should have exercised more prudence when he transacted with Norlovanian Corporation, he could not however be held liable for "gross inexcusable negligence" as contemplated in R.A. No. 3019.

FACTS:
Constantino, in his capacity as mayor of Malungon, Sarangani Province, together with his co-accused Lindong, was charged with violation of Section 3 (e) of R.A. No. 3019 before the Sandiganbayan.
The Municipality of Malungon listed as one of its priority programs, the acquisition of a fleet of heavy equipment needed by the municipality in its development projects. For this purpose, it appropriated an amount of ₱2.2 Million *per annum* for a period of five (5) years for the amortization of such purchase.

The municipality conducted two (2) public biddings for suppliers of the required fleet of heavy equipment. Both attempts, however, failed. Hence, the *Sangguniang Bayan* instead passed Resolution No. 21 on 22 February 1996, authorizing petitioner Constantino to enter into a negotiated contract for the lease/purchase of the needed fleet of heavy equipment. Constantino entered into a *Lease Agreement* with Norlovanian Corporation, represented by Lindong. The following day, Lindong appeared before the *Sangguniang Bayan* to discuss the *Lease Agreement*.

On 6 March 1996, the Municipality of Malungon paid Norlovanian Corporation a total amount of ₱2,177,090.91. The *Sangguniang Bayan* unanimously passed Resolution No. 38requesting petitioner to operate the newly acquired fleet of heavy equipment.
However, only five (5) days later, or on 23 April 1996, some *Sanggunian* members filed a formal complaint against petitioners Constantino and Lindong for violation of R.A. No. 3019.

Finding that the prosecution had proven beyond reasonable doubt the guilt of Constantino and Lindong of the offense as charged, the Sandiganbayan rendered the assailed decision sentencing them both.

ISSUE:
Whether Constantino is guilty of gross inexcusable negligence when he entered into a purportedly pure lease agreement instead of a lease/purchase agreement and for failing to secure the concurrence of the *Sangguniang Bayan* before entering into the agreement. (NO)

RULING:
With the demise of Constantino during the pendency of his appeal, the same should normally be regarded as moot and academic following the norm that the death of the accused marks the extinction of his criminal liability. However, the present two petitions are so intertwined that the absolution of Constantino is ultimately determinative of the absolution of Lindong. Thus, the Court in this instance has to ascertain the merits of Constantino's appeal to prevent a developing miscarriage of justice against Lindong.

As discussed previously, the Sandiganbayan held that manifest partiality could not be rightfully imputed to Constantino. However, the respondent court found that Constantino's act of entering into a purportedly pure lease agreement instead of a lease/purchase agreement was a flagrant violation of Resolution No. 21. In view of the rigid terms of the subject contract to which Constantino assented, coupled by his failure to secure the concurrence of the *Sangguniang Bayan* before entering into the agreement, the Sandiganbayan found that his conduct constituted gross inexcusable negligence.
Undoubtedly, the standard of culpability imposed by Section 3 of R.A. No. 3019 is quite high which, in this case, was not hurdled by the evidence presented against Constantino. Verily, the prosecution failed to satisfy the requisite proof to demonstrate Constantino's guilt beyond reasonable doubt. While Constantino should have exercised more prudence when he transacted with Norlovanian Corporation, he could not however be held liable for "gross inexcusable negligence" as contemplated in R.A. No. 3019.
The virtual acquittal of Constantino inevitably puts a welcome end to the tribulations of Lindong. Thus, we grant the petition. it is utterly illogical to absolve Constantino who entered into the contract on behalf of the government and send the private person to prison.

AZUCENA MAGALLANES, EVELYN BACOLOD and HEIRS OF JUDITH COTECSON, *Petitioners,* - versus – SUN YAT SEN ELEMENTARY SCHOOL, PAZ GO, ELENA CUBILLAN, WILLY ANG GAN TENG, BENITO ANG, and TEOTIMO TAN, *Respondents.*
G.R. No. 160876, FIRST DIVISION, January 18, 2008, SANDOVAL-GUTIERREZ, J.:

We sustain petitioners' contention that the NLRC, in modifying the award of the Court of Appeals, committed grave abuse of discretion amounting to lack or excess of jurisdiction. ***Quasi-judicial agencies have neither business nor power to modify or amend the final and executory Decisions of the appellate courts****. Under the principle of immutability of judgments, any alteration or amendment which substantially affects a final and executory judgment is void for lack of jurisdiction.*

FACTS:
On May 22, 1994, respondents terminated the services of petitioners. Thus, on August 3, 1994, they filed with the Sub-Regional Arbitration Branch No. X, National Labor Relations Commission (NLRC), Butuan City, complaints against respondents for illegal dismissal, underpayment of wages, payment of backwages, 13th month pay, ECOLA, separation pay, moral damages, and attorney's fees.

On June 3, 1995, Labor Arbiter Rogelio P. Legaspi rendered a Decision declaring that petitioners were illegally dismissed from the service and ordering respondents to reinstate them to their former or equivalent positions. On appeal by respondents, the NLRC, in its Decision dated February 20, 1996, reversed the Arbiter's judgment.

On October 28, 1999, the Court of Appeals (Special Sixteenth Division) rendered its Decision, ruling that in lieu of reinstatement, petitioners Cotecson, Bacolod, and Magallanes "shall be entitled to separation pay equivalent to one month salary and backwages computed from the time of their illegal dismissal up to the time of the promulgation of its Decision. With respect to Bella Gonzales and Grace Gonzales, the Court of Appeals found that that they have not acquired the status of regular employees. Respondents then filed with this Court a Petition for *Certiorari*, docketed as G.R. No. 142270. However, it was dismissed for lack of merit.
Petitioners filed with the Labor Arbiter a motion for execution of his Decision as modified by the Court of Appeals.

The Labor Arbiter computed the petitioners' monetary awards reckoned from the time of their illegal dismissal in June 1994 up to October 29, 1999. Respondents interposed an appeal to the NLRC. The NLRC modified the Labor Arbiter's computation. The petition was dismissed outright by the Court of Appeals for their failure to attach to their petition copies of the pleadings filed with the Labor Arbiter. Petitioners filed a motion for reconsideration, but they erroneously indicated therein the case number as **CA-G.R. SP No. 50531**, instead of **CA-G.R. SP No. 67068**. Their error was compounded by stating that the petition was with the Special Sixteenth Division, instead of the Seventh Division.
The Seventh Division denied petitioners' Motion To Transfer The Case on the ground, among others, that the motion is "non-existent" since it does not bear the correct case number.

ISSUE:
Whether the Court of Appeals (Seventh Division) erred in holding that affixing a wrong docket number on a motion renders it "non-existent;"

RULING:
The Court of Appeals (Seventh Division) is correct when it ruled that petitioners' motion for reconsideration of its Resolution dated October 29, 2001 in CA-G.R. SP No. 67068 is "non-existent." Petitioners' counsel placed a wrong case number in their motion, indicating CA-G.R. SP No. 50531 (Special Sixteenth Division) instead of CA-G.R. SP No. 50531 (Seventh Division), the correct case number.

As aptly stated by the Special Sixteenth Division, it has neither the duty nor the obligation to correct the error or to transfer the case to the Seventh Division. To hold otherwise would be to impose upon appellate courts the burden of being nannies to appellants, ensuring the absence of pitfalls that hinder the perfection of petitions and appeals.
However, we opt for liberality in the application of the rules to the instant case. This case involving a labor dispute has dragged on for over a decade now. Petitioners have waited too long for what is due them under the law.

Clearly, the Decision in CA-G.R. SP No. 50531 had long become final and executory. The Labor Arbiter computed the monetary awards due to petitioners corresponding to the period from June 1994 to October 28, 1999, in accordance with the Decision of the Court of Appeals.
We sustain petitioners' contention that the NLRC, in modifying the award of the Court of Appeals, committed grave abuse of discretion amounting to lack or excess of jurisdiction. **Quasi-judicial**

agencies have neither business nor power to modify or amend the final and executory Decisions of the appellate courts. Under the principle of immutability of judgments, any alteration or amendment which substantially affects a final and executory judgment is void for lack of jurisdiction.

RACHEL BEATRIZ RUIVIVAR, *Petitioner,* -versus – OFFICE OF THE OMBUDSMAN AND DR. CONNIE BERNARDO, *Respondents.*
G.R. No. 165012, SECOND DIVISION, September 16, 2008, BRION, J.:

The CA Decision dismissed the petition for certiorari on the ground that the petitioner failed to exhaust all the administrative remedies available to her before the Ombudsman. This ruling is legally correct as exhaustion of administrative remedies is a requisite for the filing of a petition for certiorari*. Other than this legal significance, however, the ruling necessarily carries the direct and immediate implication that the petitioner has been granted the opportunity to be heard and has refused to avail of this opportunity; hence, she cannot claim denial of due process. In the words of the CA ruling itself: "Petitioner was given the opportunity by public respondent to rebut the affidavits submitted by private respondent. . . and had a speedy and adequate administrative remedy but she failed to avail thereof for reasons only known to her."*

Under these circumstances, we cannot help but recognize that the petitioner's cause is a lost one, not only for her failure to exhaust her available administrative remedy, but also on due process grounds. The law can no longer help one who had been given ample opportunity to be heard but who did not take full advantage of the proffered chance.

FACTS:
The private respondent stated in her complaint that she is the President of the Association of Drug Testing Centers (*Association*) that conducts drug testing and medical examination of applicants for driver's license. In this capacity, she went to the Land Transportation Office (*LTO*) on May 17, 2002 to meet with representatives from the Department of Transportation and Communication (*DOTC*) and to file a copy of the Association's request to lift the moratorium imposed by the LTO on the accreditation of drug testing clinics. Before proceeding to the office of the LTO Commissioner for these purposes, she passed by the office of the petitioner to conduct a follow up on the status of her company's application for accreditation. While there, the petitioner -- without provocation or any justifiable reason and in the presence of other LTO employees and visitors -- shouted at her in a very arrogant and insulting manner, hurled invectives upon her person, and prevented her from entering the office of the LTO Commissioner.

In her Counter-Affidavit, the petitioner denied the private respondent's allegations and claimed that she merely told the private respondent to bring her request to the LTO Assistant Secretary who has the authority to act on the matter, not to the DOTC.

The Ombudsman found the petitioner administratively liable for discourtesy in the course of her official functions and imposed on her the penalty of reprimand.

The CA dismissed the petition on the ground that the petitioner used the wrong legal remedy and failed to exhaust administrative remedies before the Ombudsman.

ISSUES:

(I) Whether or not a petition for *certiorari* under Rule 65 is the proper and only available remedy when the penalty imposed in an administrative complaint with the Office of the Ombudsman is considered final and unappealable.

(II) Whether or not petitioner was denied of *(sic)*the constitutional guarantee to due process when she was deprived of her right to confront the evidence submitted against her before the decision of the Office of the Ombudsman was rendered.

RULING:

(I)

In *Fabian*, we invalidated Section 27 of R.A. No. 6770 (and Section 7, Rule III of A.O. No. 7 and the other rules implementing the Act) insofar as it provided for appeal by *certiorari* under Rule 45 from the decisions or orders of the Ombudsman in administrative cases. We held that Section 27 of R.A. No. 6770 had the effect, not only of increasing the appellate jurisdiction of this Court without its advice and concurrence in violation of Section 30, Article VI of the Constitution; it was also inconsistent with Section 1, Rule 45 of the Rules of Court which provides that a petition for review on *certiorari* shall apply only to a review of "judgments or final orders of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court, or other *courts* authorized by law". In *Lopez v. CA* and *Herrera v. Bohol,* we recognized that no appeal is allowed in administrative cases where the penalty of public censure, reprimand, suspension of not more than one month, or a fine equivalent to one month salary, is imposed. We pointed out that decisions of administrative agencies that are declared by law to be final and unappealable are still subject to judicial review if they fail the test of arbitrariness or upon proof of gross abuse of discretion; the complainant's legal recourse is to file a petition for *certiorari* under Rule 65 of the Rules of Court, applied as rules suppletory to the Rules of Procedure of the Office of the Ombudsman. The use of this recourse should take into account the last paragraph of Section 4, Rule 65 of the Rules of Court - i.e., the petition shall be filed in and be cognizable only by the CA if it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or by the Rules.

In the present case, the Ombudsman's decision and order imposing the penalty of reprimand on the petitioner are final and unappealable. Thus, the petitioner availed of the correct remedy when she filed a petition for *certiorari* before the CA to question the Ombudsman's decision to reprimand her.

(II)

The CA Decision dismissed the petition for *certiorari* on the ground that the petitioner failed to exhaust all the administrative remedies available to her before the Ombudsman. This ruling is legally correct as exhaustion of administrative remedies is a requisite for the filing of a petition for *certiorari*. Other than this legal significance, however, *the ruling necessarily carries the direct and immediate implication that the petitioner has been granted the opportunity to be heard and has refused to avail of this opportunity*; hence, she cannot claim denial of due process. In the words of the CA ruling itself: *"Petitioner was given the opportunity by public respondent to rebut the affidavits submitted by private respondent. . . and had a speedy and adequate administrative remedy but she failed to avail thereof for reasons only known to her."*

The records show that the petitioner duly filed a motion for reconsideration on due process grounds (i.e., for the private respondent's failure to furnish her copies of the affidavits of witnesses) and on questions relating to the appreciation of the evidence on record. The Ombudsman acted on this motion by issuing its Order of January 17, 2003 belatedly furnishing her with copies of the private respondent's witnesses, together with the *"directive to file, within ten (10) days from receipt of this Order, such pleading which she may deem fit under the circumstances.*"

Given this opportunity to act on the belatedly-furnished affidavits, the petitioner simply chose to file a "Manifestation" where she took the position that "The order of the Ombudsman dated 17 January 2003 supplying her with the affidavits of the complainant does not cure the 04 November 2002 order," and on this basis prayed that the Ombudsman's decision "be reconsidered and the complaint dismissed for lack of merit."
Under these circumstances, we cannot help but recognize that the petitioner's cause is a lost one, not only for her failure to exhaust her available administrative remedy, but also on due process grounds. *The law can no longer help one who had been given ample opportunity to be heard but who did not take full advantage of the proffered chance.*

III. LAW ON PUBLIC OFFICERS

A. ELIGIBILITY AND QUALIFICATIONS FOR PUBLIC OFFICE

JOCELYN SY LIMKAICHONG, *Petitioner*, -versus – COMMISSION ON ELECTIONS, NAPOLEON N. CAMERO and RENALD F. VILLANDO, *Respondents.*
G.R. No. 178831-32, EN BANC, July 30, 2009, PERALTA, J.:

Petitioners have successfully discharged their burden of proof and has convincingly shown with pieces of documentary evidence that Julio Ong Sy, father of herein respondent Jocelyn Sy-Limkaichong, failed to acquire Filipino citizenship in the naturalization proceedings which he underwent for the said purpose.

An examination of the records of Special Case No. 1043 would reveal that the ***Office of the Solicitor General was deprived of its participation in all the stages of the proceedings therein****, as required under Commonwealth Act No. 473 or the Revised Naturalization Law and Republic Act No. 530, An Act Making Additional Provisions for Naturalization.*

As correctly pointed out by petitioners, this was ***fatal to the naturalization proceedings of Julio Ong Sy****, and* ***prevented the same from gaining finality****.*

The respondent insists that naturalization proceedings are in rem and are binding on the whole world. She would have been correct had all the necessary parties to the case been informed of the same. The OSG, being the counsel for the government, has to participate in all the proceedings so that it could be bound by what has transpired therein. Lacking the participation of this indispensable party to the same, the proceedings are null and void and, hence, no rights could arise therefrom.

FACTS:
On March 26, 2007, Limkaichong filed with the COMELEC her Certificate of Candidacy for the position of Representative of the First District of Negros Oriental.
In the following weeks, two (2) petitions for her disqualification were instituted before the COMELEC by concerned citizens coming from her locality. On April 4, 2007, Napoleon Camero, a registered voter of La Libertad, Negros Oriental, filed the petition for her disqualification on the ground that she lacked the citizenship requirement of a Member of the House of Representatives.

On April 11, 2007, Renald F. Villando, also a registered voter of the same locality, filed the second petition on the same ground of citizenship.
Limkaichong claimed that she is a **natural-born Filipino** since she was born to a **naturalized Filipino father** and a **natural-born Filipino mother,** who had reacquired her status as such due to her husband's naturalization.

Citing *Salcedo II v. Commission on Elections*, she averred that a petition filed before an election, questioning the qualification of a candidate, should be based on Section 78, in relation to Section 74 OF THE Omnubis Election Code, and not under Sections 68 and 74 thereof in relation to Section 1, Rule 25 of the COMELEC Rules of Procedure and Section 5, paragraph C of COMELEC Resolution No. 7800.

Limkaichong emerged as the **winner** with 65,708 votes.

COMELEC Second Division granted the petitions in the disqualification cases, disqualified Limkaichong as a candidate for Representative of the First District of Negros Oriental

ISSUE:
Whether respondent Jocelyn Sy-Limkaichong is disqualified to run for the congressional seat of the First District of Negros Oriental on the ground that she is not a natural-born Filipino. (YES)

RULING:
Petitioners have successfully discharged their burden of proof and has convincingly shown with pieces of documentary evidence that **Julio Ong Sy, father of herein respondent Jocelyn Sy-Limkaichong, failed to acquire Filipino citizenship in the naturalization proceedings** which he underwent for the said purpose.

An examination of the records of Special Case No. 1043 would reveal that the **Office of the Solicitor General was deprived of its participation in all the stages of the proceedings therein**, as required under Commonwealth Act No. 473 or the Revised Naturalization Law and Republic Act No. 530, An Act Making Additional Provisions for Naturalization.
As correctly pointed out by petitioners, this was **fatal to the naturalization proceedings of Julio Ong Sy**, and **prevented the same from gaining finality**.

And as though that was not enough, the hearing prior to the oathtaking of respondent Tan was conducted without the required notice to the Solicitor General.
Another glaring defect in the said proceedings was the fact that **Julio Ong Sy took his Oath of Allegiance on October 21, 1959, which was exactly thirty (30) days after his declaration as a naturalized Filipino**.

Even granting that the OSG was notified of the September 21, 1959 Order, this was still one day short of the reglementary period required under Sections 11 and 12 of C.A. No. 473

The respondent insists that naturalization proceedings are in rem and are binding on the whole world.She would have been correct had all the necessary parties to the case been informed of the same. The OSG, being the counsel for the government, has to participate in all the proceedings so that it could be bound by what has transpired therein. Lacking the participation of this indispensable party to the same, the proceedings are null and void and, hence, no rights could arise therefrom.

From all the foregoing, therefore, it could be seen that **Julio Ong Sy did not acquire Filipino citizenship through the naturalization proceedings in Special Case No. 1043**. Thus, **he was only able to transmit to his offspring, Chinese citizenship**.

Respondent Jocelyn Sy-Limkaichong being the **daughter** of Julio Ong Sy, and having been **born on November 9, 1959**, under the 1935 Philippine Constitution, is a **Chinese national**, and is **disqualified** to run as First District Representative of Negros Oriental.

CIVIL SERVICE COMMISSION, *Petitioner,* -versus – MARICELLE M. CORTES, *Respondent.*
G.R. No. 200103, THIRD DIVISION, April 23, 2014, ABAD, J.:

Nepotism is defined as an appointment issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (1) appointing authority; (2) recommending authority; (3) chief of the bureau or office; and (4) person exercising immediate supervision over the appointee.

The purpose of Section 59 on the rule against nepotism is to take out the discretion of the appointing and recommending authority on the matter of appointing or recommending for appointment a relative. The rule insures the objectivity of the appointing or recommending official by preventing that objectivity from being in fact tested. Clearly, the prohibition against nepotism is intended to apply to natural persons. It is one pernicious evil impeding the civil service and the efficiency of its personnel.

*In the present case, Cortes' appointment as IO V in the CHR by the Commission En Banc, where **his father is a member**, is covered by the prohibition. Commissioner Mallari's abstention from voting did not cure the nepotistic character of the appointment because the evil sought to be avoided by the prohibition still exists. His mere presence during the deliberation for the appointment of IO V created an impression of influence and cast doubt on the impartiality and neutrality of the Commission En Banc.*

FACTS:
The Commission *En Banc* of the Commission on Human Rights (CHR) issued a resolution approving the appointment to the position of Information Officer V (IO V) of Maricelle M. Cortes. Commissioner Eligio P. Mallari, father of Maricelle Cortes, abstained from voting.

However, the Civil Service Commission (CSC) denied the appointment of Maricelle Cortes because it is covered by the rule on nepotism under Section 9 of the Revised Omnibus Rules on Appointments and Other Personnel Actions. According to the CSC, Commissioner Mallari is considered an appointing authority with respect to Cortes despite being a mere member of the Commission En Banc.

Hence, Cortes filed a petition for review to the Court of Appeals. The CA granted the petition.

ISSUE:
Whether the appointment of Cortes as IO V in the CHR is covered by the prohibition against nepotism. (YES)

RULING:

Nepotism is defined as an appointment issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (1) appointing authority; (2) recommending authority; (3) chief of the bureau or office; and (4) person exercising immediate supervision over the appointee.

Here, it is undisputed that Cortes is a relative of Commissioner Mallari in the first degree of consanguinity, as in fact Cortes is the daughter of Commissioner Mallari.
In her defense, Cortes merely raises the argument that the appointing authority referred to in Section 59 of the Administrative Code is the Commission En Banc and not the individual Commissioners who compose it.

The purpose of Section 59 on the rule against nepotism is to take out the discretion of the appointing and recommending authority on the matter of appointing or recommending for appointment a relative. The rule insures the objectivity of the appointing or recommending official by preventing that objectivity from being in fact tested. Clearly, the prohibition against nepotism is intended to apply to natural persons. It is one pernicious evil impeding the civil service and the efficiency of its personnel.

In the present case, Cortes' appointment as IO V in the CHR by the Commission En Banc, where his father is a member, is covered by the prohibition. Commissioner Mallari's abstention from voting did not cure the nepotistic character of the appointment because the evil sought to be avoided by the prohibition still exists. His mere presence during the deliberation for the appointment of IO V created an impression of influence and cast doubt on the impartiality and neutrality of the Commission *En Banc.*

B. LIABILITIES OF PUBLIC OFFICERS

LIWAYWAY VINZONS-CHATO, *Petitioner,* vs. FORTUNE TOBACCO CORPORATION, *Respondent.*
G.R. No. 141309, EN BANC, December 23, 2008, NACHURA, J.

*When what is involved is a "**duty owing to the public in general**", **an individual cannot have a cause of action for damages against the public officer**, even though he may have been injured by the action or inaction of the officer. **The remedy in this case is not judicial but political**. The **exception** to this rule occurs when the complaining **individual suffers a particular or special injury on account of the public officer's improper performance or non-performance of his public duty**.*

*Juxtaposed with Article 32 of the Civil Code, the principle may now translate into the rule that **an individual can hold a public officer personally liable for damages on account of an act or omission that violates a constitutional right only if it results in a particular wrong or injury to the former**.*

FACTS:
On June 10, 1993, the legislature enacted RA 7654, which took effect on July 3, 1993. Prior to its effectivity, cigarette brands'Champion," "Hope," and "More" were considered local brands subjected to an advalorem tax at the rate of 20-45%.

However, on July 1, 1993, or two days before RA 7654 took effect, petitioner issued RMC 37-93 reclassifying "Champion,""Hope," and "More" as locally manufactured cigarettes bearing a foreign brandsubject to the 55% ad valorem tax. RMC 37-93 in effect subjected "Hope," "More,"and

"Champion" cigarettes to the provisions of RA 7654, specifically, to Sec. 142,(c)(1) on locally manufactured cigarettes which are currently classified and taxed at55%, and which imposes an ad valorem tax of "55% provided that the minimum taxshall not be less than P5.00 per pack."

On July 2, 1993, at about 5:50 p.m., BIR Deputy Commissioner Victor A. Deoferio, Jr. sent via telefax a copy of RMC 37-93 to Fortune Tobacco but itwas addressed to no one in particular. On July 15, 1993, Fortune Tobacco received,by ordinary mail, a certified xerox copy of RMC 37-93. On July 20, 1993, respondent filed a motion for reconsideration requesting the recall of RMC 37-93, but was denied in a letter dated July 30, 1993.

The same letter assessed respondent for ad valorem tax deficiency amounting to P9,598,334.00 (computed on the basis of RMC 37-93) and demanded payment within 10 days from receipt thereof. On August 3, 1993, respondent filed a petition for review with the Court of Tax Appeals (CTA), which on September 30, 1993, issued an injunction enjoining the implementation of RMC 37-93. In itsdecision dated August 10, 1994, the CTA ruled that RMC 37-93 is defective, invalid, and unenforceable and further enjoined petitioner from collecting the deficiency tax assessment issued pursuant to RMC No. 37-93.

This ruling was affirmed by the Court of Appeals, and finally by this Court in Commissioner of Internal Revenue v. Court of Appeals. It was held, amongothers, that RMC 37-93, has fallen short of the requirements for a validadministrative issuance.

On April 10, 1997, respondent filed before the RTC a complaint for damages against petitioner in her private capacity. **Respondent contended that the lattershould be held liable for damages under Article 32 of the Civil Code considering that the issuance of RMC 37-93 violated its constitutional right against deprivation of property without due process of law and the right to equal protection of the laws.**

Petitioner filed a motion to dismiss. On September 29, 1997, the RTC denied petitioner's motion to dismiss; the case was subsequently elevated to the Court of Appeals via a petition for certiorari under Rule 65. However, same was dismissed on the ground that under Article 32 of the Civil Code, liability may arise even if the defendant did not act with malice or bad faith.

In a decision dated June 19, 2007, SC affirmed the decision of the CA. MR denied, petitioner filed, on April 29, 2008 her Motion to Refer [the case] to theHonorable Court En Banc. She contends that the petition raises a legal question that is novel and is of paramount importance.

ISSUE:
Whether or not a public officer can be held liable for damages under Article 32 of the Civil Code for violating respondent's right. (NO)

RULING:
When what is involved is a "**duty owing to the public in general**", **an individual cannot have a cause of action for damages against the public officer**, even though he may have been injured by the action or inaction of the officer. **The remedy in this case is not judicial but political**. The **exception** to this rule occurs when the complaining **individual suffers a particular or special injury on account of the public officer's improper performance or non-performance of his public duty**.

There are two kinds of duties exercised by public officers: the "duty owing to the public collectively" (the body politic), and the "duty owing to particular individuals, thus:

> 1. Of Duties to the Public. – The first of these classes embraces those officers whose duty is owing primarily to the public collectively --- to the body politic --- and not to any particular individual; who act for the public at large, and who are ordinarily paid out of the public treasury. The officers whose duties fall wholly or partially within this class are numerous and the distinction will be readily recognized.
>
> 2. Of Duties to Individuals. - The second class above referred to includes those who, while they owe to the public the general duty of a proper administration of their respective offices, yet become, by reason of their employment by a particular individual to do some act for him in an official capacity, under a special and particular obligation to him as an individual. They serve individuals chiefly and usually receive their compensation from fees paid by each individual who employs them.

An individual can never be suffered to sue for an injury which, technically, is one to the public only; he must show a wrong which he specially suffers, and damage alone does not constitute a wrong. A contrary precept (that an individual, in the absence of a special and peculiar injury, can still institute an action against a public officer on account of an improper performance or nonperformance of a duty owing to the public generally) will lead to a deluge of suits, for if one man might have an action, all men might have the like-the complaining individual has no better right than anybody else. If such were the case, no one will serve a public office. Thus, the rule restated is that an individual cannot have a particular action against a public officer without a particular injury, or a particular right, which are the grounds upon which all actions are founded.

Juxtaposed with Article 32 of the Civil Code, the principle may now translate into the rule that **an individual can hold a public officer personally liable for damages on account of an act or omission that violates a constitutional right only if it results in a particular wrong or injury to the former**.

C. PERSONNEL MOVEMENTS AND DISCIPLINARY PROCEEDINGS

PROSPERO A. PICHAY, JR. vs. OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS-INVESTIGATIVE AND ADJUDICATORY DIVISION, et al.
G.R. No. 196425, EN BANC, July 24, 2012, PERLAS-BERNABE, J.

The President has Continuing Authority to Reorganize the Executive Department under E.O. 292*. In the case of Buklod ng Kawaning EIIB v. Zamora the Court affirmed that the President's authority to carry out a reorganization in any branch or agency of the executive department is an express grant by the legislature by virtue of Section 31, Book III, E.O. 292 (the Administrative Code of 1987),* ***"the President, subject to the policy of the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the President."***

Clearly, the abolition of the PAGC and the transfer of its functions to a division specially created within the ODESLA is properly within the prerogative of the President under his continuing "delegated legislative authority to reorganize" his own office pursuant to E.O. 292.

FACTS:
In 2010, Pres. Aquino III issued E.O. 13, **abolishing** Presidential Anti-Graft Commission (PAGC) and transferring its functions to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA), more particularly to its newly-established Investigative and Adjudicatory Division (IAD).

In 2011, respondent Finance Secretary Purisima filed before the IAD-ODESLA a complaint-affidavit for grave misconduct against petitioner Pichay, Chairman of the Board of Trustees of the Local Water Utilities Administration (LWUA), as well as incumbent members of the LWUA Board of Trustees, which arose from the purchase by LWUA of 445,377 shares of stock of Express Savings Bank, Inc.

Petitioner received an Order signed by Exec. Sec. Ochoa requiring him and his co-respondents to submit their respective written explanations under oath. In compliance therewith, petitioner filed a Motion to Dismiss Ex Abundante Ad Cautelam manifesting that a case involving the same transaction and charge of grave misconduct is already pending before the Office of the Ombudsman.

ISSUE:
Whether E.O. 13 is unconstitutional for abrogating unto an administrative office a quasi-judicial function through and E.O. and not through legislative enactment by Congress. (NO)

RULING:
The President has Continuing Authority to Reorganize the Executive Department under E.O. 292. In the case of Buklod ng Kawaning EIIB v. Zamora the Court affirmed that the President's authority to carry out a reorganization in any branch or agency of the executive department is an express grant by the legislature by virtue of Section 31, Book III, E.O. 292 (the Administrative Code of 1987), **"the President, subject to the policy of the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the President."**

Clearly, the abolition of the PAGC and the transfer of its functions to a division specially created within the ODESLA is properly within the prerogative of the President under his continuing "delegated legislative authority to reorganize" his own office pursuant to E.O. 292.

The President's power to reorganize the Office of the President under Section 31 (2) and (3) of EO 292 should be distinguished from his power to reorganize the Office of the President Proper. **Reorganization** takes place when there is an **alteration of the existing structure of government offices or units** therein, including the lines of control, authority and responsibility between them. It involves a reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions.

Under Section 31 (1) of EO 292, the President can reorganize the Office of the President Proper by abolishing, consolidating or merging units, or by transferring functions from one unit to another. In contrast, under Section 31 (2) and (3) of EO 292, the President's power to reorganize offices outside the Office of the President Proper but still within the Office of the President is limited to merely transferring functions or agencies from the Office of the President to Departments or agencies, and vice versa.

The IAD-ODESLA is a fact-finding and recommendatory body not vested with quasi-judicial powers. While the term "adjudicatory" appears part of its appellation, the IAD-ODESLA cannot try and resolve

cases, its authority being limited to the conduct of investigations, preparation of reports and submission of recommendations.

The IAD-ODESLA did not encroach upon the Ombudsman's primary jurisdiction when it took cognizance of the complaint affidavit filed against him notwithstanding the earlier filing of criminal and administrative cases involving the same charges and allegations before the Office of the Ombudsman. The primary jurisdiction of the Ombudsman to investigate and prosecute cases refers to criminal cases cognizable by the Sandiganbayan and not to administrative cases. It is only in the exercise of its primary jurisdiction that the Ombudsman may, at any time, take over the investigation being conducted by another investigatory agency.

While the Ombudsman's function goes into the determination of the existence of probable cause and the adjudication of the merits of a criminal accusation, the investigative authority of the IAD- ODESLA is limited to that of a fact-finding investigator whose determinations and recommendations remain so until acted upon by the President.

PRUDENCIO QUIMBO vs. ACTING OMBUDSMAN MARGARITO GERVACIO and DIRECTRESS MARY SUSAN S. GUILLERMO OF THE OMBUDSMAN OFFICE
G.R. No. 155620, THIRD DIVISION, August 9, 2005, CARPIO-MORALES, J.

Preventive suspension is merely a preventive measure*, a preliminary step in an administrative investigation. The purpose of the suspension order is to p****revent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him****. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his suspension or removal, then he is suspended, removed or dismissed. This is the penalty.*

That preventive suspension is not a penalty is in fact explicitly provided by Section 24 of Rule XIV of the Omnibus Rules Implementing Book V of E.O. No. 292 and other Pertinent Civil Service Laws*. Not being a penalty, the period within which one is under preventive suspension is not considered part of the actual penalty of suspension as provided under Section 25 of the same Rule XIV.*

FACTS:
Provincial Engineer Prudencio Quimbo was administratively charged for harassment and oppression by Elmo Padaon, a general foreman detailed to the Motor Pool Division, Provincial Engineering. During the pendency of the administrative case before the Ombudsman, Quimbo was placed under preventive suspension without pay to commence upon receipt of the order and until such time that it is lifted but in no case beyond 6 months.

The Ombudsman lifted the preventive suspension after Quimbo presented on direct examination his last two witnesses. Thereafter, the Ombudsman in its decision found Quimbo guilty of oppression; this decision was later on modified to simple misconduct only and he was suspended from office for a period of two months without pay.

Quimbo filed a Motion for Reconsideration, pointing out that he was **already preventively suspended and praying that the period be taken into consideration as part of the final penalty imposed**. The Ombudsman found this contention untenable and clarified that preventive suspension is not a penalty but a preliminary step in an investigation; [and that] [i]f after such investigation, the charge is established and the person investigated upon is found guilty warranting the imposition of

penalty, then he shall accordingly be penalized. Likewise, the CA dismissed the petition for certiorari filed by Quimbo.

ISSUE:
Whether or not the CA committed reversible error when it dismissed the petition. (NO)

RULING:
Jurisprudential law establishes a clear-cut distinction between suspension as preventive measure and suspension as penalty. The distinction, by considering the purpose aspect of the suspensions, is readily cognizable as they have different ends sought to be achieved.

Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to p**revent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him**. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his suspension or removal, then he is suspended, removed or dismissed. This is the penalty.

That preventive suspension is not a penalty is in fact explicitly provided by Section 24 of Rule XIV of the Omnibus Rules Implementing Book V of E.O. No. 292 and other Pertinent Civil Service Laws. Not being a penalty, the period within which one is under preventive suspension is not considered part of the actual penalty of suspension as provided under Section 25 of the same Rule XIV.

CARLOS SAUNAR vs. EXECUTIVE SECRETARY
G.R. No. 186502, THIRD DIVISION, December 13, 2017, MARTIRES, J.

In administrative cases, the lack of a formal hearing does not necessarily transgress the requirement of due process. This does not mean, however, that formal hearings should be regarded as mere superfluities. ***While a formal hearing is not obligatory as the due process requirement is satisfied if the parties are given the opportunity to be heard through pleadings, the idea that a formal hearing is not indispensable should not be hastily thrown around.***

In this case, ***petitioner was not treated fairly in the proceedings as he was deprived of the opportunity to appear in all clarificatory hearings and he was not notified of the clarificatory hearing where a witness was presented thereby denying him the chance to propound questions.***

FACTS:
Petitioner was a former Regional Director of the NBI. He was the one who conducted an investigation regarding the alleged corruption concerning tobacco excise taxes against Governor Singson, Senator Jinggoy Estrada, and President Estrada. He was required by the Sandiganbayan to testify in the plunder case against President Estrada and he dutifully appeared during the hearing dates.

Thereafter, the NBI Director Wycoco informed petitioner that he was relieved from his duties and was asked to report to the Deputy Director for Regional Operation Services for further instructions. He reported thereto and was informed that an investigation as being conducted over his testimony. He was not assigned any duty and was instead told to make himself available. Petitioner made himself accessible by staying near NBI and he also attended court hearings whenever required.

Petitioner thereafter received a letter from the Presidential Anti-Graft Commission requiring him to answer a charge from Wycoco recommending action against petitioner for failure to report to duty. A witness presented in one of the hearings in the charge against him. However, **he was absent in that hearing has he received no notice thereof**. He was subsequently reassigned as regional director of the Bicol Regional Office.
Petitioner then received a copy of the OP decision dismissing him from service. The OP held that petitioner failed to report for work for more than a year which he himself admitted when he explained that he did not do so because he had not been assigned any specific duty or responsibility. It further held that he should have reported to work even without any duty specifically assigned to him. The CA affirmed the OP.

ISSUE:
Whether or not petitioner was validly dismissed form service. (NO)

RULING:
The due process requirement before administrative bodies are not as strict compared to judicial tribunals in that it suffices that a party is given a reasonable opportunity to be heart. Such reasonable opportunity should not be confined to the mere submission of position papers and the parties must given the opportunity to examine the witnesses against them.

In administrative cases, the lack of a formal hearing does not necessarily transgress the requirement of due process. This does not mean, however, that formal hearings should be regarded as mere superfluities. **While a formal hearing is not obligatory as the due process requirement is satisfied if the parties are given the opportunity to be heard through pleadings, the idea that a formal hearing is not indispensable should not be hastily thrown around.**

In this case, **petitioner was not treated fairly in the proceedings as he was deprived of the opportunity to appear in all clarificatory hearings and he was not notified of the clarificatory hearing where a witness was presented thereby denying him the chance to propound questions.**

Gross neglect of duty, as an administrative offense, refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected.

In this case, petitioner remained compliant with the lawful orders given to him. He would attend court hearings pursuant to special orders and he also stayed near NBI establishments awaiting possible assignments. He also complied when he was reassigned to the Bicol Office. Petitioner's actions was not tantamount to inexcusable or gross negligence as there was no intention to abandon his duty as an NBI officer.

JULIUS B. CAMPOL, *Petitioner*, v. MAYOR RONALD S. BALAO-AS AND VICE-MAYOR DOMINADOR I. SIANEN, *Respondents*.
G.R. No. 197634, THIRD DIVISION, November 28, 2016, JARDELEZA, J.

*As to Campol's reinstatement: Campol should be reinstated to his position as SB Secretary. His **employment in other government agencies is no hindrance to his reinstatement**. Campol had the right to live during his appeal which necessarily means that he can accept any form of employment.*

In the event that another person has already been appointed to his post, our ruling in Tañala should apply. In the eyes of the law, ***the position never became vacant*** *since Campol was illegally dropped from the rolls. Hence, the incumbency of* ***the person who assumed the position is only temporary*** *and must give way to Campol whose right to the office has been recognized by the proper authorities.*

As to the Right Backwages: Campol is ***entitled to the payment of backwages from the time of his illegal dismissal until he is reinstated to his position.*** *The CA erred in ruling that the backwages should only cover the period of his illegal dismissal until his new employment with the PAO.*

An employee of the civil service who is ordered reinstated is also ***entitled to the full payment of his or her backwages during the entire period of time that he or she was wrongfully prevented from performing the duties of his or her position and from enjoying its benefits****. This is necessarily so because, in the eyes of the law,* ***the employee never truly left the office****.*

FACTS:
Campol served the Municipality of Boliney, Abra since 1999 as Secretary to the Sangguniang Bayan (SB). The SB passed a resolution terminating Campol as SB Secretary on the ground that he was absent without approved leave from August 1, 2004 to September 30, 2004. Sianen, the Municiopal Vice Mayor, issued a Memorandum, which dropped Campol from the rolls.

Campol challenged this memorandum before the CSC-CAR, which ruled in his favor.Sianen, in tum, elevated the matter before the CSC. The CSC granted his appeal and ruled that Campol was properly dropped from the rolls.

The CA reversed the CSC. The CA ruled that no ground exists to justify Campol's dismissal.However, while the CA ruled that Campol was illegally dropped from the rolls, it **refused to order his reinstatement**. The CA reasoned that since Campol was already gainfully employed with the Public Attorney's Office (PAO) since October 2005, reinstatement was no longer possible. It also held that Campol is **entitled to backwages only from the time of his dismissal until October 2005**, prior to his employment with another government agency.

ISSUE:
Whether Campol is entitled to reinstatement and to the payment of his backwages from the time of his dismissal until he is reinstated. (YES)

RULING:
As to Campol's reinstatement: Campol should be reinstated to his position as SB Secretary. His **employment in other government agencies is no hindrance to his reinstatement**. Campol had the right to live during his appeal which necessarily means that he can accept any form of employment.

In the event that another person has already been appointed to his post, our ruling in Tañala should apply. In the eyes of the law, **the position never became vacant** since Campol was illegally dropped from the rolls. Hence, the incumbency of **the person who assumed the position is only temporary** and must give way to Campol whose right to the office has been recognized by the proper authorities.

As to the Right Backwages: Campol is **entitled to the payment of backwages from the time of his illegal dismissal until he is reinstated to his position.** The CA erred in ruling that the backwages should only cover the period of his illegal dismissal until his new employment with the PAO.

An employee of the civil service who is ordered reinstated is also **entitled to the full payment of his or her backwages during the entire period of time that he or she was wrongfully prevented from performing the duties of his or her position and from enjoying its benefits**. This is necessarily so because, in the eyes of the law, **the employee never truly left the office**.

Fixing the backwages to five years or to the period of time until the employee found a new employment is not a full recompense for the damage done by the illegal dismissal of an employee. Worse, it effectively punishes an employee for being dismissed without his or her fault.

This entitlement to full backwages also means that there is no need to deduct Campol's earnings from his employment with PAO from the award. The right to receive full backwages means exactly this- that it corresponds to Campol's salary at the time of his dismissal until his reinstatement. Any income he may have obtained during the litigation of the case shall not be deducted from this amount.

At the same time, an employer who illegally dismisses an employee has the obligation to pay him or her what he or she should have received had the illegal act not be done. It is an employer's price or penalty for illegally dismissing an employee.

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE CIVIL SERVICE COMMISSION, *Petitioner*, VS. MINERVA M.P. PACHEO, *Respondent*.
G.R. No. 178021, EN BANC, January 25, 2012, MENDOZA, J.

While a temporary transfer or assignment of personnel is permissible even without the employee's prior consent, it cannot be done when the transfer is a preliminary step toward his removal, or a scheme to lure him away from his permanent position, or when it is designed to indirectly terminate his service, or force his resignation. *Such a transfer would in effect circumvent the provision which safeguards the tenure of office of those who are in the Civil Service.*

Significantly, Section 6, Rule III of CSC Memorandum Circular No. 40, series of 1998, defines ***constructive dismissal as a situation when an employee quits his work because of the agency head's unreasonable, humiliating, or demeaning actuations which render continued work impossible.Hence, the employee is deemed to have been illegally dismissed.*** *This may occur although there is no diminution or reduction of salary of the employee. It may be a transfer from one position of dignity to a more servile or menial job.*

In the case at bench, the lateral movement of Pacheo as Assistant Chief, Legal Division from Quezon City to San Fernando, Pampanga within the same agency is undeniably a reassignment. The OSG posits that she should have first reported to her new place of assignment and then subsequently question her reassignment.

It is clear, however, from E.O. 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (7) that ***there is no such duty to first report to the new place of assignment prior to questioning an alleged invalid reassignment imposed upon an employee.*** *Pacheo was well within her right not to report immediately to RR4, San Fernando, Pampanga, and to question her reassignment.*

FACTS:
Pacheo was a Revenue Attorney IV, Assistant Chief of the Legal Division of the Bureau of Internal Revenue in Revenue Region No. 7 (RR7), Quezon City. On May 7, 2002, the BIR issued Revenue Travel Assignment Order (RTAO) No. 25-2002, ordering the reassignment of Pacheo as Assistant Chief, Legal Division from RR7 in Quezon City to RR4 in San Fernando, Pampanga. The BIR cited exigencies of the revenue service as basis for the issuance of the said RTAO.

Pacheo questioned the reassignment through her Letter dated May 9, 2002 addressed to Rene G. Banez, then Commissioner of Internal Revenue. She complained that the transfer would mean economic dislocation since she would have to spend P200.00 on daily travel expenses or approximately P4,000.00 a month. It would also mean physical burden on her part as she would be compelled to wake up early in the morning for her daily travel from Quezon City to San Fernando, Pampanga, and to return home late at night from San Fernando, Pampanga to Quezon City. She was of the view that that her reassignment was merely intended to harass and force her out of the BIR in the guise of exigencies of the revenue service. In sum, **she considered her transfer from Quezon City to Pampanga as amounting to a constructive dismissal.**

Due to the then inaction of the BIR, Pacheo filed a complaint before the CSC- National Capital Region, praying for the nullification of RTAO No. 25-2002. The CSC-NCR treated Pacheo's Complaint as an appeal and dismissed the same, without prejudice, for failure to comply with Sections 73 and 74 of Rule V(b) of the Uniform Rules on Administrative Cases in the Civil Service.
The BIR, through its Deputy Commissioner for Legal and Inspection Group, Edmundo P. Guevara, denied Pacheo's protest for lack of merit. It contended that her reassignment could not be considered constructive dismissal as she maintained her position as Revenue Attorney IV and was designated as Assistant Chief of Legal Division. It emphasized that her appointment to the position of Revenue Attorney IV was without a specific station. Consequently, she could properly be reassigned from one organizational unit to another within the BIR. Lastly, she could not validly claim a vested right to any specific station, or a violation of her right to security of tenure.

Not in conformity with the ruling of the BIR, Pacheo appealed her case before the CSC. The CSC issued Resolution No. 051697 granting Pacheo's appeal. The CSC issued Resolution No. 060397 denying Pacheo's motion for reconsideration. Undaunted, Pacheo sought recourse before the CA via a petition for review. The CA reversed the CSC Resolution and ruled in favor of Pacheo.

ISSUES:
Whether or not the assailed decision is correct in declaring that respondent was constructively dismised and entitled to back wages, notwithstanding respondent's refusal to comply with BIR RTAO No. 25-2002 which is immediately executory pursuant to Section 24 (f) of P.D. 807. (YES)

RULING:
While a temporary transfer or assignment of personnel is permissible even without the employee's prior consent, it cannot be done when the transfer is a preliminary step toward his removal, or a scheme to lure him away from his permanent position, or when it is designed to indirectly terminate his service, or force his resignation. Such a transfer would in effect circumvent the provision which safeguards the tenure of office of those who are in the Civil Service.

Significantly, Section 6, Rule III of CSC Memorandum Circular No. 40, series of 1998, defines **constructive dismissal as a situation when an employee quits his work because of the agency head's unreasonable, humiliating, or demeaning actuations which render continued work**

impossible.Hence, the employee is deemed to have been illegally dismissed. This may occur although there is no diminution or reduction of salary of the employee. It may be a transfer from one position of dignity to a more servile or menial job.

The CSC, through the OSG, contends that the deliberate refusal of Pacheo to report for work either in her original station in Quezon City or her new place of assignment in San Fernando, Pampanga negates her claim of constructive dismissal in the present case being in violation of Section 24 (f) of P.D. 807 [now Executive Order (EO) 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (6)].[20] It further argues that the subject RTAO was immediately executory, unless otherwise ordered by the CSC. It was, therefore, incumbent on Pacheo to have reported to her new place of assignment and then appealed her case to the CSC if she indeed believed that there was no justification for her reassignment.

Anent the first argument of CSC, the Court cannot sustain the proposition. It was legally impossible for Pacheo to report to her original place of assignment in Quezon City considering that the subject RTAO No. 25-2002 also reassigned Amado Rey B. Pagarigan (Pagarigan) as Assistant Chief, Legal Division, from RR4, San Fernando, Pampanga to RR7, Quezon City, the very same position Pacheo formerly held. The reassignment of Pagarigan to the same position palpably created an impediment to Pacheo's return to her original station.

The Court finds Itself unable to agree to CSC's argument that the subject RTAO was immediately executory. The Court deems it necessary to distinguish between a detail and reassignment, as they are governed by different rules. A detail is defined and governed by Executive Order 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (6), thus:

> (6) Detail. A detail is the movement of an employee from one agency to another without the issuance of an appointment and shall be allowed, only for a limited period in the case of employees occupying professional, technical and scientific positions. If the employee believes that there is no justification for the detail, he may appeal his case to the Commission. Pending appeal, the decision to detail the employee shall be executory unless otherwise ordered by the Commission.

On the other hand, a reassignment is defined and governed by E.O. 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (7), thus:

> (7) Reassignment.--An employee may be reassigned from one organizational unit to another in the same agency; Provided, That such reassignment shall not involve a reduction in rank, status or salaries.

The principal distinctions between a detail and reassignment lie in the place where the employee is to be moved and in its effectivity pending appeal with the CSC. Based on the definition, a detail requires a movement from one agency to another while a reassignment requires a movement within the same agency. Moreover, pending appeal with the CSC, an order to detail is immediately executory, whereas a reassignment order does not become immediately effective.

In the case at bench, the lateral movement of Pacheo as Assistant Chief, Legal Division from Quezon City to San Fernando, Pampanga within the same agency is undeniably a reassignment. The OSG posits that she should have first reported to her new place of assignment and then subsequently question her reassignment.

It is clear, however, from E.O. 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (7) that **there is no such duty to first report to the new place of assignment prior to questioning an alleged invalid reassignment imposed upon an employee.** Pacheo was well within her right not to report immediately to RR4, San Fernando, Pampanga, and to question her reassignment.

Reassignments involving a reduction in rank, status or salary violate an employee's security of tenure, which is assured by the Constitution, the Administrative Code of 1987, and the Omnibus Civil Service Rules and Regulations. Security of tenure covers not only employees removed without cause, but also cases of unconsented transfers and reassignments, which are tantamount to illegal/constructive removal.

The Court is not unaware that the BIR is authorized to assign or reassign internal revenue officers and employees as the exigencies of service may require. This authority of the BIR, however, should be prudently exercised in accordance with existing civil service rules.

The Court agrees with the CA that she is entitled to reinstatement, but finds Itself unable to sustain the ruling that she is entitled to full back wages and benefits. It is a settled jurisprudence that an illegally dismissed civil service employee is entitled to back salaries but limited only to a maximum period of 5 years,and not full back salaries from his illegal dismissal up to his reinstatement.

THE CIVIL SERVICE COMMISSION, *Petitioner*, vs. HENRY A. SOJOR, *Respondent*.
G.R. No. 168766, EN BANC, May 22, 2008, REYES, R.T., J.

The doctrine this Court laid down in Salalima v. Guingona, Jr. and Aguinaldo v. Santos are inapplicable to the present circumstances. Respondents in the mentioned cases are elective officials, unlike respondent here who is an appointed official.

Indeed, election expresses the sovereign will of the people. Under the principle of vox populi est suprema lex, the re-election of a public official may, indeed, supersede a pending administrative case. The same cannot be said of a re-appointment to a non-career position. There is no sovereign will of the people to speak of when the BOR re-appointed respondent Sojor to the post of university president.

FACTS:
Respondent Sojor was appointed by then President Corazon Aquino as president of the Central Visayas Polytechnic College (CVPC). In 1997, R.A. No. 8292, or the "Higher Education Modernization Act of 1997" was enacted which mandates that a Board of Trustees (BOT) be formed to act as the governing body in state colleges. The BOT of CVPC appointed Sojor as president, with a four-year term until September 2002. He was appointed president of the institution for a second term, expiring on September 24, 2006.

On June 25, 2004, CVPC was converted into the Negros Oriental State University (NORSU). A Board of Regents (BOR) succeeded the BOT as its governing body. Meanwhile, three separate administrative cases against respondent were filed by CVPC faculty members before the Civil Service Commission regional office. Sojorwas charged of nepotism, dishonesty, falsification of official documents, grave misconduct and conduct prejudicial to the best interest of the service before the CSC.

Respondent moved to dismiss the first two complaints on grounds of lack of jurisdiction. The CSC denied his motion to dismiss. Thus, respondent was formally charged with three administrative cases.

He appealed to CSC proper, arguing that since the BOT is headed by the Committee on Higher Education Chairperson who was under the Office of the President , the BOT was also under the OP. Since the president of CVPC was appointed by the BOT, then he was a presidential appointee. On the matter of the jurisdiction granted to CSC by virtue of P.D. No. 80714 enacted in October 1975, respondent contended that this was superseded by the provisions of R.A. No. 8292, a later law which granted to the BOT the power to remove university officials.

ISSUES:
I. Whether or not the power to remove faculty members, employees, and officials of a state university exclusive to the Board of Regents?

II. Whether or not respondent's appointment to the position of president of NORSU, despite the pending administrative cases against him, served as a condonation by the BOR of the alleged acts imputed to him?

RULING:
I.Section 7 of R.A. No. 9299 states that the power to remove faculty members, employees, and officials of the university is granted to the BOR "in addition to its general powers of administration." Although the BOR of NORSU is given the specific power under R.A. No. 9299 to discipline its employees and officials, there is no showing that such power is exclusive.

When the law bestows upon a government body the jurisdiction to hear and decide cases involving specific matters, it is to be presumed that such jurisdiction is exclusive unless it be proved that another body is likewise vested with the same jurisdiction, in which case, both bodies have concurrent jurisdiction over the matter.

In this case, the CSC also has jurisdiction to discipline all members of the civil service, career or non-career. Hence the CSC has concurrent jurisdiction with the BOR of the university in the discipline and removal of its officials.

II. The doctrine this Court laid down in Salalima v. Guingona, Jr. and Aguinaldo v. Santos are inapplicable to the present circumstances. Respondents in the mentioned cases are elective officials, unlike respondent here who is an appointed official.

Indeed, election expresses the sovereign will of the people. Under the principle of vox populi est suprema lex, the re-election of a public official may, indeed, supersede a pending administrative case. The same cannot be said of a re-appointment to a non-career position. There is no sovereign will of the people to speak of when the BOR re-appointed respondent Sojor to the post of university president.

OFFICE OF THE OMBUDSMAN, *Petitioner*, vs. MARIAN D. TORRES and MARICAR D. TORRES, *Respondents*.
G.R. No. 168309, THIRD DIVISION, September 25, 2008, NACHURA, J.

Our ruling in Aguinaldo also cannot benefit Maricar because ***she was not a re-elected public official*** *when she won as Councilor of Malabon City. Prior to her election, she held an appointive position – Legislative Staff Assistant – having been appointed thereto by her own father, former Councilor Edilberto Torres.* ***It is very clear that in Aguinaldo, condonation of an administrative offense***

applied only to an elective public official who was re-elected during the pendency of an administrative case against him.

FACTS:
For resolution is the Motion for Reconsideration of private respondents Marian and Maricar Torres of our Decision dated January 29, 2008 reversing and setting aside the Decision dated January 6, 2004 and the Resolution dated May 27, 2005 of the CA and reinstating the Decision dated November 9, 2001 of the Office of the Ombudsman. The Decision of the Office of the Ombudsman found private respondents administratively guilty of dishonesty, grave misconduct and falsification of official documents.

Private respondents raise the following grounds –

> IV. With all due respect, the Honorable Court erred in ruling that the doctrine laid down in Aguinaldo vs. Santos is not applicable to respondent Maricar.

ISSUE:
Whether or not condonation applies to an appointive position. (NO)

RULING:
Likewise, it is a well-entrenched jurisprudential principle that the dismissal of the criminal case involving the same set of facts does not automatically result in the dismissal of the administrative charges against private respondents.

Our ruling in Aguinaldo also cannot benefit Maricar because **she was not a re-elected public official** when she won as Councilor of Malabon City. Prior to her election, she held an appointive position – Legislative Staff Assistant – having been appointed thereto by her own father, former Councilor Edilberto Torres. **It is very clear that in Aguinaldo, condonation of an administrative offense applied only to an elective public official who was re-elected during the pendency of an administrative case against him.**

D. IMPEACHMENT

OFFICE OF THE OMBUDSMAN vs. HONORABLE COURT OF APPEALS AND FORMER DEPUTY OMBUDSMAN FOR THE VISAYAS ARTURO C. MOJICA
G.R. No. 146486, SECOND DIVISION, March 4, 2005, CHICO-NAZARIO, J.

As enumerated in Sec. 2 of Article XI of the 1987 Constitution, only the following are impeachable officers: the President, the Vice President, the members of the Supreme Court, the members of the Constitutional Commissions, and the Ombudsman. ***When it includes Ombudsman as one of the impeachable officers, it refers to the rank or title and not the office. Therefore, only the Ombudsman, not his deputies, is impeachable.***

FACTS:
A complaint was filed before the Office of the Ombudsman requesting an investigation for allegations of extortion, sexual harassment and oppression against Deputy Ombudsman Arturo Mojica. Consequently, the Office of Ombudsman ordered that a separate criminal and administrative case be filed against Mojica. Aggrieved, Mojica filed a petition before the CA.

The CA dismissed the complaints against Mojica, holding that Deputy Ombudsman is a public officer whose membership in the Philippine Bar is a qualification for the office held by him and removable only by impeachment, therefore he cannot be charged with disbarment during his incumbency. Instead, he should be impeached first before he may be held answerable to disbarment proceedings.

ISSUE:
Whether or not a Deputy Ombudsman is an impeachable officer. (NO)

RULING:
As enumerated in Sec. 2 of Article XI of the 1987 Constitution, only the following are impeachable officers: the President, the Vice President, the members of the Supreme Court, the members of the Constitutional Commissions, and the Ombudsman. **When it includes Ombudsman as one of the impeachable officers, it refers to the rank or title and not the office. Therefore, only the Ombudsman, not his deputies, is impeachable.**

MA. MERCEDITAS N. GUTIERREZ vs. THE HOUSE OF REPRESENTATIVES COMMITTEE ON JUSTICE, et al.
G.R. No. 193459, EN BANC, February 15, 2011, CARPIO-MORALES, J.

It is within the discretion of Congress to determine on how to promulgate its Impeachment Rules, in much the same way that the Judiciary is permitted to determine that to promulgate a decision means to deliver the decision to the clerk of court for filing and publication. ***It is not for this Court to tell a co-equal branch of government how to promulgate when the Constitution itself has not prescribed a specific method of promulgation. The Court is in no position to dictate a mode of promulgation beyond the dictates of the Constitution.*** *Publication in the Official Gazette or a newspaper of general circulation is but one avenue for Congress to make known its rules. Had the Constitution intended to have the Impeachment Rules published, it could have stated so as categorically as it did in the case of the rules of procedure in legislative inquiries.*

FACTS:
The first impeachment complaint against Ma. Merceditas Gutierrez was filed by Risa Hontiveros-Baraquel, Danilo Lim, and spouses Felipe and Evelyn Pestao. On August 3, 2010, Renato Reyes, Jr., Mother Mary John Mananzan, Danilo Ramos, Edre Olalia, Ferdinand Gaite and James Terry Ridon filed another impeachment complaint.

On the same date, the House of Representatives provisionally adopted the Rules of Procedure in Impeachment Proceedings of the 14th Congress. After hearing, House of Representatives Committee on Justice, found the two complaints, which both allege culpable violation of the Constitution and betrayal of public trust, sufficient in substance.

The determination of the sufficiency of substance of the complaints by public respondent, which assumed hypothetically the truth of their allegations, hinged on the issue of whether valid judgment to impeach could be rendered thereon.

ISSUES:
I. Whether or not Gutierrez's participation in the determination of the form and substance of the complaints is indispensable. (NO)

II. Whether or not the court should look into the facts constitutive of the offenses vis-à-vis her submission disclaiming the allegations in the complaints, as prayed for by Gutierrez. (NO)

III. Whether or not the delay in the publication of the Impeachment Rules constitutes violation of Gutierrez' right to due process. (NO)

IV. Whether or not the One-year Bar Rule for initiating impeachment proceedings under Article XI, Section 3, paragraph (5) of the Constitution begins to run from the filing of the first impeachment complaint, as claimed by Gutierrez. (NO)

RULING:
I. The determination of sufficiency of form and substance of an impeachment complaint is an exponent of the express constitutional grant of rule-making powers of the House of Representatives which committed such determinative function to public respondent. In the discharge of that power and in the exercise of its discretion, the House has formulated determinable standards as to the form and substance of an impeachment complaint. Prudential considerations behoove the Court to respect the compliance by the House of its duty to effectively carry out the constitutional purpose, absent any contravention of the minimum constitutional guidelines.

Contrary to Gutierrez's position that the Impeachment Rules do not provide for comprehensible standards in determining the sufficiency of form and substance, **the Impeachment Rules are clear in echoing the constitutional requirements and providing that there must be a verified complaint or resolution, and that the substance requirement is met if there is a recital of facts constituting the offense charged and determinative of the jurisdiction of the committee.**

Notatu dignum is the fact that it is only in the Impeachment Rules where a determination of sufficiency of form and substance of an impeachment complaint is made necessary. This requirement is not explicitly found in the organic law, as Section 3(2), Article XI of the Constitution basically merely requires a hearing. **In the discharge of its constitutional duty, the House deemed that a finding of sufficiency of form and substance in an impeachment complaint is vital to effectively carry out the impeachment process, hence, such additional requirement in the Impeachment Rules.**

II. This issue would require the Court to make a determination of what constitutes an impeachable offense. Such a determination is a **purely political question** which the Constitution has **left to the sound discretion of the legislature**. Clearly, the issue calls upon this court to decide a non-justiciable political question which is beyond the scope of its judicial power.

III. Gutierrez contends that she was deprived of due process since the Impeachment Rules was published only on September 2, 2010 a day after public respondent ruled on the sufficiency of form of the complaints. She likewise tacks her contention on Section 3(8), Article XI of the Constitution which directs that Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

It is within the discretion of Congress to determine on how to promulgate its Impeachment Rules, in much the same way that the Judiciary is permitted to determine that to promulgate a decision means to deliver the decision to the clerk of court for filing and publication. **It is not for this Court to tell a co-equal branch of government how to promulgate when the Constitution itself has not prescribed a specific method of promulgation. The Court is in no position to dictate a mode of**

promulgation beyond the dictates of the Constitution. Publication in the Official Gazette or a newspaper of general circulation is but one avenue for Congress to make known its rules. Had the Constitution intended to have the Impeachment Rules published, it could have stated so as categorically as it did in the case of the rules of procedure in legislative inquiries.

IV. The term initiate means to file the complaint and take initial action on it. The initiation starts with the filing of the complaint which must be accompanied with an action to set the complaint moving. It refers to the filing of the impeachment complaint coupled with Congress taking initial action of said complaint. The initial action taken by the House on the complaint is the referral of the complaint to the Committee on Justice.

In the present case, Gutierrez failed to establish grave abuse of discretion on the allegedly belated referral of the first impeachment complaint filed by the Baraquel group. For while the said complaint was filed on July 22, 2010, there was yet then no session in Congress. It was only four days later or on July 26, 2010 that the 15th Congress opened from which date the 10-day session period started to run. When, by Memorandum of August 2, 2010, Speaker Belmonte directed the Committee on Rules to include the complaint in its Order of Business, it was well within the said 10-day session period.

There is no evident point in rushing at closing the door the moment an impeachment complaint is filed. Depriving the people (recall that impeachment is primarily for the protection of the people as a body politic) of reasonable access to the limited political vent simply prolongs the agony and frustrates the collective rage of an entire citizenry whose trust has been betrayed by an impeachable officer. It shortchanges the promise of reasonable opportunity to remove an impeachable officer through the mechanism enshrined in the Constitution.

But neither does the Court find merit in Baraquel, et al.'s alternative contention that the initiation of the impeachment proceedings, which sets into motion the one-year bar, should include or await, at the earliest, the Committee on Justice report. The proceeding is initiated or begins, when a verified complaint is filed and referred to the Committee on Justice for action. This is the initiating step which triggers the series of steps that follow.

CHIEF JUSTICE RENATO C. CORONA, *Petitioner*, vs. SENATE OF THE PHILIPPINES sitting as an IMPEACHMENT COURT, BANK OF THE PHILIPPINE ISLANDS, PHILIPPINE SAVINGS BANK, ARLENE "KAKA" BAG-AO, GIORGIDI AGGABAO, MARILYN PRIMICIAS-AGABAS, NIEL TUPAS, RODOLFO FARINAS, SHERWIN TUGNA, RAUL DAZA, ELPIDIO BARZAGA, REYNALDO UMALI, NERI COLMENARES, *Respondents*.
G.R. No. 200242, EN BANC, July 17, 2012, VILLARAMA, JR., J.

The impeachment trial had been concluded with the conviction of petitioner by more than the required majority vote of the Senator-Judges. ***Petitioner immediately accepted the verdict and without any protest vacated his office****. In fact, the Judicial and Bar Council is already in the process of screening applicants and nominees, and the President of the Philippines is expected to appoint a new Chief Justice within the prescribed 90-day period from among those candidates shortlisted by the JBC. Unarguably,* ***the constitutional issue raised by petitioner had been mooted by supervening events and his own acts.***

An issue or a case becomes moot and academic when it ***ceases to present a justiciable controversy so that a determination thereof would be without practical use and value****. In such cases, there is*

no actual substantial relief to which the petitioner would be entitled to and which would be negated by the dismissal of the petition.

FACTS:
Before this Court is a petition for certiorari and prohibition with prayer for immediate issuance of temporary restraining order and writ of preliminary injunction filed by the former Chief Justice of this Court, Renato C. Corona, assailing the impeachment case initiated by the respondent Members of the House of Representatives and trial being conducted by respondent Senate of the Philippines.

The present petition was filed arguing that the Impeachment Court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it: (1) proceeded to trial on the basis of the complaint filed by respondent Representatives which complaint is constitutionally infirm and defective for lack of probable cause; (2) did not strike out the charges discussed in Art. II of the complaint which, aside from being a ―hodge-podge‖ of multiple charges, do not constitute allegations in law, much less ultimate facts, being all premised on suspicion and/or hearsay; assuming arguendo that the retention of Par. 2.3 is correct, the ruling of the Impeachment Court to retain Par. 2.3 effectively allows the introduction of evidence under Par. 2.3, as vehicle to prove Par. 2.4 and therefore its earlier resolution was nothing more than a hollow relief, bringing no real protection to petitioner; (3) allowed the presentation of evidence on charges of alleged corruption and unexplained wealth which violates petitioner's right to due process because first, Art. II does not mention ―graft and corruption‖ or unlawfully acquired wealth as grounds for impeachment, and second, it is clear under Sec. 2, Art. XI of the Constitution that ―graft and corruption‖ is a separate and distinct ground from ―culpable violation of the Constitution‖ and ―betrayal of public trust‖; and (4) issued the subpoena for the production of petitioner's alleged bank accounts as requested by the prosecution despite the same being the result of an illegal act (―fruit of the poisonous tree‖) considering that those documents submitted by the prosecution violates the absolute confidentiality of such accounts under Sec. 8 of R.A. No. 6426 (Foreign Currency Deposits Act) which is also penalized under Sec. 10 thereof.

ISSUE:
Whether or not the constitutional issues raised in this case been mooted out. (YES)

RULING:
Impeachment, described as "the most formidable weapon in the arsenal of democracy," was foreseen as creating divisions, partialities and enmities, or highlighting pre-existing factions with the greatest danger that "the decision will be regulated more... by the comparative strength of parties, than by the real demonstrations of innocence or guilt."

Given their concededly political character, the precise role of the judiciary in impeachment cases is a matter of utmost importance to ensure the effective functioning of the separate branches while preserving the structure of checks and balance in our government. Moreover, in this jurisdiction, the acts of any branch or instrumentality of the government, including those traditionally entrusted to the political departments, are proper subjects of judicial review if tainted with grave abuse or arbitrariness.

The impeachment trial had been concluded with the conviction of petitioner by more than the required majority vote of the Senator-Judges. **Petitioner immediately accepted the verdict and without any protest vacated his office**. In fact, the Judicial and Bar Council is already in the process of screening applicants and nominees, and the President of the Philippines is expected to appoint a

new Chief Justice within the prescribed 90-day period from among those candidates shortlisted by the JBC. Unarguably, **the constitutional issue raised by petitioner had been mooted by supervening events and his own acts.**

An issue or a case becomes moot and academic when it **ceases to present a justiciable controversy so that a determination thereof would be without practical use and value**. In such cases, there is no actual substantial relief to which the petitioner would be entitled to and which would be negated by the dismissal of the petition.

REPUBLIC of the PHILIPPINES, represented by SOLICITOR GENERAL JOSE C. CALIDA vs. MARIA LOURDES P.A. SERENO,
G.R. No. 237428, EN BANC, May 11, 2018, TIJAM J.

Quo warrantoas a remedy to oust an ineligible public official may be availed of when the subject act or omission was committed prior to or at the time of appointment or election relating to an official's qualifications to hold office as to render such appointment or election invalid.

Acts or omissions, even if it relates to the qualification of integrity being a continuing requirement but nonetheless committed during the incumbency of a validly appointed and/or validly elected official cannot be the subject of a quo warranto proceeding, but of impeachment if the public official concerned is impeachable and the act or omission constitutes an impeachable offense, or to disciplinary, administrative or criminal action, if otherwise.

FACTS:
Maria Lourdes Sereno served as a member of the faculty of the UP college of Law (UP) from 1986 to 2006. From 2003 to 2006, she was also employed as legal counsel for the Republic of the Philippines in two international arbitrations known as the PIATCO cases, and a Deputy Commissioner of the Commission on Human Rights.

The U.P. Human Resources Development Office (UP HRDO) certified that there was no record on respondent's file of any permission to engage in limited practice of profession. Its records also show that the Statement of Assets, Liabilities and Net Worth (SALN) available were those for 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 (9 SALN). In a manifestation, she attached her 1989 SALN which she supposedly sourced from "filing cabinets" or "drawers of UP". Her 2009 SALN was unsubscribed and was filed before the Office of the Clerk of Court only on 2012. In sum, only 11 out of 25 SALNs that ought to have been filed are available on record.

On August 2010, President Benigno Aquino III appointed the respondent as an Associate Justice. In 2012, the position of Chief Justice was declared vacant. The JBC announced the opening for applications and nominations, and required the applicants to submit all their previous SALNs up to 31 December 2011 for those in public service (instead of the usual last two years of public service). It was further provided that, "applicants with incomplete or out-of-date documentary requirements will not be interviewed or considered for nomination." The respondent, in a letter to the JBC, expressed that since she resigned from UP Law on 2006 and became a private practitioner, her nomination was considered as that coming from the private sector; thus, she is only required to comply with the requirements imposed on nominees from the private sector. The respondent likewise added that it is reasonable to consider it infeasible to retrieve her 15-year old government records and that the clearance issued by UP HRDO and CSC should be taken in her favor.

Despite the submission of only 3 SALNs, respondent was listed as applicant no. 14 with an annotation that she had complete requirements and a note stating that it is reasonable to consider it infeasible to retrieve all her government records. Thereafter, on August 2012, the respondent was appointed as the Chief Justice of the Supreme Court.

On August 2017, or 5 years after her appointment, Atty. Larry Gadon filed an impeachment complaint against respondent with the House Committee on Justice, alleging that the respondent failed to make truthful declarations in her SALNs. After the respondent has filed her reply, the House Committee on Justice conducted several hearings on the determination of probable cause, the last of which was held on February 27, 2018.

During the hearings, it was revealed that respondent purportedly failed to file her SALNs while she was a member of the faculty of the UP Law and that she filed her SALN only for the years 1998, 2002 and 2006. During the hearing on February 7, 2018, the House Committee on Justice, Justice Peralta, as a resource person being then acting ex-officio chairman of the JBC, was not made aware of the incomplete SALNs of Sereno.

Such complaint filed in the House spawned to 2 relevant incidents. One of which was the letter dated 21 February 2018 of Atty. Eligio Mallari to the OSG requesting the latter to initiate a quo warranto proceeding against Respondent. Invoking the Court's original jurisdiction, under Section 5(1), Article VIII of the Constitution in relation to the special civil action under Rule 66 of the Rules of Court, the OSG filed the petition for the issuance of the extraordinary writ of quo warranto to declare as void the appointment of the respondent as the Chief Justice and to oust and altogether exclude the respondent therefrom.

Through a Joint Motion for Leave to Intervene and Admit Attached Comment-In-Intervention, movant intervenors composed of Capistrano, et al., Zarate et al., the IBP, Senators Leila M. De Lima and Antonio Trillanes IV seek to intervene in the present petition as citizens and taxpayers and senators of the Republic.

The respondent then filed a Motion for Inhibition against Associate Justices Bersamin, Peralta, Jardeleza, Tijam, and Leonardo-De Castro, imputing actual bias for having testified against her on the impeachment hearing before the House of Representatives.

ISSUES:

I.Whether the Court can assume jurisdiction over the instant petition for *quo warranto.* (YES)

II. Whether the petition is dismissible outright on the ground of prescription. (NO)

III. Whether the respondent is eligible for the position of Chief Justice. (NO)

1. Whether the determination of a candidate's eligibility for nomination is the sole and exclusive function of the JBC, and whether such determination partakes of the character of a political question outside the Court's supervisory and review powers;

2. Whether Respondent failed to file her SALNs as mandated by the Constitution and required by the law and its implementing rules and regulations; and if so, whether the failure to file SALNs voids the nomination and appointment of Respondent as Chief Justice;

3. Whether Respondent failed to comply with the submission of SALNs as required by the JBC; and if so, whether the failure to submit SALNs to the JBC voids the nomination and appointment of Respondent as Chief Justice;

4. In case of a finding that Respondent is ineligible to hold the position of Chief Justice, whether the subsequent nomination by the JBC and the appointment by the President cured such ineligibility.

IV. Whether respondent is a de jure officer. (NO)

RULING:
I.*The Supreme Court has original jurisdiction over an action for quo warranto.* Section 5, Article VIII of the Constitution provides that the Supreme Court shall exercise original jurisdiction over petitions for *certiorari, prohibition, mandamuns, quo warranto,* and *habeas corpus.* Section 7, Rule 66 of Rules of Court also provides that the venue for an action for *quo warranto*is in the Regional Trial Court of Manila, Court of Appeals, or Supreme Court when commenced by the Solicitor General.

While the hierarchy of courts serves as a general determinant of the appropriate forum for petitions for the extraordinary writs, a direct invocation of the SC's original jurisdiction in this case is allowed when there are special and important reasons therefor. In this case, direct resort to the Court is justified considering that the action for *quo warranto*questions the qualification of no less than a Member of the Court. It is a matter of public concern over which the government takes special interest as it cannot allow an intruder or impostor to occupy a public position.

Granting that the petition is likewise of transcendental importance and has far-reaching implications, the Court is empowered to exercise its power of judicial review. To exercise restraint in reviewing an impeachable officer's appointment is a clear renunciation of a judicial duty. An outright dismissal of the petition based on speculation that respondent will eventually be tried on impeachment is a clear abdication of the Court's duty to settle actual controversy squarely presented before it. *Quo warranto* proceedings are essentially judicial in character – it calls for the exercise of the Supreme Court's constitutional duty and power to decide cases and settle actual controversies. This constitutional duty cannot be abdicated or transferred in favor of, or in deference to, any other branch of the government including the Congress, even as it acts as an impeachment court through the Senate.

To differentiate, impeachment is a proceeding exercised by the legislative, as representatives of the sovereign, to vindicate the breach of the trust reposed by the people in the hands of the public officer by determining the public officer's fitness to stay in the office. Meanwhile, an action for *quo warranto*, involves a judicial determination of the eligibility or validity of the election or appointment of a public official based on predetermined rules.
Despite the difference in their origin and nature, *quo warranto* and impeachment may proceed independently of each other as these remedies are distinct as to (1) jurisdiction; (2) grounds; (3) applicable rules pertaining to initiation, filing and dismissal; and (4) limitations.

II. Section 2, Rule 66 of the ROC makes it compulsory for the Solicitor General to commence a *quo warranto* action. The one-year limitation is not applicable when the Petitioner is not a mere private individual pursuing a private interest, but the government itself seeking relief for a public wrong and suing for public interest. Jurisprudence across the United States likewise richly reflect that when the Solicitor General files a *quo warranto* petition in behalf of the people and where the interests of the

public is involved, the lapse of time presents no effective bar as in the cases of *People v. Bailey, State ex rel Stovall v. Meneley, and State ex rel Anaya v. McBride.* Indeed, when the government is the real party in interest, and is proceeding mainly to assert its rights, there can be no defense on the ground of laches or prescription. Indubitably, the basic principle that "prescription does not lie against the State" which finds textual basis under Article 1108 (4) of the Civil Code, applies in this case.

The Republic cannot be faulted for questioning respondent's qualification for office only upon discovery of the cause of ouster. The respondent was never forthright as to whether or not she filed her SALNs covering the period of her employment in UP. Recall that in response to the JBC requiring her submission of previous SALNs, respondent never categorically said that she filed them. Instead, she cleverly hid the fact of non-filing by stating that she should not be required to submit the documents as she was considered to be coming from private practice and that it was not feasible to retrieve most of her records in the academe as they were more than 15 years old.

III.The Supreme Court's supervisory authority over the JBC consists of seeing to it that the JBC complies with its own rules.

Section 8(1), Article VIII of the Constitution provides that "A Judicial and Bar Council is herebycreated under the supervision of the Supreme Court." The power of supervision means "overseeing or the authority of an officer to see to it that the subordinate officers perform their duties." The JBC's duty to recommend or nominate, although calling for discretion, is neither absolute nor unlimited. Thus, the Supreme Court has authority, as an incident of its power of supervision over JBC, to insure that JBC faithfully executes its duties as the constitution requires of it. The Supreme Court has power to inquire into the process leading to the respondent's nomination for Chief Justice. Qualifications under the constitution cannot be waived or bargained away by JBC and one of which is that "a Member of the Judiciary must be a person of ***proven*** competence, ***integrity***, probity, and independence.

Respondent failed to file her SALNs as mandated by the Constitution and required by the law and its implementing rules and regulations, which voids her nomination and appointment as Chief Justice.

Section 17, Article XI of the Constitution states that "A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth." This has likewise been required by RA 3019 and RA 6713. The filing of SALN is so important for purposes of transparency and accountability that failure to comply with such requirement may result in not only dismissal from public service but also criminal liability such as imprisonment, fine and disqualification to hold public office. For these reasons, a public official who has failed to comply with the requirement of filing the SALN cannot be said to be of proven integrity and the Court may consider him/her disqualified from holding public office.

Respondent chronically failed to file her SALNs and thus violated the Constitution, the law and the Code of Judicial Conduct. A member of the Judiciary who commits such violations cannot be deemed to be a person of proven integrity. Respondent could have easily dispelled doubts as to the filing or non-filing of the unaccounted SALNs by presenting them before the Court. Yet, respondent opted to withhold such information or such evidence, if at all, for no clear reason. Her defenses do not lie: 1) The *Doblada doctrine* does not persuade because in that case, Doblada was able to present contrary proof that the missing SALNs were, in fact, transmitted to the OCA; 2) Being on leave from government service is not equivalent to separation from service; 3) While respondent is not required

by law to keep a record of her SALNs, logic dictates that she should have obtained a certification to attest to the fact of filing; 4) That UP HRDO never asked respondent to comply with the SALN laws holds no water as the duty to comply with such is incumbent with the respondent; 5) That respondent's compliance with the SALN requirement was reflected in the matrix of requirements and shortlist prepared by the JBC is dispelled by the fact that the appointment goes into her qualifications which were mistakenly believed to be present, and that she should have been disqualified at the outset.
In addition to that, the SALNs filed by respondent covering her years of government service in U.P. appear to have been executed and filed under suspicious circumstances; her SALNs filed with the UPHRDO were either belatedly filed or belatedly notarized, while SALNs filed as Chief Justice were also attended by irregularities.

Respondent failed to comply with the submission of SALNs as required by the JBC.

The JBC required the submission of at least ten SALNs from those applicants who are incumbent Associate Justices, absent which, the applicant ought not to have been interviewed, much less been considered for nomination. From the minutes of the meeting of the JBC, it appeared that the respondent was singled out from the rest of the applicants for having failed to submit a single piece of SALN for her years of service in UP Law. The established and undisputed fact is respondent failed to submit the required number of SALNs in violation of the rules set by the JBC itself during the process of nomination. There was no indication that the JBC deemed the three SALNs submitted by Respondent for her 20 years as a professor in UP Law and two years as Justice, as substantial compliance. Subsequently, it appeared that it was only Sereno who was not able to substantially comply with the SALN requirement, and instead of complying, Sereno wrote a letter containing justifications why she should no longer be required to file the SALNs: that she resigned from UP in 2006 and then resumed government service only in 2009, thus her government service is not continuous; that her government records are more than 15 years old and thus infeasible to retrieve; and that UP cleared her of all academic and administrative responsibilities and charges.

Contrary to her argument that the SALNs are old and are infeasible to retrieve, the Republic was able to retrieve some of the SALNs dating back to 1985. For these reasons, the JBC should no longer have considered Respondent for interview as it already required the submission of, at least, the SALNs corresponding to the immediately preceding 10 years up to December 31, 2011.

The requirement to submit the SALNs, along with the waiver of bank deposits, is not an empty requirement that may easily be dispensed with, but was placed by the JBC itself for a reason — in order to allow the JBC to carry on its mandate of recommending only applicants of high standards and who would be unsusceptible to impeachment attacks due to inaccuracies in SALNs. Respondent's failure to submit her SALNs to the JBC means that she was not able to prove her integrity at the time of her application as Chief Justice.

Subsequent nomination by the JBC and the appointment by the President did not cure the ineligibility.

The inclusion of the respondent's name in the matrix of candidates with complete requirements and in the shortlist nominated by the JBC does not ratify her compliance with the SALN requirement. The invalidity of the respondent's appointment springs from her lack of qualifications. Her inclusion in the shortlist does not negate nor supply her with the requisite proof of integrity. She should have been disqualified at the outset. Her letter of July 23, 2012 was not deliberated by JBC *en banc*. Thus,

JBC *en banc* cannot be deemed to have considered her eligible because the failure to submit her SALNs was not squarely addressed by the body. Her nomination in the shortlist and subsequent appointment do not estop the Republic or the SC from looking into her qualifications. It appears that her inclusion was made under the erroneous belief that she complied with all the legal requirements.

Neither will the President's act of appointment cause to qualify the respondent. Although the JBC is an office constitutionally created, the participation of the President in the selection and nomination process is evident from the composition of the JBC itself.

IV.A de facto judge is one who exercises the duties of a judicial office under color of an appointment or election thereto. He differs from a mere usurper who undertakes to act officially without any color of right and from a judge de jure who is in all respects legally appointed and qualified.

The effect of finding that a person appointed to an office is ineligible therefore is that his presumably valid appointment will give him color of title that confers on him the status of a de facto officer. For lack of a constitutional qualification, the respondent is ineligible to hold the position of a Chief Justice and is merely holding a colorable right or title thereto. Thus, she never attained the status of an impeachable official and her removal from the office, other than by impeachment is justified. The remedy, therefore, of *a* quo warranto at the instance of the State is proper to oust respondent from the appointive position of Chief Justice.

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY SOLICITOR GENERAL JOSE C. CALIDA, *Petitioner, -versus-*MARIA LOURDES P.A. SERENO, *Respondent.*
G.R. No. 237428, En Banc, June 19, 2018, Tijam, J.

Respondent's argument, however, dangerously disregards that the filing of SALN is not only a requirement under the law, but ***a positive duty required from every public officer or employee, first and foremost by the Constitution****. The SALN laws were passed in aid of the enforcement of the Constitutional duty to submit a declaration under oath of one's assets, liabilities, and net worth. This positive Constitutional duty of filing one's SALN is so sensitive and important that* ***it even shares the same category as the Constitutional duty imposed upon public officers and employees to owe allegiance to the State and the Constitution****. As such,* ***offenses against the SALN laws are not ordinary offenses but violations of a duty which every public officer and employee owes to the State and the Constitution****. In other words,* ***the violation of SALN laws, by itself, defeats any claim of integrity as it is inherently immoral to violate the will of the legislature and to violate the Constitution.***

Integrity, in relation to a judge's qualifications, should not be viewed separately from the institution he or she represents. ***Integrity contemplates both adherence to the highest moral standards and obedience to laws and legislations. Integrity,*** *at its minimum****, entails compliance with the law.***

FACTS:
This resolution treats of the following motions:

1. Maria Lourdes P. A. Sereno's (respondent) Ad Cautelam Motion for Reconsideration of this Court's Decision1 dated May 11, 2018, the dispositive portion of which states:

   > WHEREFORE, the Petition for Quo Warranto is GRANTED. Respondent Maria Lourdes P. A. Sereno is found DISQUALIFIED from and is hereby adjudged GUILTY of UNLAWFULLY

HOLDING and EXERCISING the OFFICE OF THE CHIEF JUSTICE. Accordingly, Respondent Maria Lourdes P. A. Sereno is OUSTED and EXCLUDED therefrom.The position of the Chief Justice of the Supreme Court is declared vacant and the Judicial and Bar Council is directed to commence the application and nomination process.This Decision is immediately executory without need of further action from the Court. Respondent Maria Lourdes P. A. Sereno is ordered to SHOW CAUSE within ten (10) days from receipt hereof why she should not be sanctioned for violating the Code of Professional Responsibility and the Code of Judicial Conduct for transgressing the sub judice rule and for casting aspersions and ill motives to the Members of the Supreme Court. SO ORDERED.

2. Respondent's Ad Cautelam Motion for Extension of Time to File Reply (to the Show Cause Order dated 11 May 2018).

Respondent argues that her alleged failure to file SALNs does not mean she has no integrity because the SALN laws are malum prohibitum and do not concern adherence to moral and ethical principles.

ISSUE:
Whether or not respondent's failure to file SALNs means she has no integrity. (YES)

RULING:
Respondent's argument, however, dangerously disregards that the filing of SALN is not only a requirement under the law, but **a positive duty required from every public officer or employee, first and foremost by the Constitution**. The SALN laws were passed in aid of the enforcement of the Constitutional duty to submit a declaration under oath of one's assets, liabilities, and net worth. This positive Constitutional duty of filing one's SALN is so sensitive and important that **it even shares the same category as the Constitutional duty imposed upon public officers and employees to owe allegiance to the State and the Constitution**. As such, **offenses against the SALN laws are not ordinary offenses but violations of a duty which every public officer and employee owes to the State and the Constitution**. In other words, **the violation of SALN laws, by itself, defeats any claim of integrity as it is inherently immoral to violate the will of the legislature and to violate the Constitution.**

Integrity, in relation to a judge's qualifications, should not be viewed separately from the institution he or she represents. **Integrity contemplates both adherence to the highest moral standards and obedience to laws and legislations. Integrity,** at its minimum**, entails compliance with the law.**

In sum, respondent has not presented any convincing ground that would merit a modification or reversal of Our May 11, 2018 Decision. Respondent, at the time of her application, lacked proven integrity on account of her failure to file a substantial number of SALNs and also, her failure to submit the required SALNs to the JBC during her application for the position..."

E. SANDIGANBAYAN AND OMBUDSMAN

EMILIO A. GONZALES III vs. OFFICE OF THE PRESIDENT OF THE PHILIPPINES, ACTING THROUGH AND REPRESENTED BY EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., et al./ WENDELL BARRERAS-SULIT vs. ATTY. PAQUITO N. OCHOA, JR., IN HIS CAPACITY AS EXECUTIVE SECRETARY, et al.
G.R. No. 196231/196232, EN BANC, September 4, 2012, PERLAS-BERNABE J.

The Ombudsman's administrative disciplinary power over a Deputy Ombudsman and Special Prosecutor is not exclusive*. For, while Section 21 of R.A. 6770 declares the Ombudsman's disciplinary authority over all government officials, Section 8(2), on the other hand, grants the President express power of removal over a Deputy Ombudsman and a Special Prosecutor.*

A harmonious construction of the two apparently conflicting provisions in R.A. No. 6770 leads to the inevitable conclusion that ***Congress had intended the Ombudsman and the President to exercise concurrent disciplinary jurisdiction over petitioners as Deputy Ombudsman and Special Prosecutor, respectively****.*

The manifest intent of Congress in enacting both provisions - Section 8(2) and Section 21 - in the same Organic Act was to provide for an external authority, through the person of the President, that would exercise the power of administrative discipline over the Deputy Ombudsman and Special Prosecutor without in the least diminishing the constitutional and plenary authority of the Ombudsman over all government officials and employees. Such legislative design is simply a measure of "check and balance" intended to address the lawmakers' real and valid concern that the Ombudsman and his Deputy may try to protect one another from administrative liabilities.

FACTS

G.R. No. 196231: In 2008, a formal charge for Grave Misconduct (robbery, grave threats, robbery extortion and physical injuries) was filed before PNP-NCR against Manila Police District Senior Inspector (P/S Insp.) Mendoza and four others. Private complainant filed a similar charge before the Office of the City Prosecutor.

While said cases were still pending, the Office of the Regional Director of the National Police Commission (NPC) turned over, upon the request of petitioner Gonzales III, all relevant documents and evidence in relation to said case to the Office of the Deputy Ombudsman for appropriate administrative adjudication. Subsequently a case for Grave Misconduct was lodged against P/S Insp. Mendoza and his fellow police officers in the Office of the Ombudsman.

Meanwhile, the case before the Office of the City Prosecutor was dismissed upon a finding that the material allegations made by the complainant had not been substantiated "by any evidence at all to warrant the indictment of respondents of the offenses charged." Similarly, the Internal Affairs Service of the PNP issued a Resolution recommending the dismissal without prejudice of the administrative case against the same police officers, for failure of the complainant to appear in three (3) consecutive hearings despite due notice.

However, upon the recommendation of petitioner Gonzales III, a Decision finding P/S Insp. Mendoza and his fellow police officers guilty of Grave Misconduct was approved by the Ombudsman. Mendoza and his colleagues filed an MR which was forwarded to Ombudsman Gutierrez for final approval, in whose office it remained pending for final review and action when P/S Insp. Mendoza hijacked a bus-load of foreign tourists on August 23, 2010 in a desperate attempt to have himself reinstated in the police service.

In the aftermath of the hostage-taking incident, which ended in the tragic murder of eight HongKong Chinese nationals, the injury of seven others and the death of P/S Insp. Mendoza, a public outcry against the blundering of government officials prompted the creation of the Incident Investigation

and Review Committee (IIRC). It was tasked to determine accountability for the incident through the conduct of public hearings and executive sessions.

The IIRC found that Deputy Ombudsman Gonzales committed serious and inexcusable negligence and gross violation of their own rules of procedure by allowing Mendoza's MR to languish for more than nine (9) months without any justification, in violation of the Ombudsman prescribed rules to resolve MRs in administrative disciplinary cases within five (5) days from submission. The inaction is gross, considering there is no opposition thereto. The prolonged inaction precipitated the desperate resort to hostage-taking.

The IIRC recommended that its findings with respect to petitioner Gonzales be referred to the Office of the President (OP) for further determination of possible administrative offenses and for the initiation of the proper administrative proceedings. In 2010, the OP instituted a Formal Charge against petitioner Gonzales for *Gross Neglect of Duty* and/or *Inefficiency in the Performance of Official Duty* under Rule XIV, Section 22 of the Omnibus Rules Implementing Book V of E.O. No. 292 and other pertinent Civil Service Laws, rules and regulations, and for *Misconduct in Office* under Section 3 of the Anti-Graft and Corrupt Practices Act. The OP rendered a decision dismissing Petitioner from service. Hence the petition.

G.R. No. 196232: In 2005, Acting Deputy Special Prosecutor of the Office of the Ombudsman charged Major General Garcia, et al. with Plunder and Money Laundering before the Sandiganbayan. The Sandiganbayan denied Major General Garcia's urgent petition for bail holding that strong prosecution evidence militated against the grant of bail. However, the government, represented by petitioner, Special Prosecutor Barreras-Sulit and her prosecutorial staff sought the Sandiganbayan's approval of a Plea Bargaining Agreement ("PLEBARA") entered into with the accused. The Sandiganbayan issued a Resolution finding the change of plea warranted and the PLEBARA compliant with jurisprudential guidelines.

Outraged by the backroom deal that could allow Major General Garcia to get off the hook with nothing but a slap on the hand notwithstanding the prosecution's apparently strong evidence of his culpability for serious public offenses, the House of Representatives' Committee on Justice conducted public hearings on the PLEBARA. At the conclusion of these public hearings, the Committee on Justice passed and adopted Committee Resolution No. 3, recommending to the President the dismissal of petitioner Barreras-Sulit from the service and the filing of appropriate charges against her Deputies and Assistants before the appropriate government office for having committed acts and/or omissions tantamount to *culpable violations of the Constitution and betrayal of public trust,* which are violations under the Anti-Graft and Corrupt Practices Act and grounds for removal from office under the Ombudsman Act. The OP proceeded with the case, setting it for preliminary investigation, despite petitioner's defenses of prematurity and the lack of jurisdiction of the OP with respect to the administrative disciplinary proceeding against her. Hence the petition.

ISSUE

Whether the Office of the President has jurisdiction to exercise administrative disciplinary power over a Deputy Ombudsman and a Special Prosecutor who belong to the constitutionally-created Office of the Ombudsman. (YES)

RULING

While the Ombudsman's authority to discipline administratively is extensive and covers all government officials, whether appointive or elective, with the exception only of those officials

removable by impeachment such authority is by no means exclusive. Petitioners cannot insist that they should be solely and directly subject to the disciplinary authority of the Ombudsman. *For, while Section 21 of R.A. 6770 declares the Ombudsman's disciplinary authority over all government officials, Section 8(2), on the other hand, grants the President express power of removal over a Deputy Ombudsman and a Special Prosecutor.*

A harmonious construction of the two apparently conflicting provisions in R.A. No. 6770 leads to the inevitable conclusion that **Congress had intended the Ombudsman and the President to exercise concurrent disciplinary jurisdiction over petitioners as Deputy Ombudsman and Special Prosecutor, respectively**.

The manifest intent of Congress in enacting both provisions - Section 8(2) and Section 21 - in the same Organic Act was to provide for an external authority, through the person of the President, that would exercise the power of administrative discipline over the Deputy Ombudsman and Special Prosecutor without in the least diminishing the constitutional and plenary authority of the Ombudsman over all government officials and employees. Such legislative design is simply a measure of "check and balance" intended to address the lawmakers' real and valid concern that the Ombudsman and his Deputy may try to protect one another from administrative liabilities.

By granting express statutory power to the President to remove a Deputy Ombudsman and a Special Prosecutor, Congress merely filled an obvious gap in the law. While the removal of the Ombudsman himself is also expressly provided for in the Constitution, which is by impeachment under Section 2 of the same Article, there is, however, no constitutional provision similarly dealing with the removal from office of a Deputy Ombudsman, or a Special Prosecutor, for that matter. By enacting Section 8(2) of R.A. 6770, Congress simply filled a gap in the law without running afoul of any provision in the Constitution or existing statutes. In fact, the Constitution itself, under Section 2, authorizes Congress to provide for the removal of all other public officers, including the Deputy Ombudsman and Special Prosecutor, who are not subject to impeachment.

The Power of the President to remove a Deputy Ombudsman and a Special Prosecutor is implied from his power to appoint. Under the doctrine of implication, the power to appoint carries with it the power to remove. The integrity and effectiveness of the Deputy Ombudsman for the Military and Other Law Enforcement Offices as a military watchdog looking into abuses and irregularities that affect the general morale and professionalism in the military is certainly of primordial importance in relation to the President's own role as Commander-in-Chief of the Armed Forces. It would not be incongruous for Congress, therefore, to grant the President concurrent disciplinary authority over the Deputy Ombudsman for the military and other law enforcement offices.

Granting the President the power to remove a Deputy Ombudsman does not diminish the independence of the Office of the Ombudsman. What the Constitution secures for the Office of the Ombudsman is, essentially, political independence. This means nothing more than that "the terms of office, the salary, the appointments and discipline of all persons under the office" are "reasonably insulated from the whims of politicians."

Petitioner Gonzales may not be removed from office where the questioned acts, falling short of constitutional standards, do not constitute betrayal of public trust.

The Constitutional Commission eventually found it reasonably acceptable for the phrase *betrayal of public trust* to refer to "[a]cts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers." In other words, acts that should constitute betrayal of public trust as to warrant removal from office may be less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment.

The OP's pronouncement of administrative accountability against petitioner and the imposition upon him of the corresponding penalty of dismissal must be reversed and set aside, as the findings of neglect of duty or misconduct in office do not amount to a *betrayal of public trust*. Hence, the President, while he may be vested with authority, cannot order the removal of petitioner as Deputy Ombudsman, there being no intentional wrongdoing of the grave and serious kind amounting to a *betrayal of public trust*.

This is not to say, however, that petitioner is relieved of all liability for his acts showing less than diligent performance of official duties. Although the administrative acts imputed to petitioner fall short of the constitutional standard of *betrayal of public trust*, considering the OP's factual findings of negligence and misconduct against petitioner, the Court deems it appropriate to refer the case to the Office of the Ombudsman for further investigation of the charges in the OP Case and the imposition of the corresponding administrative sanctions, if any.

On the other hand, **the Office of the President is vested with statutory authority to proceed administratively against petitioner Barreras-Sulit** to determine the existence of any of the grounds for her removal from office as provided for under the Constitution and the Ombudsman Act. Notwithstanding this earlier ruling by the Sandiganbayan, the OSP, unexplainably, chose to plea bargain with the accused Major General Garcia as if its evidence were suddenly insufficient to secure a conviction. At this juncture, it is not amiss to emphasize that the "standard of strong evidence of guilt which is sufficient to deny bail to an accused is markedly higher than the standard of judicial probable cause which is sufficient to initiate a criminal case." Hence, in light of the apparently strong case against accused Major General Garcia, the disciplining authority would be hard- pressed not to look into the whys and wherefores of the prosecution's turnabout in the case.

EMILIO A. GONZALES III v. OFFICE OF THE PRESIDENT, ET AL./ WENDELL BARERAS-SULIT v. ATTY. PAQUITO N. OCHOA, JR., ET AL.
G.R. No. 196231/196232, EN BANC, January 28, 2014, BRION J.

In G.R. No. 196231- The Office of the Ombudsman is envisioned to be the "protector of the people" against the inept, abusive, and corrupt in the Government, to function essentially as a complaints and action bureau. ***Its independence was expressly and constitutionally guaranteed. Section 8(2) of RA No. 6770 vesting disciplinary authority in the President over the Deputy Ombudsman violates the independence of the Office of the Ombudsman and is thus unconstitutional.***

While in G.R. No. 196232- Thus, by constitutional design, the Special Prosecutor is by no means an ordinary subordinate but one who effectively and directly aids the Ombudsman in the exercise of his/her duties, which include investigation and prosecution of officials in the Executive Department. ***What is true for the Ombudsman must be equally true, not only for her Deputies but, also for other lesser officials of that Office who act directly as agents of the Ombudsman herself in the performance of her duties.***

FACTS:
G.R. No. 196231

Christian Kalaw filed separate charges with the Philippine National Police Internal Affairs Service and with the Manila City Prosecutor's Office against Manila Police District Senior Inspector Rolando Mendoza for robbery, grave threat, robbery extortion and physical injury. On July 2, 2008, Emilio Gonzales (herein petitioner), Deputy Ombudsman for Military and Other Law Enforcement Officers (MOLEO),directed the NAPOLCOM to turn over the records of Mendoza's case to his office. On February 16, 2009,after preparing a draft decision on Mendoza's case, Gonzales forwarded the entire records to the Office of then Ombudsman Merceditas Gutierrez for her review. In his draft decision, Gonzales found Mendoza guilty of grave misconduct and imposed on them the penalty of dismissal from the service. On December 10, 2009, the MOLEO-Records Section forwarded Mendoza's case records to the Criminal Investigation, Prosecution and Administrative Bureau-MOLEO. On December 14, 2009, the case was assigned to Graft Investigation and Prosecution Officer (GIPO) Dennis Garcia for review and recommendation. GIPO Garcia released a draft order to his immediate superior, Director Eulogio S. Cecilio, for appropriate action. Dir. Cecilio signed and forwarded the draft order to Gonzales' office on April 27, 2010. Gonzales reviewed the draft and endorsed the order, together with the case records, on May 6, 2010 for the final approval by the Ombudsman. Meanwhile, on August 23, 2010, pending final action by the Ombudsman on Mendoza's case, Mendoza hijacked a tourist bus and held the 21 foreign tourists and the four Filipino tour assistant son board as hostages. While the government exerted earnest attempts to peacefully resolve the hostage-taking, it ended tragically, resulting in the deaths of Mendoza and several others.

In the aftermath, President Benigno C. Aquino III directed the Department of Justice and the Department of Interior and Local Government to conduct a joint thorough investigation. The Incident Investigation and Review Committee found the Ombudsman and Gonzales accountable for their gross negligence and grave misconduct in handling the case against Mendoza. Accordingly, Gonzales was formally charged before the Office of the President for Gross Neglect of Duty and/or Inefficiency in the Performance of Official Duty.

G.R. No. 196232

In April 2005, the Office of the Ombudsman charged Major General Carlos F. Garcia and several others, before the Sandiganbayan, with plunder and money laundering. The Office of the Ombudsman, through Sulit and her prosecutorial staff, entered into a plea bargaining agreement (Agreement) with Garcia. whereby Garcia agreed to enter a plea of guilty to the lesser offense of: indirect bribery and of facilitating money laundering n exchange of to the government his ownership over the real and personal properties enumerated in the Agreement. The Sandiganbayan approved the Agreement. The apparent one-sidedness of the Agreement drew public outrage and prompted the Committee on Justice of the House of Representatives to conduct an investigation. After public hearings, the Committee found that Sulit, her deputies and assistants committed culpable violations of the Constitution and betrayal of public trust –grounds for removal under Section 8(2) of RA No.6770. The Committee recommended to the President the dismissal from the service of Sulit and the filing of appropriate charges against her deputies and assistants before the appropriate government office Accordingly, the OP initiated an administrative disciplinary proceeding against Sulit.

ISSUE:

Whether or not Section 8 (2) of RA 6770 vesting disciplinary authority in the President over the Deputy Ombudsman and Special Prosecutor violates the independence of the Office of the Ombudsman and is therefore unconstitutional (YES)

RULING:
In more concrete terms, the Court ruled that subjecting the Deputy Ombudsman to discipline and removal by the President, whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority, cannot but seriously place at risk the independence of the Office of the Ombudsman itself. The Office of the Ombudsman, by express constitutional mandate, includes its key officials, all of them tasked to support the Ombudsman in carrying out her mandate. Unfortunately, intrusion upon the constitutionally-granted independence is what Section 8(2) of RA No. 6770 exactly did. By so doing, the law directly collided not only with the independence that the Constitution guarantees to the Office of the Ombudsman, but inevitably with the principle of checks and balances that the creation of an Ombudsman office seeks to revitalize.

What is true for the Ombudsman must be equally and necessarily true for her Deputies who act as agents of the Ombudsman in the performance of their duties. The Ombudsman can hardly be expected to place her complete trust in her subordinate officials who are not as independent as she is, if only because they are subject to pressures and controls external to her Office. This need for complete trust is true in an ideal setting and truer still in a young democracy like the Philippines where graft and corruption is still a major problem for the government. For these reasons, Section 8(2) of RA No. 6770 (providing that the President may remove a Deputy Ombudsman) should be declared void.

The Executive power to remove and discipline key officials of the Office of the Ombudsman, or to exercise any power over them, would result in an absurd situation wherein the Office of the Ombudsman is given the duty to adjudicate on the integrity and competence of the very persons who can remove or suspend its members. The mere filing of an administrative case against the Deputy Ombudsman and the Special Prosecutor before the OP can already result in their suspension and can interrupt the performance of their functions, in violation of Section 12, Article XI of the Constitution.
The Office of the President's finding of gross negligence has no legal and factual leg to stand on

A review of the case would indicate that on April 27, 2010, Dir. Cecilio signed and forwarded to Gonzales the draft order and on May 6, 2010 (or nine days after the records were forwarded to Gonzales) Gonzales endorsed the draft order for the final approval of the Ombudsman. Clearly, when Mendoza hijacked the tourist bus on August 23, 2010, the records of the case were already pending before Ombudsman Gutierrez. Hence, no gross negligence can be attributed to Gonzales.

However, by another vote of 8-7, the Court resolved to maintain the validity of Section 8(2) of RA No. 6770 insofar as Sulit is concerned. The Court did not consider the Office of the Special Prosecutor to be constitutionally within the Office of the Ombudsman and is, hence, not entitled to the independence the latter enjoys under the Constitution.

The Special Prosecutor is by no means an ordinary subordinate but one who effectively and directly aids the Ombudsman in the exercise of his/her duties, which include investigation and prosecution of officials in the Executive Department. Thus, even if the Office of the Special Prosecutor is not expressly made part of the composition of the Office of the Ombudsman, the role it performs as an organic component of that Office militates against a differential treatment between the Ombudsman's

Deputies, on one hand, and the Special Prosecutor himself, on the other. What is true for the Ombudsman must be equally true, not only for her Deputies but, also for other lesser officials of that Office who act directly as agents of the Ombudsman herself in the performance of her duties.

REY NATHANIEL C. IFURUNG, *Petitioner*, -*versus*- HON. CONCHITA C. CARPIO MORALES IN HER CAPACITY AS THE OMBUDSMAN, HON. MELCHOR ARTHUR H. CARANDANG, HON. GERARD ABETO MOSQUERA, HON. PAUL ELMER M. CLEMENTE, HON. RODOLFO M. ELMAN, HON. CYRIL ENGUERRA RAMOS IN THEIR CAPACITIES AS DEPUTIES OMBUDSMAN, AND THE OFFICE OF THE OMBUDSMAN, *Respondents*.
G.R. No. 232131, EN BANC, April 24, 2018, MARTIRES,*J.*

In our review of Sec. 8(3) of R.A. No. 6770, we note that in case of death, resignation, removal, or permanent disability of the Ombudsman, the new Ombudsman shall be appointed for a full term. ***Undoubtedly, Sec. 8(3), R.A. No. 6770 is consistent with Sec. 11, Art. XI of the 1987 Constitution in so far as it provides that the Ombudsman and the deputies shall serve for a term of seven years.*** *Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.*

Going back to our earlier pronouncement that the onerous task of rebutting the presumption weighs heavily on the party challenging the validity of the statute, the Court rules that the petitioner has miserably failed to prove that Sec. 8(3) of R.A. No. 6770 transgresses the provisions of the 1987 Constitution. As such, the Court has no option but to deny the petition.

FACTS:
Petitioner maintains that the constitutional issue raised in his petition is of transcendental importance since this Court's ruling will finally determine the correct term and tenure of the Ombudsman and his deputies and settle the matter as to the constitutionality of Sec. 8(3) of R.A. No. 6770. He alleges that Sec. 8(3), in relation to Sec. 7 of R.A. No. 6770, which provides that in case of a vacancy at the Office of the Ombudsman due to death, resignation, removal or permanent disability of the incumbent Ombudsman and his deputies, the newly appointed Ombudsman and his deputies shall be appointed to a full term of 7 years, is constitutionally infirm as it contravenes Sec. 11 in relation to Secs. 8 and 10 of Art. XI of the 1987 Constitution. He avers that like all constitutionally created positions, i.e., President, Vice-President, Senators, Members of the House of Representatives and Members of the Civil Service Commission, the Commission on Elections, and the Commission on Audit, the successor to the positions of the Ombudsman and deputies should serve only the unexpired term of the predecessor.

Hence, petitioner insists that the incumbent Ombudsman and deputies have been overstaying in their present positions for more than two years considering that their terms have expired on 1 February 2015. "To allow them to stay in the said positions one day longer constitutes a continuing affront to the 1987 Constitution, unduly clips presidential prerogatives, and deprives the nation of the services of legitimate Ombudsman and Deputies Ombudsman."

ISSUE:
Whether Section 8(3) of R.A. No. 6770 is unconstitutional for being violative of Section 11 in relation to Sections 8 and 10, Article XI of the 1987 Philippine constitution and applicable jurisprudence. (NO)

RULING:

Contrary to the position of the petitioner, Sec. 11, Art. XI by itself is clear and can stand on its own. Notably, the framers plainly provided for a seven-year term of the Ombudsman and the deputies. For sure, nowhere in the Constitution can it be gathered that the appointment to any vacancy for the position of Ombudsman and the deputies shall be only for the unexpired term of the predecessor.

This can only mean that it was the intent of the framers that the appointment to the positions of the Ombudsman and the deputies, whether it be for the expired or unexpired term of the predecessor, shall always be for a full term of seven years. *Ubilex non distinguitnecnosdistingueredebemus.* Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish. Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable purpose; neither may it engraft into the law qualifications not contemplated.

More importantly, it can be easily deduced from the decrees issued by President Marcos preceding the creation of the Office of the Ombudsman under the 1987 Constitution that the appointment of the Tanodbayan and the deputies shall be for a full term of seven years regardless of the reason for the vacancy in the position.

Jurisprudence teaches us that a statute should be construed in harmony with the constitution. In our review of Sec. 8(3) of R.A. No. 6770, we note that in case of death, resignation, removal, or permanent disability of the Ombudsman, the new Ombudsman shall be appointed for a full term. Undoubtedly, Sec. 8(3), R.A. No. 6770 is consistent with Sec. 11, Art. XI of the 1987 Constitution in so far as it provides that the Ombudsman and the deputies shall serve for a term of seven years. Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.

Petitioner failed to consider that there are other offices created under the 1987 Constitution where the successor is not limited to hold office for the unexpired term of the predecessor.

Going back to our earlier pronouncement that the onerous task of rebutting the presumption weighs heavily on the party challenging the validity of the statute, the Court rules that the petitioner has miserably failed to prove that Sec. 8(3) of R.A. No. 6770 transgresses the provisions of the 1987 Constitution. As such, the Court has no option but to deny the petition.

Pertinent to Sec. 10, Art. XI of the 1987 Constitution, it is only as to the **rank and salary** that the Ombudsman and the deputies shall be the same with the chairman and members, respectively, of the constitutional commissions.

Harmonizing Sec. 11, Art. XI of the 1987 Constitution with Sec. 8(3) of R.A. No. 6770, in any vacancy for the positions of Ombudsman and the deputies, whether as a result of the expiration of the term or death, resignation, removal, or permanent disability of the predecessor, the successor shall always be appointed for a full term of seven years.

Unlike the constitutional commissions in Art. IX of the 1987 Constitution, the seven-year term of office of the first appointees for Ombudsman and the deputies is not reckoned from 2 February 1987, but shall be reckoned from their date of appointment. Accordingly, the present Ombudsman and deputies shall serve a full term of seven years from their date of appointment unless their term is cut short by death, resignation, removal, or permanent disability.

SHARON CASTRO, *Petitioner*, vs. HON. MERLIN DELORIA, as Presiding Judge, Regional Trial Court, Branch 65, Guimaras; the COA-Region VI, represented by its Director; and HON. COURT OF APPEALS, *Respondents*.
G.R. No. 163586, THIRD DIVISION, January 27, 2009, AUSTRIA-MARTINEZ, J.

Time and time again, the Court has held that the Ombudsman has power to prosecute not only graft cases within the jurisdiction of the Sandiganbayan but also cases within the jurisdiction of the regional trial courts. ***The powers of the Ombudsman are plenary and unqualified****. The clause* ***"any illegal act or omission of any public official" is broad enough to embrace the any crime committed by a public officer or employee is within the Ombudsman's jurisdiction to prosecute.***

Section 15 of RA 6770 *gives the Ombudsman primary jurisdiction to* ***"take over, at any stage from any investigatory agency of the government, the investigation of such cases"*** *cognizable by the Sandiganbayan. Moreover, the jurisdiction of the Office of the Ombudsman should not be equated with the limited authority of the Special Prosecutor under Section 11 of RA 6770.* ***The Office of the Special Prosecutor is merely a component of the Office of the Ombudsman and may only act under the supervision and control and upon authority of the Ombudsman.***

FACTS:
Sharon Castro, a Revenue Officer of BIR Buenavista, Guimaras, was charged before the Ombudsman with Malversation of Public Funds. She was accused of misappropriating public funds worth P556,681.53 despite notice and demand upon her account for the funds.

Castro filed a Motion to Quash, stating that the Ombudsman lacked jurisdiction. She said that the Information failed to allege her salary grade—a material fact in the crime charged. Citing Uy vs. Sandiganbayan, since she had a salary grade of 27, her case should be within the jurisdiction of the RTC. She also added that the prosecutorial powers of the Ombudsman are limited to the cases cognizable by the Sandiganbayan.

RTC denied the Motion to Quash, recognizing the authority of the Ombudsman in the case. RTC cited the ***Resolution*** **of Uy vs. Sandiganbayan in 2001** which reversed the original decision in **Uy vs. Sanidganbayan 1999**, and expressly recognizing the prosecutorial and investigatory authority of the Ombudsman in cases cognizable by the RTC.

ISSUES:
I.Whether or not the Ombudsman had the authority to file a case against petitioner, as of May 31, 2001, in the light of the FIRST DECISION in the Uy vs. Sandiganbayan case (1999), which limited the powers of the Ombudsman. (YES)

II. Whether or not the Resolution of the Uy vs. Sandiganbayan case (2001) violates the constitutional provisions against ex-post facto laws and the denial of due process. (NO)

RULING:
I.Time and time again, the Court has held that the Ombudsman has power to prosecute not only graft cases within the jurisdiction of the Sandiganbayan but also cases within the jurisdiction of the regional trial courts. **The powers of the Ombudsman are plenary and unqualified**. The clause ***"any illegal act or omission of any public official"*** **is broad enough to embrace the any crime**

committed by a public officer or employee is within the Ombudsman's jurisdiction to prosecute.

Section 15 of RA 6770 gives the Ombudsman primary jurisdiction to ***"take over, at any stage from any investigatory agency of the government, the investigation of such cases"*** cognizable by the Sandiganbayan. Moreover, the jurisdiction of the Office of the Ombudsman should not be equated with the limited authority of the Special Prosecutor under Section 11 of RA 6770. **The Office of the Special Prosecutor is merely a component of the Office of the Ombudsman and may only act under the supervision and control and upon authority of the Ombudsman.**

II. The Resolution of Uy vs. Sandiganbayan in 2001 is NOT ex-post facto; it is meant to cure the defect in limiting the Ombudsman's powers.

Resolution 2001 is a judicial interpretation of the statute. As such, it constitutes part of the original law which is the **Ombudsman Act of 1989**. Such interpretation does not create new law, but rather construes it to reveal the true intent of the lawmakers. Therefore, the Resolution of the Court in *Uy* interpreting the Ombudsman Act is part of the law dated December 7, 1989. "Where no law is invalidated nor doctrine abandoned, a judicial interpretation of the law should be deemed incorporated at the moment of its legislation**". The Resolution in *Uy* set aside an erroneous pubescent interpretation of the Ombudsman Act manifested in Uy vs. Sandiganbayan (1999).**

LORNA A. MEDINA, *Petitioner*, vs. COMMISSION ON AUDIT (COA), represented by the Audit Team of EUFROCINIA MAWAK, SUSAN PALLERNA, and MA. DOLORES TEPORA, *Respondents*. G.R. No. 176478,EN BANC,February 4, 2008, TINGA, J.

Administrative Order No. 07, as amended by Administrative Order No. 17, particularly governs the procedure in administrative proceedings before the Office of the Ombudsman. Administrative Order No. 07, as amended by Administrative Order No. 17, Rule III, Section 5 specifically provides that ***the conduct of a formal investigation is discretionary upon the hearing officer****. It further provides that,* ***if the hearing officer sees no need to conduct a formal investigation, he may deem the case submitted for resolution on the basis of the position papers, affidavits, and other pleadings filed****. On the other hand, Sec. 48(2) and Sec. 48(3) of the Administrative Code cited by Medina in support of her theory that she is entitled to a formal investigation apply only to administrative cases filed before the Civil Service Commission.*

As this is an administrative complaint filed before the Office of the Ombudsman, ***it is the Rules of Procedure of the Office of the Ombudsman which shall govern****; thus, in ruling that the prerogative to elect a formal investigation pertains to the hearing officer and not to petitioner, Fernandez was only applying such procedure. The Court has ruled on the primacy of special laws and of their implementing regulations over the Administrative Code of 1987 in settling controversies specifically subject of these special laws.*

FACTS:
The Commission on Audit audited the cash and accounts handled by Lorna Medina (Medina) as Municipal Treasurer of General Mariano Alvarez, Cavite and the audit team, headed by Eufrocina

Mawak, discovered a total cash shortage of P4,080,631.36. Medina was ordered to restitute the shortage but she failed to comply. COA filed an administrative case with the Deputy Ombudsman charging Medina with grave misconduct and dishonesty.

Medina filed a Counter-Affidavit and Position Paper raising affirmative defenses. Deputy Ombudsman Victor C. Fernandez approved the recommendation of the Graft Investigation and Prosecution Officer to dismiss petitioner from service; the decision noted Medina's supposed failure to file a counter-affidavit and position paper despite due notice. Later, Medina filed an urgent motion stating that she complied with the directive to file a counter-affidavit and position paper and prayed that the decision be reversed based on her defenses.

Fernandez denied the motion; he acknowledged he made a mistake in saying that Medina failed to file a counteraffidavit and position paper but still affirmed the previous order because none of the defenses exculpate Medina from the cash shortages; furthermore, Medina's failure to produce the cash shortage created the presumption that she appropriated the funds for personal use. Medina sought reconsideration on the grounds of newly discovered evidence consisting of her petition for reconsideration of the audit report which petition was still pending with the audit team and letters to the provincial auditor of Cavite questioning the audit. Fernandez denied the motion for reconsideration because the request for re-audit is not newly discovered evidence and he denied the request for a formal investigation on the ground that petitioner was afforded due process when she filed her counter-affidavit and position paper. On appeal, the CA held that Medina was not entitled to a formal investigation and it affirmed the Fernandez's factual finding that she was guilty of grave misconduct and dishonesty.

ISSUES:
Whether or not Medina was deprived of her right to due process when her request for a formal investigation was denied. (NO)

RULING:
Administrative Order No. 07, as amended by Administrative Order No. 17, particularly governs the procedure in administrative proceedings before the Office of the Ombudsman. Administrative Order No. 07, as amended by Administrative Order No. 17, Rule III, Section 5 specifically provides that **the conduct of a formal investigation is discretionary upon the hearing officer**. It further provides that, **if the hearing officer sees no need to conduct a formal investigation**, **he may deem the case submitted for resolution on the basis of the position papers, affidavits, and other pleadings filed**. On the other hand, Sec. 48(2) and Sec. 48(3) of the Administrative Code cited by Medina in support of her theory that she is entitled to a formal investigation apply only to administrative cases filed before the Civil Service Commission.

As this is an administrative complaint filed before the Office of the Ombudsman, **it is the Rules of Procedure of the Office of the Ombudsman which shall govern**; thus, in ruling that the prerogative to elect a formal investigation pertains to the hearing officer and not to petitioner, Fernandez was only applying such procedure. The Court has ruled on the primacy of special laws and of their implementing regulations over the Administrative Code of 1987 in settling controversies specifically subject of these special laws.

The aforesaid ruling is based on the principle of statutory construction that where there are two statutes applicable to a particular case, that which is specially intended for the said case must prevail. Even assuming the Administrative Code is applicable, still the records show that Medina sought a

reinvestigation only as an afterthought; the reinvestigation should have been requested at the first opportunity and definitely before the rendition of a decision.

OFFICE OF THE OMBUDSMAN, *Petitioner*, vs. ULDARICO P. ANDUTAN, JR., *Respondent*
G.R. No. 164679. SECOND DIVISION, July 27, 2011, BRION, J.

The Ombudsman can no longer institute an administrative case against Andutan because the latter was not a public servant at the time the case was filed.

Indeed it has held in the past that a public official's resignation does not render moot an administrative case that was filed prior to the official's resignation. However, the facts of those cases are not entirely applicable to the present case*. In the past cases, the Court found that the public officials – subject of the administrative cases – resigned, either to prevent the continuation of a case already filed or to pre-empt the imminent filing of one.*

Here, neither situation obtains. First, Andutan's resignation was neither his choice nor of his own doing; ***he was forced to resign****. Second, Andutan resigned from his DOF post on July 1, 1998, while the administrative case was filed on September 1, 1999,* ***exactly one year and two months after his resignation****. What is clear from the records is that Andutan was forced to resign more than a year before the Ombudsman filed the administrative case against him.*

FACTS:
Pursuant to the Memorandum directing all non-career officials or those occupying political positions to vacate their positions, Andutan resigned from the DOF as the former Deputy Director of the One-Stop Shop Tax Credit and Duty Drawback Center of the DOF.

Subsequently, Andutan, et al. was criminally charged by the Fact Finding and Intelligence Bureau (FFIB) of the Ombudsman with Estafa through Falsification of Public Documents, and violations RA 3019. As government employees, Andutan et al. were likewise administratively charged of Grave Misconduct, Dishonesty, Falsification of Official Documents and Conduct Prejudicial to the Best Interest of the Service. The criminal and administrative charges arose from anomalies in the illegal transfer of Tax Credit Certificates (TCCs) to Steel Asia, among others.

The Ombudsman found the respondents guilty of Gross Neglect of Duty. Having been separated from the service, Andutan was imposed the penalty of forfeiture of all leaves, retirement and other benefits and privileges, and perpetual disqualification from reinstatement and/or reemployment in any branch or instrumentality of the government, including government owned and controlled agencies or corporations.

The CA annulled and set aside the decision of the Ombudsman, ruling that the latter "should not have considered the administrative complaints" because: first, Section 20 of R.A. 6770 provides that the Ombudsman "may not conduct the necessary investigation of any administrative act or omission complained of if it believes that x x x [t]he complaint was filed after one year from the occurrence of the act or omission complained of"; and second, the administrative case was filed after Andutan's forced resignation

ISSUES:

I..Whether Section 20(5) of R.A. 6770 prohibit the Ombudsman from conducting an administrative investigation a year after the act was committed. (NO)

II. Whether the Ombudsman has authority to institute an administrative complaint against a government employee who had already resigned. (NO)

RULING:
I. Well-entrenched is the rule that **administrative offenses do not prescribe**.

Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government.

Clearly, **Section 20 of R.A. 6770 does not prohibit the Ombudsman from conducting an administrative investigation after the lapse of one year**, reckoned from the time the alleged act was committed. Without doubt, even if the administrative case was filed beyond the one (1) year period stated in Section 20(5), the Ombudsman was well within its discretion to conduct the administrative investigation.

II.The Ombudsman can no longer institute an administrative case against Andutan because the latter was not a public servant at the time the case was filed.

It is irrelevant, according to the Ombudsman, that Andutan had already resigned prior to the filing of the administrative case since the operative fact that determines its jurisdiction is the commission of an offense while in the public service.

Indeed it has held in the past that a public official's resignation does not render moot an administrative case that was filed prior to the official's resignation. However, the facts of those cases are not entirely applicable to the present case. In the past cases, the Court found that the public officials – subject of the administrative cases – resigned, either to prevent the continuation of a case already filed or to pre-empt the imminent filing of one.

Here, neither situation obtains. First, Andutan's resignation was neither his choice nor of his own doing; **he was forced to resign**. Second, Andutan resigned from his DOF post on July 1, 1998, while the administrative case was filed on September 1, 1999, **exactly one year and two months after his resignation**. What is clear from the records is that Andutan was forced to resign more than a year before the Ombudsman filed the administrative case against him.

If the SC agreed with the interpretation of the Ombudsman, any official – even if he has been separated from the service for a long time – may still be subject to the disciplinary authority of his superiors, ad infinitum. Likewise, if the act committed by the public official is indeed inimical to the interests of the State, other legal mechanisms are available to redress the same.

F. PUBLIC OFFICE AND RESPONSIBILITY

PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), *Petitioner*, *vs.*COMMISSION ON AUDIT (COA) AND HON. MA. GRACIA M. PULIDO TAN, CHAIRPERSON, COMMISION ON AUDIT, *Respondent*.

G.R. No. 210903, EN BANC, October 11, 2016, PERALTA, J.

A close reading of the charters of those other government entities exempted from the Salary Standardization Law shows a common provision stating that ***although the board of directors of the said entities has the power to set a compensation, position classification system and qualification standards, the same entities shall also endeavor to make the system to conform as closely as possible to the principles and modes provided in R.A. No. 6758.***

Thus, ***the charters of those government entities exempt from the Salary Standardization Law is not without any form of restriction****. They are* ***still required to report to the Office of the President, through the DBM the details of their salary and compensation system*** *and to endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758.*

Thus, COA was correct in claiming that PEZA has to comply with Section 325 of M.O. No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of GOCCs/GFIs that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President. The said M.O. No. 20 is ***merely a reiteration of the President's power of control over the GOCCs/CFIs notwithstanding the power granted to the Board of Directors*** *of the latter to establish and fix a compensation and benefits scheme for its employees.*

FACTS:
The Philippine Economic Zone Authority (PEZA) Charter, Republic Act R.A. No. 7916, was amended by R.A. No. 8748 in 1999 exempting PEZA from existing laws, rules and regulations on compensation, position classification and qualification standards.

It shall however endeavor to make its systems conform as closely as possible to the principles under Republic Act No. 6758. The PEZA Board in Resolution No. M-99-266 dated October 29, 1999, adjusted PEZA's compensation plan and included in the said compensation plan is the grant of Christmas bonus in such amount as may be fixed by the Board and such other emoluments. PEZA had been granting Christmas bonus to each of its officers and employees for CY 2000 to 2004, however, for the years 2005 to 2008, the Christmas bonus was gradually increased per PEZA Board Resolution Nos. 05-450 and 06-462 dated November 28, 2005 and September 26, 2006, respectively.

State Auditor V Aurora Liveta-Funa issued Notice of Disallowance (ND) stating that the payment of additional Christmas bonus to PEZA officers and employees for calendar years 2005-2008 violated Section 3 of Memorandum Order (M.O.) No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of government-owned and controlled corporations (GOCCs) and government financial institutions (GFIs) that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President.

ISSUE:
Whether or not the grant of additional Christmas Bonus to PEZA Officers and employees needs the approval of the Office of the President. (YES)

RULING:
It is not disputed that after the enactment of the Salary Standardization Law (Republic Act No. 6758 became effective on July 1, 1989), laws have been passed exempting some government entities from its coverage. The said government entities were allowed to create their own compensation and

position classification systems that apply to their respective offices, usually through their Board of Directors. From 1995 to 2004, laws were passed exempting several government financial institutions from the Salary Standardization Law. Among these financial institutions are the Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation.

A close reading of the charters of those other government entities exempted from the Salary Standardization Law shows a common provision stating that **although the board of directors of the said entities has the power to set a compensation, position classification system and qualification standards, the same entities shall also endeavor to make the system to conform as closely as possible to the principles and modes provided in R.A. No. 6758.**

Thus, **the charters of those government entities exempt from the Salary Standardization Law is not without any form of restriction**. They are **still required to report to the Office of the President, through the DBM the details of their salary and compensation system** and to endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758.

Such restriction is the most apparent indication that **the legislature did not divest the President, as Chief Executive of his power of control over the said government entities**. In National Electrification Administration v. COA, this Court explained the nature of presidential power of control, and held that the constitutional vesture of this power in the President is self-executing and does not require statutory implementation, nor may itsexercise be limited, much less withdrawn, by the legislature.

It must always be remembered that under our system of government all executive departments, bureaus and offices are under the control of the President of the Philippines. This precept is embodied in Section 17, Article VII of the Constitution.

Thus, COA was correct in claiming that PEZA has to comply with Section 325 of M.O. No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of GOCCs/GFIs that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President. The said M.O. No. 20 is **merely a reiteration of the President's power of control over the GOCCs/CFIs notwithstanding the power granted to the Board of Directors** of the latter to establish and fix a compensation and benefits scheme for its employees.

ROSALINDA DIMAPILIS-BALDOZ, IN HER CAPACITY AS THEN ADMINISTRATOR OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), *Petitioner*, *vs*. COMMISSION ON AUDIT, REPRESENTED BY CHAIRMAN REYNALDO A. VILLAR AND COMMISSIONER JUANITO G. ESPINO, JR., *Respondent*.
G.R. No. 199114, EN BANC, July 16, 2013, PERLAS-BERNABE, J.

COAs exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government. Furthermore, it has also been declared that the ***COA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.***

Applying these principles to the case at bar, no grave abuse of discretion can be attributed to the COA in fixing the reckoning point of the period of disallowance at May 3, 2000, since records are bereft of any showing that it had any knowledge of Labradors prior dismissal on May 2, 1997. To hold otherwise would be simply antithetical to the concept of grave abuse of discretion, much less countenance a speculative endeavor.

FACTS:
Labrador was the former Chief of the POEAs Employment Services Regulation Division (ESRD). On May 2, 1997, then Labor Secretary Leonardo A. Quisumbing (Quisumbing) ordered his dismissal from service as he was found to have bribed a certain Madoline Villapando, an overseas Filipino worker, in the amount ofP6,200.00 in order to expedite the issuance of her overseas employment certificate.

Aside from the foregoing administrative proceedings, a criminal case for direct bribery was instituted against Labrador in view of the same infraction. Consequently, on August 31, 1999, the Sandiganbayan (SB) promulgated a Decision,convicting him of the aforementioned crime. Labrador applied and was subsequently granted probation which then suspended te execution proceedings.

The SB, however, withheld the approval of the recommendation that the probation be terminated and Labrador be discharged from its legal effects and, instead, issued a Resolution stating that Labradors application for probation was, in fact, erroneously granted due to his previous appeal from his judgment of conviction, in violation of Section 4 of the Probation Law.

Almost a year later, or on February 7, 2005, COA State Auditor IV, Crescencia L. Escurel, issued an Audit Observation Memorandum which contained her audit observations on the various expenditures of the POEA pertaining to the payment of salaries and benefits to Labrador for the period covering August 31, 1999 to March 15, 2004. Consequently, it ordered Dimapilis-Baldoz, among other POEA employees, personally liable for the salaries and other benefits unduly received by Labrador in the amount ofP1,740,124.08, paid through various checks issued from August 1999 to March 15, 2004.

ISSUE:
Whether or not grave abuse of discretion attended the COAs disallowance in this case. (NO)

RULING:
COAs exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government. Furthermore, it has also been declared that the **COA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.**

Pursuant to its mandate, the COA disallowed the disbursements pertaining to the personnel benefits paid to Labrador, reasoning that the latter should have stopped reporting for work as early as June 28, 2000 when the denial of his appeal from the SBs August 31, 1999 Decision rendered his conviction for the crime of direct bribery final and executory, notwithstanding the grant of his application for probation. In this regard, it opines that the period of disallowance should be reckoned from May 3, 2000 which is the date the SBs August 31, 1999 Decision had become final and executory.

Significant to the determination of the appropriate period of the disallowance is the undisputed fact that, pursuant to an order issued by then Labor Secretary Quisumbing, Labrador had already been made to suffer the administrative penalty of dismissal from service on May 2, 1997, which was long

before the SB convicted him of direct bribery on August 31, 1999. As a matter of law, a department secretarys decision confirming the removal of an officer under his authority is immediately executory, even pending further remedy by the dismissed public officer.

Applying these principles to the case at bar, no grave abuse of discretion can be attributed to the COA in fixing the reckoning point of the period of disallowance at May 3, 2000, since records are bereft of any showing that it had any knowledge of Labradors prior dismissal on May 2, 1997. To hold otherwise would be simply antithetical to the concept of grave abuse of discretion, much less countenance a speculative endeavor.

NINI A. LANTO, IN HER CAPACITY AS THEN DIRECTOR II OF THE ADMINISTRATIVE BRANCH, NOW DIRECTOR IV OF THE PRE-EMPLOYMENT SERVICES OFFICE OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), *Petitioner - versus -* COMMISSION ON AUDIT, NOW REPRESENTED BY CHAIRPERSON REYNALDO A. VILLAR, COMMISSIONER JUANITO G. ESPINO, JR., AND ASSISTANT COMMISSIONER DIVINIA M. ALAGON, *Respondents*. G.R. No. 217189, EN BANC, April 18, 2017, *Bersamin, J.*

It is a standing rule that every public official is entitled to the presumption of good faith in the discharge of official duties, such that, in the absence of any proof that a public officer has acted with malice or bad faith, he should not be charged with personal liability for damages that may result from the performance of an official duty.

The petitioner's good faith in certifying to the correctness of the payrolls based on available records about Labrador having actually reported to work, and on her absolute lack of knowledge of his having been dismissed and of the pendency of the criminal case in the Sandiganbayan constituted compelling circumstances that justified applying the exception in her favor. At the time she made the certifications of the payrolls she relied on the relevant public and official documents showing that Labrador had rendered actual service during the periods concerned. Her honest belief that Labrador was legally entitled to the salary payments thereby became established.

FACTS:
Leonel Labrador, the former Chief of the POEA's Employment Services Regulation Division (ESRD), was dismissed by the Secretary of Labor for acts of bribery. The COA State Auditor issued an audit observing various expenditures of the POEA pertaining to the payment of salaries and benefits to Labrador for the period covering August 31, 1999 to March 15, 2004. Based on these observations, the COA issued a Notice of Disallowance and found that POEA and the responsible officers including Petitioner should be held liable for the refund of the amount received by Labrador. Hence, Petitioner questions her personal liability as to the refund of the said amount.

ISSUE:
Whether the petitioner is personally liable for the refund. (NO)

RULING:
The petitioner's good faith in certifying to the correctness of the payrolls based on available records about Labrador having actually reported to work, and on her absolute lack of knowledge of his having been dismissed and of the pendency of the criminal case in the Sandiganbayan constituted compelling circumstances that **justified applying the exception in her favor.** At the time she made the certifications of the payrolls she relied on the relevant public and official documents showing that Labrador had rendered actual service during the periods concerned. Her honest belief that Labrador was legally entitled to the salary payments thereby became established.

Only convincing proof of the petitioner's malice or bad faith in the performance of her duties could have warranted the rejection of her plea of good faith. But the COA did not adduce proof of her malice or bad faith. At any rate, not extending the benefit of good faith and regular performance of duty to the petitioner herein would be unfair and unjust if the Court absolved the petitioner in *Dimapilis-Baldoz v. Commission on Audit* from personal liability for the same disallowed salaries of Labrador on the basis of good faith.

The fact that the petitioner was on foreign assignment when the COA rendered the assailed issuances plausibly explained why she did not seasonably assail or oppose the disallowances. In light of the foregoing circumstances, the COA's directive to withhold the petitioner's salary was void and produced no legal effect. As such, the assailed COA issuances did not attain finality and immutability as to her.

CONCHITA CARPIO-MORALES, *Petitioner,* -versus-COURT OF APPEALS and JEJOMAR ERWIN BINAY, JR., *Respondent*.
G.R. Nos. 217126-27, EN BANC, November 10, 2015, PERLAS-BERNABE, *J.*

*The concept of **public office is a public trust and the corollary requirement of accountability to the people at all times**, as mandated under the 1987 Constitution, is **plainly inconsistent** with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. **Election is not a mode of condoning an administrative offense**, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term. In this jurisdiction, **liability arising from administrative offenses may be condoned by the President** in light of Section 19, Article VII of the 1987 Constitution.*

For local elective officials like Binay, Jr., the grounds to discipline, suspend or remove an elective local official from office are stated in Section 60 of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" (LGC). Related to this provision is Section 40 (b) of the LGC which states that those removed from office as a result of an administrative case shall be disqualified from running for any elective local position.

FACTS:
A complaint/affidavit was filed by Atty. Renato Bondal and Nicolas "Ching" Enciso VI before the Office of the Ombudsman against Binay, Jr. and other public officers and employees of the City Government of Makati, accusing them of Plunder and violation of R.A. 3019, otherwise known as "The Anti-Graft and Corrupt Practices Act," in connection with the five (5) phases of the procurement and construction of the Makati City Hall Parking Building (Makati Parking Building).

The Ombudsman constituted a Special Panel of Investigators to conduct a fact-finding investigation, submit an investigation report, and file the necessary complaint, if warranted (1st Special Panel).The 1st Special Panel filed a complaint (OMB Complaint) against Binay, Jr., *et al*, charging them with six (6) administrative casesfor Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service, and six (6) criminal cases for violation of Section 3(e) of R.A. 3019, Malversation of Public Funds, and Falsification of Public Documents (OMB Cases).

The Ombudsman created another Special Panel of Investigators to conduct a preliminary investigation and administrative adjudication on the OMB Cases (2nd Special Panel). Thereafter, the 2nd Special Panel issued separate orders for each of the OMB Cases, requiring Binay, Jr., *et al.* to file their respective counter-affidavits.

Meanwhile, the Ombudsman issued the subject preventive suspension order, placing Binay, Jr., *et al.* under preventive suspension for not more than six (6) months without pay, during the pendency of the OMB Cases.
Binay, Jr. filed a petition for *certiorari* before the CA, seeking the nullification of the preventive suspension order, and praying for the issuance of a TRO and/or WPI to enjoin its implementation. Primarily, Binay, Jr. argued that he could not be held administratively liable for any anomalous activity attending any of the five (5) phases of the Makati Parking Building project since these transpired during his first term and that **his re-election as City Mayor of Makati for a second term effectively condoned his administrative liability therefor**, if any, thus rendering the administrative cases against him moot and academic.

On March 16, 2015, at around 8:24 a.m., Secretary Roxas caused the implementation of the preventive suspension order through the DILG NCR - Regional Director, Renato L. Brion, CESO III (Director Brion), who posted a copy thereof on the wall of the Makati City Hall after failing to personally serve the same on Binay, Jr. as the points of entry to the Makati City Hall were closed. At around 9:47 a.m., Assistant City Prosecutor of Makati Billy Evangelista administered the oath of office on Makati City Vice Mayor Romulo Peña, Jr. (Peña, Jr.) who thereupon assumed office as Acting Mayor.

At noon of the same day, the CA issued a Resolution, granting Binay, Jr.'s prayer for a TRO, notwithstanding Pena, Jr.'s assumption of duties as Acting Mayor earlier that day.Thereafter, the CA issued a Resolution , granting Binay, Jr.'s prayer for a WPI, which further enjoined the implementation of the preventive suspension order. In so ruling, the CA found that Binay, Jr. has an ostensible right to the final relief prayed for, namely, the nullification of the preventive suspension order, in view of the condonation doctrine.

In view of the CA's supervening issuance of a WPI, the Ombudsman filed a supplemental petition before this Court, arguing that the condonation doctrine is irrelevant to the determination of whether the evidence of guilt is strong for purposes of issuing preventive suspension orders. The Ombudsman also maintained that a reliance on the condonation doctrine is a matter of defense, which should have been raised by Binay, Jr. before it during the administrative proceedings, and that, at any rate, there is no condonation because Binay, Jr. committed acts subject of the OMB Complaint after his re-election in 2013.

ISSUE:
Whether the condonation doctrine applies. (NO)

RULING:

For local elective officials like Binay, Jr., the grounds to discipline, suspend or remove an elective local official from office are stated in Section 60 of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" (LGC). Related to this provision is Section 40(b) of the LGC which states that those removed from office as a result of an administrative case shall be disqualified from running for any elective local position. In the same sense, Section 52(a) of the RRACCS provides that the penalty of dismissal from service carries the accessory penalty of perpetual disqualification from holding public office.

In contrast, Section 66(b) of the LGC states that the **penalty of suspension** shall not exceed the unexpired term of the elective local official nor constitute a bar to his candidacy for as long as he meets the qualifications required for the office. Note, however, that the provision only pertains to the duration of the penalty and its effect on the official's candidacy. **Nothing therein states that the administrative liability therefor is extinguished by the fact of re-election.**

The concept of **public office is a public trust and the corollary requirement of accountability to the people at all times**, as mandated under the 1987 Constitution, is **plainly inconsistent** with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. **Election is not a mode of condoning an administrative offense**, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term. In this jurisdiction, **liability arising from administrative offenses may be condoned bv the President** in light of Section 19, Article VII of the 1987 Constitution.

Reading the 1987 Constitution together with the above-cited legal provisions now leads this Court to the conclusion that the doctrine of condonation is actually bereft of legal bases.

It should, however, be clarified that this Court's abandonment of the condonation doctrine should be *prospective* in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation.

HENRY R. GIRON, *Petitioner*, - *versus* - HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., HON. SANGGUNIANG PANLUNGSOD OF QUEZON CITY AND HON. KAGAWAD ARNALDO A. CANDO, *Respondents*.
G.R. No. 218463, SECOND DIVISION, March 01, 2017, MENDOZA, *J.*

The condonation doctrine has been abandoned by the Court in Carpio-Morales.In the said case, the Court declared the doctrine as unconstitutional, but stressed that its application should only be prospective. Thus, it should, however, be clarified that ***this Court's abandonment of the condonation doctrine should be prospective in application****.*

In this case, however, Giron insists that although the abandonment is prospective, it does not apply to public officials elected to a different position. On this issue, considering the ratio decidendi behind the doctrine, the Court agrees with the interpretation of the administrative tribunals below that the ***condonation doctrine applies to a public official elected to another office. The underlying theory is that each term is separate from other terms.***

Thus, in Carpio-Morales, the basic considerations are the following: first, the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct;second, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and third, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. In this case, it is a given fact that the body politic, who elected him to another office, was the same.

FACTS:
Giron, together with Marcelo Macasinag, Eliseo Cruz, Benjamin Osi and Crisanto Canciller, filed before the Ombudsman a complaint for Dishonesty, Grave Abuse of Authority and Violation of Section 389(b) of R.A. No. 7160 against Cando, then the Barangay Chairman of Capri, for illegally using electricity in three (3) of his computer shops.

The investigation, however, was suspended because of the coming October 2013 Barangay Elections. During the said elections, Cando vied for the position of Barangay Kagawad and won. He assumed office on December 1, 2013.

The City Council adopted the Resolution of the Committee, recommending the dismissal of the case against Cando for being moot and academic. It cited as basis the doctrine first enunciated in *Pascual v. Provincial Board of Nueva Ecija (Pascual)* and reiterated in *Aguinaldo v. Santos (Aguinaldo)*, where the Court stated that "a public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."

Giron moved for reconsideration, arguing that the doctrine of condonation was only applicable when the re-election of the public official was to the same position.

Giron appealed to the OP. The OP, through respondent Executive Secretary Pacquito Ochoa, Jr., dismissed the appeal. The OP opined that the condonation rule applied even if Cando runs for a different position as long as the wrongdoing that gave rise to his culpability was committed prior to the date of election.

ISSUE:
Whether the condonation doctrine applies to public officials reelected to other positions. (YES)

RULING:
The condonation doctrine has been abandoned by the Court in *Carpio-Morales*.In the said case, the Court declared the doctrine as unconstitutional, but stressed that its application should only be prospective. Thus, it should, however, be clarified that **this Court's abandonment of the condonation doctrine should be prospective in application** for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation.

In this case, however, Giron insists that although the abandonment is prospective, it does not apply to public officials elected to a different position. On this issue, considering the *ratio decidendi* behind the doctrine, the Court agrees with the interpretation of the administrative tribunals below that **the condonation doctrine applies to a public official elected to another office. The underlying theory is that each term is separate from other terms.**

Thus, in *Carpio-Morales*, the basic considerations are the following: *first*, the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct;*second*, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and *third*, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. In this case, it is a given fact that the body politic, who elected him to another office, was the same.

It should be stressed, however, that the doctrine is now abandoned. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from *Pascual*, and affirmed in the cases following the same, such as *Aguinaldo, Salalima, Mayor Garcia*, and *Governor Garcia, Jr.* which were all relied upon by the CA.

OFFICE OF THE OMBUDSMAN, *petitioner – versus* – MAYOR JULIUS CESAR VERGARA, *respondent*
G.R. No. 216871, SECOND DIVISION, December 06, 2017, *Peralta, J.*

The application of the doctrine does not require that the official must be re-elected to the same position in the immediately succeeding election. The doctrine can be applied to a public officer who was elected to a different position provided that it is show that the body politic electing the person to another office is the same.

In this case, the doctrine of condonation can still be validly applied as the case was instituted prior to the case of Ombudsman v. Jejomar Binay, which abandoned the said doctrine. As respondent was re-elected as mayor by the same electorate the voted for him when the violation was committed, the doctrine of condonation applies.

FACTS:
A complaint was filed against respondent Mayor Julius Vergara for violation of R.A. 9003 because of the maintenance of open burning dumpsite locations. Petitioner found respondent to have violated Section 5(a) of R.A. 6713 and imposed the penalty of suspension for 6 months. On a Motion for Reconsideration, this penalty was lowered to a reprimand.

While these proceedings were ongoing, respondent was re-elected as mayor in the same locality (but not in the immediately succeeding election). When the case was elevated to the CA, he manifested that the doctrine of condonation should be applied as he was re-elected, which the CA granted.

ISSUE:
Whether the doctrine of condonation applies to respondent. (YES)

RULING:
The application of the doctrine does not require that the official must be re-elected to the same position in the immediately succeeding election. The doctrine can be applied to a public officer who was elected to a different position provided that it is show that the body politic electing the person to another office is the same.

In this case, the doctrine of condonation can still be validly applied as the case was instituted prior to the case of *Ombudsman v. Jejomar Binay,* which abandoned the said doctrine. As respondent was re-elected as mayor by the same electorate the voted for him when the violation was committed, the doctrine of condonation applies.

G. ILL-GOTTEN WEALTH AND STATE RECOVERY

CONCEPCION C. DAPLAS, City Treasurer, Pasay City, and Concurrent OIC, Regional Director Bureau of Local Government Finance (BLGF) Region VII, *Petitioner, - versus* -DEPARTMENT OF FINANCE, represented by TROY FRANCIS C. PIZARRO, JOSELITO F. FERNANDEZ, REYNALDO* L. LAZARO, MELCHOR B. PIOL, and ISMAEL S. LEONOR, and THE OFFICE OF THE OMBUDSMAN, *Respondents*
G.R. No. 221153, FIRST DIVISION, April 17, 2017, *Perlas-Bernabe, J.*

Indeed, the failure to file a truthful SALN puts in doubt the integrity of the public officer or employee, and would normally amount to dishonesty. ***It should be emphasized, however, that mere non-declaration of the required data in the SALN does not automatically amount to such an offense.***

Here, the Court finds that there is no substantial evidence of intent to commit a wrong, or to deceive the authorities, and conceal the other properties in petitioner's and her husband's names. *Petitioner's failure to disclose in her 1997 SALN her business interest in KEI is not a sufficient badge of dishonesty in the absence of bad faith, or any malicious intent to conceal the truth or to make false statements.*

FACTS:
Two (2) complaints were filed against petitioner by the DOF in the Ombudsman averring violations of Sections 7 and 8 of R.A. 3019, Section 8 of R.A. 6713, Section 2 of R.A. 1379, Article 183 of the RPC and E.O. 6, constituting Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, arising out of her failure to disclose the true and detailed statement of her assets, liabilities, and net worth, business interests, and financial connections, and those of her spouse in her Statements of Assets, Liabilities, and Net Worth (SALNs). The Ombudsman found petitioner guilty of the charges and imposed the penalty of Dismissal, and its accessory penalties, without prejudice to criminal prosecution. The CA affirmed.

ISSUE:
Whether the petitioner is guilty of the charges arising out of her failure to disclose her SALN and those of her spouse. (NO)

RULING:
Records reveal that the element of intent to commit a wrong required under both the administrative offenses of Dishonesty and Grave Misconduct are lacking to warrant petitioner's dismissal from service. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.

Indeed, the failure to file a truthful SALN puts in doubt the integrity of the public officer or employee, and would normally amount to dishonesty. **It should be emphasized, however, that mere non-declaration of the required data in the SALN does not automatically amount to such an offense.**

Dishonesty requires malicious intent to conceal the truth or to make false statements. In addition, a public officer or employee becomes susceptible to dishonesty only when such non-declaration results in the accumulated wealth becoming manifestly disproportionate to his/her income, and

income from other sources, and he/she fails to properly account or explain these sources of income and acquisitions.

Here, the Court finds that there is no substantial evidence of intent to commit a wrong, or to deceive the authorities, and conceal the other properties in petitioner's and her husband's names. Petitioner's failure to disclose in her 1997 SALN her business interest in KEI is not a sufficient badge of dishonesty in the absence of bad faith, or any malicious intent to conceal the truth or to make false statements. Accordingly, the Court finds no reason to hold petitioner liable for the charges of Dishonesty and Grave Misconduct, but declares her guilty, instead, of Simple Negligence in accomplishing her SALN.

MARIA REMEDIOS ARGANA, DONATA ALMENDRALA VDA. DE ARGANA, LUIS ARGANA, JR., PEREGRINO ARGANA, ESTATE OF GELACIO ARGANA, EUFROCINIO NOFUENTE, AMPARO ARGANA NOFUENTE, JUANITO ROGELIO, MILAGROS ARGANA ROGELIO, MARIA FELICIDAD ARGANA, MARIA DOROTEA ARGANA, REFEDOR SOUTH GOLD PROPERTY MANAGEMENT & DEVELOPMENT CORPORATION, *Petitioners*, - *versus* - REPUBLIC OF THE PHILIPPINES, *Respondent*.
G.R. NO. 147227, SECOND DIVISION, November 19, 2004, TINGA, *J*.

The values were deliberately omitted to make it appear that the Compromise Agreement adheres to the 75%-25% ratio broadly adopted by the PCGG in compromising cases of ill-gotten wealth. It was this 75%-25% mode of compromise, with the greater share of 75% going to the government that misled the Court to believe, as We did believe, that the Compromise Agreement was fair, reasonable and advantageous to the Government.

What was projected to be a 75%-25% ratio was in reality a 00.15%-99.85% ratio, with 99.85% going to the Arganas. ***This is unconscionable and immoral. And since it results in a transaction grossly disadvantageous and immoral to the government, it is against the law as being violative of Section 3(g) of Republic Act 3019.***

In the instant case, fraud of an extrinsic character exists because the representatives of plaintiff Republic in the PCGG connived with defendants in hiding the assessed or market values of the properties involved, so as to make it appear that the Compromise Agreement adhered to the 75%-25% ratio adopted by the PCGG in entering into compromise of cases involving the recovery of ill-gotten wealth.

They sold plaintiff Republic down the river by entering into an agreement grossly disadvantageous to the government. For while plaintiff Republic got 00.15% (00.15074) of the estimated value of all the properties involved in this case, defendants almost ran away with 99.85% (99.84526) of their value. This is patently unfair.

FACTS:
Respondent Republic filed with the Sandiganbayan a Petition for Forfeiture of alleged ill-gotten assets and properties of the late Maximino Argana, who served as Mayor of the Municipality of Muntinlupa. The Sandiganbayan remanded the case to the Presidential Commission on Good Government (PCGG) for the conduct of an inquiry. In 1990, the case was reactivated in the Sandiganbayan.

Petitioners denied that the properties sought to be forfeited by respondent were unlawfully acquired by the deceased Mayor and/or by petitioners. Still, to avoid a protracted litigation, petitioners exerted efforts to settle the case amicably with respondent through the PCGG.

Petitioners' offer of compromise was accepted by the PCGG in its Resolution No. 97-180-A. Thereafter, the PCGG conducted an evaluation of the properties offered for settlement by petitioners. In a Memorandum, Mauro J. Estrada, Director of the PCGG Research and Development Program, recommended the inclusion of another tract of land belonging to petitioners among the properties which would be subject of the compromise.

Respondent, represented by PCGG Commissioners Reynaldo Guiao and Herminio Mendoza entered into a Compromise Agreement with petitioners, represented by petitioner Maria Felicidad Argana. Petitioners conveyed, ceded, and released in favor of respondent a total of 361.9203 hectares of agricultural land in Pangil and Famy, Laguna, or 75.12% of the properties subject of litigation, in consideration of the dismissal or withdrawal of all pending civil, criminal and administrative cases filed, litigated or investigated by respondent against them.

In a letter, the PCGG informed the OSG of the signing of the Compromise Agreement and requested the OSG to file the appropriate motion for approval thereof with the Sandiganbayan. The Sandiganbayan approved the Compromise Agreement and rendering judgment in accordance with the terms thereof.

However, respondent, through the OSG and the PCGG, filed with the Sandiganbayan a Motion to Rescind Compromise Agreement and to Set Aside Judgment by Compromise (Motion to Rescind). Respondent prayed for the rescission of the Compromise Agreement or reformation thereof after a renegotiation with petitioners. Respondent contended that the partition of the properties in the Compromise Agreement was grossly disadvantageous to the government and that there was fraud and insidious misrepresentation by petitioners in the distribution and partition of properties, to the damage and prejudice of the government. According to respondent, there was fraud and insidious misrepresentation because petitioners proposed to divide the properties with 75% accruing to the government and the remaining 25% going to petitioners and their other creditors based on the total land area of the properties instead of on their value. As a result, the government obtained only P3,620,000.00 worth of land, while petitioners received almost P4,000,000,000.00 worth.

The Sandiganbayan issued a Resolution granting respondent's Motion to Rescind. With respect to the issue of fraud, the Sandiganbayan held that there was extrinsic fraud in the execution of the Compromise Agreement.

ISSUE:
Whether the Sandiganbayan's nullification of the Compromise Agreement on the ground of extrinsic fraud was proper. (YES)

RULING:
The Court holds that no error nor grave abuse of discretion can be ascribed to the Sandiganbayan for ruling that the execution of the Compromise Agreement was tainted with fraud on the part of petitioners and in connivance with some PCGG officials. A circumspect review of the record of the case **reveals that fraud, indeed, was perpetuated upon respondent in the execution of the Compromise Agreement,** the assessed or market values of the properties offered for settlement having been concealed from the reviewing authorities such as the PCGG En Banc and even the

President of the Republic. The discussion of the Sandiganbayan on the nature and extent of the fraud perpetuated upon respondent in the execution of the Compromise Agreement is clear and convincing.

Noticeable from the documents submitted to the court after the decision approving the Compromise Agreement was promulgated is the fact that only the percentage of sharing based on area was mentioned and brought to the attention of the PCGG En Banc and the Solicitor General. **The value of the properties was never, and not even once, mentioned.**

The value of the properties must have been raised or even discussed during the several years that the properties were held under sequestration. Yet, not even the PCGG bothered to produce any tax declaration, assessment or appraisal to show the assessed or fair market value of the properties.

Again in another Memorandum, the properties were listed according to the name of the owner, certificate of title, area in square meters, location and percentages in relation to the whole. Obvious from the listing is the absence of a column to indicate the value of the properties or their classification. As the Sandiganbayan stated:

> The values were deliberately omitted to make it appear that the Compromise Agreement adheres to the 75%-25% ratio broadly adopted by the PCGG in compromising cases of ill-gotten wealth. It was this 75%-25% mode of compromise, with the greater share of 75% going to the government that misled the Court to believe, as We did believe, that the Compromise Agreement was fair, reasonable and advantageous to the Government.
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> What was projected to be a 75%-25% ratio was in reality a 00.15%-99.85% ratio, with 99.85% going to the Arganas. **This is unconscionable and immoral. And since it results in a transaction grossly disadvantageous and immoral to the government, it is against the law as being violative of Section 3(g) of Republic Act 3019.**
>
> In the instant case, fraud of an extrinsic character exists because the representatives of plaintiff Republic in the PCGG connived with defendants in hiding the assessed or market values of the properties involved, so as to make it appear that the Compromise Agreement adhered to the 75%-25% ratio adopted by the PCGG in entering into compromise of cases involving the recovery of ill-gotten wealth. Through their infidelity, those in the PCGG who handled or were closely involved with the case during the last days of the previous administration fraudulently gave the Compromise Agreement a semblance of fairness and official acceptability. They sold plaintiff Republic down the river by entering into an agreement grossly disadvantageous to the government. For while plaintiff Republic got 00.15% (00.15074) of the estimated value of all the properties involved in this case, defendants almost ran away with 99.85% (99.84526) of their value. This is patently unfair. It is no compromise but a virtual sell-out. It could not have been pulled off without the connivance or collusion of those responsible for the case in the PCGG. Instead of protecting the interest of the government, they connived at its defeat almost.

It is evident from the foregoing that the ruling of the Sandiganbayan is grounded on facts and on the law. The Court sees no reason to depart from the conclusions drawn by the Sandiganbayan on the basis of its findings, especially considering that the three justices comprising the Sandiganbayan's Third Division conducted a thorough examination of the documents submitted by the parties to this case, heard the testimonies of the parties' witnesses and observed their deportment during the hearing on the Motion to Rescind.

H. TERMINATION OF OFFICIAL RELATIONS

RE: APPLICATION FOR RETIREMENT OF JUDGE MOSLEMEN T. MACARAMBON UNDER REPUBLIC ACT NO. 910, PRESENT: AS AMENDED BY REPUBLIC ACT NO. 9946
A.M. No. 14061-Ret, EN BANC, June 19, 2012, BRION, *J.*

RA No. 910, as amended allows the grant of retirement benefits to a justice or judge who has either retired from judicial service or resigned from judicial office. ***In case of retirement, a justice or judge must show compliance with the age and service requirements as provided in RA No. 910, as amended.*** *On the other hand, resignation under RA No. 910, as amended must be "by reason of incapacity to discharge the duties of the office." In Britanico, we held that the resignation contemplated under RA No. 910, as amended must have the element of involuntariness on the part of the justice or judge. More than physical or mental disability to discharge the judicial office, the involuntariness must spring from the intent of the justice or judge who would not have parted with his/her judicial employment were it not for the presence of circumstances and/or factors beyond his/her control.****In either of the two instances above-mentioned, Judge Macarambon's case does not render him eligible to retire under RA No. 910, as amended.***

First, Judge Macarambon ***failed to satisfy the age requirement*** *as shown by the records and by his own admission that he was less than 60 years of age when he resigned from his judicial office before transferring to the COMELEC. Likewise, he* ***failed to satisfy the service requirement*** *not having been in continuous service with the Judiciary for three (3) years prior to his retirement.*

Second, Judge Macarambon's resignation was ***not by reason of incapacity to discharge*** *the duties of the office. His separation from judicial employment was of his own accord and volition. Thus, our ruling in Britanico cannot be properly applied to his case since his resignation was voluntary.*

Third, we find ***no exceptional reasons*** *to justify Judge Macarambon's request.*

FACTS:
Judge Macarambon was a judge of the RTC for a period of 18 years, 1 month and 16 days. Before reaching the optional retirement age of 60, Judge Macarambon transferred to the COMELEC having been appointed as Commissioner by then President Gloria Macapagal Arroyo. He served as COMELEC Commissioner for less than a year and was no longer re-appointed after having been bypassed thrice by the Commission on Appointments. Judge Macarambon was subsequently appointed by President Arroyo as President/CEO of the National Transmission Corporation but he resigned from the position less than a year after when he failed to receive a reappointment.

In his letter, Judge Macarambon requests that he be allowed to retire under Section 1 of RA No. 910, as amended. Judge Macarambon asserts that Section 1 allows the payment of retirement benefits to a judge of the RTC who resigns by reason of incapacity to discharge the duties of his office. Citing the case of *Re: Application for Retirement under R.A. No. 910 of Associate Justice Ramon B. Britanico of the*

Intermediate Appellate Court, he posits that his appointment as COMELEC Commissioner incapacitated him to discharge his duties as an RTC judge on account of his submission to the will of the political authority and appointing power.

As an alternative, he appeals that he be allowed to retire under the second sentence of Section 1 considering that he has rendered a total of 18 years, 1 month and 16 days of judicial service and a total of 35 years of government service. Judge Macarabon claims that while he was short of the minimum age requirement of 60, he believes that the Court's ruling in *Re: Gregorio G. Pineda* is applicable to his case where the Court brushed aside such requirement and considered the retiree's career which was marked with competence, integrity, and dedication to public service.

In his Memorandum, the Court Administrator disagreed with Judge Macarambon's position. The Court Administrator averred that Judge Macarambon's case is different from that of Justice Britanico's. Justice Britanico, together with the other Members of the Judiciary at that time, was ordered by then President Corazon C. Aquino, through Proclamation No. 1, to tender their courtesy resignations. The decision as to whether or not they would stay in their office was the prerogative of then President Aquino. On the contrary, the prerogative to accept the appointment as a COMELEC Commissioner depended entirely on Judge Macarambon. He had the choice of whether or not to accept the appointment of being a Commissioner or to stay as a RTC Judge. Therefore, his appointment as a COMELEC Commissioner did not render him incapacitated to discharge the duties of his office as a RTC Judge. Nonetheless, based on the documents submitted, Judge Macarambon may retire under R.A. No. 1616, as he meets all the requirements for retirement under the said law, i.e., has been in the government service as of June 1, 1977 and has rendered at least twenty (20) years government service, the last three (3) years of which have been continuous.

ISSUE:
Whether Judge Macarambon, who voluntarily resigned from his judicial office before reaching the optional retirement age, is entitled to receive retirement benefits under R.A. No. 910, as amended. (NO)

RULING:
Resignation and retirement are two distinct concepts carrying different meanings and legal consequences in our jurisdiction. While an employee can resign at any time, retirement entails the compliance with certain age and service requirements specified by law and jurisprudence. Resignation stems from the employee's own intent and volition to resign and relinquish his/her post. Retirement takes effect by operation of law. In terms of severance to one's employment, resignation absolutely cuts-off the employment relationship in general; in retirement, the employment relationship endures for the purpose of the grant of retirement benefits.

RA No. 910, as amended allows the grant of retirement benefits to a justice or judge who has either retired from judicial service or resigned from judicial office. **In case of retirement, a justice or judge must show compliance with the age and service requirements as provided in RA No. 910, as amended.** The second sentence of Section 1 imposes the following minimum requirements for optional retirement:

> (a) must have attained the age of sixty (60) years old; and
> (b) must have rendered at least fifteen (15) years service in the Government, the last three (3) of which shall have been continuously rendered in the Judiciary.

Strict compliance with the age and service requirements under the law is the rule and the grant of exception remains to be on a case to case basis. We have ruled that the Court allows seeming exceptions to these fixed rules for certain judges and justices only and whenever there are ample reasons to grant such exception.

On the other hand, resignation under RA No. 910, as amended must be "by reason of incapacity to discharge the duties of the office." In *Britanico*, we held that the resignation contemplated under RA No. 910, as amended must have the element of involuntariness on the part of the justice or judge. More than physical or mental disability to discharge the judicial office, the involuntariness must spring from the intent of the justice or judge who would not have parted with his/her judicial employment were it not for the presence of circumstances and/or factors beyond his/her control.

In either of the two instances above-mentioned, Judge Macarambon's case does not render him eligible to retire under RA No. 910, as amended.

First, Judge Macarambon **failed to satisfy the age requirement** as shown by the records and by his own admission that he was less than 60 years of age when he resigned from his judicial office before transferring to the COMELEC. Likewise, he **failed to satisfy the service requirement** not having been in continuous service with the Judiciary for three (3) years prior to his retirement.

Second, Judge Macarambon's resignation was **not by reason of incapacity to discharge** the duties of the office. His separation from judicial employment was of his own accord and volition. Thus, our ruling in *Britanico* cannot be properly applied to his case since his resignation was voluntary.

Third, we find **no exceptional reasons** to justify Judge Macarambon's request.

All told, we are not unmindful of Judge Macarambon's long and dedicated service in the government for which he is undeniably entitled to be rewarded. We agree with the Court Administrator that although Judge Macarambon is not qualified to retire under RA No. 910, as amended, he may retire under RA No. 1616 based on the documents he had presented before the Court which meets the age and service requirements under the said law.

EVALYN I. FETALINO and AMADO M. CALDERON, *Petitioners,*MANUEL A. BARCELONA, JR., *Petitioner-Intervenor, - versus* -COMMISSION ON ELECTIONS, *Respondent.*
G.R. No. 191890, EN BANC, December 4, 2012, Brion, J.

Section 1 of R.A. No. 1568 allows the grant of retirement benefits to the Chairman or any Member of the COMELEC who has retired from the service after having completed his term of office. ***The petitioners obviously did not retire under R.A. No. 1568, as amended, since they never completed the full seven-year term of office.***

The retirement benefits granted to petitioners under Section 1 of R.A. No. 1568 are purely gratuitous in nature. *Thus, they have no vested right over these benefits. Retirement benefits as provided under R.A. No. 1568 must be distinguished from a pension which is a form of deferred compensation for services performed. In a pension, employee participation is mandatory, thus, employees acquire contractual or vested rights over the pension as part of their compensation.*

FACTS:

President Fidel V. Ramos extended an interim appointment to petitioners Fetalino and Calderon as COMELEC Commissioners, each for a term of seven (7) years. Congress, however, adjourned before the Commission on Appointments (CA) could act on their appointments. The constitutional ban on presidential appointments later took effect and Fetalino and Calderon were no longer re-appointed. Thus, Fetalino and Calderon merely served as COMELEC Commissioners for more than four months. Subsequently, the petitioners applied for their retirement benefits and monthly pension with the COMELEC, pursuant to R.A. No. 1568. The COMELEC initially approved the claims but in a subsequent resolution, on the basis of its Law Departments study, completely disapproved the claims, stating that one whose ad interim appointment expires cannot be said to have completed his term of office so as to fall under the provisions of Section 1 of RA 1568 that would entitle him to a lump sum benefit of five years salary.

ISSUE:
Whether the petitioners are entitled to the full five-year lump sum gratuity provided for by R.A. No. 1568. (NO)

RULING:
The Court emphasized that the right to retirement benefits accrues only when two conditions are met: (1) when the conditions imposed by the applicable law in this case, R.A. No. 15688 are fulfilled; and (2) when an actual retirement takes place. The Court has repeatedly emphasized that retirement entails compliance with certain age and service requirements specified by law and jurisprudence, and takes effect by operation of law.

Section 1 of R.A. No. 1568 allows the grant of retirement benefits to the Chairman or any Member of the COMELEC who has retired from the service after having completed his term of office. **The petitioners obviously did not retire under R.A. No. 1568, as amended, since they never completed the full seven-year term of office.**

While the Court characterized an ad interim appointment in *Matibag v. Benipayo* as a permanent appointment that takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office, the Court have also positively ruled in that case that an ad interim appointment that has lapsed by inaction of the Commission on Appointments does not constitute a term of office.

The retirement benefits granted to petitioners under Section 1 of R.A. No. 1568 are purely gratuitous in nature. Thus, they have no vested right over these benefits. Retirement benefits as provided under R.A. No. 1568 must be distinguished from a pension which is a form of deferred compensation for services performed. In a pension, employee participation is mandatory, thus, employees acquire contractual or vested rights over the pension as part of their compensation.

MELINDA L. OCAMPO, *Petitioner, - versus* -COMMISSION ON AUDIT, *Respondent.*
G.R. No. 188716, EN BANC, June 10, 2013, PEREZ, *J.*

There is nothing in R.A. No. 1568 as amended by R.A. No. 3595 that allows a qualified retiree to therein recover two (2) sets of retirement benefits as a consequence of two (2) retirements from the same covered agency. As worded, R.A. No. 1568, as amended, only allows payment of only a single gratuity and a single annuity out of a single compensable retirement from any one of the covered agencies.

Since R.A. No. 1568, as amended by R.A. No. 3595 clearly does not justify the payment of more than one gratuity and one annuity to a qualified retiree, Ocampo cannot claim two (2) sets of retirement benefits under the same law.

FACTS:
Petitioner Melinda L. Ocampo (Ocampo), under Letter of Appointment, **Ocampo assumed office as Board Member of the ERB.** Upon expiration of her term, Ocampo retired under E.O. No. 172, "Creating the Energy Regulatory Board" in relation to R.A. No. 1568, "An Act to Provide Life Pension to the Auditor General and the Chairman or any Member of the Commission on Elections." **Ocampo availed of the five-year lump sum benefit and the corresponding monthly pension to be paid out for the remainder of her life.** This first gratuity lump sum payment based on 60 months or 5 years advance salary was immediately received by Ocampo after her retirement. Likewise, Ocampo began to receive her monthly pension.

Ocampo was again appointed, this time as Chairman of ERB, with a term of 4 years. The ERB was abolished and replaced by the Energy Regulatory Commission (ERC) as a consequence of the enactment of R.A. No. 9136, the Electric Reform Act of 2001. For the second time, Ocampo sought retirement under E.O. No. 172. Thereafter, Chairperson Barin approved the payment thereof to Ocampo.

However, on post-audit of the transaction with Ocampo as payee, State Auditor IV, Nelda Monterde (Auditor Monterde), issued Notice of Suspension (NS) No. 2002-002-101: (1) suspending payment of the amount of ₱1,452,613.71 covering Ocampo's second retirement gratuity computed on a pro-rata basis equivalent to only two years, eleven months, and twenty days; and (2) requiring submission by the ERC of legal basis for the payment of retirement gratuity twice under the same law (EO 172).

Ocampo wrote Auditor Monterde asking for the lifting of NS No. 2002-002-101, asseverating her entitlement to the second retirement gratuity.

The Legal and Adjudication Office-National (LAO-N) of the COA denied the request. On motion for reconsideration, the COA LAO-N issued Notice of Disallowance (ND) No. 2003-021, affirming NS No. 2002-001-101, disallowing Ocampo's receipt of a second retirement gratuity under E.O. No. 172.

The COA, in a Decision, partially affirmed ND No. 2003-021 and allowed Ocampo's receipt of a prorated retirement gratuity based on her salary as Chairperson of the ERB.

ISSUE:
Whether petitioner Ocampo is entitled to receive two sets of retirement benefits for her respective terms as Board Member and Chairperson of the ERB. (NO)

RULING:
Claim of Ocampo for Two Sets of Retirement Benefits Not a Claim of Double Compensation

At the outset, it must be clarified that the claim of Ocampo for two (2) sets of retirement benefits under R.A. No. 1568 is not, strictly speaking, a claim for double compensation prohibited under the first paragraph of Section 8, Article IX-B of the Constitution. Claims for double retirement benefits

fall under the prohibition against the receipt of double compensation when they are based on exactly the same services and on the same creditable period. **This is not, however, the case herein.**

In this case, Ocampo is not claiming two (2) sets of retirement benefits for one and the same creditable period. Rather, Ocampo is claiming a set of retirement benefits for each of her two (2) retirements from the ERB. In other words, each set of retirement benefits claimed by Ocampo is based on distinct creditable periods i.e., one for her term as **Member** of the ERB and another for her term as **Chairman** of the same agency. What Ocampo is merely claiming, therefore, is that she is entitled to two (2) sets of retirement benefits for her two (2) retirements from the ERB under R.A. No. 1568, as amended.

R.A. No. 1568 as Amended Does Not Justify Payment of More than One Gratuity and Annuity as a Consequence of Several Retirements from the Same Agency

There is nothing in R.A. No. 1568 as amended by R.A. No. 3595 that allows a qualified retiree to therein recover two (2) sets of retirement benefits as a consequence of two (2) retirements from the same covered agency. As worded, R.A. No. 1568, as amended, only allows payment of only a single gratuity and a single annuity out of a single compensable retirement from any one of the covered agencies.

In fact, the contingency of multiple retirements from the same covered agency could not have been contemplated by the law. We can confirm this if we take into consideration that R.A. No. 1568 is a law that, first and foremost, was intended to cover the retirement benefits of the chairmen and members of the COA (formerly the Office of the Auditor General) and of the Commission on Elections (COMELEC) and that it has been the consistent policy of the State, indeed since the 1935 Constitution, to prohibit any appointment of more than one term in the said constitutional bodies. **Hence, R.A. No. 1568, as it was passed and in its present form, cannot be said to have sanctioned the payment of more than one set of retirement benefits to a retiree as a consequence of multiple retirements in one agency.**

The mere circumstance that members and chairmen of the ERB may be appointed to serve therein for more than one term (but not for two consecutive terms) does not mean that they would be entitled a set of retirement benefits under R.A. No. 1568 for each of their completed term. Section 1 of E.O. No. 172 merely extends to members and chairmen of the ERB similar retirement benefits that retiring members and chairmen of the COA and COMELEC are entitled to under the law. Similar does not mean greater. **Since R.A. No. 1568, as amended by R.A. No. 3595 clearly does not justify the payment of more than one gratuity and one annuity to a qualified retiree, Ocampo cannot claim two (2) sets of retirement benefits under the same law.**

RE: LETTER OF COURT OF APPEALS JUSTICE VICENTE S.E. VELOSO FOR ENTITLEMENT TO LONGEVITY PAY FOR HIS SERVICES AS COMMISSION MEMBER III OF THE NATIONAL LABOR RELATIONS COMMISSION
A.M. No. 12-8-07-CA, EN BANC, June 16, 2015, BRION, *J.*

Construing Section 42 as we do in this Resolution does not and will not negate the applicable laws, contrary to Justice De Castro's Dissent. Rather, the interpretation that the term "salary" does not include longevity pay will rectify the error that the Court's past rulings have created on this subject. To recapitulate, the Court's prior rulings treated longevity pay as part of the "salary" – a ruling that, as explained, runs counter to the express and implied intent of BP 129. They are erroneous because they

introduced and included in the definition and composition of "salary" under Section 41 an element that the law did not intend to include, either expressly or impliedly.

Hence, the first decisive move for the Court is to declare, as it hereby declares, the abandonment of our rulings on longevity pay in the cases of Santiago, Gancayco, Dela Fuente, and Guevara-Salonga and to strike them out of our ruling case law, without, however, withdrawing the grants to those who have benefitted from the Court's misplaced final rulings.

Along these lines, the Court also hereby expressly declares that it does not disavow the longevity pay previously granted to the retired justices and judicial officials for services rendered outside the Judiciary. They may continue enjoying their granted benefits as their withdrawal now will be inequitable. With the same objective, those still in the service who are now enjoying past longevity pay grants due to past services outside the Judiciary, shall likewise continue with the grants already made, but their grants will have to be frozen at their current levels until their services outside the Judiciary are compensated for by their present and future judicial service.

FACTS:
A. Letter-Request of Justice Salazar-Fernando

In her letter, Justice Salazar-Fernando requested that her services as Judge of the MTC of Sta. Rita, Pampanga, and as Commissioner of the COMELEC, be considered as part of her judicial services as in the case of *Hon. Bernardo P. Pardo, Retired Associate Justice of the Supreme Court.* Accordingly, Justice Salazar-Fernando requested that her longevity pay be adjusted "from the current 10% to 20% of her basic salary.

B. Letter-Request of Justice Gacutan

In her letter, Justice Gacutan requested that: (a) her services as Commissioner IV of the NLRC be credited as judicial service for purposes of retirement; (b) she be given a longevity pay equivalent to 10% of her basic salary; and (c) an adjustment of her salary, allowances and benefits be made from the time she assumed as CA Justice.

C. Motion for Reconsideration of Justice Veloso

In his motion for reconsideration, Justice Veloso assailed the Court's Resolution that denied his request for the crediting of his services as NLRC Commissioner as judicial service for purposes of adjusting his salary and benefits, specifically his longevity pay. Justice Veloso claimed that R.A. 9347 which amended Article 216 of the Labor Code should be applied retroactively since it is a curative statute. He maintained under this view that he already had the rank of a CA Justice as NLRC Commissioner before he was appointed to the CA.

ISSUE:
Whether the past service of incumbent justices and judges, rendered at the Executive Department, be recognized under Section 42 of BP 129 (the longevity pay provision) on the ground that their previous executive positions now carry the rank, salary, and benefits of their counterparts in the Judiciary. (NO)

RULING:

The law governing this issue is the longevity pay provision under Section 42 of B.P. 129. What would otherwise be a simple stand-alone provision is complicated by subsequent laws that grant the same ranks, salaries and benefits. These new levels of rank and salary are essentially what the present petitioners and the incumbent justices and judges cite as basis for the grant or increase of their longevity pay. Another complicating factor involves the past rulings of this Court where past executive service had been recognized, not only for retirement pay purposes, but for longevity pay purposes upon retirement.

The consolidated cases, involve claims by CA justices – members of the Judiciary – who look up to laws involving the Executive Department to secure, maintain or increase the longevity pay that provides benefit for judges and justices. Our primary focus, however, must be the interpretation of our own law — BP 129 and its Section 42.

A. Judicial Rank and Executive Rank

The Judiciary recognizes the ranks that the law accords to judges and justices. These judicial ranks wholly pertain to the Judiciary as an independent, separate and co-equal branch of government. **As a consequence, the grant of rank at the same level as the grantees' counterpart judges or justices is not and cannot be a conferment of "judicial rank" and does not thereby accord the grantees recognition as members of the Judiciary.** For incumbent judges and justices who had previous government service outside the Judiciary, it follows that the grant of rank to them under their old executive positions does not render their service in these previous positions equivalent to and creditable as judicial service, unless Congress by law says otherwise and only for purposes of entitlement to salaries and benefits.

B. Longevity Pay under Section 42

Section 42 of BP 129 provides for the payment and the manner of computing longevity pay, i.e., to be paid monthly, based on the recipient's monthly basic pay at the rate of 5% for each five years of continuous, efficient and meritorious service rendered in the judiciary. Note that the amount of longevity pay to which a recipient shall be entitled is not a fixed amount, in contrast with the "salary" under Section 41; it is a percentage of the recipient's monthly basic pay which, at the least, is equivalent to 5%. Also, the payment of longevity pay is premised on a continued, efficient, and meritorious service: (1) in the Judiciary; and (2) of at least five years. Long and continued service in the Judiciary is the basis and reason for the payment of longevity pay; it rewards the loyal and efficient service of the recipient in the Judiciary.

From these perspectives, longevity pay is both a branch specific (i.e., to the judges and justices of the Judiciary) and conditional (i.e., due only upon the fulfillment of certain conditions) grant. In negative terms, it is not an absolute grant that is easily transferrable to other departments of government. **Based on these considerations, longevity pay should be treated as a benefit or an "add-on" and not a part, let alone an integral component of "salary," contrary to the Dissents' position.**

This consequence necessarily results as "salary" and longevity pay: (1) are treated under different sections of BP 129; (2) have different bases for determination or computation; and (3) have different reasons for the payment or grant. In addition, Section 42 of BP 129 does not categorically state that the monthly longevity pay shall form part of the "salary" or is an integral or inseparable component of "salary." Even the most liberal interpretation of Section 42 does not reveal any intention to treat longevity pay in this manner — as part, or as an integral component, of "salary."

C. <u>The structure of the laws providing for the salaries and benefits of members of the Judiciary, prosecutors, and public officers in the OSG and the NLRC further negate the Dissent's view that these laws intended equal treatment among them</u>

We cannot also agree with the Dissent's position that the laws providing for the salaries and benefits of members of the Judiciary, the prosecution service, the OSG solicitors, and the members of the NLRC aim to provide equality among these public officers in their salaries and benefits.

A look at the structure of the laws affecting the Judiciary, the prosecutors, the OSG, and the NLRC shows that there could be no equal treatment among them. **Had Congress really intended full parity between the Judiciary and other public officers in the executive department, it would have provided for reciprocity in the automatic increase of salaries, benefits and allowances, and the upgrading of the grades or levels of the emoluments of these public officers.** The inevitable conclusion from all these is that Congress, in increasing the salaries and benefits of these officers, merely used the salary levels and benefits in the Judiciary as a yardstick to make their salaries and benefits comparable to fellow government employees engaged in the administration of justice.

D. <u>Conclusion</u>

Construing Section 42 as we do in this Resolution does not and will not negate the applicable laws, contrary to Justice De Castro's Dissent. Rather, the interpretation that the term "salary" does not include longevity pay will rectify the error that the Court's past rulings have created on this subject. To recapitulate, the Court's prior rulings treated longevity pay as part of the "salary" – a ruling that, as explained, runs counter to the express and implied intent of BP 129. They are erroneous because they introduced and included in the definition and composition of "salary" under Section 41 an element that the law did not intend to include, either expressly or impliedly.

Hence, the first decisive move for the Court is to declare, as it hereby declares, the abandonment of our rulings on longevity pay in the cases of *Santiago, Gancayco, Dela Fuente, and Guevara-Salonga* and to strike them out of our ruling case law, without, however, withdrawing the grants to those who have benefitted from the Court's misplaced final rulings.

Along these lines, the Court also hereby expressly declares that it does not disavow the longevity pay previously granted to the retired justices and judicial officials for services rendered outside the Judiciary. They may continue enjoying their granted benefits as their withdrawal now will be inequitable.

With the same objective, those still in the service who are now enjoying past longevity pay grants due to past services outside the Judiciary, shall likewise continue with the grants already made, but their grants will have to be frozen at their current levels until their services outside the Judiciary are compensated for by their present and future judicial service.

Thus, this Court: (1) GRANTS the request of Associate Justice Remedios A. Salazar-Fernando that her services as Judge of the MTC of Sta. Rita, Pampanga be included in the computation of her longevity pay; (2) DENIES the request of Associate Justice Remedios A. Salazar-Femando that her services as COMELEC Commissioner be included in the computation of her longevity pay; (3) DENIES the request of Associate Justice Angelita Gacutan that her services as NLRC Commissioner be included in the

computation. of her longevity pay from the time she started her judicial service; and (4) DENIES with finality the motion for reconsideration of Associate Justice Vicente S.E. Veloso for lack of merit.

RE: APPLICATION FOR OPTIONAL RETIREMENT UNDER REPUBLIC ACT NO. 910, AS AMENDED BY REPUBLIC ACT NO. 5095 AND REPUBLIC ACT NO. 9946, OF ASSOCIATE JUSTICE MARTIN S. VILLARAMA, JR.
A.M. No. 15-11-01-SC, EN BANC, March 6, 2018, MARTIRES, *J.*

In granting the longevity pay to the justice or judge still in active service, the law did not qualify whether the recipient is to subsequently retire compulsorily or optionally. ***Upon his or her retirement, whether compulsory or optional, the justice or judge continues to enjoy the longevity pay by receiving the same together with the monthly pension benefit. Thus, if a justice or judge has rendered long service in the judiciary, he or she must be rewarded even if the retirement is optional; and the purpose of the law is served no more than it would be in the case of one who is retired compulsorily.Thus, for purposes of computing longevity pay, the tacking of leave credits to the length of judicial service rendered by qualified justices and judges should be applied to optional retirees as well.***

At the time of his or her appointment as bar examiner, an incumbent justice or judge is already concurrently serving in the judiciary. The regular functions of the justice or judge and the service performed as bar examiner cannot appropriately be considered as two separable and finite judicial services ***if they supposedly coincide at the same time or period.*** *It would be defying logic and sensible reasoning if one is to be tacked to the other, in effect extending the length of judicial service, even if no additional time was really spent in the performance of the service as bar examiner outside of the time or period actually served as justice or judge.*

Thus, for purposes of computing longevity pay, we find no justifiable reason in tacking the service as bar examiner to the judicial service of one who is already a member of the judiciary. Accordingly, Justice Villarama's service as bar examiner could not be credited in the computation of his longevity pay.

FACTS:
B.P. Blg. 129, known as "The Judiciary Reorganization Act of 1980," created or established the CA, RTCs, MeTC, MTCs, and MCTCs. Section 42 of B.P. Blg. 22 granted to justices and judges of the said courts a monthly longevity pay equivalent to 5% of the monthly basic pay for each five-year period of continuous, efficient, and meritorious service in the judiciary.

Since the Supreme Court, the Sandiganbayan, and the CTA were not covered by B.P. Blg. 129, the justices and judges of these courts were not entitled to the monthly longevity pay provided in Section 42 of B.P. Blg. 129. However, Presidential Decree No. 1927, approved on 2 May 1985, corrected the gap.

Justice Josue Bellosillo (Justice Bellosillo), a former member of this Court, who was then due to retire compulsorily, requested that his earned leave credits be tacked to his judicial service in order to increase his longevity pay. The letter-request was docketed as A.M. No. 03-9-20-SC.

While Sec. 42 provides for entitlement to longevity pay for every five (5)-year period of judicial service, fairness and justice dictate a liberal construction of the provision if the member of the judiciary concerned is retiring compulsorily and therefore is left with no option, unlike one who

retires optionally, to complete the five (5)-year period requirement in order to be entitled to the whole five percent (5%) additional longevity pay. In other words, even if he opts to extend his stay to complete at least another five (5)-year period, he cannot do so because of the constitutional limitation to his term of office.

In its Resolution in A.M. No. 03-9-20-SC, the Court granted the request of Justice Bellosillo. Thus, it became the basis of Administrative Circular **(A.C.) No. 58-2003**, entitled, "ALLOWING THE TACKING OF EARNED LEAVE CREDITS IN THE COMPUTATION OF LONGEVITY PAY UPON **COMPULSORY** RETIREMENT OF JUSTICES AND JUDGES." The circular reads:

> NOW, THEREFORE, the COURT RESOLVED, as it hereby RESOLVES, **that earned leave credits shall be allowed to be tacked to the length of judicial service for the purpose of increasing the longevity pay of Justices and Judges who reach the age of compulsory retirement.** The computation should also include the additional percentage of longevity pay that corresponds to any fraction of a five-year period in the total number of years of continuous, efficient and meritorious service rendered, considering that the retiree would no longer be able to complete the period because of his **compulsory retirement**.

Thereafter, Justice Ma. Alicia Austria Martinez (Justice Austria-Martinez), also a former member of this Court, who was to retire **optionally**, requested that the tacking of leave credits under A.C. No. 58-2003 be applied in her favor. The Court, in a Resolution, approved the request of Justice Austria-Martinez but with a qualification that the ruling be only **pro hac vice**.

Likewise, Justice Martin S. Villarama, Jr. (Justice Villarama) also applied for optional retirement. In his letter, Justice Villarama requests that the benefits of A.C. No. 58-2003 be applied in computing his longevity pay in view of several considerations. **Justice Villarama prays that, in the light of his attendant circumstances, A.C. No. 58-2003 should be applied to him, *pro hac vice.* He also prays that his earned leave credits and services as Bar Examiner in 2004 be tacked to the length of his judicial service for purposes of computing his longevity pay.**

ISSUE:
Whether Justice Villarama, an optional retiree, can claim the benefits under A.C. No. 58-2003. (YES)

RULING:
After careful deliberation, the Court rules to grant Justice Villarama's request to tack his earned leave credits, but **not** his services as Bar Examiner in 2004, to his years in judicial service for purposes of computing his longevity pay. The fraction of the five-year period immediately prior to Justice Villarama's optional retirement shall also be included in the computation.

On the application of A.C. No. 58-2003

A.C. No. 58-2003 is an implementation of Section 42 of B.P. Blg. 129, or the basic provision on longevity pay granted by law to justices and judges in the judiciary. Section 42 of B.P. Blg. 129 is intended to recompense justices and judges for each five-year period of continuous, efficient, and meritorious service rendered in the Judiciary.

In granting the longevity pay to the justice or judge still in active service, the law did not qualify whether the recipient is to subsequently retire compulsorily or optionally. **Upon his or her retirement, whether compulsory or optional, the justice or judge continues to enjoy the**

longevity pay by receiving the same together with the monthly pension benefit. Thus, if a justice or judge has rendered long service in the judiciary, he or she must be rewarded even if the retirement is optional; and the purpose of the law is served no more than it would be in the case of one who is retired compulsorily.

In crafting the circular, the Court duly considered the long-standing policy of according liberal construction to retirement laws covering government personnel. Given this legal milieu, the Court allowed the tacking of earned leave credits to the length of judicial service in order to increase the longevity pay of justices and judges. The wisdom behind the issuance of A.C. No. 58-2003 is to ensure the comfort and security of **retired** justices and judges who had tirelessly and faithfully served the government. **Thus, for purposes of computing longevity pay, the tacking of leave credits to the length of judicial service rendered by qualified justices and judges should be applied to optional retirees as well.**

On the payment of fractional longevity pay

We uphold the computation of the longevity pay to include the fractional percentage of the unexpired five-year period. When the Court approved A.C. No. 58-2003, it was with due consideration of Justice Bellosillo's observation that despite the predilection to extend one's service in the judiciary in order to complete the five-year period, a retiring justice or judge is precluded from doing so because of the constitutional limitation to his term of office. In line with the liberal approach, we adopted Justice Bellosillo's viewpoint which has since been the norm.

We hasten to add that the fractional portion of the five-year period is actual service rendered, a fact that cannot be reversed. It would be a mockery of the liberal approach in the treatment of retirement laws for government personnel if such fractional portion is disregarded to the detriment of the retiring justice or judge.

On Justice Villarama's service as bar examiner

At the time of his or her appointment as bar examiner, an incumbent justice or judge is already concurrently serving in the judiciary. The regular functions of the justice or judge and the service performed as bar examiner cannot appropriately be considered as two separable and finite judicial services **if they supposedly coincide at the same time or period.** It would be defying logic and sensible reasoning if one is to be tacked to the other, in effect extending the length of judicial service, even if no additional time was really spent in the performance of the service as bar examiner outside of the time or period actually served as justice or judge.

Thus, for purposes of computing longevity pay, we find no justifiable reason in tacking the service as bar examiner to the judicial service of one who is already a member of the judiciary. Accordingly, Justice Villarama's service as bar examiner could not be credited in the computation of his longevity pay.

In sum, a justice or judge who retires optionally, just like Justice Villarama, is entitled to the tacking of leave credits provided in A.C. No. 58- 2003 for the purpose of computing the longevity pay as granted in Section 42 of B.P. Blg. 129. Likewise, a fraction of the unexpired five-year period immediately prior to retirement is with sufficient basis. In the case of Justice Villarama, there remains a fraction of the 5-year period prior to his optional retirement on January 6, 2016 which must

correspondingly be counted in computing his longevity pay. Lastly, service as bar examiner by a member of the judiciary is not to be factored in computing longevity pay.

IV. ELECTION LAW

DOUGLAS R. CAGAS, *petitioner, - versus* - THE COMMISSION ON ELECTIONS, AND CLAUDE P. BAUTISTA, *respondents.*
G.R. No. 194139, EN BANC, January 24, 2012, BERSAMIN, *J.*

This provision, although it confers on the Court the power to review any decision, order or ruling of the COMELEC, limits such power to a ***final decision or resolution of the COMELEC En Banc, and does not extend to an interlocutory order issued by a Division of the COMELEC. Otherwise stated, the Court has no power to review on certiorari an interlocutory order or even a final resolution issued by a Division of the COMELEC.***

Under the exception, however, the Court may take cognizance of a petition for certiorari under Rule 64 to review an interlocutory order issued by a Division of the COMELEC on the ground of the issuance being made without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when it does not appear to be specifically provided under the COMELEC Rules of Procedure that the matter is one that the COMELEC En Banc may sit and consider, or a Division is not authorized to act, or the members of the Division unanimously vote to refer to the COMELEC En Banc. ***However, the exception has no application herein, because the COMELEC First Division had the competence to determine the lack of detailed specifications of the acts or omissions complained of as required by Rule 6, Section 7 of COMELEC Resolution No. 8804, and whether such lack called for the outright dismissal of the protest.***

FACTS:
The petitioner and respondent Claude P. Bautista (Bautista) contested the position of Governor of the Province of Davao del Sur in the May 10, 2010 automated national and local elections. The fast transmission of the results led to the completion by May 14, 2010 of the canvassing of votes cast for Governor of Davao del Sur, and the petitioner was proclaimed the winner (with 163,440 votes), with Bautista garnering 159,527 votes.

Alleging fraud, anomalies, irregularities, vote-buying and violations of election laws, rules and resolutions, Bautista filed an electoral protest on May 24, 2010 (EPC No. 2010-42). The protest was raffled to the COMELEC First Division.

The petitioner averred as his special affirmative defenses that Bautista did not make the requisite cash deposit on time; and that Bautista did not render a detailed specification of the acts or omissions complained of. The COMELEC First Division issued the First Assailed Order denying the special affirmative defenses of the petitioner.

The petitioner moved to reconsider on the ground that the order did not discuss whether the protest specified the alleged irregularities in the conduct of the elections, in violation of Section 2, paragraph 2, Rule 19 of COMELEC Resolution No. 8804, requiring all decisions to clearly and distinctly express the facts and the law on which they were based; and that it also contravened Section 7(*g*), Rule 6 of COMELEC Resolution No. 8804 requiring a detailed specification of the acts or omissions complained of. He prayed that the matter be certified to the COMELEC *En Banc* pursuant to Section 1, Section 5, and Section 6, all of Rule 20 of COMELEC Resolution No. 8804.

Bautista countered that the assailed orders, being merely interlocutory, could not be elevated to the COMELEC *En Banc* pursuant to the ruling in *Panlilio v. COMELEC*, and that the rules of the COMELEC required the initiatory petition to specify the acts or omissions constituting the electoral frauds, anomalies and election irregularities, and to contain the ultimate facts upon which the cause of action was based.

The COMELEC First Division issued its Second Assailed Order, denying the petitioner's motion for reconsideration. **The prayer to elevate the instant Motion for Reconsideration to the Commission En Banc is DENIED considering that the First Assailed Order is merely interlocutory and it does not dispose of the instant case with finality, in accordance with Section 5(c), Rule 3 of the COMELEC Rules of Procedure.**

Not satisfied, the petitioner commenced this **special civil action** directly in this Court.

ISSUE:
Whether this Court can take cognizance of the instant petition for certiorari. (NO)

RULING:
The governing provision is Section 7, Article IX of the 1987 Constitution, which provides:

> Section 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

This provision, although it confers on the Court the power to review any decision, order or ruling of the COMELEC, limits such power to a ***final*** **decision or resolution of the COMELEC *En Banc,* and does not extend to an interlocutory order issued by a Division of the COMELEC. Otherwise stated, the Court has no power to review on *certiorari* an interlocutory order or even a final resolution issued by a Division of the COMELEC.**

Under the exception, however, the Court may take cognizance of a petition for *certiorari* under Rule 64 to review an interlocutory order issued by a Division of the COMELEC on the ground of the issuance being made without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when it does not appear to be specifically provided under the COMELEC *Rules of Procedure* that the matter is one that the COMELEC *En Banc* may sit and consider, or a Division is not authorized to act, or the members of the Division unanimously vote to refer to the COMELEC *En Banc*. Of necessity, the aggrieved party can directly resort to the Court because the COMELEC *En Banc* is not the proper forum in which the matter concerning the assailed interlocutory order can be reviewed.
However, the exception has no application herein, because the COMELEC First Division had the competence to determine the lack of detailed specifications of the acts or omissions complained of as required by Rule 6, Section 7 of COMELEC Resolution No. 8804, and whether such lack called for the outright dismissal of the protest.

MAMERTO T. SEVILLA, JR. *Petitioner, - versus* -COMMISSION ON ELECTIONS and RENATO R. SO, *Respondents.*
G.R. No. 203833, EN BANC, March 19, 2013, BRION, J.

The COMELEC En Banc's Resolution lacks legal effect as it is not a majority decision required by the Constitution and by the COMELEC Rules of Procedure. We have previously ruled that a majority vote requires a vote of four members of the COMELEC En Banc. *In Marcoleta v. Commission on Elections, we declared "that Section 5(a) of Rule 3 of the COMELEC Rules of Procedure and Section 7 of Article IX-A of the Constitution require that a majority vote of all the members of the COMELEC En Banc, and not only those who participated and took part in the deliberations, is necessary for the pronouncement of a decision, resolution, order or ruling."*

In the present case, it appears from the records that the COMELEC En Banc did not issue an Order for a rehearing of the case in view of the filing in the interim of the present petition for certiorari by Sevilla. ***Thus, we remanded the cases to the COMELEC En Banc for the conduct of the required rehearing pursuant to the COMELEC Rules of Procedure. Based on these considerations, we thus find that a remand of this case is necessary for the COMELEC En Banc to comply with the rehearing requirement of Section 6, Rule 18 of the COMELEC Rules of Procedure.***

FACTS:
Petitioner Mamerto Sevilla and respondent Renato So were candidates for the position of Punong Barangay of Barangay Sucat, Muntinlupa City during the 2010 Barangay and Sangguniang Kabataan Elections. The Board of Election Tellers proclaimed Sevilla as the winner. So filed an election protest with the MeTC on the ground that Sevilla committed electoral fraud, anomalies and irregularities in all the protested precincts. After the recounting of ballots, the MeTC dismissed the election protest. So filed a motion for reconsideration instead of a notice of appeal and failed to pay the fees within the reglementary period and as a result the MeTC denied the motion stating that it is a prohibited pleading.

So filed a petition for certiorari with the COMELEC against the judge on the ground of grave abuse of discretion. The COMELEC Second Division granted So's petition which was thereafter affirmed by the COMELEC En Banc by vote of 3-3.

ISSUE:
Whether the COMELEC En Banc's Resolution has a legal effect. (NO)

RULING:
The COMELEC En Banc's Resolution lacks legal effect as it is not a majority decision required by the Constitution and by the COMELEC Rules of Procedure. We have previously ruled that a majority vote requires a vote of four members of the COMELEC En Banc. In *Marcoleta v. Commission on Elections,* we declared "that Section 5(a) of Rule 3 of the COMELEC Rules of Procedure and Section 7 of Article IX-A of the Constitution require that a majority vote of all the members of the COMELEC En Banc, and not only those who participated and took part in the deliberations, is necessary for the pronouncement of a decision, resolution, order or ruling."

In other words, the vote of four (4) members must always be attained in order to decide, irrespective of the number of Commissioners in attendance. Thus, for all intents and purposes, the assailed Resolution of the COMELEC En Banc had no legal effect whatsoever except to convey that the COMELEC failed to reach a decision and that further action is required.

The COMELEC En Banc's Resolution must be reheard pursuant to the COMELEC Rules of Procedure. To break the legal stalemate in case the opinion is equally divided among the members of the COMELEC En Banc, Section 6, Rule 18 of the COMELEC Rules of Procedure mandates a rehearing where parties are given the opportunity anew to strengthen their respective positions or arguments and convince the members of the COMELEC En Banc of the merit of their case. Section 6, Rule 18 of the COMELEC Rules of Procedure reads:

> Section 6. Procedure if Opinion is Equally Divided. - When the Commission En Banc is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied.

Rehearing is defined as a "second consideration of cause for purpose of calling to court's or administrative board's attention any error, omission, or oversight in first consideration. A retrial of issues presumes notice to parties entitled thereto and opportunity for them to be heard." But as held in *Samalio v. Court of Appeals:*

> A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand.

In the present case, it appears from the records that the COMELEC En Banc did not issue an Order for a rehearing of the case in view of the filing in the interim of the present petition for certiorari by Sevilla. **Thus, we remanded the cases to the COMELEC En Banc for the conduct of the required rehearing pursuant to the COMELEC Rules of Procedure. Based on these considerations, we thus find that a remand of this case is necessary for the COMELEC En Banc to comply with the rehearing requirement of Section 6, Rule 18 of the COMELEC Rules of Procedure.**

CARMELINDA C. BARRO, *Petitioner, - versus* -THE COMMISSION ON ELECTIONS (FIRST DIVISION); HON. DELIA P. NOEL-BERTULFO, in her capacity as Presiding Judge of the Municipal Trial Court, Palompon, Leyte; and ELPEDIO P. CONTINEDAS, JR., *Respondents.*
G.R. No. 186201, EN BANC, October 9, 2009, PERALTA, *J.*

It is settled that under Section 7, Article IX-A of the Constitution, what may be brought to this Court on certiorari is the decision, order or ruling of the COMELEC En Banc. ***However, this rule should not apply when a division of the COMELEC arrogates unto itself and deprives the En Banc of the authority to rule on a motion for reconsideration, like in this case.***

In this case, the First Division of the COMELEC violated the cited provisions of the Constitution and the COMELEC Rules of Procedure when it resolved petitioner's motion for reconsideration of its final Order, which dismissed petitioner's appeal. By arrogating unto itself a power constitutionally lodged in the Commission En Banc, the First Division of the COMELEC exercised judgment in excess of, or without, jurisdiction. Hence, the Order issued by the First Division of the COMELEC, denying petitioner's motion for reconsideration, is null and void.

FACTS:

Petitioner Carmelinda C. Barro and private respondent Elpedio P. Continedas, Jr. were candidates for Punong Barangay of Barangay Plaridel, Palompon, Leyte during the October 29, 2007 synchronized Barangay and Sangguniang Kabataan Elections. Petitioner garnered 150 votes, while respondent garnered 149 votes. The Barangay Board of Canvassers proclaimed petitioner as the duly elected Punong Barangay, winning by a margin of only one vote.

Private respondent filed an election protest before the MTC of Palompon, Leyte, impugning the result of the canvass in two precincts of the barangay. After the revision of ballots, the MTC found that petitioner and respondent both garnered 151 votes.

Petitioner filed a Notice of Appeal with the trial court and she stated in her petition that she also paid the appeal fee required under Section 9, Rule 14 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials (A.M. No. 07-4-15-SC). Thereafter, the records of the case were forwarded to the COMELEC.

The First Division of the COMELEC issued an Order dismissing petitioner's appeal for failure to pay the appeal fee. Petitioner filed a Motion for Reconsideration of the COMELEC First Division Order. The same was denied by the First Division of the COMELEC.

ISSUE:
Whether the Decision of the COMELEC First Division in denying the Motion for Reconsideration without elevating the same to the COMELEC En Banc was proper. (NO)

RULING:
It is settled that under Section 7, Article IX-A of the Constitution, what may be brought to this Court on certiorari is the decision, order or ruling of the COMELEC En Banc. **However, this rule should not apply when a division of the COMELEC arrogates unto itself and deprives the En Banc of the authority to rule on a motion for reconsideration, like in this case.**

Section 3, Article IX-C of the Constitution provides for the procedure for the resolution of election cases by the COMELEC, thus:

> Sec. 3. The Commission on Elections may sit En Banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission En Banc.

The constitutional provision is reflected in Sections 5 and 6, Rule 19 of the COMELEC Rules of Procedure as follows:

> Sec. 5. How Motion for Reconsideration Disposed of. — Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission En Banc.
>
> Sec. 6. Duty of Clerk of Court of Commission to Calendar Motion for Reconsideration. — The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission En Banc within ten (10) days from the certification thereof.

In this case, the First Division of the COMELEC violated the cited provisions of the Constitution and the COMELEC Rules of Procedure when it resolved petitioner's motion for reconsideration of its final Order, which dismissed petitioner's appeal. By arrogating unto itself a power constitutionally lodged in the Commission En Banc, the First Division of the COMELEC exercised judgment in excess of, or without, jurisdiction. Hence, the Order issued by the First Division of the COMELEC, denying petitioner's motion for reconsideration, is null and void.

KABATAAN PARTY-LIST, REPRESENTED BY REPRESENTATIVE JAMES MARK TERRY L. RIDON AND MARJOHARA S. TUCAY; SARAH JANE I. ELAGO, PRESIDENT OF THE NATIONAL UNION OF STUDENTS OF THE PHILIPPINES; VENCER MARI E. CRISOSTOMO, CHAIRPERSON OF THE ANAKBAYAN; MARC LINO J. ABILA, NATIONAL PRESIDENT OF THE COLLEGE EDITORS GUILD OF THE PHILIPPINES; EINSTEIN Z. RECEDES, DEPUTY SECRETARY- GENERAL OF ANAKBAYAN; CHARISSE BERNADINE I. BAÑEZ, CHAIRPERSON OF THE LEAGUE OF FILIPINO STUDENTS; ARLENE CLARISSE Y. JULVE, MEMBER OF ALYANSA NG MGA GRUPONG HALIGI NG AGHAM AT TEKNOLOHIYA PARA SA MAMAMAYAN (AGHAM); AND SINING MARIA ROSA L. MARFORI, *Petitioners*, - *versus* - COMMISSION ELECTIONS, *Respondent.*
G.R. No. 221318, EN BANC, December 16, 2015, PERLAS-BERNABE, *J.*

The right to vote is not a natural right but is a right created by law. The State may therefore regulate said right by imposing statutory disqualifications, with the restriction, however, that the same do not amount to a literacy, property or other substantive requirement.

Therefore, the State, in the exercise of its inherent police power, may then enact laws to safeguard and regulate the act of voter's registration for the ultimate purpose of conducting honest, orderly and peaceful election. ***Thus, unless it is shown that a registration requirement rises to the level of a literacy, property or other substantive requirement, the same cannot be struck down as unconstitutional, as in this case.***

FACTS:
President Benigno S. Aquino III signed into law RA 10367 which mandates the COMELEC to implement a mandatory biometrics registration system for new voters. RA 10367 was duly published on February 22, 2013 and took effect fifteen (15) days after. Pursuant to that, the COMELEC issued resolutions which commenced the mandatory biometric system of registration and implemented the NoBio-NoBoto policy.

Consequently, petitioners filed the instant petition assailing the constitutionality of the biometrics validation requirement imposed under RA 10367, as well as COMELEC Resolutions related thereto. They contend that the said law violates the right to suffrage on grounds that it rises to the level of an additional, substantial qualification where there is penalty of deactivation and biometrics deactivation is not the disqualification by law contemplated by the 1987 Constitution.

ISSUE:
Whether RA 10367, as well as the COMELEC Resolution related thereto, is constitutional. (YES)

RULING:
The right to vote is not a natural right but is a right created by law. The State may therefore regulate said right by imposing statutory disqualifications, with the restriction, however, that the same do not amount to a literacy, property or other substantive requirement. Moreover, the concept of a

"qualification" should be distinguished from the concept of "registration," which is jurisprudentially regarded as only the means by which a person's qualifications to vote is determined. **The act of registering is only one step towards voting, and it is not one of the elements that makes the citizen a qualified voter and one may be a qualified voter without exercising the right to vote. Registration is a form of regulation and not as a qualification for the right of suffrage.**

Therefore, the State, in the exercise of its inherent police power, may then enact laws to safeguard and regulate the act of voter's registration for the ultimate purpose of conducting honest, orderly and peaceful election. **Thus, unless it is shown that a registration requirement rises to the level of a literacy, property or other substantive requirement, the same cannot be struck down as unconstitutional, as in this case.**

MAGDALO PARA SA PAGBABAGO, *Petitioner, - versus* -COMMISSION ON ELECTIONS, *Respondent.*
G.R. No. 190793, EN BANC, June 19, 2012, SERENO, *J.*

At the outset, the Court held that COMELEC properly took judicial notice of the Oakwood incident, because it was widely known and extensively covered by the media made it a proper subject of judicial notice. Under Article IX-C, Section 2(5) of the 1987 Constitution, parties, organizations and coalitions that seek to achieve their goals through violence or unlawful means shall be denied registration. This disqualification is reiterated in Section 61 of B.P. 881, which provides that no political party which seeks to achieve its goal through violence shall be entitled to accreditation.

FACTS:
Magdalo Sa Pagbabago (Magdalo) filed a petition with COMELEC, seeking its registration and/or accreditation as a regional political party. However, COMELEC denied the petition for registration by taking judicial notice that the party organizer and Chairman of Magdalo, Senator Antonio F. Trillanes IV, and some members participated in the Oakwood Mutiny thereby employing violence and unlawful means to achieve the goals of the party.

ISSUE:
Whether the COMELEC's denial of the registration of Magdalo was proper. (YES)

RULING:
At the outset, the Court held that COMELEC properly took judicial notice of the Oakwood incident, because it was widely known and extensively covered by the media made it a proper subject of judicial notice. Under Article IX-C, Section 2(5) of the 1987 Constitution, parties, organizations and coalitions that seek to achieve their goals through violence or unlawful means shall be denied registration. This disqualification is reiterated in Section 61 of B.P. 881, which provides that no political party which seeks to achieve its goal through violence shall be entitled to accreditation.

Moreover, the finding that MAGDALO seeks to achieve its goals through violence or unlawful means did not operate as a prejudgment of the criminal proceedings against several member of Magdalo. The power vested by Article IX-C, Section 2(5) of the Constitution and Section 61 of BP 881 in the COMELEC to register political parties and ascertain the eligibility of groups to participate in the elections is purely administrative in character. In exercising this authority, the COMELEC only has to assess whether the party or organization seeking registration or accreditation pursues its goals by employing acts considered as violent or unlawful, and not necessarily criminal in nature.

In the case at bar, the challenged COMELEC Resolutions were issued pursuant to its administrative power to evaluate the eligibility of groups to join the elections as political parties, for which the evidentiary threshold of substantial evidence is applicable. In arriving at its assailed ruling, the COMELEC only had to assess whether there was substantial evidence adequate to support this conclusion.

JOEL G. MIRANDA, *petitioner, - versus* -ANTONIO M. ABAYA and the COMMISSION ON ELECTIONS, *respondents.*
G.R. No. 136351, EN BANC, July 28, 1999, MELO, *J.*

In Bautista vs. COMELEC, this Court explicitly ruled that "a cancelled certificate does not give rise to a valid candidacy." A person without a valid certificate of candidacy cannot be considered a candidate in much the same way as any person who has not filed any certificate of candidacy at all cannot, by any stretch of the imagination, be a candidate at all.

After having considered the importance of a certificate of candidacy, it can be readily understood why in Bautista we ruled that a person with a cancelled certificate is no candidate at all. Applying this principle to the case at bar and considering that Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, ***there demonstrably cannot be any possible substitution of a person whose certificate of candidacy has been cancelled and denied due course.***

The Court finds that the COMELEC's action nullifying the substitution by and proclamation of petitioner for the mayoralty post of Santiago City, Isabela is proper and legally sound.

FACTS:
Jose "Pempe" Miranda, then incumbent mayor of Santiago City, Isabela, filed his certificate of candidacy for the same mayoralty post for the synchronized May 11, 1998 elections. Private respondent Antonio Abaya filed a Petition to Deny Due Course to and/or Cancel Certificate of Candidacy. The petition was granted by the COMELEC, and it further ruled to disqualify Jose "Pempe" Miranda.

On May 6, 1998, way beyond the deadline for filing a certificate of candidacy, petitioner Joel Miranda filed his certificate of candidacy for the mayoralty post, supposedly as a substitute for his father, Jose "Pempe" Miranda. During the May 11, 1998 elections, petitioner and private respondent vied for the mayoralty seat, with petitioner garnering 22,002 votes, 1,666 more votes than private respondent who got only 20,336 votes.
Private respondent filed a Petition to Declare Null and Void Substitution with Prayer for Issuance of Writ of Preliminary Injunction and/or TRO, praying for the nullification of petitioner's certificate of candidacy for being void *ab initio* because the certificate of candidacy of Jose "Pempe" Miranda, whom petitioner was supposed to substitute, had already been cancelled and denied due course.

The COMELEC's First Division dismissed the case *motu proprio*. The COMELEC *En Banc* granted private respondent's motion for reconsideration, thus nullifying the substitution by petitioner Joel Miranda of his father as candidate for the mayoralty post of Santiago City.

ISSUE:
Whether the annulment of petitioner's substitution and proclamation was proper. (YES)

RULING:
The Court finds that the COMELEC's action nullifying the substitution by and proclamation of petitioner for the mayoralty post of Santiago City, Isabela is proper and legally sound.

Petitioner insists that the substitution at bar is allowed under Section 77 of the Omnibus Election Code which provides:

> Sec. 77. *Candidates in case of death, disqualification or withdrawal*. — If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.

While there is no dispute as to whether or not a nominee of a registered or accredited political party may substitute for a candidate of the same party who had been disqualified for any cause, this **does not include those cases where the certificate of candidacy of the person to be substituted had been denied due course and cancelled under Section 78 of the Code.** More importantly, under the express provisions of Section 77 of the Code, not just any person, but only "an *official candidate* of a registered or accredited political party" may be substituted.

In *Bautista vs. COMELEC*, this Court explicitly ruled that "a cancelled certificate does not give rise to a valid candidacy." A person without a valid certificate of candidacy cannot be considered a candidate in much the same way as any person who has not filed any certificate of candidacy at all cannot, by any stretch of the imagination, be a candidate at all.

After having considered the importance of a certificate of candidacy, it can be readily understood why in *Bautista* we ruled that a person with a cancelled certificate is no candidate at all. Applying this principle to the case at bar and considering that Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, **there demonstrably cannot be any possible substitution of a person whose certificate of candidacy has been cancelled and denied due course.**

NELSON T. LLUZ and CATALINO C. ALDEOSA, *Petitioners*, - *versus* - COMMISSION ON ELECTIONS and CAESAR O. VICENCIO, *Respondents*.
G.R. NO. 172840, EN BANC, June 7, 2007, CARPIO, *J.*

In other words, for a candidate's certificate of candidacy to be denied due course or canceled by the COMELEC, the fact misrepresented must pertain to a qualification for the office sought by the candidate.

No elective office, not even the office of the President of the Republic of the Philippines, requires a certain profession or occupation as a qualification. For local elective offices including that of Punong Barangay,

R.A. 7160 or the Local Government Code of 1991 prescribes only qualifications pertaining to citizenship, registration as a voter, residence, and language.

Profession or occupation not being a qualification for elective office, misrepresentation of such does not constitute a material misrepresentation. *Certainly, in a situation where a candidate misrepresents his or her profession or occupation in the certificate of candidacy, the candidate may not be disqualified from running for office under Section 78 as his or her certificate of candidacy cannot be denied due course or canceled on such ground.*

FACTS:
Private respondent was a candidate for the post of Punong Barangay of Barangay 2, Poblacion, Catubig, Samar in the 15 July 2002 Synchronized Barangay and Sangguniang Kabataan Elections. In his certificate of candidacy, private respondent stated his profession or occupation as a Certified Public Accountant (CPA). Private respondent won in the elections.

Sometime after private respondent's proclamation, petitioners charged him before the Law Department of the COMELEC with violation of Section 262 in relation to Section 74 of B.P. 881. Petitioners presented a Certification signed by Jose Ariola, Director II, Regulations Office of the Professional Regulation Commission (PRC), stating that private respondent's name does not appear in the book of the Board of Accountancy. The book contains the names of those duly authorized to practice accountancy in the Philippines.

Private respondent maintained that he was a CPA and alleged that he passed the CPA Board Examinations in 1993 with a rating of 76%. Private respondent argued that he could not be held liable for an election offense because his alleged misrepresentation of profession was not material to his eligibility as a candidate.

The PRC Records Section Officer-in-Charge Emma Francisco produced a Certification before the Law Department showing that private respondent had taken the October 3, 1993 CPA Board Examinations and obtained a failing mark of 40.71%.

The Law Department recommended the dismissal of petitioners' complaint. It held that the misrepresentation in private respondent's certificate of candidacy was not material to his eligibility as a candidate and could not be a ground for his prosecution.

The COMELEC *En Banc,* however, ordered the Law Department to file an information against private respondent for violation of Section 262 in relation to Section 74 of B.P. 881. The misrepresentation made by private respondent need not be material to his eligibility as a candidate in order to hold him liable under Section 262.

However, the COMELEC *En Banc* reconsidered its earlier Resolution, explaining that the offense allegedly committed by the respondent is for failure to disclose his true occupation as required under Section 74 of B.P. 881. Apparently, respondent misrepresented himself as a CPA when in fact he is not. Thus, the misrepresentation has been established. Moreover, the principle of materiality remains to be a crucial test in determining whether a person can be charged with violating Section 74 of B.P. 881 in relation to Section 262 thereof.The case of *Salcedo* sheds light as to what matters are deemed material with respect to the certificate of candidacy, to wit: citizenship, residency and other qualifications that may be imposed. The nature of a candidate's occupation is definitely not a material matter. To be sure, we do not elect a candidate on the basis of his occupation.

ISSUE:
Whether an alleged misrepresentation of profession or occupation on a certificate of candidacy punishable as an election offense under Section 262 in relation to Section 74 of B.P. 881. (NO)

RULING:
In urging the Court to order the COMELEC to file the necessary information against private respondent, petitioners invoke Sections 262 and 74 of B.P. 881. **However, Section 74 does not expressly mention which portion in its provisions is pertinent to Section 262, or which among its provisions when violated is punishable as an election offense.** Nothing in Section 74 partakes unmistakably of a penal clause or a positive prohibition comparable to those found in other sections also mentioned in Section 262 that use the words "shall not." The Court is then left to interpret the meaning of Section 74 to determine which of its provisions are penalized under Section 262, and particularly if disclosure of profession or occupation is among such provisions.

From the cases of *Abella v. Larrazabal* and *Salcedo,* several conclusions follow. *First*, a misrepresentation in a certificate of candidacy is material when it refers to a qualification for elective office and affects the candidate's eligibility. *Second*, when a candidate commits a material misrepresentation, he or she may be proceeded against through a petition to deny due course to or cancel a certificate of candidacy under Section 78, or through criminal prosecution under Section 262 for violation of Section 74. *Third*, a misrepresentation of a non-material fact, or a non-material misrepresentation, is not a ground to deny due course to or cancel a certificate of candidacy under Section 78. **In other words, for a candidate's certificate of candidacy to be denied due course or canceled by the COMELEC, the fact misrepresented must pertain to a qualification for the office sought by the candidate.**

No elective office, not even the office of the President of the Republic of the Philippines, requires a certain profession or occupation as a qualification. For local elective offices including that of Punong Barangay, R.A. 7160 or the Local Government Code of 1991 prescribes only qualifications pertaining to citizenship, registration as a voter, residence, and language.

Profession or occupation not being a qualification for elective office, misrepresentation of such does not constitute a material misrepresentation. Certainly, in a situation where a candidate misrepresents his or her profession or occupation in the certificate of candidacy, the candidate may not be disqualified from running for office under Section 78 as his or her certificate of candidacy cannot be denied due course or canceled on such ground.

SILVERIO R. TAGOLINO, *petitioner*, - versus - HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND LUCY MARIE TORRES-GOMEZ, *respondents*.
G.R. No. 202202, EN BANC, March 19, 2013, PERLAS-BERNABE, J.

As said by the Supreme Court, Section 77 of the Omnibus Election Code (OEC) provides that if an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, a person belonging to and certified by the same political party may file a CoC to replace the candidate who died, withdrew or was disqualified.

Considering that Section 77 requires that there be a candidate in order for substitution to take place, as well as the precept that a person without a valid CoC is not considered as a candidate at all, it necessarily follows that if a person's CoC had been denied due course to and/or cancelled, he or she cannot be validly

substituted in the electoral process. The existence of a valid CoC is therefore a condition sine qua non for a disqualified candidate to be validly substituted.

Owing to the lack of proper substitution in this case, Lucy was therefore not a bona fide candidate for the position of Representative for the Fourth District of Leyte when she ran for office, which means that she could not have been elected.

FACTS:
Petitioner Tagolino is assailing the Decision of the House of Representative Tribunal (HRET) which affirmed the validity of private respondent Lucy Marie Torres-Gomez's substitution as the Liberal Party's replacement candidate for the position of Representative for the Fourth Legislative District of Leyte. This was in lieu of her husband, Richard Gomez, who previously filed his certificate of candidacy (CoC) but was later declared ineligible to run because he failed to meet the one-year residency requirement under Section 6, Article VI of the 1987 Constitution.

Subsequently, the national and local elections were conducted as scheduled and Richard's name remained in the ballot. His garnered winning votes were credited in favor of Lucy, and she was later proclaimed as the duly-elected Representative of the Fourth District of Leyte. However, to oust her from her seat, Tagolino filed a Petition for *quo warranto*. claiming that: (1) she failed to comply with the one-year residency requirement under Section 6, Article VI of the Constitution considering that the transfer of her voter registration from San Rafael, Bulacan to the Fourth District of Leyte was only applied for on July 23, 2009; (2) she did not validly substitute Richard as his CoC was void ab initio; and (3) private respondent's CoC was void due to her non-compliance with the prescribed notarial requirements i.e., she failed to present valid and competent proof of her identity before the notarizing officer. After due proceedings, the HRET dismissed the *quo warranto* petition and declared that Lucy was a qualified candidate for the position of Leyte Representative.

ISSUE:
Whether the substitution of Lucy Torres-Gomez is valid. (NO)

RULING:
As said by the Supreme Court, Section 77 of the Omnibus Election Code (OEC) provides that if an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, a person belonging to and certified by the same political party may file a CoC to replace the candidate who died, withdrew or was disqualified.

Evidently, Section 77 requires that there be an "official candidate" before candidate substitution proceeds. Thus, whether the ground for substitution is death, withdrawal or disqualification of a candidate, the said section unequivocally states that only an official candidate of a registered or accredited party may be substituted.

As defined under Section 79 (a) of the OEC, the term "candidate" refers to any person aspiring for or seeking an elective public office who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties. The Supreme Court held that the law requires that one must have validly filed a CoC in order to be considered a candidate. The requirement of having a CoC obtains even greater importance if one considers its nature. In particular, a CoC formalizes not only a person's public declaration to run for office but evidences as well his or her statutory eligibility to be elected for the said post. In this regard, the CoC is the document which

formally accords upon a person the status of a candidate. In other words, absent a valid CoC one is not considered a candidate under legal contemplation.

Considering that Section 77 requires that there be a candidate in order for substitution to take place, as well as the precept that a person without a valid CoC is not considered as a candidate at all, it necessarily follows that if a person's CoC had been denied due course to and/or cancelled, he or she cannot be validly substituted in the electoral process. The existence of a valid CoC is therefore a condition sine qua non for a disqualified candidate to be validly substituted.

Owing to the lack of proper substitution in this case, Lucy was therefore not a *bona fide* candidate for the position of Representative for the Fourth District of Leyte when she ran for office, which means that she could not have been elected.

RENATO M. FEDERICO, PETITIONER, VS. COMMISSION ON ELECTIONS, COMELEC EXECUTIVE DIRECTOR AND OSMUNDO M. MALIGAYA, RESPONDENTS.
[G.R. No. 199612, EN BANC, January 22, 2013, MENDOZA, J.]

Under Sec. 15 of RA 9369 which governs the conduct of automated elections, the Comelec is empowered by law to prescribe such rules so as to make efficacious and successful the conduct of the first national automated election: "the Comelec, which has the constitutional mandate to enforce and administer all laws and regulations relative to the conduct of an election,"

In resolving that the deadline for all substitutions must be made on or before Dec. 15, 2009 pursuant to Comelec Resolution No. 8678, COMELEC did not abuse its discretion.

FACTS:
Edna Sanchez (Edna) and private respondent Osmundo M. Maligaya (Maligaya) were candidates for the position of municipal mayor of Sto. Tomas, Batangas, in the 2010 Elections.

On April 27, 2010, Armando Sanchez, husband of Edna and the gubernatorial candidate for the province of Batangas, died. Edna withdrew her Certificate of Candidacy (COC) for the position of mayor. She then filed a new COC and a Certificate of Nomination and Acceptance (CONA) for the position of governor as substitute candidate for her deceased husband.
On May 5, 2010, petitioner Renato M. Federico (Federico) filed with the Office of the Election Officer his COC and CONA as official candidate of the Nationalista Party and as substitute candidate for mayor, in view of the withdrawal of Edna.

Maligaya filed his Petition to Deny Due Course and to Cancel Certificate of Candidacy of Federico before the Comelec. Maligaya sought to have Federico declared ineligible to run as substitute candidate for Edna since the period to file the COC for substitute candidates had already lapsed after December 14, 2009.

The COMELEC En Banc gave due course to the COC of Edna as substitute gubernatorial candidate in the Batangas province and to that of Federico as substitute mayoralty candidate.

But the official ballots had already been printed. On the day of elections, the name "SANCHEZ, Edna P." was retained in the list of candidates for Mayor of Sto. Tomas, and garnered the highest number of votes - 28,389 against Maligaya's 22,577 votes.

The Municipal Board of Canvassers (MBOC) proclaimed Edna as the winning mayoralty candidate. Maligaya filed his Petition to Annul Proclamation of Edna Sanchez. This petition was later withdrawn.

The MBOC credited the same number of votes garnered by Edna to Federico and proclaimed the latter as the winning candidate. Maligaya filed his Petition to Annul Proclamation of Federico as mayor.

Meanwhile, Maligaya's petition to deny due course and to cancel the COC of Federico was denied by the Comelec Second Division. The Comelec First Division denied Maligaya's petition to annul the proclamation of Federico for having been filed out of time.

Maligaya elevated the matter to the Comelec En Banc. The Comelec En Banc issued the assailed Resolution granting Maligaya's partial motion for reconsideration. The Comelec En Banc was of the view that the annulment of Federico's proclamation was in order because of his invalid substitution of Edna, as his substitute COC was filed beyond the deadline and due to the illegality of the proceedings of the MBOC in generating the second COCVP without authority from the Comelec and without notice to the parties.

Federico filed the present Petition for Certiorari before the Supreme Court.

Pending resolution of the case, Vice-Mayor Armenius Silva (Intervenor Silva) of Sto. Tomas, Batangas, filed his Motion for Leave to Intervene, praying essentially that as Federico failed to qualify, he should be adjudged as his legal successor as mayor, under the Local Government Code.

ISSUE:
1st issue: Whether or not Federico could validly substitute Edna who withdrew her candidacy for the mayoralty position.

2nd issue: Granting that Federico was disqualified, should he be succeeded by Intervenor Silva under the LGC or be replaced by Maligaya.

RULING:
1st issue:

No. Federico could not validly substitute Edna who withdrew her candidacy for the mayoralty position.

There being no valid substitution, the candidate with the highest number of votes should be proclaimed as the duly elected mayor.

Regarding the May 10, 2010 automated elections, the Comelec came out with Resolution No. 8678. On substitution, Section 13 thereof provides, "the substitute for a candidate who withdrew may file his certificate of candidacy as herein provided for the office affected not later than December 14, 2009."

In case of withdrawal, which is the situation at bench, the substitute should have filed a COC by December 14, 2009.

When Batangas Gov. Armando Sanchez died on April 27, 2010, Edna withdrew her candidacy as mayor and substituted her late husband as gubernatorial candidate for the province on April 29, 2010. The party actually had the option to substitute another candidate for Governor aside from Edna. By fielding Edna as their substitute candidate for Governor, the party knew that she had to withdraw her candidacy for Mayor. Considering that the deadline for substitution in case of withdrawal had already lapsed, no person could substitute her as mayoralty candidate. The sudden death of then Governor Sanchez and the substitution by his widow in the gubernatorial race could not justify a belated substitution in the mayoralty race.

2nd issue:
No. Federico should not be succeeded by Intervenor Silva under the LGC or be replaced by Maligaya.

As Federico's substitution was not valid, there was only one qualified candidate in the mayoralty race in Sto. Tomas, Batangas - Maligaya. Being the only candidate, he received the highest number of votes. Accordingly, he should be proclaimed as the duly elected mayor in the May 10, 2010 elections.

Considering that Maligaya was the winner, the position of Intervenor Silva that he be considered the legal successor of Federico, whom he claims failed to qualify, has no legal basis. There is simply no vacancy. When there is no vacancy, the rule on succession under Section 44 of the LGC cannot be invoked.

DOMINADOR G. JALOSJOS, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND AGAPITO J. CARDINO, RESPONDENTS.
[G.R. No. 193237, EN BANC, October 09, 2012, CARPIO, J.]

A false statement in a certificate of candidacy (i.e. that a candidate is eligible to run for public office when in fact he is not) is a false material representation which is a ground for a petition under Section 78of the same Code.

FACTS:
Jalosjos and Cardino were candidates for Mayor of Dapitan City, Zamboanga del Norte in the May 2010 elections. Jalosjos was running for his third term.

In December 2009, Cardino filed a petition under Sec. 78 of the Omnibus Election Code (OEC) to cancel and deny the certificate of candidacy (COC) of Jalosjos on the ground that Jalosjos made a false material representation in his COC when he declared under oath that he was eligible for the Office of Mayor. Cardino claimed that long before Jalosjos filed his COC, the latter had already been convicted of final judgment for robbery, and that Jalosjos had yet to serve his sentence. Jalosjos admitted the conviction, but claimed that he had been granted probation.

The COMELEC First Division granted Cardino's petition, which then cancelled Jalosjos' COC. It concluded that Jalosjos indeed committed material misrepresentation in his COC when he declared under oath that he is eligible to be elected when in fact he is not by reason of a final judgment in a criminal case, the sentence of which he has not yet served (prision mayor). The First Division also found that Jalosjos' certificate of compliance of probation was fraudulently issued; thus, Jalosjos has not yet served his sentence.

The COMELEC En Banc denied Jalosjos' MR. Jalosjos was disqualified from running for public office. His proclamation as winning mayor does not deprive COMELEC of its authority. Because he was ousted, LGC provisions on succession apply.

Jalosjos filed a special civil action for certiorari assailing the COMELEC's En Banc resolution. He argues that the COMELEC was acting in grave abuse of discretion. Cardino also filed a special civil action for certiorari. He argues that the COMELEC was acting in grave abuse of discretion when it added to the dispositive portion of its 11 August 2010 Resolution that the provisions of the Local Government Code on succession should apply.

ISSUE:
1st issue: Whether or not Jalosjos committed material misrepresentation.
2nd issue: Whether or not Cardino should be proclaimed as the winning mayor.

RULING:
1st issue:

Yes. Jalosjos committed material misrepresentation.

The Court said these cases are NOT rendered moot by Jalosjos' resignation. In resolving the case, the Court addressed not only Jalosjos' eligibility to run for public office and the consequences of the cancellation of his COC, but also COMELEC's constitutional duty to enforce and administer all laws relating to the conduct of elections.

A false statement in a certificate of candidacy (i.e. that a candidate is eligible to run for public office when in fact he is not) is a false material representation which is a ground for a petition under Section 78 of the Same Code.

Jalosjos made a false statement of a material fact in his COC when he stated under oath that he was eligible to run for mayor. Thus, the COMELEC properly cancelled Jalosjos' certificate of candidacy.
A void COC on the ground of ineligibility that existed at the time of the filing of the certificate of candidacy can never give rise to a valid candidacy, and much less to valid votes. In this case, Jalosjos' COC was cancelled because he was ineligible from the start to run for Mayor. Whether the COC is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a valid candidate from the very beginning, his COC being void ab initio. Jalosjos' ineligibility existed on the day he filed his COC, and the cancellation of his certificate of candidacy retroacted to the day he filed it. Having retroacted to the day of filing, Cardino, Jalosjos' opponent, thus ran unopposed. There was only one qualified candidate – Cardino – who received the highest number of votes.

2nd issue:
Yes. Cardino should be proclaimed as the winning mayor, since Jalosjos' COC was void from the beginning, he was never a candidate at any time and the votes for him were stray votes. Cardino, being the only qualified candidate, garnered the highest number, and thus won for the position of Mayor.

The rule that second placers cannot replace the first placer if the latter was disqualified or declared ineligible is limited to situations where the COC of the first placer was valid at the time of filing but subsequently declared invalid. Compare that to this case, where the COC was void ab initio; the

person who filed it was never a candidate in the first place, and all votes for him are considered stray votes.

Moreover, the final judgment of conviction is notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law. To allow the COMELEC to wait for a person to file a petition to cancel the COC of one suffering from perpetual special disqualification will result in the anomaly that these cases so grotesquely exemplify. Here, despite a prior perpetual special disqualification, Jalosjos was even elected and served twice as mayor.

SVETLANA P. JALOSJOS, PETITIONER, VS. COMMISSION ON ELECTIONS, EDWIN ELIM TUMPAG AND RODOLFO Y. ESTRELLADA, RESPONDENTS.
[G.R. No. 193314, EN BANC, February 26, 2013, SERENO, C.J.]

In the absence of clear and positive proof based on these criteria, the residence of origin should be deemed to continue. Only with evidence showing concurrence of all three requirements can the presumption of continuity or residence be rebutted, for a change of residence requires an actual and deliberate abandonment, and one cannot have two legal residences at the same time."

Moreover, even if these requisites are established by clear and positive proof, the date of acquisition of the domicile of choice, or the critical date, must also be established to be within at least one year prior to the elections using the same standard of evidence.

FACTS:
On 20 November 2009, petitioner filed her Certificate of Candidacy (CoC) for mayor of Baliangao, Misamis Occidental for the 10 May 2010 elections. She indicated therein her place of birth and residence as BarangayTugas, Municipality of Baliangao, Misamis Occidental (Brgy. Tugas).

Asserting otherwise, private respondents filed against petitioner a Petition to Deny Due Course to or Cancel the Certificate of Candidacy, in which they argued that she had falsely represented her place of birth and residence, because she was in fact born in San Juan, Metro Manila, and had not totally abandoned her previous domicile, Dapitan City.

On the other hand, petitioner averred that she had established her residence in the said barangay since December 2008 when she purchased two parcels of land there, and that she had been staying in the house of a certain Mrs. Lourdes Yap (Yap) while the former was overseeing the construction of her house. Furthermore, petitioner asserted that the error in her place of birth was committed by her secretary. Nevertheless, in a CoC, an error in the declaration of the place of birth is not a material misrepresentation that would lead to disqualification, because it is not one of the qualifications provided by law.

The Petition to Deny Due Course to or Cancel the Certificate of Candidacy remained pending as of the day of the elections, in which petitioner garnered the highest number of votes. On 10 May 2010, the Municipal Board of Canvassers of Baliangao, Misamis Occidental, proclaimed her as the duly elected municipal mayor.

On 04 June 2010, the COMELEC Second Division ruled that respondent was DISQUALIFIED for the position of mayor.

The COMELEC En Banc promulgated a Resolution on 19 August 2010 denying the Motion for Reconsideration of petitioner for lack of merit and affirming the Resolution of the Second Division denying due course to or cancelling her CoC

ISSUE:
Whether or not the COMELEC committed grave abuse of discretion in holding that petitioner failed to prove compliance with the one-year residency requirement for local elective officials.

RULING:
No. The COMELEC did not commit grave abuse of discretion in holding that petitioner failed to prove compliance with the one-year residency requirement for local elective officials.

Petitioner failed to comply with the one-year residency requirement for local elective officials.

Petitioner's uncontroverted domicile of origin is Dapitan City. The question is whether she was able to establish, through clear and positive proof, that she had acquired a domicile of choice in Baliangao, Misamis Occidental, prior to the May 2010 elections.

When it comes to the qualifications for running for public office, residence is synonymous with domicile. Accordingly, Nuval v. Gurayheld as follows:

"The term residence as so used, is synonymous with omicilewhich imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention."

There are three requisites for a person to acquire a new domicile by choice. First, residence or bodily presence in the new locality. Second, an intention to remain there. Third, an intention to abandon the old domicile.

These circumstances must be established by clear and positive proof, as held in Romualdez-Marcos v. COMELEC and subsequently in Dumpit- Michelena v. Boado:

In the absence of clear and positive proof based on these criteria, the residence of origin should be deemed to continue. Only with evidence showing concurrence of all three requirements can the presumption of continuity or residence be rebutted, for a change of residence requires an actual and deliberate abandonment, and one cannot have two legal residences at the same time."

Moreover, even if these requisites are established by clear and positive proof, the date of acquisition of the domicile of choice, or the critical date, must also be established to be within at least one year prior to the elections using the same standard of evidence.

In the instant case, we find that petitioner failed to establish by clear and positive proof that she had resided in Baliangao, Misamis Occidental, one year prior to the 10 May 2010 elections.

There were inconsistencies in the Affidavits of Acas-Yap, Yap III, Villanueva, Duhaylungsod, Estrellada, Jumawan, Medija, Bagundol, Colaljo, Tenorio, Analasan, Bation, Maghilum and Javier.

First, they stated that they personally knew petitioner to be an actual and physical resident of Brgy. Tugassince 2008. However, they declared in the same Affidavits that she stayed in Brgy. Punta Miray while her house was being constructed in Brgy. Tugas.

Second, construction workers Yap III, Villanueva, Duhaylungsod and Estrellada asserted that in December 2009, construction was still ongoing. By their assertion, they were implying that six months before the 10 May 2010 elections, petitioner had not yet moved into her house at Brgy. Tugas.

Third, the same construction workers admitted that petitioner only visited Baliangao occasionally when they stated that "at times when she (petitioner) was in Baliangao, she used to stay at the house of Lourdes Yap while her residential house was being constructed."

These discrepancies bolster the statement of the Brgy. Tugas officials that petitioner was not and never had been a resident of their barangay. At most, the Affidavits of all the witnesses only show that petitioner was building and developing a beach resort and a house in Brgy. Tugas, and that she only stayed in Brgy. Punta Miray whenever she wanted to oversee the construction of the resort and the house.

Assuming that the claim of property ownership of petitioner is true, Fernandez v. COMELEC has established that the ownership of a house or some other property does not establish domicile. This principle is especially true in this case as petitioner has failed to establish her bodily presence in the locality and her intent to stay there at least a year before the elections.

Finally, the approval of the application for registration of petitioner as a voter only shows, at most, that she had met the minimum residency requirement as a voter. This minimum requirement is different from that for acquiring a new domicile of choice for the purpose of running for public office.

JOSEPH C. DIMAPILIS, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.
[G.R. No. 227158, EN BANC, April 18, 2017, PERLAS-BERNABE, J.]

A person intending to run for public office must not only possess the required qualifications for the position for which he or she intends to run, but must also possess none of the grounds for disqualification under the law.

FACTS:
In 2013, sought his re-election as Punong Barangay and filed his COC, declaring under oath that he is "eligible for the office he seeks to be elected to." Ultimately, he won in the said elections and was proclaimed as the duly elected Punong Barangay of Brgy. Pulung Maragul in 2013. The Legal Department of COMELEC filed a Petition for Disqualification against the Petitioner alleging that he was barred from running as he was suffering an accessory penalty of Perpetual disqualification after being found guilty of the administrative offense of Grave Misconduct. Petitioner in his answer averred that the Petition partakes the nature of a petition to cancel his CO under Section 78 of the Omnibus Election Code. The COMELEC Division granted the Petition as affirmed by the COMELEC *En Banc*.

ISSUE:
Whether or not the COMELEC correctly cancelled Petitioner's COC.

RULING:

YES. The COMELEC correctly cancelled Petitioner's COC

To be "eligible" relates to the capacity of holding, as well as that of being elected to an office. Conversely, "ineligibility" has been defined as a "disqualification or legal incapacity to be elected to an office or appointed to a particular position." In this case, petitioner had been found guilty of Grave Misconduct by a final judgment, and punished with dismissal from service with all its accessory penalties, including perpetual disqualification from holding public office. Verily, perpetual disqualification to hold public office is a material fact involving eligibility which rendered petitioner's COC void from the start since he was not eligible to run for any public office at the time he filed the same.

The Court had previously ruled that the COMELEC has the legal duty to cancel the CoC of anyone suffering from the accessory penalty of perpetual disqualification to hold public office. The COMELEC will be grossly remiss in its constitutional duty to "enforce and administer all laws" relating to the conduct of elections if it does not *motu proprio* bar from running for public office those suffering from perpetual special disqualification by virtue of a final judgment.

As petitioner's disqualification to run for public office pursuant to the final and executory OMB rulings dismissing him from service now stands beyond dispute, it is incumbent upon the COMELEC to cancel petitioner's CoC as a matter of course, else it be remiss in fulfilling its Constitutional duty to enforce and administer all laws and regulations relative to the conduct of an election.

H. SOHRIA PASAGI DIAMBRANG, PETITIONER, VS. COMMISSION ON ELECTIONS AND H. HAMIM SARIP PATAD, RESPONDENTS.
[G.R. No. 201809, EN BANC, October 11, 2016, Carpio, (Acting) C.J.]

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took effect, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void ab initio, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void ab initio is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void ab initio is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning.

FACTS:
Petitioner H. Sohria Pasagi Diambrang (Diambrang) and respondent H. Hamim Sarip Patad (Patad) were candidates for Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte in the 25 October 2010 Barangay Elections. Patad obtained 183 votes while Diambrang obtained 78 votes. However, the Barangay Board of Canvassers (BBOC) proclaimed Diambrang as the duly elected Punong Barangay based on the assumption that Patad was disqualified for being a fugitive from justice. The BBOC's assumption was, in turn, based on the recommendation of the Provincial Election

Supervisor that was not yet final and executory because the COMELEC had not issued any ruling on the matter.

Patad filed a petition to annul Diambrang's proclamation. The case was docketed as SPC No. 10-079 (BRGY). Neither Diambrang nor any of the members of the BBOC of Barangay Kaludan, Nunungan, Lanao del Norte filed their comment on the petition.
In its Resolution promulgated on 11 August 2011, the COMELEC Second Division annulled Diambrang's proclamation.
In its Resolution promulgated on 30 January 2012,4 the COMELEC En Banc annulled the proclamation of Diambrang and ordered the first ranked Barangay Kagawad of Barangay Kaludan to succeed as the new Punong Barangay.

ISSUE:
Whether or not Diambrang can be proclaimed as the elected Punong Barangay in view of Patad's disqualification.

RULING:
No. Diambrang cannot be proclaimed as the elected Punong Barangay in view of Patad's disqualification, since the case has been rendered moot by the election of a new Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte during the 28 October 2013 Barangay Elections.

The case had been overtaken by events due to Patad's failure to file his comment on the petition as well as the repeated failure of the Postmaster of Lanao del Norte to respond to the Court's query whether Patad received the Resolution requiring him to file his comment. In a letter dated 18 January 2016, the Judicial Records Office8 requested for the assistance of the Postmaster General and CEO of Manila to determine the date of delivery of the letter under Registry Receipt No. 9206 addressed to Patad.9 The request was forwarded to the Office of Area VIII Director of Central Mindanao.10 On 11 August 2016, Eduardo M. Juliata, Sr., LC/ACTG Postmaster of Philippine Postal Corporation, Central Mindanao Area VIII issued a certification that the registered letter was received in good order by SB Samsodin Guindo on 30 July 2012.11 In a Resolution dated 30 August 2016, the Court resolved to dispense with the filing of Patad's comment on the petition.

We reiterate the Court's prevailing rulings on the matter of disqualification of a candidate and its effect on the second-placer in an election.
The assailed Decision of the COMELEC En Banc was promulgated on 30 January 2012. The COMELEC En Banc ruled that Diambrang, as a second placer, could not be declared as the duly-elected winner despite Patad's disqualification.

On 9 October 2012, this Court promulgated its ruling in Jalosjos, Jr. v. Commission on Elections13 where the Court held:

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took effect, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void ab initio, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void ab initio is cancelled on the day, or before the

day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void ab initio is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void ab initio. Otherwise, a certificate of candidacy void ab initio can operate to defeat one or more valid certificates of candidacy for the same position.

In Aratea v. Commission on Elections, we ruled that whether the certificate of candidacy is cancelled before or after the elections is immaterial because a cancellation on the ground that the candidate was ineligible or not qualified to run means he was never a candidate from the very beginning.
In Maquiling v. Commission on Elections,16 the Court revisited its previous ruling that the second-placer cannot be proclaimed as a winner in an election contest. This Court held in Maquiling:
We have ruled in the recent cases of Aratea v. COMELEC and Jalosjos v. COMELEC that a void COC cannot produce any legal effect.

Thus, the votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election.

Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected.

As in any contest, elections are governed by rules that determine the qualifications and disqualifications of those who are allowed to participate as players. When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.

There is no need to apply the rule cited in Labo v. COMELEC that when the voters are well aware within the realm of notoriety of a candidate's disqualification and still cast their votes in favor said candidate, then the eligible candidate obtaining the next higher number of votes may be deemed elected. That rule is also a mere obiter that further complicated the rules affecting qualified candidates who placed second to ineligible ones.

The electorate's awareness of the candidate's disqualification is not a prerequisite for the disqualification to attach to the candidate. The very existence of a disqualifying circumstance makes the candidate ineligible. Knowledge by the electorate of a candidate's disqualification is not necessary before a qualified candidate who placed second to a disqualified one can be proclaimed as the winner. The second-placer in the vote count is actually the first-placer among the qualified candidates.
That the disqualified candidate has already been proclaimed and has assumed office is of no moment. The subsequent disqualification based on a substantive ground that existed prior to the filing of the certificate of candidacy voids not only the COC but also the proclamation.
Clearly, the prevailing ruling is that if the certificate of candidacy is void ab initio, the candidate is not considered a candidate from the very beginning even if his certificate of candidacy was cancelled after the elections.

Patad's disqualification arose from his being a fugitive from justice. It does not matter that the disqualification case against him was finally decided by the COMELEC En Banc only on 14 November

2011. Patad's certificate of candidacy was void ab initio. As such, Diambrang, being the first-placer among the qualified candidates, should have been proclaimed as the duly-elected Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte. However, due to supervening events as we previously discussed, Diambrang can no longer hold office.

CASAN MACODE MACQUILING, PETITIONER, VS. COMMISSION ON ELECTIONS, ROMMEL ARNADO Y CAGOCO, AND LINOG G. BALUA. RESPONDENTS.
RESOLUTION
[G.R. No. 195649, EN BANC, July 02, 2013, SERENO, J.]

When a candidate for public office use a foreign passport after renouncing his foreign citizenship, he is not divested of his Filipino citizenship but it recants the Oath of Renunciation required to qualify one to run for an elective position. A candidate who holds dual citizenship is disqualified to run for public office.

FACTS:
In the earlier resolution of this case, docket as G.R. No. 195649, on April 16, 2013, the court moved to disqualify respondent Arnado from running for and holding any local elective position on the ground of dual citizenship. For when he used his US passport after renouncing his American citizenship, he has recanted the same Oath of Renunciation he took. Section 40(d) of the Local Government Code disqualifies him not only from holding the public office but even from becoming a candidate in the May 2010 elections.

This present Resolution resolves the Motion for Reconsideration filed by respondent on May 10, 2013 and the Supplemental Motion for Reconsideration filed on May 20, 2013.

TheCourt is not unaware that the term of office of the local officials elected in the May 2010 elections has already ended on June 30, 2010. Arnado, therefore, has successfully finished his term of office. While the relief sought can no longer be granted, ruling on the motion for reconsideration is important as it will either affirm the validity of Arnado's election or affirm that Arnado never qualified to run for public office.

ISSUE:
Whether or not his Affidavit of Renunciation of American Citizenship warrants his expatriation, making him eligible to run for and occupy an elective post in the Philippines.

RULING:
Respondent cites Section 349 of the Immigration and Naturalization Act of the United States as having the effect of expatriation when he executed his Affidavit of Renunciation of American Citizenship on April 3, 2009 and thus claims that he was divested of his American citizenship. If indeed, respondent was divested of all the rights of an American citizen, the fact that he was still able to use his US passport after executing his Affidavit of Renunciation repudiates this claim. It is unquestioned that Arnado is a natural born Filipino citizen, or that he acquired American citizenship by naturalization. There is no doubt that he reacquired his Filipino citizenship by taking his Oath of Allegiance to the Philippines and that he renounced his American citizenship. But it is also indubitable that after renouncing his American citizenship, Arnado used his U.S. passport at least six times.

The use of a passport is a positive declaration that one is a citizen of the country which issued the passport, or that a passport proves that the country which issued it recognizes the person named

therein as it's national. Quite the contrary, the renunciation of foreign citizenship must be complete and unequivocal. The requirement that the renunciation must be made through an oath emphasizes the solemn duty of the one making the oath of renunciation to remain true to what he has sworn to. Allowing the subsequent use of a foreign passport because it is convenient for the person to do so is rendering the oath a hollow act. It devalues the act of taking of an oath, reducing it to a mere ceremonial formality.

This requirement of renunciation of any and all foreign citizenship, when read together with Section 40(d) of the Local Government Code which disqualifies those with dual citizenship from running for any elective local position, indicates a policy that anyone who seeks to run for public office must be solely and exclusively a Filipino citizen. To allow a former Filipino who reacquires Philippine citizenship to continue using a foreign passport – which indicates the recognition of a foreign state of the individual as its national – even after the Filipino has renounced his foreign citizenship, is to allow a complete disregard of this policy. Notably, Section 40(d) of the Local Government Code calls for application in the instant case, given the fact that at the time Arnado filed his certificate of candidacy, he was not only a Filipino citizen but, by his own declaration via the use of his US passport, also an American citizen. It is the application of this law and not of any foreign law that serves as the basis for Arnado's disqualification to run for any local elective position.

It must be stressed that what is at stake here is the principle that only those who are exclusively Filipinos are qualified to run for public office. If we allow dual citizens who wish to run for public office to renounce their foreign citizenship and afterwards continue using their foreign passports, we are creating a special privilege for these dual citizens, thereby effectively junking the prohibition in Section 40(d) of the Local Government Code.

In view of the foregoing, there can be no doubt that while at first, his Affidavit of Renunciation of American Citizenship warranted his expatriation, he repudiated such by using his US passport, making his citizenship status dual. Unfortunately for him, Section 40(d) of the Local Government Code disqualifies those with dual citizenship from running for local elective positions.

ROMMEL C. ARNADO, PETITIONER, VS. COMMISSION ON ELECTIONS AND FLORANTE CAPITAN, RESPONDENTS.
[G.R. No. 210164, EN BANC, August 18, 2015, DEL CASTILLO, J.]

The use of a foreign passport amounts to repudiation or recantation of the oath of renunciation. Arnado's use of his US passport in 2009 invalidated his oath of renunciation resulting in his disqualification to run for mayor of Kauswagan in the 2010 elections. Since then and up to the time he filed his CoC for the 2013 elections, Arnado had not cured the defect in his qualification.

FACTS:
Petitioner Arnado is a natural-born Filipino citizen who lost his Philippine citizenship after he was naturalized as citizen of the USA.

Subsequently, and in preparation for his plans to run for public office in the Philippines, Arnado applied for repatriation under RA 9225 before the Consul General of the Philippines in San Franciso, USA.

He took an Oath of Allegiance to the Republic of the Philippines on July 10, 2008 and, on even date, an Order of Approval of Citizenship Retention and Re acquisition was issued in his favor. On April 3, 2009, Arnado executed an Affidavit of Renunciation of his foreign citizenship.

On November 30, 2009, Arnado filed his Certificate of Candidacy (CoC) for the mayoralty post of Kauswagan, Lanao del Norte for the May 10, 2010 national and local elections.

Balua, another mayoralty candidate filed a petition to disqualify Petitioner Arnado and/or to cancel his CoC on the ground that Arnado remained a US citizen because he continued to use his US passport for entry to and exit from the Philippines after executing aforesaid Affidavit of Renunciation.

While Balua's petition remained pending, the May 10, 2010 elections proceeded where Arnado garnered the highest number of votes and was proclaimed the winning candidate.

On October 5, 2010, the COMELEC First Division issued held that Arnado's continued use of his US passport effectively negated his April 3, 2009 Affidavit of Renunciation. Thus, he was disqualified to run for public office for failure to comply with the requirements of RA 9225. The COMELEC First Division accordingly nullified his proclamation and held that the rule on succession should be followed.

In the meantime, Maquiling, another mayoralty candidate who garnered the second highest number of votes, intervened in the case. He argued that the COMELEC First Division erred in applying the rule on succession.

The COMELEC *En Banc* reversed the ruling of the COMELEC First Division. It held that Arnado's use of his US passport did not operate to revert his status to dual citizenship; that he continued to use his US passport because he did not yet know that he had been issued a Philippine passport at the time of the relevant foreign trips; and that, after receiving his Philippine passport, Arnado used the same for his subsequent trips.

Maquiling then appealed to the SC. While Maquiling's petition was pending, the period for the filing of CoCs for local elective officials for the May 13, 2013 elections officially began. On October 1, 2012, Petitioner Arnado filed his CoC for the same position. Respondent Capitan also filed his CoC for the mayoralty post of Kauswagan.

Before the May 2013 elections, the SC ruled on the Maquiling petition. It set aside the COMELEC en banc's resolution and disqualified Petitioner Arnado from running for elective position, and declared Maquiling as the duly elected mayor of Kauswagan, Lanao Del Norte in the May 2010 elections and that the subsequent use of his US passport, Petitioner Arnado effectively disavowed or recalled his April 3, 2009 Affidavit of Renunciation. The issuance of the Maquiling Decision sets the stage for the present controversy.

Shortly after the *Maquiling Decision*, Petitioner Arnado executed an Affidavit Affirming Rommel C. Arnado's "Affidavit of Renunciation Dated April 3, 2009."

Private Respondent Capitpan, Petitioner Arnado's lone rival in the May 2013 elections, filed a Petition seeking to disqualify him from running for municipal mayor of Kauswagan and/or to cancel his CoC based on the ruling of this Court in *Maquiling.*

ISSUE:
Whether or not petitioner Arnado is qualified to run.

RULING:
No. Petitioner Arnado is not qualified to run.

Under Section 4(d) of the Local Government Code, a person with "dual citizenship" is disqualified from running for any elective local position. The phrase "dual citizenship" in said Section 4(d) must be understood as referring to "dual allegiance.''

RA 9225 allowed natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization abroad to reacquire Philippine citizenship and to enjoy full civil and political rights upon compliance with the requirements of the law. They may now run for public office in the Philippines provided that they:

(1) meet the qualifications for holding such public office as required by the Constitution and existing laws; and,

(2) make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath prior to or at the time of filing of their CoC.

In this case, Arnado failed to comply with the second requisite because, as held in*Maquiling v. Commission on Elections,* his April 3, 2009 Affidavit of Renunciation was deemed withdrawn when he used his US passport after executing said affidavit. Consequently, at the time he filed his CoC on October 1, 2012 for purposes of the May 13, 2013 elections, Arnado had yet to comply with said second requirement. The Comelec also noted that while Arnado submitted an affidavit dated May 9, 2013, affirming his April 3, 2009 Affidavit of Renunciation, the same would not suffice for having been belatedly executed.

It is worth noting that the reason for Arnado's disqualification to run for public office during the 2010 elections — being a candidate without total and undivided allegiance to the Republic of the Philippines - still subsisted when he filed his CoC for the 2013 elections on October 1, 2012. The Comelec *En Banc* merely adhered to the ruling of this Court in *Maquiling* lest it would be committing grave abuse of discretion had it departed therefrom.

The use of a foreign passport amounts to repudiation or recantation of the oath of renunciation. Arnado's use of his US passport in 2009 invalidated his oath of renunciation resulting in his disqualification to run for mayor of Kauswagan in the 2010 elections. Since then and up to the time he filed his CoC for the 2013 elections, Arnado had not cured the defect in his qualification. *Maquiling*, therefore, is binding on and applicable to this case.

ARSENIO A. AGUSTIN, PETITIONER, VS. COMMISSION ON ELECTIONS AND SALVADOR S. PILLOS, RESPONDENTS.
[G.R. No. 207105, EN BANC, November 10, 2015, BERSAMIN, J.]

A person of dual citizenship is disqualified from running for a public office in the Philippines.
Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted.

FACTS:
In 1997, petitioner Agustin was naturalized as a citizen of the United States of America (USA).In 2012,he filed his certificate of candidacy (CoC) for the position of Mayor of the Municipality of Marcos, Ilocos Norte to be contested in the May 2013 local elections.As the official candidate of the Nacionalista Party,he declared in his CoC that he was eligible for the office he was seeking to be elected to; that he was a natural-born Filipino citizen; and that he had been a resident of the Municipality of Marcos, Ilocos Norte for 25 years.

Respondent Salvador S. Pillos, a rival mayoralty candidate, filed in the COMELEC a Petition To Deny Due Course and/or to Cancel the Certificate of Candidacy of Arsenio A. Agustin, alleging that the petitioner had made a material misrepresentation in his CoC by stating that he had been a resident of the Municipality of Marcos for 25 years despite having registered as a voter therein only on May 31, 2012. In his answer, the petitioner countered that the one-year requirement referred to residency, not to voter registration; that residency was not dependent on citizenship, such that his travel to Hawaii for business purposes did not violate the residency requirement pursuant to prevailing jurisprudence; and that as regards citizenship, he attached a copy of his Affidavit of Renunciation of U.S. American Citizenship.
The COMELEC Second Division issued its omnibus resolution holding that the requirement that a candidate must be a registered voter does not carry with it the requirement that he must be so one year before the elections because this refers to the residency qualification. As far as registration as a voter is concerned, it should suffice that they are duly registered upon the filing of their COCs or within the period prescribed by law for such registration.

Pillos moved for the reconsideration with the COMELEC En Banc.He alleged that the certification issued by the Bureau of Immigration reflected that the petitioner had voluntarily declared in his travel documents that he was a citizen of the USA; that when he travelled to Hawaii, USA on October 6, 2012, he still used his USA passport despite his renunciation of his USA citizenship on October 2, 2012 and after filing his CoC on October 5, 2012, in which he declared that he was a resident of the Municipality of Marcos, Ilocos Norte; and that the petitioner's declaration of his eligibility in his CoC constituted material misrepresentation because of his failure to meet the citizenship and residency requirements.

On April 23, 2013, the COMELEC En Banc issued its assailed resolution cancelling and denying due course to the petitioner's CoC, observing that while Agustin presented a copy of his Affidavit of Renunciation, he failed to furnish this Commission a copy of his Oath of Allegiance. Noteworthy is the fact, that in Agustin's Affidavit of Renunciation, it was stated that his Oath of Allegiance is attached; however, said attachment has not been made available for the perusal of this Commission. Having failed to sufficiently show that he complied with the provisions of RA 9225, Agustin's COC must be cancelled and/or denied due course.

On election day, the name of the petitioner remained in the ballot. He was later on proclaimed as the duly elected Municipal Mayor of Marcos, Ilocos Norte,the highest among the contending parties.

The petitioner filed on an Urgent Motion to Withdraw Verified Urgent Motion for Reconsideration with Leave of Court. The petitioner then instituted this case, alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC En Banc.

ISSUE:

1st issue: Whether or not petitioner Agustin is eligible as a candidate for the position of Mayor of the Municipality of Marcos, Ilocos Norte.
2nd issue: Whether or not Pillos' claim that he is the rightful occupant of the contested elective position correct.
RULING:
1st issue:

No. Petitioner Agustin is not eligible as a candidate for the position of Mayor of the Municipality of Marcos, Ilocos Norte.

The petitioner filed a valid CoC, but the use of his USA passport after his renunciation of foreign citizenship rendered him disqualified from continuing as a mayoralty candidate.

There are two remedies available under existing laws to prevent a candidate from running in an electoral race. One is by petition for disqualification, and the other by petition to deny due course to or to cancel his certificate of candidacy. A petition for disqualification can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.

The petition of Pillos was in the nature of the Section 78 petition to deny due course to or to cancel the CoC of the Yet, the COMELEC En Banc canceled the petitioner's CoC not because of his failure to meet the residency requirement but because of his failure "to sufficiently show that he complied with the provisions of RA 9225." Such basis for cancellation was unwarranted considering that he became eligible to run for public office when he expressly renounced his USA citizenship, by which he fully complied with the requirements stated in Section 5(2) of Republic Act No. 9225. His CoC was valid for all intents and purposes of the election laws because he did not make therein any material misrepresentation of his eligibility to run as Mayor of the Municipality of Marcos, Ilocos Norte.

The Court uphold the declaration by the COMELEC En Banc that the petitioner was ineligible to run and be voted for as Mayor of the Municipality of Marcos, Ilocos Norte. It is not disputed that on October 6, 2012,after having renounced his USA citizenship and having already filed his CoC, he travelled abroad using his USA passport, thereby representing himself as a citizen of the USA. He continued using his USA passport in his subsequent travels abroaddespite having been already issued his Philippine passport on August 23, 2012.He thereby effectively repudiated his oath of renunciation on October 6, 2012, the first time he used his USA passport after renouncing his USA citizenship on October 2, 2012. Consequently, he could be considered an exclusively Filipino citizen only for the four days from October 2, 2012 until October 6, 2012.

The petitioner's continued exercise of his rights as a citizen of the USA through using his USA passport after the renunciation of his USA citizenship reverted him to his earlier status as a dual citizen.Such reversion disqualified him from being elected to public office in the Philippines pursuant to Section

40(d) of the Local Government Code.

2nd issue:
Yes. Pillos' claim that he is the rightful occupant of the contested elective position is correct.

Petitioner was declared disqualified by final judgment before election day; hence, the votes cast for him should not be counted. His rival, respondent Pillos, should be proclaimed duly elected Mayor for obtaining the highest number of votes in the elections.

The effect of the petitioner's disqualification under the April 23, 2013 resolution depended on when the disqualification attained finality. The distinction exists because of Section 6 of Republic Act No. 6646 (The Electoral Reforms Law of 1987), which states: Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Section 6 of the said law covers two situations. The first is when the disqualification becomes final before the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification becomes final after the elections, which is the situation covered in the second sentence of Section 6.

The present case falls under the first situation. Section 6 of the Electoral Reforms Law governing the first situation is categorical: a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted.

The effect was to render the votes cast in his favor stray, resulting in Pillos being proclaimed the winning candidate.

It is crucial, therefore, to determine with certainty the time when the judgment declaring the petitioner disqualified from running for the local elective position attained finality.

Pillos submits that the April 23, 2013 resolution was already deemed final and executory as of May 4, 2013; hence, the writ of execution was issued on June 18, 2013; and that the petitioner's disqualification thus attained finality prior to the May 13, 2013 elections. Pillos' submission is correct. Although the petitioner filed his Verified Urgent Motion for Reconsideration with Leave of Court, the April 23, 2013 resolution granting Pillos' motion for reconsideration,such filing did not impede the April 23, 2013 resolution from being deemed final and executory because Section 1(d), Rule 13 of the 1993 COMELEC Rules of Procedure expressly disallowed the filing of the motion for reconsideration.Within the context of Section 13, Rule 18,and Section 3, Rule 37,both of the 1993 COMELEC Rules of Procedure, the April 23, 2013 resolution became final and executory as of May 4, 2013 upon the lapse of five days from its promulgation without a restraining order being issued by the Supreme Court.

ROSALINDA A. PENERA, PETITIONER, COMMISSION ON ELECTIONS AND EDGAR T. ANDANAR, RESPONDENTS.
DECISION WITH RESOLUTION

[G.R. No. 181613, EN BANC, November 25, 2009, CARPIO, J.]

A candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight — any election offense that may be committed by a candidate under any election law cannot be committed before the start of the campaign period.

FACTS:
Penera and private respondent Edgar T. Andanar were mayoralty candidates in Sta. Monica during the 14 May 2007 elections. On 2 April 2007, Andanar filed before the Office of the Regional Election Director, Caraga Region (Region XIII), a Petition for Disqualification against Penera, as well as the candidates for Vice-Mayor and Sangguniang Bayan who belonged to her political party, for unlawfully engaging in election campaigning and partisan political activity prior to the commencement of the campaign period.

Rosalinda A. Penera's filed a motion for reconsideration of this Court's Decision of 11 September 2009.The assailed Decision dismissed Penera's petition and affirmed the Resolution dated 30 July 2008 of the COMELEC En Banc as well as the Resolution dated 24 July 2007 of the COMELEC Second Division. The Decision disqualified Penera from running for the office of Mayor in Sta. Monica, Surigao del Norte and declared that the Vice-Mayor should succeed Penera.

ISSUE:
1st issue: Whether or not Penera is guilty of premature campaigning.
2nd issue: Whether or not premature campaigning can be committed by a person who is not a candidate.

RULING:
1st & 2nd issue:
No. Penera is not guilty of premature campaigning and premature campaigning cannot be committed by a person who is not a candidate.

Under the assailed September 11, 2009 Decision, a candidate may already be liable for premature campaigning after the filing of the certificate of candidacy but even before the start of the campaign period. Thus, such person can be disqualified for premature campaigning for acts done before the start of the campaign period. In short, the Decision considers a person who files a certificate of candidacy already "candidate" even before the start of the campaign period.

Now the Supreme Court holds that the assailed Decision is contrary to the clear intent and letter of the law. In Lanot v. COMELEC, it held that a person who files a certificate of candidacy is not a candidate until the start of the campaign period. Lanot was decided on the ground that one who files a certificate of candidacy is not a candidate until the start of the campaign period. Congress elevated the Lanot doctrine into a statute by specifically inserting it as the second sentence of the third paragraph of the amended Section 15 of RA 8436. In RA 9369,

Congress inserted the word "only" so that the first proviso now reads:

x x x Provided, that, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period x x x.

Thus, Congress not only reiterated but also strengthened its mandatory directive that election offenses can be committed by a candidate "only" upon the start of the campaign period. This clearly means that before the start of the campaign period, such election offenses cannot be so committed.

In layman's language, this means that a candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight — any election offense that may be committed by a candidate under any election law cannot be committed before the start of the campaign period. In ruling that Penera is liable for premature campaigning for partisan political acts before the start of the campaigning, the assailed Decision ignores the clear and express provision of the law.

CELESTINO A. MARTINEZ III, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND BENHUR L. SALIMBANGON, RESPONDENTS.
[G.R. No. 189034, EN BANC, January 11, 2015, Villarama, JR., J.]

The prohibition against nuisance candidates is aimed precisely at preventing uncertainty and confusion in ascertaining the true will of the electorate. Thus, in certain situations as in the case at bar, final judgments declaring a nuisance candidate should effectively cancel the certificate of candidacy filed by such candidate as of election day.

FACTS:
Petitioner Martinez III and private respondent Salimbangon are candidates for Legislative Representative in Cebu in the 2007 elections. Petitioner filed petition to declare another candidate, Edilito Martinez, as nuisance candidate. The petition was only resolved almost a month after the elections, with Edilito declared as nuisance candidate.

Salimbangon was declared the winner in the elections. Petitioner made a protest to the HRET, contending that the votes "MARTINEZ" and "C. MARTINEZ" were not credited to him, and said votes could have made him win the election. The HRET held that the votes were properly denied on the ground that there was no way of determining the real intention of the voter, as Edilito was still a candidate during the election day, and said votes could be for either of them.

ISSUE:
1st issue: Whether or not the effect of declaring a candidate a nuisance candidate takes effect on election day, even if made after elections.

2nd issue: Whether or not the "MARTINEZ" votes are to be credited to petitioner.

RULING:
1st issue:

Yes. The effect of declaring a candidate a nuisance candidate takes effect on election day, even if made after elections.

Ensconced in our jurisprudence is the well-founded rule that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. An election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative. The prohibition against nuisance candidates is aimed precisely at preventing uncertainty and confusion in ascertaining the true will of the electorate. Thus, in certain situations as in the case at bar, final judgments declaring a nuisance candidate should effectively cancel the certificate of candidacy filed by such candidate as of *election day*. Otherwise, potential nuisance candidates will continue to put the electoral process into mockery by filing certificates of candidacy at the last minute and delaying resolution of any petition to declare them as nuisance candidates until elections are held and the votes counted and canvassed.

2nd issue:
Yes. The "MARTINEZ" votes are to be credited to petitioner.

Respondent HRET gravely abused its discretion in affirming the proclamation of respondent Salimbangon as the duly elected Representative of the Fourth Legislative District of Cebu despite the final outcome of revision showing 5,401 ballots with only "MARTINEZ" or "C. "MARTINEZ" written on the line for Representative, votes which should have been properly counted in favor of petitioner and not nullified as stray votes, after considering all relevant circumstances clearly establishing that such votes could not have been intended for "Edilito C. Martinez" who was declared a nuisance candidate in a final judgment.

CASIMIRA S. DELA CRUZ, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOHN LLOYD M. PACETE, RESPONDENTS.
[G.R. No. 192221, EN BANC, November 13, 2012, VILLARAMA, JR., J.]

The votes cast for a nuisance candidate declared as such in a final judgment, particularly where such nuisance candidate has the same surname as that of the legitimate candidate, are not stray but must be counted in favor of the legitimate candidate. The voters' constructive knowledge of such cancelled candidacy made their will more determinable, as it is then more logical to conclude that the votes cast for the nuisance could have been intended only for the legitimate candidate.

FACTS:
In this petition for certiorari, Casimira S. Dela Cruz assails COMELEC Resolution No. 8844 considering as stray the votes cast in favor of certain candidates who were either disqualified or whose COCs had been cancelled/denied due course but whose names still appeared in the official ballots or certified lists of candidates for the May 10, 2010 elections.

During the canvassing of the votes by the Municipal Board of Canvassers (MBOC) of Bugasong on May 13, 2010, Casimira insisted that the votes cast in favor of Aurelio be counted in her favor. However, the MBOC refused, citing Resolution No. 8844. The Statement of Votes by Precinct for Vice- Mayor of Antique-Bugasong showed the following results of the voting:

	TOTAL	**RANK**
Dela Cruz, Aurelio N.	532	3
Dela Cruz, Casimira S.	6389	2

Pacete, John Lloyd M.	6428	1

Consequently, John Lloyd M. Pacete was proclaimed Vice-Mayor of Bugasong by the MBOC of Bugasong.
Considering that Pacete won by a margin of only thirty-nine (39) votes, Casimira contends that she would have clearly won the elections for Vice-Mayor of Bugasong had the MBOC properly tallied or added the votes cast for Aurelio to her votes.

ISSUE:
Whether or not the votes cast in favor of a nuisance candidate declared as such in a final judgement should be considered in favor of the legitimate candidate.

RULING:
Yes. The votes cast in favor of a nuisance candidate declared as such in a final judgement should be considered in favor of the legitimate candidate.

It bears to stress that Sections 211 (24) and 72 applies to all disqualification cases and not to petitions to cancel or deny due course to a certificate of candidacy such as Sections 69 (nuisance candidates) and 78 (material representation shown to be false). Notably, such facts indicating that a certificate of candidacy has been filed "to put the election process in mockery or disrepute, or to cause confusion among the voters by the similarity of the names of the registered candidates, or other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate" are not among those grounds enumerated in Section 68 (giving money or material consideration to influence or corrupt voters or public officials performing electoral functions, election campaign overspending and soliciting, receiving or making prohibited contributions) of the OEC or Section 40 of Republic Act No. 7160 (Local Government Code of 1991).

In Fermin vs. COMELEC, this Court distinguished a petition for disqualification under Section 68 and a petition to cancel or deny due course to a certificate of candidacy (COC) under Section 78. Said proceedings are governed by different rules and have distinct outcomes.

At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. They are different remedies, based on different grounds, and resulting in different eventualities.

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC. Thus, in Miranda vs. Abaya, this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.

Strictly speaking, a cancelled certificate cannot give rise to a valid candidacy, and much less to valid votes. Said votes cannot be counted in favor of the candidate whose COC was cancelled as he/she is

not treated as a candidate at all, as if he/she never filed a COC. But should these votes cast for the candidate whose COC was cancelled or denied due course be considered stray?

The foregoing rule regarding the votes cast for a nuisance candidate declared as such under a final judgment was applied by this Court in Bautista vs. COMELEC where the name of the nuisance candidate Edwin Bautista (having the same surname with the bona fide candidate) still appeared on the ballots on election day because while the COMELEC rendered its decision to cancel Edwin Bautista's COC on April 30, 1998, it denied his motion for reconsideration only on May 13, 1998 or three days after the election. We said that the votes for candidates for mayor separately tallied on orders of the COMELEC Chairman was for the purpose of later counting the votes and hence are not really stray votes. These separate tallies actually made the will of the electorate determinable despite the apparent confusion caused by a potential nuisance candidate.

But since the COMELEC decision declaring Edwin Bautista a nuisance candidate was not yet final on election day, this Court also considered those factual circumstances showing that the votes mistakenly deemed as "stray votes" refer to only the legitimate candidate (petitioner Efren Bautista) and could not have been intended for Edwin Bautista. We further noted that the voters had constructive as well as actual knowledge of the action of the COMELEC delisting Edwin Bautista as a candidate for mayor.

A stray vote is invalidated because there is no way of determining the real intention of the voter. This is, however, not the situation in the case at bar. Significantly, it has also been established that by virtue of newspaper releases and other forms of notification, the voters were informed of the COMELEC's decision to declare Edwin Bautista a nuisance candidate. In the more recent case of Martinez III v. House of Representatives Electoral Tribunal, this Court likewise applied the rule in COMELEC Resolution No. 4116 not to consider the votes cast for a nuisance candidate stray but to count them in favor of the bona fide candidate notwithstanding that the decision to declare him as such was issued only after the elections.

As illustrated in Bautista, the pendency of proceedings against a nuisance candidate on election day inevitably exposes the bona fide candidate to the confusion over the similarity of names that affects the voter's will and frustrates the same. It may be that the factual scenario in Bautista is not exactly the same as in this case, mainly because the Comelec resolution declaring Edwin Bautista a nuisance candidate was issued before and not after the elections, with the electorate having been informed thereof through newspaper releases and other forms of notification on the day of election. Undeniably, however, the adverse effect on the voter's will was similarly present in this case, if not worse, considering the substantial number of ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative - over five thousand - which have been declared as stray votes, the invalidated ballots being more than sufficient to overcome private respondent's lead of only 453 votes after the recount.

Here, Aurelio was declared a nuisance candidate long before the May 10, 2010 elections. On the basis of Resolution No. 4116, the votes cast for him should not have been considered stray but counted in favor of petitioner. COMELEC's changing of the rule on votes cast for nuisance candidates resulted in the invalidation of significant number of votes and the loss of petitioner to private respondent by a slim margin. We observed in Martinez:

Bautista upheld the basic rule that the primordial objective of election laws is to give effect to, rather than frustrate, the will of the voter. The inclusion of nuisance candidates turns the electoral exercise

into an uneven playing field where the bona fide candidate is faced with the prospect of having a significant number of votes cast for him invalidated as stray votes by the mere presence of another candidate with a similar surname. Any delay on the part of the COMELEC increases the probability of votes lost in this manner. While political campaigners try to minimize stray votes by advising the electorate to write the full name of their candidate on the ballot, still, election woes brought by nuisance candidates persist.

The Court will not speculate on whether the new automated voting system to be implemented in the May 2010 elections will lessen the possibility of confusion over the names of candidates. What needs to be stressed at this point is the apparent failure of the HRET to give weight to relevant circumstances that make the will of the electorate determinable, following the precedent in Bautista.

We hold that the rule in Resolution No. 4116 considering the votes cast for a nuisance candidate declared as such in a final judgment, particularly where such nuisance candidate has the same surname as that of the legitimate candidate, not stray but counted in favor of the latter, remains a good law.

BARANGAY ASSOCIATION FOR NATIONAL ADVANCEMENT AND TRANSPARENCY (BANAT), PETITIONER, VS. COMMISSION ON ELECTIONS (SITTING AS THE NATIONAL BOARD OF CANVASSERS), RESPONDENT.

ARTS BUSINESS AND SCIENCE PROFESSIONALS, INTERVENOR.

AANGAT TAYO, INTERVENOR.

COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC. (SENIOR CITIZENS), INTERVENOR.

[G.R. No. 179271, EN BANC, April 21, 2009, CARPIO, J.]

The two percent threshold in relation to the distribution of the additional seats is unconstitutional. It presents an unwarranted obstacle to the full implementation of Section 5(2), Article VI of the Constitution and prevents the attainment of the broadest possible representation of party, sectoral or group interests in the House of Representatives.

FACTS:
In May 2007 elections, Barangay Association for National Advancement and Transparency (BANAT)filed before the National Board of Canvassers(NBC) a petition to proclaim the full number of party list representatives provided by the Constitution; that Section 11(b) of RA 7941 which prescribes the 2% threshold votes, should be harmonized with Section 5, Article VI of the Constitution and with Section 12 of RA 7941 and should be applicable only to the first party-list representative seats to be allotted on the basis of their initial/first ranking; that the 3-seat limit prescribed by RA 7941 shall be applied; and that the formula/procedure prescribed in the allocation of party-list seats, Annex A of Comelec Res. 2847 shall be used for the purpose of determining how many seats shall be proclaimed, which party-list groups are entitled to representative seats and how many of their nominees shall seat. However, COMELEC denied the same for being moot and academic. It announced that it would determine the total number of seats of each winning party, organization, or coalition in accordance with Veterans Federation Party vs. COMELEC formula.

Subsequently, Bayan Muna, Abono, and A Teacher asked the COMELEC to reconsider its decision to use the Veterans formula because the Veterans formula is violative of the Constitution and of Republic Act No. 7941.

ISSUES:
1st issue: Whether or not the twenty percent allocation for party-list representatives in Section 5(2), Article VI of the Constitution mandatory.

2nd issue: Whether or not the three-seat limit in Section 11(b) of RA 7941 is constitutional.

3rd issue: Whether or not the two percent threshold prescribed in Section 11(b) of RA 7941 in allocation of additional seats is constitutional.

RULING:
1st issue:
No. The twenty percent allocation for party-list representatives in Section 5(2), Article VI of the Constitution is not mandatory.

Neither the Constitution nor RA. 7941 mandates the filling-up of the entire 20% allocation of party-list representatives found in the Constitution. The 20% allocation of party-list representatives is merely a ceiling; party-list representatives cannot be more than 20% of the members of the House of Representatives. However, we cannot allow the continued existence of a provision in the law which will systematically prevent the constitutionally allocated 20% party-list representatives from being filled.

2nd issue:
Yes. The three-seat limit in Section 11(b) of RA 7941 is constitutional.

The three-seat cap, as a limitation to the number of seats that a qualified party-list organization may occupy, remains a valid statutory device that prevents any party from dominating the party-list elections.

3rd issue:
No. The two percent threshold prescribed in Section 11(b) of RA 7941 in allocation of additional seats is unconstitutional.

We therefore strike down the two percent threshold only in relation to the distribution of the additional seats as found in the second clause of Section 11(b) of R.A. No. 7941. The two percent threshold presents an unwarranted obstacle to the full implementation of Section 5(2), Article VI of the Constitution and prevents the attainment of the broadest possible representation of party, sectoral or group interests in the House of Representatives. The continued operation of the two percent threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives.

ROGELIO BATIN CABALLERO, PETITIONER, VS. COMMISSION ON ELECTIONS AND JONATHAN ENRIQUE V. NANUD, JR., RESPONDENTS.
[G.R. No. 209835, EN BANC, September 22, 2015, PERALTA, J.]
Naturalization in a foreign country may result in an abandonment of domicile in the Philippines.

FACTS:
Enrique Nanud filed a petition to cancel Rogelio Caballero's certificate of candidacy (COC) on the ground of false representation. It was alleged that Caballero was actually a Canadian citizen, hence ineligible to run for mayor. Caballero argued that he already took an Oath of Allegiance to the Republic and has renounced his Canadian citizenship.

Comelec nevertheless cancelled the Caballero's COC for failure to comply with the one year residency requirement, reasoning that Caballero's naturalization as a Canadian citizen resulted in the abandonment of his domicile of origin in Uyugan, Batanes. Caballero insisted that the requirement of the law in fixing the residence qualification of a candidate running for public office is not strictly on the period of residence in the place where he seeks to be elected but on the acquaintance by the candidate on his constituents' vital needs for their common welfare; and that his nine months of actual stay in Uyugan, Batanes prior to his election is a substantial compliance with the law.

ISSUE:
Whether or not Caballero abandoned his domicile.

Ruling:
Yes. Caballero abandoned his domicile.

The term "residence" is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is, the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*). A domicile of origin is acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (*domicile of choice*). It consists not only in the intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.

In this case, Caballero was a natural born Filipino who was born and raised in Uyugan, Batanes. Thus, it could be said that he had his domicile of origin in Uyugan, Batanes. However, he later worked in Canada and became a Canadian citizen. Naturalization in a foreign country may result in an abandonment of domicile in the Philippines. This holds true in Caballero's case as permanent resident status in Canada is required for the acquisition of Canadian citizenship. Hence, Caballero had effectively abandoned his domicile in the Philippines and transferred his domicile of choice in Canada. His frequent visits to Uyugan, Batanes during his vacation from work in Canada cannot be considered as waiver of such abandonment.

Moreover, it was held that Caballero's retention of his Philippine citizenship under RA 9225 did not automatically make him regain his residence in Uyugan, Batanes. He must still prove that after becoming a Philippine citizen on September 13, 2012, he had reestablished Uyugan, Batanes as his new domicile of choice which is reckoned from the time he made it as such.

V. MUNICIPAL CORPORATIONS

A. FISCAL AUTONOMY AND SELF-RELIANCE

MANILA INTERNATIONAL AIRPORT AUTHORITY, PETITIONER, VS. COURT OF APPEALS, CITY

OF PARAÑAQUE, CITY MAYOR OF PARAÑAQUE, SANGGUNIANG PANGLUNGSOD NG PARAÑAQUE, CITY ASSESSOR OF PARAÑAQUE, AND CITY TREASURER OF PARAÑAQUE, RESPONDENTS.
[G.R. No. 155650, EN BANC, July 20, 2006, CARPIO, J.]

Land and buildings of MIAA are part of the public dominion and thus cannot be the subject of levy and auction sale.

FACTS:
Manila International Airport Authority (MIAA) is the operator of the Ninoy Aquino International Airport (NAIA) located in Paranaque City. The Officers of the City of Paranaque sent notices to MIAA due to real estate tax delinquency. When MIAA failed to settle the entire amount, the said officers threatened to levy and subject to auction the land and buildings of MIAA which they did. MIAA sought for a Temporary Restraining Order (TRO) from the CA but failed to do so within the 60 days reglementary period, so the petition was dismissed. MIAA then sought for a TRO with the Supreme Court a day before the public auction which the court granted but the TRO was received by the Paranaque City officers 3 hours after the public auction. MIAA claims that although the charter provides that the title of the land and building are with MIAA, still, the ownership is with the Republic of the Philippines. That as the said properties are of public dominion, they cannot be subjected to levy and auction sale.

ISSUE:
Whether or not the land and buildings of MIAA are part of the public dominion and thus cannot be the subject of levy and auction sale.

RULING:
Yes. The land and buildings of MIAA are part of the public dominion and thus cannot be the subject of levy and auction sale.

Art 420 of the Civil Code provides, to wit: Art 420. The following things are property of public dominion: (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;. No one can dispute that properties of public dominion mentioned in Article 420 of the Civil Code are owned by the State. The term "ports" includes seaports and airports. The MIAA Airport Lands and Buildings constitute a "port" constructed by the State. Hence, the same are properties of public dominion and thus owned by the State or the Republic of the Philippines. The Airport Lands and Buildings are devoted to public use because they are used by the public for international and domestic travel and transportation. The fact that the MIAA collects terminal fees and other charges from the public does not remove the character of the Airport Lands and Buildings as properties for public use. The charging of fees to the public does not determine the character of the property whether it is of public dominion or not.

As properties of public dominion, the Airport Lands and Buildings are outside the commerce of man. Unless the President issues a proclamation withdrawing the Airport Lands and Buildings from public use, these properties remain properties of public dominion and are inalienable. Since the disputed properties are of public dominion, they are not subject to levy on execution or foreclosure sale.

CITY OF LAPU-LAPU, PETITIONER, VS. PHILIPPINE ECONOMIC ZONE AUTHORITY, RESPONDENT.

[G.R. No. 184203, SECOND DIVISION, November 26, 2014, LEONEN, J.]

Being an instrumentality of the national government, the PEZA cannot be taxed by local government units.

FACTS:
PEZA was created to manage economic zones in the country. The City of Lapu-Lapu demanded real property taxes from PEZA's properties in Mactan Economic Zone. The City anchors its demand on the Local Government Code which withdrew the real property tax exemptions previously granted to entities. Characterizing the PEZA as an agency of the National Government, the trial court ruled that the City had no authority to tax the PEZA under the Local Government Code.

ISSUE:
Whether or not the PEZA is an instrumentality of the national government, hence, exempt from payment of real property taxes.

RULING:
Yes. The PEZA is an instrumentality of the national government, hence, exempt from payment of real property taxes.

An instrumentality is "any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter." As an instrumentality of the national government, the PEZA is vested with special functions or jurisdiction by law. Congress created the PEZA to operate, administer, manage and develop special economic zones in the Philippines. Special economic zones are areas with highly developed or which have the potential to be developed into agro-industrial, industrial tourist/recreational, commercial, banking, investment and financial centers. By operating, administering, managing, and developing special economic zones which attract investments and promote use of domestic labor, the PEZA carries out the policy of the Government.

Being an instrumentality of the national government, the PEZA cannot be taxed by local government units. Although a body corporate vested with some corporate powers, the PEZA is not a government-owned or controlled corporation taxable for real property taxes.

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA), PETITIONER, VS. CITY OF LAPU-LAPU AND ELENA T. PACALDO, RESPONDENTS.
[G.R. No. 181756, FIRST DIVISION, June 15, 2015, LEONARDO-DE CASTRO, J.]

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.

FACTS:
Mactan-Cebu International Airport Authority (MCIAA) was created on July 31, 1990 under Republic Act No. 6958 for the "management and supervision of the Mactan International Airport in the Province of Cebu and the Lahug Airport in Cebu City x x x and such other airports as may be established in the Province of Cebu."

Under its charter, Section 14 of RA 6958, MCIAA enjoyed exemption from realty taxes "imposed by the National Government or any of its political subdivisions, agencies and instrumentalities"
On September 11, 1996, however, the Supreme Court rendered a decision in Mactan-Cebu International Airport Authority vs. Marcos (the 1996 MCIAA case) declaring that upon the effectivity of Republic Act No. 7160 (The Local Government Code of 1991 or "LGC"), MCIAA was no longer exempt from real estate taxes.

Thus, in January 1997, respondent City of Lapu-Lapu issued to MCIAA a Statement of Real Estate Tax assessing the lots comprising the Mactan International Airport in the amount of P162,058,959.52, and later amended down to P151,376,134.66.

MCIAA averred that the assessed amount covered real estate taxes on the lots utilized solely and exclusively for public or governmental purposes such as the airfield, runway and taxiway, and the lots on which they are situated.

MCIAA paid the City P4 million monthly, later increased to P6 million monthly. As of December 2003, MCIAA had paid the City a total of P275,728,313.36.

Upon request of MCIAA's General Manager, the Secretary of the Department of Justice issued DOJ Opinion No. 50, Series of 1998 took the effect that: "the properties used for airport purposes, such as the airfield, runway and taxiway and the lots on which the runway and taxiway are located, are owned by the State or by the Republic of the Philippines and are merely held in trust by the MCIAA, notwithstanding that certificates of titles thereto may have been issued in the name of the MCIAA"

Based on the above DOJ Opinion, the Department of Finance issued a 2nd Indorsement to the City Treasurer of Lapu-Lapu, essentially granting the MCIAA's request for exemption from payment of real property tax on the property used for airport purposes.

The City Treasurer Elena Pacaldo sent MCIAA a Statement of Real Property Tax Balances up to the year 2002 reflecting the amount of P246,395,477.20. MCIAA claimed that the statement again included the lots utilized solely and exclusively for public purpose such as the airfield, runway, and taxiway and the lots on which these are built. Pacaldo then issued Notices of Levy on 18 sets of real properties of MCIAA.

MCIAA filed a petition for prohibition with the RTC of Lapu-Lapu City to enjoin respondent City from issuing a warrant of levy against MCIAA's properties and from selling them at public auction for delinquency in realty tax obligations. MCIAA based its claim of exemption on DOJ Opinion No. 50.

The RTC Lapu-Lapu City issued a 72-hour TRO but refused to extend it. Hence, on December 10, 2003, City of Lapu-Lapu auctioned 27 of MCIAA's properties. As there was no interested bidder who participated in the auction sale, the City forfeited and purchased said properties. The corresponding Certificates of Sale of Delinquent Property were issued to the City of Lapu-Lapu.

The RTC initially granted the permanent injunction in favor of MCIAA. However, upon motion by the City of Lapu-Lapu, the RTC reversed itself and reasoned that "the City has presented Ordinance No. 44 (Omnibus Tax Ordinance of the City of Lapu-Lapu), Section 25 which authorized the collection of a rate of one and one-half (1 1/2) [per centum] from.. any real estate lying within the jurisdiction of the City of Lapu-Lapu...Though this ordinance was enacted prior to the effectivity of Republic Act No.

7160 (LGC), to the mind of the Court this ordinance is still a valid and effective ordinance in view of Sec. 529 of RA 7160."

The RTC further ruled that, without an ordinance , the City can still collect the additional 1% tax on real property in view of Republic Act No. 5447 which created the Special Education Fund constituted from the proceeds of the additional tax on real property imposed by the law.
The RTC likewise ruled that when MCIAA failed to redeem the parcels of land acquired by the City, the ownership thereof became fully vested on the City without the latter having to perform any other acts to perfect its ownership.

On appeal by MCIAA, the Court of Appeals (CA) held that MCIAA is a government-owned or controlled corporation (GOCC) and its properties are subject to realty tax and the special education fund.
MCIAA, in its motion fore reconsideration, cited Manila International Airport Authority vs. Court of Appeals (the 2006 MIAA case) where the Manila International Airport Authority had been described as a government instrumentality. It is alleged that the the 2006 MIAA case has overturned the 1996 MCIAA case.

The CA, in denying the motion for reconsideration, refused to apply the ruling in the 2006 MIAA case on the premise that the same had not yet reached finality, and that as far as MCIAA is concerned, the 1996 MCIAA case is still good law.

The CA nevertheless held that the auction sale on the tax delinquent assets of MCIAA was void since under Republic Act No. 6958 (MCIAA charter), the properties of MCIAA may not be conveyed or transferred to any person or entity except to the national government.
Hence, this petition.

ISSUE:
Whether or not MCIAA is a GOCC.

RULING:
No. MCIAA is not a GOCC but a Government instrumentality.
Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.

Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. (Section 2(10) of the Introductory Provisions of the Administrative Code of 1987)
The definition of "instrumentality" uses the phrase "includes x x x government-owned or controlled corporations" which means that a government "instrumentality" may or may not be a "government-

owned or controlled corporation." Obviously, the term government "instrumentality" is broader than the term "government-owned or controlled corporation."

Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock. (Section 2(13) of the Introductory Provisions of the Administrative Code of 1987) A government-owned or controlled corporation must be "organized as a stock or non-stock corporation." In the 2006 MIAA case, it was held that MIAA is not a stock corporation because "it has no capital stock divided into shares". MIAA is also not a non-stock corporation because it has no members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation. (See in relation to Section 3, 87 and 88 of the Corporation Code)

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.

Petitioner MCIAA, with its many similarities to the MIAA, should be classified as a government instrumentality, as its properties are being used for public purposes. MCIAA is vested with corporate powers but it is not a stock or non-stock corporation, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Like MIAA, petitioner MCIAA has capital under its charter but it is not divided into shares of stock. It also has no stockholders or voting shares.

AQUILINO Q. PIMENTEL, JR., SERGIO TADEO AND NELSON ALCANTARA, PETITIONERS, VS. EXECUTIVE SECRETARY PAQUITO N. OCHOA AND SECRETARY CORAZON JULIANO-SOLIMAN OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, RESPONDENTS.
[G.R. No. 195770, EN BANC, July 17, 2012, PERLAS-BERNABE, J.]

Since the CCT program is a national program funded by the GAA, the LGC has expressly reserved the implementation thereof with the national government, unless the LGUs have been designated as the primary implementing agency.

FACTS:
As a poverty reduction measure, the government thru the Department of Social Welfare and Development (DSWD) implemented the Conditional Cash Transfer Program (CCT). Eligible households that are selected from priority target areas consisting of the poorest provinces classified by the National Statistical Coordination Board (NCSB) are granted a health assistance of P500.00/month, or P6,000.00/year, and an educational assistance of P300.00/month for 10 months, or a total of P3,000.00/year, for each child but up to a maximum of three children per family (assuming that they qualify based on the conditions set by the DSWD).

DSWD issued an Administrative Order, which outlined the guidelines for the implementation of the CCT. Among its provisions is the creation of an inter-agency network composed of the DSWD,

Department of Health (DOH), National Anti-Poverty Commission (NAPC) and various Local Government Units (LGUs). In fact, a memorandum of agreement was signed between the DSWD and the LGUs to delineate the duties to be performed by both parties in the implementation of the CCT.

To ensure the success of the CCT, Congress funded the program through the annual General Appropriations Act (GAA). For 2009 it was given 298 Million Pesos, for 2010 it was 5 Billion Pesos, and for 2011 it was doubled to 10 Billion Pesos.

ISSUE:
Whether or not the implementation of the CCT by the DSWD can be considered a "recentralization" which is a violation of local autonomy.

RULING:
No. The implementation of the CCT by the DSWD cannot be considered a "recentralization" which is a violation of local autonomy.
The power to implement programs funded by the national government is reserved in the Local Government Code. Section 17of the Local Government Code vested upon the LGUs the duties and functions pertaining to the delivery of basic services. This is in line with the state policy of making Local Governments self-reliant communities and effective partners in the attainment of national goals.

While such provision charges the LGUs to take the responsibilities devolved from national agencies, the same section provides an exception regarding nationally funded projects, facilities, programs, and services.

The import of this express reservation under Section 17 (c) is that unless the LGU has been designated as the implementing agency, it has no power over a program for which funding has been provided by the national government under the annual GAA. This is notwithstanding the fact that the delivery of these basic services is done within the jurisdiction of these LGUs.

The purpose of local autonomy is to break the monopoly of the national government over the affairs of the LGUs. Local autonomy is not designed to create mini-states *imperium et imperio.* The nature of the relationship between the national government and the LGUs is that of integration and coordination. The national government has not completely relinquished its authority over local governments. to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress.

To yield unreserved power of governance to the local government unit as to preclude any and all involvement by the national government in programs implemented in the local level would be to shift the tide of monopolistic power to the other extreme, which would amount to a decentralization of power, which is beyond the constitutional concept of autonomy.

LEAGUE OF PROVINCES OF THE PHILIPPINES, PETITIONER, VS. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND HON. ANGELO T. REYES, IN HIS CAPACITY AS SECRETARY OF DENR, RESPONDENTS.
[G.R. No. 175368, EN BANC, April 11, 2013, PERALTA, J.]

Where there is a dispute as to the validity of the issuance of the Small-Scale Mining Permits by the Provincial Governor, the DENR Secretary's power to review and decide a case is a quasi-judicial function which cannot be equated with "substitution of judgment" of the Provincial Governor nor "control" over the said act of the officer as it is a determination of the rights of the parties over conflicting claims based on the law.

FACTS:
In 1998, Golden Falcon Mineral Exploration Corporation (Golden Falcon) filed with the DENR Mines and Geosciences Bureau Regional Office No. III (MGB R-III) an Application for Financial and Technical Assistance Agreement (FTAA) covering an area situated in Bulacan. The MGB R-III denied the application due to Golden Falcon's failure to secure area clearances from the DENR Regional Office.
Golden Falcon filed an appeal with the MGB-Central Office. The MGB-Central Office eventually denied the appeal of Golden Falcon. As the case was pending, several people applied for Small-Scale Mining Permits with the Provincial Environment and Natural Resources Office (PENRO) of Bulacan covering the area that Golden Falcon was applying for.

The area covered by Golden Falcon's application was then opened for mining in August 2004. In September 2004, another mining company, Atlantic Mines and Trading Corporation (AMTC) filed with the PENRO of Bulacan an Application for Exploration Permit (AEP) covering the area covered by Golden Falcon's application. The mining company presented its valid permit and protested to the PENRO that the location was only opened for mining in August 2004, hence, the Small-Mining permits should not be issued. The Bulacan Provincial Government still approved and issued the Small-Scale Mining permits.

AMTC then appealed to respondent DENR Secretary and decided in favor of AMTC. The DENR Secretary agreed that the area was open to mining location only on August 11, 2004. He stated that the Applications for Small-Scale Mining were filed on February 10, 2004 when the area was still closed to mining location; hence, the Small-Scale Mining Permits granted by the PMRB and the Governor were null and void. The DENR Secretary nullified the said permits.
Hence, this petition.

ISSUE:
Whether or not the act of the Secretary nullifying the permits usurped the power of the Provincial Government.

RULING:
The petition is denied.

Pursuant to Section 2, Article XII of the Constitution, R.A. No. 7076 or the People's Small- Scale Mining Act of 1991, was enacted, establishing under Section 4 thereof a People's Small- Scale Mining Program to be implemented by the DENR Secretary in coordination with other concerned government agencies. The People's Small-Scale Mining Act of 1991 defines "small-scale mining" as "refer[ring] to mining activities, which rely heavily on manual labor using simple implement and methods and do not use explosives or heavy mining equipment."

It should be pointed out that the Administrative Code of 198733 provides that the DENR is, subject to law and higher authority, in charge of carrying out the State's constitutional mandate, under Section 2, Article XII of the Constitution, to control and supervise the exploration, development, utilization and conservation of the country's natural resources. Hence, the enforcement of small-scale

mining law in the provinces is made subject to the supervision, control and review of the DENR under the Local Government Code of 1991, while the People's Small-Scale Mining Act of 1991 provides that the People's Small-Scale Mining Program is to be implemented by the DENR Secretary in coordination with other concerned local government agencies.

The DENR Secretary's power to review and, therefore, decide, in this case, the issue on the validity of the issuance of the Small-Scale Mining Permits by the Provincial Governor as recommended by the PMRB, is a quasi-judicial function, which involves the determination of what the law is, and what the legal rights of the contending parties are, with respect to the matter in controversy and, on the basis thereof and the facts obtaining, the adjudication of their respective rights. The DENR Secretary exercises quasi-judicial function under R.A. No. 7076 and its Implementing Rules and Regulations to the extent necessary in settling disputes, conflicts or litigations over conflicting claims. This quasi-judicial function of the DENR Secretary can neither be equated with "substitution of judgment" of the Provincial Governor in issuing Small-Scale Mining Permits nor "control" over the said act of the Provincial Governor as it is a determination of the rights of AMTC over conflicting claims.

CONGRESSMAN HERMILANDO I. MANDANAS; MAYOR EFREN B. DIONA; MAYOR ANTONINO A. AURELIO; KAGAWAD MARIO ILAGAN; BARANGAY CHAIR PERLITO MANALO; BARANGAY CHAIR MEDEL MEDRANO; BARANGAY KAGAWAD CRIS RAMOS; BARANGAY KAGAWAD ELISA D. BALBAGO, AND ATTY. JOSE MALVAR VILLEGAS, *Petitioners*, -versus- EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; SECRETARY CESAR PURISIMA, DEPARTMENT OF FINANCE; SECRETARY FLORENCIO H. ABAD, DEPARTMENT OF BUDGET AND MANAGEMENT; COMMISSIONER KIM JACINTO-HENARES, BUREAU OF INTERNAL REVENUE; AND NATIONAL TREASURER ROBERTO TAN, BUREAU OF THE TREASURY, *Respondents*.
G.R. No. 199802, EN BANC, July 03, 2018, BERSAMIN, *J*.

Section 284 of the LGC deviates from the plain language of Section 6 of Article X of the 1987 Constitution.The phrase national internal revenue taxes engrafted in Section 284 is undoubtedly more restrictive than the term national taxes written in Section 6. Congress has actually departed from the letter of the 1987 Constitution stating that national taxes should be the base from which the just share of the LGU comes. Section 284 has effectively deprived the LGUs from deriving their just share from other national taxes.

The exclusion of other national taxes like customs duties from the base for determining the just share of the LGUs contravened the express constitutional edict in Section 6, Article X the 1987 Constitution.

FACTS:
The petitioners hereby challenge the manner in which the just share in the national taxes of the local government units (LGUs) has been computed.
Implementing the constitutional mandate for decentralization and local autonomy, Congress enacted Republic Act No. 7160, otherwise known as the Local Government Code (LGC), in order to guarantee the fiscal autonomy of the LGUs by specifically providing that:
"SECTION 284. Allotment of Internal Revenue Taxes. — Local government units shall have a share in the **national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows:
(a) On the first year of the effectivity of this Code, thirty percent (30%);
(b) On the second year, thirty-five percent (35%); and
(c) On the third year and thereafter, forty percent (40%).

Provided, That in the event that the National Government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government, and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of **national internal revenue taxes** of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services."

According to the implementing rules and regulations of the LGC, the IRA is determined on the basis of the actual collections of the National Internal Revenue Taxes (NIRTs) as certified by the Bureau of Internal Revenue.

Mandanas, et al. allege herein that certain collections of NIRTs by the Bureau of Customs– specifically: excise taxes, value added taxes (VATs) and documentary stamp taxes (DSTs) – have not been included in the base amounts for the computation of the IRA; that such taxes, albeit collected by the BOC, should form part of the base from which the IRA should be computed because they constituted NIRTs; that, consequently, the release of the additional amount of P60,750,000,000.00 to the LGUs as their IRA for FY 2012 should be ordered; and that for the same reason the LGUs should also be released their unpaid IRA for FY 1992 to FY 2011, inclusive, totaling P438,103,906,675.73.

Congressman Enrique Garcia, Jr., avers that the insertion by Congress of the words internal revenue in the phrase national taxes found in Section 284 of the LGC caused the diminution of the base for determining the just share of the LGUs, and should be declared unconstitutional; that, moreover, the exclusion of certain taxes and accounts pursuant to or in accordance with special laws was similarly constitutionally untenable; that the VATs and excise taxes collected by the BOC should be included in the computation of the IRA; and that the respondents should compute the IRA on the basis of all national tax collections, and thereafter distribute any shortfall to the LGUs.

ISSUE:
Whether or not the exclusion of certain national taxes from the base amount for the computation of the just share of the LGUs in the national taxes is constitutional. (NO)

RULING:
Section 284 of the LGC deviates from the plain language of Section 6 of Article X of the 1987 Constitution.

Section 6, Article X the 1987 Constitution textually commands the allocation to the LGUs of a just share in the national taxes, viz.:
Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.
Section 6mentions national taxes as the source of the just share of the LGUs while Section 284 ordains that the share of the LGUs be taken from national internal revenue taxes instead.

Thephrase national internal revenue taxes engrafted in Section 284 is undoubtedly more restrictive than the term national taxes written in Section 6. Congress has actually departed

from the letter of the 1987 Constitution stating that national taxes should be the base from which the just share of the LGU comes. Such departure is impermissible. Verbalegis non estrecedendum (from the words of a statute there should be no departure). Equally impermissible is that **Congress has also thereby curtailed the guarantee of fiscal autonomy in favor of the LGUs** under the 1987 Constitution.

Taxes are the enforced proportional contributions exacted by the State from persons and properties pursuant to its sovereignty in order to support the Government and to defray all the public needs. Taxes are classified into national and local. National taxes are those levied by the National Government, while local taxes are those levied by the LGUs.
What the phrase national internal revenue taxes as used in Section 284 included are all the taxes enumerated in Section 21 of the National Internal Revenue Code, as amended by R.A. No. 8424, viz.:
Section 21. Sources of Revenue. — The following taxes, fees and charges are deemed to be national internal revenue taxes: (a) Income tax; (b) Estate and donor's taxes; (c) Value-added tax; (d) Other percentage taxes; (e) Excise taxes; (f) Documentary stamp taxes; and(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.
In view of the foregoing enumeration of what are the national internal revenue taxes, **Section 284 has effectively deprived the LGUs from deriving their just share from other national taxes, like the customs duties.**

Strictly speaking, customs duties are also taxes because they are exactions whose proceeds become public funds. It is the nomenclature given to taxes imposed on the importation and exportation of commodities and merchandise to or from a foreign country.

It is clear from the foregoing clarification that **the exclusion of other national taxes like customs duties from the base for determining the just share of the LGUs contravened the express constitutional edict in Section 6, Article X the 1987 Constitution**.

However, the petitioners' prayer for the payment of the arrears of the LGUs' just share on the theory that the computation of the base amount had been unconstitutional all along cannot be granted.
It is true that with our declaration today that the IRA is not in accordance with the constitutional determination of the just share of the LGUs in the national taxes, logic demands that the LGUs should receive the difference between the just share they should have received had the LGC properly reckoned. This puts the National Government in arrears as to the just share of the LGUs.
However, doctrine of operative fact recognizes the existence of the law or executive act prior to the determination of its unconstitutionality as an operative fact that produced consequences that cannot always be erased, ignored or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect.

Hence, the effect of our declaration through this decision of the unconstitutionality of Section 284 of the LGC and its related laws as far as they limited the source of the just share of the LGUs to the NIRTs is prospective. It cannot be otherwise.

Section 6, Article X of the 1987 Constitution commands that the just share of the LGUs in national taxes shall be automatically released to them. The LGUs are not required to perform any act or thing in order to receive their just share in the national taxes.Hence, the just share of the LGUs in the national taxes shall be released to them without need of yearly appropriation.

The Court declares the phrase "internal revenue" appearing in Section 284 of the Local Government Code unconstitutional, and deletes the phrase from Section 284, Section 285, Section 287, and Section 290. Such sections are modified to reflect the deletion of the phrase "internal revenue". **Any mention of "Internal Revenue Allotment" or "IRA" in the LGC and its IRR shall be understood as pertaining to the allotment of the Local Government Units derived from national taxes.**
The collections of national taxes for inclusion in the base of the just share the Local Government Units shall include, but shall not be limited to, the following:
(a) The national internal revenue taxes enumerated in Section 21 of the National Internal Revenue Code, as amended, collected by the Bureau of Internal Revenue and the Bureau of Customs;
(b) Tariff and customs duties collected by the Bureau of Customs;
(c) 50% of the value-added taxes collected in the Autonomous Region in Muslim Mindanao, and 30% of all other national tax collected in the Autonomous Region in Muslim Mindanao.
The remaining 50% of the collections of value-added taxes and 70% of the collections of the other national taxes in the Autonomous Region in Muslim Mindanao shall be the exclusive share of the Autonomous Region in Muslim Mindanao pursuant to Section 9 and Section 15 of Republic Act No. 9054.
(d) 60% of the national taxes collected from the exploitation and development of the national wealth. The remaining 401% of the national taxes collected from the exploitation and development of the national wealth shall exclusively accrue to the host Local Government Units pursuant to Section 290 of Republic Act No. 7160 (Local Government Code);
(e) 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products. The remaining 15% shall accrue to the special purpose funds created by Republic Act No. 7171 and Republic Act No. 7227;
(f) The entire 50% of the national taxes collected under Sections 106, 108 and 116 of the NIRC as provided under Section 283 of the NIRC; and
(g) 5% of the 25% franchise taxes given to the National Government under Section 6 of Republic Act No. 6631 and Section 8 of Republic Act No. 6632.

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY RAPHAEL P.M. LOTILLA, SECRETARY, DEPARTMENT OF ENERGY (DOE), MARGARITO B. TEVES, SECRETARY, DEPARTMENT OF FINANCE (DOF), AND ROMULO L. NERI, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT (DBM), *petitioners*, -versus- PROVINCIAL GOVERNMENT OF PALAWAN, REPRESENTED BY GOVERNOR ABRAHAM KAHLIL B. MITRA, *respondent*.
G.R. No. 170867, EN BANC, December 4, 2018, TIJAM, *J.*

There is no debate that the natural resource in the Camago-Malampaya reservoir belongs to the State, noting that Palawan's claim is anchored not on ownership of the reservoir but on a revenue-sharing scheme, under Section 7, Article X of the 1986 Constitution and Section 290 of the LGC, that allows local government units (LGUs) to share in the proceeds of the utilization of national wealth provided they are found within their respective areas.

The Court, however, found that existing laws do not include the Camago-Malampaya reservoir within the area or territorial jurisdiction of the Province of Palawan. It stressed that "As defined in its organic law, the province of Palawan comprises merely of islands. The continental shelf, where the Camago-Malamapaya reservoir is loated, was clearly not included in its territory.
FACTS:
On December 11, 1990, the Republic of the Philippines (Republic or National Government), through the Department of Energy (DoE), entered into Service Contract No. 38 with Shell Philippines Exploration B.V. and Occidental Philippines, Incorporated (collectively SPEX/OXY), as Contractor, for

the exclusive conduct of petroleum operations in the area known as "Camago-Malampaya" located offshore northwest of Palawan. Exploration of the area led to the drilling of the Camago-Malampaya natural gas reservoir about 80 kilometers from the main island of Palawan and 30 kms from the platform.

The Provincial Government of Palawan asserted its claim over forty percent (40%) of the National Government's share in the proceeds of the project. It argued that since the reservoir is located within its territorial jurisdiction, it is entitled to said share under Section 290 of the Local Government Code. The National Government disputed the claim, arguing that since the gas fields were approximately 80 kms from Palawan's coastline, they are outside the territorial jurisdiction of the province and is within the national territory of the Philippines.

On May 7, 2003, the Provincial Government of Palawan filed a petition for declaratory relief before the RTC of Palawan and Puerto Princesa against DoE Secretary Vicente S. Perez, Jr., DoF Secretary Jose Isidro N. Camacho and DBM Secretary Emilia T. Boncodin (Department Secretaries), docketed as Civil Case No. 3779. It sought judicial determination of its rights under A.O. No. 381 (1998), Republic Act (R.A.) No. 7611 or the Strategic Environmental Plan (SEP) for Palawan Act, Section 290 of R.A. No. 7160 or the Local Government Code of 1991 (Local Government Code), and Provincial Ordinance No. 474 (series of 2000). It asked the RTC to declare that the Camago-Malampaya natural gas reservoir is part of the territorial jurisdiction of the Province of Palawan and that the Provincial Government of Palawan was entitled to receive 40% of the National Government's share in the proceeds of the Camago-Malampaya natural gas project.

The RTC decided Civil Case No. 3779 in favor of the Province of Palawan. The RTC held that it was "unthinkable" to limit Palawan's territorial jurisdiction to its landmass and municipal waters considering that the Local Government Code empowered them to protect the environment, and R.A. No. 7611 adopted a comprehensive framework for the sustainable development of Palawan compatible with protecting and enhancing the natural resources and endangered environment of the province.

ISSUE:
Whether the national wealth, in this case the Camago-Malampaya reservoir, is within the Province of Palawan's "area" for it to be entitled to 40% of the government's share under Service Contract No. 38. (NO)

RULING:
There is no debate that the natural resource in the Camago-Malampaya reservoir belongs to the State, noting that Palawan's claim is anchored not on ownership of the reservoir but on a revenue-sharing scheme, under Section 7, Article X of the 1986 Constitution and Section 290 of the LGC, that allows local government units (LGUs) to share in the proceeds of the utilization of national wealth provided they are found within their respective areas.

The Court, however, found that existing laws do not include the Camago-Malampaya reservoir within the area or territorial jurisdiction of the Province of Palawan. It stressed that "As defined in its organic law, the province of Palawan comprises merely of islands. The continental shelf, where the Camago-Malamapaya reservoir is loated, was clearly not included in its territory.

The Court also held that Presidential Decree No. 1596, which constituted Kalayaan as a separate municipality of the Province of Palawan, cannot be the basis for holding that the Camago-Malampaya

reservoir forms part of Palawan's territory. It declared that the delineation of territory in PD 1596 refers to Kalayaan alone and that the inclusion of the seabed, subsoil, and continental margin in Kalayaan's territory cannot by simple analogy be applied to Palawan. Likewise, it held that the definition of "Palawan" under Republic Act No. 7611 should not be taken as a statement of territorial limits for purposes of Section 7, Article X of the 1987 Constitution, but in the context of RA 7611 which is aimed at environmental monitoring, research, and education.

The Court also did not subscribe to Palawan's argument posited by the Province of Palawan that the national wealth, the proceeds from which the State is mandated to share with the LGUs, shall be wherever the local government exercises any degree of jurisdiction. "An LGU's territorial jurisdiction is not necessarily co-extensive with its exercise or assertion of powers. To hold otherwise may result in condoning acts that are clearly ultra vires. It may lead to, the words of the Republic, LGUs 'rush(ing) to exercise its powers and functions in areas rich in natural resources even if outside its boundaries) with the intention of seeking a share in the proceeds of its exploration' – a situation that 'would sow conflict not only among the local government units and the national government but worse, between and among local government units.'"

The Court pointed out also that Palawan never alleged in which of its municipalities or component cities and barangays the Camago-Malampay reservoir is located, militating against its claim that the area form part of its territory.

The Court further held that 1) estoppel does not lie against the Republic as previous acknowledgments of Palawan's share were based on the mistaken assumption that it it is entitled to the said allocation, 2) Section1, Article X of the 1987 Constitution did not apportion the entire Philippine territory among the LGUs such that at any one time, a body of water or a piece of land should belong to some province or city, 3) the United Nations Convention on the Law of the Seas (UNCLOS) did not confer on LGUs their own continental shelf as this pertains to the coastal state.

B. LOCAL AUTONOMY AND NATIONAL ACCOUNTABILITY

BATANGAS CATV, INC., petitioner –versus- THE COURT OF APPEALS, THE BATANGAS CITY SANGGUNIANG PANLUNGSOD and BATANGAS CITY MAYOR, respondents.
G.R. No. 138810, EN BANC, September 29, 2004, SANDOVAL-GUTIERREZ, J.

An ordinance enacted by virtue of the general welfare clause is valid, unless it contravenes the [Constitution], or [a statute], or unless it is against public policy, or is unreasonable, oppressive, partial, discriminating, or in derogation of common right. Ordinances passed by virtue of the implied power found in the general welfare clause must be reasonable, consonant with the general powers and purposes of the corporation, and not inconsistent with the laws or policy of the State. (De la Cruz vs. Paraz)

The apparent defect in Resolution No. 210 is that it contravenes E.O. No. 205 and E.O. No. 436 insofar as it permits respondent Sangguniang Panlungsod to usurp a power exclusively vested in the NTC, i.e., the power to fix the subscriber rates charged by CATV operators. Since E.O. No. 205, a general law, mandates that the regulation of CATV operations shall be exercised by the NTC, an LGU cannot enact an ordinance or approve a resolution in violation of the said law.

FACTS:

In 1986, the Sangguniang Panlungsod of Batangas City enacted Resolution No. 210 granting Batangas CATV, Inc. (petitioner) a permit to construct, install, and operate a Community Antenna Television (CATV) or Cable Television system in Batangas City. Section 8 of the Resolution provides that petitioner is authorized to charge its subscribers the maximum rates specified therein, "provided, however, that any increase of rates shall be subject to the approval of the Sangguniang Panlungsod."

Sometime in November 1993, petitioner increased its subscriber rates from P88 to P180 per month. As a result, the Batangas City Mayor wrote petitioner a letter threatening to cancel its permit unless it secures the approval of the Sangguniang Panlungsod, pursuant to Resolution No. 210.

Petitioner then filed with the RTC a petition for injunction, alleging that the Sangguniang Panlungsod has no authority to regulate the subscriber rates charged by CATV operators because under Executive Order No. 205, the National Telecommunications Commission (NTC) has the sole authority to regulate the CATV operation in the Philippines.

The RTC decided in favor of petitioner. It pointed out that the sole agency of the government which can regulate CATV operation is the NTC, and that the local government units (LGUs) cannot exercise regulatory power over it without appropriate legislation.

On appeal, the Court of Appeals reversed the RTC. The CA held that the regulation of businesses in the locality is expressly provided in the Local Government Code and the fixing of service rates is lawful under the General Welfare Clause.

Petitioner filed a motion for reconsideration but was denied. Hence, the instant petition for review on certiorari.

ISSUE:
The issue is whether an LGU may regulate the subscriber rates charged by CATV operators within its territorial jurisdiction? (NO)

RULING:
The Sangguniang Panlungsod, like other local legislative bodies, has been empowered to enact ordinances and approve resolutions under the general welfare clause of B.P. Blg. 337, the Local Government Code of 1983. That it continues to posses such power is clear under the new law, **R.A. No. 7160 (the Local Government Code of 1991). Section 16** thereof provides:

"SECTION 16. General Welfare. - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among others, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant, scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants."

Section 458 of the same Code specifically mandates:

"SECTION 458. Powers, Duties, Functions and Compensation. - (a) The Sangguniang Panlungsod, as

the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code..."

The general welfare clause is the delegation in statutory form of the police power of the State to LGUs. Through this, LGUs may prescribe regulations to protect the lives, health, and property of their constituents and maintain peace and order within their respective territorial jurisdictions.

Like any other enterprise, CATV operation maybe regulated by LGUs under the general welfare clause. This is primarily because the CATV system commits the indiscretion of crossing public properties. (It uses public properties in order to reach subscribers.) The physical realities of constructing CATV system - the use of public streets, rights of ways, the founding of structures, and the parceling of large regions - allow an LGU a certain degree of regulation over CATV operators. This is the same regulation that it exercises over all private enterprises within its territory.

While we recognize the LGUs' power under the general welfare clause, we cannot sustain Resolution No. 210. We are convinced that respondents strayed from the well recognized limits of its power. The flaws in Resolution No. 210 are: (1) it violates the mandate of existing laws and (2) it violates the State's deregulation policy over the CATV industry.

An ordinance enacted by virtue of the general welfare clause is valid, unless it contravenes the [Constitution], or [a statute], or unless it is against public policy, or is unreasonable, oppressive, partial, discriminating, or in derogation of common right. Ordinances passed by virtue of the implied power found in the general welfare clause must be reasonable, consonant with the general powers and purposes of the corporation, and not inconsistent with the laws or policy of the State. *(De la Cruz vs. Paraz)*

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In Keller vs. State, it was held that: " a municipal ordinance, insofar as it attempts to regulate the subject which is completely covered by a general statute of the legislature, may be rendered invalid. x x x A reason advanced for this view is that such ordinances are in excess of the powers granted to the municipal corporation."

It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law.

ARSADI M. DISOMANGCOP and RAMIR M. DIMALOTANG, *petitioners*, -versus- THE SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS SIMEON A. DATUMANONG and THE SECRETARY OF BUDGET and MANAGEMENT EMILIA T. BONCODIN, *respondents*.

G.R. No. 149848, EN BANC, November 25, 2004, TINGA, *J.*

The objective of the autonomy system is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business. This is achieved through the establishment of a special governance regime for certain member communities who choose their own authorities from within the community and exercise the jurisdictional authority legally accorded to them to decide internal community affairs.

The challenged law creates an office with functions and powers which, by virtue of E.O. 426, have been previously devolved to the DPWH-ARMM, First Engineering District in Lanao del Sur. E.O. 426 clearly ordains the transfer of the control and supervision of the offices of the DPWH within the ARMM, including their functions, powers and responsibilities, personnel, equipment, properties, and budgets to the ARG. R.A. 8999 has made the DPWH-ARMM effete and rendered regional autonomy illusory with respect to infrastructure projects.

FACTS:
Challenged in the instant petition for certiorari, prohibition and mandamus with prayer for a temporary restraining order and/or writ of preliminary injunction are the constitutionality and validity of Republic Act No. 8999 entitled "An Act Establishing An Engineering District in the First District of the Province of Lanao del Sur and Appropriating Funds Therefor," and Department of Public Works and Highways (DPWH) Department Order No. 119 on the subject, "Creation of Marawi Sub-District Engineering Office."

Pursuant to the constitutional mandate, Republic Act No. 6734 (R.A. 6734), entitled "An Act Providing for An Organic Act for the Autonomous Region in Muslim Mindanao," was enacted and signed into law on 1 August 1989. The law called for the holding of a plebiscite in the provinces of Basilan, Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, South Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte, and Zamboanga del Sur, and the cities of Cotabato, Dapitan, Dipolog, General Santos, Iligan, Marawi, Pagadian, Puerto Princesa and Zamboanga. In the plebiscite, only four (4) provinces voted for the creation of an autonomous region, namely: Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi. These provinces became the Autonomous Region in Muslim Mindanao (ARMM). The law contains elaborate provisions on the powers of the Regional Government and the areas of jurisdiction which are reserved for the National Government. President Aquino issued E.O. 426, entitled "Placing the Control and Supervision of the Offices of the DPWH within the ARMM under the Autonomous Regional Government, and for other purposes."

Nearly nine (9) years later, then DPWH Secretary Gregorio R. Vigilar issued D.O. 119 (Creation of Marawi Sub-District Engineering Officewhich shall have jurisdiction over all national infrastructure projects and facilities under the DPWH within Marawi City and the province of Lanao del Sur.) Almost two years later, President Estrada approved and signed into law R.A. 8999 (establishing engineering district in lanao del sur). Congress later passed R.A. 9054, entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, entitled An Act Providing for the Autonomous Region in Muslim Mindanao, as Amended."

On 23 July 2001, petitioners addressed a petition to DPWH Secretary Simeon Datumanong, seeking the revocation of D.O. 119 and the non-implementation of R.A. 8999. No action, however, was taken on the petition.[Petitioners allege that D.O. 119 was issued with grave abuse of discretion and that it

violates the constitutional autonomy of the ARMM. They point out that the challenged Department Order has tasked the Marawi Sub-District Engineering Office with functions that have already been devolved to the DPWH-ARMM First Engineering District in Lanao del Sur. Petitioners also contend that R.A. 8999 is a piece of legislation that was not intelligently and thoroughly studied, and that the explanatory note to House Bill No. 995 (H.B. 995) from which the law originated is questionable. Petitioners assert as well that prior to the sponsorship of the law, no public hearing nor consultation with the DPWH-ARMM was made. The House Committee on Public Works and Highways (Committee) failed to invite a single official from the affected agency. Finally, petitioners argue that the law was skillfully timed for signature by former President Joseph E. Estrada during the pendency of the impeachment proceedings.

ISSUES:

1. Whether Republic Act No. 8999 was valid. (NO)
2. Whether DPWH Department Order No. 119 was valid. (NO)

RULING:

(I)

The challenged law never became operative and was superseded or repealed by a subsequent enactment. The ARMM Organic Acts are deemed a part of the regional autonomy scheme. While they are classified as statutes, the Organic Acts are more than ordinary statutes because they enjoy affirmation by a plebiscite. Hence, the provisions thereof cannot be amended by an ordinary statute, such as R.A. 8999 in this case. The amendatory law has to be submitted to a plebiscite.

Although R.A. 9054 was enacted later, it reaffirmed the imperativeness of the plebiscite requirement. In fact, R.A. 9054 itself, being the second or later ARMM Organic Act, was subjected to and ratified in a plebiscite.

The first ARMM Organic Act, R.A. 6074, as implemented by E.O. 426, devolved the functions of the DPWH in the ARMM which includes Lanao del Sur (minus Marawi City at the time) to the Regional Government. By creating an office with previously devolved functions, R.A. 8999, in essence, sought to amend R.A. 6074. The amendatory law should therefore first obtain the approval of the people of the ARMM before it could validly take effect. Absent compliance with this requirement, R.A. 8999 has not even become operative.

From another perspective, R.A. 8999 was repealed and superseded by R.A. 9054. Where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention must be given effect. R.A. 9054 is anchored on the 1987 Constitution.

It advances the constitutional grant of autonomy by detailing the powers of the ARG covering, among others, Lanao del Sur and Marawi City, one of which is its jurisdiction over regional urban and rural planning. R.A. 8999, however, ventures to reestablish the National Government's jurisdiction over infrastructure programs in Lanao del Sur. R.A. 8999 is patently inconsistent with R.A. 9054, and it destroys the latter law's objective.

Clearly, R.A. 8999 is antagonistic to and cannot be reconciled with both ARMM Organic Acts, R.A. 6734 and R.A. 9054. The kernel of the antagonism and disharmony lies in the regional autonomy which the ARMM Organic Acts ordain pursuant to the Constitution. On the other hand, R.A. 8999 contravenes true decentralization which is the essence of regional autonomy.

Regional Autonomy Under R.A. 6734 and R.A. 9054
The idea behind the Constitutional provisions for autonomous regions is to allow the separate development of peoples with distinctive cultures and traditions. These cultures, as a matter of right, must be allowed to flourish.

Autonomy, as a national policy, recognizes the wholeness of the Philippine society in its ethnolinguistic, cultural, and even religious diversities. It strives to free Philippine society of the strain and wastage caused by the assimilationist approach. Policies emanating from the legislature are invariably assimilationist in character despite channels being open for minority representation.

As a result, democracy becomes an irony to the minority group.
The need for regional autonomy is more pressing in the case of the Filipino Muslims and the Cordillera people who have been fighting for it. Their political struggle highlights their unique cultures and the unresponsiveness of the unitary system to their aspirations. The Moros' struggle for self-determination dates as far back as the Spanish conquest in the Philippines. Even at present, the struggle goes on.

However, the creation of autonomous regions does not signify the establishment of a sovereignty distinct from that of the Republic, as it can be installed only "within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines."

The objective of the autonomy system is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business. This is achieved through the establishment of a special governance regime for certain member communities who choose their own authorities from within the community and exercise the jurisdictional authority legally accorded to them to decide internal community affairs.

In the Philippine setting, regional autonomy implies the cultivation of more positive means for national integration. It would remove the wariness among the Muslims, increase their trust in the government and pave the way for the unhampered implementation of the development programs in the region.

A necessary prerequisite of autonomy is decentralization. Decentralization is a decision by the central government authorizing its subordinates, whether geographically or functionally defined, to exercise authority in certain areas. It involves decision-making by subnational units. It is typically a delegated power, wherein a larger government chooses to delegate certain authority to more local governments. Federalism implies some measure of decentralization, but unitary systems may also decentralize. Decentralization differs intrinsically from federalism in that the subunits that have been authorized to act (by delegation) do not possess any claim of right against the central government.

Decentralization comes in two forms—deconcentration and devolution. Deconcentration is administrative in nature; it involves the transfer of functions or the delegation of authority and responsibility from the national office to the regional and local offices. This mode of decentralization is also referred to as administrative decentralization. Devolution, on the other hand, connotes political decentralization, or the transfer of powers, responsibilities, and resources for the performance of certain functions from the central government to local government units. This is a more liberal form of decentralization since there is an actual transfer of powers and responsibilities.

It aims to grant greater autonomy to local government units in cognizance of their right to self-government, to make them self-reliant, and to improve their administrative and technical capabilities.

The diminution of Congress' powers over autonomous regions was confirmed in Ganzon v. CA wherein this Court held that "the omission (of "as may be provided by law") signifies nothing more than to underscore local governments' autonomy from Congress and to break Congress' 'control' over local government affairs."

This is true to subjects over which autonomous regions have powers, as specified in Sections 18 and 20, Article X of the 1987 Constitution. Expressly not included therein are powers over certain areas. Worthy of note is that the area of public works is not excluded and neither is it reserved for the National Government.

E.O. 426 officially devolved the powers and functions of the DPWH in ARMM to the Autonomous Regional Government (ARG). More importantly, Congress itself through R.A. 9054 transferred and devolved the administrative and fiscal management of public works and funds for public works to the ARG.

In treading their chosen path of development, the Muslims in Mindanao are to be given freedom and independence with minimum interference from the National Government. This necessarily includes the freedom to decide on, build, supervise and maintain the public works and infrastructure projects within the autonomous region. The devolution of the powers and functions of the DPWH in the ARMM and transfer of the administrative and fiscal management of public works and funds to the ARG are meant to be true, meaningful and unfettered. This unassailable conclusion is grounded on a clear consensus, reached at the Constitutional Commission and ratified by the entire Filipino electorate, on the centrality of decentralization of power as the appropriate vessel of deliverance for Muslim Filipinos and the ultimate unity of Muslims and Christians in this country. With R.A. 8999, however, this freedom is taken away, and the National Government takes control again. The hands, once more, of the autonomous peoples are reined in and tied up.

The challenged law creates an office with functions and powers which, by virtue of E.O. 426, have been previously devolved to the DPWH-ARMM, First Engineering District in Lanao del Sur. E.O. 426 clearly ordains the transfer of the control and supervision of the offices of the DPWH within the ARMM, including their functions, powers and responsibilities, personnel, equipment, properties, and budgets to the ARG. Among its other functions, the DPWH-ARMM, under the control of the Regional Government shall be responsible for highways, flood control and water resource development systems, and other public works within the ARMM. Its scope of power includes the planning, design, construction and supervision of public works. According to RA 9054, the reach of the Regional Government enables it to appropriate, manage and disburse all public work funds allocated for the region by the central government. The use of the word "powers" in EO 426 manifests an unmistakable case of devolution.

It is clear from the foregoing provision of law that except for the areas of executive power mentioned therein, all other such areas shall be exercised by the Autonomous Regional Government ("ARG") of the Autonomous Region in Muslim Mindanao. It is noted that programs relative to infrastructure facilities, health, education, women in development, agricultural extension and watershed management do not fall under any of the exempted areas listed in the provision of law. Thus, the inevitable conclusion is that all these spheres of executive responsibility have been transferred to the ARG.

R.A. 8999 has made the DPWH-ARMM effete and rendered regional autonomy illusory with respect to infrastructure projects. The Congressional Record shows, on the other hand, that the "lack of an implementing and monitoring body within the area" has hindered the speedy implementation, of infrastructure projects. Apparently, in the legislature's estimation, the existing DPWH-ARMM engineering districts failed to measure up to the task. But if it was indeed the case, the problem could not be solved through the simple legislative creation of an incongruous engineering district for the central government in the ARMM. As it was, House Bill No. 995 which ultimately became R.A. 8999 was passed in record time on second reading (not more than 10 minutes), absolutely without the usual sponsorship speech and debates. The precipitate speed which characterized the passage of R.A. 8999 is difficult to comprehend since R.A. 8999 could have resulted in the amendment of the first ARMM Organic Act and, therefore, could not take effect without first being ratified in a plebiscite. What is more baffling is that in March 2001, or barely two (2) months after it enacted R.A. 8999 in January 2001, Congress passed R.A. 9054, the second ARMM Organic Act, where it reaffirmed the devolution of the DPWH in ARMM, including Lanao del Sur and Marawi City, to the Regional Government and effectively repealed R.A. 8999.

(II)
D.O. 119 creating the Marawi Sub-District Engineering Office which has jurisdiction over infrastructure projects within Marawi City and Lanao del Sur is violative of the provisions of E.O. 426. The Executive Order was issued pursuant to R.A. 6734—which initiated the creation of the constitutionally-mandated autonomous region and which defined the basic structure of the autonomous government. E.O. 426 sought to implement the transfer of the control and supervision of the DPWH within the ARMM to the Autonomous Regional Government. In particular, it identified four (4) District Engineering Offices in each of the four (4) provinces, namely: Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi. Accordingly, the First Engineering District of the DPWHARMM in Lanao del Sur has jurisdiction over the public works within the province. The office created under D.O. 119, having essentially the same powers, is a duplication of the DPWH-ARMM First Engineering District in Lanao del Sur formed under the aegis of E.O. 426. The department order, in effect, takes back powers which have been previously devolved under the said executive order. D.O. 119 runs counter to the provisions of E.O. 426. The DPWH's order, like spring water, cannot rise higher than its source of power—the Executive. The fact that the department order was issued pursuant to E.O. 124—signed and approved by President Aquino in her residual legislative powers—is of no moment. It is a finely-imbedded principle in statutory construction that a special provision or law prevails over a general one. Lex specialis derogant generali. As this Court expressed in the case of Leveriza v. Intermediate Appellate Court, "another basic principle of statutory construction mandates that general legislation must give way to special legislation on the same subject, and generally be so interpreted as to embrace only cases in which the special provisions are not applicable, that specific statute prevails over a general statute and that where two statutes are of equal theoretical application to a particular case, the one designed therefor specially should prevail."

E.O. No. 124, upon which D.O. 119 is based, is a general law reorganizing the Ministry of Public Works and Highways while E.O. 426 is a special law transferring the control and supervision of the DPWH offices within ARMM to the Autonomous Regional Government. The latter statute specifically applies to DPWH-ARMM offices. E.O. 124 should therefore give way to E.O. 426 in the instant case.

In any event, the ARMM Organic Acts and their ratification in a plebiscite in effect superseded E.O. 124. In case of an irreconcilable conflict between two laws of different vintages, the later enactment prevails because it is the later legislative will.

Further, in its repealing clause, R.A. 9054 states that "all laws, decrees, orders, rules and regulations, and other issuances or parts thereof, which are inconsistent with this Organic Act, are hereby repealed or modified accordingly." With the repeal of E.O. 124 which is the basis of D.O. 119, it necessarily follows that D.O. 119 was also rendered functus officio by the ARMM Organic Acts.

D. LOCAL AUTONOMY AND DECISION MAKING

PROVINCE OF RIZAL, MUNICIPALITY OF SAN MATEO, PINTONG BOCAUE MULTIPURPOSE COOPERATIVE, CONCERNED CITIZENS OF RIZAL, INC., ROLANDO E. VILLACORTE, BERNARDO HIDALGO, ANANIAS EBUENGA, VILMA T. MONTAJES, FEDERICO MUNAR, JR., ROLANDO BEÑAS, SR., ET AL., and KILOSBAYAN, INC., *petitioners*, -versus- EXECUTIVE SECRETARY, SECRETARY OF ENVIRONMENT & NATURAL RESOURCES, LAGUNA LAKE DEVELOPMENT AUTHORITY, SECRETARY OF PUBLIC WORKS & HIGHWAYS, SECRETARY OF BUDGET & MANAGEMENT, METRO MANILA DEVELOPMENT AUTHORITY and THE HONORABLE COURT OF APPEALS, *respondents*.
G.R. No. 129546, EN BANC, December 13, 2005, CHICO-NAZARIO, J

Under the Local Government Code, therefore, two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior consultation with the affected local communities, and prior approval of the project by the appropriate sanggunian. Absent either of these mandatory requirements, the project's implementation is illegal.|||

Contrary to the averment of the respondents, Proclamation No. 635, which was passed on 28 August 1995, is subject to the provisions of the Local Government Code, which was approved four years earlier, on 10 October 1991.

FACTS:
This is a petition filed by the Province of Rizal, the municipality of San Mateo, and various concerned citizens for review on *certiorari* of the Decision of the Court of Appeals, denying, for lack of cause of action, the petition for *certiorari*, prohibition and *mandamus* with application for a temporary restraining order/writ of preliminary injunction assailing the legality and constitutionality of Proclamation No. 635.

At the height of the garbage crisis plaguing Metro Manila and its environs, parts of the Marikina Watershed Reservation were set aside by the Office of the President [President Ramos], through Proclamation No. 635, for use as a sanitary landfill and similar waste disposal applications.

The petitioners opposed the implementation of said order since the creation of dump site under the territorial jurisdiction would compromise the health of their constituents. Moreso, the dump site is to be constructed in Watershed reservation.

Through their concerted efforts of the officials and residents of Province of Rizal and Municipality of San Mateo, the dump site was closed. However, during the term of President Estrada in 2003, the dumpsite was re-opened.

A temporary restraining order was then filed. Although petitioners did not raised the question that the project was not consulted and approved by their appropriate Sanggunian, the court take it into consideration since a mere MOA does not guarantee the dump site's permanent closure.

ISSUE:
Whether or not the consultation and approval of the Province of Rizal and municipality of San Mateo is needed before the implementation of the project. (YES)

RULING:
Contrary to the averment of the respondents, Proclamation No. 635, which was passed on 28 August 1995, is subject to the provisions of the Local Government Code, which was approved four years earlier, on 10 October 1991.

Section 2(c) of the said law declares that it is the policy of the state- "to require all national agencies and offices to conduct periodic consultation with appropriate local government units, non-governmental and people's organization, and other concerned sectors of the community before any project or program is implemented in their respective jurisdiction." Likewise Section 27 requires prior consultations before a program shall be implemented by government authorities and the prior approval of the Sanggunian is obtained." Corollarily as held in ***Lina , Jr. v. Paño***, Section 2 (c), requiring consultations with the appropriate local government units, should apply to national government projects affecting the environmental or ecological balance of the particular community implementing the project.

Moreover, Section 447, which enumerates the powers, duties and functions of the municipality, grants the *sangguniang bayan* the power to, among other things, "enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of th(e) Code." These include:

(1) Approving ordinances and passing resolutions to **protect the environment and impose appropriate penalties for acts which endanger the environment,** such as dynamite fishing and other forms of destructive fishing, illegal logging and smuggling of logs, smuggling of natural resources products and of endangered species of flora and fauna, slash and burn farming, and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance; [Section 447 (1)(vi)]

(2) Prescribing reasonable limits and restraints on the use of property within the jurisdiction of the municipality, adopting a comprehensive land use plan for the municipality, reclassifying land within the jurisdiction of the city, subject to the pertinent provisions of this Code, enacting integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations; establishing fire limits or zones, particularly in populous centers; and regulating the construction, repair or modification of buildings within said fire limits or zones in accordance with the provisions of this Code;[Section 447 (2)(vi-ix)]

(3) Approving ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, …providing for the establishment, maintenance, protection, and conservation of communal forests and watersheds, tree parks, greenbelts, mangroves, and other similar forest development projects ….and, subject to existing laws, establishing and providing for the maintenance, repair and operation of an efficient waterworks system to supply water for the inhabitants and purifying the source of the water supply; regulating the construction, maintenance, repair and use of hydrants, pumps, cisterns and reservoirs; protecting the purity and quantity of the water supply of the municipality and, for this purpose, extending the coverage of appropriate ordinances over all

territory within the drainage area of said water supply and within one hundred (100) meters of the reservoir, conduit, canal, aqueduct, pumping station, or watershed used in connection with the water service; and regulating the consumption, use or wastage of water."[Section 447 (5)(i) & (vii)]

Under the Local Government Code, therefore, two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior *consultation* with the affected local communities, and prior *approval* of the project by the appropriate *sanggunian*. Absent either of these mandatory requirements, the project's implementation is illegal.|||

BORACAY FOUNDATION, INC. v. THE PROVINCE OF AKLAN, REPRESENTED BY GOVERNOR CARLITO S. MARQUEZ, THE PHILIPPINE RECLAMATION AUTHORITY, AND THE DENR-EMB (REGION VI)
G.R. No. 196870, EN BANC, June 26, 2012, LEONARDO-DE CASTRO, J.

Two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior consultation with the affected local communities, and prior approval of the project by the appropriate sanggunian.

The project in this case can be classified as a national project that affects the environmental and ecological balance of local communities, because the commercial establishments to be built on phase 1, as described in the EPRMP quoted above, could cause pollution as it could generate garbage, sewage, and possible toxic fuel discharge. Hence, it is covered by the requirements found in Sections 26 and 27 of the Local Government Code provisions.

FACTS:
Respondent Province decided to build a Jetty Port and Passenger Terminal at Barangay Caticlan to be the main gateway to Boracay in the Malay Municipality. However, Sangguniang Barangay of Caticlan, Malay Municipality, issued a Resolution manifesting its strong opposition to said application. Consequently, Sangguniang Panlalawigan of respondent Province approved a resolution formally authorizing Governor Marquez to represent the renovation/rehabilitation of the Caticlan/Cagban Passenger Terminal Buildings and Jetty Ports; and (b) reclamation of a portion of Caticlan foreshore for commercial purposes. During the course of the negotiation, respondent Province deliberated on the possible expansion from its original proposed reclamation area of 2.64 hectares to forty (40) hectares in order to maximize the utilization of its resources and as a response to the findings of the Preliminary Geohazard Assessment study which showed that the recession and retreat of the shoreline caused by coastal erosion and scouring should be the first major concern in the project site and nearby coastal area. But still, the Sangguniang Bayan of Malay refused to give the favourable endorsement to the Province of Aklan. As a result, the petitioner contends that the respondent province failed to conduct the required consultation procedures as required by the Local Government Code.

ISSUE:
Whether or not the prior consultation is a requirement before a national project that affects the environmental and ecological balance of local communities can be implemented. (YES)

RULING:
Two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior consultation with the affected local

communities, and prior approval of the project by the appropriate sanggunian. Absent either of these mandatory requirements, the projects implementation is illegal. Based on the above, therefore, prior consultations and prior approval are required by law to have been conducted and secured by the respondent Province.

The project in this case can be classified as a national project that affects the environmental and ecological balance of local communities, because the commercial establishments to be built on phase 1, as described in the EPRMP quoted above, could cause pollution as it could generate garbage, sewage, and possible toxic fuel discharge. Hence, it is covered by the requirements found in Sections 26 and 27 of the Local Government Code provisions.

SOCIAL JUSTICE SOCIETY (SJS) OFFICERS, NAMELY, SAMSON S. ALCANTARA, and VLADIMIR ALARIQUE T. CABIGAO, *petitioners* –versus-ALFREDO S. LIM, in his capacity as mayor of the City of Manila, *respondent*
G.R. No. 187836 & 187916, EN BANC, November 25, 2014, PEREZ, J.

The Social Justice Society and several others questions the legality and constitutionality of Ordinance No. 8187 allowing the stay of the oil depots in Pandacan. The Court thereby ruled that the facts surrounding its previous decision on G.R. No. 156052 and the present remains the same. Therefore, there is no need to rehash the discussions on the issues at hand. The very nature of the depots where millions of liters of highly flammable and highly volatile products, regardless of whether or not the composition may cause explosions, has no place in a densely populated area. Surely, any untoward incident in the oil depots, be it related to terrorism of whatever origin or otherwise, would definitely cause not only destruction to properties within and among the neighboring communities but certainly mass deaths and injuries. For, given that the threat sought to be prevented may strike at one point or another, no matter how remote it is as perceived by one or some, the Court cannot allow the right to life to be dependent on the unlikelihood of an event. Statistics and theories of probability have no place in situations where the very life of not just an individual but of residents of big neighborhoods is at stake.

FACTS:
These petitions are a sequel to the case of Social Justice Society v. Mayor Atienza, Jr. (hereinafter referred to as G.R. No. 156052), where the Court found: (1) that the ordinance subject thereof – Ordinance No. 8027 – was enacted "to safeguard the rights to life, security and safety of the inhabitants of Manila;"9 (2) that it had passed the tests of a valid ordinance; and (3) that it is not superseded by Ordinance No. 8119. Declaring that it is constitutional and valid, the Court accordingly ordered its immediate enforcement with a specific directive on the relocation and transfer of the Pandacan oil terminals.

The SJS now seek the nullification of Ordinance No. 8187, which contains provisions contrary to those embodied in Ordinance No. 8027. Allegations of violation of the right to health and the right to a healthful and balanced environment are also included.

The 36-hectare Pandacan Terminals house the oil companies' distribution terminals and depot facilities. The Department of Energy and the various oil companies entered into a Memorandum of Agreement whereby a Master Plan will be formulated to address and minimize the potential risks and hazards posed by the proximity of communities, businesses and offices to the Pandacan oil terminals without adversely affecting the security and reliability of supply and distribution of

petroleum products to Metro Manila and the rest of Luzon, and the interests of consumers and users of such petroleum products in those areas.

During the incumbency of former Mayor Lito Atienza, Ordinance No. 8027 was enacted against the continued stay of the oil depots. During the pendency of G.R. no. 156052, the oil companies filed before the Regional Trial Court of Manila several petitions for the issuance of writs of preliminary prohibitory injunction and preliminary mandatory injunction, a petition for prohibition and mandamus also for the annulment of the Ordinance. Such prayers were granted by the RTC Manila.
Meanwhile, Mayor Atienza approved Ordinance No. 8119 entitled "An Ordinance Adopting the Manila Comprehensive Land Use Plan and Zoning Regulations of 2006 and Providing for the Administration, Enforcement and Amendment thereto. Said ordinance designated the Pandacan oil depot area as a "Planned Unit Development/Overlay Zone" (O-PUD).
On 7 March 2007, the Supreme Court ruled in its Decision in G.R. No. 156052 that the mayor has the mandatory legal duty to enforce Ordinance No. 8027 and order the removal of the Pandacan terminals. A motion for reconsideration of the above decision was filed by the oil companies. The Court in its resolution, upheld the validity of the ordinance. In the said resolution, the Court also ruled that Ordinance No. 8027 was not impliedly repealed by Ordinance No. 8119. A second motion for reconsideration was then filed, which was denied with finality.

On 14 May 2009, during the incumbency of former Mayor Alfredo S. Lim (Mayor Lim), who succeeded Mayor Atienza, the Sangguniang Panlungsod enacted Ordinance No. 8187. The new Ordinance repealed, amended, rescinded or otherwise modified Ordinance No. 8027, Section 23 of Ordinance No. 8119, and all other Ordinances or provisions inconsistent therewith thereby allowing, once again, the operation of "of the oil depots in the Pandacan area.

The SJS, several other public officials and concerned tax payers filed their respective petitions seeking to nullify Ordinance No. 8187 due to its unconstitutionality. Mayor Lim countered that the Ordinance was in the valid exercise of police power of the Local Government.

On 28 August 2012, while the Court was awaiting the submission of the Memorandum of respondents Vice-Mayor Domagoso and the councilors who voted in favor of the assailed Ordinance, the Sangguniang Panlungsod, which composition had already substantially changed, enacted Ordinance No. 8283. Ordinance No. 8283 thus permits the operation of the industries operating within the Industrial Zone. However, the oil companies, whose oil depots are located in the High Intensity Commercial/Mixed Use Zone (C3/MXD), are given until the end of January 2016 within which to relocate their terminals.

ISSUE:
Whether or not the enactment of the assailed Ordinance allowing the continued stay of the oil companies in the depots is, indeed, invalid and unconstitutional. (YES)

RULING:
Ordinance No. 8187 is invalid and unconstitutional. The Court sees no reason why ordinance No. 8187 should not be stricken down insofar as the presence of the oil depots in Pandacan is concerned. At the outset, let it be emphasized that the Court, in G.R. No. 156052, has already pronounced that the matter of whether or not the oil depots should remain in the Pandacan area is of transcendental importance to the residents of Manila. The Court may, thus, brush aside procedural infirmities, if any, as the Court had in the past, and take cognizance of the cases if only to determine if the acts complained of are no longer within the bounds of the Constitution and the laws in place.

The Court summarizes the position of the Sangguniang Panlungsod on the matter subject of these petitions. In 2001, the Sanggunian found the relocation of the Pandacan oil depots necessary. Hence, the enactment of Ordinance No. 8027.

In 2009, when the composition of the Sanggunian had already changed, Ordinance No. 8187 was passed in favor of the retention of the oil depots. In 2012, again when some of the previous members were no longer re-elected, but with the Vice-Mayor still holding the same seat, and pending the resolution of these petitions, Ordinance No. 8283 was enacted to give the oil depots until the end of January 2016 within which to transfer to another site. Former Mayor Lim stood his ground and vetoed the last ordinance. In its Comment, the 7th Council (2007-2010) alleged that the assailed Ordinance was enacted to alleviate the economic condition of its constituents.

The foregoing, thus, shows that its determination of the "general welfare" of the city does not after all gear towards the protection of the people in its true sense and meaning, but is, one way or another, dependent on the personal preference of the members who sit in the council as to which particular sector among its constituents it wishes to favor.

As to the argument of the oil companies that the threat of a terrorist attack is merely conjectural, the Court rules that the issue of whether or not the Pandacan Terminal is not a likely target of terrorist attacks has already been passed upon in G. R. No. 156052. The very nature of the depots where millions of liters of highly flammable and highly volatile products, regardless of whether or not the composition may cause explosions, has no place in a densely populated area. Surely, any untoward incident in the oil depots, be it related to terrorism of whatever origin or otherwise, would definitely cause not only destruction to properties within and among the neighboring communities but certainly mass deaths and injuries.

The steps taken by the oil companies (i.e. scaling down of the operations in the Pandacan Terminals), therefore, remain insufficient to convince the Court that the dangers posed by the presence of the terminals in a thickly populated area have already been completely removed.
For, given that the threat sought to be prevented may strike at one point or another, no matter how remote it is as perceived by one or some, the Court cannot allow the right to life to be dependent on the unlikelihood of an event. Statistics and theories of probability have no place in situations where the very life of not just an individual but of residents of big neighborhoods is at stake.

It is the removal of the danger to life not the mere subdual of risk of catastrophe that the Court saw in and made the Court favor Ordinance No. 8027. That reason, unaffected by Ordinance No. 8187, compels the affirmance of the Court's Decision in G.R. No. 156052.

The ordinance was intended to safeguard the rights to life, security and safety of all the inhabitants of Manila and not just of a particular class. The depot is perceived, rightly or wrongly, as a representation of western interests which means that it is a terrorist target. As long as it (sic) there is such a target in their midst, the residents of Manila are not safe. It therefore became necessary to remove these terminals to dissipate the threat.

Both law and jurisprudence support the constitutionality and validity of Ordinance No. 8027. Without a doubt, there are no impediments to its enforcement and implementation. Any delay is unfair to the inhabitants of the City of Manila and its leaders who have categorically expressed their desire for the relocation of the terminals. Their power to chart and control their own destiny and preserve their

lives and safety should not be curtailed by the intervenors' warnings of doomsday scenarios and threats of economic disorder if the ordinance is enforced.

The same best interest of the public guides the present decision. The Pandacan oil depot remains a terrorist target even if the contents have been lessened. In the absence of any convincing reason to persuade this Court that the life, security and safety of the inhabitants of Manila are no longer put at risk by the presence of the oil depots, the Court hold that Ordinance No. 8187 in relation to the Pandacan Terminals is invalid and unconstitutional. There is, therefore, no need to resolve the rest of the issues.

A comprehensive and well-coordinated plan within a specific timeframe shall, therefore, be observed in the relocation of the Pandacan Terminals. The oil companies shall begiven a fresh non-extendible period of forty-five (45) days from notice within which to submit to the Regional Trial Court, Branch 39, Manila an updated comprehensive plan and relocation schedule. The relocation, inturn, shall be completed not later than six months from the date of their submission. Finally, let it be underscored that after the last Manifestation filed by Shell informing this Court that respondent former Mayor Lim vetoed Ordinance No. 8283 for the second time, and was anticipating its referral to the President for the latter's consideration, nothing was heard from any of the parties until the present petitions as to the status of the approval or disapproval of the said ordinance. As it is, the fate of the Pandacan Terminals remains dependent on this final disposition of these cases.

WILFREDO MOSQUEDA, MARCELO VILLAGANES, JULIETA LAWAGON, CRISPIN ALCOMENDRAS, CORAZON SABINADA, VIRGINIA CATA-AG, FLORENCIA SABANDON, and LEDEVINA ADLAWAN, *petitioners*,-versus- PILIPINO BANANA GROWERS & EXPORTERS ASSOCIATION, INC., DAVAO FRUITS CORPORATION, and LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION, *respondents*.|||
G.R. Nos. 189185 & 189305, EN BANC, August 16, 2016, BERSAMIN, J.

A local government unit is considered to have properly exercised its police powers only if it satisfies the following requisites, to wit:

(1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and

(2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive.

A substantially overinclusive or underinclusive classification tends to undercut the governmental claim that the classification serves legitimate political ends. Where overinclusiveness is the problem, the vice is that the law has a greater discriminatory or burdensome effect than necessary. In this light, we strike down Section 5 and Section 6 of Ordinance No. 0309-07 for carrying an invidious classification, and for thereby violating the Equal Protection Clause.

FACTS:

After several committee hearings and consultations with various stakeholders**,** the Sangguniang Panlungsod of Davao City enacted *Ordinance No. 0309, Series of 2007*, to impose a ban against aerial spraying as an agricultural practice by all agricultural entities within Davao City. City Mayor Rodrigo Duterte approved the ordinance on February 9, 2007.

The Pilipino Banana Growers and Exporters Association, Inc. (PBGEA) and two of its members filed their petition in the RTC to challenge the constitutionality of the ordinance, and to seek the issuance of provisional reliefs through a temporary restraining order (TRO). They alleged that the ordinance was an unreasonable exercise of police power; violated the equal protection clause; amounted to· the confiscation of property without due process of law; and lacked publication pursuant to Section 5116 of Republic Act No. 7160 *(Local Government Code).*

After trial, the RTC rendered judgment declaring Ordinance No. 0309-07 valid and constitutional. It opined that the City of Davao had validly exercised police power under the General Welfare Clause of the LGC; that the ordinance, being based on a valid classification, was consistent with the Equal Protection Clause; that aerial spraying was distinct from other methods of pesticides application because it exposed the residents to a higher degree of health risk caused by aerial drift; and that the ordinance enjoyed the presumption of constitutionality, and could be invalidated only upon a clear showing that it had violated the Constitution. However, the RTC, recognizing the impracticability of the 3-month transition period under Section 5 of the Ordinance, recommended the parties to agree on an extended transition period.

On appeal, the Court of Appeals (CA) reversed the RTC judgment. The CA declared Section 5 of Ordinance No. 0309-07 as void and unconstitutional for being unreasonable and oppressive. It declared that the ban ran afoul with the Equal Protection Clause inasmuch as Section 3(a) of the ordinance -which defined the term *aerial spraying* -did not make reasonable distinction between the hazards, safety and beneficial effects of liquid substances that were being applied aerially. The CA did not see any established relation between the purpose of protecting the public and the environment against the harmful effects of aerial spraying, on one hand, and the imposition of the ban against aerial spraying of all forms of substances, on the other. It ruled that the maintenance of the 30-meter buffer zone within and around the agricultural plantations under Section 6 of Ordinance No. 0309-07 constituted taking of property without due process because the landowners were thereby compelled to cede portions of their property without just compensation; that the exercise of police power to require the buffer zone was invalid because there was no finding that the 30-meter surrounding belt was obnoxious to the public welfare; and that, accordingly, Ordinance No. 0309-07 was unconstitutional because of the absence of a separability clause.

Hence, the present petition for review on *certiorari.*

ISSUE:
Whether Ordinance No. 0309-07 is unconstitutional on due process and equal protection grounds for being unreasonable and oppressive, and an invalid exercise of police power. (YES)

RULING:
Section 5 (3 month transition period) of Ordinance No. 0309-07 violates the Due Process Clause

A local government unit is considered to have properly exercised its police powers only if it satisfies the following requisites, to wit:

(1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and

(2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive.

The first requirement refers to the Equal Protection Clause of the Constitution; the second, to the Due Process Clause of the Constitution.

So long as the ordinance realistically serves a legitimate public purpose, and it employs means that are reasonably necessary to achieve that purpose without unduly oppressing the individuals regulated, the ordinance must survive a due process challenge.

Section 5 of Ordinance No. 0309-07 is challenged for being unreasonable and oppressive in that it sets the effectivity of the ban at three months after publication of the ordinance. It is alleged that three months will be inadequate time to shift from aerial to truck-mounted boom spraying. The Court agreed. Requiring the respondents and other affected individuals to comply with the consequences of the ban within the three-month period under pain of penalty like fine, imprisonment and even cancellation of business permits would definitely be oppressive as to constitute abuse of police power. The required civil works for the conversion to truck-mounted boom spraying alone will consume considerable time and financial resources given the topography and geographical features of the plantations. As such, the conversion could not be completed within the short timeframe of three months.

Section 5 and Section 6 of Ordinance No. 0309-07 are void for being violative of the Equal Protection Clause

A substantially overinclusive or underinclusive classification tends to undercut the governmental claim that the classification serves legitimate political ends. Where overinclusiveness is the problem, the vice is that the law has a greater discriminatory or burdensome effect than necessary. In this light, we strike down Section 5 and Section 6 of Ordinance No. 0309-07 for carrying an invidious classification, and for thereby violating the Equal Protection Clause.

The discriminatory character of the ordinance makes it oppressive and unreasonable in light of the existence and availability of more permissible and practical alternatives that will not overburden the respondents and those dependent on their operations as well as those who stand to be affected by the ordinance. The alleged harm caused by aerial spraying may be addressed by following the Good Agricultural Practices (GAP) that the Dept of Agriculture has been promoting among plantation operators.

However, we do not subscribe to the respondents' position that there must be a distinction based on the level of concentration or the classification imposed by the FPA on pesticides: This strenuous requirement cannot be expected from a local government unit that should only be concerned with general policies in local administration and should not be restricted by technical concerns that are best left to agencies vested with the appropriate special competencies. The disregard of the pesticide classification is not an equal protection issue but is more relevant in another aspect of delegated police power.

Ordinance No. 0309-07 is an ultra vires act

Section 5(c) of the *Local Government Code* accords a liberal interpretation to its general welfare provisions. The policy of liberal construction is consistent with the spirit of local autonomy that endows local government units with sufficient power and discretion to accelerate their economic development and uplift the quality of life for their constituents.

However, the power to legislate under the General Welfare Clause is not meant to be an invincible authority. More importantly, because the police power of the local government units flows from the express delegation of the power by Congress, its exercise is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the terms used in granting the power should be construed against the local legislative units.

The *Local Government Code* is not intended to vest in the local government unit the blanket authority to legislate upon any subject that it finds proper to legislate upon in the guise of serving the common good.

The function of pesticides control, regulation and development is within the jurisdiction of the FPA under Presidential Decree No. 1144. The responsibility of the FPA includes not only the identification of safe and unsafe pesticides, but also the prescription of the safe modes of application in keeping with the standard of good agricultural practices.
On the other hand, the enumerated devolved functions to the local government units do not include the regulation and control of pesticides and other agricultural chemicals. The non-inclusion should preclude the Sangguniang Bayan of Davao City from enacting Ordinance No. 0309-07, for otherwise it would be arrogating unto itself the authority to prohibit the aerial application of pesticides in derogation of the authority expressly vested in the FPA by Presidential Decree No. 1144.

In enacting Ordinance No. 0309-07 without the inherent and explicit authority to do so, the City of Davao performed an ultra vires act. As a local government unit, the City of Davao could act only as an agent of Congress, and its every act should always conform to and reflect the will of its principal.

Every local government unit only derives its legislative authority from Congress. In no instance can the local government unit rise above its source of authority. As such, its ordinance cannot run against or contravene existing laws, precisely because its authority is only by virtue of the valid delegation from Congress.

Ordinance No. 0309-07 proposes to prohibit an activity already covered by the jurisdiction of the FPA, which has issued its own regulations under its Memorandum Circular No. 02, Series of 2009, entitled *Good Agricultural Practices for Aerial Spraying of Fungicide in Banana Plantations.* While Ordinance No. 0309-07 prohibits aerial spraying in banana plantations within the City of Davao, Memorandum Circular No. 02 seeks to regulate the conduct of aerial spraying in banana plantationsin conformity with the standard of Good Agricultural Practices (GAP).

Although Memorandum Circular No. 02 and Ordinance No. 0309-07 both require the maintenance of the buffer zone, they differ as to their treatment and maintenance of the buffer zone. Under Memorandum Circular No. 02, a 50-meter "no-spray boundary" buffer zone should be observed by the spray pilots, and the observance of the zone should be recorded in the Aerial Spray Final Report (ASFR) as a post-application safety measure. On the other hand, Ordinance No. 0309-07 requires the maintenance of the 30-meter buffer zone to be planted with diversified trees.

LGUs are empowered under Section 16 of the *Local Government Code* to promote the general welfare of the people through regulatory, not prohibitive, ordinances that conform with the policy directions of the National Government. Ordinance No. 0309-07 failed to pass this test as it contravenes the specific regulatory policy on aerial spraying in banana plantations on a nationwide scale of the National Government, through the FPA. The unconstitutionality of the ban renders nugatory Ordinance No. 0309-07 in its entirety.

BATANGAS CITY, MARIA TERESA GERON, In her capacity as City Treasurer of Batangas City and TEODULFO A. DEGUITO, In his capacity as City Legal Officer of Batangas City, *petitioners*, -versus- PILIPINAS SHELL PETROLEUM CORPORATION, *respondent*.
G.R. No. 187631, THIRD DIVISION, July 8, 2015, PERALTA, J.

Although the power to tax is inherent in the State, the same is not true for LGUs because although the mandate to impose taxes granted to LGUs is categorical and long established in the 1987 Philippine Constitution, the same is not all encompassing as it is subject to limitations as explicitly stated in Section 5, Article X of the 1987 Constitution, viz.:

SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

The power of LGUs to impose business taxes derives from Section 143 of the LGC. However, the same is subject to the explicit statutory impediment provided for under Section 133(h) of the same Code. It can, therefore, be deduced that although petroleum products are subject to excise tax, the same is specifically excluded from the broad power granted to LGUs under Section 143(h) of the LGC to impose business taxes.

FACTS:
Pilipinas Shell Petroleum Corporation operates (Shell) an oil refinery and depot in Tabagao, Batangas City, which manufactures and produces petroleum products that are distributed nationwide.

On February 20, 2001, Batangas City, through its City Legal Officer, sent a notice of assessment to Shell demanding the payment of P92,373,720.50 and P312,656,253.04 as business taxes for its manufacture and distribution of petroleum products. In addition, Shell was also required and assessed to pay the amount of P4,299,851.00 as Mayor's Permit Fee based on the gross sales of its Tabagao Refinery. The assessment was allegedly pursuant of Section 134 of the Local Government Code (LGC) of 1991 and Section 23 of its Batangas City Tax Code of 2002.

Shell filed a protest on April 17, 2002 contending that it is not liable for the payment of the local business tax either as a manufacturer or distributor of petroleum products. It further argued that the Mayor's Permit Fees are exorbitant, confiscatory, arbitrary, unreasonable and not commensurable with the cost of issuing a license.

Batangas City denied Shell's protest and declared that under Section 14 of the Batangas City Tax Code of 2002, they are empowered to withhold the issuance of the Mayor's Permit for failure of Shell to pay the business taxes on its manufacture and distribution of petroleum products.

Shell filed a Petition for Review with the RTC of Batangas City. In the interim, Shell paid under protest the Mayor's Permit Fees for the year 2003.

The RTC of Batangas City rendered a Decision sustaining the imposition of business taxes upon the manufacture and distribution of petroleum products by Shell. However, the RTC withheld the imposition of Mayor's Permit Fee in deference to the provisions of Section 147 in relation to Section 143(h) of of the LGC, which imposed a limit to the power of an local government unit (LGU) to collect the said business taxes. Motion for reconsideration was denied.

Shell filed a Petition for Review with the Court of Tax Appeals (CTA). The CTA Second Division ruled that Shell is not subject to the business taxes on the manufacture and distribution of petroleum products because of the express limitation provided under Section 133(h) of the LGC. The CTA Second Division also ordered the refund of the excessive mayor's permit collected from Shell in the amount of P3,525,010.50. Upon motion for clarification by Shell, the CTA Second Division rendered an Amended Decision correcting the amount to P3,870,860.00 'as written in the body of the decision'.

The CTA En Banc affirmed in toto the Amended Decision of the CTA Second Division. Hence, the present petition.

ISSUE:
Whether a local government unit (LGU) is empowered under the LGC to impose business taxes on persons or entities engaged in the business of manufacturing and distribution of petroleum products. (NO)

RULING:
Section 133 (h) of the LGC provides for the common limitations on the taxing powers of LGUs, to wit:

SECTION 133. Common Limitations on the Taxing Powers of Local Government Units. - Unless otherwise provided herein, the exercise of taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following: xxx

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, **and** taxes, fees or charges on petroleum products;

From the foregoing, Section 133(h) clearly specifies the <u>two kinds of taxes which cannot be imposed by LGUs</u>:

(i) excise taxes on articles enumerated under the NIRC, as amended; and
(ii) <u>taxes, fees or charges on petroleum products.</u>

The power of LGUs to impose business taxes derives from Section 143 of the LGC. However, the same is subject to the explicit statutory impediment provided for under Section 133(h) of the same Code. It can, therefore, be deduced that <u>although petroleum products are subject to excise tax, the same is specifically excluded from the broad power granted to LGUs under Section 143(h) of the LGC to impose business taxes</u>.

Additionally, Section 133(h) of the LGC makes plain that the <u>prohibition with respect to petroleum</u>

products extends not only to excise taxes thereon, but all "taxes, fees or charges." The earlier reference in paragraph 143(h) to excise taxes comprehends a wider range of subject of taxation: all articles already covered by excise taxation under the NIRC, such as alcohol products, tobacco products, mineral products, automobiles, and such non-essential goods as jewelry, goods made of precious metals, perfumes, and yachts and other vessels intended for pleasure or sports. In contrast, the later reference to "taxes, fees and charges" pertains only to one class of articles of the many subjects of excise taxes, specifically, "petroleum products." While LGUs are authorized to burden all such other class of goods with "taxes, fees and charges," excepting excise taxes, a specific prohibition is imposed barring the levying of any other type of taxes with respect to petroleum products.

Moreover, Article 232(h) of the Implementing Rules and Regulations (IRR) of the LGC of 1991 states:

ARTICLE 232. Tax on Business. - The Municipality may impose taxes on the following businesses:

x x x x

(h) On any business not otherwise specified in the preceding paragraphs which the sanggunian concerned may deem proper to tax provided that that on any business subject to the excise tax, VAT or percentage tax under the NIRC, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year and provided further, that in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline, and other petroleum products shall not be subject to any local tax imposed in this Article.

Article 232 defines with more particularity the capacity of a municipality to impose taxes on businesses. However, it admits of certain exceptions, specifically, that businesses engaged in the production, manufacture, refining, distribution or sale of oil, gasoline, and other petroleum products, shall not be subject to any local tax imposed by Article 232.

Section 143 of the LGC defines the general power of LGUs to tax businesses within its jurisdiction. Thus, the omnibus grant of power to LGUs under Section 143(h) of the LGC cannot overcome the specific exception or exemption in Section 133(h) of the same Code. This is in accord with the rule on statutory construction that specific provisions must prevail over general ones. A special and specific provision prevails over a general provision irrespective of their relative positions in the statute. *Generalia specialibus non derogant.* Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.

D. CREATION AND ALTERATION OF LOCAL GOVERNMENTS

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), represented by LCP National President Jerry P. Treñas; CITY OF CALBAYOG, represented by Mayor Mel Senen S. Sarmiento; and JERRY P. TREÑAS, in his personal capacity as Taxpayer, petitioners, vs. COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; AND MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON, respondents.

G.R. Nos. 176951, 177499 & 178056, EN BANC, April 12, 2011, BERSAMIN J.

We should not ever lose sight of the fact that the 16 cities covered by the Cityhood Laws not only had conversion bills pending during the 11th Congress, but have also complied with the requirements of the Local Government Code prescribed prior to its amendment by RA No. 9009. Congress undeniably gave these cities all the considerations that justice and fair play demanded. Hence, this Court should do no less by stamping its imprimatur to the clear and unmistakable legislative intent and by duly recognizing the certain collective wisdom of Congress.

FACTS:
During the 11th Congress, Congress enacted into law 33 bills converting 33 municipalities into cities. However, Congress did not act on bills converting 24 other municipalities into cities.

During the 12th Congress, Congress enacted into law Republic Act No. 9009 (RA 9009), which took effect on 30 June 2001. RA 9009 amended Section 450 of the Local Government Code by increasing the annual income requirement for conversion of a municipality into a city from P20 million to P100 million. The rationale for the amendment was to restrain, in the words of Senator Aquilino Pimentel, "the mad rush" of municipalities to convert into cities solely to secure a larger share in the Internal Revenue Allotment despite the fact that they are incapable of fiscal independence.

After the effectivity of RA 9009, the House of Representatives of the 12th Congress adopted Joint Resolution No. 29, which sought to exempt from the P100 million income requirement in RA 9009 the 24 municipalities whose cityhood bills were not approved in the 11th Congress.

However, the 12th Congress ended without the Senate approving Joint Resolution No. 29. During the 13th Congress, the House of Representatives re-adopted Joint Resolution No. 29 as Joint Resolution No. 1 and forwarded it to the Senate for approval. However, the Senate again failed to approve the Joint Resolution. Following the advice of Senator Aquilino Pimentel, 16 municipalities filed, through their respective sponsors, individual cityhood bills. The 16 cityhood bills contained a common provision exempting all the 16 municipalities from the P100 million income requirement in RA 9009.

On 22 December 2006, the House of Representatives approved the cityhood bills. The Senate also approved the cityhood bills in February 2007, except that of Naga, Cebu which was passed on 7 June 2007. The cityhood bills lapsed into law (Cityhood Laws) on various dates from March to July 2007 without the President's signature.

The Cityhood Laws direct the COMELEC to hold plebiscites to determine whether the voters in each respondent municipality approve of the conversion of their municipality into a city.

Petitioners filed the present petitions to declare the Cityhood Laws unconstitutional for violation of Section 10, Article X of the Constitution, as well as for violation of the equal protection clause.

Petitioners also lament that the wholesale conversion of municipalities into cities will reduce the share of existing cities in the Internal Revenue Allotment because more cities will share the same amount of internal revenue set aside for all cities under Section 285 of the Local Government Code.

ISSUE:
Whether the Cityhood Laws violate Section 10, Article X of the Constitution and the equal protection clause. (NO)

RULING:
The 16 Cityhood Laws are constitutional. "We should not ever lose sight of the fact that the 16 cities covered by the Cityhood Laws not only had conversion bills pending during the 11th Congress, but have also complied with the requirements of the Local Government Code prescribed prior to its amendment by RA No. 9009. Congress undeniably gave these cities all the considerations that justice and fair play demanded. Hence, this Court should do no less by stamping its *imprimatur* to the clear and unmistakable legislative intent and by duly recognizing the certain collective wisdom of Congress."

The Court stressed that Congress clearly intended that the local government units covered by the Cityhood Laws be exempted from the coverage of RA 9009, which imposes a higher income requirement of PhP100 million for the creation of cities.

"The Court reiterated that while RA 9009 was being deliberated upon, the Congress was well aware of the pendency of conversion bills of several municipalities, including those covered by the Cityhood Laws. It pointed out that RA 9009 took effect on June 30, 2001, when the 12th Congress was incipient. By reason of the clear legislative intent to exempt the municipalities covered by the conversion bills pending during the 11th Congress, the House of Representatives adopted *Joint Resolution No. 29 entitled Joint Resolution to Exempt Certain Municipalities Embodied in Bills Filed in Congress before June 30, 2001 from the coverage of Republic Act No. 9009*. However, the Senate failed to act on the said Joint Resolution. Even so, the House readopted Joint Resolution No. 29 as Joint Resolution No. 1 during the 12th Congress, and forwarded the same for approval to the Senate, which again failed to prove it. Eventually, the conversion bills of respondents were individually filed in the Lower House and were all unanimously and favorably voted upon. When forwarded to the Senate, the bills were also unanimously approved. The acts of both Chambers of Congress show that the exemption clauses ultimately incorporated in the Cityhood Laws are but the express articulations of the clear legislative intent to exempt the respondents, without exception, from the coverage of RA No. 9009. Thereby, RA 9009, and, by necessity, the LCG, were amended, not by repeal but by way of the express exemptions being embodied in the exemption clauses.**"**

The Court held that the imposition of the income requirement of P100 million from local sources under RA 9009 was arbitrary. "While the Constitution mandates that the creation of local government units must comply with the criteria laid down in the LGC, it cannot be justified to insist that the Constitution must have to yield to every amendment to the LGC despite such amendment imminently producing effects contrary to the original thrusts of the LGC to promote autonomy, decentralization, countryside development, and the concomitant national growth."

RODOLFO G. NAVARRO, VICTOR F. BERNAL, RENE O. MEDINA, petitioners –versus-
EXECUTIVE SECRETARY EDUARDO ERMITA, respondent
G.R. No. 180050, EN BANC, April 12, 2011, Nachura, J.

The central policy considerations in the creation of local government units are economic viability, efficient administration, and capability to deliver basic services to their constituents. The criteria prescribed by the Local Government Code, i.e., income, population and land area, are all designed to accomplish these results

A perusal of the congressional debate for the matter reveals that economic viability is the primordial criterion. Land area, while considered as an indicator of viability of a local government unit, is not conclusive in showing that Dinagat cannot become a province.

FACTS:
Pursuant to RA 9355, a law creating the province of Dinagat Islands, the Comelec conducted the mandatory plebiscite for the ratification of the creation of the province of Dinagat under the Local Government Code. The plebiscite resulted in the approval by the people from the mother province Surigao del Norte and the province of Dinagat. Thereafter, petitioners challenged the constitutionality of RA 9355, contending that the province of Dinagat did not meet the population and land area requisite for the creation of a province under the Local Government Code. They alleged that Dinagat had a land area of 802.12 square kilometers only and a population of only 106,951, whereas, the LGC requires, among others, that the territory should atleast be 2000 square kilometers with 250,000 inhabitants.

ISSUE:
Whether or not RA 9355 is constitutional. (YES)

RULING:
The central policy considerations in the creation of local government units are economic viability, efficient administration, and capability to deliver basic services to their constituents. The criteria prescribed by the Local Government Code, *i.e.*, income, population and land area, are all designed to accomplish these results. A perusal of the congressional debate for the matter reveals that economic viability is the primordial criterion. Land area, while considered as an indicator of viability of a local government unit, is not conclusive in showing that Dinagat cannot become a province, taking into account its average annual income of P82,696,433.23 at the time of its creation, which is four times more than the minimum requirement of P20,000,000.00 for the creation of a province. The delivery of basic services to its constituents has been proven possible and sustainable. The spirit rather than the letter of the law. A statute must be read according to its spirit or intent, for what is within the spirit is within the statute although it is not within its letter, and that which is within the letter but not within the spirit is not within the statute. Put a bit differently, that which is within the intent of the lawmaker is as much within the statute as if within the letter, and that which is within the letter of the statute is not within the statute unless within the intent of the lawmakers. Withal, courts ought not to interpret and should not accept an interpretation that would defeat the intent of the law and its legislators.

AURELIO M. UMALI, petitioner –versus- COMMISSION ON ELECTIONS, JULIUS CESAR V. VERGARA, and THE CITY GOVERNMENT OF CABANATUAN, respondents
G.R. No. 203974, EN BANC, April 22, 2014, VELASCO, JR., J.

Creation, division, merger, abolition or substantial alteration of boundaries of local government units involve a common denominator— material change in the political and economic rights of the local government units directly affected as well as the people therein. It is precisely for this reason that the Constitution requires the approval of the people "in the political units directly affected."

The Court treats the phrase "by the qualified voters therein" in Sec. 453 under the Local Government Code to mean the qualified voters not only in the city proposed to be converted to an HUC but also the

voters of the political units directly affected by such conversion in order to harmonize Sec. 453 with Sec. 10, Art. X of the Constitution.

FACTS:
The Sangguniang Panglungsod of Cabanatuan City passed a resolution requesting the President to declare the conversion of Cabanatuan City from a component city of the province of Nueva Ecija into a highly urbanized city (HUC). Acceding to the request, the President issued a Presidential Proclamation proclaiming the City of Cabanatuan as an HUC subject to ratification in a plebiscite by the qualified voters therein, as provided for in Section 453 of the Local Government Code of 1991. Comelec issued a proclamation resolving that registered residents of Cabanatuan City should participate in the said plebiscite.

The governor of Nueva Ecija filed a motion for reconsideration maintaining that the qualified voters of the province should be included in the said plebiscite. The phrase "qualified voters therein" used in Sec. 453 of the LGC should then be interpreted to refer to the qualified voters of the units directly affected by the conversion and not just those in the component city proposed to be upgraded.

ISSUE:
Whether or not only the qualified registered voters of Cabanatuan City can participate in the plebiscite called for the conversion of Cabanatuan City from a component city into an HUC. (NO)

RULING:
While conversion to an HUC is not explicitly provided in Sec. 10, Art. X of the Constitution we nevertheless observe that the conversion of a component city into an HUC is substantial alteration of boundaries. Creation, division, merger, abolition or substantial alteration of boundaries of local government units involve a common denominator— material change in the political and economic rights of the local government units directly affected as well as the people therein. It is precisely for this reason that the Constitution requires the approval of the people "in the political units directly affected." The entire province of Nueva Ecija will be directly affected by Cabanatuan City's conversion. As a consequence, all the qualified registered voters of Nueva Ecija should then be allowed to participate in the plebiscite called for that purpose.

E. SUPERVISION OVER, AND DISCIPLINE OF LOCAL OFFICIALS

JOSE C. MIRANDA, *petitioner*, -versus- HON. SANDIGANBAYAN, OFFICE OF THE OMBUDSMAN, SEC. JOSE D. LINA, JR., in his capacity as Secretary of the DILG, and FAUSTINO DY, JR. in his capacity as Governor of the Province of Isabela, *respondents*.
G.R. No. 154098, EN BANC, July 27, 2005, 502 PHIL 423-474, PUNO, J.

It is plain that Section 63 of the Local Government Code was only meant as a cap on the discretionary power of the President, governor and mayor to impose excessively long preventive suspensions. The Ombudsman is not mentioned in the said provision and was not meant to be governed thereby. Indeed, the reason is not hard to distill. The President, governor and mayor are political personages. As such, the possibility of extraneous factors influencing their decision to impose preventive suspensions is not remote. The Ombudsman, on the other hand, is not subject to political pressure given the independence of the office which is protected by no less than the Constitution.
Verily, Section 63 of the Local Government Code does not govern preventive suspensions imposed by the Ombudsman, which is a constitutionally created office and independent from the Executive branch of

government. The Ombudsman's power of preventive suspension is governed by Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989,"[.] . . . The six-month period of preventive suspension imposed by the Ombudsman was indubitably within the limit provided by its enabling law. This enabling law has not been modified by the legislature.

FACTS:
The Ombudsman placed petitioner Jose C. Miranda (Mayor Miranda) then the mayor of Santiago City, Isabela, under preventive suspension for six months from 25 July 1997 to 25 January 1998 for alleged violations of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees. Subsequently, then Vice Mayor Navarro filed a Complaint with the Office of the Ombudsman (Ombudsman).In the said Complaint, Vice Mayor Navarro alleged that Mayor Miranda committed the following acts on 24 November 1997 despite the continuing effectivity of the Ombudsman's preventive suspension order: (a) issued a memorandum addressed to Navarro advising her that he was assuming his position as City Mayor; (b) gave directives to the heads of offices and other employees; (c) issued Office Order No. 11-021 which authorized certain persons to start work; and (d) insisted on performing the functions and duties of Mayor despite Navarro's requests to desist from doing so without a valid court order and in spite of the order of Department of the Interior and Local Government (DILG) Undersecretary Manuel Sanchez directing him to cease from reassuming the position. Vice Mayor Navarro contended that Mayor Miranda committed the felony of usurpation of authority or official functions under Article 177 of the Revised Penal Code (RPC).

In his counter-affidavit, Mayor Miranda asserted that he reassumed office on the advice of his lawyer and in good faith. He contended that under Section 63(b) of the Local Government Code, local elective officials could not be preventively suspended for a period beyond 60 days. He also averred that, on the day he reassumed office, he received a memorandum from DILG Undersecretary Manuel Sanchez instructing him to vacate his office and he immediately complied with the same. Notably, Mayor Miranda's counter-affidavit also stated that he left the mayoralty post after "coercion" by the Philippine National Police.

ISSUE:
Whether the petitioner usurped authority when reassumed office after 60 days. (YES)

RULING:
It is plain that Section 63 of the Local Government Code was only meant as a cap on the discretionary power of the President, governor and mayor to impose excessively long preventive suspensions. The Ombudsman is not mentioned in the said provision and was not meant to be governed thereby. Indeed, the reason is not hard to distill. The President, governor and mayor are political personages. As such, the possibility of extraneous factors influencing their decision to impose preventive suspensions is not remote. The Ombudsman, on the other hand, is not subject to political pressure given the independence of the office which is protected by no less than the Constitution.

Verily, Section 63 of the Local Government Code does not govern preventive suspensions imposed by the Ombudsman, which is a constitutionally created office and independent from the Executive branch of government. The Ombudsman's power of preventive suspension is governed by Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989,"[.] . . . The six-month period of preventive suspension imposed by the Ombudsman was indubitably within the limit provided by its enabling law. This enabling law has not been modified by the legislature.

The Constitution has endowed the Ombudsman with unique safeguards to ensure immunity from political pressure. Among these statutory protections are fiscal autonomy, fixed term of office and classification as an impeachable officer. This much was recognized by this Court in the earlier cited case of Garcia v. Monica. Moreover, there are stricter safeguards for imposition of preventive suspension by the Ombudsman. The Ombudsman Act of 1989 requires that the Ombudsman determine: (1) that the evidence of guilt is strong; and (2) that any of the following circumstances are present: (a) the charge against such officer or employee involves dishonesty, oppression, or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

THE PROVINCIAL GOVERNMENT OF CAMARINES NORTE, represented by GOVERNOR JESUS O. TYPOCO, JR., petitioner –versus- BEATRIZ O. GONZALES, respondent
G.R. No. 185740, EN BANC, July 23, 2013, BRION, J.

Where the position of provincial administrator is reclassified as a highly confidential and coterminous, the security of tenure of the incumbent provincial administrator is not violated when such change was caused by Congress in good faith to meet the demands of the society even if it results in his removal from office or the shortening of his term.

FACTS:
Beatriz Gonzales was appointed as the provincial administrator of the Province of Camarines Norte by then Governor Roy A. Padilla, Jr. on April 1, 1991. Her appointment was on a permanent capacity. In 1999, she was dismissed in service when she was found guilty of gross insubordination/ gross discourtesy in the course of official duties, and conduct grossly prejudicial to the best interest of the service by the Ad Hoc Investigation Committee.

Gonzales appealed to the Civil Service Commission which reduced her penalty to (6) months suspension. Upon the expiration of the suspension, she was reinstated but dismissed again the next day on the ground of lack of confidence. Governor Pimentel claimed that the provincial administrator position is highly confidential and is coterminous in nature pursuant to the Local Government Code of 1991. The CSC ordered that Gonzales must be reinstated because Gonzales acquired a vested right to her permanent appointment and she may only be ousted on valid grounds and lack of confidence is not one of them. The CA affirmed the decision of the CSC. Hence, this petition.

ISSUE:
Whether or not Gonzales' security of tenure was violated when the position of provincial administrator was reclassified as a highly confidential and coterminous position. (NO)

RULING:
Congress' reclassification of the provincial administrator position in RA 7160 is a valid exercise of legislative power that does not violate Gonzales' security of tenure.

These two concepts are different. The nature of a position may change by law according to the dictates of Congress. The right to hold a position, on the other hand, is a right that enjoys constitutional and statutory guarantee, but may itself change according to the nature of the position.

Congress has the power and prerogative to introduce substantial changes in the provincial administrator position and to reclassify it as a primarily confidential, non-career service position. Flowing from the legislative power to create public offices is the power to abolish and modify them to meet the demands of society; Congress can change the qualifications for and shorten the term of existing statutory offices. When done in good faith, these acts would not violate a public officer's security of tenure, even if they result in his removal from office or the shortening of his term. Modifications in public office, such as changes in qualifications or shortening of its tenure, are made in good faith so long as they are aimed at the office and not at the incumbent.

More recently, in Dimayuga v. Benedicto II, we upheld the removal of Chona M. Dimayuga, a permanent appointee to the Executive Director II position, which was not part of the career executive service at the time of her appointment. During her incumbency, the CSC, by authority granted under Presidential Decree No. 1, classified the Executive Director II position to be within the career executive service. Since Dimayuga was not a career executive service officer, her initially permanent appointment to the position became temporary; thus, she could be removed from office at any time.

In the current case, Congress, through RA 7160, did not abolish the provincial administrator position but significantly modified many of its aspects. It is now a primarily confidential position under the non-career service tranche of the civil service. This change could not have been aimed at prejudicing Gonzales, as she was not the only provincial administrator incumbent at the time RA 7160 was enacted. Rather, this change was part of the reform measures that RA 7160 introduced to further empower local governments and decentralize the delivery of public service. Section 3(b) of RA 7160 provides as one of its operative principles that:

(b) There shall be established in every local government unit an accountable, efficient, and dynamic organizational structure and operating mechanism that will meet the priority needs and service requirements of its communities.

Thus, Gonzales' permanent appointment as provincial administrator prior to the enactment of RA 7160 is immaterial to her removal as provincial administrator. For purposes of determining whether Gonzales' termination violated her right to security of tenure, the nature of the position she occupied at the time of her removal should be considered, and not merely the nature of her appointment at the time she entered government service.

The Court is aware that this decision has repercussions on the tenure of other corporate secretaries in various GOCCs. The officers likely assumed their positions on permanent career status, expecting protection for their tenure and appointments, but are now re-classified as primarily confidential appointees. Such concern is unfounded, however, since the statutes themselves do not classify the position of corporate secretary as permanent and career in nature. Moreover, there is no absolute guarantee that it will not be classified as confidential when a dispute arises. As earlier stated, the Court, by legal tradition, has the power to make a final determination as to which positions in government are primarily confidential or otherwise. In the light of the instant controversy, the Court's view is that the greater public interest is served if the position of a corporate secretary is classified as primarily confidential in nature.

The quoted portion, however, even bolsters our theory. Read together with its succeeding paragraph, the quoted portion in Civil Service Commission v. Javier actually stands for the proposition that other corporate secretaries in government-owned and –controlled corporations cannot expect protection for their tenure and appointments upon the reclassification of their position to a primarily

confidential position. There, the Court emphasized that these officers cannot rely on the statutes providing for their permanent appointments, if and when the Court determines these to be primarily confidential. In the succeeding paragraph after the portion quoted by the dissent, we even pointed out that there is no vested right to public office, nor is public service a property right.

Moreover, it is a basic tenet in the country's constitutional system that "public office is a public trust," and that there is no vested right in public office, nor an absolute right to hold office. No proprietary title attaches to a public office, as public service is not a property right. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office. The rule is that offices in government, except those created by the constitution, may be abolished, altered, or created anytime by statute. And any issues on the classification for a position in government may be brought to and determined by the courts.

F. ORGANIZATIONAL STRUCTURES

LA CARLOTA CITY, NEGROS OCCIDENTAL, represented by its Mayor, HON. JEFFREY P. FERRER, * and the SANGGUNIANG PANLUNGSOD OF LA CARLOTA CITY, NEGROS OCCIDENTAL, represented by its Vice-Mayor, HON. DEMIE JOHN C. HONRADO, ** *petitioners*, -versus- ATTY. REX G. ROJO, *respondent*.
G.R. No. 181367, EN BANC, April 24, 2012, CARPIO, J.

A quorum of the Sangguniang Panlungsod should be computed based on the total composition of the Sangguniang Panlungsod.

In this case, the Sangguniang Panlungsod of La Carlota City, Negros Occidental is composed of the presiding officer, ten (10) regular members, and two (2) ex-officio members, or a total of thirteen (13) members. A majority of the 13 "members" of the Sangguniang Panlungsod, or at least seven (7) members, is needed to constitute a quorum to transact official business. Since seven (7) members (including the presiding officer) were present on the 17 March 2004 regular session of the Sangguniang Panlungsod, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted.

FACTS:
Vice-Mayor Rex R. Jalandoon of La Carlota City, Negros Occidental appointed Atty. Rex G. Rojo who had just tendered his resignation as member of the Sangguniang Panlungsod the day preceding such appointment, as Sangguniang Panlungsod Secretary. The status of the appointment was permanent. Vice-Mayor submitted Rojo's appointment papers to the Civil Service Commission Negros Occidental Field Office (CSCFO-Negros Occidental) for attestation. In a Letter dated March 24, 2004, the said CSCFO wrote Jalandoon to inform him of the infirmities the office found on the appointment documents, i.e. the Chairman of the Personnel Selection Board and the Human Resource Management Officer did not sign the certifications, the latter relative to the completeness of the documents as well as to the publication requirement.

In view of the failure of the appointing authority to comply with the directive, the said CSCFO considered the appointment of Rojo permanently recalled or withdrawn, in a subsequent Letter to Jalandoon dated April 14, 2004. Jalandoon deemed the recall a disapproval of the appointment, hence, he brought the matter to the CSC Regional Office No. 6 in Iloilo City, by way of an appeal. He averred that the Human Resource Management Officer of La Carlota City refused to affix his signature on Rojo's appointment documents but nonetheless transmitted them to the CSCFO. Such transmittal,

according to Jalandoon, should be construed that the appointment was complete and regular and that it complied with the pertinent requirements of a valid appointment. City of La Carlota represented by the newly elected mayor, Hon. Jeffrey P. Ferrer and the Sangguniang Panlungsod represented by the newly elected Vice-Mayor, Hon. Demie John C. Honrado, collectively, the petitioners herein, intervened. They argued that Jalandoon is not the real party in interest in the appeal but Rojo who, by his inaction, should be considered to have waived his right to appeal from the disapproval of his appointment. CSC Regional Office No. 6 reversed and set aside the CSCFO's earlier ruling. The regional office likewise ruled that Rojo's appointment on March 18, 2004 was made outside the period of the election ban from March 26 to May 9, 2004, and that his resignation from the SangguniangPanlungsod was valid having been tendered with the majority of the council members in attendance (seven (7) out of the thirteen councilors were present).

Considering that the appointment of Rojo sufficiently complied with the publication requirement, deliberation by the Personnel Selection Board, certification that it was issued in accordance with the limitations provided for under Section 325 of R.A. 7160 and that appropriations or funds are available for said position, the regional office approved the same. Mayor Ferrer and Vice-Mayor Honrado appealed the foregoing Decision of the CSC Regional Office No. 6 to the Civil Service Commission (or Commission). Commission dismissed said appeal on the ground that the appellants were not the appointing authority and were therefore improper parties to the appeal.

Despite its ruling of dismissal, the Commission went on to reiterate CSC Regional Office's discussion on the appointing authority's compliance with the certification and deliberation requirements, as well as the validity of appointee's tender of resignation. It likewise denied the motion for reconsideration thereafter filed by the petitioners in a Resolution dated November 8, 2005. Petitioners filed a petition for review with the Court of Appeals. Court of Appeals denied the petition, and affirmed Resolution Nos. 050654 and 051646 of the Civil Service Commission, dated 17 May 2005 and 8 November 2005, respectively. Petitioners filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution dated 18 January 2008.

ISSUE:
1. Whether the appointment of respondent as Sangguniang Panlungsod secretary violated the constitutional proscription against eligibility of an elective official for appointment during his tenure. (NO)

2. Whether respondent's appointment as Sangguniang Panlungsod secretary was issued contrary to existing civil service rules and regulations. (NO)

RULING:
A quorum of the Sangguniang Panlungsod should be computed based on the total composition of the Sangguniang Panlungsod. In this case, the Sangguniang Panlungsod of La Carlota City, Negros Occidental is composed of the presiding officer, ten (10) regular members, and two (2) ex-officio members, or a total of thirteen (13) members. A majority of the 13 "members" of the Sangguniang Panlungsod, or at least seven (7) members, is needed to constitute a quorum to transact official business. Since seven (7) members (including the presiding officer) were present on the 17 March 2004 regular session of the Sangguniang Panlungsod, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted. The Perez case cited in the Dissenting Opinion was decided in 1969 prior to the 1987 Constitution, and prior to the enactment of RA 7160 or the Local Government Code of 1991. In fact, the Perez case was decided even prior to the old Local Government Code which was enacted in 1983. In ruling that the vice-mayor is not a constituent

member of the municipal board, the Court in the Perez case relied mainly on the provisions of Republic Act No. 305 (RA 305) creating the City of Naga and the amendatory provisions of Republic Act No. 2259 (RA 2259) making the vice mayor the presiding officer of the municipal board. Under RA 2259, the vice-mayor was the presiding officer of the City Council or Municipal Board in chartered cities. **However, RA 305 and 2259 were silent on whether as presiding officerthe vice-mayor could vote**. Thus, the applicable laws in Perez are no longer the applicable laws in the present case. On the other hand, the 2004 case of Zamora v. Governor Caballero, in which the Court interpreted Section 53 of RA 7160 to mean that the entire membership must be taken into account in computing the quorum of the Sangguniang Panlalawigan, was decided under the 1987 Constitution and after the enactment of the Local Government Code of 1991.

In stating that there were fourteen (14) members of the Sangguniang Panlalawigan of Compostela Valley, the Court in Zamora clearly included the Vice- Governor, as presiding officer, as part of the entire membership of the Sangguniang Panlalawigan which must be taken into account in computing the quorum. On the issue that respondent's appointment was issued during the effectivity of the election ban, the Court agrees with the finding of the Court of Appeals and the Civil Service Commission that since the respondent's appointment was validly issued on 18 March 2004, then the appointment did not violate the election ban period which was from 26 March to 9 May 2004. Indeed, the Civil Service Commission found that despite the lack of signature and certification of the Human Resource Management Officer of La Carlota City on respondent's appointment papers, respondent's appointment is deemed effective as of 18 March 2004 considering that there was substantial compliance with the appointment requirements, thus: Records show that Atty. Rojo's appointment was transmitted to the CSC Negros Occidental Field Office on March 19, 2004 by the office of Gelongo without his certification and signature at the back of the appointment. Nonetheless, records show that the position to which Atty. Rojo was appointed was published on January 6, 2004.

The qualifications of Atty. Rojo were deliberated upon by the Personnel Selection Board on March 5, 2004, attended by Vice Mayor Jalandoon as Chairman and Jose Leofric F. De Paola, SP member and Sonia P. Delgado, Records Officer, as members. Records likewise show that a certification was issued by Vice Mayor Jalandoon, as appointing authority, that the appointment was issued in accordance with the limitations provided for under Section 325 of RA 7160 and the said appointment was reviewed and found in order pursuant to Section 5, Rule V of the Omnibus Rules Implementing Executive Order No. 292. Further, certifications were issued by the City Budget Officer, Acting City Accountant, City Treasurer and City Vice Mayor that appropriations or funds are available for said position. Apparently, all the requirements prescribed in Section 1, Rule VIII in CSC Memorandum Circular No. 15, series of 1999, were complied with. Clearly, the appointment of respondent on 18 March 2004 was validly issued considering that: (1) he was considered resigned as Sangguniang Panlungsod member effective 17 March 2004; (2) he was fully qualified for the position of Sanggunian Secretary; and (3) there was substantial compliance with the appointment requirements.

ARNOLD D. VICENCIO, petitioner –versus- HON. REYNALDO A. VILLAR, ET AL. , respondents
G.R. No. 182069, EN BANC, July 3, 2012, SERENO, J.

Vice-Mayor Powers: There is no inherent authority on the part of the city vice-mayor to enter into contracts on behalf of the local government unit, unlike that provided for the city mayor. Hence his power to enter into contracts must be expressly granted by ordinance.

The Ordinance is clear and precise and leaves no room for interpretation. It only authorized the then City Vice-Mayor to enter into consultancy contracts in the specific areas of concern. Further, the

appropriations for this particular item were limited to the savings for the period June to December 2003. This was an additional limitation to the power granted to Vice-Mayor Yambao to contract on behalf of the city. The fact that any later consultancy contract would necessarily require further appropriations from the city council strengthens the contention that the power granted under the Ordinance was limited in scope. Hence, petitioner was without authority to enter into the 2005 Consultancy Contracts.

FACTS :
In 2003, the City Council or the *Sangguniang Panglungsod ng* Malabon (SPM) presided over by then Acting Vice-Mayor Galauran approved a City Ordinance (entitled An Ordinance Granting Authority to the City Vice-Mayor, Hon. Yambao, to Negotiate and Enter into Contract for Consultancy Services for Consultants in the Sanggunian Secretariat Tasked to Function in their Respective Areas of Concern xxx). Thus, the City of Malabon, represented by Galauran, entered into the 2003 Consultancy Contracts.

In 2004, Vicencio was elected Vice-Mayor, and he also became the Presiding Officer of the SPM and, at the same time, the head of the Sanggunian Secretariat. To complement the manpower requirements of the existing *Sanggunian* Secretariat, Vicencio deemed it necessary to hire the services of consultants with the end view of augmenting and upgrading its performance capability for the effective operation of the legislative machinery of the city. Vicencio wrote a letter to City Legal Officer Diaz inquiring whether SPM still needs to ratify the newly entered consultancy contracts hired by the former administration. Atty. Diaz categorically stated that ratification was no longer necessary, provided that the services to be contracted were those stipulated in the ordinance.

In 2005, the SPM adopted a City Ordinance (Appropriations Act of Malabon) wherein PhP 792,000 was earmarked for consultancy services under the Legislative Secretariat. Thus, Vicencio entered into the 2005 Consultancy Contracts.

The City Auditor's Office, however, disallowed the disbursement of the consultants' salaries claiming that the City Ordinance which was the basis of the 2005 consultancy contracts only authorized former Vice Mayor Yambao and not incumbent Vice Mayor Vicencio and it only covered the period June to December 2003, among others. The Adjudication and Settlement Board of COA and the COA Chairperson affirmed the said decision.

ISSUE:
Whether the incumbent vice-mayor can enter into consultancy contracts pursuant to an ordinance expressly granting the former vice-mayor such power. (NO)

RULING:
Under Sec. 456 of the LGC, there is no inherent authority on the part of the city vice-mayor to enter into contracts on behalf of the local government unit, unlike that provided for the city mayor. Thus, the authority of the vice-mayor to enter into contracts on behalf of the city was strictly circumscribed by the ordinance granting it. The Ordinance specifically authorized Vice-Mayor Yambao to enter into contracts for consultancy services. As this is not a power or duty given under the law to the Office of the Vice-Mayor, such Ordinance cannot be construed as a "continuing authority" for any person who enters the Office of the Vice-Mayor to enter into subsequent, albeit similar, contracts.

The Ordinance is clear and precise and leaves no room for interpretation. It only authorized the then City Vice-Mayor to enter into consultancy contracts in the specific areas of concern. Further, the

appropriations for this particular item were limited to the savings for the period June to December 2003. This was an additional limitation to the power granted to Vice-Mayor Yambao to contract on behalf of the city. The fact that any later consultancy contract would necessarily require further appropriations from the city council strengthens the contention that the power granted under the Ordinance was limited in scope. Hence, petitioner was without authority to enter into the 2005 Consultancy Contracts.
Section 103 of P.D. 1445 declares that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. The public official's personal liability arises only if the expenditure of government funds was made in violation of law. In this case, petitioner's act of entering into a contract on behalf of the local government unit without the requisite authority therefor was in violation of the Local Government Code. While petitioner may have relied on the opinion of the City Legal Officer, such reliance only serves to buttress his good faith. It does not, however, exculpate him from his personal liability under P.D. 1445.

G. TERM LIMITS AND RECALL

ATTY. VENANCIO Q. RIVERA III and ATTY. NORMANDICK DE GUZMAN, *petitioners*, -versus- COMELEC and MARINO "BOKING" MORALES, *respondents*.
G.R. No. 167591, EN BANC, May 9, 2007, SANDOVAL-GUTIERREZ, *J.*

The assumption of office and his continuous exercise of the functions thereof from start to finish of the term, should legally be taken as service for a full term in contemplation of the three-term rule.(see Ong v. Alegre)

In the present case, Morales was able to serve for the full term from July 1, 1998 to June 30, 2001. The decision declaring his proclamation void only became final on August 6, 2001. Clearly, the three-term limit rule applies to him.

FACTS:
In the May 2004 elections, respondent Marino "Boking" Morales ran as candidate for mayor of Mabalacat, Pampanga.

Attys. Venancio Q. Rivera and Normandick De Guzman, petitioners, filed with the Commission on Elections (COMELEC) a petition to cancel respondent Morales' Certificate of Candidacy on the ground that he was elected and had served three previous consecutive terms as mayor of Mabalacat.

Morales admitted that he was elected mayor of Mabalacat for the first term (1995-1998) and third term (2001-2004). However, he claimed that he served the second term (1198-2001) only in the capacity of a "de facto" officer only since his proclamation as mayor was declared void by the Regional Trial Court (RTC) in its Decision dated April 2, 2001,which became final and executory on August 6, 2001. Moreover, he was preventively suspended by the Ombudsman in an anti-graft case from January 16, 1999 to July 15, 1999.

The COMELEC Second Division declared respondent Morales disqualified to run for the position of municipal mayor on the ground that he had already served three (3) consecutive terms.

The COMELEC en banc, however, set aside the resolution of the second division and found Morales eligible to run for office of mayor since he served his second term as de facto mayor only. Rivera and

De Guzman filed a petition for certiorari with the Supreme Court.

Meanwhile, Morales won and was proclaimed the duly elected mayor of Mabalacat in the 2004 elections. Anthony Dee, also a candidate for mayor, filed with the RTC a petition for *quo warranto* against Morales on the ground that he is ineligible to run for another term or fourth term.

The RTC dismissed petitioner Dee's petition for *quo warranto.* The Comelec First Division and En banc likewise found no violation of the three-term limit rule. Dee filed a petition for certiorari with the Supreme Court.

The petitions filed by Rivera and Dee were consolidated

ISSUE:
Whether Morales already served his 3 consecutive term. (YES)

RULING:
When the proclamation is declared void only after the elected official has been able to serve the full term of the office, such service shall be counted in the three-term limit

Morales contends that his second term, July 1, 1998 to June 30, 2001 to which he was elected and which he served, may not be counted in the three-term limit since his proclamation was declared void by the RTC.

The assumption of office and his continuous exercise of the functions thereof from start to finish of the term, should legally be taken as service for a full term in contemplation of the three-term rule.*(see Ong v. Alegre)*

In the present case, Morales was able to serve for the full term from July 1, 1998 to June 30, 2001. The decision declaring his proclamation void only became final on August 6, 2001. Clearly, the three-term limit rule applies to him.

Unlike in *Lonzanida v. COMELEC*, Morales was never unseated during the term in question, he never ceased discharging his duties and responsibilities as mayor for the entire period covering the 1998-2001 term.

In *Borja, Jr. vs.COMELEC,* Capco's assumption of the office of mayor came about by operation of law upon the death of the incumbent mayor. His service for the remaining period may not be regarded as a "term" for purposes of the three-term limit rule. First, he held the position for less than three years. Second, he was not elected to that position. In contrast, Morales was electedfor the position of Mayor in the 1998 elections and he served as mayor until June 30, 2001.He was mayor for the entire period notwithstanding the Decision of the RTC in the electoral protest.

Respondent Morales maintains that he served his second term (1998 to 2001) only as a "caretaker of the office" or as a "*de facto* officer." Section 8, Article X of the Constitution is violated and its purpose defeated when an official serves in the same position for three consecutive terms. Whether as "caretaker" or *"de facto"* officer, he exercises the powers and enjoys the prerequisites of the office which enables him "to stay on indefinitely".

As a consequence of Morales' ineligibility, a permanent vacancy in the contested office has occurred.

This should now be filled by the **vice-mayor** in accordance with Section 44 of the Local Government Code.

ROBERTO L. DIZON, *petitioner*, -*versus*- COMMISSION ON ELECTIONS and MARINO P. MORALES, *respondents*.
G.R. No. 182088, EN BANC, January 30, 2009, CARPIO, *J.*

The three-term limit does not apply whenever there is an involuntary break. The Constitution does not require that the interruption or hiatus to be a full term of three years. What the law requires is for an interruption, break or a rest period from a candidate's term of office "for any length of time."

Our ruling in theRiveracase served as Morales' involuntary severance from office with respect to the 2004-2007 term. Involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service. Our decision in theRiveracase was promulgated on 9 May 2007 and was effective immediately. The next day, Morales notified the vice mayor's office of our decision. The vice mayor assumed the office of the mayor from 17 May 2007 up to 30 June 2007. The assumption by the vice mayor of the office of the mayor, no matter how short it may seem to Dizon, interrupted Morales' continuity of service. Thus, Morales did not hold office for the full term of 1 July 2004 to 30 June 2007.

FACTS:
Roberto L. Dizon, a resident and taxpayer of Mabalacat, Pampanga, filed a case with the COMELEC to disqualify Marino P. Morales, the incumbent mayor of Mabalacat on the ground that the latter was elected and had fully served three previous consecutive terms in violation of Section 43 of the Local Government Code. Dizon alleged that Morales was municipal mayor in 1995, 1998, 2001 and 2004. Thus, Morales should not have been allowed to have filed his Certificate of Candidacy on March 2007 for the same position and same municipality.

Morales, on the other hand, contended that he is still eligible and qualified to run as mayor of Mabalacat because he was not elected for the said position in the 1998 elections. He averred that the COMELEC en banc affirmed the decision of the RTC declaring Anthony D. Dee as the duly elected Mayor of Mabalacat in the 1998 elections. Thus, he was not elected for the said position in the 1998 elections. His term should be reckoned from 2001. He added that his election in 2004 is only for his second term.

COMELEC Second Division ruled in favor of Morales and denied the petition. It took judicial notice of SC's ruling in the Rivera case promulgated on May 9, 2007 where it was held that Morales was elected as mayor of Mabalacat in 1995, 1998 and 2001 (notwithstanding the RTC Decision in an electoral protest case that the then proclamation of Morales was void). The SC ruled in that case that Morales violated the three-term limit under Section 43 of the LGC. Hence, Morales was considered not a candidate in the 2004 elections, and this failure to qualify for the 2004 elections is a gap and allows him to run again for the same position in 2007 elections.

ISSUES:
1. Whether the period served by Morales in the 2004-2007 term (although he was ousted from his office as Mayor on May16, 2007) should be considered his fourth term. (NO)

2. Whether the 2007-2010 term of Morales is his 5th term. (NO)

RULING:
(I)

In our decision promulgated on 9 May 2007, this Court unseated Morales during his fourth term. We cancelled his Certificate of Candidacy dated 30 December 2003. This cancellation disqualified Morales from being a candidate in the May 2004 elections. The votes cast for Morales were considered stray votes.

Both Article X, Section 8 of the Constitution and Section 43(b) of the Local Government Code state that the term of office of elective local officials, except barangay officials, shall be three years, and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

There should be a concurrence of two conditions for the application of the disqualification: (1) that the official concerned has been elected for three consecutive terms in the same local government post and (2) that he has fully served three consecutive terms.

In the Rivera case, we found that Morales was elected as mayor of Mabalacat for four consecutive terms: 1995-1998, 1998-2001, 2001-2004, and 2004-2007. We disqualified Morales from his candidacy in the May 2004 elections because of the three-term limit. Although the trial court previously ruled that Morales' proclamation for the 1998-2001 term was void, there was no interruption of the continuity of Morales' service with respect to the 1998-2001 term because the trial court's ruling was promulgated only on 4 July 2001, or after the expiry of the 1998-2001 term.

Our ruling in the Rivera case served as Morales' involuntary severance from office with respect to the 2004-2007 term. Involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service. Our decision in the Rivera case was promulgated on 9 May 2007 and was effective immediately. The next day, Morales notified the vice mayor's office of our decision. The vice mayor assumed the office of the mayor from 17 May 2007 up to 30 June 2007. The assumption by the vice mayor of the office of the mayor, no matter how short it may seem to Dizon, interrupted Morales' continuity of service. Thus, Morales did not hold office for the full term of 1 July 2004 to 30 June 2007. (4th term)

(II)
We concede that Morales occupied the position of mayor of Mabalacat for the following periods: 1 July 1995 to 30 June 1998, 1 July 1998 to 30 June 2001, 1 July 2001 to 30 June 2004, and 1 July 2004 to 16 May 2007.

However, because of his disqualification, Morales was not the duly elected mayor for the 2004-2007 term. Neither did Morales hold the position of mayor of Mabalacat for the full term. Morales cannot be deemed to have served the full term of 2004-2007 because he was ordered to vacate his post before the expiration of the term. Morales' occupancy of the position of mayor of Mabalacat from 2004-2007 cannot be counted as a term for purposes of computing the three-term limit. Indeed, the period from 17 May 2007 to 30 June 2007 served as a gap for purposes of the three-term limit rule.

Thus, the present 1 July 2007 to 30 June 2010 term is effectively Morales' first term for purposes of the three-term limit rule.

FEDERICO T. MONTEBON and ELEANOR M. ONDOY, *Petitioners*, -versus COMMISSION ON ELECTION and SESINANDO F. POTENCIOSO, JR., *Respondents.*
G.R. No. 180444, EN BANC, April 8, 2008, YNARES-SANTIAGO, *J.*

In Lonzanida v. Commission on Elections, the Court held that the two conditions for the application of the disqualification must concur: 1) that the official concerned has been elected for three consecutive terms in the same local government post; and 2) that he has fully served three consecutive terms. In Borja, Jr. v. Commission on Elections, the Court emphasized that the term limit for elective officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Thus, for the disqualification to apply, it is not enough that the official has been elected three consecutive times; he must also have served three consecutive terms in the same position.
In this case, a permanent vacancy occurred in the office of the vice mayor due to the retirement of Vice Mayor Mendoza. Respondent, being the highest ranking municipal councilor, succeeded him in accordance with law. It is clear therefore that his assumption of office as vice-mayor can in no way be considered a voluntary renunciation of his office as municipal councilor.

FACTS:
Petitioners Montebon and Ondy and respondent Potencioso, Jr. were candidates for municipal councilor of the Municipality of Tuburan, Cebu for the May 14, 2007 Synchronized National and Local Elections. On April 30, 2007, petitioners and other candidates for municipal councilor filed a petition for disqualification against respondent with the COMELEC alleging that respondent had been elected and served three consecutive terms as municipal councilor in 1998-2001, 2001-2004, and 2004-2007. Thus, he is proscribed from running for the same position in the 2007 elections as it would be his fourth consecutive term.

In petitioners' memorandum, they maintained that respondent's assumption of office as vice-mayor in January 2004 should not be considered an interruption in the service of his second term since it was a voluntary renunciation of his office as municipal councilor. They argued that, according to the law, voluntary renunciation of the office for any length of time shall not be considered an interruption in the continuity of service for the full term for which the official concerned was elected.
On the other hand, respondent alleged that a local elective official is not disqualified from running for the fourth consecutive time to the same office if there was an interruption in one of the previous three terms.

On June 2, 2007, the COMELEC First Division denied the petition for disqualification ruling that respondent's assumption of office as vice-mayor should be considered an interruption in the continuity of his service. His second term having been involuntarily interrupted, respondent should thus not be disqualified to seek reelection as municipal councilor.
On appeal, the COMELEC *En Banc* upheld the ruling of the First Division Petitioners filed the instant petition for *certiorari* on the ground that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that respondent's assumption of office as vice-mayor in January 2004 interrupted his 2001-2004 term as municipal councilor.

ISSUE:
Whether the three-term limit was violated. (NO)

RULING:
In *Lonzanida v. Commission on Elections*, the Court held that the two conditions for the application of the disqualification must concur: 1) that the official concerned has been elected for three consecutive terms in the same local government post; and 2) that he has fully served three consecutive terms. In *Borja, Jr. v. Commission on Elections*, the Court emphasized that the term limit for elective officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Thus, for the disqualification to apply, it is not enough that the official has been elected three consecutive times; he must also have served three consecutive terms in the same position.

While it is undisputed that respondent was elected municipal councilor for three consecutive terms, the issue lies on whether he is deemed to have fully served his second term in view of his assumption of office as vice-mayor of Tuburan on January 12, 2004.

Succession in local government offices is by operation of law. Section 44 of Republic Act No. 7160, otherwise known as the Local Government Code, provides that if a permanent vacancy occurs in the office of the vice mayor, the highest ranking sanggunian member shall become vice mayor.
In this case, a permanent vacancy occurred in the office of the vice mayor due to the retirement of Vice Mayor Mendoza. Respondent, being the highest ranking municipal councilor, succeeded him in accordance with law. It is clear therefore that his assumption of office as vice-mayor can in no way be considered a voluntary renunciation of his office as municipal councilor.

NICASIO BOLOS, JR., *Petitioner*, -versus- THE COMMISSION ON ELECTIONS and REY ANGELES CINCONIEGUE, *Respondents*.
G.R. NO. 184082, EN BANC, March 17, 2009, PERALTA, *J.*

In Lonzanida v. Commission on Elections, the Court stated that the second part of the rule on the three-term limit shows the clear intent of the framers of the Constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term. The Court held that two conditions for the application of the disqualification must concur: (1) that the official concerned has been elected for three consecutive terms in the same government post; and (2) that he has fully served three consecutive terms. In this case, petitioner did not fill in or succeed to a vacancy by operation of law. He instead relinquished his office as Punong Barangay during his third term when he won and assumed office as Sangguniang Bayan member of Dauis, Bohol, which is deemed a voluntary renunciation of the Office of Punong Barangay.

FACTS:
For three consecutive terms, petitioner was elected to the position of *Punong Barangay* of Barangay Biking, Dauis, Bohol in the Barangay Elections held in 1994, 1997 and 2002.
In May 2004, while sitting as the incumbent *Punong Barangay* of Barangay Biking, petitioner ran for Municipal Councilor of Dauis, Bohol and won. He assumed office as Municipal Councilor on July 1, 2004, leaving his post as *Punong Barangay*. He served the full term of the *Sangguniang Bayan* position, which was until June 30, 2007.

Thereafter, petitioner filed his Certificate of Candidacy for *Punong Barangay* of Barangay Biking, Dauis, Bohol in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections.

Respondent Rey Angeles Cinconiegue, the incumbent *Punong Barangay* and candidate for the same office, filed before the COMELEC a petition for the disqualification of petitioner as candidate on the ground that he had already served the three-term limit. Hence, petitioner is no longer allowed to run for the same position in accordance with Section 8, Article X of the Constitution and Section 43 (b) of R.A. No. 7160.

Cinconiegue contended that petitioner's relinquishment of the position of *Punong Barangay* in July 2004 was voluntary on his part, as it could be presumed that it was his personal decision to run as municipal councilor in the May 14, 2004 National and Local Elections. He added that petitioner knew that if he won and assumed the position, there would be a voluntary renunciation of his post as *Punong Barangay*.

In his Answer, petitioner admitted that he was elected as *Punong Barangay* of Barangay Biking, Dauis, Bohol in the last three consecutive elections of 1994, 1997 and 2002. However, he countered that in the May 14, 2004 National and Local Elections, he ran and won as Municipal Councilor of Dauis, Bohol. By reason of his assumption of office as *Sangguniang Bayan* member, his remaining term of office as *PunongBarangay*, which would have ended in 2007, was left unserved. He argued that his election and assumption of office as *Sangguniang Bayan* member was by operation of law; hence, it must be considered as an involuntary interruption in the continuity of his last term of service.

In a Resolution, the First Division of the COMELEC ruled that petitioner's relinquishment of the office of *Punong Barangay* of Biking, Dauis, Bohol, as a consequence of his assumption of office as *Sangguniang Bayan* member of Dauis, Bohol, on July 1, 2004, was a voluntary renunciation of the Office of *Punong Barangay*. Petitioner's motion for reconsideration was denied by the COMELEC en banc in a Resolution.

ISSUE:
Whether there was voluntary renunciation of the Office of *Punong Barangay* by petitioner when he assumed office as Municipal Councilor so that he is deemed to have fully served his third term as *Punong Barangay*, warranting his disqualification from running for the same position in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections. (YES)

RULING:
In Lonzanida v. Commission on Elections, the Court stated that the second part of the rule on the three-term limit shows the clear intent of the framers of the Constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term. The Court held that two conditions for the application of the disqualification must concur: (1) that the official concerned has been elected for three consecutive terms in the same government post; and (2) that he has fully served three consecutive terms.

In this case, it is undisputed that petitioner was elected as *Punong Barangay* for three consecutive terms, satisfying the first condition for disqualification.
What is to be determined is whether petitioner is deemed to have voluntarily renounced his position as *Punong Barangay* during his third term when he ran for and won as *Sangguniang Bayan* member and assumed said office.

The Court agrees with the COMELEC that there was voluntary renunciation by petitioner of his position as *Punong Barangay*.

As conceded even by him, respondent (petitioner herein) had already completed two consecutive terms of office when he ran for a third term in the Barangay Elections of 2002. When he filed his certificate of candidacy for the Office of Sangguniang Bayan of Dauis, Bohol, in the May 10, 2004 [elections], he was not deemed resigned. Nonetheless, all the acts attending his pursuit of his election as municipal councilor point out to an intent and readiness to give up his post as Punong Barangay once elected to the higher elective office, for it was very unlikely that respondent had filed his Certificate of Candidacy for the Sangguniang Bayan post, campaigned and exhorted the municipal electorate to vote for him as such and then after being elected and proclaimed, return to his former position. He knew that his election as municipal councilor would entail abandonment of the position he held, and he intended to forego of it. Abandonment, like resignation, is voluntary.
Indeed, petitioner was serving his third term as *Punong Barangay* when he ran for *Sangguniang Bayan*member and, upon winning, assumed the position of *Sangguniang Bayan* member, thus, voluntarily relinquishing his office as *Punong Barangay* which the Court deems as a voluntary renunciation of said office.

Petitioner erroneously argues that when he assumed the position of *Sangguniang Bayan* member, he left his post as *Punong Barangay* by operation of law; hence, he did not fully serve his third term as *Punong Barangay*.

In this case, petitioner did not fill in or succeed to a vacancy by operation of law. He instead relinquished his office as *Punong Barangay* during his third term when he won and assumed office as *Sangguniang Bayan* member of Dauis, Bohol, which is deemed a voluntary renunciation of the Office of *Punong Barangay*.

SIMON B. ALDOVINO, JR., DANILO B. FALLER and FERDINAND N. TALABONG, *Petitioner,* - versus- COMMISSION ON ELECTIONS and WILFREDO F. ASILO, *Respondent.*
G.R. No. 184836, EN BANC, December 23, 2009, BRION, *J.*

The "interruption" of a term exempting an elective official from the three-term limit rule is one that involves no less than the involuntary loss of title to office and elective official must have involuntarily left his office. Thus, based on this standard, loss of office by operation of law, being involuntary, is an effective interruption of service within a term, while on the other hand, temporary inability or disqualification to exercise the functions of an elective post, even if involuntary, should not be considered an effective interruption of a term because it does not involve the loss of title to office or at least an effective break from holding office. The office holder, while retaining title, is simply barred from exercising the functions of his office for a reason provided by law.

In cases of preventive suspension, the suspended official is barred from performing the functions of his office and does not receive salary in the meanwhile, but does not vacate and lose title to his office since loss of office is a consequence that only results upon an eventual finding of guilt or liability. Thus. Asilo's 2004-2007 term was not interrupted by the Sandiganbayan-imposed preventive suspension in 2005, as preventive suspension does not interrupt an elective official's term.

FACTS:
Wilfredo F. Asilo (Asilo) was elected councilor of Lucena City for three consecutive terms: for the 1998-2001, 2001-2004, and 2004-2007 terms, respectively. In September 2005 or during his 2004-2007 term of office, the Sandiganbayan preventively suspended him for 90 days in relation with a criminal case he then faced. In the 2007 election, Asilo filed his certificate of candidacy for the same position. This prompted Simon B. Aldovino, Jr., Danilo B. Faller, and Ferdinand N. Talabong (the

petitioners) sought to deny due course to Asilo's certificate of candidacy or to cancel it on the ground that he had been elected and had served for three terms; his candidacy for a fourth term therefore violated the three-term limit rule under Section 8, Article X of the Constitution and Section 43(b) of RA 7160. Commission on Elections (Comelec) ruled that preventive suspension is an effective interruption because it renders the suspended public official unable to provide complete service for the full term.

ISSUE:
Whether the preventive suspension of an elected public official an interruption of his term of office for purposes of the three-term limit rule under RA 7160, or the Local Government Code. (NO)

RULING:
Section 8, Article X of the Constitution states that the term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

The "interruption" of a term exempting an elective official from the three-term limit rule is one that involves no less than the involuntary loss of title to office and elective official must have involuntarily left his office. Thus, based on this standard, loss of office by operation of law, being involuntary, is an effective interruption of service within a term, while on the other hand, temporary inability or disqualification to exercise the functions of an elective post, even if involuntary, should not be considered an effective interruption of a term because it does not involve the loss of title to office or at least an effective break from holding office. The office holder, while retaining title, is simply barred from exercising the functions of his office for a reason provided by law.
In cases of preventive suspension, the suspended official is barred from performing the functions of his office and does not receive salary in the meanwhile, but does not vacate and lose title to his office since loss of office is a consequence that only results upon an eventual finding of guilt or liability. Thus. Asilo's 2004-2007 term was not interrupted by the Sandiganbayan-imposed preventive suspension in 2005, as preventive suspension does not interrupt an elective official's term.

ANGEL G. NAVAL, *Petitioner,* -versus- COMMISSION ON ELECTIONS and NELSON B. JULIA, *Respondent.*
G.R. No. 207851, EN BANC, July 8, 2014, REYES, *J.*

Reapportionment is "the realignment orchange in legislative districts brought about by changes in population and mandated by the constitutional requirement of equality of representation." The aim of legislative apportionment is to equalize population and voting power among districts. The basis for districting shall be the number of the inhabitants of a city or a province and not the number of registered voters therein.

The rationale behind reapportionment is the constitutional requirement to achieve equality of representation among the districts. It is with this mindset that the Court should consider Naval's argument anent having a new set of constituents electing him into office in 2010 and 2013.
Naval's ineligibility to run, by reason of violation of the three-term limit rule, does not undermine the right to equal representation of any of the districts in Camarines Sur. With or without him, the renamed Third District, which he labels as a new set of constituents, would still be represented, albeit by another eligible person.

FACTS:
From 2004 to 2010, Angel Naval had been elected and had served as a member of Sanggunian, Second district, Camarines Sur. Sometime in 2009, RA 9716, which reapportioned the legislative districts of Camarines, was enacted. Eight out of ten towns were taken from the second district of Camarines Sur to create a third district. The second district was composed of the remaining two towns, plus the town of Gainza and Milaor from the first district. In the 2010 elections, Naval ran and won as a member of the Sanggunian of the third district. In 2013, she ran again and was re-elected for the same position. When Naval's election was question on the ground of the three-term rule, she argued that she only served as a member of the Sanggunian for two terms. Her theory is that because of the reapportionment of the province of Camarines Sur, she was, elected by another territorial jurisdiction and by different inhabitants.

ISSUE:
Whether Naval's election for the year 2013 is valid. (NO)

RULING:
Reapportionment is "the realignment orchange in legislative districts brought about by changes in population and mandated by the constitutional requirement of equality of representation." The aim of legislative apportionment is to equalize population and voting power among districts. The basis for districting shall be the number of the inhabitants of a city or a province and not the number of registered voters therein.

The Court notes that after the reapportionment of the districts in Camarines Sur, the current Third District, which brought Naval to office in 2010 and 2013, has a population of 35,856 less than that of the old Second District, which elected him in 2004 and 2007. However, the wordings of R.A. No. 9716 indicate the intent of the lawmakers to create a single new Second District from the merger of the towns from the old First District with Gainza and Milaor. As to the current Third District, Section 3(c) of R.A. No. 9716 used the word "rename." Although the qualifier "without a change in its composition" was not found in Section 3(c), unlike in Sections 3(d) and (e), still, what is pervasive isthe clear intent to create a sole new district in that of the Second, while merely renaming the rest.

The rationale behind reapportionment is the constitutional requirement to achieve equality of representation among the districts. It is with this mindset that the Court should consider Naval's argument anent having a new set of constituents electing him into office in 2010 and 2013.
Naval's ineligibility to run, by reason of violation of the three-term limit rule, does not undermine the right to equal representation of any of the districts in Camarines Sur. With or without him, the renamed Third District, which he labels as a new set of constituents, would still be represented, albeit by another eligible person.

EFREN RACEL ARATEA, *Petitioner*, -versus- COMMISSION ON ELECTIONS and ESTELA D. ANTIPOLO, *Respondent*.
G.R. No. 195229, EN BANC, October 9, 2012, CARPIO, *J*.

A petition for disqualification under Section 68 clearly refers to "the commission of prohibited acts and possession of a permanent resident status in a foreign country." All the offenses mentioned in Section 68 refer to election offenses under the Omnibus Election Code, not to violations of other penal laws. There is absolutely nothing in the language of Section 68 that would justify including violation of the three-term limit rule, or conviction by final judgment of the crime of falsification under the Revised Penal Code,

as one of the grounds or offenses covered under Section 68. A cancelled certificate of candidacy void ab initio cannot give rise to a valid candidacy, and much less to valid votes.

Lonzanida's certificate of candidacy was cancelled because he was ineligible or not qualified to run for Mayor. Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a candidate from the very beginning, his certificate of candidacy being void ab initio. There was only one qualified candidate for Mayor in the May 2010 elections - Antipolo, who therefore received the highest number of votes.

FACTS:
Lonzanida and Antipolo were candidates for Mayor of San Antonio, Zambales in the May 2010 National and Local Elections. Dra. Rodolfo filed a petition under Section 78 of the Omnibus Election Code (OEC) to disqualify Lonzanida and to deny due course or to cancel Lonzanida's certificate of candidacy on the ground that Lonzanida was elected, and had served, as mayor of San Antonio, Zambales for four (4) consecutive terms immediately prior to the term for the May 2010 elections.
Rodolfo asserted that Lonzanida made a false material representation in his certificate of candidacy when Lonzanida certified under oath that he was eligible for the office he sought election. Section 8, Article X of the 1987 Constitution and Section 43(b) of the Local Government Code (LGC) both prohibit a local elective official from being elected and serving for more than three consecutive terms for the same position.

The COMELEC Second Division rendered a Resolution cancelling Lonzanida's certificate of candidacy. Lonzanida's MR before the COMELEC En Banc remained pending during the May 2010 elections. Lonzanida and Aratea garnered the highest number of votes and were respectively proclaimed Mayor and Vice-Mayor.

Aratea took his oath of office as Acting Mayor before RTC Judge of Olongapo. On the same date, Aratea wrote the DILG and requested for an opinion on whether, as Vice-Mayor, he was legally required to assume the Office of the Mayor in view of Lonzanida's disqualification. DILG responded through an opinion which stated that Lonzanida was disqualified to hold office by reason of his criminal conviction, and as a consequence, his office was deemed permanently vacant, and thus, Aratea should assume the Office of the Mayor in an acting capacity without prejudice to the COMELEC's resolution of Lonzanida's motion for reconsideration.
In another letter, Aratea requested the DILG to allow him to take the oath of office as Mayor of San Antonio, Zambales. In his response, then Sec. Robredo allowed Aratea to take an oath of office as "the permanent Municipal Mayor of San Antonio, Zambales without prejudice however to the outcome of the cases pending before the COMELEC.

The COMELEC En Banc then issued a Resolution disqualifying Lonzanida from running for Mayor in the May 2010 elections – based on two grounds: first, Lonzanida had been elected and had served as Mayor for more than three consecutive terms without interruption; and second, Lonzanida had been convicted by final judgment of 10 counts of falsification under the Revised Penal Code. Lonzanida was sentenced for each count of falsification to imprisonment of 4 years and 1 day of prisión correccional as minimum, to 8 years and 1 day of prisión mayor as maximum. The judgment of conviction became final in October 2009, before Lonzanida filed his certificate of candidacy on 1 December 2009.

ISSUE:

Whether Lonzanida was disqualified under Section 68 OEC, or made a false material representation under Section 78 of the same Code that resulted in his certificate of candidacy being void ab initio. Section 78. (YES)

RULING

Antipolo, the alleged "second placer," should be proclaimed Mayor because Lonzanida's certificate of candidacy was void ab initio. In short, Lonzanida was never a candidate at all. All votes for Lonzanida were stray votes. Thus, Antipolo, the only qualified candidate, actually garnered the highest number of votes for the position of Mayor.

A petition for disqualification under Section 68 clearly refers to "the commission of prohibited acts and possession of a permanent resident status in a foreign country." All the offenses mentioned in Section 68 refer to election offenses under the OEC, not to violations of other penal laws. There is absolutely nothing in the language of Section 68 that would justify including violation of the three-term limit rule, or conviction by final judgment of the crime of falsification under the Revised Penal Code, as one of the grounds or offenses covered under Section 68.

On the other hand, Section 7829 of the OEC states that a certificate of candidacy may be denied or cancelled when there is false material representation of the contents of the certificate of candidacy. Section 74 OEC details the contents of the certificate of candidacy such that it shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office x x x

The conviction of Lonzanida by final judgment, with the penalty of prisión mayor, disqualifies him perpetually from holding any public office, or from being elected to any public office. This perpetual disqualification took effect upon the finality of the judgment of conviction, before Lonzanida filed his certificate of candidacy.

A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run. A cancelled certificate of candidacy void ab initio cannot give rise to a valid candidacy, and much less to valid votes. Lonzanida's certificate of candidacy was cancelled because he was ineligible or not qualified to run for Mayor. Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a candidate from the very beginning, his certificate of candidacy being void ab initio. There was only one qualified candidate for Mayor in the May 2010 elections - Antipolo, who therefore received the highest number of votes.

MAYOR BARBARA RUBY C. TALAGA, *Petitioner,* -versus- COMMISSION ON ELECTIONS and RODERICK A. ALCALA, *Respondents.*
G.R. No. 196804, EN BANC, October 9, 2012, BERSAMIN, *J.*

A candidate who does not file a valid CoC may not be validly substituted, because a person without a valid CoC is not considered a candidate in much the same way as any person who has not filed a CoC is not at all a candidate.

Ramon was absolutely precluded from asserting an eligibility to run as Mayor of Lucena City for the fourth consecutive term. Resultantly, his CoC was invalid and ineffectual ab initio for containing the incurable defect consisting in his false declaration of his eligibility to run. The invalidity and inefficacy of his CoC made his situation even worse than that of a nuisance candidate because the nuisance candidate may remain eligible despite cancellation of his CoC or despite the denial of due course to the CoC pursuant to Section 69 of OEC.

FACTS:
Ramon Talaga was elected Mayor of Lucena City in the 2001, 2004 and 2007 elections. He served all his terms uninterrupted although he was preventively suspended in two occasions: a) October 13 - November14, 2005 b) September 4 - October 30, 2009. He again tried to run in the 2010 elections and filed his certificate of candidacy. Philip Castillo, the incumbent Vice Mayor and also a candidate for Mayor in the 2010 election filed a motion in the COMELEC to cancel the COC of Mayor Ramon Talaga as it is in contravention with the 3 term limit imposed by the Constitution. COMELEC gave due course to the petition and as a result Ramon Talaga was disqualified to run for Mayor.

Initially, Ramon Talaga filed an MR but later on withdrew and substituted his wife to run for the position of the Mayor instead. On election day on May 10, 2010, the name of Ramon remained printed on the ballots but the votes cast in his favor were counted in favor of Barbara Ruby as his substitute candidate, resulting in Barbara Ruby being ultimately credited with 44,099 votes as against Castillo's 39,615 votes.

It was only on May 13, 2010 when the COMELEC En Banc, upon the recommendation of its Law Department, gave due course to Barbara Ruby's CoC and CONA through Resolution No. 8917, thereby including her in the certified list of candidates. Consequently, the CBOC proclaimed Barbara Ruby as the newly-elected Mayor of Lucena City.
Hence, Castillo filed a petition for annulment of proclamation of Barbara Ruby Talaga. Castillo contends that there was no valid substitution hence the votes for Talaga should be considered stray votes and he should be declared as the Mayor instead.

ISSUE:
Whether there was a valid substitution by Barbara Ruby Talaga. (NO)

RULING:
There was no valid substitution. A non-candidate like Ramon had no right to pass on to his substitute. For there to be a valid substitution, there must be a valid COC. The declaration of Ramon's disqualification rendered his COC invalid; hence he was not a valid candidate to be properly substituted.

Considering that a cancelled CoC does not give rise to a valid candidacy, there can be no valid substitution of the candidate under Section 77 of OEC. It should be clear, too, that a candidate who does not file a valid CoC may not be validly substituted, because a person without a valid CoC is not considered a candidate in much the same way as any person who has not filed a CoC is not at all a candidate.

Likewise, a candidate who has not withdrawn his CoC in accordance with Section 73 of OEC may not be substituted. A withdrawal of candidacy can only give effect to a substitution if the substitute candidate submits prior to the election a sworn CoC as required by Section 73 of OEC.

To accord with the constitutional and statutory proscriptions, Ramon was absolutely precluded from asserting an eligibility to run as Mayor of Lucena City for the fourth consecutive term. Resultantly, his CoC was invalid and ineffectual ab initio for containing the incurable defect consisting in his false declaration of his eligibility to run. The invalidity and inefficacy of his CoC made his situation even worse than that of a nuisance candidate because the nuisance candidate may remain eligible despite cancellation of his CoC or despite the denial of due course to the CoC pursuant to Section 69 of OEC. Labo doctrine should apply. The only time that a second placer is allowed to take the place of a disqualified winning candidate is when two requisites concur, namely: (a) the candidate who obtained the highest number of votes is disqualified; and (b) the electorate was fully aware in fact and in law of that candidate's disqualification as to bring such awareness within the realm of notoriety but the electorate still cast the plurality of the votes in favor of the ineligible candidate. Under this sole exception, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case the eligible candidate with the second highest number of votes may be deemed elected. But the exception did not apply in favor of Castillo simply because the second element was absent. The electorate of Lucena City were not the least aware of the fact of Barbara Ruby's ineligibility as the substitute. In fact, the COMELEC En Banc issued the Resolution finding her substitution invalid only on May 20, 2011, or a full year after the decisions.

MAYOR ABELARDO ABUNDO, SR., *Petitioner,* -versus- COMMISSION ON ELECTIONS and ERNESTO R. VEGA, *Respondent.*
G.R. No. 201716, EN BANC, January 8, 2013, VELASCO, JR., J.

To be considered as interruption of service, the law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit.

During the period of one year and ten months, title to hold such office and the corresponding right to assume the functions thereof still belonged to his opponent, as proclaimed election winner. Accordingly, Abundo actually held the office and exercised the functions as mayor only upon his declaration, following the resolution of the protest, as duly elected candidate for only a little over one year and one month. The reality on the ground is that Abundo actually served less. The almost two-year period during which Abundo's opponent actually served as Mayor is and ought to be considered an involuntary interruption of Abundo's continuity of service. An involuntary interrupted term, cannot, in the context of the disqualification rule, be considered as one term for purposes of counting the three-term threshold.

FACTS:
For four successive regular elections, Abelardo Abundo vied for the position of municipal mayor of Viga, Catanduanes. In the 2004 electoral derby, the Viga municipal board of canvassers initially proclaimed as winner one Torres, who, in due time, performed the functions of the office of mayor. Abundo protested and was eventually declared the winner of the 2004 mayoralty electoral contest. Then came the 2010 elections where Abundo and Torres again opposed each other and Torres lost no time in seeking the former's disqualification to run, predicated on the three-consecutive term limit

rule. Comelec First Division ruled in favor of Abundo. Vega commenced a quo warranto action before the RTCto unseat Abundo on essentially the same grounds Torres raised. The RTC declared Abundo ineligible to serve as municipal mayor because he has already served three consecutive terms. Comelec's second division and en banc affirmed.

ISSUE:
Whether or not Abundo is deemed to have served three consecutive terms. (NO)

RULING:
Pursuant to Sec. 8, Art. X of the Constitution as well as in Sec. 43(b) of the LGC, voluntary renunciation of the office by the incumbent elective local official for any length of time shall not, in determining service for three consecutive terms, be considered an interruption in the continuity of service for the full term for which the elective official concerned was elected.

During the period of one year and ten months, title to hold such office and the corresponding right to assume the functions thereof still belonged to his opponent, as proclaimed election winner. Accordingly, Abundo actually held the office and exercised the functions as mayor only upon his declaration, following the resolution of the protest, as duly elected candidate for only a little over one year and one month. The reality on the ground is that Abundo actually served less. The almost two-year period during which Abundo's opponent actually served as Mayor is and ought to be considered an involuntary interruption of Abundo's continuity of service. An involuntary interrupted term, cannot, in the context of the disqualification rule, be considered as one term for purposes of counting the three-term threshold. It cannot be overemphasized that pending the favorable resolution of his election protest, Abundo was relegated to being an ordinary constituent since his opponent, as presumptive victor in the 2004 elections, was occupying the mayoralty seat. Hence, even if declared later as having the right to serve the elective position such declaration would not erase the fact that prior to the finality of the election protest, Abundo did not serve in the mayor's office and, in fact, had no legal right to said position.

SOFRONIO ALBANIA, *Petitioner,* -versus- COMMISSION ON ELECTIONS and EDGARDO TALLADO, *Respondent.*
G.R. No. 226792, EN BANC, June 6, 2017, PERALTA, *J.*

A violation of the three-term limit rule is not included among the grounds for disqualification, but a ground for a petition to deny due course to or cancel certificate of candidacy.

In this case, while respondent ran as Governor of Camarines Norte in the 2007 elections, he did not win as such. It was only after he filed a petition for correction of manifest error that he was proclaimed as the duly elected Governor. He assumed the post and served the unexpired term of his opponent from March 22, 2010 until June 30, 2010. Consequently, he did not hold the office for the full term of three years to which he was supposedly entitled to. Thus, such period of time that respondent served as Governor did not constitute a complete and full service of his term. The period when he was out of office involuntarily interrupted the continuity of his service as Governor. As he had not fully served the 2007-2010 term, and had not been elected for three consecutive terms as Governor, there was no violation of the three-term limit rule when he ran again in the 2016 elections.

FACTS:
Edgardo Tallado (Tallado) and Jesus Typoco (Typoco) were both candidates for the position of Governor in Camarines Norte. After losing the elections, Tallado questioned the results and was later

proclaimed as the winner and assumed office. He thereafter served as Governor for 2 more terms and again filed his certificate of candidacy for the same position. The Petitioner, a registered voter, filed a Petition for Disqualification on the ground that he violated the term limit under RA 7160 and his suspension from office for 1 year for being guilty of grave abuse of authority. The petition was dismissed for being filed out of time.

ISSUE:
Whether the Respondent is disqualified to run as Governor. (NO)

RULING:
The grounds for disqualification of a candidate are found under Sections 12 and 68 of Batas Pambansa Blg. 881, as amended, otherwise known as the Omnibus Election Code of the Philippines, as well as Section 40 of the Local Government Code.

Respondent's suspension from office is indeed not a ground for a petition for disqualification as Section 40(b) clearly speaks of removal from office as a result of an administrative offense that would disqualify a candidate from running for any elective local position. In fact, the penalty of suspension cannot be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications for the office as provided under Section 66(b) of R.A. No. 7160.

Since the petition filed was a petition to deny due course to cancel a certificate of candidacy, such petition must be filed within 25 days from the time of filing of the COC, as provided under Section 78 of the Omnibus Election Code. However, as the COMELEC found, the petition was filed beyond the reglementary period, and dismissed the petition for being filed out time.

In this case, respondent filed his COC for Governor of Camarines Norte for the 2016 elections on October 16, 2015, and he had 25 days therefrom to file the petition for denial of due course or cancellation of COC on the ground of violation of the three-term limit rule, which fell on November 10, 2015. However, the petition was filed only on November 13, 2015 which was already beyond the period to file the same; thus, find no grave abuse of discretion committed by the COMELEC in dismissing the petition for being filed out of time.

In this case, while respondent ran as Governor of Camarines Norte in the 2007 elections, he did not win as such. It was only after he filed a petition for correction of manifest error that he was proclaimed as the duly elected Governor. He assumed the post and served the unexpired term of his opponent from March 22, 2010 until June 30, 2010. Consequently, he did not hold the office for the full term of three years to which he was supposedly entitled to. Thus, such period of time that respondent served as Governor did not constitute a complete and full service of his term. The period when he was out of office involuntarily interrupted the continuity of his service as Governor. As he had not fully served the 2007-2010 term, and had not been elected for three consecutive terms as Governor, there was no violation of the three-term limit rule when he ran again in the 2016 elections.

ALROBEN J. GOH, *Petitioner* -versus- HON. LUCILO R. BAYRON and COMMISSION ON ELECTIONS, *Respondents.*
G.R. No. 212584, EN BANC, November 25, 2014, CARPIO, *J.*

The 1987 Constitution not only guaranteed the COMELEC's fiscal autonomy, but also granted its head, as authorized by law, to augment items in its appropriations from its savings.

Under these factual circumstances, we find it difficult to justify the COMELEC's reasons why it is unable to conduct recall elections in 2014 when the COMELEC was able to conduct recall elections in 2002 despite lack of the specific words "Conduct and supervision of x x x recall votes x x x" in the 2002 GAA. In the 2002 GAA, the phrase "Conduct and supervision of elections and other political exercises" was sufficient to fund the conduct of recall elections. In the 2014 GAA, there is a specific line item appropriation for the "Conduct and supervision of x x x recall votes x x x."

FACTS:
Goh filed before the COMELEC a recall petition, against Mayor Bayron due to loss of trust and confidence brought about by "gross violation of pertinent provisions of the Anti-Graft and Corrupt Practices Act, gross violation of pertinent provisions of the Code of Conduct and Ethical Standards for Public Officials, Incompetence, and other related gross inexcusable negligence/dereliction of duty, intellectual dishonesty and emotional immaturity as Mayor of Puerto Princesa City." The COMELEC found the recall petition sufficient in form and substance, but suspended the funding of any and all recall elections until the resolution of the funding issue. Mayor Bayron filed with the COMELEC an Omnibus Motion for Reconsideration and for Clarification. COMELEC en banc affirmed the resolution of the division.

ISSUE:
Whether the 2014 GAA provides the line item appropriation to allow the COMELEC to perform its constitutional mandate of conducting recall elections. (YES)

RULING:
The 1987 Constitution expressly provides the COMELEC with the power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall." The 1987 Constitution not only guaranteed the COMELEC's fiscal autonomy, but also granted its head, as authorized by law, to augment items in its appropriations from its savings.

Under these factual circumstances, we find it difficult to justify the COMELEC's reasons why it is unable to conduct recall elections in 2014 when the COMELEC was able to conduct recall elections in 2002 despite lack of the specific words "Conduct and supervision of x x x recall votes x x x" in the 2002 GAA. In the 2002 GAA, the phrase "Conduct and supervision of elections and other political exercises" was sufficient to fund the conduct of recall elections. In the 2014 GAA, there is a specific line item appropriation for the "Conduct and supervision of x x x recall votes x x x."

More importantly, the COMELEC admits in its Resolution No. 9882 that the COMELEC has "a line item for the 'Conduct and supervision of elections, referenda, recall votes and plebiscites.'" This admission of the COMELEC is a correct interpretation of this specific budgetary appropriation. To be valid, an appropriation must indicate a specific amount and a specific purpose. However, the purpose may be specific even if it is broken down into different related sub-categories of the same nature. For example, the purpose can be to "conduct elections," which even if not expressly spelled out covers regular, special, or recall elections. The purpose of the appropriation is still specific – to fund elections, which naturally and logically include, even if not expressly stated, not only regular but also special or recall elections.

AUTONOMOUS REGIONS
BAI SANDRA S. A. SEMA, *Petitioner* -versus- COMMISSION ON ELECTIONS and DIDAGEN P. DILANGALEN, *Respondents.*
G.R. No. 177597, EN BANC, July 16, 2008, CARPIO, *J.*

Only Congress can create provinces and cities because the creation of provinces and cities necessarily includes the creation of legislative districts, a power only Congress can exercise under Section 5, Article VI of the Constitution and Section 3 of the Ordinance appended to the Constitution.

The ARMM Regional Assembly cannot create a province without a legislative district because the Constitution mandates that every province shall have a legislative district. Moreover, the ARMM Regional Assembly cannot enact a law creating a national office like the office of a district representative of Congress because the legislative powers of the ARMM Regional Assembly operate only within its territorial jurisdiction as provided in Section 20, Article X of the Constitution.

FACTS:
Cotabato City is the first district of Maguindanao. Although it forms part of Maguindanao's first legislative district, it is not part of the ARMM but Region XII. ARMM Regional Assembly exercising its power to create provinces under Art VI Section 9 of RA 9054 enacted Muslim Mindanao Autonomy Act No. 201 (MMA Act 201) creating the Province of Shariff Kabunsuan which Maguindanao ratified. Cotabato City was then became part of Shariff Kabunsuan.

ISSUE:
Whether Section 19, Article VI of RA 9054, delegating to the ARMM Regional Assembly the power to create provinces, cities, municipalities and barangays, is constitutional . (NO)

RULING:
Section 19, Article VI of RA 9054 is unconstitutional insofar as it grants to the ARMM Regional Assembly the power to create provinces and cities, is void for it is contrary to the constitution, as well as Section 3 of the Ordinance appended to the Constitution.
The ARMM Regional Assembly cannot create a province without a legislative district because the Constitution mandates that every province shall have a legislative district. Moreover, the ARMM Regional Assembly cannot enact a law creating a national office like the office of a district representative of Congress because the legislative powers of the ARMM Regional Assembly operate only within its territorial jurisdiction as provided in Section 20, Article X of the Constitution. Thus, we rule that MMA Act 201, enacted by the ARMM Regional Assembly and creating the Province of Shariff Kabunsuan, is void.

DATU MICHAEL ABAS KIDA, in his personal capacity, and in representation of MAGUINDANAO FEDERATION OF AUTONOMOUS IRRIGATORS ASSOCIATION, INC., HADJI MUHMINA J. USMAN, JOHN ANTHONY L. LIM, JAMILON T. ODIN, ASRIN TIMBOL JAIYARI, MUJIB M. KALANG, ALIH AL-SAIDI J. SAPI-E, KESSAR DAMSIE ABDIL, and BASSAM ALUH SAUPI, *Petitioners*, -versus- SENATE OF THE PHILIPPINES, represented by its President JUAN PONCE ENRILE, HOUSE OF REPRESENTATIVES, thru SPEAKER FELICIANO BELMONTE, COMMISSION ON ELECTIONS, thru its Chairman, SIXTO BRILLANTES, JR., PAQUITO OCHOA, JR., Office of the President Executive Secretary, FLORENCIO ABAD, JR., Secretary of Budget, and ROBERTO TAN, Treasurer of the Philippines, *Respondents.*
G.R. No. 196271, EN BANC, February 28, 2012, BRION, J.

RA No. 10153 was passed in order to synchronize the ARMM elections with the national and local elections. In the course of synchronizing the ARMM elections with the national and local elections, Congress had to grant the President the power to appoint OICs in the ARMM.
While the Constitution does not expressly instruct Congress to synchronize the national and local elections, the intention can be inferred from the following provisions of the Transitory Provisions (Article XVIII) of the Constitution, which states that the first elections of Members of the Congress under this Constitution shall be held on the second Monday of May, 1987. The first local elections shall be held on a date to be determined by the President, which may be simultaneous with the election of the Members of the Congress. It shall include the election of all Members of the city or municipal councils in the Metropolitan Manila area.

FACTS:
Pursuant to the constitutional mandate of synchronization, RA No. 10153 postponed the regional elections in the Autonomous Region in Muslim Mindanao, which were scheduled to be held on the second Monday of August 2011, to the second Monday of May 2013 and recognized the President's power to appoint officers-in-charge (OICs) to temporarily assume these positions upon the expiration of the terms of the elected officials. Datu Michael Abas Kida, et al. filed a motion for reconsideration assailing constitutionality of R.A. 10153 on the ground that the constitution gave ARMM a special status and is separate and distinct from the ordinary local government units.

ISSUES:
1. Whether or not the Constitution mandate the synchronization of ARMM regional elections with national and local elections.
2. Whether or not by granting the President the power to appoint OICs violate the elective and representative nature of ARMM regional legislative and executive offices.
3. Whether or not ARMM regional officials should be allowed to remain in their respective positions until the May 2013 elections since there is no specific provision in the Constitution which prohibits regional elective officials from performing their duties in a holdover capacity.

RULING:
1. Yes. While the Constitution does not expressly instruct Congress to synchronize the national and local elections, the intention can be inferred from the following provisions of the Transitory Provisions (Article XVIII) of the Constitution, which states that the first elections of Members of the Congress under this Constitution shall be held on the second Monday of May, 1987. The first local elections shall be held on a date to be determined by the President, which may be simultaneous with the election of the Members of the Congress. It shall include the election of all Members of the city or municipal councils in the Metropolitan Manila area. The framers of the Constitution during the deliberation, through Davide could not have expressed their objective more clearly that there will be a single election in 1992 for all elective officials – from the President down to the municipal officials. Significantly, the framers were even willing to temporarily lengthen or shorten the terms of elective officials in order to meet this objective, highlighting the importance of this constitutional mandate.

2. No. Section 3 of RA No. 10153, which mandates the President shall appoint officers-in-charge for the Office of the Regional Governor, Regional Vice Governor and Members of the Regional Legislative Assembly who shall perform the functions pertaining to the said offices until the officials duly elected in the May 2013 elections shall have qualified and assumed office. The above-quoted provision did not change the basic structure of the ARMM regional government. On the contrary, this provision clearly preserves the basic structure of the ARMM regional government when it recognizes the offices

of the ARMM regional government and directs the OICs who shall temporarily assume these offices to perform the functions pertaining to the said offices.

3. No. The clear wording of Section 8, Article X of the Constitution expresses the intent of the framers of the Constitution to categorically set a limitation on the period within which all elective local officials can occupy their offices. It is established that elective ARMM officials are also local officials; they are, thus, bound by the three-year term limit prescribed by the Constitution. It, therefore, becomes irrelevant that the Constitution does not expressly prohibit elective officials from acting in a holdover capacity. Short of amending the Constitution, Congress has no authority to extend the three-year term limit by inserting a holdover provision in RA No. 9054. Thus, the term of three years for local officials should stay at three (3) years, as fixed by the Constitution, and cannot be extended by holdover by Congress.

FUNDAMENTAL POWERS AND THE BILL OF RIGHTS

CARLOS SUPERDRUG CORP., doing business under the name and style "Carlos Superdrug," ELSIE M. CANO, doing business under the name and style "Advance Drug," Dr. SIMPLICIO L. YAP, JR., doing business under the name and style "City Pharmacy," MELVIN S. DELA SERNA, doing business under the name and style "Botica dela Serna," and LEYTE SERV-WELL CORP., doing business under the name and style "Leyte Serv-Well Drugstore," *Petitioners,* -versus- DEPARTMENT OF SOCIAL WELFARE and DEVELOPMENT (DSWD), DEPARTMENT OF HEALTH (DOH), DEPARTMENT OF FINANCE (DOF), DEPARTMENT OF JUSTICE (DOJ), and DEPARTMENT OF INTERIOR and LOCAL GOVERNMENT (DILG), *Respondents.*

G.R. NO. 166494, EN BANC, June 29, 2007, AZCUNA, *J*.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

Given these, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because petitioners have not taken time to calculate correctly and come up with a financial report, so that they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage

FACTS:

Petitioners, as domestic corporations and proprietors operating drugstores in the Philippines, assailed the constitutionality of Sec. 4(a) of the Expanded Senior Citizens Act which grants a 20% discount in the purchase of medicines for the exclusive use of the senior citizens. They argued that the law is confiscatory because it infringes Art. III, Sec. 9 of the Constitution which provides that private property shall not be taken for public use without just compensation. They maintained that the reduction in their total revenues resulting from the grant of discount is a forced subsidy corresponding to the taking of private property for public use or benefit, for which they should be entitled to a just compensation, but the law failed to provide a scheme whereby they will be justly compensated.

ISSUE:

Whether the State's imposition upon private establishments of the burden of partly subsidizing a government program violates Art. III, Sec. 9 of the Constitution. (NO)

RULING:
The Senior Citizens Act was enacted primarily to maximize the contribution of senior citizens to nation-building, and to grant benefits and privileges to them for their improvement and well-being as the State considers them an integral part of our society.
The law is a legitimate exercise of police power which has general welfare for its object. For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare. While the Constitution protects property rights, the State, in the exercise of police power, can intervene in the operations of a business which may result in an impairment of property rights in the process. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor. Thus, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage.
Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

Given these, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because petitioners have not taken time to calculate correctly and come up with a financial report, so that they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage.

DRUGSTORES ASSOCIATION OF THE PHILIPPINES, INC. AND NORTHERN LUZON DRUG CORPORATION, *Petitioners*, -versus- NATIONAL COUNCIL ON DISABILITY AFFAIRS; DEPARTMENT OF HEALTH; DEPARTMENT OF FINANCE; BUREAU OF INTERNAL REVENUE; DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT; AND DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, *Respondent*.
G.R. No. 194561, THIRD DIVISION, September 14, 2016, PERALTA, *J*.

A legislative act based on the police power requires the concurrence of a lawful subject and a lawful method. In more familiar words, (a) the interests of the public generally, as distinguished from those of a particular class, should justify the interference of the state; and (b) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. The PWD mandatory discount on the purchase of medicine is supported by a valid objective or purpose as aforementioned. It has a valid subject considering that the concept of public use is no longer confined to the traditional notion of use by the public, but held synonymous with public interest, public benefit,

public welfare, and public convenience. As in the case of senior citizens, the discount privilege to which the PWDs are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related.

FACTS:
On March 24, 1992, Republic Act (R.A.) No. 7277, entitled "An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and their Integration into the Mainstream of Society and for Other Purposes," otherwise known as the "Magna Carta for Disabled Persons," was passed into law.

On April 30, 2007, Republic Act No. 94427 was enacted amending R.A. No. 7277. The Title of R.A. No. 7277 was amended to read as "Magna Carta for Persons with Disability" and all references on the law to "disabled persons" were amended to read as "persons with disability" (PWD).8 Specifically, R.A. No. 9442 granted the PWDs a twenty (20) percent discount on the purchase of medicine, and a tax deduction scheme was adopted whereincovered establishments may deduct the discount granted from gross income based on the net cost of goods sold or services rendered.

The Implementing Rules and Regulations (IRR) of R.A. No. 944210 was jointly promulgated by the Department of Social Welfare and Development (DSWD), Department of Education, Department of Finance (DOF), Department of Tourism, Department of Transportation and Communication, Department of the Interior and Local Government (DILG) and Department of Agriculture.

On December 9, 2008, the DOF issued Revenue Regulations No. 1-200916 prescribing rules and regulations to implement R.A. 9442 relative to the tax privileges of PWDs and tax incentives for establishments granting the discount. Section 4 of Revenue Regulations No.001-09 states that drugstores can only deduct the 20% discount from their gross income subject to some conditions.
On May 20, 2009, the DOH issued A.O. No. 2009-001118 specifically stating that the grant of 20% discount shall be provided in the purchase of branded medicines and unbranded generic medicines from all establishments dispensing medicines for the exclusive use of the PWDs. It also detailed the guidelines for the provision of medical and related discounts and special privileges to PWDs pursuant to R.A. 9442.
On July 28, 2009, petitioners filed a Petition for Prohibition with application for a Temporary Restraining Order and/or a Writ of Preliminary Injunctionbefore the Court of Appeals to annul and enjoin the implementation of the aforesaid laws.

On July 26, 2010, the CA rendered a Decision upholding the constitutionality of R.A. 7277 as amended, as well as the assailed administrative issuances. However, the CA suspended the effectivity of NCDA A.O. No. 1 pending proof of respondent NCDA's compliance with filing of said administrative order with the Office of the National Administrative Register (ONAR) and its publication in a newspaper of general circulation.

In a Resolution dated November 19, 2010, the CA dismissed petitioners' motion for reconsideration and lifted the suspension of the effectivity of NCDA A.O. No. 1 considering the filing of the same with ONAR and its publication in a newspaper of general circulation.

ISSUE:
Whether the mandated pwd discount is a valid exercise of police power. (YES)

RULING:
The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs. It is [t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

Police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. On the other hand, the power of eminent domain is the inherent right of the state (and of those entities to which the power has been lawfully delegated) to condemn private property to public use upon payment of just compensation.

In the exercise of police power, property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state. A legislative act based on the police power requires the concurrence of a lawful subject and a lawful method. In more familiar words, (a) the interests of the public generally, as distinguished from those of a particular class, should justify the interference of the state; and (b) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.
R.A. No. 7277 was enacted primarily to provide full support to the improvement of the total well-being of PWDs and their integration into the mainstream of society.

Hence, the PWD mandatory discount on the purchase of medicine is supported by a valid objective or purpose as aforementioned. It has a valid subject considering that the concept of public use is no longer confined to the traditional notion of use by the public, but held synonymous with public interest, public benefit, public welfare, and public convenience. As in the case of senior citizens, the discount privilege to which the PWDs are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Also, the means employed to provide a fair, just and quality health care to PWDs are reasonably related to its accomplishment, and are not oppressive, considering that as a form of reimbursement, the discount extended to PWDs in the purchase of medicine can be claimed by the establishments as allowable tax deductions pursuant to Section 32 of R.A. No. 9442 as implemented in Section 4 of DOF Revenue Regulations No. 1-2009. Otherwise stated, the discount reduces taxable income upon which the tax liability of the establishments is computed.

SOUTHERN LUZON DRUG CORPORATION, *Petitioner*, -versus- THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, THE NATIONAL COUNCIL FOR THE WELFARE OF DISABLED PERSONS, THE DEPARTMENT OF FINANCE, and THE BUREAU OF INTERNAL REVENUE, *Respondents.*
G.R. No. 199669, EN BANC, April 25, 2017, REYES, *J.*

To begin with, the issue of just compensation finds no relevance in the instant case as it had already been made clear in Carlos Superdrug that the power being exercised by the State in the imposition of senior citizen discount was its police power. Unlike in the exercise of the power of eminent domain, just compensation is not required in wielding police power. This is precisely because there is no taking involved, but only an imposition of burden.

FACTS:
In 2004, RA 9257 amending RA 7432 or "An Act to Maximize the Contribution of Senior Citizens to Nation-Building, Grant Benefits and Special Privileges and For Other Purposes," was signed into law. The new law retained the 20% discount on the purchase of medicines but removed the annual income ceiling thereby qualifying all senior citizens to the privileges under the law. RA 7277 pertaining to the "Magna Carta for Disabled Persons" was enacted, granting a 20% discount on purchase of medicines. Hence, Petitioners filed a Petition for Prohibition with application for TRO seeking to declare as unconstitutional Sec. 4 of RA 9257 and Sec. 32 of RA 9442.

ISSUE:
Whether the said provisions are constitutional. (YES)

RULING:
It is the bounden duty of the State to care for the elderly as they reach the point in their lives when the vigor of their youth has diminished and resources have become scarce. In the same way, providing aid for the disabled persons is an equally important State responsibility. Thus, the State is obliged to give full support to the improvement of the total well-being of disabled persons and their integration into the mainstream of society. As to the State, the duty emanates from its role as parens patriae which holds it under obligation to provide protection and look after the welfare of its people especially those who cannot tend to themselves. In fulfilling this duty, the State may resort to the exercise of its inherent powers: police power, eminent domain and power of taxation. It is in the exercise of its police power that the Congress enacted R.A. Nos. 9257 and 9442, the laws mandating a 20% discount on purchases of medicines made by senior citizens and PWDs. It is also in further exercise. of this power that the legislature opted that the said discount be claimed as tax deduction, rather than tax credit, by covered establishments.

To begin with, the issue of just compensation finds no relevance in the instant case as it had already been made clear in *Carlos Superdrug* that the power being exercised by the State in the imposition of senior citizen discount was its police power. Unlike in the exercise of the power of eminent domain, just compensation is not required in wielding police power. This is precisely because there is no taking involved, but only an imposition of burden.

For the petitioner's clarification, the presentation of the financial statement is not of compelling significance in justifying its claim for just compensation. What is imperative is for it to establish that there was taking in the constitutional sense or that, in the imposition of the mandatory discount, the power exercised by the state was eminent domain. There is also no ousting of the owner or

deprivation of ownership. Establishments are neither divested of ownership of any of their properties nor is anything forcibly taken from them. They remain the owner of their goods and their profit or loss still depends on the performance of their sales.

Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. "The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another."

To recognize all senior citizens as a group, without distinction as to income, is a valid classification. The Constitution itself considered the elderly as a class of their own and deemed it a priority to address their needs. It needs no further explanation that PWDs have special needs which, for most,' last their entire lifetime. They constitute a class of their own, equally deserving of government support as our elderlies. While some of them maybe willing to work and earn income for themselves, their disability deters them from living their full potential. Thus, the need for assistance from the government to augment the reduced income or productivity brought about by their physical or intellectual limitations.

CRISOSTOMO B. AQUINO, *Petitioner*, -versus- MUNICIPALITY OF MALAY, AKLAN, represented by HON. MAYOR JOHN P. YAP, SANGGUNIANG BA YAN OF MALAY, AKLAN, represented by HON. EZEL FLORES, DANTE PASUGUIRON, ROWEN AGUIRRE, WILBEC GELITO, JUPITER GALLENERO, OFFICE OF THE MUNICIPAL ENGINEER, OFFICE OF THE MUNICIPAL TREASURER, BORACAY PNP CHIEF, BORACAY FOUNDATION, INC., represented by NENETTE GRAF, MUNICIPAL AUXILIARY POLICE, and JOHN and JANE DOES, *Respondents.*
G.R. No. 211356, THIRD DIVISION, September 29, 2014, VELASCO, JR., *J.*

In the exercise of police power and the general welfare clause, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government. Otherwise stated, the government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare.
One such piece of legislation is the LGC, which authorizes city and municipal governments, acting through their local chief executives, to issue demolition orders. Under existing laws, the office of the mayor is given powers not only relative to its function as the executive official of the town; it has also been endowed with authority to hear issues involving property rights of individuals and to come out with an effective order or resolution thereon.

FACTS:
Boracay West Cove applied for the issuance of a building permit covering the construction of a hotel over a parcel of land. However, its application was denied on the ground that the proposed construction site was within the "no build zone." Meanwhile, it continued with the construction of the resort hotel. Subsequently, the Office of the Mayor of Malay issued an Executive Order, ordering the closure and demolition of the hotel.

ISSUE:
Whether the mayor can order the demolition of illegally constructed establishments without resorting to judicial remedy. (YES)

RULING:

Sec. 444 (b)(3)(vi) of the Local Government Code empowers the mayor to order the closure and removal of illegally constructed establishments for failing to secure the necessary permits. However, under the law, insofar as illegal constructions are concerned, the mayor can order their closure and demolition only after satisfying the requirement of due notice and hearing. In this case at bar, Boracay West Cove admittedly failed to secure the necessary permits before the construction of the hotel; and, the due process requirement is deemed to have been sufficiently complied with since the company received notices to comply with the ordinance and yet it failed to do so.
In the exercise of police power and the general welfare clause, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government. Otherwise stated, the government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare.
One such piece of legislation is the LGC, which authorizes city and municipal governments, acting through their local chief executives, to issue demolition orders. Under existing laws, the office of the mayor is given powers not only relative to its function asthe executive official of the town; it has also been endowed with authorityto hear issues involving property rights of individuals and to come out with an effective order or resolution thereon.

MARK ANTHONY V. ZABAL, THITING ESTOSO JACOSALEM, AND ODON S. BANDIOLA , *Petitioners,* -versus- RODRIGO R. DUTERTE, President of the Republic of the Philippines; SALVADOR C. MEDIALDEA, Executive Secretary; and EDUARDO M. AÑO, [Secretary] of the Department of the Interior and Local Government , *Respondents.*
G.R. No. 238467, EN BANC, February 12, 2019, DEL CASTILLO, *J.*

Proclamation No. 475 does not pose an actual impairment on the right to travel*. In fine,* ***this case does not actually involve the right to travel*** *in its essential sense contrary to what petitioners want to portray. Any bearing that Proclamation No. 475 may have on the right to travel is* ***merely corollary to the closure of Boracay*** *and the ban of tourists and non-residents therefrom which* ***were necessary incidents of the island's rehabilitation****.*
There is certainly no showing that Proclamation No. 475 deliberately meant to impair the right to travel. The questioned proclamation is clearly focused on its purpose of rehabilitating Boracay and any intention to directly restrict the right cannot, in any manner, be deduced from its import.

FACTS:
Petitioners Zabal and Jacosalem are both residents of Boracay who, at the time of the filing of the petition, were earning a living from the tourist activities therein. While not a resident, Petitioner Bandiola, for his part, claims to occasionally visit Boracay for business and pleasure.
Claiming that Boracay has become a cesspool, President Duterte first made public his plan to shut it down during a business forum held in Davao. President Duterte ordered the shutting down of the island in a cabinet meeting held on April 4, 2018. This was confirmed by then Presidential Spokesperson Roque, Jr. wherein he formally announced that the total closure of Boracay would be for a maximum period of six months starting April 26, 2018.
Petitioners claim that ever since the news of Boracay's closure came about, fewer tourists had been engaging the services of Zabal and Jacosalem such that their earnings were barely enough to feed their families. Hence, despite the fact that the government was then yet to release a formal issuance on the matter, petitioners filed the Petition for Prohibition and Mandamus with Application for Temporary Restraining Order, Preliminary Injunction, and/or Status Quo Ante Order on April 25, 2018.

On May 18, 2018, petitioners filed a Supplemental Petition stating that the day following the filing of

their original petition or on April 26, 2018, President Duterte issued **Proclamation No. 475** formally declaring a state of calamity in Boracay and ordering its closure for six months from April 26, 2018 to October 25, 2018. The closure was implemented on even date. Thus, in addition to what they prayed for in their original petition, petitioners implore the Court to declare as unconstitutional Proclamation No. 475 insofar as it orders the closure of Boracay and **ban of tourists and non-residents therefrom**.

ISSUE:
Whether Proclamation No. 475 constitute an impairment on the right to travel. (NO)

RULING:
Proclamation No. 475 does not pose an actual impairment on the right to travel. Petitioners claim that Proclamation No. 475 impairs the right to travel based on the following provisions:

> NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered subject to applicable laws, rules, regulations and jurisprudence.
> xxx xxx xxx
> The Municipality of Malay, Aklan is also hereby directed to ensure that **no tourist will be allowed entry to the island of Boracay** until such time that the closure has been lifted by the President.

The activities proposed to be undertaken to rehabilitate Boracay involved inspection, testing, demolition, relocation, and construction. These could not have been implemented freely and smoothly with tourists coming in and out of the island not only because of the possible disruption that they may cause to the works being undertaken, but primarily because their safety and convenience might be compromised.

Also, the contaminated waters in the island were not just confined to a small manageable area. The excessive water pollutants were all over Bolabog beach and the numerous illegal drainpipes connected to and discharging wastewater over it originate from different parts of the island. Indeed, the activities occasioned by the necessary digging of these pipes and the isolation of the contaminated beach waters to give way to treatment could not be done in the presence of tourists. Aside from the dangers that these contaminated waters pose, hotels, inns, and other accommodations may not be available as they would all be inspected and checked to determine their compliance with environmental laws.

Moreover, it bears to state that a piece-meal closure of portions of the island would not suffice since as mentioned, illegal drainpipes extend to the beach from various parts of Boracay. Also, most areas in the island needed major structural rectifications because of numerous resorts and tourism facilities which lie along easement areas, illegally reclaimed wetlands, and of forested areas that were illegally cleared for construction purposes. Hence, the need to close the island in its entirety and ban tourists therefrom.

In fine, **this case does not actually involve the right to travel** in its essential sense contrary to what petitioners want to portray. Any bearing that Proclamation No. 475 may have on the right to travel is **merely corollary to the closure of Boracay** and the ban of tourists and non-residents therefrom

which **were necessary incidents of the island's rehabilitation**.
There is certainly no showing that Proclamation No. 475 deliberately meant to impair the right to travel. The questioned proclamation is clearly focused on its purpose of rehabilitating Boracay and any intention to directly restrict the right cannot, in any manner, be deduced from its import.
Also significant to note is that **the closure** of Boracay **was only temporary** considering the categorical pronouncement that it was only for a definite period of six months. Hence, if at all, **the impact of Proclamation No. 475 on the right to travel is not direct but merely consequential**; and, the same is only for a reasonably short period of time or merely temporary.

JOSE J. FERRER, JR. *Petitioner,* -versus- CITY MAYOR HERBERT BAUTISTA, CITY COUNCIL OF QUEZON CITY, CITY TREASURER OF QUEZON CITY, and CITY ASSESSOR OF QUEZON CITY, *Respondents.*
G.R. No. 210551, EN BANC, June 30, 2015, PERALTA, *J.*

The levy of Socialized Housing Tax is primarily for urban development and housing program; thus, for the general welfare of the entire city. It is therefore in the exercise of police power implemented through taxation. In the exercise of police power, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government.

FACTS:
The Quezon City Council enacted Ordinance which imposes upon real properties a Socialized Housing Tax which shall accrue to the Socialized Housing Programs of the Quezon City Government. Jose Ferrer, a registered owner of a residential property in Quezon City filed the instant petition for certiorari, assailing the subject ordinance. He asserts that it does not find basis in the social justice principle enshrined in the Constitution. For him, the SHT cannot be viewed as a "charity" from real property owners since it is forced, not voluntary; thereby burdening them with the expenses to provide funds for housing of informal settlers.

ISSUE:
Whether the imposition of SHT shall be struck down for arbitrary intrusion into private rights of real property owners. (NO)

RULING:
The Constitution explicitly espouses the view that the use of property bears a social function and that all economic agents shall contribute to the common good. In this case, the imposition of SHT on real property is primarily for urban development and housing program; thus, for the general welfare. Removing slum areas in Quezon City is not only beneficial to the underprivileged and homeless constituents but advantageous to the real property owners as well. The situation will improve the value of the their property investments, fully enjoying the same in view of an orderly, secure, and safe community, and will enhance the quality of life of the poor, making them law-abiding constituents and better consumers of business products.
Consequently, the levy of SHT is primarily in the exercise of police power for the general welfare of the entire city. In the exercise of police power, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government. In this case, it is taxation that made the implement of the state's police power.

PHILIPPINE HEALTH CARE PROVIDERS, INC, *Petitioner* -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 167330, FIRST DIVISION, September 18, 2009, CORONA, *J.*

As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who is to pay it. So potent indeed is the power that it was once opined that "the power to tax involves the power to destroy."
Petitioner claims that the assessed DST to date which amounts to ₱376 millionis way beyond its net worth of ₱259 million. Respondent never disputed these assertions. Given the realities on the ground, imposing the DST on petitioner would be highly oppressive. It is not the purpose of the government to throttle private business. On the contrary, the government ought to encourage private enterprise Petitioner, just like any concern organized for a lawful economic activity, has a right to maintain a legitimate business.

FACTS:
Philippine Health Care Providers, Inc. is a domestic corporation with a net worth of P259 million. The Commissioner of Internal Revenue sent PHCPI a final assessment notice demanding the payment of deficiency documentary stamp taxes (DST) amounting to P376 million. PHCPI claimed that the assessed DST to date which amounts to P376 million is way beyond its net worth of P259 million.

ISSUE:
Whether the exercise of the power of taxation in this case is oppressive. (YES)

RULING:
As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who is to pay its So potent indeed is the power that it was once opined that "the power to tax involves the power to destroy."
Petitioner claims that the assessed DST to date which amounts to ₱376 million is way beyond its net worth of ₱259 million. Respondent never disputed these assertions. Given the realities on the ground, imposing the DST on petitioner would be highly oppressive. It is not the purpose of the government to throttle private business. On the contrary, the government ought to encourage private enterprise Petitioner, just like any concern organized for a lawful economic activity, has a right to maintain a legitimate business. As aptly held in *Roxas, et al. v. CTA, et al.*:

The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg."
Legitimate enterprises enjoy the constitutional protection not to be taxed out of existence. Incurring losses because of a tax imposition may be an acceptable consequence but killing the business of an entity is another matter and should not be allowed. It is counter-productive and ultimately subversive of the nation's thrust towards a better economy which will ultimately benefit the majority of our people.

The rate of DST under Section 185 is equivalent to 12.5% of the premium charged. Its imposition will elevate the cost of health care services. This will in turn necessitate an increase in the membership fees, resulting in either placing health services beyond the reach of the ordinary wage earner or driving the industry to the ground. At the end of the day, neither side wins, considering the indispensability of the services offered by HMOs.

NATIONAL CORPORATION POWER, *Petitioner* – versus- CITY OF CABANATUAN represented by its CITY MAYOR, HON. HONORATO PEREZ, *Respondent*
G.R. No. 177332, SECOND DIVISION, October 01, 2014, Leonen, J.

A surcharge regardless of how it is computed is already a deterrent. While it is true that imposing a higher amount may be a more effective deterrent, it cannot be done in violation of law and in such a way as to make it confiscatory. The Court finds this reasoning not compelling for us to deviate from the express provisions of Section 168 of the Local Government Code. When a law speaks unequivocally, it is not the province of this court to scan its wisdom or its policy.
In this case, the yearly accrual of the 25% surcharge is unconscionable. The City's yearly imposition of the 25% surcharge, which was sustained by the trial court and the Court of Appeals, resulted in an aggregate penalty that is way higher than NAPOCOR's basic tax liabilities. Furthermore, it effectively exceeded the prescribed 72% ceiling for interest under Section 168 of the Local Government Code. Here, the City applied the 25% cumulative surcharge for more than three years. Its computation undoubtedly exceeded the 72% ceiling imposed under Section 168 of the Local Government Code.

FACTS:
The City of Cabanatuan (the City) assessed the National Power Corporation (NAPOCOR) a franchise tax amounting to 808,606.41, representing 75% of 1% of its gross receipts for 1992. NAPOCOR refused to pay, arguing that it is exempt from paying the franchise tax.Consequently, on November 9, 1993, the City filed a complaint before the Regional Trial Court of Cabanatuan City, demanding NAPOCOR to pay the assessed tax due plus 25% surcharge and interest of 2% per month of the unpaid tax, and costs of suit.

In the order dated January 25, 1996, the trial court declared that the City could not impose a franchise tax on NAPOCOR and accordingly dismissed the complaint for lack of merit. In the March 12, 2001 decision of the Court of Appeals (Eighth Division) in CA-G.R. CV No. 53297, the appellate court reversed the trial court and found NAPOCOR liable to pay franchise tax.

The trial court sustained the City's computation of the surcharge based on the total unpaid tax for each year proper tax for the year + unpaid tax of the previous year/s], which, in effect, resulted in the imposition of the 25% surcharge for every year of default in the payment of a franchise tax, thereby arriving at the total amount of 13,744,096.69. NAPOCOR, on the other hand, insists a onetime application of the 25% surcharge based on the total franchise tax due and unpaid (10,286,468.57 from 1992 to 2002), arriving at the sum of only 2,571,617.14.

ISSUE:
Whether or not the imposition of the 25% surcharge for every year of default in the payment of a franchise tax is correct. (NO)

RULING:
There is nothing in the Court of Appeals' decision that would justify the interpretation that the statutory penalty of 25% surcharge should be charged yearly from due date until full payment. If that was the intention of the Court of Appeals, it should have so expressly stated in the dispositive portion of its decision.
Article 1226 of the Civil Code refers to penalties prescribed in contracts, not to penalties embodied in a judgment. The fallo says "tax due and unpaid," which simply means tax owing or owed or "tax due that was not paid." The "and" is "a conjunction used to denote a joinder or union, 'binding together,' 'relating the one to the other.'" In the context of the decision rendered, there is no ambiguity.

As understood from the common and usual meaning of the conjunction "and," the words "tax due" and "unpaid" are inseparable. Hence, when the taxpayer does not pay its tax due for a particular year, then a surcharge is applied on the full amount of the tax due. However, when the taxpayer makes a partial payment of the tax due, the surcharge is applied only on the balance or the part of the tax due that remains unpaid. It is in this sense that the fallo of the Court of Appeals decision should be read, i.e., a 25% surcharge is to be added to the proper franchise tax so due and unpaid for each year.
The proper franchise tax due each year is computed, with paragraphs 1 and 2 of the fallo being applied, based on the gross receipts earned by NAPOCOR. Since the franchise tax due was not paid on time, a surcharge of 25% is imposed as an addition to the main tax required to be paid. This is the proper meaning of paragraph 3 of the fallo.

Section 168 of the Local Government Code categorically provides that the local government unit may impose a surcharge not exceeding 25% of the amount of taxes, fees, or charges not paid on time.

> SECTION 168. Surcharges and Penalties on Unpaid Taxes, Fees, or Charges. – The sanggunian may impose a surcharge not exceeding twenty-five (25%) of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding two percent (2%) per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months.

The surcharge is a civil penalty imposed once for late payment of a tax. Contrast this with the succeeding provisions on interest, which was imposable at the rate not exceeding 2% per month of the unpaid taxes until fully paid. The fact that the interest charge is made proportionate to the period of delay, whereas the surcharge is not, clearly reveals the legislative intent for the different modes in their application.

A surcharge regardless of how it is computed is already a deterrent. While it is true that imposing a higher amount may be a more effective deterrent, it cannot be done in violation of law and in such a way as to make it confiscatory. The Court finds this reasoning not compelling for us to deviate from the express provisions of Section 168 of the Local Government Code. When a law speaks unequivocally, it is not the province of this court to scan its wisdom or its policy.

The yearly accrual of the 25% surcharge is unconscionable. The City's yearly imposition of the 25% surcharge, which was sustained by the trial court and the Court of Appeals, resulted in an aggregate penalty that is way higher than NAPOCOR's basic tax liabilities. Furthermore, it effectively exceeded the prescribed 72% ceiling for interest under Section 168 of the Local Government Code. Here, the City applied the 25% cumulative surcharge for more than three years. Its computation undoubtedly exceeded the 72% ceiling imposed under Section 168 of the Local Government Code.

Taxes and its surcharges and penalties cannot be construed in such a way as to become oppressive and confiscatory. Taxes are implied burdens that ensure that individuals and businesses prosper in a conducive environment assured by good and effective government. A healthy balance should be maintained such that laws are interpreted in a way that these burdens do not amount to a confiscatory outcome. Taxes are not and should not be construed to drive businesses into insolvency. To a certain extent, a reasonable surcharge will provide incentive to pay; an unreasonable one delays payment and engages government in unnecessary litigation and expense.

Hence, the City's computation of the surcharge is oppressive and unconscionable. Since it is undisputed that NAPOCOR had already paid the amount of Pl2,868,085.71 to the City Treasurer of Cabanatuan City, the judgment has accordingly been fully satisfied.

B. DUE PROCESS

REPUBLIC OF THE PHILIPPINES, *Petitioner* –versus- JENNIFER B. CAGANDAHAN, *Respondent*. G.R. No. 166676, SECOND DIVISION, September 12, 2008, QUISUMBING, J.

Rep. Act No. 9048 removed from the ambit of Rule 108 of the Rules of Court the correction of such errors. Rule 108 now applies only to substantial changes and corrections in entries in the civil register. Under Rep. Act No. 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court

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In this case, respondent undisputedly has CAH. CAH is one of many conditions that involve intersex anatomy. During the twentieth century, medicine adopted the term "intersexuality" to apply to human beings who cannot be classified as either male or female.

Intersex individuals are treated in different ways by different cultures. In most societies, intersex individuals have been expected to conform to either a male or female gender role.

In deciding this case, we consider the compassionate calls for recognition of the various degrees of intersex as variations which should not be subject to outright denial. "It has been suggested that there is some middle ground between the sexes, a `no-man's land' for those individuals who are neither truly `male' nor truly `female'." The current state of Philippine statutes apparently compels that a person be classified either as a male or as a female, but this Court is not controlled by mere appearances when nature itself fundamentally negates such rigid classification. In the instant case, if we determine respondent to be a female, then there is no basis for a change in the birth certificate entry for gender. But if we determine, based on medical testimony and scientific development showing the respondent to be other than female, then a change in then subject's birth certificate entry is in order. In the absence of a law on the matter, the Court will not dictate on respondent concerning a matter so innately private as one's sexuality and lifestyle preferences, much less on whether or not to undergo medical treatment to reverse the male tendency due to CAH

FACTS:
On December 11, 2003, respondent Jennifer Cagandahan filed a Petition for Correction of Entries in Birth Certificate before the RTC, Branch 33 of Siniloan, Laguna.

In her petition, she alleged that she was born on January 13, 1981 and was registered as a female in the Certificate of Live Birth but while growing up, she developed secondary male characteristics and was diagnosed to have Congenital Adrenal Hyperplasia (CAH) which is a condition where persons thus afflicted possess both male and female characteristics. She further alleged that she was diagnosed to have clitoral hyperthropy in her early years and at age six, underwent an ultrasound where it was discovered that she has small ovaries. At age thirteen, tests revealed that her ovarian structures had minimized, she has stopped growing and she has no breast or menstrual development. She then alleged that for all interests and appearances as well as in mind and emotion, she has become a male person. Thus, she prayed that her birth certificate be corrected such that her gender be changed from female to male and her first name be changed from Jennifer to Jeff.

The petition was published in a newspaper of general circulation for three (3) consecutive weeks and was posted in conspicuous places by the sheriff of the court. The Solicitor General entered his appearance and authorized the Assistant Provincial Prosecutor to appear in his behalf.

Dr. Sionzon issued a medical certificate stating that respondent's condition is known as CAH. He explained that genetically respondent is female but because her body secretes male hormones, her female organs did not develop normally and she has two sex organs - female and male. He testified that this condition is very rare, that respondent's uterus is not fully developed because of lack of female hormones, and that she has no monthly period. He further testified that respondent's condition is permanent and recommended the change of gender because respondent has made up her mind, adjusted to her chosen role as male, and the gender change would be advantageous to her.

The RTC granted respondent's petition in a Decision.

ISSUE:
Whether the trial court erred in ordering the correction of entries in the birth certificate of respondent to change her sex or gender, from female to male, on the ground of her medical condition known as CAH, and her name from "Jennifer" to "Jeff," under Rules 103 and 108 of the Rules of Court.(NO)

RULING:
The determination of a person's sex appearing in his birth certificate is a legal issue and the court must look to the statutes. In this connection, Article 412 of the Civil Code provides:
ART. 412. No entry in a civil register shall be changed or corrected without a judicial order.

Together with Article 376 of the Civil Code, this provision was amended by Republic Act No. 9048 in so far as *clerical or typographical* errors are involved. The correction or change of such matters can now be made through administrative proceedings and without the need for a judicial order. In effect, Rep. Act No. 9048 removed from the ambit of Rule 108 of the Rules of Court the correction of such errors. Rule 108 now applies only to substantial changes and corrections in entries in the civil register.

Under Rep. Act No. 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court.

Respondent undisputedly has CAH. This condition causes the early or "inappropriate" appearance of male characteristics. A person, like respondent, with this condition produces too much androgen, a male hormone. A newborn who has XX chromosomes coupled with CAH usually has a (1) swollen clitoris with the urethral opening at the base, an ambiguous genitalia often appearing more male than female; (2) normal internal structures of the female reproductive tract such as the ovaries, uterus and fallopian tubes; as the child grows older, some features start to appear male, such as deepening of the voice, facial hair, and failure to menstruate at puberty. About 1 in 10,000 to 18,000 children are born with CAH.

CAH is one of many conditions that involve intersex anatomy. During the twentieth century, medicine

adopted the term "intersexuality" to apply to human beings who cannot be classified as either male or female.

Intersex individuals are treated in different ways by different cultures. In most societies, intersex individuals have been expected to conform to either a male or female gender role.

In deciding this case, we consider the compassionate calls for recognition of the various degrees of intersex as variations which should not be subject to outright denial. "It has been suggested that there is some middle ground between the sexes, a `no-man's land' for those individuals who are neither truly `male' nor truly `female'." The current state of Philippine statutes apparently compels that a person be classified either as a male or as a female, but this Court is not controlled by mere appearances when nature itself fundamentally negates such rigid classification.

In the instant case, if we determine respondent to be a female, then there is no basis for a change in the birth certificate entry for gender. But if we determine, based on medical testimony and scientific development showing the respondent to be other than female, then a change in the subject's birth certificate entry is in order.

Respondent here has simply let nature take its course and has not taken unnatural steps to arrest or interfere with what he was born with. And accordingly, he has already ordered his life to that of a male. Respondent could have undergone treatment and taken steps, like taking lifelong medication, to force his body into the categorical mold of a female but he did not. He chose not to do so. Nature has instead taken its due course in respondent's development to reveal more fully his male characteristics.

In the absence of a law on the matter, the Court will not dictate on respondent concerning a matter so innately private as one's sexuality and lifestyle preferences, much less on whether or not to undergo medical treatment to reverse the male tendency due to CAH. The Court will not consider respondent as having erred in not choosing to undergo treatment in order to become or remain as a female. Neither will the Court force respondent to undergo treatment and to take medication in order to fit the mold of a female, as society commonly currently knows this gender of the human species. Respondent is the one who has to live with his intersex anatomy. To him belongs the human right to the pursuit of happiness and of health. Thus, to him should belong the primordial choice of what courses of action to take along the path of his sexual development and maturation.

BRIGIDO B. QUIAO, *Petitioner,* -versus-RITA C. QUIAO, KITCHIE C. QUIAO, LOTIS C. QUIAO, PETCHIE C. QUIAO, represented by their mother RITA QUIAO, *Respondents.*
G.R. No 176556, SECOND DIVISION, July 4, 2012, Reyes, J.

While one may not be deprived of his "vested right," he may lose the same if there is due process and such deprivation is founded in law and jurisprudence. Here, the petitioner was accorded his right to due process. First, he was well-aware that the respondent prayed in her complaint that all of the conjugal properties be awarded to her. In fact, in his Answer, the petitioner prayed that the trial court divide the community assets between the petitioner and the respondent as circumstances and evidence warrant after the accounting and inventory of all the community properties of the parties. Second, when the decision for legal separation was promulgated, the petitioner never questioned the trial court's ruling forfeiting what the trial court termed as "net profits," pursuant to Article 129(7) of the Family Code. Thus, the petitioner cannot claim being deprived of his right to due process.

Moreover, Art. 176 of the Family Code specifically states that the guilty spouse must forfeit his/her share in the conjugal partnership profits.

FACTS:
Rita C. Quiao (Rita) and Brigido B. Quiao (Brigido) were married sometime in 1977. The Civil Code (not Family Code) governed their marriage, and because they did not stipulate a property regime, theirs was automatically a Conjugal Partnership of Gains. In 2000, Rita filed a complaint for legal separation against petitioner Brigido B. Quiao (Brigido). RTC rendered a decision declaring the legal separation thereby awarding the custody of their 3 minor children in favor of Rita and all remaining properties shall be divided equally between the spouses subject to the respective legitimes of the children and the payment of the unpaid conjugal liabilities.

Brigido's share, however, of the net profits earned by the conjugal partnership is forfeited in favor of the common children because Brigido is the offending spouse.

Neither party filed a motion for reconsideration and appeal within the period 270 days later or after more than nine months from the promulgation of the Decision, the petitioner filed before the RTC a Motion for Clarification, asking the RTC to define the term "Net Profits Earned."

RTC held that the phrase "NET PROFIT EARNED" denotes "the remainder of the properties of the parties after deducting the separate properties of each [of the] spouse and the debts." It further held that after determining the remainder of the properties, it shall be forfeited in favor of the common children because the offending spouse does not have any right to any share of the net profits earned, pursuant to Articles 63, No. (2) and 43, No. (2) of the Family Code.

The petitioner claims that the court a quo is wrong when it applied Article 129 of the Family Code, instead of Article 102. He confusingly argues that Article 102 applies because there is no other provision under the Family Code which defines net profits earned subject of forfeiture as a result of legal separation.

ISSUES:
1. Whether Article 102 on dissolution of absolute community or Article 129 on dissolution of conjugal partnership of gains is applicable in this case.
2. Whether the offending spouse acquired vested rights over ½ of the properties in the conjugal partnership. (NO)
3. Whether the computation of "net profits" earned in the conjugal partnership of gains the same with the computation of "net profits" earned in the absolute community. (NO)

RULING:
1. Article 129 governs in relation to Article 63(2) of the Family Code.

   While the couple was married before the effectivity of the Family Code, their separation took place when the Family Code was operative; therefore, the Family Code is the applicable law in the liquidation of CPG assets and liabilities.

2. The offending spouse did not acquire vested rights over ½ of the properties in the conjugal partnership.
   The petitioner is saying that since the property relations between the spouses is governed by the regime of Conjugal Partnership of Gains under the Civil Code, the petitioner acquired

vested rights over half of the properties of the Conjugal Partnership of Gains, pursuant to Article 143 of the Civil Code, which provides: "All property of the conjugal partnership of gains is owned in common by the husband and wife."

While one may not be deprived of his "vested right," he may lose the same if there is due process and such deprivation is founded in law and jurisprudence. Here, the petitioner was accorded his right to due process. First, he was well-aware that the respondent prayed in her complaint that all of the conjugal properties be awarded to her. In fact, in his Answer, the petitioner prayed that the trial court divide the community assets between the petitioner and the respondent as circumstances and evidence warrant after the accounting and inventory of all the community properties of the parties. Second, when the decision for legal separation was promulgated, the petitioner never questioned the trial court's ruling forfeiting what the trial court termed as "net profits," pursuant to Article 129(7) of the Family Code. Thus, the petitioner cannot claim being deprived of his right to due process.

Moreover, Art. 176 of the Family Code specifically states that the guilty spouse must forfeit his/her share in the conjugal partnership profits.

3. The computation of "net profits" earned in the conjugal partnership of gains is not the same with the computation of "net profits" earned in the absolute community.

When a couple enters into a regime of absolute community, the husband and the wife become joint owners of all the properties of the marriage. Whatever property each spouse brings into the marriage, and those acquired during the marriage (except those excluded under Article 92 of the Family Code) form the common mass of the couple's properties. And when the couple's marriage or community is dissolved, that common mass is divided between the spouses, or their respective heirs, equally or in the proportion the parties have established, irrespective of the value each one may have originally owned.

In this case, assuming arguendo that Art 102 is applicable, since it has been established that the spouses have no separate properties, what will be divided equally between them is simply the "net profits." And since the legal separation decision states that the ½ share decision in the net profits shall be awarded to the children, Brigido will still be left with nothing.

On the other hand, when a couple enters into a regime of conjugal partnership of gains under Article 142 of the Civil Code, "the husband and the wife place in common fund the fruits of their separate property and income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage." From the foregoing provision, each of the couple has his and her own property and debts. The law does not intend to effect a mixture or merger of those debts or properties between the spouses. Rather, it establishes a complete separation of capitals.

Here, since it was already established by the trial court that the spouses have no separate properties, there is nothing to return to any of them. The listed properties above are considered part of the conjugal partnership. Thus, ordinarily, what remains in the above-listed properties should be divided equally between the spouses and/or their respective heirs. However, since the trial court found the petitioner the guilty party, his share from the net profits of the conjugal partnership is forfeited in favor of the common children, pursuant to

Article 63(2) of the Family Code. Again, like in the absolute community regime, nothing will be returned to the guilty party in the conjugal partnership regime, because there is no separate property which may be accounted for in the guilty party's favor.

ANONYMOUS, *Complainant* –versus- MA. VICTORIA P. RADAM Utility Worker, Office of the Clerk of Court, Regional Trial Court of Alaminos City,*Respondent.*
AM No. P-07-2333, FIRST DIVISION, Dec 19, 2007, CORONA, *J*.

The essence of due process in an administrative proceeding is the opportunity to explain one's side, whether written or verbal.This presupposes that one has been previously apprised of the accusation against him or her. Here, respondent was deprived of both with regard to her alleged unbecoming conduct in relation to a certain statement in the birth certificate of her child.
Respondent was indicted only for alleged immorality for giving birth out of wedlock. It was the only charge of which she was informed. Judge Abella's investigation focused solely on that matter. Thus, the recommendation of the OCA that she be held administratively liable in connection with an entry in the birth certificate of Christian Jeon came like a thief in the night. It was unwarranted. Respondent was neither confronted with it nor given the chance to explain it. To hold her liable for a totally different charge of which she was totally unaware will violate her right to due process.

FACTS:
In an anonymous letter-complaint dated September 30, 2005, respondent Ma. Victoria Radam, utility worker in the Office of the Clerk of Court of the Regional Trial Court of Alaminos City in Pangasinan, was charged with immorality. The unnamed complainant alleged that respondent was unmarried but got pregnant and gave birth sometime in October 2005. The complainant claimed that respondent's behavior tainted the image of the judiciary.

In connection with the complaint, Judge Elpidio N. Abella conducted a discreet investigation to verify the allegations against respondent. Judge Abella made the following recommendation:

Since respondent admitted that she is single and that she got pregnant and gave birth to a baby boy without being married to the father of the child, albeit she advanced the reason for her remaining unmarried, it being that she and her boyfriend had a mutual plan to migrate to Canada, this Investigating Judge considers that such conduct of the respondent fell short of the strict standards of Court personnel and contrary to the Code of Judicial Ethics and the Civil Service Rules. A place in the judiciary demands upright men and women who must carry on with dignity, hence respondent is guilty of disgraceful and immoral conduct which cannot be countenanced by the Court. Certainly, the image of the Judiciary has been affected by such conduct of the respondent.

After reviewing the findings and recommendation of Judge Abella, the Office of the Court Administrator (OCA) recommended that, in accordance with *Villanueva v. Milan*, respondent be absolved of the charge of immorality because her alleged misconduct (that is, giving birth out of wedlock) did not affect the character and nature of her position as a utility worker. It observed:

There is no indication that the relationship of respondent to her alleged boyfriend has caused prejudice to any person or has adversely affected the performance of her function as utility worker to the detriment of the public service.

However, it proposed that she be held liable for conduct unbecoming a court employee and imposed a fine of P5,000 for stating in the birth certificate of her child Christian Jeon that the father

was "unknown" to her.[10]

ISSUE:
Whether the OCA is correct. (NO)

RULING:
The OCA correctly exonerated respondent from the charge of immorality. However, its recommendation to hold her liable for a charge of which she was not previously informed was wrong.

For purposes of determining administrative responsibility, giving birth out of wedlock is not *per se* immoral under civil service laws. For such conduct to warrant disciplinary action, the same must be "grossly immoral," that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.
For a particular conduct to constitute "disgraceful and immoral" behavior under civil service laws, it must be regulated on account of the concerns of public and secular morality. It cannot be judged based on personal bias, specifically those colored by particular mores. Nor should it be grounded on "cultural" values not convincingly demonstrated to have been recognized in the realm of public policy expressed in the Constitution and the laws. At the same time, the constitutionally guaranteed rights (such as the right to privacy) should be observed to the extent that they protect behavior that may be frowned upon by the majority.
In this case, it was not disputed that, like respondent, the father of her child was unmarried. Therefore, respondent cannot be held liable for disgraceful and immoral conduct simply because she gave birth to the child Christian Jeon out of wedlock.

Respondent was indicted only for alleged immorality for giving birth out of wedlock. It was the only charge of which she was informed. Judge Abella's investigation focused solely on that matter. Thus, the recommendation of the OCA that she be held administratively liable in connection with an entry in the birth certificate of Christian Jeon came like a thief in the night. It was unwarranted. Respondent was neither confronted with it nor given the chance to explain it. To hold her liable for a totally different charge of which she was totally unaware will violate her right to due process.

The essence of due process in an administrative proceeding is the opportunity to explain one's side, whether written or verbal.This presupposes that one has been previously apprised of the accusation against him or her. Here, respondent was deprived of both with regard to her alleged unbecoming conduct in relation to a certain statement in the birth certificate of her child.

An employee must be informed of the charges proferred against him, and ... the normal way by which the employee is so informed is by furnishing him with a copy of the charges against him. This is a basic procedural requirement that ... cannot be dispensed with and still remain consistent with the constitutional provision on due process. The second minimum requirement is that the employee charged with some misfeasance or malfeasance must have a reasonable opportunity to present his side of the matter, that is to say, his defenses against the charges levelled against him and to present evidence in support of his defenses.

MARGIE CORPUS MACIAS, *Complainant* –versus- MARIANO JOAQUIN S. MACIAS, PRESIDING JUDGE, BRANCH 28, REGIONAL TRIAL COURT, LILOY, ZAMBOANGA DEL NORTE, *Respondent.* A.M. No. RTJ-01-1650 (Formerly OCA IPI No. 01-1195-RTJ), THIRD DIVISION, September 29, 2009, NACHURA, *J.*

In more recent rulings, the Court applied substantial evidence as the normative quantum of proof necessary in resolving administrative complaints against judges.

When we dismiss a public officer or employee from his position or office for the commission of a grave offense in connection with his office, we merely require that the complainant prove substantial evidence. When we disbar a disgraceful lawyer, we require that complainant merely prove a clear preponderance of evidence to establish liability. There appears no compelling reason to require a higher degree of proof when we deal with cases filed against judges.

However, in this case, we are not convinced that complainant was able to prove, by substantial evidence, that respondent committed the acts complained of. Basic is the rule that in administrative proceedings, complainant bears the onus of establishing the averments of her complaint.If complainant fails to discharge this burden, respondent cannot be held liable for the charge.

FACTS:
This involves an administrative complaint filed by complainant Margie C. Macias charging her husband, Mariano Joaquin S. Macias (Judge Macias), with immorality and conduct prejudicial to the best interest of the service. The complaint was filed on March 7, 2001, when respondent was still sitting as the presiding judge of Branch 28 of the Regional Trial Court (RTC) of Liloy, Zamboanga del Norte.

Complainant alleged that sometime in 1998, respondent engaged in an illicit liaison and immoral relationship with a certain Judilyn Seranillos (Seranillos), single and in her early 20s. The relationship continued until the time of the filing of the complaint. Complainant enumerated some of the abuses committed by respondent, to wit:
(a) [Respondent] has been using court personnel, namely, Emmanuel "Botiong" Tenefrancia, process server, as constant escort of his paramour in going to their appointed trysts or in escorting back said woman to the place where she is staying, and as errand boy seeing to their needs when respondent and his mistress are together;

(b) Respondent has been using another court employee in the person of Camilo Bandivas, court sheriff, as contact person to his young lover and in summoning and bringing complainant's witnesses to respondent to be harassed and threatened;

(c) Said Judilyn Seranillos, respondent's lover, has been brought many times by respondent to his court in Liloy, Zamboanga del Norte, thereby scandalizing court personnel and lawyers, who sometimes must wait for the session to start because respondent and his mistress are not yet through with each other; That the scandalous relations of respondent with his mistress is an open secret among lawyers, court personnel and litigants [in] Liloy, Zamboanga del Norte;

(d) Respondent has not been calendaring (sic) cases nor holding court sessions nor court hearings on Mondays and Fridays so that he can have an extended date with his paramour, to the great prejudice of public service;

(e) Respondent and his paramour had often met at the house of Zoosima Ojano Carangan, aunt of respondent's paramour, [in] Taway, Ipil, Zamboanga del Sur, and the people of Taway know that respondent judge, who usually arrives in his car, has been shamelessly and immorally carrying on an illicit affair with said Judilyn Seranillos. Some inquisitive people usually go out of their houses upon

seeing respondent's car parked at the house of the aunt of respondent's young mistress, and these barrio folks often watch respondent come and go; and

(f) Respondent has one or two other women lovers whom he shamelessly cavorts even in the presence of court personnel.
On October 29, 2001, Justice Rosario issued an Order setting the initial hearing on November 27, 28 and 29, 2001 and requiring the parties to submit a list of their respective witnesses and documentary evidence. The hearing was, however, reset to January 28, 29, 30, and 31, 2002 upon motion of complainant. On January 28, 2002, the parties informed the Investigating Justice that they were exerting all efforts for a possible reconciliation. Upon motion by both parties, the hearing was again reset to March 11, 12, 13, and 14, 2002.

On March 11, 2002, the parties again informed the Investigating Justice of their desire to confer in a last effort to settle. The request was again granted with an order that both parties should be ready the following day if no settlement was reached. The following day, March 12, 2002, the scheduled hearing proceeded after the parties failed to reach any amicable settlement.

From a list of seven (7) witnesses, complainant manifested that only four (4) witnesses shall be presented.

The third witness, Engracio Dialo, Jr., was not allowed to testify after respondent's counsel objected because the intended testimony would cover an event that took place after the filing of the complaint, and Dialo's affidavit narrated matters that were not covered by the allegations in the complaint. Complainant manifested her intention to file a motion to amend the complaint. The Investigating Justice ordered the direct examination of the fourth witness, complainant Margie Macias, without prejudice to her presenting Dialo after the motion to amend the complaint shall have been resolved. Complainant, however, refused, saying that she would testify only after Dialo had testified. The Investigating Justice warned complainant that her refusal to testify shall be taken as a waiver of her right to present further witnesses and evidence. Despite the warning, complainant refused to proceed with her direct testimony. The Investigating Justice ordered complainant to rest her case, but she again refused.

On April 25, 2002, the Investigating Justice submitted his Report and Recommendation to this Court. He recommended the dismissal of the complaint against Judge Macias. The Investigating Justice reasoned that complainant failed to prove beyond reasonable doubt that respondent committed acts of immorality, or that his conduct was prejudicial to the best interest of the service. The Investigating Justice, however, recommended that Judge Macias be reprimanded for failing to exercise great care and circumspection in his actions.

ISSUE:
Whether it is really necessary that administrative complaints against members of the judiciary be disposed of only after adducing evidence that will prove guilt beyond reasonable doubt. (NO)

RULING:
In several cases, this Court has ruled that if what is imputed to a respondent judge connotes a misconduct that, if proven, would result in dismissal from the bench, then the quantum of proof necessary to support the administrative charges or to establish grounds for the removal of a judicial officer should be more than substantial.

The first case involving an administrative complaint filed against a judge in this jurisdiction was decided in 1922 in *In re Impeachment of Horrilleno*. There, Justice Malcolm explained:

The procedure for the impeachment of judges of first instance has heretofore not been well defined. **The Supreme Court has not yet adopted rules of procedure**, as it is authorized to do by law. In practice, it is usual for the court to require that charges made against a judge of first instance shall be presented in due form and sworn to; thereafter, to give the respondent judge an opportunity to answer; thereafter, if the explanation of the respondent be deemed satisfactory, to file (sic) the charges without further annoyance for the judge; while if the charges establish a *prima facie* case, they are referred to the Attorney-General who acts for the court in conducting an inquiry into the conduct of the respondent judge. On the conclusion of the Attorney-General's investigation, a hearing is had before the court *en banc* and it sits in judgment to determine if sufficient cause exists involving the serious misconduct or inefficiency of the respondent judge as warrants the court in recommending his removal to the Governor-General.

Impeachment proceedings before courts have been said, **in other jurisdictions**, to be in their nature highly penal in character and to be governed by the rules of law applicable to criminal cases. The charges must, therefore, be proved beyond a reasonable doubt.

With *Horilleno*, it became necessary for every complainant to prove guilt beyond reasonable doubt despite the fact that the case will only involve an administrative, and not a criminal, complaint. The reason is explained, albeit scarcely, in *Alcuizar v. Carpio*:

While substantial evidence would ordinarily suffice to support a finding of guilt, **the rule is a bit different where the proceedings involve judges charged with grave offense**. Administrative proceedings against judges are, by nature, highly penal in character and are to be governed by the rules applicable to criminal cases.

In more recent rulings, however, the Court applied substantial evidence as the normative quantum of proof necessary in resolving administrative complaints against judges. In order to diffuse confusion, a clarification has to be made. First, the pronouncements in *Horilleno* and *Alcuizar* may be said to have been superseded by the Court's recent rulings in *Gutierrez v. Belen*, *Reyes v. Paderanga*, and *Naval v. Panday.*

Second, members of the judiciary are not a class of their own, *sui generis*, in the field of public service as to require a higher degree of proof for the administrative cases filed against them other than, perhaps, the fact that because of the nature of the responsibility judges have, they are required to live up to a higher standard of integrity, probity and morality.

When we dismiss a public officer or employee from his position or office for the commission of a grave offense in connection with his office, we merely require that the complainant prove substantial evidence. When we disbar a disgraceful lawyer, we require that complainant merely prove a clear preponderance of evidence to establish liability. There appears no compelling reason to require a higher degree of proof when we deal with cases filed against judges.

However, in this case, we are not convinced that complainant was able to prove, by substantial evidence, that respondent committed the acts complained of. Basic is the rule that in administrative proceedings, complainant bears the *onus* of establishing the averments of her complaint.If complainant fails to discharge this burden, respondent cannot be held liable for the charge.

Under Sections 8 and 11 of Rule 140 of the Rules of Court, a judge found guilty of immorality can be dismissed from the service, if still in the active service, or may forfeit all or part of his retirement benefits, if already retired, and disqualified from reinstatement or appointment to any public office including government-owned or controlled corporations. We have already ruled that if a judge is to be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge. This quantum of evidence, complainant failed to satisfy.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant,* -versus- JUDGE CADER P. INDAR, PRESIDING JUDGE AND ACTING PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 14, COTABATO CITY AND BRANCH 15, SHARIFF AGUAK, MAGUINDANAO, RESPECTIVELY, *Respondent.*
A.M. No. RTJ-10-2232, EN BANC, April 10, 2012, PER CURIAM

In Cornejo v. Gabriel, the Court held that notice and hearing are not indispensable in administrative investigations, thus:

The fact should not be lost sight of that we are dealing with an administrative proceeding and not with a judicial proceeding. As Judge Cooley, the leading American writer on constitutional Law, has well said, due process of law is not necessarily judicial process; much of the process by means of which the Government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law, as is judicial process. ***While a day in court is a matter of right in judicial proceedings, in administrative proceedings it is otherwise since they rest upon different principles. In certain proceedings, therefore, of an administrative character, it may be stated, without fear of contradiction, that the right to a notice and hearing are not essential to due process of law****. x x x*

In this case, Judge Indar was given ample opportunity to controvert the charges against him. While there is no proof that Judge Indar personally received the notices of hearing issued by the Investigating Justices, the first two notices of hearing were received by one Mustapha Randang of the Clerk of Court, RTC-Cotabato, while one of the notices was received by a certain Mrs. Asok, who were presumably authorized and capable to receive notices on behalf of Judge Indar.
Further, Judge Indar cannot feign ignorance of the administrative investigation against him because aside from the fact that the Court's Resolution suspending him was mailed to him, his preventive suspension was reported in major national newspapers.Moreover, Judge Indar was repeatedly sent notices of hearings to his known addresses. Thus, there was due notice on Judge Indar of the charges against him. However, Judge Indar still failed to file his explanation and appear at the scheduled hearings.

FACTS:
This is an administrative complaint for gross misconduct and dishonesty against respondent Judge Cader P. Indar, Al Haj (Judge Indar), Presiding Judge of the Regional Trial Court (RTC), Branch 14, Cotabato City and Acting Presiding Judge of the RTC, Branch 15, Shariff Aguak, Maguindanao.

This case originated from reports by the Local Civil Registrars of Manila and Quezon City to the Office of the Court Administrator (OCA) that they have received an alarming number of decisions, resolutions, and orders on annulment of marriage cases allegedly issued by Judge Indar.

To verify the allegations against Judge Indar, the OCA conducted a judicial audit in RTC-Shariff Aguak, Branch 15, where the Audit Team found that the list of cases submitted by the Local Civil Registrars of Manila and Quezon City do not appear in the records of cases received, pending or disposed by RTC-Shariff Aguak, Branch 15. Likewise, the annulment decisions did not exist in the records of RTC-Cotabato, Branch 14. The Audit Team further observed that the case numbers in the list submitted by the Local Civil Registrars are not within the series of case numbers recorded in the docket books of either RTC-Shariff Aguak or RTC-Cotabato.

In a Resolution dated 4 May 2010, the Court *En Banc* (1) docketed this administrative matter as A.M. No. RTJ-10-2232, and (2) preventively suspended Judge Indar pending investigation of this case.

The case was re-raffled to Justice Angelita A. Gacutan (Justice Gacutan) of the Court of Appeals, Cagayan de Oro due to its proximity to the Regional Trial Courts involved.
Justice Gacutan set the case for hearing on several dates and sent the corresponding notices of hearing to Judge Indar at his known addresses, namely, his official stations in RTC-Cotabato and RTC-Shariff Aguak and residence address.

Judge Indar failed to attend the hearing as rescheduled and to submit the affidavit as required. Thus, in an Order of 23 July 2010, Justice Gacutan directed Judge Indar to explain his non-appearance, and reset the hearing to 10 and 11 August 2010. The Order was sent to his residence address in M. Tan Subdivision, Gonzalo Javier St., Rosary Heights, Cotabato City. The LBC report indicated that the Order was received by a certain Mrs. Asok.

Meanwhile, Judge George C. Jabido (Judge Jabido), Acting Presiding Judge of RTC-Shariff Aguak, Branch 15, was directed to verify the authenticity of the records of the subject Decisions and to appear at the hearing on 29 March 2011. The hearing was canceled due to the judicial reorganization in the Court of Appeals.

Judge Jabido, who was notified of the hearing, testified that:
In compliance with the directive of the Investigating Justice to verify the authenticity of the records of the listed decisions, judgments and orders, he issued memos to the officers of the Court, the Branch Clerk of Court, the docket clerk, directing them to produce and secure copies of the minutes and other documents related therein. He personally checked the records of the RTC. The Records of the RTC are bereft of evidence to show that regular and true proceedings were had on these cases. There is no showing that a docket fee has been paid for each corresponding cases. There is also no showing that the parties were notified of a scheduled hearing as calendared. There is also no record that a hearing was conducted. No stenographic notes of the actual proceedings were also made. He could not also determine when the said cases were submitted for decision as it was not calendared for that purpose.

In his Report dated 2 September 2011, Justice Borreta first determined whether the requirements of due process had been complied with since there was no proof that Judge Indar personally and actually received any of the notices sent to him in the course of the investigation.

Justice Borreta differentiated administrative due process with judicial due process. He stated that "while a day in court is a matter of right in judicial proceedings, it is otherwise in administrative proceedings since they rest upon different principles."

Justice Borreta noted that all possible means to locate Judge Indar and to personally serve the court notices to him were resorted to. The notices of hearing were sent to Judge Indar's known addresses, namely, his sala in RTC-Cotabato Branch 14 and RTC-Shariff Aguak Branch 15, and at his residence address. However, none of the notices appeared to have been personally received by Judge Indar.

Notwithstanding, Justice Borreta concluded that the requirements of due process have been complied with. Justice Borreta stated that Judge Indar was aware of a pending administrative case against him. The notice of this Court's Resolution of 4 May 2010, preventively suspending Judge Indar, was mailed and sent to him at his sala in RTC-Shariff Aguak, Branch 15.

Justice Borreta proceeded to determine Judge Indar's administrative liability, and found the latter guilty of serious misconduct and dishonesty.

According to Justice Borreta, Judge Indar's act of issuing decisions on annulment of marriage cases without complying with the stringent procedural and substantive requirements of the Rules of Court for such cases clearly violates the Code of Judicial Conduct. Judge Indar made it appear that the annulment cases underwent trial, when the records show no judicial proceedings occurred.

Moreover, Judge Indar's act of "affirming in writing before the Australian Embassy the validity of a decision he allegedly rendered," when in fact that case does not appear in the court's records, constitutes dishonesty.

ISSUE:
Whether due process was observed in declaring Judge Indar guilty of gross misconduct and dishonesty. (YES)

RULING:

The Uniform Rules on Administrative Cases in the Civil Service, which govern the conduct of disciplinary and non-disciplinary proceedings in administrative cases, clearly provide that technical rules of procedure and evidence do not strictly apply to administrative proceedings.

In *Cornejo v. Gabriel*, the Court held that notice and hearing are not indispensable in administrative investigations, thus:

The fact should not be lost sight of that we are dealing with an administrative proceeding and not with a judicial proceeding. As Judge Cooley, the leading American writer on constitutional Law, has well said, due process of law is not necessarily judicial process; much of the process by means of which the Government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law, as is judicial process. **While a day in court is a matter of right in judicial proceedings, in administrative proceedings it is otherwise since they rest upon different principles. In certain proceedings, therefore, of an administrative character, it may be stated, without fear of contradiction, that the right to a notice and hearing are not essential to due process of law**. x x x

It is settled that "technical rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process cannot be fully equated with due process in its strict judicial sense." It is enough that the party is given the chance to be heard before the case against him is decided. Otherwise stated, in the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard.

The Court emphasized in *Cornejo* the Constitutional precept that public office is a public trust, which is the underlying principle for the relaxation of the requirements of due process of law in administrative proceedings, thus:
Again, for this petition to come under the due process of law prohibition, it would be necessary to consider an office as "property." It is, however, well settled in the United States, that **a public office is not property within the sense of the constitutional guaranties of due process of law, but is a public trust or agency**.

In this case, Judge Indar was given ample opportunity to controvert the charges against him. While there is no proof that Judge Indar personally received the notices of hearing issued by the Investigating Justices, the first two notices of hearing were received by one Mustapha Randang of the Clerk of Court, RTC-Cotabato, while one of the notices was received by a certain Mrs. Asok, who were presumably authorized and capable to receive notices on behalf of Judge Indar.

Further, Judge Indar cannot feign ignorance of the administrative investigation against him because aside from the fact that the Court's Resolution suspending him was mailed to him, his preventive suspension was reported in major national newspapers.Moreover, Judge Indar was repeatedly sent notices of hearings to his known addresses. Thus, there was due notice on Judge Indar of the charges against him. However, Judge Indar still failed to file his explanation and appear at the scheduled hearings. Consequently, the investigation proceeded *ex parte* in accordance with Section 4, Rule 140 of the Rules of Court.

SPS. EUGENE C. GO AND ANGELITA GO, AND MINOR EMERSON CHESTER KIM B. GO, *Petitioners,* -versus- COLEGIO DE SAN JUAN DE LETRAN, REV. FR. EDWIN LAO, REV. FR. JOSE RHOMMEL HERNANDEZ, ALBERT ROSARDA AND MA. TERESA SURATOS, *Respondents.*
G.R. No. 169391, SECOND DIVISION, October 10, 2012, BRION, J.

In Ateneo de Manila University v. Capulong, the Court held that ***Guzman v. National University****, not Ang Tibay, is the authority on the procedural rights of students in disciplinary cases. In Guzman, we laid down the minimum standards in the imposition of disciplinary sanctions in academic institutions, as follows:*
It bears stressing that due process in disciplinary cases involving students does not entail proceedings and hearings similar to those prescribed for actions and proceedings in courts of justice. The proceedings in student discipline cases may be summary; and cross-examination is not, contrary to petitioners' view, an essential part thereof. There are withal minimum standards which must be met to satisfy the demands of procedural due process; and these are, that (1) the students must be informed in writing of the nature and cause of any accusation against them; (2) they shall have the right to answer the charges against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.

These standards render the petitioners' arguments totally without merit.Since disciplinary proceedings may be summary, the insistence that a "formal inquiry" on the accusation against Kim should have been conducted lacks legal basis.
The records show that, without any explanation, both parents failed to attend the January 8, 2002 conference while Mr. Go did not bother to go to the January 15, 2002 conference. "Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot thereafter complain of deprivation of due process." Jurisprudence has clarified that administrative due process cannot be fully equated with due process in the strict judicial sense.The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.

FACTS:
In October 2001, Mr. George Isleta, the Head of Letran's Auxiliary Services Department, received information that certain fraternities were recruiting new members among Letran's high school students. He also received a list of the students allegedly involved. School authorities started an investigation, including the conduct of medical examinations on the students whose names were on the list. On November 20, 2002, Dr. Emmanuel Asuncion, the school physician, reported that six (6) students bore injuries, probable signs of blunt trauma of more than two weeks, on the posterior portions of their thighs. Mr. Rosarda, the Assistant Prefect for Discipline, conferred with the students and asked for their explanations in writing.

Four (4) students, namely: Raphael Jay Fulgencio, Nicolai Lacson, Carlos Parilla, and Isaac Gumba, admitted that they were neophytes of the Tau Gamma Fraternity and were present in a hazing rite held on October 3, 2001 in the house of one Dulce in Tondo, Manila. They also identified the senior members of the fraternity present at their hazing. These included Kim, then a fourth year high school student.

In the meantime, Gerardo Manipon, Letran's security officer, prepared an incident report that the Tau Gamma Fraternity had violated its covenant with Letran by recruiting members from its high school department. Manipol had spoken to one of the fraternity neophytes and obtained a list of eighteen (18) members of the fraternity currently enrolled at the high school department. Kim's name was also in the list.

At the Parents-Teachers Conference held on November 23, 2001, Mr. Rosarda informed Kim's mother, petitioner Mrs. Angelita Go (Mrs. Go), that students had positively identified Kim as a fraternity member. Mrs. Go expressed disbelief as her son was supposedly under his parents' constant supervision.

Mr. Rosarda thereafter spoke to Kim and asked him to explain his side. Kim responded through a written statement dated December 19, 2001; he denied that he was a fraternity member. He stated that at that time, he was at Dulce's house to pick up a gift, and did not attend the hazing of Rafael, Nicolai, Carlos, and Isaac.

On the same day, Mr. Rosarda requested Kim's parents (by notice) to attend a conference on January 8, 2002 to address the issue of Kim's fraternity membership. Both Mrs. Go and petitioner Mr. Eugene Go (Mr. Go) did not attend the conference.

In time, the respondents found that twenty-nine (29) of their students, including Kim, were fraternity

members. The respondents found substantial basis in the neophytes' statements that Kim was a senior fraternity member. Based on their disciplinary rules, the Father Prefect for Discipline (respondent Rev. Fr. Jose Rhommel Hernandez) recommended the fraternity members' dismissal from the high school department rolls; incidentally, this sanction was stated in a January 10, 2002 letter to Mr. and Mrs. Go. After a meeting with the Rector's Council, however, respondent Fr. Edwin Lao, Father Rector and President of Letran, rejected the recommendation to allow the fourth year students to graduate from Letran. Students who were not in their fourth year were allowed to finish the current school year but were barred from subsequent enrollment in Letran.

Mr. Rosarda conveyed to Mrs. Go and Kim, in their conference on January 15, 2002, the decision to suspend Kim from January 16, 2002 to February 18, 2002. Incidentally, Mr. Go did not attend this conference.

On even date, Mrs. Go submitted a request for the deferment of Kim's suspension to January 21, 2002 so that he could take a previously scheduled examination.The request was granted.

The respondents also proposed that the students and their parents sign a *pro-forma* agreement to signify their conformity with their suspension. Mr. and Mrs. Go refused to sign. They also refused to accept the respondents' finding that Kim was a fraternity member. They likewise insisted that due process had not been observed.

On January 28, 2002, the petitioners filed a complaint for damages before the RTC of Caloocan City claiming that the respondents had unlawfully dismissed Kim.Mr. and Mrs. Go also sought compensation for the "business opportunity losses" they suffered while personally attending to Kim's disciplinary case.

The RTC held that the respondents had failed to observe "the basic requirement of due process" and that their evidence was "utterly insufficient" to prove that Kim was a fraternity member. It also declared that Letran had no authority to dismiss students for their fraternity membership. Accordingly, it awarded the petitioners moral and exemplary damages.

On appeal, the CA reversed and set aside the RTC decision. It held, among others, that the petitioners were not denied due process as the petitioners had been given ample opportunity to be heard in Kim's disciplinary case. The CA also found that there was no bad faith, malice, fraud, nor any improper and willful motive or conduct on the part of the respondents to justify the award of damages.

ISSUE:
Whether the CA had erred in setting aside the decision of the RTC. (NO)

RULING:
Even a cursory perusal of the rest of DECS Order No. 20, s. 1991 reveals the education department's clear intent to apply the prohibition against fraternity membership for *all* elementary and high school students, regardless of their school of enrollment. Even assuming *arguendo* that the education department had not issued such prohibition, private schools still have the authority to promulgate and enforce a similar prohibition pursuant to their right to establish disciplinary rules and regulations. This right has been recognized in the Manual of Regulations for Private Schools, which has the character of law.

In this case, the petitioners were notified of both rule and penalty through Kim's enrollment contract for school year 2001 to 2002. Notably, the penalty provided for fraternity membership is "summary dismissal." We also note that Mrs. Go signified her conformé to these terms with her signature in the contract. No reason, therefore, exist to justify the trial court's position that respondent Letran cannot lawfully dismiss violating students, such as Kim.

On the issue of due process, the petitioners insist that the question be resolved under the guidelines for administrative due process in *Ang Tibay v. Court of Industrial Relations.*[47] They argue that the respondents violated due process (a) by not conducting a formal inquiry into the charge against Kim; (b) by not giving them any written notice of the charge; and (c) by not providing them with the opportunity to cross-examine the neophytes who had positively identified Kim as a senior member of their fraternity. The petitioners also fault the respondents for not showing them the neophytes' written statements, which they claim to be unverified, unsworn, and hearsay.

These arguments deserve scant attention.

In *Ateneo de Manila University v. Capulong*, the Court held that ***Guzman v. National University***, not Ang Tibay, is the authority on the procedural rights of students in disciplinary cases. In *Guzman*, we laid down the minimum standards in the imposition of disciplinary sanctions in academic institutions, as follows:
[I]t bears stressing that due process in disciplinary cases involving students does not entail proceedings and hearings similar to those prescribed for actions and proceedings in courts of justice. The proceedings in student discipline cases may be summary; and cross-examination is not, contrary to petitioners' view, an essential part thereof. There are withal minimum standards which must be met to satisfy the demands of procedural due process; and these are, that (1) the students must be informed in writing of the nature and cause of any accusation against them; (2) they shall have the right to answer the charges against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.
These standards render the petitioners' arguments totally without merit.

In *De La Salle University, Inc. v. Court of Appeals*, where we affirmed the petitioning university's right to exclude students from the rolls of their respective schoolsfor their involvement in a fraternity mauling incident, we rejected the argument that there is a denial of due process when students are not allowed to cross-examine the witnesses against them in school disciplinary proceedings. We reject the same argument in this case.

We are likewise not moved by the petitioners' argument that they were not given the opportunity to examine the neophytes' written statements and the security officer's incident report. These documents are admissible in school disciplinary proceedings, and may amount to substantial evidence to support a decision in these proceedings.

Since disciplinary proceedings may be summary, the insistence that a "formal inquiry" on the accusation against Kim should have been conducted lacks legal basis.

The records also show that, without any explanation, *both* parents failed to attend the January 8, 2002 conference while Mr. Go did not bother to go to the January 15, 2002 conference. "Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot

thereafter complain of deprivation of due process."

Jurisprudence has clarified that administrative due process cannot be fully equated with due process in the strict judicial sense.The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.Thus, we are hard pressed to believe that Kim's denial of his fraternity membership before formal notice was given worked against his interest in the disciplinary case. What matters for due process purpose is notice of what is to be explained, not the form in which the notice is given.

FIRST CLASS CADET ALDRIN JEFF P. CUDIA of the Philippine Military Academy, represented by his father RENATO P. CUDIA, who also acts on his own behalf, and BERTENI CATALUNA CAUSING, *Petitioners,*-versus-THE SUPERINTENDENT OF THE PHILIPPINE MILITARY ACADEMY (PMA), THE HONOR COMMITTEE (HC) OF 2014 OF THE PMA and HC MEMBERS, and the CADET REVIEW AND APPEALS BOARD (CRAB),*Respondents.*
G.R. No. 211362, EN BANC, Feb 24, 2015, PERALTA, J.

In Guzman, the Court held that there are minimum standards which must be met to satisfy the demands of procedural due process, to wit:

> *(1)the students must be informed in writing of the nature and cause of any accusation against them; (2) they shall have the right to answer the charges against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.*

In this case, the investigation of Cadet 1CL Cudia's Honor Code violation followed the prescribed procedure and existing practices in the PMA. He was notified of the Honor Report from Maj. Hindang. He was then given the opportunity to explain the report against him. He was informed about his options and the entire process that the case would undergo. The preliminary investigation immediately followed after he replied and submitted a written explanation. Upon its completion, the investigating team submitted a written report together with its recommendation to the HC Chairman. The HC thereafter reviewed the findings and recommendations. When the honor case was submitted for formal investigation, a new team was assigned to conduct the hearing. During the formal investigation/hearing, he was informed of the charge against him and given the right to enter his plea. He had the chance to explain his side, confront the witnesses against him, and present evidence in his behalf. After a thorough discussion of the HC voting members, he was found to have violated the Honor Code. Thereafter, the guilty verdict underwent the review process at the Academy level – from the OIC of the HC, to the SJA, to the Commandant of Cadets, and to the PMA Superintendent. A separate investigation was also conducted by the HTG. Then, upon the directive of the AFP-GHQ to reinvestigate the case, a review was conducted by the CRAB. Further, a Fact-Finding Board/Investigation Body composed of the CRAB members and the PMA senior officers was constituted to conduct a deliberate investigation of the case. Finally, he had the opportunity to appeal to the President. Sadly for him, all had issued unfavorable rulings.

FACTS:
Complainant Cadet 1CL Cudia was a member of Siklab Diwa Class of 2014 of the Philippine Military Academy, the country's premiere military academy. He belonged to the "A" Company and was the Deputy Baron of his class. Cadet Cudia was supposed to graduate as the class salutatorian, receive

the Philippine Navy Saber as the top Navy cadet graduate, and be commissioned as an ensign of the Philippine Navy. However, Cadet Cudia was dismissed from the academy; thus, he was not able to attend his graduation ceremony.

On November 14, 2013 Cadet Cudia had his OR432 class at 1:30-3:00 PM and his ENG412 at 3:05-4:05 PM. Cadet Cudia, however, arrived two minutes late at his ENG412 class. Consequently, a delinquency report was issued against him. He explained that the reason why he was late was because their instructor in OR432 dismissed the class a little bit late. Finding Cadet Cudia to have lied, for it was found out that they were not dismissed late by their instructor, the penalty of 11 demerits and 13 touring hours was meted out to him.

Thereafter, for having violated the first tenet of the Honor Code (Lying, pursuant to Sec. VII.12b of the CCAFPR S-2008), Cadet Cudia was reported to the Honor Committee (HC), a body of cadets entrusted by the Cadet Corps to preserve the sanctity of the honor code. Formal investigation against Cadet Cudia then ensued. The HC rendered a verdict finding him guilty of violating the Honor Code. The Commandant of Cadets, Colonel Briguez, affirmed the findings of the HC and recommended to Vice Abogado, then PMA Superintendent, the separation of Cadet Cudia from the PMA. Special Orders No. 26 was then issued by the PMA Headquarters placing Cadet Cudia on indefinite leave of absence without pay and allowances effective February 10, 2014 pending approval of his separation by the AFP-GHQ, barring him from future appointment and/or admission as cadet, and not permitting him to qualify for any entrance requirements to the PMA. Two days later, Vice Admiral Abogado approved the recommendation to dismiss Cadet Cudia.

On February 13, 2014, Cadet Cudia submitted a letter to the Office of the Commandant of Cadets requesting for reinstatement by the PMA of his status as a cadet. Cadet Cudia likewise filed his personal appeal with the new PMA Superintendent Maj. Gen. Lopez who was then directed to review the case of Cadet Cudia. Maj. Gen Lopez, in turn, referred the matter to the Cadet Review and Appeals Board (CRAB).

Meanwhile, Cadet Cudia and his family engaged the services of the Public Attorney's Office (PAO) in Baguio City.

Thereafter, the Spouses Cudia filed a letter-complaint before the CHR-Cordillera Administrative Region (CAR) Office against the HC members for having violated the human rights of Cadet Cudia, particularly his rights to due process, education, and privacy of communication.

The Commission on Human Rights-CAR Office found the Officer and Members of the PMA HC and certain officials to have violated the rights of Cadet Cudia, specifically, his right to dignity, due process, education, privacy and good life. Consequently, the Commission on Human Rights recommended that the PMA be ordered to proclaim Cadet Cudia a graduate of PMA.

Meanwhile, the CRAB rendered a decision upholding the dismissal of Cadet Cudia, thus prompting the Spouses Cudia to appeal the case to President Aquino, the Commander-in-Chief of the AFP. The Office of the President, however, sustained the findings of the CRAB. Hence, this petition.

ISSUE:
Whether or not Cadet Cudia was accorded due process. (YES)

RULING:

Ateneo de Manila University v. Capulong already settled the issue as it held that although both Ang Tibay and Guzman essentially deal with the requirements of due process, the latter case is more apropos since it specifically deals with the minimum standards to be satisfied in the imposition of disciplinary sanctions in academic institutions. That Guzman is the authority on the procedural rights of students in disciplinary cases was reaffirmed by the Court in the fairly recent case of Go v. Colegio De San Juan De Letran.

In Guzman, the Court held that there are minimum standards which must be met to satisfy the demands of procedural due process, to wit:

> (1)the students must be informed in writing of the nature and cause of any accusation against them; (2) they shall have the right to answer the charges against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.

This Court has been consistent in reminding that due process in disciplinary cases involving students does not entail proceedings and hearings similar to those prescribed for actions and proceedings in courts of justice; that the proceedings may be summary; that cross-examination is not an essential part of the investigation or hearing; and that the required proof in a student disciplinary action, which is an administrative case, is neither proof beyond reasonable doubt nor preponderance of evidence but only substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Notice and hearing is the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings. The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. So long as the party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process.

A formal trial-type hearing is not, at all times and in all instances, essential to due process – it is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based. "To be heard" does not only mean presentation of testimonial evidence in court – one may also be heard through pleadings and where the opportunity to be heard through pleadings is accorded, there is no denial of due process.

Considering that the case of Cadet 1CL Cudia is one of first impression in the sense that this Court has not previously dealt with the particular issue of a dismissed cadet's right to due process, it is necessary for Us to refer to U.S. jurisprudence for some guidance. Notably, our armed forces have been patterned after the U.S. Army and the U.S. military code produced a salutary effect in the military justice system of the Philippines. Hence, pertinent case laws interpreting the U.S. military code and practices have persuasive, if not the same, effect in this jurisdiction.

The Court begins by stating that U.S. courts have uniformly viewed that "due process" is a flexible concept, requiring consideration in each case of a variety of circumstances and calling for such procedural protections as the particular situation demands.

The case of Wasson v. Trowbridge broadly outlined the minimum standards of due process required in the dismissal of a cadet. Thus: when the government affects the private interests of individuals, it may not proceed arbitrarily but must observe due process of law. x x x Nevertheless, the flexibility which is inherent in the concept of due process of law precludes the dogmatic application of specific

rules developed in one context to entirely distinct forms of government action. "For, though 'due process of law' generally implies and includes actor, reus, judex, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings, * * * yet, this is not universally true." x x x Thus, to determine in any given case what procedures due process requires, the court must carefully determine and balance the nature of the private interest affected and of the government interest involved, taking account of history and the precise circumstances surrounding the case at hand.

The Court concludes, therefore, that due process only requires for the dismissal of a Cadet from the Merchant Marine Academy that he be given a fair hearing at which he is apprised of the charges against him and permitted a defense. x x x For the guidance of the parties x x x the rudiments of a fair hearing in broad outline are plain. The Cadet must be apprised of the specific charges against him. He must be given an adequate opportunity to present his defense both from the point of view of time and the use of witnesses and other evidence. We do not suggest, however, that the Cadet must be given this opportunity both when demerits are awarded and when dismissal is considered. The hearing may be procedurally informal and need not be adversarial.

In the case of Andrews v. Knowlton, the Court of Appeals held that the case of Wasson is equally controlling in cases where cadets were separated from the military academy for violation of the Honor Code. The Court of Appeals ruled that in order to be proper and immune from constitutional infirmity, a cadet who is sought to be dismissed or separated from the academy must be afforded a hearing, be apprised of the specific charges against him, and be given an adequate opportunity to present his or her defense both from the point of view of time and the use of witnesses and other evidence.

In this case, the investigation of Cadet 1CL Cudia's Honor Code violation followed the prescribed procedure and existing practices in the PMA. He was notified of the Honor Report from Maj. Hindang. He was then given the opportunity to explain the report against him. He was informed about his options and the entire process that the case would undergo. The preliminary investigation immediately followed after he replied and submitted a written explanation. Upon its completion, the investigating team submitted a written report together with its recommendation to the HC Chairman. The HC thereafter reviewed the findings and recommendations. When the honor case was submitted for formal investigation, a new team was assigned to conduct the hearing. During the formal investigation/hearing, he was informed of the charge against him and given the right to enter his plea. He had the chance to explain his side, confront the witnesses against him, and present evidence in his behalf. After a thorough discussion of the HC voting members, he was found to have violated the Honor Code. Thereafter, the guilty verdict underwent the review process at the Academy level – from the OIC of the HC, to the SJA, to the Commandant of Cadets, and to the PMA Superintendent. A separate investigation was also conducted by the HTG. Then, upon the directive of the AFP-GHQ to reinvestigate the case, a review was conducted by the CRAB. Further, a Fact-Finding Board/Investigation Body composed of the CRAB members and the PMA senior officers was constituted to conduct a deliberate investigation of the case. Finally, he had the opportunity to appeal to the President. Sadly for him, all had issued unfavorable rulings.

JENNY M. AGABON and VIRGILIO C. AGABON, *Petitioners,* -versus-NATIONAL LABOR RELATIONS COMMISSION (NLRC), RIVIERA HOME IMPROVEMENTS, INC. and VICENTE ANGELES, *Respondents.*
G.R. No. 158693, EN BANC, November 17, 2004, YNARES-SANTIAGO, *J.*

Constitutional due process protects the individual from the government and assures him of his rights in criminal, civil or administrative proceedings; while statutory due process found in the Labor Code and Implementing Rules protects employees from being unjustly terminated without just cause after notice and hearing.
Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in Reta v. National Labor Relations Commission. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later," which we sought to deter in the Serrano ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.

The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. ***Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00.***

FACTS:
Private respondent Riviera Home Improvements, Inc. is engaged in the business of selling and installing ornamental and construction materials. It employed petitioners Virgilio Agabon and Jenny Agabon as gypsum board and cornice installers on January 2, 1992 until February 23, 1999 when they were dismissed for abandonment of work.
Petitioners then filed a complaint for illegal dismissal and payment of money claims. Petitioners assert that they were dismissed because the private respondent refused to give them assignments unless they agreed to work on a "pakyaw" basis when they reported for duty on February 23, 1999. They did not agree on this arrangement because it would mean losing benefits as SSS members. Petitioners also claim that private respondent did not comply with the twin requirements of notice and hearing.

Private respondent on the other hand, maintained that petitioners were not dismissed but had abandoned their work. In fact, private respondent sent two letters to the last known addresses of the petitioners advising them to report for work. Private respondent's manager even talked to petitioner Virgilio by telephone sometime in June 1999 to tell him about the new assignment at Pacific Plaza Towers involving 40,000 square meters of cornice installation work. However, petitioners did not report for work because they had subcontracted to perform installation work for another company. Petitioners also demanded for an increase in their wage to P280.00 per day. When this was not granted, petitioners stopped reporting for work and filed the illegal dismissal case.

ISSUE:
Whether private respondent observe the procedural requirements in effecting petitioners' dismissal. (NO)

RULING:
The procedure for terminating an employee is found in Book VI, Rule I, Section 2(d) of the *Omnibus Rules Implementing the Labor Code*:

Standards of due process: requirements of notice. In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

In case of termination, the foregoing notices shall be served on the employee's last known address. Dismissals based on just causes contemplate acts or omissions attributable to the employee while dismissals based on authorized causes involve grounds under the Labor Code which allow the employer to terminate employees. A termination for an authorized cause requires payment of separation pay. When the termination of employment is declared illegal, reinstatement and full backwages are mandated under Article 279. If reinstatement is no longer possible where the dismissal was unjust, separation pay may be granted.

Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard and after hearing or opportunity to be heard, a notice of the decision to dismiss; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation.

From the foregoing rules four possible situations may be derived: (1) the dismissal is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed; (2) the dismissal is without just or authorized cause but due process was observed; (3) the dismissal is without just or authorized cause and there was no due process; and (4) the dismissal is for just or authorized cause but due process was not observed.

In the first situation, the dismissal is undoubtedly valid and the employer will not suffer any liability.

In the second and third situations where the dismissals are illegal, Article 279 mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

In the fourth situation, the dismissal should be upheld. While the procedural infirmity cannot be cured, it should not invalidate the dismissal. However, the employer should be held *liable for non-compliance with the procedural requirements of due process*.

The present case squarely falls under the fourth situation. The dismissal should be upheld because it was established that the petitioners abandoned their jobs to work for another company. Private respondent, however, did not follow the notice requirements and instead argued that sending notices

to the last known addresses would have been useless because they did not reside there anymore. Unfortunately for the private respondent, this is not a valid excuse because the law mandates the twin notice requirements to the employee's last known address. Thus, it should be held *liable for non-compliance with the procedural requirements of due process*.
Due process under the Labor Code, like *Constitutional due process*, has two aspects: substantive, *i.e.*, the valid and authorized causes of employment termination under the Labor Code; and procedural, *i.e.*, the manner of dismissal. Procedural due process requirements for dismissal are found in the Implementing Rules of P.D. 442, as amended, otherwise known as the Labor Code of the Philippines in Book VI, Rule I, Sec. 2, as amended by Department Order Nos. 9 and 10.Breaches of these *due process* requirements violate the Labor Code. Therefore *statutory due process* should be differentiated from failure to comply with *constitutional due process*.

Constitutional due process protects the individual from the government and assures him of his rights in criminal, civil or administrative proceedings; while *statutory due process* found in the Labor Code and Implementing Rules protects employees from being unjustly terminated without just cause after notice and hearing.
Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later," which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.
The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. **Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00.**

Michael H. –versus- Gerald D.
U.S. Supreme Court, 491 U.S. 110, June 15, 1989

Michael's contention that procedural due process requires that he be afforded an opportunity to demonstrate his paternity in an evidentiary hearing fundamentally misconceives the nature of § 621. ***Although phrased in terms of a presumption, § 621 expresses and implements a substantive rule of law declaring it to be generally irrelevant for paternity purposes whether a child conceived during, and born into, an existing marriage was begotten by someone other than the husband and had a prior relationship with him, based on the state legislature's determination, as a matter of overriding social policy, that the husband should be held responsible for the child and that the integrity and privacy of the family unit should not be impugned.*** *Because Michael's complaint is that the statute categorically denies all men in his circumstances an opportunity to establish their paternity, his challenge is not accurately viewed as procedural. Moreover, not only has he failed to demonstrate that the interest he seeks to vindicate has traditionally been accorded protection by society, but the common law presumption of legitimacy, and even modern statutory and decisional law, demonstrate that society has historically protected, and continues to protect, the marital family against the sort of claim Michael asserts.*

FACTS:
In May, 1981, appellant Victoria D. was born to Carole D., who was married to, and resided with, appellee Gerald D. in California. Although Gerald was listed as father on the birth certificate and has

always claimed Victoria as his daughter, blood tests showed a 98.07% probability that appellant Michael H., with whom Carole had had an adulterous affair, was Victoria's father. During Victoria's first three years, she and her mother resided at times with Michael, who held her out as his own, at times with another man, and at times with Gerald, with whom they have lived since June, 1984. In November, 1982, Michael filed a filiation action in California Superior Court to establish his paternity and right to visitation. Victoria, through her court-appointed guardian *ad litem,* filed a cross-complaint asserting that she was entitled to maintain filial relationships with both Michael and Gerald. The court ultimately granted Gerald summary judgment on the ground that there were no triable issues of fact as to paternity under Cal.Evid. Code § 621, which provides that a child born to a married woman living with her husband, who is neither impotent nor sterile, is presumed to be a child of the marriage, and that this presumption may be rebutted only by the husband or wife, and then only in limited circumstances. Moreover, the court denied Michael's and Victoria's motions for visitation pending appeal under Cal.Civ. Code § 4601, which provides that a court may, in its discretion, grant "reasonable visitation rights . . . to any . . . person having an interest in the child's welfare." The California Court of Appeal affirmed, rejecting Michael's procedural and substantive due process challenges to § 621 as well as Victoria's due process and equal protection claims. The court also rejected Victoria's assertion of a right to continued visitation with Michael under § 4601, on the ground that California law denies visitation against the wishes of the mother to a putative father who has been prevented by § 621 from establishing his paternity.

ISSUE:
Whether Michael's right to due process was violated. (NO)

HELD:
The judgment is affirmed.
JUSTICE SCALIA, joined by THE CHIEF JUSTICE, and in part by JUSTICE O'CONNOR and JUSTICE KENNEDY, concluded that:
1. The § 621 presumption does not infringe upon the due process rights of a man wishing to establish his paternity of a child born to the wife of another man.
(a) Michael's contention that procedural due process requires that he be afforded an opportunity to demonstrate his paternity in an evidentiary hearing fundamentally misconceives the nature of § 621. Although phrased in terms of a presumption, § 621 expresses and implements a substantive rule of law declaring it to be generally irrelevant for paternity purposes whether a child conceived during, and born into, an existing marriage was begotten by someone other than the husband and had a prior relationship with him, based on the state legislature's determination, as a matter of overriding social policy, that the husband should be held responsible for the child and that the integrity and privacy of the family unit should not be impugned. Because Michael's complaint is that the statute categorically denies all men in his circumstances an opportunity to establish their paternity, his challenge is not accurately viewed as procedural.
(b) There is no merit to Michael's substantive due process claim that he has a constitutionally protected "liberty" interest in the parental relationship he has established with Victoria, and that protection of Gerald's and Carole's marital union is an insufficient state interest to support termination of that relationship. Michael has failed to meet his burden of proving that his claimed "liberty" interest is one so deeply imbedded within society's traditions as to be a fundamental right. Not only has he failed to demonstrate that the interest he seeks to vindicate has traditionally been accorded protection by society, but the common law presumption of legitimacy, and even modern statutory and decisional law, demonstrate that society has historically protected, and continues to protect, the marital family against the sort of claim Michael asserts.

2. The § 621 presumption does not infringe upon any constitutional right of a child to maintain a relationship with her natural father. Victoria's assertion that she has a due process right to maintain filial relationships with both Michael and Gerald is, at best, the obverse of Michael's claim and fails for the same reasons. Nor is there any merit to her claim that her equal protection rights have been violated because, unlike her mother and presumed father, she had no opportunity to rebut the presumption of her legitimacy, since the State's decision to treat her differently from her parents pursues the legitimate end of preventing the disruption of an otherwise peaceful union by the rational means of not allowing anyone but the husband or wife to contest legitimacy.

WASHINGTON ET AL. -versus-. GLUCKSBERG ET AL.
June 26, 1997, US Supreme Court

This Court's decisions lead to the conclusion that respondents' asserted "right" to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause.

The Court's established method of substantive-due-process analysis has two primary features: First, the Court has regularly observed that the Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition. E. g., Moore v. East Cleveland, 431 U. S. 494, 503 (plurality opinion). Second, the Court has required a "careful description" of the asserted fundamental liberty interest. E. g., Reno v. Flores, 507 U. S. 292, 302. The Ninth Circuit's and respondents' various descriptions of the interest here at stake-e. g., a right to "determine the time and manner of one's death," the "right to die," a "liberty to choose how to die," a right to "control of one's final days," "the right to choose a humane, dignified death," and "the liberty to shape death" -run counter to that second requirement. Since the Washington statute prohibits "aiding another person to attempt suicide," the question before the Court is more properly characterized as whether the "liberty" specially protected by the Clause includes a right to commit suicide which itself includes a right to assistance in doing so. This asserted right has no place in our Nation's traditions, given the country's consistent, almost universal, and continuing rejection of the right, even for terminally ill, mentally competent adults. To hold for respondents, the Court would have to reverse centuries of legal doctrine and practice, and strike down the considered policy choice of almost every State.

FACTS:
The State's present law makes "promoting a suicide attempt" a felony, and provides: "A person is guilty of [that crime] when he knowingly causes or aids another person to attempt suicide." Respondents, four Washington physicians who occasionally treat terminally ill, suffering patients, declare that they would assist these patients in ending their lives if not for the State's assisted-suicide ban. They, along with three gravely ill plaintiffs who have since died and a nonprofit organization that counsels people considering physician-assisted suicide, filed this suit against petitioners, the State and its Attorney General, seeking a declaration that the ban is, on its face, unconstitutional. They assert a liberty interest protected by the Fourteenth Amendment's Due Process Clause which extends to a personal choice by a mentally competent, terminally ill adult to commit physician-assisted suicide. Relying primarily on *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, and *Cruzan* v. *Director, Mo. Dept. of Health*, 497 U. S. 261, the Federal District Court agreed, concluding that Washington's assistedsuicide ban is unconstitutional because it places an undue burden on the exercise of that constitutionally protected liberty interest. The en banc Ninth Circuit affirmed.

ISSUE:

Whether Washington's prohibition against "causing" or "aiding" a suicide violate the Due Process Clause. (NO)

RULING:
(a) An examination of our Nation's history, legal traditions, and practices demonstrates that Anglo-American common law has punished or otherwise disapproved of assisting suicide for over 700 years; that rendering such assistance is still a crime in almost every State; that such prohibitions have never contained exceptions for those who were near death; that the prohibitions have in recent years been reexamined and, for the most part, reaffirmed in a number of States; and that the President recently signed the Federal Assisted Suicide Funding Restriction Act of 1997, which prohibits the use of federal funds in support of physician-assisted suicide.

(b) In light of that history, this Court's decisions lead to the conclusion that respondents' asserted "right" to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause.

The Court's established method of substantive-due-process analysis has two primary features: First, the Court has regularly observed that the Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition. *E. g., Moore* v. *East Cleveland,* 431 U. S. 494, 503 (plurality opinion). Second, the Court has required a "careful description" of the asserted fundamental liberty interest. *E. g., Reno* v. *Flores,* 507 U. S. 292, 302. The Ninth Circuit's and respondents' various descriptions of the interest here at stake-e. g., a right to "determine the time and manner of one's death," the "right to die," a "liberty to choose how to die," a right to "control of one's final days," "the right to choose a humane, dignified death," and "the liberty to shape death" -run counter to that second requirement. Since the Washington statute prohibits "aiding another person to attempt suicide," the question before the Court is more properly characterized as whether the "liberty" specially protected by the Clause includes a right to commit suicide which itself includes a right to assistance in doing so. This asserted right has no place in our Nation's traditions, given the country's consistent, almost universal, and continuing rejection of the right, even for terminally ill, mentally competent adults. To hold for respondents, the Court would have to reverse centuries of legal doctrine and practice, and strike down the considered policy choice of almost every State. Respondents' contention that the asserted interest *is* consistent with this Court's substantive-due-process cases, if not with this Nation's history and practice, is unpersuasive. The constitutionally protected right to refuse lifesaving hydration and nutrition that was discussed in *Cruzan, supra,* at 279, was not simply deduced from abstract concepts of personal autonomy, but was instead grounded in the Nation's history and traditions, given the common-law rule that forced medication was a battery, and the long legal tradition protecting the decision to refuse unwanted medical treatment. And although *Casey* recognized that many of the rights and liberties protected by the Due Process Clause sound in personal autonomy, 505 U. S., at 852, it does not follow that any and all important, intimate, and personal decisions are so protected, see *San Antonio Independent School Dist.* v. *Rodriguez,* 411 U. S. 1, 33-34. *Casey* did not suggest otherwise.

(c) The constitutional requirement that Washington's assisted-suicide ban be rationally related to legitimate government interests, see, *e.* g., *Heller* v. *Doe,* 509 U. S. 312, 319-320, is unquestionably met here. These interests include prohibiting intentional killing and preserving human life; preventing the serious public-health problem of suicide, especially among the young, the elderly, and those suffering from untreated pain or from depression or other mental disorders; protecting the medical profession's integrity and ethics and maintaining physicians' role as their patients' healers; protecting the poor, the elderly, disabled persons, the terminally ill, and persons in other vulnerable

groups from indifference, prejudice, and psychological and financial pressure to end their lives; and avoiding a possible slide toward voluntary and perhaps even involuntary euthanasia. The relative strengths of these various interests need not be weighed exactingly, since they are unquestionably important and legitimate, and the law at issue is at least reasonably related to their promotion and protection.

Lawrence –versus- Texas,
539 U.S. 558 (2003)

Bowers' rationale does not withstand careful analysis. In his dissenting opinion in Bowers JUSTICE STEVENS concluded that (1) the fact a State's governing majority has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice, and (2) individual decisions concerning the intimacies of physical relationships, even when not intended to produce offspring, are a form of "liberty" protected by due process. That analysis should have controlled Bowers, and it controls here. Bowers was not correct when it was decided, is not correct today, and is hereby overruled. This case does not involve minors, persons who might be injured or coerced, those who might not easily refuse consent, or public conduct or prostitution. It does involve two adults who, with full and mutual consent, engaged in sexual practices common to a homosexual lifestyle. Petitioners' right to liberty under the Due Process Clause gives them the full right to engage in private conduct without government intervention. Casey, supra, at 847. The Texas statute furthers no legitimate state interest which can justify its intrusion into the individual's personal and private life.

FACTS:
John Lawrence, Tyron Garner, and Robert Eubanks were three gay men spending the evening together at Lawrence's apartment in Houston. While Garner and Eubanks had been involved in a romantic relationship, Lawrence and Eubands were friends. Eubanks was angry that Garner had been flirting with Lawrence and left the apartment, ostensibly to buy a soda. He then called the police and reported that there was a disturbance involving weapons at the apartment. The sheriff's deputies entered the apartment on Eubanks' directions with weapons drawn.

One of the deputies, Joseph Quinn, alleged that Lawrence and Garner were engaged in anal sex in the bedroom, which was unlocked. However, the other three officers reported different stories, two of them saying that they saw no intercourse at all. It is possible that Quinn's account was driven by Lawrence's hostility toward him as well as his biases against African-Americans and homosexuals. (Garner was African-American.) Nevertheless, Quinn charged Lawrence and Garner with "deviate sex" under Chapter 21, Section 21.06 of the Texas Penal Code. They pleaded no content to the charges on the advice of their lawyers and were fined a small amount, which was raised when the judge realized that their lawyers planned to raise a constitutional challenge to the convictions. Appeals were permitted only in cases where a fine of at least a certain amount was imposed.

The defense attorneys argued that the Texas law violated the Constitution because it prevented only homosexual couples from engaging in anal sex while allowing the same conduct for heterosexual couples. Challenging the Supreme Court's decision in Bowers v. Hardwick that criminalizing homosexuality was constitutional, they asserted the creative argument of a right to privacy and argued that law enforcement should not have the right to invade an individual's bedroom.

ISSUE:
*Whether t*he Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violates the Due Process Clause. (YES)

RULING:
(a) Resolution of this case depends on whether petitioners were free as adults to engage in private conduct in the exercise of their liberty under the Due Process Clause. For this inquiry the Court deems it necessary to reconsider its *Bowers* holding. The *Bowers* Court's initial substantive statement-"The issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy ... ," 478 U. S., at 190-discloses the Court's failure to appreciate the extent of the liberty at stake. To say that the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim the individual put forward, just as it would demean a married couple were it said that marriage is just about the right to have sexual intercourse. Although the laws involved in *Bowers* and here purport to do no more than prohibit a particular sexual act, their penalties and purposes have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. They seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals. The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons.

(b) Having misapprehended the liberty claim presented to it, the *Bowers* Court stated that proscriptions against sodomy have ancient roots. 478 U. S., at 192. It should be noted, however, that there is no longstanding history in this country of laws directed at homosexual conduct as a distinct matter. Early American sodomy laws were not directed at homosexuals as such but instead sought to prohibit nonprocreative sexual activity more generally, whether between men and women or men and men. Moreover, early sodomy laws seem not to have been enforced against consenting adults acting in private. Instead, sodomy prosecutions often involved predatory acts against those who could not or did not consent: relations between men and minor girls or boys, between adults involving force, between adults implicating disparity in status, or between men and animals. The longstanding criminal prohibition of homosexual sodomy upon which *Bowers* placed such reliance is as consistent with a general condemnation of nonprocreative sex as it is with an established tradition of prosecuting acts because of their homosexual character. Far from possessing "ancient roots," *ibid.,* American laws targeting same-sex couples did not develop until the last third of the 20th century. Even now, only nine States have singled out samesex relations for criminal prosecution. Thus, the historical grounds relied upon in *Bowers* are more complex than the majority opinion and the concurring opinion by Chief Justice Burger there indicated. They are not without doubt and, at the very least, are overstated. The *Bowers* Court was, of course, making the broader point that for centuries there have been powerful voices to condemn homosexual conduct as immoral, but this Court's obligation is to define the liberty of all, not to mandate its own moral code, *Planned Parenthood of Southeastern Pa.* v. *Casey,* 505 U. S. 833, 850. The Nation's laws and traditions in the past half century are most relevant here. They show an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex. See *County of Sacramento v. Lewis*, 523 U. S. 833, 857.

(c) *Bowers'* deficiencies became even more apparent in the years following its announcement. The 25 States with laws prohibiting the conduct referenced in *Bowers* are reduced now to 13, of which 4 enforce their laws only against homosexual conduct. In those States, including Texas, that still proscribe sodomy (whether for same-sex or heterosexual conduct), there is a pattern of nonenforcement with respect to consenting adults acting in private. *Casey, supra,* at 851-which confirmed that the Due Process Clause protects personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education-and *Romer* v. *Evans,* 517 U. S. 620,

624-which struck down class-based legislation directed at homosexuals-cast *Bowers'* holding into even more doubt. The stigma the Texas criminal statute imposes, moreover, is not trivial. Although the offense is but a minor misdemeanor, it remains a criminal offense with all that imports for the dignity of the persons charged, including notation of convictions on their records and on job application forms, and registration as sex offenders under state law. Where a case's foundations have sustained serious erosion, criticism from other sources is of greater significance. In the United States, criticism of *Bowers* has been substantial and continuing, disapproving of its reasoning in all respects, not just as to its historical assumptions. And, to the extent *Bowers* relied on values shared with a wider civilization, the case's reasoning and holding have been rejected by the European Court of Human Rights, and that other nations have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct. There has been no showing that in this country the governmental interest in circumscribing personal choice is somehow more legitimate or urgent. *Stare decisis* is not an inexorable command. *Payne v. Tennessee*, 501 U.S. 808, 828. Bowers' holding has not induced detrimental reliance of the sort that could counsel against overturning it once there are compelling reasons to do so. *Casey, supra*, at 855—856. *Bowers* causes uncertainty, for the precedents before and after it contradict its central holding.

(d) *Bowers'* rationale does not withstand careful analysis. In his dissenting opinion in *Bowers* JUSTICE STEVENS concluded that (1) the fact a State's governing majority has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice, and (2) individual decisions concerning the intimacies of physical relationships, even when not intended to produce offspring, are a form of "liberty" protected by due process. That analysis should have controlled *Bowers*, and it controls here. *Bowers* was not correct when it was decided, is not correct today, and is hereby overruled. This case does not involve minors, persons who might be injured or coerced, those who might not easily refuse consent, or public conduct or prostitution. It does involve two adults who, with full and mutual consent, engaged in sexual practices common to a homosexual lifestyle. Petitioners' right to liberty under the Due Process Clause gives them the full right to engage in private conduct without government intervention. *Casey, supra,* at 847. The Texas statute furthers no legitimate state interest which can justify its intrusion into the individual's personal and private life.

Obergefell –versus- Hodges
576 U.S. ___ (2015)

The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. Same-sex couples may exercise the fundamental right to marry. Bakerv. Nelson is overruled. The State laws challenged by the petitioners in these cases are held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

FACTS:
In Ohio, John Arthur was suffering from the latter stages of amyotrophic lateral sclerosis (ALS), a terminal illness. Recognizing the need to make critical end-of-life decisions, Arthur sought to have the Ohio Registrar identify his partner, James Obergefell, as his surviving spouse on his death certificate so that Obergefell could receive the benefits due to a spouse. Arthur and Obergefell had married in Maryland two years earlier. The Registrar planned to certify Obergefell as Arthur's spouse on the death certificate, believing that discrimination against same-sex couples was unconstitutional. The state of Ohio prohibited same-sex marriage, however, and its Attorney General's Office mobilized

to defend that ban.

Also in Ohio, four same-sex couples brought a claim seeking the right to list both parents on the birth certificates of their children. In this case, known as Henry v. Wymyslo, three of the couples lived in Ohio, and all of the children were born there. Henry v. Wymyslo was heard before the same judge who reviewed the Obergefell case, District Judge Timothy S. Black.

In Tennessee, four same-sex couples sued to force the state to recognize their marriages, which had been performed in California and New York. (One of the New York couples later left the case.) They argued that Tennessee's refusal to recognize same-sex marriages violated its own rule that a marriage validated where it is celebrated is valid everywhere.

In Michigan, April DeBoer and Jayne Rowse brought a claim on behalf of themselves and three children whom they sought to jointly adopt. All of the children, one boy and two girls, had special needs. The two nurses challenged a state law prohibiting adoption by same-sex couples and limiting second-parent adoption to married couples, while defining marriage as between opposite-sex individuals only.

In Kentucky, Gregory Bourke and Michael DeLeon brought a claim on behalf of themselves and DeLeon's two adopted children. Three other couples, one with four children, joined their claim. While Bourke and DeLeon were legally married in Ontario, Canada, the other couples were married in Iowa, California, and Connecticut.

The couples prevailed in the federal district courts of all four states. In Obergefell, District Judge Black issued a temporary restraining order, which the state did not appeal, and planned oral arguments on whether a permanent injunction should be granted. Unfortunately, Arthur died before arguments were held, and the state moved within a week to dismiss the case as moot. Black denied the motion and ruled two months later that Ohio must recognize same-sex marriages performed in other states on death certificates. He also issued an order in Henry v. Wymyslo that required states to recognize same-sex marriages performed in other states, although he stayed the enforcement of his ruling with respect to matters other than the birth certificates sought in this specific case.

All four of these cases were appealed to the Sixth Circuit, which reversed the trial court decisions in each of them and reinstated the state bans on same-sex marriage. (Some observers, including the dissenting justice in the Sixth Circuit's 2-1 decision, speculated that the court took this view deliberately to force the Supreme Court to resolve the ensuing circuit split and provide a definitive answer on the issue of marriage equality.) The Supreme Court then consolidated the cases for review. Since the federal government previously had announced its support for marriage equality, U.S. Solicitor General Donald Verrilli, Jr. joined the plaintiffs' lawyers for oral argument before the Court.

ISSUE:
Whether the Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State.(YES)

RULING:

(a) Before turning to the governing principles and precedents, it is appropriate to note the history of the subject now before the Court.

(1) The history of marriage as a union between two persons of the opposite sex marks the beginning of these cases. To the respondents, it would demean a timeless institution if marriage were extended to same-sex couples. But the petitioners, far from seeking to devalue marriage, seek it for themselves because of their respect—and need—for its privileges and responsibilities, as illustrated by the petitioners' own experiences.

(2) The history of marriage is one of both continuity and change. Changes, such as the decline of arranged marriages and the abandonment of the law of coverture, have worked deep transformations in the structure of marriage, affecting aspects of marriage once viewed as essential. These new insights have strengthened, not weakened, the institution. Changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new generations.

This dynamic can be seen in the Nation's experience with gay and lesbian rights. Well into the 20th century, many States condemned same-sex intimacy as immoral, and homosexuality was treated as an illness. Later in the century, cultural and political developments allowed same-sex couples to lead more open and public lives. Extensive public and private dialogue followed, along with shifts in public attitudes. Questions about the legal treatment of gays and lesbians soon reached the courts, where they could be discussed in the formal discourse of the law. In 2003, this Court overruled its 1986 decision in *Bowers* v. *Hardwick*, 478 U. S. 186 , which upheld a Georgia law that criminalized certain homosexual acts, concluding laws making same-sex intimacy a crime "demean the lives of homosexual persons." *Lawrence* v. *Texas*, 539 U. S. 558 . In 2012, the federal Defense of Marriage Act was also struck down. *United States* v. *Windsor*, 570 U. S. ___. Numerous same-sex marriage cases reaching the federal courts and state supreme courts have added to the dialogue.

(b) The Fourteenth Amendment requires a State to license a marriage between two people of the same sex.

(1) The fundamental liberties protected by the Fourteenth Amendment's Due Process Clause extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs. See, *e.g., Eisenstadt* v. *Baird*, 405 U. S. 438 ; *Griswold* v. *Connecticut*, 381 U. S. 479 –486. Courts must exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect. History and tradition guide and discipline the inquiry but do not set its outer boundaries. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.

Applying these tenets, the Court has long held the right to marry is protected by the Constitution. For example, *Loving* v. *Virginia*, 388 U. S. 1 , invalidated bans on interracial unions, and *Turner* v. *Safley*, 482 U. S. 78 , held that prisoners could not be denied the right to marry. To be sure, these cases presumed a relationship involving opposite-sex partners, as did *Baker* v. *Nelson*, 409 U. S. 810 , a one-line summary decision issued in 1972, holding that the exclusion of same-sex couples from marriage did not present a substantial federal question. But other, more instructive precedents have expressed broader principles. See, *e.g., Lawrence*, *supra,* at 574. In assessing whether the force and rationale of its cases apply to same-sex couples, the Court must respect the basic reasons why the right to marry

has been long protected. See, *e.g.,Eisenstadt*, *supra*, at 453–454. This analysis compels the conclusion that same-sex couples may exercise the right to marry.

(2) Four principles and traditions demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples. The first premise of this Court's relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. This abiding connection between marriage and liberty is why *Loving* invalidated interracial marriage bans under the Due Process Clause. See 388 U. S., at 12. Decisions about marriage are among the most intimate that an individual can make. See *Lawrence*, *supra*, at 574. This is true for all persons, whatever their sexual orientation.

A second principle in this Court's jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals. The intimate association protected by this right was central to *Griswold* v. *Connecticut*, which held the Constitution protects the right of married couples to use contraception, 381 U. S., at 485, and was acknowledged in *Turner*, *supra,* at 95. Same-sex couples have the same right as opposite-sex couples to enjoy intimate association, a right extending beyond mere freedom from laws making same-sex intimacy a criminal offense. See *Lawrence, supra*, at 567.

A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education. See, *e.g., Pierce* v. *Society of Sisters*, 268 U. S. 510 . Without the recognition, stability, and predictability marriage offers, children suffer the stigma of knowing their families are somehow lesser. They also suffer the significant material costs of being raised by unmarried parents, relegated to a more difficult and uncertain family life. The marriage laws at issue thus harm and humiliate the children of same-sex couples. This does not mean that the right to marry is less meaningful for those who do not or cannot have children. Precedent protects the right of a married couple not to procreate, so the right to marry cannot be conditioned on the capacity or commitment to procreate.

Finally, this Court's cases and the Nation's traditions make clear that marriage is a keystone of the Nation's social order. See *Maynard* v. *Hill*, 125 U. S. 190 . States have contributed to the fundamental character of marriage by placing it at the center of many facets of the legal and social order. There is no difference between same- and opposite-sex couples with respect to this principle, yet same-sex couples are denied the constellation of benefits that the States have linked to marriage and are consigned to an instability many opposite-sex couples would find intolerable. It is demeaning to lock same-sex couples out of a central institution of the Nation's society, for they too may aspire to the transcendent purposes of marriage.

The limitation of marriage to opposite-sex couples may long have seemed natural and just, but its inconsistency with the central meaning of the fundamental right to marry is now manifest. Pp. 12–18.

(3) The right of same-sex couples to marry is also derived from the Fourteenth Amendment's guarantee of equal protection. The Due Process Clause and the Equal Protection Clause are connected in a profound way. Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always co-extensive, yet each may be instructive as to the meaning and reach of the other. This dynamic is reflected in *Loving,* where the Court invoked both the Equal Protection Clause and the Due Process Clause; and in *Zablocki* v. *Redhail*, 434 U. S. 374 , where the Court invalidated a law barring fathers delinquent on child-support payments from marrying. Indeed, recognizing that new insights and societal understandings can reveal unjustified inequality

within fundamental institutions that once passed unnoticed and unchallenged, this Court has invoked equal protection principles to invalidate laws imposing sex-based inequality on marriage, see, *e.g., Kirchberg* v. *Feenstra*, 450 U. S. 455 –461, and confirmed the relation between liberty and equality. The Court has acknowledged the interlocking nature of these constitutional safeguards in the context of the legal treatment of gays and lesbians. See *Lawrence*, 539 U. S., at 575. This dynamic also applies to same-sex marriage. The challenged laws burden the liberty of same-sex couples, and they abridge central precepts of equality. The marriage laws at issue are in essence unequal: Same-sex couples are denied benefits afforded opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial works a grave and continuing harm, serving to disrespect and subordinate gays and lesbians.

(4) The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. Same-sex couples may exercise the fundamental right to marry. *Baker*v. *Nelson* is overruled. The State laws challenged by the petitioners in these cases are held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

(5) There may be an initial inclination to await further legislation, litigation, and debate, but referenda, legislative debates, and grassroots campaigns; studies and other writings; and extensive litigation in state and federal courts have led to an enhanced understanding of the issue. While the Constitution contemplates that democracy is the appropriate process for change, individuals who are harmed need not await legislative action before asserting a fundamental right. *Bowers,* in effect, upheld state action that denied gays and lesbians a fundamental right. Though it was eventually repudiated, men and women suffered pain and humiliation in the interim, and the effects of these injuries no doubt lingered long after *Bowers* was overruled. A ruling against same-sex couples would have the same effect and would be unjustified under the Fourteenth Amendment. The petitioners' stories show the urgency of the issue they present to the Court, which has a duty to address these claims and answer these questions. Respondents' argument that allowing same-sex couples to wed will harm marriage as an institution rests on a counterintuitive view of opposite-sex couples' decisions about marriage and parenthood. Finally, the First Amendment ensures that religions, those who adhere to religious doctrines, and others have protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths.

(c) The Fourteenth Amendment requires States to recognize same-sex marriages validly performed out of State. Since same-sex couples may now exercise the fundamental right to marry in all States, there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character. Pp. 27–28.

WHITE LIGHT CORPORATION, TITANIUM CORPORATION and STA. MESA TOURIST & DEVELOPMENT CORPORATION,*Petitioners,*-versus-CITY OF MANILA, represented by DE CASTRO, MAYOR ALFREDO S. LIM,*Respondent.*
G.R. No. 122846, EN BANC, January 20, 2009, TINGA, J.

The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural due process" and "substantive due process." Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the

established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.

If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has sufficient justification for depriving a person of life, liberty, or property.

In this case, an ordinance which prevents the lawful uses of a wash rate depriving patrons of a product and the petitioners of lucrative business ties in with another constitutional requisite for the legitimacy of the ordinance as a police power measure. ***It must appear that the interests of the public generally, as distinguished from those of a particular class, require an interference with private rights and the means must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive of private rights. It must also be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work.*** *More importantly, a reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded. Lacking a concurrence of these requisites, the police measure shall be struck down as an arbitrary intrusion into private rights.Lacking a concurrence of these requisites, the police measure shall be struck down as an arbitrary intrusion into private rights.*

FACTS:
On December 3, 1992, City Mayor Alfredo S. Lim (Mayor Lim) signed into law the Ordinance. The Ordinance is reproduced in full, hereunder:

SEC. 2. Title. This ordinance shall be known as "An Ordinance" prohibiting short time admission in hotels, motels, lodging houses, pension houses and similar establishments in the City of Manila.

SEC. 3. Pursuant to the above policy, short-time admission and rate [*sic*], wash-up rate or other similarly concocted terms, are hereby prohibited in hotels, motels, inns, lodging houses, pension houses and similar establishments in the City of Manila.

SEC. 4. Definition of Terms. Short-time admission shall mean admittance and charging of room rate for less than twelve (12) hours at any given time or the renting out of rooms more than twice a day or any other term that may be concocted by owners or managers of said establishments but would mean the same or would bear the same meaning.

SEC. 5. Penalty Clause. Any person or corporation who shall violate any provision of this ordinance shall upon conviction thereof be punished by a fine of Five Thousand (₱5,000.00) Pesos or imprisonment for a period of not exceeding one (1) year or both such fine and imprisonment at the discretion of the court; Provided, That in case of [a] juridical person, the president, the manager, or the persons in charge of the operation thereof shall be liable: Provided, further, That in case of subsequent conviction for the same offense, the business license of the guilty party shall automatically be cancelled.

On December 21, 1992, petitioners White Light Corporation (WLC), Titanium Corporation (TC) and Sta. Mesa Tourist and Development Corporation (STDC) filed a motion to intervene and to admit attached complaint-in-intervention on the ground that the Ordinance directly affects their business

interests as operators of drive-in-hotels and motels in Manila. The three companies are components of the Anito Group of Companies which owns and operates several hotels and motels in Metro Manila. The City filed an Answer dated January 22, 1993 alleging that the Ordinance is a legitimate exercise of police power.

The RTC rendered a decision declaring the Ordinance null and void. The RTC noted that the ordinance "strikes at the personal liberty of the individual guaranteed and jealously guarded by the Constitution." Reference was made to the provisions of the Constitution encouraging private enterprises and the incentive to needed investment, as well as the right to operate economic enterprises. Finally, from the observation that the illicit relationships the Ordinance sought to dissuade could nonetheless be consummated by simply paying for a 12-hour stay, the RTC likened the law to the ordinance annulled in *Ynot v. Intermediate Appellate Court,* where the legitimate purpose of preventing indiscriminate slaughter of carabaos was sought to be effected through an inter-province ban on the transport of carabaos and carabeef.

The Court of Appeals reversed the decision of the RTC and affirmed the constitutionality of the Ordinance. First, it held that the Ordinance did not violate the right to privacy or the freedom of movement, as it only penalizes the owners or operators of establishments that admit individuals for short time stays. Second, the virtually limitless reach of police power is only constrained by having a lawful object obtained through a lawful method. The lawful objective of the Ordinance is satisfied since it aims to curb immoral activities. There is a lawful method since the establishments are still allowed to operate. Third, the adverse effect on the establishments is justified by the well-being of its constituents in general. Finally, as held in *Ermita-Malate Motel Operators Association v. City Mayor of Manila,* liberty is regulated by law.

ISSUE:
Whether the ordinance is valid. (NO)

RULING:
Police power is based upon the concept of necessity of the State and its corresponding right to protect itself and its people. Police power has been used as justification for numerous and varied actions by the State. These range from the regulation of dance halls, movie theaters, gas stations and cockpits. The awesome scope of police power is best demonstrated by the fact that in its hundred or so years of presence in our nation's legal system, its use has rarely been denied.

The apparent goal of the Ordinance is to minimize if not eliminate the use of the covered establishments for illicit sex, prostitution, drug use and alike. These goals, by themselves, are unimpeachable and certainly fall within the ambit of the police power of the State. Yet the desirability of these ends do not sanctify any and all means for their achievement. Those means must align with the Constitution, and our emerging sophisticated analysis of its guarantees to the people.

The primary constitutional question that confronts us is one of due process, as guaranteed under Section 1, Article III of the Constitution. Due process evades a precise definition. The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty and property of individuals. The due process guaranty serves as a protection against arbitrary regulation or seizure. Even corporations and partnerships are protected by the guaranty insofar as their property is concerned.

The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural due process" and "substantive due process." Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.

If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has sufficient justification for depriving a person of life, liberty, or property.

The question of substantive due process, moreso than most other fields of law, has reflected dynamism in progressive legal thought tied with the expanded acceptance of fundamental freedoms. Police power, traditionally awesome as it may be, is now confronted with a more rigorous level of analysis before it can be upheld. The vitality though of constitutional due process has not been predicated on the frequency with which it has been utilized to achieve a liberal result for, after all, the libertarian ends should sometimes yield to the prerogatives of the State. Instead, the due process clause has acquired potency because of the sophisticated methodology that has emerged to determine the proper metes and bounds for its application.

In this case, an ordinance which prevents the lawful uses of a wash rate depriving patrons of a product and the petitioners of lucrative business ties in with another constitutional requisite for the legitimacy of the ordinance as a police power measure. **It must appear that the interests of the public generally, as distinguished from those of a particular class, require an interference with private rights and the means must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive of private rights. It must also be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work.** More importantly, a reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded.

Lacking a concurrence of these requisites, the police measure shall be struck down as an arbitrary intrusion into private rights.

GOVERNMENT SERVICE INSURANCE SYSTEM, Cebu City Branch, *Petitioner,* -versus-
MILAGROS O. MONTESCLAROS, *Respondent.*
G.R. No. 146494, EN BANC, July 14, 2004, CARPIO, *J.*

The Court holds that the proviso, which was the sole basis for the rejection by GSIS of Milagros' claim, is unconstitutional because it violates the due process clause. The proviso is also discriminatory and denies equal protection of the law. The proviso is contrary to Section 1, Article III of the Constitution, which provides that "no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." ***The proviso is unduly oppressive in outrightly denying a dependent spouse's claim for survivorship pension if the dependent spouse contracted marriage to the pensioner within the three-year prohibited period.*** *There is outright confiscation of benefits due the surviving spouse without giving the surviving spouse an opportunity to be heard. The proviso undermines the purpose of PD 1146, which is to assure comprehensive and*

integrated social security and insurance benefits to government employees and their dependents in the event of sickness, disability, death, and retirement of the government employees.

FACTS:
Sangguniang Bayan member Nicolas Montesclaros ("Nicolas") married Milagros Orbiso ("Milagros") on 10 July 1983. Nicolas was a 72- year old widower when he married Milagros who was then 43 years old.

On 4 January 1985, Nicolas filed with the Government Service Insurance System ("GSIS") an application for retirement benefits effective 18 February 1985 under Presidential Decree No. 1146 or the Revised Government Service Insurance Act of 1977 ("PD 1146"). In his retirement application, Nicolas designated his wife Milagros as his sole beneficiary. Nicolas' last day of actual service was on 17 February 1985. On 31 January 1986, GSIS approved Nicolas' application for retirement "*effective 17 February 1984*," granting a lump sum payment of annuity for the first five years and a monthly annuity thereafter. Nicolas died on 22 April 1992. Milagros filed with GSIS a claim for survivorship pension under PD 1146. **On 8 June 1992, GSIS denied the claim because under Section 18 of PD 1146, the surviving spouse has no right to survivorship pension if the surviving spouse contracted the marriage with the pensioner within three years before the pensioner qualified for the pension.** According to GSIS, Nicolas wed Milagros on 10 July 1983, less than one year from his date of retirement on "*17 February 1984*."

On 2 October 1992, Milagros filed with the trial court a special civil action for declaratory relief questioning the validity of Section 18 of PD 1146 disqualifying her from receiving survivorship pension.

On 9 November 1994, the trial court rendered judgment declaring Milagros eligible for survivorship pension. The trial court ordered GSIS to pay Milagros the benefits due including interest. Citing Articles 115 and 117 of the Family Code, the trial court held that retirement benefits, which the pensioner has earned for services rendered and for which the pensioner has contributed through monthly salary deductions, are onerous acquisitions. Since retirement benefits are property the pensioner acquired through labor, such benefits are conjugal property. The trial court held that the prohibition in Section 18 of PD 1146 is deemed repealed for being inconsistent with the Family Code, a later law. The Family Code has retroactive effect if it does not prejudice or impair vested rights.

The Court of Appeals agreed with the trial court that the retirement benefits are onerous and conjugal because the pension came from the deceased pensioner's salary deductions.

ISSUE:
Whether Section 16 of PD 1146 entitles Milagros to survivorship pension (YES)

RULING:
The Court holds that the proviso, which was the sole basis for the rejection by GSIS of Milagros' claim, is unconstitutional because it violates the due process clause. The proviso is also discriminatory and denies equal protection of the law.

The proviso is contrary to Section 1, Article III of the Constitution, which provides that "no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." **The proviso is unduly oppressive in outrightly denying a dependent spouse's claim for survivorship pension if the dependent spouse contracted**

marriage to the pensioner within the three-year prohibited period. There is outright confiscation of benefits due the surviving spouse without giving the surviving spouse an opportunity to be heard. The proviso undermines the purpose of PD 1146, which is to assure comprehensive and integrated social security and insurance benefits to government employees and their dependents in the event of sickness, disability, death, and retirement of the government employees.

The law extends survivorship benefits to the surviving and qualified beneficiaries of the deceased member or pensioner to cushion the beneficiaries against the adverse economic effects resulting from the death of the wage earner or pensioner. The surviving spouse of a government employee is entitled to receive survivor's benefits under a pension system. However, statutes sometimes require that the spouse should have married the employee for a certain period before the employee's death **to prevent sham marriages contracted for monetary gain.**

A statute based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law. The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class. Thus, the law may treat and regulate one class differently from another class provided there are real and substantial differences to distinguish one class from another.

The proviso in question does not satisfy these requirements. The proviso discriminates against the dependent spouse who contracts marriage to the pensioner within three years before the pensioner qualified for the pension. Under the proviso, even if the dependent spouse married the pensioner more than three years before the pensioner's death, the dependent spouse would still not receive survivorship pension if the marriage took place within three years before the pensioner qualified for pension. The object of the prohibition is vague. There is no reasonable connection between the means employed and the purpose intended. The law itself does not provide any reason or purpose for such a prohibition. If the purpose of the proviso is to prevent "***deathbed marriages*****,"** then we do not see why the proviso reckons the three-year prohibition from the date the pensioner qualified for pension and not from the date the pensioner died. The classification does not rest on substantial distinctions. Worse, the classification lumps all those marriages contracted within three years before the pensioner qualified for pension as having been contracted primarily for financial convenience to avail of pension benefits.

REPUBLIC OF THE PHILIPPINES, *Petitioner,* -versus- LIBERTY ALBIOS, *Respondent*.
G.R. No. 198780, THIRD DIVISION, October 16, 2013, Mendoza, J.

No less than our Constitution declares that marriage, as an in violable social institution, is the foundation of the family and shall be protected by the State. It must, therefore, be safeguarded from the whims and caprices of the contracting parties.

In this case, that their consent was freely given is best evidenced by their conscious purpose of acquiring American citizenship through marriage. There was a clear intention to enter into a real and valid marriage so as to fully comply with the requirements of an application for citizenship. The possibility that the parties in a marriage might have no real intention to establish a life together is, however, insufficient to nullify a marriage freely entered into in accordance with law. There is no law that declares a marriage void if it is entered into for purposes other than what the Constitution or law declares, such as the acquisition of foreign citizenship. Therefore, so long as all the essential and formal requisites prescribed by law are present, and it is not void or voidable under the grounds provided by law, it shall be declared valid.

FACTS:
David Lee Fringer, an American citizen, and Liberty Albios were married. Two years later, Albios filed a petition for declaration of nullity of marriage, alleging that the marriage was one made in jest as they never really had any intention of entering into a married state, thus null and void. Fringer did not attend any proceedings. The RTC declared the marriage null and void as the marriage was to enable Albios to obtain American citizenship for $2,000. It ruled that when marriage was entered into for a purpose other than the establishment of a conjugal and family life, such was a farce and should not be recognized from inception.

ISSUE:
Whether or not the marriage between Fringer and Albios "made in jest" is void. (NO)

RULING:
There was real consent between the parties. That their consent was freely given is best evidenced by their conscious purpose of acquiring American citizenship through marriage. There was a clear intention to enter into a real and valid marriage so as to fully comply with the requirements of an application for citizenship. The possibility that the parties in a marriage might have no real intention to establish a life together is, however, insufficient to nullify a marriage freely entered into in accordance with law. There is no law that declares a marriage void if it is entered into for purposes other than what the Constitution or law declares, such as the acquisition of foreign citizenship. Therefore, so long as all the essential and formal requisites prescribed by law are present, and it is not void or voidable under the grounds provided by law, it shall be declared valid.

Albios has indeed made a mockery of the sacred institution of marriage. Allowing her marriage with Fringer to be declared void would only further trivialize this inviolable institution. Albios already misused a judicial institution to enter into a marriage of convenience; she should not be allowed to again abuse it to get herself out of an inconvenient situation. No less than our Constitution declares that marriage, as an in violable social institution, is the foundation of the family and shall be protected by the State. It must, therefore, be safeguarded from the whims and caprices of the contracting parties. This Court cannot leave the impression that marriage may easily be entered into when it suits the needs of the parties, and just as easily nullified when no longer needed.

SOUTHERN HEMISPHERE ENGAGEMENT NETWORK, INC., et al., *Petitioners, -versus-* ANTI-TERRORISM COUNCIL, et al., *Respondents*
G.R. No. 178552, EN BANC, October 05, 2010, J. Carpio-Morales

A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution because it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid. Statutes found vague as a matter of due process typically are invalidated only 'as applied' to a particular defendant. Thus, absent an actual or imminent charge against the petitioner, a vagueness analysis of the assailed statute is legally impermissible. In this case, since the petitioners have not been charged with violation of the assailed law, the vagueness doctrine is not applicable.

FACTS:

Petitioners herein challenge the constitutionality of the Human Security Act of 2007. They assailed the said law for being intrinsically vague and impermissibly broad the definition of the crime of terrorism under the said law in that terms like "widespread and extraordinary fear and panic among the populace" and "coerce the government to give in to an unlawful demand" are nebulous, leaving law enforcement agencies with no standard to measure the prohibited acts. Respondents, through the OSG, countered that the doctrines of void-for-vagueness and overbreadth find no application in the present case since these doctrines apply only to free speech cases; and that RA 9372 regulates conduct, not speech.

ISSUE:
Whether the vagueness doctrine is an applicable ground to assail a penal statute.

RULING:
Yes, but only in an as-applied challenge. A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution because it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid.

In this jurisdiction, penal statutes found vague as a matter of due process typically are invalidated only "as applied" to a particular defendant. This means that in determining the constitutionality of a statute, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged. Absent an actual or imminent charge against the petitioner, a limited vagueness analysis of the assailed statute is legally impermissible. Therefore, in this case, since the petitioners have not been charged with violation of the assailed law, the vagueness doctrine is not applicable.

C. EQUAL PROTECTION

LOUIS BAROK C. BIRAOGO, *Petitioner,* -versus-THE PHILIPPINE TRUTH COMMISSION OF 2010, *Respondent*
G.R. No. 192935, EN BANC, December 7, 2010, MENDOZA, J.

The equal protection clause is aimed at all official state actions, not just those of the legislature. Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or whatever guise is taken.

In this case, Executive Order No. 1 should be struck down as violative of the equal protection clause. The clear mandate of the envisioned truth commission is to investigate and find out the truth concerning the reported cases of graft and corruption during the previous administration only. Though the OSG enumerates several differences between the Arroyo administration and other past administrations,

these distinctions are not substantial enough to merit the restriction of the investigation to the previous administration only. The reports of widespread corruption in the Arroyo administration cannot be taken as basis for distinguishing said administration from earlier administrations which were also blemished by similar widespread reports of impropriety. They are not inherent in, and do not inure solely to, the Arroyo administration.

FACTS:
This is a consolidated petition assailing Executive Order No.1 dated July 30, 2010, entitled Creating the Philippine Truth Commission of 2010, a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the previous administration. Petitioners Louis Biraogo assails Executive Order No. 1 for being violative of the legislative power of Congress under Section 1, Article VI of the Constitution as it usurps the constitutional authority of the legislature to create a public office and to appropriate funds therefor.

In addition, Biraogo claims that it is unconstitutional for it is not under the President's continuing authority to reorganize the Office of the President. Finally, E.O. No. 1 accordingly, violates the equal protection clause as it selectively targets for investigation and prosecution officials and personnel of the previous administration

In defense, the Office of the Solicitor General claims that,E.O. No. 1 does not arrogate the powers of Congress to create a public office because the Presidents executive power and power of control necessarily include the inherent power to conduct investigations to ensure that laws are faithfully executed. Also, E.O. No. 1 does not usurp the power of Congress to appropriate funds because there is no appropriation but a mere allocation of funds already appropriated by Congress. And that the Truth Commission does not violate the equal protection clause because it was validly created for laudable purposes.

ISSUES:
1. Whether the Creation of the Truth Commission of 2010's basis is the President's power of control. (NO)
2. Whether the Creation of the Truth Commission of 2010's basis is the President's duty to faithfully execute the laws under Section 17,Article VII. (YES)
3. Whether the Truth Commission of 2010 is constitutional. (NO)

RULING:
1. The creation of the PTC is not justified by the Presidents power of control. Control is essentially the power to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter. Clearly, the power of control is entirely different from the power to create public offices. The former is inherent in the Executive, while the latter finds basis from either a valid delegation from Congress, or his inherent duty to faithfully execute the laws. Further, there is no valid delegation from the congress that would warrant the creation of the commission because P.D. 1416, as amended by P.D. No. 1772 where the respondent anchors its legality was already held *functus oficio*. Thus, it begs the question of where does the Truth Commission of 2010 finds legal basis? This is answered by the second issue herein.

2. While the power to create a truth commission cannot pass muster on the basis of P.D. No. 1416 as amended by P.D. No. 1772, the creation of the PTC finds justification under Section 17, Article VII of the Constitution, imposing upon the President the duty to ensure that the laws are faithfully

executed. The Presidents power to conduct investigations to aid him in ensuring the faithful execution of laws in this case, fundamental laws on public accountability and transparency is inherent in the President's powers as the Chief Executive. That the authority of the President to conduct investigations and to create bodies to execute this power is not explicitly mentioned in the Constitution or in statutes does not mean that he is bereft of such authority.Indeed, the Executive is given much leeway in ensuring that our laws are faithfully executed. The powers of the President are not limited to those specific powers under the Constitution. One of the recognized powers of the President granted pursuant to this constitutionally-mandated duty is the power to create ad hoc committees. This flows from the obvious need to ascertain facts and determine if laws have been faithfully executed.

On the charge that Executive Order No. 1 transgresses the power of Congress to appropriate funds for the operation of a public office, suffice it to say that there will be no appropriation but only an allotment or allocations of existing funds already appropriated.

3. The equal protection clause is aimed at all official state actions, not just those of the legislature. Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or whatever guise is taken.

It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of ***reasonableness.*** The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class. Superficial differences do not make for a valid classification.

Applying these precepts to this case, Executive Order No. 1 should be struck down as violative of the equal protection clause. The clear mandate of the envisioned truth commission is to investigate and find out the truth concerning the reported cases of graft and corruption during the *previous administration*only. Though the OSG enumerates several differences between the Arroyo administration and other past administrations, these distinctions are not substantial enough to merit the restriction of the investigation to the previous administration only. The reports of widespread corruption in the Arroyo administration cannot be taken as basis for distinguishing said administration from earlier administrations which were also blemished by similar widespread reports of impropriety. They are not inherent in, and do not inure solely to, the Arroyo administration.

JESUS C. GARCIA vs. THE HONORABLE RAY ALANT. DRILON, Presiding Judge, Regional Trial Court-Branch 41, Bacolod City, and ROSALIE JAYPE-GARCIA, for herself and in behalf of minor children, namely: JO-ANN, JOSEPH EDUARD, JESSE ANTHONE, all surnamed GARCIA (G.R. No. 179267, EN BANC, June 25, 2013, Perlas-Bernabe, J.)

There is no violation of due process when the person accused of the offense is given the opportunity to give an answer but refused to do so. The issuance of a Temporary Protection Order pursuant to R.A 9262 is not violative of equal protection clause and due process. R.A. 9262 is not "anti-male" as the offense may be committed by any person against a woman and her children or a woman in a sexual or dating relationship.

FACTS:
Rosalie Garcia married Jesus Garcia in 2002 and had (3) children namely Jo-Ann (17), Joseph Eduard (6), and Jesse Anthone (3). Jo-Ann is Jesus' natural child who was adopted by Rosalie. In the course of their marriage, Jesus allegedly physically and emotionally abused Rosalie when she refused to obey her husband such as when she took up law against Jesus' wishes and when they fight due to Jesus' extramarital affair with one of his son's godmother. Also, Jesus was accused of hurting Jo-Ann when she read the text messages between the petitioner and his paramour and depriving the family of financial support.

In 2004, R.A. 9262 also known as An Act Criminalizing Violence Against Women and Children, was enacted. And in 2006, Rosalie filed a petition for the issuance of a Temporary Protection Order (TPO) against her husband for physical abuse, emotional, psychological, and economic violence as a result of marital infidelity on the part of petitioner, with threats of deprivation of custody of her children and of financial support.

The RTC issued the TPO against the petitioner and ordered him to comment as to why the TPO should not be renewed or extended. However, the petitioner did not file an answer as it would be futile according to him. With the case pending in the RTC, the petitioner filed a petition for prohibition with the Court of Appeals claiming that R.A. 9262 is unconstitutional as it is violative of due process and equal protection clause, hence the issued TPO are invalid. The CA dismissed the petition because the issue of constitutionality was not raised at the first instance in the RTC. Hence, this petition.

ISSUE:
Whether or not R.A. 9262 is unconstitutional for being violative of due process and equal protection clause? (NO)

RULING:
R.A. 9262 does not violate the guaranty of equal protection of the laws.

Equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. The oft-repeated disquisition in the early case of ***Victoriano v. Elizalde Rope Workers' Union*** is instructive:

> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be **germane to the purpose of the law**; that it must **not be limited to existing conditions only**; and that it must **apply equally to each member of the class**. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

I. R.A. 9262 rests on substantial distinctions.
The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for **real differences** justifying the classification under the law.

The United Nations, which has long recognized VAW as a human rights issue, passed its Resolution 48/104 on the Declaration on Elimination of Violence Against Women on December 20, 1993 stating that "violence against women is a manifestation of **historically unequal power relations between men and women**, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate positions, compared with men.

The enactment of R.A. 9262 aims to address the discrimination brought about by biases and prejudices against women. As emphasized by the CEDAW Committee on the Elimination of Discrimination against Women, addressing or correcting discrimination through specific measures focused on women does **not** discriminate against men. Petitioner's contention, therefore, that R.A. 9262 is discriminatory and that it is an "anti-male," "husband-bashing," and "hate-men" law deserves scant consideration. As a State Party to the CEDAW, the Philippines bound itself to take all appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."84 Justice Puno correctly pointed out that "(t)he paradigm shift changing the character of domestic violence from a private affair to a public offense will require the development of a distinct mindset on the part of the police, the prosecution and the judges."

II. The classification is germane to the purpose of the law.
The distinction between men and women is germane to the purpose of R.A. 9262, which is to address violence committed against women and children.

In 1979, the U.N. General Assembly adopted the CEDAW, which the Philippines ratified on August 5, 1981. Subsequently, the Optional Protocol to the CEDAW was also ratified by the Philippines on October 6, 2003. This Convention mandates that State parties shall accord to women equality with men before the law and shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations on the basis of equality of men and women. The Philippines likewise ratified the Convention on the Rights of the Child and its two protocols. It is, thus, bound by said Conventions and their respective protocols.

III. The classification is not limited to existing conditions only, and apply equally to all members
Moreover, the application of R.A. 9262 is not limited to the existing conditions when it was promulgated, but to future conditions as well, for as long as the safety and security of women and their children are threatened by violence and abuse. R.A. 9262 applies **equally** to all women and children who sufferviolence and abuse.

R.A. 9262 is not violative of the due process clause of the Constitution.
A **protection order** is an order issued to prevent further acts of violence against women and their children, their family or household members, and to grant other necessary reliefs. Its purpose is to safeguard the offended parties from further harm, minimize any disruption in their daily life and facilitate the opportunity and ability to regain control of their life.
It is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side. Thus, the fear of petitioner of being "stripped of family, property, guns, money, children, job, future employment and reputation, all in a matter of seconds, without an inkling of what happened" is a

mere product of an overactive imagination. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

It should be recalled that petitioner filed on April 26, 2006 an Opposition to the Urgent Ex-Parte Motion for Renewal of the TPO that was granted only two days earlier on April 24, 2006. Likewise, on May 23, 2006, petitioner filed a motion for the modification of the TPO to allow him visitation rights to his children. Still, the trial court in its Order dated September 26, 2006, gave him five days (5) within which to show cause why the TPO should not be renewed or extended. Yet, he chose not to file the required comment arguing that it would just be an "exercise in futility," conveniently forgetting that the renewal of the questioned TPO was only for a limited period (30 days) each time, and that he could prevent the continued renewal of said order if he can show sufficient cause therefor. Having failed to do so, petitioner may not now be heard to complain that he was denied due process of law.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, *v.* MARELYN TANEDO MANALO, *Respondent*.
(G.R. No. 221029, EN BANC, April 24, 2018, Peralta, *J.*)

In this case, the Court finds that Paragraph 2 of Article 26 violates one of the essential requisites of the equal protection clause. Particularly, the limitation of the provision only to a foreign divorce decree initiated by the alien spouse is unreasonable as it is based on superficial, arbitrary, and whimsical classification.

A Filipino who is married to another Filipino is not similarly situated with a Filipino who is married to a foreign citizen. There are real, material and substantial differences between them. Ergo, they should not be treated alike, both as to rights conferred and liabilities imposed. Without a doubt, there are political, economic, cultural, and religious dissimilarities as well as varying legal systems and procedures, all too unfamiliar, that a Filipino national who is married to an alien spouse has to contend with. More importantly, while a divorce decree obtained abroad by a Filipino against another Filipino is null and void, a divorce decree obtained by an alien against his or her Filipino spouse is recognized if made in accordance with the national law of the foreigner.

FACTS:
Manalo is previously married in the Philippines to a Japanese national named YOSHINO MINORO as shown by their Marriage Contract. Recently, Manalo filed a case for divorce in Japan and after due proceedings, a divorce decree was rendered by the Japanese Court.
Subsequently, Manalo filed a petition for cancellation of entry of marriage in the Civil Registry of San Juan, Metro Manila, praying for the cancellation of the entry of her marriage, and that she be allowed to return and use her maiden surname.

RTC denied the petition for lack of merit. In ruling that the divorce obtained by Manalo in Japan should not be recognized, it opined that, based on Article 15 of the New Civil Code, the Philippine law "does not afford Filipinos the right to file for a divorce, whether they are in the country or living abroad, if they are married to Filipinos or to foreigners, or if they celebrated their marriage in the Philippines or in another country."

On appeal, the CA overturned the RTC decision. It held that Article 26 of the Family Code of the Philippines is applicable even if it was Manalo who filed for divorce against her Japanese husband because the decree they obtained makes the latter no longer married to the former, capacitating him to remarry. For the appellate court, the fact that it was Manalo who filed the divorce case is inconsequential. The OSG filed a motion for reconsideration, but it was denied; hence, this petition.

ISSUE:
Whether or not paragraph 2 of Art. 26 of the Family Code violates the equal protection clause? (YES)

RULING:
The Court finds that Paragraph 2 of Article 26 violates one of the essential requisites of the equal protection clause. Particularly, the limitation of the provision only to a foreign divorce decree initiated by the alien spouse is unreasonable as it is based on superficial, arbitrary, and whimsical classification.

A Filipino who is married to another Filipino is not similarly situated with a Filipino who is married to a foreign citizen. There are real, material and substantial differences between them. *Ergo*, they should not be treated alike, both as to rights conferred and liabilities imposed. Without a doubt, there are political, economic, cultural, and religious dissimilarities as well as varying legal systems and procedures, all too unfamiliar, that a Filipino national who is married to an alien spouse has to contend with. More importantly, while a divorce decree obtained abroad by a Filipino against another Filipino is null and void, a divorce decree obtained by an alien against his or her Filipino spouse is recognized if made in accordance with the national law of the foreigner.

On the contrary, there is no real and substantial difference between a Filipino who initiated a foreign divorce proceedings and a Filipino who obtained a divorce decree upon the instance of his or her alien spouse. In the eyes of the Philippine and foreign laws, both are considered as Filipinos who have the same rights and obligations in an alien land. The circumstances surrounding them are alike. Were it not for Paragraph 2 of Article 26, both are still married to their foreigner spouses who are no longer their wives/husbands. Hence, to make a distinction between them based merely on the superficial difference of whether they initiated the divorce proceedings or not is utterly unfair. Indeed, the treatment gives undue favor to one and unjustly discriminate against the other.

Further, the differentiation in Paragraph 2 of Article 26 is arbitrary. There is inequality in treatment because a foreign divorce decree that was initiated and obtained by a Filipino citizen against his or her alien spouse would not be recognized even if based on grounds similar to Articles 35, 36, 37 and 38 of the Family Code. In filing for divorce based on these grounds, the Filipino spouse cannot be accused of invoking foreign law at whim, tantamount to insisting that he or she should be governed with whatever law he or she chooses.

The foregoing notwithstanding, the Court cannot yet write *finis* to this controversy by granting Manalo's petition to recognize and enforce the divorce decree rendered by the Japanese court and to cancel the entry of marriage in the Civil Registry of San Juan, Metro Manila. The fact of divorce must still first be proven. Before a foreign divorce decree can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it. Since the divorce was raised by Manalo, the burden of proving the pertinent Japanese law validating it, as well as her former husband's capacity to remarry, fall squarely upon her.

ANTONIO M. SERRANO, Petitioner, *vs.*

GALLANT MARITIME SERVICES, INC. and MARLOW NAVIGATION CO., INC., Respondents.
(G.R. No. 167614, EN BANC, March 24, 2009, AUSTRIA-MARTINEZ, *J.*)

The Court concludes that the subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a 3-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.

There being a suspect classification involving a vulnerable sector protected by the Constitution, the Court now subjects the classification to a strict judicial scrutiny, and determines whether it serves a compelling state interest through the least restrictive means.

What constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history. It is akin to the paramount interest of the state for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards, or in maintaining access to information on matters of public concern.

In the present case, the Court dug deep into the records but found no compelling state interest that the subject clause may possibly serve. Government has failed to discharge its burden of proving the existence of a compelling state interest that would justify the perpetuation of the discrimination against OFWs under the subject clause.

FACTS:
Petitioner was hired by Gallant Maritime Services, Inc. and Marlow Navigation Co., Ltd. under a POEA-approved Contract of Employment as a Chief Officer for the duration of 12 months with basic monthly salary of US$1,400.00.

When respondents did not deliver on their promise to make petitioner Chief Officer, the latter refused to stay on as Second Officer and was repatriated to the Philippines on May 26, 1998. Petitioner's employment contract was for a period of 12 months, but at the time of his repatriation, he had served only two (2) months and seven (7) days of his contract, leaving an unexpired portion of nine (9) months and twenty-three (23) days.

Petitioner filed with the LA a Complaint against respondents for constructive dismissal and for payment of his money claims in the total amount of US$26,442.73. The LA rendered a Decision, declaring the dismissal of petitioner illegal and awarding him monetary benefits in the amount of ***EIGHT THOUSAND SEVEN HUNDRED SEVENTY U.S. DOLLARS (US $8,770.00), representing the complainant's salary for three (3) months of the unexpired portion of the aforesaid contract of employment***.

On appeal, NLRC corrected the LA's computation of the lump-sum salary awarded to petitioner by reducing the applicable salary rate from US$2,590.00 to US$1,400.00 because R.A. No. 8042 "does not provide for the award of overtime pay, which should be proven to have been actually performed, and for vacation leave pay." Petitioner filed a Motion for Partial Reconsideration, but this time he questioned the constitutionality of the subject clause. The NLRC denied the motion. When brought to the CA, NLRC's ruling was affirmed; however, the CA skirted the constitutional issue raised by petitioner. Hence, this petition.

ISSUE:
Whether or not the subject clause violates the equal protection clause? (YES)

RULING:
Upon cursory reading, the subject clause appears facially neutral, for it applies to all OFWs. However, a closer examination reveals that the subject clause has a discriminatory intent against, and an invidious impact on, OFWs at two levels:

First, OFWs with employment contracts of less than one year vis-à-vis OFWs with employment contracts of one year or more;
Second, among OFWs with employment contracts of more than one year; and
Third, OFWs vis-à-vis local workers with fixed-period employment;

OFWs with employment contracts of less than one year *vis-à-vis* OFWs with employment contracts of one year or more

The subject clause classifies OFWs into two categories. The first category includes OFWs with fixed-period employment contracts of less than one year; in case of illegal dismissal, they are entitled to their salaries for the entire unexpired portion of their contract. The second category consists of OFWs with fixed-period employment contracts of one year or more; in case of illegal dismissal, they are entitled to monetary award equivalent to only 3 months of the unexpired portion of their contracts.
The disparity in the treatment of these two groups cannot be discounted. To illustrate the disparity even more vividly, the Court assumes a hypothetical OFW-A with an employment contract of 10 months at a monthly salary rate of US$1,000.00 and a hypothetical OFW-B with an employment contract of 15 months with the same monthly salary rate of US$1,000.00. Both commenced work on the same day and under the same employer, and were illegally dismissed after one month of work. Under the subject clause, OFW-A will be entitled to US$9,000.00, equivalent to his salaries for the remaining 9 months of his contract, whereas OFW-B will be entitled to only US$3,000.00, equivalent to his salaries for 3 months of the unexpired portion of his contract, instead of US$14,000.00 for the unexpired portion of 14 months of his contract, as the US$3,000.00 is the lesser amount.
The disparity becomes more aggravating when the Court takes into account jurisprudence that, ***prior to the effectivity of R.A. No. 8042 on July 14, 1995,*** illegally dismissed OFWs, no matter how long the period of their employment contracts, were entitled to their salaries for the entire unexpired portions of their contracts.

It is plain that prior to R.A. No. 8042, all OFWs, regardless of contract periods or the unexpired portions thereof, were treated alike in terms of the computation of their monetary benefits in case of illegal dismissal. Their claims were subjected to a uniform rule of computation: their basic salaries multiplied by the entire unexpired portion of their employment contracts.

The enactment of the subject clause in R.A. No. 8042 introduced a differentiated rule of computation of the money claims of illegally dismissed OFWs based on their employment periods, in the process ***singling out*** one category whose contracts have an unexpired portion of one year or more and subjecting them to the peculiar disadvantage of having their monetary awards limited to their salaries for 3 months or for the unexpired portion thereof, whichever is less, but all the while sparing the other category from such prejudice, simply because the latter's unexpired contracts fall short of one year.

Among OFWs with Employment Contracts of More Than One Year
The Court notes that the subject clause "or for three (3) months for every year of the unexpired term, whichever is less" contains the qualifying phrases "every year" and "unexpired term." By its

ordinary meaning, the word "term" means a limited or definite extent of time. Corollarily, that "every year" is but part of an "unexpired term" is significant in many ways: first, the unexpired term must be at least one year, *for if it were any shorter, there would be no occasion for such unexpired term to be measured by every year*; and second, the original term must be more than one year, for otherwise, whatever would be the unexpired term thereof will not reach even a year. Consequently, the more decisive factor in the determination of when the subject clause "for three (3) months for every year of the unexpired term, whichever is less" shall apply is not the length of the original contract period as held in *Marsaman*, but the length of the unexpired portion of the contract period -- the subject clause applies in cases when the unexpired portion of the contract period is at least one year, which arithmetically requires that the original contract period be more than one year.

Viewed in that light, the subject clause creates a sub-layer of discrimination among OFWs whose contract periods are for more than one year: those who are illegally dismissed with less than one year left in their contracts shall be entitled to their salaries for the entire unexpired portion thereof, while those who are illegally dismissed with one year or more remaining in their contracts shall be covered by the subject clause, and their monetary benefits limited to their salaries for three months only.

To concretely illustrate the application of the foregoing interpretation of the subject clause, the Court assumes hypothetical OFW-C and OFW-D, who each have a 24-month contract at a salary rate of US$1,000.00 per month. OFW-C is illegally dismissed on the 12th month, and OFW-D, on the 13th month. Considering that there is at least 12 months remaining in the contract period of OFW-C, the subject clause applies to the computation of the latter's monetary benefits. Thus, OFW-C will be entitled, not to US$12,000,00 or the latter's total salaries for the 12 months unexpired portion of the contract, but to the lesser amount of US$3,000.00 or the latter's salaries for 3 months out of the 12-month unexpired term of the contract. On the other hand, OFW-D is spared from the effects of the subject clause, for there are only 11 months left in the latter's contract period. Thus, OFW-D will be entitled to US$11,000.00, which is equivalent to his/her total salaries for the entire 11-month unexpired portion.

OFWs *vis-à-vis* Local Workers with Fixed-Period Employment

As discussed earlier, prior to R.A. No. 8042, a uniform system of computation of the monetary awards of illegally dismissed OFWs was in place. This uniform system was applicable even to local workers with fixed-term employment.

Prior to R.A. No. 8042, OFWs and local workers with fixed-term employment who were illegally discharged were treated alike in terms of the computation of their money claims: they were uniformly entitled to their salaries for the entire unexpired portions of their contracts. But with the enactment of R.A. No. 8042, specifically the adoption of the subject clause, illegally dismissed OFWs with an unexpired portion of one year or more in their employment contract have since been differently treated in that their money claims are subject to a 3-month cap, whereas no such limitation is imposed on local workers with fixed-term employment.

The Court concludes that the subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a 3-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.

There being a suspect classification involving a vulnerable sector protected by the Constitution, the Court now subjects the classification to a strict judicial scrutiny, and determines whether it serves a compelling state interest through the least restrictive means.

What constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history. It is akin to the paramount interest of the state for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards, or in maintaining access to information on matters of public concern. In the present case, the Court dug deep into the records but found no compelling state interest that the subject clause may possibly serve. Government has failed to discharge its burden of proving the existence of a compelling state interest that would justify the perpetuation of the discrimination against OFWs under the subject clause.

Assuming that, as advanced by the OSG, the purpose of the subject clause is to protect the employment of OFWs by mitigating the solidary liability of placement agencies, such callous and cavalier rationale will have to be rejected. There can never be a justification for any form of government action that alleviates the burden of one sector, but imposes the same burden on another sector, especially when the favored sector is composed of private businesses such as placement agencies, while the disadvantaged sector is composed of OFWs whose protection no less than the Constitution commands.

SAMEER OVERSEAS PLACEMENT AGENCY, INC. Petitioner, *vs*. JOY C. CABILES, Respondent.
(G.R. No. 170139, EN BANC, August 5, 2014, Leonen, J.)

The reinstated clause does not satisfy the requirement of reasonable classification. In Serrano, the Court identified the classifications made by the reinstated clause. It distinguished between fixed-period overseas workers and fixed-period local workers. It also distinguished between overseas workers with employment contracts of less than one year and overseas workers with employment contracts of at least one year. Within the class of overseas workers with at least one-year employment contracts, there was a distinction between those with at least a year left in their contracts and those with less than a year left in their contracts when they were illegally dismissed.

The Court also finds that the classifications are not relevant to the purpose of the law, which is to "establish a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress, and for other purposes." Further, the Court finds specious the argument that reducing the liability of placement agencies "redounds to the benefit of the [overseas] workers."

Respondent Joy Cabiles is entitled to her salary for the unexpired portion of her contract, in accordance with Section 10 of Republic Act No. 8042. The award of the three-month equivalence of respondent's salary must be modified accordingly. Since she started working on June 26, 1997 and was terminated on July 14, 1997, respondent is entitled to her salary from July 15, 1997 to June 25, 1998.

FACTS:
Respondent Joy Cabiles was hired by Wacoal Taiwan, Inc., through petitioner agency Sameer Overseas Placement Agency as a cutter. Subsequently, Cabiles was informed that her services are

already terminated and that she must report to their head office for her immediate repatriation. Because of this, Cabiles filed a complaint for illegal dismissal against Sameer and Wacoal.

The Labor Arbiter ruled in favor of Sameer and held that there was no illegal dismissal that took place because the termination of the services of Cabiles was for a just cause. It gave credence to the contention of Sameer that Cabiles was terminated from service because of her inefficiency. On appeal, the NLRC ruled in favor of Cabiles and held that she is illegally dismissed. The Court of Appeals affirmed the ruling of NLRC. Hence, the current petition.

Sameer reiterates that there was just cause for termination because there was a finding of Wacoal that respondent was inefficient in her work. Therefore, it claims that respondent's dismissal was valid.

ISSUE:
Whether or not the reinstated clause in RA 10022 violates the equal protection clause? (YES)

RULING:
The CA affirmed the NLRC's decision to award respondent NT$46,080.00 or the three-month equivalent of her salary, attorney's fees of NT$300.00, and the reimbursement of the withheld NT$3,000.00 salary, which answered for her repatriation. The Court upholds the finding that respondent is entitled to all of these awards. ***The award of the three-month equivalent of respondent's salary should, however, be increased to the amount equivalent to the unexpired term of the employment contract.***
In ***Serrano v. Gallant Maritime Services, Inc. and Marlow Navigation Co., Inc.*****,** the court ruled that the clause "or for three (3) months for every year of the unexpired term, whichever is less" is unconstitutional for violating the equal protection clause and substantive due process.

The Court is aware that the clause *"or for three (3) months for every year of the unexpired term, whichever is less"* was reinstated in Republic Act No. 8042 upon promulgation of Republic Act No. 10022 in 2010. Republic Act No. 10022 was promulgated on March 8, 2010. This means that the reinstatement of the clause in Republic Act No. 8042 was not yet in effect at the time of respondent's termination from work in 1997. Republic Act No. 8042 before it was amended by Republic Act No. 10022 governs this case.

The reinstated clause, this time as provided in Republic Act. No. 10022, violates the constitutional rights to equal protection and due process. Petitioner as well as the Solicitor General have failed to show any compelling change in the circumstances that would warrant us to revisit the precedent.

The Court reiterates its finding in Serrano v. Gallant Maritime that limiting wages that should be recovered by an illegally dismissed overseas worker to three months is both a violation of due process and the equal protection clauses of the Constitution.

Equal protection of the law is a guarantee that persons under like circumstances and falling within the same class are treated alike, in terms of "privileges conferred and liabilities enforced." It is a guarantee against "undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality."

There is no violation of the equal protection clause if the law applies equally to persons within the same class and if there are reasonable grounds for distinguishing between those falling within the

class and those who do not fall within the class. A law that does not violate the equal protection clause prescribes a reasonable classification.

A reasonable classification "(1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class." The reinstated clause does not satisfy the requirement of reasonable classification.

In *Serrano*, the Court identified the classifications made by the reinstated clause. It distinguished between fixed-period overseas workers and fixed-period local workers. It also distinguished between overseas workers with employment contracts of less than one year and overseas workers with employment contracts of at least one year. Within the class of overseas workers with at least one-year employment contracts, there was a distinction between those with at least a year left in their contracts and those with less than a year left in their contracts when they were illegally dismissed.

The Court also noted in *Serrano* that before the passage of Republic Act No. 8042, the money claims of illegally terminated overseas and local workers with fixed-term employment were computed in the same manner. Their money claims were computed based on the "unexpired portions of their contracts."The adoption of the reinstated clause in Republic Act No. 8042 subjected the money claims of illegally dismissed overseas workers with an unexpired term of at least a year to a cap of three months' worth of their salary. There was no such limitation on the money claims of illegally terminated local workers with fixed-term employment.

The Court observed that illegally dismissed overseas workers whose employment contracts had a term of less than one year were granted the amount equivalent to the unexpired portion of their employment contracts. Meanwhile, illegally dismissed overseas workers with employment terms of at least a year were granted a cap equivalent to three months of their salary for the unexpired portions of their contracts.

Observing the terminologies used in the clause, the Court also found that "the subject clause creates a sub-layer of discrimination among OFWs whose contract periods are for more than one year: those who are illegally dismissed with less than one year left in their contracts shall be entitled to their salaries for the entire unexpired portion thereof, while those who are illegally dismissed with one year or more remaining in their contracts shall be covered by the reinstated clause, and their monetary benefits limited to their salaries for three months only."

These classifications do not rest on any real or substantial distinctions that would justify different treatments in terms of the computation of money claims resulting from illegal termination. Overseas workers regardless of their classifications are entitled to security of tenure, at least for the period agreed upon in their contracts. This means that they cannot be dismissed before the end of their contract terms without due process. If they were illegally dismissed, the workers' right to security of tenure is violated.

The Court also finds that the classifications are not relevant to the purpose of the law, which is to "establish a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress, and for other purposes." Further, the Court finds specious the argument that reducing the liability of placement agencies "redounds to the benefit of the [overseas] workers."

Putting a cap on the money claims of certain overseas workers does not increase the standard of protection afforded to them. On the other hand, foreign employers are more incentivized by the reinstated clause to enter into contracts of at least a year because it gives them more flexibility to violate our overseas workers' rights. Their liability for arbitrarily terminating overseas workers is decreased at the expense of the workers whose rights they violated.
Thus, respondent Joy Cabiles is entitled to her salary for the unexpired portion of her contract, in accordance with Section 10 of Republic Act No. 8042. The award of the three-month equivalence of respondent's salary must be modified accordingly. Since she started working on June 26, 1997 and was terminated on July 14, 1997, respondent is entitled to her salary from July 15, 1997 to June 25, 1998.

UNITED STATES, PETITIONER *v.* EDITH SCHLAIN WINDSOR, IN HER CAPACITY AS EXECUTOR OF THE ESTATE OF THEA CLARA SPYER, ET AL.
(No. 12-307, June 26, 2013, Kennedy, J.)

DOMA's principal effect is to identify a subset of state sanctioned marriages and make them unequal. The principal purpose is to impose inequality, not for other reasons like governmental efficiency. Responsibilities, as well as rights, enhance the dignity and integrity of the person. And DOMA contrives to deprive some couples married under the laws of their State, but not other couples, of both rights and responsibilities. By creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect. By this dynamic DOMA undermines both the public and private significance of state sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition. This places same-sex couples in an unstable position of being in a second-tier marriage.

FACTS
Two women, Edith Windsor and Thea Spyer, were married in a lawful ceremony in Ontario, Canada in 2007. They then returned to their home in New York City. Spyer died in February 2009, and left her entire estate to Windsor. Because DOMA denies federal recognition to same-sex spouses, Windsor did not qualify for the marital exemption from the federal estate tax, which excludes from taxation "any interest in property which passes or has passed from the decedent to his surviving spouse." Windsor paid $363,053 in estate taxes and sought a refund. The Internal Revenue Service denied the refund, concluding that, under DOMA, Windsor was not a "surviving spouse."

Windsor commenced a refund suit in the United States District Court for the Southern District of New York. She contended that DOMA violates the guarantee of equal protection, as applied to the Federal Government through the Fifth Amendment. The United States District Court and the Court of Appeals ruled that this portion of the statute is unconstitutional and ordered the United States to pay Windsor a refund.

ISSUE:
Whether or not the Defense of Marriage Act is constitutional? (NO)

RULING:

In 1996, as some States were beginning to consider the concept of same-sex marriage, and before any State had acted to permit it, Congress enacted the **Defense of Marriage Act (DOMA**).

Section 3 of DOMA provides as follows:

> "In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

DOMA is unconstitutional as a deprivation of the equal liberty of persons that is protected by the Fifth Amendment. By history and tradition the definition and regulation of marriage has been treated as being within the authority and realm of the separate States. Congress has enacted discrete statutes to regulate the meaning of marriage in order to further federal policy, but DOMA, with a directive applicable to over 1,000 federal statutes and the whole realm of federal regulations, has a far greater reach. Its operation is also directed to a class of persons that the laws of New York, and of 11 other States, have sought to protect. Assessing the validity of that intervention requires discussing the historical and traditional extent of state power and authority over marriage.

Subject to certain constitutional guarantees, "regulation of domestic relations" is "an area that has long been regarded as a virtually exclusive province of the States," The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for "when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States." Marriage laws may vary from State to State, but they are consistent within each State.

Against this background DOMA rejects the long established precept that the incidents, benefits, and obligations of marriage are uniform for all married couples within each State, though they may vary, subject to constitutional guarantees, from one State to the next. Despite these considerations, it is unnecessary to decide whether this federal intrusion on state power is a violation of the Constitution because it disrupts the federal balance.

The question is whether the resulting injury and indignity is a deprivation of an essential part of the liberty protected by the Fifth Amendment, since what New York treats as alike the federal law deems unlike by a law designed to injure the same class the State seeks to protect. New York's actions were a proper exercise of its sovereign authority. They reflect both the community's considered perspective on the historical roots of the institution of marriage and its evolving understanding of the meaning of equality.

DOMA seeks to injure the very class New York seeks to protect. By doing so it violates basic due process and equal protection principles applicable to the Federal Government. The Constitution's guarantee of equality "must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot" justify disparate treatment of that group. In determining whether a law is motived by an improper animus or purpose, "'[d]iscriminations of an unusual character'" especially require careful consideration. DOMA cannot survive under these principles. The responsibility of the States for the regulation of domestic relations is an important indicator of the substantial societal impact the State's classifications have in the daily lives and customs of its people. DOMA's unusual deviation from the usual tradition of recognizing and accepting state definitions of marriage here operates to deprive same-sex couples of the benefits and responsibilities that come with the federal recognition of their marriages. This is strong evidence of a law having the

purpose and effect of disapproval of that class. The avowed purpose and practical effect of the law here in question are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States.

DOMA's principal effect is to identify a subset of state sanctioned marriages and make them unequal. The principal purpose is to impose inequality, not for other reasons like governmental efficiency. Responsibilities, as well as rights, enhance the dignity and integrity of the person. And DOMA contrives to deprive some couples married under the laws of their State, but not other couples, of both rights and responsibilities. By creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect. By this dynamic DOMA undermines both the public and private significance of state sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition. This places same-sex couples in an unstable position of being in a second-tier marriage. The differentiation demeans the couple, whose moral and sexual choices the Constitution protects, and whose relationship the State has sought to dignify. And it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.

D. SEARCHES AND SEIZURES

UNITED STATES, PETITIONER *v.* JEFFREY GRUBBS
(No. 04-1414, March 21, 2006, Scalia, J.)

In other words, for a conditioned anticipatory warrant to comply with the Fourth Amendment's requirement of probable cause, two prerequisites of probability must be satisfied. It must be true not only that if the triggering condition occurs "there is a fair probability that contraband or evidence of a crime will be found in a particular place," but also that there is probable cause to believe the triggering condition will occur. The supporting affidavit must provide the magistrate with sufficient information to evaluate both aspects of the probable-cause determination.

In this case, the occurrence of the triggering condition--successful delivery of the videotape to Grubbs' residence--would plainly establish probable cause for the search. In addition, the affidavit established probable cause to believe the triggering condition would be satisfied. Although it is possible that Grubbs could have refused delivery of the videotape he had ordered, that was unlikely. The Magistrate therefore "had a 'substantial basis for . . . conclud[ing]' that probable cause existed."

The Fourth Amendment does not require that the warrant set forth the magistrate's basis for finding probable cause, even though probable cause is the quintessential "precondition to the valid exercise of executive power." Much less does it require description of a triggering condition.

Because the Fourth Amendment does not require that the triggering condition for an anticipatory search warrant be set forth in the warrant itself, the Court of Appeals erred in invalidating the warrant at issue here.

FACTS:
Respondent Jeffrey Grubbs purchased a videotape containing child pornography from a Web site operated by an undercover postal inspector. Officers from the Postal Inspection Service arranged a

controlled delivery of a package containing the videotape to Grubbs' residence. A postal inspector submitted a search warrant application to a Magistrate Judge for the Eastern District of California, accompanied by an affidavit describing the proposed operation in detail. The affidavit stated:

> "Execution of this search warrant will not occur unless and until the parcel has been received by a person(s) and has been physically taken into the residence . . . ."

In addition to describing this triggering condition, the affidavit referred to two attachments, which described Grubbs' residence and the items officers would seize. These attachments, but not the body of the affidavit, were incorporated into the requested warrant.

The Magistrate Judge issued the warrant as requested. Two days later, an undercover postal inspector delivered the package. Grubbs' wife signed for it and took the unopened package inside. The inspectors detained Grubbs as he left his home a few minutes later, then entered the house and commenced the search. Grubbs was placed under arrest, and various items were seized, including the videotape.

A grand jury for the Eastern District of California indicted Grubbs on one count of receiving a visual depiction of a minor engaged in sexually explicit conduct. He moved to suppress the evidence seized during the search of his residence, arguing as relevant here that the warrant was invalid because it failed to list the triggering condition. After an evidentiary hearing, the District Court denied the motion. The Court of Appeals for the Ninth Circuit reversed. Relying on Circuit precedent, it held that "the particularity requirement of the Fourth Amendment applies with full force to the conditions precedent to an anticipatory search warrant."

ISSUES:

(1) Whether anticipatory search warrants are unconstitutional? (NO)
(2) Whether the Fourth Amendment requires that a triggering condition for an anticipatory search warrant be set forth in the warrant itself? (NO)

RULING:

(1) An anticipatory warrant is "a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place." Most anticipatory warrants subject their execution to some condition precedent other than the mere passage of time--a so-called "triggering condition." The affidavit at issue here, for instance, explained that "[e]xecution of the search warrant will not occur unless and until the parcel [containing child pornography] has been received by a person(s) and has been physically taken into the residence." If the government were to execute an anticipatory warrant before the triggering condition occurred, there would be no reason to believe the item described in the warrant could be found at the searched location; by definition, the triggering condition which establishes probable cause has not yet been satisfied when the warrant is issued. Grubbs argues that for this reason anticipatory warrants contravene the Fourth Amendment's provision that "no Warrants shall issue, but upon probable cause."

US Supreme Court rejects this view. Probable cause exists when "there is a fair probability that contraband or evidence of a crime will be found in a particular place." Because the probable-cause requirement looks to whether evidence will be found *when the search is conducted*, all warrants are, in a sense, "anticipatory."

Anticipatory warrants are, therefore, no different in principle from ordinary warrants. They require the magistrate to determine (1) that it is *now probable* that (2) contraband, evidence of a crime, or a fugitive *will be* on the described premises (3) when the warrant is executed. It should be noted, however, that where the anticipatory warrant places a condition (other than the mere passage of time) upon its execution, the first of these determinations goes not merely to what will probably be found *if* the condition is met. (If that were the extent of the probability determination, an anticipatory warrant could be issued for every house in the country, authorizing search and seizure *if* contraband should be delivered--though for any single location there is no likelihood that contraband will be delivered.) Rather, the probability determination for a conditioned anticipatory warrant looks also to the likelihood that the condition will occur, and thus that a proper object of seizure will be on the described premises.

In other words, for a conditioned anticipatory warrant to comply with the Fourth Amendment's requirement of probable cause, two prerequisites of probability must be satisfied. It must be true not only that *if* the triggering condition occurs "there is a fair probability that contraband or evidence of a crime will be found in a particular place," but also that there is probable cause to believe the triggering condition *will occur*. The supporting affidavit must provide the magistrate with sufficient information to evaluate both aspects of the probable-cause determination.
In this case, the occurrence of the triggering condition--successful delivery of the videotape to Grubbs' residence--would plainly establish probable cause for the search. In addition, the affidavit established probable cause to believe the triggering condition would be satisfied. Although it is possible that Grubbs could have refused delivery of the videotape he had ordered, that was unlikely. The Magistrate therefore "had a 'substantial basis for . . . concluding' that probable cause existed."

(2)The Ninth Circuit invalidated the anticipatory search warrant at issue here because the warrant failed to specify the triggering condition. The Fourth Amendment's particularity requirement, it held, "applies with full force to the conditions precedent to an anticipatory search warrant."

The Fourth Amendment, however, does not set forth some general "particularity requirement." It specifies only two matters that must be "particularly describ[ed]" in the warrant: "the place to be searched" and "the persons or things to be seized." Court has previously rejected efforts to expand the scope of this provision to embrace unenumerated matters.

The Fourth Amendment does not require that the warrant set forth the magistrate's basis for finding probable cause, even though probable cause is the quintessential "precondition to the valid exercise of executive power." Much less does it require description of a triggering condition.
Because the Fourth Amendment does not require that the triggering condition for an anticipatory search warrant be set forth in the warrant itself, the Court of Appeals erred in invalidating the warrant at issue here. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

RETIRED SP04 BIENVENIDO LAUD, Petitioner,*vs*.
PEOPLE OF THE PHILIPPINES, *et al.,* Respondent.
(G.R. No. 199032, November 19, 2014, Per Curiam)

In order for the de facto doctrine to apply, all of the following elements must concur: (a) there must be a de jure office; (b) there must be color of right or general acquiescence by the public; and (c) there must be actual physical possession of the office in good faith. The existence of the foregoing elements is rather clear in this case. Undoubtedly, there is a de jure office of a 2nd Vice-Executive Judge. Judge Peralta also

had a colorable right to the said office as he was duly appointed to such position and was only divested of the same by virtue of a supervening legal technicality – that is, the operation of Section 5, Chapter III of A.M. No. 03-8-02-SC as above-explained; also, it may be said that there was general acquiescence by the public since the search warrant application was regularly endorsed to the sala of Judge Peralta by the Office of the Clerk of Court of the Manila-RTC under his apparent authority as 2nd Vice Executive Judge. Finally, Judge Peralta's actual physical possession of the said office is presumed to be in good faith, as the contrary was not established. Accordingly, Judge Peralta can be considered to have acted as a de facto officer when he issued the Search Warrant, hence, treated as valid as if it was issued by a de jure officer suffering no administrative impediment.

FACTS:
On July 10, 2009, the Philippine National Police (PNP), through Police Senior Superintendent Roberto B. Fajardo, applied with the (RTC) of Manila, Branch50 (Manila-RTC) for a warrant to search three (3) caves located inside the Laud Compound in Purok 3, Barangay Ma-a, Davao City, where the alleged remains of the victims summarily executed by the so-called "Davao Death Squad" may be found.

In support of the application, a certain Ernesto Avasola (Avasola) was presented to the RTC and there testified that he personally witnessed the killing of six (6) persons in December 2005, and was, in fact, part of the group that buried the victims.

Judge William Simon P. Peralta (Judge Peralta), acting as Vice Executive Judge of the Manila-RTC, found probable cause for the issuance of a search warrant, and thus, issued the Search Warrant which was later enforced by the elements of the PNP-Criminal Investigation and Detection Group, in coordination with the members of the Scene of the Crime Operatives on July 15, 2009.

The search of the Laud Compound caves yielded positive results for the presence of human remains. On July 20, 2009, retired SPO4 Bienvenido Laud (Laud), filed an Urgent Motion to Quash and to Suppress Illegally Seized Evidence premised on the ground that Judge Peralta had no authority to act on the application for a search warrant since he had been automatically divested of his position as Vice Executive Judge when several administrative penalties were imposed against him by the Court.

ISSUE:
Whether or not the administrative penalties imposed on Judge Peralta invalidated the Search Warrant? (NO)

RULING:
Judge Peralta can be considered to have acted as a *de facto* officer when he issued the Search Warrant, hence, treated as valid as if it was issued by a de jure officer suffering no administrative impediment. Citing Section 5, Chapter III of A.M. No. 03-8-02-SC which provides that "the imposition upon an Executive Judge or Vice-Executive Judge of an administrative penalty of at least a reprimand shall automatically operate to divest him of his position as such," Laud claims that Judge Peralta had no authority to act as Vice-Executive Judge and accordingly issue the Search Warrant in view of the Court's Resolution in *Dee C. Chuan & Sons, Inc. v. Judge Peralta* wherein he was administratively penalized with fines of P15,000.00 and P5,000.00.

While the Court does agree that the imposition of said administrative penalties did operate to divest Judge Peralta's authority to act as Vice Executive Judge, it must be qualified that the abstraction of such authority would not, by and of itself, result in the invalidity of Search Warrant considering that Judge Peralta may be considered to have made the issuance as a *de facto* officer whose acts would,

nonetheless, remain valid. *Funa v. Agra* defines who a *de facto* officer is and explains that his acts are just as valid for all purposes as those of a *de jure* officer, in so far as the public or third persons who are interested therein are concerned.

A *de facto* officer is one who derives his appointment from one having colorable authority to appoint, if the office is an appointive office, and whose appointment is valid on its face. He may also be one who is in possession of an office, and is discharging his duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent is not a mere volunteer. Consequently, the acts of the *de facto* officer are just as valid for all purposes as those of a de jure officer, in so far as the public or third persons who are interested therein are concerned.

In order for the *de facto* doctrine to apply, all of the following elements must concur: (a) there must be a de jure office; (b) there must be color of right or general acquiescence by the public; and (c) there must be actual physical possession of the office in good faith.

The existence of the foregoing elements is rather clear in this case. Undoubtedly, there is a *de jure* office of a 2nd Vice-Executive Judge. Judge Peralta also had a colorable right to the said office as he was duly appointed to such position and was only divested of the same by virtue of a supervening legal technicality – that is, the operation of Section 5, Chapter III of A.M. No. 03-8-02-SC as above-explained; also, it may be said that there was general acquiescence by the public since the search warrant application was regularly endorsed to the sala of Judge Peralta by the Office of the Clerk of Court of the Manila-RTC under his apparent authority as 2nd Vice Executive Judge. Finally, Judge Peralta's actual physical possession of the said office is presumed to be in good faith, as the contrary was not established. Accordingly, Judge Peralta can be considered to have acted as a *de facto* officer when he issued the Search Warrant, hence, treated as valid as if it was issued by a *de jure* officer suffering no administrative impediment.

LOS ANGELES COUNTY, CALIFORNIA, et al. *v.* MAX RETTELE et al.
(No. 06–605, May 21, 2007, Per Curiam)

When the deputies ordered respondents from their bed, they had no way of knowing whether the African-American suspects were elsewhere in the house. The presence of some Caucasians in the residence did not eliminate the possibility that the suspects lived there as well. As the deputies stated in their affidavits, it is not uncommon in our society for people of different races to live together. Just as people of different races live and work together, so too might they engage in joint criminal activity. The deputies, who were searching a house where they believed a suspect might be armed, possessed authority to secure the premises before deciding whether to continue with the search.
In executing a search warrant officers may take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search. Unreasonable actions include the use of excessive force or restraints that cause unnecessary pain or are imposed for a prolonged and unnecessary period of time.

FACTS:
From September to December 2001, Los Angeles County Sheriff's Department Deputy Dennis Watters investigated a fraud and identity-theft crime ring. There were four suspects of the investigation. The four suspects were known to be African-Americans.

On December 11, Watters obtained a search warrant for two houses in Lancaster, California, where he believed he could find the suspects. What Watters did not know was that one of the houses (the first to be searched) had been sold in September to a Max Rettele. He had purchased the home and moved into it three months earlier with his girlfriend Judy Sadler and Sadler's 17-year-old son Chase Hall. All three, respondents here, are Caucasians.

On the morning of December 19, Watters briefed six other deputies in preparation for the search of the houses. Watters informed them they would be searching for three African-American suspects, one of whom owned a registered handgun. The possibility a suspect would be armed caused the deputies concern for their own safety. Around 7:15 Watters and six other deputies knocked on the door and announced their presence.

The deputies' announcement awoke Rettele and Sadler. The deputies entered their bedroom with guns drawn and ordered them to get out of their bed and to show their hands. They protested that they were not wearing clothes. By that time the deputies realized they had made a mistake. They apologized to Rettele and Sadler, thanked them for not becoming upset, and left within five minutes. They proceeded to the other house the warrant authorized them to search, where they found three suspects. Those suspects were arrested and convicted.

Rettele and Sadler, individually and as guardians *ad litem* for Hall, filed suit against Los Angeles County, the Los Angeles County Sheriff's Department, Deputy Watters, and other members of the sheriff's department. Respondents alleged petitioners violated their Fourth Amendment rights by obtaining a warrant in reckless fashion and conducting an unreasonable search and detention.
The District Court held that the warrant was obtained by proper procedures and the search was reasonable. On appeal respondents did not challenge the validity of the warrant; they did argue that the deputies had conducted the search in an unreasonable manner. A divided panel of the Court of Appeals for the Ninth Circuit reversed in an unpublished opinion. The Court of Appeals denied rehearing and rehearing en banc.

ISSUE:
Whether or not respondents' constitutional right against unreasonable searches and seizures was violated? (NO)

RULING
When the deputies ordered respondents from their bed, they had no way of knowing whether the African-American suspects were elsewhere in the house. The presence of some Caucasians in the residence did not eliminate the possibility that the suspects lived there as well. As the deputies stated in their affidavits, it is not uncommon in our society for people of different races to live together. Just as people of different races live and work together, so too might they engage in joint criminal activity. The deputies, who were searching a house where they believed a suspect might be armed, possessed authority to secure the premises before deciding whether to continue with the search.
In executing a search warrant officers may take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search. Unreasonable actions include the use of excessive force or restraints that cause unnecessary pain or are imposed for a prolonged and unnecessary period of time.

The orders by the police to the occupants, in the context of this lawful search, were permissible, and perhaps necessary, to protect the safety of the deputies. Blankets and bedding can conceal a weapon, and one of the suspects was known to own a firearm, factors which underscore this point. The

Constitution does not require an officer to ignore the possibility that an armed suspect may sleep with a weapon within reach. The reports are replete with accounts of suspects sleeping close to weapons.

This is not to say, of course, that the deputies were free to force Rettele and Sadler to remain motionless and standing for any longer than necessary. The Court has recognized that "special circumstances, or possibly a prolonged detention" might render a search unreasonable. There is no accusation that the detention here was prolonged. The deputies left the home less than 15 minutes after arriving. The detention was shorter and less restrictive than the 2- to 3-hour handcuff detention upheld in *Mena*. And there is no allegation that the deputies prevented Sadler and Rettele from dressing longer than necessary to protect their safety.

The Fourth Amendment allows warrants to issue on probable cause, a standard well short of absolute certainty. Valid warrants will issue to search the innocent, and people like Rettele and Sadler unfortunately bear the cost. Officers executing search warrants on occasion enter a house when residents are engaged in private activity; and the resulting frustration, embarrassment, and humiliation may be real, as was true here. When officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, however, the Fourth Amendment is not violated.

As respondents' constitutional rights were not violated, "there is no necessity for further inquiries concerning qualified immunity." The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

RODEL LUZ y ONG, Petitioner, *vs.* PEOPLE OF THE PHILIPPINES, Respondent.
(G.R. No. 197788, SECOND DIVISION, February 29, 2012, SERENO, *J.*)

First, there was no valid arrest of petitioner. When he was flagged down for committing a traffic violation, he was not, ipso facto and solely for this reason, arrested. Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.

Second, there being no valid arrest, the warrantless search that resulted from it was likewise illegal. It must be noted that the evidence seized, although alleged to be inadvertently discovered, was not in "plain view." It was actually concealed inside a metal container inside petitioner's pocket. Clearly, the evidence was not immediately apparent. Neither was there a consented warrantless search. Consent to a search is not to be lightly inferred, but shown by clear and convincing evidence. It must be voluntary in order to validate an otherwise illegal search; that is, the consent must be unequivocal, specific, intelligently given and uncontaminated by any duress or coercion. While the prosecution claims that petitioner acceded to the instruction of PO3 Alteza, this alleged accession does not suffice to prove valid and intelligent consent. In fact, the RTC found that petitioner was merely "told" to take out the contents of his pocket. Neither does the search qualify under the "stop and frisk" rule. While the rule normally applies when a police officer observes suspicious or unusual conduct, which may lead him to believe that a criminal act may be afoot, the stop and frisk is merely a limited protective search of outer clothing for weapons.

FACTS:
Traffic enforcer PO2 Emmanuel L. Alteza flagged down the accused for violating a municipal ordinance which requires all motorcycle drivers to wear helmet while driving said motor vehicle; that he invited the accused to come inside their sub-station since the place where he flagged down the accused is almost in front of the said sub-station; that while he and SPO1 Rayford Brillante were issuing a citation ticket for violation of municipal ordinance, he noticed that the accused was uneasy and kept on getting something from his jacket; that he was alerted and so, he told the accused to take out the contents of the pocket of his jacket as the latter may have a weapon inside it; that the accused obliged and slowly put out the contents of the pocket of his jacket, among which was a nickel-like tin or metal container about two (2) to three (3) inches in size; that upon seeing the said container, he asked the accused to open it; and that upon his instruction, the accused spilled out the contents of the container on the table which turned out to be four (4) plastic sachets, the two (2) of which were empty while the other two (2) contained suspected *shabu*.

After arraignment and trial, the RTC convicted petitioner of illegal possession of dangerous drugs committed on 10 March 2003. It found the prosecution evidence sufficient to show that he had been lawfully arrested for a traffic violation and then subjected to a valid search, which led to the discovery on his person of two plastic sachets later found to contain *shabu*. The RTC also found his defense of frame-up and extortion to be weak, self-serving and unsubstantiated.
Upon review, the CA affirmed the RTC's Decision. Hence, petitioner filed under Rule 45 the instant Petition for Review on Certiorari. Petitioner claims that there was no lawful search and seizure, because there was no lawful arrest. He claims that the finding that there was a lawful arrest was erroneous, since he was not even issued a citation ticket or charged with violation of the city ordinance. Even assuming there was a valid arrest, he claims that he had never consented to the search conducted upon him.

ISSUES:
(1) Whether or not there lawful arrest? (NO)
(2) Whether or not there was lawful search and seizure? (NO)
RULING
(1) First, there was no valid arrest of petitioner. When he was flagged down for committing a traffic violation, he was not, *ipso facto* and solely for this reason, arrested. Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.

Under R.A. 4136, or the Land Transportation and Traffic Code, the general procedure for dealing with a traffic violation is not the arrest of the offender, but the confiscation of the driver's license of the latter. Similarly, the PNP Operations Manual provides that in flagging down vehicles during the conduct of checkpoints, a Traffic Citation Ticket (TCT) or Traffic Violation Report (TVR) shall immediately be issued, and that traffic enforcers shall never indulge in prolonged, unnecessary conversation or argument with the driver or any of the vehicle's occupants;

At the time that he was waiting for PO3 Alteza to write his citation ticket, petitioner could not be said to have been "under arrest." In ***Berkemer v. McCarty***, the U.S. Supreme Court ruled that, since the

motorist therein was only subjected to modest questions while still at the scene of the traffic stop, he was not at that moment placed under custody (such that he should have been apprised of his Miranda rights), and neither can treatment of this sort be fairly characterized as the functional equivalent of a formal arrest. Similarly, neither can petitioner here be considered "under arrest" at the time that his traffic citation was being made.

This ruling does not imply that there can be no arrest for a traffic violation. Certainly, when there is an intent on the part of the police officer to deprive the motorist of liberty, or to take the latter into custody, the former may be deemed to have arrested the motorist. In this case, however, the officer's issuance (or intent to issue) a traffic citation ticket negates the possibility of an arrest for the same violation.

(2) Second, there being no valid arrest, the warrantless search that resulted from it was likewise illegal. It must be noted that the evidence seized, although alleged to be inadvertently discovered, was not in "plain view." It was actually concealed inside a metal container inside petitioner's pocket. Clearly, the evidence was not immediately apparent.

Neither was there a consented warrantless search. Consent to a search is not to be lightly inferred, but shown by clear and convincing evidence. It must be voluntary in order to validate an otherwise illegal search; that is, the consent must be unequivocal, specific, intelligently given and uncontaminated by any duress or coercion. While the prosecution claims that petitioner acceded to the instruction of PO3 Alteza, this alleged accession does not suffice to prove valid and intelligent consent. In fact, the RTC found that petitioner was merely "told" to take out the contents of his pocket. Whether consent to the search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances. Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether the defendant was in a public or a secluded location; (3) whether the defendant objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence would be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting. It is the State that has the burden of proving, by clear and positive testimony, that the necessary consent was obtained, and was freely and voluntarily given. In this case, all that was alleged was that petitioner was alone at the police station at three in the morning, accompanied by several police officers. These circumstances weigh heavily against a finding of valid consent to a warrantless search.

Neither does the search qualify under the "stop and frisk" rule. While the rule normally applies when a police officer observes suspicious or unusual conduct, which may lead him to believe that a criminal act may be afoot, the stop and frisk is merely a limited protective search of outer clothing for weapons.

The foregoing considered, petitioner must be acquitted. While he may have failed to object to the illegality of his arrest at the earliest opportunity, a waiver of an illegal warrantless arrest does not, however, mean a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest.

The subject items seized during the illegal arrest are inadmissible. The drugs are the very *corpus delicti* of the crime of illegal possession of dangerous drugs. Thus, their inadmissibility precludes conviction and calls for the acquittal of the accused.

RAMON MARTINEZ y GOCO/RAMON GOCO y MARTINEZ @ MON, Petitioner, *vs.*
PEOPLE OF THE PHILIPPINES, Respondent.
(G.R. No. 198694, SECOND DIVISION, February 13, 2013, PERLAS-BERNABE, *J.*)

A valid warrantless arrest which justifies a subsequent search is one that is carried out under the parameters of Section 5(a), Rule 113 of the Rules of Court which requires that the apprehending officer must have been spurred by probable cause to arrest a person caught in flagrante delicto. Specifically with respect to arrests, probable cause refers to such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. In this light, the determination of the existence or absence of probable cause necessitates a re-examination of the factual incidents.

Records show that PO2 Soque arrested Ramon for allegedly violating Section 844 of the Manila City Ordinance. The gravamen of these offenses penalized under the ordinance is the disruption of communal tranquillity. Thus, to justify a warrantless arrest based on the same, it must be established that the apprehension was effected after a reasonable assessment by the police officer that a public disturbance is being committed. A perusal of the PO2 Soque's testimony negates the presence of probable cause when the police officers conducted their warrantless arrest of Ramon.

Since it cannot be said that Ramon was validly arrested, the warantless search that resulted from it was also illegal. Thus, the subject shabu purportedly seized from Ramon is inadmissible in evidence for being the proverbial fruit of the poisonous tree as mandated by the above discussed constitutional provision. In this regard, considering that the confiscated shabu is the very corpus delicti of the crime charged, Ramon's acquittal should therefore come as a matter of course.

FACTS:
At around 9:15 in the evening of December 29, 2007, PO2 Soque, PO2 Cepe and PO3 Zeta, who were all assigned to the Station Anti-Illegal Drugs (SAID) Section of the Malate Police Station 9, conducted a routine foot patrol along Balingkit Street, Malate, Manila. In the process, they heard a man shouting "*Putang ina mo! Limang daan na ba ito?*" For purportedly violating Section 844 of the Revised Ordinance of the City of Manila which punishes breaches of the peace, the man, later identified as Ramon, was apprehended and asked to empty his pockets. In the course thereof, the police officers were able to recover from him a small transparent plastic sachet containing white crystalline substance suspected to be *shabu*. PO2 Soque confiscated the sachet and brought Ramon to Police Station 9 where the former marked the item with the latter's initials, "RMG." When the white crystalline substance was found positive for methamphetamine hydrochloride (or *shabu*), Ramon was charged with possession of dangerous drugs under Section 11(3), Article II of RA 9165 through an Information.

RTC convicted Ramon of the crime of possession of dangerous drugs as charged, finding all its elements to have been established through the testimonies of the prosecution's disinterested witnesses. In this relation, it also upheld the legality of Ramon's warrantless arrest, observing that Ramon was disturbing the peace in violation of the Manila City Ordinance during the time of his apprehension.

CA denied Ramon's appeal and thereby affirmed his conviction. It upheld the factual findings of the RTC which found that the elements of the crime of possession of dangerous drugs were extant, to wit: (1) that the accused is in possession of a prohibited drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.
Likewise, the CA sustained the validity of the body search made on Ramon as an incident of a lawful warrantless arrest for breach of the peace which he committed in the presence of the police officers, notwithstanding its (the case for breach of the peace)subsequent dismissal for failure to prosecute.

ISSUES:
(1) Whether or not there was valid arrest? (NO)
(2) Whether or not there was valid search? (NO)

RULING:
(1) A valid warrantless arrest which justifies a subsequent search is one that is carried out under the parameters of Section 5(a), Rule 113 of the Rules of Court which requires that the apprehending officer must have been spurred by probable cause to arrest a person caught *in flagrante delicto*. Specifically with respect to arrests, probable cause refers to such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. In this light, the determination of the existence or absence of probable cause necessitates a re-examination of the factual incidents.

Records show that PO2 Soque arrested Ramon for allegedly violating Section 844 of the Manila City Ordinance. The gravamen of these offenses penalized under the ordinance is the disruption of communal tranquillity. Thus, to justify a warrantless arrest based on the same, it must be established that the apprehension was effected after a reasonable assessment by the police officer that a public disturbance is being committed.

A perusal of the PO2 Soque's testimony negates the presence of probable cause when the police officers conducted their warrantless arrest of Ramon. To elucidate, it cannot be said that the act of shouting in a thickly-populated place, with many people conversing with each other on the street, would constitute any of the acts punishable under Section 844 of the Manila City Ordinance. Ramon was not making or assisting in any riot, affray, disorder, disturbance, or breach of the peace; he was not assaulting, beating or using personal violence upon another; and, the words he allegedly shouted – "*Putang ina mo! Limang daan na ba ito?*" – are not slanderous, threatening or abusive, and thus, could not have tended to disturb the peace or excite a riot considering that at the time of the incident, Balingkit Street was still teeming with people and alive with activity.

In its totality, the Court observes that these facts and circumstances could not have engendered a well-founded belief that any breach of the peace had been committed by Ramon at the time that his warrantless arrest was effected. All told, no probable cause existed to justify Ramon's warrantless arrest.

(2) Enshrined in the fundamental law is a person's right against unwarranted intrusions by the government (Section 2, Article III of the 1987 Philippine Constitution).

Accordingly, so as to ensure that the same sacrosanct right remains revered, effects secured by government authorities in contravention of the foregoing are rendered inadmissible in evidence for any purpose, in any proceeding (Section 3(2), Article III of the Constitution).

Commonly known as the "exclusionary rule," the proscription is not, however, an absolute and rigid one. As found in jurisprudence, the traditional exceptions are customs searches, searches of moving vehicles, seizure of evidence in plain view, consented searches, "stop and frisk" measures and searches incidental to a lawful arrest. This last-mentioned exception is of particular significance to this case and thus, necessitates further disquisition.

Since it cannot be said that Ramon was validly arrested, the warantless search that resulted from it was also illegal. Thus, the subject *shabu* purportedly seized from Ramon is inadmissible in evidence for being the proverbial fruit of the poisonous tree as mandated by the above discussed constitutional provision. In this regard, considering that the confiscated *shabu* is the very *corpus delicti* of the crime charged, Ramon's acquittal should therefore come as a matter of course.

ONGCOMA HADJI HOMAR, Petitioner, *vs.*PEOPLE OF THE PHILIPPINES, Respondent.
(G.R. No. 182534, SECOND DIVISION, September 2, 2015, BRION, *J.*)

Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.

Clearly, no arrest preceded the search on the person of the petitioner. When Tan and Tangcoy allegedly saw the petitioner jaywalking, they did not arrest him but accosted him and pointed to him the right place for crossing. In fact, according to the RTC, Tan and Tangcoy "immediately accosted him and told him to cross [at] the designated area." From Tan's testimony, the intent to arrest the petitioner only came after they allegedly confiscated the shabu from the petitioner, for which they informed him of his constitutional rights and brought him to the police station.

In the light of the discussion above, the respondent's argument that there was a lawful search incident to a lawful warrantless arrest for jaywalking appears to be an afterthought in order to justify a warrantless search conducted on the person of the petitioner. In fact, the illegality of the search for the shabu is further highlighted when it was not recovered immediately after the alleged lawful arrest, if there was any, but only after the initial search resulted in the recovery of the knife. Thereafter, according to Tan, Tangcoy conducted another search on the person of the petitioner resulting in the alleged confiscation of the shabu. Clearly, the petitioner's right to be secure in his person was callously brushed aside twice by the arresting police officers.

FACTS:
PO1 Eric Tan was the lone witness for the prosecution. He testified that while proceeding to the South Wing, Roxas Boulevard, onboard a mobile hunter, they saw the petitioner crossing a "No Jaywalking" portion of Roxas Boulevard. They immediately accosted him and told him to cross at the pedestrian crossing area.

The petitioner picked up something from the ground, prompting Tangcoy to frisk him resulting in the recovery of a knife. Thereafter, Tangcoy conducted a thorough search on the petitioner's body and

found and confiscated a plastic sachet containing what he suspected as *shabu.* Tangcoy and Tan executed a *sinumpaang salaysay* on the incident.

The petitioner was then charged for violation of Section 11, Article II of RA 9165. The Information states that on or about August 20, 2002, the petitioner was found to possess one heat-sealed transparent plastic sachet containing 0.03 grams of methamphetamine hydrochloride, otherwise known as *shabu*. The petitioner pleaded not guilty during arraignment.
The RTC convicted the petitioner. It ruled that PO1 Tan and C/A Tangcoy were presumed to have performed their duties regularly in arresting and conducting a search on the petitioner. CA dismissed the petition and affirmed the RTC's findings. According to the CA, the petitioner committed jaywalking in the presence of PO1 Tan and C/A Tangcoy; hence, his warrantless arrest for jaywalking was lawful. Consequently, the subsequent frisking and search done on the petitioner's body which produced the knife and the *shabu* were incident to a lawful arrest allowed under Section 13, Rule 126 of the Revised Rules of Criminal Procedure. Hence, this appeal.

ISSUE:
Whether a lawful warrantless arrest preceded the search conducted on petitioner's body? (NO)

RULING:
The prosecution failed to prove that a lawful warrantless arrest preceded the search conducted on the petitioner's body.

In the present case, the respondent alleged that the petitioner's warrantless arrest was due to his commission of jaywalking in flagrante delicto and in the presence of Tan and Tangcoy. To constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence of or within the view of the arresting officer.

On this point, the bare testimony of Tan as quoted by the CA in its decision, the prosecution did not proffer any other proof to establish that the requirements for a valid *in flagrante delicto* arrest were complied with. Particularly, the prosecution failed to prove that the petitioner was committing a crime.

The respondent failed to specifically identify the area where the petitioner allegedly crossed. Thus, Tan merely stated that the petitioner "crossed the street of Roxas Boulevard, in a place not designated for crossing." Aside from this conclusion, the respondent failed to prove that the portion of Roxas Boulevard where the petitioner crossed was indeed a "no jaywalking" area. The petitioner was also not charged of jaywalking. These are pieces of evidence that could have supported the conclusion that indeed the petitioner was committing a crime of jaywalking and therefore, the subsequent arrest and search on his person was valid. Unfortunately, the prosecution failed to prove this in the present case.

However, that the filing of a criminal charge is not a condition precedent to prove a valid warrantless arrest. Even if there is a criminal charge against an accused, the prosecution is not relieved from its burden to prove that there was indeed a valid warrantless arrest preceding the warrantless search that produced the *corpus delicti* of the crime.

Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.
Clearly, no arrest preceded the search on the person of the petitioner. When Tan and Tangcoy allegedly saw the petitioner jaywalking, they did not arrest him but accosted him and pointed to him the right place for crossing. In fact, according to the RTC, Tan and Tangcoy "immediately accosted him and told him to cross [at] the designated area." From Tan's testimony, the intent to arrest the petitioner only came after they allegedly confiscated the *shabu* from the petitioner, for which they informed him of his constitutional rights and brought him to the police station.

In the light of the discussion above, the respondent's argument that there was a lawful search incident to a lawful warrantless arrest for jaywalking appears to be an afterthought in order to justify a warrantless search conducted on the person of the petitioner. In fact, the illegality of the search for the *shabu* is further highlighted when it was not recovered immediately after the alleged lawful arrest, if there was any, but only after the initial search resulted in the recovery of the knife. Thereafter, according to Tan, Tangcoy conducted another search on the person of the petitioner resulting in the alleged confiscation of the *shabu*. Clearly, the petitioner's right to be secure in his person was callously brushed aside twice by the arresting police officers.

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, *vs.*
NAZARENO VILLAREAL y LUALHATI, Accused-Appellant.
(G.R. No. 201363, SECOND DIVISION, March 18, 2013, PERLAS-BERNABE, *J.*

Without the overt act that would pin liability against appellant, it is therefore clear that PO3 de Leon was merely impelled to apprehend appellant on account of the latter's previous charge for the same offense. However, a previous arrest or existing criminal record, even for the same offense, will not suffice to satisfy the exacting requirements provided under Section 5, Rule 113 in order to justify a lawful warrantless arrest. "Personal knowledge" of the arresting officer that a crime had in fact just been committed is required. To interpret "personal knowledge" as referring to a person's reputation or past criminal citations would create a dangerous precedent and unnecessarily stretch the authority and power of police officers to effect warrantless arrests based solely on knowledge of a person's previous criminal infractions, rendering nugatory the rigorous requisites laid out under Section 5.

It was therefore error on the part of the CA to rule on the validity of appellant's arrest based on "personal knowledge of facts regarding appellant's person and past criminal record," as this is unquestionably not what "personal knowledge" under the law contemplates, which must be strictly construed. Consequently, there being no lawful warrantless arrest, the shabu purportedly seized from appellant is rendered inadmissible in evidence for being the proverbial fruit of the poisonous tree. As the confiscated shabu is the very corpus delicti of the crime charged, appellant must be acquitted and exonerated from all criminal liability.

FACTS:
As PO3 de Leon was driving his motorcycle on his way home along 5th Avenue, he saw appellant from a distance of about 8 to 10 meters, holding and scrutinizing in his hand a plastic sachet of *shabu*. Thus, PO3 de Leon, a member of the Station Anti-Illegal Drugs-Special Operation Unit (SAID-SOU) in

Caloocan City, alighted from his motorcycle and approached the appellant whom he recognized as someone he had previously arrested for illegal drug possession.

Upon seeing PO3 de Leon, appellant tried to escape but was quickly apprehended with the help of a tricycle driver. Despite appellant's attempts to resist arrest, PO3 de Leon was able to board appellant onto his motorcycle and confiscate the plastic sachet of *shabu* in his possession. Upon qualitative examination, the plastic sachet, which contained 0.03 gram of white crystalline substance, tested positive for methamphetamine hydrochloride, a dangerous drug. Consequently, appellant was charged with violation of Section 11, Article II of RA 9165 for illegal possession of dangerous drugs in an Information. When arraigned, appellant entered a plea of not guilty to the offense charged.

After trial on the merits, the RTC convicted appellant as charged upon a finding that all the elements of the crime of illegal possession of dangerous drugs have been established. Moreover, the RTC found the plain view doctrine to be applicable, as the confiscated item was in plain view of PO3 de Leon at the place and time of the arrest. In its assailed Decision, the CA sustained appellant's conviction, finding "a clear case of *in flagrante delicto* warrantless arrest" as provided under Section 5, Rule 113 of the Revised Rules of Criminal Procedure.

ISSUE:
Whether the CA erred in affirming *in toto* the RTC's Decision convicting appellant of the offense charged? (YES)

RULING:
For the warrantless arrest under paragraph (a) of Section 5, Rule 113 of the Revised Rules of Criminal Procedure to operate, two elements must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. On the other hand, paragraph (b) of Section 5 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the appellant had committed it.

In both instances, the officer's personal knowledge of the fact of the commission of an offense is absolutely required. Under paragraph (a), the officer himself witnesses the crime while under paragraph (b), he knows for a fact that a crime has just been committed.

A punctilious assessment of the factual backdrop of this case shows that there could have been no lawful warrantless arrest. On the basis of PO3 de Leon's testimony, the Court finds it inconceivable how PO3 de Leon, even with his presumably perfect vision, would be able to identify with reasonable accuracy, from a distance of about 8 to 10 meters and while simultaneously driving a motorcycle, a negligible and minuscule amount of powdery substance (0.03 gram) inside the plastic sachet allegedly held by appellant. That he had previously effected numerous arrests, all involving *shabu*, is insufficient to create a conclusion that what he purportedly saw in appellant's hands was indeed *shabu.*

Neither has it been established that the rigorous conditions set forth in paragraph (b) of Section 5, Rule 113 have been complied with, i.e., that an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the appellant had committed it.
The factual circumstances of the case failed to show that PO3 de Leon had personal knowledge that a crime had been indisputably committed by the appellant. It is not enough that PO3 de Leon had

reasonable ground to believe that appellant had just committed a crime; a crime must in fact have been committed first, which does not obtain in this case.

Without the overt act that would pin liability against appellant, it is therefore clear that PO3 de Leon was merely impelled to apprehend appellant on account of the latter's previous charge for the same offense. However, a previous arrest or existing criminal record, even for the same offense, will not suffice to satisfy the exacting requirements provided under Section 5, Rule 113 in order to justify a lawful warrantless arrest. "Personal knowledge" of the arresting officer that a crime had in fact just been committed is required. To interpret "personal knowledge" as referring to a person's reputation or past criminal citations would create a dangerous precedent and unnecessarily stretch the authority and power of police officers to effect warrantless arrests based solely on knowledge of a person's previous criminal infractions, rendering nugatory the rigorous requisites laid out under Section 5.

It was therefore error on the part of the CA to rule on the validity of appellant's arrest based on "personal knowledge of facts regarding appellant's person and past criminal record," as this is unquestionably not what "personal knowledge" under the law contemplates, which must be strictly construed.

Consequently, there being no lawful warrantless arrest, the *shabu* purportedly seized from appellant is rendered inadmissible in evidence for being the proverbial fruit of the poisonous tree. As the confiscated *shabu* is the very *corpus delicti* of the crime charged, appellant must be acquitted and exonerated from all criminal liability.

JEFFREY MIGUEL y REMEGIO, Petitioner *vs.* PEOPLE OF THE PHILIPPINES, Respondent
(G.R. No. 227038, FIRST DIVISION, July 31, 2017, PERLAS-BERNABE, *J.*)

More importantly, the Court simply finds highly implausible the prosecution's claim that a valid warrantless arrest was made on petitioner on account of the alleged public display of his private parts because if it was indeed the case, then the proper charge should have been filed against him. However, records are bereft of any showing that such charge was filed aside from the instant criminal charge for illegal possession of dangerous drugs - thereby strengthening the view that no prior arrest was made on petitioner which led to a search incidental thereto. As stressed earlier, there must first be a lawful arrest before a search can be made and that such process cannot be reversed.
All told, the Bantay Bayan operatives conducted an illegal search on the person of petitioner. Consequently, the marijuana purportedly seized from him on account of such search is rendered inadmissible in evidence pursuant to the exclusionary rule under Section 3 (2), Article III of the 1987 Constitution. Since the confiscated marijuana is the very corpus delicti of the crime charged, petitioner must necessarily be acquitted and exonerated from criminal liability.

FACTS
The prosecution alleged that a *Bantay Bayan* operative of Barangay San Antonio Village, Makati City named Bahoyo purportedly received a report of a man showing off his private parts at Kaong Street. BB Bahoyo and fellow *Bantay Bayan* operative Velasquez then went to the said street and saw a visibly intoxicated person, which they later identified as herein petitioner, urinating and displaying his private parts while standing in front of a gate enclosing an empty lot.

BB Bahoyo and BB Velasquez approached petitioner and asked him where he lived, and asked for an identification card, but petitioner failed to produce one. BB Velasquez then repeated the request for

an identification card, but instead, petitioner emptied his pockets, revealing a pack of cigarettes containing one (1) stick of cigarette and two (2) pieces of rolled paper containing dried marijuana leaves, among others. This prompted BB Bahoyo and BB Velasquez to seize the foregoing items, take petitioner to the police station, and turn him, as well as the seized items, over to SPO3 Castillo. After examination, it was confirmed that the aforesaid rolled paper contained marijuana and that petitioner was positive for the presence of methamphetamine but negative for THC-metabolites, both dangerous drugs.

An Information was then filed before the RTC charging petitioner of illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of RA 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." Petitioner pleaded not guilty to the charge.

RTC found petitioner guilty beyond reasonable doubt of the crime charged. The RTC found that BB Bahoyo and BB Velasquez conducted a valid warrantless arrest, as petitioner was scandalously showing his private parts at the time of his arrest. Therefore, the resultant search incidental to such arrest which yielded the seized marijuana in petitioner's possession was also lawful. Aggrieved, petitioner appealed to the CA which affirmed petitioner's conviction. Undaunted, petitioner moved for reconsideration, which was, however, denied in a Resolution; hence, this petition.

ISSUES:
(1) Whether or not the Bill of Rights may be applied to the *Bantay Bayan* operatives? (YES)
(2) Whether or not the *Bantay Bayan* operatives conducted a lawful search on petitioner? (NO)

RULING:
(1) Petitioner's arresting officers, *i.e.,* BB Bahoyo and BB Velasquez, are mere *Bantay Bayan* operatives of Makati City. Strictly speaking, they are not government agents like the PNP or the NBI in charge of law enforcement; but rather, they are ***civilian volunteers*** who act as "force multipliers" to assist the aforesaid law enforcement agencies in maintaining peace and security within their designated areas. Particularly, jurisprudence described the nature of *Bantay Bayan* as "a group of male residents living in the area organized for the purpose of keeping peace in their community, which is an accredited auxiliary of the PNP."

In the case of ***Dela Cruz v. People*** involving civilian port personnel conducting security checks, the Court thoroughly discussed that while the Bill of Rights under Article III of the 1987 Constitution generally cannot be invoked against the acts of private individuals, the same may nevertheless be applicable if such individuals *act under the color of a state-related function.*
In this light, the Court is convinced that the acts of the *Bantay Bayan* - or any barangay-based or other volunteer organizations in the nature of watch groups - relating to the preservation of peace and order in their respective areas have the color of a state-related function. As such, they should be deemed as law enforcement authorities for the purpose of applying the Bill of Rights under Article III of the 1987 Constitution to them.

(2) One of the recognized exceptions to the need of a warrant before a search may be effected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made- the process cannot be reversed.**

In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: *(a)* the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*b)* such overt act is done in the

presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it. In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential. Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed."

On the basis of the testimonies, the Court is inclined to believe that at around past 12 o'clock in the early morning of May 24, 2010, petitioner went out to the street to urinate when the *Bantay Bayan* operatives chanced upon him. The latter then approached and questioned petitioner, and thereafter, went on to search his person, which purportedly yielded the marijuana seized from him. Verily, the prosecution's claim that petitioner was showing off his private parts was belied by the testimonies. Clearly, these circumstances do not justify the conduct of an *in flagrante delicto* arrest, considering that there was no overt act constituting a crime committed by petitioner in the presence or within the view of the arresting officer. Neither do these circumstances necessitate a *"hot pursuit"* warrantless arrest as the arresting *Bantay Bayan* operatives do not have any personal knowledge of facts that petitioner had just committed an offense.

More importantly, the Court simply finds highly implausible the prosecution's claim that a valid warrantless arrest was made on petitioner on account of the alleged public display of his private parts because if it was indeed the case, then the proper charge should have been filed against him. However, records are bereft of any showing that such charge was filed aside from the instant criminal charge for illegal possession of dangerous drugs - thereby strengthening the view that no prior arrest was made on petitioner which led to a search incidental thereto. As stressed earlier, there must first be a lawful arrest before a search can be made and that such process cannot be reversed.

All told, the *Bantay Bayan* operatives conducted an illegal search on the person of petitioner. Consequently, the marijuana purportedly seized from him on account of such search is rendered inadmissible in evidence pursuant to the exclusionary rule under Section 3 (2), Article III of the 1987 Constitution. Since the confiscated marijuana is the very *corpus delicti* of the crime charged, petitioner must necessarily be acquitted and exonerated from criminal liability.

DAVID LEON RILEY *vs.* CALIFORNIA
UNITED STATES *vs.* BRIMA WURIE
(No. 13-132, June 25, 2014, Roberts, C.J.)

The Court declines to extend Robinson's categorical rule to searches of data stored on cell phones. Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Officers may examine the phone's physical aspects to ensure that it will not be used as a weapon, but the data on the phone can endanger no one. With regard to concerns as to destruction of evidence, this might be addressed by responding in a targeted manner to urgent threats of remote wiping or by taking action to disable a phone's locking mechanism in order to secure the scene.

Cell phones differ in both a quantitative and a qualitative sense from other objects that might be carried on an arrestee's person. Notably, modern cell phones have an immense storage capacity. Before cell phones, a search of a person was limited by physical realities and generally constituted only a narrow intrusion on privacy. But cell phones can store millions of pages of text, thousands of pictures, or hundreds of videos. This has several interrelated privacy consequences. First, a cell phone collects in one

place many distinct types of information - an address, a note, a prescription, a bank statement, a video - that reveal much more in combination than any isolated record. Second, the phone's capacity allows even just one type of information to convey far more than previously possible. The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, data on the phone can date back for years. In addition, an element of pervasiveness characterizes cell phones but not physical records.

But the Court's holding is not that the information on a cell phone is immune from search; it is that a warrant is generally required before a search. The warrant requirement is an important component of the Court's Fourth Amendment jurisprudence, and warrants may be obtained with increasing efficiency. In addition, although the search incident to arrest exception does not apply to cell phones, the continued availability of the exigent circumstances exception may give law enforcement a justification for a warrantless search in particular cases.

FACTS:
In No. 13–132, petitioner Riley was stopped for a traffic violation, which eventually led to his arrest on weapons charges. An officer searching Riley incident to the arrest seized a cell phone from Riley's pants pocket. The officer accessed information on the phone and noticed the repeated use of a term associated with a street gang. At the police station two hours later, a detective specializing in gangs further examined the phone's digital contents. Based in part on photographs and videos that the detective found, the State charged Riley in connection with a shooting that had occurred a few weeks earlier and sought an enhanced sentence based on Riley's gang membership. Riley moved to suppress all evidence that the police had obtained from his cell phone. The trial court denied the motion, and Riley was convicted. The California Court of Appeal affirmed.

In No. 13–212, respondent Wurie was arrested after police observed him participate in an apparent drug sale. At the police station, the officers seized a cell phone from Wurie's person and noticed that the phone was receiving multiple calls from a source identified as "my house" on its external screen. The officers opened the phone, accessed its call log, determined the number associated with the "my house" label, and traced that number to what they suspected was Wurie's apartment. They secured a search warrant and found drugs, a firearm and ammunition, and cash in the ensuing search. Wurie was then charged with drug and firearm offenses. He moved to suppress the evidence obtained from the search of the apartment. The District Court denied the motion, and Wurie was convicted. The First Circuit reversed the denial of the motion to suppress and vacated the relevant convictions.

ISSUE:
Whether the police may, without a warrant, search digital information on a cell phone seized from an individual who has been arrested? (NO)

RULING:
The police generally may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested. The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

As the text makes clear, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" Our cases have determined that "[w]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing reasonableness generally requires the obtaining of a judicial warrant." Such a warrant ensures that the inferences to support a search are "drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.

(a) A warrantless search is reasonable only if it falls within a specific exception to the Fourth Amendment's warrant requirement. The well-established exception at issue here applies when a warrantless search is conducted incident to a lawful arrest.

Three related precedents govern the extent to which officers may search property found on or near an arrestee. ***Chimel v. California, 395 U. S. 752***, requires that a search incident to arrest be limited to the area within the arrestee's immediate control, where it is justified by the interests in officer safety and in preventing evidence destruction. In ***United States v. Robinson, 414 U. S. 218***, the Court applied the *Chimel* analysis to a search of a cigarette pack found on the arrestee's person. It held that the risks identified in *Chimel* are present in all custodial arrests, even when there is no specific concern about the loss of evidence or the threat to officers in a particular case. The trilogy concludes with ***Arizona* v. *Gant*, 556 U. S. 332**, which permits searches of a car where the arrestee is unsecured and within reaching distance of the passenger compartment, or where it is reasonable to believe that evidence of the crime of arrest might be found in the vehicle.

(b) The Court declines to extend *Robinson*'s categorical rule to searches of data stored on cell phones. Absent more precise guidance from the founding era, the Court generally determines whether to exempt a given type of search from the warrant requirement "by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, and the degree to which it is needed for the promotion of legitimate governmental interests." That balance of interests supported the search incident to arrest exception in *Robinson*. But a search of digital information on a cell phone does not further the government interests identified in *Chimel*, and implicates substantially greater individual privacy interests than a brief physical search.

(1) The digital data stored on cell phones does not present either *Chimel* risk.

(i) Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Officers may examine the phone's physical aspects to ensure that it will not be used as a weapon, but the data on the phone can endanger no one. To the extent that a search of cell phone data might warn officers of an impending danger, *e.g.,* that the arrestee's confederates are headed to the scene, such a concern is better addressed through consideration of case-specific exceptions to the warrant requirement, such as exigent circumstances.

The United States and California both suggest that a search of cell phone data might help ensure officer safety in more indirect ways, for example by alerting officers that confederates of the arrestee are headed to the scene. There is undoubtedly a strong government interest in warning officers about such possibilities, but neither the United States nor California offers evidence to suggest that their concerns are based on actual experience. The proposed consideration would also represent a broadening of *Chimel*'s concern that an *arrestee himself* might grab a weapon and use it against an officer "to resist arrest or effect his escape." And any such threats from outside the

arrest scene do not "lurk[ ] in all custodial arrests." Accordingly, the interest in protecting officer safety does not justify dispensing with the warrant requirement across the board. To the extent dangers to arresting officers may be implicated in a particular way in a particular case, they are better addressed through consideration of case-specific exceptions to the warrant requirement, such as the one for exigent circumstances.

(ii) The United States and California raise concerns about the destruction of evidence, arguing that, even if the cell phone is physically secure, information on the cell phone remains vulnerable to remote wiping and data encryption. Remote wiping occurs when a phone, connected to a wireless network, receives a signal that erases stored data. This can happen when a third party sends a remote signal or when a phone is preprogrammed to delete data upon entering or leaving certain geographic areas (so-called "geo fencing"). Encryption is a security feature that some modern cell phones use in addition to password protection. When such phones lock, data becomes protected by sophisticated encryption that renders a phone all but "unbreakable" unless police know the password.

As an initial matter, those broad concerns are distinct from *Chimel*'s focus on a defendant who responds to arrest by trying to conceal or destroy evidence within his reach. The briefing also gives little indication that either problem is prevalent or that the opportunity to perform a search incident to arrest would be an effective solution. And, at least as to remote wiping, law enforcement currently has some technologies of its own for combatting the loss of evidence. Finally, law enforcement's remaining concerns in a particular case might be addressed by responding in a targeted manner to urgent threats of remote wiping or by taking action to disable a phone's locking mechanism in order to secure the scene.

(2) A conclusion that inspecting the contents of an arrestee's pockets works no substantial additional intrusion on privacy beyond the arrest itself may make sense as applied to physical items, but more substantial privacy interests are at stake when digital data is involved.

(i) Cell phones differ in both a quantitative and a qualitative sense from other objects that might be carried on an arrestee's person. Notably, modern cell phones have an immense storage capacity. Before cell phones, a search of a person was limited by physical realities and generally constituted only a narrow intrusion on privacy. But cell phones can store millions of pages of text, thousands of pictures, or hundreds of videos. This has several interrelated privacy consequences. *First*, a cell phone collects in one place many distinct types of information - an address, a note, a prescription, a bank statement, a video - that reveal much more in combination than any isolated record. *Second*, the phone's capacity allows even just one type of information to convey far more than previously possible. The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. *Third*, data on the phone can date back for years. In addition, an element of pervasiveness characterizes cell phones but not physical records. A person might carry in his pocket a slip of paper reminding him to call Mr. Jones; he would not carry a record of all his communications with Mr. Jones for the past several months, as would routinely be kept on a phone.

A decade ago officers might have occasionally stumbled across a highly personal item such as a diary, but today many of the more than 90% of American adults who own cell phones keep on their person a digital record of nearly every aspect of their lives. Finally, there is an element of pervasiveness that characterizes cell phones but not physical records.

(ii) The scope of the privacy interests at stake is further complicated by the fact that the data viewed on many modern cell phones may in fact be stored on a remote server. Thus, a search may extend well beyond papers and effects in the physical proximity of an arrestee, a concern that the United States recognizes but cannot definitively foreclose.

TIMOTHY IVORY CARPENTER, PETITIONER *v.* UNITED STATES
(No. 16–402, June 22, 2018, Roberts, C.J.)

A majority of the Court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements. Allowing government access to cell-site records—which "hold for many Americans the 'privacies of life,'"—contravenes that expectation. In fact, historical cell-site records present even greater privacy concerns than the GPS monitoring considered in Jones: They give the Government near perfect surveillance and allow it to travel back in time to retrace a person's whereabouts, subject only to the five-year retention policies of most wireless carriers.

Although such records are generated for commercial purposes, that distinction does not negate Carpenter's anticipation of privacy in his physical location. Mapping a cell phone's location over the course of 127 days provides an all-encompassing record of the holder's whereabouts. As with GPS information, the time stamped data provides an intimate window into a person's life, revealing not only his particular movements, but through them his "familial, political, professional, religious, and sexual associations."

US Court declines to extend Smith and Miller to cover these novel circumstances. Given the unique nature of cellphone location records, the fact that the information is held by a third party does not by itself overcome the user's claim to Fourth Amendment protection. Whether the Government employs its own surveillance technology as in Jones or leverages the technology of a wireless carrier, the Court holds that an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI. The location information obtained from Carpenter's wireless carriers was the product of a search.

Nor does the second rationale for the third-party doctrine—voluntary exposure—hold up when it comes to CSLI. Cell phone location information is not truly "shared" as the term is normally understood. First, cell phones and the services they provide are "such a pervasive and insistent part of daily life" that carrying one is indispensable to participation in modern society. Second, a cell phone logs a cell-site record by dint of its operation, without any affirmative act on the user's part beyond powering up.

FACTS:
In 2011, police officers arrested four men suspected of robbing a series of Radio Shack and T-Mobile stores in Detroit. One of the men confessed that, over the previous four months, the group had robbed nine different stores in Michigan and Ohio. The suspect identified 15 accomplices who had

participated in the heists and gave the FBI some of their cell phone numbers; the FBI then reviewed his call records to identify additional numbers that he had called around the time of the robberies.

Based on that information, the prosecutors applied for court orders under the Stored Communications Act to obtain cell phone records for petitioner Timothy Carpenter and several other suspects. That statute, as amended in 1994, permits the Government to compel the disclosure of certain telecommunications records when it "offers specific and articulable facts showing that there are reasonable grounds to believe" that the records sought "are relevant and material to an ongoing criminal investigation." Federal Magistrate Judges issued two orders directing Carpenter's wireless carriers—Metro PCS and Sprint—to disclose "cell/site sector [information] for [Carpenter's] telephone at call origination and at call termination for incoming and outgoing calls" during the four-month period when the string of robberies occurred. The first order sought 152 days of cell-site records from Metro PCS, which produced records spanning 127 days. The second order requested seven days of CSLI from Sprint, which produced two days of records covering the period when Carpenter's phone was "roaming" in northeastern Ohio. Altogether the Government obtained 12,898 location points cataloging Carpenter's movements—an average of 101 data points per day.

Carpenter was charged with six counts of robbery and an additional six counts of carrying a firearm during a federal crime of violence. Prior to trial, Carpenter moved to suppress the cell-site data provided by the wireless carriers. He argued that the Government's seizure of the records violated the Fourth Amendment because they had been obtained without a warrant supported by probable cause. The District Court denied the motion. Carpenter was convicted on all but one of the firearm counts and sentenced to more than 100 years in prison. The Court of Appeals for the Sixth Circuit affirmed.

ISSUES:
(1) Whether the Government conducts a search under the Fourth Amendment when it accesses historical cell phone records that provide a comprehensive chronicle of the user's past movements? (YES)
(2) Whether or not the third-party doctrine applies in this case? (NO)

RULING:
(1) The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The "basic purpose of this Amendment," our cases have recognized, "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." The Government's acquisition of Carpenter's cell-site records was a Fourth Amendment search.

The Fourth Amendment protects not only property interests but certain expectations of privacy as well. Thus, when an individual "seeks to preserve something as private," and his expectation of privacy is "one that society is prepared to recognize as reasonable," official intrusion into that sphere generally qualifies as a search and requires a warrant supported by probable cause.

A majority of the Court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements. Allowing government access to cell-site records—which "hold for many Americans the 'privacies of life,'"—contravenes that expectation. In fact, historical cell-site records present even greater privacy concerns than the GPS monitoring considered in *Jones*: They give the Government near perfect surveillance and allow it to travel back

in time to retrace a person's whereabouts, subject only to the five-year retention policies of most wireless carriers.

Although such records are generated for commercial purposes, that distinction does not negate Carpenter's anticipation of privacy in his physical location. Mapping a cell phone's location over the course of 127 days provides an all-encompassing record of the holder's whereabouts. As with GPS information, the time stamped data provides an intimate window into a person's life, revealing not only his particular movements, but through them his "familial, political, professional, religious, and sexual associations." These location records "hold for many Americans the 'privacies of life.'" And like GPS monitoring, cell phone tracking is remarkably easy, cheap, and efficient compared to traditional investigative tools. With just the click of a button, the Government can access each carrier's deep repository of historical location information at practically no expense.

(2) The Government contends that the third-party doctrine governs this case, because cell-site records, like the records in *Smith* and *Miller*, are "business records," created and maintained by wireless carriers. But there is a world of difference between the limited types of personal information addressed in *Smith* and *Miller* and the exhaustive chronicle of location information casually collected by wireless carriers.

The third-party doctrine partly stems from the notion that an individual has a reduced expectation of privacy in information knowingly shared with another. *Smith* and *Miller*, however, did not rely solely on the act of sharing. They also considered "the nature of the particular documents sought" and limitations on any "legitimate 'expectation of privacy' concerning their contents." In mechanically applying the third-party doctrine to this case the Government fails to appreciate the lack of comparable limitations on the revealing nature of CSLI.

US Court declines to extend *Smith* and *Miller* to cover these novel circumstances. Given the unique nature of cellphone location records, the fact that the information is held by a third party does not by itself overcome the user's claim to Fourth Amendment protection. Whether the Government employs its own surveillance technology as in *Jones* or leverages the technology of a wireless carrier, the Court holds that an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI. The location information obtained from Carpenter's wireless carriers was the product of a search.

A person does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary, "what [one] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." A majority of this Court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements.

Nor does the second rationale for the third-party doctrine—voluntary exposure—hold up when it comes to CSLI. Cell phone location information is not truly "shared" as the term is normally understood. First, cell phones and the services they provide are "such a pervasive and insistent part of daily life" that carrying one is indispensable to participation in modern society. Second, a cell phone logs a cell-site record by dint of its operation, without any affirmative act on the user's part beyond powering up.

The Government did not obtain a warrant supported by probable cause before acquiring Carpenter's cell-site records. It acquired those records pursuant to a court order under the Stored Communications Act, which required the Government to show "reasonable grounds" for believing that the

records were "relevant and material to an ongoing investigation." That showing falls well short of the probable cause required for a warrant. Consequently, an order issued under §2703(d) is not a permissible mechanism for accessing historical cell-site records. Not all orders compelling the production of documents will require a showing of probable cause. A warrant is required only in the rare case where the suspect has a legitimate privacy interest in records held by a third party. And even though the Government will generally need a warrant to access CSLI, case-specific exceptions—*e.g.*, exigent circumstances—may support a warrantless search.

DANNY BIRCHFIELD, *vs.* NORTH DAKOTA;
WILLIAM ROBERT BERNARD, JR., *vs.* MINNESOTA; AND
STEVE MICHAEL BEYLUND, *vs.* GRANT LEVI, DIRECTOR, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
(Nos. 14–1468, 14–1470, and 14–1507, June 23, 2016, Alito, J.)

Participation in a breath test is not an experience that is likely to cause any great enhancement in the embarrassment that is inherent in any arrest. The act of blowing into a straw is not inherently embarrassing, nor are evidentiary breath tests administered in a manner that causes embarrassment. Again, such tests are normally administered in private at a police station, in a patrol car, or in a mobile testing facility, out of public view. Moreover, once placed under arrest, the individual's expectation of privacy is necessarily diminished. For all these reasons, US Court reiterates what it said in Skinner: A breath test does not "implicat[e] significant privacy concerns."

Blood tests are a different matter. They "require piercing the skin" and extract a part of the subject's body. Blood draws are "a compelled physical intrusion beneath [the defendant's] skin and into his veins"). And while humans exhale air from their lungs many times per minute, humans do not continually shed blood. It is true, of course, that people voluntarily submit to the taking of blood samples as part of a physical examination, and the process involves little pain or risk.

These legal conclusions resolve the three present cases. Birchfield was criminally prosecuted for refusing a warrantless blood draw, and therefore the search that he refused cannot be justified as a search incident to his arrest or on the basis of implied consent. Because there appears to be no other basis for a warrantless test of Birchfield's blood, he was threatened with an unlawful search and unlawfully convicted for refusing that search. Bernard was criminally prosecuted for refusing a warrantless breath test. Because that test was a permissible search incident to his arrest for drunk driving, the Fourth Amendment did not require officers to obtain a warrant prior to demanding the test, and Bernard had no right to refuse it. Beylund submitted to a blood test after police told him that the law required his submission. The North Dakota Supreme Court, which based its conclusion that Beylund's consent was voluntary on the erroneous assumption that the State could compel blood tests, should reevaluate Beylund's consent in light of the partial inaccuracy of the officer's advisory.

FACTS:
In these cases, all three petitioners were arrested on drunk-driving charges. The state trooper who arrested petitioner Danny Birchfield advised him of his obligation under North Dakota law to undergo BAC testing and told him, as state law requires, that refusing to submit to a blood test could lead to criminal punishment. Birchfield refused to let his blood be drawn and was charged with a misdemeanor violation of the refusal statute. He entered a conditional guilty plea but argued that the Fourth Amendment prohibited criminalizing his refusal to submit to the test. The State District Court rejected his argument, and the State Supreme Court affirmed.

After arresting petitioner William Robert Bernard, Jr., Minnesota police transported him to the station. There, officers read him Minnesota's implied consent advisory, which like North Dakota's informs motorists that it is a crime to refuse to submit to a BAC test. Bernard refused to take a breath test and was charged with test refusal in the first degree. The Minnesota District Court dismissed the charges, concluding that the warrantless breath test was not permitted under the Fourth Amendment. The State Court of Appeals reversed, and the State Supreme Court affirmed.

The officer who arrested petitioner Steve Michael Beylund took him to a nearby hospital. The officer read him North Dakota's implied consent advisory, informing him that test refusal in these circumstances is itself a crime. Beylund agreed to have his blood drawn. The test revealed a BAC level more than three times the legal limit. Beylund's license was suspended for two years after an administrative hearing, and on appeal, the State District Court rejected his argument that his consent to the blood test was coerced by the officer's warning. The State Supreme Court affirmed.

ISSUES:

(1) Whether or not the Fourth Amendment permits warrants breath tests incident to arrests for drunk diving? (YES)
(2) Whether or not the Fourth Amendment permits warrantless blood tests incident to arrests for drunk diving? (NO)

RULING:

(1) Taking a blood sample or administering a breath test is a search governed by the Fourth Amendment. These searches may nevertheless be exempt from the warrant requirement if they fall within, as relevant here, the exception for searches conducted incident to a lawful arrest. This exception applies categorically, rather than on a case-by-case basis.

The search-incident-to-arrest doctrine has an ancient pedigree that predates the Nation's founding, and no historical evidence suggests that the Fourth Amendment altered the permissible bounds of arrestee searches. The mere "fact of the lawful arrest" justifies "a full search of the person." The doctrine may also apply in situations that could not have been envisioned when the Fourth Amendment was adopted. In *Riley* v. *California*, the Court considered how to apply the doctrine to searches of an arrestee's cell phone. Because founding era guidance was lacking, the Court determined "whether to exempt [the] search from the warrant requirement 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.' " The same mode of analysis is proper here because the founding era provides no definitive guidance on whether blood and breath tests should be allowed incident to arrest.

The analysis begins by considering the impact of breath and blood tests on individual privacy interests. Breath tests do not "implicat[e] significant privacy concerns." *Skinner*, 489 U. S., at 626. That remains so today. First, the physical intrusion is almost negligible. Breath tests "do not require piercing the skin" and entail "a minimum of inconvenience." As Minnesota describes its version of the breath test, the process requires the arrestee to blow continuously for 4 to 15 seconds into a straw-like mouthpiece that is connected by a tube to the test machine. Independent sources describe other breath test devices in essentially the same terms. The effort is no more demanding than blowing up a party balloon. Petitioner Bernard argues, however, that the process is nevertheless a significant intrusion because the arrestee must insert the mouthpiece of the machine into his or her mouth. But there is nothing painful or strange about this requirement. The use of a straw to drink beverages is a common practice and one to which few object.

Nor, contrary to Bernard, is the test a significant intrusion because it "does not capture an ordinary exhalation of the kind that routinely is exposed to the public" but instead "'requires a sample of "alveolar" (deep lung) air.'" Humans have never been known to assert a possessory interest in or any emotional attachment to *any* of the air in their lungs. The air that humans exhale is not part of their bodies. Exhalation is a natural process—indeed, one that is necessary for life. Humans cannot hold their breath for more than a few minutes, and all the air that is breathed into a breath analyzing machine, including deep lung air, sooner or later would be exhaled even without the test.

Finally, participation in a breath test is not an experience that is likely to cause any great enhancement in the embarrassment that is inherent in any arrest. The act of blowing into a straw is not inherently embarrassing, nor are evidentiary breath tests administered in a manner that causes embarrassment. Again, such tests are normally administered in private at a police station, in a patrol car, or in a mobile testing facility, out of public view. Moreover, once placed under arrest, the individual's expectation of privacy is necessarily diminished.

For all these reasons, US Court reiterates what it said in *Skinner*: A breath test does not "implicat[e] significant privacy concerns."

(2) Blood tests are a different matter. They "require piercing the skin" and extract a part of the subject's body. Blood draws are "a compelled physical intrusion beneath [the defendant's] skin and into his veins"). And while humans exhale air from their lungs many times per minute, humans do not continually shed blood. It is true, of course, that people voluntarily submit to the taking of blood samples as part of a physical examination, and the process involves little pain or risk.

Nevertheless, for many, the process is not one they relish. It is significantly more intrusive than blowing into a tube. Perhaps that is why many States' implied consent laws, including Minnesota's, specifically prescribe that breath tests be administered in the usual drunk-driving case instead of blood tests or give motorists a measure of choice over which test to take.

In addition, a blood test, unlike a breath test, places in the hands of law enforcement authorities a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading. Even if the law enforcement agency is precluded from testing the blood for any purpose other than to measure BAC, the potential remains and may result in anxiety for the person tested.

Because the impact of breath tests on privacy is slight, and the need for BAC testing is great, the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. Blood tests, however, are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Respondents have offered no satisfactory justification for demanding the more intrusive alternative without a warrant. In instances where blood tests might be preferable—*e.g.*, where substances other than alcohol impair the driver's ability to operate a car safely, or where the subject is unconscious—nothing prevents the police from seeking a warrant or from relying on the exigent circumstances exception if it applies. Because breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests, a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving. No warrant is needed in this situation.

Motorists may not be criminally punished for refusing to submit to a blood test based on legally implied consent to submit to them. It is one thing to approve implied-consent laws that impose civil

penalties and evidentiary consequences on motorists who refuse to comply, but quite another for a State to insist upon an intrusive blood test and then to impose criminal penalties on refusal to submit. There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads.

These legal conclusions resolve the three present cases. Birch-field was criminally prosecuted for refusing a warrantless blood draw, and therefore the search that he refused cannot be justified as a search incident to his arrest or on the basis of implied consent. Because there appears to be no other basis for a warrantless test of Birchfield's blood, he was threatened with an unlawful search and unlawfully convicted for refusing that search. Bernard was criminally prosecuted for refusing a warrantless breath test. Because that test was a permissible search incident to his arrest for drunk driving, the Fourth Amendment did not require officers to obtain a warrant prior to demanding the test, and Bernard had no right to refuse it. Beylund submitted to a blood test after police told him that the law required his submission. The North Dakota Supreme Court, which based its conclusion that Beylund's consent was voluntary on the erroneous assumption that the State could compel blood tests, should reevaluate Beylund's consent in light of the partial inaccuracy of the officer's advisory.

SOCIAL JUSTICE SOCIETY (SJS), petitioner vs.
DANGEROUS DRUGS BOARD and PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA), respondents.
ATTY. MANUEL J. LASERNA, JR., petitioner vs.
DANGEROUS DRUGS BOARD and PHILIPPINE DRUG ENFORCEMENT AGENCY, respondents.
AQUILINO Q. PIMENTEL, JR., petitioner vs.
COMMISSION ON ELECTIONS, respondents.
(G.R. No. 157870, 158633, 161658, EN BANC, November 3, 2008, VELASCO, JR., J.)

Accordingly, Sec. 36(g) of RA 9165 should be, as it is hereby declared as, unconstitutional. It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. If Congress cannot require a candidate for senator to meet such additional qualification, the COMELEC, to be sure, is also without such power. The right of a citizen in the democratic process of election should not be defeated by unwarranted impositions of requirement not otherwise specified in the Constitution. Sec. 36(g) of RA 9165, as sought to be implemented by the assailed COMELEC resolution, effectively enlarges the qualification requirements enumerated in the Sec. 3, Art. VI of the Constitution.

The drug test prescribed under Sec. 36(c), (d), and (f) of RA 9165 for secondary and tertiary level students and public and private employees, while mandatory, is a random and suspicionless arrangement. The objective is to stamp out illegal drug and safeguard in the process "the well-being of [the] citizenry, particularly the youth, from the harmful effects of dangerous drugs." Guided by Vernonia and Board of Education, the Court is of the view and so holds that the provisions of RA 9165 requiring mandatory, random, and suspicionless drug testing of students are constitutional. Indeed, it is within the prerogative of educational institutions to require, as a condition for admission, compliance with reasonable school rules and regulations and policies. To be sure, the right to enroll is not absolute; it is subject to fair, reasonable, and equitable requirements.

Just as in the case of secondary and tertiary level students, the mandatory but random drug test prescribed by Sec. 36 of RA 9165 for officers and employees of public and private offices is justifiable, albeit not exactly for the same reason. The employees' privacy interest in an office is to a large extent

circumscribed by the company's work policies, the collective bargaining agreement, if any, entered into by management and the bargaining unit, and the inherent right of the employer to maintain discipline and efficiency in the workplace. Their privacy expectation in a regulated office environment is, in fine, reduced; and a degree of impingement upon such privacy has been upheld.

Like their counterparts in the private sector, government officials and employees also labor under reasonable supervision and restrictions imposed by the Civil Service law and other laws on public officers, all enacted to promote a high standard of ethics in the public service. And if RA 9165 passes the norm of reasonableness for private employees, the more reason that it should pass the test for civil servants, who, by constitutional command, are required to be accountable at all times to the people and to serve them with utmost responsibility and efficiency.

Unlike the situation covered by Sec. 36(c) and (d) of RA 9165, the Court finds no valid justification for mandatory drug testing for persons accused of crimes. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy.

FACTS:
In these kindred petitions, the constitutionality of Section 36 of Republic Act No. (RA) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, insofar as it requires mandatory drug testing of candidates for public office, students of secondary and tertiary schools, officers and employees of public and private offices, and persons charged before the prosecutor's office with certain offenses, among other personalities, is put in issue.

ISSUES:
(1) Does Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 impose an additional qualification for candidates for senator? (YES) Corollarily, can Congress enact a law prescribing qualifications for candidates for senator in addition to those laid down by the Constitution? (NO) and
(2) Whether or not mandatory drug testing can be imposed on secondary and tertiary level students? (YES) Officials and employees in public and private offices? (YES) Specifically, do these paragraphs violate the right to privacy, the right against unreasonable searches and seizure, and the equal protection clause? (NO)
(3) Whether or not mandatory drug testing can be imposed on persons accused of crimes? (NO)

RULING:
(1) Pimentel Petition (Constitutionality of Sec. 36[g] of RA 9165 and COMELEC Resolution No. 6486)
In essence, Pimentel claims that Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 illegally impose an additional qualification on candidates for senator. He points out that, subject to the provisions on nuisance candidates, a candidate for senator needs only to meet the qualifications laid down in Sec. 3, Art. VI of the Constitution, to wit: (1) citizenship, (2) voter registration, (3) literacy, (4) age, and (5) residency.

Pimentel's contention is well - taken. Accordingly, Sec. 36(g) of RA 9165 should be, as it is hereby declared as, unconstitutional. It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. If Congress cannot require a candidate for senator to meet such additional qualification, the COMELEC, to be sure, is also without such power. The right of a citizen in the democratic process of election should not be defeated by unwarranted impositions of requirement not otherwise specified in the Constitution.

Sec. 36(g) of RA 9165, as sought to be implemented by the assailed COMELEC resolution, effectively enlarges the qualification requirements enumerated in the Sec. 3, Art. VI of the Constitution. As couched, said Sec. 36(g) unmistakably requires a candidate for senator to be certified illegal - drug clean, obviously as a pre - condition to the validity of a certificate of candidacy for senator or, with like effect, a condition *sine qua non* to be voted upon and, if proper, be proclaimed as senator - elect. The COMELEC resolution completes the chain with the proviso that "[n]o person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test." Viewed, therefore, in its proper context, Sec. 36(g) of RA 9165 and the implementing COMELEC Resolution add another qualification layer to what the 1987 Constitution, at the minimum, requires for membership in the Senate. Whether or not the drug-free bar set up under the challenged provision is to be hurdled before or after election is really of no moment, as getting elected would be of little value if one cannot assume office for non - compliance with the drug - testing requirement.

It may of course be argued, in defense of the validity of Sec. 36(g) of RA 9165, that the provision does not expressly state that non-compliance with the drug test imposition is a disqualifying factor or would work to nullify a certificate of candidacy. This argument may be accorded plausibility if the drug test requirement is optional. But the particular section of the law, without exception, made drug-testing on those covered mandatory, necessarily suggesting that the obstinate ones shall have to suffer the adverse consequences for not adhering to the statutory command.

(2) SJS Petition(Constitutionality of Sec. 36[c], [d], [f], and [g] of RA 9165)
The drug test prescribed under Sec. 36(c), (d), and (f) of RA 9165 for secondary and tertiary level students and public and private employees, while mandatory, is a random and suspicionless arrangement. The objective is to stamp out illegal drug and safeguard in the process "the well-being of [the] citizenry, particularly the youth, from the harmful effects of dangerous drugs."

The primary legislative intent is not criminal prosecution, as those found positive for illegal drug use as a result of this random testing are not necessarily treated as criminals. They may even be exempt from criminal liability should the illegal drug user consent to undergo rehabilitation. Secs. 54 and 55 of RA 9165 are clear on this point.

What can reasonably be deduced from US jurisprudence and applied to this jurisdiction are: (1) schools and their administrators stand *in loco parentis* with respect to their students; (2) minor students have contextually fewer rights than an adult, and are subject to the custody and supervision of their parents, guardians, and schools; (3) schools, acting in loco parentis, have a duty to safeguard the health and well - being of their students and may adopt such measures as may reasonably be necessary to discharge such duty; and (4) schools have the right to impose conditions on applicants for admission that are fair, just, and non-discriminatory.

Guided by *Vernonia* and *Board of Education*, the Court is of the view and so holds that the provisions of RA 9165 requiring mandatory, random, and suspicionless drug testing of students are

constitutional. Indeed, it is within the prerogative of educational institutions to require, as a condition for admission, compliance with reasonable school rules and regulations and policies. To be sure, the right to enroll is not absolute; it is subject to fair, reasonable, and equitable requirements. Just as in the case of secondary and tertiary level students, the mandatory but random drug test prescribed by Sec. 36 of RA 9165 for officers and employees of public and private offices is justifiable, albeit not exactly for the same reason.

The employees' privacy interest in an office is to a large extent circumscribed by the company's work policies, the collective bargaining agreement, if any, entered into by management and the bargaining unit, and the inherent right of the employer to maintain discipline and efficiency in the workplace. Their privacy expectation in a regulated office environment is, in fine, reduced; and a degree of impingement upon such privacy has been upheld.

Like their counterparts in the private sector, government officials and employees also labor under reasonable supervision and restrictions imposed by the Civil Service law and other laws on public officers, all enacted to promote a high standard of ethics in the public service. And if RA 9165 passes the norm of reasonableness for private employees, the more reason that it should pass the test for civil servants, who, by constitutional command, are required to be accountable at all times to the people and to serve them with utmost responsibility and efficiency.

(3) Laserna Petition (Constitutionality of Sec. 36[c], [d], [f], and [g] of RA 9165)

Unlike the situation covered by Sec. 36(c) and (d) of RA 9165, the Court finds no valid justification for mandatory drug testing for persons accused of crimes. In the case of students, the constitutional viability of the mandatory, random, and suspicionless drug testing for students emanates primarily from the waiver by the students of their right to privacy when they seek entry to the school, and from their voluntarily submitting their persons to the parental authority of school authorities. In the case of private and public employees, the constitutional soundness of the mandatory, random, and suspicionless drug testing proceeds from the reasonableness of the drug test policy and requirement. The Court finds the situation entirely different in the case of persons charged before the public prosecutor's office with criminal offenses punishable with six (6) years and one (1) day imprisonment. The operative concepts in the mandatory drug testing are "randomness" and "suspicionless." In the case of persons charged with a crime before the prosecutor's office, a mandatory drug testing can never be random or suspicionless. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy. To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, contrary to the stated objectives of RA 9165. Drug testing in this case would violate a persons' right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused persons are veritably forced to incriminate themselves.

JAIME D. DELA CRUZ, Petitioner, *vs.*PEOPLE OF THE PHILIPPINES, Respondent.
(G.R. No. 200748, FIRST DIVISION, July 23, 2014, SERENO, *CJ.*)

The drug test is not covered by allowable non-testimonial compulsion. The constitutional right of an accused against self-incrimination proscribes the use of physical or moral compulsion to extort communications from the accused and not the inclusion of his body in evidence when it may be material.

Purely mechanical acts are not included in the prohibition as the accused does not thereby speak his guilt, hence the assistance and guiding hand of counsel is not required. The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act. Hence, it has been held that a woman charged with adultery may be compelled to submit to physical examination to determine her pregnancy; and an accused may be compelled to submit to physical examination and to have a substance taken from his body for medical determination as to whether he was suffering from gonorrhea which was contracted by his victim; to expel morphine from his mouth; to have the outline of his foot traced to determine its identity with bloody footprints; and to be photographed or measured, or his garments or shoes removed or replaced, or to move his body to enable the foregoing things to be done.

In the instant case, the Court fails to see how a urine sample could be material to the charge of extortion. The RTC and the CA, therefore, both erred when they held that the extraction of petitioner's urine for purposes of drug testing was "merely a mechanical act, hence, falling outside the concept of a custodial investigation."

The drug test was a violation of petitioner's right to privacy and right against self-incrimination. It is incontrovertible that petitioner refused to have his urine extracted and tested for drugs. He also asked for a lawyer prior to his urine test. He was adamant in exercising his rights, but all of his efforts proved futile, because he was still compelled to submit his urine for drug testing under those circumstances.

FACTS:
Jaime D. dela Cruz was a public officer, having been duly appointed and qualified to such public position as Police Officer 2 of the PNP assigned in the Security Service Group of the Cebu City Police Office, after having been arrested by agents of the NBI in an entrapment operation, was found positive for use of methamphetamine hydrochloride or *shabu*, the dangerous drug after a confirmatory test conducted on said accused.

Dela Cruz was then charged with violation of Section 15, Article II of Republic Act No. (R.A.) 9165, or the Comprehensive Dangerous Drugs Act of 2002, by the Graft Investigation and Prosecution Officer of the Office of the Ombudsman - Visayas, in an Information.

When arraigned, petitioner, assisted by counsel *de parte*, pleaded not guilty to the charge. RTC Branch 58 of Cebu City found the accused guilty beyond reasonable doubt of violating Section 15, Article II of R.A. 9165 and sentenced him to suffer the penalty of compulsory rehabilitation for a period of not less than six (6) months at the Cebu Center for the Ultimate Rehabilitation of Drug Dependents located at Salinas, Lahug, Cebu City.
Petitioner filed an appeal assigning as error the RTC's validation of the result of the urine test despite its dubiousness having been admitted in spite of the lack of legal basis for its admission. First, he alleges that the forensic laboratory examination was conducted despite the fact that he was not assisted by counsel, in clear violation of his constitutional right. Secondly, he was allegedly held guilty beyond reasonable doubt notwithstanding the lack of sufficient basis to convict him. The CA found the appeal devoid of merit and affirmed the ruling of the RTC. Hence, this petition.

ISSUE:
Whether or not the extraction of urine for purposes of drug testing in this case violates the Constitution? (YES)

RULING:

Disregarding petitioner's objection regarding the admissibility of the evidence, the lower court reasoned that "a suspect cannot invoke his right to counsel when he is required to extract urine because, while he is already in custody, he is not compelled to make a statement or testimony against himself. Extracting urine from one's body is merely a mechanical act, hence, falling outside the concept of a custodial investigation."

The drug test is not covered by allowable non-testimonial compulsion. The constitutional right of an accused against self-incrimination proscribes the use of physical or moral compulsion to extort communications from the accused and not the inclusion of his body in evidence when it may be material. Purely mechanical acts are not included in the prohibition as the accused does not thereby speak his guilt, hence the assistance and guiding hand of counsel is not required. The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act. Hence, it has been held that a woman charged with adultery may be compelled to submit to physical examination to determine her pregnancy; and an accused may be compelled to submit to physical examination and to have a substance taken from his body for medical determination as to whether he was suffering from gonorrhea which was contracted by his victim; to expel morphine from his mouth; to have the outline of his foot traced to determine its identity with bloody footprints; and to be photographed or measured, or his garments or shoes removed or replaced, or to move his body to enable the foregoing things to be done.
In the instant case, the Court fails to see how a urine sample could be material to the charge of extortion. The RTC and the CA, therefore, both erred when they held that the extraction of petitioner's urine for purposes of drug testing was "merely a mechanical act, hence, falling outside the concept of a custodial investigation."In the face of the constitutional guarantees in Sections 2 and 17, Article III, the Court cannot condone drug testing of all arrested persons regardless of the crime or offense for which the arrest is being made.

DANNY LEE KYLLO, *Petitioner,* – versus - UNITED STATES, *Respondent.*
No. 99 – 8508 (533 U.S. 27), June 11, 2001, SCALIA, J.

As Justice Harlan's oft-quoted concurrence described it, a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable. We have subsequently applied this principle to hold that a Fourth Amendment search does not occur–even when the explicitly protected location of a house is concerned–unless "the individual manifested a subjective expectation of privacy in the object of the challenged search," and "society [is] willing to recognize that expectation as reasonable."

Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a "search" and is presumptively unreasonable without a warrant.

FACTS:
In 1991 Agent William Elliott of the United States Department of the Interior came to suspect that marijuana was being grown in the home belonging to petitioner Danny Kyllo. Indoor marijuana growth typically requires high-intensity lamps. In order to determine whether an amount of heat was emanating from petitioner's home consistent with the use of such lamps, at 3:20 a.m. on January 16, 1992, Agent Elliott and Dan Haas used an Agema Thermovision 210 thermal imager to scan the triplex. Thermal imagers detect infrared radiation, which virtually all objects emit but which is not visible to the naked eye.

The scan of Kyllo's home took only a few minutes and was performed from the passenger seat of Agent Elliott's vehicle across the street from the front of the house and from the street in back of the house. The scan showed that the roof over the garage and a side wall of petitioner's home were relatively hot compared to the rest of the home and substantially warmer than neighboring homes in the triplex. Agent Elliott concluded that petitioner was using halide lights to grow marijuana in his house, which indeed he was. Based on tips from informants, utility bills, and the thermal imaging, a Federal Magistrate Judge issued a warrant authorizing a search of petitioner's home, and the agents found an indoor growing operation involving more than 100 plants.

ISSUE:
Whether the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat within the home constitutes a "search". (YES)

RULING:
In assessing when a search is not a search, we have applied somewhat in reverse the principle first enunciated in *Katz v. United States, (389 U.S. 347, 1967)*. *Katz* involved eavesdropping by means of an electronic listening device placed on the outside of a telephone booth–a location not within the catalog ("persons, houses, papers, and effects") that the Fourth Amendment protects against unreasonable searches. We held that the Fourth Amendment nonetheless protected Katz from the warrantless eavesdropping because he "justifiably relied" upon the privacy of the telephone booth. As Justice Harlan's oft-quoted concurrence described it, a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable. We have subsequently applied this principle to hold that a Fourth Amendment search does not occur–even when the explicitly protected location of a house is concerned–unless "the individual manifested a subjective expectation of privacy in the object of the challenged search," and "society [is] willing to recognize that expectation as reasonable." It would be foolish to contend that the degree of privacy secured to citizens by the Fourth Amendment has been entirely unaffected by the advance of technology.

While it may be difficult to refine *Katz* when the search of areas such as telephone booths, automobiles, or even the curtilage and uncovered portions of residences are at issue, in the case of the search of the interior of homes–the prototypical and hence most commonly litigated area of protected privacy–there is a ready criterion, with roots deep in the common law, of the minimal expectation of privacy that exists, and that is acknowledged to be reasonable. To withdraw protection of this minimum expectation would be to permit police technology to erode the privacy guaranteed by the Fourth Amendment. We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical "intrusion into a constitutionally protected area," constitutes a search–at least where (as here) the technology in question is not in general public use. This assures preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted. On the basis of this criterion, the information obtained by the thermal imager in this case was the product of a search.

Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a "search" and is presumptively unreasonable without a warrant.

UNITED STATES, *Petitioner,* – versus - ANTOINE JONES, *Respondent.*
No. 10 – 1259 (565, U.S. 400), January 23, 2012, SCALIA, J.

The Fourth Amendment provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." It is beyond dispute that a vehicle is an "effect" as that term is used in the Amendment.

It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a "search" within the meaning of the Fourth Amendment when it was adopted.

FACTS:
In 2004 respondent Antoine Jones, owner and operator of a nightclub in the District of Columbia, came under suspicion of trafficking in narcotics and was made the target of an investigation by a joint FBI and Metropolitan Police Department task force.

Based on information from various sources, the Government applied to the United States District Court for the District of Columbia for a warrant authorizing the use of an electronic tracking device on the Jeep Grand Cherokee registered to Jones's wife. A warrant issued, authorizing installation of the de- vice in the District of Columbia and within 10 days.

On the 11th day, and not in the District of Columbia but in Maryland, agents installed a GPS tracking device on the undercarriage of the Jeep while it was parked in a public parking lot. Over the next 28 days, the Government used the device to track the vehicle's movements, and once had to replace the device's battery when the vehicle was parked in a different public lot in Maryland. By means of signals from multiple satellites, the device established the vehicle's location within 50 to 100 feet and communicated that location by cellular phone to a Government computer. It relayed more than 2,000 pages of data over the 4-week period.

The Government ultimately obtained a multiple-count indictment charging Jones and several alleged co-conspirators with, as relevant here, conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine and 50 grams or more of cocaine base.

ISSUE:
Whether the attachment of a Global-Positioning-System (GPS) tracking device to an individual's vehicle, and subsequent use of that device to monitor the vehicle's movements on public streets, constitutes a search or seizure within the meaning of the Fourth Amendment. (YES)

RULING:
The Fourth Amendment provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." It is beyond dispute that a vehicle is an "effect" as that term is used in the Amendment.

It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a "search" within the meaning of the Fourth Amendment when it was adopted.

The text of the Fourth Amendment reflects its close connection to property, since otherwise it would have referred simply to "the right of the people to be secure against unreasonable searches and seizures"; the phrase "in their persons, houses, papers, and effects" would have been superfluous.

In Katz v. United States, 389 U. S. 347, 351 (1967), we said that "the Fourth Amendment protects people, not places," and found a violation in attachment of an eavesdropping device to a public telephone booth. Our later cases have applied the analysis of Justice Harlan's concurrence in that case, which said that a violation occurs when government officers violate a person's "reasonable expectation of privacy,

The Government contends that no search occurred here, since Jones had no "reasonable expectation of privacy" in the area of the Jeep accessed by Government agents (its underbody) and in the locations of the Jeep on the public roads, which were visible to all. But we need not address the Government's contentions, because Jones's Fourth Amendment rights do not rise or fall with the Katz formulation. At bottom, we must "assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted. For most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas ("persons, houses, papers, and effects") it enumerates. Katz did not repudiate that understanding. Katz, the Court explained, established that "property rights are not the sole measure of Fourth Amendment violations," but did not "snuf[f] out the previously recognized protection for property."

BRICCIO "RICKY" A. POLLO, *Petitioner,* - versus - CHAIRPERSON KARINA CONSTANTINO-DAVID, *Respondent*
G.R. No. 181881, EN BANC, October 18, 2011, VILLARAMA, JR., J.

Determining the reasonableness of any search involves a two-fold inquiry: first, one must consider whether the action was justified at its inception, x x x; second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place.

Ordinarily, a search of an employee's office by a supervisor will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a non-investigatory work-related purpose such as to retrieve a needed file x x x. The search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the nature of the misconduct.

The search of petitioner's computer files was conducted in connection with investigation of work-related misconduct prompted by an anonymous letter-complaint addressed to Chairperson David regarding anomalies in the CSC-ROIV where the head of the Mamamayan Muna Hindi Mamaya Na division is supposedly "lawyering" for individuals with pending cases in the CSC. That it was the computers that were subjected to the search was justified since these furnished the easiest means for an employee to encode and store documents. Indeed, the computers would be a likely starting point in ferreting out incriminating evidence. Concomitantly, the ephemeral nature of computer files, that is, they could easily be destroyed at a click of a button, necessitated drastic and immediate action. Pointedly, to impose the need to comply with the probable cause requirement would invariably defeat the purpose of the work-related investigation.

FACTS:

Pollo is a government employee whose computer was searched pursuant to the anonymous letter complaint to the Office of Chairperson David. The government employer used Pollo's personal files stored in the computer as evidence of misconduct. Thereafter, Pollo was charged administratively and dismissed from service. Pollo now assails the validity of the search and resulting evidence thereby being the fruit of the poisonous tree.

ISSUE:

1. Whether Pollo has reasonable expectation of privacy. (NONE)

2. Whether the search conducted on his office computer and the copying of his personal files without his knowledge and consent was reasonable. (YES)

RULING:

1. In the 1967 case of *Katz v. United States*, it was noted that existence of privacy right under prior decisions involved a two-fold requirement: first, that a person has exhibited an actual (subjective) expectation of privacy; and second, that the expectation be one that society is prepared to recognize as reasonable (objective).

   In the 1987 case of *O'Connor v. Ortega*, the US Court categorically declared that "[i]ndividuals do not lose Fourth Amendment rights merely because they work for the government instead of a private employer. In the matter of government employees' reasonable expectations of privacy in their workplace, *O'Connor* teaches: x x x Public employees' expectations of privacy in their offices, desks, and file cabinets, like similar expectations of employees in the private sector, may be reduced by virtue of actual office practices and procedures, or by legitimate regulation. x x x the employee's expectation of privacy must be assessed in the context of the employment relation. An office is seldom a private enclave free from entry by supervisors, other employees, and business and personal invitees. Instead, in many cases offices are continually entered by fellow employees and other visitors during the workday for conferences, consultations, and other work-related visits. Simply put, it is the nature of government offices that others – such as fellow employees, supervisors, consensual visitors, and the general public – may have frequent access to an individual's office. We agree with JUSTICE SCALIA that "[c]onstitutional protection against unreasonable searches by the government does not disappear merely because the government has the right to make reasonable intrusions in its capacity as employer," x x x but some government offices may be so open to fellow employees or the public that no expectation of privacy is reasonable. x x x Given the great variety of work environments in the public sector, the question of whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis.

   One of the factors stated in *O'Connor* which are relevant in determining whether an employee's expectation of privacy in the workplace is reasonable is the existence of a workplace privacy policy.

   The CSC in this case had implemented a policy (computers are to be used for legitimate purpose only, an explicit waiver of the expectation of privacy despite the use of passwords) that put its employees on notice that they have no expectation of privacy in anything they create, store, send or receive on the office computers, and that the CSC may monitor the use of the computer resources using both automated or human means. This implies that on-the-spot inspections may be done to ensure that the computer resources were used only for such legitimate business purposes.

2. In the case of searches conducted by a public employer, we must balance the invasion of the employee's legitimate expectations of privacy against the government's need for supervision, control, and the efficient operation of the workplace. To the Court's view, therefore, a probable cause requirement for searches for a work-related purpose would impose intolerable burdens on public employers. The governmental interest justifying work-related intrusions by public employers is the efficient and proper operation of the workplace. When employers conduct an investigation, they have an interest substantially different from "the normal need for law enforcement". Government agencies provide myriad services to the public, and the work of these agencies would suffer if employers were required to have probable cause before they entered an employee's desk for the purpose of finding a file or piece of office correspondence. The delay in correcting the employee misconduct caused by the need for probable cause rather than reasonable suspicion will be translated into tangible and often irreparable damage to the agency's work, and ultimately to the public interest.

   Public employer intrusions on the constitutionally protected privacy interests of government employees for no investigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances. **Under this reasonableness standard, both the inception and the scope of the intrusion must be reasonable:**

   Determining the reasonableness of any search involves a two-fold inquiry: first, one must consider whether the action was justified at its inception, x x x; second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place.

   Ordinarily, a search of an employee's office by a supervisor will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a non-investigatory work-related purpose such as to retrieve a needed file x x x. The search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the nature of the misconduct.

   This test was found to be fulfilled in the case at bar. The search of petitioner's computer files was conducted in connection with investigation of work-related misconduct prompted by an anonymous letter-complaint addressed to Chairperson David regarding anomalies in the CSC-ROIV where the head of the Mamamayan Muna Hindi Mamaya Na division is supposedly "lawyering" for individuals with pending cases in the CSC.

   Considering the damaging nature of the accusation, the Commission had to act fast, if only to arrest or limit any possible adverse consequence or fall-out. Thus, on the same date that the complaint was received, a search was forthwith conducted involving the computer resources in the concerned regional office. That it was the computers that were subjected to the search was justified since these furnished the easiest means for an employee to encode and store documents. Indeed, the computers would be a likely starting point in ferreting out incriminating evidence. Concomitantly, the ephemeral nature of computer files, that is, they could easily be destroyed at a click of a button, necessitated drastic and immediate action. Pointedly, to impose the need to comply with the probable cause requirement would invariably defeat the purpose of the work-related investigation. Worthy to mention, too, is

the fact that the Commission effected the warrantless search in an open and transparent manner. Officials and some employees of the regional office, who happened to be in the vicinity, were on hand to observe the process until its completion. In addition, the respondent himself was duly notified, through text messaging, of the search and the concomitant retrieval of files from his computer.

JESSE U. LUCAS, *Petitioner,* -versus- JESUS S. LUCAS, *Respondent.*
G.R. No. 190710, SECOND DIVISION, June 6, 2011, NACHURA, J.

A court order for blood testing is considered a "search," which, under their Constitutions (as in ours), must be preceded by a finding of probable cause in order to be valid. Hence, the requirement of a prima facie case, or reasonable possibility, was imposed in civil actions as a counterpart of a finding of probable cause.

Although a paternity action is civil, not criminal, the constitutional prohibition against unreasonable searches and seizures is still applicable, and a proper showing of sufficient justification under the particular factual circumstances of the case must be made before a court may order a compulsory blood test.

FACTS:
Jesse Lucas filed a Petition to Establish Filiation with a **Motion for the Submission of Parties to DNA Testing** before the Regional Trial Court (RTC). Jesse alleged that he is the son of his mother Elsie who got acquainted with respondent, Jesus S. Lucas in Manila. He also submitted documents which include (a) petitioner's certificate of live birth; (b) petitioner's baptismal certificate; (c) petitioner's college diploma, showing that he graduated from Saint Louis University in Baguio City with a degree in Psychology; (d) his Certificate of Graduation from the same school; (e) Certificate of Recognition from the University of the Philippines, College of Music; and (f) clippings of several articles from different newspapers about petitioner, as a musical prodigy. Petitioner filed with the RTC a Very Urgent Motion to Try and Hear the Case. Hence, on September 3, 2007, the RTC, finding the petition to be sufficient in form and substance, issued the Order setting the case for hearing and urging anyone who has any objection to the petition to file his opposition

Jesus filed a Motion for Reconsideration arguing that DNA testing cannot be had on the basis of a mere allegation pointing to him as Jesse's father. Acting on Jesus' Motion for Reconsideration, the RTC dismissed the case and held that Jesse failed to establish compliance with the four procedural aspects for a paternity action enumerated in the case of *Herrera v. Alba* namely, a prima facie case, affirmative defences, presumption of legitimacy, and physical resemblance between the putative father and the child.

ISSUE:
Whether *prima facie* showing of legitimacy is necessary before a court can issue a DNA testing. (YES)

RULING:
It is not yet time to discuss the lack of a prima facie case vis-à-vis the motion for DNA testing since no evidence has, as yet, been presented by petitioner.

In some states, to warrant the issuance of the DNA testing order, there must be a show cause hearing wherein the applicant must first present sufficient evidence to establish a prima facie case or a reasonable possibility of paternity or "good cause" for the holding of the test. In these states, a court

order for blood testing is considered a "search," which, under their Constitutions (as in ours), must be preceded by a finding of probable cause in order to be valid. Hence, the requirement of a prima facie case, or reasonable possibility, was imposed in civil actions as a counterpart of a finding of probable cause.

The Supreme Court of Louisiana eloquently explained; "Although a paternity action is civil, not criminal, the constitutional prohibition against unreasonable searches and seizures is still applicable, and a proper showing of sufficient justification under the particular factual circumstances of the case must be made before a court may order a compulsory blood test. Courts in the various jurisdictions have differed regarding the kind of procedures which are required, but those jurisdictions have almost universally found that a preliminary showing must be made before a court can constitutionally order compulsory blood testing in paternity cases. We agree, and find that, as a preliminary matter, before the court may issue an order for compulsory blood testing, the moving party must show that there is a reasonable possibility of paternity. As explained hereafter, in cases in which paternity is contested and a party to the action refuses to voluntarily undergo a blood test, a show-cause hearing must be held in which the court can determine whether there is sufficient evidence to establish a prima facie case which warrants issuance of a court order for blood testing."

The same condition precedent should be applied in our jurisdiction to protect the putative father from mere harassment suits. Thus, during the hearing on the motion for DNA testing, the petitioner must present prima facie evidence or establish a reasonable possibility of paternity.

MARYLAND, *Petitioner*, - versus - ALONZO JAY KING, Jr., *Respondent.*
No. 12 – 207 (569 U.S. 435), June 3, 2013, KENNEDY, J.

In this balance of reasonableness, great weight is given to both the significant government interest at stake in the identification of arrestees and DNA identification's unmatched potential to serve that interest. The government interest is not outweighed by respondent's privacy interests. By comparison to the substantial government interest and the unique effectiveness of DNA identification, the intrusion of a cheek swab to obtain a DNA sample is minimal. Reasonableness must be considered in the context of an individual's legitimate privacy expectations, which necessarily diminish when he is taken into police custody.

An invasive surgery may raise privacy concerns weighty enough for the search to require a warrant, notwithstanding the arrestee's diminished privacy expectations, but a buccal swab, which involves a brief and minimal intrusion with "virtually no risk, trauma, or pain," does not increase the indignity already attendant to normal incidents of arrest.

FACTS:
In 2003 a man concealing his face and armed with a gun broke into a woman's home in Salisbury, Maryland. He raped her. The police were unable to identify or apprehend the assailant based on any detailed description or other evidence they then had, but they did obtain from the victim a sample of the perpetrator's DNA.

In 2009 Alonzo King was arrested in Wicomico County, Maryland, and charged with first- and second-degree assault for menacing a group of people with a shotgun. As part of a routine booking procedure for serious offenses, his DNA sample was taken by applying a cotton swab or filter paper—known as a buccal swab—to the inside of his cheeks. The DNA was found to match the DNA taken from the Salisbury rape victim. King was tried and convicted for the rape. Additional DNA samples were taken

from him and used in the rape trial, but there seems to be no doubt that it was the DNA from the cheek sample taken at the time he was booked in 2009 that led to his first having been linked to the rape and charged with its commission.

ISSUE:
Whether the use of the DNA sample violates the protection against unreasonable search and seizure. (NO).

RULING:
When officers make an arrest supported by probable cause to hold for a serious offense and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment.

The framework for deciding the issue presented is well established. Using a buccal swab inside a person's cheek to obtain a DNA sample is a search under the Fourth Amendment. And the fact that the intrusion is negligible is of central relevance to determining whether the search is reasonable. Because the need for a warrant is greatly diminished here, where the arrestee was already in valid police custody for a serious offense supported by probable cause, **the search is analyzed by reference to "reasonableness, not individualized suspicion,"** and reasonableness is determined by weighing "the promotion of legitimate governmental interests" against "the degree to which the search intrudes upon an individual's privacy,"

In this balance of reasonableness, great weight is given to both the significant government interest at stake in the identification of arrestees and DNA identification's unmatched potential to serve that interest. The Act (Maryland's Act authorizes law en- forcement authorities to collect DNA samples from, as relevant here, persons charged with violent crimes,) serves a well-established, legitimate government interest: the need of law enforcement officers in a safe and accurate way to process and identify persons and possessions taken into custody. "Probable cause provides legal justification for arresting a suspect, and for a brief period of detention to take the administrative steps incident to arrest,"

DNA identification is an important advance in the techniques long used by law enforcement to serve legitimate police concerns. Police routinely have used scientific advancements as standard procedures for identifying arrestees. Fingerprinting, perhaps the most direct historical analogue to DNA technology, has, from its advent, been viewed as a natural part of "the administrative steps incident to arrest." However, DNA identification is far superior. The additional intrusion upon the arrestee's privacy beyond that associated with fingerprinting is not significant, and DNA identification is markedly more accurate.

The government interest is not outweighed by respondent's privacy interests. By comparison to the substantial government interest and the unique effectiveness of DNA identification, the intrusion of a cheek swab to obtain a DNA sample is minimal. **Reasonableness must be considered in the context of an individual's legitimate privacy expectations, which necessarily diminish when he is taken into police custody.** An invasive surgery may raise privacy concerns weighty enough for the search to require a warrant, notwithstanding the arrestee's diminished privacy expectations, but a buccal swab, which involves a brief and minimal intrusion with "virtually no risk, trauma, or pain," does not increase the indignity already attendant to normal incidents of arrest.

E. PRIVACY OF COMMUNICATION AND CORRESPONDENCE

KATZ, *Petitioner,* – versus - UNITED STATES, *Respondent.*
389 U.S. 347 (1967), December 18, 1967, STEWART, J.

Because the Fourth Amendment protects people, rather than places, its reach cannot turn on the presence or absence of a physical intrusion into any given enclosure.

Although the surveillance in this case may have been so narrowly circumscribed that it could constitutionally have been authorized in advance, it was not in fact conducted pursuant to the warrant procedure which is a constitutional precondition of such electronic surveillance

FACTS:
Petitioner Katz was convicted under an eight-count indictment charging him with transmitting wagering information by telephone from Los Angeles to Miami and Boston, in violation of a federal statute. At trial the Government was permitted, over the petitioner's objection, to introduce evidence of the petitioner's end of telephone conversations, overheard by FBI agents who had attached an electronic listening and recording device to the outside of the public telephone booth from which he had placed his calls.

The Court of Appelals upheld the conviction since there was no violation of the Fourth Amendment because "there was no physical entrance into the area occupied by the petitioner."

ISSUES:
1. Whether the installation of an electronic listening and recording devise to the outside of the public telephone constitutes as "search and seizure" (YES)
2. Whether the search and seizure conducted complied with constitutional standards (NO)

RULING:
1. The petitioner has strenuously argued that the booth was a "constitutionally protected area." The Government has maintained with equal vigor that it was not. But this effort to decide whether or not a given "area," viewed in the abstract, is "constitutionally protected" deflects attention from the problem presented by this case. For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection but what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.

   The Government stresses the fact that the telephone booth from which the petitioner made his calls was constructed partly of glass, so that he was as visible after he entered it as he would have been if he had remained outside. But what he sought to exclude when he entered the booth was not the intruding eye - it was the uninvited ear. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world. To read the Constitution more narrowly is to ignore the vital role that the public telephone has come to play in private communication.

The Fourth Amendment governs not only the seizure of tangible items but extends as well to the recording of oral statements, over-heard without any "technical trespass under . . . local property law." Once this much is acknowledged, and once it is recognized that the Fourth Amendment protects people - and not simply "areas" - against unreasonable searches and seizures, it becomes clear that the reach of that Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure.

The Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a "search and seizure" within the meaning of the Fourth Amendment. The fact that the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance.

2. The Government's position is that its agents acted in an entirely defensible manner: They did not begin their electronic surveillance until investigation of the petitioner's activities had established a strong probability that he was using the telephone in question to transmit gambling information to persons in other States, in violation of federal law. Moreover, the surveillance was limited, both in scope and in duration, to the specific purpose of establishing the contents of the petitioner's unlawful telephonic communications.

   Accepting this account of the Government's actions as accurate, it is clear that this surveillance was so narrowly circumscribed that a duly authorized magistrate, properly notified of the need for such investigation, specifically informed of the basis on which it was to proceed, and clearly apprised of the precise intrusion it would entail, could constitutionally have authorized, with appropriate safeguards, the very limited search and seizure that the Government asserts in fact took place.

   It is apparent that the agents in this case acted with restraint. Yet the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer. They were not required, before commencing the search, to present their estimate of probable cause for detached scrutiny by a neutral magistrate. They were not compelled, during the conduct of the search itself, to observe precise limits established in advance by a specific court order. Nor were they directed, after the search had been completed, to notify the authorizing magistrate in detail of all that had been seized. In the absence of such safeguards, this Court has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end. Searches conducted without warrants have been held unlawful "notwithstanding facts unquestionably showing probable cause: for the Constitution requires "that the deliberate, impartial judgment of a judicial officer . . . be interposed between the citizen and the police . . . ." "Over and again this Court has emphasized that the mandate of the Fourt] Amendment requires adherence to judicial processes," and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions. Although the surveillance in this case may have been so narrowly circumscribed that it could constitutionally have been authorized in advance, it was not in fact conducted pursuant to the warrant procedure which is a constitutional precondition of such electronic surveillance

Dissenting Opinion of JUSTICE BLACK

The Fourth Amendment says that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The first clause protects "persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." These words connote the idea of tangible things with size, form, and weight, things capable of being searched, seized, or both. The second clause of the Amendment still further establishes its Framers' purpose to limit its protection to tangible things by providing that no warrants shall issue but those "particularly describing the place to be searched, and the persons or things to be seized." A conversation overheard by eavesdropping, whether by plain snooping or wiretapping, is not tangible and, under the normally accepted meanings of the words, can neither be searched nor seized. In addition the language of the second clause indicates that the Amendment refers not only to something tangible so it can be seized but to something already in existence so it can be described. Yet the Court's interpretation would have the Amendment apply to overhearing future conversations which by their very nature are nonexistent until they take place.

Eavesdropping (and wiretapping is nothing more than eavesdropping by telephone) is recognized as "an ancient practice which at common law was condemned as a nuisance." There can be no doubt that the Framers were aware of this practice, and if they had desired to outlaw or restrict the use of evidence obtained by eavesdropping, I believe that they would have used the appropriate language to do so in the Fourth Amendment. They certainly would not have left such a task to the ingenuity of language-stretching judges.

Since I see no way in which the words of the Fourth Amendment can be construed to apply to eavesdropping, that closes the matter for me. In interpreting the Bill of Rights, I willingly go as far as a liberal construction of the language takes me, but I simply cannot in good conscience give a meaning to words which they have never before been thought to have and which they certainly do not have in common ordinary usage. I will not distort the words of the Amendment in order to "keep the Constitution up to date" or "to bring it into harmony with the times." It was never meant that this Court have such power, which in effect would make us a continuously functioning constitutional convention.

The Fourth Amendment protects privacy only to the extent that it prohibits unreasonable searches and seizures of "persons, houses, papers, and effects." No general right is created by the Amendment so as to give this Court the unlimited power to hold unconstitutional everything which affects privacy.

CITY OF ONTARIO, CALIFORNIA, ET AL., *Petitioners,* – versus - QUON ET AL., *Respondents.*
No. 08-1332, June 17, 2010, KENNEDY, J.

Under the approach of the O'Connor plurality, when conducted for a "noninvestigatory, work-related purpos[e]" or for the "investigatio[n] of work-related misconduct," a government employer's warrantless search is reasonable if it is "'justified at its inception'" and if "'the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of'" the circumstances giving rise to the search.

The search was justified at its inception because there were "reasonable grounds for suspecting that the search was necessary for a noninvestigatory work-related purpose." Since the searc was ordered to determine whether the character limit on the City's contract with the pager provider was sufficient to

meet the City's needs. This was a "legitimate work-related rationale." As for the scope of the search, reviewing the transcripts was reasonable because it was an efficient and expedient way to determine whether Quon's overages were the result of work-related messaging or personal use. The review was also not "'excessively intrusive.'"

FACTS:
Jeff Quon was employed by the Ontario Police Department (OPD) as a police officer. In October 2001, the City acquired 20 alphanumeric pagers capable of sending and receiving text messages. The City issued pagers to its police officers including Quon.

Before acquiring the pagers, the City announced a "Computer Usage, Internet and E-Mail Policy" (Computer Policy) that applied to all employees. Among other provisions, it specified that the City "reserves the right to monitor and log all network activity including e-mail and Internet use, with or without notice. Users should have no expectation of privacy or confidentiality when using these resources."
Within the first or second billing cycle after the pagers were distributed, Quon exceeded his monthly text message character allotment. His superior told him about the overage and reminded him that messages sent on the pagers were "considered e-mail and could be audited." After multiple incidents of overage, the superior decided to determine whether the existing character limit was too low—that is, whether officers such as Quon were having to pay fees for sending work-related messages—or if the overages were for personal messages.

Upon review of the transcripts, it was discovered that many of the messages sent and received on Quon's pager were not work related, and some were sexually explicit. The report concluded that Quon had violated OPD rules. Quon was allegedly disciplined.

ISSUE:
Whether the right of Quon to privacy of communications is violated. (NO)

RULING:
In *O'Connor,* the Court agreed with the general principle that "[i]ndividuals do not lose Fourth Amendment rights merely because they work for the government instead of a private employer." A majority of the Court further agreed that "'special needs, beyond the normal need for law enforcement,'" make the warrant and probable-cause requirement impracticable for government employers.

Even if Quon had a reasonable expectation of privacy in his text messages, petitioners did not necessarily violate the Fourth Amendment by obtaining and reviewing the transcripts. Although as a general matter, warrantless searches "are per se unreasonable under the Fourth Amendment," there are "a few specifically established and well-delineated exceptions" to that general rule. The Court has held that the "'special needs'" of the workplace justify one such exception.

Under the approach of the O'Connor plurality, when conducted for a "noninvestigatory, work-related purpos[e]" or for the "investigatio[n] of work-related misconduct," a government employer's warrantless search is reasonable if it is "'justified at its inception'" and if "'the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of'" the circumstances giving rise to the search.

The search was justified at its inception because there were "reasonable grounds for suspecting that the search was necessary for a noninvestigatory work-related purpose." Since the searc was ordered to determine whether the character limit on the City's contract with the pager provider was sufficient to meet the City's needs. This was a "legitimate work-related rationale." As for the scope of the search, reviewing the transcripts was reasonable because it was an efficient and expedient way to determine whether Quon's overages were the result of work-related messaging or personal use. The review was also not "'excessively intrusive.'"

Quon was told that his messages were subject to auditing. As a law enforcement officer, he would or should have known that his actions were likely to come under legal scrutiny, and that this might entail an analysis of his on-the-job communications. Under the circumstances, a reasonable employee would be aware that sound management principles might require the audit of messages to determine whether the pager was being appropriately used. Given that the City issued the pagers to Quon and other SWAT Team members in order to help them more quickly respond to crises—and given that Quon had received no assurances of privacy—Quon could have anticipated that it might be necessary for the City to audit pager messages to assess the SWAT Team's performance in particular emergency situations.

TERESITA SALCEDO-ORTANEZ, *Petitioner* – versus - COURT OF APPEALS, HON. ROMEO F. ZAMORA, *Respondents.*
G.R. No. 110662, SECOND DIVISION, August 4, 1994, PADILLA, J.

R.A. No. 4200 entitled "An Act to Prohibit and Penalize Wire Tapping and Other Related Violations of the Privacy of Communication, and for other purposes" expressly makes such tape recordings inadmissible in evidence. Absent a clear showing that both parties to the telephone conversations allowed the recording of the same, the inadmissibility of the subject tapes is mandatory under R.A. No. 4200.

FACTS:
Respondent Rafael S. Ortanez filed a complaint for annulment of marriage with damages against petitioner Teresita Salcedo-Ortanez on grounds of lack of marriage license and/or psychological incapacity of the petitioner. Among the exhibits offered by private respondent were three (3) cassette tapes of alleged telephone conversations between petitioner and unidentified persons. These tape recordings were made and obtained when private respondent allowed his friends from the military to wire tap his home telephone. The cassette tapes were admittted as evidence.

A petition for certiorari was filed by petitioner in the CA assailing the admission in evidence of the cassette tapes. CA dismissed the petition stating that the tape recordings are not inadmissible per se.

ISSUE:
Whether the tape recordings are admissible as evidence. (NO)

RULING:
R.A. No. 4200 entitled "An Act to Prohibit and Penalize Wire Tapping and Other Related Violations of the Privacy of Communication, and for other purposes" expressly makes such tape recordings inadmissible in evidence. Clearly, respondent's trial court and Court of Appeals failed to consider the

afore-quoted provisions (Sec 1 and 4) of the law in admitting in evidence the cassette tapes in question. Absent a clear showing that both parties to the telephone conversations allowed the recording of the same, the inadmissibility of the subject tapes is mandatory under R.A. No. 4200.

CECILIA ZULUETA, *Petitioner,* – versus - COURT OF APPEALS and ALFREDO MARTIN, *Respondents.*
G.R. No. 107383, SECOND DIVISION, February 20, 1996, MENDOZA, J.

The only exception to the constitutional injunction declaring the privacy of communication and correspondence to be inviolable is if there is a lawful order from a court or when public safety or order requires otherwise, as prescribed by law.

The intimacies between husband and wife do not justify any one of them in breaking the drawers and cabinets of the other and in ransacking them for any telltale evidence of marital infidelity. A person, by contracting marriage, does not shed his/her integrity or his right to privacy as an individual and the constitutional protection is ever available to him or to her.

FACTS:
Petitioner Cecilia Zulueta is the wife of private respondent Alfredo Martin. On March 26, 1982, petitioner entered the clinic of her husband, a doctor of medicine, and in the presence of her mother, a driver and private respondent's secretary, forcibly opened the drawers and cabinet in her husbands clinic and took 157 documents consisting of private correspondence between Dr. Martin and his alleged paramours, greetings cards, cancelled checks, diaries, Dr. Martins passport, and photographs. The documents and papers were seized for use in evidence in a case for legal separation and for disqualification from the practice of medicine which petitioner had filed against her husband.

ISSUE:
Whether the documents seized may be used against the respondent in the case filed by his wife. (NO)

RULING:
Indeed the documents and papers in question are inadmissible in evidence. The constitutional injunction declaring the privacy of communication and correspondence to be inviolable is no less applicable simply because it is the wife (who thinks herself aggrieved by her husbands' infidelity) who is the party against whom the constitutional provision is to be enforced. The only exception to the prohibition in the Constitution is if there is a lawful order from a court or when public safety or order requires otherwise, as prescribed by law. Any violation of this provision renders the evidence obtained inadmissible for any purpose in any proceeding. The intimacies between husband and wife do not justify any one of them in breaking the drawers and cabinets of the other and in ransacking them for any telltale evidence of marital infidelity. A person, by contracting marriage, does not shed his/her integrity or his right to privacy as an individual and the constitutional protection is ever available to him or to her.

The law insures absolute freedom of communication between the spouses by making it privileged. Neither husband nor wife may testify for or against the other without the consent of the affected spouse while the marriage subsists. Neither one may be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage, save for

specified exceptions. But one thing is freedom of communication; quite another is a compulsion for each one to share what one knows with the other. And this has nothing to do with the duty of fidelity that each owes to the other.

BLAS F. OPLE, *Petitioners,* – versus - RUBEN D. TORRES, ALEXANDER AGUIRRE, HECTOR VILLANUEVA, CIELITO HABITO, ROBERT BARBERS, CARMENCITA REODICA, CESAR SARINO, RENATO VALENCIA, TOMAS P. AFRICA, HEAD OF THE NATIONAL COMPUTER CENTER and CHAIRMAN OF THE COMMISSION ON AUDIT, *Respondents.*
G.R. No. 127685, EN BANC, July 23, 1998, PUNO, J.

The Court prescind from the premise that the right to privacy is a fundamental right guaranteed by the Constitution, hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn.

The indefiniteness of A.O. No. 308 can give the government the roving authority to store and retrieve information for a purpose other than the identification of the individual through his PRN.

It does not provide who shall control and access the data, under what circumstances and for what purpose. These factors are essential to safeguard the privacy and guaranty the integrity of the information.

FACTS:
Petitioner Senator Blas F. Ople assailed the constitutionality of the Administrative Order No. 308 entitled "Adoption of Computerized Identification Reference System" - providing for a national computerized identification system with the goal of providing convenient way to transact business with the government. Among the grounds raised is that the A.O. impermissibly intrudes the citizen's constitutional right of privacy.

ISSUE:
Whether the Administrative Order No. 308 violates the constitutional right to privacy. (YES)

RULING:
If we extend our judicial gaze, we will find that the right of privacy is recognized and enshrined in several provisions of our Constitution. The Court prescind from the premise that the right to privacy is a fundamental right guaranteed by the Constitution, hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn. A.O. No. 308 is predicated on two considerations: (1) the need to provides our citizens and foreigners with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities and (2) the need to reduce, if not totally eradicate, fraudulent transactions and misrepresentations by persons seeking basic services. It is debatable whether these interests are compelling enough to warrant the issuance of A.O. No. 308. But what is not arguable is the broadness, the vagueness, the overbreadth of A.O. No. 308 which if implemented will put our people's right to privacy in clear and present danger. The heart of A.O. No. 308 lies in its Section 4 which provides for a Population Reference Number (PRN) as a "common reference number to establish a linkage among concerned agencies" through the use of "Biometrics Technology" and "computer application designs."

A.O. No. 308 should also raise our antennas for a further look will show that it does not state whether encoding of data is limited to biological information alone for identification purposes In fact, the

Solicitor General claims that the adoption of the Identification Reference System will contribute to the "generation of population data for development planning." This is an admission that the PRN will not be used solely for identification but the generation of other data with remote relation to the avowed purposes of A.O. No. 308. Clearly, the indefiniteness of A.O. No. 308 can give the government the roving authority to store and retrieve information for a purpose other than the identification of the individual through his PRN.

The potential for misuse of the data to be gathered under A.O. No. 308 cannot be underplayed. Pursuant to said administrative order, an individual must present his PRN everytime he deals with a government agency to avail of basic services and security. His transactions with the government agency will necessarily be recorded — whether it be in the computer or in the documentary file of the agency. The more frequent the use of the PRN, the better the chance of building a huge formidable informatin base through the electronic linkage of the files. The data may be gathered for gainful and useful government purposes; but the existence of this vast reservoir of personal information constitutes a covert invitation to misuse, a temptation that may be too great for some of our authorities to resist.
We can even grant, arguendo, that the computer data file will be limited to the name, address and other basic personal infomation about the individual. Even that hospitable assumption will not save A.O. No. 308 from constitutional infirmity for again said order does not tell us in clear and categorical terms how theseinformation gathered shall he handled. It does not provide who shall control and access the data, under what circumstances and for what purpose. These factors are essential to safeguard the privacy and guaranty the integrity of the information.

It is plain and we hold that A.O. No. 308 falls short of assuring that personal information which will be gathered about our people will only be processed for unequivocally specified purposes. The lack of proper safeguards in this regard of A.O. No. 308 may interfere with the individual's liberty of abode and travel by enabling authorities to track down his movement; it may also enable unscrupulous persons to access confidential information and circumvent the right against self-incrimination; it may pave the way for "fishing expeditions" by government authorities and evade the right against unreasonable searches and seizures. The possibilities of abuse and misuse of the PRN, biometrics and computer technology are accentuated when we consider that the individual lacks control over what can be read or placed on his ID, much less verify the correctness of the data encoded.

KILUSANG MAYO UNO, *Petitioner,* – versus - THE DIRECTOR-GENERAL, NATIONAL ECONOMIC DEVELOPMENT AUTHORITY, *Respondent.*
G.R. No. 167798, EN BANC, APRIL 19, 2006, CARPIO, J.

The right to privacy does not bar the adoption of reasonable ID systems by government entities.

EO 420 shows no constitutional infirmity because it even narrowly limits the data that can be collected, recorded and shown compared to the existing ID systems of government entities. EO 420 further provides strict safeguards to protect the confidentiality of the data collected, in contrast to the prior ID systems which are bereft of strict administrative safeguards.

FACTS:
President Gloria Macapagal – Arroyo issued Executive Order No. 420 that directs a unified ID system among government agencies and Government owned and controlled corporations in order to have a uniform ID for all government agencies. Kilusang Mayo Uno and other respondents assailed this executive order that it infringes the citizens' right to privacy.

ISSUE:
Whether EO 420 infringes on the citizens right to privacy. (NO)

RULING:
The right to privacy does not bar the adoption of reasonable ID systems by government entities. All these years, the GSIS, SSS, LTO, Philhealth and other government entities have been issuing ID cards in the performance of their governmental functions. There have been no complaints from citizens that the ID cards of these government entities violate their right to privacy. There have also been no complaints of abuse by these government entities in the collection and recording of personal identification data.

Prior to EO 420, government entities had a free hand in determining the kind, nature and extent of data to be collected and stored for their ID systems. Under EO 420, government entities can collect and record only the 14 specific data mentioned in Section 3 of EO 420. In addition, government entities can show in their ID cards only eight of these specific data.

Also, prior to EO 420, there was no executive issuance to government entities prescribing safeguards on the collection, recording, and disclosure of personal identification data to protect the right to privacy. Now, under EO 420, safeguards are instituted.

On its face, EO 420 shows no constitutional infirmity because it even narrowly limits the data that can be collected, recorded and shown compared to the existing ID systems of government entities. EO 420 further provides strict safeguards to protect the confidentiality of the data collected, in contrast to the prior ID systems which are bereft of strict administrative safeguards.

Petitioners have not shown how EO 420 will violate their right to privacy. Petitioners cannot show such violation by a mere facial examination of EO 420 because EO 420 narrowly draws the data collection, recording and exhibition while prescribing comprehensive safeguards.

MARYNETTE R. GAMBOA, *Petitioner,* – versus - P/SSUPT. MARLOU C. CHAN, *Respondent.*
G.R. No. 193636, EN BANC, July 24, 2012, SERENO, C.J.

It must be emphasized that in order for the privilege of the writ to be granted, there must exist a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other.

In this case, the Court ruled that Gamboa was unable to prove through substantial evidence that her inclusion in the list of individuals maintaining PAGs made her and her supporters susceptible to harassment and to increased police surveillance.

FACTS:
Gamboa alleged that the Philippine National Police in Ilocos Norte (PNP–Ilocos Norte) conducted a series of surveillance operations against her and her aidesand classified her as someone who keeps a Private Army Group (PAG). Purportedly without the benefit of data verification, PNP–Ilocos Norte forwarded the information gathered on her to the Zeñarosa Commission, thereby causing her inclusion in the Report's enumeration of individuals maintaining PAGs.

ABS CBN Broadcasting reported this list and several newspapers show this as well. Contending that her right to privacy was violated and her reputation maligned and destroyed, Gamboa filed a Petition for the issuance of a writ of habeas data against respondents in their capacities as officials of the PNP-Ilocos Norte.

ISSUE:
Whether the petition for the issuance of writ of habeas data is proper (NO)

RULING:
Clearly, the right to privacy is considered a fundamental right that must be protected from intrusion or constraint. However, when the right to privacy finds tension with a competing state objective, the courts are required to weigh both notions. In these cases, although considered a fundamental right, the right to privacy may nevertheless succumb to an opposing or overriding state interest deemed legitimate and compelling.

The Constitution explicitly mandates the dismantling of private armies and other armed groups not recognized by the duly constituted authority. It also provides for the establishment of one police force that is national in scope and civilian in characterand is controlled and administered by a national police commission. Taking into account these constitutional fiats, it is clear that to investigate the existence of PAGs with the ultimate objective of dismantling them permanently is a legitimate state aim.

The writ of habeas data is an independent and summary remedy designed to protect the image, privacy, honor, information, and freedom of information of an individual, and to provide a forum to enforce one's right to the truth and to informational privacy. It seeks to protect a person's right to control information regarding oneself, particularly in instances in which such information is being collected through unlawful means in order to achieve unlawful ends. It must be emphasized that in order for the privilege of the writ to be granted, there must exist a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other.

In this case, the Court ruled that Gamboa was unable to prove through substantial evidence that her inclusion in the list of individuals maintaining PAGs made her and her supporters susceptible to harassment and to increased police surveillance. In this regard, respondents sufficiently explained that the investigations conducted against her were in relation to the criminal cases in which she was implicated. As public officials, they enjoy the presumption of regularity, which she failed to overcome. The state interest of dismantling PAGs far outweighs the alleged intrusion on the private life of Gamboa, especially when the collection and forwarding by the PNP of information against her was pursuant to a lawful mandate. Therefore, the privilege of the writ of habeas data must be denied.

In this case, respondents admitted the existence of the Report, but emphasized its confidential nature. That it was leaked to third parties and the media was regrettable, even warranting reproach but it must be stressed that Gamboa failed to establish that respondents were responsible for this unintended disclosure. In any event, there are other reliefs available to her to address the purported damage to her reputation, making a resort to the extraordinary remedy of the writ of habeas data unnecessary and improper.

RHONDA AVE S. VIVARES and SPS. MARGARITA AND DAVID SUZARA, *Petitioners,* – versus - ST. THERESA'S COLLEGE, MYLENE RHEZA T. ESCUDERO, and JOHN DOES, *Respondents.*
G.R. No. 202666, THIRD DIVISION, September 29, 2014, VELASCO, J.

It is through the availability of said privacy tools that many OSN users are said to have a subjective expectation that only those to whom they grant access to their profile will view the information they post or upload thereto.

Considering that the default setting for Facebook posts is "Public," it can be surmised that the photographs in question were viewable to everyone on Facebook, absent any proof that petitioners' children positively limited the disclosure of the photograph. If such were the case, they cannot invoke the protection attached to the right to informational privacy

FACTS:
In January 2012, Angela Tan, a high school student at St. Theresa's College (STC), uploaded on Facebook several pictures of her and her classmates (Nenita Daluz and Julienne Suzara) wearing only their undergarments. Thereafter, some of their classmates reported said photos to their teacher, Mylene Escudero. Escudero, through her students, viewed and downloaded said pictures. Escudero reported the matter and, through one of her student's Facebook page, showed the photos to Kristine Rose Tigol (Tigol), STC's Discipline-in-Charge, for appropriate action.

STC found Tan et al to have violated the student's handbook and banned them from "marching" in their graduation ceremonies scheduled in March 2012. Subsequently, Rhonda Vivares, mother of Nenita, and the other mothers filed a petition for the issuance of the writ of habeas data against the school. They prayed that STC be ordered to surrender and deposit with the court all soft and printed copies of the subject data and have such data be declared illegally obtained in violation of the children's right to privacy.

ISSUE:
Whether the right to privacy of the childred was violated. (NO)

RULING:
The concept of privacy has, through time, greatly evolved, with technological advancements having an influential part therein. This evolution was briefly recounted in former Chief Justice Reynato S. Puno's speech, The Common Right to Privacy, where he explained the three strands of the right to privacy, viz: (1) locational or situational privacy; (2) informational privacy; and (3) decisional privacy. Of the three, what is relevant to the case at bar is the right to informational privacy––usually defined as the right of individuals to control information about themselves. With the availability of numerous avenues for information gathering and data sharing nowadays, not to mention each system's inherent vulnerability to attacks and intrusions, there is more reason that every individual's right to control said flow of information should be protected and that each individual should have at least a reasonable expectation of privacy in cyberspace.

Since gaining popularity, the online social network(OSN) phenomenon has paved the way to the creation of various social networking sites, including the one involved in the case at bar, www.facebook.com (Facebook). To address concerns about privacy, but without defeating its purpose, Facebook was armed with different privacy tools designed to regulate the accessibility of a user's profile as well as information uploaded by the user. In *H v. W,* the South Gauteng High Court recognized this ability of the users to "customize their privacy settings. **It is through the availability**

of said privacy tools that many OSN users are said to have a subjective expectation that only those to whom they grant access to their profile will view the information they post or upload thereto.

Before one can have an expectation of privacy in his or her Online Social Networking (OSN) activity, it is first necessary that said user, in this case the children of petitioners, manifest the intention to keep certain posts private, through the employment of measures to prevent access thereto or to limit its visibility. And this intention can materialize in cyberspace through the utilization of the OSN's privacy tools. **In other words, utilization of these privacy tools is the manifestation, in cyber world, of the user's invocation of his or her right to informational privacy.**

Considering that the default setting for Facebook posts is "Public," it can be surmised that the photographs in question were viewable to everyone on Facebook, absent any proof that petitioners' children positively limited the disclosure of the photograph. If such were the case, they cannot invoke the protection attached to the right to informational privacy

As applied, even assuming that the photos in issue are visible only to the sanctioned students' Facebook friends, respondent STC can hardly be taken to task for the perceived privacy invasion since it was the minors' Facebook friends who showed the pictures to Tigol. Respondents were mere recipients of what were posted. They did not resort to any unlawful means of gathering the information as it was voluntarily given to them by persons who had legitimate access to the said posts. Clearly, the fault, if any, lies with the friends of the minors. Curiously enough, however, neither the minors nor their parents imputed any violation of privacy against the students who showed the images to Escudero.

DR. JOY MARGATE LEE, *Petitioner*,- versus - P/SUPT. NERI A. ILAGAN, *Respondent*.
G.R. No. 203254, FIRST DIVISION, October 08, 2014, PERLAS-BERNABE, J.

In order to support a petition for the issuance of such writ, the Habeas Data Rule essentially requires that the petition sufficiently alleges, among others, "the manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party." The petition must adequately show that there exists a nexus between the right to privacy on one hand, and the right to life, liberty, or security on the other, which must be supported by substantial evidence.

In this case, Ilagan was not able to sufficiently allege that his right to life, liberty or security was or would be violated through the supposed reproduction and threatened dissemination of the subject sex video. While Ilagan purports a privacy interest in the suppression of this video – which he fears would somehow find its way to Quiapo or be uploaded in the internet for public consumption – he failed to explain the connection between such interest and any violation of his right to life, liberty or security. As the rules and existing jurisprudence on the matter evoke, alleging and eventually proving the nexus between one's privacy right to the cogent rights to life, liberty or security are crucial in habeas data cases, so much so that a failure on either account certainly renders a habeas data petition dismissible, as in this case.

FACTS:
Police Superintendent Neri Ilagan alleged that he and petitioner Dr. Joy Margate Lee were former common law partners. In July 2011, Ilagan visited Lee at the latter's condominium, rested for a while and thereafter, proceeded to his office. Upon arrival, Ilagan noticed that his digital camera was missing. Lee confronted Ilagan at the latter's office regarding a purported sex video she discovered

from the aforesaid camera involving Ilagan and another woman. Ilagan denied the video and demanded Lee to return the camera, but to no avail.

During their confrontation, Ilagan allegedly slammed Lee's head against a wall inside his office and walked away. This prompted Lee to utilize said video as evidence in filing various complaints – criminal (in violation of the "Anti-Violence Against Women and Their Children Act of 2004"), and administrative [for misconduct before the National Police Commission (NAPOLCOM)] – against Ilagan.

Ilagan claimed that Lee's acts of reproducing the subject video and threatening to distribute the same to the upper echelons of the NAPOLCOM and uploading it to the internet violated not only his right to life, liberty, security, and privacy but also that of the other woman, and thus, the issuance of a writ of habeas data in Ilagan's favor is warranted. The RTC issued a Writ of Habeas Data directing Lee to appear before the court a quo, and to produce Ilagan's digital camera as well as the negative/original copy of the subject video.

ISSUE:
Whether the issuance of a Writ of Habeas Data in favor of Ilagan was proper. (NO)

RULING:
The Rule on the Writ of Habeas Data stands as "a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party."

In order to support a petition for the issuance of such writ, the Habeas Data Rule essentially requires that the petition sufficiently alleges, among others, "the manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party." The petition must adequately show that there exists a nexus between the right to privacy on one hand, and the right to life, liberty, or security on the other, which must be supported by substantial evidence.

In this case, Ilagan was not able to sufficiently allege that his right to life, liberty or security was or would be violated through the supposed reproduction and threatened dissemination of the subject sex video. While Ilagan purports a privacy interest in the suppression of this video – which he fears would somehow find its way to Quiapo or be uploaded in the internet for public consumption – he failed to explain the connection between such interest and any violation of his right to life, liberty or security. As the rules and existing jurisprudence on the matter evoke, alleging and eventually proving the nexus between one's privacy right to the cogent rights to life, liberty or security are crucial in habeas data cases, so much so that a failure on either account certainly renders a habeas data petition dismissible, as in this case.

Nothing therein would indicate that Lee actually proceeded to commit any overt act towards the end of violating Ilagan's right to privacy in life, liberty or security. Nor would anything on record even lead a reasonable mind to conclude that Lee was going to use the subject video in order to achieve unlawful ends – say for instance, to spread it to the public so as to ruin Ilagan's reputation. Contrastingly, Lee even made it clear in her testimony that the only reason why she reproduced the subject video was to legitimately utilize the same as evidence in the criminal and administrative cases that she filed against Ilagan. Hence, due to the insufficiency of the allegations as well as the glaring

absence of substantial evidence, the Court finds it proper to reverse the RTC Decision and dismiss the habeas data petition.

F. FREEDOM OF EXPRESSION

FRANCISCO CHAVEZ, *Petitioner,* – versus - RAUL M. GONZALES, *Respondent.*
G.R. No. 168338, EN BANC, February 15, 2008, PUNO, C.J.

A governmental action that restricts freedom of speech or of the press based on content is given the strictest scrutiny, with the government having the burden of overcoming the presumed unconstitutionality by the clear and present danger rule. This rule applies equally to all kinds of media, including broadcast media.

For this failure of the respondents alone to offer proof to satisfy the clear and present danger test, the Court has no option but to uphold the exercise of free speech and free press. There is no showing that the feared violation of the anti-wiretapping law clearly endangers the national security of the State.

FACTS:
On June 5, 2005, Press Secretary Ignacio Bunye told reporters that the opposition was planning to destabilize the administration by releasing an audiotape of a mobile phone conversation allegedly between the President of the Philippines, Gloria Macapagal Arroyo, and a high-ranking official of the Commission on Elections (COMELEC). The conversation was audiotaped allegedly through wire-tapping. On June 8, 2005, respondent Department of Justice (DOJ) Secretary Raul Gonzales warned reporters that those who had copies of the compact disc (CD) and those broadcasting or publishing its contents could be held liable under the Anti-Wiretapping Act. He also stated that persons possessing or airing said tapes were committing a continuing offense, subject to arrest by anybody who had personal knowledge if the crime was committed or was being committed in their presence. On June 11, 2005, the NTC issued a press release giving fair warning to radio and television owners/operators to observe anti-wiretapping law and pertinent circulars on programstandards.

The acts of respondents are alleged to be violations of the freedom on expression and of the press, and the right of the people to information on matters of public concern. Respondents denied that the acts transgress the Constitution.

ISSUE:
Whether the official statements made by respondents on June 8, and 11, 2005 warning the media on airing the alleged wiretapped conversation between the President and other personalities constitute unconstitutional prior restraint on the exercise of freedom of speech and of the press. (YES)

RULING:
The Supreme Court applied the Content-based restriction test and ruled that respondents' evidence falls short of satisfying the clear and present danger test. With respect to content-based restrictions, the government must show the type of harm the speech sought to be restrained would bring about especially the gravity and the imminence of the threatened harm otherwise the prior restraint will

be invalid. Prior restraint on speech based on its content cannot be justified by hypothetical fears, but only by showing a substantive and imminent evil that has taken the life of a reality already on ground. As formulated, the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.

A governmental action that restricts freedom of speech or of the press based on content is given the strictest scrutiny, with the government having the burden of overcoming the presumed unconstitutionality by the clear and present danger rule. This rule applies equally to all kinds of media, including broadcast media. This outlines the procedural map to follow in cases like the one at bar as it spells out the following: (a) the test; (b) the presumption; (c) the burden of proof; (d) the party to discharge the burden; and (e) the quantum of evidence necessary. On the basis of the records of the case at bar, respondents who have the burden to show that these acts do not abridge freedom of speech and of the press failed to hurdle the clear and present danger test. It appears that the great evil which government wants to prevent is the airing of a tape recording in alleged violation of the anti-wiretapping law. The records of the case at bar, however, are confused and confusing, and respondents evidence falls short of satisfying the clear and present danger test. Firstly, the various statements of the Press Secretary obfuscate the identity of the voices in the tape recording. Secondly, the integrity of the taped conversation is also suspect. The Press Secretary showed to the public two versions, one supposed to be a complete version and the other, an altered version. Thirdly, the evidence of the respondents on the whos and the hows of the wiretapping act is ambivalent, especially considering the tapes different versions. The identity of the wire-tappers, the manner of its commission and other related and relevant proofs are some of the invisibles of this case. Fourthly, given all these unsettled facets of the tape, it is even arguable whether its airing would violate the anti-wiretapping law.

For this failure of the respondents alone to offer proof to satisfy the clear and present danger test, the Court has no option but to uphold the exercise of free speech and free press. There is no showing that the feared violation of the anti-wiretapping law clearly endangers the national security of the State.

JOSE JESUS M. DISINI, JR., et al., *Petitioners,* – versus - SECRETARY OF JUSTICE, et al., *Respondents.*
G.R. No. 203335, EN BANC, February 11, 2014, ABAD, J.

The government has a legitimate right to regulate the use of cyberspace and contain and punish wrongdoings. Hence not all provisions of the cybercrime law could be declared unconstitutional

FACTS:
The cybercrime law aims to regulate access to and use of the cyberspace. And because linking with the internet opens up a user to communications from others, the ill-motivated can use the cyberspace for committing theft by hacking into or surreptitiously accessing his bank account or credit card or defrauding him through false representations. The wicked can use the cyberspace, too, for illicit trafficking in sex or for exposing to pornography guileless children who have access to the internet. For this reason, the government has a legitimate right to regulate the use of cyberspace and contain and punish wrongdoings.

Petitioners question the constitutionality of the following provisions of the Cybercrime Law:

1. Section 4(a)(1) which punishes Illegal Access- The access to the whole or any part of a computer system without right. Petitioners contend that Section 4(a)(1) fails to meet the strict scrutiny standard required of laws that interfere with the fundamental rights of the people and should thus be struck down.

2. Section 4(a)(3) which punishes Data Interference. – The intentional or reckless alteration, damaging, deletion or deterioration of computer data, electronic document, or electronic data message, without right, including the introduction or transmission of viruses. Petitioners claim that Section 4(a)(3) suffers from overbreadth in that, while it seeks to discourage data interference, it intrudes into the area of protected speech and expression, creating a chilling and deterrent effect on these guaranteed freedoms.

3. Section 4(a)(6) which punishes Cyber-squatting. – The acquisition of domain name over the internet in bad faith to profit, mislead, destroy the reputation, and deprive others from registering the same, if such a domain name is: (i) Similar, identical, or confusingly similar to an existing trademark registered with the appropriate government agency at the time of the domain name registration; (ii) Identical or in any way similar with the name of a person other than the registrant, in case of a personal name; and (iii) Acquired without right or with intellectual property interests in it. Petitioners claim that Section 4(a)(6) or cyber-squatting violates the equal protection clause in that, not being narrowly tailored, it will cause a user using his real name to suffer the same fate as those who use aliases or take the name of another in satire, parody, or any other literary device.

4. Section 4(b)(3) punishes Computer-related Identity Theft. – The intentional acquisition, use, misuse, transfer, possession, alteration, or deletion of identifying information belonging to another, whether natural or juridical, without right: Provided: that if no damage has yet been caused, the penalty imposable shall be one (1) degree lower. Petitioners claim that Section 4(b)(3) violates the constitutional rights to due process and to privacy and correspondence and transgresses the freedom of the press.

5. Section 4(c)(1) punishes Cybersex– The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration. Petitioners claim that the above violates the freedom of expression clause of the Constitution. They express fear that private communications of sexual character between husband and wife or consenting adults, which are not regarded as crimes under the penal code, would now be regarded as crimes when done "for favor" in cyberspace. In common usage, the term "favor" includes "gracious kindness," "a special privilege or right granted or conceded," or "a token of love (as a ribbon) usually worn conspicuously." This meaning given to the term "favor" embraces socially tolerated trysts. The law as written would invite law enforcement agencies into the bedrooms of married couples or consenting individuals.

6. Section 4(c)(2) punishes Child Pornography. — The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system: Provided, That the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775. Petitioners point out that the provision of ACPA that makes it unlawful for any person to "produce, direct, manufacture or create any form of child pornography"clearly relates to the prosecution of persons who aid and abet the core offenses that ACPA seeks to punish. Petitioners are wary that a person who merely doodles on paper and imagines a sexual abuse of a 16-year-old is not criminally liable for producing child pornography but one who

formulates the idea on his laptop would be. Further, if the author bounces off his ideas on Twitter, anyone who replies to the tweet could be considered aiding and abetting a cybercrime.

7. Section 4(c)(3) Unsolicited Commercial Communications. – The transmission of commercial electronic communication with the use of computer system which seeks to advertise, sell, or offer for sale products and services are prohibited unless:

(i) There is prior affirmative consent from the recipient; or

(ii) The primary intent of the communication is for service and/or administrative announcements from the sender to its existing users, subscribers or customers; or

(iii) The following conditions are present:

(aa) The commercial electronic communication contains a simple, valid, and reliable way for the recipient to reject receipt of further commercial electronic messages (opt-out) from the same source; (bb) The commercial electronic communication does not purposely disguise the source of the electronic message; and

(cc) The commercial electronic communication does not purposely include misleading information in any part of the message in order to induce the recipients to read the message.

The Government, represented by the Solicitor General, points out that unsolicited commercial communications or spams are a nuisance that wastes the storage and network capacities of internet service providers, reduces the efficiency of commerce and technology, and interferes with the owner's peaceful enjoyment of his property. Transmitting spams amounts to trespass to one's privacy since the person sending out spams enters the recipient's domain without prior permission. The OSG contends that commercial speech enjoys less protection in law.

8. Section 4(c)(4) punishes Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future. Petitioners dispute the constitutionality of both the penal code provisions on libel as well as Section 4(c)(4) of the Cybercrime Prevention Act on cyberlibel. Petitioners lament that libel provisions of the penal code and, in effect, the libel provisions of the cybercrime law carry with them the requirement of "presumed malice" even when the latest jurisprudence already replaces it with the higher standard of "actual malice" as a basis for conviction. Petitioners argue that inferring "presumed malice" from the accused's defamatory statement by virtue of Article 354 of the penal code infringes on his constitutionally guaranteed freedom of expression.

9. Sec. 5. Other Offenses. — The following acts shall also constitute an offense: (a) Aiding or Abetting in the Commission of Cybercrime. – Any person who willfully abets or aids in the commission of any of the offenses enumerated in this Act shall be held liable. (b) Attempt in the Commission of Cybercrime. — Any person who willfully attempts to commit any of the offenses enumerated in this Act shall be held liable. Petitioners assail the constitutionality of Section 5 that renders criminally liable any person who willfully abets or aids in the commission or attempts to commit any of the offenses enumerated as cybercrimes. It suffers from overbreadth, creating a chilling and deterrent effect on protected expression.

10. Sec. 6. All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: Provided, That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

ISSUE:
Whether the questioned provisions are constitutional.

RULING:
1. **YES.** The Court found nothing in Section 4(a)(1) that calls for the application of the strict scrutiny standard since no fundamental freedom, like speech, is involved in punishing what is essentially a condemnable act – accessing the computer system of another without right. It is a universally condemned conduct.

2. **YES**. Under the overbreadth doctrine, a proper governmental purpose, constitutionally subject to state regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms. But Section 4(a)(3) does not encroach on these freedoms at all. It simply punishes what essentially is a form of vandalism, the act of willfully destroying without right the things that belong to others, in this case their computer data, electronic document, or electronic data message. Such act has no connection to guaranteed freedoms. There is no freedom to destroy other people's computer systems and private documents. Here, the chilling effect that results in paralysis is an illusion since Section 4(a)(3) clearly describes the evil that it seeks to punish and creates no tendency to intimidate the free exercise of one's constitutional rights.

3. **YES**. It is the evil purpose for which he uses the name that the law condemns. The law is reasonable in penalizing him for acquiring the domain name in bad faith to profit, mislead, destroy reputation, or deprive others who are not ill-motivated of the rightful opportunity of registering the same. The challenge to the constitutionality of Section 4(a)(6) on ground of denial of equal protection is baseless.

4. **YES.** The usual identifying information regarding a person includes his name, his citizenship, his residence address, his contact number, his place and date of birth, the name of his spouse if any, his occupation, and similar data. The law punishes those who acquire or use such identifying information without right, implicitly to cause damage. Petitioners simply fail to show how government effort to curb computer-related identity theft violates the right to privacy and correspondence as well as the right to due process of law. Also, the charge of invalidity of this section based on the overbreadth doctrine will not hold water since the specific conducts proscribed do not intrude into guaranteed freedoms like speech. Clearly, what this section regulates are specific actions: the acquisition, use, misuse or deletion of personal identifying data of another. There is no fundamental right to acquire another's personal data. Further, petitioners fear that Section 4(b)(3) violates the freedom of the press in that journalists would be hindered from accessing the unrestricted user account of a person in the news to secure information about him that could be published. But this is not the essence of identity theft that the law seeks to prohibit and punish. Evidently, the theft of identity information must be intended for an illegitimate purpose. Moreover, acquiring and disseminating information made public by the user himself cannot be regarded as a form of theft.

5. **YES**. The deliberations of the Bicameral Committee of Congress on this section of the Cybercrime Prevention Act give a proper perspective on the issue. These deliberations show a lack of intent to penalize "private showing x x x between and among two private persons x x x although that may be

a form of obscenity to some." The understanding of those who drew up the cybercrime law is that the element of "engaging in a business" is necessary to constitute the illegal cybersex. The Act actually seeks to punish cyber prostitution, white slave trade, and pornography for favor and consideration. This includes interactive prostitution and pornography, i.e., by webcam. The Court will not declare Section 4(c)(1) unconstitutional where it stands a construction that makes it apply only to persons engaged in the business of maintaining, controlling, or operating, directly or indirectly, the lascivious exhibition of sexual organs or sexual activity with the aid of a computer system as Congress has intended.

6. **YES.** The provision merely expands the scope of the Anti-Child Pornography Act of 2009 (ACPA) to cover identical activities in cyberspace. In theory, nothing prevents the government from invoking the ACPA when prosecuting persons who commit child pornography using a computer system. Actually, ACPA's definition of child pornography already embraces the use of "electronic, mechanical, digital, optical, magnetic or any other means." Notably, no one has questioned this ACPA provision.

7. **NO**. People, before the arrival of the age of computers, have already been receiving such unsolicited ads by mail. These have never been outlawed as nuisance since people might have interest in such ads. What matters is that the recipient has the option of not opening or reading these mail ads. That is true with spams. Their recipients always have the option to delete or not to read them. To prohibit the transmission of unsolicited ads would deny a person the right to read his emails, even unsolicited commercial ads addressed to him. Commercial speech is a separate category of speech which is not accorded the same level of protection as that given to other constitutionally guaranteed forms of expression but is nonetheless entitled to protection. Unsolicited advertisements are legitimate forms of expression.

8. The Court agreed with the Solicitor General that libel is not a constitutionally protected speech and that the government has an obligation to protect private individuals from defamation. Indeed, cyberlibel is actually not a new crime since Article 353, in relation to Article 355 of the penal code, already punishes it. In effect, Section 4(c) (4) above merely affirms that online defamation constitutes "similar means" for committing libel. But the Court's acquiescence goes only insofar as the cybercrime law penalizes the author of the libelous statement or article. Cyberlibel brings with it certain intricacies, unheard of when the penal code provisions on libel were enacted. The culture associated with internet media is distinct from that of print.

9. Section 5 with respect to Section 4(c)(4) is unconstitutional. Its vagueness raises apprehension on the part of internet users because of its obvious chilling effect on the freedom of expression, especially since the crime of aiding or abetting ensnares all the actors in the cyberspace front in a fuzzy way. What is more, as the petitioners point out, formal crimes such as libel are not punishable unless consummated. In the absence of legislation tracing the interaction of netizens and their level of responsibility such as in other countries, Section 5, in relation to Section 4(c)(4) on Libel, Section 4(c)(3) on Unsolicited Commercial Communications, and Section 4(c)(2) on Child Pornography, cannot stand scrutiny. But the crime of aiding or abetting the commission of cybercrimes under Section 5 should be permitted to apply to Section 4(a)(1) on Illegal Access, Section 4(a)(2) on Illegal Interception, Section 4(a)(3) on Data Interference, Section 4(a)(4) on System Interference, Section 4(a)(5) on Misuse of Devices, Section 4(a)(6) on Cyber-squatting, Section 4(b)(1) on Computer-related Forgery, Section 4(b)(2) on Computer-related Fraud, Section 4(b)(3) on Computer-related Identity Theft, and Section 4(c)(1) on Cybersex. None of these offenses borders on the exercise of the freedom of expression. That Section 5 penalizes aiding or abetting and attempt in the commission of cybercrimes as VA L I D and CONSTITUTIONAL only in relation to Section 4(a)(1) on Illegal Access,

Section 4(a)(2) on Illegal Interception, Section 4(a)(3) on Data Interference, Section 4(a)(4) on System.

10. Section 6 merely makes commission of existing crimes through the internet a qualifying circumstance. As the Solicitor General points out, there exists a substantial distinction between crimes committed through the use of information and communications technology and similar crimes committed using other means. In using the technology in question, the offender often evades identification and is able to reach far more victims or cause greater harm. The distinction, therefore, creates a basis for higher penalties for cybercrimes.

MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD (MTRCB), *Petitioner*, *v.* **ABS-CBN BROADCASTING CORPORATION and LOREN LEGARDA,** *Respondents*.
G.R. NO. 15528, THIRD DIVISION, January 17, 2005, SANDOVAL-GUTIERREZ, *J.*

Respondents claim that the showing of "The Inside Story" is protected by the constitutional provision on freedom of speech and of the press. However, there has been no declaration at all by the framers of the Constitution that freedom of expression and of the press ***has a preferred status****.*
If this Court, in Iglesia ni Cristo, did not exempt religious programs from the jurisdiction and review power of petitioner MTRCB, with more reason, there is no justification to exempt therefrom "The Inside Story" which, according to respondents, is protected by the constitutional provision on freedom of expression and of the press, a freedom bearing ***no preferred status****.*

Talk shows on a given issue are not considered newsreels*." Clearly, the "The Inside Story" cannot be considered a newsreel. It is more of a public affairs program which is described as a variety of news treatment; a cross between pure television news and news-related commentaries, analysis and/or exchange of opinions.* ***Certainly, such kind of program is within petitioner's review power****.*

FACTS*:*
On October 15, 1991, at 10:45 in the evening, respondent ABS-CBN aired "*Prosti-tuition*," an episode of the television (TV) program "*The Inside Story*" produced and hosted by respondent Legarda. It depicted female students moonlighting as prostitutes to enable them to pay for their tuition fees. In the course of the program, student prostitutes, pimps, customers, and some faculty members were interviewed. The Philippine Women's University (PWU) was named as the school of some of the students involved and the facade of PWU Building at Taft Avenue, Manila conspicuously served as the background of the episode.

The showing of "*The Inside Story*" caused uproar in the PWU community. Dr. Leticia P. de Guzman, Chancellor and Trustee of the PWU, and the PWU Parents and Teachers Association filed letter-complaints[3] with petitioner MTRCB. Both complainants alleged that the episode besmirched the name of the PWU and resulted in the harassment of some of its female students.

Acting on the letter-complaints, the MTRCB Legal Counsel initiated a formal complaint with the MTRCB Investigating Committee. The said Committee ordered the respondents to pay the sum of **TWENTY THOUSAND PESOS (₱20,000.00)** for non-submission of the program, subject of this case for review and approval of the MTRCB.

On appeal, the Chairman of the MTRCB, issued a Decision affirming the above ruling. Respondents filed a motion for reconsideration but was denied in a Resolution.

Respondents then filed a special civil action for *certiorari* with the RTC. The RTC rendered a Decision in favor of respondents Petitioner filed a motion for reconsideration but was denied.
Hence, this Petition for Review on *Certiorari* .

ISSUE: whether the MTRCB has the power or authority to review the "*The Inside Story*" prior to its exhibition or broadcast by television. (YES)

RULING:
*...[O]*ur task is to decide whether or not petitioner has the power to review the television program "*The Inside Story*." The task is not Herculean because it merely resurrects this Court *En Banc's* ruling in *Iglesia ni Cristo v. Court of Appeals*. There, the *Iglesia ni Cristo* sought exception from petitioner's review power contending that the term "*television programs*" under Sec. 3 (b) does not include "*religious programs*" which are protected under Section 5, Article III of the Constitution. This Court, through Justice Reynato Puno, categorically ruled that P.D. No. 1986 gives petitioner "the power to screen, review and examine "*all television programs,"* emphasizing the phrase "*all television programs*," x x x

Settled is the rule in statutory construction that where the law does not make any exception, courts may not except something therefrom, unless there is compelling reason apparent in the law to justify it. *Ubi lex non distinguit nec distinguere debemos*. Thus, when the law says "*all television programs*," the word "*all*" covers all television programs, whether religious, public affairs, news documentary, etc. The principle assumes that the legislative body made no qualification in the use of general word or expression.

It then follows that since "*The Inside Story*" is a television program, it is within the jurisdiction of the MTRCB over which it has power of review.

Here, respondents sought exemption from the coverage of the term "*television programs*" on the ground that the "*The Inside Story*" is a "public affairs program, news documentary and socio-political editorial" protected under Section 4, Article III of the Constitution. Albeit, respondent's basis is not freedom of religion, as in *Iglesia ni Cristo*, but freedom of expression and of the press, the ruling in *Iglesia ni Cristo* applies squarely to the instant issue. It is significant to note that in *Iglesia ni Cristo*, this Court declared that freedom of religion has been accorded a *preferred status* by the framers of our fundamental laws, past and present, "designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs x x x." Yet despite the fact that freedom of religion has been accorded a *preferred status*, still this Court, did not exempt the *Iglesia ni Cristo's* religious program from petitioner's review power.

Respondents claim that the showing of "*The Inside Story*" is protected by the constitutional provision on freedom of speech and of the press. However, there has been no declaration at all by the framers of the Constitution that freedom of expression and of the press **has a preferred status**.

If this Court, in *Iglesia ni Cristo*, did not exempt religious programs from the jurisdiction and review power of petitioner MTRCB, with more reason, there is no justification to exempt therefrom "*The Inside Story*" which, according to respondents, is protected by the constitutional provision on freedom of expression and of the press, a freedom bearing **no preferred status**.
The only exceptions from the MTRCB's power of review are those expressly mentioned in Section 7 of P. D. No. 1986, such as **(1)** television programs imprinted or exhibited by the Philippine Government and/or its departments and agencies, and **(2)** newsreels. x x x

Still in a desperate attempt to be exempted, respondents contend that the "*The Inside Story*" falls under the category of newsreels.

Their contention is unpersuasive.

x x x **Apparently, newsreels are straight presentation of events. They are depiction of "actualities**." Correspondingly, the MTRCB Rules and Regulations implementing P. D. No. 1986 define newsreels as "**straight news reporting, as distinguished from news analyses, commentaries and opinions. Talk shows on a given issue are not considered newsreels**." Clearly, the "*The Inside Story*" cannot be considered a newsreel. It is more of a public affairs program which is described as a variety of news treatment; a cross between pure television news and news-related commentaries, analysis and/or exchange of opinions. **Certainly, such kind of program is within petitioner's review power**.

It bears stressing that the sole issue here is whether petitioner MTRCB has authority to review "*The Inside Story*." Clearly, we are not called upon to determine whether petitioner violated Section 4, Article III (Bill of Rights) of the Constitution providing that no law shall be passed abridging the freedom of speech, of oppression or the press. Petitioner did not disapprove or ban the showing of the program. Neither did it cancel respondents' permit. Respondents were merely penalized for their failure to submit to petitioner "*The Inside Story*" for its review and approval. Therefore, we need not resolve whether certain provisions of P. D. No. 1986 and the MTRCB Rules and Regulations specified by respondents contravene the Constitution.

Consequently, we cannot sustain the RTC's ruling that Sections 3 (c) (d), 4, 7 and 11 of P. D. No. 1986 and Sections 3, 7 and 28 (a) of the MTRCB Rules and Regulations are unconstitutional.

LESTER GERARD PACKINGHAM, PETITIONER v. NORTH CAROLINA
582 U.S. ___ , No. 15-1194, 19 June 2017, Justice Kennedy

Like other inventions heralded as advances in human progress, the Internet and social media will be exploited by the criminal mind. It is also clear that "sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people," and that a legislature "may pass valid laws to protect children" and other sexual assault victims. ***However, the assertion of a valid governmental interest "cannot, in every context, be insulated from all constitutional protections."***

With one broad stroke, North Carolina bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge. ***Foreclosing access to social media altogether thus prevents users from engaging in the legitimate exercise of First Amendment rights.***

The State has not met its burden to show that this sweeping law is necessary or legitimate to serve its purpose of keeping convicted sex offenders away from vulnerable victims. No case or holding of this Court has approved of a statute as broad in its reach.

FACTS:

In 2002, petitioner Lester Gerard Packingham—then a 21-year-old college student—had sex with a 13-year-old girl. He pleaded guilty to taking indecent liberties with a child. Because this crime qualifies as "an offense against a minor," petitioner was required to register as a sex offender—a

status that can endure for 30 years or more. As a registered sex offender, petitioner was barred under §14–202.5 from gaining access to commercial social networking sites. In 2010, a state court dismissed a traffic ticket against petitioner. In response, he logged on to Facebook.com and posted the following statement on his personal profile: "Man God is Good! How about I got so much favor they dismissed the ticket before court even started? No fine, no court cost, no nothing spent. . . . . .Praise be to GOD, WOW! Thanks JESUS!"

At the time, a member of the Durham Police Department was investigating registered sex offenders who were thought to be violating §14–202.5. The officer noticed that a "'J.R. Gerrard'" had posted the statement quoted above.

In 2008, North Carolina law makes it a felony for a registered sex offender "to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages." According to sources cited to the Court, the State has prosecuted over 1,000 people for violating this law, including petitioner, who was indicted after posting a statement on his personal Facebook profile about a positive experience in traffic court. The trial court denied petitioner's motion to dismiss the indictment on the ground that the law violated the First Amendment. He was convicted and given a suspended prison sentence. On appeal, the State Court of Appeals struck down §14–202.5 on First Amendment grounds, but the North Carolina Supreme Court reversed.

The Court granted certiorari.

ISSUE:
Whether that law is permissible under the First Amendment's Free Speech Clause, applicable to the States under the Due Process Clause of the Fourteenth Amendment. (NO)

RULING:
The North Carolina statute impermissibly restricts lawful speech in violation of the First Amendment. A fundamental First Amendment principle is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. Today, one of the most important places to exchange views is cyberspace, particularly social media, which offers "relatively unlimited, low-cost capacity for communication of all kinds," Reno v. American Civil Liberties Union, 521 U. S. 844, 870, to users engaged in a wide array of protected First Amendment activity on any number of diverse topics. The Internet's forces and directions are so new, so protean, and so far reaching that courts must be conscious that what they say today may be obsolete tomorrow. Here, in one of the first cases the Court has taken to address the relationship between the First Amendment and the modern Internet, the Court must exercise extreme caution before suggesting that the First Amendment provides scant protection for access to vast networks in that medium.

This background informs the analysis of the statute at issue. Even assuming that the statute is content neutral and thus subject to intermediate scrutiny, the provision is not narrowly tailored to serve a significant governmental interest."

Like other inventions heralded as advances in human progress, the Internet and social media will be exploited by the criminal mind. It is also clear that "sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people," and that a legislature "may pass valid laws to protect children" and other sexual assault victims. **However, the assertion of a valid**

governmental interest "cannot, in every context, be insulated from all constitutional protections."

Two assumptions are made in resolving this case. First, while the Court need not decide the statute's precise scope, it is enough to assume that the law applies to commonplace social networking sites like Facebook, LinkedIn, and Twitter. Second, the Court assumes that the First Amendment permits a State to enact specific, narrowly-tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contacting a minor or using a website to gather information about a minor.

Even with these assumptions, the statute here enacts a prohibition unprecedented in the scope of First Amendment speech it burdens. Social media allows users to gain access to information and communicate with one another on any subject that might come to mind. With one broad stroke, North Carolina bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge. **Foreclosing access to social media altogether thus prevents users from engaging in the legitimate exercise of First Amendment rights.** Even convicted criminals—and in some instances especially convicted criminals—might receive legitimate benefits from these means for access to the world of ideas, particularly if they seek to reform and to pursue lawful and rewarding lives.

The State has not met its burden to show that this sweeping law is necessary or legitimate to serve its purpose of keeping convicted sex offenders away from vulnerable victims. No case or holding of this Court has approved of a statute as broad in its reach. The State relies on Burson v. Freeman, 504 U. S. 191, but that case considered a more limited restriction—prohibiting campaigning within 100 feet of a polling place—in order to protect the fundamental right to vote.

The Court noted, moreover, that a larger buffer zone could "become an impermissible burden" under the First Amendment. The better analogy is Board of Airport Comm'rs of Los Angeles v. Jews for Jesus, Inc., 482 U. S. 569. If an ordinance prohibiting any "First Amendment activities" at a single Los Angeles airport could be struck down because it covered all manner of protected, nondisruptive behavior, including "talking and reading, or the wearing of campaign buttons or symbolic clothing," it follows with even greater force that the State may not enact this complete bar to the exercise of First Amendment rights on websites integral to the fabric of modern society and culture.

EMILIO M. R. OSMEÑA and PABLO P. GARCIA, petitioners, vs.
THE COMMISSION ON ELECTIONS, respondent.
G.R. No. 132231,EN BANC, March 31, 1998, MENDOZA, *J.*

Here, x x x there is no total ban on political ads, much less restriction on the content of the speech. Given the fact that print space and airtime can be controlled or dominated by rich candidates to the disadvantage of poor candidates, there is a substantial or legitimate governmental interest justifying exercise of the regulatory power of the COMELEC under Art. IX-C, §4 of the Constitution. x x x

The provisions in question involve no suppression of political ads. They only prohibit the sale or donation of print space and airtime to candidates but require the COMELEC instead to procure space and time in the mass media for allocation, free of charge, to the candidates. In effect, during the election period, the COMELEC takes over the advertising page of newspapers or the commercial time of radio and TV stations and allocates these to the candidates.

FACTS:
This is a petition for prohibition, seeking a reexamination of the validity of §11(b) of R.A. No. 6646, the Electoral Reforms Law of 1987, which prohibits mass media from selling or giving free of charge print space or air time for campaign or other political purposes, except to the Commission on Elections. Petitioners are candidates for public office in the forthcoming elections. Petitioner Emilio M. R. Osmeña is candidate for President of the Philippines, while petitioner Pablo P. Garcia is governor of Cebu Province, seeking reelection. They contend that events after the ruling in *National Press Club v. Commission on Elections*" have called into question the validity of the very premises of that [decision]."

NPC v. COMELEC upheld the validity of §11(b) of R.A. No. 6646 against claims that it abridged freedom of speech and of the press. In urging a reexamination of that ruling, petitioners claim that experience in the last five years since the decision in that case has shown the "undesirable effects" of the law because "the ban on political advertising has not only failed to level the playing field, [but] actually worked to the grave disadvantage of the poor candidate[s]" by depriving them of a medium which they can afford to pay while their more affluent rivals can always resort to other means of reaching voters like airplanes, boats, rallies, parades, and handbills.

No empirical data have been presented by petitioners to back up their claim, however. Argumentation is made at the theoretical and not the practical level.

Indeed, petitioners do not complain of any harm suffered as a result of the operation of the law. They do not complain that they have in any way been disadvantaged as a result of the ban on media advertising. Their contention that, contrary to the holding in NPC, §11(b) works to the disadvantage of candidates who do not have enough resources to wage a campaign outside of mass media can hardly apply to them. Their financial ability to sustain a long drawn-out campaign, using means other than the mass media to communicate with voters, cannot be doubted. If at all, it is candidates like intervenor Roger Panotes, who is running for mayor of Daet, Camarines Norte, who can complain against §11(b) of R.A. No. 6646. But Panotes is for the law which, he says, has "to some extent, reduced the advantages of moneyed politicians and parties over their rivals who are similarly situated as ROGER PANOTES." He claims that "the elimination of this substantial advantage is one reason why ROGER PANOTES and others similarly situated have dared to seek an elective position this coming elections."

What petitioners seek is not the adjudication of a case but simply the holding of an academic exercise. And since a majority of the present Court is unpersuaded that its decision in NPC is founded in error, it will suffice for present purposes simply to reaffirm the ruling in that case. *Stare decisis et non quieta movere*.

ISSUE:
Whether or not the case of *NPC v. COMELEC, which* upheld the validity of §11(b) of R.A. No. 6646 against claims that it abridged freedom of speech and of the press, is founded in error. (NO)
RULING:
[W]e have undertaken to revisit the decision in *NPC v. COMELEC* in order to clarify our own understanding of its reach and set forth a theory of freedom of speech.

I. No Ad Ban, Only a Substitution of COMELEC Space and COMELEC Time for the Advertising Page and Commercials in Mass Media

The term political "ad ban," when used to describe §11(b) of R.A. No. 6646, is misleading, for even as §11(b) prohibits the sale or donation of print space and air time to political candidates, it mandates the COMELEC to procure and itself allocate to the candidates space and time in the media. There is no suppression of political ads but only a regulation of the time and manner of advertising. x x x
Here, x x x there is no total ban on political ads, much less restriction on the content of the speech. Given the fact that print space and air time can be controlled or dominated by rich candidates to the disadvantage of poor candidates, there is a substantial or legitimate governmental interest justifying exercise of the regulatory power of the COMELEC under Art. IX-C, §4 of the Constitution. x x x
The provisions in question involve no suppression of political ads. They only prohibit the sale or donation of print space and air time to candidates but require the COMELEC instead to procure space and time in the mass media for allocation, free of charge, to the candidates. In effect, during the election period, the COMELEC takes over the advertising page of newspapers or the commercial time of radio and TV stations and allocates these to the candidates. x x x
… [T]he State can prohibit campaigning *outside* a certain period as well as campaigning *within* a certain place. For unlimited expenditure for political advertising in the mass media skews the political process and subverts democratic self-government. What is bad is if the law prohibits campaigning by certain candidates because of the views expressed in the ad. Content regulation cannot be done in the absence of any compelling reason.

II. Law Narrowly Drawn to Fit Regulatory Purpose
The main purpose of §11(b) is regulatory. Any restriction on speech is only incidental, and it is no more than is necessary to achieve its purpose of promoting equality of opportunity in the use of mass media for political advertising. The restriction on speech, as pointed out in NPC, is limited both as to time and as to scope. x x x
The premise of this argument is that §11(b) imposes a ban on media political advertising. What petitioners seem to miss is that the prohibition against paid or sponsored political advertising is only half of the regulatory framework, the other half being the mandate of the COMELEC to procure print space and air time so that these can be allocated free of charge to the candidates.

RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. *v.* AMERICAN CIVIL LIBERTIES UNION ET AL.
521 U. S. 844, June 26, 1997, Stevens, J.

A law may violate the First Amendment if it is so overly broad that it curtails protected as well as unprotected speech.

In this case, Justice Stevens found that the Act was overly broad and vague under the First Amendment. Since it was a content-specific law, a high level of scrutiny was appropriate. He observed that there would be less restrictive alternatives to meet the government's objective, and he felt that the Act as currently written prohibited a large amount of speech that would be protected under the First Amendment.

While children have a right to be protected from explicit content, adults also have a right to access that content. Stevens argued that adults cannot be restricted to transmit and receive only those forms of speech that would be appropriate for children.

FACTS:
The federal government enacted the Communications Decency Act (CDA) to prevent children from gaining access to explicit material online. This law made it illegal to knowingly send obscene or

indecent messages, or anything that depicts sexual or excretory activities or organs in an offensive way as determined by contemporary community standards, to someone under 18. The Court previously had upheld similarly written provisions. Its decision in Ginsberg v. New York (1968) held that material that is potentially harmful for children can be regulated, even if it is not obscene. FCC v. Pacifica Foundation (1978) allowed the FCC to impose administrative sanctions on broadcast media that aired content containing expletives when children could hear it. In Renton v. Playtime Theatres, Inc. (1986), the Court ruled that municipalities could use zoning ordinances to keep adult movie theaters out of residential areas.

ISSUE:
Whether or not the CDA's "indecent transmission" and "patently offensive display" provisions abridge "the freedom of speech" protected by the First Amendment. (YES)

RULING:
The CDA's "indecent transmission" and "patently offensive display" provisions abridge "the freedom of speech" protected by the First Amendment. x x x

A close look at the precedents relied on by the Government raises, rather than relieves, doubts about the CDA's constitutionality. The CDA differs from the various laws and orders upheld in those cases in many ways, including that it does not allow parents to consent to their children's use of restricted materials; is not limited to commercial transactions; fails to provide any definition of "indecent" and omits any requirement that "patently offensive" material lack socially redeeming value; neither limits its broad categorical prohibitions to particular times nor bases them on an evaluation by an agency familiar with the medium's unique characteristics; is punitive; applies to a medium that, unlike radio, receives full First Amendment protection; and cannot be properly analyzed as a form of time, place, and manner regulation because it is a content-based blanket restriction on speech**. These precedents, then, do not require the Court to uphold the CDA and are fully consistent with the application of the most stringent review of its provisions**. x x x

Regardless of whether the CDA is so vague that it violates the Fifth Amendment, the many ambiguities concerning the scope of its coverage render it problematic for First Amendment purposes. **For instance, its use of the undefined terms "indecent" and "patently offensive" will provoke uncertainty among speakers about how the two standards relate to each other and just what they mean.The vagueness of such a content-based regulation, coupled with its increased deterrent effect as a criminal statute, raise special First Amendment concerns because of its obvious chilling effect on free speech.** Contrary to the Government's argument, the CDA is not saved from vagueness by the fact that its "patently offensive" standard repeats the second part of the three-prong obscenity test set forth in *Miller* v. *California,* 413 U. S. 15,24. **The second *Miller* prong reduces the inherent vagueness of its own "patently offensive" term by requiring that the proscribed material be "specifically defined by the applicable state law." In addition, the *Miller* definition applies only to "sexual conduct," whereas the CDA prohibition extends also to "excretory activities" and "organs" of both a sexual and excretory nature.** Each of *Miller's* other two prongs also critically limits the uncertain sweep of the obscenity definition. Just because a definition including three limitations is not vague, it does not follow that one of those limitations, standing alone, is not vague. The CDA's vagueness undermines the likelihood that it has been carefully tailored to the congressional goal of protecting minors from potentially harmful materials.

The CDA lacks the precision that the First Amendment requires when a statute regulates the content of speech. **Although the Government has an interest in protecting children from potentially harmful material, the CDA pursues that interest by suppressing a large amount of speech that adults have a constitutional right to send and receive. Its breadth is wholly unprecedented.The CDA's burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the Act's legitimate purposes.** The Government has not proved otherwise. On the other hand, the District Court found that currently available *user-based* software suggests that a reasonably effective method by which *parents* can prevent their children from accessing material which the *parents* believe is inappropriate will soon be widely available. Moreover, the arguments in this Court referred to possible alternatives such as requiring that indecent material be "tagged" to facilitate parental control, making exceptions for messages with artistic or educational value, providing some tolerance for parental choice, and regulating some portions of the Internet differently from others. **Particularly in the light of the absence of any detailed congressional findings, or even hearings addressing the CDA's special problems, the Court is persuaded that the CDA is not narrowly tailored.**

PHILIP SIGFRID A. FORTUN, Petitioner, vs.
PRIMA JESUSA B. QUINSAYAS, MA. GEMMA OQUENDO, DENNIS AYON, NENITA OQUENDO, ESMAEL MANGUDADATU, JOSE PAVIA, MELINDA QUINTOS DE JESUS, REYNALDO HULOG, REDMOND BATARIO, MALOU MANGAHAS, DANILO GOZO, GMA NETWORK INC., through its new editors Raffy Jimenez and Victor Sollorano, SOPHIA DEDACE, ABS-CBN CORPORATION, through the Head of its News Group, Maria Ressa, CECILIA VICTORIA OREÑA-DRILON, PHILIPPINE DAILY INQUIRER, INC. represented by its Editor-in-Chief Letty Jimenez Magsanoc, TETCH TORRES, PHILIPPINE STAR represented by its Editor-in-Chief Isaac Belmonte, and EDU PUNAY, Respondents.
G.R. No. 194578, SECOND DIVISION, February 13, 2013, CARPIO, J.

Section 18, Rule 139-B of the Rules of Court is not a restriction on the freedom of the press.1âwphi1 If there is a legitimate public interest, media is not prohibited from making a fair, true, and accurate news report of a disbarment complaint*. In the absence of a legitimate public interest in a disbarment complaint, members of the media must preserve the confidentiality of disbarment proceedings during its pendency. Disciplinary proceedings against lawyers must still remain private and confidential until their final determination. Only the final order of this Court shall be published like its decisions in other cases.*

…Indeed, petitioner failed to prove that, except for Atty. Quinsayas, the other respondents, namely De Jesus, Hulog, Batario, Mangahas, and even Gozo, who did not file his separate comment, had a hand in the dissemination and publication of the disbarment complaint against him. It would appear that only Atty. Quinsayas was responsible for the distribution of copies of the disbarment complaint. In its Comment, GMA Network stated that the publication ***"had already been done and completed when copies of the complaint for disbarment were distributed by one of the disbarment complainants, Atty. Prima Quinsayas x x x."*** *Dedace also stated in her Comment that "Atty. Quinsayas gave copies of the disbarment complaint against Atty. Fortun and she received one."*

FACTS:
On 23 November 2009, a convoy of seven vehicles carrying the relatives of then Maguindanao vice-mayor Esmael "Toto" Mangudadatu, as well as lawyers and journalists, was on their way to the Commission on Elections office in Shariff Aguak to file Mangudadatu's Certificate of Candidacy when

they were accosted by a group of about 100 armed men at a checkpoint in Sitio Malating, Ampatuan town, some four to ten kilometers from their destination. The group was taken hostage and brought to a hilly and sparsely-populated part of Sitio Magating, Barangay Salman, Ampatuan, Maguindanao. The gruesome aftermath of the hostage-taking was later discovered and shocked the world. The hostages were systematically killed by shooting them at close range with automatic weapons, and their bodies and vehicles were dumped in mass graves and covered with the use of a backhoe. These gruesome killings became known as the Maguindanao Massacre. A total of 57 victims were killed, 30 of them journalists. Subsequently, criminal cases for Murder were filed and raffled to the RTC. Petitioner is the counsel for Datu Andal Ampatuan, Jr. (Ampatuan, Jr.), the principal accused in the murder cases.

In November 2010, Atty. Quinsayas, et al. filed a disbarment complaint against petitioner before this Court, docketed as Bar Matter No. A.C. 8827. The disbarment case is still pending.

Petitioner alleged that GMA News TV internet website posted an article, written by Dedace, entitled "Mangudadatu, others seek disbarment of Ampatuan lawyer," On even date, Inquirer.net, the website of PDI, also published an article, written by Torres, which according to petitioner also stated details of the disbarment case. Petitioner further alleged that PhilStar published an article, written by Punay, which gave details of the disbarment allegation. Further, petitioner alleged that Channel 23 aired on national television a program entitled "ANC Presents: Crying for Justice: the Maguindanao Massacre." Drilon, the program's host, asked questions and allowed Atty. Quinsayas to discuss the disbarment case against petitioner, including its principal points. Petitioner was allegedly singled out and identified in the program as the lead counsel of the Ampatuan family.

Petitioner alleged that Atty. Quinsayas, et al. actively disseminated the details of the disbarment complaint against him in violation of Rule 139-B of the Rules of Court on the confidential nature of disbarment proceedings. Petitioner further alleged that respondent media groups and personalities conspired with Atty. Quinsayas, et al. by publishing the confidential materials on their respective media platforms. Petitioner pointed out that Drilon discussed the disbarment complaint with Atty. Quinsayas in a television program viewed nationwide.
Petitioner alleged that the public circulation of the disbarment complaint against him exposed this Court and its investigators to outside influence and public interference. Petitioner alleged that opinion writers wrote about and commented on the disbarment complaint which opened his professional and personal reputation to attack.

ISSUE:
Whether respondents violated the confidentiality rule in disbarment proceedings, warranting a finding of guilt for indirect contempt of court. (THE ANSWER MUST BE QUALIFIED)

RULING:
The Court recognizes that "publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech." **As a general rule, disbarment proceedings are confidential in nature until their final resolution and the final decision of this Court. In this case, however, the filing of a disbarment complaint against petitioner is itself a matter of public concern considering that it arose from the Maguindanao Massacre case.** The interest of the public is not on petitioner himself but primarily on his involvement and participation as defense counsel in the Maguindanao Massacre case. Indeed, the allegations in the disbarment complaint relate to petitioners supposed actions involving the Maguindanao Massacre case.

The Maguindanao Massacre is a very high-profile case. Of the 57 victims of the massacre, 30 were journalists. It is understandable that any matter related to the Maguindanao Massacre is considered a matter of public interest and that the personalities involved, including petitioner, are considered as public figure. The Court explained it, thus:

But even assuming a person would not qualify as a public figure, it would not necessarily follow that he could not validly be the subject of a public comment. For he could; for instance, if and when he would be involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. **The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety.** (Boldface in the original)

Since the disbarment complaint is a matter of public interest, legitimate media had a right to publish such fact under freedom of the press. The Court also recognizes that respondent media groups and personalities merely acted on a news lead they received when they reported the filing of the disbarment complaint.

The distribution by Atty. Quinsayas to the media of the disbarment complaint, by itself, is not sufficient to absolve the media from responsibility for violating the confidentiality rule. However, since petitioner is a public figure or has become a public figure because he is representing a matter of public concern, and because the event itself that led to the filing of the disbarment case against petitioner is a matter of public concern, the media has the right to report the filing of the disbarment case as legitimate news. It would have been different if the disbarment case against petitioner was about a private matter as the media would then be bound to respect the confidentiality provision of disbarment proceedings under Section 18, Rule 139-B of the Rules of Court.

Section 18, Rule 139-B of the Rules of Court is not a restriction on the freedom of the press*.1âwphi1* If there is a legitimate public interest, media is not prohibited from making a fair, true, and accurate news report of a disbarment complaint. In the absence of a legitimate public interest in a disbarment complaint, members of the media must preserve the confidentiality of disbarment proceedings during its pendency. Disciplinary proceedings against lawyers must still remain private and confidential until their final determination. Only the final order of this Court shall be published like its decisions in other cases.

…Indeed, petitioner failed to prove that, except for Atty. Quinsayas, the other respondents, namely De Jesus, Hulog, Batario, Mangahas, and even Gozo, who did not file his separate comment, had a hand in the dissemination and publication of the disbarment complaint against him. It would appear that only Atty. Quinsayas was responsible for the distribution of copies of the disbarment complaint. In its Comment, GMA Network stated that the publication **"had already been done and completed when copies of the complaint for disbarment were distributed by one of the disbarment complainants, Atty. Prima Quinsayas x x x."** Dedace also stated in her Comment that "Atty. Quinsayas gave copies of the disbarment complaint against Atty. Fortun and she received one."

Atty. Quinsayas is bound by Section 18, Rule 139-B of the Rules of Court both as a complainant in the disbarment case against petitioner and as a lawyer. As a lawyer and an officer of the Court, Atty. Quinsayas is familiar with the confidential nature of disbarment proceedings. However, instead of

preserving its confidentiality, Atty. Quinsayas disseminated copies of the disbarment complaint against petitioner to members of the media which act constitutes contempt of court. In *Relativo v. De Leon,* the Court ruled that the premature disclosure by publication of the filing and pendency of disbarment proceedings is a violation of the confidentiality rule. In that case, Atty. Relativo, the complainant in a disbarment case, caused the publication in newspapers of statements regarding the filing and pendency of the disbarment proceedings. The Court found him guilty of contempt.
Indirect contempt against a Regional Trial Court or a court of equivalent or higher rank is punishable by a fine not exceeding P30,000 or imprisonment not exceeding six months or both. Atty. Quinsayas acted wrongly in setting aside the confidentiality rule which every lawyer and member of the legal profession should know. Hence, we deem it proper to impose on her a fine of Twenty Thousand Pesos (P20,000).

PLEASANT GROVE CITY, UTAH, et al. *v.* SUMMUM
555 U.S. 460, February 25, 2009, Alito, J.

Placing a monument in a public park is government speech, so it is not controlled by the First Amendment.

Here, the Park's monuments clearly represent government speech. Although many were donated in completed form by private entities, the City has "effectively controlled" their messages by exercising "final approval authority" over their selection.

FACTS:
Pioneer Park (Park), a public park in petitioner Pleasant Grove City (City), has at least 11 permanent, privately donated displays, including a Ten Commandments monument. In rejecting the request of respondent Summum, a religious organization, to erect a monument containing the Seven Aphorisms of Summum, the City explained that it limited Park monuments to those either directly related to the City's history or donated by groups with longstanding community ties. After the City put that policy and other criteria into writing, respondent renewed its request, but did not describe the monument's historical significance or respondent's connection to the community. The City rejected the request, and respondent filed suit, claiming that the City and petitioner officials had violated the First Amendment's Free Speech Clause by accepting the Ten Commandments monument but rejecting respondent's proposed monument. The District Court denied respondent's preliminary injunction request, but the Tenth Circuit reversed. Noting that it had previously found the Ten Commandments monument to be private rather than government speech and that public parks have traditionally been regarded as public forums, the court held that, because the exclusion of the monument was unlikely to survive strict scrutiny, the City was required to erect it immediately.

ISSUE:
Whether or not the City and petitioner officials had violated the First Amendment's Free Speech Clause by accepting the Ten Commandments monument but rejecting respondent's proposed monument. (NO)

RULING:
Permanent monuments displayed on public property typically represent government speech. Governments have long used monuments to speak to the public. Thus, a government-commissioned and government-financed monument placed on public land constitutes government speech. So, too, are privately financed and donated monuments that the government accepts for public display on government land. While government entities regularly accept privately funded or donated

monuments, their general practice has been one of selective receptivity. Because city parks play an important role in defining the identity that a city projects to its residents and the outside world, cities take care in accepting donated monuments, selecting those that portray what the government decisionmakers view as appropriate for the place in question, based on esthetics, history, and local culture. The accepted monuments are meant to convey and have the effect of conveying a government message and thus constitute government speech.

Here, the Park's monuments clearly represent government speech. Although many were donated in completed form by private entities, the City has "effectively controlled" their messages by exercising "final approval authority" over their selection. The City has selected monuments that present the image that the City wishes to project to Park visitors; it has taken ownership of most of the monuments in the Park, including the Ten Commandments monument; and it has now expressly set out selection criteria.

Respondent's legitimate concern that the government speech doctrine not be used as a subterfuge for favoring certain viewpoints does not mean that a government entity should be required to embrace publicly a privately donated monument's "message" in order to escape Free Speech Clause restrictions. A city engages in expressive conduct by accepting and displaying a privately donated monument, but it does not necessarily endorse the specific meaning that any particular donor sees in the monument. A government's message may be altered by the subsequent addition of other monuments in the same vicinity. It may also change over time.

"[P]ublic forum principles … are out of place in the context of this case. The forum doctrine applies where a government property or program is capable of accommodating a large number of public speakers without defeating the essential function of the land or program, but public parks can accommodate only a limited number of permanent monuments. If governments must maintain viewpoint neutrality in selecting donated monuments, they must either prepare for cluttered parks or face pressure to remove longstanding and cherished monuments. Were public parks considered traditional public forums for the purpose of erecting privately donated monuments, most parks would have little choice but to refuse all such donations. And if forum analysis would lead almost inexorably to closing of the forum, forum analysis is out of place.

WALKER, CHAIRMAN, TEXAS DEPARTMENT OF MOTOR VEHICLES BOARD, ET AL. v. TEXAS DIVISION, SONS OF CONFEDERATE VETERANS, INC., ET AL.
576 U.S. ___, No. 14-144, 18 June2015, Breyer, J.

The State exercises final authority over the messages that may be conveyed by its specialty plates, it takes ownership of each specialty plate design, and it has traditionally used its plates for government speech…

The State exercises final authority over the messages that may be conveyed by its specialty plates, it takes ownership of each specialty plate design, and it has traditionally used its plates for government speech. *These features of Texas specialty plates militate against a determination that Texas has created a public forum. Finally, the plates are not a nonpublic forum, where the "government is . . . a proprietor, managing its internal operations." The fact that private parties take part in the design and propagation of a message does not extinguish the governmental nature of the message or transform the government's role into that of a mere forum provider. Nor does Texas's requirement that vehicle*

owners pay annual fees for specialty plates mean that the plates are a forum for private speech. And this case does not resemble other nonpublic forum cases.

FACTS:
Texas offers automobile owners a choice between general-issue and specialty license plates. Those who want the State to issue a particular specialty plate may propose a plate design, comprising a slogan, a graphic, or both. If the Texas Department of Motor Vehicles Board approves the design, the State will make it available for display on vehicles registered in Texas. Here, the Texas Division of the Sons of Confederate Veterans and its officers (collectively SCV) filed suit against the Chairman and members of the Board (collectively Board), arguing that the Board's rejection of SCV's proposal for a specialty plate design featuring a Confederate battle flag violated the Free Speech Clause. The District Court entered judgment for the Board, but the Fifth Circuit reversed, holding that Texas's specialty license plate designs are private speech and that the Board engaged in constitutionally forbidden viewpoint discrimination when it refused to approve SCV's design.

ISSUE:
Whether or not the Board's rejection of SCV's proposal for a specialty plate design featuring a Confederate battle flag violated the Free Speech Clause. (NO)

RULING:
Texas's specialty license plate designs constitute government speech, and thus Texas was entitled to refuse to issue plates featuring SCV's proposed design**. When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.** A government is generally entitled to promote a program, espouse a policy, or take a position. Were the Free Speech Clause interpreted otherwise, "it is not easy to imagine how government would function." That is not to say that a government's ability to express itself is without restriction. Constitutional and statutory provisions outside of the Free Speech Clause may limit government speech, and the Free Speech Clause itself may constrain the government's speech if, for example, the government seeks to compel private persons to convey the government's speech. This Court's precedents regarding government speech provide the appropriate framework through which to approach the case.

The same analysis the Court used in Summum—to conclude that a city "accepting a privately donated monument and placing it on city property" was engaging in government speech—leads to the conclusion that government speech is at issue here. First, history shows that States, including Texas, have long used license plates to convey government speech, e.g., slogans urging action, promoting tourism, and touting local industries. Second, Texas license plate designs "are often closely identified in the public mind with the [State]." Each plate is a government article serving the governmental purposes of vehicle registration and identification. The governmental nature of the plates is clear from their faces: the State places the name "TEXAS" in large letters across the top of every plate. Texas also requires Texas vehicle owners to display license plates, issues every Texas plate, and owns all of the designs on its plates. The plates are, essentially, government IDs, and ID issuers "typically do not permit" their IDs to contain "message[s] with which they do not wish to be associated," Third, Texas maintains direct control over the messages conveyed on its specialty plates, by giving the Board final approval over each design. Like the city government in Summum, Texas "has effectively controlled the messages [conveyed] by exercising final approval authority over their selection." These considerations, taken together, show that Texas's specialty plates are similar enough to the monuments in Summum to call for the same result.

Forum analysis, which applies to government restrictions on purely private speech occurring on government property is not appropriate when the State is speaking on its own behalf. The parties agree that Texas's specialty license plates **are not a traditional public forum.** Further, Texas's policies and the nature of its license plates indicate that the State did not intend its specialty plates to serve as either a designated public forum—where "government property . . . not traditionally . . . a public forum is intentionally opened up for that purpose,"—or a limited public forum—where a government "reserves a forum for certain groups or for the discussion of certain topics,"

The State exercises final authority over the messages that may be conveyed by its specialty plates, it takes ownership of each specialty plate design, and it has traditionally used its plates for government speech. These features of Texas specialty plates militate against a determination that Texas has created a public forum. Finally, the plates are not a nonpublic forum, where the "government is . . . a proprietor, managing its internal operations." The fact that private parties take part in the design and propagation of a message does not extinguish the governmental nature of the message or transform the government's role into that of a mere forum provider. Nor does Texas's requirement that vehicle owners pay annual fees for specialty plates mean that the plates are a forum for private speech. And this case does not resemble other nonpublic forum cases.

The determination that Texas's specialty license plate designs are government speech does not mean that the designs do not also implicate the free speech rights of private persons. The Court has acknowledged that drivers who display a State's selected license plate designs convey the messages communicated through those designs. The Court has also recognized that the First Amendment stringently limits a State's authority to compel a private party to express a view with which the private party disagrees. Just as Texas cannot require SCV to convey "the State's ideological message," SCV cannot force Texas to include a Confederate battle flag on its specialty license plates.

RENATO V. PERALTA, PETITIONER, VS. PHILIPPINE POSTAL CORPORATION (PHILPOST), REPRESENTED BY MA. JOSEFINA MDELACRUZ IN HER CAPACITY AS POSTMASTER GENERAL AND CHIEF EXECUTIVE OFFICER, THE BOARD OF DIRECTORS OF PHILPOST, REPRESENTED BY ITS CHAIRMAN CESAR N. SARINO, RESPONDENTS.
G.R. No. 223395, EN BANC, December 04, 2018, TIJAM, J.

There is no quibbling that as to the 50,000 stamps ordered, printed and issued to INC, the same did not violate the Constitutional prohibitions separating State matters from religion.
It is plain, that the costs for the printing and issuance of the aforesaid 50,000 stamps were all paid for by INC. Any perceived use of government property, machines or otherwise, is de minimis and certainly do not amount to a sponsorship of a specific religion.
The centennial celebration of the Iglesia ni Cristo, though arguably involves a religious institution, has a secular aspect… It is simply an acknowledgment of INC's existence for a hundred years. It does not necessarily equate to the State sponsoring the INC.

Furthermore, adopting the stance of benevolent neutrality, this Court deems the design of the INC commemorative stamp constitutionally permissible. As correctly held by the CA, there is an intrinsic historical value in the fact that Felix Y Manalo is a Filipino and that the INC is a Filipino institution.

FACTS:
On May 10, 2014, respondent Philippine Postal Corporation (PhilPost) issued a stamp commemorating Iglesia ni Cristo's (INC's) Centennial Celebration. The design of the stamp showed a photo of INC founder, the late Felix Y. Manalo (Manalo) with the designation on the left side containing the words "*Felix Y. Manalo, 1886-1963 First Executive Minister of Iglesia ni Cristo*", with the Central Temple of the religious group at the background. At the right side of Manalo's photo is the INC's centennial logo which contained a torch enclosed by a two concentric circles containing the words "*IGLESIA Nl CRISTO CENTENNIAL 1914-2014*".

On June 16, 2014, petitioner Renato V. Peralta (petitioner) filed a complaint for injunction with the RTC-Manila assailing the constitutionality of the printing, issuance and distribution of the INC commemorative centennial stamps, allegedly paid for by respondent PhilPost using public funds.

In his complaint, petitioner alleged that the printing and issuance of the INC commemorative stamp involved disbursement of public funds and violated Section 29(2) of Article VI of the 1987 Constitution. He argued that respondents' act of releasing the said stamps was unconstitutional because it was tantamount to sponsorship of a religious activity; it violated the separation of the Church and the State; and the non-establishment of religion clause. Thus, petitioner prayed that respondents be restrained from issuing and distributing the INC commemorative stamps.

RTC: denied the petitioner's application for the issuance of a preliminary injunction.
CA: affirmed the RTC decision. The Motion for reconsideration was also denied.

Hence, the present petition.

ISSUE:
Whether or not the printing of the INC commemorative stamp did not amount to a violation of the non-establishment of religion clause. (NO)

RULING:
I. The printing of the INC commemorative stamp did not amount to a violation of the non-establishment of religion clause.

There is no quibbling that as to the 50,000 stamps ordered, printed and issued to INC, the same did not violate the Constitutional prohibitions separating State matters from religion.
It is plain, that the costs for the printing and issuance of the aforesaid 50,000 stamps were all paid for by INC. Any perceived use of government property, machines or otherwise, is *de minimis* and certainly do not amount to a sponsorship of a specific religion.
Also, We see no violation of the Constitutional prohibition on establishment of religion, insofar as the remaining 1,150,000 pieces of stamps printed and distributed by PhilPost.
First, there is no law mandating anyone to avail of the INC commemorative stamps, nor is there any law purporting to require anyone to adopt the INC's teachings. Arguably, while then President Aquino issued Proclamation No. 815, s. 2014, authorizing the issuance of the INC commemorative stamp, the same did not contain any legal mandate endorsing or requiring people to conform to the INC's teachings. xxx

As to the use of the government's machinery in printing and distribution of the 1.2 million stamps, this Court does not find that the same amounted to sponsorship of INC as a religion considering that the same is no different from other stamps issued by PhilPost acknowledging persons and events of significance to the country, such as those printed celebrating National Artists, past Philippine Presidents, and events of organizations, religious or not. We note that PhilPost has also issued stamps for the Catholic Church such as those featuring Heritage Churches,15thInternational Eucharistic Congress, and Pope Francis. In the past, the Bureau of Posts also printed stamps celebrating 300 years of Islam in the 1980s. Likewise, our review of the records does not disclose that PhilPost has exclusively or primarily used its resources to benefit INC, to the prejudice of other religions. Finally, other than this single transaction with INC, this Court did not find PhilPost to have been unnecessarily involved in INC's affairs.

Based on the foregoing, this Court is not convinced that PhilPost has actually used its resources to endorse, nor encourage Filipinos to join INC or observe the latter's doctrines. On the contrary, this Court agrees with respondents that the printing of the INC commemorative stamp was endeavored merely as part of PhilPost's ordinary business.

The printing of the INC commemorative stamp is no different. It is simply an acknowledgment of INC's existence for a hundred years. It does not necessarily equate to the State sponsoring the INC.

II. The design of the INC commemorative stamp is merely an acknowledgment of the historical and cultural contribution of INC to the Philippine society.

Adopting the stance of benevolent neutrality, this Court deems the design of the INC commemorative stamp constitutionally permissible. As correctly held by the CA, there is an intrinsic historical value in the fact that Felix Y Manalo is a Filipino and that the INC is a Filipino institution. It explained, thus:

xxx Both matters, "culture" and "national development," are secular in character. Further, it cannot be denied that the part of the late Felix Y. Manalo's cultural and historical contribution is his founding of the INC. This circumstance, however, does not immediately put it in a religious light if it is only the historical fact of establishment which is being mentioned, *i.e.*, adding nothing more and without regard to its doctrine and teachings. x x x

The purpose in setting up the marker is **essentially to recognize the distinctive contribution of the late Felix Manalo to the culture of the Philippines, rather than to commemorate his founding and leadership of the *Iglesia ni Cristo***. The practical reality that greater benefit may be derived by members of the *Iglesia ni Cristo* than by most others could well be true but such a peculiar advantage still remains to be merely incidental and secondary in nature. Indeed, that only a few would actually benefit from the expropriation of property does not necessarily diminish the essence and character of public use. (Emphasis ours)

To debunk petitioner's claim that Section 29, Article VI of the 1987 Constitutionwas violated, We agree with PhilPost's view that:

xxx the printing and issuance of the assailed commemorative stamps were not inspired by any sectarian denomination. The stamps were neither for the benefit of INC, nor money derived from their sale inured to its benefit. xxx the stamps delivered to INC were not free of charge and whatever

income derived from the sale to INC and of the excess to the postal clients were not given to INC, but went to the coffers of PhilPost.

All told, therefore, the Court finds no reason or basis to grant the petition. In refusing to declare unconstitutional the INC's commemorative stamp, this Court is merely applying jurisprudentially sanctioned policy of benevolent neutrality. To end, it bears to emphasize that the Constitution establishes separation of the Church and the State, and not separation of religion and state

ALEJANDRO ESTRADA, Complainant, vs.
SOLEDAD S. ESCRITOR, Respondent.
A.M. No. P-02-1651, EN BANC, June 22, 2006, PUNO, *J.*

Be that as it may, the free exercise of religion is specifically articulated as one of the fundamental rights in our Constitution. It is a fundamental right that enjoys a preferred position in the hierarchy of rights — "the most inalienable and sacred of human rights," in the words of Jefferson. Hence, it is not enough to contend that the state's interest is important, because our Constitution itself holds the right to religious freedom sacred. The State must articulate in specific terms the state interest involved in preventing the exemption, which must be compelling, for only the gravest abuses, endangering paramount interests can limit the fundamental right to religious freedom. To rule otherwise would be to emasculate the Free Exercise Clause as a source of right by itself.

Thus, it is not the State's broad interest in "protecting the institutions of marriage and the family," or even "in the sound administration of justice" that must be weighed against respondent's claim, but the State's narrow interest in refusing to make an exception for the cohabitation which respondent's faith finds moral. ***In other words, the government must do more than assert the objectives at risk if exemption is given; it must precisely show how and to what extent those objectives will be undermined if exemptions are granted.*** *This, the Solicitor General failed to do.*

FACTS:
Complainant Alejandro Estrada requested Judge Jose F. Caoibes, Jr., presiding judge RTC - Las Piñas City, for an investigation of respondent Soledad Escritor, court interpreter in said court, for living with a man not her husband, and having borne a child within this live-in arrangement. Estrada believes that Escritor is committing an immoral act that tarnishes the image of the court, thus she should not be allowed to remain employed therein as it might appear that the court condones her act. Consequently, respondent was charged with committing "disgraceful and immoral conduct" under Book V, Title I, Chapter VI, Sec. 46(b)(5) of the Revised Administrative Code.

Respondent Escritor testified that when she entered the judiciary in 1999, she was already a widow, her husband having died in 1998. She admitted that she started living with Luciano Quilapio, Jr. without the benefit of marriage more than twenty years ago when her husband was still alive but living with another woman. She also admitted that she and Quilapio have a son. But as a member of the religious sect known as the Jehovah's Witnesses and the Watch Tower and Bible Tract Society, respondent asserted that their conjugal arrangement is in conformity with their religious beliefs and has the approval of her congregation. In fact, after ten years of living together, she executed on July 28, 1991, a "Declaration of Pledging Faithfulness." xxx

By invoking the religious beliefs, practices and moral standards of her congregation, in asserting that her conjugal arrangement does not constitute disgraceful and immoral conduct for which she should be held administratively liable, the Court had to determine the contours of religious freedom under Article III, Section 5 of the Constitution, which provides, viz:

Sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.
In the Court's decision for the same case dated August 4, 2003 it held that it is the compelling state interest test, the strictest test, which must be applied.
Notwithstanding the above rulings, the Court could not, at that time, rule definitively on the ultimate issue of whether respondent was to be held administratively liable for there was need to give the State the opportunity to adduce evidence that it has a more "compelling interest" to defeat the claim of the respondent to religious freedom. Thus, in the decision dated August 4, 2003, we remanded the complaint to the Office of the Court Administrator (OCA), and ordered the Office of the Solicitor General (OSG) to intervene in the case so it can determine whether the 3 steps of the "compelling state interest test" are satisfied.

ISSUE:
Whether respondent should be found guilty of the administrative charge of "disgraceful and immoral conduct. (NO)

RULING:
The OSG failed to satisfy the "compelling state interest" test which involves 3 processes:

(a) examine the sincerity and centrality of respondent's claimed religious belief and practice;

(b) present evidence on the state's "compelling interest" to override respondent's religious belief and practice; and

(c) show that the means the state adopts in pursuing its interest is the least restrictive to respondent's religious freedom.

There has never been any question that the state has an interest in protecting the institutions of marriage and the family, or even in the sound administration of justice. Indeed, the provisions by which respondent's relationship is said to have impinged, e.g., Book V, Title I, Chapter VI, Sec. 46(b)(5) of the Revised Administrative Code, Articles 334 and 349 of the Revised Penal Code, and even the provisions on marriage and family in the Civil Code and Family Code, all clearly demonstrate the State's need to protect these secular interests.

Be that as it may, the free exercise of religion is specifically articulated as one of the fundamental rights in our Constitution. It is a fundamental right that enjoys a preferred position in the hierarchy of rights — "the most inalienable and sacred of human rights," in the words of Jefferson. Hence, it is not enough to contend that the state's interest is important, because our Constitution itself holds the right to religious freedom sacred. The State must articulate in specific terms the state interest involved in preventing the exemption, which must be compelling, for only the gravest abuses, endangering paramount interests can limit the fundamental right to religious freedom. To rule otherwise would be to emasculate the Free Exercise Clause as a source of right by itself.

Thus, it is not the State's broad interest in "protecting the institutions of marriage and the family," or even "in the sound administration of justice" that must be weighed against respondent's claim, but the State's narrow interest in refusing to make an exception for the cohabitation which respondent's faith finds moral**. In other words, the government must do more than assert the objectives at risk if exemption is given; it must precisely show how and to what extent those objectives will be undermined if exemptions are granted.** This, the Solicitor General failed to do.

As previously discussed, our Constitution adheres to the benevolent neutrality approach that gives room for accommodation of religious exercises as required by the Free Exercise Clause. Thus, in arguing that respondent should be held administratively liable as the arrangement she had was "illegal per se because, by universally recognized standards, it is inherently or by its very nature bad, improper, immoral and contrary to good conscience," the Solicitor General failed to appreciate that benevolent neutrality could allow for accommodation of morality based on religion, provided it does not offend compelling state interests.

Finally, even assuming that the OSG has proved a compelling state interest, it has to further demonstrate that the state has used the least intrusive means possible so that the free exercise is not infringed any more than necessary to achieve the legitimate goal of the state, i.e., it has chosen a way to achieve its legitimate state end that imposes as little as possible on religious liberties. Again, the Solicitor General utterly failed to prove this element of the test. Other than the two documents offered as cited above which established the sincerity of respondent's religious belief and the fact that the agreement was an internal arrangement within respondent's congregation, no iota of evidence was offered. In fact, the records are bereft of even a feeble attempt to procure any such evidence to show that the means the state adopted in pursuing this compelling interest is the least restrictive to respondent's religious freedom.

Thus, we find that in this particular case and under these distinct circumstances, respondent Escritor's conjugal arrangement cannot be penalized as she has made out a case for exemption from the law based on her fundamental right to freedom of religion. The Court recognizes that state interests must be upheld in order that freedoms - including religious freedom - may be enjoyed. In the area of religious exercise as a preferred freedom, however, man stands accountable to an authority higher than the state, and so the state interest sought to be upheld must be so compelling that its violation will erode the very fabric of the state that will also protect the freedom. In the absence of a showing that such state interest exists, man must be allowed to subscribe to the Infinite.

MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD (MTRCB), *Petitioner*, *v.* **ABS-CBN BROADCASTING CORPORATION and LOREN LEGARDA,** *Respondents*.
G.R. NO. 15528, THIRD DIVISION, January 17, 2005, SANDOVAL-GUTIERREZ, *J.*

Respondents claim that the showing of "The Inside Story" is protected by the constitutional provision on freedom of speech and of the press. However, there has been no declaration at all by the framers of the Constitution that freedom of expression and of the press ***has a preferred status****.*
If this Court, in Iglesia ni Cristo, did not exempt religious programs from the jurisdiction and review power of petitioner MTRCB, with more reason, there is no justification to exempt therefrom "The Inside Story" which, according to respondents, is protected by the constitutional provision on freedom of expression and of the press, a freedom bearing ***no preferred status****.*

Talk shows on a given issue are not considered newsreels*." Clearly, the "The Inside Story" cannot be considered a newsreel. It is more of a public affairs program which is described as a variety of news*

treatment; a cross between pure television news and news-related commentaries, analysis and/or exchange of opinions. ***Certainly, such kind of program is within petitioner's review power****.*

FACTS:
Respondent ABS-CBN aired "*Prosti-tuition*," an episode of the television (TV) program "*The Inside Story*" produced and hosted by respondent Legarda. It depicted female students moonlighting as prostitutes to enable them to pay for their tuition fees. In the course of the program, student prostitutes, pimps, customers, and some faculty members were interviewed. The Philippine Women's University (PWU) was named as the school of some of the students involved and the facade of PWU Building at Taft Avenue, Manila conspicuously served as the background of the episode.
The showing of "*The Inside Story*" caused uproar in the PWU community. Dr. Leticia P. de Guzman, Chancellor and Trustee of the PWU, and the PWU Parents and Teachers Association filed letter-complaints[3] with petitioner MTRCB. Both complainants alleged that the episode besmirched the name of the PWU and resulted in the harassment of some of its female students.

Acting on the letter-complaints, the MTRCB Legal Counsel initiated a formal complaint with the MTRCB Investigating Committee. The said Committee ordered the respondents to pay the sum of **TWENTY THOUSAND PESOS (₱20,000.00)** for non-submission of the program, subject of this case for review and approval of the MTRCB.

On appeal, the Chairman of the MTRCB, issued a Decision affirming the above ruling. Respondents filed a motion for reconsideration but was denied in a Resolution.

Respondents then filed a special civil action for *certiorari* with the RTC. The RTC rendered a Decision in favor of respondents. Petitioner filed a motion for reconsideration but it was denied.
Hence, this Petition for Review on *Certiorari* .

ISSUE:
Whether or not the MTRCB has the power or authority to review the "*The Inside Story*" prior to its exhibition or broadcast by television. (YES)

RULING:
*…[O]*ur task is to decide whether or not petitioner has the power to review the television program "*The Inside Story*." The task is not Herculean because it merely resurrects this Court *En Banc's* ruling in *Iglesia ni Cristo v. Court of Appeals*. There, the *Iglesia ni Cristo* sought exception from petitioner's review power contending that the term "*television programs*" under Sec. 3 (b) does not include "*religious programs*" which are protected under Section 5, Article III of the Constitution. This Court, through Justice Reynato Puno, categorically ruled that P.D. No. 1986 gives petitioner "the power to screen, review and examine "*all television programs,"* emphasizing the phrase "*all television programs*," x x x

Settled is the rule in statutory construction that where the law does not make any exception, courts may not except something therefrom, unless there is compelling reason apparent in the law to justify it. *Ubi lex non distinguit nec distinguere debemos*. Thus, when the law says "*all television programs*," the word "*all*" covers all television programs, whether religious, public affairs, news documentary, etc. The principle assumes that the legislative body made no qualification in the use of general word or expression.

It then follows that since "*The Inside Story*" is a television program, it is within the jurisdiction of the MTRCB over which it has power of review.

Here, respondents sought exemption from the coverage of the term "*television programs*" on the ground that the "*The Inside Story*" is a "public affairs program, news documentary and socio-political editorial" protected under Section 4, Article III of the Constitution. Albeit, respondent's basis is not freedom of religion, as in *Iglesia ni Cristo*, but freedom of expression and of the press, the ruling in *Iglesia ni Cristo* applies squarely to the instant issue. It is significant to note that in *Iglesia ni Cristo*, this Court declared that freedom of religion has been accorded a *preferred status* by the framers of our fundamental laws, past and present, "designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs x x x." Yet despite the fact that freedom of religion has been accorded a *preferred status*, still this Court, did not exempt the *Iglesia ni Cristo's* religious program from petitioner's review power.

Respondents claim that the showing of "*The Inside Story*" is protected by the constitutional provision on freedom of speech and of the press. However, there has been no declaration at all by the framers of the Constitution that freedom of expression and of the press **has a preferred status**.

If this Court, in *Iglesia ni Cristo*, did not exempt religious programs from the jurisdiction and review power of petitioner MTRCB, with more reason, there is no justification to exempt therefrom "*The Inside Story*" which, according to respondents, is protected by the constitutional provision on freedom of expression and of the press, a freedom bearing **no preferred status**.

The only exceptions from the MTRCB's power of review are those expressly mentioned in Section 7 of P. D. No. 1986, such as **(1)** television programs imprinted or exhibited by the Philippine Government and/or its departments and agencies, and **(2)** newsreels. x x x
Still in a desperate attempt to be exempted, respondents contend that the "*The Inside Story*" falls under the category of newsreels.

Their contention is unpersuasive.

xxx **Apparently, newsreels are straight presentation of events. They are depiction of "actualities**." Correspondingly, the MTRCB Rules and Regulations implementing P. D. No. 1986 define newsreels as "**straight news reporting, as distinguished from news analyses, commentaries and opinions. Talk shows on a given issue are not considered newsreels**." Clearly, the "*The Inside Story*" cannot be considered a newsreel. It is more of a public affairs program which is described as a variety of news treatment; a cross between pure television news and news-related commentaries, analysis and/or exchange of opinions. **Certainly, such kind of program is within petitioner's review power**.

It bears stressing that the sole issue here is whether petitioner MTRCB has authority to review "*The Inside Story*." Clearly, we are not called upon to determine whether petitioner violated Section 4, Article III (Bill of Rights) of the Constitution providing that no law shall be passed abridging the freedom of speech, of oppression or the press. Petitioner did not disapprove or ban the showing of the program. Neither did it cancel respondents' permit. Respondents were merely penalized for their failure to submit to petitioner "*The Inside Story*" for its review and approval. Therefore, we need not resolve whether certain provisions of P. D. No. 1986 and the MTRCB Rules and Regulations specified by respondents contravene the Constitution.

Consequently, we cannot sustain the RTC's ruling that Sections 3 (c) (d), 4, 7 and 11 of P. D. No. 1986 and Sections 3, 7 and 28 (a) of the MTRCB Rules and Regulations are unconstitutional.

LESTER GERARD PACKINGHAM, PETITIONER v. NORTH CAROLINA
582 U.S. ___ , No. 15-1194, 19 June 2017, KENNEDY, J.

Like other inventions heralded as advances in human progress, the Internet and social media will be exploited by the criminal mind. It is also clear that "sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people," and that a legislature "may pass valid laws to protect children" and other sexual assault victims. ***However, the assertion of a valid governmental interest "cannot, in every context, be insulated from all constitutional protections."***

With one broad stroke, North Carolina bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge. ***Foreclosing access to social media altogether thus prevents users from engaging in the legitimate exercise of First Amendment rights.***

The State has not met its burden to show that this sweeping law is necessary or legitimate to serve its purpose of keeping convicted sex offenders away from vulnerable victims. No case or holding of this Court has approved of a statute as broad in its reach.

FACTS:
In 2002, petitioner Lester Gerard Packingham—then a 21-year-old college student—had sex with a 13-year-old girl. He pleaded guilty to taking indecent liberties with a child. Because this crime qualifies as "an offense against a minor," petitioner was required to register as a sex offender—a status that can endure for 30 years or more. As a registered sex offender, petitioner was barred under §14–202.5 from gaining access to commercial social networking sites. In 2010, a state court dismissed a traffic ticket against petitioner. In response, he logged on to Facebook.com and posted the following statement on his personal profile: "Man God is Good! How about I got so much favor they dismissed the ticket before court even started? No fine, no court cost, no nothing spent. . . . . .Praise be to GOD, WOW! Thanks JESUS!"

At the time, a member of the Durham Police Department was investigating registered sex offenders who were thought to be violating §14–202.5. The officer noticed that a "'J.R. Gerrard'" had posted the statement quoted above.

In 2008, North Carolina law makes it a felony for a registered sex offender "to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages." According to sources cited to the Court, the State has prosecuted over 1,000 people for violating this law, including petitioner, who was indicted after posting a statement on his personal Facebook profile about a positive experience in traffic court. The trial court denied petitioner's motion to dismiss the indictment on the ground that the law violated the First Amendment. He was convicted and given a suspended prison sentence. On appeal, the State Court of Appeals struck down §14–202.5 on First Amendment grounds, but the North Carolina Supreme Court reversed.

The Court granted certiorari.

ISSUE:
Whether that law is permissible under the First Amendment's Free Speech Clause, applicable to the States under the Due Process Clause of the Fourteenth Amendment. (NO)

RULING:
The North Carolina statute impermissibly restricts lawful speech in violation of the First Amendment. A fundamental First Amendment principle is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. Today, one of the most important places to exchange views is cyberspace, particularly social media, which offers "relatively unlimited, low-cost capacity for communication of all kinds," Reno v. American Civil Liberties Union, 521 U. S. 844, 870, to users engaged in a wide array of protected First Amendment activity on any number of diverse topics. The Internet's forces and directions are so new, so protean, and so far reaching that courts must be conscious that what they say today may be obsolete tomorrow. Here, in one of the first cases the Court has taken to address the relationship between the First Amendment and the modern Internet, the Court must exercise extreme caution before suggesting that the First Amendment provides scant protection for access to vast networks in that medium.

This background informs the analysis of the statute at issue. Even assuming that the statute is content neutral and thus subject to intermediate scrutiny, the provision is not narrowly tailored to serve a significant governmental interest."

Like other inventions heralded as advances in human progress, the Internet and social media will be exploited by the criminal mind. It is also clear that "sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people," and that a legislature "may pass valid laws to protect children" and other sexual assault victims. **However, the assertion of a valid governmental interest "cannot, in every context, be insulated from all constitutional protections."**

Two assumptions are made in resolving this case. First, while the Court need not decide the statute's precise scope, it is enough to assume that the law applies to commonplace social networking sites like Facebook, LinkedIn, and Twitter. Second, the Court assumes that the First Amendment permits a State to enact specific, narrowly-tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contacting a minor or using a website to gather information about a minor.

Even with these assumptions, the statute here enacts a prohibition unprecedented in the scope of First Amendment speech it burdens. Social media allows users to gain access to information and communicate with one another on any subject that might come to mind. With one broad stroke, North Carolina bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge. **Foreclosing access to social media altogether thus prevents users from engaging in the legitimate exercise of First Amendment rights.** Even convicted criminals—and in some instances especially convicted criminals—might receive legitimate benefits from these means for access to the world of ideas, particularly if they seek to reform and to pursue lawful and rewarding lives.

The State has not met its burden to show that this sweeping law is necessary or legitimate to serve its purpose of keeping convicted sex offenders away from vulnerable victims. No case or holding of this Court has approved of a statute as broad in its reach.xxx

EMILIO M. R. OSMEÑA and PABLO P. GARCIA, petitioners, vs.
THE COMMISSION ON ELECTIONS, respondent.
G.R. No. 132231,EN BANC, March 31, 1998, MENDOZA, *J.*

Here, x x x there is no total ban on political ads, much less restriction on the content of the speech. Given the fact that print space and airtime can be controlled or dominated by rich candidates to the disadvantage of poor candidates, there is a substantial or legitimate governmental interest justifying exercise of the regulatory power of the COMELEC under Art. IX-C, §4 of the Constitution. x x x

The provisions in question involve no suppression of political ads. They only prohibit the sale or donation of print space and airtime to candidates but require the COMELEC instead to procure space and time in the mass media for allocation, free of charge, to the candidates. In effect, during the election period, the COMELEC takes over the advertising page of newspapers or the commercial time of radio and TV stations and allocates these to the candidates.

FACTS:
This is a petition for prohibition, seeking a reexamination of the validity of §11(b) of R.A. No. 6646, the Electoral Reforms Law of 1987, which prohibits mass media from selling or giving free of charge print space or air time for campaign or other political purposes, except to the Commission on Elections. Petitioners are candidates for public office in the forthcoming elections. Petitioner Emilio M. R. Osmeña is candidate for President of the Philippines, while petitioner Pablo P. Garcia is governor of Cebu Province, seeking reelection. They contend that events after the ruling in *National Press Club v. Commission on Elections*" have called into question the validity of the very premises of that [decision]."

NPC v. COMELEC upheld the validity of §11(b) of R.A. No. 6646 against claims that it abridged freedom of speech and of the press. In urging a reexamination of that ruling, petitioners claim that experience in the last five years since the decision in that case has shown the "undesirable effects" of the law because "the ban on political advertising has not only failed to level the playing field, [but] actually worked to the grave disadvantage of the poor candidate[s]" by depriving them of a medium which they can afford to pay while their more affluent rivals can always resort to other means of reaching voters like airplanes, boats, rallies, parades, and handbills.

No empirical data have been presented by petitioners to back up their claim, however. Argumentation is made at the theoretical and not the practical level.

Indeed, petitioners do not complain of any harm suffered as a result of the operation of the law. They do not complain that they have in any way been disadvantaged as a result of the ban on media advertising. Their contention that, contrary to the holding in NPC, §11(b) works to the disadvantage of candidates who do not have enough resources to wage a campaign outside of mass media can hardly apply to them. Their financial ability to sustain a long drawn-out campaign, using means other than the mass media to communicate with voters, cannot be doubted. If at all, it is candidates like intervenor Roger Panotes, who is running for mayor of Daet, Camarines Norte, who can complain against §11(b) of R.A. No. 6646. But Panotes is for the law which, he says, has "to some extent, reduced the advantages of moneyed politicians and parties over their rivals who are similarly situated as ROGER PANOTES." He claims that "the elimination of this substantial advantage is one reason why ROGER PANOTES and others similarly situated have dared to seek an elective position this coming elections."

What petitioners seek is not the adjudication of a case but simply the holding of an academic exercise. And since a majority of the present Court is unpersuaded that its decision in NPC is founded in error, it will suffice for present purposes simply to reaffirm the ruling in that case. *Stare decisis et non quieta movere*.

ISSUE:
Whether or not the case of *NPC v. COMELEC, which* upheld the validity of §11(b) of R.A. No. 6646 against claims that it abridged freedom of speech and of the press, is founded in error. (NO)

RULING:
[W]e have undertaken to revisit the decision in *NPC v. COMELEC* in order to clarify our own understanding of its reach and set forth a theory of freedom of speech.
I. No Ad Ban, Only a Substitution of COMELEC Space and COMELEC Time for the Advertising Page and Commercials in Mass Media

The term political "ad ban," when used to describe §11(b) of R.A. No. 6646, is misleading, for even as §11(b) prohibits the sale or donation of print space and air time to political candidates, it mandates the COMELEC to procure and itself allocate to the candidates space and time in the media. There is no suppression of political ads but only a regulation of the time and manner of advertising. x x x
Here, x x x there is no total ban on political ads, much less restriction on the content of the speech. Given the fact that print space and air time can be controlled or dominated by rich candidates to the disadvantage of poor candidates, there is a substantial or legitimate governmental interest justifying exercise of the regulatory power of the COMELEC under Art. IX-C, §4 of the Constitution. x x x
The provisions in question involve no suppression of political ads. They only prohibit the sale or donation of print space and air time to candidates but require the COMELEC instead to procure space and time in the mass media for allocation, free of charge, to the candidates. In effect, during the election period, the COMELEC takes over the advertising page of newspapers or the commercial time of radio and TV stations and allocates these to the candidates. x x x

… [T]he State can prohibit campaigning *outside* a certain period as well as campaigning *within* a certain place. For unlimited expenditure for political advertising in the mass media skews the political process and subverts democratic self-government. What is bad is if the law prohibits campaigning by certain candidates because of the views expressed in the ad. Content regulation cannot be done in the absence of any compelling reason.

II. Law Narrowly Drawn to Fit Regulatory Purpose
The main purpose of §11(b) is regulatory. Any restriction on speech is only incidental, and it is no more than is necessary to achieve its purpose of promoting equality of opportunity in the use of mass media for political advertising. The restriction on speech, as pointed out in NPC, is limited both as to time and as to scope. x x x

The premise of this argument is that §11(b) imposes a ban on media political advertising. What petitioners seem to miss is that the prohibition against paid or sponsored political advertising is only half of the regulatory framework, the other half being the mandate of the COMELEC to procure print space and air time so that these can be allocated free of charge to the candidates.

SOCIAL WEATHER STATIONS, INCORPORATED and KAMAHALAN PUBLISHING CORPORATION, doing business as MANILA STANDARD *v.* COMMISSION ON ELECTIONS

G.R. No. 147571, May 5, 2001, Mendoza,*J.*

Under the O'Brien test, even if a law furthers an important or substantial governmental interest, it should be invalidated if such governmental interest is not unrelated to the suppression of free expression.

Applying the O'Brien Test in this case, the Court ruled that Section 5.4 is invalid, because (1) it imposes a prior restraint on the freedom of expression, (2) it is a direct and total suppression of a category of expression even though such suppression is only for a limited period, and (3) the governmental interest sought to be promoted can be achieved by means other than the suppression of freedom of expression.

FACTS:
Comelec sought to enforce Sec. 5.4 of RA 9006 (Fair Election Act), which provides: "Surveys affecting national candidates shall not be published fifteen (15) days before an election and surveys affecting local candidates shall not be published seven (7) days before an election." Petitioners brought an action for prohibition to enjoin Comelec from enforcing such provision, claiming that it constitutes a prior restraint on the exercise of freedom of speech without any clear and present danger to justify such restraints.

ISSUE:
Whether or not Sec. 5.4 of RA 9006 constitutes an unconstitutional abridgment of freedom of speech, expression and the press. (YES)
RULING:
The Court applied the O'Brien Test under, under which even if a law furthers an important or substantial governmental interest, it should be invalidated if such governmental interest is not unrelated to the suppression of free expression. Moreover, even if the purpose is unrelated to the suppression of free speech, the law should nevertheless be invalidated if the restriction on freedom of expression is greater than is necessary to achieve the governmental purpose in question.

Applying the O'Brien Test in this case, the Court ruled that Section 5.4 is invalid, because (1) it imposes a prior restraint on the freedom of expression, (2) it is a direct and total suppression of a category of expression even though such suppression is only for a limited period, and (3) the governmental interest sought to be promoted can be achieved by means other than the suppression of freedom of expression. Contrary to the claim of the Solicitor General, the prohibition imposed by Section 5.4 cannot be justified on the ground that it is only for a limited period and is only incidental. The prohibition may be for a limited time, but the curtailment of the right of expression is direct, absolute, and substantial. It constitutes a total suppression of a category of speech and is not made less so because it is only for a period of fifteen (15) days immediately before a national election and seven (7) days immediately before a local election.

SOCIAL WEATHER STATIONS, INC. AND PULSE ASIA, INC., *v.* COMMISSION ON ELECTIONS
G.R. No. 208062, April 07, 2015, J. Leonen

The names of those who commission or pay for election surveys, including subscribers of survey firms, must be disclosed pursuant to Sec. 5.2(a) of the Fair Election Act. This requirement is a valid regulation in the exercise of police power and effects the constitutional policy of guaranteeing equal access to opportunities for public service. The nature of the speech involved, as well as the Fair Election Act's purpose of ensuring political equality, calls into operation the equality-based approach to weighing liberty to express vis-a-vis equality of opportunities. In an equality-based approach, politically

disadvantaged speech prevails over regulation but regulation promoting political equality prevails over speech.

FACTS:
Comelec Resolution No. 9674 (Resolution) directed SWS, Pulse Asia and other survey firms of similar circumstanceto submit to Comelec the names of all commissioners and payors of all surveys published from Feb. 12, 2013 to April 23, 2013, including those of their "subscribers." SWS and Pulse Asia assailed the Resolution as having been issued *ultra vires*. They contended that the Resolution is in excess of what the Fair Election Act requires.

ISSUE:
Whether or not the rights of petitioners to free speech will be curtailed by the requirement to submit the names of their subscribers. (NO)

RULING:
The names of those who commission or pay for election surveys, including subscribers of survey firms, must be disclosed pursuant to Sec. 5.2(a) of the Fair Election Act. This requirement is a valid regulation in the exercise of police power and effects the constitutional policy of guaranteeing equal access to opportunities for public service. The nature of the speech involved, as well as the Fair Election Act's purpose of ensuring political equality, calls into operation the equality-based approach to weighing *liberty* to express vis-a-vis *equality* of opportunities. In an equality-based approach, politically disadvantaged speech prevails over regulation but regulation promoting political equality prevails over speech.

Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates or who do not speak as members of a political party if they are not candidates, only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only. The regulation (a) should be provided by law, (b) reasonable, (c) narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression, and (d) demonstrably the least restrictive means to achieve that object. The regulation must only be with respect to the time, place, and manner of the rendition of the message. In no situation may the speech be prohibited or censored on the basis of its content. For this purpose, it will not matter whether the speech is made with or on private property.

SWS and Pulse Asia's free speech rights must be weighed in relation to the Fair Election Act's purpose of ensuring political equality and, therefore, the speech of others who want to participate unencumbered in our political spaces. On one hand, there are petitioners' right to publish and publications which are attended by the interests of those who can employ published data to their partisan ends. On the other, there is regulation that may affect equality and, thus, strengthen the capacity of those on society's margins or those who grope for resources to engage in the democratic dialogue. The latter fosters the ideals of deliberative democracy. It does not trump the former; rather, it provides the environment where the survey group's free speech rights should reside.

GMA NETWORK, INC. *v.* COMMISSION ON ELECTIONS
G.R. No. 205357, September 2, 2014, PERALTA, *J.*

Section 9 (a) of Comelec Resolution No. 9615, with its adoption of the "aggregate-based" airtime limits unreasonably restricts the guaranteed freedom of speech and of the press. It is unreasonable and

*arbitrary as it unduly restricts and constrains the ability of candidates and political parties to reach out and communicate with the people. Here, the adverted reason for imposing the "aggregate-based" airtime limits—leveling the playing field—**does not constitute a compelling state interest** which would justify such a substantial restriction on the freedom of candidates and political parties to communicate their ideas, philosophies, platforms and programs of government.*

FACTS:
Petitioners GMA Network, Incorporated (GMA), ABS-CBN Corporation (ABS-CBN), ABC Development Corporation (ABC), et. al. are owners/operators of radio and television networks in the Philippines, while petitioner Kapisanan ng mga Brodkaster ng Pilipinas (KBP) is the national organization of broadcasting companies in the Philippines representing operators of radio and television stations and said stations themselves. They sent their respective letters to Comelec questioning the constitutionality of Section 9 (a) of Comelec Resolution No. 9615 (Resolution) limiting the broadcast and radio advertisements of candidates and political parties for national election positions to an aggregate total of one hundred twenty (120) minutes and one hundred eighty (180) minutes, respectively. During the previous May 2007 and 2010, Comelec issued Resolutions implementing and interpreting the airtime limitations, to mean that a candidate is entitled to the aforestated number of minutes "per station." For the May 2013 elections, however, respondent Comelec promulgated Resolution No. 9615, changing the interpretation of said candidates' and political parties' airtime limitation for political campaigns or advertisements from a "per station" basis, to a "total aggregate" basis.

Petitioners contend that such restrictive regulation on allowable broadcast time violates freedom of the press, impairs the people's right to suffrage as well as their right to information relative to the exercise of their right to choose who to elect during the forth coming elections. However, Comelec contended that its issuance of the assailed Resolution is pursuant to Section 4, Article IX (C) of the Constitution which vests on the Comelec the power to supervise and regulate, during election periods, transportation and other public utilities, as well as mass media

ISSUE:
Whether or not Section 9 (a) of the assailed Comelec resolution violates freedom of speech and of the press. (YES)

RULING:
Section 9 (a) of Comelec Resolution No. 9615, with its adoption of the "aggregate-based" airtime limits unreasonably restricts the guaranteed freedom of speech and of the press. It is unreasonable and arbitrary as it unduly restricts and constrains the ability of candidates and political parties to reach out and communicate with the people. Here, the adverted reason for imposing the "aggregate-based" airtime limits—leveling the playing field—**does not constitute a compelling state interest** which would justify such a substantial restriction on the freedom of candidates and political parties to communicate their ideas, philosophies, platforms and programs of government. And, this is specially so in the absence of a clear-cut basis for the imposition of such a prohibitive measure. In this particular instance, what the Comelec has done is analogous to letting a bird fly after one has clipped its wings. It is also particularly unreasonable and whimsical to adopt the aggregate-based time limits on broadcast time when we consider that the Philippines is not only composed of so many islands. There are also a lot of languages and dialects spoken among the citizens across the country. Accordingly, for a national candidate to really reach out to as many of the electorates as possible, then it might also be necessary that he conveys his message through his advertisements in languages and dialects that the people may more readily understand and relate to. To add all of these airtimes in

different dialects would greatly hamper the ability of such candidate to express himself - a form of suppression of his political speech.

THE DIOCESE OF BACOLOD, REPRESENTED BY THE MOST REV. BISHOP VICENTE M. NAVARRA and THE BISHOP HIMSELF IN HIS PERSONAL CAPACITY *v.* COMMISSION ON ELECTIONS AND THE ELECTION OFFICER OF BACOLOD CITY, ATTY. MAVIL V. MAJARUCON
G.R. No. 205728, January 21, 2015, LEONEN, *J.*

While the tarpaulin may influence the success or failure of the named candidates and political parties, this does not necessarily mean it is election propaganda. The tarpaulin was not paid for or posted "in return for consideration" by any candidate, political party, or party-list group. Personal opinions, unlike sponsored messages, are not covered by the second paragraph of Sec. 1(4) of Comelec Resolution No. 9615 defining "political advertisement" or "election propaganda."

FACTS:
Bishop Vicente M. Navarra posted two (2) tarpaulins, each with approximately six feet (6') by ten feet (10') in size, for public viewing within the vicinity of San Sebastian Cathedral of Bacolod. One of the tarpaulins stated: "Conscience Vote" and lists of candidates as either "(Anti-RH) Team Buhay" with a check mark or "(Pro-RH) Team Patay" with an "X" mark.The electoral candidates were classified according to their vote on the adoption of the RH Law. Those who voted for the passing of the law were classified as comprising "Team Patay," while those who voted against it form "Team Buhay. When the said tarpaulin came to the attention of Comelec, it sent a letter to Bishop Navarra ordering the immediate removal of the tarpaulin because it was in violation of Comelec Resolution No. 9615 as the lawful size for election propaganda material is only two feet (2') by three feet (3'); otherwise, it will be constrained to file an election offense against the latter.

Concerned about the imminent threat of prosecution for their exercise of free speech, Bishop Navarra, et al. prayed for the Court to declare the questioned orders of Comelec as unconstitutional, and permanently restraining the latter from enforcing them after notice and hearing.

ISSUE:
Whether or not the controversial tarpaulin is an election propaganda which the Comelec has the power to regulate; otherwise its prohibition shall constitute an abridgment of freedom of speech. (NO)

RULING:
It is not election propaganda.While the tarpaulin may influence the success or failure of the named candidates and political parties, this does not necessarily mean it is election propaganda. The tarpaulin was not paid for or posted "in return for consideration" by any candidate, political party, or party-list group. Personal opinions, unlike sponsored messages, are not covered by the second paragraph of Sec. 1(4) of Comelec Resolution No. 9615 defining "political advertisement" or "election propaganda."

The caricature, though not agreeable to some, is still protected speech. That petitioners chose to categorize them as purveyors of death or of life on the basis of a single issue—and a complex piece of legislation at that—can easily be interpreted as an attempt to stereotype the candidates and party-list organizations. Not all may agree to the way their thoughts were expressed, as in fact there are other Catholic dioceses that chose not to follow the example of petitioners. But, the Bill of Rights enumerated in our Constitution is an enumeration of our fundamental liberties. It is not a detailed

code that prescribes good conduct. It provides space for all to be guided by their conscience, not only in the act that they do to others but also in judgment of the acts of others.

1-UNITED TRANSPORT KOALISYON (1-UTAK) *v.* COMMISSION ON ELECTIONS
G.R. No. 206020, April 14, 2015, J. Reyes

The "captive-audience" doctrine recognizes that a listener has a right not to be exposed to an unwanted message in circumstances in which the communication cannot be avoided.Thus, a government regulation based on the captive-audience doctrine may not be justified if the supposed "captive audience" may avoid exposure to the otherwise intrusive speech. The prohibition under Section 7(g) items (5) and (6) of Resolution No. 9615 is not justified under the captive-audience doctrine; the commuters are not forced or compelled to read the election campaign materials posted on PUVs and transport terminals. Nor are they incapable of declining to receive the messages contained in the posted election campaign materials since they may simply avert their eyes if they find the same unbearably intrusive.

FACTS:
In 2013, Comelec promulgated Resolution No. 9615, which provided for the rules implementing R.A. No. 9006 in connection with the May 13, 2013 national and local elections and subsequent elections. One of the sections enumerates the prohibited forms of election propaganda including the posting of any election campaign or propaganda material in public utility vehicles such as buses, jeepneys, trains, taxi cabs, ferries, pedicabs and tricycles, whether motorized or not, and within the premises of public transport terminals, such as bus terminals, airports, seaports, docks, piers, train stations, and the like.

ISSUE:
Whether or not the provisions which prohibit the posting of any election campaign or propaganda material in PUVs and public transport terminals are constitutional. (NO)

RULING:
Such prohibitions unduly infringe on the fundamental right of the people to freedom of speech. Central to the prohibition is the freedom of individuals, *i.e.*, the owners of PUVs and private transport terminals, to express their preference, through the posting of election campaign material in their property, and convince others to agree with them. The prohibition constitutes a clear prior restraint on the right to free expression of the owners of PUVs and transport terminals. As a result of the prohibition, owners of PUVs and transport terminals are forcefully and effectively inhibited from expressing their preferences under the pain of indictment for an election offense and the revocation of their franchise or permit to operate.

A content-neutral regulation, *i.e.*, which is merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well-defined standards,is constitutionally permissible, even if it restricts the right to free speech, provided that the following requisites concur: *first,* the government regulation is within the constitutional power of the Government; *second,* it furthers an important or substantial governmental interest; *third,* the governmental interest is unrelated to the suppression of free expression; and *fourth*, the incidental restriction on freedom of expression is no greater than is essential to the furtherance of that interest.Section 7(g) items (5) and (6) of Resolution No. 9615 are content-neutral regulations since they merely control the place where

election campaign materials may be posted. However, the prohibition is still repugnant to the free speech clause as it fails to satisfy all of the requisites for a valid content-neutral regulation.

The captive-audience doctrine states that when a listener cannot, as a practical matter, escape from intrusive speech, the speech can be restricted.The "captive-audience" doctrine recognizes that a listener has a right not to be exposed to an unwanted message in circumstances in which the communication cannot be avoided.Thus, a government regulation based on the captive-audience doctrine may not be justified if the supposed "captive audience" may avoid exposure to the otherwise intrusive speech. The prohibition under Section 7(g) items (5) and (6) of Resolution No. 9615 is not justified under the captive-audience doctrine; the commuters are not forced or compelled to read the election campaign materials posted on PUVs and transport terminals. Nor are they incapable of declining to receive the messages contained in the posted election campaign materials since they may simply avert their eyes if they find the same unbearably intrusive.

RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. *v.* AMERICAN CIVIL LIBERTIES UNION ET AL.
521 U. S. 844, June 26, 1997, Stevens, J.

A law may violate the First Amendment if it is so overly broad that it curtails protected as well as unprotected speech.

In this case, Justice Stevens found that the Act was overly broad and vague under the First Amendment. Since it was a content-specific law, a high level of scrutiny was appropriate. He observed that there would be less restrictive alternatives to meet the government's objective, and he felt that the Act as currently written prohibited a large amount of speech that would be protected under the First Amendment.

While children have a right to be protected from explicit content, adults also have a right to access that content. Stevens argued that adults cannot be restricted to transmit and receive only those forms of speech that would be appropriate for children.

FACTS:
The federal government enacted the Communications Decency Act (CDA) to prevent children from gaining access to explicit material online. This law made it illegal to knowingly send obscene or indecent messages, or anything that depicts sexual or excretory activities or organs in an offensive way as determined by contemporary community standards, to someone under 18. The Court previously had upheld similarly written provisions. Its decision in Ginsberg v. New York (1968) held that material that is potentially harmful for children can be regulated, even if it is not obscene. FCC v. Pacifica Foundation (1978) allowed the FCC to impose administrative sanctions on broadcast media that aired content containing expletives when children could hear it. In Renton v. Playtime Theatres, Inc. (1986), the Court ruled that municipalities could use zoning ordinances to keep adult movie theaters out of residential areas.

ISSUE:
Whether or not the CDA's "indecent transmission" and "patently offensive display" provisions abridge "the freedom of speech" protected by the First Amendment. (YES)

RULING:
The CDA's "indecent transmission" and "patently offensive display" provisions abridge "the freedom of speech" protected by the First Amendment. x x x

A close look at the precedents relied on by the Government raises, rather than relieves, doubts about the CDA's constitutionality. The CDA differs from the various laws and orders upheld in those cases in many ways, including that it does not allow parents to consent to their children's use of restricted materials; is not limited to commercial transactions; fails to provide any definition of "indecent" and omits any requirement that "patently offensive" material lack socially redeeming value; neither limits its broad categorical prohibitions to particular times nor bases them on an evaluation by an agency familiar with the medium's unique characteristics; is punitive; applies to a medium that, unlike radio, receives full First Amendment protection; and cannot be properly analyzed as a form of time, place, and manner regulation because it is a content-based blanket restriction on speech**. These precedents, then, do not require the Court to uphold the CDA and are fully consistent with the application of the most stringent review of its provisions**. x x x

Regardless of whether the CDA is so vague that it violates the Fifth Amendment, the many ambiguities concerning the scope of its coverage render it problematic for First Amendment purposes. **For instance, its use of the undefined terms "indecent" and "patently offensive" will provoke uncertainty among speakers about how the two standards relate to each other and just what they mean.The vagueness of such a content-based regulation, coupled with its increased deterrent effect as a criminal statute, raise special First Amendment concerns because of its obvious chilling effect on free speech.** Contrary to the Government's argument, the CDA is not saved from vagueness by the fact that its "patently offensive" standard repeats the second part of the three-prong obscenity test set forth in *Miller* v. *California,* 413 U. S. 15,24. **The second *Miller* prong reduces the inherent vagueness of its own "patently offensive" term by requiring that the proscribed material be "specifically defined by the applicable state law." In addition, the *Miller* definition applies only to "sexual conduct," whereas the CDA prohibition extends also to "excretory activities" and "organs" of both a sexual and excretory nature.** Each of *Miller's* other two prongs also critically limits the uncertain sweep of the obscenity definition. Just because a definition including three limitations is not vague, it does not follow that one of those limitations, standing alone, is not vague. The CDA's vagueness undermines the likelihood that it has been carefully tailored to the congressional goal of protecting minors from potentially harmful materials.

The CDA lacks the precision that the First Amendment requires when a statute regulates the content of speech. **Although the Government has an interest in protecting children from potentially harmful material, the CDA pursues that interest by suppressing a large amount of speech that adults have a constitutional right to send and receive. Its breadth is wholly unprecedented.The CDA's burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the Act's legitimate purposes.** The Government has not proved otherwise. On the other hand, the District Court found that currently available *user-based* software suggests that a reasonably effective method by which *parents* can prevent their children from accessing material which the *parents* believe is inappropriate will soon be widely available. Moreover, the arguments in this Court referred to possible alternatives such as requiring that indecent material be "tagged" to facilitate parental control, making exceptions for messages with artistic or educational value, providing some tolerance for parental choice, and regulating some portions of the Internet differently from others. **Particularly in the light of the**

absence of any detailed congressional findings, or even hearings addressing the CDA's special problems, the Court is persuaded that the CDA is not narrowly tailored.

RE: LETTER OF THE UP LAW FACULTY ENTITLED "RESTORING INTEGRITY: A STATEMENT BY THE FACULTY OF THE UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW ON THE ALLEGATIONS OF PLAGIARISM AND MISREPRESENTATION IN THE SUPREME COURT"
A.M. No. 10-10-4-SC, March 08, 2011, J. Leonardo-De Castro

The right to criticize, which is guaranteed by the freedom of speech and of expression in the Bill of Rights of the Constitution, must be exercised responsibly, for every right carries with it a corresponding obligation. Freedom is not freedom from responsibility, but freedom with responsibility. Moreover, the accusatory and vilifying nature of certain portions of the Statement exceeded the limits of fair comment and cannot be deemed as protected free speech. Freedom of speech and of expression, like all constitutional freedoms, is not absolute and that freedom of expression needs on occasion to be adjusted to and accommodated with the requirements of equally important public interest. One of these fundamental public interests is the ***maintenance of the integrity and orderly functioning of the administration of justice.***

FACTS:
Thirty-seven (37) UP law professorwere directed to show cause why they should not be disciplined as members of the Bar for violation of specific provisions of the Code of Professional Responsibility. The letter written by such professors made known to the Supreme Court their view that the plagiarism committed in the case of *Vinuya v. Executive Secretary* is unacceptable, unethical and in breach of the high standards of moral conduct and judicial and professional competence expected of the Supreme Court, and that in light of the extremely serious and far-reaching nature of the dishonesty and to save the honor and dignity of the Supreme Court as an institution, it is necessary for the *ponente* of *Vinuya v. Executive Secretary,* Justice Del Castillo, to resign his position, without prejudice to any other sanctions that the Court may consider appropriate. The professors alleged that with the issuance of the Show Cause Resolution, the Supreme Court has interfered with respondents' constitutionally mandated right to free speech and expression. They contended that the Supreme Court is denying them the right to criticize the Court's decisions and actions, and that it seeks to "silence" respondent law professors' dissenting view on what they characterize as a "legitimate public issue."

ISSUE:
Whether or not the Show Cause Resolution deny the professors their freedom of expression. (NO)

RULING:
A reading of the Show Cause Resolution will plainly show that it was neither the fact that respondents had criticized a decision of the Court nor that they had charged one of its members of plagiarism that motivated the said Resolution. It was the manner of the criticism and the contumacious language by which respondents, who are not parties nor counsels in the *Vinuya* case, have expressed their opinion in favor of the petitioners in the said pending case for the "proper disposition" and consideration of the Court that gave rise to said Resolution. The Show Cause Resolution made no objections to the portions of the Restoring Integrity Statement that respondents claimed to be "constructive" but only asked respondents to explain those portions of the said Statement that by no stretch of the imagination could be considered as fair or constructive. The insult to the members of the Court was aggravated by imputations of deliberately delaying the resolution of the said case, its dismissal

on the basis of "polluted sources," the Court's alleged indifference to the cause of petitioners in the *Vinuya* case, as well as the supposed alarming lack of concern of the members of the Court for even the most basic values of decency and respect.

The right to criticize, which is guaranteed by the freedom of speech and of expression in the Bill of Rights of the Constitution, must be exercised responsibly, for every right carries with it a corresponding obligation. Freedom is not freedom from responsibility, but freedom with responsibility. Moreover, the accusatory and vilifying nature of certain portions of the Statement exceeded the limits of fair comment and cannot be deemed as protected free speech. Freedom of speech and of expression, like all constitutional freedoms, is not absolute and that freedom of expression needs on occasion to be adjusted to and accommodated with the requirements of equally important public interest. One of these fundamental public interests is **the maintenance of the integrity and orderly functioning of the administration of justice.**There is no antinomy between free expression and the integrity of the system of administering justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community.

PHILIP SIGFRID A. FORTUN, Petitioner, vs.
PRIMA JESUSA B. QUINSAYAS, MA. GEMMA OQUENDO, DENNIS AYON, NENITA OQUENDO, ESMAEL MANGUDADATU, JOSE PAVIA, MELINDA QUINTOS DE JESUS, REYNALDO HULOG, REDMOND BATARIO, MALOU MANGAHAS, DANILO GOZO, GMA NETWORK INC., through its new editors Raffy Jimenez and Victor Sollorano, SOPHIA DEDACE, ABS-CBN CORPORATION, through the Head of its News Group, Maria Ressa, CECILIA VICTORIA OREÑA-DRILON, PHILIPPINE DAILY INQUIRER, INC. represented by its Editor-in-Chief Letty Jimenez Magsanoc, TETCH TORRES, PHILIPPINE STAR represented by its Editor-in-Chief Isaac Belmonte, and EDU PUNAY, Respondents.
G.R. No. 194578, SECOND DIVISION, February 13, 2013, CARPIO, J.

Since the disbarment complaint is a matter of public interest, legitimate media had a right to publish such fact under freedom of the press. The Court also recognizes that respondent media groups and personalities merely acted on a news lead they received when they reported the filing of the disbarment complaint.

The distribution by Atty. Quinsayas to the media of the disbarment complaint, by itself, is not sufficient to absolve the media from responsibility for violating the confidentiality rule. However, since petitioner is a public figure or has become a public figure because he is representing a matter of public concern, and because the event itself that led to the filing of the disbarment case against petitioner is a matter of public concern, the media has the right to report the filing of the disbarment case as legitimate news.

FACTS:
On 23 November 2009, a convoy of seven vehicles carrying the relatives of then Maguindanao vice-mayor Esmael "Toto" Mangudadatu, as well as lawyers and journalists were accosted by a group of about 100 armed men at a checkpoint in Sitio Malating, Ampatuan town. The group was taken hostage. The gruesome aftermath of the hostage-taking was later discovered and shocked the world. These gruesome killings became known as the Maguindanao Massacre. A total of 57 victims were killed, 30 of them journalists.

Subsequently, criminal cases for Murder were filed and raffled to the RTC. Petitioner is the counsel for Datu Andal Ampatuan, Jr. (Ampatuan, Jr.), the principal accused in the murder cases.
In November 2010, Atty. Quinsayas, et al. filed a disbarment complaint against petitioner before this Court, docketed as Bar Matter No. A.C. 8827. The disbarment case is still pending.

Petitioner alleged that Atty. Quinsayas, et al. actively disseminated the details of the disbarment complaint against him in violation of Rule 139-B of the Rules of Court on the confidential nature of disbarment proceedings. Petitioner further alleged that respondent media groups and personalities conspired with Atty. Quinsayas, et al. by publishing the confidential materials on their respective media platforms. Petitioner pointed out that Drilon discussed the disbarment complaint with Atty. Quinsayas in a television program viewed nationwide.

Petitioner alleged that the public circulation of the disbarment complaint against him exposed this Court and its investigators to outside influence and public interference. Petitioner alleged that opinion writers wrote about and commented on the disbarment complaint which opened his professional and personal reputation to attack.

ISSUE:
Whether respondents violated the confidentiality rule in disbarment proceedings, warranting a finding of guilt for indirect contempt of court. (THE ANSWER MUST BE QUALIFIED)

RULING:
The Court recognizes that "publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech." **As a general rule, disbarment proceedings are confidential in nature until their final resolution and the final decision of this Court. In this case, however, the filing of a disbarment complaint against petitioner is itself a matter of public concern considering that it arose from the Maguindanao Massacre case.** The interest of the public is not on petitioner himself but primarily on his involvement and participation as defense counsel in the Maguindanao Massacre case. Indeed, the allegations in the disbarment complaint relate to petitioners supposed actions involving the Maguindanao Massacre case. xxx
Since the disbarment complaint is a matter of public interest, legitimate media had a right to publish such fact under freedom of the press. The Court also recognizes that respondent media groups and personalities merely acted on a news lead they received when they reported the filing of the disbarment complaint.

The distribution by Atty. Quinsayas to the media of the disbarment complaint, by itself, is not sufficient to absolve the media from responsibility for violating the confidentiality rule. However, since petitioner is a public figure or has become a public figure because he is representing a matter of public concern, and because the event itself that led to the filing of the disbarment case against petitioner is a matter of public concern, the media has the right to report the filing of the disbarment case as legitimate news. It would have been different if the disbarment case against petitioner was about a private matter as the media would then be bound to respect the confidentiality provision of disbarment proceedings under Section 18, Rule 139-B of the Rules of Court.

Section 18, Rule 139-B of the Rules of Court is not a restriction on the freedom of the press. If there is a legitimate public interest, media is not prohibited from making a fair, true, and accurate news report of a disbarment complaint. In the absence of a legitimate public interest in a disbarment complaint, members of the media must preserve the confidentiality of disbarment

proceedings during its pendency. Disciplinary proceedings against lawyers must still remain private and confidential until their final determination. Only the final order of this Court shall be published like its decisions in other cases. Xxx

Indeed, petitioner failed to prove that, except for Atty. Quinsayas, the other respondents, namely De Jesus, Hulog, Batario, Mangahas, and even Gozo, who did not file his separate comment, had a hand in the dissemination and publication of the disbarment complaint against him. It would appear that only Atty. Quinsayas was responsible for the distribution of copies of the disbarment complaint. xxx Atty. Quinsayas is bound by Section 18, Rule 139-B of the Rules of Court both as a complainant in the disbarment case against petitioner and as a lawyer. As a lawyer and an officer of the Court, Atty. Quinsayas is familiar with the confidential nature of disbarment proceedings. However, instead of preserving its confidentiality, Atty. Quinsayas disseminated copies of the disbarment complaint against petitioner to members of the media which act constitutes contempt of court. In *Relativo v. De Leon,* the Court ruled that the premature disclosure by publication of the filing and pendency of disbarment proceedings is a violation of the confidentiality rule. In that case, Atty. Relativo, the complainant in a disbarment case, caused the publication in newspapers of statements regarding the filing and pendency of the disbarment proceedings. The Court found him guilty of contempt.
Indirect contempt against a Regional Trial Court or a court of equivalent or higher rank is punishable by a fine not exceeding P30,000 or imprisonment not exceeding six months or both. Atty. Quinsayas acted wrongly in setting aside the confidentiality rule which every lawyer and member of the legal profession should know. Hence, we deem it proper to impose on her a fine of Twenty Thousand Pesos (P20,000).

PHARMACEUTICAL AND HEALTH CARE ASSOCIATION OF THE PHILIPPINES *v.* HEALTH SECRETARY FRANCISCO T. DUQUE III, et al.
G.R. NO. 173034, October 09, 2007, J. Austria-Martinez

The advertising and promotion of breastmilk substitutes properly falls within the ambit of the term commercial speech.

The absolute ban on advertising is unduly restrictive and is more than necessary to further the avowed governmental interest of promoting the health of infants and young children. It ought to be self-evident, for instance, that the advertisement of such products which are strictly informative cuts too deep on free speech. The laudable concern of the respondent for the promotion of the health of infants and young children cannot justify the absolute, overarching ban.

FACTS:
Executive Order No. 51 (Milk Code) was issued by President Corazon Aquino. One of the preambular clauses of the Milk Code states that the law seeks to give effect to Article 11 of the International Code of Marketing of Breastmilk Substitutes (ICMBS), a code adopted by the World Health Assembly (WHA) in 1981. From 1982 to 2006, the WHA adopted several Resolutions to the effect that breastfeeding should be supported, promoted and protected, hence, it should be ensured that nutrition and health claims are not permitted for breastmilk substitutes. The DOH issued the assailed RIRR which was to take effect on July 7, 2006. Petitioner, representing its members that are manufacturers of breastmilk substitutes, filed the present Petition for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order (TRO) or Writ of Preliminary Injunction.

ISSUE:

Whether or not the absolute ban on the advertising and promotion of breastmilk substitutes found under Sections 4(f) and 11 of A.O. No. 2006-0012 (RIRR) should be struck down. (YES)

RULING:
The advertising and promotion of breastmilk substitutes properly falls within the ambit of the term commercial speech-that is, speech that proposes an economic transaction. This is a separate category of speech which is not accorded the same level of protection as that given to other constitutionally guaranteed forms of expression but is nonetheless entitled to protection. An American jurisprudence provided a four-part analysis for evaluating the validity of regulations of commercial speech: (1) The commercial speech must concern lawful acitivity and not be misleading; (2) The asserted governmental interest must be substantial. If both of these requirements are met, it must next be determined whether the state regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Applying the test in the case at bar, first, it is not claimed that the advertisement at issue is an unlawful activity or is inaccurate. In fact, both the International Code and the Milk Code recognize and concede that there are instances when breastmilk substitutes may be necessary. Second, there is no doubt that the government interest in providing safe and adequate nutrition to infants and young children is substantial. This interest is expressed as a national policy in no less than the fundamental law of our land and is also embodied in various international agreements where we are a party. Third, there is an undeniable causal relationship between the interest of government and the advertising ban. Unquestionably, breastfeeding is the tested and proven method of providing optimal nutrition to infants and young children. The rationale of the absolute ban is to prevent mothers from succumbing to suggestive and misleading marketing and propaganda which may be contained in advertisements of breastmilk substitutes.Fourth, prescinding from these predicates, the critical inquiry is: whether the complete suppression of the advertisement and promotion of breastmilk substitutes is no more than necessary to further the interest of the state in the protection and promotion of the right to health of infants and young children. The absolute ban on advertising is unduly restrictive and is more than necessary to further the avowed governmental interest of promoting the health of infants and young children. It ought to be self-evident, for instance, that the advertisement of such products which are strictly informative cuts too deep on free speech. The laudable concern of the respondent for the promotion of the health of infants and young children cannot justify the absolute, overarching ban.

PLEASANT GROVE CITY, UTAH, et al. *v.* SUMMUM
555 U.S. 460, February 25, 2009, Alito, J.

Placing a monument in a public park is government speech, so it is not controlled by the First Amendment.

Here, the Park's monuments clearly represent government speech. Although many were donated in completed form by private entities, the City has "effectively controlled" their messages by exercising "final approval authority" over their selection.

FACTS:
Pioneer Park (Park), a public park in petitioner Pleasant Grove City (City), has at least 11 permanent, privately donated displays, including a Ten Commandments monument. In rejecting the request of respondent Summum, a religious organization, to erect a monument containing the Seven Aphorisms of Summum, the City explained that it limited Park monuments to those either directly related to the

City's history or donated by groups with longstanding community ties. After the City put that policy and other criteria into writing, respondent renewed its request, but did not describe the monument's historical significance or respondent's connection to the community. The City rejected the request, and respondent filed suit, claiming that the City and petitioner officials had violated the First Amendment's Free Speech Clause by accepting the Ten Commandments monument but rejecting respondent's proposed monument. The District Court denied respondent's preliminary injunction request, but the Tenth Circuit reversed. Noting that it had previously found the Ten Commandments monument to be private rather than government speech and that public parks have traditionally been regarded as public forums, the court held that, because the exclusion of the monument was unlikely to survive strict scrutiny, the City was required to erect it immediately.

ISSUE:
Whether or not the City and petitioner officials had violated the First Amendment's Free Speech Clause by accepting the Ten Commandments monument but rejecting respondent's proposed monument. (NO)

RULING:
Permanent monuments displayed on public property typically represent government speech. Governments have long used monuments to speak to the public. Thus, a government-commissioned and government-financed monument placed on public land constitutes government speech. So, too, are privately financed and donated monuments that the government accepts for public display on government land. While government entities regularly accept privately funded or donated monuments, their general practice has been one of selective receptivity. Because city parks play an important role in defining the identity that a city projects to its residents and the outside world, cities take care in accepting donated monuments, selecting those that portray what the government decisionmakers view as appropriate for the place in question, based on esthetics, history, and local culture. The accepted monuments are meant to convey and have the effect of conveying a government message and thus constitute government speech.

Here, the Park's monuments clearly represent government speech. Although many were donated in completed form by private entities, the City has "effectively controlled" their messages by exercising "final approval authority" over their selection. The City has selected monuments that present the image that the City wishes to project to Park visitors; it has taken ownership of most of the monuments in the Park, including the Ten Commandments monument; and it has now expressly set out selection criteria. xxx

"[P]ublic forum principles … are out of place in the context of this case. The forum doctrine applies where a government property or program is capable of accommodating a large number of public speakers without defeating the essential function of the land or program, but public parks can accommodate only a limited number of permanent monuments. If governments must maintain viewpoint neutrality in selecting donated monuments, they must either prepare for cluttered parks or face pressure to remove longstanding and cherished monuments. Were public parks considered traditional public forums for the purpose of erecting privately donated monuments, most parks would have little choice but to refuse all such donations. And if forum analysis would lead almost inexorably to closing of the forum, forum analysis is out of place.

WALKER, CHAIRMAN, TEXAS DEPARTMENT OF MOTOR VEHICLES BOARD, ET AL. v. TEXAS DIVISION, SONS OF CONFEDERATE VETERANS, INC., ET AL.

576 U.S. ___, No. 14-144, 18 June2015, Breyer, J.

The State exercises final authority over the messages that may be conveyed by its specialty plates, it takes ownership of each specialty plate design, and it has traditionally used its plates for government speech…

The State exercises final authority over the messages that may be conveyed by its specialty plates, it takes ownership of each specialty plate design, and it has traditionally used its plates for government speech.These features of Texas specialty plates militate against a determination that Texas has created a public forum. Finally, the plates are not a nonpublic forum, where the "government is . . . a proprietor, managing its internal operations." The fact that private parties take part in the design and propagation of a message does not extinguish the governmental nature of the message or transform the government's role into that of a mere forum provider. Nor does Texas's requirement that vehicle owners pay annual fees for specialty plates mean that the plates are a forum for private speech. And this case does not resemble other nonpublic forum cases.

FACTS:
Texas offers automobile owners a choice between general-issue and specialty license plates. Those who want the State to issue a particular specialty plate may propose a plate design, comprising a slogan, a graphic, or both. If the Texas Department of Motor Vehicles Board approves the design, the State will make it available for display on vehicles registered in Texas. Here, the Texas Division of the Sons of Confederate Veterans and its officers (collectively SCV) filed suit against the Chairman and members of the Board (collectively Board), arguing that the Board's rejection of SCV's proposal for a specialty plate design featuring a Confederate battle flag violated the Free Speech Clause. The District Court entered judgment for the Board, but the Fifth Circuit reversed, holding that Texas's specialty license plate designs are private speech and that the Board engaged in constitutionally forbidden viewpoint discrimination when it refused to approve SCV's design.

ISSUE:
Whether or not the Board's rejection of SCV's proposal for a specialty plate design featuring a Confederate battle flag violated the Free Speech Clause. (NO)

RULING:
Texas's specialty license plate designs constitute government speech, and thus Texas was entitled to refuse to issue plates featuring SCV's proposed design**. When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.** A government is generally entitled to promote a program, espouse a policy, or take a position. Were the Free Speech Clause interpreted otherwise, "it is not easy to imagine how government would function." That is not to say that a government's ability to express itself is without restriction. Constitutional and statutory provisions outside of the Free Speech Clause may limit government speech, and the Free Speech Clause itself may constrain the government's speech if, for example, the government seeks to compel private persons to convey the government's speech. This Court's precedents regarding government speech provide the appropriate framework through which to approach the case. xxx

Forum analysis, which applies to government restrictions on purely private speech occurring on government property is not appropriate when the State is speaking on its own behalf. The parties agree that Texas's specialty license plates **are not a traditional public forum.** Further, Texas's policies and the nature of its license plates indicate that the State did not intend its specialty plates to serve as either a designated public forum—where "government property . . . not traditionally . . . a

public forum is intentionally opened up for that purpose,"—or a limited public forum—where a government "reserves a forum for certain groups or for the discussion of certain topics,"

The State exercises final authority over the messages that may be conveyed by its specialty plates, it takes ownership of each specialty plate design, and it has traditionally used its plates for government speech. These features of Texas specialty plates militate against a determination that Texas has created a public forum. Finally, the plates are not a nonpublic forum, where the "government is . . . a proprietor, managing its internal operations." **The fact that private parties take part in the design and propagation of a message does not extinguish the governmental nature of the message or transform the government's role into that of a mere forum provider.** Nor does Texas's requirement that vehicle owners pay annual fees for specialty plates mean that the plates are a forum for private speech. And this case does not resemble other nonpublic forum cases. xxx

G. FREEDOM OF RELIGION

RENATO V. PERALTA, PETITIONER, VS. PHILIPPINE POSTAL CORPORATION (PHILPOST), REPRESENTED BY MA. JOSEFINA MDELACRUZ IN HER CAPACITY AS POSTMASTER GENERAL AND CHIEF EXECUTIVE OFFICER, THE BOARD OF DIRECTORS OF PHILPOST, REPRESENTED BY ITS CHAIRMAN CESAR N. SARINO, RESPONDENTS.
G.R. No. 223395, EN BANC, December 04, 2018, TIJAM, J.

There is no quibbling that as to the 50,000 stamps ordered, printed and issued to INC, the same did not violate the Constitutional prohibitions separating State matters from religion.
It is plain, that the costs for the printing and issuance of the aforesaid 50,000 stamps were all paid for by INC. Any perceived use of government property, machines or otherwise, is de minimis and certainly do not amount to a sponsorship of a specific religion.
The centennial celebration of the Iglesia ni Cristo, though arguably involves a religious institution, has a secular aspect… It is simply an acknowledgment of INC's existence for a hundred years. It does not necessarily equate to the State sponsoring the INC.

Furthermore, adopting the stance of benevolent neutrality, this Court deems the design of the INC commemorative stamp constitutionally permissible. As correctly held by the CA, there is an intrinsic historical value in the fact that Felix Y Manalo is a Filipino and that the INC is a Filipino institution.

FACTS:
On May 10, 2014, respondent Philippine Postal Corporation (PhilPost) issued a stamp commemorating Iglesia ni Cristo's (INC's) Centennial Celebration. The design of the stamp showed a photo of INC founder, the late Felix Y. Manalo (Manalo) with the designation on the left side containing the words "*Felix Y. Manalo, 1886-1963 First Executive Minister of Iglesia ni Cristo*", with the Central Temple of the religious group at the background. At the right side of Manalo's photo is the INC's centennial logo which contained a torch enclosed by a two concentric circles containing the words "*IGLESIA Nl CRISTO CENTENNIAL 1914-2014*".

On June 16, 2014, petitioner Renato V. Peralta (petitioner) filed a complaint for injunction with the RTC-Manila assailing the constitutionality of the printing, issuance and distribution of the INC commemorative centennial stamps, allegedly paid for by respondent PhilPost using public funds.

In his complaint, petitioner alleged that the printing and issuance of the INC commemorative stamp involved disbursement of public funds and violated Section 29(2) of Article VI of the 1987 Constitution. He argued that respondents' act of releasing the said stamps was unconstitutional because it was tantamount to sponsorship of a religious activity; it violated the separation of the Church and the State; and the non-establishment of religion clause. Thus, petitioner prayed that respondents be restrained from issuing and distributing the INC commemorative stamps.

RTC: denied the petitioner's application for the issuance of a preliminary injunction.
CA: affirmed the RTC decision. The Motion for reconsideration was also denied.

Hence, the present petition.

ISSUE:
Whether or not the printing of the INC commemorative stamp did not amount to a violation of the non-establishment of religion clause. (NO)

RULING:
I. The printing of the INC commemorative stamp did not amount to a violation of the non-establishment of religion clause.

There is no quibbling that as to the 50,000 stamps ordered, printed and issued to INC, the same did not violate the Constitutional prohibitions separating State matters from religion.
It is plain, that the costs for the printing and issuance of the aforesaid 50,000 stamps were all paid for by INC. Any perceived use of government property, machines or otherwise, is *de minimis* and certainly do not amount to a sponsorship of a specific religion.

Also, We see no violation of the Constitutional prohibition on establishment of religion, insofar as the remaining 1,150,000 pieces of stamps printed and distributed by PhilPost.
First, there is no law mandating anyone to avail of the INC commemorative stamps, nor is there any law purporting to require anyone to adopt the INC's teachings. Arguably, while then President Aquino issued Proclamation No. 815, s. 2014, authorizing the issuance of the INC commemorative stamp, the same did not contain any legal mandate endorsing or requiring people to conform to the INC's teachings. xxx

The centennial celebration of the Iglesia ni Cristo, though arguably involves a religious institution, has a secular aspect. In the old case of *Garces, et al. vs. Hon. Estenzo, etc., et al.*, the Court made a similar pronouncement as to a controversy involving the purchase of a barangay council of a statue of San Vicente Ferrer:

The wooden image was purchased in connection with the celebration of the barrio fiesta honoring the patron saint, San Vicente Ferrer, and not for the purpose of favoring any religion nor interfering with religious matters or the religious beliefs of the barrio residents. One of the highlights of the fiesta was the mass. Consequently, the image of the patron saint had to be placed in the church when the mass was celebrated.

If there is nothing unconstitutional or illegal in holding a fiesta and having a patron saint for the barrio, then any activity intended to facilitate the worship of the patron saint (such as the acquisition and display of his image) cannot be branded as illegal.

As noted in the first resolution, the barrio fiesta **is a socio-religious affair. Its celebration is an ingrained tradition in rural communities. The fiesta relieves the monotony and drudgery of the lives of the masses.**

The barangay council designated a layman as the custodian of the wooden image in order to forestall any suspicion that it is favoring the Catholic church. A more practical reason for that arrangement would be that the image, if placed in a layman's custody, could easily be made available to any family desiring to borrow the image in connection with prayers and novenas.(Emphasis ours)

As to the use of the government's machinery in printing and distribution of the 1.2 million stamps, this Court does not find that the same amounted to sponsorship of INC as a religion considering that the same is no different from other stamps issued by PhilPost acknowledging persons and events of significance to the country, such as those printed celebrating National Artists, past Philippine Presidents, and events of organizations, religious or not. We note that PhilPost has also issued stamps for the Catholic Church such as those featuring Heritage Churches,15thInternational Eucharistic Congress, and Pope Francis. In the past, the Bureau of Posts also printed stamps celebrating 300 years of Islam in the 1980s. Likewise, our review of the records does not disclose that PhilPost has exclusively or primarily used its resources to benefit INC, to the prejudice of other religions. Finally, other than this single transaction with INC, this Court did not find PhilPost to have been unnecessarily involved in INC's affairs.

Based on the foregoing, this Court is not convinced that PhilPost has actually used its resources to endorse, nor encourage Filipinos to join INC or observe the latter's doctrines. On the contrary, this Court agrees with respondents that the printing of the INC commemorative stamp was endeavored merely as part of PhilPost's ordinary business.

The printing of the INC commemorative stamp is no different. It is simply an acknowledgment of INC's existence for a hundred years. It does not necessarily equate to the State sponsoring the INC.

II. The design of the INC commemorative stamp is merely an acknowledgment of the historical and cultural contribution of INC to the Philippine society.

Adopting the stance of benevolent neutrality, this Court deems the design of the INC commemorative stamp constitutionally permissible. As correctly held by the CA, there is an intrinsic historical value in the fact that Felix Y Manalo is a Filipino and that the INC is a Filipino institution. It explained, thus:

xxx Both matters, "culture" and "national development," are secular in character. Further, it cannot be denied that the part of the late Felix Y. Manalo's cultural and historical contribution is his founding of the INC. This circumstance, however, does not immediately put it in a religious light if it is only the historical fact of establishment which is being mentioned, *i.e.*, adding nothing more and without regard to its doctrine and teachings. x x x

The purpose in setting up the marker is **essentially to recognize the distinctive contribution of the late Felix Manalo to the culture of the Philippines, rather than to commemorate his founding and leadership of the *Iglesia ni Cristo***. The practical reality that greater benefit may be derived by members of the *Iglesia ni Cristo* than by most others could well be true but such a peculiar advantage still remains to be merely incidental and secondary in nature. Indeed, that only a few

would actually benefit from the expropriation of property does not necessarily diminish the essence and character of public use. (Emphasis ours)

To debunk petitioner's claim that Section 29, Article VI of the 1987 Constitutionwas violated, We agree with PhilPost's view that:

xxx the printing and issuance of the assailed commemorative stamps were not inspired by any sectarian denomination. The stamps were neither for the benefit of INC, nor money derived from their sale inured to its benefit. xxx the stamps delivered to INC were not free of charge and whatever income derived from the sale to INC and of the excess to the postal clients were not given to INC, but went to the coffers of PhilPost.

All told, therefore, the Court finds no reason or basis to grant the petition. In refusing to declare unconstitutional the INC's commemorative stamp, this Court is merely applying jurisprudentially sanctioned policy of benevolent neutrality. To end, it bears to emphasize that the Constitution establishes separation of the Church and the State, and not separation of religion and state

ALEJANDRO ESTRADA, Complainant, vs.
SOLEDAD S. ESCRITOR, Respondent.
A.M. No. P-02-1651, EN BANC, June 22, 2006, PUNO, *J.*

Be that as it may, the free exercise of religion is specifically articulated as one of the fundamental rights in our Constitution. It is a fundamental right that enjoys a preferred position in the hierarchy of rights — "the most inalienable and sacred of human rights," in the words of Jefferson. Hence, it is not enough to contend that the state's interest is important, because our Constitution itself holds the right to religious freedom sacred. The State must articulate in specific terms the state interest involved in preventing the exemption, which must be compelling, for only the gravest abuses, endangering paramount interests can limit the fundamental right to religious freedom. To rule otherwise would be to emasculate the Free Exercise Clause as a source of right by itself.

Thus, it is not the State's broad interest in "protecting the institutions of marriage and the family," or even "in the sound administration of justice" that must be weighed against respondent's claim, but the State's narrow interest in refusing to make an exception for the cohabitation which respondent's faith finds moral. ***In other words, the government must do more than assert the objectives at risk if exemption is given; it must precisely show how and to what extent those objectives will be undermined if exemptions are granted.*** *This, the Solicitor General failed to do.*

FACTS:
Complainant Alejandro Estrada requested Judge Jose F. Caoibes, Jr., presiding judge RTC - Las Piñas City, for an investigation of respondent Soledad Escritor, court interpreter in said court, for living with a man not her husband, and having borne a child within this live-in arrangement. Estrada believes that Escritor is committing an immoral act that tarnishes the image of the court, thus she should not be allowed to remain employed therein as it might appear that the court condones her act. Consequently, respondent was charged with committing "disgraceful and immoral conduct" under Book V, Title I, Chapter VI, Sec. 46(b)(5) of the Revised Administrative Code.

Respondent Escritor testified that when she entered the judiciary in 1999, she was already a widow, her husband having died in 1998. She admitted that she started living with Luciano Quilapio, Jr. without the benefit of marriage more than twenty years ago when her husband was still alive but

living with another woman. She also admitted that she and Quilapio have a son. But as a member of the religious sect known as the Jehovah's Witnesses and the Watch Tower and Bible Tract Society, respondent asserted that their conjugal arrangement is in conformity with their religious beliefs and has the approval of her congregation. In fact, after ten years of living together, she executed on July 28, 1991, a "Declaration of Pledging Faithfulness."

In the Court's decision for the same case dated August 4, 2003 it held that it is the compelling state interest test, the strictest test, which must be applied.
Notwithstanding the above rulings, the Court could not, at that time, rule definitively on the ultimate issue of whether respondent was to be held administratively liable for there was need to give the State the opportunity to adduce evidence that it has a more "compelling interest" to defeat the claim of the respondent to religious freedom. Thus, in the decision dated August 4, 2003, we remanded the complaint to the Office of the Court Administrator (OCA), and ordered the Office of the Solicitor General (OSG) to intervene in the case so it can determine whether the 3 steps of the "compelling state interest test" are satisfied.

ISSUE:
Whether respondent should be found guilty of the administrative charge of "disgraceful and immoral conduct. (NO)

RULING:
The OSG failed to satisfy the "compelling state interest" test which involves 3 processes:

(a) examine the sincerity and centrality of respondent's claimed religious belief and practice;

(b) present evidence on the state's "compelling interest" to override respondent's religious belief and practice; and

(c) show that the means the state adopts in pursuing its interest is the least restrictive to respondent's religious freedom.
There has never been any question that the state has an interest in protecting the institutions of marriage and the family, or even in the sound administration of justice. Indeed, the provisions by which respondent's relationship is said to have impinged, e.g., Book V, Title I, Chapter VI, Sec. 46(b)(5) of the Revised Administrative Code, Articles 334 and 349 of the Revised Penal Code, and even the provisions on marriage and family in the Civil Code and Family Code, all clearly demonstrate the State's need to protect these secular interests.

Be that as it may, the free exercise of religion is specifically articulated as one of the fundamental rights in our Constitution. It is a fundamental right that enjoys a preferred position in the hierarchy of rights — "the most inalienable and sacred of human rights," in the words of Jefferson. Hence, it is not enough to contend that the state's interest is important, because our Constitution itself holds the right to religious freedom sacred. The State must articulate in specific terms the state interest involved in preventing the exemption, which must be compelling, for only the gravest abuses, endangering paramount interests can limit the fundamental right to religious freedom. To rule otherwise would be to emasculate the Free Exercise Clause as a source of right by itself.

Thus, it is not the State's broad interest in "protecting the institutions of marriage and the family," or even "in the sound administration of justice" that must be weighed against respondent's claim, but the State's narrow interest in refusing to make an exception for the cohabitation which respondent's

faith finds moral**. In other words, the government must do more than assert the objectives at risk if exemption is given; it must precisely show how and to what extent those objectives will be undermined if exemptions are granted.** This, the Solicitor General failed to do.

As previously discussed, our Constitution adheres to the benevolent neutrality approach that gives room for accommodation of religious exercises as required by the Free Exercise Clause. Thus, in arguing that respondent should be held administratively liable as the arrangement she had was "illegal per se because, by universally recognized standards, it is inherently or by its very nature bad, improper, immoral and contrary to good conscience," the Solicitor General failed to appreciate that benevolent neutrality could allow for accommodation of morality based on religion, provided it does not offend compelling state interests.

Finally, even assuming that the OSG has proved a compelling state interest, it has to further demonstrate that the state has used the least intrusive means possible so that the free exercise is not infringed any more than necessary to achieve the legitimate goal of the state, i.e., it has chosen a way to achieve its legitimate state end that imposes as little as possible on religious liberties. Again, the Solicitor General utterly failed to prove this element of the test. Other than the two documents offered as cited above which established the sincerity of respondent's religious belief and the fact that the agreement was an internal arrangement within respondent's congregation, no iota of evidence was offered. In fact, the records are bereft of even a feeble attempt to procure any such evidence to show that the means the state adopted in pursuing this compelling interest is the least restrictive to respondent's religious freedom.

Thus, we find that in this particular case and under these distinct circumstances, respondent Escritor's conjugal arrangement cannot be penalized as she has made out a case for exemption from the law based on her fundamental right to freedom of religion. The Court recognizes that state interests must be upheld in order that freedoms - including religious freedom - may be enjoyed. In the area of religious exercise as a preferred freedom, however, man stands accountable to an authority higher than the state, and so the state interest sought to be upheld must be so compelling that its violation will erode the very fabric of the state that will also protect the freedom. In the absence of a showing that such state interest exists, man must be allowed to subscribe to the Infinite.

ANG LADLAD LGBT PARTY REPRESENTED HEREIN BY ITS CHAIR, DANTON REMOTO *v.* COMMISSION ON ELECTIONS
G.R. No. 190582, April 08, 2010, J. Del Castillo

Clearly, governmental reliance on religious justification is inconsistent with this policy of neutrality. Hence, it was grave violation of the non-establishment clause for the Comelec to utilize the Bible and the Koran to justify the exclusion of Ang Ladlad.Rather than relying on religious belief, the legitimacy of the Assailed Resolutions should depend, instead, on whether the Comelec is able to advance some justification for its rulings beyond mere conformity to religious doctrine. A law could be religious or Kantian or Aquinian or utilitarian in its deepest roots, but it must have an articulable and discernible secular purpose and justification to pass scrutiny of the religion clauses.

FACTS:
Ang Ladlad is an organization composed of men and women who identify themselves as lesbians, gays, bisexuals, or trans-gendered individuals (LGBTs). *Ang Ladlad* applied for registration with the Comelec but it was was denied on the ground that the LGBT sector is neither enumerated in the Constitution and RA 7941, nor is it associated with or related to any of the sectors in the enumeration.

Comelec also ruled that *Ang Ladlad* tolerates immorality which offends religious beliefs. Furthermore, Comelec held that should it grant the petition, it will be exposing our youth to an environment that does not conform to the teachings of our faith. *Ang Ladlad* argued that the denial of accreditation, insofar as it justified the exclusion by using religious dogma, violated the constitutional guarantees against the establishment of religion.

ISSUE: Whether or not religion is a valid basis for the refusal of Comelec to accept *Ang Ladlad's* Petition for Registration (NO)

RULING:
Our Constitution provides in Article III, Section 5 that no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. At bottom, what our non-establishment clause calls for is "government neutrality in religious matters." Clearly, governmental reliance on religious justification is inconsistent with this policy of neutrality. Hence, it was grave violation of the non-establishment clause for the Comelec to utilize the Bible and the Koran to justify the exclusion of *Ang Ladlad*.Rather than relying on religious belief, the legitimacy of the Assailed Resolutions should depend, instead, on whether the Comelec is able to advance some justification for its rulings beyond mere conformity to religious doctrine. A law could be religious or Kantian or Aquinian or utilitarian in its deepest roots, but it must have an articulable and discernible secular purpose and justification to pass scrutiny of the religion clauses. Recognizing the religious nature of the Filipinos and the elevating influence of religion in society, however, the Philippine constitution's religion clauses prescribe not a strict but a benevolent neutrality. Benevolent neutrality recognizes that government must pursue its secular goals and interests but at the same time strive to uphold religious liberty to the greatest extent possible within flexible constitutional limits. Thus, although the morality contemplated by
laws is secular, benevolent neutrality could allow for accommodation of morality based on religion, provided it does not offend compelling state interests.

Re: Letter of Tony Q. Valenciano Holding of Religious Rituals at the Hall of Justice Building in Quezon City
A.M. No. 10-4-19-SC, EN BANC, March 7, 2017, MENDOZA, J.

The aforecited constitutional provision "does not inhibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general.

FACTS:
This controversy originated from a series of letters written by Valenciano and addressed to the Chief Justice Reynato S. Puno reporting that the basement of the Hall of Justice of Quezon City had been converted into a Roman Catholic Chapel, complete with Catholic religious icons and other instrument for religious activities. He believe that such practice violated the constitutional provisions on the separation of Church and State and the constitutional prohibition against the appropriation of public money and property for the benefit of a sect, church, denomination, or any other system of religion. He further averred that the holding of masses at the basement of Hall of Justice showed that it tended to favor the Catholic litigants; that the rehearsals and other activities caused great disturbance to the employees; and that court functions are affected due to the masses that is being held from 12:00 to 1:15 in the afternoon.

ISSUE:

Whether or not the holding of masses at the basement of the Quezon City Hall of Justice violates the constitutional principle of separation of Church and State as well as the constitutional prohibition against appropriation of public money or property for the benefit of any sect, church, denomination, sectarian institution or system of religion.

RULING:
The holding of Religious Rituals in the Hall of Justice does not amount to the union of Church and State. The 1987 constitution provides that the separation of Church and the State shall be inviolable; if further provides that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. Allowing religion to flourish is not contrary to the principle of separation of Church and state. In fact, these two principles are in perfect harmony with each other. The Roman Catholic express their worship through the holy mass and to stop these would be tantamount to repressing the right to the free exercise of their religion.

It is also the view of the Supreme Court that the holding of Catholic masses at the basement of the Quezon City Hall of Justice is not a case of establishment but merely accommodation wherein the government recognize the reality that some measures may not be imposed on a certain portion of the population for the reason that these measures are contrary to their religious beliefs. As long as it can be shown that the exercise of the right does not impair the public welfare, the attempt of the State to regulate or prohibit such right would be an unconstitutional encroachment.

No appropriation of Public money or property for the benefit of any Church. The constitution provides that "No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support any sect, church, denomination, sectarian institution, or system of religion, or any priest, preacher, minister or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or any penal institution, or government orphanage or leprosarium.

The prohibition contemplates a scenario where the appropriation is primarily intended for the furtherance of a particular church. The aforecited constitutional provision "does not inhibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general. Thus, the basement of the Quezon City Hall of Justice has remained to be a public property devoted for public use because the holding of Catholic masses therein is a mere incidental consequence of its primary purpose.

DENMARK S. V ALMORES, Petitioner vs. DR. CRISTINA ACHACOSO, in her capacity as Dean of the College of Medicine, and DR. GIOVANNI CABILDO, Faculty of the Mindanao State University, Respondents
G.R. No. 217453, FIRST DIVISION, JULY 19, 2017, CAGUIAO, J.

The freedom of religion enjoys a preferred status among the rights conferred to each citizen by our fundamental charter. In this regard, , when confronted with a potential infringement of fundamental rights, the Court will not hesitate, as it now does, to overlook procedural lapses in order to fulfill its foremost duty of satisfying the higher demands of substantial justice.

FACTS:
Petitioner Valmores is a member of the Seventh-day Adventist Church, whose fundamental beliefs include the strict observance ofthe Sabbath as sacred day. He joins the faithful worshipping and resting on Saturday, and refrains from non-religious undertakings from sunset of Friday to Saturday.

Petitioner Valmores was enrolled as a first year Med Student at the MSU-College of Medicine. He wrote to Respondent Achacoso, requesting to be excused from class, in any case that a weekday session is rescheduled to a Saturday to avoid conflict with the Church worship.
Some of his classes were moved to Saturdays, like his exam in Respondent Cabildo's class. He obtained a failing grade after not being excused from the same.

Several pastors and officers of the Seventh-day Adventists Church sent Respondent Achacoso a letter requesting for an audience with the MSU school board, in connection with the request for exemption by Petitioner Valmoso.

Again, Petitioner wrote the Dean and sought reconsideration however no response was given.

Petitioner elevated the matter before CHED. They issued a memorandum addressing the issue and ordered for the Dean to implement the same. The school president ordered the Dean to enforce the CHED Memorandum, however it remained unheeded.

Petitioner raised the issue in Court, stating that Respondents violated his constitutional right to freedom of religion for refusing to enforce the CHED Memorandum. He prayed for the issuance of a Writ of Mandamus for the immediate resolution of the issue.

Respondents argue that MSU had other students who were able to graduate Med School despite being members of the same Church. Hence, they argued that Valmores' case was not unique as to merit exceptional treatment

ISSUE:
Whether or not the religious belief of the petitioner should be respected

RULING:
The freedom of religion enjoys a preferred status among the rights conferred to each citizen by our fundamental charter. In this case, no less than petitioner Valmores' right to religious freedom is being threatened by respondents' failure to accommodate his case. In this regard, when confronted with a potential infringement of fundamental rights, the Court will not hesitate, as it now does, to overlook procedural lapses in order to fulfill its foremost duty of satisfying the higher demands of substantial justice.

The Court is also aware of petitioner Valmores' plea for the expedient resolution of his case, as he has yet to enroll in the MSU-College of Medicine and continue with his studies. Plainly enough, to require petitioner Valmores to hold his education in abeyance in the meantime that he is made to comply with the rule on hierarchy of courts would be unduly burdensome. It is a known fact that education is a time-sensitive endeavor, where premium is placed not only on its completion, but also on the timeliness of its achievement. Inevitably, justice in this case must take the form of a prompt and immediate disposition if complete relief is to be accorded.

At once, a plain reading of the memorandum reveals the ministerial nature of the duty imposed upon HEIs. Its policy is crystal clear: a student's religious obligations takes precedence over his academic responsibilities, consonant with the constitutional guarantee of free exercise and enjoyment of religious worship. Accordingly, the CHED imposed a positive duty on all HEIs to exempt students, as

well as faculty members, from academic activities in case such activities interfere with their religious obligations

On these premises, the Court finds sufficient bases to relax the foregoing procedural rules in the broader interest of justice.

H. LIBERTY OF ABODE AND FREEDOM OF MOVEMENT

FRANCISCO V. GUDANI AND LT. COL. ALEXANDER F. BALUTAN v. LT./GEN. GENEROSO S. SENGA
G.R. No. 170165, EN BANC, August 15, 2006, TINGA, *J.*

The Constitution reposes final authority, control and supervision of the AFP to the President, a civilian who is not a member of the armed forces, and whose duties as commander-in-chief represent only a part of the organic duties imposed upon the office, the other functions being clearly civil in nature.

FACTS:
Senator Biazon invited several senior officers of the AFP to appear at a public hearing regarding allegations of massive cheating and the surfacing of copies of an audio allegedly of a phone conversation between President Gloria Macapagal Arroyo and an official of the COMELEC. That same day, President Gloria-Macapagal-Arroyo issued Executive Order No. 464 enjoining officials of the executive department including the military establishment from appearing in any legislative inquiry without her approval.

ISSUE:
Whether the president may prevent a member of the armed forces from testifying before a legislative inquiry.

RULING:
YES. The vitality of the tenet that the President is the commander-in-chief of the Armed Forces is most crucial to the democratic way of life, to civilian supremacy over the military, and to the general stability of our representative system of government. The Constitution reposes final authority, control and supervision of the AFP to the President, a civilian who is not a member of the armed forces, and whose duties as commander-in-chief represent only a part of the organic duties imposed upon the office, the other functions being clearly civil in nature. Civilian supremacy over the military also countermands the notion that the military may bypass civilian authorities, such as civil courts, on matters such as conducting warrantless searches and seizures.

The President has constitutional authority to do so, by virtue of her power as commander-in-chief, and that as a consequence a military officer who defies such injunction is liable under military justice. At the same time, any chamber of Congress which seeks the appearance before it of a military officer against the consent of the President has adequate remedies under law to compel such attendance. Any military official whom Congress summons to testify before it may be compelled to do so by the President. If the President is not so inclined, the President may be commanded by judicial order to compel the attendance of the military officer. Final judicial orders have the force of the law of the land which the President has the duty to faithfully execute.

The Court's ruling that the President could, as a general rule, require military officers to seek presidential approval before appearing before Congress is based foremost on the notion that a

contrary rule unduly diminishes the prerogatives of the President as commander-in-chief. Congress holds significant control over the armed forces in matters such as budget appropriations and the approval of higher-rank promotions, yet it is on the President that the Constitution vests the title as commander-in-chief and all the prerogatives and function appertaining to the position.

LEAVE DIVISION, OFFICE OF ADMINISTRATIVE SERVICES-OFFICE OF THE COURT ADMINISTRATOR(OFFICE OF THE COURT ADMINISTRATOR) v. HEUSDENS
A.M. No. P-11-2927, EN BANC, December 13, 2011, Mendoza, J.

Regulation is necessary for the orderly administration of justice. If judges and court personnel can go onleave and travel abroad at will and without restrictions or regulations, there could be a disruption in theadministration of justice.

FACTS:
Heusdens, a staff clerk of MTC Tagum, left abroad without waiting for the results of her leaveapplication. It turned out that no travel authority was issued in her favor. Heusdens explained that it was nother intention to violate the rules (OCA Circular) as her leave was approved by her superior judge.

ISSUE:
Whether the circular issued by the OCA can restrict a citizen's right to travel as guaranteed by theConstitution.

RULING:
YES.The exercise of ones right to travel or the freedom to move from one place to another, as assuredby the Constitution, is not absolute. There are constitutional, statutory and inherent limitations regulating theright to travel. Section 6 itself provides that neither shall the right to travel be impaired except in the interestof national security, public safety or public health, as may be provided by law.

OFFICE OF ADMINISTRATIVE SERVICES-OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. JUDGE IGNACIO B. MACARINE, MUNICIPAL CIRCUIT TRIAL COURT, GEN. LUNA, SURIGAO DEL NORTE
A.M. No. MTJ-10-1770, SECOND DIVISION, July 18, 2012, J. Brion

OCA Circular No. 49-2003 does not restrict but merely regulates, by providing guidelines to be complied by judges and court personnel, before they can go on leave to travel abroad.

FACTS:
OCA Circular No. 49-2003 requires that all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Cuurt. A travel authority must be secured from the OCA. The complete requirements should be submitted to and received by the OCA at least two weeks before the intended time of travel. Judges and personnel who shall leave the country without travel authority issued by the OCA shall be subject to disciplinary action. Judge Macarinewrote the Court Administrator requesting for authority to travel to Hongkong with his family for the period of September 10 - 14, 2009 where he would celebrate his 65th birthday. He stated that his travel abroad shall be charged to his annual forced leave. However, he did not submit the corresponding application for leave. For his failure to submit the complete requirements, his request for authority to travel remained unacted upon. He proceeded with his travel abroad without the required travel authority from the OCA. He was then informed by the OCA that his leave of

absence for the period of September 9-15, 2009 had been disapproved and his travel considered unauthorized by the Court. His absences shall not be deducted from his leave credits but from his salary corresponding to the seven (7) days that he was absent, pursuant to Section 50 of the Omnibus Rules on Leave.

ISSUE:
Whether or not the said OCA Circular restricts the right to travel

RULING:
No. Although the right to travel is guaranteed by the Constitution, the exercise of such right is not absolute. Section 6, Article III of the 1987 Constitution allows restrictions on one's right to travel provided that such restriction is in the interest of national security, public safety or public health as may be provided by law. This, however, should by no means be construed as limiting the Court's inherent power of administrative supervision over lower courts. OCA Circular No. 49-2003 does not restrict but merely regulates, by providing guidelines to be complied by judges and court personnel, before they can go on leave to travel abroad. To "restrict" is to restrain or prohibit a person from doing something; to "regulate" is to govern or direct according to rule.To ensure management of court dockets and to avoid disruption in the administration of justice, OCA Circular No. 49-2003 requires a judge who wishes to travel abroad to submit, together with his application for leave of absence duly recommended for approval by his Executive Judge, a certification from the Statistics Division, Court Management Office of the OCA, as to the condition of his docket, based on his Certificate of Service for the month immediately preceding the date of his intended travel, that he has decided and resolved all cases or incidents within three (3) months from date of submission, pursuant to Section 15(1) and (2), Article VIII of the 1987 Constitution

SAMAHAN NG MGA PROGRESIBONG KABATAAN (SPARK),* JOANNE ROSE SACE LIM, JOHN ARVIN NAVARRO BUENAAGUA, RONEL BACCUTAN, MARK LEO DELOS REYES, AND CLARISSA JOYCE VILLEGAS, MINOR, FOR HERSELF AND AS REPRESENTED BY HER FATHER, JULIAN VILLEGAS, JR., *Petitioners, v.* **QUEZON CITY, AS REPRESENTED BY MAYOR HERBERT BAUTISTA, CITY OF MANILA, AS REPRESENTED BY MAYOR JOSEPH ESTRADA, AND NAVOTAS CITY, AS REPRESENTED BY MAYOR JOHN REY TIANGCO**, *Respondents*.
G.R. No. 225442, EN BANC, August 08, 2017, PERLAS-BERNABE, J.

A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application

FACTS:
Following the campaign of President Rodrigo Roa Duterte to implement a nationwide curfew for minors, several local governments in Metro Manila, in this case, Navotas City and Quezon City, started to strictly implement their curfew ordinances on minors through police operations which were publicly known as part of "Oplan Rody.Petitioners,spearheaded by theSamahan ng mga Progresibong Kabataan(SPARK) - an association of young adults and minors that aims to forward a free and just society, in particular the protection of the rights and welfare of the youth and minors- filed this present petition, arguing that the Curfew Ordinances are unconstitutional.

Their arguments were the following:(a) it result in arbitrary and discriminatory enforcement, and thus, fall under the void for vagueness doctrine; (b) suffer from overbreadth by proscribing or impairing legitimate activities of minors during curfew hours; (c) deprive minors of the right to liberty and the right to travel without substantive due process; and (d) deprive parents of their

natural and primary right in rearing the youth without substantive due process.More specifically, petitioners posit that the Curfew Ordinances encourage arbitrary and discriminatory enforcement as there are no clear provisions or detailed standards on how law enforcers should apprehend and properly determine the age of the alleged curfew violators.

ISSUE:
Whether or not the Curfew Ordinances are unconstitutional.

RULING:
The petition is partly granted. Petitioners' prayer to declare the Curfew Ordinances as void for vagueness is denied."A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two (2) respects: (1)it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle."In this case, petitioners' invocation of the void for vagueness doctrine is improper, considering that they do not properly identify any provision in any of the Curfew Ordinances, which, because of its vague terminology, fails to provide fair warning and notice to the public of what is prohibited or required so that one may act accordingly. The void for vagueness doctrine is premised on due process considerations, which are absent from this particular claim.

EFRAIM C. GENUINO, ERWIN F. GENUINO and SHERYL G. SEE, Petitioners
vs HON. LEILA M. DE LIMA, in her capacity as Secretary of Justice, and RICARDO V. PARAS III, in his capacity as Chief State Counsel, CRISTINO L. NAGUIAT, JR. and the BUREAU OF IMMIGRATION, Respondents
G.R. No. 197930, EN BANC, APRIL 17, 2018, REYES, JR., *J.:*

The right to travel is a guarantee of the constitution under the Bill of rights. There are allowable restrictions in the exercise of this right which are for the interest of national security, public safety or public health as may be provided by law.

FACTS:
The case is a consolidated case of Petition for Certiorari and Prohibition against former DOJ Secretary Delima for her issuance of DOJ circular no. 41. Series of 2010, known as the "Consolidated Rules and Regulations Governing Issuance and Implementation of Hold Departure Orders (HDO), Watch list Orders (WLO) and Allow Departure Orders (ADO)" . The Petitioners questions the constitutionality of this DOJ circular on the ground that it infringes the constitutional right to travel.

The petitioners in these consolidated cases are former Presiden tArroyo and her husband, and Efraim and Erwin Genuino. Former DOJ Secretary De lima issued HDO and WLO against petitioners on the ground that criminal charges of plunder, qualified theft and violation of the Omnibus Election Code were filed against them. Petitioners, particularly Spouses Arroyo, file temporary restraining order against the issued HDO and WLO of DOJ seeking relief and grant from court to allow them to travel so that former president Arroyo may seek medical treatment abroad. The court granted relief sought on a condition that petition will file a bond of PhP2M, an undertaking that petitioners shall report to Philippine consulate in the countries they are to visit (Germany, Singapore, USA, Italy, Spain and Austria) and shall appoint a representative to receive on their behalf subpoena, orders and other

legal processes. Petitioners complied all the conditions instead of following the order of the court, DOJ caused for the refusal to process the petitioners travel documents. Hence, this case.

ISSUE:
Whether or not the issued DOJ circular 41 infringes the constitutional rights of the petitioners to travel and thus an ultra vires to the constitution.

RULING:
The constitution is the fundamental, paramount and supreme law of the nation; it is deemed written in every statute and contract. If a law or administrative rule violates any norm of the constitution, that issuance is null and void and has no effect. In this case, the right to travel is a guarantee of the constitution under the Bill of rights. There are allowable restrictions in the exercise of this right which are for the interest of national security, public safety or public health as may be provided by law. The ground of the respondent in the issuance of DOJ circular 41 is for the petitioners to be present during the preliminary investigation of their cases which is outside the allowable restrictions provided by the constitution, hence, it is ultra vires and has no effect.

I. RIGHT TO INFORMATION

NAGKAKAISANG MARALITA NG SITIO MASIGASIG, INC., Petitioner, vs. MILITARY SHRINE SERVICES - PHILIPPINE VETERANS AFFAIRS OFFICE, DEPARTMENT OF NATIONAL DEFENSE, G.R. No. 187587, FIRST DIVISION, June 5, 2013, SERENO, CJ.

Publication must be in full or it is no publication at all since its purpose is to inform the public of the contents of the laws.

FACTS:
By virtue of Proclamation 423, Former President Carlos P. Garcia reserved parcels of land in the Municipalities of Pasig, Taguig, Paranaque, Province of Rizal and Pasay City for military reservation. Later on, Former President Marcos issued a proclamation amending such publication, which excludes certain area of the reserved land. Again, President Marcos issued Proclamation No. 2476 that further amended the proclamation that excluded the barangays of Lower Bicutan, Upper Bicutan and Signal Village and a handwritten addendum which includes Western Bicutan for the disposition of the area. The proclamation was published in the Official Gazette without the handwritten addendum. Demolition of illegal structures existed to prevent the area from the increasing number of informal settlers. Members of petitioner Nagkakaisang Maralita ng Sitio Masigasig, Inc. (NMSMI) and Western Bicutan Lot Owners Association, Inc. (WBLOAI) filed for a Petition with Commission on Settlement of Land Problems (COSLAP) praying for the reclassification of the areas they are occupying as is already alienable and disposable. COSLAP ruled that the handwritten addendum of President Marcos was not published thus the areas occupied by the petitioners are in question alienable and disposable.

NMSMI and WBLOAI filed Petition for Review under Rule 45 of the Rules of Court.

ISSUE:
Did the handwritten addendum of President Marcos have the force and effect of law though it was not included in the publication?

RULING:

NO, the handwritten addendum of President Marcos did not have the force and effect law since it was not included in the publication. We agree that the publication must be in full or it is no publication at all since its purpose is to inform the public of the contents of the laws. In relation thereto, Article 2 of the Civil Code expressly provides: ART. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. This Code shall take effect one year after such publication. Under the above provision, the requirement of publication is indispensable to give effect to the law, unless the law itself has otherwise provided.

In the case at bar, though Proclamation No. 2476 was published in an Official Gazette, the handwritten addendum of President Marcos declaring the Western Bicutan as alienable and disposable was not included.

Therefore, without publication, the handwritten addendum of President Marcos never had any legal force and effect.

FRANCISCO I. CHAVEZ *v.* PCGG, ET AL.
G.R. No. 130716, FIRST DIVISION, DECEMBER 9, 1998, PANGANIBAN, *J.*

The state policy of full public disclosure extends only to transactions involving public interest and may also be subject to reasonable conditions prescribed by law. The following are some of the recognized restrictions: (1) national security matters and intelligence information, (2) trade secrets and banking transactions, (3) criminal matters, and (4) other confidential information.

FACTS:
Francisco Chavez, in invoking his constitutional right to information, demanded that the Presidential Commission on Good Government (PCGG) make public any and all negotiations and agreements pertaining to the PCGG's task of recovering the Marcoses' ill-gotten wealth. He claimed that any compromise on the alleged billions of ill-gotten wealth involves an issue of paramount public interest since it has a debilitating effect on the country's economy that would be greatly prejudicial to the national interest of the Filipino people. The PCGG, while admitting that a compromise is in the works, claimed that Chavez's action is premature, since the proposed terms and conditions of the agreements have not become effective and binding.

ISSUE:
May the PCGG be required to reveal the proposed terms of compromise agreement with the Marcos heirs as regards their alleged ill-gotten wealth?

RULING:
Yes.The recovery of the Marcoses alleged ill-gotten wealth is a matter of public concern and imbued with public interest. Ill-gotten wealth, by its very nature, assumes a public character. The assets and properties referred to supposedly originated from the government itself. To all intents and purposes, therefore, they belong to the people. Thus, there is no question that Chavez has a right to PCGG's disclosure of any agreement that may be arrived at concerning the Marcoses' purported ill-gotten wealth. The question that remains is whether the constitutional provision likewise guarantee access to information regarding ongoing negotiations or proposals prior to the final agreement. Reviewing the deliberations of the Constitutional Commission, the Court held that it is incumbent upon the PCGG and its officers, as well as other government representatives, to disclose sufficient public information on any proposed settlement they have decided to take up with the ostensible owners and holders of ill-gotten wealth. Such information, though, must pertain to definite propositions of the government,

not necessarily to intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the exploratory stage.

HAZEL MA. C. ANTOLIN, PETITIONER, VS. ABELARDO T. DOMONDON, JOSE A. GANGAN, AND VIOLETA J. JOSEF, RESPONDENTS.
G.R. No. 165036, FIRST DIVISION, July 05, 2010 , DEL CASTILLO, J.

Like all the constitutional guarantees, the right to information is not absolute; it is limited to "matters of public concern" and is further "subject to such limitations as may be provided by law" (Section 7, Article III, 1987 Constitution). Similarly, the State's policy of full disclosure is limited to "transactions involving public interest," and is "subject to reasonable conditions prescribed by law"

FACTS:
Petitioner Hazel antolin took the 1997 CPA Board Exams but failed, receiving failing grades from four out of seven subjects. Convinced that she deserved to pass, she wrote to respondent Abelardo Domondon, Acting Chariman of the Board of Accountany, and requested that her answer sheets be re-corrected. Her answer sheets were shown but these consisted merely of shaded marks. She requested for copies of the questionnaire, their respective answer keys, and an explanation of the grading system used in each subject. Respondent denied the request.

ISSUE:
Whether or not Antolin has a right to obtain copies of the examination papers.

RULING:
Like all the constitutional guarantees, the right to information is not absolute; it is limited to "matters of public concern" and is further "subject to such limitations as may be provided by law" (Section 7, Article III, 1987 Constitution). Similarly, the State's policy of full disclosure is limited to "transactions involving public interest," and is "subject to reasonable conditions prescribed by law" (Sec. 28, Art. II, 1987 Constitution). The Court has always grappled with the meanings of "public interest" and "public concern" which "embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen," and which are, in the final analysis, up to the courts to determine on a case by case basis [Legaspi v. Civil Service Commission, 234 Phil. 521, 535 (1987)]. National board examinations such as the CPA Board Exams are matters of public concern. The populace in general, and the examinees in particular, would understandably be interested in the fair and competent administration of these exams in order to ensure that only those qualified are admitted into the accounting profession. And as with all matters pedagogical, these examinations could be not merely quantitative means of assessment, but also means to further improve the teaching and learning of the art and science of accounting.

AIR PHILIPPINES CORPORATION, *Petitioner*, *v.* **PENNSWELL, INC.** *Respondent*.
G.R. NO. 172835, THIRD DIVISION, December 13, 2007, CHICO-NAZARIO, J.

Trade secrets should receive greater protection from discovery, because they derive economic value from being generally unknown and not readily ascertainable by the public.
FACTS:

Petitioner Air Philippines Corporation is a domestic corporation engaged in the business of air transportation services. On the other hand, respondent Pennswell, Inc. was organized to engage in the business of manufacturing and selling industrial chemicals, solvents, and special lubricants.

Respondent delivered and sold to petitioner sundry goods in trade. Under the contracts, petitioner's total outstanding obligation amounted to P449,864.98 with interest at 14% per annum until the amount would be fully paid. For failure of the petitioner to comply with its obligation under said contracts, respondent filed a Complaint for a Sum of Money on 28 April 2000 with the RTC.

In its Answer, petitioner alleged that it was defrauded in the amount of P592,000.00 by respondent for its previous sale of four items. Petitioner asserted that it was deceived by respondent which merely altered the names and labels of such goods. Petitioner asseverated that had respondent been forthright about the identical character of the products, it would not have purchased the items complained of.

Moreover, petitioner alleged that when the purported fraud was discovered, a conference was held between petitioner and respondent on 13 January 2000, whereby the parties agreed that respondent would return to petitioner the amount it previously paid. However, petitioner was surprised when it received a letter from the respondent, demanding payment of the amount of P449,864.94, which later became the subject of respondent's Complaint for Collection of a Sum of money against petitioner.

During the pendency of the trial, petitioner filed a Motion to Compel respondent to give a detailed list of the ingredients and chemical components of the following products. The RTC rendered an Order granting the petitioner's motion.

Respondent sought reconsideration of the foregoing Order, contending that it cannot be compelled to disclose the chemical components sought because the matter is confidential. It argued that what petitioner endeavored to inquire upon constituted a trade secret which
respondent cannot be forced to divulge.

The RTC gave credence to respondent's reasoning, and reversed itself. Alleging grave abuse of discretion on the part of the RTC, petitioner filed a Petition for Certiorari under Rule 65 of the Rules of Court with the Court of Appeals, which denied the Petition and affirmed the Order dated 30 June 2004 of the RTC. Petitioner's Motion for Reconsideration was denied. Unyielding, petitioner brought the instant Petition before SC.

ISSUE:
W/N CA erred in upholding RTC decision denying petitioner's motion to subject respondent's products to compulsory disclosure.
RULING:

No. The products are covered by the exception of trade secrets being divulged in compulsory disclosure. The Court affirms the ruling of the Court of Appeals which upheld the finding of the RTC that there is substantial basis for respondent to seek protection of the law for its proprietary rights over the detailed chemical composition of its products.

The Supreme Court has declared that trade secrets and banking transactions are among the recognized restrictions to the right of the people to information as embodied in the

Constitution. SC said that the drafters of the Constitution also unequivocally affirmed that, aside from national security matters and intelligence information, trade or industrial secrets (pursuant to the Intellectual Property Code and other related laws) as well as banking transactions (pursuant to the Secrecy of Bank Deposits Act), are also exempted from compulsory disclosure.

J. RIGHT OF ASSOCIATION

BOY SCOUTS OF AMERICA AND MONMOUTH COUNCIL, et al., PETITIONERS *v.*
JAMES DALE
No. 99-699, ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY, June 28, 2000, Chief Justice Rehnquist

The court found that, while the Petitioner's laws and oaths do not mention sexuality, the purpose of the organization to foster "morally straight" and "clean" membership would be disregarded if the petitioner was forced to accept the Respondent. Further, the First Amendment Rights of the association would be violated if it were forced, under the guise of law, to send a message that it accepted homosexual conduct when, on its own assertions, it did not. The Supreme Court of the United States (Supreme Court) held that to require the Petitioner to accept Respondent was an abridgment of the Petitioner's freedom of expression.

FACTS:
The Respondent, a life-long boy scout, was an assistant scout master in New Jersey, when the Petitioner learned of his homosexuality and revoked his membership. The Respondent brought suit to enjoin the action and the New Jersey court, under its public accommodations law, required the Petitioner to admit the Respondent.

ISSUE:
This case questions whether an organization can be compelled to accept a member whose activities and beliefs may be against the very nature of the organization

RULING:
Reversed.

The court found that, while the Petitioner's laws and oaths do not mention sexuality, the purpose of the organization to foster "morally straight" and "clean" membership would be disregarded if the petitioner was forced to accept the Respondent. Further, the First Amendment Rights of the association would be violated if it were forced, under the guise of law, to send a message that it accepted homosexual conduct when, on its own assertions, it did not. The Supreme Court of the United States (Supreme Court) held that to require the Petitioner to accept Respondent was an abridgment of the Petitioner's freedom of expression.

BANK OF THE PHILIPPINE ISLANDS, Petitioner, vs.BPI EMPLOYEES UNION-DAVAO CHAPTER-FEDERATION OF UNIONS IN BPI UNIBANK, Respondent.
G.R. No. 164301, EN BANC, October 19, 2011, LEONARDO-DE CASTRO, *J.:*

All employees in the bargaining unit covered by a Union Shop Clause in their CBA with management are subject to its terms. However, under law and jurisprudence, the following kinds of employees are exempted from its coverage, namely, employees who at the time the union shop agreement takes effect are bona fide members of a religious organization which prohibits its members from joining labor unions on religious grounds.

FACTS:
On March 23, 2000, the Bangko Sentral ng Pilipinas approved the Articles of Merger executed on January 20, 2000 by and between BPI, herein petitioner, and FEBTC.[This Article and Plan of Merger was approved by the Securities and Exchange Commission on April 7, 2000.Pursuant to the Article and Plan of Merger, all the assets and liabilities of FEBTC were transferred to and absorbed by BPI as the surviving corporation. FEBTC employees, including those in its different branches across the country, were hired by petitioner as its own employees, with their status and tenure recognized and salaries and benefits maintained. Respondent BPI Employees Union-Davao Chapter - Federation of Unions in BPI Unibank is the exclusive bargaining agent of BPI's rank and file employees in Davao City. The former FEBTC rank-and-file employees in Davao City did not belong to any labor union at the time of the merger. Prior to the effectivity of the merger, or on March 31, 2000, respondent Union invited said FEBTC employees to a meeting regarding the Union Shop Clause of the existing CBA between petitioner BPI and respondent Union After the meeting called by the Union, some of the former FEBTC employees joined the Union, while others refused. Later, however, some of those who initially joined retracted their membership. Respondent Union then sent notices to the former FEBTC employees who refused to join, as well as those who retracted their membership, and called them to a hearing regarding the matter. When these former FEBTC employees refused to attend the hearing, the president of the Union requested BPI to implement the Union Shop Clause of the CBA and to terminate their employment pursuant thereto. After two months of management inaction on the request, respondent Union informed petitioner BPI of its decision to refer the issue of the implementation of the Union Shop Clause of the CBA to the Grievance Committee. However, the issue remained unresolved at this level and so it was subsequently submitted for voluntary arbitration by the parties.

ISSUE:
Whether or not the former FEBTC employees that were absorbed by petitioner upon the merger between FEBTC and BPI should be covered by the Union Shop Clause found in the existing CBA between petitioner and respondent Union.

RULING:
All employees in the bargaining unit covered by a Union Shop Clause in their CBA with management are subject to its terms. However, under law and jurisprudence, the following kinds of employees are exempted from its coverage, namely, employees who at the time the union shop agreement takes effect are bona fide members of a religious organization which prohibits its members from joining labor unions on religious grounds; employees already in the service and already members of a union other than the majority at the time the union shop agreement took effect; confidential employees who are excluded from the rank and file bargaining unit; and employees excluded from the union shop by express terms of the agreement.

K. EMINENT DOMAIN

MANOTOK REALTY, INC. and MANOTOK ESTATE CORPORATION, Petitioners, vs.
CLT REALTY DEVELOPMENT CORPORATION, Respondent.
G.R. No. 123346, EN BANC, December 14, 2007, TINGA, J.

The fact of expropriation is extremely significant, for titles acquired by the State by way of expropriation are deemed cleansed of whatever previous flaws may have attended these titles.

FACTS:
TCT No. 4211 was cancelled by TCT No. 5261 which was issued in the name of FranciscoGonzales. Inscribed on the "Memorandum of the Incumbrances Affecting the Property Described inthis Certificate" was the sale executed in favor of Francisco Gonzales dated 3 March 1920. Thus, on6 April 1920, TCT No. 5261 was issued in the name of

Francisco Gonzales.On 22 August 1938, TCTNo. 5261 was cancelled by TCT No. 35486.The property was later subdivided into seven lots in accordance with subdivision plan Psd-21154. Partitioning the lots among the co-owners, TCT No. 35486 was eventually cancelled and inlieu thereof six (6) certificates of titles were individually issued to Francisco Gonzales's six (6) children, specifically, TCT Nos. 1368-1373 while TCT No. 1374 was issued in favor of all thechildren.

However, the properties covered by TCT Nos. 1368-1374 were expropriated by the Republic of thePhilippines and were eventually subdivided and sold to various vendees. Eighteen (18) lots wereobtained by MRI from the years 1965 to 1974, while it acquired the lot covered by TCT No. 165119in 1988. On the other hand, MEC acquired from PhilVille Development Housing Corporation Lot No.19-B by virtue of Deed of Exchange executed in its favor for which, TCT No. 232568 was issued on9 May 1991.The fact that these lots were subjected to expropriation proceedings sometime in 1947 under Commonwealth Act No. 539 for resale to tenants is beyond question, as also enunciated by theSupreme Court in Republic of the Philippines v. Jose Leon Gonzales, et al.

ISSUE:
Whether the fact of expropriation of the property is significant in determining the proper owners of the estate.

RULING:
YES.

The fact of expropriation is extremely significant, for titles acquired by the State by way of expropriation are deemed cleansed of whatever previous flaws may have attended these titles.

As Justice Vitug explained in Republic v. Court of Appeals, and then Associate Justice (nowChief Justice) Puno reiterated in Reyes v. NHA:

"In an rem proceeding, condemnation acts uponthe property. After condemnation, the paramount title is in the public under a new andindependent title; thus, by giving notice to all claimants to a disputed title, condemnationproceedings provide a judicial process for securing better title against all the world than maybe obtained by voluntary conveyance.

HACIENDA LUISITA, INCORPORATED v. PRESIDENTIAL AGRARIAN REFORM COUNCIL, ET AL.
G.R. No. 171101, EN BANC, APRIL 24, 2012, VELASCO, JR. J.

In determining just compensation, the price or value of the property at the time it was taken from the owner and appropriated by the government shall be the basis. If the government takes

possession of the land before the institution of expropriation proceedings, the value should be fixed as of the time of the taking of said possession, not of the filing of the complaint.

FACTS:
The Supreme Court en banc voted unanimously to dismiss or deny the petition filed by Hacienda Luisita, Inc. (HLI) and affirm with modifications the resolutions of the Presidential Agrarian Reform Council (PARC) revoking HLI's Stock Distribution Plan (SDP) and placing the subject lands in Hacienda Luisita under compulsory coverage of the Comprehensive Agrarian Reform Program (CARP) of the government. The Court however did not order outright land distribution. The Court noted that there are operative facts that occurred in the interim and which the Court cannot validly ignore. Thus, the Court declared that the revocation of the SDP must, by application of the operative fact principle, give way to the right of the original 6,296 qualified farmworkers-beneficiaries (FWBs) to choose whether they want to remain as HLI stockholders or choose actual land distribution. The parties thereafter filed their respective motions for reconsideration of the Court decision.

ISSUE:
Whether or not, for the purpose of determining just compensation, the date of taking is November 21, 1989, when PARC approved HLI's stock distribution plan (SDP).

RULING:
Yes. When the agricultural lands of Hacienda Luisita were transferred by Tadeco (former owner thereof) to HLI in order to comply with CARP through the stock distribution option scheme, sealed with the imprimatur of PARC under PARC Resolution No. 89-12-2 dated November 21, 1989, Tadeco was consequently dispossessed of the afore-mentioned attributes of ownership. Notably, Tadeco and HLI are two different entities with separate and distinct legal personalities. Ownership by one cannot be considered as ownership by the other. Corollarily, it is the official act by the government, that is, the PARC's approval of the Stock distributionProgram (SDP), which should be considered as the reckoning point for the taking of the agricultural lands of Hacienda Luisita. Although the transfer of ownership over the agricultural lands was made prior to the SDP's approval, it is this Court's consistent view that these lands officially became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP. Such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition.

By a vote of 8-6, the Court affirmed its ruling that the date of taking in determining just compensation is November 21, 1989 when PARC approved HLI's stock option plan.

SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS v. SPOUSES TECSON
G.R. No. 179334, EN BANC, July 1, 2013, PERALTA, *J.*

Just compensation is the fair value of the property as between one who receives, and one who desires to sell fixed at the time of the actual taking by the government.

FACTS:
Spouses Tecson were the owners of a certain land which was among the properties taken by the government sometime in 1940 to be used for the construction of the MacArthur Highway. The land was taken without their consent and without the necessary expropriation proceedings. The spouses demanded the payment of the fair market value of the same but the DPWH offered to pay at the rate of ₱0.70 per square meter only which was the value of the property at the time of taking.

Consequently, the spouses filed a Complaint for recovery of possession of the disputed land with damages. The RTC dismissed the complaint. Upon appeal, the CA reversed the RTC ruling and remanded the case to the trial court for the purpose of determining the just compensation to be awarded to the spouses. The RTC found the amount of ₱1,500.00 per square meter as the just compensation for the subject property which was based on its current market value. Upon appeal, the CA affirmed the determination made by the RTC. Hence, this petition.

ISSUE:
Whether or not the just compensation to be awarded is based on the current market value of the property.

RULING:
No. Just compensation is the value of the property at the time of taking that is controlling for purposes of compensation. Thus, the just compensation due the Spouses Tecson in this case should, therefore, be fixed not as of the time of payment but at the time of taking, that is, in 1940. The value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings. For where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken x xx.

The fair market value of the subject property in 1940 was ₱0.70/sq m. Hence, it should, therefore, be used in determining the amount due respondents instead of the higher value which is ₱1,500.00.

SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS v .**SPOUSES TECSON**
G.R. No. 179334, April 21, 2015, **PERALTA, *J.***

The true measure of just compensation is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample.

FACTS:
For resolution is the Motion for Reconsideration filed by the spouses Tecson imploring the Supreme Court to take a second look at its Decision in their complaint for recovery of possession of the disputed property with damages in which the said court ordered that the valuation of the subject property owned by them shall be P0.70 instead of ₱1,500.00 per square meter, with interest at six percent (6%) per annum from the date of taking in 1940 instead of March 17, 1995, until full payment. The spouses insist that gross injustice will result if the amount that will be awarded today will be based simply on the value of the property at the time of the actual taking. Hence, they suggest that a happy middle ground be achieved by meeting the need for doctrinal precision and the thirst for substantial justice.

ISSUE:
Whether or not the motion for reconsideration filed by the spouses should be granted.

RULING:

No**.** The assailed decision is maintained. The fair market value of the property at the time of taking is controlling for purposes of computing just compensation. Just compensation due respondents-movants in this case should, therefore, be fixed not as of the time of payment but at the time of taking in 1940 which is Seventy Centavos (P0.70) per square meter, and not One Thousand Five Hundred Pesos (₱1,500.00) per square meter, as valued by the RTC and CA. While disparity in the above amounts is obvious and may appear inequitable to respondents-movants as they would be receiving such outdated valuation after a very long period, it should be noted that the purpose of just compensation is not to reward the owner for the property taken but to compensate him for the loss thereof. As such, the true measure of the property, as upheld by a plethora of cases, is the market value at the time of the taking, when the loss resulted.

PATRICIA L. TIONGSON, SPS. EDUARDO GO and PACITA GO, ROBERTO LAPERAL III, ELISA MANOTOK, MIGUEL A.B. SISON, ET AL., *Petitioners*, -versus- NATIONAL HOUSING AUTHORITY, *Respondent*.
G.R. NO. 140377, SECOND DIVISION, July 14, 2008, CARPIO MORALES, *J.*

Following then Rule 67, Section 4 of the Rules of Court reading:

SEC. 4. Order of expropriation. - If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

x x x x

vis a vis the factual backdrop of the case, the just compensation of petitioners' properties must be determined "as of the date of . . . the filing of [NHA's] complaint" on September 14, 1987."

FACTS:
Respondent National Housing Authority (NHA) took possession in 1978 of properties belonging to petitioners Patricia L. Tiongson, et al. pursuant to P.D. No. 1669, "An Act Providing for the Expropriation of the Property Known as the 'Tambunting Estate' Registered Under TCT Nos. 119059, 122450, 122459, 122452 And Lot Nos. 1-A, 1-C, 1-D, 1-E, 1-F, 1-G And 1-H Of (LRC) PSD-230517 (Previously Covered By TCT No. 119058) of the Register of Deeds of Manila and for The Sale at Cost of the Lots Therein to the Bona Fide Occupants and Other Squatters Families and to Upgrade the Same, and Authorizing the Appropriation of Funds For The Purpose", and of properties belonging to Patricia Tiongson, et al. pursuant to P.D. No. 1670, "An Act Providing For The Expropriation of the Property Along the Estero De Sunog-Apog Formerly Consisting of Lots Nos. 55-A, 55-B And 55-C, Block 2918 of the Subdivision Plan Psd-11746, Covered by TCT Nos. 49286, 49287 and 49288, Respectively, of the Register of Deeds of Manila and for The Sale at Cost of the Lots Therein to the Bona Fide Occupants and Other Squatter Families and to Upgrade The Same, and Authorizing The Appropriation of Funds For The Purpose."

In G.R. NOS. L-55166, "Elisa R. Manotok, et al.v. National Housing Authority et al.," and 55167, "Patricia Tiongson et al. v. National Housing Authority, et al.," this Court, by Decision of May 21, 1987, held that "Presidential Decree Numbers 1669 and 1670, which respectively proclaimed the Tambunting Estate and the Estero de Sunog-Apoy area expropriated, are declared unconstitutional

and, therefore, null and void," they being violative of the therein petitioners' right to due process of law. The decision had become final and executory.

Subsequently or on September 14, 1987, NHA filed before the Regional Trial Court of Manila a complaint against petitioners, docketed as Civil Case No. 87-42018, which was later amended, for expropriation of parcels of land - part of those involved in G.R. No. L-55166.

By Order of April 29, 1997, Branch 41 of the Manila RTC to which the complaint for expropriation was raffled brushed aside a previous order dated June 15, 1988 of the then Presiding Judge of said branch of the RTC and held that the determination of just compensation of the properties should be reckoned from the date of filing of NHA's petition or on September 14, 1987. The NHA moved to reconsider the said April 29, 1997 Order of the trial court, contending that the determination of the just compensation should be reckoned from the time it took possession of the properties in 1978. The trial court, by Order of August 5, 1997, denied NHA's motion for reconsideration.

The NHA assailed the above-stated trial court's Orders of April 29, 1997 and August 5, 1997 via petition for *certiorari* before the Court of Appeals. The appellate court, by the challenged Decision of June 16, 1999, reversed and set aside the trial court's orders and held that the just compensation should be "based on the actual taking of the property in 1978."

ISSUE:
Whether or not the trial court's Order of April 29, 1997 holding that the determination of the just compensation of their properties should be reckoned from the date NHA filed the petition before the RTC on September 14, 1987 is in order. (YES)

RULING:
In declaring, in its challenged Decision, that the determination of just compensation should be reckoned from NHA's taking of the properties in 1978, the appellate court simply relied on Annex "C" of NHA's petition before it, the Order dated June 15, 1988 of the then Presiding Judge of the trial court reading:

In this condemnation proceedings, by agreement of the parties, the total value of the properties to be condemned is hereby fixed at ₱14,264,465.00, provisionally, and considering the admission of the parties that plaintiff has taken possession of the properties in question sometime in 1978, or long before the complaint in this case was filed, plaintiff is hereby authorized to retain possession thereof upon its depositing with the City Treasurer of Manila the aforesaid sum of ₱14,264,465.00 subject to the Orders of this Court and forthwith submit the Official Receipt of the said deposit to this Court,

and thus concluded that "the parties admitted that [NHA] took possession of the subject properties as early as 1978." The appellate court reached that conclusion, despite its recital of the antecedents of the case including herein petitioners' sustained moves, even before the trial court, in maintaining that the reckoning of just compensation should be from the date of filing of the petition for expropriation on September 14, 1987.

The earlier-quoted allegations of the body and prayer in NHA's Petition for Expropriation filed before the RTC constitute judicial admissions of NHA—that it possessed the subject properties until this Court's declaration, in its above-stated Decision in G.R. No. L-55166 promulgated on May 21, 1987, that P.D. No. 1669 pursuant to which NHA took possession of the properties of petitioners in 1978

was unconstitutional and, therefore, null and void. These admissions, the appellate court either unwittingly failed to consider or escaped its notice.

Following then Rule 67, Section 4 of the Rules of Court reading:

SEC. 4. Order of expropriation. - If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

x x x x

vis a vis the factual backdrop of the case, the just compensation of petitioners' properties must be determined "as of the date of . . . the filing of [NHA's] complaint" on September 14, 1987."

REPUBLIC OF THE PHILIPPINES THROUGH THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS,*Petitioner*, -versus- COURT OF APPEALS and ROSARIO RODRIGUEZ REYES, *Respondents*.
G.R. No. 160379, FIRST DIVISION, August 14, 2009, CARPIO, *J.*

Just compensation is based on the price or value of the property at the time it was taken from the owner and appropriated by the government. However, if the government takes possession before the institution of expropriation proceedings, the value should be fixed as of the time of the taking of said possession, not of the filing of the complaint. The value at the time of the filing of the complaint should be the basis for the determination of the value when the taking of the property involved coincides with or is subsequent to the commencement of the proceedings.

In this case, petitioner took possession of the subject property without initiating expropriation proceedings. Consequently, private respondent filed the instant case for just compensation and damages. To determine just compensation, the trial court appointed three commissioners pursuant to Section 5 of Rule 67 of the 1997 Rules of Civil Procedure. None of the parties objected to such appointment.

The trial court's appointment of commissioners in this particular case is not improper. The appointment was done mainly to aid the trial court in determining just compensation, and it was not opposed by the parties. Besides, the trial court is not bound by the commissioners' recommended valuation of the subject property. The court has the discretion on whether to adopt the commissioners' valuation or to substitute its own estimate of the value as gathered from the records.

FACTS:

Private respondent Rosario Rodriguez Reyes is the absolute owner of a parcel of land identified as Lot 849-B and covered by TCT No. T-7194. The 1,043-square meter lot is situated on Claro M. Recto and Osmeña Streets, Cagayan de Oro City.

On 6 November 1990, private respondent received a letter from petitioner Republic of the Philippines, through the Department of Public Works and Highways (DPWH), requesting permission to enter into a portion of private respondent's lot consisting of 663 square meters, and to begin construction of the Osmeña Street extension road. On 20 December 1990, petitioner took possession

of private respondent's property without initiating expropriation proceedings. Consequently, on 4 and 7 January 1991, private respondent sent letters to the DPWH stating her objection to the taking of her property. On 16 May 1991, private respondent sent a letter to the City Appraisal Committee (CAC) rejecting the latter's appraisal of the subject property.

In the same letter, private respondent requested the City Assessor for a reappraisal of her property, but said request was denied.

On 17 March 1992 , private respondent filed with the Regional Trial Court (RTC) of Cagayan de Oro City a complaint claiming just compensation and damages against petitioner.

On 30 June 1993, the RTC appointed three commissioners to determine the subject property's fair market value, as well as the consequential benefits and damages of its expropriation.

On 16 June 1994, the RTC ordered the commissioners to submit their report as soon as possible, but until the scheduled hearing on 15 July 1994, the commissioners still failed to submit their report. Upon motion of private respondent, the RTC issued an order appointing a new set of commissioners.

On 11 October 1994, the new commissioners submitted their report, the pertinent portions of which provide, thus:
COMMISSIONERS' REPORT
x x x
What has been taken over and used by the defendant is not only 663 square meters but 746 square meters, more or less, which includes Lot No. 849-B-1.
On the other hand, the remaining portion left to the plaintiff, Lot No. 849-B-3 will not actually be 297 square meters. If we deduct the setback area from Osmeña Extension Street, the usable/buildable area left to the plaintiff would only be a little over 50 square meters. This portion would not command a good price if sold. Neither is it ideal for purposes of any building construction because aside from its being a very small strip of land, the shape is triangular.

On 2 June 1995, the RTC rendered a Decision in favor of the plaintiff and against the defendants.
On 15 June 1995, the RTC rendered an Amended Decision with the following dispositive portion, thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring the former as having the right to retain 590 square meters of the property covered by TCT No. T-7194, and ordering the latter to return 293 square meters of the 746 square meters taken; that defendants are solidarily liable to pay the sum of ₱4,696,000.00, the fair market value of 1990 (sic), as just compensation for the 453 square meters taken for the Osmeña Street extension; to pay ₱185,000.00 representing damages for 37 months computed at the rate of ₱5,000.00 per month from the filing of this case; and Attorney's fees of ₱10,000.00 plus costs of suit.

On appeal by petitioner, the Court of Appeals rendered judgment, affirming with modifications the decision of the RTC. The Court of Appeals found that the commissioners' recommendations on just compensation were not supported by valid documents. Also, it was unclear in the RTC decision whether the trial court merely adopted the commissioners' recommendations or the court made its own independent valuation of the subject property. Thus, the Court of Appeals held that a reconvening of the commissioners or an appointment of new commissioners to determine just compensation was necessary. The appellate court further held that the trial court's order for

petitioner's return of the 293-square meter lot had no legal basis and was no longer feasible since the lot was already part of the completed Sergio Osmeña extension road. Moreover, consequential damages should be awarded in lieu of actual damages for private respondent's alleged loss of income from the remaining 297-square meter lot.

ISSUE:
Whether the Court of Appeals erred in ordering the remand of the case to the trial court, to order the reconvening of the commissioners or appointment of new commissioners to determine the consequential damages for the remaining 297- square meter lot. (NO)

RULING:
Eminent domain is the authority and right of the State, as sovereign, to take private property for public use upon observance of due process of law and payment ofjust compensation.[20] The Constitution provides that, "[p]rivate property shall not be taken for public use without just compensation."

Just compensation is the full and fair equivalent of the property sought to be expropriated. Among the factors to be considered in arriving at the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations thereon. The measure is not the taker's gain but the owner's loss. To be just, the compensation must be fair not only to the owner but also to the taker.

Just compensation is based on the price or value of the property at the time it was taken from the owner and appropriated by the government. However, if the government takes possession before the institution of expropriation proceedings, the value should be fixed as of the time of the taking of said possession, not of the filing of the complaint. The value at the time of the filing of the complaint should be the basis for the determination of the value when the taking of the property involved coincides with or is subsequent to the commencement of the proceedings.

The procedure for determining just compensation is set forth in Rule 67 of the 1997 Rules of Civil Procedure. Section 5 of Rule 67 partly states that "[u]pon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken." However, we held in *Republic v. Court of Appeals* that Rule 67 presupposes a prior filing of complaint for eminent domain with the appropriate court by the expropriator. If no such complaint is filed, the expropriator is considered to have violated procedural requirements, and hence, waived the usual procedure prescribed in Rule 67, including the appointment of commissioners to ascertain just compensation. In *National Power Corporation v. Court of Appeals*, we clarified that when there is no action for expropriation and the case involves only a complaint for damages or just compensation, the provisions of the Rules of Court on ascertainment of just compensation (i.e., provisions of Rule 67) are no longer applicable, and a trial before commissioners is dispensable.

In this case, petitioner took possession of the subject property without initiating expropriation proceedings. Consequently, private respondent filed the instant case for just compensation and damages. To determine just compensation, the trial court appointed three commissioners pursuant to Section 5 of Rule 67 of the 1997 Rules of Civil Procedure. None of the parties objected to such appointment.

The trial court's appointment of commissioners in this particular case is not improper. The appointment was done mainly to aid the trial court in determining just compensation, and it was not opposed by the parties. Besides, the trial court is not bound by the commissioners' recommended valuation of the subject property. The court has the discretion on whether to adopt the commissioners' valuation or to substitute its own estimate of the value as gathered from the records.

However, we agree with the appellate court that the trial court's decision is not clear as to its basis for ascertaining just compensation. The trial court mentioned in its decision the valuations in the reports of the City Appraisal Committee and of the commissioners appointed pursuant to Rule 67. But whether the trial court considered these valuations in arriving at the just compensation, or the court made its own independent valuation based on the records, was obscure in the decision. The trial court simply gave the total amount of just compensation due to the property owner without laying down its basis. Thus, there is no way to determine whether the adjudged just compensation is based on competent evidence. For this reason alone, a remand of the case to the trial court for proper determination of just compensation is in order. In *National Power Corporation v. Bongbong*, we held that although the determination of just compensation lies within the trial court's discretion, it should not be done arbitrarily or capriciously. The decision of the trial court must be based on all established rules, correct legal principles, and competent evidence. The court is proscribed from basing its judgment on speculations and surmises.

Petitioner questions the appellate court's decision to remand the case to determine the consequential damages for the remaining 297-square meter lot of private respondent. Petitioner contends that no consequential damages may be awarded as the remaining lot was "not actually taken" by the DPWH, and to award consequential damages for the lot which was retained by the owner is tantamount to unjust enrichment on the part of the latter.

Petitioner's contention is unmeritorious.

No actual taking of the remaining portion of the real property is necessary to grant consequential damages. If as a result of the expropriation made by petitioner, the remaining lot (i.e., the 297-square meter lot) of private respondent suffers from an impairment or decrease in value, consequential damages may be awarded to private respondent. On the other hand, if the expropriation results to benefits to the remaining lot of private respondent, these consequential benefits may be deducted from the awarded consequential damages, if any, or from the market value of the expropriated property. We held in *B.H. Berkenkotter & Co. v. Court of Appeals* that:

To determine just compensation, the trial court should first ascertain the market value of the property, to which should be added the consequential damages after deducting therefrom the consequential benefits which may arise from the expropriation. If the consequential benefits exceed the consequential damages, these items should be disregarded altogether as the basic value of the property should be paid in every case.

Section 6 of Rule 67 of the Rules of Civil Procedure provides:

x x x The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the

consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.

As stated, consequential damages are awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value. Thus, there is a valid basis for the grant of consequential damages to the property owner, and no unjust enrichment can result therefrom.

NATIONAL POWER CORPORATION, *Petitioner*, -versus- APOLONIO V. MARASIGAN, FRANCISCO V. MARASIGAN, LILIA V. MARASIGAN, BENITO V. MARASIGAN, JR., AND ALICIA V. MARASIGAN, *Respondents*.
G.R. No. 220367, FIRST DIVISION, November 20, 2017, TIJAM, *J.*

The insistence of NPC to base the value of the properties solely on the tax declarations is misplaced considering that such is only one of the several factors which the court may consider to facilitate the determination of just compensation. Indeed, courts enjoy sufficient judicial discretion to determine the classification of lands, because such classification is one of the relevant standards for the assessment of the value of lands subject of expropriation proceedings. It bears to emphasize, however, that the court's discretion in classifying the expropriated land is only for the purpose of determining just compensation and is not meant to substitute that of the local government's power to reclassify and convert lands through local ordinance.

As regards consequwntial damages, as a rule, just compensation, to which the owner of the property to be expropriated is entitled, is equivalent to the market value. The rule is modified where only a part of a certain property is expropriated. In such a case, the owner is not restricted to compensation for the portion actually taken, he is also entitled to recover the consequential damages, if any, to the remaining part of the property.

NPC's contention that the consequential benefits should have canceled the consequential damages likewise deserve no merit. It is true that if the expropriation resulted in benefits to the remaining lot, such consequential benefits may be deducted from the consequential damages or from the value of the expropriated property. However, such consequential benefits refer to the actual benefits derived by the landowner which are the direct and proximate results of the improvements as a consequence of the expropriation and not to the general benefits which the landowner may receive in common with the community. Here, it was not shown by NPC how the alleged "tremendous increase" in the value of the remaining portions of the properties could have been directly caused by the construction of the transmission lines. If at all, any appreciation in the value of the properties is caused by the consequent increase in land value over time and not by the mere presence of the transmission lines.

FACTS:
For purposes of constructing and maintaining its steel transmission lines and wooden electric poles for its Naga-Tiwi 230 KV (Single Bundle), Naga-Tiwi 230 KV (Double Bundle) and 69 KV Naga-Daraga Transmission Lines, NPC filed, on January 23, 2006, an expropriation complaint against respondents as registered owners of the four parcels of land located in Barangays Sagurong, San Agustin and San Jose, Pili, Camarines Sur.

The total area over which NPC sought an easement of right of way covers 49,173 square meters of the subject properties. Based on the tax declarations allegedly classifying the properties as

agricultural and based on the corresponding Bureau of Internal Revenue's (BIR) zoning valuation therefor, NPC offered to pay PhP 299,550.50.

While interposing no objection to the expropriation, respondents nevertheless opposed the classification of the properties as agricultural on the ground that the same were classified as industrial, commercial and residential since the year 1993. Respondents thus claimed PhP 47,064,400 for the affected 49,173 square meters. By way of counterclaim, respondents sought payment of consequential damages for the areas left in between each transmission line, like the spaces underneath the infrastructure, commonly known as "dangling" portions in the total area of 41,869 square meters.

Meanwhile, an appraisal committee was formed by the RTC for purposes of determining just compensation, which thereafter submitted a Consolidated Report dated August 10, 2006. A reversed trial thereafter ensued.

Respondents presented the Chairman of the appraisal committee who testified that the appraisal committee recommended the total valuation of PhP 49,064,400 based on the assessor's data and the BIR zonal valuations as indicated on the 1997 tax declarations. Also presented was the succeeding Chairman of the appraisal committee who testified that the properties suffered consequential damages which the appraisal committee recommended to be computed at 50% of the BIR zonal value per square meter or for a total amount of PhP 22,227,800. On ocular inspection, the appraisal committee found that the existence of the transmission lines hampered the properties' potential use such that while the areas before and after the transmission lines could still be used, the areas in between could no longer be utilized. The appraisal committee also noted that the transmission lines produced considerable noise making the area unsuitable for residential purposes.

The RTC rendered its Decision dated December 20, 2010 affirming the recommendation of the appraisal committee for the payment of just compensation and fixed the amount of PhP 47,064,400 for the 49,173 square meters based on the BIR zonal valuation of the properties classified as residential, commercial and industrial as of the time of the filing of the complaint on January 23, 2006. The RTC rejected NPC's claim that it took possession of the property in 1972 and 1974 when respondents allegedly allowed NPC to construct the transmission lines for lack of proof. In addition, the RTC held that had the properties been taken on said years, such taking was without color of legal authority. The RTC likewise adopted the recommendation of the appraisal committee for the payment of PhP 22,227,800 as consequential damages for the 41,867 square meters portion of the properties which were rendered useless or no longer fit for its intended use due to the construction of the transmission lines.

Consequently, NPC interposed its appeal before the CA raising as issues the alleged erroneous award of just compensation and consequential damages.

On September 1, 2015, the CA rendered its Decision denying NPC's appeal.

ISSUE:
Whether or not the amount of just compensation and the award of consequential damages are correct. (YES)

RULING:
Reckoning point of the market value of the properties

The circumstances surrounding the "taking" of property in the context of the State's exercise of the power of eminent domain has been jurisprudentially listed in the seminal case of *Republic v. Vda. De Castellvi*, thus:

First, the expropriator must enter a private property. x x x
Second, the entrance into private property must be for more than a momentary period. x x x
x x x x

Fourth, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected. x x x
Fifth, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property. x x x
That there was taking of the subject properties for purposes of expropriation is beyond contest. What plagues the court and the parties is the date when such taking is to be reckoned because this will, in turn, be determinative of the value of the subject properties from which the amount of just compensation will be based.

Sec. 4, Rule 67 lays down the basic rule that the value of the just compensation is to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

The case of *National Transmission Corporation v. Oroville Development Corporation*, settles that just compensation should be reckoned from the date of actual taking when such preceded the filing of the complaint for expropriation. In *Oroville*, the Court explains that the State is. only obliged to make good the loss sustained by the landowner and considering the circumstances availing at the time the property was taken. Deviation from this general rule was permitted in the cases of *National Power Corporation v. Heirs of Macabangkit Sangkay* and *National Power Corporation v. Spouses Saludares* due to special circumstances therein obtaining which necessitated a valuation of just compensation at the time the landowners initiated inverse condemnation proceedings notwithstanding that taking of the properties occurred first.

The peculiarity of the instant case is that NPC insists that it took the subject properties in the 1970s despite having initiated the expropriation complaint only on January 23, 2006. Following the general rule, NPC thus reasons that the value of the properties should be reckoned in the 1970s. However, NPC's expropriation complaint and the very testimonial evidence it offered strongly militate against such proposition.

NPC's expropriation complaint filed on January 23, 2006 clearly sought "to acquire an easement of right-of-way over portions of the [subject properties]" to enable it "to construct and maintain its steel transmission lines and wooden electric poles for its Naga-Tiwi 230 KV (Single Bundle), Naga-Tiwi 230 KV (Double Bundle) and 69 KV Naga-Daraga Transmission Lines". NPC's action relative to the acquisition of an easement of right-of-way made prior to the filing of its expropriation complaint was limited only to the conduct of negotiations with respondents. Even then, such negotiations pertained to the construction of HVDC 350 KV transmission lines which was not among the transmission lines subject of the expropriation complaint. This, as much, was alleged by NPC itself in its expropriation complaint and was testified to by NPC's right-of-way officer who conducted the negotiations in 1996. The lower courts were thus correct in disregarding NPC's claim of actual taking in the 1970s as such was not alleged in the expropriation complaint nor was it successfully proven during the trial.

There being no sufficient proof that NPC actually took the subject properties at a date preceding the filing of the expropriation complaint, the time of the taking should be taken to mean as coinciding with the commencement of the expropriation proceedings on January 23, 2006. Hence, the value at the time of the filing of the complaint should be the basis for the determination of the value when the taking of the property involved coincides with or is subsequent to the commencement of the proceedings.

Amount of just compensation

Here, NPC assails the valuation assigned to the subject properties for being contrary to its alleged classification as agricultural as appearing on the tax declarations attached to its expropriation complaint.

However, the insistence of NPC to base the value of the properties solely on the tax declarations is misplaced considering that such is only one of the several factors which the court may consider to facilitate the determination of just compensation. Indeed, courts enjoy sufficient judicial discretion to determine the classification of lands, because such classification is one of the relevant standards for the assessment of the value of lands subject of expropriation proceedings. It bears to emphasize, however, that the court's discretion in classifying the expropriated land is only for the purpose of determining just compensation and is not meant to substitute that of the local government's power to reclassify and convert lands through local ordinance.

The subject properties in this case had been reclassified as residential, commercial and industrial several years before the expropriation complaint was filed. If NPC contests the reclassification of the subject properties, the expropriation case is not the proper venue to do so. As such, the RTC and the CA did not err in abiding by the classification of the subject properties as residential, commercial and industrial as reclassified under Sangguniang Bayan Resolution No. 17 and Municipal Ordinance No. 7 dated February 1, 1993 and as certified to by the Municipal Assessor of Pili, Camarines Sur.

In any case, reliance on the tax declarations attached to NPC's expropriation complaint to classify the properties as purely agricultural is inaccurate as these very same tax declarations reveal that portions of the expropriated Lot No. 4237 and Lot No. 2870 are in fact classified as residential and commercial.

Award of consequential damages

As a rule, just compensation, to which the owner of the property to be expropriated is entitled, is equivalent to the market value. The rule is modified where only a part of a certain property is expropriated. In such a case, the owner is not restricted to compensation for the portion actually taken, he is also entitled to recover the consequential damages, if any, to the remaining part of the property.

Consequential damages is specifically enunciated under Section 6 of Rule 67 as follows:
Section 6. Proceedings by Commissioners. — Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties, to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. **The commissioners shall assess the consequential damages to the property not**

taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.

Thus, if as a result of expropriation, the remaining portion of the property suffers from impairment or decrease in value, the award of consequential damages is proper.

NPC's contention that the consequential benefits should have canceled the consequential damages likewise deserve no merit. It is true that if the expropriation resulted in benefits to the remaining lot, such consequential benefits may be deducted from the consequential damages or from the value of the expropriated property. However, such consequential benefits refer to the actual benefits derived by the landowner which are the direct and proximate results of the improvements as a consequence of the expropriation and not to the general benefits which the landowner may receive in common with the community. Here, it was not shown by NPC how the alleged "tremendous increase" in the value of the remaining portions of the properties could have been directly caused by the construction of the transmission lines. If at all, any appreciation in the value of the properties is caused by the consequent increase in land value over time and not by the mere presence of the transmission lines.

Imposition of interest

Notwithstanding the foregoing, We find the need to modify the imposition of interest.

The award of interest is imposed in the nature of damages for delay in payment which, in effect, makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner. Thus, the imposition of interest is justified only in cases where delay has been sufficiently established.

In this case, NPC deposited the provisional value of the subject properties in the amount of PhP 47,064,400 on May 19, 2006 which was days before the issuance of a writ of possession. Considering NPC's prompt payment, the imposition of interest thereon is unjustified and should therefore be deleted.

However, interest should be imposed on the award of consequential damages as it is a component of just compensation. To emphasize, in order to determine just compensation, the trial court should first ascertain the market value of the property, to which should be added the consequential damages after deducting therefrom the consequential benefits which may arise from the expropriation. If the consequential benefits exceed the consequential damages, these items should be disregarded altogether as the basic value of the property should be paid in every case. Here, when the RTC pegged the amount of PhP 47,064,400 for the expropriated 49,173 square meters, the consequential damages was not yet included. The total just compensation should therefore be the total of PhP 47,064,400 and PhP22,227,800. Considering that the amount of PhP 22,227,800 as consequential damages was not yet paid, such amount should earn interest at the rate of 12% *per annum* from January 23, 2006 until June 30, 2013 and the interest rate of 6% *per annum* is imposed from July 1, 2013 until fully paid.

REPUBLIC OF THE PHILIPPINES, GENERAL ROMEO ZULUETA, COMMODORE EDGARDO GALEOS, ANTONIO CABALUNA, DOROTEO MANTOS & FLORENCIO BELOTINDOS, *Petitioners*, -versus- VICENTE G. LIM, *Respondent*.
G.R. No. 161656, EN BANC, June 29, 2005, SANDOVAL-GUTIERREZ, *J.*

Justice is the first virtue of social institutions. When the state wields its power of eminent domain, there arises a correlative obligation on its part to pay the owner of the expropriated property a just compensation. If it fails, there is a clear case of injustice that must be redressed. In the present case, fifty-seven (57) years have lapsed from the time the Decision in the subject expropriation proceedings became final, but still the Republic of the Philippines, herein petitioner, has not compensated the owner of the property. To tolerate such prolonged inaction on its part is to encourage distrust and resentment among our people – the very vices that corrode the ties of civility and tempt men to act in ways they would otherwise shun.

FACTS:
On September 5, 1938, the Republic of the Philippines (Republic) instituted a special civil action for expropriation with the Court of First Instance (CFI) of Cebu, docketed as Civil Case No. 781, involving Lots 932 and 939 of the Banilad Friar Land Estate, Lahug, Cebu City, for the purpose of establishing a military reservation for the Philippine Army. Lot 932 was registered in the name of Gervasia Denzon under Transfer Certificate of Title (TCT) No. 14921 with an area of 25,137 square meters, while Lot 939 was in the name of Eulalia Denzon and covered by TCT No. 12560 consisting of 13,164 square meters.

After depositing ₱9,500.00 with the Philippine National Bank, pursuant to the Order of the CFI dated October 19, 1938, the Republic took possession of the lots. Thereafter, or on May 14, 1940, the CFI rendered its Decision ordering the Republic to pay the Denzons the sum of ₱4,062.10 as just compensation.

The Denzons interposed an appeal to the Court of Appeals but it was dismissed on March 11, 1948. An entry of judgment was made on **April 5, 1948**.

In 1950, Jose Galeos, one of the heirs of the Denzons, filed with the National Airports Corporation a claim for rentals for the two lots, but it "denied knowledge of the matter." Another heir, Nestor Belocura, brought the claim to the Office of then President Carlos Garcia who wrote the Civil Aeronautics Administration and the Secretary of National Defense to expedite action on said claim. On September 6, 1961, Lt. Manuel Cabal rejected the claim but expressed willingness to pay the appraised value of the lots within a reasonable time.

For failure of the Republic to pay for the lots, on September 20, 1961, the Denzons' successors-in-interest, **Francisca Galeos-Valdehueza and Josefina Galeos-Panerio**, filed with the same CFI an action for recovery of possession with damages against the Republic and officers of the Armed Forces of the Philippines in possession of the property. The case was docketed as Civil Case No. R-7208.

In the interim or on November 9, 1961, TCT Nos. 23934 and 23935 covering Lots 932 and 939 were issued in the names of Francisca Valdehueza and Josefina Panerio, respectively. Annotated thereon was the phrase "subject to the priority of the National Airports Corporation to acquire said parcels of land, Lots 932 and 939 upon previous payment of a reasonable market value."

On July 31, 1962, the CFI promulgated its Decision in favor of Valdehueza and Panerio, holding that they are the owners and have retained their right as such over Lots 932 and 939 because of the Republic's failure to pay the amount of ₱4,062.10, adjudged in the expropriation proceedings. However, in view of the annotation on their land titles, they were ordered to execute a deed of sale in favor of the Republic. In view of "the differences in money value from 1940 up to the present," the court adjusted the market value at ₱16,248.40, to be paid with 6% interest per annum from April 5, 1948, date of entry in the expropriation proceedings, until full payment.

After their motion for reconsideration was denied, Valdehueza and Panerio appealed from the CFI Decision, in view of the amount in controversy, directly to this Court. The case was docketed as No. L-21032. On May 19, 1966, this Court rendered its Decision affirming the CFI Decision. It held that Valdehueza and Panerio are still the registered owners of Lots 932 and 939, there having been no payment of just compensation by the Republic. Apparently, this Court found nothing in the records to show that the Republic paid the owners or their successors-in-interest according to the CFI decision. While it deposited the amount of ₱9,500,00, and said deposit was allegedly disbursed, however, the payees could not be ascertained.

Notwithstanding the above finding, this Court still ruled that Valdehueza and Panerio are not entitled to recover possession of the lots but may only demand the payment of their fair market value.

Meanwhile, in 1964, Valdehueza and Panerio mortgaged Lot 932 to **Vicente Lim**, herein respondent, as security for their loans. For their failure to pay Lim despite demand, he had the mortgage foreclosed in 1976. Thus, TCT No. 23934 was cancelled, and in lieu thereof, TCT No. 63894 was issued in his name.

On August 20, 1992, respondent Lim filed a complaint for **quieting of title** with the Regional Trial Court (RTC), Branch 10, Cebu City, against General Romeo Zulueta, as Commander of the Armed Forces of the Philippines, Commodore Edgardo Galeos, as Commander of Naval District V of the Philippine Navy, Antonio Cabaluna, Doroteo Mantos and Florencio Belotindos, herein petitioners. Subsequently, he amended the complaint to implead the Republic.

On May 4, 2001, the RTC rendered a decision in favor of respondent.

Petitioners elevated the case to the Court of Appeals, docketed therein as CA-G.R. CV No. 72915. In its Decision dated September 18, 2003, the Appellate Court sustained the RTC Decision.

ISSUE:
Whether the Republic has retained ownership of Lot 932 despite its failure to pay respondent's predecessors-in-interest the just compensation therefor pursuant to the judgment of the CFI rendered as early as May 14, 1940. (NO)

RULING:
One of the basic principles enshrined in our Constitution is that no person shall be deprived of his private property without due process of law; and in expropriation cases, an essential element of due process is that there must be just compensation whenever private property is taken for public use. Accordingly, Section 9, Article III, of our Constitution mandates: "*Private property shall not be taken for public use without just compensation.*"

The Republic disregarded the foregoing provision when it failed and refused to pay respondent's predecessors-in-interest the just compensation for Lots 932 and 939. The length of time and the manner with which it evaded payment demonstrate its arbitrary high-handedness and confiscatory attitude. The final judgment in the expropriation proceedings (Civil Case No. 781) was entered on **April 5, 1948**. More than half of a century has passed, yet, to this day, the landowner, now respondent, has remained empty-handed. Undoubtedly, over 50 years of delayed payment cannot, in any way, be viewed as fair. This is more so when such delay is accompanied by bureaucratic hassles. Apparent from *Valdehueza* is the fact that respondent's predecessors-in-interest were given a "run around" by the Republic's officials and agents. In 1950, despite the benefits it derived from the use of the two lots, the National Airports Corporation denied knowledge of the claim of respondent's predecessors-in-interest. Even President Garcia, who sent a letter to the Civil Aeronautics Administration and the Secretary of National Defense to expedite the payment, failed in granting relief to them. And, on September 6, 1961, while the Chief of Staff of the Armed Forces expressed willingness to pay the appraised value of the lots, nothing happened.

The Court of Appeals is correct in saying that Republic's delay is contrary to the rules of fair play, as **"just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also the payment for the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered 'just.'"** In jurisdictions similar to ours, where an entry to the expropriated property precedes the payment of compensation, it has been held that if the compensation is not paid in a **reasonable time**, the party may be treated as a trespasser *ab initio.*

In *Kennedy v. Indianapolis*, the US Supreme Court cited several cases holding that title to property does not pass to the condemnor until just compensation had actually been made. In fact, the decisions appear to be uniform to this effect. As early as 1838, in *Rubottom v. McLure*, it was held that **'actual payment to the owner of the condemned property was a condition precedent to the investment of the title to the property in the State' albeit 'not to the appropriation of it to public use.'** In *Rexford v. Knight*, the Court of Appeals of New York said that the construction upon the statutes was that the fee did not vest in the State until the payment of the compensation although the authority to enter upon and appropriate the land was complete prior to the payment. Kennedy further said that **'both on principle and authority the rule is . . . that the right to enter on and use the property is complete, as soon as the property is actually appropriated under the authority of law for a public use, but that the title does not pass from the owner without his consent, until just compensation has been made to him."**

Our own Supreme Court has held in *Visayan Refining Co. v. Camus and Paredes*, that:
'If the laws which we have exhibited or cited in the preceding discussion are attentively examined it will be apparent that the method of expropriation adopted in this jurisdiction is such as to afford absolute reassurance that no piece of land can be finally and irrevocably taken from an unwilling owner until compensation is paid...'
Clearly, without full payment of just compensation, there can be no transfer of title from the landowner to the expropriator. Otherwise stated, the Republic's acquisition of ownership is conditioned upon the full payment of just compensation within a reasonable time.
Significantly, in *Municipality of Biñan v. Garcia* this Court ruled that the expropriation of lands consists of two stages, to wit:
"x x x The ***first*** is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the

plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint" x x x.
The ***second*** phase of the eminent domain action is concerned with the determination by the court of "the just compensation for the property sought to be taken." This is done by the court with the assistance of not more than three (3) commissioners. x x x.
It is only upon the completion of these two stages that expropriation is said to have been completed. In *Republic v. Salem Investment Corporation*, we ruled that, "the process is not completed until payment of just compensation." Thus, here, the failure of the Republic to pay respondent and his predecessors-in-interest for a period of 57 years rendered the expropriation process incomplete.

The Republic now argues that under *Valdehueza*, respondent is not entitled to recover possession of Lot 932 but only to demand payment of its fair market value. Of course, we are aware of the doctrine that "non-payment of just compensation (in an expropriation proceedings) does not entitle the private landowners to recover possession of the expropriated lots." This is our ruling in the recent cases of *Republic of the Philippines vs. Court of Appeals, et al.,* and *Reyes vs. National Housing Authority*. However, the facts of the present case do not justify its application. It bears stressing that the Republic was ordered to pay just compensation **twice**, the *first* was in the expropriation proceedings and the *second*, in *Valdehueza.* Fifty-seven (57) years have passed since then. **We cannot but construe the Republic's failure to pay just compensation as a deliberate refusal on its part.** Under such circumstance, **recovery of possession** is in order. In several jurisdictions, the courts held that recovery of possession may be had when property has been wrongfully taken or is wrongfully retained by one claiming to act under the power of eminent domain **or where a rightful entry is made and the party condemning refuses to pay the compensation which has been assessed or agreed upon;** or fails or refuses to have the compensation assessed and paid.

The Republic also contends that where there have been constructions being used by the military, as in this case, public interest demands that the present suit should not be sustained.

It must be emphasized that an individual cannot be deprived of his property for the public convenience. In *Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform*, we ruled:
"One of the basic principles of the democratic system is that where the rights of the individual are concerned, the end does not justify the means. It is not enough that there be a valid objective; it is also necessary that the means employed to pursue it be in keeping with the Constitution. Mere expediency will not excuse constitutional shortcuts. **There is no question that not even the strongest moral conviction or the most urgent public need, subject only to a few notable exceptions, will excuse the bypassing of an individual's rights. It is no exaggeration to say that a person invoking a right guaranteed under Article III of the Constitution is a majority of one even as against the rest of the nation who would deny him that right**.

The right covers the person's life, his liberty and his property under Section 1 of Article III of the Constitution. With regard to his property, the owner enjoys the added protection of Section 9, which reaffirms the familiar rule that private property shall not be taken for public use without just compensation."

We thus rule that the special circumstances prevailing in this case entitle respondent to recover possession of the expropriated lot from the Republic. Unless this form of swift and effective relief is granted to him, the grave injustice committed against his predecessors-in-interest, though no fault

or negligence on their part, will be perpetuated. Let this case, therefore, serve as a wake-up call to the Republic that in the exercise of its power of eminent domain, necessarily in derogation of private rights, it must comply with the Constitutional limitations. This Court, as the guardian of the people's right, will not stand still in the face of the Republic's oppressive and confiscatory taking of private property, as in this case.

LAND BANK OF THE PIDLIPPINES, *Petitioner*,
-versus- EUGENIO DALAUTA, *Respondent.*
G.R. No. 190004, EN BANC, August 8, 2017, MENDOZA, *J.*

The taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings ***is essentially a judicial function which is vested with the courts and not with administrative agencies.*** *Consequently, the SAC properly took cognizance of respondent's petition for determination of just compensation.*

Since the determination of just compensation is a judicial function, the Court must abandon its ruling in Veterans Bank, Martinez and Soriano that a petition for determination of just compensation before the SAC shall be proscribed and adjudged dismissible if not filed within the 15-day period prescribed under the DARAB Rules.

To maintain the rulings would be incompatible and inconsistent with the legislative intent to vest the original and exclusive jurisdiction in the determination of just compensation with the SAC. Indeed, such rulings judicially reduced the SAC to merely an appellate court to review the administrative decisions of the DAR. This was never the intention of the Congress.

As earlier cited, in Section 57 of R.A. No. 6657, Congress expressly granted the RTC, acting as SAC, the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. Only the legislature can recall that power. The DAR has no authority to qualify or undo that. The Court's pronouncement in Veterans Bank, Martinez, Soriano, and Limkaichong, reconciling the power of the DAR and the SAC essentially barring any petition to the SAC for having been filed beyond the 15-day period provided in Section 11, Rule XIII of the DARAB Rules of Procedure, cannot be sustained. The DAR regulation simply has no statutory basis.

FACTS:
Respondent Eugenio Dalauta *(Dalauta)* was the registered owner of an agricultural land in Florida, Butuan City, with an area of 25.2160 hectares and covered by Transfer Certificate of Title *(TCT)* No. T-1624. The land was placed by the Department of Agrarian Reform *(DAR)* under compulsory acquisition of the Comprehensive Agrarian Reform Program *(CARP)* as reflected in the Notice of Coverage, dated January 17, 1994, which Dalauta received on February 7, 1994. Petitioner Land Bank of the Philippines *(LBP)* offered ₱192,782.59 as compensation for the land, but Dalauta rejected such valuation for being too low.

The case was referred to the DAR Adjudication Board *(DARAB)* through the Provincial Agrarian Reform Adjudicator *(PARAD)* of Butuan City. A summary administrative proceeding was conducted to determine the appropriate just compensation for the subject property. In its Resolution, dated December 4, 1995, the PARAD affirmed the valuation made by LBP in the amount of ₱192,782.59.

On February 28, 2000, Dalauta filed a petition for determination of just compensation with the RTC, sitting as SAC. He alleged that LBP's valuation of the land was inconsistent with the rules and regulations prescribed in DAR Administrative Order *(A.O.)* No. 06, series of 1992, for determining the just compensation of lands covered by CARP's compulsory acquisition scheme.

On May 30, 2006, the SAC rendered its decision as follows:
WHEREFORE, AND IN VIEW OF ALL OF THE FOREGOING, DAR and LBP are directed to pay to:
1.) Land Owner Mr. Eugenio Dalauta the following:
a. Two Million Six Hundred Thirty Nine Thousand Five Hundred Fifty Seven (₱2,639,557.oo) Pesos, Philippine Currency, as value of the Land;
b. One Hundred Thousand (₱100,ooo.oo) Pesos, Philippine Currency for the farmhouse;
c. One Hundred Fifty Thousand (₱150,000.00) Pesos, Philippine Currency, as reasonable attorney's fees;
d. Fifty Thousand (₱50,000.00) Pesos, Philippine Currency as litigation expenses;
2.) The Members of the Board of Commissioners:
a. Ten Thousand (P10,ooo.oo) Pesos, Philippine Currency for the Chairman of the Board;
b. Seven Thousand Five Hundred (₱7,500.00) Pesos, Philippine Currency for each of the two (2) members of the Board;
Unsatisfied, LBP filed a motion for reconsideration, but it was denied by the SAC on July 18, 2006. Hence, LBP filed a petition for review under Rule 42 of the Rules of Court before the CA.

In its September 18, 2009 Decision, the CA ruled that the SAC correctly took cognizance of the case, citing *LBP v. Wycoco* and *LBP v. Suntay.* It reiterated that the SAC had original and exclusive jurisdiction over all petitions for the determination of just compensation. The appellate court stated that the original and exclusive jurisdiction of the SAC would be undermined if the DAR would vest in administrative officials the original jurisdiction in compensation cases and make the SAC an appellate court for the review of administrative decisions.

ISSUE:
Whether or not the trial court had properly taken jurisdiction over the case despite the finality of the PARAD Resolution. (YES)

RULING:
In agrarian reform cases, **primary jurisdiction** is vested in the DAR, more specifically, in the DARAB as provided for in Section 50 of R.A. No. 6657 which reads:
SEC. 50. *Quasi-Judicial Powers of the* DAR. - The DAR is hereby vested with **primary jurisdiction** to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

Meanwhile, Executive Order *(E.O.)* No. 229 also vested the DAR with (1) quasi-judicial powers to determine and adjudicate agrarian reform matters; and (2) jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources.

On the other hand, the SACs are the Regional Trial Courts expressly granted by law with **original** and **exclusive jurisdiction** over all petitions for the determination of just compensation to landowners. Section 57 of R.A. No. 6657 provides:

SEC. 57. *Special Jurisdiction.* - The Special Agrarian Courts shall have **original** and **exclusive jurisdiction** over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.
The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

Adhering thereto, in *Land Bank of the Philippines v. Heir of Trinidad S. V da. De Arieta,* it was written:
In both voluntary and compulsory acquisitions, wherein the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the RTC, acting as a special agrarian court. But as with the DAR-awarded compensation, LBP's valuation of lands covered by CARL is considered only as an **initial determination, which is not conclusive, as it is the RTC, sitting as a Special Agrarian Court, that should make the final determination of just compensation,** taking into consideration the factors enumerated in Section 17 of R.A. No. 6657 and the applicable DAR regulations. xxx.

Recognizing the separate jurisdictions of the two bodies, the DARAB came out with its own rules to avert any confusion. Section 11, Rule XIII of the 1994 DARAB Rules of Procedure reads:
Land Valuation Determination and Payment of Just Compensation. - The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but **shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof.** Any party shall be entitled to only one motion for reconsideration.

The Court stamped its imprimatur on the rule in *Philippine Veterans Bank v. CA (Veterans Bank); LBP v. Martinez (Martinez); and Soriano v. Republic (Soriano).* In all these cases, it was uniformly decided that the petition for determination of just compensation before the SAC should be filed within the period prescribed under the DARAB Rules, that is, "within fifteen (15) days from receipt of the notice thereof."

To implement the provisions of R.A. No. 6657, particularly §50 thereof, Rule XIII, §u of the DARAB Rules of Procedure provides:

Land Valuation Determination and Payment of Just Compensation. - The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts **within fifteen (15) days from receipt of the notice thereof.** Any party shall be entitled to only one motion for reconsideration.

As we held in *Republic v. Court of Appeals,* this rule is an acknowledgment by the DARAB that the power to decide just compensation cases for the taking of lands under R.A. No. 6657 is vested in the courts. It is error to think that, because of Rule XIII, §n, the original and exclusive jurisdiction given to the courts to decide petitions for determination of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.

The jurisdiction of the Regional Trial Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination. For that matter, the law may provide that the decision of the DAR is final and unappealable.

Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.

Accordingly, as the petition in the Regional Trial Court was **filed beyond the 15-day period** provided in Rule XIII, §u of the Rules of Procedure of the DARAB, **the trial court correctly dismissed the case and the Court of Appeals correctly affirmed the order of dismissal.** Xxx

Any uncertainty with the foregoing ruling was cleared when the Court adhered to the Veterans Bank ruling in its July 31, 2008 Resolution in *Land Bank v. Martinez:*

On the supposedly conflicting pronouncements in the cited decisions, the Court reiterates its ruling in this case that **the agrarian reform adjudicator's decision on land valuation attains finality after the lapse of the 15-day period** stated in the DARAB Rules. The petition for the fixing of just compensation should therefore, following the law and settled jurisprudence, be filed with the SAC within the said period. This conclusion, as already explained in the assailed decision, is based on the doctrines laid down in *Philippine Veterans Bank v. Court of Appeals and Department of Agrarian Reform Adjudication Board v. Lubrica.*

Jurisdiction of the SAC is Original and Exclusive; The Courts Ruling in Veterans Bank and Martinez should be Abandoned
Citing the rulings in *Veterans and Martinez,* the LBP argues that the PARAD resolution already attained finality when Dalauta filed the petition for determination of just compensation before the RTC sitting as SAC. The petition was filed beyond the 15-day prescriptive period or, specifically, more than five (5) years after the issuance of the PARAD Resolution.

When the issue on jurisdiction was raised again before the CA, the appellate court, citing *LBP v. Wycoco* and *LBP v. Suntay,* stressed that the RTC, acting as SAC, had original and exclusive jurisdiction over all petitions for the determination of just compensation. It explained that the original and exclusive jurisdiction of the SAC would be undermined if the DAR would vest in administrative officials the original jurisdiction in compensation cases and make the SAC an appellate court for the review of administrative decisions.

The Court agrees with the CA in this regard. Section 9, Article III of the 1987 Constitution provides that "[p]rivate property shall not be taken for public use without just compensation." In *Export Processing Zone Authority v. Dulay,* the Court ruled that **the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies.** "The executive department or the legislature may make the initial determination, but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the 'justness' of the decreed compensation. "Any law or rule in derogation of this proposition is contrary to the letter and spirit of the Constitution, and is to be

struck down as void or invalid. These were reiterated in *Land Bank of the Philippines v. Montalvan*, when the Court explained:

It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has **"original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners."** This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, **it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Sec. 57 and therefore would be void.** Thus, direct resort to the SAC by private respondent is valid.

It would be well to emphasize that the taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings **is essentially a judicial function which is vested with the courts and not with administrative agencies.** Consequently, the SAC properly took cognizance of respondent's petition for determination of just compensation.

Since the determination of just compensation is a judicial function, the Court must abandon its ruling in *Veterans Bank, Martinez and Soriano* that a petition for determination of just compensation before the SAC shall be proscribed and adjudged dismissible if not filed within the 15-day period prescribed under the DARAB Rules.

To maintain the rulings would be incompatible and inconsistent with the legislative intent to vest the original and exclusive jurisdiction in the determination of just compensation with the SAC. Indeed, such rulings judicially reduced the SAC to merely an appellate court to review the administrative decisions of the DAR. This was never the intention of the Congress.

As earlier cited, in Section 57 of R.A. No. 6657, Congress expressly granted the RTC, acting as SAC, the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. Only the legislature can recall that power. The DAR has no authority to qualify or undo that. The Court's pronouncement in *Veterans Bank, Martinez, Soriano, and Limkaichong,* reconciling the power of the DAR and the SAC essentially barring any petition to the SAC for having been filed beyond the 15-day period provided in Section 11, Rule XIII of the DARAB Rules of Procedure, cannot be sustained. The DAR regulation simply has no statutory basis.

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY AND AIR TRANSPORTATION OFFICE, *Petitioners*, -versus- BERNARDO L. LOZADA, SR., AND THE HEIRS OF ROSARIO MERCADO, NAMELY, VICENTE LOZADA, MARIO M. LOZADA, MARCIA L. GODINEZ, VIRGINIA L. FLORES, BERNARDO LOZADA, JR., DOLORES GACASAN, SOCORRO CAFARO AND ROSARIO LOZADA, REPRESENTED BY MARCIA LOZADA GODINEZ, *Respondents*.
G.R. No. 176625, EN BANC, February 25, 2010, NACHURA, *J*.

The taking of private property, consequent to the Government's exercise of its power of eminent domain, is always subject to the condition that the property be devoted to the specific public purpose for which it was taken. Corollarily, if this particular purpose or intent is not initiated or not at all pursued, and is peremptorily abandoned, then the former owners, if they so desire, may seek the reversion of the

property, subject to the return of the amount of just compensation received. In such a case, the exercise of the power of eminent domain has become improper for lack of the required factual justification.

While in the trial in Civil Case No. R-1881 [we] could have simply acknowledged the presence of public purpose for the exercise of eminent domain regardless of the survival of Lahug Airport, the trial court in its Decision chose not to do so but instead prefixed its finding of public purpose upon its understanding that "Lahug Airport will continue to be in operation." Verily, these meaningful statements in the body of the Decision warrant the conclusion that the expropriated properties would remain to be so until it was confirmed that Lahug Airport was no longer "in operation."

Indeed, the Decision in Civil Case No. R-1881 should be read in its entirety, wherein it is apparent that the acquisition by the Republic of the expropriated lots was subject to the condition that the Lahug Airport would continue its operation. The condition not having materialized because the airport had been abandoned, the former owner should then be allowed to reacquire the expropriated property.

FACTS:
Subject of this case is Lot No. 88-SWO-25042 (Lot No. 88), with an area of 1,017 square meters, more or less, located in Lahug, Cebu City. Its original owner was Anastacio Deiparine when the same was subject to expropriation proceedings, initiated by the Republic of the Philippines (Republic), represented by the then Civil Aeronautics Administration (CAA), for the expansion and improvement of the Lahug Airport. The case was filed with the then Court of First Instance of Cebu, Third Branch, and docketed as Civil Case No. R-1881.

During the pendency of the expropriation proceedings, respondent Bernardo L. Lozada, Sr. acquired Lot No. 88 from Deiparine. Consequently, Transfer Certificate of Title (TCT) No. 9045 was issued in Lozada's name.

On December 29, 1961, the trial court rendered judgment in favor of the Republic and ordered the latter to pay Lozada the fair market value of Lot No. 88, adjudged at P3.00 per square meter, with consequential damages by way of legal interest computed from November 16, 1947--the time when the lot was first occupied by the airport. Lozada received the amount of P3,018.00 by way of payment.

The projected improvement and expansion plan of the old Lahug Airport, however, was not pursued.

Lozada, with the other landowners, contacted then CAA Director Vicente Rivera, Jr., requesting to repurchase the lots, as per previous agreement. The CAA replied that there might still be a need for the Lahug Airport to be used as an emergency DC-3 airport. It reiterated, however, the assurance that "should this Office dispose and resell the properties which may be found to be no longer necessary as an airport, then the policy of this Office is to give priority to the former owners subject to the approval of the President."

On November 29, 1989, then President Corazon C. Aquino issued a Memorandum to the Department of Transportation, directing the transfer of general aviation operations of the Lahug Airport to the Mactan International Airport before the end of 1990 and, upon such transfer, the closure of the Lahug Airport.

From the date of the institution of the expropriation proceedings up to the present, the public purpose of the said expropriation (expansion of the airport) was never actually initiated, realized, or implemented. Instead, the old airport was converted into a commercial complex. Lot No. 88 became

the site of a jail known as *Bagong Buhay Rehabilitation Complex*, while a portion thereof was occupied by squatters.The old airport was converted into what is now known as the Ayala I.T. Park, a commercial area.

Thus, on June 4, 1996, petitioners initiated a complaint for the recovery of possession and reconveyance of ownership of Lot No. 88. The case was docketed as Civil Case No. CEB-18823 and was raffled to the Regional Trial Court (RTC), Branch 57, Cebu City.

On October 22, 1999, the RTC rendered its Decision in favor of the plaintiffs, Bernardo L. Lozada, Sr., and the heirs of Rosario Mercado, namely, Vicente M. Lozada, Marcia L. Godinez, Virginia L. Flores, Bernardo M. Lozada, Jr., Dolores L. Gacasan, Socorro L. Cafaro and Rosario M. Lozada, represented by their attorney-in-fact Marcia Lozada Godinez, and against defendants Cebu-Mactan International Airport Authority (MCIAA) and Air Transportation Office (ATO).

Aggrieved, petitioners interposed an appeal to the CA. After the filing of the necessary appellate briefs, the CA rendered its assailed Decision dated February 28, 2006, denying petitioners' appeal and affirming *in toto* the Decision of the RTC, Branch 57, Cebu City. Petitioners' motion for reconsideration was, likewise, denied in the questioned CA Resolution dated February 7, 2007.

ISSUE:
Whether or not the judgment in Civil Case No. R-1881 was absolute and unconditional, giving title in fee simple to the Republic. (NO)
RULING:
Petitioners anchor their claim to the controverted property on the supposition that the Decision in the pertinent expropriation proceedings did not provide for the condition that should the intended use of Lot No. 88 for the expansion of the Lahug Airport be aborted or abandoned, the property would revert to respondents, being its former owners. Petitioners cite, in support of this position, *Fery v. Municipality of Cabanatuan*, which declared that the Government acquires only such rights in expropriated parcels of land as may be allowed by the character of its title over the properties—

If x x x land is expropriated for a particular purpose, with the condition that when that purpose is ended or abandoned the property shall return to its former owner, then, of course, when the purpose is terminated or abandoned the former owner reacquires the property so expropriated. If x x x land is expropriated for a public street and the expropriation is granted upon condition that the city can *only* use it for a public street, then, of course, when the city abandons its use as a public street, it returns to the former owner, unless there is some statutory provision to the contrary. x x x. If, upon the contrary, however, the decree of expropriation gives to the entity a fee simple title, then, of course, the land becomes the absolute property of the expropriator, whether it be the State, a province, or municipality, and in that case the non-user does not have the effect of defeating the title acquired by the expropriation proceedings. x x x.

When land has been acquired for public use in *fee simple, unconditionally*, either by the exercise of eminent domain or by purchase, the former owner retains no right in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner. x x x.

Contrary to the stance of petitioners, this Court had ruled otherwise in *Heirs of Timoteo Moreno and Maria Rotea v. Mactan-Cebu International Airport Authority*, thus—

Moreover, respondent MCIAA has brought to our attention a significant and telling portion in the *Decision* in Civil Case No. R-1881 validating our discernment that the expropriation by the predecessors of respondent was ordered under the running impression that Lahug Airport would continue in operation—

As for the public purpose of the expropriation proceeding, it cannot now be doubted. Although Mactan Airport is being constructed, it does not take away the actual usefulness and importance of the Lahug Airport: it is handling the air traffic both civilian and military. From it aircrafts fly to Mindanao and Visayas and pass thru it on their flights to the North and Manila. *Then, no evidence was adduced to show how soon is the Mactan Airport to be placed in operation and whether the Lahug Airport will be closed immediately thereafter.* It is up to the other departments of the Government to determine said matters. The Court cannot substitute its judgment for those of the said departments or agencies. *In the absence of such showing, the Court will presume that the Lahug Airport will continue to be in operation.*

While in the trial in Civil Case No. R-1881 [we] could have simply acknowledged the presence of public purpose for the exercise of eminent domain regardless of the survival of Lahug Airport, the trial court in its *Decision* chose not to do so but instead prefixed its finding of public purpose upon its understanding that *"Lahug Airport will continue to be in operation."* Verily, these meaningful statements in the body of the *Decision* warrant the conclusion that the expropriated properties would remain to be so until it was confirmed that Lahug Airport was no longer *"in operation."* This inference further implies two (2) things: (a) after the Lahug Airport ceased its undertaking as such and the expropriated lots were not being used for any airport expansion project, the rights vis-a -vis the expropriated Lots Nos. 916 and 920 as between the State and their former owners, petitioners herein, must be equitably adjusted; and (b) the foregoing unmistakable declarations in the body of the *Decision* should merge with and become an intrinsic part of the *fallo* thereof which under the premises is clearly inadequate since the dispositive portion is not in accord with the findings as contained in the body thereof.

Indeed, the Decision in Civil Case No. R-1881 should be read in its entirety, wherein it is apparent that the acquisition by the Republic of the expropriated lots was subject to the condition that the Lahug Airport would continue its operation. The condition not having materialized because the airport had been abandoned, the former owner should then be allowed to reacquire the expropriated property.

On this note, we take this opportunity to revisit our ruling in *Fery*, which involved an expropriation suit commenced upon parcels of land to be used as a site for a public market. Instead of putting up a public market, respondent Cabanatuan constructed residential houses for lease on the area. Claiming that the municipality lost its right to the property taken since it did not pursue its public purpose, petitioner Juan Fery, the former owner of the lots expropriated, sought to recover his properties. However, as he had admitted that, in 1915, respondent Cabanatuan acquired a fee simple title to the lands in question, judgment was rendered in favor of the municipality, following American jurisprudence, particularly *City of Fort Wayne v. Lake Shore & M.S. RY. Co., McConihay v. Theodore Wright,* and *Reichling v. Covington Lumber Co.,* all uniformly holding that the transfer to a third party of the expropriated real property, which necessarily resulted in the abandonment of the particular public purpose for which the property was taken, is not a ground for the recovery of the same by its previous owner, the title of the expropriating agency being one of fee simple.

Obviously, *Fery* was not decided pursuant to our now sacredly held constitutional right that private property shall not be taken for public use without just compensation. It is well settled that the taking

of private property by the Government's power of eminent domain is subject to two mandatory requirements: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake of the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.

More particularly, with respect to the element of public use, the expropriator should commit to use the property pursuant to the purpose stated in the petition for expropriation filed, failing which, it should file another petition for the new purpose. If not, it is then incumbent upon the expropriator to return the said property to its private owner, if the latter desires to reacquire the same. Otherwise, the judgment of expropriation suffers an intrinsic flaw, as it would lack one indispensable element for the proper exercise of the power of eminent domain, namely, the particular public purpose for which the property will be devoted. Accordingly, the private property owner would be denied due process of law, and the judgment would violate the property owner's right to justice, fairness, and equity.

In light of these premises, we now expressly hold that the taking of private property, consequent to the Government's exercise of its power of eminent domain, is always subject to the condition that the property be devoted to the specific public purpose for which it was taken. Corollarily, if this particular purpose or intent is not initiated or not at all pursued, and is peremptorily abandoned, then the former owners, if they so desire, may seek the reversion of the property, subject to the return of the amount of just compensation received. In such a case, the exercise of the power of eminent domain has become improper for lack of the required factual justification.

Respondents must likewise pay petitioners the necessary expenses they may have incurred in maintaining Lot No. 88, as well as the monetary value of their services in managing it to the extent that respondents were benefited thereby.

Following Article 1187 of the Civil Code, petitioners may keep whatever income or fruits they may have obtained from Lot No. 88, and respondents need not account for the interests that the amounts they received as just compensation may have earned in the meantime.

In accordance with Article 1190 of the Civil Code vis-a -vis Article 1189, which provides that "(i)f a thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor x x x," respondents, as creditors, do not have to pay, as part of the process of restitution, the appreciation in value of Lot No. 88, which is a natural consequence of nature and time.

ANUNCIACION VDA. DE OUANO, MARIO P. OUANO, LETICIA OUANO ARNAIZ, and CIELO OUANO MARTINEZ, *Petitioners*,

vs.

THE REPUBLIC OF THE PHILIPPINES, THE MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY, and THE REGISTER OF DEEDS FOR THE CITY OF CEBU, *Respondents*.

x -x

G.R. No. 168812

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA), *Petitioner*,

-versus- RICARDO L. INOCIAN, in his personal capacity and as Attorney-in-Fact of OLYMPIA E. ESTEVES, EMILIA E. BACALLA, RESTITUTA E. MONTANA, and RAUL L. INOCIAN; and ALETHA SUICO MAGAT, in her personal capacity and as Attorney-in-Fact of PHILIP M. SUICO, DORIS S. DELA CRUZ, JAMES M. SUICO, EDWARD M. SUICO, ROSELYN SUICO-LAWSIN, REX M. SUICO, KHARLA SUICO-GUTIERREZ, ALBERT CHIONGBIAN, and JOHNNY CHAN, *Respondents*.

G.R. No. 168770, FIRST DIVISION, February 9, 2011, VELASCO, JR., *J.*

A condemnor should commit to use the property pursuant to the purpose stated in the petition for expropriation, failing which it should file another petition for the new purpose. If not, then it behooves the condemnor to return the said property to its private owner, if the latter so desires. The government cannot plausibly keep the property it expropriated in any manner it pleases and, in the process, dishonor the judgment of expropriation. This is not in keeping with the idea of fair play.

The notion, therefore, that the government, via expropriation proceedings, acquires unrestricted ownership over or a fee simple title to the covered land, is no longer tenable.

Given the foregoing disquisitions, equity and justice demand the reconveyance by MCIAA of the litigated lands in question to the Ouanos and Inocians. In the same token, justice and fair play also dictate that the Ouanos and Inocian return to MCIAA what they received as just compensation for the expropriation of their respective properties plus legal interest to be computed from default, which in this case should run from the time MCIAA complies with the reconveyance obligation. They must likewise pay MCIAA the necessary expenses it might have incurred in sustaining their respective lots and the monetary value of its services in managing the lots in question to the extent that they, as private owners, were benefited thereby.

FACTS:

At the center of these two (2) Petitions for Review on Certiorari under Rule 45 is the issue of the right of the former owners of lots acquired for the expansion of the Lahug Airport in Cebu City to repurchase or secure reconveyance of their respective properties.

Per its October 19, 2005 Resolution, the Court ordered the consolidation of both cases.

In 1949, the National Airport Corporation (NAC), MCIAA's predecessor agency, pursued a program to expand the Lahug Airport in Cebu City. Through its team of negotiators, NAC met and negotiated with the owners of the properties situated around the airport, which included Lot Nos. 744-A, 745-A, 746, 747, 761-A, 762-A, 763-A, 942, and 947 of the Banilad Estate. As the landowners would later claim, the government negotiating team, as a sweetener, assured them that they could repurchase their respective lands should the Lahug Airport expansion project do not push through or once the Lahug Airport closes or its operations transferred to Mactan-Cebu Airport. Some of the landowners accepted the assurance and executed deeds of sale with a right of repurchase. Others, however, including the owners of the aforementioned lots, refused to sell because the purchase price offered was viewed as way below market, forcing the hand of the Republic, represented by the then Civil Aeronautics Administration (CAA), as successor agency of the NAC, to file a complaint for the expropriation of Lot Nos. 744-A, 745-A, 746, 747, 761-A, 762-A, 763-A, 942, and 947, among others, docketed as Civil Case No. R-1881 entitled Republic v. Damian Ouano, et al.

On December 29, 1961, the then Court of First Instance (CFI) of Cebu rendered judgment for the Republic.

In view of the adverted buy-back assurance made by the government, the owners of the lots no longer appealed the decision of the trial court. Following the finality of the judgment of condemnation, certificates of title for the covered parcels of land were issued in the name of the Republic which, pursuant to Republic Act No. 6958, were subsequently transferred to MCIAA.

At the end of 1991, or soon after the transfer of the aforesaid lots to MCIAA, Lahug Airport completely ceased operations, Mactan Airport having opened to accommodate incoming and outgoing commercial flights. On the ground, the expropriated lots were never utilized for the purpose they were taken as no expansion of Lahug Airport was undertaken. This development prompted the former lot owners to formally demand from the government that they be allowed to exercise their promised right to repurchase. The demands went unheeded. Civil suits followed.

G.R. No. 168812 (MCIAA Petition)

On October 7, 1998, the RTC rendered a Decision in Civil Case No. CEB-18370, directing defendant Mactan Cebu International Airport Authority (MCIAA) to reconvey (free from liens and encumbrances) to plaintiffs Ricardo Inocian, Olimpia E. Esteves, Emilia E. Bacalla, Restituta E. Montana and Raul Inocian Lots No. 744-A, 745-A, 746, 762-A, 747, 761-A and to plaintiffs Aletha Suico Magat, Philip M. Suico, Doris S. dela Cruz, James M. Suico, Edward M. Suico, Roselyn S. Lawsin, Rex M. Suico and Kharla Suico-Gutierrez Lots No. 942 and 947, after plaintiffs shall have paid MCIAA the sums indicated in the decision in Civil Case No. R-1881. Defendant MCIAA is likewise directed to pay the aforementioned plaintiffs the sum or P50,000.00 as and for attorney's fees and P10,000.00 for litigation expenses.

On January 14, 2005, the CA rendered judgment for the Inocians, declaring them entitled to the reconveyance of the questioned lots as the successors-in-interest of the late Isabel Limbaga and Santiago Suico, as the case may be, who were the former registered owners of the said lots. The decretal portion of the CA's Decision reads:

G.R. No. 168770 (Ouano Petition)

By a Decision dated November 28, 2000, the RTC, Branch 57 in Cebu City ruled in favor of the Ouanos.

In time, the Ouanos interposed an appeal to the CA, docketed as CA-G.R. CV No. 78027. Eventually, the appellate court rendered a Decision dated September 3, 2004, denying the appeal.

ISSUE:

Whether abandonment of the public use for which the subject properties were expropriated entitles petitioners Ouanos, et al. and respondents Inocian, et al. to reacquire them. (YES)

RULING:

The Court has, to be sure, taken stock of *Fery v. Municipality of Cabanatuan*, a case MCIAA cites at every possible turn, where the Court made these observations:

If, for example, land is expropriated for a particular purpose, with the condition that when that purpose is ended or abandoned the property shall return to its former owner, then of course, when the purpose is terminated or abandoned, the former owner reacquires the property so expropriated. x x x If, upon the contrary, however the decree of expropriation gives to the entity a fee simple title, then, of course, the land becomes the absolute property of the expropriator x x x and in that case the non-user does not have the effect of defeating the title acquired by the expropriation proceedings x x x.

Fery notwithstanding, MCIAA cannot really rightfully say that it has absolute title to the lots decreed expropriated in Civil Case No. R-1881. The correct lesson of *Fery* is captured by what the Court said in that case, thus: "the government acquires only such rights in expropriated parcels of land as may be allowed by the character of its title over the properties." In light of our disposition in *Heirs of Moreno* and *Tudtud*, the statement immediately adverted to means that in the event the particular public use for which a parcel of land is expropriated is abandoned, the owner shall not be entitled to

recover or repurchase it as a matter of right, unless such recovery or repurchase is expressed in or irresistibly deducible from the condemnation judgment. But as has been determined below, the decision in Civil Case No. R-1881 enjoined MCIAA, as a condition of approving expropriation, to allow recovery or repurchase upon abandonment of the Lahug airport project. To borrow from our underlying decision in *Heirs of Moreno*, "[n]o doubt, the return or repurchase of the condemned properties of petitioners could readily be justified as the manifest legal effect of consequence of the trial court's underlying presumption that 'Lahug Airport will continue to be in operation' when it granted the complaint for eminent domain and the airport discontinued its activities."

Providing added support to the Ouanos and the Inocians' right to repurchase is what in *Heirs of Moreno* was referred to as constructive trust, one that is akin to the implied trust expressed in Art. 1454 of the Civil Code, the purpose of which is to prevent unjust enrichment. In the case at bench, the Ouanos and the Inocians parted with their respective lots in favor of the MCIAA, the latter obliging itself to use the realties for the expansion of Lahug Airport; failing to keep its end of the bargain, MCIAA can be compelled by the former landowners to reconvey the parcels of land to them, otherwise, they would be denied the use of their properties upon a state of affairs that was not conceived nor contemplated when the expropriation was authorized. In effect, the government merely held the properties condemned in trust until the proposed public use or purpose for which the lots were condemned was actually consummated by the government. Since the government failed to perform the obligation that is the basis of the transfer of the property, then the lot owners Ouanos and Inocians can demand the reconveyance of their old properties after the payment of the condemnation price.

The Court, in the recent *MCIAA v. Lozada, Sr*., revisited and abandoned the Fery ruling that the former owner is not entitled to reversion of the property even if the public purpose were not pursued and were abandoned, thus:

On this note, we take this opportunity to revisit our ruling in *Fery*, which involved an expropriation suit commenced upon parcels of land to be used as a site for a public market. Instead of putting up a public market, respondent Cabanatuan constructed residential houses for lease on the area. Claiming that the municipality lost its right to the property taken since it did not pursue its public purpose, petitioner Juan Fery, the former owner of the lots expropriated, sought to recover his properties. However, as he had admitted that, in 1915, respondent Cabanatuan acquired a fee simple title to the lands in question, judgment was rendered in favor of the municipality, following American jurisprudence, particularly *City of Fort Wayne v. Lake Shore & M.S. RY. Co., McConihay v. Theodore Wright,* and *Reichling v. Covington Lumber Co.,* all uniformly holding that the transfer to a third party of the expropriated real property, which necessarily resulted in the abandonment of the particular public purpose for which the property was taken, is not a ground for the recovery of the same by its previous owner, the title of the expropriating agency being one of fee simple.

Obviously, *Fery* was not decided pursuant to our now sacredly held constitutional right that private property shall not be taken for public use without just compensation. It is well settled that the taking of private property by the Governments power of eminent domain is subject to two mandatory requirements: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake of the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.

More particularly, with respect to the element of public use, the expropriator should commit to use the property pursuant to the purpose stated in the petition for expropriation filed, failing which, it

should file another petition for the new purpose. If not, it is then incumbent upon the expropriator to return the said property to its private owner, if the latter desires to reacquire the same. Otherwise, the judgment of expropriation suffers an intrinsic flaw, as it would lack one indispensable element for the proper exercise of the power of eminent domain, namely, the particular public purpose for which the property will be devoted. Accordingly, the private property owner would be denied due process of law, and the judgment would violate the property owners right to justice, fairness, and equity.

In light of these premises, we now expressly hold that the taking of private property, consequent to the Governments exercise of its power of eminent domain, is always subject to the condition that the property be devoted to the specific public purpose for which it was taken. Corollarily, if this particular purpose or intent is not initiated or not at all pursued, and is peremptorily abandoned, then the former owners, if they so desire, may seek the reversion of the property, subject to the return of the amount of just compensation received. In such a case, the exercise of the power of eminent domain has become improper for lack of the required factual justification.

Clinging to *Fery*, specifically the fee simple concept underpinning it, is no longer compelling, considering the ensuing inequity such application entails. Too, the Court resolved Fery not under the cover of any of the Philippine Constitutions, each decreeing that private property shall not be taken for public use without just compensation. The twin elements of just compensation and public purpose are, by themselves, direct limitations to the exercise of eminent domain, arguing, in a way, against the notion of fee simple title. The fee does not vest until payment of just compensation.

A condemnor should commit to use the property pursuant to the purpose stated in the petition for expropriation, failing which it should file another petition for the new purpose. If not, then it behooves the condemnor to return the said property to its private owner, if the latter so desires. The government cannot plausibly keep the property it expropriated in any manner it pleases and, in the process, dishonor the judgment of expropriation. This is not in keeping with the idea of fair play.

The notion, therefore, that the government, via expropriation proceedings, acquires unrestricted ownership over or a fee simple title to the covered land, is no longer tenable. We suggested as much in *Heirs of Moreno* and in *Tudtud* and more recently in *Lozada, Sr*. Expropriated lands should be differentiated from a piece of land, ownership of which was absolutely transferred by way of an unconditional purchase and sale contract freely entered by two parties, one without obligation to buy and the other without the duty to sell. In that case, the fee simple concept really comes into play. There is really no occasion to apply the "fee simple concept" if the transfer is conditional. The taking of a private land in expropriation proceedings is always conditioned on its continued devotion to its public purpose. As a necessary corollary, once the purpose is terminated or peremptorily abandoned, then the former owner, if he so desires, may seek its reversion, subject of course to the return, at the very least, of the just compensation received.

Given the foregoing disquisitions, equity and justice demand the reconveyance by MCIAA of the litigated lands in question to the Ouanos and Inocians. In the same token, justice and fair play also dictate that the Ouanos and Inocian return to MCIAA what they received as just compensation for the expropriation of their respective properties plus legal interest to be computed from default, which in this case should run from the time MCIAA complies with the reconveyance obligation. They must likewise pay MCIAA the necessary expenses it might have incurred in sustaining their respective lots and the monetary value of its services in managing the lots in question to the extent that they, as private owners, were benefited thereby.

In accordance with Art. 1187 of the Civil Code on mutual compensation, MCIAA may keep whatever income or fruits it may have obtained from the parcels of land expropriated. In turn, the Ouanos and Inocians need not require the accounting of interests earned by the amounts they received as just compensation.
Following Art. 1189 of the Civil Code providing that "[i]f the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor x x x," the Ouanos and Inocians do not have to settle the appreciation of the values of their respective lots as part of the reconveyance process, since the value increase is merely the natural effect of nature and time.

REPUBLIC OF THE PHILIPPINES, represented by the NATIONAL POWER CORPORATION, *Petitioner*,
-versus- HEIRS OF SATURNINO Q. BORBON, AND COURT OF APPEALS, *Respondents*.
G.R. No. 165354, FIRST DIVISION, January 12, 2015, BERSAMIN, *J.*

Public use is the fundamental basis for the action for expropriation; hence, NAPOCOR's motion to discontinue the proceedings is warranted and should be granted. The Court has observed in Metropolitan Water District v. De los Angeles:

It is not denied that the purpose of the plaintiff was to acquire the land in question for public use. The fundamental basis then of all actions brought for the expropriation of lands, under the power of eminent domain, is public use. That being true, the very moment that it appears at any stage of the proceedings that the expropriation is not for a public use, the action must necessarily fail and should be dismissed, for the reason that the action cannot be maintained at all except when the expropriation is for some public use. That must be true even during the pendency of the appeal or at any other stage of the proceedings. If, for example, during the trial in the lower court, it should be made to appear to the satisfaction of the court that the expropriation is not for some public use, it would be the duty and the obligation of the trial court to dismiss the action. And even during the pendency of the appeal, if it should be made to appear to the satisfaction of the appellate court that the expropriation is not for public use, then it would become the duty and the obligation of the appellate court to dismiss it.

Unlike in Metropolitan Water District v. De los Angeles where the request to discontinue the expropriation proceedings was made upon the authority appearing in the board resolution issued on July 14, 1930, counsel for NAPOCOR has not presented herein any document to show that NAPOCOR had decided, as a corporate body, to discontinue the expropriation proceedings. Nonetheless, the Court points to the Memorandum dated December 13, 2012 and the Certificate of Inspection/Accomplishment dated February 5, 2005 attached to NAPOCOR's motion attesting to the retirement of the transmission lines. Also, Metropolitan Water District v. De los Angeles emphasized that it became the duty and the obligation of the court, regardless of the stage of the proceedings, to dismiss the action "if it should be made to appear to the satisfaction of the court that the expropriation is not for some public use." Despite the lack of the board resolution, therefore, the Court now considers the documents attached to NAPOCOR's Manifestation and Motion to Discontinue Expropriation Proceedings to be sufficient to establish that the expropriation sought is no longer for some public purpose.

FACTS:

In February 1993, NAPOCOR entered a property located in Barangay San Isidro, Batangas City in order to construct and maintain transmission lines for the 230 KV Mahabang Parang-Pinamucan Power Transmission Project. Respondents heirs of Saturnino Q. Borbon owned the property, with a total area of 14,257 square meters, which was registered under Transfer Certificate of Title No. T-9696 of the Registry of Deeds of Batangas.

On May 26, 1995, NAPOCOR filed a complaint for expropriation in the Regional Trial Court in Batangas City (RTC), seeking the acquisition of an easement of right of way over a portion of the property involving an area of only 6,326 square meters, more or less, alleging that it had negotiated with the respondents for the acquisition of the easement but they had failed to reach any agreement; and that, nonetheless, it was willing to deposit the amount of ₱9,790.00 representing the assessed value of the portion sought to be expropriated. It prayed for the issuance of a writ of possession upon deposit to enable it to enter and take possession and control of the affected portion of the property; to demolish all improvements existing thereon; and to commence construction of the transmission line project. It likewise prayed for the appointment of three commissioners to determine the just compensation to be paid.

The RTC constituted the panel of three commissioners. Two commissioners submitted a joint report on April 8, 1999, in which they found that the property was classified as industrial land located within the Industrial 2 Zone; that although the property used to be classified as agricultural (i.e., horticultural and pasture land), it was reclassified to industrial land for appraisal or taxation purposes on June 30, 1994; and that the reclassification was made on the basis of a certification issued by the Zoning Administrator pursuant to Section 3.10 (d) of the Amended Zoning Ordinance (1989) of the City of Batangas. The two commissioners appraised the value at ₱550.00/square meter. However, the third commissioner filed a separate report dated March 16, 1999, whereby he recommended the payment of "an easement fee of at least ten percent (10%) of the assessed value indicated in the tax declaration plus cost of damages in the course of the construction, improvements affected and tower occupancy fee."

In the judgment dated November 27, 2000, the RTC adopted the recommendation contained in the joint report.

NAPOCOR appealed (CA-G.R. No. 72069).

On April 29, 2004, the CA promulgated its decision, affirming with modification the ruling of the RTC, that plaintiff-appellant shall pay only for the occupied 6,326 square meters of the subject real property at the rate of ₱550.00 per square meter and to pay legal interest therefrom until fully paid.

ISSUE:
Whether or not the expropriation proceedings should be discontinued or dismissed pending appeal. (YES)

RULING:
The dismissal of the proceedings for expropriation at the instance of NAPOCOR is proper, but, conformably with Section 4, Rule 67 of the Rules of Court, the dismissal or discontinuance of the proceedings must be upon such terms as the court deems just and equitable.

Before anything more, we remind the parties about the nature of the power of eminent domain. The right of eminent domain is "the ultimate right of the sovereign power to appropriate, not only the

public but the private property of all citizens within the territorial sovereignty, to public purpose." But the exercise of such right is not unlimited, for two mandatory requirements should underlie the Government's exercise of the power of eminent domain, namely: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.

Public use, in common acceptation, means "use by the public." However, the concept has expanded to include utility, advantage or productivity for the benefit of the public. In Asia's Emerging Dragon Corporation v. Department of Transportation and Communications, Justice Corona, in his dissenting opinion said that:

To be valid, the taking must be for public use. The meaning of the term "public use" has evolved over time in response to changing public needs and exigencies. Public use which was traditionally understood as strictly limited to actual "use by the public" has already been abandoned. "Public use" has now been held to be synonymous with "public interest," "public benefit," and "public convenience."

It is essential that the element of public use of the property be maintained throughout the proceedings for expropriation. The effects of abandoning the public purpose were explained in *Mactan-Cebu International Airport Authority v. Lozada, Sr*., to wit:

More particularly, with respect to the element of public use, the expropriator should commit to use the property pursuant to the purpose stated in the petition for expropriation filed, failing which, it should file another petition for the new purpose. If not, it is then incumbent upon the expropriator to return the said property to its private owner, if the latter desires to reacquire the same. Otherwise, the judgment of expropriation suffers an intrinsic flaw, as it would lack one indispensable element for the proper exercise of the power of eminent domain, namely, the particular public purpose for which the property will be devoted. Accordingly, the private property owner would be denied due process of law, and the judgment would violate the property owner's right to justice, fairness and equity.

A review reveals that *Metropolitan Water District v. De los Angeles* is an appropriate precedent herein. There, the Metropolitan Water District passed a board resolution requesting the Attorney-General to file a petition in the Court of First Instance of the Province of Rizal praying that it be permitted to discontinue the condemnation proceedings it had initiated for the expropriation of a parcel of land in Montalban, Rizal to be used in the construction of the Angat Waterworks System. It claimed that the land was no longer indispensably necessary in the maintenance and operation of its waterworks system, and that the expropriation complaint should then be dismissed. The Court, expounding on the power of the State to exercise the right of eminent domain, then pronounced:

There is no question raised concerning the right of the plaintiff here to acquire the land under the power of eminent domain. That power was expressly granted it by its charter. The power of eminent domain is a right reserved to the people or Government to take property for public use. It is the right of the state, through its regular organization, to reassert either temporarily or permanently its dominion over any portion of the soil of the state on account of public necessity and for the public good. The right of eminent domain is the right which the Government or the people retains over the estates of individuals to resume them for public use. It is the right of the people, or the sovereign, to dispose, in case of public necessity and for the public safety, of all the wealth contained in the state.

Indeed, public use is the fundamental basis for the action for expropriation; hence, NAPOCOR's motion to discontinue the proceedings is warranted and should be granted. The Court has observed in *Metropolitan Water District v. De los Angeles*:

It is not denied that the purpose of the plaintiff was to acquire the land in question for public use. The fundamental basis then of all actions brought for the expropriation of lands, under the power of eminent domain, is public use. That being true, the very moment that it appears at any stage of the proceedings that the expropriation is not for a public use, the action must necessarily fail and should be dismissed, for the reason that the action cannot be maintained at all except when the expropriation is for some public use. That must be true even during the pendency of the appeal or at any other stage of the proceedings. If, for example, during the trial in the lower court, it should be made to appear to the satisfaction of the court that the expropriation is not for some public use, it would be the duty and the obligation of the trial court to dismiss the action. And even during the pendency of the appeal, if it should be made to appear to the satisfaction of the appellate court that the expropriation is not for public use, then it would become the duty and the obligation of the appellate court to dismiss it.

In the present case the petitioner admits that the expropriation of the land in question is no longer necessary for public use. Had that admission been made in the trial court the case should have been dismissed there. It now appearing positively, by resolution of the plaintiff, that the expropriation is not necessary for public use, the action should be dismissed even without a motion on the part of the plaintiff. The moment it appears in whatever stage of the proceedings that the expropriation is not for a public use the complaint should be dismissed and all the parties thereto should be relieved from further annoyance or litigation.

It is notable that the dismissal of the expropriation proceedings in *Metropolitan Water District v. De los Angeles* was made subject to several conditions in order to address the dispossession of the defendants of their land, and the inconvenience, annoyance and damages suffered by the defendants on account of the proceedings. Accordingly, the Court remanded the case to the trial court for the issuance of a writ of possession ordering Metropolitan Water District to immediately return possession of the land to the defendants, and for the determination of damages in favor of the defendants, the claims for which must be presented within 30 days from the return of the record to the court of origin and notice thereof.

Here, NAPOCOR seeks to discontinue the expropriation proceedings on the ground that the transmission lines constructed on the respondents' property had already been retired. Considering that the Court has consistently upheld the primordial importance of public use in expropriation proceedings, NAPOCOR's reliance on *Metropolitan Water District v. De los Angeles* was apt and correct. Verily, the retirement of the transmission lines necessarily stripped the expropriation proceedings of the element of public use. To continue with the expropriation proceedings despite the definite cessation of the public purpose of the project would result in the rendition of an invalid judgment in favor of the expropriator due to the absence of the essential element of public use.

Unlike in *Metropolitan Water District v. De los Angeles* where the request to discontinue the expropriation proceedings was made upon the authority appearing in the board resolution issued on July 14, 1930, counsel for NAPOCOR has not presented herein any document to show that NAPOCOR had decided, as a corporate body, to discontinue the expropriation proceedings. Nonetheless, the Court points to the Memorandum dated December 13, 2012 and the Certificate of Inspection/Accomplishment dated February 5, 2005 attached to NAPOCOR's motion attesting to the

retirement of the transmission lines. Also, *Metropolitan Water District v. De los Angeles* emphasized that it became the duty and the obligation of the court, regardless of the stage of the proceedings, to dismiss the action "if it should be made to appear to the satisfaction of the court that the expropriation is not for some public use." Despite the lack of the board resolution, therefore, the Court now considers the documents attached to NAPOCOR's Manifestation and Motion to Discontinue Expropriation Proceedings to be sufficient to establish that the expropriation sought is no longer for some public purpose.

Accordingly, the Court grants the motion to discontinue the proceedings subject to the conditions to be shortly mentioned hereunder, and requires the return of the property to the respondents. Having said that, we must point out that NAPOCOR entered the property without the owners' consent and without paying just compensation to the respondents. Neither did it deposit any amount as required by law prior to its entry. The Constitution is explicit in obliging the Government and its entities to pay just compensation before depriving any person of his or her property for public use. Considering that in the process of installing transmission lines, NAPOCOR destroyed some fruit trees and plants without payment, and the installation of the transmission lines went through the middle of the land as to divide the property into three lots, thereby effectively rendering the entire property inutile for any future use, it would be unfair for NAPOCOR not to be made liable to the respondents for the disturbance of their property rights from the time of entry until the time of restoration of the possession of the property. There should be no question about the taking. In several rulings, notably *National Power Corporation v. Zabala*, *Republic v. Libunao*, *National Power Corporation v. Tuazon*, and *National Power Corporation v. Saludares*, this Court has already declared that "since the high-tension electric current passing through the transmission lines will perpetually deprive the property owners of the normal use of their land, it is only just and proper to require Napocor to recompense them for the full market value of their property."

In view of the discontinuance of the proceedings and the eventual return of the property to the respondents, there is no need to pay "just compensation" to them because their property would not be taken by NAPOCOR. Instead of full market value of the property, therefore, NAPOCOR should compensate the respondents for the disturbance of their property rights from the time of entry in March 1993 until the time of restoration of the possession by paying to them actual or other compensatory damages. This conforms with the following pronouncement in *Mactan-Cebu International Airport Authority v. Lozada, Sr.:*

In light of these premises, we now expressly hold that the taking of private property, consequent to the Government's exercise of its power of eminent domain, is always subject to the condition that the property be devoted to the specific public purpose for which it was taken. Corollarily, if this particular purpose or intent is not initiated or not at all pursued, and is peremptorily abandoned, then the former owners, if they so desire, may seek the reversion of the property, subject to the return of the amount of just compensation received. In such a case, the exercise of the power of eminent domain has become improper for lack of the required factual justification.

This should mean that the compensation must be based on what they actually lost as a result and by reason of their dispossession of the property and of its use, including the value of the fruit trees, plants and crops destroyed by NAPOCOR's construction of the transmission lines. Considering that the dismissal of the expropriation proceedings is a development occurring during the appeal, the Court now treats the dismissal of the expropriation proceedings as producing the effect of converting the case into an action for damages. For that purpose, the Court remands the case to the court of origin for further proceedings, with instruction to the court of origin to enable the parties to fully

litigate the action for damages by giving them the opportunity to re-define the factual and legal issues by the submission of the proper pleadings on the extent of the taking, the value of the compensation to be paid to the respondents by NAPOCOR, and other relevant matters as they deem fit. Trial shall be limited to matters the evidence upon which had not been heretofore heard or adduced. The assessment and payment of the correct amount of filing fees due from the respondents shall be made in the judgment, and such amount shall constitute a first lien on the recovery. Subject to these conditions, the court of origin shall treat the case as if originally filed as an action for damages.

NATIONAL POWER CORPORATION, *Petitioner*,
-versus- SPOUSES RODOLFO ZABALA and LILIA BAYLON, *Respondents*.
G.R. No. 173520, SECOND DIVISION, January 30, 2013, DEL CASTILLO, *J.*

Legislative enactments, as well as executive issuances, fixing or providing fix the method of computing just compensation are tantamount to impermissible encroachment on judicial prerogatives. Thus they are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount of just compensation.

In National Power Corporation v. Bagui, where the same petitioner also invoked the provisions of Section 3A of RA No. 6395, we held that:

Moreover, Section 3A-(b) of R.A. No. 6395, as amended, is not binding on the Court. It has been repeatedly emphasized that the determination of just compensation in eminent domain cases is a judicial function and that any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.

This ruling was reiterated in Republic v. Lubinao, National Power Corporation v. Tuazon and National Power Corporation v. Saludares and continues to be the controlling doctrine. Notably, in all these cases, Napocor likewise argued that it is liable to pay the property owners for the easement of right-of-way only and not the full market value of the land traversed by its transmission lines. But we uniformly held in those cases that since the high-tension electric current passing through the transmission lines will perpetually deprive the property owners of the normal use of their land, it is only just and proper to require Napocor to recompense them for the full market value of their property.

FACTS:
On October 27, 1994, plaintiff-appellant National Power Corporation ("Napocor" x x x) filed a complaint for Eminent Domain against defendants-appellees Sps. R. Zabala & L. Baylon, Tomas Aguirre, Generosa de Leon and Leonor Calub ("Spouses Zabala", "Aguirre" "de Leon", and "Calub," respectively x x x) before the Regional Trial Court, Balanga City, Bataan alleging that: defendants-appellees Spouses Zabala and Baylon, Aguirre, de Leon, and Calub own parcels of land located in Balanga City, Bataan; it urgently needed an easement of right of way over the affected areas for its 230 KV Limay-Hermosa Transmission Line[s]; the said parcels of land have neither been applied nor expropriated for any public use, and were selected in a manner compatible with the greatest public good and the least private injury; it repeatedly negotiated with the defendants-appellees for the acquisition of right of way easement over the said parcels of land but failed to reach an agreement with the latter; it has the right to take or enter upon the possession of the subject properties pursuant to Presidential Decree No. 42, which repealed Section 2, Rule 67 of the Rules of Court upon the filing of the expropriation complaint before the proper court or at anytime thereafter, after due notice to defendants-appellees, and upon deposit with the Philippine National Bank of the amount equal to the

assessed value of the subject properties for taxation purposes which is to be held by said bank subject to the orders and final disposition of the court; and it is willing to deposit the provisional value representing the said assessed value of the affected portions of the subject property x x x. It prayed for the issuance of a writ of possession authorizing it to enter and take possession of the subject property, to demolish all the improvements x x x thereon, and to commence with the construction of the transmission lines project on the subject properties, and to appoint not more than three (3) commissioners to ascertain and report the just compensation for the said easement of right of way.

On December 4, 1997, the Commissioners submitted their Report/Recommendation fixing the just compensation for the use of defendants-appellees Spouses Zabala's property as easement of right of way at ₱150.00 per square meter without considering the consequential damages.

Plaintiff-appellant Napocor prayed in its Comment to the commissioners' report, that the report be recommitted to the commissioners for the modification of the report and the substantiation of the same with reliable and competent documentary evidence based on the value of the property at the time of its taking. On their part, defendants-appellees Spouses Zabala prayed, in the Comments, for the fixing of the just compensation at ₱250.00 per square meter.

On February 25, 1998, the lower court recommitted the report to the Commissioners for further report on the points raised by the parties.

On August 20, 2003, the Commissioners submitted their Final Report fixing the just compensation at ₱500.00 per square meter.

Since the Commissioners had already submitted their Final Report on the valuation of the subject property, spouses Zabala moved for the resolution of the case insofar as their property was concerned. Thus, on June 28, 2004, the RTC rendered its Partial Decision, ruling that Napocor has the lawful authority to take for public purpose and upon payment of just compensation a portion of spouses Zabala's property. The RTC likewise ruled that since the spouses Zabala were deprived of the beneficial use of their property, they are entitled to the actual or basic value of their property. Thus, it fixed the just compensation at ₱150.00 per square meter.

Napocor appealed to the CA. It argued that the Commissioners' reports upon which the RTC based the just compensation are not supported by documentary evidence. Necessarily, therefore, the just compensation pegged by the RTC at ₱150.00 per square meter also lacked basis. Napocor likewise imputed error on the part of the RTC in not applying Section 3A of Republic Act (RA) No. 6395 which limits its liability to easement fee of not more than 10% of the market value of the property traversed by its transmission lines.

On July 10, 2006, the CA rendered the assailed Decision affirming the RTC's Partial Decision.

ISSUE:
Whether or not Napocor is correct in saying that under Section 3A of RA No. 6395, it is not required to pay the full market value of the property when the principal purpose for which it is actually devoted will not be impaired by its transmission lines. (NO)

RULING:
Section 3A of RA No. 6395 cannot restrict the constitutional power of the courts to determine just compensation.

In insisting that the just compensation cannot exceed 10% of the market value of the affected property, Napocor relies heavily on Section 3A of RA No. 6395, the pertinent portions of which read:

Sec. 3A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall:
(a) With respect to the acquired land or portion thereof, not to exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.
(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

x x x x

Just compensation has been defined as "the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to qualify the meaning of the word 'compensation' and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample." The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government." Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof. In *National Power Corporation v. Bagui*, where the same petitioner also invoked the provisions of Section 3A of RA No. 6395, we held that:

Moreover, Section 3A-(b) of R.A. No. 6395, as amended, is not binding on the Court. It has been repeatedly emphasized that the determination of just compensation in eminent domain cases is a judicial function and that any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.

This ruling was reiterated in *Republic v. Lubinao*, *National Power Corporation v. Tuazon* and *National Power Corporation v. Saludares* and continues to be the controlling doctrine. Notably, in all these cases, Napocor likewise argued that it is liable to pay the property owners for the easement of right-of-way only and not the full market value of the land traversed by its transmission lines. But we uniformly held in those cases that since the high-tension electric current passing through the transmission lines will perpetually deprive the property owners of the normal use of their land, it is only just and proper to require Napocor to recompense them for the full market value of their property.

The just compensation of ₱150.00 per square meter as fixed by the RTC is not supported by evidence.
In the case before us, it appears that the Commissioners' November 28, 1997 Report/Recommendation is not supported by any documentary evidence. There is nothing therein which would show that before arriving at the recommended just compensation of ₱150.00, the Commissioners considered documents relevant and pertinent thereto. Their Report/Recommendation simply states that on November 17, 1997, the Commissioners conducted an ocular inspection; that they interviewed persons in the locality; that the adjacent properties have market value of ₱150.00 per square meter; and, that the property of Nobel Philippine which is farther from the Roman Expressway is being sold for ₱200.00 per square meter. No documentary evidence whatsoever was presented to support their report that indeed the market value of the adjacent properties are ₱150.00 and that of Nobel Philippine is ₱200.00.

Under Section 8, Rule 67 of the Rules of Court, the trial court may accept or reject, whether in whole or in part, the commissioners' report which is merely advisory and recommendatory in character. It may also recommit the report or set aside the same and appoint new commissioners. In the case before us, however, in spite of the insufficient and flawed reports of the Commissioners and Napocor's objections thereto, the RTC eventually adopted the same. It shrugged off Napocor's protestations and limited itself to the reports submitted by the Commissioners. It neither considered nor required the submission of additional evidence to support the recommended ₱150.00 per square meter just compensation. Ergo, insofar as just compensation is concerned, we cannot sustain the RTC's Partial Decision for want of documentary support.

Lastly, it should be borne in mind that just compensation should be computed based on the fair value of the subject property at the time of its taking or the filing of the complaint, whichever came first. Since in this case the filing of the eminent domain case came ahead of the taking, just compensation should be based on the fair market value of spouses Zabala's property at the time of the filing of Napocor's Complaint on October 27, 1994 or thereabouts.

SPOUSES JESUS L. CABAHUG AND CORONACION M. CABAHUG, *Petitioners*,
-versus- NATIONAL POWER CORPORATION, *Respondent*.
G.R. No. 186069, SECOND DIVISION, January 30, 2013, PEREZ, *J.*

The CA regarded the Grant of Right of Way executed by Jesus Cabahug in favor of NPC as a valid and binding contract between the parties, a fact affirmed by the OSG in its 8 October 2009 Comment to the petition at bench. Given that the parties have already agreed on the easement fee for the portions of the subject parcels traversed by NPC's transmissions lines, the CA ruled that the Spouses Cabahug's attempt to collect further sums by way of additional easement fee and/or just compensation is violative of said contract and tantamount to unjust enrichment at the expense of NPC. As correctly pointed out by the Spouses Cabahug, however, the CA's ruling totally disregards the fourth paragraph of the Grant executed by Jesus Cabahug which expressly states as follows:

That I hereby reserve the option to seek additional compensation for Easement Fee, based on the Supreme Court Decision in G.R. No. 60077, promulgated on January 18, 1991, which jurisprudence is designated as "NPC vs. Gutierrez" case.

From the foregoing reservation, it is evident that the Spouses Cabahug's receipt of the easement fee did not bar them from seeking further compensation from NPC.

Even without the reservation made by Jesus Cabahug in the Grant of Right of Way, the application of Gutierrez to this case is not improper as NPC represents it to be. Where the right of way easement, as in this case, similarly involves transmission lines which not only endangers life and limb but restricts as well the owner's use of the land traversed thereby, the ruling in Gutierrez remains doctrinal and should be applied. It has been ruled that the owner should be compensated for the monetary equivalent of the land if, as here, the easement is intended to perpetually or indefinitely deprive the owner of his proprietary rights through the imposition of conditions that affect the ordinary use, free enjoyment and disposal of the property or through restrictions and limitations that are inconsistent with the exercise of the attributes of ownership, or when the introduction of structures or objects which, by their nature, create or increase the probability of injury, death upon or destruction of life and property found on the land is necessary. Measured not by the taker's gain but the owner's loss, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator.

FACTS:
The Spouses Cabahug are the owners of two parcels of land situated in Barangay Capokpok, Tabango, Leyte, registered in their names under Transfer Certificate of Title (TCT) Nos. T-9813 and T-1599 of the Leyte provincial registry. They were among the defendants in Special Civil Action No. 0019-PN, a suit for expropriation earlier filed by NPC before the RTC, in connection with its Leyte-Cebu Interconnection Project. The suit was later dismissed when NPC opted to settle with the landowners by paying an easement fee equivalent to 10% of value of their property in accordance with Section 3-A of Republic Act (RA) No. 6395. In view of the conflicting land values presented by the affected landowners, it appears that the Leyte Provincial Appraisal Committee, upon request of NPC, fixed the valuation of the affected properties at P45.00 per square meter.

On 9 November 1996, Jesus Cabahug executed two documents denominated as Right of Way Grant in favor of NPC. For and in consideration of the easement fees in the sums of P112,225.50 and P21,375.00, Jesus Cabahug granted NPC a continuous easement of right of way for the latter's transmissions lines and their appurtenances over 24,939 and 4,750 square meters of the parcels of land covered by TCT Nos. T-9813 and T-1599, respectively. By said grant, Jesus Cabahug agreed not to construct any building or structure whatsoever, nor plant in any area within the Right of Way that will adversely affect or obstruct the transmission line of NPC, except agricultural crops, the growth of which will not exceed three meters high. Under paragraph 4 of the grant, however, Jesus Cabahug reserved the option to seek additional compensation for easement fee, based on the Supreme Court's 18 January 1991 Decision in G.R. No. 60077, entitled *National Power Corporation v. Spouses Misericordia Gutierrez and Ricardo Malit, et al.* (*Gutierrez*).

On 21 September 1998, the Spouses Cabahug filed the complaint for the payment of just compensation, damages and attorney's fees against NPC which was docketed as Civil Case No. PN-0213 before the RTC. Claiming to have been totally deprived of the use of the portions of land covered by TCT Nos. T-9813 and T-1599, the Spouses Cabahug alleged, among other matters, that in accordance with the reservation provided under paragraph 4 of the aforesaid grant, they have demanded from NPC payment of the balance of the just compensation for the subject properties which, based on the valuation fixed by the Leyte Provincial Appraisal Committee, amounted to P1,202,404.50. In its answer, on the other hand, NPC averred that it already paid the full easement fee mandated under Section 3-A of RA 6395 and that the reservation in the grant referred to additional compensation for easement fee, not the full just compensation sought by the Spouses Cabahug.

Acting on the motion for judgment on the pleadings that was filed by the Spouses Cabahug, the RTC went on to render a Decision dated 14 March 2000. Brushing aside NPC's reliance on Section 3-A of RA 6395, the RTC applied the ruling handed down by this Court in *Gutierrez* to the effect that NPC's easement of right of way which indefinitely deprives the owner of their proprietary rights over their property falls within the purview of the power of eminent domain. As a consequence, the RTC disposed of the complaint in favor of the Spouses Cabahug and against NPC.

Aggrieved by the foregoing decision, the NPC perfected the appeal which was docketed as CA-G.R. CV No. 67331 before the CA which, on 16 May 2007, rendered the herein assailed decision, reversing and setting aside the RTC's appealed decision, finding that the facts of a case are different from those obtaining in Gutierrez and that Section 3-A of RA 6395 only allows NPC to acquire an easement of right of way over properties traversed by its transmission lines.

ISSUE:
Whether or not the CA erred in disregarding paragraph 4 of the Grant of Right of Way whereby Jesus Cabahug reserved the right to seek additional compensation for easement fee. (YES)

RULING:
The CA regarded the Grant of Right of Way executed by Jesus Cabahug in favor of NPC as a valid and binding contract between the parties, a fact affirmed by the OSG in its 8 October 2009 Comment to the petition at bench. Given that the parties have already agreed on the easement fee for the portions of the subject parcels traversed by NPC's transmissions lines, the CA ruled that the Spouses Cabahug's attempt to collect further sums by way of additional easement fee and/or just compensation is violative of said contract and tantamount to unjust enrichment at the expense of NPC. As correctly pointed out by the Spouses Cabahug, however, the CA's ruling totally disregards the fourth paragraph of the Grant executed by Jesus Cabahug which expressly states as follows:

That I hereby reserve the option to seek additional compensation for Easement Fee, based on the Supreme Court Decision in G.R. No. 60077, promulgated on January 18, 1991, which jurisprudence is designated as "*NPC vs. Gutierrez*" case.

From the foregoing reservation, it is evident that the Spouses Cabahug's receipt of the easement fee did not bar them from seeking further compensation from NPC. Even by the basic rules in the interpretation of contracts, we find that the CA erred in holding that the payment of additional sums to the Spouses Cabahug would be violative of the parties' contract and amount to unjust enrichment. Indeed, the rule is settled that a contract constitutes the law between the parties who are bound by its stipulations which, when couched in clear and plain language, should be applied according to their literal tenor. Courts cannot supply material stipulations, read into the contract words it does not contain or, for that matter, read into it any other intention that would contradict its plain import. Neither can they rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.

Considering that *Gutierrez* was specifically made the point of reference for Jesus Cabahug's reservation to seek further compensation from NPC, we find that the CA likewise erred in finding that the ruling in said case does not apply to the case at bench. Concededly, the NPC was constrained to file an expropriation complaint in *Gutierrez* due to the failure of the negotiations for its acquisition of an easement of right of way for its transmission lines. The issue that was eventually presented for

this Court's resolution, however, was the propriety of making NPC liable for the payment of the full market value of the affected property despite the fact that transfer of title thereto was not required by said easement. In upholding the landowners' right to full just compensation, the Court ruled that the power of eminent domain may be exercised although title is not transferred to the expropriator in an easement of right of way. Just compensation which should be neither more nor less than the money equivalent of the property is, moreover, due where the nature and effect of the easement is to impose limitations against the use of the land for an indefinite period and deprive the landowner its ordinary use.

Even without the reservation made by Jesus Cabahug in the Grant of Right of Way, the application of *Gutierrez* to this case is not improper as NPC represents it to be. Where the right of way easement, as in this case, similarly involves transmission lines which not only endangers life and limb but restricts as well the owner's use of the land traversed thereby, the ruling in *Gutierrez* remains doctrinal and should be applied. It has been ruled that the owner should be compensated for the monetary equivalent of the land if, as here, the easement is intended to perpetually or indefinitely deprive the owner of his proprietary rights through the imposition of conditions that affect the ordinary use, free enjoyment and disposal of the property or through restrictions and limitations that are inconsistent with the exercise of the attributes of ownership, or when the introduction of structures or objects which, by their nature, create or increase the probability of injury, death upon or destruction of life and property found on the land is necessary. Measured not by the taker's gain but the owner's loss, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator.

Too, the CA reversibly erred in sustaining NPC's reliance on Section 3-A of RA 6395 which states that only 10% of the market value of the property is due to the owner of the property subject to an easement of right of way. Since said easement falls within the purview of the power of eminent domain, NPC's utilization of said provision has been repeatedly struck down by this Court in a number of cases. The determination of just compensation in eminent domain proceedings is a judicial function and no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation, but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. Hence, Section 3A of R.A. No. 6395, as amended, is not binding upon this Court.

NATIONAL POWER CORPORATION, *Petitioner*, -versus- LUCMAN G. IBRAHIM, OMAR G. MARUHOM, ELIAS G.MARUHOM, BUCAY G. MARUHOM, FAROUK G. MARUHOM, HIDJARA G. MARUHOM, ROCANIA G. MARUHOM, POTRISAM G. MARUHOM, LUMBA G. MARUHOM, SINAB G. MARUHOM, ACMAD G. MARUHOM, SOLAYMAN G. MARUHOM, MOHAMAD M. IBRAHIM, and CAIRONESA M. IBRAHIM, *Respondents*.
G.R. No. 168732, FIRST DIVISION, June 29, 2007, AZCUNA, *J.*

In the past, the Court has held that if the government takes property without expropriation and devotes the property to public use, after many years, the property owner may demand payment of just compensation in the event restoration of possession is neither convenient nor feasible. This is in accordance with the principle that persons shall not be deprived of their property except by competent authority and for public use and always upon payment of just compensation.

Petitioner contends that the underground tunnels in this case constitute an easement upon the property of respondents which does not involve any loss of title or possession. The manner in which the easement

was created by petitioner, however, violates the due process rights of respondents as it was without notice and indemnity to them and did not go through proper expropriation proceedings. Petitioner could have, at any time, validly exercised the power of eminent domain to acquire the easement over respondents' property as this power encompasses not only the taking or appropriation of title to and possession of the expropriated property but likewise covers even the imposition of a mere burden upon the owner of the condemned property. Significantly, though, landowners cannot be deprived of their right over their land until expropriation proceedings are instituted in court. The court must then see to it that the taking is for public use, that there is payment of just compensation and that there is due process of law.

In disregarding this procedure and failing to recognize respondents' ownership of the sub-terrain portion, petitioner took a risk and exposed itself to greater liability with the passage of time. It must be emphasized that the acquisition of the easement is not without expense. The underground tunnels impose limitations on respondents' use of the property for an indefinite period and deprive them of its ordinary use. Based upon the foregoing, respondents are clearly entitled to the payment of just compensation. Notwithstanding the fact that petitioner only occupies the sub-terrain portion, it is liable to pay not merely an easement fee but rather the full compensation for land. This is so because in this case, the nature of the easement practically deprives the owners of its normal beneficial use. Respondents, as the owners of the property thus expropriated, are entitled to a just compensation which should be neither more nor less, whenever it is possible to make the assessment, than the money equivalent of said property.

FACTS:
On November 23, 1994, respondent Lucman G. Ibrahim, in his personal capacity and in behalf of his co-heirs Omar G. Maruhom, et.al., instituted an action against petitioner National Power Corporation (NAPOCOR) for recovery of possession of land and damages before the Regional Trial Court (RTC) of Lanao del Sur.

In their complaint, Ibrahim and his co-heirs claimed that they were owners of several parcels of land described in Survey Plan FP (VII-5) 2278 consisting of 70,000 square meters, divided into three (3) lots, i.e. Lots 1, 2, and 3 consisting of 31,894, 14,915, and 23,191 square meters each respectively. Sometime in 1978, NAPOCOR, through alleged stealth and without respondents' knowledge and prior consent, took possession of the sub-terrain area of their lands and constructed therein underground tunnels. The existence of the tunnels was only discovered sometime in July 1992 by respondents and then later confirmed on November 13, 1992 by NAPOCOR itself through a memorandum issued by the latter's Acting Assistant Project Manager. The tunnels were apparently being used by NAPOCOR in siphoning the water of Lake Lanao and in the operation of NAPOCOR's Agus II, III, IV, V, VI, VII projects located in Saguiran, Lanao del Sur; Nangca and Balo-i in Lanao del Norte; and Ditucalan and Fuentes in Iligan City.

On September 19, 1992, respondent Omar G. Maruhom requested the Marawi City Water District for a permit to construct and/or install a motorized deep well in Lot 3 located in Saduc, Marawi City but his request was turned down because the construction of the deep well would cause danger to lives and property. On October 7, 1992, respondents demanded that NAPOCOR pay damages and vacate the sub-terrain portion of their lands but the latter refused to vacate much less pay damages. Respondents further averred that the construction of the underground tunnels has endangered their lives and properties as Marawi City lies in an area of local volcanic and tectonic activity. Further, these illegally constructed tunnels caused them sleepless nights, serious anxiety and shock thereby

entitling them to recover moral damages and that by way of example for the public good, NAPOCOR must be held liable for exemplary damages.

On August 7, 1996, the RTC rendered a Decision, denying plaintiffs' [private respondents'] prayer for defendant [petitioner] National Power Corporation to dismantle the underground tunnels constructed between the lands of plaintiffs in Lots 1, 2, and 3 of Survey Plan FP (VII-5) 2278; ordering defendant to pay to plaintiffs the fair market value of said 70,000 square meters of land covering Lots 1, 2, and 3 as described in Survey Plan FP (VII-5) 2278 less the area of 21,995 square meters at ₱1,000.00 per square meter or a total of ₱48,005,000.00 for the remaining unpaid portion of 48,005 square meters; with 6% interest per annum from the filing of this case until paid; ordering defendant to pay plaintiffs a reasonable monthly rental of ₱0.68 per square meter of the total area of 48,005 square meters effective from its occupancy of the foregoing area in 1978 or a total of ₱7,050,974.40; ordering defendant to pay plaintiffs the sum of ₱200,000.00 as moral damages; and ordering defendant to pay the further sum of ₱200,000.00 as attorney's fees and the costs.

On October 4, 1996, a Petition for Relief from Judgment was filed by respondents Omar G. Maruhom, Elias G. Maruhom, Bucay G. Maruhom, Mamod G. Maruhom, Farouk G. Maruhom, Hidjara G. Maruhom, Potrisam G. Maruhom and Lumba G. Maruhom asserting as follows:

1) they did not file a motion to reconsider or appeal the decision within the reglementary period of fifteen (15) days from receipt of judgment because they believed in good faith that the decision was for damages and rentals and attorney's fees only as prayed for in the complaint:
2) it was only on August 26, 1996 that they learned that the amounts awarded to the plaintiffs represented not only rentals, damages and attorney's fees but the greatest portion of which was payment of just compensation which in effect would make the defendant NPC the owner of the parcels of land involved in the case;
3) when they learned of the nature of the judgment, the period of appeal has already expired;
4) they were prevented by fraud, mistake, accident, or excusable negligence from taking legal steps to protect and preserve their rights over their parcels of land in so far as the part of the decision decreeing just compensation for petitioners' properties;
5) they would never have agreed to the alienation of their property in favor of anybody, considering the fact that the parcels of land involved in this case were among the valuable properties they inherited from their dear father and they would rather see their land crumble to dust than sell it to anybody.
The RTC granted the petition and rendered a modified judgment dated September 8, 1997.

Subsequently, both respondent Ibrahim and NAPOCOR appealed to the CA.

In the Decision dated June 8, 2005, the CA set aside the modified judgment and reinstated the original Decision dated August 7, 1996, amending it further by deleting the award of moral damages and reducing the amount of rentals and attorney's fees.

ISSUE:
Whether respondents are entitled to just compensation hinges upon who owns the sub-terrain area occupied by petitioner. (YES)

RULING:
The Court sustains the finding of the lower courts that the sub-terrain portion of the property similarly belongs to respondents. This conclusion is drawn from Article 437 of the Civil Code which provides:

ART. 437. The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation.

Thus, the ownership of land extends to the surface as well as to the subsoil under it. In *Republic of the Philippines v. Court of Appeals*, this principle was applied to show that rights over lands are indivisible and, consequently, require a definitive and categorical classification.

Moreover, petitioner's argument that the landowners' right extends to the sub-soil insofar as necessary for their practical interests serves only to further weaken its case. The theory would limit the right to the sub-soil upon the economic utility which such area offers to the surface owners. Presumably, the landowners' right extends to such height or depth where it is possible for them to obtain some benefit or enjoyment, and it is extinguished beyond such limit as there would be no more interest protected by law.

In this regard, the trial court found that respondents could have dug upon their property motorized deep wells but were prevented from doing so by the authorities precisely because of the construction and existence of the tunnels underneath the surface of their property. Respondents, therefore, still had a legal interest in the sub-terrain portion insofar as they could have excavated the same for the construction of the deep well. The fact that they could not was appreciated by the RTC as proof that the tunnels interfered with respondents' enjoyment of their property and deprived them of its full use and enjoyment.

In the past, the Court has held that if the government takes property without expropriation and devotes the property to public use, after many years, the property owner may demand payment of just compensation in the event restoration of possession is neither convenient nor feasible. This is in accordance with the principle that persons shall not be deprived of their property except by competent authority and for public use and always upon payment of just compensation.

Petitioner contends that the underground tunnels in this case constitute an easement upon the property of respondents which does not involve any loss of title or possession. The manner in which the easement was created by petitioner, however, violates the due process rights of respondents as it was without notice and indemnity to them and did not go through proper expropriation proceedings. Petitioner could have, at any time, validly exercised the power of eminent domain to acquire the easement over respondents' property as this power encompasses not only the taking or appropriation of title to and possession of the expropriated property but likewise covers even the imposition of a mere burden upon the owner of the condemned property. Significantly, though, landowners cannot be deprived of their right over their land until expropriation proceedings are instituted in court. The court must then see to it that the taking is for public use, that there is payment of just compensation and that there is due process of law.

In disregarding this procedure and failing to recognize respondents' ownership of the sub-terrain portion, petitioner took a risk and exposed itself to greater liability with the passage of time. It must be emphasized that the acquisition of the easement is not without expense. The underground tunnels impose limitations on respondents' use of the property for an indefinite period and deprive them of its ordinary use. Based upon the foregoing, respondents are clearly entitled to the payment of just compensation. Notwithstanding the fact that petitioner only occupies the sub-terrain portion, it is liable to pay not merely an easement fee but rather the full compensation for land. This is so because in this case, the nature of the easement practically deprives the owners of its normal beneficial use. Respondents, as the owners of the property thus expropriated, are entitled to a just compensation which should be neither more nor less, whenever it is possible to make the assessment, than the money equivalent of said property.

The entitlement of respondents to just compensation having been settled, the issue now is on the manner of computing the same. In this regard, petitioner claims that the basis for the computation of the just compensation should be the value of the property at the time it was taken in 1978.

Just compensation has been understood to be the just and complete equivalent of the loss and is ordinarily determined by referring to the value of the land and its character at the time it was taken by the expropriating authority. There is a "taking" in this sense when the owners are actually deprived or dispossessed of their property, where there is a practical destruction or a material impairment of the value of their property, or when they are deprived of the ordinary use thereof. There is a "taking" in this context when the expropriator enters private property not only for a momentary period but for more permanent duration, for the purpose of devoting the property to a public use in such a manner as to oust the owner and deprive him of all beneficial enjoyment thereof. Moreover, "taking" of the property for purposes of eminent domain entails that the entry into the property must be under warrant or color of legal authority.

Under the factual backdrop of this case, the last element of taking mentioned, i.e., that the entry into the property is under warrant or color of legal authority, is patently lacking. Petitioner justified its nonpayment of the indemnity due respondents upon its mistaken belief that the property formed part of the public dominion.

NATIONAL POWER CORPORATION, *Petitioner*, -versus- HEIRS OF MACABANGKIT SANGKAY, namely: CEBU, BATOWA-AN, SAYANA, NASSER, MANTA, EDGAR, PUTRI , MONGKOY*, and AMIR, all surnamed MACABANGKIT, *Respondents*.
G.R. No. 165828, FIRST DIVISION, August 24, 2011, BERSAMIN, *J.*

The Court held in National Power Corporation v. Ibrahim that NPC was "liable to pay not merely an easement fee but rather the full compensation for land" traversed by the underground tunnels, viz:

In disregarding this procedure and failing to recognize respondents' ownership of the sub-terrain portion, petitioner took a risk and exposed itself to greater liability with the passage of time. It must be emphasized that the acquisition of the easement is not without expense. The underground tunnels impose limitations on respondents' use of the property for an indefinite period and deprive them of its ordinary use. Based upon the foregoing, respondents are clearly entitled to the payment of just compensation. Notwithstanding the fact that petitioner only occupies the sub-terrain portion, it is liable to pay not merely an easement fee but rather the full compensation for land. This is so because in this case, the nature of the easement practically deprives the owners of its normal beneficial use. Respondents, as the owner of the property thus expropriated, are entitled to a just compensation which

should be neither more nor less, whenever it is possible to make the assessment, than the money equivalent of said property.

Here, like in National Power Corporation v. Ibrahim, NPC constructed a tunnel underneath the land of the Heirs of Macabangkit without going through formal expropriation proceedings and without procuring their consent or at least informing them beforehand of the construction. NPC's construction adversely affected the owners' rights and interests because the subterranean intervention by NPC prevented them from introducing any developments on the surface, and from disposing of the land or any portion of it, either by sale or mortgage.

As a result, NPC should pay just compensation for the entire land.

FACTS:
Pursuant to its legal mandate under Republic Act No. 6395 (An Act Revising the Charter of the National Power Corporation), NPC undertook the Agus River Hydroelectric Power Plant Project in the 1970s to generate electricity for Mindanao. The project included the construction of several underground tunnels to be used in diverting the water flow from the Agus River to the hydroelectric plants.

On November 21, 1997, the respondents, all surnamed Macabangkit (Heirs of Macabangkit), as the owners of land with an area of 221,573 square meters situated in Ditucalan, Iligan City, sued NPC in the RTC for the recovery of damages and of the property, with the alternative prayer for the payment of just compensation. They alleged that they had belatedly discovered that one of the underground tunnels of NPC that diverted the water flow of the Agus River for the operation of the Hydroelectric Project in Agus V, Agus VI and Agus VII traversed their land; that their discovery had occurred in 1995 after Atty. Saidali C. Gandamra, President of the Federation of Arabic Madaris School, had rejected their offer to sell the land because of the danger the underground tunnel might pose to the proposed Arabic Language Training Center and Muslims Skills Development Center; that such rejection had been followed by the withdrawal by Global Asia Management and Resource Corporation from developing the land into a housing project for the same reason; that Al-Amanah Islamic Investment Bank of the Philippines had also refused to accept their land as collateral because of the presence of the underground tunnel; that the underground tunnel had been constructed without their knowledge and consent; that the presence of the tunnel deprived them of the agricultural, commercial, industrial and residential value of their land; and that their land had also become an unsafe place for habitation because of the loud sound of the water rushing through the tunnel and the constant shaking of the ground, forcing them and their workers to relocate to safer grounds.

After trial, the RTC ruled in favor of the plaintiffs (Heirs of Macabangkit).

On August 18, 1999, the RTC issued a supplemental decision, viz:

Upon a careful review of the original decision dated August 13, 1999, a sentence should be added to paragraph 1(a) of the dispositive portion thereof, to bolster, harmonize, and conform to the findings of the Court, which is quoted hereunder, to wit:

"Consequently, plaintiffs' land or properties are hereby condemned in favor of defendant National Power Corporation, upon payment of the aforesaid sum."

Therefore, paragraph 1(a) of the dispositive portion of the original decision should read, as follows:

a) To pay plaintiffs' land with a total area of 227,065 square meters, at the rate of FIVE HUNDRED (₱500.00) PESOS per square meter, or a total of ONE HUNDRED THIRTEEN MILLION FIVE HUNDRED THIRTY TWO THOUSAND AND FIVE HUNDRED (₱113,532,500.00) PESOS, plus interest, as actual damages or just compensation; Consequently, plaintiffs' land or properties are hereby condemned in favor of defendant National Power Corporation, upon payment of the aforesaid sum.

On its part, NPC appealed to the CA on August 25, 1999.

On October 5, 2004, the CA affirmed the decision of the RTC, holding that the testimonies of NPC's witness Gregorio Enterone and of the respondents' witness Engr. Pete Sacedon, the topographic survey map, the sketch map, and the ocular inspection report sufficiently established the existence of the underground tunnel traversing the land of the Heirs of Macabangkit; that NPC did not substantiate its defense that prescription already barred the claim of the Heirs of Macabangkit; and that Section 3(i) of R.A. No. 6395, being silent about tunnels, did not apply.

ISSUE:
Whether or not the appellate court erred on a question of law when it affirmed the decision and supplemental decision of the court a quo directing and ordering petitioner to pay just compensation to respondents. (NO)

RULING:
We uphold the liability of NPC for payment of just compensation

The ocular inspection actually confirmed the existence of the tunnel underneath the land of the Heirs of Macabangkit.

It bears noting that NPC did not raise any issue against or tender any contrary comment on the ocular inspection report.

Five-year prescriptive period under Section 3(i) of Republic Act No. 6395 does not apply to claims for just compensation

The CA held that Section 3(i) of Republic Act No. 6395 had no application to this action because it covered facilities that could be easily discovered, not tunnels that were inconspicuously constructed beneath the surface of the land.

Without necessarily adopting the reasoning of the CA, we uphold its conclusion that prescription did not bar the present action to recover just compensation.

Section 3(i) of Republic Act No. 6395 covers the construction of "works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require." It is notable that Section 3(i) includes no limitation except those enumerated after the term works. Accordingly, we consider the term works as embracing all kinds of constructions, facilities, and other developments that can enable or help NPC to meet its objectives of developing hydraulic power expressly provided under paragraph (g) of Section 3. The CA's restrictive construal of Section 3(i) as exclusive of tunnels was obviously unwarranted, for the provision applies not only to development works easily discoverable or on the

surface of the earth but also to subterranean works like tunnels. Such interpretation accords with the fundamental guideline in statutory construction that when the law does not distinguish, so must we not. Moreover, when the language of the statute is plain and free from ambiguity, and expresses a single, definite, and sensible meaning, that meaning is conclusively presumed to be the meaning that the Congress intended to convey.

Even so, we still cannot side with NPC.

We rule that the prescriptive period provided under Section 3(i) of Republic Act No. 6395 is applicable only to an action for damages, and does not extend to an action to recover just compensation like this case. Consequently, NPC cannot thereby bar the right of the Heirs of Macabangkit to recover just compensation for their land.

The action to recover just compensation from the State or its expropriating agency differs from the action for damages. The former, also known as inverse condemnation, has the objective to recover the value of property taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency. Just compensation is the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word just is used to intensify the meaning of the word compensation in order to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. On the other hand, the latter action seeks to vindicate a legal wrong through damages, which may be actual, moral, nominal, temperate, liquidated, or exemplary. When a right is exercised in a manner not conformable with the norms enshrined in Article 19 and like provisions on human relations in the Civil Code, and the exercise results to the damage of another, a legal wrong is committed and the wrongdoer is held responsible.

The two actions are radically different in nature and purpose. The action to recover just compensation is based on the Constitution while the action for damages is predicated on statutory enactments. Indeed, the former arises from the exercise by the State of its power of eminent domain against private property for public use, but the latter emanates from the transgression of a right. The fact that the owner rather than the expropriator brings the former does not change the essential nature of the suit as an inverse condemnation, for the suit is not based on tort, but on the constitutional prohibition against the taking of property without just compensation. It would very well be contrary to the clear language of the Constitution to bar the recovery of just compensation for private property taken for a public use solely on the basis of statutory prescription.

Due to the need to construct the underground tunnel, NPC should have first moved to acquire the land from the Heirs of Macabangkit either by voluntary tender to purchase or through formal expropriation proceedings. In either case, NPC would have been liable to pay to the owners the fair market value of the land, for Section 3(h) of Republic Act No. 6395 expressly requires NPC to pay the fair market value of such property at the time of the taking.

This was what NPC was ordered to do in *National Power Corporation v. Ibrahim*, where NPC had denied the right of the owners to be paid just compensation despite their land being traversed by the underground tunnels for siphoning water from Lake Lanao needed in the operation of Agus II, Agus III, Agus IV, Agus VI and Agus VII Hydroelectric Projects in Saguiran, Lanao del Sur, in Nangca and Balo-I in Lanao del Norte and in Ditucalan and Fuentes in Iligan City. There, NPC similarly argued that the underground tunnels constituted a mere easement that did not involve any loss of title or possession on the part of the property owners, but the Court resolved against NPC, to wit:

Petitioner contends that the underground tunnels in this case constitute an easement upon the property of the respondents which does not involve any loss of title or possession. The manner in which the easement was created by petitioner, however, violates the due process rights of respondents as it was without notice and indemnity to them and did not go through proper expropriation proceedings. Petitioner could have, at any time, validly exercised the power of eminent domain to acquire the easement over respondents' property as this power encompasses not only the taking or appropriation of title to and possession of the expropriated property but likewise covers even the imposition of a mere burden upon the owner of the condemned property. Significantly, though, landowners cannot be deprived of their right over their land until expropriation proceedings are instituted in court. The court must then see to it that the taking is for public use, that there is payment of just compensation and that there is due process of law.

NPC's construction of the tunnel constituted taking of the land, and entitled owners to just compensation

The Court held in *National Power Corporation v. Ibrahim* that NPC was "liable to pay not merely an easement fee but rather the full compensation for land" traversed by the underground tunnels, viz:

In disregarding this procedure and failing to recognize respondents' ownership of the sub-terrain portion, petitioner took a risk and exposed itself to greater liability with the passage of time. It must be emphasized that the acquisition of the easement is not without expense. The underground tunnels impose limitations on respondents' use of the property for an indefinite period and deprive them of its ordinary use. Based upon the foregoing, respondents are clearly entitled to the payment of just compensation. Notwithstanding the fact that petitioner only occupies the sub-terrain portion, it is liable to pay not merely an easement fee but rather the full compensation for land. This is so because in this case, the nature of the easement practically deprives the owners of its normal beneficial use. Respondents, as the owner of the property thus expropriated, are entitled to a just compensation which should be neither more nor less, whenever it is possible to make the assessment, than the money equivalent of said property.

Here, like in *National Power Corporation v. Ibrahim*, NPC constructed a tunnel underneath the land of the Heirs of Macabangkit without going through formal expropriation proceedings and without procuring their consent or at least informing them beforehand of the construction. NPC's construction adversely affected the owners' rights and interests because the subterranean intervention by NPC prevented them from introducing any developments on the surface, and from disposing of the land or any portion of it, either by sale or mortgage.

Did such consequence constitute taking of the land as to entitle the owners to just compensation?

We agree with both the RTC and the CA that there was a full taking on the part of NPC, notwithstanding that the owners were not completely and actually dispossessed. It is settled that the taking of private property for public use, to be compensable, need not be an actual physical taking or appropriation. Indeed, the expropriator's action may be short of acquisition of title, physical possession, or occupancy but may still amount to a taking. Compensable taking includes destruction, restriction, diminution, or interruption of the rights of ownership or of the common and necessary use and enjoyment of the property in a lawful manner, lessening or destroying its value. It is neither necessary that the owner be wholly deprived of the use of his property, nor material whether the property is removed from the possession of the owner, or in any respect changes hands.

As a result, NPC should pay just compensation for the entire land. In that regard, the RTC pegged just compensation at ₱500.00/square meter based on its finding on what the prevailing market value of the property was at the time of the filing of the complaint, and the CA upheld the RTC.

NATIONAL POWER CORPORATION, ***Petitioner***, **-versus- FELICISIMO TARCELO AND HEIRS OF COMIA SANTOS**, ***Respondents***.
G.R. No. 198139, SECOND DIVISION, September 08, 2014, DEL CASTILLO, *J.*

It has always been the rule that "[t]he only portion of the decision that may be the subject of execution is that which is ordained or decreed in the dispositive portion. Whatever may be found in the body of the decision can only be considered as part of the reasons or conclusions of the court and serve only as guides to determine the ratio decidendi." "[W]here there is a conflict between the dispositive portion of the decision and the body thereof, the dispositive portion controls irrespective of what appears in the body of the decision. While the body of the decision, order or resolution might create some ambiguity in the manner of the court's reasoning preponderates, it is the dispositive portion thereof that finally invests rights upon the parties, sets conditions for the exercise of those rights, and imposes corresponding duties or obligation."

Thus, with the decretal portion of the trial court's November 7, 2005 Decision particularly stating that NPC shall have the lawful right to enter, take possession and acquire easement of right-of-way over the affected portions of respondents' properties upon the payment of just compensation, any order executing the trial court's Decision should be based on such dispositive portion. "An order of execution is based on the disposition, not on the body, of the decision."

FACTS:
Respondents Felicisimo Tarcelo (Tarcelo) and the heirs of Comia Santos (Santos heirs) are the owners of two lots measuring 4,404 and 2,611 square meters, respectively, which are situated in Brgy. Tabangao-Ambulong, Batangas City.

Sometime in 2000, petitioner National Power Corporation (NPC) filed Civil Case No. 5785 with the Batangas City RTC, seeking to expropriate portions of Tarcelo and the Santos heirs' lots to the extent of 1,595.91 square meters which are affected by the construction and maintenance of NPC's 1,200 MW Ilijan Natural Gas Pipeline Project. In other words, NPC's natural gas pipeline shall traverse respondents' lands to such extent.

On July 29, 2002, the Batangas City RTC issued an order of condemnation, thus authorizing NPC to take possession of the subject lots. Thereafter, it appointed three commissioners who in turn submitted their respective Reports and recommendations on the amount of just compensation to be paid to respondents.

On November 7, 2005, the Batangas City RTC rendered a Decision fixing just compensation for the subject lots at P1,000.00 per square meter.

NPC filed an appeal – docketed as CA-G.R. CV No. 86712 – with the CA. On June 26, 2007, the appellate court issued a Decision, stating as follows:

In pronouncing the just compensation in this case, We fix the rate of the subject property at SEVEN HUNDREDNINETY SEVEN [sic] and FIFTY CENTAVOS (₱797.50) per square meter by averaging

₱475.00 and ₱1,120.00 of the commissioner's report. This is nearest to and in consonance with the ruling that in expropriation proceedings, the owner of the property condemned is generally entitled to the fair market value, that is the sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell.

IN VIEW OF ALL THE FOREGOING, appealed decision dated November 7, 2005 is AFFIRMEDwith MODIFICATIONthat the just compensation in this case is lowered from ONE THOUSAND PESOS (₱1,000.00) to SEVEN HUNDRED NINETY SEVEN and FIFTY CENTAVOS (₱797.50) per square meter. No pronouncement as to costs.

SO ORDERED.

The above Decision of the appellate court became final and executory, and entry of judgment was done accordingly.

Respondents moved for execution. In a March 6, 2009 Order, the Batangas City RTC granted their respective motions, and a Writ of Execution was issued.

On May 14, 2009, a Notice of Garnishment was served on the Manager of the Land Bank of the Philippines, NPC Branch, Quezon City for the satisfaction of the amount of P5,594,462.50 representing just compensation for the **whole** of respondents' 4,404- and 2,611-square meter lots – or 7,015 square meters – and not merely the supposedly affected portions thereof totaling 1,595.91 square meters as NPC originally sought to acquire.

On May 29, 2009, NPC filed an Urgent Omnibus Motion seeking to quash the Writ of Execution and Notice of Garnishment, which it claimed were inconsistent with the Batangas City RTC's November 7, 2005 Decision and the CA's June 26, 2007 Decision in CA-G.R. CV No. 86712 where just compensation was fixed at P1,000.00 per square meter only for the affected area of 1,591.91 square meters, and not for the whole of respondents' respective lots. It argued that the appeal in CA-G.R. CV No. 86712 resolved only the issue of whether respondents should be paid the full market value of the affected 1,595.91-square meter area or just a 10% easement fee therefor; it did not decide whether NPC should pay just compensation for the entire area of 7,015 square meters.

On September 24, 2009, the Batangas City RTC issued an Order denying NPC's Urgent Omnibus Motion.

Seeking to set aside the September 24, 2009 and October 23, 2009 Orders of the Batangas City RTC as well as its March 9, 2009 Writ of Execution and May 14, 2009 Notice of Garnishment, NPC filed a Petition for *Certiorari* with the CA, which was docketed as CA-G.R. SP No. 112054.

On January 20, 2011, the CA rendered the assailed Decision denying the petition.

The CA held that there was nothing in the November 7, 2005 Decision of the Batangas City RTC to indicate that NPC was being ordered to pay just compensation only for the 1,595.91-square meter portion of respondents' properties; on the contrary, the trial court held that –
Based on the foregoing, **the court fixes the just compensation for the subject properties** situated in Brgy. Tabangao-Ambulong, Batangas City at ONE THOUSAND PESOS (P1,000.00) per square meter.

– which meant that in the fixing of the amount of just compensation, the trial court did not confine itself to the 1,595.91-square meter portion but rather to the subject properties in their entirety and without qualification.

ISSUE:
Whether or not the Court of Appeals erred in upholding the trial court's orders approving the notice of garnishment which demanded payment of just compensation for the entire property of respondents instead of the affected portions only in accordance with the complaint and the trial court's decision. (YES)

RULING:
The exercise of the right of eminent domain, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights. It is one of the harshest proceedings known to the law. x x x The authority to condemn is to be strictly construed in favor of the owner and against the condemnor. When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained.

Corollarily, it has been held that trial courts should exercise care and circumspection in the resolution of just compensation cases, considering that they involve the expenditure of public funds.

The above principles were somehow lost on both the trial and appellate courts.

The trial court itself particularly decreed in its November 7, 2005 Decision that only the affected portions of respondents' properties were to be acquired and compensated for. In the decretal portion of its Decision, it thus held as follows:

WHEREFORE, plaintiff National Power Corporation is ordered to pay the defendants the amount of P1,000.00 per square meter.

Upon payment of just compensation to the defendants, subject to the deductions of the sums due the Government for unpaid real estate taxes and other imposts, **the plaintiff shall have a lawful right to enter, take possession and acquire easement of right-of-way over the portions of the properties** together with the improvements sought to be expropriated for the purpose stated, free from any and all liens and encumbrances.

The CA therefore patently erred in declaring in its assailed Decision that there is nothing in the November 7, 2005 Decision of the Batangas City RTC to indicate that NPC was being ordered to pay just compensation only for the 1,595.91-square meter portion of respondents' properties. On the contrary, the evidence is quite clear that NPC has been made liable precisely to such extent only, and not more.

The Court likewise observes that contrary to the CA's appreciation, the June 26, 2007 Decision in CA-G.R. CV No. 86712 did not particularly declare that NPC should pay for the **entire** area of respondents' properties. It merely stated that respondents should be compensated for the full and fair market value of their property and not merely paid a 10% easement fee therefor; it did not resolve the issue of whether NPC should pay just compensation for the entire area of 7,015 square meters. It simply said that NPC should pay for the full per-square meter value of the affected portions, and not just a fraction thereof (or 10%). There could be no other interpretation of the June 26, 2007 pronouncement in CA-G.R. CV No. 86712 when the CA stated therein that –

At bar, it cannot be gainsaid that the construction of underground pipeline is a simple case of mere passage of gas pipeline. It will surely cause damage and prejudice to the agricultural potentials of appellees' property. Deep excavation will have to be done whereby plants and trees will be uprooted. A possible leakage could certainly do harm and adversely restrict the agricultural and economic activity of the land. This is not to mention that it will create an environmental health hazard dangerous to the occupant's life and limb.

Hence, defendants-appellees are entitled for (sic) just compensation to (sic) the ***full*** market value of their property not just ten percent (10%) of it.

x x x x

Taking all the consideration [sic] of the subject property, Commissioners Taupa and Nuique placed the value of the property at P475.00 per square meter based on the Land Bank valuation and Cuervo Appraisers, Inc. and the Provincial/City Appraisal Committees of Batangas, Laguna and Lipa City, while Commissioner Atienza valued the property at P1,120 per square meter, based on the average value per findings of the Committee composed of the City Assessor, City Treasurer, City Engineer under Resolution No. 9-99 dated June 18, 1999 that the subject property will cost P1,000.00 to P1,300.00 per square meter, and the opinion value of her Team's survey and Report which revealed that the prevailing price of agricultural land in Tabangao-Ambulong, Batangas City is NINE HUNDRED THIRTY PESOS (P930.00) per square meter.

NPC is thus correct in its observation that the issue of whether it should be made to pay for the whole 7,015-square meter area was not at all raised. Besides, in arriving at its judgment, the CA took into full consideration the Commissioners' Reports, which recommended the payment of just compensation only for the affected portions of respondents' properties; if it believed otherwise, the appellate court would have so indicated, and it would have taken exception to the said reports and arrived at its own independent consideration of the case.

It has always been the rule that "[t]he only portion of the decision that may be the subject of execution is that which is ordained or decreed in the dispositive portion. Whatever may be found in the body of the decision can only be considered as part of the reasons or conclusions of the court and serve only as guides to determine the *ratio decidendi.*" "[W]here there is a conflict between the dispositive portion of the decision and the body thereof, the dispositive portion controls irrespective of what appears in the body of the decision. While the body of the decision, order or resolution might create some ambiguity in the manner of the court's reasoning preponderates, it is the dispositive portion thereof that finally invests rights upon the parties, sets conditions for the exercise of those rights, and imposes corresponding duties or obligation." Thus, with the decretal portion of the trial court's November 7, 2005 Decision particularly stating that NPC shall have the lawful right to enter, take possession and acquire easement of right-of-way over the affected portions of respondents' properties upon the payment of just compensation, any order executing the trial court's Decision should be based on such dispositive portion. "An order of execution is based on the disposition, not on the body, of the decision."

Execution must therefore conform to that ordained or decreed in the dispositive part of the decision.[47]Since there is a disparity between the dispositive portion of the trial court's November 7, 2005 Decision as affirmed with modification by the final and executory June 26, 2007 Decision of the CA in CA-G.R. CV No. 86712 – which decreed that respondents be paid just compensation only for the

affected portions of their properties, totaling **1,595.91 square meters** – and the Notice of Garnishment – for the satisfaction of the amount of P5,594,462.50 representing just compensation for the **whole 7,015 square meters** – the latter must be declared null and void.

It is a settled general principle that a writ of execution must conform substantially to every essential particular of the judgment promulgated. Execution not in harmony with the judgment is bereft of validity. It must conform, more particularly, to that ordained or decreed in the dispositive portion of the decision.

In the same manner, the Batangas City RTC's September 24, 2009 and October 23, 2009 Orders are hereby declared null and void in regard only to the Notice of Garnishment, as it countermands the decretal portion of the November 7, 2005 Decision and completely changes the tenor thereof by holding NPC liable to pay for the value of the whole of respondents' properties; all proceedings held for the purpose of amending or altering the dispositive portion of the trial court's November 7, 2005 Decision, as affirmed with modification by the CA's final and executory June 26, 2007 Decision in CA-G.R. CV No. 86712, are null and void for lack of jurisdiction.

In *PH Credit Corporation v. Court of Appeals*, we stressed that "respondent's [petitioner's] obligation is based on the judgment rendered by the trial court. The dispositive portion or the fallo is its decisive resolution and is thus the subject of execution. x x x. Hence the execution must conform with that which is ordained or decreed in the dispositive portion of the decision."

In *INIMACO v. NLRC*, we also held thus:

None of the parties in the case before the Labor Arbiter appealed the Decision dated March 10, 1987, hence the same became final and executory. It was, therefore, removed from the jurisdiction of the Labor Arbiter or the NLRC to further alter or amend it. **Thus, the proceedings held for the purpose of amending or altering the dispositive portion of the said decision are null and void for lack of jurisdiction**. Also, the Alias Writ of Execution is null and void because it varied the tenor of the judgment in that it sought to enforce the final judgment against ''Antonio Gonzales/Industrial Management Development Corp. (INIMACO) and/or Filipinas Carbon and Mining Corp. and Gerardo Sicat, which makes the liability solidary.

In other words, "[o]nce a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity."

L. CONTRACT CLAUSE

LEPANTO CONSOLIDATED MINING CO., *Petitioner*, ***-versus-*** **WMC RESOURCES INT L. PTY. LTD., WMC PHILIPPINES, INC. and SAGITTARIUS MINES, INC.,** *Respondents*.
G.R. NO. 162331, FIRST DIVISION, November 20, 2006, CHICO-NAZARIO, *J.*

It is engrained in jurisprudence that the constitutional prohibition on the impairment of the obligation of contract does not prohibit every change in existing laws, and to fall within the prohibition, the change must not only impair the obligation of the existing contract, but the impairment must be substantial.

Substantial impairment as conceived in relation to impairment of contracts has been explained in the case of Clemons v. Nolting, which stated that: a law which changes the terms of a legal contract between parties, either in the time or mode of performance, or imposes new conditions, or dispenses with those expressed, or authorizes for its satisfaction something different from that provided in its terms, is law which impairs the obligation of a contract and is therefore null and void. Section 40 of the Philippine Mining Act of 1995 requiring the approval of the President with respect to assignment or transfer of FTAAs, if made applicable retroactively to the Columbio FTAA, would be tantamount to an impairment of the obligations under said contract as it would effectively restrict the right of the parties thereto to assign or transfer their interests in the said FTAA.

By imposing a new condition apart from those already contained in the agreement, before the parties to the Columbio FTAA may assign or transfer its rights and interest in the said agreement, Section 40 of the Philippine Mining Act of 1995, if made to apply to the Columbio FTAA, will effectively modify the terms of the original contract and thus impair the obligations of the parties thereto and restrict the exercise of their vested rights under the original agreement. Such modification to the Columbio FTAA, particularly in the conditions imposed for its valid transfer is equivalent to an impairment of said contract violative of the Constitution.

FACTS:
On 22 March 1995, the Philippine Government and WMC Philippines, the local wholly-owned subsidiary of WMC Resources International Pty. Ltd. (WMC Resources) executed a Financial and Technical Assistance Agreement, denominated as the Columbio FTAA No. 02-95-XI (Columbio FTAA) for the purpose of large scale exploration, development, and commercial exploration of possible mineral resources in an initial contract area of 99,387 hectares located in the provinces of South Cotabato, Sultan Kudarat, Davao del Sur, and North Cotabato in accordance with Executive Order No. 279 and Department Administrative Order No. 63, Series of 1991.

The Columbio FTAA is covered in part by 156 mining claims held under various Mineral Production Sharing Agreements (MPSA) by Southcot Mining Corporation, Tampakan Mining Corporation, and Sagittarius Mines, Inc. (collectively called the Tampakan Companies), in accordance with the Tampakan Option Agreement entered into by WMC Philippines and the Tampakan Companies on 25 April 1991, as amended by Amendatory Agreement dated 15 July 1994, for purposes of exploration of the mining claims in Tampakan, South Cotabato. The Option Agreement, among other things, provides for the grant of the right of first refusal to the Tampakan Companies in case WMC Philippines desires to dispose of its rights and interests in the mining claims covering the area subject of the agreement.

WMC Resources subsequently divested itself of its rights and interests in the Columbio FTAA, and on 12 July 2000 executed a Sale and Purchase Agreement with petitioner Lepanto over its entire shareholdings in WMC Philippines, subject to the exercise of the Tampakan Companies' exercise of their right of first refusal to purchase the subject shares. On 28 August 2000, petitioner sought the approval of the 12 July 2000 Agreement from the DENR Secretary.

In an Agreement dated 6 October 2000, however, the Tampakan Companies sought to exercise its right of first refusal. Thus, in a letter dated 13 October 2000, petitioner assailed the Tampakan Companies' exercise of its right of first refusal, alleging that the Tampakan Companies failed to match the terms and conditions set forth in the 12 July 2000 Agreement.

Thereafter, petitioner filed a case for Injunction, Specific Performance, Annulment of Contracts and Contractual Interference with the Regional Trial Court of Makati, Branch 135, against WMC Resources, WMC Philippines, and the Tampakan Companies. WMC Philippines and the Tampakan Companies moved for the dismissal of said case. Said Motion to Dismiss having been denied, WMC Philippines challenged the order dismissing the Motion on appeal before the Court of Appeals which subsequently ordered the dismissal of the case on the ground of forum shopping.

With the denial of petitioner's Motion for Reconsideration, the case was elevated to this Court. In a Decision dated 24 September 2003, the Court affirmed the Decision of the appellate court and dismissed the petition.

In the interim, on 10 January 2001, contending that the 12 July Agreement between petitioner and WMC Philippines had expired due to failure to meet the necessary preconditions for its validity, WMC Resources and the Tampakan Companies executed another Sale and Purchase Agreement, where Sagittarius Mines, Inc. was designated assignee and corporate vehicle which would acquire the shareholdings and undertake the Columbio FTAA activities. On 15 January 2001, Sagittarius Mines, Inc. increased its authorized capitalization to ₱250 million. Subsequently, WMC Resources and Sagittarius Mines, Inc. executed a Deed of Absolute Sale of Shares of Stocks on 23 January 2001.

After due consideration and evaluation of the financial and technical qualifications of Sagittarius Mines, Inc., the DENR Secretary approved the transfer of the Columbio FTAA from WMC Philippines to Sagittarius Mines, Inc. in the assailed Order. According to said Order, pursuant to Section 66 of Department Administrative Order No. 96-40, as amended, Sagittarius Mines, Inc. meets the qualification requirements as Contractor-Transferee of FTAA No. 02-95-XI, and that the application for transfer of said FTAA went thru the procedure and other requirements set forth under the law.

Aggrieved by the transfer of the Columbio FTAA in favor of Sagittarius Mines, Inc., petitioner filed a Petition for Review of the Order of the DENR Secretary with the Office of the President.

In a Decision dated 23 July 2002, the Office of the President dismissed the petition.

With the denial of its Motion for Reconsideration, petitioner lodged an appeal before the Court of Appeals which was consequently dismissed by the appellate court in the herein assailed Decision.

ISSUE:
Whether or not imposing a new condition apart from those already contained in the agreement is equivalent to an impairment of contract violative of the Constitution. (YES)

RULING:
To resolve this matter, it is imperative at this point to stress the fact that the Columbio FTAA was entered into by the Philippine Government and WMC Philippines on 22 March 1995, undoubtedly before the Philippine Mining Act of 1995 took effect on 14 April 1995. Furthermore, it is undisputed that said FTAA was granted in accordance with Executive Order No. 279 and Department Administrative Order No. 63, Series of 1991, which does not contain any similar condition on the transfer or assignment of financial or technical assistance agreements. Thus, it would seem that what petitioner would want this Court to espouse is the retroactive application of the Philippine Mining Act of 1995 to the Columbio FTAA, a valid agreement concluded prior to the naissance of said piece of legislation.

This posture of petitioner would clearly contradict the established legal doctrine that statutes are to be construed as having only a prospective operation unless the contrary is expressly stated or necessarily implied from the language used in the law. As reiterated in the case of *Segovia v. Noel,* a sound cannon of statutory construction is that a statute operates prospectively only and never retroactively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication.

Article 4 of the Civil Code provides that: "Laws shall not have a retroactive effect unless therein otherwise provided." According to this provision of law, in order that a law may have retroactive effect it is necessary that an express provision to this effect be made in the law, otherwise nothing should be understood which is not embodied in the law. Furthermore, it must be borne in mind that a law is a rule established to guide our actions without no binding effect until it is enacted, wherefore, it has no application to past times but only to future time, and that is why it is said that the law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions.

In the case at bar, there is an absence of either an express declaration or an implication in the Philippine Mining Act of 1995 that the provisions of said law shall be made to apply retroactively, therefore, any section of said law must be made to apply only prospectively, in view of the rule that a statute ought not to receive a construction making it act retroactively, unless the words used are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied.

Be that as it may, assuming for the sake of argument that We are to apply the Philippine Mining Act of 1995 retrospectively to the Columbio FTAA, the lack of presidential approval will not be fatal as to render the transfer illegal, especially since, as in the instant case, the alleged lack of presidential approval has been remedied when petitioner appealed the matter to the Office of the President which approved the Order of the DENR Secretary granting the application for transfer of the Columbio FTAA to Sagittarius Mines, Inc. As expounded by the Court in the Resolution of the Motion for Reconsideration in the *La Bugal-B Laan Tribal Association, Inc. v. Ramos* case, involving the same FTAA subject of the instant case:

> x x x Moreover, when the transferee of an FTAA is another foreign corporation, there is a logical application of the requirement of prior approval by the President of the Republic and notification to Congress in the event of assignment or transfer of an FTAA. In this situation, such approval and notification are appropriate safeguards, considering that the new contractor is the subject of a foreign government.
>
> **On the other hand, when the transferee of the FTAA happens to be a Filipino corporation, the need for such safeguard is not critical; hence, the lack of prior approval and notification may not be deemed fatal as to render the transfer invalid. Besides, it is not as if approval by the President is entirely absent in this instance.** x x x That case involved the review of the Decision of the Court of Appeals dated November 21, 2003 in CA G.R. SP No. 74161, which affirmed the DENR Order dated December 31, 2001 and the Decision of the Office of the President dated July 23, 2002, **both *approving* the assignment of the WMCP FTAA to Sagittarius**.

Furthermore, if petitioner was indeed of the mind that Section 40 of the Philippine Mining Act of 1995 is applicable to the Columbio FTAA, thus necessitating the approval of the President for the validity

of its transfer or assignment, it would seem contradictory that petitioner sought the approval of the DENR Secretary, and not that of the President, of its 12 July 2000 Sale and Purchase Agreement with WMC Resources. Hence, it may be glimpsed from the very act of petitioner that it recognized that the provision of the Columbio FTAA regarding the consent of the DENR Secretary with respect to the transfer of said FTAA must be upheld.

It is engrained in jurisprudence that the constitutional prohibition on the impairment of the obligation of contract does not prohibit every change in existing laws, and to fall within the prohibition, the change must not only impair the obligation of the existing contract, but the impairment must be substantial. Substantial impairment as conceived in relation to impairment of contracts has been explained in the case of *Clemons v. Nolting*, which stated that: a law which changes the terms of a legal contract between parties, either in the time or mode of performance, or imposes new conditions, or dispenses with those expressed, or authorizes for its satisfaction something different from that provided in its terms, is law which impairs the obligation of a contract and is therefore null and void. Section 40 of the Philippine Mining Act of 1995 requiring the approval of the President with respect to assignment or transfer of FTAAs, if made applicable retroactively to the Columbio FTAA, would be tantamount to an impairment of the obligations under said contract as it would effectively restrict the right of the parties thereto to assign or transfer their interests in the said FTAA.

By imposing a new condition apart from those already contained in the agreement, before the parties to the Columbio FTAA may assign or transfer its rights and interest in the said agreement, Section 40 of the Philippine Mining Act of 1995, if made to apply to the Columbio FTAA, will effectively modify the terms of the original contract and thus impair the obligations of the parties thereto and restrict the exercise of their vested rights under the original agreement. Such modification to the Columbio FTAA, particularly in the conditions imposed for its valid transfer is equivalent to an impairment of said contract violative of the Constitution.

M. FREE ACCESS TO COURTS

RE: Query of Mr. Roger C. Prioreschi Re Exemption from Legal and Filing Fees of the Good Shepherd Foundation, Inc.
A.M. No. 09-6-9-SC, EN BANC, August 19, 2009, **BERSAMIN,** *J.*

Only a natural party litigant may be regarded as an indigent litigant. The Good Shepherd Foundation, Inc., being a corporation invested by the State with a juridical personality separate and distinct from that of its members, is a juridical person. Among others, it has the power to acquire and possess property of all kinds as well as incur obligations and bring civil or criminal actions, in conformity with the laws and regulations of their organization. As a juridical person, therefore, it cannot be accorded the exemption from legal and filing fees granted to indigent litigants.

That the Good Shepherd Foundation, Inc. is working for indigent and underprivileged people is of no moment. Clearly, the Constitution has explicitly premised the free access clause on a person's poverty, a condition that only a natural person can suffer.

In view of the foregoing, the Good Shepherd Foundation, Inc. cannot be extended the exemption from legal and filing fees despite its working for indigent and underprivileged people.

FACTS:
In his letter dated May 22, 2009 addressed to the Chief Justice, Mr. Roger C. Prioreschi, administrator of the Good Shepherd Foundation, Inc., wrote:

xxx

The Hon. Court Administrator Jose Perez pointed out to the need of complying with OCA Circular No. 42-2005 and Rule 141 that reserves this "privilege" to indigent persons. While judges are appointed to interpret the law, this type of law seems to be extremely detailed with requirements that do not leave much room for interpretations.

In addition, this law deals mainly with "individual indigent" and it does not include Foundations or Associations that work with and for the most Indigent persons. As seen in our Article of Incorporation, since 1985 the Good Shepherd Foundation, Inc. reached-out to the poorest among the poor, to the newly born and abandoned babies, to children who never saw the smile of their mother, to old people who cannot afford a few pesos to pay for "common prescriptions", to broken families who returned to a normal life. In other words, we have been working hard for the very Filipino people, that the Government and the society cannot reach to, or have rejected or abandoned them.

Can the Courts grant to our Foundation who works for indigent and underprivileged people, the same option granted to indigent people?

xxx

ISSUE:
Whether or not the Courts can grant to foundations like the Good Shepherd Foundation, Inc. the same exemption from payment of legal fees granted to indigent litigants even if the foundations are working for indigent and underprivileged people. (NO)

RULING:
To answer the query of Mr. Prioreschi, the Courts cannot grant to foundations like the Good Shepherd Foundation, Inc. the same exemption from payment of legal fees granted to indigent litigants even if the foundations are working for indigent and underprivileged people.

The basis for the exemption from legal and filing fees is the free access clause, embodied in Sec. 11, Art. III of the 1987 Constitution, thus:

> Sec. 11. Free access to the courts and quasi judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

The importance of the right to free access to the courts and quasi judicial bodies and to adequate legal assistance cannot be denied. A move to remove the provision on free access from the

Constitution on the ground that it was already covered by the equal protection clause was defeated by the desire to give constitutional stature to such specific protection of the poor.

In implementation of the right of free access under the Constitution, the Supreme Court promulgated rules, specifically, Sec. 21, Rule 3, Rules of Court, and Sec. 19, Rule 141, Rules of Court, which respectively state thus:

> Sec. 21. Indigent party. - A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an ex parte application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.
>
> Such authority shall include an exemption from payment of docket and other lawful fees, and of transcripts of stenographic notes which the court may order to be furnished him. The amount of the docket and other lawful fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides.
>
> Any adverse party may contest the grant of such authority at any time before judgment is rendered by the trial court. If the court should determine after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court. If payment is not made within the time fixed by the court, execution shall issue for the payment thereof, without prejudice to such other sanctions as the court may impose.
>
> Sec. 19. Indigent litigants exempt from payment of legal fees.' Indigent litigants (a) whose gross income and that of their immediate family do not exceed an amount double the monthly minimum wage of an employee and (b) who do not own real property with a fair market value as stated in the current tax declaration of more than three hundred thousand (P300,000.00) pesos shall be exempt from payment of legal fees.
>
> The legal fees shall be a lien on any judgment rendered in the case favorable to the indigent litigant unless the court otherwise provides.
> To be entitled to the exemption herein provided, the litigant shall execute an affidavit that he and his immediate family do not earn a gross income abovementioned, and they do not own any real property with the fair value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the litigant's affidavit. The current tax declaration, if any, shall be attached to the litigant's affidavit.
> Any falsity in the affidavit of litigant or disinterested person shall be sufficient cause to dismiss the complaint or action or to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred.

The clear intent and precise language of the aforequoted provisions of the Rules of Court indicate that only a natural party litigant may be regarded as an indigent litigant. The Good Shepherd Foundation, Inc., being a corporation invested by the State with a juridical personality separate and distinct from that of its members, is a juridical person. Among others, it has the power to acquire and possess property of all kinds as well as incur obligations and bring civil or criminal actions, in conformity with the laws and regulations of their organization. As a juridical person, therefore, it cannot be accorded the exemption from legal and filing fees granted to indigent litigants.

That the Good Shepherd Foundation, Inc. is working for indigent and underprivileged people is of no moment. Clearly, the Constitution has explicitly premised the free access clause on a person's poverty, a condition that only a natural person can suffer.

There are other reasons that warrant the rejection of the request for exemption in favor of a juridical person. For one, extending the exemption to a juridical person on the ground that it works for indigent and underprivileged people may be prone to abuse (even with the imposition of rigid documentation requirements), particularly by corporations and entities bent on circumventing the rule on payment of the fees. Also, the scrutiny of compliance with the documentation requirements may prove too time-consuming and wasteful for the courts.

In view of the foregoing, the Good Shepherd Foundation, Inc. cannot be extended the exemption from legal and filing fees despite its working for indigent and underprivileged people.

N. RIGHTS OF SUSPECTS (SEE ALSO THE *ANTI-TORTURE ACT OF 2009* [R.A. NO. 9745])

CHARLES THOMAS DICKERSON, *Petitioner,* -versus- UNITED STATES, *Respondent*.
No. 99-5525, United States Supreme Court, June 26, 2000, Rehnquist, C. J.

Miranda and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts.

Miranda, being a constitutional decision of this Court, may not be in effect overruled by an Act of Congress. Given §3501's express designation of voluntariness as the touchstone of admissibility, its omission of any warning requirement, and its instruction for trial courts to consider the totality of the circumstances surrounding the giving of the confession, this Court agrees with the Fourth Circuit that Congress intended §3501 to overrule Miranda.

While Congress has ultimate authority to modify or set aside any such rules that are not constitutionally required, e.g., Palermo v. United States, 360 U. S. 343, 345-348, it may not supersede this Court's decisions interpreting and applying the Constitution. That Miranda announced a constitutional rule is demonstrated, first and foremost, by the fact that both Miranda and two of its companion cases applied its rule to proceedings in state courts, and that the Court has consistently done so ever since.

This Court declines to overrule Miranda. Whether or not this Court would agree with Miranda's reasoning and its rule in the first instance, stare decisis weighs heavily against overruling it now. Even in constitutional cases, stare decisiscarries such persuasive force that the Court has always required a departure from precedent to be supported by some special justification.

FACTS:
Petitioner Dickerson was indicted for bank robbery, conspiracy to commit bank robbery, and using a firearm in the course of committing a crime of violence, all in violation of the applicable provisions of Title 18 of the United States Code. Before trial, Dickerson moved to suppress a statement he had made at a Federal Bureau of Investigation field office, on the grounds that he had not received "*Miranda* warnings" before being interrogated. The District Court granted his motion to suppress, and the Government took an interlocutory appeal to the United States Court of Appeals for the Fourth Circuit. That court, by a divided vote, reversed the District Court's suppression order. It agreed with the District Court's conclusion that petitioner had not received *Miranda* warnings before making his

statement. But it went on to hold that §3501, which in effect makes the admissibility of statements such as Dickerson's turn solely on whether they were made voluntarily, was satisfied in this case. It then concluded that our decision in *Miranda* was not a constitutional holding, and that therefore Congress could by statute have the final say on the question of admissibility.

In the wake of *Miranda* v. *Arizona*, 384 U. S. 436, in which the Court held that certain warnings must be given before a suspect's statement made during custodial interrogation could be admitted in evidence, *id.,* at 479, Congress enacted 18 U. S. C. §3501, which in essence makes the admissibility of such statements turn solely on whether they were made voluntarily. Petitioner, under indictment for bank robbery and related federal crimes, moved to suppress a statement he had made to the Federal Bureau of Investigation, on the ground he had not received "*Miranda* warnings" before being interrogated. The District Court granted his motion, and the Government took an interlocutory appeal. In reversing, the Fourth Circuit acknowledged that petitioner had not received *Miranda* warnings, but held that §3501 was satisfied because his statement was voluntary. It concluded that *Miranda* was not a constitutional holding, and that, therefore, Congress could by statute have the final say on the admissibility question.

ISSUE:
Whether or not Miranda warnings can be overrueled by 18 U. S. C. §3501, an Act of Congress. (NO)

RULING:
Miranda and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts.

Miranda, being a constitutional decision of this Court, may not be in effect overruled by an Act of Congress. Given §3501's express designation of voluntariness as the touchstone of admissibility, its omission of any warning requirement, and its instruction for trial courts to consider the totality of the circumstances surrounding the giving of the confession, this Court agrees with the Fourth Circuit that Congress intended §3501 to overrule *Miranda*. The law is clear as to whether Congress has constitutional authority to do so. This Court has supervisory authority over the federal courts to prescribe binding rules of evidence and procedure. While Congress has ultimate authority to modify or set aside any such rules that are not constitutionally required, it may not supersede this Court's decisions interpreting and applying the Constitution. That *Miranda* announced a constitutional rule is demonstrated, first and foremost, by the fact that both *Miranda* and two of its companion cases applied its rule to proceedings in state courts, and that the Court has consistently done so ever since. The Court does not hold supervisory power over the state courts, as to which its authority is limited to enforcing the commands of the Constitution. The conclusion that *Miranda* is constitutionally based is also supported by the fact that that case is replete with statements indicating that the majority thought it was announcing a constitutional rule. Although *Miranda* invited legislative action to protect the constitutional right against coerced self-incrimination, it stated that any legislative alternative must be "at least as effective in appraising accused persons of their right of silence and in assuring a continuous opportunity to exercise it."

A contrary conclusion is not required by the fact that the Court has subsequently made exceptions from the *Miranda* rule. No constitutional rule is immutable, and the sort of refinements made by such cases are merely a normal part of constitutional law. *Oregon* v. *Elstad*, 470 U. S. 298, 306--in which the Court, in refusing to apply the traditional "fruits" doctrine developed in Fourth Amendment cases, stated that Miranda's exclusionary rule serves the Fifth Amendment and sweeps more broadly than that Amendment itself--does not prove that *Miranda* is a nonconstitutional decision, but simply

recognizes the fact that unreasonable searches under the Fourth Amendment are different from unwarned interrogation under the Fifth. Finally, although the Court agrees with the court-appointed *amicus curiae* that there are more remedies available for abusive police conduct than there were when *Miranda* was decided--*e.g.*, a suit under *Bivens* v. *Six Unknown Named Agents*, 403 U. S. 388--it does not agree that such additional measures supplement §3501's protections sufficiently to create an adequate substitute for the *Miranda* warnings. *Miranda* requires procedures that will warn a suspect in custody of his right to remain silent and assure him that the exercise of that right will be honored, see, *e.g.*, 384 U. S., at 467, while §3501 explicitly eschews a requirement of preinterrogation warnings in favor of an approach that looks to the administration of such warnings as only one factor in determining the voluntariness of a suspect's confession. Section 3501, therefore, cannot be sustained if *Miranda* is to remain the law.

This Court declines to overrule *Miranda.* Whether or not this Court would agree with *Miranda*'s reasoning and its rule in the first instance, *stare decisis* weighs heavily against overruling it now. Even in constitutional cases, *stare decisis*carries such persuasive force that the Court has always required a departure from precedent to be supported by some special justification. There is no such justification here. *Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture. While the Court has overruled its precedents when subsequent cases have undermined their doctrinal underpinnings, that has not happened to *Miranda.* If anything, subsequent cases have reduced *Miranda*'s impact on legitimate law enforcement while reaffirming the decision's core ruling. The rule's disadvantage is that it may result in a guilty defendant going free. But experience suggests that §3501's totality-of-the-circumstances test is more difficult than *Miranda* for officers to conform to, and for courts to apply consistently. The requirement that *Miranda* warnings be given does not dispense with the voluntariness inquiry, but cases in which a defendant can make a colorable argument that a self-incriminating statement was compelled despite officers' adherence to *Miranda* are rare.

Given §3501's express designation of voluntariness as the touchstone of admissibility, its omission of any warning requirement, and the instruction for trial courts to consider a nonexclusive list of factors relevant to the circumstances of a confession, we agree with the Court of Appeals that Congress intended by its enactment to overrule *Miranda*. Because of the obvious conflict between our decision in *Miranda* and §3501, we must address whether Congress has constitutional authority to thus supersede *Miranda*. If Congress has such authority, §3501's totality-of-the-circumstances approach must prevail over *Miranda*'s requirement of warnings; if not, that section must yield to *Miranda*'s more specific requirements.

The law in this area is clear. This Court has supervisory authority over the federal courts, and we may use that authority to prescribe rules of evidence and procedure that are binding in those tribunals. *Carlisle* v. *United States*, 517 U. S. 416, 426 (1996). However, the power to judicially create and enforce nonconstitutional "rules of procedure and evidence for the federal courts exists only in the absence of a relevant Act of Congress." *Palermo* v. *United States*, 360 U. S. 343, 353, n. 11 (1959) (citing *Funk* v. *United States*, 290 U. S. 371, 382 (1933), and *Gordon* v. *United States*, 344 U. S. 414, 418 (1953)). Congress retains the ultimate authority to modify or set aside any judicially created rules of evidence and procedure that are not required by the Constitution. *Palermo*, *supra*, at 345-348; *Carlisle*, *supra*, at 426; *Vance* v. *Terrazas*, 444 U. S. 252, 265 (1980).

But Congress may not legislatively supersede our decisions interpreting and applying the Constitution. This case therefore turns on whether the *Miranda* Court announced a constitutional rule or merely exercised its supervisory authority to regulate evidence in the absence of

congressional direction. Recognizing this point, the Court of Appeals surveyed *Miranda* and its progeny to determine the constitutional status of the *Miranda* decision. Relying on the fact that we have created several exceptions to *Miranda*'s warnings requirement and that we have repeatedly referred to the *Miranda* warnings as "prophylactic," and "not themselves rights protected by the Constitution," the Court of Appeals concluded that the protections announced in *Miranda* are not constitutionally required.

In sum, we conclude that *Miranda* announced a constitutional rule that Congress may not supersede legislatively. Following the rule of *stare decisis*, we decline to overrule *Miranda* ourselves. The judgment of the Court of Appeals is therefore reversed.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- DOMINGO REYES y PAJE, ALVIN ARNALDO y AVENA and JOSELITO FLORES y VICTORIO, *Accused-Appellants*.
G.R. NO. 178300, THIRD DIVISION, March 17, 2009, CHICO-NAZARIO, *J.*

An extra-judicial confession is a declaration made voluntarily and without compulsion or inducement by a person under custodial investigation, stating or acknowledging that he had committed or participated in the commission of a crime.

Thus, we have held that an extra-judicial confession is admissible in evidence if the following requisites have been satisfied: (1) it must be voluntary; (2) it must be made with the assistance of competent and independent counsel; (3) it must be express; and (4) it must be in writing.

The right to counsel is a fundamental right and is intended to preclude the slightest coercion as would lead the accused to admit something false. The right to counsel attaches upon the start of the investigation, i.e., when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the accused. The lawyer called to be present during such investigation should be, as far as reasonably possible, the choice of the accused. If the lawyer is one furnished in behalf of accused, he should be competent and independent; that is, he must be willing to fully safeguard the constitutional rights of the accused. A competent and independent counsel is logically required to be present and able to advice and assist his client from the time the latter answers the first question asked by the investigator until the signing of the confession. Moreover, the lawyer should ascertain that the confession was made voluntarily, and that the person under investigation fully understood the nature and the consequence of his extra-judicial confession vis-a-vis his constitutional rights.

Since the prosecution has sufficiently established that the respective extra-judicial confessions of appellant Arnaldo and appellant Flores were obtained in accordance with the constitutional guarantees, these confessions are admissible. They are evidence of a high order because of the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime, unless prompted by truth and conscience. Consequently, the burden of proving that undue pressure or duress was used to procure the confessions rests on appellants Arnaldo and Flores.

In the case at bar, appellants Arnaldo and Flores failed to discharge their burden of proving that they were forced or coerced to make their respective confessions. Other than their self-serving statements that they were maltreated by the PAOCTF officers/agents, they did not present any plausible proof to substantiate their claims.

FACTS:

On 11 August 1999, an Information was filed before the RTC charging appellants with the special complex crime of kidnapping for ransom with homicide.

During their arraignment, appellants, assisted by a counsel de oficio, pleaded "Not guilty" to the charge. Trial on the merits thereafter followed.

The Yao family is composed of Yao San (father), Chua Ong Ping Sim (mother), Robert and Raymond (children), Lenny (daughter-in-law, wife of Robert), Matthew and Charlene (grandchildren), and Jona Abagatnan and Josephine Ortea (housemaids). The Yao family owns and operates a poultry farm in Barangay Santo Cristo, San Jose del Monte, Bulacan.

On 16 July 1999, at about 11:00 p.m., the Yao family, on board a Mazda MVP van, arrived at the their poultry farm in Barangay Sto. Cristo, San Jose del Monte, Bulacan. Yao San alighted from the van to open the gate of the farm. At this juncture, appellant Reyes and a certain Juanito Pataray (Pataray) approached, poked their guns at Yao San, and dragged him inside the van. Appellant Reyes and Pataray also boarded the van. Thereupon, appellants Arnaldo and Flores, with two male companions, all armed with guns, arrived and immediately boarded the van. Appellant Flores took the driver's seat and drove the van. Appellants Reyes and Arnaldo and their cohorts then blindfolded each member of the Yao family inside the van with packaging tape.

On 18 July 1999, appellants called Yao San through a cellular phone and demanded the ransom of ₱5 million for Chua Ong Ping Sim and Raymond. Yao San acceded to appellants' demand. Appellants allowed Yao San to talk with Chua Ong Ping Sim.

On 23 July 1999, the corpses of Chua Ong Ping Sim and Raymond were found at the La Mesa Dam, Novaliches, Quezon City. Both died of asphyxia by strangulation.

On 26 July 1999, appellant Arnaldo surrendered to the Presidential Anti-Organized Crime Task Force (PAOCTF) at Camp Crame, Quezon City. Thereupon, appellant Arnaldo, with the assistance of Atty. Uminga, executed a written extra-judicial confession narrating his participation in the incident. Appellant Arnaldo identified appellants Reyes and Flores, Pataray and a certain Tata and Akey as his co-participants in the incident. Appellant Arnaldo also described the physical features of his cohorts and revealed their whereabouts.

Subsequently, appellant Reyes was arrested in Sto. Cristo, San Jose del Monte, Bulacan. Thereafter, appellants Arnaldo and Reyes were identified in a police line-up by Yao San, Robert and Abagatnan as their kidnappers.

On 10 August 1999, agents of the PAOCTF arrested appellant Flores in Balayan, Batangas. Afterwards, appellant Flores, with the assistance of Atty. Rous, executed a written extra-judicial confession detailing his participation in the incident. Appellant Flores identified appellants Reyes and Arnaldo, Pataray and a certain Tata and Akey as his co-participants in the incident. Appellant Flores was subsequently identified in a police line-up by Yao San, Robert and Abagatnan as one of their kidnappers.

After trial, the RTC rendered a Decision dated 26 February 2002 convicting appellants of the special complex crime of kidnapping for ransom with homicide and sentencing each of them to suffer the supreme penalty of death. Appellants were also ordered to pay jointly and severally the Yao

family ₱150,000.00 as civil indemnity, ₱500,000.00 as moral damages and the costs of the proceedings.

By reason of the death penalty imposed on each of the appellants, the instant case was elevated to us for automatic review. However, pursuant to our ruling in *People v. Mateo*, we remanded the instant case to the Court of Appeals for proper disposition.

On 14 August 2006, the Court of Appeals promulgated its Decision affirming with modifications the RTC Decision. The appellate court reduced the penalty imposed by the RTC on each of the appellants from death penalty to *reclusion perpetua* without the possibility of parole. It also decreased the amount of civil indemnity from ₱150,000.00 to ₱100,000.00. Further, it directed appellants to pay jointly and severally the Yao family ₱100,000.00 as exemplary damages.

ISSUE:
Whether or not the trial court erred in giving weight and credence to the extra-judicial confessions of appellant Arnaldo and appellant Flores. (NO)

RULING:
An extra-judicial confession is a declaration made voluntarily and without compulsion or inducement by a person under custodial investigation, stating or acknowledging that he had committed or participated in the commission of a crime. In order that an extra-judicial confession may be admitted in evidence, Article III, Section 12 of the 1987 Constitution mandates that the following safeguards be observed :

> Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.ςηαñroblεš νυr†υαl lαω lιbrαrÿ
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or Section 17 shall be inadmissible in evidence against him.

Thus, we have held that an extra-judicial confession is admissible in evidence if the following requisites have been satisfied: (1) it must be voluntary; (2) it must be made with the assistance of competent and independent counsel; (3) it must be express; and (4) it must be in writing.

The mantle of protection afforded by the above-quoted constitutional provision covers the period from the time a person is taken into custody for the investigation of his possible participation in the commission of a crime or from the time he is singled out as a suspect in the commission of the offense although not yet in custody.

The right of an accused to be informed of the right to remain silent and to counsel contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation

of an abstract constitutional principle. Such right contemplates effective communication which results in the subject understanding what is conveyed.

The right to counsel is a fundamental right and is intended to preclude the slightest coercion as would lead the accused to admit something false. The right to counsel attaches upon the start of the investigation, i.e., when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the accused. The lawyer called to be present during such investigation should be, as far as reasonably possible, the choice of the accused. If the lawyer is one furnished in behalf of accused, he should be competent and independent; that is, he must be willing to fully safeguard the constitutional rights of the accused. A competent and independent counsel is logically required to be present and able to advice and assist his client from the time the latter answers the first question asked by the investigator until the signing of the confession. Moreover, the lawyer should ascertain that the confession was made voluntarily, and that the person under investigation fully understood the nature and the consequence of his extra-judicial confession vis-a-vis his constitutional rights.

However, the foregoing rule is not intended to deter to the accused from confessing guilt if he voluntarily and intelligently so desires, but to protect him from admitting what he is being coerced to admit although untrue. To be an effective counsel, a lawyer need not challenge all the questions being propounded to his client. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him; but, rather, it was adopted in our Constitution to preclude the slightest coercion on the accused to admit something false. The counsel should never prevent an accused from freely and voluntarily telling the truth.

We have gone over the records and found that the PAOCTF investigators have duly apprised appellants Arnaldo and Flores of their constitutional rights to remain silent and to have competent and independent counsel of their own choice during their respective custodial investigations.

The Pasubali of appellants Arnaldo and Flores's written extra-judicial confessions clearly shows that before they made their respective confessions, the PAOCTF investigators had informed them that the interrogation about to be conducted on them referred to the kidnapping of the Yao family. Thereafter, the PAOCTF agents explained to them that they had a constitutional right to remain silent, and that anything they would say may be used against them in a court of law. They were also told that they were entitled to a counsel of their own choice, and that they would be provided with one if they had none. When asked if they had a lawyer of their own, appellant Arnaldo replied that he would be assisted by Atty. Uminga, while appellant Flores agreed to be represented by Atty. Rous. Thereafter, when asked if they understood their said rights, they replied in the affirmative. The appraisal of their constitutional rights was done in the presence of their respective lawyers and in the Tagalog dialect, the language spoken and understood by them. Appellants Arnaldo and Flores and their respective counsels, Atty. Uminga and Atty. Rous, also signed and thumbmarked the extra-judicial confessions. Atty. Uminga and Atty. Rous attested to the veracity of the afore-cited facts in their respective court testimonies. Indeed, the appraisal of appellants' constitutional rights was not merely perfunctory, because it appeared certain that appellants had understood and, in fact, exercised their fundamental rights after being informed thereof.

Records reflect that appellants Arnaldo and Reyes were likewise accorded their right to competent and independent counsel during their respective custodial investigations.

As regards appellant Arnaldo, Atty. Uminga testified that prior to the questioning of appellant Arnaldo about the incident, Atty. Uminga told the PAOCTF investigators and agents to give him and appellant Arnaldo space and privacy, so that they could freely converse. After the PAOCTF investigators and agents left them, he and appellant Arnaldo went to a cubicle where only the two of them were present. He interviewed appellant Arnaldo in the Tagalog language regarding the latter's personal circumstances and asked him why he was in the PAOCTF office and why he wanted a lawyer. Appellant Arnaldo replied that he wanted to make a confession about his participation in the kidnapping of the Yao family. Thereupon, he asked appellant Arnaldo if the latter would accept his assistance as his lawyer for purposes of his confession. Appellant Arnaldo agreed. He warned appellant Arnaldo that he might be sentenced to death if he confessed involvement in the incident. Appellant Arnaldo answered that he would face the consequences because he was bothered by his conscience. He inquired from appellant Arnaldo if he was harmed or intimidated into giving self-incriminating statements to the PAOCTF investigators. Appellant Arnaldo answered in the negative. He requested appellant Arnaldo to remove his shirt for him to check if there were torture marks on his body, but he found none. He also observed that appellant Arnaldo's appearance and movements were normal. His conference with appellant Arnaldo lasted for 15 minutes or more. Thereafter, he allowed the PAOCTF investigators to question appellant Arnaldo.

Further, Atty. Uminga sat beside appellant Arnaldo during the inquiry and listened to the latter's entire confession. After the taking of appellant Arnaldo's confession, Atty. Uminga requested the PAOCTF investigators to give him a copy of appellant Arnaldo's confession. Upon obtaining such copy, he read it entirely and thereafter gave it to appellant Arnaldo. He instructed appellant Arnaldo to read and comprehend the same carefully. He told appellant Arnaldo to ask him for clarification and comment if he did not agree or understand any part of his written confession. Appellant Arnaldo read his entire written confession and handed it to him. Atty. Uminga asked him if he had objections to it. Appellant Arnaldo replied in the negative. He then reminded appellant Arnaldo that the latter could still change his mind, and that he was not being forced to sign. Appellant Arnaldo manifested that he would sign his written confession. Later, he and appellant Arnaldo affixed their signatures to the written confession.

With respect to appellant Flores, Atty. Rous declared that before the PAOCTF investigators began questioning appellant, Atty. Rous interviewed him in Tagalog inside a room, where only the two of them were present. He asked appellant Flores about his personal circumstances. Appellant Flores replied that he was a suspect in the kidnapping of the Yao family, and he wanted to give a confession regarding his involvement in the said incident. He asked appellant Flores whether he would accept his assistance as his lawyer. Appellant Flores affirmed that he would. He asked appellant Flores why he wanted to give such confession. Appellant Flores answered that he was bothered by his conscience. Atty. Rous warned appellant Flores that his confession would be used against him in a court of law, and that the death penalty might be imposed on him. Appellant Flores told him that he wanted to tell the truth and unload the burden on his mind. He requested appellant Flores to lift his shirt for the former to verify if there were torture marks or bruises on his body, but found none. Again, he cautioned appellant Flores about the serious consequences of his confession, but the latter maintained that he wanted to tell the truth. Thereafter, he permitted the PAOCTF investigators to question appellant Flores.

Additionally, Atty. Rous stayed with appellant Flores while the latter was giving statements to the PAOCTF investigators. After the taking of appellant Flores' statements, he instructed appellant Flores to read and check his written confession. Appellant Flores read the same and made some minor

corrections. He also read appellant Flores' written confession. Afterwards, he and appellant Flores signed the latter's written confession.

It is true that it was the PAOCTF which contacted and suggested the availability of Atty. Uminga and Atty. Rous to appellants Arnaldo and Flores, respectively. Nonetheless, this does not automatically imply that their right to counsel was violated. What the Constitution requires is the presence of competent and independent counsel, one who will effectively undertake his client's defense without any intervening conflict of interest. There was no conflict of interest with regard to the legal assistance rendered by Atty. Uminga and Atty. Rous. Both counsels had no interest adverse to appellants Arnaldo and Flores. Although Atty. Uminga testified that he was a former National Bureau of Investigation (NBI) agent, he, nevertheless, clarified that he had been separated therefrom since 1994 when he went into private practice. Atty. Uminga declared under oath that he was a private practitioner when he assisted appellant Arnaldo during the custodial investigation. It appears that Atty. Uminga was called by the PAOCTF to assist appellant Arnaldo, because Atty. Uminga's telephone number was listed on the directory of his former NBI officemates detailed at the PAOCTF. Atty. Rous, on the other hand, was a member of the Free Legal Aid Committee of the Integrated Bar of the Philippines, Quezon City at the time he rendered legal assistance to appellant Flores. Part of Atty. Rous' duty as member of the said group was to render legal assistance to the indigents including suspects under custodial investigation. There was no evidence showing that Atty. Rous had organizational or personal links to the PAOCTF. In fact, he proceeded to the PAOCTF office to assist appellant Flores, because he happened to be the lawyer manning the office when the PAOCTF called. In *People v. Fabro*, we stated:

> The Constitution further requires that the counsel be independent; thus, he cannot be a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose interest is admittedly adverse to that of the accused. Atty. Jungco does not fall under any of said enumeration. Nor is there any evidence that he had any interest adverse to that of the accused. The indelible fact is that he was president of the Zambales Chapter of the Integrated Bar of the Philippines, and not a lackey of the lawmen.

Further, as earlier stated, under Section 12(1), Article III of the 1987 Constitution, an accused is entitled to have competent and independent counsel preferably of his own choice. The phrase "preferably of his own choice" does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling the defense. Otherwise, the tempo of custodial investigation would be solely in the hands of the accused who can impede, nay, obstruct, the progress of the interrogation by simply selecting a lawyer who, for one reason or another, is not available to protect his interest. While the choice of a lawyer in cases where the person under custodial interrogation cannot afford the services of counsel - or where the preferred lawyer is not available - is naturally lodged in the police investigators, the suspect has the final choice, as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused when he does not raise any objection to the counsel's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of the statement before the swearing officer. Appellants Arnaldo and Flores did not object to the appointment of Atty. Uminga and Atty. Rous as their lawyers, respectively, during their custodial investigation. Prior to their questioning, appellants Arnaldo and Flores conferred with Atty. Uminga and Atty. Rous. Appellant Arnaldo manifested that he would be assisted by Atty. Uminga, while appellant Flores agreed to be counseled by Atty. Rous. Atty. Uminga and Atty. Rous countersigned the written extra-judicial confessions of appellants

Arnaldo and Flores, respectively. Hence, appellants Arnaldo and Flores are deemed to have engaged the services of Atty. Uminga and Atty. Rous, respectively.

Since the prosecution has sufficiently established that the respective extra-judicial confessions of appellant Arnaldo and appellant Flores were obtained in accordance with the constitutional guarantees, these confessions are admissible. They are evidence of a high order because of the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime, unless prompted by truth and conscience. Consequently, the burden of proving that undue pressure or duress was used to procure the confessions rests on appellants Arnaldo and Flores.

In the case at bar, appellants Arnaldo and Flores failed to discharge their burden of proving that they were forced or coerced to make their respective confessions. Other than their self-serving statements that they were maltreated by the PAOCTF officers/agents, they did not present any plausible proof to substantiate their claims.

They did not submit any medical report showing that their bodies were subjected to violence or torture. Neither did they file complaints against the persons who had allegedly beaten or forced them to execute their respective confessions despite several opportunities to do so. Appellants Arnaldo and Flores averred that they informed their family members/relatives of the alleged maltreatment, but the latter did not report such allegations to proper authorities. On the contrary, appellants Arnaldo and Flores declared in their respective confessions that they were not forced or harmed in giving their sworn statements, and that they were not promised or given any award in consideration of the same. Records also bear out that they were physically examined by doctors before they made their confessions. Their physical examination reports certify that no external signs of physical injury or any form of trauma were noted during their examination. In *People v. Pia*, we held that the following factors indicate voluntariness of an extra-judicial confession: (1) where the accused failed to present credible evidence of compulsion or duress or violence on their persons; (2) where they failed to complain to the officers who administered the oaths; (3) where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; (4) where there appeared to be no marks of violence on their bodies; and (5) where they did not have themselves examined by a reputable physician to buttress their claim.

It should also be noted that the extra-judicial confessions of appellants Arnaldo and Flores are replete with details on the manner in which the kidnapping was committed, thereby ruling out the possibility that these were involuntarily made. Their extra-judicial confessions clearly state how appellants and their cohorts planned the kidnapping as well as the sequence of events before, during and after its occurrence. The voluntariness of a confession may be inferred from its language if, upon its face, the confession exhibits no suspicious circumstances tending to cast doubt upon its integrity, it being replete with details which could only be supplied by the accused.

With respect to appellant Reyes's claim that the extra-judicial confessions of appellants Arnaldo and Flores cannot be used in evidence against him, we have ruled that although an extra-judicial confession is admissible only against the confessant, jurisprudence makes it admissible as corroborative evidence of other facts that tend to establish the guilt of his co-accused. In *People v. Alvarez*, we ruled that where the confession is used as circumstantial evidence to show the probability of participation by the co-conspirator, that confession is receivable as evidence against a co-accused. In *People v. Encipido* we elucidated as follows:

It is also to be noted that APPELLANTS' extrajudicial confessions were independently made without collusion, are identical with each other in their material respects and confirmatory of the other. They are, therefore, also admissible as circumstantial evidence against their co-accused implicated therein to show the probability of the latter's actual participation in the commission of the crime. They are also admissible as corroborative evidence against the others, it being clear from other facts and circumstances presented that persons other than the declarants themselves participated in the commission of the crime charged and proved. They are what is commonly known as interlocking confession and constitute an exception to the general rule that extrajudicial confessions/admissions are admissible in evidence only against the declarants thereof.

Appellants Arnaldo and Flores stated in their respective confessions that appellant Reyes participated in their kidnapping of the Yao family. These statements are, therefore, admissible as corroborative and circumstantial evidence to prove appellant Reyes' guilt.

PEOPLE OF THE PHILIPPINES, ***Plaintiff-Appellee*****, -versus-MARK JASON CHAVEZ Y BITANCOR ALIAS "NOY"**, ***Accused-Appellant*****.**
G.R. No. 207950, SECOND DIVISION, September 22, 2014, LEONEN, *J.*

The right to counsel upon being questioned for the commission of a crime is part of the Miranda rights,which require that:

. . . (a) any person under custodial investigation has the right to remain silent; (b) anything he says can and will be used against him in a court of law; (c) he has the right to talk to an attorney before being questioned and to have his counsel present when being questioned; and (d) if he cannot afford an attorney, one will be provided before any questioning if he so desires.

The Miranda rights were incorporated in our Constitution but were modified to include the statement that any waiver of the right to counsel must be made "in writing and in the presence of counsel."

The invocation of these rights applies during custodial investigation, which begins "when the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect taken into custody by the police who starts the interrogation and propounds questions to the person to elicit incriminating statements."

This means that even those who voluntarily surrendered before a police officer must be apprised of their Miranda rights. For one, the same pressures of a custodial setting exist in this scenario. Chavez is also being questioned by an investigating officer in a police station. As an additional pressure, he may have been compelled to surrender by his mother who accompanied him to the police station.

FACTS:
In the information dated November 8, 2006, Mark Jason Chavez y Bitancor (Chavez) was charged with the crime of robbery with homicide.

The facts as found by the lower court are as follows.

On October 28, 2006, Peñamante arrived home at around 2:45 a.m., coming from work as a janitor in Eastwood City. When he was about to go inside his house at 1326 Tuazon Street, Sampaloc, Manila, he saw a person wearing a black, long-sleeved shirt and black pants and holding something while

leaving the house/parlor of Elmer Duque (Barbie) at 1325 Tuazon Street, Sampaloc, Manila, just six meters across Peñamante's house.

There was a light at the left side of the house/parlor of Barbie, his favorite haircutter, so Peñamante stated that he was able to see the face of Chavez and the clothes he was wearing.

Chavez could not close the door of Barbie's house/parlor so he simply walked away. However, he dropped something that he was holding and fell down when he stepped on it. He walked away after, and Peñamante was not able to determine what Chavez was holding. Peñamante then entered his house and went to bed.

Sometime after 10:00 a.m., the Scene of the Crime Office (SOCO) team arrived, led by PCI Cayrel. She was joined by PO3 Rex Maglansi (photographer), PO1 Joel Pelayo (sketcher), and a fingerprint technician. They conducted an initial survey of the crime scene after coordinating with SPO3 Casimiro of the Manila Police District Homicide Section.

The team noted that the lobby and the parlor were in disarray, and they found Barbie's dead body inside. They took photographs and collected fingerprints and other pieces of evidence such as the 155 pieces of hair strands found clutched in Barbie's left hand. They documented the evidence then turned them over to the Western Police District Chemistry Division. Dr. Salen was called to conduct an autopsy on the body.

At around 11:00 a.m., Peñamante's landlady woke him up and told him that Barbie was found dead at 9:00 a.m. He then informed his landlady that he saw Chavez leaving Barbie's house at 2:45 a.m.

At around 1:00 p.m., Dr. Salen conducted an autopsy on the body and found that the time of death was approximately 12 hours prior to examination. There were 22 injuries on Barbie's body — 21 were stab wounds in various parts of the body caused by a sharp bladed instrument, and one incised wound was caused by a sharp object. Four (4) of the stab wounds were considered fatal.

The next day, the police invited Peñamante to the Manila Police Station to give a statement. Peñamante described to SPO3 Casimiro the physical appearance of the person he saw leaving Barbie's parlor.

Accompanied by his mother, Chavez voluntarily surrendered on November 5, 2006 to SPO3 Casimiro at the police station. Chavez was then 22 years old. His mother told the police that she wanted to help her son who might be involved in Barbie's death.

SPO3 Casimiro informed them of the consequences in executing a written statement without the assistance of a lawyer. However, Chavez's mother still gave her statement, subscribed by Administrative Officer Alex Francisco. She also surrendered two cellular phones owned by Barbie and a baseball cap owned by Chavez.

The next day, Peñamante was again summoned by SPO3 Casimiro to identify from a line-up the person he saw leaving Barbie's house/parlor that early morning of October 28, 2006. Peñamante immediately pointed to and identified Chavez and thereafter executed his written statement. There were no issues raised in relation to the line-up.

On August 19, 2011, the trial court found Chavez guilty beyond reasonable doubt of the crime of robbery with homicide.

On February 27, 2013, the Court of Appeals affirmed the trial court's decision. Chavez then filed a notice of appeal pursuant to Rule 124, Section 13(c) of the Revised Rules of Criminal Procedure, as amended, elevating the case with this court.

As regards his mother's statement,Chavez argued its inadmissibility as evidence since his mother was not presented before the court to give the defense an opportunity for cross-examination. He added that affidavits are generally rejected as hearsay unless the affiant appears before the court and testifies on it.

ISSUE:
Whether or not the statement of Chavez's mother is admissible. (NO)

RULING:
It is contrary to human nature for a mother to voluntarily surrender her own son and confess that her son committed a heinous crime.

Chavez was 22 years old, no longer a minor, when he voluntarily went to the police station on November 5, 2006 for investigation, and his mother accompanied him. SPO3 Casimiro testified that the reason she surrendered Chavez was because "she wanted to help her son" and "perhaps the accused felt that [the investigating police] are getting nearer to him." Nevertheless, during cross-examination, SPO3 Casimiro testified:

Q: Regarding the mother, Mr. witness, did I get you right that when the mother brought her son, according to you she tried to help her son, is that correct?
A: That is the word I remember, sir.
Q: Of course, said help you do not know exactly what she meant by that?
A: Yes, sir.
Q: It could mean that she is trying to help her son to be cleared from this alleged crime, Mr. witness?
A: Maybe, sir.

Chavez's mother "turned-over (2) units of Cellular-phones and averred that her son Mark Jason told her that said cellphones belong[ed] to victim Barbie. . . [that] NOY was wounded in the incident and that the fatal weapon was put in a manhole infront [sic] of their residence." The records are silent on whether Chavez objected to his mother's statements. The records also do not show why the police proceeded to get his mother's testimony as opposed to getting Chavez's testimony on his voluntary surrender.

At most, the lower court found that Chavez's mother was informed by the investigating officer at the police station of the consequences in executing a written statement without the assistance of a lawyer. She proceeded to give her statement dated November 7, 2006 on her son's confession of the crime despite the warning. SPO3 Casimiro testified during his cross-examination:

Q: Do you remember if anybody assisted this Anjanette Tobias when she executed this Affidavit you mentioned?
A: She was with some neighbors.
Atty. Villanueva
Q: How about a lawyer, Mr. Witness?

A: None, sir.
Q: So, in other words, no lawyer informed her of the consequence of her act of executing an Affidavit?
A: We somehow informed her of what will be the consequences of that statement, sir.
Q: So, you and your police officer colleague at the time?
A: Yes, sir.

The booking sheet and arrest report states that "when [the accused was] appraised [sic] of his constitutional rights and nature of charges imputed against him, accused opted to remain silent." This booking sheet and arrest report is also dated November 7, 2006, or two days after Chavez, accompanied by his mother, had voluntarily gone to the police station.

The right to counsel upon being questioned for the commission of a crime is part of the *Miranda rights,*which require that:

. . . (a) any person under custodial investigation has the right to remain silent; (b) anything he says can and will be used against him in a court of law; (c) he has the right to talk to an attorney before being questioned and to have his counsel present when being questioned; and (d) if he cannot afford an attorney, one will be provided before any questioning if he so desires.

The *Miranda rights* were incorporated in our Constitution but were modified to include the statement that any waiver of the right to counsel must be made "in writing and in the presence of counsel."

The invocation of these rights applies during custodial investigation, which begins "when the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect taken into custody by the police who starts the interrogation and propounds questions to the person to elicit incriminating statements."

It may appear that the *Miranda rights* only apply when one is "taken into custody by the police," such as during an arrest. These rights are intended to protect ordinary citizens from the pressures of a custodial setting:

> *The purposes of the safeguards prescribed by Miranda are to ensure that the police do not coerce or trick captive suspects into confessing, to relieve the "inherently compelling pressures" "generated by the custodial setting itself,"* "which work to undermine the individual's will to resist," and as much as possible to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary. Those purposes are implicated as much by in-custody questioning of persons suspected of misdemeanours as they are by questioning of persons suspected of felonies.

Republic Act No. 7438 expanded the definition of custodial investigation to "include the practice of issuing an 'invitation' to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the 'inviting' officer for any violation of law."

This means that even those who voluntarily surrendered before a police officer must be apprised of their *Miranda rights*. For one, the same pressures of a custodial setting exist in this scenario. Chavez is also being questioned by an investigating officer in a police station. As an additional pressure, he may have been compelled to surrender by his mother who accompanied him to the police station.

PEOPLE OF THE PHILIPPINES, Petitioner, -versus- EDNA MALNGAN Y MAYO, Respondent.
G.R. No. 170470, EN BANC, September 26, 2006, CHICO-NAZARIO, J.

Article III, Section 12 of the Constitution in part provides:

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
x x x x
(3) Any confession or admission obtained in violation of this Section or Section 17 hereof shall be inadmissible in evidence.

We have held that the abovequoted provision applies to the stage of custodial investigation - when the investigation is no longer a general inquiry into an unsolved crime but starts to focus on a particular person as a suspect. Said constitutional guarantee has also been extended to situations in which an individual has not been formally arrested but has merely been "invited" for questioning.

FACTS:
Around 4:45 A.M. on January 2, 2001, Remigio Bernardo and his tanods saw the accused-appellant, one hired as a housemaid by Roberto Separa, Sr., with her head turning in different directions, hurriedly leaving the house of her employer at No. 172 Moderna Street, Balut, Tondo, Manila. She was seen to have boarded a pedicab which was driven by a person later identified as Rolando Gruta. She was heard by the pedicab driver to have instructed that she be brought to Nipa Street, but upon her arrival there, she changed her mind and asked that she be brought instead to Balasan Street where she finally alighted, after paying for her fare.

At around 5:15 A.M., Barangay Chairman Bernardo's group later discovered that a fire gutted the house of the employer of the housemaid. Barangay Chairman Bernardo and his tanods responded to the fire upon hearing shouts from the residents and thereafter, firemen from the Fire District 1-NCR arrived at the fire scene to contain the fire.

Barangay Chairman Bernardo and his tanods apprehended Edna and they immediately brought her to the Barangay Hall for investigation. At the Barangay Hall, Mercedita Mendoza, neighbor of Roberto Separa, Sr. and whose house was also burned, identified the woman as accused-appellant who was the housemaid of Roberto Separa, Sr. Upon inspection, a disposable lighter was found inside accused-appellant's bag. Thereafter, accused-appellant confessed to Barangay Chairman Bernardo in the presence of multitudes of angry residents outside the Barangay Hall that she set her employer's house on fire because she had not been paid her salary for about a year and that she wanted to go home to her province but her employer told her to just ride a broomstick in going home.

Accused-appellant was then turned over to arson investigators headed by S[F]O4 Danilo Talusan, who brought her to the San Lazaro Fire Station in Sta. Cruz, Manila where she was further investigated and then detained. When Mercedita Mendoza went to the San Lazaro Fire Station to give her sworn statement, she had the opportunity to ask the accused-appellant at the latter's detention cell why and how she did the burning of her employer's house.

When interviewed by Carmelita Valdez, a reporter of ABS-CBN Network, accused-appellant while under detention was heard by SFO4 Danilo Talusan as having admitted the crime and even narrated the manner how she accomplished it. SFO4 Danilo Talusan was able to hear the same confession, this time at his home, while watching the television program "True Crime" hosted by Gus Abelgas also of ABS-CBN Network.

The fire resulted in [the] destruction of the house of Roberto Separa, Sr. and other adjoining houses and the death of Roberto Separa, Sr. and Virginia Separa together with their four (4) children, namely: Michael, Daphne, Priscilla and Roberto, Jr.

On January 9, 2001, an Information was filed before the RTC of Manila, Branch 41, charging accused-appellant with the crime of Arson with Multiple Homicide.

When arraigned, accused-appelant with assistance of counsel de oficio, pleaded "not guilty" to the crim charged. Thereafter, trial ensued. However, she was held guilty beyond reasonable doubt. Due to the death penalty imposed by the RTC, the case was directly elevated to the Supreme Court for automatic review.
The SC referred the case and its records to the Court of Appeals for appropriate action and disposition. The CA then affirmed with modification the decision of the RTC.

ISSUE:
Whether the court erred in allowing and giving credence to the hearsay evidence and uncounseled admissions allegedly given by the accused.

RULING:
Article III, Section 12 of the Constitution in part provides:

> (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
> x x x x
> (3) Any confession or admission obtained in violation of this Section or Section 17 hereof shall be inadmissible in evidence.

We have held that the abovequoted provision applies to the stage of custodial investigation - when the investigation is no longer a general inquiry into an unsolved crime but starts to focus on a particular person as a suspect. Said constitutional guarantee has also been extended to situations in which an individual has not been formally arrested but has merely been "invited" for questioning.

To be admissible in evidence against an accused, the extrajudicial confessions made must satisfy the following requirements:

(1) it must be voluntary;
(2) it must be made with the assistance of competent and independent counsel;
(3) it must be express; and
(4) it must be in writing.

Arguably, the barangay tanods, including the Barangay Chairman, in this particular instance, *may* be deemed as law enforcement officer for purposes of applying Article III, Section 12(1) and (3), of the Constitution. When accused-appellant was brought to the barangay hall in the morning of 2 January 2001, she was already a suspect, actually the only one, in the fire that destroyed several houses as well as killed the whole family of Roberto Separa, Sr. She was, therefore, already under custodial investigation and the rights guaranteed by Article III, Section 12(1), of the Constitution should have already been observed or applied to her. Accused-appellant's confession to Barangay Chairman Remigio Bernardo was made in response to the "interrogation" made by the latter - admittedly conducted without first informing accused-appellant of her rights under the Constitution or done in the presence of counsel. For this reason, the confession of accused-appellant, given to Barangay Chairman Remigio Bernardo, as well as the lighter found by the latter in her bag are inadmissible in evidence against her as such were obtained in violation of her constitutional rights.

Be that as it may, the inadmissibility of accused-appellant's confession to Barangay Chairman Remigio Bernardo and the lighter as evidence do not automatically lead to her acquittal. It should well be recalled that the constitutional safeguards during custodial investigations do not apply to those not elicited through questioning by the police or their agents but given in an ordinary manner whereby the accused verbally admits to having committed the offense as what happened in the case at bar when accused-appellant admitted to Mercedita Mendoza, one of the neighbors of Roberto Separa, Sr., to having started the fire in the Separas' house. Article III of the Constitution, or the Bill of Rights, solely governs the relationship between the individual on one hand and the State (and its agents) on the other; it does not concern itself with the relation between a private individual and another private individual - as both accused-appellant and prosecution witness Mercedita Mendoza undoubtedly are. Here, there is no evidence on record to show that said witness was acting under police authority, so appropriately, accused-appellant's uncounselled extrajudicial confession to said witness was properly admitted by the RTC.

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- ANTONIO LAUGA Y PINA ALIAS TERIO, Accused-Appellant.
G.R. No. 186228 March 15, 2010 PEREZ, J.

Any inquiry he (Bantay Bayan) makes has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights provided for under Article III, Section 12 of the Constitution, otherwise known as the Miranda Rights, is concerned.

FACTS:
Antonio Lauga raped his 13-year-old daughter, AAA. Thereafter, AAA relayed her harrowing experience to her grandmother. The two sought the assistance of Moises Boy Banting, a *bantay bayan*. Banting found Lauga in his house wearing only his underwear. He invited Lauga to the police station, to which the latter obliged. At the police outpost, Lauga admitted to Banting that he raped AAA because he was unable to control himself. RTC found him guilty of rape qualified by relationship and minority. The decision of the trial court was affirmed with modifications by the CA.

ISSUE:
Whether or not Lauga's extrajudicial confession before Moises Boy Banting without the assistance of a counsel was in violation of his constitutional right. (YES)

RULING:

The *bantay bayan* is a group of male residents living in a certain area organized for the purpose of keeping peace in their community. It is an accredited auxiliary of the PNP. Also, it may be worthy to consider that pursuant to Section 1(g) of Executive Order No. 309 issued on 11 November 1987, as amended, a Peace and Order Committee in each *barangay* shall be organized to serve as implementing arm of the City/Municipal Peace and Order Council at the *Barangay* level. The composition of the Committee includes, among others: (1) the *Punong Barangay* as Chairman; (2) the Chairman of the *Sangguniang Kabataan*; (3) a Member of the *Lupon Tagapamayapa*; (4) a *Barangay Tanod*; and (5) at least three (3) Members of existing *Barangay*-Based Anti-Crime or neighborhood Watch Groups or a Non Government Organization Representative well-known in his community.

This Court is convinced that *barangay*-based volunteer organizations in the nature of watch groups, as in the case of the "*bantay bayan*," are recognized by the local government unit to perform functions relating to the preservation of peace and order at the *barangay* level. Thus, without ruling on the legality of the actions taken by Moises Boy Banting, and the specific scope of duties and responsibilities delegated to a "*bantay bayan*," particularly on the authority to conduct a custodial investigation, any inquiry he makes has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights provided for under Article III, Section 12 of the Constitution, otherwise known as the Miranda Rights, is concerned. Therefore, the extrajudicial confession of Laug, for being made without the assistance of a counsel, is inadmissible in evidence.

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- ANTONIO DACANAY Y TUMALABCAB, Accused-Appellant.
G.R. No. 216064, FIRST DIVISION, November 7, 2016, Caguioa, J.

In People vs. Andan, we held that a confession made before news reporters, absent any showing of undue influence from the police authorities, is sufficient to sustain a conviction for the crime confessed to by the accused. The fact that the extrajudicial confession was made by Antonio while inside a detention cell does not by itself render such confession inadmissible, contrary to what Antonio would like this Court to believe. In People v. Domantay, where the accused was also interviewed while inside a jail cell, this Court held that such circumstance alone does not taint the extrajudicial confession of the accused, especially since the same was given freely and spontaneously.

FACTS:
On October 6, 2007, Norma E. Dacanay, the wife of Antonio, was found lifeless with several puncture wounds on the bathroom floor of their home by their son, Quinn, who was then coming home from school. Quinn likewise observed that the rest of the house was in disarray, with the clothes and things of Norma scattered on the floor, as if suggesting that a robbery had just taken place. At that time, Antonio had already left for work after having allegedly left the house at around six in the morning.

Quinn then rushed to the house of his aunt, one Beth Bautista, to tell her about the fate of Norma, and then proceeded to the workplace of Antonio, which was only 10 minutes away from their house.

Thereafter, both Quinn and Antonio proceeded back to their house and were met by some police officers who were then already conducting an investigation on the incident.

Antonio was then interviewed by PO3 Jay Santos, during which interview, Antonio informed PO3 Santos that P100,000.00 in cash and pieces of jewelry were missing. Antonio alluded to a certain "Miller" as an alleged "lover" of Norma who may have perpetrated the crime. However, after further

investigation, the identity of "Miller" was never ascertained, as none of Norma's friends knew of any such person.

After PO3 Santos's inspection of the crime scene, Antonio was invited to the precinct to formalize his statement, to which the latter declined, as he still had to take care of the funeral arrangements of Norma. While Antonio promised to proceed to the police station on the following day, he never made good on such promise.

On October 8, 2007, PO3 Santos invited Antonio to the precinct. When they arrived at the precinct, Barangay Kagawad Antonio I. Nastor, Jr. and some members of the media were present.

While at the precinct, Barangay Kagawad Antonio I. Nastor, Jr. informed PO3 Santos that Antonio was already willing to confess to killing Norma. Accordingly, PO3 Santos proceeded to contact a lawyer from the Public Attorney's Office. In the meantime, PO3 Santos apprised Antonio of his constitutional rights, including the right to remain silent. However, as determined by both the RTC and the CA, despite having been apprised of his rights, Antonio nonetheless confessed to the crime before the media representatives, who separately interviewed him without PO3 Santos.

For his defense, Antonio interposed the twin defenses of alibi and denial, claiming coercion and intimidation on the part of the police officers involved in the investigation of the crime.

Upon arraignment, Antonio entered a plea of not guilty to the crime charged. Trial on the merits then ensued. On June 21, 2011, the RTC gave weight to the extrajudicial confession of Antonio and found him guilty of the crime of Parricide.

Aggrieved, Antonio timely filed a Notice of Appeal dated June 30, 2011, elevating the case to the CA. The CA affirmed the RTC *in toto* and dismissed the appeal for lack of merit, on the ground that Antonio failed to overcome the presumption of voluntariness attended by his extrajudicial confession.

ISSUE:
Whether the CA, in affirming the RTC, erred in finding Antonio guilty of the crime of Parricide on the basis of his extrajudicial confession. (NO)

RULING:
In *People vs. Andan,* we held that a confession made before news reporters, absent any showing of undue influence from the police authorities, is sufficient to sustain a conviction for the crime confessed to by the accused. The fact that the extrajudicial confession was made by Antonio while inside a detention cell does not by itself render such confession inadmissible, contrary to what Antonio would like this Court to believe. In *People v. Domantay*, where the accused was also interviewed while inside a jail cell, this Court held that such circumstance alone does not taint the extrajudicial confession of the accused, especially since the same was given freely and spontaneously.

Following this Court's ruling in *People v. Jerez*, the details surrounding the commission of the crime, which could be supplied only by the accused, and the spontaneity and coherence exhibited by him during his interviews, belie any insinuation of duress that would render his confession inadmissible.

Notably, while Antonio's testimony is replete with imputations of violence and coercion, no other evidence was presented to buttress these desperate claims. Neither was there any indication that Antonio instituted corresponding criminal or administrative actions against the police officers

allegedly responsible. It is well-settled that where the accused fails to present evidence of compulsion; where he did not institute any criminal or administrative action against his supposed intimidators for maltreatment; and where no physical evidence of violence was presented, all these will be considered as factors indicating voluntariness.

All told, absent any independent evidence of coercion or violence to corroborate Antonio's bare assertions, no other conclusion can be drawn other than the fact that his statements were made freely and spontaneously, unblemished by any coercion or intimidation.

O. RIGHTS OF THE ACCUSED

PEOPLE OF THE PHILIPPINES, Petitioner, -versus- LUZVIMINDA S. VALDEZ AND THE SANDIGANBAYAN (FIFTH DIVISION), Respondent.
G.R. Nos. 216007-09, EN BANC, December 8, 2005, Peralta, J.

The general rule is that a motion for reconsideration is a condition sine qua non before a petition for certiorari may lie, its purpose being to grant an opportunity for the court a quo to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case. However, the rule is not absolute and jurisprudence has laid down the following exceptions when the filing of a petition for certiorari is proper notwithstanding the failure to file a motion for reconsideration:

(a) where the order is a patent nullity, as where the court a quo has no jurisdiction;
(b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable;
(d) where, under the circumstances, a motion for reconsideration would be useless;
(e) where petitioner was deprived of due process and there is extreme urgency for relief;
(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
(g) where the proceedings in the lower court are a nullity for lack of due process;
(h) where the proceeding was ex parte or in which the petitioner had no opportunity to object; and,
(i) where the issue raised is one purely of law or public interest is involved.

FACTS:
The case stemmed from the Joint Affidavit executed by Sheila S. Velmonte-Portal and Mylene T. Romero, both State Auditors of the Commission on Audit Region VI in Pavia, Iloilo, who conducted a post-audit of the disbursement vouchers (D.V.) of the Bacolod City Government. Among the subjects thereof were the reimbursements of expenses of private respondent Luzviminda S. Valdez (Valdez), a former mayor of Bacolod City.

Based on the verification conducted in the establishments that issued the official receipts, it was alleged that the cash slips were altered/falsified to enable Valdez to claim/receive reimbursement from the Government the total amount of P279,150.00 instead of only P4,843.25; thus, an aggregate overclaim of P274,306.75.

The Public Assistance and Corruption Prevention Office, Office of the Ombudsman - Visayas received the joint affidavit, which was thereafter resolved adverse to Valdez.

Consequently, Valdez was charged with eight cases four of which (SB-14-CRM-0317 to 0320) were for Violation of Section 3 (e) of Republic Act No. 3019, while the remaining half (SB-14-CRM-0321 to 0324) were for the complex crime of Malversation of Public Funds thru Falsification of Official/Public Documents under Articles 217 and 171, in relation to Article 48 of the Revised Penal Code. All the cases were raffled before public respondent.

Since the Ombudsman recommended "no bail" in SB-14-CRM-0321, 0322, and 0324, Valdez, who is still at-large, caused the filing of a Motion to Set Aside No Bail Recommendation and to Fix the Amount of Bail.

Petitioner countered in its Comment/Opposition that the Indeterminate Sentence Law is inapplicable as the attending circumstances are immaterial because the charge constituting the complex crime have the corresponding penalty of *reclusion perpetua*. Instead of a motion to fix bail, a summary hearing to determine if the evidence of guilt is strong is, therefore, necessary conformably with Section 13, Article III of the 1987 Constitution and Section 4, Rule 114 of the Rules.

Due to the issuance and release of a warrant of arrest, Valdez subsequently filed an Urgent Supplemental Motion to the Motion to Set Aside No Bail Recommendation and to Fix the Amount of Bail with Additional Prayer to Recall/Lift Warrant of Arrest. Petitioner filed a Comment/Opposition thereto. Later, the parties filed their respective Memorandum of Authorities.

On October 10, 2014, public respondent granted the motions of Valdez. Without filing a motion for reconsideration, petitioner elevated the matter before the Supreme Court.

ISSUE:
Whether an accused indicted for the complex crime of Malversation of Public Funds thru Falsification of Official/Public Documents involving an amount that exceeds P22,000.00 is entitled to bail as a matter of right. (NO)

RULING:
The general rule is that a motion for reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case. However, the rule is not absolute and jurisprudence has laid down the following exceptions when the filing of a petition for *certiorari* is proper notwithstanding the failure to file a motion for reconsideration:

> (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
> (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
> (c) where there is an urgent necessity for the resolution of the question and any further delay

would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable;
(d) where, under the circumstances, a motion for reconsideration would be useless;
(e) where petitioner was deprived of due process and there is extreme urgency for relief;
(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
(g) where the proceedings in the lower court are a nullity for lack of due process;
(h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and,
(i) where the issue raised is one purely of law or public interest is involved.

The issue being raised here is one purely of law and all the argument, *pros* and *cons* were already raised in and passed upon by public respondent; thus, filing a motion for reconsideration would be an exercise in futility. Likewise, as petitioner claims, the resolution of the question raised in this case is of urgent necessity considering its implications on similar cases filed and pending before the Sandiganbayan. As it appears, there have been conflicting views on the matter such that the different divisions of the anti-graft court issue varying resolutions. Undeniably, the issue is of extreme importance affecting public interest. It involves not just the right of the State to prosecute criminal offenders but, more importantly, the constitutional right of the accused to bail.

GOVERNMENT OF HONG KONG SPECIAL ADMINISTRATIVE REGION, REPRESENTED BY THE PHILIPPINE DEPARTMENT OF JUSTICE, Petitioner, -versus- HON. FELIX T. OLALIA, JR. AND JUAN ANTONIO MUÑOZ, Respondents.
G.R. No. 153675, EN BANC, April 19, 2007, SANDOVAL-GUTIERREZ, J.

Extradition has been characterized as the right of a foreign power, created by treaty, to demand the surrender of one accused or convicted of a crime within its territorial jurisdiction, and the correlative duty of the other state to surrender him to the demanding state. It is not a criminal proceeding. Even if the potential extraditee is a criminal, an extradition proceeding is not by its nature criminal, for it is not punishment for a crime, even though such punishment may follow extradition. It is sui generis, tracing its existence wholly to treaty obligations between different nations. It is not a trial to determine the guilt or innocence of the potential extraditee. Nor is it a full-blown civil action, but one that is merely administrative in character. Its object is to prevent the escape of a person accused or convicted of a crime and to secure his return to the state from which he fled, for the purpose of trial or punishment.

FACTS:
Private respondent Muñoz was charged before the Hong Kong Court with 3 counts of the offense of "accepting an advantage as agent," in violation of Section 9(1)(a) of the Prevention of Bribery Ordinance, Cap. 201 of Hong Kong. He also faces 7 counts of the offense of conspiracy to defraud, penalized by the common law of Hong Kong. On August 23, 1997 and October 25, 1999, warrants of arrest were issued against him. If convicted, he faces a jail term of 7 to 14 years for each charge.

On September 13, 1999, the DOJ received from the Hong Kong Department of Justice a request for the provisional arrest of private respondent. The DOJ then forwarded the request to the NBI which, in turn, filed with the RTC of Manila, Branch 19 an application for the provisional arrest of private respondent.

On September 23, 1999, the RTC issued an Order of Arrest against private respondent. That same day, the NBI agents arrested and detained him.

Petitioner Hong Kong Special Administrative Region filed with the RTC a petition for extradition of private respondent. In the same case, a petition for bail was filed by the private respondent.

On October 8, 2001, Judge Bernardo, Jr. issued an Order denying the petition for bail, holding that there is no Philippine law granting bail in extradition cases and that private respondent is a high "flight risk." Thereafter, Judge Bernardo, Jr. inhibited himself from further hearing the case which was then raffled off to Branch 8 presided by the herein respondent judge.

Consequently, private respondent filed a motion for reconsideration and was granted by the respondent judge subject to the following conditions:

> 1. Bail is set at Php750,000.00 in cash with the condition that accused hereby undertakes that he will appear and answer the issues raised in these proceedings and will at all times hold himself amenable to orders and processes of this Court, will further appear for judgment. If accused fails in this undertaking, the cash bond will be forfeited in favor of the government;
> 2. Accused must surrender his valid passport to this Court;
> 3. The Department of Justice is given immediate notice and discretion of filing its own motion for hold departure order before this Court even in extradition proceeding; andcralawlibrary
> 4. Accused is required to report to the government prosecutors handling this case or if they so desire to the nearest office, at any time and day of the week; and if they further desire, manifest before this Court to require that all the assets of accused, real and personal, be filed with this Court soonest, with the condition that if the accused flees from his undertaking, said assets be forfeited in favor of the government and that the corresponding lien/annotation be noted therein accordingly.

On December 21, 2001, petitioner filed an urgent motion to vacate the above Order, but it was denied by respondent judge in his Order dated April 10, 2002. Hence, the instant petition.

ISSUE:
Whether a prospective extradite may be granted bail. (YES)

RULING:
Extradition has been characterized as the right of a foreign power, created by treaty, to demand the surrender of one accused or convicted of a crime within its territorial jurisdiction, and the correlative duty of the other state to surrender him to the demanding state. It is not a criminal proceeding. Even if the potential extraditee is a criminal, an extradition proceeding is not by its nature criminal, for it is not punishment for a crime, even though such punishment may follow extradition. It is *sui generis,* tracing its existence wholly to treaty obligations between different nations. It is not a trial to determine the guilt or innocence of the potential extraditee. Nor is it a full-blown civil action, but one that is merely administrative in character. Its object is to prevent the escape of a person accused or convicted of a crime and to secure his return to the state from which he fled, for the purpose of trial or punishment.

An extradition proceeding being *sui generis*, the standard of proof required in granting or denying bail can neither be the proof beyond reasonable doubt in criminal cases nor the standard of proof of preponderance of evidence in civil cases. While administrative in character, the standard of substantial evidence used in administrative cases cannot likewise apply given the object of extradition law which is to prevent the prospective extraditee from fleeing our jurisdiction. In his Separate Opinion in *Purganan*, then Associate Justice, now Chief Justice Reynato S. Puno, proposed

that a new standard which he termed "clear and convincing evidence" should be used in granting bail in extradition cases. According to him, this standard should be lower than proof beyond reasonable doubt but higher than preponderance of evidence. The potential extraditee must prove by "clear and convincing evidence" that he is not a flight risk and will abide with all the orders and processes of the extradition court.

In this case, there is no showing that private respondent presented evidence to show that he is not a flight risk. Consequently, this case should be remanded to the trial court to determine whether private respondent may be granted bail on the basis of "clear and convincing evidence."

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF CAPT. GARY ALEJANO, PN (MARINES) CAPT. NICANOR FAELDON, ET AL., Petitioners, -versus- GEN. PEDRO CABUAY, GEN. NARCISO ABAYA, SEC. ANGELO REYES, and SEC. ROILO GOLEZ, Respondents.
G.R. No. 160792, EN BANC, Augus 25, 2005, CARPIO, J.

*In our jurisdiction, the last paragraph of Section 4(b) of RA 7438 provides the standard to make regulations in detention centers allowable: "**such reasonable measures as may be necessary to secure the detainee's safety and prevent his escape**." In the present case, the visiting hours accorded to the lawyers of the detainees are reasonably connected to the legitimate purpose of securing the safety and preventing the escape of all detainees.*

FACTS:
Early morning of 27 July 2003, some 321 armed soldiers, led by the now detained junior officers, entered and took control of the Oakwood Premier Luxury Apartments located in the business district of Makati City. The junior officers publicly renounced their support for the administration and called for the resignation of President Gloria Macapagal-Arroyo and several cabinet members.

Around 7:00 p.m. of the same date, the soldiers voluntarily surrendered to the authorities after several negotiations with government emissaries.

On 31 July 2003, Gen. Abaya, as the Chief of Staff of the AFP, issued a directive to all the Major Service Commanders to turn over custody of ten junior officers to the ISAFP Detention Center. The transfer took place while military and civilian authorities were investigating the soldiers' involvement in the Oakwood incident.

On 1 August 2003, government prosecutors filed an Information for *coup d'etat* with the RTC of Makati City, Branch 61, against the soldiers involved in the 27 July 2003 Oakwood incident. The trial court later issued the Commitment Orders giving custody of junior officers Lt. SG Antonio Trillanes IV and Capt. Gerardo Gambala to the Commanding Officers of ISAFP.

On 2 August 2003, Gen. Abaya issued a directive to all Major Service Commanders to take into custody the military personnel under their command who took part in the Oakwood incident except the detained junior officers who were to remain under the custody of ISAFP.

On 11 August 2003, petitioners filed a petition for *habeas corpus* with the Supreme Court. On 12 August 2003, the Court issued a Writ of *Habeas Corpus* directing respondents to make a return of the writ and to appear and produce the persons of the detainees before the Court of Appeals on the scheduled date for hearing and further proceedings. On the same date, the detainees and their other co-accused filed with the RTC a Motion for Preliminary Investigation, which the trial court granted.

On August 18, 2003, respondents submitted their Return of the Writ and Answer to the petition and produced the detainees before the CA during the scheduled hearing.

On 17 September 2003, the CA rendered its decision dismissing the petition. The appellate court ordered Gen. Cabuay to adhere to his commitment made in court regarding visiting hours and the detainees' right to exercise for two hours a day.

ISSUE:
Whether there was an actual prohibition of the detainees' right to effective representation when petitioners' visits were limited by the schedule of visiting hours. (NO)

RULING:
The schedule of visiting hours does not render void the detainees' indictment for criminal and military offenses to warrant the detainees' release from detention. The ISAFP officials did not deny, but merely regulated, the detainees' right to counsel. The purpose of the regulation is not to render ineffective the right to counsel, but to secure the safety and security of all detainees.

In our jurisdiction, the last paragraph of Section 4(b) of RA 7438 provides the standard to make regulations in detention centers allowable: "***such reasonable measures as may be necessary to secure the detainee's safety and prevent his escape***." In the present case, the visiting hours accorded to the lawyers of the detainees are reasonably connected to the legitimate purpose of securing the safety and preventing the escape of all detainees.

While petitioners may not visit the detainees any time they want, the fact that the detainees still have face-to-face meetings with their lawyers on a **daily basis** clearly shows that there is no impairment of detainees' right to counsel. Petitioners as counsels could visit their clients between 8:00 a.m. and 5:00 p.m. with a lunch break at 12:00 p.m. The visiting hours are regular business hours, the same hours when lawyers normally entertain clients in their law offices. Clearly, the visiting hours pass the standard of reasonableness. Moreover, in urgent cases, petitioners could always seek permission from the ISAFP officials to confer with their clients beyond the visiting hours.

The scheduled visiting hours provide reasonable access to the detainees, giving petitioners sufficient time to confer with the detainees. The detainees' right to counsel is not undermined by the scheduled visits. Even in the hearings before the Senate and the Feliciano Commission, petitioners were given time to confer with the detainees, a fact that petitioners themselves admit. Thus, at no point were the detainees denied their right to counsel.

JUAN PONCE ENRILE, Petitioner, -versus-
SANDIGANBAYAN (THIRD DIVISION), AND PEOPLE OF THE PHILIPPINES, Respondents.
G.R. No. 213847, EN BANC, August 18, 2015, BERSAMIN, J.

It is worthy to note that bail is not granted to prevent the accused from committing additional crimes. The purpose of bail is to guarantee the appearance of the accused at the trial, or whenever so required by the trial court. The amount of bail should be high enough to assure the presence of the accused when so required, but it should be no higher than is reasonably calculated to fulfill this purpose. Thus, bail acts as a reconciling mechanism to accommodate both the accused's interest in his provisional liberty before or during the trial, and the society's interest in assuring the accused's presence at trial.

FACTS:
The Ombudsman charged Juan Ponce Enrile and several others with plunder with the Sandiganbayan. On the same day that the warrant for his arrest was issued, Enrile voluntarily surrendered and was later on confined at the Philippine National Police General Hospital. Thereafter, Enrile filed his *Motion for Detention at the PNP General Hospital* , and his *Motion to Fix Bail*, claiming that he should be allowed to post bail because: (a) the Prosecution had not yet established that the evidence of his guilt was strong; (b) although he was charged with plunder, the penalty as to him would only be *reclusion temporal*, not *reclusion perpetua*; and (c) he was not a flight risk, and his age and physical condition must further be seriously considered. The Sandiganbyan denied the motion.

ISSUE:
Whether the Sandiganbayan gravely abused its discretion in denying Enrile's motion. (YES)

RULING:
It is worthy to note that bail is not granted to prevent the accused from committing additional crimes. The purpose of bail is to guarantee the appearance of the accused at the trial, or whenever so required by the trial court. The amount of bail should be high enough to assure the presence of the accused when so required, but it should be no higher than is reasonably calculated to fulfill this purpose. Thus, bail acts as a reconciling mechanism to accommodate both the accused's interest in his provisional liberty before or during the trial, and the society's interest in assuring the accused's presence at trial.

In our view, his social and political standing and his having immediately surrendered to the authorities upon his being charged in court indicate that the risk of his flight or escape from this jurisdiction is highly unlikely. His personal disposition from the onset of his indictment for plunder, formal or otherwise, has demonstrated his utter respect for the legal processes of this country. We also do not ignore that at an earlier time many years ago when he had been charged with rebellion with murder and multiple frustrated murder, he already evinced a similar personal disposition of respect for the legal processes and was granted bail during the pendency of his trial because he was not seen as a flight risk. With his solid reputation in both his public and his private lives, his long years of public service, and history's judgment of him being at stake, he should be granted bail.

The currently fragile state of Enrile's health presents another compelling justification for his admission to bail, but which the Sandiganbayan did not recognize. Accordingly, we conclude that the Sandiganbayan arbitrarily ignored the objective of bail to ensure the appearance of the accused during the trial; and unwarrantedly disregarded the clear showing of the fragile health and advanced age of Enrile. As such, the Sandiganbayan gravely abused its discretion in denying Enrile's Motion To Fix Bail. Grave abuse of discretion, as the ground for the issuance of the writ of certiorari, connotes whimsical and capricious exercise of judgment as is equivalent to excess, or lack of jurisdiction.

JUAN PONCE ENRILE, Petitioner, -versus-
SANDIGANBAYAN (THIRD DIVISION), AND PEOPLE OF THE PHILIPPINES, Respondents.
G.R. No. 213847, EN BANC, July 12, 2016, BERSAMIN, J.

Bail exists to ensure society's interest in having the accused answer to a criminal prosecution without unduly restricting his or her liberty and without ignoring the accused's right to be presumed innocent. It does not perform the function of preventing or licensing the commission of a crime. The notion that bail is required to punish a person accused of crime is, therefore, fundamentally misplaced. Indeed, the

practice of admission to bail is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial.

FACTS:
The People of the Philippines, represented by the Office of the Special Prosecutor of the Office of the Ombudsman, have filed their *Motion for Reconsideration* to assail the decision promulgated on August 18, 2015 granting the petition for *certiorari* of the petitioner.

The People argue that the decision is inconsonant with deeply-embedded constitutional principles on the right to bail; that the express and unambiguous intent of the 1987 Constitution is to place persons accused of crimes punishable by *reclusion perpetua* on a different plane, and make their availment of bail a matter of judicial discretion, not a matter of right, only upon a showing that evidence of their guilt is not strong; and that the Court should have proceeded from the general proposition that the petitioner had no right to bail because he does not stand on equal footing with those accused of less grave crimes.

ISSUE:
Whether the Court should reverse its decision dated August 18, 2015. (NO)

RULING:
To start with, the People were not kept in the dark on the health condition of the petitioner. Through his *Omnibus Motion* dated June 10, 2014 and his *Motion to Fix Bail* dated July 7, 2014, he manifested to the *Sandiganbayan* his currently frail health, and presented medical certificates to show that his physical condition required constant medical attention. The People were *not denied* the reasonable opportunity to challenge or refute the allegations about his advanced age and the instability of his health even if the allegations had not been directly made in connection with his *Motion to Fix Bail.*

Secondly, the imputation of "preferential treatment" in "undue favor" of the petitioner is absolutely bereft of basis. A reading of the decision of August 18, 2015 indicates that the Court did not grant his provisional liberty because he was a sitting Senator of the Republic. It did so because there were proper bases - legal as well as factual - for the favorable consideration and treatment of his plea for provisional liberty on bail. By its decision, the Court has recognized his right to bail by emphasizing that such right should be curtailed only if the risks of flight from this jurisdiction were too high. In our view, however, the records demonstrated that the risks of flight were low, or even nil. The Court has taken into consideration other circumstances, such as his advanced age and poor health, his past and present disposition of respect for the legal processes, the length of his public service, and his individual public and private reputation.

Bail exists to ensure society's interest in having the accused answer to a criminal prosecution without unduly restricting his or her liberty and without ignoring the accused's right to be presumed innocent. It does not perform the function of preventing or licensing the commission of a crime. The notion that bail is required to punish a person accused of crime is, therefore, fundamentally misplaced. Indeed, the practice of admission to bail is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. The spirit of the procedure is rather to enable them to stay out of jail until a trial with all the safeguards has found and adjudged them guilty. Unless permitted this conditional privilege, the individuals wrongly accused could be punished by the period or imprisonment they undergo while awaiting trial, and even handicap them in consulting counsel, searching for evidence and witnesses, and preparing a defense. Hence, bail acts as a reconciling

mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring his presence at trial.

CYRIL CALPITO QUI, Petitioner, -versus- PEOPLE OF THE PHILIPPINES, Respondent.
G.R. No. 196161, THIRD DIVISION, September 26, 2012

As the Court categorically held in People v. Fitzgerald, "[A]s for an accused already convicted and sentenced to an imprisonment term exceeding six years, ***bail may be denied or revoked based on prosecution evidence as to the existence of any of the circumstances under Sec. 5, paragraphs (a) to (e)*** *. . . ."*

FACTS:
Petitioner was charged with two counts of violation of Section 10(a), Article VI of Republic Act No. 7610 or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

On June 18, 2010, the RTC, Branch 94 in Quezon City convicted petitioner as charged, and sentenced her to two equal periods of imprisonment for an indeterminate penalty of 5 years, 4 months and 21 days of prision correccional in its maximum period, as minimum, to 7 years, 4 months and 1 day of prision mayor in its minimum period, as maximum.

On July 1, 2010. Petitioner filed her Notice of Appeal. With the perfection of her appeal and the consequent elevation of the case records to the CA, petitioner posthaste filed before the appellate court an Urgent Petition/Application for Bail Pending Appeal which respondent People of the Philippines, through the Office of the Solicitor General, opposed. The OSG urged for the denial of the bail application on the ground of petitioner's propensity to evade the law and that she is a flight-risk, as she in fact failed to attend several hearings before the RTC resulting in the issuance of three warrants for her arrest.

On December 17, 2010, the CA issued the first assailed Resolution denying petitioner's application for bail pending appeal on the basis of Sec. 5 (d) of Rule 114, Revised Rules of Criminal Procedure. Petitioner's Motion for Reconsideration was likewise rejected through the March 17, 2011 CA Resolution.

Thus, this Petition for Review on *Certiorari*.

ISSUE:
Whether the petitioner is entitled to bail pending appeal. (NO)

RULING:
The CA properly exercised its discretion in denying petitioner's application for bail pending appeal. The CA's determination as to petitioner being a high risk for flight is not without factual mooring. Indeed, the undisputed fact that petitioner did not attend the hearings before the RTC, which compelled the trial court to issue warrants for her arrest, is undeniably indicative of petitioner's propensity to trifle with court processes. This fact alone should weigh heavily against a grant of bail pending appeal.

Petitioner's argument that she has the constitutional right to bail and that the evidence of guilt against her is not strong is spurious. Certainly, after one is convicted by the trial court, the presumption of innocence, and with it, the constitutional right to bail, ends. As to the strength of

evidence of guilt against her, suffice it to say that what is before the Court is not the appeal of her conviction, let alone the matter of evaluating the weight of the evidence adduced against her.

Consequently, the Court agrees with the appellate court's finding of the presence of the fourth circumstance enumerated in the above-quoted Sec. 5 of Rule 114, Revised Rules of Criminal Procedure, and holds that the appellate court neither erred nor gravely abused its discretion in denying petitioner's application for bail pending appeal. The appellate court appeared to have been guided by the circumstances provided under the Rules. As the Court categorically held in *People v. Fitzgerald,* "[A]s for an accused already convicted and sentenced to an imprisonment term exceeding six years, **bail may be denied or revoked based on prosecution evidence as to the existence of any of the circumstances under Sec. 5, paragraphs (a) to (e)** . . . ." Evidently, the circumstances succinctly provided in Sec. 5 of Rule 114, Revised Rules of Criminal Procedure have been placed as a guide for the exercise of the appellate court's discretion in granting or denying the application for bail, pending the appeal of an accused who has been convicted of a crime where the penalty imposed by the trial court is imprisonment exceeding six (6) years.

RE: CONVICTION OF JUDGE ADORACION G. ANGELES, REGIONAL TRIAL COURT, BRANCH 121, CALOOCAN CITY IN CRIMINAL CASE NOS. Q-97-69655 to 56 FOR CHILD ABUSE
A.M. No. 06-9-545-RTC, THIRD DIVISION, January 31, 2008, NACHURA, J.

It must be remembered that the existence of a presumption indicating the guilt of the accused does not in itself destroy the constitutional presumption of innocence unless the inculpating presumption, together with all the evidence, or the lack of any evidence or explanation, proves the accused's guilt beyond a reasonable doubt. Until the accused's guilt is shown in this manner, the presumption of innocence continues.

FACTS:
On July 17, 2006, the RTC, Branch 100, Quezon City rendered a Decision in Criminal Case Nos. Q-97-69655-56 convicting respondent of violation of Republic Act (RA) No. 7610.

On July 25, 2006, Senior State Prosecutor Emmanuel Y. Velasco of the Department of Justice wrote a letter to then Chief Justice Artemio V. Panganiban inquiring whether it is possible for this Court, in the public interest, *motu proprio* to order the immediate suspension of the respondent in view of the aforementioned RTC Decision.

On the basis of SSP Velasco's letter and by virtue of this Court's Resolution dated March 31, 1981, the OCA submitted to this Court a Report dated August 25, 2006 with an attached Administrative Complaint**.**

In a Resolution dated September 18, 2006, this Court's Second suspended the respondent from performing her judicial functions while awaiting the final resolution of her criminal cases or until further orders from this Court.

On October 6, 2006, respondent filed an Urgent Motion for Reconsideration of the aforementioned Resolution claiming that her suspension is essentially unjust. Thereafter, On October 11, 2006, SSP Velasco filed an Urgent Appeal/Manifestation to the Court *En Banc* on the alleged unethical conduct of respondent, seeking the immediate implementation of this Court's Resolution dated September 18, 2006. On October 16, 2007, SSP Velasco filed an Opposition to the said Motion for

Reconsideration, manifesting that respondent continuously defied this Court's Resolution dated September 18, 2006.

Correlatively, the IBP – CALAMNA Chapter, through its PRO Atty. Emiliano A. Mackay, wrote a letter dated October 18, 2006 addressed to the Second Division of this Court inquiring as to the effectivity of the Resolution suspending the respondent. Likewise, the IBP-CALMANA Chapter manifested that respondent did not cease to perform her judicial functions. In the same vein, in an undated letter addressed to Associate Justice Angelina Sandoval-Gutierrez, the Concerned Trial Lawyers in the City of Caloocan raised the same concern before this Court.

In her Reply to SSP Velasco's Opposition, respondent admitted that she continued discharging her bounden duties in utmost good faith after filing her motion for reconsideration. On October 25, 2006, respondent filed a Manifestation of Voluntary Inhibition stating that she is voluntarily inhibiting from handling all cases scheduled for hearing before her sala from October 25, 2006 to November 13, 2006.

On October 27, 2006, the OCA conducted a judicial audit in respondent's sala. Per Report of the judicial audit team, it was established that from October 6, 2006 to October 23, 2006, respondent conducted hearings, issued orders, decided cases and resolved motions, acting as if the order of suspension which the respondent received on October 6, 2006 was only a "mirage."

On October 30, 2006, SSP Velasco filed an Administrative Complaint against respondent for violation of the Court's Circulars, the New Code of Judicial Conduct, and the Civil Service Rules and Regulations, and for Gross Misconduct.

In her Comment, respondent, in addition to her previous contentions, argued that the Resolution dated September 18, 2006 ordering her suspension was issued only by a Division of this Court contrary to Section 11, Article VIII of the Constitution.

Subsequently, in a Resolution dated February 19, 2007, this Court lifted the suspension of respondent. Respondent was then given a fresh period of 10 days from the receipt of the OCA Administrative Complaint within which to file her comment, which was filed by the respondent on March 15, 2007.

In his Motion for Reconsideration of this Court's Resolution dated February 19, 2007, SSP Velasco argued that respondent's deprivation of her right to due process was cured when she filed her motion for the reconsideration of the suspension order; thus, there is no need to lift such order. In response, respondent filed a Comment/Opposition to the said motion with a Motion to Declare SSP Velasco in contempt of Court due to this aforementioned statement.

In a Resolution dated July 4, 2007, this Court, among others, directed SSP Velasco to file his comment on respondent's motion to cite him for contempt. On August 21, 2007, SSP Velasco filed his Comment admitting that the allegedly contemptuous statements were merely lifted from said letter. He argued that the former Chief Justice or the Court for that matter, did not find any contemptuous statement in the letter.

In her Reply to said Comment, respondent argued that it cannot be said that somebody could cause pressure if no one is believed to be susceptible to pressure. Thus, the use of this kind of language tends to degrade the administration of justice and constitutes indirect contempt.

Meanwhile in its Memorandum, the OCA reiterated its earlier position that respondent should be suspended pending the outcome of this administrative case. By filing her Comment raising arguments against her suspension, respondent has fully availed herself of such right. However, the OCA submitted that respondent's arguments are devoid of merit.

ISSUE:
Whether grounds exist to preventively suspend the respondent judge pending the resolution of the administrative case. (NO)

RULING:
We agree with respondent's argument that since her conviction of the crime of child abuse is currently on appeal before the CA, the same has not yet attained finality. As such, she still enjoys the constitutional presumption of innocence. It must be remembered that the existence of a presumption indicating the guilt of the accused does not in itself destroy the constitutional presumption of innocence unless the inculpating presumption, together with all the evidence, or the lack of any evidence or explanation, proves the accused's guilt beyond a reasonable doubt. Until the accused's guilt is shown in this manner, the presumption of innocence continues.

Moreover, it is established that any administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment. The OCA, as well as SSP Velasco, failed to prove that other than the fact that a judgment of conviction for child abuse was rendered against the respondent, which is still on appeal, there are other lawful grounds to support the imposition of preventive suspension. Based on the foregoing disquisition, the Court is of the resolve that, while it is true that preventive suspension *pendente lite* does not violate the right of the accused to be presumed innocent as the same is not a penalty, the rules on preventive suspension of judges, not having been expressly included in the Rules of Court, are amorphous at best. Likewise, we consider respondent's argument that there is no urgency in imposing preventive suspension as the criminal cases are now before the CA, and that she cannot, by using her present position as an RTC Judge, do anything to influence the CA to render a decision in her favor.

PEOPLE OF THE PHILIPPINES, Petitioner, -versus- NOEL GO CAOILI ALIAS "BOY TAGALOG", Respondent.
G.R. No. 196342, EN BANC, August 8, 2017, TIJAM, J.

PEOPLE OF THE PHILIPPINES, Petitioner, -versus- NOEL GO CAOILI ALIAS "BOY TAGALOG", *Respondent*.
G.R. No. 196848, EN BANC, August 8, 2017, TIJAM, J.

The due recognition of the constitutional right of an accused to be informed of the nature and cause of the accusation through the criminal complaint or information is decisive of whether his prosecution for a crime stands or not.

FACTS:
On June 22, 2006, First Assistant Provincial Prosecutor Raul O. Nasayao filed an Information against Caoili, charging him with the crime of rape through sexual intercourse in violation of Article 266-A, in relation to Article 266-B, of the RPC as amended by R.A. No. 8353, and R.A. No. 7610.

On July 31, 2006, the RTC issued an Order confirming Caoili 's detention at the Municipal Station of the Bureau of Jail Management and Penology after his arrest on October 25, 2005. Upon arraignment on September 15, 2006, Caoili pleaded not guilty to the crime charged.

The victim, AAA, testified how her father sexually molested her on October 23, 2005 at around 7:00 P.M. at their house located in Barangay JJJ, Municipality of KKK, in the Province of LLL.

On October 26, 2005, AAA disclosed to Emelia Loayon, the guidance counselor at AAA's school, the sexual molestation and physical violence committed against her by her own father. Loayon accompanied AAA to the police station to report the sexual and physical abuse. AAA also executed a sworn statement regarding the incident before the Municipal Mayor.

AAA underwent a medical examination conducted by Dr. Ramie Hipe at the [KKK] Medicare Community Hospital. Dr. Hipe issued a medical certificate dated October 26, 2005.

Dr. Hipe referred AAA to a Medical Specialist, Dr. Lucila Clerino (Dr. Clerino), for further Medico-Legal examination and vaginal smear. Dr. Clerino issued a Supplementary Medical Certificate dated October 28, 2005, indicating that AAA's hymenal area had lacerations complete at 6 o'clock and 9 o'clock superficial laceration at 12 o'clock.

AAA sought the assistance of the Department of Social Welfare and Development which facilitated her admission to a rehabilitation center run by the Missionary Sisters of Mary.

On June 17, 2008, the RTC rendered its Decision declaring Caoili guilty of rape by sexual assault.

On September 29, 2008, pursuant to a Commitment Order issued by the RTC on August 27, 2008, provincial jail guards escorted Caoili for his confinement at the Davao Prisons and Penal Farm, Panabo, Davao del Norte (Davao Penal Colony).

Thereafter, Caoili filed his appeal before the CA. On July 22, 2010, the CA rendered its Decision and held that although Caoili is clearly guilty of rape by sexual assault, what the trial court should have done was to direct the State Prosecutor to file a new Information charging the proper offense, and after compliance therewith, to dismiss the original Information.

ISSUE:
Whether the Caoili can be held guilty of the lesser crime of acts of lasciviousness performed on a child. (YES)

RULING:
Caoili had been charged with rape through sexual intercourse in violation of Article 266-A of the RPC and R.A. No. 7610. Applying the variance doctrine under Section 4, in relation to Section 5 of Rule 120 of the Revised Rules of Criminal Procedure, Caoili can be held guilty of the lesser crime of acts of lasciviousness performed on a child, *i.e.*, lascivious conduct under Section 5(b) of R.A. No. 7610, which was the offense proved, because it is included in rape, the offense charged.

The due recognition of the constitutional right of an accused to be informed of the nature and cause of the accusation through the criminal complaint or information is decisive of whether his prosecution for a crime stands or not. Nonetheless, the right is not transgressed if the information

sufficiently alleges facts and omissions constituting an offense that includes the offense established to have been committed by the accused, which, in this case, is lascivious conduct under Section 5(b) of R.A. No. 7610.

RE: PETITION FOR RADIO AND TELEVISION COVERAGE OF THE MULTIPLE MURDER CASES AGAINST MAGUINDANAO GOVERNOR ZALDY AMPATUAN, *ET AL.*, A.M. No. 10-11-5-SC, June 14, 2011 CARPIO MORALES, *J.*

The right of an accused to a fair trial is not incompatible to a free press.

FACTS:
Fifty-seven (57) people including 32 journalists and media practitioners were killed while on their way to Shariff Aguak in Maguindanao. The tragic incident which came to be known as the Maguindanao Massacre spawned charges for 57 counts of murder and an additional charge of rebellion against 197 accused. Almost a year later, the National Union of Journalists of the Philippines (NUJP), ABS-CBN Broadcasting Corporation, GMA Network, Inc., relatives of the victims, individual journalists from various media entities, and members of the academe filed a petition before the SC praying that live television and radio coverage of the trial in these criminal cases be allowed, recording devices (*e.g.*, still cameras, tape recorders) be permitted inside the courtroom to assist the working journalists, and reasonable guidelines be formulated to govern the broadcast coverage and the use of devices.

ISSUE:
Whether the petition should be granted. (YES)

RULING:
Respecting the possible influence of media coverage on the impartiality of trial court judges, petitioners correctly explain that prejudicial publicity insofar as it undermines the right to a fair trial must pass the totality of circumstances test, applied in *People v. Teehankee, Jr.* and *Estrada v. Desierto,* that the right of an accused to a fair trial is not incompatible to a free press, that pervasive publicity is not *per se* prejudicial to the right of an accused to a fair trial, and that there must be allegation and proof of the impaired capacity of a judge to render a bias-free decision. Mere fear of possible undue influence is not tantamount to actual prejudice resulting in the deprivation of the right to a fair trial. Moreover, an aggrieved party has ample legal remedies. He may challenge the validity of an adverse judgment arising from a proceeding that transgressed a constitutional right. As pointed out by petitioners, an aggrieved party may early on move for a change of venue, for continuance until the prejudice from publicity is abated, for disqualification of the judge, and for closure of portions of the trial when necessary. The trial court may likewise exercise its power of contempt and issue gag orders.

One apparent circumstance that sets the Maguindanao Massacre cases apart from the earlier cases is the impossibility of accommodating even the parties to the cases the private complainants/families of the victims and other witnesses inside the courtroom. Thus, the Court partially granted *pro hac vice* the request for live broadcast by television and radio of the trial court proceedings of the Maguindanao Massacre cases, subject to the guidelines herein outlined.

HARRY L. GO, TONNY NGO, JERRY NGO AND JANE GO, Petitioners, -versus- THE PEOPLE OF THE PHILIPPINES and HIGHDONE COMPANY, LTD., ET AL., Respondents.
G.R. No. 185527, THIRD DIVISION, July 18, 2012 PERLAS-BERNABE, J.

The right of confrontation, on the other hand, is held to apply specifically to criminal proceedings and to have a twofold purpose: (1) to afford the accused an opportunity to test the testimony of witnesses by cross-examination, and (2) to allow the judge to observe the deportment of witnesses.

FACTS:
Harry Go, Tonny Ngo, Jerry Ngo and Jane Go (petitioners) were charged before the MeTC of Manila for Other Deceits under Article 318 of the Revised Penal Code. The private prosecutor filed a Motion to Take Oral Deposition of Li Luen Ping, an old frail businessman from Laos, Cambodia who is the prosecution's complaining witness. It was alleged that Li Luen Ping was being treated for lung infection in Laos, Cambodia and that he could not make the long travel to the Philippines by reason of ill health. Petitioners opposed the motion, invoking their constitutional right of confrontation.

ISSUE:
Whether or not the motion should be granted. (NO)

RULING:
There is a great deal of difference between the face-to- face confrontation in a public criminal trial in the presence of the presiding judge and the cross-examination of a witness in a foreign place outside the courtroom in the absence of a trial judge. The main and essential purpose of requiring a witness to appear and testify orally at a trial is to secure for the adverse party the opportunity of cross-examination. "The opponent," according to an eminent authority, demands confrontation, not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross examination which cannot be had except by the direct and personal putting of questions and obtaining immediate answers. There is also the advantage of the witness before the judge, and it is this – it enables the judge as trier of facts to obtain the elusive and incommunicable evidence of a witness' deportment while testifying, and a certain subjective moral effect is produced upon the witness. It is only when the witness testifies orally that the judge may have a true idea of his countenance, manner and expression, which may confirm or detract from the weight of his testimony. Certainly, the physical condition of the witness will reveal his capacity for accurate observation and memory, and his deportment and physiognomy will reveal clues to his character. These can only be observed by the judge if the witness testifies orally in court.

REYNALDO H. JAYLO, WILLIAM VALENZONA AND ANTONIO G. HABALO, Petitioners, -versus- SANDIGANBAYAN (FIRST DIVISION), PEOPLE OF THE PHILIPPINES AND HEIRS OF COL. ROLANDO DE GUZMAN, FRANCO CALANOG AND AVELINO MANGUERA
G.R. Nos. 183152-54, FIRST DIVISION, January 21, 2015 SERENO, C.J.

As a statutory right, the filing of a motion for reconsideration is to be exercised in accordance with and in the manner provided by law.

FACTS:
The Sandiganbayan found Reynaldo Jaylo, Edgardo Castro, William Valenzona, and Antonio Habalo (petitioners) guilty of homicide. During the promulgation of the Sandiganbayan's judgment, none of

the accused appeared despite notice. Counsel for the three petitioners filed a Motion for Partial Reconsideration. The Sandiganbayan took no action on the motion and ordered the implementation of the warrants for the arrest of the convicted accused. In an Ad Cautelam Motion for Reconsideration, counsel for the three urged the Sandiganbayan to give due course to and resolve the Motion for Partial Reconsideration but to no avail. They argued that the right to file a Motion for Reconsideration is a statutory grant and not merely a remedy available in the Rules, as provided under Section 6 of Rule 120 of the Rules of Court. Thus, according to them, their absence at the promulgation of judgment before the Sandiganbayan cannot be deemed to have resulted in the loss of their right to file a motion for reconsideration.

ISSUE:
Whether the petitioners lost their right to file a motion for reconsideration. (YES)

RULING:
Like an appeal, the right to file a motion for reconsideration is a statutory grant or privilege. As a statutory right, the filing of a motion for reconsideration is to be exercised in accordance with and in the manner provided by law. Thus, a party filing a motion for reconsideration must strictly comply with the requisites laid down in the Rules of Court.

It bears stressing that the provision on which petitioners base their claim states that "[a] petition for reconsideration of any final order or decision maybe filed within fifteen (15) days from promulgation or notice of the final order or judgment." In Social Security Commission v. Court of Appeals, we enunciated that the term "may" denotes a mere possibility, an opportunity, or an option. Those granted this opportunity may choose to exercise it or not. If they do, they must comply with the conditions attached thereto.

Aside from the condition that a motion for reconsideration must be filed within 15 days from the promulgation or notice of the judgment, the movant must also comply with the conditions laid down in the Rules of Court, which applies to all cases and proceedings filed with the Sandiganbayan

In this case, petitioners have just shown their lack of faith in the jurisdiction of the Sandiganbayan by not appearing before it for the promulgation of the judgment on their cases. Surely they cannot later on expect to be allowed to invoke the Sandiganbayan's jurisdiction to grant them relief from its judgment of conviction.

P. PRIVILEGE OF THE WRIT OF HABEAS CORPUS (Read the Rules on Writ of Amparo[A.M. No. 07-9-12-SC]) and Writ of Habeas Data [A.M. No. 08-1-16-SC]) {SeeAlso Philippine Act On Crimes Against International Humanitarian Law,Genocide and Other Crimes Against Humanity [R.A. No. 9851])

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF DATUKAN MALANG SALIBO,

DATUKAN MALANG SALIBO, Petitioner, -versus-
WARDEN, QUEZON CITY JAIL ANNEX, BJMP BUILDING, CAMP BAGONG DIWA, TAGUIG CITY and all other persons acting on his behalf and/or having custody of DATUKAN MALANG SALIBO, Respondent.
G.R. No. 197597, SECOND DIVISION, April 8, 2015, LEONEN, J.

An application for a writ of habeas corpus may be made through a petition filed before this court or any of its members, the Court of Appeals or any of its members in instances authorized by law, or the Regional Trial Court or any of its presiding judges. The court or judge grants the writ and requires the officer or person having custody of the person allegedly restrained of liberty to file a return of the writ. A hearing on the return of the writ is then conducted.

FACTS:
Salibo and other Filipinos were allegedly in Saudi Arabia for the Hajj Pilgrimage. While in Saudi Arabia, Salibo visited and prayed in the cities of Medina, Mecca, Arpa, Mina and Jeddah.He returned to the Philippines on December 20, 2009.

On August 3, 2010, Salibo learned that police officers of Datu Hofer Police Station in Maguindanao suspected him to be Butukan S. Malang (e of the 197 accused of 57 counts of murder for allegedly participating in the November 23, 2009 Maguindanao Massacre). He had a pending warrant of arrest issued by the trial court.

Salibo presented himself before the police officers of a Police Station to clear his name. He explained that he was not Butukan S. Malang and that he could not have participated in the November 23, 2009 Maguindanao Massacre because he was in Saudi Arabia at that time.He presented to the police "pertinent portions of his passport, boarding passes and other documents"

Police officers apprehended Salibo and tore off page two of his passport that evidenced his departure for Saudi Arabia on November 7, 2009. They then detained Salibo at the Datu Hofer Police Station for about three 3 days.

The police officers transferred Salibo to the Criminal Investigation and Detection Group in Cotabato City, where he was detained for another 10 days. While in Cotabato City, the Criminal Investigation and Detention Group allegedly made him sign and affix his thumbprint on documents.

On August 20, 2010, Salibo was finally transferred to the Quezon City.

Salibo filed before the Court of Appeals the Urgent Petition for Habeas Corpus questioning the legality of his detention and deprivation of his liberty.

Court of Appeals issued a Writ of Habeas Corpus, making the Writ returnable to the Second Vice Executive Judge of the RTC, Pasig City. The CA ordered the Warden of the Quezon City Jail Annex to file a Return of the Writ one day before the scheduled hearing and produce the person of Salibo at the 10:00 a.m. hearing.

Thereafter, the jail guards of the Quezon City Jail Annex brought Salibo before the trial court. The Warden, however, failed to file a Return one day before the hearing. He also appeared without counsel during the hearing. Hence, the hearing was reset.

On the next hearing, Atty Villante (BJMP Legal Officer) appeared as counsel for the warden which was questioned by Salibo. Salibo argued that only the Office of the Solicitor General has the authority to appear on behalf of a respondent in a habeas corpus proceeding.

The trial court found that Salibo was not "judicially charged" under any resolution, information, or amended information. The Resolution, Information, and Amended Information presented in court

did not charge Datukan Malang Salibo as an accused. He was also not validly arrested as there was no Warrant of Arrest or Alias Warrant of Arrest against him. The trial court, thus, ruled that Salibo was not restrained of his liberty under process issued by a court.

The trial court was likewise convinced that Salibo was not the Butukan S. Malang charged with murder in connection with the Maguindanao Massacre. The NBI Clearance dated August 27, 2009 showed that Salibo has not been charged of any crime as of the date of the certificate. Moreover, the trial court said that Salibo "established that [he] was out of the country" from November 7, 2009 to December 19, 2009. Thus, in the Decision dated October 29, 2010, the trial court granted Salibo's Petition for Habeas Corpus and ordered his immediate release from detention.

On appeal by the Warden, however, the CA reversed and set aside the trial court's Decision. Through its Decision dated April 19, 2011, the CA dismissed Salibo's Petition for Habeas Corpus and found that Salibo's arrest and subsequent detention were made under a valid Information and Warrant of Arrest. According to the Court of Appeals, Salibo's proper remedy was a Motion to Quash Information and/or Warrant of Arrest.

Salibo filed a Motion for Reconsideration, which the CA denied in its Resolution dated July 6, 2011.

ISSUE:
Whether the Decision of the RTC on petitioner Salibo's Petition for Habeas Corpus was appealable to the CA. (YES)

RULING:
An application for a writ of habeas corpus may be made through a petition filed before this court or any of its members, the Court of Appeals or any of its members in instances authorized by law, or the Regional Trial Court or any of its presiding judges. The court or judge grants the writ and requires the officer or person having custody of the person allegedly restrained of liberty to file a return of the writ. A hearing on the return of the writ is then conducted.

The return of the writ may be heard by a court apart from that which issued the writ. Should the court issuing the writ designate a lower court to which the writ is made returnable, the lower court shall proceed to decide the petition of habeas corpus. By virtue of the designation, the lower court "acquire[s] the power and authority to determine the merits of the [petition for habeas corpus.]" Therefore, the decision on the petition is a decision appealable to the court that has appellate jurisdiction over decisions of the lower court.

In this case, petitioner Salibo filed his Petition for Habeas Corpus before the Court of Appeals. The Court of Appeals issued a Writ of Habeas Corpus, making it returnable to the Regional Trial Court, Branch 153, Pasig City. The trial court then heard respondent Warden on his Return and decided the Petition on the merits.

We rule that the trial court acquired the power and authority to determine the merits of of petitioner Salibo's Petition. The decision on the Petition for Habeas Corpus, therefore, was the decision of the trial court, not of the Court of Appeals. Since the Court of Appeals is the court with appellate jurisdiction over decisions of trial courts, respondent Warden correctly filed the appeal before the Court of Appeals.

THE SECRETARY OF NATIONAL DEFENSE, THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, Petitioners, -versus- RAYMOND MANALO and REYNALDO MANALO, Respondents.
G.R. No. 180906, EN BANC, October 7, 2008, PUNO, C.J.

The writ of amparo serves both preventive and curative roles in addressing the problem of extralegal killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses; it is curative in that it facilitates the subsequent punishment of perpetrators as it will inevitably yield leads to subsequent investigation and action. In the long run, the goal of both the preventive and curative roles is to deter the further commission of extralegal killings and enforced disappearances.

FACTS:
On February 14, 2006, brothers Raymond and Reynaldo Manalo, farmers from San Ildefonso, Bulacan were abducted by members of the Citizens Armed Forces Geographical Unit (CAFGU) on suspicion that the brothers were members or supporters of the New Peoples' Army (NPA). The Manalo brothers were detained in various locations: in Fort Magsaysay, Nueva Ecija; in Camp Tecson, San Miguel, Bulacan; in Camp Luna, Limay Bataan; in a house somewhere in Zambales; in a farm in Pangasinan. They were also subjected to various forms of torture such as chained and blind folded, beaten black and blue in different parts of the body, hit in the stomach with a hard wood, slapped in the forehead by .45 pistol, punched in the mouth, burned some parts of their bodies with a burning wood, made to witness the killings of fellow captives; forced to take the pill "alive" which caused them headaches, and threatened to be executed. After having been detained and tortured for 18 months, the brothers were able to escape from their captors and torturers on August 13, 2007.

On August 23, 2007, the Manalo brothers filed a Petition for Prohibition, Injunction, and Temporary Restraining Order to stop the military (herein petitioners) from depriving them of their right to liberty and other basic rights. While the petition was pending, the Rule on the Writ of Amparo took effect on October 24, 2007. On the same day, the Manalo brothers filed a Manifestation and Omnibus Motion to Treat Existing Petition as Amparo Petition. The next day, October 25, 2017, the Supreme Court favorably granted their petition which was treated as an Amparo Petition. The SC remanded the Amparo petition to the Court of Appeals and ordered the latter to conduct a summary hearing thereon on November 8, 2007.

On December 26, 2007, the CA granted the privilege of the Writ of Amparo to the Manalo brothers relying on the brothers' affidavits and testimonies and the medical reports and testimony of Dr. Molino, a forensic expert, on the scars left by the injuries inflicted on the brothers. The CA ordered the Secretary of National Defense and the AFP Chief of Staff to furnish the Manalo brothers and the CA within 5 days with all the official and unofficial reports of the investigation undertaken, confirm in writing the present places of Hilario and Caigas – the military personnel identified by the Manalo brothers; to produce all medical reports, records and charts, reports of any treatment given or recommended and medicines prescribed while in detention; and to submit a list of medical personnel who attended to the brothers while under military custody. In their Return of the Writ, the military disputed the brothers' accounts but undertook to exert efforts in providing results of the investigations conducted or to be conducted relative to the circumstances of the alleged abduction of the Manalo brothers.

The petitioners went to the Supreme Court seeking the reversal of the CA decision extending the privilege of the Writ of Amparo to the Manalo brothers.

ISSUE:
Whether the CA seriously and grievously erred in believing and giving full faith and credit to the incredible uncorroborated, contradicted, and obviously scripted, rehearsed and self-serving affidavit/testimony of herein respondent Raymond Manalo. (NO)

RULING:
The writ of *amparo* serves both preventive and curative roles in addressing the problem of extralegal killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses; it is curative in that it facilitates the subsequent punishment of perpetrators as it will inevitably yield leads to subsequent investigation and action. In the long run, the goal of both the preventive and curative roles is to deter the further commission of extralegal killings and enforced disappearances.

Section 1 of the Rule on the Writ of Amparo provides for the following causes of action, viz.:

> *Section 1. Petition. - The petition for a writ of Amparo is a remedy available to any person whose* ***right to life, liberty and security is violated or threatened with violation*** *by an unlawful act or omission of a public official or employee, or of a private individual or entity.*
>
> *The writ shall cover extralegal killings and* ***enforced disappearances or threats thereof****.*

Sections 17 and 18, on the other hand, provide for the degree of proof required:

> Sec. 17. *Burden of Proof and Standard of Diligence Required.* - The parties shall establish their claims by substantial evidence.
>
> xxx xxx xxx
>
> Sec. 18. *Judgment.* — . . . If the **allegations in the petition are proven by substantial evidence**, the court shall **grant** the privilege of the writ and such reliefs as may be proper and appropriate; **otherwise**, the privilege shall be **denied**.

After careful perusal of the evidence presented, we affirm the findings of the Court of Appeals that respondents were abducted from their houses in Sito Muzon, Brgy. Buhol na Mangga, San Ildefonso, Bulacan on February 14, 2006 and were continuously detained until they escaped on August 13, 2007. The abduction, detention, torture, and escape of the respondents were narrated by respondent Raymond Manalo in a clear and convincing manner. His account is dotted with countless candid details of respondents' harrowing experience and tenacious will to escape, captured through his different senses and etched in his memory.

We reject the claim of petitioners that respondent Raymond Manalo's statements were not corroborated by other independent and credible pieces of evidence. Raymond's affidavit and testimony were corroborated by the affidavit of respondent Reynaldo Manalo. The testimony and medical reports prepared by forensic specialist Dr. Molino, and the pictures of the scars left by the physical injuries inflicted on respondents, also corroborate respondents' accounts of the torture they endured while in detention. Respondent Raymond Manalo's familiarity with the facilities in Fort Magsaysay such as the "DTU", as shown in his testimony and confirmed by Lt. Col. Jimenez to be the

"Division Training Unit", firms up respondents' story that they were detained for some time in said military facility.

Since their escape, respondents have been under concealment and protection by private citizens because of the threat to their life, liberty and security. The threat vitiates their free will as they are forced to limit their movements or activities. Precisely because respondents are being shielded from the perpetrators of their abduction, they cannot be expected to show evidence of overt acts of threat such as face-to-face intimidation or written threats to their life, liberty and security. Nonetheless, the circumstances of respondents' abduction, detention, torture and escape reasonably support a conclusion that there is an apparent threat that they will again be abducted, tortured, and this time, even executed. These constitute threats to their liberty, security, and life, actionable through a petition for a writ of *amparo*.

GEN. AVELINO I. RAZON, JR., CHIEF, PHILIPPINE NATIONAL POLICE (PNP); POLICE CHIEF SUPERINTENDENT RAUL CASTAÑEDA, CHIEF, CRIMINAL INVESTIGATION AND DETECTION GROUP (CIDG); ET AL., Petitioners, - versus- *MARY JEAN B. TAGITIS, herein represented by ATTY. FELIPE P. ARCILLA, JR., Attorney-in-Fact, Respondent.*
G.R. No. 182498, EN BANC, December 3, 2009, BRION, J.

A petition for the Writ of Amparo shall be signed and verified and shall allege, among others (in terms of the portions the petitioners cite):

(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;
(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;
(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

The framers of the Amparo Rule never intended Section 5(c) to be complete in every detail in stating the threatened or actual violation of a victim's rights.

FACTS:
Tagitis, a consultant for the World Bank and the Senior Honorary Counselor for the Islamic Development Bank *(IDB)* Scholarship Programme, was last seen in Jolo, Sulu. Together with Arsimin Kunnong *(Kunnong),* an IDB scholar, Tagitis arrived in Jolo by boat in the early morning of October 31, 2007 from a seminar in Zamboanga City. They immediately checked-in at ASY Pension House. Tagitis asked Kunnong to buy him a boat ticket for his return trip the following day to Zamboanga. When Kunnong returned from this errand, Tagitis was no longer around. The receptionist related that Tagitis went out to buy food at around 12:30 in the afternoon and even left his room key with the desk. Kunnong looked for Tagitis and even sent a text message to the latter's Manila-based secretary who did not know of Tagitis' whereabouts and activities either; she advised Kunnong to simply wait.

On November 4, 2007, Kunnong and Muhammad Abdulnazeir N. Matli, a UP professor of Muslim studies and Tagitis' fellow student counselor at the IDB, reported Tagitis' disappearance to the Jolo

Police Station. On November 7, 2007, Kunnong executed a sworn affidavit attesting to what he knew of the circumstances surrounding Tagitis' disappearance.

More than a month later (on December 28, 2007), the respondent filed a Petition for the Writ of *Amparo (petition)* with the CA through her Attorney-in-Fact, Atty. Felipe P. Arcilla. The petition was directed against Lt. Gen. Alexander Yano, Commanding General, Philippine Army; Gen. Avelino I. Razon, Chief, Philippine National Police (*PNP*); Gen. Edgardo M. Doromal, Chief, Criminal Investigation and Detention Group (*CIDG*); Sr. Supt. Leonardo A. Espina, Chief, Police Anti-Crime and Emergency Response; Gen. Joel Goltiao, Regional Director, ARMM-PNP; and Gen. Ruben Rafael, Chief, Anti-Terror Task Force Comet.

More than a month later (on December 28, 2007), Mary Jean Tagitis filed a Petition for the Writ of Amparo (petition) with the CA through her Attorney-in-Fact, Atty. Felipe P. Arcilla.The petition was directed against Lt. Gen. Alexander Yano, Commanding General, Philippine Army; Gen. Avelino I. Razon, Chief, Philippine National Police (PNP); Gen. Edgardo M. Doromal, Chief, Criminal Investigation and Detention Group (CIDG); Sr. Supt. Leonardo A. Espina, Chief, Police Anti-Crime and Emergency Response; Gen. Joel Goltiao, Regional Director, ARMM-PNP; and Gen. Ruben Rafael, Chief, Anti-Terror Task Force Comet.

Mary Jean said in her statement that she approached some of her co-employees with the Land Bank in Digos branch, Digos City, Davao del Sur who likewise sought help from some of their friends in the military who could help them find/locate the whereabouts of her husband. All of her efforts did not produce any positive results except the information from persons in the military who do not want to be identified that Engr. Tagitis is in the hands of the uniformed men. According to reliable information she received, subject Engr. Tagitis is in the custody of police intelligence operatives, specifically with the CIDG, PNP Zamboanga City, being held against his will in an earnest attempt of the police to involve and connect Engr. Tagitis with the different terrorist groups particularly the Jemaah Islamiyah or JI.

She then filed her complaint with the PNP Police Station in the ARMM in Cotobato and in Jolo, seeking their help to find her husband, but was told of an intriguing tale by the police that her husband was not missing but was with another woman having good time somewhere, which is a clear indication of the refusal of the PNP to help and provide police assistance in locating her missing husband.

Heeding an advise of one police officer, she went to the different police headquarters namely Police Headquarters in Cotabato City, Davao City, Zamboanga City and eventually in the National Headquarters in Camp Crame in Quezon City but her efforts produced no positive results. These trips exhausted all of her resources which pressed her to ask for financial help from friends and relatives.

She has exhausted all administrative avenues and remedies but to no avail, and under the circumstances, she has no other plain, speedy and adequate remedy to protect and get the release of her husband, Engr. Morced Tagitis, from the illegal clutches of his captors, their intelligence operatives and the like which are in total violation of the subject's human and constitutional rights, except the issuance of a WRIT OF AMPARO.

On the same day the petition was filed, the CA immediately issued the Writ of Amparo, set the case for hearing on January 7, 2008, and directed the petitioners to file their verified return within seventy-two (72) hours from service of the writ.

In their verified Return filed during the hearing of January 27, 2008, the petitioners denied any involvement in or knowledge of Tagitis' alleged abduction. They argued that the allegations of the petition were incomplete and did not constitute a cause of action against them; were baseless, or at best speculative; and were merely based on hearsay evidence. In addition, they all claimed that they exhausted all means, particularly taking pro-active measures to investigate, search and locate Tagitis and to apprehend the persons responsible for his disappearance.

On March 7, 2008, the CA issued its decision confirming that the disappearance of Tagitis was an "enforced disappearance" under the United Nations (UN) Declaration on the Protection of All Persons from Enforced Disappearances. The CA thus extended the privilege of the writ to Tagitis and his family, and directed the CIDG Chief, Col. Jose Volpane Pante, PNP Chief Avelino I. Razon, Task Force Tagitis heads Gen. Joel Goltiao and Col. Ahiron Ajirim, and PACER Chief Sr. Supt. Leonardo A. Espina to exert extraordinary diligence and efforts to protect the life, liberty and security of Tagitis, with the obligation to provide monthly reports of their actions to the CA. At the same time, the CA dismissed the petition against the then respondents from the military, Lt. Gen Alexander Yano and Gen. Ruben Rafael, based on the finding that it was PNP-CIDG, not the military, that was involved.

ISSUE:
Whether the Amparo petition was sufficient in form and substance. (YES)

RULING:
A petition for the Writ of Amparo shall be signed and verified and shall allege, among others (in terms of the portions the petitioners cite):

(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;
(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;
(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

The framers of the Amparo Rule never intended Section 5(c) to be complete in every detail in stating the threatened or actual violation of a victim's rights. As in any other initiatory pleading, the pleader must of course state the ultimate facts constituting the cause of action, omitting the evidentiary details. In an Amparo petition, however, this requirement must be read in light of the nature and purpose of the proceeding, which addresses a situation of uncertainty; the petitioner may not be able to describe with certainty how the victim exactly disappeared, or who actually acted to kidnap, abduct or arrest him or her, or where the victim is detained, because these information may purposely be hidden or covered up by those who caused the disappearance. In this type of situation, to require the level of specificity, detail and precision that the petitioners apparently want to read into the Amparo Rule is to make this Rule a token gesture of judicial concern for violations of the constitutional rights to life, liberty and security.

To read the Rules of Court requirement on pleadings while addressing the unique Amparo situation, the test in reading the petition should be to determine whether it contains the details available to the petitioner under the circumstances, while presenting a cause of action showing a violation of the victim's rights to life, liberty and security through State or private party action. The petition should

likewise be read in its totality, rather than in terms of its isolated component parts, to determine if the required elements – namely, of the disappearance, the State or private action, and the actual or threatened violations of the rights to life, liberty or security – are present.

In the present case, the petition amply recites in its paragraphs 4 to 11 the circumstances under which Tagitis suddenly dropped out of sight after engaging in normal activities, and thereafter was nowhere to be found despite efforts to locate him. The petition alleged, too, under its paragraph 7, in relation to paragraphs 15 and 16, that according to reliable information, police operatives were the perpetrators of the abduction. It also clearly alleged how Tagitis' rights to life, liberty and security were violated when he was "forcibly taken and boarded on a motor vehicle by a couple of burly men believed to be police intelligence operatives," and then taken "into custody by the respondents' police intelligence operatives since October 30, 2007, specifically by the CIDG, PNP Zamboanga City, x x x held against his will in an earnest attempt of the police to involve and connect [him] with different terrorist groups."

These allegations, in our view, properly pleaded ultimate facts within the pleader's knowledge about Tagitis' disappearance, the participation by agents of the State in this disappearance, the failure of the State to release Tagitis or to provide sufficient information about his whereabouts, as well as the actual violation of his right to liberty. Thus, the petition cannot be faulted for any failure in its statement of a cause of action.

These allegations, to our mind, sufficiently specify that reports have been made to the police authorities, and that investigations should have followed. That the petition did not state the manner and results of the investigation that the Amparo Rule requires, but rather generally stated the inaction of the police, their failure to perform their duty to investigate, or at the very least, their reported failed efforts, should not be a reflection on the completeness of the petition. To require the respondent to elaborately specify the names, personal circumstances, and addresses of the investigating authority, as well the manner and conduct of the investigation is an overly strict interpretation of Section 5(d), given the respondent's frustrations in securing an investigation with meaningful results. Under these circumstances, we are more than satisfied that the allegations of the petition on the investigations undertaken are sufficiently complete for purposes of bringing the petition forward.

GEN. AVELINO I. RAZON, JR., CHIEF, PHILIPPINE NATIONAL POLICE (PNP); POLICE CHIEF SUPERINTENDENT RAUL CASTAÑEDA, CHIEF, CRIMINAL INVESTIGATION AND DETECTION GROUP (CIDG); ET AL., Petitioners, - versus- *MARY JEAN B. TAGITIS, herein represented by ATTY. FELIPE P. ARCILLA, JR., Attorney-in-Fact, Respondent.*
G.R. No. 182498, EN BANC, February 16, 2010, BRION, J.

Suffice it to say that we continue to adhere to the substantial evidence rule that the Rule on the Writ of Amparo requires, with some adjustments for flexibility in considering the evidence presented. When we ruled that hearsay evidence (usually considered inadmissible under the general rules of evidence) may be admitted as the circumstances of the case may require, we did not thereby dispense with the

substantial evidence rule; we merely relaxed the evidentiary rule on the admissibility of evidence, maintaining all the time the standards of reason and relevance that underlie every evidentiary situation.

FACTS:
The petitioners filed a Motion for Reconsideration addressing the December 3, 2009 Decision of the Supreme Court. The assailed Decision affirmed the March 7, 2008 Decision of the Court of Appeals confirming the enforced disappearance of Engineer Morced N. Tagitis and granting the Writ of Amparo.

The Court held that the government in general, through the PNP and the PNP-CIDG, and in particular, the Chiefs of these organizations, together with Col. Kasim, were fully accountable for the enforced disappearance of Tagitis. Specifically, the Court held Col. Kasim accountable for his failure to disclose under oath information relating to the enforced disappearance; for the purpose of this accountability, we ordered that Col. Kasim be impleaded as a party to this case. Similarly, the Court also held the PNP accountable for the suppression of vital information that Col. Kasim could, but did not, provide with the same obligation of disclosure that Col. Kasim carries.

The petitioners cited two grounds in support of their Motion for Reconsideration.

First, the petitioners argue that there was no sufficient evidence to conclude that Col. Kasim's disclosure unequivocally points to some government complicity in the disappearance of Tagitis. Specifically, the petitioners contend that this Court erred in unduly relying on the raw information given to Col. Kasim by a personal intelligence *"asset"* without any other evidence to support it. The petitioners emphasize that the respondent only presented a *"token piece of evidence"* that points to Col. Kasim as the source of information that Tagitis was under custodial investigation for having been suspected as a *"terrorist supporter."* This, according to the petitioners, cannot be equated to the substantial evidence required by the Rule on the Writ of Amparo.

Second, the petitioners contend that Col. Kasim's death renders impossible compliance with the Court's directive in its December 3, 2009 decision that Col. Kasim be impleaded in the present case and held accountable with the obligation to disclose information known to him and to his *"assets"* on the enforced disappearance of Tagitis. The petitioners alleged that Col. Kasim was killed in an encounter with the Abu Sayaff Group on May 7, 2009. To prove Col. Kasim's death, the petitioners attached to their motion a copy of an article entitled *"Abus kill Sulu police director"* published by the Philippine Daily Inquirer on May 8, 2009. This article alleged that *"Senior Supt. Julasirim Kasim, his brother Rosalin, a police trainee, and two other police officers were killed in a fire fight with Abu Sayaff bandits that started at about 1 p.m. on Thursday, May 7, 2009 at the boundaries of Barangays Kulasi and Bulabog in Maimbung town, Sulu."* The petitioners also attached an official copy of General Order No. 1089 dated May 15, 2009 issued by the PNP National Headquarters, indicating that "PS SUPT [Police Senior Superintendent] Julasirim Ahadin Kasim 0-05530, PRO ARMM, is posthumously retired from PNP service effective May 8, 2009." Additionally, the petitioners point out that the intelligence *"assets"* who supplied the information that Tagitis was under custodial investigation were personal to Col. Kasim; hence, the movants can no longer comply with this Court's order to disclose any information known to Col. Kasim and his *"assets."*

ISSUE:
Whether sufficient evidence exists to support the conclusion that the Kasim evidence unequivocally points to some government complicity in the disappearance. (NO)

RULING:
We see no merit in the petitioners' claim that the Kasim evidence does not amount to substantial evidence required by the Rule on the Writ of Amparo. This is not a new issue; we extensively and thoroughly considered and resolved it in our December 3, 2009 Decision. At this point, we need not go into another full discussion of the justifications supporting an evidentiary standard specific to the Writ of *Amparo.* Suffice it to say that we continue to adhere to the substantial evidence rule that the Rule on the Writ of Amparo requires, with some adjustments for flexibility in considering the evidence presented. When we ruled that hearsay evidence (usually considered inadmissible under the general rules of evidence) may be admitted as the circumstances of the case may require, we did not thereby dispense with the substantial evidence rule; we merely relaxed the evidentiary rule on the *admissibility of evidence,* maintaining all the time the standards of reason and relevance that underlie every evidentiary situation. This, we did, by considering the totality of the obtaining situation and the consistency of the hearsay evidence with the other available evidence in the case.

At the risk of repetition, we stress that other pieces of evidence point the way towards our conclusion, particularly the unfounded and consistent denials by government authorities of any complicity in the disappearance; the dismissive approach of the police to the report of the disappearance; and the haphazard handling of the investigation that did not produce any meaningful results. In cruder but more understandable language, the run-around given to the respondent and the government responses to the request for meaningful investigation, considered in the light of the Kasim evidence, pointed to the conclusion that the Tagitis affair carried a *"foul smell"* indicative of government complicity or, at the very least, an attempt at cover-up and concealment. This is the situation that the Writ of *Amparo* specifically seeks to address.

LT. COL. ROGELIO BOAC, LT. COL. FELIPE ANOTADO AND LT. FRANCIS MIRABELLE SAMSON, Petitioners, -versus- ERLINDA T. CADAPAN AND CONCEPCION E. EMPEÑO, Respondents.
G.R. Nos. 184461-62, EN BANC, May 31, 2011, CARPIO-MORALES, J.

ERLINDA T. CADAPAN AND CONCEPCION E. EMPEÑO, Petitioners, - versus- GEN. HERMOGENES ESPERON, P/DIR.GEN. AVELINO RAZON, (RET.), ET AL., Respondents.
G.R. No. 184495, EN BANC, May 31, 2011, CARPIO-MORALES, J.

ERLINDA T. CADAPAN AND CONCEPCION E. EMPEÑO, Petitioners, -versus- GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, ET AL., Respondents.
G.R. No. 187109, EN BANC, May 31, 2011, CARPIO-MORALES, J.

Rubrico v. Macapagal-Arroyo expounded on the concept of command responsibility as follows:

> *The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict." In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility, foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then formulated, command responsibility is "**an omission mode of individual criminal liability**,"*

*whereby the superior is made responsible for **crimes committed** by his subordinates for failing to prevent or punish the perpetrators (as opposed to crimes he ordered).*

It bears stressing that command responsibility is properly a form of criminal complicity, and thus a substantive rule that points to criminal or administrative liability.

FACTS:
At 2:00 a.m. of June 26, 2006, armed men abducted Sherlyn Cadapan, Karen Empeño and Manuel Merino from a house in San Miguel, Hagonoy, Bulacan. The three were herded onto a jeep bearing license plate RTF 597 that sped towards an undisclosed location. Having thereafter heard nothing from Sherlyn, Karen and Merino, their respective families scoured nearby police precincts and military camps in the hope of finding them but the same yielded nothing.

On July 17, 2006, spouses Asher and Erlinda Cadapan and Concepcion Empeño filed a petition for *habeas corpus* before the Court, docketed as **G.R. No. 173228**, impleading then Generals Romeo Tolentino and Jovito Palparan, Lt. Col. Rogelio Boac, Arnel Enriquez and Lt. Francis Mirabelle Samson as respondents. By Resolution of July 19, 2006, the Court issued a writ of *habeas corpus,* returnable to the Presiding Justice of the Court of Appeals.

The *habeas corpus* petition was docketed at the appellate court as **CA-G.R. SP No. 95303**.

By Return of the Writ dated July 21, 2006, the respondents in the *habeas corpus* petition denied that Sherlyn, Karen and Merino are in the custody of the military. To the Return were attached affidavits from the respondents, except Enriquez, who all attested that they do not know Sherlyn, Karen and Merino; that they had inquired from their subordinates about the reported abduction and disappearance of the three, but their inquiry yielded nothing; and that the military does not own nor possess a stainless-steel jeep with plate number RTF 597. Also appended to the Return was a certification from the Land Transportation Office (LTO) that plate number RTF 597 had not yet been manufactured as of July 26, 2006.

Trial thereupon ensued at the appellate court. By Decision of March 29, 2007, the CA dismissed the habeas corpus petition.

Petitioners moved for reconsideration of the appellate court's decision.

By Decision of September 17, 2008, the appellate court granted the motion for reconsideration (the habeas corpus case) and ordered the immediate release of Sherlyn, Karen and Merino (the amparo case).

Lt. Col. Rogelio Boac, et al. challenged before this Court, via petition for review, the September 17, 2008 Decision of the appellate court. This was docketed as G.R. Nos. 184461-62, the first above-captioned case — subject of the present Decision.

Erlinda Cadapan and Concepcion Empeño, on the other hand, filed their own petition for review also challenging the same September 17, 2008 Decision of the appellate court only insofar as the *amparo* aspect is concerned. Their petition, docketed as G.R. No. 179994, was redocketed as G.R. No. 184495, the second above-captioned case.

By Resolution of June 15, 2010, the Court ordered the consolidation of G.R. No. 184495 with G.R. Nos. 1844461-62.

Meanwhile, Erlinda Cadapan and Concepcion Empeño filed before the appellate court a Motion to Cite Respondents in Contempt of Court for failure of the respondents in the *amparo* and *habeas corpus* cases to comply with the directive of the appellate court to immediately release the three missing persons. By Resolution of March 5, 2009, the appellate court denied the motion.

Via a petition for *certiorari* filed on March 30, 2009 before this Court, Erlinda Cadapan and Concepcion Empeño challenged the appellate court's March 5, 2009 Resolution denying their motion to cite respondents in contempt. The petition was docketed as G.R. No. 187109, the last above-captioned case subject of the present Decision.

ISSUE:
Whether the chief of the AFP, the commanding general of the Philippine Army, as well as the heads of the concerned units had command responsibility over the abduction and detention of Sherlyn, Karen and Merino. (YES)

RULING:
Rubrico v. Macapagal-Arroyo expounded on the concept of command responsibility as follows:

> The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict." In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility, foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then formulated, command responsibility is "**an omission mode of individual criminal liability**," whereby the superior is made responsible for **crimes committed** by his subordinates for failing to prevent or punish the perpetrators (as opposed to crimes he ordered).

It bears stressing that command responsibility is properly a form of criminal complicity, and thus a substantive rule that points to criminal or administrative liability.

An *amparo* proceeding is not criminal in nature nor does it ascertain the criminal liability of individuals or entities involved. Neither does it partake of a civil or administrative suit. Rather, it is a *remedial* measure designed to direct specified courses of action to government agencies to safeguard the constitutional right to life, liberty and security of aggrieved individuals.
Rubrico categorically denies the application of command responsibility in *amparo* cases to determine *criminal liability.* The Court maintains its adherence to this pronouncement as far as *amparo* cases are concerned. *Rubrico,* however, recognizes a preliminary yet limited application of command responsibility in *amparo* cases to instances of determining the responsible or accountable individuals or entities that are duty-bound to abate any transgression on the life, liberty or security of the aggrieved party.

In other words, command responsibility may be loosely applied in *amparo* cases in order to identify those accountable individuals that have the power to effectively implement whatever processes an *amparo* court would issue. In such application, the *amparo* court does not impute criminal responsibility but merely pinpoint the superiors it considers to be in the best position to protect the rights of the aggrieved party.

Such identification of the responsible and accountable superiors may well be a preliminary determination of criminal liability which, of course, is still subject to further investigation by the appropriate government agency.

Relatedly, the legislature came up with Republic Act No. 9851 to include command responsibility as a form of criminal complicity in crimes against international humanitarian law, genocide and other crimes. RA 9851 is thus the substantive law that definitively imputes criminal liability to those superiors who, despite their position, still fail to take all necessary and reasonable measures within their power to prevent or repress the commission of illegal acts or to submit these matters to the competent authorities for investigation and prosecution.

The Court finds that the appellate court erred when it did not specifically name the respondents that it found to be responsible for the abduction and continued detention of Sherlyn, Karen and Merino. For, from the records, it appears that the responsible and accountable individuals are Lt. Col. Anotado, Lt. Mirabelle, Gen. Palparan, Lt. Col. Boac, Arnel Enriquez and Donald Caigas. They should thus be made to comply with the September 17, 2008 Decision of the appellate court to IMMEDIATELY RELEASE Sherlyn, Karen and Merino.

The petitions against Generals Esperon, Razon and Tolentino should be dismissed for lack of merit as there is no showing that they were even remotely accountable and responsible for the abduction and continued detention of Sherlyn, Karen and Merino.

ARTHUR BALAO, WINSTON BALAO, NONETTE BALAO, JONILYN BALAO-STRUGAR and BEVERLY LONGID, *Petitioners,* -versus- GLORIA MACAPAGAL-ARROYO, EDUARDO ERMITA, et al., *Respondents.*
G.R. No. 186050, EN BANC, December 13, 2011, VILLARAMA, JR., J.

PRESIDENT GLORIA MACAPAGAL-ARROYO, SECRETARY EDUARDO ERMITA, et al., Petitioners, -versus- ARTHUR BALAO, WINSTON BALAO, NONETTE BALAO, JONILYN BALAO-STRUGAR and BEVERLY LONGID, Respondents.
G.R. No. 186059, EN BANC, December 13, 2011, VILLARAMA, JR., J.

The Rule on the Writ of Amparo was promulgated on October 24, 2007 amidst rising incidence of "extralegal killings" and "enforced disappearances." It was formulated in the exercise of this Court's expanded rule-making power for the protection and enforcement of constitutional rights enshrined in the 1987 Constitution, albeit limited to these two situations. "Extralegal killings" refer to killings committed without due process of law, i.e., without legal safeguards or judicial proceedings. On the other hand, "enforced disappearances" are attended by the following characteristics: an arrest, detention, or abduction of a person by a government official or organized groups or private individuals acting with

the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such person outside the protection of law.

FACTS:
On October 28, 2008, petitioners in G.R. No. 186050, filed with the RTC of La Trinidad, Benguet a Petition for the Issuance of a Writ of Amparo in favor of James Balao who was abducted by unidentified armed men on September 17, 2008 in Tomay, La Trinidad, Benguet.

James M. Balao is a Psychology and Economics graduate of the University of the Philippines-Baguio (UP-Baguio). In 1984, he was among those who founded the Cordillera Peoples Alliance (CPA), a coalition of non-government organizations (NGOs) working for the cause of indigenous peoples in the Cordillera Region. As head of CPA's education and research committee, James actively helped in the training and organization of farmers. He was also the President of Oclupan Clan Association which undertakes the registration and documentation of clan properties to protect their rights over ancestral lands. In 1988, while working for the CPA, he was arrested on the charge of violation of the Anti-Subversion Law but the case was eventually dismissed for lack of evidence.

The testimonies and statements of eyewitnesses established the following circumstances surrounding James's disappearance:

On September 17, 2008, at around 8:30 in the morning, a man clad in black jacket, black shirt, black visor and gray pants was standing infront of Saymor's Store at Tomay, La Trinidad, Benguet. He had a belt bag and a travelling bag which was placed on a bench. Vicky Bonel was at the time attending to the said store owned by her brother-in-law while Aniceto G. Dawing, Jr. and his co-employee were delivering bakery products thereat. A white van then arrived and stopped infront of the store. Five men in civilian clothes who were carrying firearms alighted from the van and immediately approached the man poking their guns on him. They grabbed and handcuffed him. The man was asking why he was being apprehended. One of the armed men addressed the people witnessing the incident, saying they were policemen. Another warned that no one should interfere because the man was being arrested for illegal drugs. Thereafter, they pushed the man inside the van. One of the armed men went back to the store to get the man's travelling bag. Before leaving the place, one of the armed men was also heard telling the driver of the van that they are going to proceed to Camp Dangwa (PNP Provincial Headquarters in La Trinidad, Benguet). The witnesses later identified the man as James Balao after seeing his photograph which appeared in posters announcing him as missing.

The petition alleged that in May 2008, James reported surveillances on his person to his family, particularly to his sister Nonette Balao (Nonette), and to CPA Chairperson Beverly Longid (Beverly). James supposedly observed certain vehicles tailing him and suspiciously parked outside his residence, one of which was a van with plate number USC 922. He also claimed to have received calls and messages through his mobile phone informing him that he was under surveillance by the PNP Regional Office and the AFP-ISU. To prove the surveillance, the informer gave the exact dates he visited his family, clothes he wore, and dates and times he goes home or visits friends and relatives.
It was further alleged that on September 17, 2008, around 7:00 in the morning, James sent a text message to Nonette informing her that he was about to leave his rented house in Fairview Central, Baguio City and that he was going to their ancestral residence in Pico, La Trinidad, Benguet to do his laundry. The travel time from Fairview, Baguio City to Pico usually takes only 20 to 45 minutes. Around 8:00 a.m., Nonette, after discovering that James never reached their parents' house at Pico,

started contacting their friends and relatives to ask about James's whereabouts. No one, however, had any idea where he was.

Thus, the Balao family, with the assistance of the CPA and other NGOs, tried to locate James. Teams were formed to follow James's route from Fairview, Baguio City to Pico, La Trinidad and people along the way were asked if they happened to see him. These searches, however, yielded negative results. They also sought the help of the media to announce James's disappearance and wrote several government agencies to inform them of his disappearance and enlist their help in locating him.

Contending that there is no plain, speedy or adequate remedy for them to protect James's life, liberty and security, petitioners prayed for the issuance of a writ of amparo ordering the respondents to disclose where James is detained or confined, to release James, and to cease and desist from further inflicting harm upon his person. Petitioners simultaneously filed an Urgent Ex-Parte Motion for the immediate issuance of a writ of amparo pursuant to Section 6 of the Rule on the Writ of Amparo.

On October 9, 2008, the Writ of Amparo was issued directing respondents to file their verified return together with their supporting affidavit within five days from receipt of the writ.

Respondents in their Joint Return contended that the petition failed to meet the requirement in the Rule on the Writ of *Amparo* that claims must be established by substantial evidence considering that: (1) petitioners' allegations do not mention in anyway the manner, whether directly or indirectly, the alleged participation of respondents in the purported abduction of James; (2) Nonette and Beverly do not have personal knowledge of the circumstances surrounding the abduction of James, hence, their statements are hearsay with no probative value; and (3) the allegations in the petition do not show the materiality and relevance of the places sought to be searched/inspected and documents to be produced. The respondents also stated that President Gloria Macapagal-Arroyo is immune from suit and should thus be dropped as party-respondent and that only Arthur Balao should be named petitioner and the rest of the other petitioners dropped.

On January 19, 2009, the RTC denied respondents' prayer that President Arroyo be dropped as party-respondent, the RTC held that a petition for a writ of amparo is not "by any stretch of imagination a niggling[,] vexing or annoying court case" from which she should be shielded. In upholding the standing of James's siblings and Beverly to file the petition, the RTC held that what Section 2 of the Rule on the Writ of Amparo rules out is the right to file similar petitions, meaning there could be no successive petitions for the issuance of a writ of amparo for the same party. The RTC likewise ruled that the government unmistakably violated James's right to security of person. It found the investigation conducted by respondents as very limited, superficial and one-sided. The police and military thus miserably failed to conduct an effective investigation of James's abduction as revealed by the investigation report.

Hence, this instant petition.

ISSUE:
Whether the totality of evidence satisfies the degree of proof required by the Amparo Rule to establish an enforced disappearance. (NO)

RULING:

The Rule on the Writ of Amparo was promulgated on October 24, 2007 amidst rising incidence of "extralegal killings" and "enforced disappearances." It was formulated in the exercise of this Court's expanded rule-making power for the protection and enforcement of constitutional rights enshrined in the 1987 Constitution, albeit limited to these two situations. "Extralegal killings" refer to killings committed without due process of law, i.e., without legal safeguards or judicial proceedings. On the other hand, "enforced disappearances" are attended by the following characteristics: an arrest, detention, or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such person outside the protection of law.

Section 18 of the Amparo Rule provides:

> SEC. 18. Judgment. - The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.

In this case, here is nothing wrong with petitioners' simultaneous recourse to other legal avenues to gain public attention for a possible enforced disappearance case involving their very own colleague. Respondents should even commend such initiative that will encourage those who may have any information on the identities and whereabouts of James's abductors to help the PNP in its investigation.

Assuming there was reluctance on the part of the Balao family and CPA to submit James's relatives or colleagues for questioning by agents of the PNP and AFP, they cannot be faulted for such stance owing to the military's perception of their organization as a communist front: ergo, enemies of the State who may be targeted for liquidation. But more important, such non-cooperation provides no excuse for respondents' incomplete and one-sided investigations.

In view of the foregoing, respondents clearly failed to discharge their burden of extraordinary diligence in the investigation of James's abduction. Such ineffective investigation extant in the records of this case prevents us from completely exonerating the respondents from allegations of accountability for James' disappearance. The reports submitted by the PNP Regional Office, Task Force Balao and Baguio City Police Station do not contain meaningful results or details on the depth and extent of the investigation made. In Razon, Jr. v. Tagitis, the Court observed that such reports of top police officials indicating the personnel and units they directed to investigate can never constitute exhaustive and meaningful investigation, or equal detailed investigative reports of the activities undertaken to search for the victim. In the same case we stressed that the standard of diligence required – the duty of public officials and employees to observe extraordinary diligence – called for extraordinary measures expected in the protection of constitutional rights and in the consequent handling and investigation of extra-judicial killings and enforced disappearance cases.

As to the matter of dropping President Arroyo as party-respondent, though not raised in the petitions, we hold that the trial court clearly erred in holding that presidential immunity cannot be properly invoked in an amparo proceeding. As president, then President Arroyo was enjoying immunity from suit when the petition for a writ of amparo was filed. Moreover, the petition is bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.

SECRETARY LEILA M. DE LIMA, DIRECTOR NONNATUS R. ROJAS and DEPUTY DIRECTOR REYNALDO O. ESMERALDA, *Petitioners*, - versus - **MAGTANGGOL B. GATDULA, *Respondent.***
G.R. No. 204528, EN BANC, February 19, 2013, LEONEN, *J.*

The Decision grantinh the writ of amparo pertained to the issuance of the writ under Section 6 of the Rule on the Writ of Amparo, not the judgment under Section 18. The "Decision" is thus an interlocutory order, as suggested by the fact that temporary protection, production and inspection orders were given together with the decision. The temporary protection, production and inspection orders are interim reliefs that may be granted by the court upon filing of the petition but before final judgment is rendered.

FACTS:
Magtanggol B. Gatdula filed a Petition for the Issuance of a Writ of Amparo against Justice Secretary Leila M. De Lima, Director Nonnatus R. Rojas and Deputy Director Reynaldo O. Esmeralda of the NBI (DE LIMA, ET AL. for brevity) in the RTC of Manila. The judge issued summons and ordered De Lima, et al. to file an Answer and also set the case for hearing. Even without a Return nor an Answer, he ordered the parties to file their respective memoranda within five (5) working days after hearing. Later, the RTC rendered a "*Decision*" granting the issuance of the Writ of *Amparo* and the interim reliefs prayed for. The MR filed by De Lima, et al was denied. Thus, they filed before the SC a Petition for Review on Certiorari (With Very Urgent Application for the Issuance of a TRO/Writ of Preliminary Injunction) via Rule 45.

ISSUE:
Whether Rule 45 is the proper remedy.

RULING:
No. The "*Decision*" dated 20 March 2012 granting the writ of *Amparo* is not the judgment or final order contemplated under this rule. Hence, a Petition for Review under Rule 45 may not yet be the proper remedy at this time. This "*Decision*" pertained to the issuance of the writ under Section 6 of the Rule on the Writ of *Amparo*, not the judgment under Section 18. The "*Decision*" is thus an interlocutory order, as suggested by the fact that temporary protection, production and inspection orders were given together with the decision. The temporary protection, production and inspection orders are interim reliefs that may be granted by the court upon filing of the petition but *before* final judgment is rendered.

The *Petition for Review* is not the proper remedy to assail the interlocutory order denominated as *"Decision"* dated 20 March 2012. A Petition for Certiorari, on the other hand, is prohibited. Simply dismissing the present petition, however, will cause grave injustice to the parties involved. It undermines the salutary purposes for which the Rule on the Writ of *Amparo* were promulgated.

Thus, the Court nullified all orders that are subject of this *Resolution* issued by Judge Silvino T. Pampilo, Jr. after respondent Gatdula filed the *Petition for the Issuance of a Writ of Amparo*; and directed Judge Pampilo to determine within forty-eight (48) hours from his receipt of this *Resolution* whether the issuance of the Writ of *Amparo* is proper on the basis of the petition and its attached affidavits.

EDGARDO NAVIA, RUBEN DIO, and ANDREW BUISING, *Petitioners*, - versus - VIRGINIA PARDICO, for and in behalf and in representation of BENHUR V. PARDICO, *Respondent.*
G.R. No. 184467, EN BANC, June 19, 2012, DEL CASTILLO, *J.*

As thus dissected, it is now clear that for the protective writ of amparo to issue, allegation and proof that the persons subject thereof are missing are not enough. It must also be shown and proved by substantial evidence that the disappearance was carried out by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge the same or give information on the fate or whereabouts of said missing persons, with the intention of removing them from the protection of the law for a prolonged period of time.

FACTS:
A vehicle of Asian Land Strategies Corporation (Asian Land) arrived at the house of Lolita M. Lapore. The arrival of the vehicle awakened Lolitas son, Enrique Lapore (Bong), and Benhur Pardico (Ben), who were then both staying in her house. When Lolita went out to investigate, she saw two uniformed guards disembarking from the vehicle. One of them immediately asked Lolita where they could find her son Bong. Before Lolita could answer, the guard saw Bong and told him that he and Ben should go with them to the security office of Asian Land because a complaint was lodged against them for theft of electric wires and lamps in the subdivision. Shortly thereafter, Bong, Lolita and Ben were in the office of the security department of Asian Land also located in Grand Royale Subdivision.

Exasperated with the mysterious disappearance of her husband, Virginia filed a Petition for Writ of Amparobefore the RTC of Malolos City. A Writ of Amparo was accordingly issued and served on the petitioners. The trial court issued the challenged Decision granting the petition. Petitioners filed a Motion for Reconsideration which was denied by the trial court.

Petitioners essentially assail the sufficiency of the amparo petition. They contend that the writ of amparo is available only in cases where the factual and legal bases of the violation or threatened violation of the aggrieved partys right to life, liberty and security are clear. Petitioners assert that in the case at bench, Virginia miserably failed to establish all these. First, the petition is wanting on its face as it failed to state with some degree of specificity the alleged unlawful act or omission of the petitioners constituting a violation of or a threat to Bens right to life, liberty and security. And second, it cannot be deduced from the evidence Virginia adduced that Ben is missing; or that petitioners had a hand in his alleged disappearance. On the other hand, the entries in the logbook which bear the signatures of Ben and Lolita are eloquent proof that petitioners released Ben on March 31, 2008 at around 10:30 p.m. Petitioners thus posit that the trial court erred in issuing the writ and in holding them responsible for Bens disappearance.

ISSUE:
Whether or not the issuance of A Writ of Amparo is proper?

RULING:
A.M. No. 07-9-12-SC or The Rule on the Writ of Amparo was promulgated to arrest the rampant extralegal killings and enforced disappearances in the country. Its purpose is to provide an expeditious and effective relief "to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity."

Article 6 of the International Covenant on Civil and Political Rights recognizes every human beings inherent right to life, while Article 9 thereof ordains that everyone has the right to liberty and security. The right to life must be protected by law while the right to liberty and security cannot be impaired except on grounds provided by and in accordance with law. This overarching command against

deprivation of life, liberty and security without due process of law is also embodied in our fundamental law.

The budding jurisprudence on amparo blossomed in Razon, Jr. v. Tagitis when this Court defined enforced disappearances. The Court in that case applied the generally accepted principles of international law and adopted the International Convention for the Protection of All Persons from Enforced Disappearances definition of enforced disappearances, as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."
From the statutory definition of enforced disappearance, thus, we can derive the following elements that constitute it:
(a) that there be an arrest, detention, abduction or any form of deprivation of liberty;
(b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;
(c) that it be followed by the State or political organizations refusal to acknowledge or give information on the fate or whereabouts of the person subject of the amparo petition; and,
(d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.

As thus dissected, it is now clear that for the protective writ of amparo to issue, allegation and proof that the persons subject thereof are missing are not enough. It must also be shown and proved by substantial evidence that the disappearance was carried out by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge the same or give information on the fate or whereabouts of said missing persons, with the intention of removing them from the protection of the law for a prolonged period of time. Simply put, the petitioner in an amparo case has the burden of proving by substantial evidence the indispensable element of government participation.

But lest it be overlooked, in an amparo petition, proof of disappearance alone is not enough. It is likewise essential to establish that such disappearance was carried out with the direct or indirect authorization, support or acquiescence of the government. This indispensable element of State participation is not present in this case. The petition does not contain any allegation of State complicity, and none of the evidence presented tend to show that the government or any of its agents orchestrated Bens disappearance. In fact, none of its agents, officials, or employees were impleaded or implicated in Virginia's amparo petition whether as responsible or accountable persons.51 Thus, in the absence of an allegation or proof that the government or its agents had a hand in Bens disappearance or that they failed to exercise extraordinary diligence in investigating his case, the Court will definitely not hold the government or its agents either as responsible or accountable persons.

We are aware that under Section 1 of A.M. No. 07-9-12-SC a writ of amparo may lie against a private individual or entity. But even if the person sought to be held accountable or responsible in an amparo petition is a private individual or entity, still, government involvement in the disappearance remains an indispensable element. Here, petitioners are mere security guards at Grand Royale Subdivision in Brgy. Lugam, Malolos City and their principal, the Asian Land, is a private entity. They do not work for the government and nothing has been presented that would link or connect them to some covert police, military or governmental operation. As discussed above, to fall within the ambit of A.M. No.

07-9-12-SC in relation to RA No. 9851, the disappearance must be attended by some governmental involvement. This hallmark of State participation differentiates an enforced disappearance case from an ordinary case of a missing person.

Spouses NERIO and SOLEDAD PADOR and REY PADOR*, Petitioners,*
- versus - **Barangay Captain BERNABE ARCAYAN, Barangay Tanod CHIEF ROMEO PADOR, Barangay Tanods ALBERTO ALIVIO, CARMELO REVALES, ROBERTO ALIMORIN, WINELO ARCAYAN, CHRISTOPHER ALIVIO & BIENVENIDO ARCAYAN, all of Barangay Tabunan, Cebu City, *Respondents.***
G.R. No. 183460, EN BANC, March 12, 2013, SERENO, *J.*

To be entitled to the privilege of the writ, petitioners must prove by substantial evidence that their rights to life, liberty and security are being violated or threatened by an unlawful act or omission.

FACTS:
Petitioners filed with the RTC a Verified Petition for the Issuance of a Writ of Amparo. They alleged that rumors circulated that petitioner Nerio Pador was a marijuana planter.

Respondents Alberto Alivio, Carmelo Revales and Roberto Alimorin raided their ampalaya farm to search for marijuana plants, but found none. After the raid, petitioners Nerio and Rey Pador received invitation letters for a conference from respondent Barangay Captain Arcayan. Petitioners then concluded that the conduct of the raid, the sending of the invitation letters, the refusal of respondent barangay captain to receive their letter-reply as well as the possibility of more harassment cases, falseaccusations, and possible violence from respondents gravely threatened their right to life, liberty and security and necessitated the issuance of a writ of amparo. RTC issued the Writ and directed respondents to make a verified return.
While the barangay tanods were having a final briefing, Carmelo Revales left the place to take his breakfast. While he was taking his breakfast, Nerio Pador, who was riding a motorcycle, stopped and accused the former of uprooting the marijuana plants. Carmelo denied any knowledge about the incident, and Nerio thereafter threatened to have him killed. Carmelo promptly reported this threat to the other barangay tanods. Respondents recounted that, notwithstanding Nerio's actions, they proceeded to patrol the area. When they passed by the house of Nerio, he angrily uttered in Cebuano, "If I will be informed who reported the matter to the police, I will attack the informant.
The RTC issued the assailed Resolutio finding that petitioners' claims were based merely on hearsay, speculations, surmises and conjectures, and that respondents had sufficiently explained the reason behind the issuance of the letters of invitation. It thereafter proceeded to deny petitioners the privilege of the writ of *amparo*.

ISSUE:
Whether or not the Petitioners are entitled to the issuance of Writ of Amparo.

RULING:
No. To be entitled to the privilege of the writ, petitioners must prove by substantial evidence that their rights to life, liberty and security are being violated or threatened by an unlawful act or omission.

A closer look at the instant Petition shows that it is anchored on the following allegations: first, that respondents conducted a raid on the property of petitioner based on information that the latter were cultivators of marijuana; second, that respondent barangay captain sent them invitation letters without stating the purpose of the invitation; third, that respondent barangay captain refused to

receive petitioners' letter-reply; and fourth, that petitioners anticipate the possibility of more harassment cases, false accusations, and potential violence from respondents.
All these allegations are insufficient bases for a grant of the privilege of the writ.
On the first allegation, we find that the supposed raid on petitioners' ampalaya farm was sufficiently controverted by respondents. Assuming, however, that respondents had in fact entered the ampalaya farm, petitioner Rey Pador himself admitted that they had done so with his permission, as stated in his affidavit. Finally, even assuming that the entry was done without petitioners' permission, the writ of amparo does not envisage the protection of concerns that are purely property or commercial in nature, as follows

On petitioners' second and third allegations, we find that the barangay captain's act of sending invitation letters to petitioners and failure to sign the receiving copy of their letter-reply did not violate or threaten their constitutional right to life, liberty or security. The records show that Barangay Captain Arcayan sufficiently explained the factual basis for his actions.

The fourth allegation of petitioner that, following these events, they can anticipate more harassment cases, false accusations and possible violence from respondents is baseless, unfounded, and grounded merely on pure speculations and conjectures. As such, this allegation does... not warrant the consideration of this Court.

On a final note, the privilege of the writ of amparo is an extraordinary remedy adopted to address the special concerns of extra-legal killings and enforced disappearances. " Accordingly, the remedy ought to be resorted to and granted judiciously, lest the ideal sought by the Amparo Rule be diluted and undermined by the indiscriminate filing of amparo petitions for purposes less than the desire to secure amparo reliefs and protection and/or on the basis of unsubstantiated allegations.

Infant JULIAN YUSA Y CARAM, represented by his mother, MA. CHRISTINA YUSAY CARAM, *Petitioner*, - versus - **Atty. MARIJOY D. SEGUI, Atty. SALLY D. ESCUTIN, VILMA B. CABRERA, and CELIA C. YANGCO, *Respondents*.**
G.R. No. 193652, EN BANC, August 5, 2014, VILLARAMA, JR., *J.*

The Amparo Rule was intended to address the intractable problem of "extralegal killings"and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof.

FACTS:
Ma. Christina Yusay Caram gave birth to Baby Julian out of an amorous relationship without the benefit of marriage. Christina voluntarily surrendered Baby Julian by way of a Deed of Voluntary Commitment to the DSWD in order to avoid placing her family in a potentially embarrassing situation for having a second illegitimate son. Christina changed her mind about the adoption and filed a petition for the issuance of a writ of amparo before the RTC of Quezon City. RTC issued a Writ of Amparo commanding the four respondents to produce the body of Baby Julian at a hearing scheduled and to file their verified written return to the writ. In one of its orders, it acknowledged that Baby Julian was brought before the court and the Christina was allowed to see him and take photographs of him. RTC dismissed the petition for issuance of a writ of amparo without prejudice to the filing of the appropriate action in court since Christina availed of the wrong remedy to regain custody of her child Baby Julian.

ISSUE:

Whether a petition for a writ of amparo is the proper recourse for obtaining parental authority and custody of a minor child.

RULING:
No. The Amparo Rule was intended to address the intractable problem of "extralegal killings"and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are killings committed without due process of law, i.e., without legal safeguards or judicial proceedings. On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.

In this case, DSWD officers never concealed Baby Julian's whereabouts. In fact, Christina obtained a copy of the DSWD's May 28, 2010 Memorandum explicitly stating that Baby Julian was in the custody of the Medina Spouses when she filed her petition before the RTC. Besides, she even admitted in her petition for review on certiorari that the respondent DSWD officers presented Baby Julian before the RTC during the hearing held in the afternoon of August 5, 2010. There is therefore, no "enforced disappearance" as used in the context of the Amparo rule as the third and fourth elements are missing.

Q. SELF-INCRIMINATION

JOSE JESUS M. DISINI, JR., ROWENA S. DISINI, LIANNE IVY P. MEDINA, JANETTE TORAL and ERNESTO SONIDO, JR., *Petitioners*, - versus - **THE SECRETARY OF JUSTICE, THE SECRETARY OF THE DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, THE EXECUTIVE DIRECTOR OF THE INFORMATION AND COMMUNICATIONS TECHNOLOGY OFFICE, THE CHIEF OF THE PHILIPPINE NATIONAL POLICE and THE DIRECTOR OF THE NATIONAL BUREAU OF INVESTIGATION, *Respondents*.**
G.R. No. 203335, EN BANC, February 11, 2014, ABAD, *J.*

The Court declared several provisions of Republic Act 10175, otherwise known as the Cybercrime Prevention Act of 2012 as void and unconstitutional for violation of fundamental rights of the people as will be discussed below.

FACTS:
Cyberspace is a system that accommodates millions and billions of simultaneous and on- going individual accesses to and uses of the internet. But all is not well with the system since it could not filter out a number of persons of ill will who would want to use cyberspace technology for mischiefs and crimes. One of them can, for instance, avail himself of the system to unjustly ruin the reputation of another or bully the latter by posting defamatory statements against him that people can read. Because of this, the Government saw the need to prevent these tomfooleries from happening and punish their perpetrators, hence the Cybercrime Prevention Act.

Petitioners move to declare several provision of R.A. 10175 (Cybercrime Prevention Act of 2012) unconstitutional and void on the ground that it violates several constitutional rights. Pending hearing and adjudication of the issues presented in these cases, on February 5, 2013 the Court extended the original 120-day temporary restraining order (TRO) that it earlier issued on October 9, 2012, enjoining respondent government agencies from implementing the cybercrime law until further orders.

ISSUE:
Whether or not RA 10175 is valid and constitutional

RULING:
The Court declared several provisions as void and unconstitutional. Those which are not included in the enumeration below were sustained.

1. Sec. 4 (c) (3) Penalizing posts of unsolicited commercial communications or SPAM.

Government points out that such are nuisance that wastes the storage and network capacities of internet service providers which reduces the efficiency of computers, commerce, technology and interferes with the owner's peaceful enjoyment of his property which amounts to trespass to one's privacy since the person sending out spams enters recipient's domain without prior permission.

Such was not accepted by the court for one there was no basis to state that it reduces the efficiency of computers and second the recipient has the option of not opening or reading these mail, there is the option to delete or not. And even before the arrival of computers people are already receiving unsolicited ads by mail and were never outlawed to be a nuisance since they might have interest in such ads. Further, unsolicited advertisements are legitimate forms of expression. Commercial speech though not accorded the same level of protection as that given to other constitutionally guaranteed forms of expression; it is nonetheless entitle to protection. The State cannot rob one of these rights without violating the constitutionally guaranteed freedom of expression.

2. Sec. 12- Authorizing the collection or recording of traffic data in real-time.
If such would be granted to law enforcement agencies it would curtail civil liberties or provide opportunities for official abuse. Sec. 12 is too broad and do not provide ample safeguards against crossing legal boundaries and invading the right to privacy.
Informational Privacy which is the interest in avoiding disclosure of personal matters has two aspects, specifically: (1) The right not to have private information disclosed; and (2) The right to live freely without surveillance and intrusion.
Sec. 12 applies to all information and communications technology users and transmitting communications is akin to putting a letter in an envelope properly addressed, sealing it closed and sending it through the postal service.
In congruence with Justices Carpio and Brion that when seemingly random bits of traffic data are gathered in bulk, pooled together, and analysed, they reveal patterns of activities which can be then used to create profiles of the persons under surveillance. Such information is likely beyond what the public may expect to be disclosed and clearly falls within matters protected by the right to privacy.
Another reason to strike down said provision is by reason that it allows collection and recording traffic data "with due cause". Section 12 does not bother to relate the collection of data to the probable commission of a particular crime. It is akin to the use of a general search warrant that the Constitution prohibits. Likewise it is bit descriptive of the purpose for which data collection will be used. The authority given is too sweeping and lacks restraint which only be used for Fishing Expeditions which

will unnecessarily expose the citizenry to leaked information or worse to extortion from certain bad elements in these agencies.

3. Sec. 19 Authorizing the DOJ to restrict or block access to suspected computer data.
Computer data produced by its author constitutes personal property regardless of where it is stored. The provision grants the Government the power to seize and place the computer data under its control and disposition without a warrant. The DOJ order cannot substitute to judicial search warrants.
Content of the computer data also constitute speech which is entitle to protection. If an executive officer be granted such power to acquire data without warrants and declare that its contents violates the law that would make him the judge, jury and executioner all rolled in one.
Section 19 also disregards jurisprudential guidelines established to determine the validity of restrictions on speech:

1. Dangerous tendency doctrine;
2. Balancing of interest test; and
3. Clear and present danger rule.

It merely requires that the data be blocked if on its face it violate any provision of the cybercrime law and considering Section 6 of said law, it can also be applied to any provision under the Revised Penal Code in connection with the Cybercrime law.

4. Section 4(c)(4) that penalizes libel in connection with section 5 which penalizes aiding or abetting to said felony.
Section 4 (c)(4) is valid and constitutional with respect to the original author of the post but void and unconstitutional with respect to other who simply receive the post and react to it.
With regards to the author of the post, Sec. 4 (c) (4) merely affirms that online defamation constitutes "similar means" for committing libel as defined under the RPC.
The internet encourages a freewheeling, anything-goes writing style. Facebook and Twitter were given as examples and stated that the acts of liking, commenting, sharing or re- tweets, are not outright considered to be "aiding or abetting." Such if compared to the physical world would be mere expressions or reactions made regarding a specific post.
The terms "aiding or abetting" constitute a broad sweep that generates a chilling effect on those who express themselves through cyberspace posts, comments, and other messages.
If such means are adopted, self-inhibition borne of fear of what sinister predicament awaits internet users will suppress otherwise robust discussion of public issues and democracy will be threatened together with all liberties.

5. Charging offenders of violation of RA 10175 and the RPC both with regard to libel; likewise with RA 9775 on Child pornography constitutes double jeopardy.
The acts defined in the Cybercrime Law involve essentially the same elements and are in fact one and the same with the RPC and RA 9775.

UNITED STATES – versus – BALSYS
524 U.S. 666, REHNQUIST COURT, June 25, 1998

Although resident aliens are entitled to the same Fifth Amendment protections as citizen "persons" the risk of their deportation is not sufficient to sustain a self-incrimination privilege intended to apply only to the United States government. The Court explained that since the Fifth Amendment does not bind foreign governments, and that would not be subject to domestic enforcement of immunity-for-testimony deals, one could not assert a self-incrimination protection against possible prosecution at their hands.

FACTS:
When the Office of Special Investigations of the Department of Justice's Criminal Division (OSI) subpoenaed respondent Balsys, a resident alien, to testify about his wartime activities between 1940 and 1944 and his immigration to the United States, he claimed the Fifth Amendment privilege against self-incrimination, based on his fear of prosecution by a foreign nation. The Federal District Court granted OSI's petition to enforce the subpoena, but the Second Circuit vacated the order, holding that a witness with a real and substantial fear of prosecution by a foreign country may assert the privilege to avoid giving testimony in a domestic proceeding, even if the witness has no valid fear of a criminal prosecution in this country.

ISSUE:
Whether or not foreign prosecution is within the scope of Self-incrimination Clause.

RULING:
Foreign prosecution is within the scope of Self-incrimination Clause.

As a resident alien, Balsys is a "person" who, under that Clause, cannot "be compelled in any criminal case to be a witness against himself." However, the question here is whether a criminal prosecution by a foreign government not subject to this country's constitutional guarantees presents a "criminal case" for purposes of the privilege. In the precursors of this case, the Court concluded that prosecution in a state jurisdiction not bound by the Self-Incrimination Clause is beyond the purview of the privilege.

The Court's precedent turned away from this proposition once, in *Malloy* v. *Hogan*, where it applied the Fourteenth Amendment due process incorporation to the Self-Incrimination Clause, so as to bind the States as well as the National Government by its terms. It immediately said, in *Murphy* v. *Waterfront Comm'n of N.* Y. *Harbor*, that *Malloy* necessitated a reconsideration of *Murdock's* rule. After *Malloy,* the Fifth Amendment limitation was no longer framed for one jurisdiction alone, each jurisdiction having instead become subject to the same privilege claim flowing from the same source. Since fear of prosecution in the one jurisdiction now implicated the very privilege binding upon the other, the *Murphy* opinion sensibly recognized that if a witness could not assert the privilege in such circumstances, the witness could be "whipsawed" into incriminating himself under both state and federal law, even though the privilege was applicable to each. Such whipsawing is possible because the privilege against self-incrimination can be exchanged by the government for an immunity to prosecutorial use of any compelled inculpatory testimony. Such an exchange by the government is permissible only when it provides immunity as broad as the privilege. *Malloy* had held the privilege binding on the state jurisdictions as well as the National Government, it would have been intolerable to allow a prosecutor in one or the other jurisdiction to eliminate the privilege by offering immunity less complete than the privilege's dual jurisdictional reach. To the extent that the *Murphy* Court undercut *Murdock's* rationale on historical grounds, its reasoning that English cases supported a more expansive reading of the Clause is flawed and cannot be accepted now.

R. DOUBLE JEOPARDY

PEOPLE OF THE PHILIPPINES, *Petitioner*, - versus - HON. GREGORIO G. PINEDA, Branch XXI, Court of First Instance of Rizal, and CONSOLACION NAVAL, *Respondents*.
G.R. No. 44205, EN BANC, February 16, 1993, MELO, *J.*

Withal, the mere filing of two information charging the same offense is not an appropriate basis for the invocation of double jeopardy since the first jeopardy has not yet set in by a previous conviction, acquittal or termination of the case without the consent of the accused.

FACTS:
Consolacion Naval, herein private respondent, was separately accused of having committed the crime of estafa and of falsification, both before the then Court of First Instance of Rizal. She sought the quashal of the latter charge on the supposition that she is in danger of being convicted for the same felony. Her first attempt in this respect did not spell success, but the Honorable Gregorio G. Pineda, Presiding Judge of Branch 21 was persuaded to the contrary thereafter on the belief that the alleged falsification was a necessary means of committing estafa. The confluence of the foregoing assertions disclose that Consolacion Naval sold the subject realty to Edilberto Ilano who made a partial payment of P130,850.00. About two years later, an application for registration under the Land Registration Act was submitted by Consolacion wherein she stated that she owned the same lot and that it was unencumbered. For those reasons, the corresponding title was issued in her name.

These antecedents spawned the simultaneous institution of the charges. Consolacion Naval moved to quash the information for falsification, premised, among other things, on the apprehension that she is in danger of being condemned for an identical offense. The following day, Naval pleaded not guilty to the charge levelled against her for falsification. The court a quo denied her motion to quash. The magistrate below thereafter reconsidered his order of denial which gave rise to the corresponding unsuccessful bid by the People for reinstatement of the information for falsification. Hence the instant petition

ISSUE:
Whether the court below correctly quashed the information for falsification.

RULING:
The theory of a single crime advanced by private respondent in her "second" motion to quash couched as motion for reconsideration is not synonymous with "pardon, conviction, acquittal or jeopardy". In effect, therefore, respondent judge accommodated another basis for the quashal of the information albeit the same was not so stated in the motion therefor. This should not have been tolerated.

At any rate, it is virtually unacceptable to suppose that private respondent concocted the scheme of falsification in 1971 precisely to facilitate the commission of estafa in 1973 such that both crimes emanated from a single criminal impulse. It was similarly fallacious for the lower court to have shared the notion that private respondent is in danger of being convicted twice for the same criminal act, a circumstance recognized under Section 2(h) Rule 117 of the Old Rules as suggested in the motion to quash, because this plea is understood to presuppose that the other case against private respondent has been dismissed or otherwise terminated without her express consent, by a court of competent jurisdiction, upon a valid complaint or information, and after the defendant had pleaded to the charge.

Withal, the mere filing of two information charging the same offense is not an appropriate basis for the invocation of double jeopardy since the first jeopardy has not yet set in by a previous conviction, acquittal or termination of the case without the consent of the accused. Moreover, it appears that private respondent herein had not yet been arraigned in the previous case for estafa.

PEOPLE OF THE PHILIPPINES, *Petitioner*, - versus -
HON. TIRSO D. C. VELASCO in his capacity as the Presiding Judge, RTC-Br. 88, Quezon City, and HONORATO GALVEZ, *Respondents*.
G.R. No. 127444, EN. BANC, September 13, 2000, BELLOSILLO, *J.*

The requisites for invoking double jeopardy are the following: (a) a valid complaint or information; (b) before a competent court before which the same is filed; (c) the defendant had pleaded to the charge; and, (d) the defendant was acquitted, or convicted, or the case against him dismissed or otherwise terminated without his express consent.

FACTS:
A shooting took place and claimed the life of Alex Vinculado and seriously injured his brother Levi who permanently lost his left vision. Their uncle, Miguel Vinculado, Jr. was also shot. A slug tunneled through his right arm, pierced the right side of his body and burrowed in his stomach where it remained until extracted by surgical procedure. Thus, three informations - one for homicide and two for frustrated homicide - were filed against Honorato Galvez, Mayor of San Ildefonso, and Godofredo Diego, a municipal employee and alleged bodyguard of the mayor. However, the charges were withdrawn and a new set filed against the accused upgrading the crimes to murder and frustrated murder. Mayor Galvez was also charged with violation of PD 1866 for unauthorized carrying of firearm outside his residence; hence, a fourth information had to be filed. The court found Diego guilty of murder and double frustrated murder. However, Mayor Galvez was acquitted of the crimes charged against him for insufficiency of evidence and finding that the act of carrying of firearm was not a violation of law. The acquittal of Galvez is now challenged by the Government in a Petition for Certiorari under Rule 65 and Sec. 1, Art. VIII, of the Constitution that the exculpation of Galvez from all criminal responsibility by Judge Velasco constitutes grave abuse of discretion amounting to lack of jurisdiction. Allegedly, the judge deliberately and wrongfully disregarded certain facts and evidence on record which, if judiciously considered, would have led to a finding of guilt of the accused beyond reasonable doubt. Petitioner proposes that this patently gross judicial indiscretion and arbitrariness should be rectified by a re-examination of the evidence by the Court upon a determination that a review of the case will not transgress the constitutional guarantee against double jeopardy.

ISSUE:
Whether or not elevating the issue of criminal culpability of Galvez despite acquittal should be considered violative of the constitutional right of the accused against double jeopardy.

RULING:
Yes. A remand to a trial court of a judgment of acquittal brought before the Supreme Court on certiorari cannot be had unless there is a finding of mistrial, as in *Galman v. Sandiganbayan (G.R. No. 72670, 12 September 1986)*. Thus, the doctrine that "double jeopardy may not be invoked after trial" may apply only when the Court finds that the "criminal trial was a sham" because the prosecution representing the sovereign people in the criminal case was denied due process. In such case, the remand remand of the criminal case for further hearing and/or trial before the lower courts amounts merely to a continuation of the first jeopardy, and does not expose the accused to a second jeopardy." Philippine jurisprudence has been consistent in its application of the Double Jeopardy Clause such that it has viewed with suspicion, and not without good reason, applications for the extraordinary writ questioning decisions acquitting an accused on ground of grave abuse of discretion.

In this case, the petition at hand which seeks to nullify the decision of respondent judge acquitting the accused Honorato Galvez goes deeply into the trial court's appreciation and evaluation in esse of the evidence adduced by the parties. A reading of the questioned decision shows that respondent judge considered the evidence received at trial. These consisted among others of the testimonies relative to the positions of the victims vis-à-vis the accused and the trajectory, location and nature of the gunshot wounds, and the opinion of the expert witness for the prosecution. While the appreciation thereof may have resulted in possible lapses in evidence evaluation, it nevertheless does not detract from the fact that the evidence was considered and passed upon. This consequently exempts the act from the writ's limiting requirement of excess or lack of jurisdiction. As such, it becomes an improper object of and therefore non-reviewable by certiorari. To reiterate, errors of judgment are not to be confused with errors in the exercise of jurisdiction.

PEOPLE OF THE PHILIPPINES, *Petitioner*, - *versus* - THE SANDIGANBAYAN (FOURTH DIVISION) and ALEJANDRO A. VILLAPANDO, *Respondents*.
G.R. No. 164185, SECOND DIVISION, July 23, 2008, QUISUMBING, *J.*

When there is a grave abuse of discretion in the grant of demurrer to evidence and acquittal of the accused, further prosecution of the accused would not violate the constitutional proscription on double jeopardy. In this case, Villapando can still be prosecuted despite of his acquittal before the Sandiganbayan because the latter acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

FACTS:
During the May 11, 1998 elections, Villapando ran for Municipal Mayor of San Vicente, Palawan. Orlando M. Tiape, a relative of Villapando's wife, ran for Municipal Mayor of Kitcharao, Agusan del Norte. Villapando won while Tiape lost. Thereafter, on July 1, 1998, Villapando designated Tiape as Municipal Administrator of the Municipality of San Vicente, Palawan.

Solomon B. Maagad and Renato M. Fernandez charged Villapando and Tiape for violation of Article 244 of the Revised Penal Code before the Office of the Deputy Ombudsman for Luzon. The complaint was resolved against Villapando and Tiape and the two were charged for violation of Article 244 of the Revised Penal Code with the Sandiganbayan. Upon arraignment, Villapando pleaded not guilty. Meanwhile, the case against Tiape was dismissed after the prosecution proved his death. Villapando filed his Demurrer to Evidence before the Sandiganbayan. The Demurrer to Evidence was found with merit and Villapando was acquitted of the crime charged. Subsequently, The Ombudsman filed a petition through the Office of the Special Prosecutor.

ISSUE:
Whether or not Villapando can be prosecuted despite of his acquittal before the Sandiganbayan.

RULING:
Yes, because the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Although this Court held that once a court grants the demurrer to evidence, such order amounts to an acquittal and any further prosecution of the accused would violate the constitutional proscription on double jeopardy, this Court held in the same case that such ruling on the matter shall not be disturbed *in the absence of a grave abuse of discretion*.

Section 6, Article IX of the 1987 Constitution states no candidate who has lost in any election shall, within one year after such election, be appointed to any office in the government or any government-owned or controlled corporation or in any of their subsidiaries. Section 94(b) of the Local

Government Code of 1991, for its part, states that except for losing candidates in barangay elections, no candidate who lost in any election shall, within one year after such election, be appointed to any office in the government or any government-owned or controlled corporation or in any of their subsidiaries. Petitioner argues that the court erred when it ruled that temporary prohibition is not synonymous with the absence of lack of legal qualification.

The Sandiganbayan, Fourth Division held that the qualifications for a position are provided by law and that it may well be that one who possesses the required legal qualification for a position may be temporarily disqualified for appointment to a public position by reason of the one-year prohibition imposed on losing candidates. However, there is no violation of Article 244 of the Revised Penal Code should a person suffering from temporary disqualification be appointed so long as the appointee possesses all the qualifications stated in the law.

In this case, the Sandiganbayan, Fourth Division, in disregarding basic rules of statutory construction, acted with grave abuse of discretion. Its interpretation of the term legal disqualification in Article 244 of the Revised Penal Code defies legal cogency. Legal disqualification cannot be read as excluding temporary disqualification in order to exempt therefrom the legal prohibitions under the 1987 Constitution and the Local Government Code of 1991.

JASON IVLER y AGUILAR, *Petitioner*, - versus- HON. MARIA ROWENA MODESTO-SAN PEDRO, Judge of the Metropolitan Trial Court, Branch 71, Pasig City, and EVANGELINE PONCE, *Respondents*.
G.R. No. 172716, SECOND DIVISION, November 17, 2010, CARPIO, *J.*

Reckless imprudence under Article 365 is a single quasi-offense by itself and not merely a means to commit other crimes such that conviction or acquittal of such quasi-offense bars subsequent prosecution for the same quasi-offense, regardless of its various resulting acts, undergirded this Court's unbroken chain of jurisprudence on double jeopardy as applied to Article 365.

FACTS:
Following a vehicular collision, Jason Ivler was charged before with two separate offenses: (1) Reckless Imprudence Resulting in Slight Physical Injuries for injuries sustained by Evangeline Ponce; and (2) Reckless Imprudence Resulting in Homicide and Damage to Property for the death of Evangeline's husband Nestor Ponce and damage to the Spouses Ponce's vehicle. Ivler posted bail for his temporary release in both cases. Ivler pleaded guilty to the charge in the first case and was meted out the penalty of public censure. Invoking this conviction, Ivler moved to quash the Information in the second case for placing him in jeopardy of second punishment for the same offense of reckless imprudence.

ISSUE:
Whether or not Ivler's constitutional right under the Double Jeopardy Clause bars further proceedings in the criminal case.

RULING:
Yes. Reckless imprudence under Article 365 is a single quasi-offense by itself and not merely a means to commit other crimes such that conviction or acquittal of such quasi-offense bars subsequent prosecution for the same quasi-offense, regardless of its various resulting acts, undergirded this Court's unbroken chain of jurisprudence on double jeopardy as applied to Article 365. Hence, Ivler's prior conviction of the crime of Reckless Imprudence Resulting in Slight Physical Injuries bars a

subsequent prosecution for the crime of Reckless Imprudence Resulting in Homicide as it arises from the same act upon which the first prosecution was based.

S. EX POST FACTO LAWS AND BILLS OF ATTAINDER

ORLANDO L. SALVADOR, for and in behalf of the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, *Petitioner*, - versus - PLACIDO L. MAPA, JR., RAFAEL A. SISON, ROLANDO M. ZOSA, CESAR C. ZALAMEA, BENJAMIN BAROT, CASIMIRO TANEDO, J.V. DE OCAMPO, ALICIA L. REYES, BIENVENIDO R. TANTOCO, JR., BIENVENIDO R. TANTOCO, SR., FRANCIS B. BANES, ERNESTO M. CARINGAL, ROMEO V. JACINTO, and MANUEL D. TANGLAO, *Respondents*. G.R. No. 135080, THIRD DIVISION, November 28, 2007, NACHURA, *J.*

The constitutional doctrine that outlaws an ex post facto law generally prohibits the retrospectivity of penal laws. ***The subject administrative and memorandum orders clearly do not come within the shadow of this definition.*** *Administrative Order No. 13 creates the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, and provides for its composition and functions. It does not mete out penalty for the act of granting behest loans.*

FACTS:
On October 8, 1992 then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans. Several loan accounts were referred to the Committee for investigation, including the loan transactions between Metals Exploration Asia, Inc. (MEA), now Philippine Eagle Mines, Inc. (PEMI) and the Development Bank of the Philippines (DBP).

After examining and studying the documents relative to the loan transactions, the Committee determined that they bore the characteristics of behest loans, as defined under Memorandum Order No. 61 because the stockholders and officers of PEMI were known cronies of then President Ferdinand Marcos; the loan was under-collateralized; and PEMI was undercapitalized at the time the loan was granted. Consequently, Atty. Salvador, Consultant of the Fact-Finding Committee, and representing the Presidential Commission on Good Government (PCGG), filed with the Office of the Ombudsman a sworn complaint for violation of Sections 3(e) and (g) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, against the respondents.

The Ombudsman dismissed the complaint. It dismissed the complaint holding that the offenses charged had already prescribed. It bears mention that the acts complained of were committed before the issuance of BP 195 on March 2, 1982. Hence, the prescriptive period in the instant case is ten (10) years as provided in the (sic) Section 11 of R.A. 3019, as originally enacted. Equally important to stress is that the subject financial transactions between 1978 and 1981 transpired at the time when there was yet no Presidential Order or Directive naming, classifying or categorizing them as Behest or Non-Behest Loans. The Presidential Ad Hoc Committee on Behest Loans was created on October 8, 1992 under Administrative Order No. 13. Subsequently, Memorandum Order No. 61, dated November 9, 1992, was issued defining the criteria to be utilized as a frame of reference in determining behest loans. Accordingly, if these Orders are to be considered the bases of charging respondents for alleged offenses committed, they become ex-post facto laws which are proscribed by the Constitution. The Committee filed a Motion for Reconsideration, but it was denied.

ISSUES:
1. Whether or not the crime charged had already prescribed.

2. Whether or not A.O. 13 and M.O. 61 are ex-post facto laws.

RULING:

1. The crime charged had not yet prescribed.

The issue of prescription has long been settled by this Court in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, thus:

> It is well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the... loans." Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which the respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.

Since the prescriptive period commenced to run on the date of the discovery of the offenses, and since discovery could not have been made earlier than October 8, 1992, the date when the Committee was created, the criminal offenses allegedly committed by the respondents had not yet prescribed when the complaint was filed on October 4, 1996.

2. Administrative Order No. 13 and Memorandum Order No. 61 are not ex post facto laws.

An ex post facto law has been defined as one (a) which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or (b) which aggravates a crime or makes it greater than it was when committed; or (c) which... changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or (d) which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order... to convict the defendant.[22] This Court added two (2) more to the list, namely: (e) that which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful; or (f) that which deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

The constitutionality of laws is presumed. To justify nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful or arguable implication; a law shall not be declared invalid unless the conflict with the Constitution is clear beyond... reasonable doubt. The presumption is always in favor of constitutionality.

The constitutional doctrine that outlaws an ex post facto law generally prohibits the retrospectivity of penal laws. **The subject administrative and memorandum orders clearly do not come within the shadow of this definition.** Administrative Order No. 13 creates the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, and provides for its composition and functions. It does not mete out penalty for the act of granting behest loans. Memorandum Order No. 61 merely provides a frame of reference for determining behest loans. Not being penal laws, Administrative Order No. 13 and Memorandum Order No. 61 cannot be characterized as ex post facto laws. There is, therefore, no basis for the Ombudsman to rule that the subject administrative and memorandum orders are ex post facto.

SR. INSP. JERRY C. VALEROSO, *Petitioner*, - versus - THE PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 164815, THIRD DIVISION, February 22, 2008, REYES, R.T., *J.*

As a general rule, penal laws should not have retroactive application, lest they acquire the character of an ex post facto law. An exception to this rule, however, is when the law is advantageous to the accused.

FACTS:
Jerry Valeroso was charged with illegal possession of firearm and ammunition under P.D. 1866 in which he pleaded not guilty. The trial court found Valeroso guilty sentencing him to suffer the penalty of *prision correccional* in its maximum period or from 4 years, 2 months and 1 day as minimum to 6 years as maximum and to pay the fine in the amount of P15,000. The CA affirmed with modification the RTC's decision stating that "Verily, the penalty imposed by the trial court upon the accused-appellant is modified to 4 years and 2 months as minimum up to 6 years as maximum."

ISSUE:
Whether or not the CA correctly modified the penalty imposed.

RULING:
Yes. P.D. No. 1866, as amended, was the governing law at the time petitioner committed the offense on July 10, 1996. However, R.A. No. 8294 amended P.D. No. 1866 on July 6, 1997, during the pendency of the case with the trial court. The present law now states that the of *prision correccional* in its maximum period and a fine of not less than Fifteen Thousand Pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low-powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided*, That no other crime was committed.

As a general rule, penal laws should not have retroactive application, lest they acquire the character of an *ex post facto* law. An exception to this rule, however, is when the law is advantageous to the accused. Although an additional fine of P15,000.00 is imposed by R.A. No. 8294, the same is still advantageous to the accused, considering that the imprisonment is lowered to *prision correccional* in its maximum period from *reclusion temporal* in its maximum period to *reclusion perpetua* under P.D. No. 1866.

Applying the Indeterminate Sentence Law, *prision correccional* maximum which ranges from four (4) years, two (2) months and one (1) day to six (6) years, is the prescribed penalty and will form the maximum term of the indeterminate sentence. The minimum term shall be one degree lower, which is *prision correccional* in its medium period (two [2] years, four [4] months and one [1] day to four [4] years and two [2] months). Hence, the penalty imposed by the CA is correct. The penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum term, to six (6) years of *prision correccional* maximum, as maximum term.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, - versus - EDUARDO M. COJUANGCO, JR., JUAN PONCE ENRILE, MARIA CLARA LOBREGAT, JOSE ELEAZAR, JR., JOSE CONCEPCION, ROLANDO P. DELA CUESTA, EMMANUEL M. ALMEDA, HERMENEGILDO C. ZAYCO, NARCISO M. PINEDA, IÑAKI R. MENDEZONA, DANILO S. URSUA, TEODORO D. REGALA, VICTOR P. LAZATIN, ELEAZAR B. REYES, EDUARDO U. ESCUETA, LEO J. PALMA, DOUGLAS LU YM, SIGFREDO VELOSO and JAIME GANDIAGA, *Respondents*.
G.R. No. 139930, EN BANC, June 26, 2012, ABAD, *J.*

Section 15, Article XI of the 1987 Constitution applies only to civil actions for recovery of ill-gotten wealth, not to criminal cases *such as the complaint against respondents in OMB-0-90-2810. Thus, the prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth contemplated in Section 15, Article XI of the 1987 Constitution may be barred by prescription.*

In the prosecution of cases of behest loans, the Court reckoned the prescriptive period from the discovery of such loans. ***Those circumstances do not obtain in this case****. For one thing, what is questioned here is not the grant of behest loans that, by their nature, could be concealed from the public eye by the simple expedient of suppressing their documentations.*

FACTS:
On April 25, 1977, the respondents incorporated the United Coconut Oil Mills, Inc. (UNICOM) with an authorized capital stock of P100 million divided into one million shares with a par value of P100 per share. The incorporators subscribed to 200,000 shares worth P20 million and paid P5 million. On September 26, 1978 UNICOM amended its capitalization. On August 29, 1979 the Board of Directors of the United Coconut Planters Bank (UCPB) approved Resolution 247-79 authorizing UCPB, the Administrator of the Coconut Industry Investment Fund (CII Fund), to invest not more than P500 million from the fund in the equity of UNICOM for the benefit of the coconut farmers. On September 4, 1979 UNICOM increased its authorized capital stock to 10 million shares without par value. The Certificate of Increase of Capital Stock stated that the incorporators held one million shares without par value and that UCPB subscribed to 4 million shares worth P495 million. On September 18, 1979 a new set of UNICOM directors approved another amendment to UNICOM's capitalization. This increased its authorized capital stock to one billion shares.

About 10 years later or on March 1, 1990 the OSG filed a complaint for violation of R.A. 3019 against respondents, the 1979 members of the UCPB board of directors, before PCGG. The OSG alleged that UCPB's investment in UNICOM was manifestly and grossly disadvantageous to the government since UNICOM had a capitalization of only P5 million and it had no track record of operation. The PCGG subsequently referred the complaint to the Office of the Ombudsman.

About nine years later or on March 15, 1999 the Office of the Special Prosecutor (OSP) issued a Memorandum, stating that although it found sufficient basis to indict respondents for violation of Section 3(e) of R.A. 3019, the action has already prescribed. The Office of the Ombudsman approved the OSP's recommendation for dismissal of the complaint. It additionally ruled that UCPB's subscription to the shares of stock of UNICOM on September 18, 1979 was the proper point at which the prescription of the action began to run since respondents' act of investing into UNICOM was consummated on that date. Notably, when the crime was committed in 1979 the prescriptive period for it had not yet been amended. The original provision of Section 11 of R.A. 3019 provided for prescription of 10 years. Thus, the OSG filed its complaint out of time.

ISSUE:
Whether or not respondents' alleged violation of Section 3(e) of R.A. 3019 already prescribed.

RULING:
Section 15, Article XI of the 1987 Constitution provides that the **right of the State to recover properties unlawfully acquired by public officials or employees is not barred by prescription, laches, or estoppel.** But the Court has already settled in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* that **Section 15, Article XI of the 1987 Constitution applies only to civil actions for recovery of ill-gotten wealth, not to criminal cases** such as the complaint against

respondents in OMB-0-90-2810. Thus, the prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth contemplated in Section 15, Article XI of the 1987 Constitution may be barred by prescription.

Now R.A. 3019 being a special law, the 10-year prescriptive period should be computed in accordance with Section 2 of Act 3326, which provides:

> **Section 2.** Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment

In the prosecution of cases of behest loans, the Court reckoned the prescriptive period from the discovery of such loans. The reason for this is that the government, as aggrieved party, could not have known that those loans existed when they were made. Both parties to such loans supposedly conspired to perpetrate fraud against the government. They could only have been discovered after the 1986 EDSA Revolution when the people ousted President Marcos from office. And, prior to that date, no person would have dared question the legality or propriety of the loans.

Those circumstances do not obtain in this case. For one thing, what is questioned here is not the grant of behest loans that, by their nature, could be concealed from the public eye by the simple expedient of suppressing their documentations.

The OSG made no allegation that respondent members of the board of directors of UCPB connived with UNICOM to suppress public knowledge of the investment. The OSG makes no allegation that the SEC denied public access to UCPB's investment in UNICOM during martial law at the President's or anyone else's instance. Indeed, no accusation of this kind has ever been hurled at the SEC with reference to corporate transactions of whatever kind during martial law since even that regime had a stake in keeping intact the integrity of the SEC as an instrumentality of investments in the Philippines.

And, granted that the feint-hearted might not have the courage to question the UCPB investment into UNICOM during martial law, the second element that the action could not have been instituted during the 10-year period because of martial law does not apply to this case. The last day for filing the action was, at the latest, on February 8, 1990, about four years after martial law ended. Petitioner had known of the investment it now questions for a sufficiently long time yet it let those four years of the remaining period of prescription run its course before bringing the proper action.

BUREAU OF CUSTOMS EMPLOYEES ASSOCIATION (BOCEA), represented by its National President (BOCEA National Executive Council) Mr. Romulo A. Pagulayan, *Petitioner*,
- versus - **HON. MARGARITO B. TEVES, in his capacity as Secretary of the Department of Finance, HON. NAPOLEON L. MORALES, in his capacity as Commissioner of the Bureau of Customs, HON. LILIAN B. HEFTI, in her capacity as Commissioner of the Bureau of Internal Revenue, *Respondents*.**
G.R. No. 181704, EN BANC, December 6, 2011, VILLARAMA, JR., *J.*

A bill of attainder is a legislative act which inflicts punishment on individuals or members of a particular group without a judicial trial. R.A. No. 9335 does not possess the elements of a bill of attainder. It does not seek to inflict punishment without a judicial trial. R.A. No. 9335 merely lays down the grounds for the termination of a BIR or BOC official or employee and provides for the consequences thereof. The

democratic processes are still followed and the constitutional rights of the concerned employee are amply protected.

FACTS:
President Gloria Macapagal-Arroyo signed into law R.A. No. 9335, otherwise known as the Attrition Act of 2005. It was enacted to optimize the revenue-generation capability and collection of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC). The law intends to encourage BIR and BOC officials and employees to exceed their revenue targets by providing a system of rewards and sanctions through the creation of a Rewards and Incentives Fund and a Revenue. Performance Evaluation Board. The Implementing Rules and Regulations (IRR) of the Act was approved and became effective in 2006. The Bureau of Customs Employees Association (BOCEA), an association of rank-and-file employees of the BOC, assail the constitutionality of R.A. No. 9335 and its IRR alleging that it is in violation of the fundamental rights of its members. BOCEA aver, among others, that R.A. No. 9335 is a bill of attainder because it inflicts punishment upon a particular group or class of officials and employees without trial. This is evident from the fact that the law confers upon the Board the power to impose the penalty of removal upon employees who do not meet their revenue targets; that the same is without the benefit of hearing; and that the removal from service is immediately executory.

ISSUE:
Whether or not R.A. No. 9335 is a bill of attainder.

RULING:
NO. R.A. No. 9335 and its IRR are constitutional. A bill of attainder is a legislative act which inflicts punishment on individuals or members of a particular group without a judicial trial. Essential to a bill of attainder are a specification of certain individuals or a group of individuals, the imposition of a punishment, penal or otherwise, and the lack of judicial trial. R.A. No. 9335 does not possess the elements of a bill of attainder. It does not seek to inflict punishment without a judicial trial. R.A. No. 9335 merely lays down the grounds for the termination of a BIR or BOC official or employee and provides for the consequences thereof. The democratic processes are still followed and the constitutional rights of the concerned employee are amply protected. It must be noted that this is not the first time the constitutionality of R.A. No. 9335 and its IRR are being challenged. The Court already settled the majority of the same issues raised by BOCEA in its decision in Abakada Guro Party List v. Purisima (G.R. No. 166715, August 14, 2008), which attained finality on September 17, 2008.

VII. CITIZENSHIP

MARY GRACE NATIVIDAD S. POE-LLAMANZARES, *Petitioners*, - versus -
COMELEC AND ESTRELLA C. ELAMPARO *Respondents*.
G.R. No. 221697, EN BANC, March 8, 2016, PEREZ, *J.*

Foundlings are as a class, natural-born citizens.

FACTS:
Petitioner Grace Poe was found abandoned as a newborn infant in the Parish Church of Jaro, Iloilo, by a certain Edgardo Militar, who took custody of her. When Poe reached the age of five, celebrity spouses Fernando Poe, Jr. and Susan Roces formally adopted her via a petition for adoption with the MTC of San Juan. Poe became a naturalized American citizen and obtained a US passport after marrying her husband who was a citizen of both the Philippines and the US. Poe eventually resettled

in the Philippines after the untimely demise of her father and took her Oath of Allegiance to the Republic pursuant to R.A. No. 9225. Poe filed her Certificate of Candidacy for the Presidency for the May 2016 Elections where she declared that she is a natural-born citizen. Private respondents filed these cases against her for the alleged misrepresentation Poe made in stating that she is a natural-born Filipino on account of being a foundling.

ISSUE:
Whether or not a foundling like Grace Poe is a natural-born Filipino citizen.

RULING:
Yes. The fact is that petitioner's blood relationship with a Filipino citizen is demonstrable. There is more than sufficient evidence that petitioner has Filipino parents and is therefore a natural-born Filipino. Parenthetically, the burden of proof was on private respondents to show that petitioner is not a Filipino citizen. The private respondents should have shown that her parents were aliens. Poe's admission that she is a foundling did not shift the burden to her because such status did not exclude the possibility that her parents were Filipinos, especially as in this case where there is a high probability, if not certainty, that her parents are Filipinos.

As a matter of law, foundlings are as a class, natural-born citizens. While the 1935 Constitution's enumeration is silent as to foundlings, there is no restrictive language which would definitely exclude foundlings either. Because of silence and ambiguity in the enumeration with respect to foundlings, there is a need to examine the intent of the framers. Deliberations of the 1934 Constitutional Convention show that the framers intended foundlings to be covered by the enumeration. Though the Rafols amendment was not carried out, it was not because there was any objection to the notion that persons of unknown parentage are not citizens but only because their number was not enough to merit specific mention. In international law, foundlings are likewise presumed to have the nationality of the country of birth. While international conventions providing this principle are yet unratified by the Philippines, they are nevertheless generally accepted principles of international law.

THE REPUBLIC OF THE PHILIPPINES, *Petitioner*, - versus - NORA FE SAGUN, *Respondent*.
G.R. No. 187567, FIRST DIVISION, February 15, 2012, VILLARAMA, JR., *J.*

The phrase reasonable time has been interpreted to mean that the election of Filipino citizenship should be made generally within three (3) years from reaching the age of majority.

FACTS:
Respondent is the legitimate child of Albert Chan, a Chinese national, and Marta Borromeo, a Filipino citizen. She was born on August 8, 1959 and did not elect Philippine citizenship upon reaching the age of majority. It was only after she married Alex Sagun, at the age of 33, did she execute an Oath of Allegiance to the Republic of the Philippines. This document was, however, not recorded and registered with the Local Civil Registrar. Respondent thereafter applied for a Philippine passport but the same was denied due to her father's citizenship and there being no annotation on her birth certificate that she has elected Philippine citizenship. Consequently, she sought a judicial declaration of her election of Philippine citizenship and prayed that the Local Civil Registrar of Baguio City be ordered to annotate the same on her birth certificate.

ISSUE:

Whether or not an election of Philippine citizenship, made twelve years after reaching the age of majority, is considered to have been made within a reasonable time as interpreted by jurisprudence.

RULING:
No. Respondent failed to comply with the legal requirements for a valid election. Specifically, the execution of a sworn statement of her election of Philippine citizenship. The only documentary evidence submitted by respondent in support of her claim of alleged election was her oath of allegiance, executed 12 years after she reached the age of majority, which was unregistered. As aptly pointed out by the petitioner, even assuming arguendo that respondents oath of allegiance suffices, its execution was not within a reasonable time after respondent attained the age of majority and was not registered with the nearest civil registry as required under Section 1 of CA No. 625. The phrase reasonable time has been interpreted to mean that the election should be made generally within three years from reaching the age of majority. Moreover, there was no satisfactory explanation proffered by respondent for the delay and the failure to register with the nearest local civil registry.

AASJS (ADVOCATES AND ADHERENTS OF SOCIAL JUSTICE FOR SCHOOL TEACHERS AND ALLIED WORKERS) MEMBER - HECTOR GUMANGAN CALILUNG, *Petitioner*, - versus - **THE HONORABLE SIMEON DATUMANONG, in his official capacity as the Secretary of Justice, *Respondent*.**
G.R. No. 160869, EN BANC, May 11, 2007, QUISUMBING, *J.*

What Rep. Act No. 9225 does is allow dual citizenship to natural-born Filipino citizens who have lost Philippine citizenship by reason of their naturalization as citizens of a foreign country. On its face, it does not recognize dual allegiance. By swearing to the supreme authority of the Republic, the person implicitly renounces his foreign citizenship.

FACTS:
Petitioner filed a petition and prays that a writ of prohibition be issued to stop respondent from implementing Republic Act No. 9225, entitled "An Act Making the Citizenship of Philippine Citizens Who Acquire Foreign Citizenship Permanent, Amending for the Purpose Commonwealth Act No. 63, As Amended, and for Other Purposes" which he avers that Rep. Act No. 9225 is unconstitutional as it violates Section 5, Article IV of the 1987 Constitution that states, "Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law."
R.A. 9225:

> SEC. 2. *Declaration of Policy*.-It is hereby declared the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act.
>
> SEC. 3. *Retention of Philippine Citizenship*.-Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have reacquired Philippine citizenship upon taking the oath of allegiance to the Republic.

ISSUE:
(1) Is Rep. Act No. 9225 unconstitutional?
(2) Does this Court have jurisdiction to pass upon the issue of dual allegiance?

RULING:
No. Section 5, Article IV of the Constitution is a declaration of a policy and it is not a self-executing provision. What Rep. Act No. 9225 does is allow dual citizenship to natural-born Filipino citizens who have lost Philippine citizenship by reason of their naturalization as citizens of a foreign country. On its face, it does not recognize dual allegiance. By swearing to the supreme authority of the Republic, the person implicitly renounces his foreign citizenship. Plainly, from Section 3, Rep. Act No. 9225 stayed clear out of the problem of dual allegiance and shifted the burden of confronting the issue of whether or not there is dual allegiance to the concerned foreign country. What happens to the othercitizenship was not made a concern of Rep. Act No. 9225. On the other hand, Congress was given a mandate to draft a law that would set specific parameters of what really constitutes dual allegiance. Until this is done, it would be premature for the judicial department, including this Court, to rule on issues pertaining to dual allegiance.

RENATO M. DAVID, *Petitioner*, - versus- EDITHA A. AGBAY and PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 199113, THIRD DIVISION, March 18, 2015, VILLARAMA, JR., *J.*

The law makes a distinction between those natural-born Filipinos who became foreign citizens before and after the effectivity of R.A. 9225. The authors of the law intentionally employed the terms "re-acquire" and "retain" to describe the legal effect of taking the oath of allegiance to the Republic of the Philippines.

FACTS:
In 1974, petitioner Renato M. David migrated to Canada where he became a Canadian citizen by naturalization. Upon retirement, David and his wife returned to the Philippines and purchased a lot where they constructed a residential house, a part of which is a public land. Renato David filed a Miscellaneous Lease Agreement (MLA) over the subject land with the DENR and CENRO. In the said application, David indicated that he is a Filipino citizen. Editha Agbay opposed the application on the ground that David, a Canadian citizen, is disqualified to own land. She also filed a criminal complaint for falsification of public documents against David. Meanwhile, David reacquired his Filipino citizenship under the provisions of R.A. No. 9225. In his defense, petitioner averred that at the time he filed his application, he had intended to re-acquire Philippine citizenship and that he had been assured by a CENRO officer that he could declare himself as a Filipino.

ISSUE:
Whether or not the lower court erred in disregarding the fact that petitioner is a natural-born Filipino citizen, and that by reacquiring the same status under R.A. No. 9225 he was by legal fiction "deemed not to have lost" it.

RULING:
No. The law makes a distinction between those natural-born Filipinos who became foreign citizens before and after the effectivity of R.A. 9225. Although the heading of Section 3 is "Retention of Philippine Citizenship", the authors of the law intentionally employed the terms "re-acquire" and "retain" to describe the legal effect of taking the oath of allegiance to the Republic of the Philippines. This is also evident from the title of the law using both re-acquisition and retention.

In fine, for those who were naturalized in a foreign country, they shall be deemed to have re-acquired their Philippine citizenship which was lost pursuant to Commonwealth Act No. 63, under which naturalization in a foreign country is one of the ways by which Philippine citizenship may be lost. As

its title declares, R.A. 9225 amends C.A. No. 63 by doing away with the provision in the old law which takes away Philippine citizenship from natural-born Filipinos who become naturalized citizens of other countries and allowing dual citizenship, and also provides for the procedure for re-acquiring and retaining Philippine citizenship. In the case of those who became foreign citizens after R.A. 9225 took effect, they shall retain Philippine citizenship despite having acquired foreign citizenship provided they took the oath of allegiance under the new law.

Considering that petitioner was naturalized as a Canadian citizen prior to the effectivity of R.A. 9225, he belongs to the first category of natural-born Filipinos under the first paragraph of Section 3 who lost Philippine citizenship by naturalization in a foreign country. As the new law allows dual citizenship, he was able to re-acquire his Philippine citizenship by taking the required oath of allegiance.

VIVENNE K. TAN, *Petitioner*, -versus- VINCENT "BINGBONG" CRISOLOGO, *Respondent*.
G.R. No. 193993, THIRD DIVISION, November 8, 2017, MARTIRES, *J.*

Congress declared as a state policy that all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions laid out by the law. It would seem that the law makes a distinction between Filipino citizens who lost their Philippine citizenship prior to the effectivity of R.A. No. 9225 and reacquired their citizenship under the same law from those who lost their Philippine citizenship after R.A. No. 9225 was enacted and retained their citizenship.

Tan took an Oath of Allegiance to the U.S.A. on 19 January 1993, prior to the enactment of R.A. No. 9225 on 29 August 2003. If we were to effect as retroactive Tan's Philippine citizenship to the date she lost her Philippine citizenship, then the different use of the words "reacquire" and "retain" in R.A. No. 9225 would effectively be futile.

FACTS:
On 19 January 1993, Tan, born to Filipino parents, became a naturalized citizen of the United States of America. On 26 October 2009, Tan applied to be registered as a voter in Quezon City. She indicated that she was a Filipino Citizen by birth. Her application was approved by the Election Registration Board making her a registered voter. On 30 November 2009, Tan took an Oath of Allegiance to the Republic of the Philippines before a notary public in Makati City. The following day, she filed a petition before the Bureau of Immigration for the reacquisition of her Philippine citizenship. She stated in her petition that she lost her Philippine citizenship when she became a naturalized American citizen. However, Tan executed a sworn declaration renouncing her allegiance to the U.S.A. Thereafter, the BI confirmed her reacquisition of Philippine citizenship. On the same day, Tan filed her Certificate of Candidacy for the 2010 National Elections to run as congresswoman for the First District of Quezon City.

Respondent Vincent "Bing bong" Crisologo filed a petition before the MeTC seeking the exclusion of Tan from the voter's list because (1) she was not a Filipino citizen when she registered as a voter; and (2) she failed to meet the residency requirement of the law. In her answer, Tan countered that she is a natural-born citizen having been born to Filipino parents on 1 April 1968. Although she became a naturalized American citizen on 19 January 1993, Tan claimed that since 1996 she had effectively renounced her American citizenship as she had been continuously residing in the Philippines. She had also found employment within the country and even set up a school somewhere in Greenhills.

MeTC rendered a decision excluding Tan from the voter's list. Aggrieved, Tan appealed the MeTC decision to the RTC, where it was reversed and Crisologo's petition was dismissed for lack of merit. CA came up with a decision finding that the RTC committed grave abuse of discretion amounting to lack or in excess of jurisdiction in reversing the decision of the MeTC.

ISSUE:
Whether or not Tan can be considered a Philippine citizen at the time she registered as a voter. (NO)

RULING:
Without any doubt, only Filipino citizens are qualified to vote and may be included in the permanent list of voters. Thus, to be registered a voter in the Philippines, the registrant must be a citizen at the time he or she filed the application.

R.A. No. 9225 was enacted to allow natural-born Filipino citizens, who lost their Philippine citizenship through naturalization in a foreign country, to expeditiously reacquire Philippine citizenship. Under the procedure currently in place under R.A. No. 9225, the reacquisition of Philippine citizenship requires only the taking of an oath of allegiance to the Republic of the Philippines. Congress declared as a state policy that all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship *under the conditions* laid out by the law. It would seem that the law makes a distinction between Filipino citizens who lost their Philippine citizenship prior to the effectivity of R.A. No. 9225 and *reacquired* their citizenship under the same law from those who lost their Philippine citizenship after R.A. No. 9225 was enacted and *retained* their citizenship.

Once Philippine citizenship is renounced because of naturalization in a foreign country, we cannot consider one a Filipino citizen unless and until his or her allegiance to the Republic of the Philippines is reaffirmed. Simply stated, right after a Filipino renounces allegiance to our country, he or she is to be considered a foreigner.

Note that Tan's act of acquiring U.S. citizenship had been a conscious and voluntary decision on her part. While studying and working in the U.S.A., Tan chose to undergo the U.S. naturalization process to acquire U.S. citizenship. This naturalization process required her to renounce her allegiance to the Philippine Republic and her Philippine citizenship. This is clear from the Oath of Allegiance she took to become a U.S. citizen.

Renunciation or the relinquishment of one's citizenship requires a voluntary act for it to produce any legal effect. This willingness to disassociate from a political community is manifested by swearing to an oath. If we were to consider the words in the Oath of Allegiance as meaningless, the process laid out under the law to effect naturalization would be irrelevant and useless. Thus, to give effect to the legal implications of taking an Oath of Allegiance, we must honor the meaning of the words which the person declaring the oath has sworn to *freely, without mental reservation or purpose of evasion.*

Tan took an Oath of Allegiance to the U.S.A. on 19 January 1993, prior to the enactment of R.A. No. 9225 on 29 August 2003. If we were to effect as retroactive Tan's Philippine citizenship to the date she lost her Philippine citizenship, then the different use of the words "reacquire" and "retain" in R.A. No. 9225 would effectively be futile.

PETITION FOR LEAVE TO RESUME PRACTICE OF LAW, BENJAMIN M. DACANAY, *petitioner.*
B.M. No. 1678, EN BANC, December 17, 2007, CORONA, *J.*

The exception is when Filipino citizenship is lost by reason of naturalization as a citizen of another country but subsequently reacquired pursuant to RA 9225. This is because "all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of [RA 9225]." Therefore, a Filipino lawyer who becomes a citizen of another country is deemed never to have lost his Philippine citizenship if he reacquires it in accordance with RA 9225. Although he is also deemed never to have terminated his membership in the Philippine bar, no automatic right to resume law practice accrues.

FACTS:
Petitioner was admitted to the Philippine bar in March 1960. He practiced law until he migrated to Canada in December 1998 to seek medical attention for his ailments. He subsequently applied for Canadian citizenship to avail of Canada's free medical aid program. His application was approved and he became a Canadian citizen in May 2004.

On July 14, 2006, pursuant to RA 9225, petitioner reacquired his Philippine citizenship. On that day, he took his oath of allegiance as a Filipino citizen before the Philippine Consulate General in Toronto, Canada. Thereafter, he returned to the Philippines and now intends to resume his law practice.

ISSUE:
Whether or not petitioner Benjamin M. Dacanay can still practice law after reacquiring his Philippine citizenship. (YES)

RULING:
The Constitution provides that the practice of all professions in the Philippines shall be limited to Filipino citizens save in cases prescribed by law. Since Filipino citizenship is a requirement for admission to the bar, loss thereof terminates membership in the Philippine bar and, consequently, the privilege to engage in the practice of law. In other words, the loss of Filipino citizenship *ipso jure* terminates the privilege to practice law in the Philippines. The practice of law is a privilege denied to foreigners.

The exception is when Filipino citizenship is lost by reason of naturalization as a citizen of another country but subsequently reacquired pursuant to RA 9225. This is because "all Philippine citizens who become citizens of another country shall be *deemed not to have lost their Philippine citizenship* under the conditions of [RA 9225]." Therefore, a Filipino lawyer who becomes a citizen of another country is deemed never to have lost his Philippine citizenship if he reacquires it in accordance with RA 9225. Although he is also deemed never to have terminated his membership in the Philippine bar, no automatic right to resume law practice accrues.

Under RA 9225, if a person intends to practice the legal profession in the Philippines and he reacquires his Filipino citizenship pursuant to its provisions "(he) shall apply with the proper authority for a license or permit to engage in such practice." Stated otherwise, before a lawyer who reacquires Filipino citizenship pursuant to RA 9225 can resume his law practice, he must first secure from this Court the authority to do so, conditioned on:

(a) the updating and payment in full of the annual membership dues in the IBP;

(b) the payment of professional tax;
(c) the completion of at least 36 credit hours of mandatory continuing legal education; this is specially significant to refresh the applicant/petitioner's knowledge of Philippine laws and update him of legal developments and
(d) the retaking of the lawyer's oath which will not only remind him of his duties and responsibilities as a lawyer and as an officer of the Court, but also renew his pledge to maintain allegiance to the Republic of the Philippines.

Compliance with these conditions will restore his good standing as a member of the Philippine bar.

CASAN MACODE MAQUILING, *Petitioners*, -versus- COMMISSION ON ELECTIONS, ROMMEL ARNADO y CAGOCO, LINOG G. BALUA, *Respondents*.
G.R. No. 195649, EN BANC, April 16, 2013, Sereno, CJ

The use of foreign passport after renouncing one's foreign citizenship is a positive and voluntary act of representation as to one's nationality and citizenship; it does not divest Filipino citizenship regained by repatriation but it recants the Oath of Renunciation required to qualify one to run for an elective position.

FACTS:
Rommel Arnado is a natural-born Filipino citizen who lost his Filipino citizenship as a consequence of his subsequent naturalization as a US citizen. Arnado applied for repatriation under R.A. No. 9225 before the Consulate General of the Philippines in San Franciso, USA and took the Oath of Allegiance to the Republic of the Philippines. On 3 April 2009 Arnado again took his Oath of Allegiance to the Republic and executed an Affidavit of Renunciation of his foreign citizenship. Thereafter, Arnado filed his Certificate of Candidacy for Mayor of Kauswagan, Lanao del Norte. Linog Balua, another mayoralty candidate, filed a petition seeking Arnado's disqualification and/or cancellation of Arnado's CoC contending that Arnado is a foreigner. To bolster his claim of Arnado's US citizenship, Balua presented evidence indicating that Arnado has been using his US Passport in entering and departing the Philippines even after his repatriation and execution of affidavit of renunciation.

Petitioner Casan Maquiling intervened in the instant case after having garnered the second highest number of votes during the elections.

ISSUE:
Whether or not the use of a foreign passport after renouncing foreign citizenship amounts to undoing a renunciation earlier made and affects one's qualifications to run for public office. (YES)

RULING:
By using his foreign passport, Arnado positively and voluntarily represented himself as an American, in effect declaring before immigration authorities of both countries that he is an American citizen, with all attendant rights and privileges granted by the United States of America. The renunciation of foreign citizenship is not a hollow oath that can simply be professed at any time, only to be violated the next day. It requires an absolute and perpetual renunciation of the foreign citizenship and a full divestment of all civil and political rights granted by the foreign country that granted the citizenship. While the act of using a foreign passport is not one of the acts enumerated in C.A. No. 63 constituting renunciation and loss of Philippine citizenship, it is nevertheless an act that repudiates the very oath of renunciation required for a former Filipino citizen who is also a citizen of another country to be qualified to run for a local elective position.

In this case, when Arnado used his US passport just eleven days after he renounced his American citizenship, he recanted his Oath of Renunciation that he "absolutely and perpetually renounce(s) all allegiance and fidelity to the UNITED STATES OF AMERICA" and that he "divest(s) [him]self of full employment of all civil and political rights and privileges of the United States of America." This act of using a foreign passport after renouncing one's foreign citizenship is fatal to Arnado's bid for public office, as it effectively imposed on him a disqualification to run for an elective local position.

REPUBLIC OF THE PHILIPPINES, *Petitioner,* -versus- KAMRAN F. KARBASI, *Respondent*.
G.R. No. 210412, SECOND DIVISION, July 29, 2015, MENDOZA, *J.*

The Naturalization Law disqualifies citizens or subjects of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subjects. A perusal of Karbasi's petition, both with the RTC and the CA, together with his supplemental pleadings filed with the Court, however, reveals that he has successfully established his refugee status upon arrival in the Philippines. In effect, the country's obligations under its various international commitments come into operation. Articles 6 and 34 of the 1951 Convention relating to the Status of Refugees, to which the Philippines is a signatory, must be considered in this case.

As applied to this case, Karbasi' s status as a refugee has to end with the attainment of Filipino citizenship, in consonance with Philippine statutory requirements and international obligations. Indeed, the Naturalization Law must be read in light of the developments in international human rights law specifically the granting of nationality to refugees and stateless persons.

FACTS:
On June 25, 2002, Kamran F. Karbasi *(Karbasi)* filed a petition for naturalization with the RTC. After finding the petition sufficient in form and substance, the RTC issued an order setting the petition for hearing and ordering the publication thereof, once a week for three (3) consecutive weeks, in the Official Gazette and in a newspaper of general circulation in Zamboanga del Norte and in the cities of Dipolog and Dapitan. In the same Order, persons concerned were enjoined to show cause, if any, why the petition should not be granted and oppose the petition.

Karbasi and his counsel appeared and presented proof of compliance with the jurisdictional requirements. Nobody appeared to interpose an objection to the petition. During the hearing on May 18, 2006, Alton C. Ratificar and Dominador Natividad Tagulo testified as character witnesses. On several hearing dates thereafter, Karbasi himself took the witness stand.

RTC found Karbasi's evidence sufficient to support his petition. Finding Karbasi as possessing all the qualifications and none of the disqualifications to become a Filipino citizen, the RTC rendered its decision admitting him as citizen of the Philippines. Not in conformity, the Republic of the Philippines, through the Office of the Solicitor General, interposed an appeal to the CA, based mainly on the ground that the RTC erred in granting Karbasi's petition as he failed to comply with the provisions of Commonwealth Act No. 473 *(Naturalization Law)* on character, income and reciprocity. Specifically, the OSG pointed out that Karbasi failed to establish that: 1] Iran grants reciprocal rights of naturalization to Filipino citizens; 2] he has a lucrative income as required under the law; and 3] he is of good moral character as shown by his disregard of Philippine tax laws when he had underdeclared his income in his income tax returns (ITRs) and overstated the same in his petition for naturalization. CA rendered the assailed decision affirming the grant of Filipino citizenship to Karbasi.

The OSG asserts that the findings of the courts *a quo* are not in accord with law and jurisprudence because Karbasi failed to prove that he had a lucrative income and an irreproachable character. It insists that Karbasi failed to establish his lucrative income considering that at the time of the filing of his petition for naturalization in 2002, his gross income was P21,868.65. Per table of Annual Income and Expenditure in Western Mindanao, the average income for the year 2000 was P86,135.00 and for 2003 was P93,000.00. This shows that Karbasi's declared gross income was way below the average income and average expenses in Western Mindanao, the region where Dipolog City, his residence, is located. This shows that Karbasi's declared gross income was not enough to support his family within the contemplation of the law. The OSG cites the discrepancy between his petition for naturalization and his ITRs as another reason to deny his application for Filipino citizenship. The OSG further argues that the "underdeclaration" of Karbasi's income in his ITRs reflects his disregard of Philippine tax laws and, worse, its overstatement in his petition indicates his intent to make it appear that there was compliance with the Naturalization Law, when there was actually none. According to the OSG, this negates irreproachable behavior which required of every applicant for naturalization because the failure to enter the true income on the tax return is indicative of dishonesty.

ISSUE:
Whether or not the CA had correctly affirmed the RTC decision granting Karbasi's application for naturalization despite the opposition posed by the OSG. (YES)

RULING:
Jurisprudence dictates that in judicial naturalization, the application must show substantial and formal compliance with the law. In other words, an applicant must comply with the jurisdictional requirements; establish his or her possession of the qualifications and none of the disqualifications enumerated under the law; and present at least two (2) character witnesses to support his allegations.

A reading of the OSG's pleadings discloses that its position arose out of a comparison made between Karbasi's declared income and the amounts reflected in the Data on Annual Income and Expenditure in Western Mindanao issued by the NSCB. A long line of cases reveals that the Court did not hesitate in reversing grants of citizenship upon a showing that the applicant had no lucrative income and would, most likely, become a public charge.

While it is true that a naturalization case is not an ordinary judicial contest to be decided in favor of the party whose claim is supported by the preponderance of the evidence, this does not accord infallibility on any and all of the OSG's assertions. If this were the case, the rules of evidence might as well be brushed aside in order to accord conclusiveness to every opposition by the Republic. Needless to state, the Court still has the final authority and duty to evaluate the records of proceedings *a quo* and decide on the issues with fair and sound judgment. To accept the OSG's logic is a dangerous precedent that would peg the compliance to this requirement in the law to a comparison with the results of research, the purpose of which is unclear. This is not to say that the data produced by government research are inappropriate, or much less irrelevant in judicial proceedings. The plain reliance on this research information, however, may not be expected to produce the force of logic which the OSG wants to attain in this case. Besides, had the law intended for government data on livelihood and income research to be used as a gauge for the "lucrative income" requirement, it must have stated the same and foreclosed the Court's power to assess existing facts in any given case. Here, the Court opts to exercise this power and delve into a judicious review of the findings of the RTC and the CA and, as explained, to rule that Karbasi, possesses a lucrative income and a lawful occupation, as required by the Naturalization Law.*1â*

The OSG raised the issue of Karbasi's alleged underdeclaration of income in his ITRs. It contended that even if Karbasi had, indeed, a lucrative means of earning, his failure to declare the income which he had earned from service contracts and to present any proof of the withholding of the taxes thereon, would reflect adversely on his conduct, which under the statute must be "proper and irreproachable." Like the CA, the Court is inclined not to apply the rigidity of the ruling in *Lim Eng Yu* to the present case. Unlike *Lim Eng Yu*, Karbasi did not deny the charge of the OSG and instead admitted a procedural lapse on his part. Here, there is no showing that the income earned by Karbasi was undeclared in order to benefit from statutory tax exemptions. To clarify, this does not intend to downplay the requirement of good moral character in naturalization cases. It bears stressing that the granting of applications for naturalization still necessitates that only those who are deserving may be admitted as Filipino citizens. The character of the applicant remains to be one of the significant measures to determine entitlement to Filipino citizenship. Nonetheless, the tenor of the ground used for the denial of the application in *Lim Eng Yu* is not akin to what happened in this case.

Again, it is not the objective of the Court to justify irregularities in ITRs by reason of a "mistaken belief." The Court, however, finds it difficult to equate Karbasi's lapse with a moral depravity that is fatal to his application for Filipino citizenship. This mistaken understanding of the proper way to declare income is actually so common to individual taxpayers, including lawyers and other professionals. While this is not to be taken as an excuse for every irregularity in ITRs, the Court is not prepared to consider this as an outright reflection of one's immoral inclinations. With due consideration to his character as established by witnesses, and as observed by the RTC during the hearings, Karbasi should be deemed to have sufficiently explained his mistake.

Considering the above disquisitions, the Court does not need to belabor the last issue on reciprocity between Iranian and Philippine laws on naturalization. True, the Naturalization Law disqualifies citizens or subjects of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subjects. A perusal of Karbasi's petition, both with the RTC and the CA, together with his supplemental pleadings filed with the Court, however, reveals that he has successfully established his refugee status upon arrival in the Philippines. In effect, the country's obligations under its various international commitments come into operation. Articles 6 and 34 of the 1951 Convention relating to the Status of Refugees, to which the Philippines is a signatory, must be considered in this case.

In the same vein, Article 7 of the said Convention expressly provides exemptions from reciprocity, while Article 34 states the earnest obligation of contracting parties to "as far as possible facilitate the assimilation and naturalization of refugees." As applied to this case, Karbasi' s status as a refugee has to end with the attainment of Filipino citizenship, in consonance with Philippine statutory requirements and international obligations. Indeed, the Naturalization Law must be read in light of the developments in international human rights law specifically the granting of nationality to refugees and stateless persons.

REPUBLIC OF THE PHILIPPINES, HON. RAUL S. GONZALEZ, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE, HON. ALIPIO F. FERNANDEZ, JR., IN HIS CAPACITY AS

COMMISSIONER OF THE BUREAU OF IMMIGRATION, HON. ARTHEL B. CAROÑONGAN, HON. TEODORO B. DELARMENTE, HON. JOSE D. CABOCHAN, AND HON. FRANKLIN Z. LITTAUA, IN THEIR CAPACITY AS MEMBERS OF THE BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION, *Petitioners*, -versus- DAVONN MAURICE C. HARP, *Respondent*.
G.R. No. 188829, FIRST DIVISION, June 13, 2016, SERENO, C.J.

It is settled that summary deportation proceedings cannot be instituted by the BI against citizens of the Philippines. However, the rule enunciated in the above-cases admits of an exception, at least insofar as deportation proceedings are concerned. Thus, what if the claim to citizenship of the alleged deportee is satisfactory? Should the deportation proceedings be allowed to continue or should the question of citizenship be ventilated in a judicial proceeding? In Chua Hiong vs. Deportation Board (96 Phil. 665 [1955]), this Court answered the question in the affirmative.

Since respondent has already been declared and recognized as a Philippine citizen by the BI and the DOJ, he must be protected from summary deportation proceedings.

FACTS:
Respondent Davonn Maurice Harp was born and raised in the United States of America to Toiya Harp and Manuel Arce Gonzalez. While on a visit to the Philippines, he was discovered by basketball talent scouts. He was invited to play in the Philippine Basketball League and was eventually drafted to play in the Philippine Basketball Association.

Sometime in 2002, respondent was among those invited to participate in a Senate investigation jointly conducted by the Committee on Games, Amusement, and Sports; and the Committee on Constitutional Amendments, Revision of Codes and Laws. The Senate inquiry sought to review the processes and requirements involved in the acquisition and determination of Philippine citizenship in connection with the "influx of bogus Filipino-American (Fil-Am) or Filipino-foreign (Fil-foreign) basketball players into the PBA and other basketball associations in the Philippines."

In the course of the inquiry, it was established that respondent had previously obtained recognition as a citizen of the Philippines from the BI and the DOJ upon submission of the following documents:

a) Respondent's birth certificate;
b) A certified true copy of the birth certificate of respondent's father, Manuel;
c) A Certification from the Consulate General of the Philippines stating that Manuel became a citizen of the United States of America only on 10 November 1981;
d) An affidavit affirming Manuel's Filipino citizenship at the time of respondent's birth;
e) Respondent's passport;
f) The passports of respondent's parents; and
g) The marriage contract of respondent's parents.

The Senate committees, however, found reason to doubt the Philippine citizenship of respondent. After a scrutiny of the documents he had submitted and its own field investigation of his purported background, they concluded that he had used spurious documents in support of his Petition for Recognition.

Acting on the basis of the special committee's findings, DOJ Secretary Gonzalez issued a Resolution revoking the recognition accorded to respondent and five other PBA players. Secretary Gonzalez also directed the BI to undertake summary deportation proceedings against them.

BI ordered the summary deportation of respondent. It noted that the recognition previously accorded to him as a Filipino citizen had been revoked by the DOJ because of the spurious documents submitted in support thereof. Consequently, the BI considered him an improperly documented alien subject to summary deportation proceedings pursuant to BI Memorandum Order Nos. ADD-01-031 and ADD-01-035.

Upon receipt of the Summary Deportation Order, respondent withdrew his petition for prohibition before the RTC. He thereafter filed a Petition for Review with an application for injunction before the CA to seek the reversal of the DOJ Resolution and the BI Summary Deportation Order. The CA granted the Petition and set aside the deportation order. It held that respondent, who was a recognized citizen of the Philippines, could not be summarily deported and that his citizenship may only be attacked through a direct action in a proceeding that would respect his rights as a citizen.

Petitioners assert that in granting the Petition for Review filed by respondent, the CA erred for the following reasons: (1) his appeal was rendered moot and academic by his voluntary departure from the Philippines; (2) the CA had no jurisdiction over his appeal because the petition had been filed out of time; and (3) the appellate court used his Philippine citizenship as a basis to set aside the Summary Deportation Order despite the DOJ's valid revocation of the recognition accorded to him.

Respondent, on the other hand, maintains that he is a recognized natural-born Philippine citizen, who cannot be deprived of his rights and summarily deported by the BI. He alleges that his citizenship was duly established when he filed his petition for recognition before the DOJ and the BI, and that the recognition they granted to him cannot be overturned merely on the basis of the "unfounded conjectures and baseless speculations" of the Senate committees, the DOJ and the NBI.

ISSUE:
Whether or not respondent could be summarily deported and his citizenship be attacked collaterally. (NO)

RULING:
Respondent's appeal was not rendered moot and academic by his voluntary departure from the Philippines.

Respondent, prior to his deportation, was recognized as a Filipino citizen. He manifested his intent to return to the country because his Filipino wife and children are residing in the Philippines. The filing of the petitions before the Court of Appeals and before this court showed his intention to prove his Filipino lineage and citizenship, as well as the error committed by petitioners in causing his deportation from the country. He was precisely questioning the DOJ's revocation of his certificate of recognition and his summary deportation by the BI. Therefore, we rule that respondent's deportation did not render the present case moot.

The filing of respondent's Petition before the CA was not unreasonably delayed. The one-day delay in the filing of the Petition is excusable. It is apparent that the delay in the filing of the Petition was for a valid reason, i.e. respondent had to wait for the RTC Order allowing him to withdraw his then pending Petition. It is likewise clear that he did not intend to delay the administration of justice, as he in fact filed the appeal with the CA on the very same day the RTC issued the awaited Order.

In the interest of putting an end to the entire controversy, we shall resolve all issues raised by the parties in relation to the DOJ Resolution and the Summary Deportation Order, in particular:

a) Finality of the Recognition Accorded to Respondent

As the agency tasked to "provide immigration and naturalization regulatory services" and "implement the laws governing citizenship and the admission and stay of aliens," the DOJ has the power to authorize the recognition of citizens of the Philippines. Any individual born of a Filipino parent is a citizen of the Philippines and is entitled to be recognized as such. Recognition is accorded by the BI and the DOJ to qualified individuals, provided the proper procedure is complied with and the necessary documents are submitted. In this case, respondent was accorded recognition as a citizen on 24 February 2000. On 24 October 2000, he was issued Identification Certificate No. 018488, which confirmed his status and affirmed his entitlement to all the rights and privileges of citizenship.

Petitioners, however, are correct in saying that the recognition granted to respondent has not attained finality. This Court has consistently ruled that the issue of citizenship may be threshed out as the occasion demands. Res judicata only applies once a finding of citizenship is affirmed by the Court in a proceeding in which: (a) the person whose citizenship is questioned is a party; (b) the person's citizenship is raised as a material issue; and (c) the Solicitor General or an authorized representative is able to take an active part. Since respondent's citizenship has not been the subject of such a proceeding, there is no obstacle to revisiting the matter in this case.

b) Validity of the DOJ Resolution

As in any administrative proceeding, the exercise of the power to revoke a certificate of recognition already issued requires the observance of the basic tenets of due process. At the very least, it is imperative that the ruling be supported by substantial evidence in view of the gravity of the consequences that would arise from a revocation.

In this case, the DOJ relied on certain pieces of documentary and testimonial evidence to support its conclusion that respondent is not a true citizen of the Philippines. The Court finds these pieces of evidence inadequate to warrant a revocation of the recognition accorded to respondent.

c) Validity of the Summary Deportation Order

It is settled that summary deportation proceedings cannot be instituted by the BI against citizens of the Philippines. However, the rule enunciated in the above-cases admits of an exception, at least insofar as deportation proceedings are concerned. Thus, what if the claim to citizenship of the alleged deportee is satisfactory? Should the deportation proceedings be allowed to continue or should the question of citizenship be ventilated in a judicial proceeding? In Chua Hiong vs. Deportation Board (96 Phil. 665 [1955]), this Court answered the question in the affirmative, and We quote:

When the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly enjoin the deportation proceedings. A citizen is entitled to live in peace, without molestation from any official or authority, and if he is disturbed by a deportation proceeding, he has the unquestionable right to resort to the courts for his protection, either by a writ of habeas corpus or of prohibition, on the legal ground that the Board lacks jurisdiction. If he is a citizen and evidence thereof is satisfactory, there is no sense nor justice

in allowing the deportation proceedings to continue, granting him the remedy only after the Board has finished its investigation of his undesirability.

. . . And if the right (to peace) is precious and valuable at all, it must also be protected on time, to prevent undue harassment at the hands of ill-meaning or misinformed administrative officials. Of what use is this much boasted right to peace and liberty if it can be availed of only after the Deportation Board has unjustly trampled upon it, besmirching the citizen's name before the bar of public opinion? (Emphases supplied)

Since respondent has already been declared and recognized as a Philippine citizen by the BI and the DOJ, he must be protected from summary deportation proceedings.

VIII. PUBLIC INTERNATIONAL LAW

PROF. MERLIN M. MAGALLONA ET AL, *Petitioners*, -versus- HON. EDUARDO ERMITA ET AL, *Respondents.*
G.R No. 187167, EN BANC, JULY 16, 2011, CARPIO, J.

Baselines laws are nothing but statutory mechanisms for UNCLOS III States parties to delimit with precision the extent of their maritime zones and continental shelves. In turn, this gives notice to the rest of the international community of the scope of the maritime space and submarine areas within which States parties exercise treaty-based rights, namely, the exercise of sovereignty over territorial waters (Article 2), the jurisdiction to enforce customs, fiscal, immigration, and sanitation laws in the contiguous zone (Article 33), and the right to exploit the living and non living resources in the exclusive economic zone (Article 56) and continental shelf (Article 77).

FACTS:
In March 2009, Republic Act 9522, an act defining the archipelagic baselines of the Philippines was enacted (Baselines Law). This law was meant to comply with the terms of the third United Nations Convention on the Law of the Sea (UNCLOS III), ratified by the Philippines in February 1984. Professor Merlin Magallona, et al. questioned the validity of RA 9522 as they contend, among others, that the law decreased the national territory of the Philippines hence the law is unconstitutional.

ISSUE:
Whether or not RA 9522 is constitutional. (YES)

RULING:
The Supreme Court emphasized that RA 9522, or UNCLOS, itself is not a means to acquire, or lose, territory. The treaty and the baseline law has nothing to do with the acquisition, enlargement, or diminution of the Philippine territory. What controls when it comes to acquisition or loss of territory is the international law principle on occupation, accretion, cession and prescription and NOT the execution of multilateral treaties on the regulations of sea-use rights or enacting statutes to comply with the treaty's terms to delimit maritime zones and continental shelves.

The law did not decrease the demarcation of our territory. In fact it increased it. Under the old law amended by RA 9522 (RA 3046), we adhered with the rectangular lines enclosing the Philippines. The area that it covered was 440,994 square nautical miles (sq. na. mi.). But under 9522, and with the inclusion of the exclusive economic zone, the extent of our maritime was increased to 586,210 sq.

na. mi. If any, the baselines law is a notice to the international community of the scope of the maritime space and submarine areas within which States parties exercise treaty-based rights.

ISABELITA C. VINUYA et al., *Petitioners*, –versus-. THE HONORABLE EXECUTIVE SECRETARY ALBERTO G. ROMULO et al., *Respondents*.
G.R. No. 162230, EN BANC, April 28, 2010, DEL CASTILLO, J.

The question whether the Philippine government should espouse claims of its nationals against a foreign government is a foreign relations matter, the authority for which is demonstrably committed by our Constitution not to the courts but to the political branches.

FACTS:
As a result of the atrocities committed by the Japanese during the Second World War, Vinuya et al, all members of the MALAYA LOLAS, sought the assistance of the respondent in filing their claim against the Japanese officials and military officers who are responsible for the so called "comfort women" system. However, the officials of the Executive Department declined to assist the petitioners and stated that compensation for the victims have already been complied with by virtue of the Peace Treaty between the Philippines and Japan. Dissatisfied, Vinuya et al., filed this present petition for certiorari with an application for the issuance of a writ of preliminary mandatory injunction against the respondents.

ISSUES:
Whether or not the respondents committed grave abuse of discretion amounting to lack or excess of discretion in refusing to espouse their claims for the crimes against humanity and war crimes committed against them. (NO)

RULING:
From a Domestic Law Perspective, the Executive Department has the exclusive prerogative to determine whether to espouse petitioners' claims against Japan. Certain types of cases often have been found to present political questions. One such category involves questions of foreign relations. It is well established that "the conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative "the political departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision."

The question whether the Philippine government should espouse claims of its nationals against a foreign government is a foreign relations matter, the authority for which is demonstrably committed by our Constitution not to the courts but to the political branches. In this case, the Executive Department has already decided that it is to the best interest of the country to waive all claims of its nationals for reparations against Japan in the Treaty of Peace of 1951. The wisdom of such decision is not for the courts to question.

Neither could petitioners herein assail the said determination by the Executive Department via the instant petition for certiorari. The Executive Department has determined that taking up petitioners' cause would be inimical to our country's foreign policy interests, and could disrupt our relations with Japan, thereby creating serious implications for stability in this region. For us to overturn the Executive Department's determination would mean an assessment of the foreign policy judgments by a coordinate political branch to which authority to make that judgment has been constitutionally committed.

Moreover, the Philippines is not under any international obligation to espouse petitioners' claims. Since the exercise of diplomatic protection is the right of the State, reliance on the right is within the absolute discretion of states, and the decision whether to exercise the discretion may invariably be influenced by political considerations other than the legal merits of the particular claim. The State, therefore, is the sole judge to decide whether its protection will be granted, to what extent it is granted, and when will it cease. It retains, in this respect, a discretionary power the exercise of which may be determined by considerations of a political or other nature, unrelated to the particular case.

SENATOR AQUILINO PIMENTEL, JR., et al., *Petitioners*, -versus- OFFICE OF THE EXECUTIVE SECRETARY et al., *Respondents*.
G.R. No. 158088, EN BANC, July 6, 2005, PUNO J.

Under our Constitution, the power to ratify is vested in the President, subject to the concurrence of the Senate and the role of the Senate is limited only to giving or withholding its consent, or concurrence, to the ratification.

FACTS:
In this petition, Senator Pimentel et al, sought to compel the officials of the executive branch to transmit the text of the Rome Statute signed by a member of the Philippine Mission to the Senate for ratification for the Statute specifically requires that it be subject to ratification, acceptance or approval of the signatory states. Senator Pimentel et al., contends that it is the function of the Senate to ratify treaties pursuant to Section 21, Article VII of the 1987 Constitution and that the executive branch is obliged to transmit the signed copy of the Statute to the Senate. It further alleged that since the provision of the Rome Statute forms part of the customary international law, the Senate has the ministerial duty to ratify the same.

ISSUE:
Whether or not the executive branch has a ministerial duty to transmit to the Senate the copy of the Rome Statute even without the signature of the President. (NO)

RULING:
It should be emphasized that under the Constitution, the power to ratify is vested in the President, subject to the concurrence of the Senate. The role of the Senate, however, is limited only to giving or withholding its consent, or concurrence, to the ratification. Hence, it is within the authority of the President to refuse to submit a treaty to the Senate or, having secured its consent for its ratification, refuse to ratify it. Although the refusal of a state to ratify a treaty, which has been signed in its behalf, is a serious step that should not be taken lightly, such decision is within the competence of the President alone, which cannot be encroached by this Court via a writ of mandamus. This Court has no jurisdiction over actions seeking to enjoin the President in the performance of his official duties. The Court, therefore, cannot issue the writ of mandamus prayed for by the petitioners as it is beyond its jurisdiction to compel the executive branch of the government to transmit the signed text of Rome Statute to the Senate.

RENE A.V. SAGUISAG et al., *Petitioners*, -versus- EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., et al., *Respondents*.
G.R. No. 212426, EN BANC, July 26, 2016, SERENO, *CJ.*

The special nature of an executive agreement is not just a domestic variation in international agreements. International practice has accepted the use of various forms and designations of

international agreements, ranging from the traditional notion of a treaty – which connotes a formal, solemn instrument – to engagements concluded in modern, simplified forms that no longer necessitate ratification.

FACTS:
This is a Resolution on the Motion for Reconsideration seeking to reverse the Decision of this Court in Saguisag et. al., v. Executive Secretary dated 12 January 2016.

Petitioners claim this Court erred when it ruled that the Enhanced Defense Cooperation Agreement (EDCA) between the Philippines and the US was not a treaty. In connection to this, petitioners move that EDCA must be in the form of a treaty in order to comply with the constitutional restriction under Section 25, Article· XVIII of the 1987 Constitution on foreign military bases, troops, and facilities. Additionally, they reiterate their arguments on the issues of telecommunications, taxation, and nuclear weapons.

The principal reason for the Motion for Reconsideration is evidently petitioners' disagreement with the Decision that EDCA implements the VFA and Mutual Defense Treaty (MDT). Petitioners argue that EDCA's provisions fall outside the allegedly limited scope of the VFA and MDT because it provides a wider arrangement than the VFA for military bases, troops, and facilities, and it allows the establishment of U.S. military bases.

ISSUE:
Whether or not EDCA is a treaty. (YES)

RULING:
Petitioners detail their objections to EDCA in a similar way to their original petition, claiming that the VFA and MDT did not allow EDCA to contain the following provisions:
1. Agreed Locations
2. Rotational presence of personnel
3. U.S. contractors
4. Activities of U.S. contractors

We ruled in Saguisag, et. al. that the EDCA is not a treaty despite the presence of these provisions. The very nature of EDCA, its provisions and subject matter, indubitably categorize it as an executive agreement – a class of agreement that is not covered by the Article XVIII Section 25 restriction – in painstaking detail. To partially quote the Decision:

> Executive agreements may dispense with the requirement of Senate concurrence because of the legal mandate with which they are concluded.

As culled from the deliberations of the Constitutional Commission, past Supreme Court Decisions, and works of noted scholars, executive agreements merely involve arrangements on the implementation of existing policies, rules, laws, or agreements.

They are concluded

(1) to adjust the details of a treaty;
(2) pursuant to or upon confirmation by an act of the Legislature; or
(3) in the exercise of the President's independent powers under the Constitution.

The raison d'etre of executive agreements hinges on prior constitutional or legislative authorizations.

The special nature of an executive agreement is not just a domestic variation in international agreements. International practice has accepted the use of various forms and designations of international agreements, ranging from the traditional notion of a treaty – which connotes a formal, solemn instrument – to engagements concluded in modern, simplified forms that no longer necessitate ratification.

An international agreement may take different forms: treaty, act, protocol, agreement, concordat, compromis d'arbitrage, convention, covenant, declaration, exchange of notes, statute, pact, charter, agreed minute, memorandum of agreement, modus vivendi, or some other form. Consequently, under international law, the distinction between a treaty and an international agreement or even an executive agreement is irrelevant for purposes of determining international rights and obligations. However, this principle does not mean that the domestic law distinguishing treaties, international agreements, and executive agreements is relegated to a mere variation in form, or that the constitutional requirement of Senate concurrence is demoted to an optional constitutional directive. There remain two very important features that distinguish treaties from executive agreements and translate them into terms of art in the domestic setting.

First, executive agreements must remain traceable to an express or implied authorization under the Constitution, statutes, or treaties. The absence of these precedents puts the validity and effectivity of executive agreements under serious question for the main function of the Executive is to enforce the Constitution and the laws enacted by the Legislature, not to defeat or interfere in the performance of these rules. In turn, executive agreements cannot create new international obligations that are not expressly allowed or reasonably implied in the law they purport to implement.

Second, treaties are, by their very nature, considered superior to executive agreements. Treaties are products of the acts of the Executive and the Senate unlike executive agreements, which are solely executive actions. Because of legislative participation through the Senate, a treaty is regarded as being on the same level as a statute. If there is an irreconcilable conflict, a later law or treaty takes precedence over one that is prior. An executive agreement is treated differently. Executive agreements that are inconsistent with either a law or a treaty are considered ineffective. Both types of international agreement are nevertheless subject to the supremacy of the Constitution.

Subsequently, the Decision goes to great lengths to illustrate the source of EDCA's validity, in that as an executive agreement it fell within the parameters of the VFA and MDT, and seamlessly merged with the whole web of Philippine law. We need not restate the arguments here. It suffices to state that this Court remains unconvinced that EDCA deserves treaty status under the law. We find no reason for EDCA to be declared unconstitutional. It fully conforms to the Philippines' legal regime through the MDT and VFA. It also fully conforms to the government's continued policy to enhance our military capability in the face of various military and humanitarian issues that may arise.

Zivotofsky –versus- Kerry
576 U.S. 1059 June 8, 2015

When the President's action is inconsistent with Congress' will, the President can prevail if the President has exclusive and conclusive power under the Constitution on the issue.

FACTS:
Section 214(d) of the Foreign Relations Authorization Act states that for "purposes of the registration of birth, certification of nationality, or issuance of a passport of a United States citizen born in the city of Jerusalem, the Secretary shall, upon the request of the citizen or the citizen's legal guardian, record the place of birth as Israel."

Petitioner Zivotofsky was born to U.S. citizens living in Jerusalem. His mother asked the American Embassy officials to list his place of birth as "Israel" on his passport. The Embassy refused to do so, noting the Executive Branch's longstanding position that the U.S. does not recognize Israel as having sovereignty over Jerusalem. Petitioner's parents brought suit in federal court to enforce Section 214(d) of the Act.

ISSUE:
Whether or not Section 214(d) is unconstitutional because it encroaches on the President's power to recognize a foreign sovereign? (YES)

RULING:
The President has the exclusive power to recognize a foreign state.

When the President's action is inconsistent with Congress' will, the President can prevail if the President has exclusive and conclusive power under the Constitution on the issue. The Constitution's text, and its structure, grant the President the power to recognize foreign nations and governments. That power is found under the Reception Clause (in which the President receives Ambassadors and other Public Ministers), under the Article II power to negotiate treaties, and under the power to engage in direct diplomacy with foreign heads of state.

Further, the country must speak with one voice regarding which governments the U.S. views as legitimate, and only the President has the characteristic of unity at all times. Court precedent also indicates that the President has the exclusive prerogative to recognize foreign states. Finally, history has demonstrated Congress's acceptance of the President's exclusive recognition power.

Given all of the above, section 214(d) infringes on the President's exclusive authority and is, therefore, unconstitutional. Moreover, the unconstitutionality is clear because the purpose of the Act was specifically to infringe on the President's exclusive recognition power.

SECRETARY OF JUSTICE, *Petitioner*, -versus- HON. RALPH C. LANTION, Presiding Judge, Regional Trial Court of Manila, Branch 25, and MARK B. JIMENEZ, *Respondents*.
G.R. No. 139465, EN BANC, January 18, 2000, Melo, J.

The doctrine of incorporation is applied whenever municipal tribunals (or local courts) are confronted with situations in which there appears to be a conflict between a rule of international law and the provisions of the constitution or statute of the local state. Efforts should first be exerted to harmonize them, so as to give effect to both since it is to be presumed that municipal law was enacted with proper regard for the generally accepted principles of international law in observance of the observance of the Incorporation Clause in the Constitution.

FACTS:

The Philippines has an extradition treaty with the USA. In 1999, the DOJ received from US a request for the extradition of private respondent Mark Jimenez. Pending evaluation of the extradition documents, Jimenez requested copies of the extradition request, but the DOJ denied such request on the ground that the extradition treaty states that the formal request for extradition of the United States contains grand jury information and documents obtained through grand jury process covered by strict secrecy rules under United States law. According to the DOJ, such denial is consistent with Article 7 of the RP-US Extradition Treaty, which provides that the Philippine Government must represent the interests of the United States in any proceedings arising out of a request for extradition.

ISSUE:
Whether or not granting Jimenez the rights of notice and hearing would be considered a breach of the extradition treaty with the US. (NO)

RULING:
The doctrine of incorporation is applied whenever municipal tribunals (or local courts) are confronted with situations in which there appears to be a conflict between a rule of international law and the provisions of the constitution or statute of the local state. Efforts should first be exerted to harmonize them, so as to give effect to both since it is to be presumed that municipal law was enacted with proper regard for the generally accepted principles of international law in observance of the observance of the Incorporation Clause in the Constitution.

In this case, there is no such conflict between international law and municipal law. Instead, there is a void in the provisions of the treaty as regards the basic due process of the prospective extraditee. In the absence of a law or principle of law, we must apply the rules of fair play. An application of the basic twin due process rights of notice and hearing will not go against the treaty or the implementing law. Neither the Treaty nor the Extradition Law precludes these rights from a prospective extraditee. Petitioner contends that the United States requested the Philippine Government to prevent unauthorized disclosure of confidential information. Hence, the secrecy surrounding the action of the Department of Justice Panel of Attorneys. The confidentiality argument is, however, overturned by petitioner's revelation that everything it refuses to make available at this stage would be obtainable during trial. If the information is truly confidential, the veil of secrecy cannot be lifted at any stage of the extradition proceedings. Not even during trial.

JEFFREY LIANG (HUEFENG), *Petitioners*, -versus- PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 125865, January 28, 2000, YNARES-SANTIAGO, J.

It is well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice or in bad faith or beyond the scope of his authority or jurisdiction.

FACTS:
Jeffrey Liang is an economist working with the Asian Development Bank (ADB). He was charged before the MeTC of Mandaluyong City with two counts of grave oral defamation for allegedly uttering defamatory words against fellow ADB worker Joyce Cabal. Thereafter, MeTC judge received an "office of protocol" from the Department of Foreign Affairs (DFA) stating that Liang is covered by immunity from legal process under Section 45 of the Agreement between the ADB and the Philippine

Government regarding the Headquarters of the ADB (hereinafter Agreement) in the country. As a result, MeTc judge dismissed the two criminal cases. However, RTC set aside the MeTC rulings and ordered the latter court to enforce the warrant of arrest. Liang elevated the case to the Supreme Court via a petition for review arguing that he is covered by immunity under the Agreement.

ISSUE:
Whether or not Liang is covered by the immunity under the agreement. (NO)

RULING:
Section 45 of the Agreement between the ADB and the Philippine Government regarding the Headquarters of the ADB provides that Officers and staff of the Bank including for the purpose of this Article experts and consultants performing missions for the Bank shall enjoy immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity. The immunity mentioned therein is not absolute, but subject to the exception that the acts was done in "official capacity". Slandering a person is not covered by the immunity agreement because Philippines laws do not allow the commission of a crime, such as defamation, in the name of official duty.

KHOSROW MINUCHER, *petitioner*, -versus- HON. COURT OF APPEALS and ARTHUR SCALZO, *respondents*.
G.R. No. 142396, FIRST DIVISION, February 11, 2003, VITUG, J.

A foreign agent, operating within a territory, can be cloaked with immunity from suit as long as it can be established that he is acting within the directives of the sending state.

FACTS:
Violation of the "Dangerous Drugs Act of 1972," was filed against Minucher following a "buy-bust operation" conducted by Philippine police narcotic agents accompanied by Scalzo in the house of Minucher, an Iranian national, where heroin was said to have been seized. Minucher was later acquitted by the court.

Minucher later on filed for damages due to trumped-up charges of drug trafficking made by Arthur Scalzo.

Scalzo on his counterclaims that he had acted in the discharge of his official duties as being merely an agent of the Drug Enforcement Administration of the United States Department of Justice.

Scalzo subsequently filed a motion to dismiss the complaint on the ground that, being a special agent of the United States Drug Enforcement Administration, he was entitled to diplomatic immunity. He attached to his motion Diplomatic Note of the United States Embassy addressed to DOJ of the Philippines and a Certification of Vice Consul Donna Woodward, certifying that the note is a true and faithful copy of its original. Trial court denied the motion to dismiss.

ISSUE:
Whether or not Arthur Scalzo is indeed entitled to diplomatic immunity. (YES)

RULING:
A foreign agent, operating within a territory, can be cloaked with immunity from suit as long as it can be established that he is acting within the directives of the sending state. The consent or imprimatur

of the Philippine government to the activities of the United States Drug Enforcement Agency, however, can be gleaned from the undisputed facts in the case.

The official exchanges of communication between agencies of the government of the two countries Certifications from officials of both the Philippine Department of Foreign Affairs and the United States Embassy Participation of members of the Philippine Narcotics Command in the "buy-bust operation" conducted at the residence of Minucher at the behest of Scalzo. These may be inadequate to support the "diplomatic status" of the latter but they give enough indication that the Philippine government has given its imprimatur, if not consent, to the activities within Philippine territory of agent Scalzo of the United States Drug Enforcement Agency.

The job description of Scalzo has tasked him to conduct surveillance on suspected drug suppliers and, after having ascertained the target, to inform local law enforcers who would then be expected to make the arrest. In conducting surveillance activities on Minucher, later acting as the poseur-buyer during the buy-bust operation, and then becoming a principal witness in the criminal case against Minucher, Scalzo hardly can be said to have acted beyond the scope of his official function or duties.

GOVERNMENT OF HONG KONG SPECIAL ADMINISTRATIVE REGION, represented by the Philippine Department of Justice, *Petitioner*, -versus- HON. FELIXBERTO T. OLALIA, JR. and JUAN ANTONIO MUÑOZ, *Respondents*.
G.R. No. 153675, EN BANC, April 19, 2007, SANDOVAL-GUTIERREZ, J.

It said that while our extradition law does not provide for the grant of bail to an extraditee, there is no provision prohibiting him or her from filing a motion for bail, a right under the Constitution.

FACTS:
Juan Muñoz was charged before a Hong Kong Court with several counts of offenses in violation of Hong Kong laws. If convicted, he faces a jail term of 7 to 14 years for each charge. After Juan Muñoz was arrested in the Philippines, the Hong Kong Special Administrative Region filed with the RTC of Manila a petition for the extradition of Juan Muñoz. On December 20, 2001, Judge X of RTC-Manila allowed Juan Muñoz to post bail. However, the government of Hong Kong alleged that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in admitting him to bail because "there is nothing in the Constitution or statutory law providing that a potential extraditee a right to bail, the right being limited solely to criminal proceedings."

ISSUE:
Whether or not Juan Muñoz, a potential extradite, be granted bail on the basis of clear and convincing evidence that he is not a flight risk and will abide with all the orders and processes of the extradition court. (YES)

RULING:
In a unanimous decision the SC remanded to the Manila RTC, to determine whether Juan Muñoz is entitled to bail on the basis of "clear and convincing evidence." If Muñoz is not entitled to such, the trial court should order the cancellation of his bail bond and his immediate detention; and thereafter, conduct the extradition proceedings with dispatch.

"If bail can be granted in deportation cases, we see no justification why it should not also be allowed in extradition cases. Likewise, considering that the Universal Declaration of Human Rights applies to deportation cases, there is no reason why it cannot be invoked in extradition cases. After all, both are

administrative proceeding where the innocence or guilt of the person detained is not in issue," the Court said.

Citing the various international treaties giving recognition and protection to human rights, the Court saw the need to reexamine its ruling in Government of United States of America v. Judge Purganan which limited the exercise of the right to bail to criminal proceedings.

It said that while our extradition law does not provide for the grant of bail to an extraditee, there is no provision prohibiting him or her from filing a motion for bail, a right under the Constitution.

It further said that even if a potential extradite is a criminal, an extradition proceeding is not by its nature criminal, for it is not punishment for a crime, even though such punishment may follow extradition. It added that "extradition is not a trial to determine the guilt or innocence of potential extraditee. Nor is it a full-blown civil action, but one that is merely administrative in character.

GOVERNMENT OF HONGKONG SPECIAL ADMINISTRATIVE REGION, REPRESENTED BY THE PHILIPPINE DEPARTMENT OF JUSTICE, *Petitioner*, -versus- JUAN ANTONIO MUNOZ, *Respondent*.
G.R. No. 207342, EN BANC, August 16, 2016, Bersamin, J.

The Philippines has the obligation of ensuring the individual his right to liberty and due process and should not therefor deprive the extraditee of his right to bail PROVIDED that certain standards for the grant is satisfactorily met. In other words there should be "CLEAR AND CONVINCING EVIDENCE".

FACTS:
Respondent Muñoz was charged of 3 counts of offences of "accepting an advantage as agent", and 7 counts of conspiracy to defraud, punishable by the common law of Hongkong. The Hongkong Department of Justice requested DOJ for the provisional arrest of respondent Muñoz; the DOJ forward the request to the NBI then to RTC. On the same day, NBI agents arrested him.

Respondent filed with the CA a petition for certiorari, prohibition and mandamus with application for preliminary mandatory injunction and writ of habeas corpus questioning the validity of the order of arrest.

The CA declared the arrest void. Hence, this petition by the Hongkong Department of Justice thru the DOJ.

DOJ filed a petition for certiorari in this Court and sustained the validity of the arrest.

Hongkong Administrative Region then filed in the RTC petition for extradition and arrest of respondent. Meanwhile, respondent filed a petition for bail, which was opposed by the petitioner, initially the RTC denied the petition holding that there is no Philippine Law granting bail in extradition cases and that private responded is a "flight risk".

Motion for reconsideration was filed by the respondent, which was granted. Hence, this petition.

ISSUE:
Whether or not right to bail can be avail in extradition cases. (YES)

RULING:
In Purganan case, the right to bail was not included in the extradition cases, since it is available only in criminal proceedings.

However the Supreme Court, recognised the following trends in International Law:

1. The growing importance of the individual person in publican international law who, in the 20th century attained global recognition.
2. The higher value now being given in human rights in international sphere
3. The corresponding duty of countries to observe these human rights in fulfilling their treaty obligations
4. The of duty of this court to balance the rights of the individual under our fundamental law, on one hand, and the law on extradition on the other.

The modern trend in the public international law is the primacy placed on the sanctity of human rights.

Enshrined the Constitution "The state values the dignity of every human person and guarantees full respect for human rights." The Philippines therefore, has the responsibility of protecting and promoting the right of every person to liberty and due process, ensuring that those detained or arrested can participate in the proceeding before the a court, to enable it to decide without delay on the legality of the detention and order their release if justified.

Examination of this Court in the doctrines provided for in the US Vs Purganan provide the following:

1. The exercise of the State's police power to deprive a person of his liberty is not limited to criminal proceedings.
2. To limit the right to bail in the criminal proceeding would be to close our eyes to jurisprudential history. Philippines has not limited the exercise of the right to bail to criminal proceedings only. This Court has admitted to bail persons who are not involved in criminal proceedings. In fact, bail has been involved in this jurisdiction to persons in detention during the tendency of administrative proceedings, taking into cognisance the obligation of the Philippines under international conventions to uphold human rights.

EXTRADITION, is defined as the removal of an accused from the Philippines with the object of placing him at the disposal of foreign authorities to enable the requesting state or government to hold him in connection with criminal investigation directed against him or execution of a penalty imposed on him under the penal and criminal law of the requesting state or government. Thus characterized as the right of the a foreign power, created by treaty to demand the surrender of one accused or convicted of a crimes within its territorial jurisdiction, and the correlative obligation of the other state to surrender him to the demanding state.

The extradited may be subject to detention as may be necessary step in the process of extradition, but the length of time in the detention should be reasonable.

In the case at bar, the record show that the respondent, Muñoz has been detained for 2 years without being convicted in Hongkong.

The Philippines has the obligation of ensuring the individual his right to liberty and due process and should not therefor deprive the extraditee of his right to bail PROVIDED that certain standards for the grant is satisfactorily met. In other words there should be "CLEAR AND CONVINCING EVIDENCE".

However in the case at bar, the respondent was not able to show and clear and convincing evidence that he be entitled to bail. Thus the case is remanded in the court for the determination and otherwise, should order the cancellation of his bond and his immediate detention.

HAMDI –versus- RUMSFELD
542 U.S. 507, 2004

A detained U.S. citizen, who wishes to challenge his classification as an "enemy combatant," must be given the basis for his classification, and be given a reasonable opportunity to challenge the Government's assertions before a neutral decisionmaker.

FACTS:
Following the attacks on September 11, 2001, Congress passed the Authorization for Use of Military Force ("AUMF"). The AUMF allowed the President to use force against those entities or persons who committed the attacks on September 11th, in order to prevent future attacks. Soon after, the President sent troops to Afghanistan to defeat al Qaeda and the Taliban.

Yaser Esam Hamdi, born a U.S. citizen, was detained in Afghanistan by U.S. troops. The U.S. Government contended that Hamdi had taken up arms for the Taliban, and against the U.S. The Government deemed Hamdi an "enemy combatant," which justified holding Hamdi indefinitely and without formal charges or proceedings.

Hamdi's father, on Hamdi's behalf, filed a petition for writ of habeas corpus in the Federal District Court. The petition argued that Hamdi's Fifth and Fourteenth Amendment rights were violated. Hamdi argued that, as a U.S. citizen, he was improperly detained without charges, access to a tribunal, or legal counsel. Before the Federal District Court, the only evidence presented was a declaration by the Government. That declaration stated that Hamdi was affiliated with the Taliban and had surrendered an assault rifle to U.S. troops.

The Federal District Court determined that the Government's declaration, standing alone, was insufficient to justify Hamdi's detention. The District Court asked for further evidence. The Fourth Circuit reversed. The Fourth Circuit, giving deference to the Government's war powers, found that the Government's declaration was sufficient for Hamdi's detention. The U.S. Supreme Court granted certiorari.

ISSUE:
Whether or not the Government can detain a U.S. citizen as an "enemy combatant" without access to legal counsel, without having charges brought against him, and without the chance to rebut the "enemy combatant" classification. (NO)

RULING:
The decision of the Fourth Circuit is vacated and remanded.

A detained U.S. citizen, who wishes to challenge his classification as an "enemy combatant," must be given the basis for his classification, and be given a reasonable opportunity to challenge the Government's assertions before a neutral decisionmaker.

The Court in this case was presented with the tension between personal freedom and national security. Specifically, the Court was called upon to find the balance between a U.S. citizen's right to due process, and the Government's interest in ensuring that a person who has fought against the U.S. during war is not permitted to return to the battlefield.

Writing for a plurality, Justice O'Connor first found that the Government did indeed have the authority to detain Hamdi under the AUMF. Justice O'Connor, however, went on to hold that even though the Executive branch be given deference during times of conflict, the Government does not enjoy unchecked power during wartime. Accordingly, the Constitution demands that Hamdi be given legal counsel and some ability to rebut his classification as an "enemy combatant."

MEDELLIN –versus- TEXAS
552 U.S. 491, 2008, Roberts, C.J

States courts are not required under the U.S. Constitution to honor a treaty obligation of the United States by enforcing a decision of the International Court of Justice. What the Vienna Convention stipulate is that if a person detained by a foreign country asks, the authorities of the detaining national must, without delay, inform the consular post of the detainee of the detention.

FACTS:
Jose Medellin (D), a Mexican national was found guilty for being part of the gang rape and murder of two teenage girls in Houston. He argued that the state had violated his rights under the Vienna Convention in which the United States is a party. Under the Vienna Convention, any foreign national detained for any crime has a right to contact his consulate.

Though his appeal was dismissed by the Supreme Court, the Court took up his case again and Medellin (D) argument rested in part on a holding by the International Court of Justice in Case Concerning Avena and Other Mexican Nationals (Mex v U.S.), 2004 I.C.J. 12 that the U.S. had violated the Vienna Convention rights of 51 Mexican national (including Medellin (D) and that their state-court convictions must be reconsidered, regardless of any forfeiture of the right to raise the Vienna Convention claims because of a failure to follow state rules governing criminal convictions.

Based on these, Medellin (D) argued that the Vienna Convention granted him an individual right that state courts must respect. A memorandum from the U.S. President that instructed state courts to comply with the I.C.J's rulings by rehearsing the cases was also cited by Medellin (D). He further argued that the Constitution gives the President broad power to ensure that treaties are enforced, and that this power extends to the treatment of treaties in state court proceedings.

ISSUE:
Whether or not state courts are required under the U.S. Constitution to honor a treaty obligation of the United States by enforcing a decision of the International Court of Justice? (NO)

Whether or not states courts are required by the U.S. Constitution to provide review and reconsideration of a conviction without regard to state procedural default rules as required by a memorandum by the President. (NO)

RULING:
States courts are not required under the U.S. Constitution to honor a treaty obligation of the United States by enforcing a decision of the International Court of Justice. What the Vienna Convention stipulate is that if a person detained by a foreign country asks, the authorities of the detaining national must, without delay, inform the consular post of the detainee of the detention.

State courts are not required by the U.S. Constitution to provide review and reconsideration of a conviction without regard to state procedural default rules as required by a Memorandum by the President. The presidential memorandum was an attempt by the Executive Branch to enforce a non-self-executing treaty without the necessary congressional action, giving it no binding authority on state courts.

Not all international law obligations automatically constitute binding federal law enforceable in United States courts. A distinction is recognized between treaties that automatically have effect as domestic law, and those that--while they constitute international law commitments--do not by themselves function as binding federal law. A treaty is equivalent to an act of the legislature, and hence self-executing, when it operates of itself without the aid of any legislative provision. When, in contrast, treaty stipulations are not self-executing they can only be enforced pursuant to legislation to carry them into effect. In sum, while treaties may comprise international commitments, they are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be "self-executing" and is ratified on those terms. What is meant by "self-executing" is that the treaty has automatic domestic effect as federal law upon ratification. Conversely, a "non-self-executing" treaty does not by itself give rise to domestically enforceable federal law. Whether such a treaty has domestic effect depends upon implementing legislation passed by Congress.

SUZETTE NICOLAS y SOMBILON, *Petitioner*, -versus- ALBERTO ROMULO, in his capacity as Secretary of Foreign Affairs; RAUL GONZALEZ, in his capacity as Secretary of Justice; EDUARDO ERMITA, in his capacity as Executive Secretary; RONALDO PUNO, in his capacity as Secretary of the Interior and Local Government; SERGIO APOSTOL, in his capacity as Presidential Legal Counsel; and L/CPL. DANIEL SMITH, *Respondents*.
G.R. No. 175888, EN BANC, February 11, 2009, AZCUNA, J.

The SC ruled that "the VFA was duly concurred in by the Philippine Senate and has been recognized as a treaty by the United States," and "the fact that (it) was not submitted for advice and consent of the United States does not detract from its status as a binding international agreement or treaty recognized by the said State."

FACTS:
Lance Corporal Daniel Smith, member of the US Armed Forces, was found guilty beyond reasonable doubt of the crime of rape in the RTC of Makati. The court ordered Smith detained at the Makati City Jail until further orders.

On December 19 and 22, 2006, Philippine Foreign Affairs Secretary Alberto Romulo and US Ambassador Kristie Kenney executed agreements that pursuant to the VFA, Smith be returned to the US military custody and be detained at the first floor, Rowe Building, US Embassy Compound.

Petitioner Jovito Salonga, et al. challenged the validity of the said agreements contending that the Philippines should have custody of Smith because, first of all, the VFA is void and unconstitutional since it violates Art. XVlll, Sec. 25 of the constitution.

ISSUE:
Whether or not the VFA constitutional? (YES)
Whether or not the Romulo-Kenney Agreements is in accordance with the provisions of the VFA itself? (NO)

RULING:
VFA is Constitutional

The SC ruled that "the VFA was duly concurred in by the Philippine Senate and has been recognized as a treaty by the United States," and "the fact that (it) was not submitted for advice and consent of the United States does not detract from its status as a binding international agreement or treaty recognized by the said State."

Section 25, Article XVIII, 1987 Constitution provides that "foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State."

The issue, the Court said, is "whether or not the presence of the US Armed Forces in Philippine territory pursuant to the VFA is allowed 'under a treaty duly concurred in by the Senate and recognized as a treaty by the other contracting State.'" "It is," the Court ruled. "The VFA, which is the instrument agreed upon to provide for the joint RP-US military exercises, is simply an implementing agreement to the main RP-US Mutual Defense Treaty," the Court held. The RP-US Mutual Defense Treaty of August 30, 1951 was signed and duly ratified with the concurrence of both the Philippine Senate and the United States Senate.

Romulo-Kenney Agreements not in accord with the VFA itself

The Court however ruled that "the Romulo-Kenney Agreements of December 19 and 22, 2006, which are agreements on the detention of the accused in the United States Embassy, are not in accord with the VFA itself because such detention is not "by Philippine authorities." Article V, Section 10 of the VFA provides that "the confinement or detention by Philippine authorities of the United States personnel shall be carried out in facilities agreed on by appropriate Philippines and United States authorities."