

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

POLITICAL LAW

- **G.R. No. 171496. March 3, 2014** Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH) Vs. Ortigas and Company Limited Partnership

- **Owners whose properties were taken for public use are entitled to just compensation.**

Appeals from the Regional Trial Court to the Court of Appeals under Rule 41 must raise both questions of fact and law

Section 2 of Rule 50 of the Rules of Court provides that appeals taken from the Regional Trial Court to the Court of Appeals raising only pure questions of law are not reviewable by the Court of Appeals. In which case, the appeal shall not be transferred to the appropriate court. Instead, it shall be dismissed outright.

Appeals from the decisions of the Regional Trial Court, raising purely questions of law must, in all cases, be taken to the Supreme Court on a petition for review on certiorari in accordance with Rule 45. An appeal by notice of appeal from the decision of the Regional Trial Court in the exercise of its original jurisdiction to the Court of Appeals is proper if the appellant raises questions of fact or both questions of fact and questions of law.

There is a question of law when the appellant raises an issue as to what law shall be applied on a given set of facts. Questions of law do "not involve an examination of the probative value of the evidence presented." Its resolution rests solely on the application of a law given the circumstances. There is a question of fact when the court is required to examine the truth or falsity of the facts presented. A question of fact "invites a review of the evidence."

The sole issue raised by petitioner

Republic of the Philippines to the Court of Appeals is whether respondent Ortigas' property should be conveyed to it only by donation, in accordance with Section 50 of Presidential Decree No. 1529. This question involves the interpretation and application of the provision. It does not require the Court of Appeals to examine the truth or falsity of the facts presented. Neither does it invite a review of the evidence. The issue raised before the Court of Appeals was, therefore, a question purely of law. The proper mode of appeal is through a petition for review under Rule 45. Hence, the Court of Appeals did not err in dismissing the appeal on this ground.

In other words, what Section 1 of Rule 41 prohibits is an appeal taken from an interlocutory order. An interlocutory order or judgment, unlike a final order or judgment, does "not completely dispose of the case [because it leaves to the court] something else to be decided upon." Appeals from interlocutory orders are generally prohibited to prevent delay in the administration of justice and to prevent "undue burden upon the courts."

Orders denying motions for reconsideration are not always interlocutory orders. A motion for reconsideration may be considered a final decision, subject to an appeal, if "it puts an end to a particular matter," leaving the court with nothing else to do but to execute the decision.

The trial court's order denying petitioner Republic of the Philippines' motion for reconsideration of the decision granting respondent Ortigas the authority to sell its property to the government was not an interlocutory order because it completely disposed of a particular matter. An appeal from it would not cause delay in the administration of justice. Petitioner Republic of the Philippines' appeal to the Court of Appeals, however, was properly dismissed because the former used the wrong mode of appeal.

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Section 50 of Presidential Decree No. 1529 does not apply in a case that is the proper subject of an expropriation proceeding

Respondent Ortigas may sell its property to the government. It must be compensated because its property was taken and utilized for public road purposes.

Petitioner Republic of the Philippines insists that the subject property may not be conveyed to the government through modes other than by donation. It relies on Section 50 of the Property Registration Decree, which provides that delineated boundaries, streets, passageways, and waterways of a subdivided land may not be closed or disposed of by the owner except by donation to the government.

Petitioner Republic of the Philippines' reliance on Section 50 of the Property Registration Decree is erroneous. Section 50 contemplates roads and streets in a subdivided property, not public thoroughfares built on a private property that was taken from an owner for public purpose. A public thoroughfare is not a subdivision road or street.

More importantly, when there is taking of private property for some public purpose, the owner of the property taken is entitled to be compensated.

There is taking when the following elements are present:

1. The government must enter the private property;
2. The entrance into the private property must be indefinite or permanent;
3. There is color of legal authority in the entry into the property;
4. The property is devoted to public use or purpose;
5. The use of property for public use

removed from the owner all

beneficial enjoyment of the property.

All of the above elements are present in this case. Petitioner Republic of the Philippines' construction of a road — a permanent structure — on respondent Ortigas' property for the use of the general public is an obvious permanent entry on petitioner Republic of the Philippines' part. Given that the road was constructed for general public use stamps it with public character, and coursing the entry through the Department of Public Works and Highways gives it a color of legal authority.

As a result of petitioner Republic of the Philippines' entry, respondent Ortigas may not enjoy the property as it did before. It may not anymore use the property for whatever legal purpose it may desire. Neither may it occupy, sell, lease, and receive its proceeds. It cannot anymore prevent other persons from entering or using the property. In other words, respondent Ortigas was effectively deprived of all the bundle of rights from entering or using the property. In other words, respondent Ortigas was effectively deprived of all the bundle of rights

It is true that the lot reserved for road widening, together with five other lots, formed part of a bigger property before it was subdivided. However, this does not mean that all lots delineated as roads and streets form part of subdivision roads and streets that are subject to Section 50 of the Property Registration Decree. Subdivision roads and streets are constructed primarily for the benefit of the owners of the surrounding properties. They are, thus, constructed primarily for private use — as opposed to delineated road lots taken at the instance of the government for the use and benefit of the general public.

In this case, the lot was reserved for road

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widening at the instance of petitioner Republic of the Philippines. While the lot segregated for road widening used to be part of the subdivided lots, the intention to separate it from the delineated subdivision streets was obvious from the fact that it was located at the fringes of the original lot — exactly at petitioner Republic of the Philippines' intended location for the road widening project. Moreover, petitioner Republic of the Philippines' intention to take the property for public use was obvious from the completion of the road widening for the C-5 flyover project and from the fact that the general public was already taking advantage of the thoroughfare.

Delineated roads and streets, whether part of a subdivision or segregated for public use, remain private and will remain as such until conveyed to the government by donation or through expropriation proceedings. An owner may not be forced to donate his or her property even if it has been delineated as road lots because that would partake of an illegal taking. He or she may even choose to retain said properties. If he or she chooses to retain them, however, he or she also retains the burden of maintaining them and paying for real estate taxes.

An owner of a subdivision street which was not taken by the government for public use would retain such burden even if he or she would no longer derive any commercial value from said street. To remedy such burden, he or she may opt to donate it to the government. In such case, however, the owner may not force the government to purchase the property. That would be tantamount to allowing the government to take private property to benefit private individuals. This is not allowed under the Constitution, which requires that taking must be for public use.

Further, since the Constitution proscribes taking of private property without just compensation, any taking must entail a

corresponding appropriation for that purpose. Public funds, however, may only be appropriated for public purpose. Employment of public funds to benefit a private individual constitutes malversation.

Therefore, private subdivision streets not taken for public use may only be donated to the government.

In contrast, when the road or street was delineated upon government request and taken for public use, as in this case, the government has no choice but to compensate the owner for his or her sacrifice, lest it violates the constitutional provision against taking without just compensation

Respondent Ortigas, immediately upon the government's suggestion that it needed a portion of its property for road purposes, went so far as to go through the process of annotating on its own title that the property was reserved for road purposes. Without question, respondent Ortigas allowed the government to construct the road and occupy the property when it could have compelled the government to resort to expropriation proceedings and ensure that it would be compensated. Now, the property is being utilized, not for the benefit of respondent Ortigas as a private entity but by the public. Respondent Ortigas remains uncompensated. Instead of acknowledging respondent Ortigas' obliging attitude, however, petitioner Republic of the Philippines refuses to pay, telling instead that the property must be given to it at no cost. This is unfair.

Title to the subject lot remains under respondent Ortigas' name. The government is already in possession of the property but is yet to acquire title to it. To legitimize such possession, petitioner Republic of the Philippines must acquire the property from respondent Ortigas by instituting expropriation proceedings or through negotiated sale, which has

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already been recognized in law as a mode of government acquisition of private property for public purpose.

Taking of private property without just compensation is a violation of a person's property right. In situations where the government does not take the trouble of initiating an expropriation proceeding, the private owner has the option to compel payment of the property taken, when justified. The trial court should continue to proceed with this case to determine just compensation in accordance with law.

administer and enforce laws, including rules and regulations issued by the DOH, that pertain to the registration of pharmaceutical products.

For their part, respondents maintain that under RA 3720, the power to make rules to implement the law is lodged with the Secretary of Health, not with the FDA.

They also argue that the assailed circulars are void for lack of prior hearing, consultation, and publication.

Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.

An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations.

Meanwhile, **interpretative rules** are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single

- **G.R. No. 190837. March 5, 2014** Republic of the Philippines rep. by the Bureau of Food and Drugs (BFAD) now Food and Drugs Administration Vs. Drugmaker's Laboratories, Inc. and Terramedic, Inc.

- The primordial issue in this case is **whether or not the FDA may validly issue and implement Circular Nos. 1 and 8, s. 1997.** In resolving this issue, there is a need to determine whether or not the aforesaid circulars partake of administrative rules and regulations and, as such, must comply with the requirements of the law for its issuance.

The FDA contends that it has the authority to issue Circular Nos. 1 and 8, s. 1997 as it is the agency mandated by law to

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person or party in particular but concern all those belonging to the same class which may be covered by the said rules.

Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.

In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the "Administrative Code of 1987," on prior notice, hearing, and publication in order to be valid and binding, except when the same is merely an interpretative rule. This is because "[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law."

In the case at bar, it is undisputed that RA 3720, as amended by Executive Order No. 175, s. 1987 prohibits, *inter alia*, the manufacture and sale of pharmaceutical products without obtaining the proper CPR from the FDA. In this regard, the FDA has been deputized by the same law to accept applications for registration of pharmaceuticals and, after due course, grant or reject such applications. To this end, the said law expressly authorized the Secretary of Health, upon the recommendation of the FDA Director, to issue rules and regulations that pertain to the registration of pharmaceutical products.

A careful scrutiny of the foregoing issuances would reveal that AO 67, s. 1989 is actually the rule that originally introduced the BA/BE testing requirement as a component of applications for the issuance of CPRs covering certain pharmaceutical products. As such, it is considered an administrative regulation – a legislative rule to be exact – issued by the Secretary of Health in consonance with the express authority granted to him by RA 3720 to implement the statutory mandate that all drugs and devices should first be registered with the FDA prior to their manufacture and sale. Considering that neither party contested the validity of its issuance, the Court deems that AO 67, s. 1989 complied with the requirements of prior hearing, notice, and publication pursuant to the presumption of regularity accorded to the government in the exercise of its official duties.

On the other hand, Circular Nos. 1 and 8, s. 1997 cannot be considered as administrative regulations because they do not: (a) implement a primary legislation by providing the details thereof; (b) interpret, clarify, or explain existing statutory regulations under which the FDA operates; and/or (c) ascertain the existence of certain facts or things upon which the enforcement of RA 3720 depends. In fact, the only purpose of these circulars is for the FDA to administer and supervise the implementation of the provisions of AO 67, s. 1989, including those covering the BA/BE testing requirement, consistent with and pursuant to RA 3720.

Therefore, the FDA has sufficient authority to issue the said circulars and since they would not affect the substantive rights of the parties that they seek to govern – as they are not, strictly speaking, administrative regulations in the first place – no prior hearing, consultation, and publication are needed for their validity.

In sum, the Court holds that Circular Nos. 1 and 8, s. 1997 are valid issuances and

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binding to all concerned parties, including the respondents in this case.

- **G.R. No. 204869. March 11, 2014** Technical Education and Skills Development Authority (TESDA) Concurring and Dissenting Opinion **J. Brion**

- The Constitution vests COA, as guardian of public funds, with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.

The COA is generally accorded complete discretion in the exercise of its constitutional duty and the Court generally sustains its decisions in recognition of its expertise in the laws it is entrusted to enforce.

We do not find any grave abuse of discretion when COA disallowed the disbursement of EME to TESDA officials for being excessive and unauthorized by law

The GAA provisions are clear that the EME shall *not exceed* the amounts fixed in the GAA. The GAA provisions are also clear that *only* the officials named in the GAA, the officers of equivalent rank as may be authorized by the DBM, and the offices under them are entitled to claim EME not exceeding the amount provided in the GAA.

The COA faithfully implemented the GAA provisions. COA Circular No. 2012-001 states that the amount fixed under the GAA for the National Government offices and officials shall be the ceiling in the disbursement of EME. COA Circular No. 89-300, prescribing the guidelines in the disbursement of EME, likewise states that the amount fixed by the GAA shall be the basis for the control in the disbursement of these funds.

The COA merely complied with its mandate when it disallowed the EME that were reimbursed to officers who were not

entitled to the EME, or who received EME in excess of the allowable amount. When the law is clear, plain and free from ambiguity, there should be no room for interpretation but only its application.

However, TESDA insists on its interpretation justifying its payment of EME out of the TESDP Fund. It argues that the 2004-2007 GAAs did not prohibit its officials from receiving additional EME chargeable against an authorized funding, the TESDP Fund in this case, for another office to which they have been designated.

We do not find merit in TESDA's argument.

The TESDA is an instrumentality of the government established under Republic Act No. 7796 or the TESDA Act of 1994. Under Section 33 of the TESDA Act, the TESDA budget for the implementation of the Act is included in the annual GAA; hence, the TESDP Fund, being sourced from the Treasury, are funds belonging to the government, or any of its departments, in the hands of public officials.

The Constitution provides, "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." The State Audit Code, which prescribes the guidelines in disbursing public funds, reiterates this important Constitutional provision that there should be an appropriation law or other statutes specifically authorizing payment out of any public funds.

In this case, TESDA failed to point out the law specifically authorizing it to grant additional reimbursement for EME from the TESDP Fund, contrary to the explicit requirement in the Constitution and the law. In *Yap v. Commission on Audit*, we upheld COA's disallowance of medical expenses and other benefits such as car maintenance, gasoline allowance and driver's subsidy due to petitioner's failure to point out the law specifically

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authorizing the same. There is nothing in the 2004-2007 GAAs which allows TESDA to grant its officials **another set of EME from another source of fund** like the TESDP Fund. COA aptly pointed out that not even TESDA's inclusion of EME from both the General Fund and the TESDP Fund in the 2005 GAA justified its payment of excessive EME from 2004 up to 2007. The 2005 GAA provided for a ceiling on EME that TESDA still had to comply despite the grant of EME in the 2005 GAA for foreign-assisted projects.

The position of project officer is not among those listed or authorized to be entitled to EME, namely, the officials named in the GAA, the officers of equivalent rank as may be authorized by the DBM, and the offices under them. The underlying principle behind the EME is to enable those occupying key positions in the government to meet various financial demands. As pointed out by COA, the position of project officer is not even included in the Personnel Service Itemization or created with authority from the DBM. Thus, the TESDA officials were, in fact, merely designated with additional duties, which designation did not entitle them to additional EME.

Having settled that COA properly disallowed the payment of excessive EME by TESDA, we proceed to determine whether the TESDA officials should refund the excess EME granted to them.

the Director-General's blatant violation of the clear provisions of the Constitution, the 2004-2007 GAAs and the COA circulars is equivalent to gross negligence amounting to bad faith. He is required to refund the EME he received from the TESDP Fund for himself. As for the TESDA officials who had no participation in the approval of the excessive EME, they acted in good faith since they had no hand in the approval of the unauthorized EME. They also honestly believed that the additional EME were reimbursement for their designation as project officers by the

Director-General. Being in good faith, they need not refund the excess EME they received.

- **G.R. No. 192100. March 12, 2014** Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH) Vs. Asia Pacific Intergrated Steel Corporation

- Hence, this petition assailing the CA's affirmance of the trial court's award of just compensation, the legal basis of which is allegedly insufficient.

Section 5 of R.A. 8974 enumerates the standards for assessing the value of expropriated land taken for national government infrastructure projects, , thus:

SECTION 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. - In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

1. (a) The classification and use for which the property is suited;
2. (b) The developmental costs for improving the land;
3. (c) The value declared by the owners;
4. (d) The current selling price of similar lands in the vicinity;
5. (e) The reasonable disturbance compensation for the removal

and/or demolition of certain improvements on the land and for the value of the improvements thereon;

(f) The size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

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(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

In this case, the trial court considered only (a) and (d): (1) the classification of the subject property which is located in an area with mixed land use (commercial, residential and industrial) and the property's conversion from agricultural to industrial land, and (2) the current selling price of similar lands in the vicinity – the only factors which the commissioners included in their Report. It also found the commissioners' recommended valuation of P1,000.00 to P1,500.00 per square to be fair and just despite the absence of documentary substantiation as said prices were based merely on the opinions of bankers and realtors.

We find that the trial court did not judiciously determine the fair market value of the subject property as it failed to consider other relevant factors such as the zonal valuation, tax declarations and current selling price supported by documentary evidence. Indeed, just compensation must not be arrived at arbitrarily, but determined after an evaluation of different factors.

It is settled that the final conclusions on the proper amount of just

compensation can only be made after due ascertainment of the requirements

set forth under R.A. 8974 and not merely based on the declarations of the parties. Since these requirements were not satisfactorily complied with, and in the absence of reliable and actual data as bases in fixing the value of the condemned property, remand of this case to the trial court is in order.

- **G.R. No. 163361. March 12, 2014** Spouses Jose M. Estacion, Jr. [Deceased,

substituted by Jose T. Estacion III, Edgardo T. Estacion, Michael T. Estacion and Jocelyn Estacion Hamoy] and Agelina T. Estacion Vs. Hon. Secretary, Department of Agrarian Reform, et al.

ISSUE: JUST COMPENSATION

The petitioners have no personality to file the petition for the determination of just compensation

Records bear out the fact that at the time the petitioners filed the Amended Petition in 1998, ownership of the properties sought to be compensated for was already transferred to respondent PNB. As early as 1969, the petitioners already mortgaged the properties as security for the sugar crop loan they originally obtained from respondent PNB, and as admitted by the petitioners, respondent PNB foreclosed the mortgage on the property in 1982. As a result, title to the properties was consolidated in the name of PNB. Moreover, as disclosed by PNB, the properties were already transferred to the government pursuant to the mandate of Executive Order No. 407, which directed all government-owned and -controlled corporations to surrender to the DAR all landholdings suitable for agriculture. Clearly, the petitioners have no personality to seek determination of just compensation given that ownership of and title to the properties have already passed on to PNB and eventually, the State.

The petitioners cannot solely rely on TCT No. T-9096 to assert ownership over the properties since it is merely an evidence of ownership or title over the particular property described therein.

Exclusive and original jurisdiction of the SAC to determine just compensation

Contrary to the CA's position, however, the RTC, acting as a SAC, has jurisdiction to determine just compensation at the very first instance, and the petitioners

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need not pass through the DAR for initial valuation.

The determination of just compensation is essentially a judicial function, which is vested in the RTC acting as SAC. It cannot be lodged with administrative agencies such as the DAR. The Court has already settled the rule that the SAC is not an appellate reviewer of the DAR decision in administrative cases involving compensation.

Nevertheless, as correctly pointed out by the SAC, it does not have the power to determine the validity of the extrajudicial foreclosure of the mortgage conducted by PNB over the properties, as prayed for by the petitioners. The jurisdiction of the SAC vested by Section 57 of R.A. No. 6657, while original and exclusive, is limited only to petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act.

- **G.R. No. 201643. March 12, 2014** Office of the Ombudsman Vs. Jose T. Capulong

ISSUE: NON-FILING OF SALN'S; NON-DISCLOSURE OF SPOUSE'S BUSINESS INTEREST

Essentially, the issue presented to the Court for resolution is whether the CA has jurisdiction over the subject matter and can grant reliefs, whether primary or incidental, after the Ombudsman has lifted the subject order of preventive suspension.

As a rule, it is the consistent and general policy of the Court not to interfere with the Ombudsman's exercise of its investigatory and prosecutory powers. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman but upon practicality as well. It is within the context of this well-entrenched policy that the Court proceeds to pass upon the validity of the preventive suspension order issued by the

Ombudsman.

In the instant case, the subsequent lifting of the preventive suspension order against Capulong does not render the petition moot and academic. It does not preclude the courts from passing upon the validity of a preventive suspension order, it being a manifestation of its constitutionally mandated power and authority 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.

The preventive suspension order is interlocutory in character and not a final order on the merits of the case. The aggrieved party may then seek redress from the courts through a petition for *certiorari* under Section 1, Rule 65 of the 1997 Rules of Court. While it is true that the primary relief prayed for by Capulong in his petition has already been voluntarily corrected by the Ombudsman by the issuance of the order lifting his preventive suspension, we must not lose sight of the fact that Capulong likewise prayed for other remedies. There being a finding of grave abuse of discretion on the part of the Ombudsman, it was certainly imperative for the CA to grant incidental reliefs, as sanctioned by Section 1 of Rule 65.

The decision of the appellate court to proceed with the merits of the case is included in Capulong's prayer for such "other reliefs as may be just and equitable under the premises." Such a prayer in the petition justifies the grant of a relief not otherwise specifically prayed for.

More importantly, we have ruled that it is the allegations in the pleading which determine the nature of the action and the Court shall grant relief warranted by the allegations and proof even if no such relief is prayed for.

Significantly, the power of adjudication,

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vested in the CA is not restricted to the specific relief claimed by the parties to the dispute, but may include in the order or decision any matter or determination which may be deemed necessary and expedient for the purpose of settling the dispute or preventing further disputes, provided said matter for determination has been established by competent evidence during the hearing. The CA is not bound by technical rules of procedure and evidence, to the end that all disputes and other issues will be adjudicated in a just, expeditious and inexpensive proceeding.

The requisites for the Ombudsman to issue a preventive suspension order are clearly contained in Section 24 of R.A. No. 6770. The rule is that whether the evidence of guilt is strong is left to the determination of the Ombudsman by taking into account the evidence before him. In the very words of Section 24, the Ombudsman may preventively suspend a public official pending investigation if "*in his judgment*" the evidence presented before him tends to show that the official's guilt is strong and if the further requisites enumerated in Section 24 are present.

The Court, however, can substitute its own judgment for that of the Ombudsman on this matter, with a clear showing of grave abuse of discretion on the part of the Ombudsman.

Undoubtedly, in this case, the CA aptly ruled that the Ombudsman abused its discretion because it failed to sufficiently establish any basis to issue the order of preventive suspension. Capulong's non-disclosure of his wife's business interest does not constitute serious dishonesty or grave misconduct. Nothing in the records reveals that Capulong deliberately placed "N/A" in his SALN despite knowledge about his wife's business interest. As explained by Capulong, the SEC already revoked the registration of the corporations where his wife was an incorporator; hence, he deemed it not

necessary to indicate it in his SALN.

Ineluctably, the dismissal of an administrative case does not necessarily bar the filing of a criminal prosecution for the same or similar acts, which were the subject of the administrative complaint. The Court finds no cogent reason to depart from this rule. However, the crime of perjury for which Capulong was charged, requires a willful and deliberate assertion of a falsehood in a statement under oath or in an affidavit, and the statement or affidavit in question here is Capulong's SALNs. It then becomes necessary to consider the administrative charge against Capulong to determine whether or not he has committed perjury. Therefore, with the dismissal of Capulong's administrative case, the CA correctly dismissed its criminal counterpart since the crime of perjury which stemmed from misrepresentations in his SALNs will no longer have a leg to stand on.

- **G.R. No. 198271. April 1, 2014** Arnaldo M. Espinas, Lillian N. Asprer, and Eleanora R. De Jesus Vs. Commission on Elections

ISSUE: Notice of Disallowance covering petitioners' reimbursement claims for extraordinary and miscellaneous expenses for the period January to December 2006.

The CoA's audit power is among the constitutional mechanisms that gives life to the check-and-balance system inherent in our system of government. As an essential complement, the CoA has been vested with the exclusive authority to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

As an independent constitutional body conferred with such power, it reasonably follows that the CoA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be

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accorded great weight and respect.

Viewed in the foregoing light, the Court finds that the CoA did not commit any grave abuse of discretion as its affirmation of Notice of Disallowance No. 09-001-GF(06) is based on cogent legal grounds.

First off, the Court concurs with the CoA's conclusion that the "certification" submitted by petitioners cannot be properly considered as a supporting document within the purview of Item III(3) of CoA Circular No. 2006-01 which pertinently states that a **"claim for reimbursement of [EME] expenses shall be supported by receipts and/or other documents evidencing disbursements."** Similar to the word "receipts," the "other documents" pertained to under the above-stated provision is qualified by the phrase "evidencing disbursements." Citing its lexicographic definition, the CoA stated that the term "disbursement" means "to pay out commonly from a fund" or "to make payment in settlement of debt or account payable."

That said, it then logically follows that petitioners' "certification," so as to fall under the phrase "other documents" under Item III(3) of CoA Circular No. 2006-01, must substantiate the "paying out of an account payable," or, in simple term, a disbursement. However, an examination of the sample "certification" attached to the petition does not, by any means, fit this description. The signatory therein merely certifies that he/she has spent, within a particular month, a certain amount for meetings, seminars, conferences, official entertainment, public relations, and the like, and that the certified amount is within the ceiling authorized under the LWUA corporate budget. Accordingly, since petitioners' reimbursement claims were solely supported by this "certification," the CoA properly disallowed said claims for failure to comply with CoA Circular No. 2006-01.

Lastly, the Court upholds the CoA's finding that there exists a substantial distinction between officials of NGAs and the officials of GOCCs, GFIs and their subsidiaries which justify the peculiarity in regulation. Since the EME of GOCCs, GFIs and their subsidiaries, are, pursuant to law, allocated by their own internal governing boards, as opposed to the EME of NGAs which are appropriated in the annual GAA duly enacted by Congress, there is a perceivable rational impetus for the CoA to impose nuanced control measures to check if the EME disbursements of GOCCs, GFIs and their subsidiaries constitute irregular, unnecessary, excessive, extravagant, or unconscionable government expenditures. Case in point is the LWUA Board of Trustees which, pursuant to Section 69 of PD 198, as amended, is "authorized to appropriate out of any funds of the Administration, such amounts as it may deem necessary for the operational and other expenses of the Administration including the purchase of necessary equipment." Indeed, the Court recognizes that denying GOCCs, GFIs and their subsidiaries the benefit of submitting a secondary-alternate document in support of an EME reimbursement, such as the "certification" discussed herein, is a CoA policy intended to address the disparity in EME disbursement autonomy. As pertinently stated in CoA Circular No. 2006-01, the consideration underlying the rules and regulations contained therein is the fact that "[g]overning boards of [GOCCs/GFIs] are invariably empowered to appropriate through resolutions such amounts as they deem appropriate for extraordinary and miscellaneous expenses." Hence, in due deference to the CoA's constitutional prerogatives, the Court, absent any semblance of grave abuse of discretion in this case, respects the regulation, and consequently dismisses the petition.

- **G.R. No. 199549. April 7, 2014** Civil Service Commission and Department of Science and Technology, Regional Office No. V

• We find the present petition partially meritorious. The respondent is guilty of simple

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insubordination.

- Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer.

In this case, the respondent committed insubordination when she failed to promptly act on the June 16, 2000 memorandum issued by her superior, Regional Director Nepomuceno, reminding her of her duties to immediately turn-over documents to and exchange room assignments with the new Administrative Officer-Designate, Engr. Lucena. The subject memorandum was a lawful order issued to enforce Special Order No. 23, s. of 2000 reassigning the respondent from Administrative to Planning Officer, and which warranted the respondent's obedience and compliance.

We see in the respondent's initial inaction her deliberate choice not to act on the subject memoranda; she waited until the resolution of her motion for reconsideration of her reassignment (that she filed on June 27, 2000) before she actually complied. The service would function very inefficiently if these types of dilatory actions would be allowed.

- **G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 & 207563. April 8, 2014** James M. Imbong, et al. Vs. Hon. Paquito N. Ochoa, Jr., et al. Concurring and Dissenting Opinion **C.J. Sereno, J. Del Castillo, J. Reyes, J. Perlas-Bernabe** Concurring Opinion **J. Carpio, J. Leonardo-De Castro, J. Abad** Separate Concurring Opinion **J. Brion** Dissenting Opinion **J. Leonen**

- **I. PROCEDURAL:** Whether the Court may exercise its power of judicial review over the controversy.
- 1] Power of Judicial Review 2]

Actual Case or Controversy 3]
Facial Challenge
4] Locus Standi
5] Declaratory Relief
6] One Subject/One Title Rule

- **II. SUBSTANTIVE:** Whether the RH law is unconstitutional:
- 1] Right to Life
2] Right to Health
3] Freedom of Religion and the Right to Free Speech 4] The Family
5] Freedom of Expression and Academic Freedom
6] Due Process
- 7] Equal Protection
8] Involuntary Servitude
9] Delegation of Authority to the FDA
10] Autonomy of Local Governments/ARMM

***SUBSTANTIVE ISSUES:**

A. Whether or not (WON) RA 10354/Reproductive Health (RH) Law is unconstitutional for violating the:

1. Right to life

2. Right to health

3. Freedom of religion and right to free speech

a.) WON the RH Law violates the guarantee of religious freedom since it mandates the State-sponsored procurement of contraceptives, which contravene the religious beliefs of e.g. the petitioners

b.) WON the RH Law violates the guarantee of religious freedom by compelling medical health practitioners, hospitals, and health care providers, under pain of penalty, to refer patients to other institutions despite their

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conscientious objections

c.) WON the RH Law violates the guarantee of religious freedom by requiring would-be spouses, as a condition for the issuance of a marriage license, to attend a seminar on parenthood, family planning, breastfeeding and infant nutrition

4. Right to privacy (marital privacy and autonomy)

5. Freedom of expression and academic freedom

6. Due process clause

7. Equal protection clause

8. Prohibition against involuntary servitude

B. WON the delegation of authority to the Food and Drug Administration (FDA) to determine WON a supply or product is to be included in the Essential Drugs List is valid

C. WON the RH Law infringes upon the powers devolved to Local Governments and the Autonomous Region in Muslim Mindanao (ARMM)

*** HELD:**

A.

1. NO.

2. NO.

3.

a.) NO.

b.) YES.

c.) NO.

4. YES.

5. NO.

6. NO.

7. NO.

8. NO.

B. NO.

C. NO.

*** RATIO:**

1.) Majority of the Members of the Court believe that the question of when life begins is a scientific and medical issue that should not be decided, at this stage, without proper hearing and evidence. However, they agreed that individual Members could express their own views on this matter.

Article II, Section 12 of the Constitution states: "The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception."

In its plain and ordinary meaning (a canon in statutory construction), the traditional

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meaning of "conception" according to reputable dictionaries cited by the *ponente* is that life begins at fertilization. Medical sources also support the view that conception begins at fertilization.

The framers of the Constitution also intended for (a) "conception" to refer to the moment of "fertilization" and (b) the protection of the unborn child upon fertilization. In addition, they did not intend to ban all contraceptives for being unconstitutional; only those that kill or destroy the fertilized ovum would be prohibited. Contraceptives that actually prevent the union of the male sperm and female ovum, and those that similarly take action before fertilization should be deemed non-abortive, and thus constitutionally permissible.

The intent of the framers of the Constitution for protecting the life of the unborn child was to prevent the Legislature from passing a measure prevent abortion. The Court cannot interpret this otherwise. The RH Law is in line with this intent and actually prohibits abortion. By using the word "or" in defining abortifacient (Section 4(a)), the RH Law prohibits not only drugs or devices that prevent implantation but also those that induce abortion and induce the destruction of a fetus inside the mother's womb. The RH Law recognizes that the fertilized ovum already has life and that the State has a bounded duty to protect it.

However, the authors of the IRR gravely abused their office when they redefined the meaning of abortifacient by using the term "primarily". Recognizing as abortifacients 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" (Sec. 3.01(a) of the IRR) would pave the way for the approval of

contraceptives that may harm or destroy the life of the unborn from conception/fertilization. This violates Section 12, Article II of the Constitution. For the same reason, the definition of contraceptives under the IRR (Sec 3.01(j)), which also uses the term "primarily", must be struck down.

2.) Petitioners claim that the right to health is violated by the RH Law because it requires the inclusion of hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortifacient and effective family planning products and supplies in the National Drug Formulary and in the regular purchase of essential medicines and supplies of all national hospitals (Section 9 of the RH Law). They cite risks of getting diseases gained by using e.g. oral contraceptive pills.

Some petitioners do not question contraception and contraceptives *per se*. Rather, they pray that the status quo under RA 4729 and 5921 be maintained. These laws prohibit the sale and distribution of contraceptives without the prescription of a duly-licensed physician.

The RH Law does not intend to do away with RA 4729 (1966). **With RA 4729 in place, the Court believes adequate safeguards exist to ensure that only safe contraceptives are made available to the public.** In fulfilling its mandate under Sec. 10 of the RH Law, the DOH must keep in mind the provisions of RA 4729: **the contraceptives it will procure shall be from a duly licensed drug store or pharmaceutical company and that the actual distribution of these contraceptive drugs and devices will be done following a prescription of a qualified medical practitioner.**

Meanwhile, the **requirement of Section 9 of the RH Law is to be considered**

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"mandatory" only after these devices and materials have been tested, evaluated and approved by the FDA. Congress cannot determine that contraceptives are "safe, legal, non-abortionifient and effective".

3.) The Court cannot determine whether or not the use of contraceptives or participation in support of modern RH measures (a) is moral from a religious standpoint; or, (b) right or wrong according to one's dogma or belief. However, the Court has the authority to determine whether or not the RH Law contravenes the Constitutional guarantee of religious freedom.

3a.) The State may pursue its legitimate secular objectives without being dictated upon the policies of any one religion. To allow religious sects to dictate policy or restrict other groups would violate Article III, Section 5 of the Constitution or the Establishment Clause. This would cause the State to adhere to a particular religion, and thus, establishes a state religion. Thus, the State can enhance its population control program through the RH Law even if the promotion of contraceptive use is contrary to the religious beliefs of e.g. the petitioners.

3b.) Sections 7, 23, and 24 of the RH Law obliges a hospital or medical practitioner to immediately refer a person seeking health care and services under the law to another accessible healthcare provider despite their conscientious objections based on religious or ethical beliefs. **These provisions violate the religious belief and conviction of a conscientious objector. They are contrary to Section 29(2), Article VI of the Constitution or the Free Exercise Clause, whose basis is the respect for the inviolability of the human conscience.**

The provisions in the RH Law compelling

non-maternity specialty hospitals and hospitals owned and operated by a religious group and health care service providers to refer patients to other providers and penalizing them if they fail to do so (Sections 7 and 23(a)(3)) as well as compelling them to disseminate information and perform RH procedures under pain of penalty (Sections 23(a)(1) and (a)(2) in relation to Section 24) also violate (and inhibit) the freedom of religion. While penalties may be imposed by law to ensure compliance to it, **a constitutionally-protected right must prevail over the effective implementation of the law.**

Excluding public health officers from being conscientious objectors (under Sec. 5.24 of the IRR) also violates the equal protection clause. There is no perceptible distinction between public health officers and their private counterparts. In addition, the freedom to believe is intrinsic in every individual and the protection of this freedom remains even if he/she is employed in the government.

Using the compelling state interest test, there is **no compelling state interest** to limit the free exercise of conscientious objectors. There is **no immediate danger to the life or health** of an individual in the perceived scenario of the above-quoted provisions. In addition, the limits do not pertain to life-threatening cases.

The **respondents also failed to show that these provisions are least intrusive means** to achieve a legitimate state objective. The Legislature has already taken other secular steps to ensure that the right to health is protected, such as RA 4729, RA 6365 (The Population Act of the Philippines) and RA 9710 (The *Magna Carta* of Women).

3c.) Section 15 of the RH Law, which requires would-be spouses to attend a

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seminar on parenthood, family planning, breastfeeding and infant nutrition as a condition for the issuance of a marriage license, is a reasonable exercise of police power by the government. The law does not even mandate the type of family planning methods to be included in the seminar. Those who attend the seminar are free to accept or reject information they receive and they retain the freedom to decide on matters of family life without the intervention of the State.

4.) Section 23(a)(2)(i) of the RH Law, which permits RH procedures even with only the consent of the spouse undergoing the provision (disregarding spousal content), **intrudes into marital privacy and autonomy and goes against the constitutional safeguards for the family as the basic social institution.** Particularly, Section 3, Article XV of the Constitution mandates the State to defend: (a) the right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood and (b) the right of families or family associations to participate in the planning and implementation of policies and programs that affect them. The RH Law cannot infringe upon this mutual decision-making, and endanger the institutions of marriage and the family.

The exclusion of parental consent in cases where a minor undergoing a procedure is already a parent or has had a miscarriage (Section 7 of the RH Law) is also anti-family and violates Article II, Section 12 of the Constitution, which states: "The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government." In addition, the portion of Section 23(a)(ii) which reads "in the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required

only in elective surgical procedures" is invalid as it denies the right of parental authority in cases where what is involved is "non-surgical procedures."

However, a minor may receive information (as opposed to procedures) about family planning services. Parents are not deprived of parental guidance and control over their minor child in this situation and may assist her in deciding whether to accept or reject the information received. In addition, an exception may be made in life-threatening procedures.

5.) The Court declined to rule on the constitutionality of Section 14 of the RH Law, which mandates the State to provide Age- and Development-Appropriate Reproductive Health Education. Although educators might raise their objection to their participation in the RH education program, the Court reserves its judgment should an actual case be filed before it.

Any attack on its constitutionality is premature because the Department of Education has not yet formulated a curriculum on age-appropriate reproductive health education.

Section 12, Article II of the Constitution places more importance on the role of parents in the development of their children with the use of the term "primary". The right of parents in upbringing their youth is superior to that of the State.

The provisions of Section 14 of the RH Law and corresponding provisions of the IRR supplement (rather than supplant) the right and duties of the parents in the moral development of their children.

By incorporating parent-teacher-community associations, school officials, and other interest groups in developing

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the mandatory RH program, it could very well be said that the program will be in line with the religious beliefs of the petitioners.

6.) The RH Law does not violate the due process clause of the Constitution as the definitions of several terms as observed by the petitioners are not vague.

The definition of "private health care service provider" must be seen in relation to Section 4(n) of the RH Law which defines a "public health service provider". The "private health care institution" cited under Section 7 should be seen as synonymous to "private health care service provider."

The terms "service" and "methods" are also broad enough to include providing of information and rendering of medical procedures. Thus, hospitals operated by religious groups are exempted from rendering RH service and modern family planning methods (as provided for by Section 7 of the RH Law) as well as from giving RH information and procedures.

The RH Law also defines "incorrect information". Used together in relation to Section 23 (a)(1), the terms "incorrect" and "knowingly" connote a sense of malice and ill motive to mislead or misrepresent the public as to the nature and effect of programs and services on reproductive health.

7.) To provide that the poor are to be given priority in the government's RH program is not a violation of the equal protection clause. In fact, it is pursuant to Section 11, Article XIII of the Constitution, which states that **the State shall prioritize the needs of the underprivileged, sick, elderly, disabled, women, and children and that it shall endeavor to provide**

medical care to paupers.

The RH Law does not only seek to target the poor to reduce their number, since Section 7 of the RH Law prioritizes poor and marginalized couples who are suffering from fertility issues and desire to have children. In addition, the RH Law does not prescribe the number of children a couple may have and does not impose conditions upon couples who intend to have children. The RH Law only seeks to provide priority to the poor.

The exclusion of private educational institutions from the mandatory RH education program under Section 14 is valid. There is a need to recognize the academic freedom of private educational institutions especially with respect to religious instruction and to consider their sensitivity towards the teaching of reproductive health education.

8.) The requirement under Sec. 17 of the RH Law for private and non-government health care service providers to render 48 hours of *pro bono* RH services does not amount to involuntary servitude, for two reasons. First, the practice of medicine is undeniably imbued with public interest that it is both the power and a duty of the State to control and regulate it in order to protect and promote the public welfare. Second, Section 17 only encourages private and non-government RH service providers to render *pro bono* service. Besides the PhilHealth accreditation, no penalty is imposed should they do otherwise.

However, conscientious objectors are exempt from Sec. 17 as long as their religious beliefs do not allow them to render RH service, *pro bono* or otherwise (See Part 3b of this digest.)

B. The delegation by Congress to the FDA of the power to determine whether or not

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a supply or product is to be included in the Essential Drugs List is valid, as the FDA not only has the power but also the competency to evaluate, register and cover health services and methods (under RA 3720 as amended by RA 9711 or the FDA Act of 2009).

C. The RH Law does not infringe upon the autonomy of local governments. Paragraph (c) of Section 17 provides a categorical exception of cases involving nationally-funded projects, facilities, programs and services. Unless a local government unit (LGU) is particularly 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 general appropriations act, even if the program involves the delivery of basic services within the jurisdiction of the LGU.

In addition, LGUs are merely encouraged to provide RH services. Provision of these services are not mandatory. Therefore, the RH Law does not amount to an undue encroachment by the national government upon the autonomy enjoyed by LGUs.

Article III, Sections 6, 10, and 11 of RA 9054 or the Organic Act of the ARMM merely delineates the powers that may be exercised by the regional government. These provisions cannot be seen as an abdication by the State of its power to enact legislation that would benefit the general welfare.

- **G.R. No. 181792. April 21, 2014** Star Special Watchmen and Detective Agency, Inc., et al. Vs. Puerto Princesa City, Mayor Edward Hagedorn, et al.

- Petitioners basically argue that the remedy of mandamus is proper to compel respondents to comply with the November 18, 2003 decision of the RTC-Br. 223 which ordered respondents to pay petitioners the sums of money stated therein.

The Court cannot blame petitioners for resorting to the remedy of mandamus because they have done everything in the books to satisfy their just and demandable claim. They went to the courts, the COA, the Ombudsman, and the DILG. They resorted to the remedy of mandamus because in at least three (3) cases, the Court sanctioned the remedy in cases of final judgments rendered against a local government unit (LGU). The Court ruled that a claimant may resort to the remedy of mandamus to compel an LGU to enact the necessary ordinance and approve the corresponding disbursement in order to satisfy the judgment award.

Considering that a writ of execution was already issued by RTC-Br. 223, the remedy of petitioners is to follow up their claim with the COA. Petitioners rightfully did so, but the COA erred in not acting on the claim.

From the above provisions, it is clear that the COA has the authority and power to settle "*all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities.*" This authority and power can still be exercised by the COA even if a court's decision in a case has already become final and executory. In other words, the COA still retains its primary jurisdiction to adjudicate a claim even after the issuance of a writ of execution.

Considering that the COA still retained its primary jurisdiction to adjudicate money claim, petitioners should have filed a *petition for certiorari* with this Court pursuant to Section 50 of P.D. No. 1445. Hence, the COA's refusal to act did not leave the petitioners without any remedy at all.

WHEREFORE, the petition for mandamus is **DENIED**. Petitioners are enjoined to refile its claim with the Commission on Audit pursuant to P.D. No. 1445.

- **G.R. No. 203335/G.R. No. 203299/G.R.**

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No. 203306/G.R. No. 203359/G.R. No. 203378/G.R. No. 203391/G.R. No. 203407/G.R. No. 203340/G.R. No. 203453/G.R. No. 203454. April 22, 2014 Jose Jesus M. Disini, Jr., et al., Vs. The Secretary of Justice, et al./Louis "Barok" C. Biraogo Vs. National Bureau of Investigation, et al./ Alab Ng Mamamahayag (ALAM), et al. Vs. Office of the President, et al./ Senator Teofisto D. Guingona III Vs. The Executive Secretary, et al./ Alexander Adonis, et al. Vs. The Executive Secretary, et al./Hon. Raymond V. Palatino, et al. Vs. Hon. Paquito N. Ochoa, Jr., et al./Bagong Alyansang Makabayan Secretary General Renato M. Reyes, Jr., et al. Vs. Benigno Simeon C. Aquino III, et al./ Melencio S. Sta. Maria, et al. Vs. Hon. Paquito Ochoa, et al./National Union of Journalists of the Philippines, et al.Vs. The Executive Secretary, et al./Paul Cornelius T. Castillo, et al.,Vs. The Hon. Secretary of Justice, et al./Anthony Ian M. Cruz, et al. Vs. His Excellency Benigno S. Aquino III, et al./Philippine Bar Association, Inc., Vs. His Excellency Benigno S. Aquino III, et al./Bayan Muna Representative Neri J. Colmenares Vs. The Executive Secretary Paquito Ochoa, Jr., /National Press Club Of The Philippines, Inc., Represented By Benny D. Antiporda in his Capacity as President and in his Personal Capacity Vs. Office of the President, President Benigno Simeon Aquino III, et al. Philippine Internet Freedom Alliance, et al. Vs. The Executive Secretary, et al. Dissenting and Concurring Opinion **C.J. Sereno** Dissenting Opinion **J. Brion, J. Leonen**

- Section 6 of the cybercrime law imposes penalties that are one degree higher when the crimes defined in the Revised Penal Code and certain special laws are committed with the use of information and communication technologies (ICT). Some of the petitioners insist that Section 6 is invalid since it produces an unusual chilling effect on users of cyberspace that would hinder free expression.

-
- Petitioner Bloggers and Netizens for Democracy insist that Section 6 cannot stand in the absence of a definition of the term "information and communication technology".² But petitioner seems to forget the basic tenet that statutes should not be read in isolation from one another. The parameters of that ICT exist in many other laws. Indeed those parameters have been used as basis for establishing government systems and classifying evidence.³ These along with common usage provide the needed boundary within which the law may be applied.
-
- The Court had ample opportunity to consider the proposition that Section 6 violates the equal protection clause via the parties' pleadings, oral arguments, and memoranda. But, as the Decision stressed, the power to fix the penalties for violations of penal laws, like the cybercrime law, exclusively belongs to Congress.
-
- In any event, Section 6 of the cybercrime law merely makes the commission of existing crimes through the internet a qualifying circumstance that raises by one degree the penalties corresponding to such crimes. This is not at all arbitrary since a substantial distinction exists between crimes committed through the use of ICT and similar crimes committed using conventional means.
-
- The United Nations Special Rapporteur,⁴ Frank La Rue, acknowledged the material distinction. He pointed out that "[t]he vast potential and benefits of the Internet are rooted in its unique characteristics, such as its speed, worldwide reach and relative anonymity." For this

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reason, while many governments advocate freedom online, they recognize the necessity to regulate certain aspects of the use of this media to protect the most vulnerable.⁵

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- Not infrequently, certain users of the technology have found means to evade being identified and for this reason have been emboldened to reach far more victims or cause greater harm or both. It is, therefore, logical for Congress to consider as aggravating the deliberate use of available ICT by those who ply their wicked trades.
-
- Compared to traditional crimes, cybercrimes are more perverse. In traditional estafa for example, the offender could reach his victim only at a particular place and a particular time. It is rare that he could consummate his crime without exposing himself to detection and prosecution. Fraud online, however, crosses national boundaries, generally depriving its victim of the means to obtain reparation of the wrong done and seek prosecution and punishment of the absent criminal. Cybercriminals enjoy the advantage of anonymity, like wearing a mask during a heist.
-
- Petitioners share the Chief Justice's concern for the overall impact of those penalties, being one degree higher than those imposed on ordinary crimes, including the fact that the prescriptive periods for the equivalent cybercrimes have become longer.⁶
-
- Prescription is not a matter of procedure over which the Court has something to say. Rather, it is substantive law since it assumes the existence of an authority to punish a wrong, which authority the Constitution vests in Congress

alone. Thus, there is no question that Congress may provide a variety of periods for the prescription of offenses as it sees fit. What it cannot do is pass a law that extends the periods of prescription to impact crimes committed before its passage.⁷

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- It is pointed out that the legislative discretion to fix the penalty for crimes is not absolute especially when this discretion is exercised in violation of the freedom of expression. The increase in the penalty for online libel creates, according to this view, greater and unusual chilling effect that violates the protection afforded to such freedom.
-
- But what the stiffer penalty for online libel truly targets are those who choose to use this most pervasive of media without qualms, tearing down the reputation of private individuals who value their names and community standing. The law does not remotely and could not have any chilling effect on the right of the people to disagree, a most protected right, the exercise of which does not constitute libel.

The constitutional guarantee against prior restraint and subsequent punishment, the jurisprudential requirement of "actual malice," and the legal protection afforded by "privilege communications" all ensure that protected speech remains to be protected and guarded. As long as the expression or speech falls within the protected sphere, it is the solemn duty of courts to ensure that the rights of the people are protected.

At bottom, the deepest concerns of the movants seem to be the fact that the government seeks to regulate activities in the internet at all. For them, the Internet is a place where a everyone should be free to do and say whatever he or she wants. But that is anarchical. Any good

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thing can be converted to evil use if there are no laws to prohibit such use. Indeed, both the United States and the Philippines have promulgated laws that regulate the use of and access to the Internet.¹⁰

- The movants argue that Section 4(c)(4) is both vague and overbroad. But, again, online libel is not a new crime. It is essentially the old crime of libel found in the 1930 Revised Penal Code and transposed to operate in the cyberspace. Consequently, the mass of jurisprudence that secures the freedom of expression from its reach applies to online libel. Any apprehended vagueness in its provisions has long been settled by precedents.

- **G.R. No. 203974/G.R. No. 204371. April 22, 2014** Aurelio M. Umali Vs. Commission on Elections, Julius Cesar Vs. Vergara, and The City Government of Cabanatuan/J.V. Bautista Vs. Commission on Elections Dissenting Opinion **J. Leonen**

The bone of contention in the present controversy boils down to whether the qualified registered voters of the entire province of Nueva Ecija or only those in Cabanatuan City can participate in the plebiscite called for the conversion of Cabanatuan City from a component city into an HUC.

Sec. 453 of the LGC should be interpreted in accordance with Sec. 10, Art. X of the Constitution

Before proceeding to unravel the seeming conflict between the two provisions, it is but proper that we ascertain first the relationship between Sec. 10, Art. X of the Constitution and Sec. 453 of the LGC.

First of all, we have to restate the general principle that legislative power cannot be delegated. Nonetheless, the general rule barring delegation is subject to certain exceptions allowed in the Constitution, namely:

(1) Delegation by Congress to the President of the power to fix "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" under Section 28(2) of Article VI of the Constitution; and

(2) Delegation of emergency powers by Congress to the President "to exercise powers necessary and proper to carry out a declared national policy" in times of war and other national emergency under Section 23(2) of Article VI of the Constitution.

The power to create, divide, merge, abolish or substantially alter boundaries of provinces, cities, municipalities or *barangays*, which is pertinent in the case at bar, is essentially legislative in nature.⁵ The framers of the Constitution have, however, allowed for the delegation of such power in Sec. 10, Art. X of the Constitution as long as (1) the criteria prescribed in the LGC is met and (2) the creation, division, merger, abolition or the substantial alteration of the boundaries is subject to the approval by a majority vote in a plebiscite.

True enough, Congress delegated such power to the *Sangguniang Panlalawigan* or *Sangguniang Panlungsod* to create *barangays* pursuant to Sec. 6 of the LGC, which provides:

Section 6. **Authority to Create Local Government Units.** – A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the **sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction**, subject to such limitations and requirements prescribed in this Code."

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(emphasis supplied)

The guidelines for the exercise of this authority have sufficiently been outlined by the various LGC provisions detailing the requirements for the creation of barangays⁶, municipalities⁷, cities⁸, and provinces⁹. Moreover, compliance with the plebiscite requirement under the Constitution has also been directed by the LGC under its Sec. 10, which reads:

Section 10. Plebiscite Requirement. – No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose **in the political unit or units directly affected.**” (emphasis supplied)

With the twin criteria of standard and plebiscite satisfied, the delegation to LGUs of the power to create, divide, merge, abolish or substantially alter boundaries has become a recognized exception to the doctrine of non-delegation of legislative powers.

Likewise, legislative power was delegated to the President under Sec. 453 of the LGC quoted earlier, which states:

Section 453. Duty to Declare Highly Urbanized Status. – It shall be the duty of the President to declare a city as highly urbanized within thirty (30) days after it shall have met the minimum requirements prescribed in the immediately preceding Section, upon proper application therefor and ratification in a plebiscite by the qualified voters therein.

In this case, the provision merely authorized the President to make a determination on whether or not the requirements under Sec. 452¹⁰ of the LGC are complied with. The provision makes it ministerial for the President, upon proper application, to declare a component city as highly urbanized once the minimum

requirements, which are based on certifiable and measurable indices under Sec. 452, are satisfied. The mandatory language “shall” used in the provision leaves the President with no room for discretion.

In so doing, Sec. 453, in effect, automatically calls for the conduct of a plebiscite for purposes of conversions once the requirements are met. No further legislation is necessary before the city proposed to be converted becomes eligible to become an HUC through ratification, as the basis for the delegation of the legislative authority is the very LGC.

In view of the foregoing considerations, the Court concludes that the source of the delegation of power to the LGUs under Sec. 6 of the LGC and to the President under Sec. 453 of the same code is none other than Sec. 10, Art. X of the Constitution.

Respondents, however, posit that Sec. 453 of the LGC is actually outside the ambit of Sec. 10, Art. X of the Constitution, considering that the conversion of a component city to an HUC is not “creation, division, merge, abolition or substantial alternation of boundaries” encompassed by the said constitutional provision.

This proposition is bereft of merit.

First, the Court’s pronouncement in *Miranda vs. Aguirre*¹¹ is apropos and may be applied by analogy. While *Miranda* involves the downgrading, instead of upgrading, as here, of an independent component city into a component city, its application to the case at bar is nonetheless material in ascertaining the proper treatment of conversions. In that seminal case, the Court held that the downgrading of an independent component city into a component city comes within the purview of Sec. 10, Art. X of the Constitution.

It was determined in the case that the changes that will result from the conversion are too substantial that there

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is a necessity for the plurality of those that will be affected to approve it. Similar to the enumerated acts in the constitutional provision, conversions were found to result in material changes in the economic and political rights of the people and LGUs affected. Given the far-reaching ramifications of converting the status of a city, we held that the plebiscite requirement under the constitutional provision should equally apply to conversions as well. Thus, RA 8528¹³ was declared unconstitutional in *Miranda* on the ground that the law downgraded Santiago City in Isabela without submitting it for ratification in a plebiscite, in contravention of Sec. 10, Art. X of the Constitution.

Second, 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.

As the phrase implies, "substantial alteration of boundaries" involves and necessarily entails a change in the geographical configuration of a local government unit or units. However, the phrase "boundaries" should not be limited to the mere physical one, referring to the metes and bounds of the LGU, but also to its political boundaries. It also connotes a modification of the demarcation lines between political subdivisions, where the LGU's exercise of corporate power ends and that of the other begins. And as a qualifier, the alteration must be "substantial" for it to be within the ambit of the constitutional provision.

Verily, the upward conversion of a component city, in this case Cabanatuan City, into an HUC will come at a steep price. It can be gleaned from the above-cited rule that the province will inevitably suffer a corresponding decrease in territory brought about by Cabanatuan City's gain of independence. With the city's newfound autonomy, it will be free from the oversight powers of the province,

which, in effect, reduces the territorial jurisdiction of the latter. What once formed part of Nueva Ecija will no longer be subject to supervision by the province. In more concrete terms, Nueva Ecija stands to lose 282.75 sq. km. of its territorial jurisdiction with Cabanatuan City's severance from its mother province. This is equivalent to carving out almost 5% of Nueva Ecija's 5,751.3 sq. km. area. This sufficiently satisfies the requirement that the alteration be "substantial."

Needless to stress, the alteration of boundaries would necessarily follow Cabanatuan City's conversion in the same way that creations, divisions, mergers, and abolitions generally cannot take place without entailing the alteration. The enumerated acts, after all, are not mutually exclusive, and more often than not, a combination of these acts attends the reconfiguration of LGUs.

In light of the foregoing disquisitions, the Court rules that conversion to an HUC is substantial alternation of boundaries governed by Sec. 10, Art. X and resultantly, said provision applies, governs and prevails over Sec. 453 of the LGC.

Moreover, the rules of statutory construction dictate that a particular provision should be interpreted with the other relevant provisions in the law. The Court finds that it is actually Sec. 10 of the LGC which is undeniably the applicable provision on the conduct of plebiscites. The title of the provision itself, "*Plebiscite Requirement*", makes this obvious. It requires a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. On the other hand, Sec. 453 of the LGC, entitled "*Duty to Declare Highly Urbanized Status*", is only on the duty to declare a city as highly urbanized. It mandates the Office of the President to make the declaration after the city has met the requirements under Sec. 452, and upon proper application and ratification in a plebiscite. The conduct of a plebiscite is then a requirement before a declaration

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can be made. Thus, the Court finds that Sec. 10 of the LGC prevails over Sec. 453 of the LGC on the plebiscite requirement.

We now take the bull by the horns and resolve the issue whether Sec. 453 of the LGC trenches on Sec. 10, Art. X of the Constitution.

Hornbook doctrine is that neither the legislative, the executive, nor the judiciary has the power to act beyond the Constitution's mandate. The Constitution is **supreme**; any exercise of power beyond what is circumscribed by the Constitution is *ultra vires* and a nullity.

Pursuant to established jurisprudence, the phrase "by the qualified voters therein" in Sec. 453 should be construed in a manner that will avoid conflict with the Constitution. If one takes the plain meaning of the phrase in relation to the declaration by the President that a city is an HUC, then, Sec. 453 of the LGC will clash with the explicit provision under Sec. 10, Art. X that the voters in the "political units directly affected" shall participate in the plebiscite. Such construction should be avoided in view of the supremacy of the Constitution. Thus, the Court treats the phrase "by the qualified voters therein" in Sec. 453 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.

The Court finds that respondents are mistaken in construing Sec. 453 in a vacuum. Their interpretation of Sec. 453 of the LGC runs afoul of Sec. 10, Art. X of the Constitution which explicitly requires that all residents in the "political units directly affected" should be made to vote.

Respondents make much of the plebiscites conducted in connection with the conversion of Puerto Princesa City, Tacloban City and Lapu-Lapu City where the ratification was made by the registered voters in said cities alone. It is clear, however, that the issue of who are

entitled to vote in said plebiscites was not properly raised or brought up in an actual controversy. The issue on who will vote in a plebiscite involving a conversion into an HUC is a novel issue, and this is the first time that the Court is asked to resolve the question. As such, the past plebiscites in the aforementioned cities have no materiality or relevance to the instant petition. Suffice it to say that conversion of said cities prior to this judicial declaration will not be affected or prejudiced in any manner following the operative fact doctrine that "the actual existence of a statute prior to such a determination is an operative fact and may have consequences which cannot always be erased by a new judicial declaration."¹⁸

The entire province of Nueva Ecija will be directly affected by Cabanatuan City's conversion

In cutting the umbilical cord between Cabanatuan City and the province of Nueva Ecija, the city will be separated from the territorial jurisdiction of the province, as earlier explained. The provincial government will no longer be responsible for delivering basic services for the city residents' benefit. Ordinances and resolutions passed by the provincial council will no longer cover the city. Projects queued by the provincial government to be executed in the city will also be suspended if not scrapped to prevent the LGU from performing functions outside the bounds of its territorial jurisdiction, and from expending its limited resources for ventures that do not cater to its constituents.

In view of these changes in the economic and political rights of the province of Nueva Ecija and its residents, the entire province certainly stands to be directly affected by the conversion of Cabanatuan City into an HUC. Following the doctrines in *Tan* and *Padilla*, all the qualified registered voters of Nueva Ecija should then be allowed to participate in the

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plebiscite called for that purpose.

Respondents' apprehension that requiring the entire province to participate in the plebiscite will set a dangerous precedent leading to the failure of cities to convert is unfounded. Their fear that provinces will always be expected to oppose the conversion in order to retain the city's dependence is speculative at best. In any event, any vote of disapproval cast by those directly affected by the conversion is a valid exercise of their right to suffrage, and our democratic processes are designed to uphold the decision of the majority, regardless of the motive behind the vote. It is unfathomable how the province can be deprived of the opportunity to exercise the right of suffrage in a matter that is potentially deleterious to its economic viability and could diminish the rights of its constituents. To limit the plebiscite to only the voters of the areas to be partitioned and seceded from the province is as absurd and illogical as allowing only the secessionists to vote for the secession that they demanded against the wishes of the majority and to nullify the basic principle of majority rule.³⁴

- **G.R. No. 199439. April 22, 2014** City of General Santos, represented by its Mayor, Hon. Darlene Magnolia R. Antonino-Custodio Vs. Commission on Audit

In order to be able to deliver more effective and efficient services, the law allows local government units the power to reorganize. In doing so, they should be given leeway to entice their employees to avail of severance benefits that the local government can afford. However, local government units may not provide such when it amounts to a supplementary retirement benefit scheme.

- **G.R. No. 207900. April 22, 2014** Mayor Gamal S. Hayudini Vs. Commission on Elections and Mustapha J. Omar Concurring and Dissenting Opinion **J. Leonardo-De Castro, J. Brion**

Hayudini contends that the COMELEC committed grave abuse of discretion when it admitted, and later granted, Omar's

petition despite failure to comply with Sections 2 and 4 of Rule 23 of the COMELEC Rules of Procedure, as amended by Resolution No. 9523. The subject sections read:

Section 2. Period to File Petition. — The Petition must be **filed within five (5) days from the last day for filing of certificate of candidacy; but not later than twenty five (25) days from the time of filing of the certificate of candidacy subject of the Petition.** In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy.

x x x x

Section 4. Procedure to be observed. — Both parties shall observe the following procedure:

- The petitioner shall, before filing of the Petition, furnish a copy of the Petition, through personal service to the respondent. In cases where personal service is not feasible, or the respondent refuses to receive the Petition, or the respondents' whereabouts cannot be ascertained, the petitioner shall execute an affidavit stating the reason or circumstances therefor and resort to registered mail as a mode of service. The proof of service or the affidavit shall be attached to the Petition to be filed;¹⁷

Here, Hayudini filed his CoC on October 5, 2012, which was also the last day of filing of CoC for the May 13, 2013 elections. Omar, on the other hand, filed the subject petition only on March 26, 2013. Under the COMELEC Rules, a Petition to Deny Due Course or Cancel CoC must be filed within five days from the last day for filing a certificate of candidacy, but not later than twenty-five days from the time of filing of the CoC subject of the petition. Clearly, Omar's petition was filed way beyond the

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prescribed period. Likewise, he failed to provide sufficient explanation as to why his petition was not served personally to Hayudini.

Settled is the rule that the COMELEC Rules of Procedure are subject to liberal construction. The COMELEC has the power to liberally interpret or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before it. This liberality is for the purpose of promoting the effective and efficient implementation of its objectives – ensuring the holding of free, orderly, honest, peaceful, and credible elections, as well as achieving just, expeditious, and inexpensive determination and disposition of every action and proceeding brought before the COMELEC. Unlike an ordinary civil action, an election contest is imbued with public interest. It involves not only the adjudication of private and pecuniary interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. And the tribunal has the corresponding duty to ascertain, by all means within its command, whom the people truly chose as their rightful leader.²¹

Indeed, Omar had previously filed a Petition to Deny Due Course or Cancel Hayudini's CoC on October 15, 2012, docketed as SPA No. 13-106(DC)(F). This was dismissed on January 31, 2013, or the same day the MCTC granted Hayudini's petition to be included in the list of voters. However, on March 8, 2013, the RTC reversed the MCTC ruling and, consequently, ordered the deletion of Hayudini's name in Barangay Bintawlan's permanent list of voters. Said deletion was already final and executory under the law.²² Hayudini, however, still appealed the case to the CA, which was subsequently denied. Notably, thereafter, he went to the CA again, this time to file a petition for *certiorari*, docketed as CA-G.R. SP No. 05499.²³ In a Resolution dated July 9, 2013, the CA also denied said petition primarily because of

Hayudini's act of engaging in the pernicious practice of forum shopping by filing two modes of appeal before said court.²⁴ Hence, by virtue of the finality of said RTC decision deleting his name from the voters' list, Hayudini, who had been previously qualified under the law²⁵ to run for an elective position, was then rendered ineligible.

Given the finality of the RTC decision, the same should be considered a valid supervening event. A supervening event refers to facts and events transpiring after the judgment or order had become executory. These circumstances affect or change the substance of the judgment and render its execution inequitable.²⁶ Here, the RTC's March 8, 2013 decision, ordering the deletion of Hayudini's name in the list of voters, which came after the dismissal of Omar's first petition, is indubitably a supervening event which would render the execution of the ruling in SPA No. 13-106(DC)(F) iniquitous and unjust. As the COMELEC aptly ruled, the decision to exclude Hayudini was still non-existent when the COMELEC first promulgated the Resolution in SPA No. 13-106(DC)(F) on January 31, 2013, or when the issues involved therein were passed upon.²⁷ The First Division even expressed that although the Election Registration Board (ERB) denied Hayudini's application for registration, it could not adopt the same because it was not yet final as Hayudini was still to file a Petition for Inclusion before the MCTC.²⁸ Thus, it is not far-fetched to say that had this final RTC finding been existent before, the COMELEC First Division could have taken judicial notice of it and issued a substantially different ruling in SPA No. 13-106(DC)(F).

The same ruling adequately equipped Omar with the necessary ground to successfully have Hayudini's CoC struck down. Under the rules, a statement in a certificate of candidacy claiming that a candidate is eligible to run for public office when in truth he is not, is a false material representation, a ground for a petition under Section 78 of the Omnibus Election

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Code.

The false representation mentioned in these provisions must pertain to a material fact, not to a mere innocuous mistake. A candidate who falsifies a material fact cannot run; if he runs and is elected, cannot serve; in both cases, he or she can be prosecuted for violation of the election laws. These facts pertain to a candidate's qualification for elective office, such as his or her citizenship and residence. Similarly, the candidate's status as a registered voter falls under this classification as it is a legal requirement which must be reflected in the CoC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the local government under which he or she is running.³⁰ Even the will of the people, as expressed through the ballot, cannot cure the vice of ineligibility, especially if they mistakenly believed, as in the instant case, that the candidate was qualified.³¹

Aside from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." Simply put, it must be made with a malicious intent to deceive the electorate as to the potential candidate's qualifications for public office.³²

Section 74 requires the candidate to state under oath in his CoC "that he is eligible for said office." A candidate is eligible if he has a right to run for the public office. If a candidate is not actually eligible because he is not a registered voter in the municipality where he intends to be elected, but still he states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation, a ground to support a petition under Section 78.³³ It is interesting to note that Hayudini was, in fact, initially excluded by the ERB as a voter. On November 30, 2012, the ERB issued a certificate confirming the

disapproval of Hayudini's petition for registration.³⁴ This is precisely the reason why he needed to file a Petition for Inclusion in the Permanent List of Voters in *Barangay* Bintawlan before the MCTC. Thus, when he stated in his CoC that "he is eligible for said office," Hayudini made a clear and material misrepresentation as to his eligibility, because he was not, in fact, registered as a voter in *Barangay* Bintawlan.

Had the COMELEC not given due course to Omar's petition solely based on procedural deficiencies, South Ubian would have a mayor who is not even a registered voter in the locality he is supposed to govern, thereby creating a ridiculously absurd and outrageous situation. Hence, the COMELEC was accurate in cancelling Hayudini's certificate of candidacy.

Hayudini likewise protests that it was a grave error on the part of the COMELEC to have declared his proclamation null and void when no petition for annulment of his proclamation was ever filed. What petitioner seems to miss, however, is that the nullification of his proclamation as a winning candidate is also a legitimate outcome – a necessary legal consequence – of the cancellation of his CoC pursuant to Section 78. A CoC cancellation proceeding essentially partakes of the nature of a disqualification case.³⁵ The cancellation of a CoC essentially renders the votes cast for the candidate whose certificate of candidacy has been cancelled as stray votes.³⁶ If the disqualification or CoC cancellation or denial case is not resolved before the election day, the proceedings shall continue even after the election and the proclamation of the winner. Meanwhile, the candidate may be voted for and even be proclaimed as the winner, but the COMELEC's jurisdiction to deny due course and cancel his or her CoC continues. This rule likewise applies even if the candidate facing disqualification has already taken his oath of office.³⁷ The only exception to this rule is in the case of congressional and senatorial candidates where the COMELEC *ipso jure* loses

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jurisdiction in favor of either the Senate or the House of Representatives Electoral Tribunal after the candidates have been proclaimed, taken the proper oath, and also assumed office.³⁸

It bears stressing that one of the requirements for a mayoralty candidate is that he must be a resident of the city or municipality where he intends to be elected. Thus, under Section 74 of the Omnibus Election Code, it is required that a candidate must certify under oath that he is eligible for the public office he seeks election. In this case, when petitioner stated in

his CoC that he is a resident of Barangay Bintawlan, South Ubian, Tawi Tawi and eligible for a public office, but it turned out that he was declared to be a non-resident thereof in a petition for his inclusion in the list of registered voters, he therefore committed a false representation in his CoC which pertained to a material fact which is a ground for the cancellation of his CoC under Section 78 of the Omnibus Election Code. Petitioner's ineligibility for not being a resident of the place he sought election is not a ground for a petition for disqualification, since the grounds enumerated under Section 68³⁹ of the Omnibus Election Code specifically refer to the commission of prohibited acts, and possession of a permanent resident status in a foreign country.

We find the factual milieu of the *Aratea* case applicable in the instant case, since this is also a case for a petition to deny due course or cancel a certificate of candidacy. Since Hayudini was never a valid candidate for the position of the Municipal Mayor of South Ubian, Tawi-Tawi, the votes cast for him should be considered stray votes. Consequently, the COMELEC properly proclaimed Salma Omar, who garnered the highest number of votes in the remaining qualified candidates for the mayoralty post, as the duly-elected Mayor of South Ubian, Tawi Tawi.

Finally, contrary to Hayudini's belief, the

will of the electorate is still actually respected even when the votes for the ineligible candidate are disregarded. The votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election for these do not constitute the sole and total expression of the sovereign voice. On the other hand, those votes for the eligible and legitimate candidates form an integral part of said voice, which must equally be given due respect, if not more.

- **G.R. No. 167120. April 23, 2014** Rodolfo V. Francisco Vs. Emiliana M. Rojas, et al.

- ***The Court adheres to a policy of non-interference with the investigatory and prosecutorial powers of the Office of the Ombudsman.***

- In general, the Court follows a policy of non-interference with the exercise by the Office of the Ombudsman of its investigatory and prosecutorial powers, in respect of the initiative and independence inherent in the said Office, which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service."⁴³ The Court expounded on such policy in *M.A. Jimenez Enterprises, Inc. v. Ombudsman*,⁴⁴ thus:

- It is well-settled that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Ombudsman. The Ombudsman is vested with the sole power to investigate and prosecute, *motu proprio* or upon the complaint of any person, any act or omission which appears to be illegal, unjust, improper, or inefficient. It has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. As explained in *Esquivel v. Ombudsman*:

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- The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon his constitutional mandate and the courts will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.
- The Court respects the relative autonomy of the Ombudsman to investigate and prosecute, and refrains from interfering when the latter exercises such powers either directly or through the Deputy Ombudsman, except when there is grave abuse of discretion. Indeed, the Ombudsman's determination of probable cause may only be assailed through certiorari proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion defined as such capricious and whimsical exercise of judgment as is equivalent to lack

of jurisdiction. For there to be a finding of grave abuse of discretion, it must be shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.

- **G.R. No. 200103, April 23, 2014** Civil Service Commission Vs. Maricelle M. Cortes

This case concerns the validity of appointment by the Commission *En Banc* where the appointee is the daughter of one of the Commissioners.

Issue of the Case

Whether or not the CA erred when it ruled that the appointment of respondent Cortes as IO V in the CHR is not covered by the prohibition against nepotism.

Ruling of the Court

The petition is impressed with merit.

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.¹ Here, it is undisputed that respondent Cortes is a relative of Commissioner Mallari in the first degree of consanguinity, as in fact Cortes is the daughter of Commissioner Mallari.

By way of exception, the following shall not be covered by the prohibition: (1) persons employed in a confidential capacity; (2) teachers; (3) physicians; and (4) members of the Armed Forces of the Philippines.² In the present case, however, the appointment of respondent

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Cortes as IO V in the CHR does not fall to any of the exemptions provided by law.

In her defense, respondent 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.³ 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.⁴

Moreover, basic rule in statutory construction is the legal maxim that “we must interpret not by the letter that killeth, but by the spirit that giveth life.” To rule that the prohibition applies only to the Commission, and not to the individual members who compose it, will render the prohibition meaningless. Apparently, the Commission *En Banc*, which is a body created by fiction of law, can never have relatives to speak of.

Indeed, it is absurd to declare that the prohibitive veil on nepotism does not include appointments made by a group of individuals acting as a body. What cannot be done directly cannot be done indirectly. This principle is elementary and does not need explanation. Certainly, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.

In the present case, respondent 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*.

- **Jesse Philip B. Eijansantos Vs. Special Presidential Task Force 156, represented by Atty. Allan U. Ventura** G.R. No. 203696. June 2, 2014

- *Substantial evidence is the only quantum of evidence needed in administrative proceedings*
- The OSG correctly argued that in an administrative proceeding, the evidentiary bar against which the evidence at hand is measured is not the highest quantum of proof beyond reasonable doubt, requiring moral certainty to support affirmative findings. Instead, the lowest standard of substantial evidence, that is, such relevant evidence as a reasonable mind will accept as adequate to support a conclusion, applies. Because administrative liability attaches so long as there is some evidence adequate to support the conclusion that acts constitutive of the administrative offense have been performed (or have not been performed), reasonable doubt does not *ipso facto* result in exoneration unlike in criminal proceedings where guilt must be proven beyond reasonable doubt.¹⁷
- In this case, there is ample substantial evidence to support the conclusion that the petitioner committed an act constitutive of grave misconduct. It need not be emphasized that from January 1994 to June 1998, a total of thirty four (34) TCCs worth at least P110,194,158.00 were issued to Evergreen. These TCCs were utilized either through own use by

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Evergreen or transfer to other companies. Had the petitioner exercised due care and caution, he could have discovered that Evergreen, its suppliers and buyers did not exist or could no longer be found. The sales invoices and delivery receipts which were used as bases of tax credit claims of Evergreen were fake and the TCCs were transferred fictitiously. All these anomalies resulted due to the gross negligence committed by the petitioner and his co-evaluators in handling the tax credit applications. The petitioner, to repeat, failed to faithfully comply with his duty and responsibility to conduct a physical verification/inspection of manufacturing and plant facilities, which enabled Evergreen to succeed in deceiving the government in the amount of P867, 680.00 to its damage and prejudice.

Public service requires integrity and discipline. For this reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. By the very nature of their duties and responsibilities, public officers and employees must faithfully adhere to hold sacred and render inviolate the constitutional principle that a public office is a public trust and must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.¹⁸

- In fine, the entire act of petitioner clearly points to a deliberate disregard of established rules constitutive of grave misconduct.

• **Gerardo R. Villaseñor and Rodel A. Mesa Vs. Ombudsman and Hon. Herbert Bautista, City Mayor, Quezon City** G.R. No. 202303. June 4, 2014

Petitioner Villaseñor argues that his constitutional right of not to be deprived of life, liberty and property without due process of law, was grossly violated by the Ombudsman when:

- He was prevented from cross-examining complainant's witnesses;
- He failed to receive any copy of any order relative to the preliminary conference of the case; and

His dismissal from the service was ordered implemented while his motion for reconsideration remains unresolved. He argues that the order of dismissal cannot be deemed executory as it has not yet attained finality on account of his unresolved motion for reconsideration.

From the above, it can be gleaned that the Ombudsman decisions in administrative cases may either be unappealable or appealable. Unappealable decisions are final and executory, and they are as follows: (1) respondent is absolved of the charge; (2) the penalty imposed is public censure or reprimand; (3) suspension of not more than one month; and (4) a fine equivalent to one month's salary. Appealable decisions, on the other hand, are those which fall outside said enumeration, and may be appealed to the CA under Rule 43 of the Rules of Court, within 15 days from receipt of the written notice of the decision or order denying the motion for reconsideration. Section 7 is categorical in providing that an appeal shall not stop the decision from being executory, and that such shall be executed as a matter of course.

Petitioner Mesa was ordered suspended for one year without pay, while petitioner Villaseñor was ordered dismissed from the service. These are plainly appealable decisions which are immediately executory pending appeal.

The petitioners cannot argue that A.O. No. 17, which makes appealable decisions of the Ombudsman immediately executory, cannot be applied to them. It is of no moment that A.O. No. 17 took effect on September 7, 2003, after the Joint Decision was issued against Mesa and Villaseñor on June 17, 2003. Of note are the facts that the Joint Decision was approved by the Ombudsman on November 26, 2004; the motions for

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reconsideration thereto were denied on March 2, 2006; and the Joint Decision was ordered implemented on August 23, 2006, all after A.O. No. 17 had already become effective.

Article 4 of the Civil Code does indeed provide that laws shall have no retroactive effect. Rules regulating the procedure of courts, however, are retroactive in nature, and are, thus, applicable to actions pending and unresolved at the time of their passage. As a general rule, no vested right may attach to or arise from procedural laws and rules, hence, retroactive application does not violate any right of a person adversely affected.¹²

The Rules of Procedure of the Office of the Ombudsman are procedural in nature and therefore, may be applied retroactively to petitioners' cases which were pending and unresolved at the time of the passing of A.O. No. 17. No vested right is violated by the application of Section 7 because the respondent in the administrative case is considered preventively suspended while his case is on appeal and, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. It is important to note that there is no such thing as a vested interest in an office, or even an absolute right to hold office. 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.¹³

The nature of appealable decisions of the Ombudsman was, in fact, settled in *Ombudsman v. Samaniego*, where it was held that such are immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ.¹⁴ The petitioners argue that this particular case cannot be applied to them because it was based on Section 7, as amended by A.O. No. 17, which cannot be applied to them retroactively. Their argument cannot be given credence.

As already discussed, Section 7 may be retroactively applied in the case of the petitioners.

It is, therefore, beyond cavil that petitioner Mesa's appeal cannot stay the implementation of the order of suspension against him.

Petitioner Villaseñor argues that the Ombudsman erred in implementing the order of dismissal against him despite his pending motion for reconsideration with the same office.

Villaseñor's pending motion for reconsideration cannot stop his order of dismissal from being executory. Memorandum Circular No. 01, series of 2006, of the Office of the Ombudsman, provides in part:

The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.

x x x

[Emphasis supplied]

Thus, petitioner Villaseñor's filing of a motion for reconsideration does not stay the immediate implementation of the Ombudsman's order of dismissal, considering that "a decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course" under Section 7. As already explained, no vested right of Villaseñor would be violated as he would be considered under preventive suspension, and entitled to the salary and emoluments he did not receive in the event that he wins his eventual appeal.

- **The Office of the Solicitor General Vs. The Court of Appeals, et al.** G.R. No. 199027. June 9, 2014

ISSUE: COMPELLING THE OSG TO REPRESENT THE MUNICIPAL GOVERNMENT OF SAGUIRAN, LANA DEL SUR (A LOCAL GOVERNMENT UNIT) IN

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ITS LAWSUIT.¹⁶

A cursory reading of this provision may create the impression that the OSG's mandate under the Administrative Code is unqualified, and thus broad enough to include representation of a local government unit in any case filed by or against it, as local government units, indisputably, form part of the Government of the Philippines. Towards a proper resolution of the pending issue, however, the OSG's mandate under the Administrative Code must be construed taking into account the other statutes that pertain to the same subject of representation in courts.

On the matter of counsels' representation for the government, the Administrative Code is not the only law that delves on the issue. Specifically for local government units, the LGC limits the lawyers who are authorized to represent them in court actions, as the law defines the mandate of a local government unit's legal officer.

Evidently, this provision of the LGC not only identifies the powers and functions of a local government unit's legal officer. It also restricts, as it names, the lawyer who may represent the local government unit as its counsel in court proceedings. Being a special law on the issue of representation in court that is exclusively made applicable to local government units, the LGC must prevail over the provisions of the Administrative Code, which classifies only as a general law on the subject matter.

Given the foregoing, the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions which obligated the OSG to represent the Municipality of Saguiran. Such ruling disregarded the provisions of the LGC that vested exclusive authority upon legal officers to be counsels of local government units. Even the employment of a special legal officer is expressly allowed by the law only upon a strict condition that the action or proceeding which involves the component

city or municipality is adverse to the provincial government or to another component city or municipality.

- **Light Rail Transit Authority etc. Vs. Aurora A. Salvana** G.R. No. 192074. June 10, 2014

An administrative agency has standing to appeal the Civil Service Commission's repeal or modification of its original decision. In such instances, it is included in the concept of a "party adversely affected" by a decision of the Civil Service Commission granted the statutory right to appeal.

However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent.

The present rule is that a government party is a "party adversely affected" for purposes of appeal provided that the government party that has a right to appeal must be the office or agency prosecuting the case.

The LRTA had standing to appeal the modification by the Civil Service Commission of its decision

The employer has the right "to select honest and trustworthy employees."⁸² When the government office disciplines an employee based on causes and procedures allowed by law, it exercises its discretion. This discretion is inherent in the constitutional principle that "[p]ublic officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with

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patriotism and justice, and lead modest lives.”⁸³ This is a principle that can be invoked by the public as well as the government office employing the public officer.

Here, petitioner already decided to dismiss respondent for dishonesty. Dishonesty is a serious offense that challenges the integrity of the public servant charged. To bar a government office from appealing a decision that lowers the penalty of the disciplined employee prevents it from ensuring its mandate that the civil service employs only those with the utmost sense of responsibility, integrity, loyalty, and efficiency.

Honesty and integrity are important traits required of those in public service. If all decisions by quasi-judicial bodies modifying the penalty of dismissal were allowed to become final and unappealable, it would, in effect, show tolerance to conduct unbecoming of a public servant. The quality of civil service would erode, and the citizens would end up suffering for it.

During the pendency of this decision, or on November 18, 2011, the Revised Rules on Administrative Cases in the Civil Service or RACCS was promulgated. The Civil Service Commission modified the definition of a “party adversely affected” for purposes of appeal.

Section 4. *Definition of Terms.* –

...

k. PARTY ADVERSELY AFFECTED refers to the respondent against whom a decision in an administrative case has been rendered or to **the disciplining authority in an appeal from a decision reversing or modifying the original decision.** (Emphasis supplied)

Procedural laws have retroactive application. Remedial rights are those rights granted by remedial or procedural laws. These are rights that only operate

to further the rules of procedure or to confirm vested rights. As such, the retroactive application of remedial rights will not adversely affect the vested rights of any person. Considering that the right to appeal is a right remedial in nature, we find that Section 4, paragraph (k), Rule I of the RACCS applies in this case. Petitioner, therefore, had the right to appeal the decision of the Civil Service Commission that modified its original decision of dismissal.

Recent decisions implied the retroactive application of this rule. While the right of government parties to appeal was not an issue, this court gave due course to the appeals filed by government agencies before the promulgation of the Revised Rules on Administrative Cases in the Civil Service.

Thus, we now hold that the parties adversely affected by a decision in an administrative case who may appeal shall include the disciplining authority whose decision dismissing the employee was either overturned or modified by the Civil Service Commission.

RESIGNATION FROM PUBLIC OFFICE

The qualified acceptance of Administrator Robles, however, did not affect the validity of respondent’s resignation. Section 1, Rule XII of the Civil Service Commission Memorandum Circular No. 40, series of 1998, as amended by Civil Service Commission Memorandum Circular No. 15, series of 1999, requires:

Sec. 1. Resignation. The following documents shall be submitted to the Commission for record purposes:

a. The voluntary written notice of the employee informing the appointing authority that he is relinquishing his position and the effectivity date of said resignation; and,

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b. The acceptance of resignation in writing by the agency head or appointing authority which shall indicate the date of effectivity of the resignation.

An officer or employee under investigation may be allowed to resign pending decision of his case without prejudice to the continuation of the proceedings until finally terminated.

The qualification placed by Administrator Robles on his acceptance does not make respondent's resignation any less valid. The rules and regulations allow the acceptance of resignations while the administrative case is pending provided that the proceedings will still continue.

- **Maria Carolina P. Araullo, et al. Vs. Benigno Simeon C. Aquino III, President of the Republic of the Philippines, et al.** G.R. No. 209287/209135/209136/209155/209164/209260/209442/209517/209569. July 1, 2014 Separate Opinion **J. Carpio, J. Brion** Concurring and Dissenting Opinion **J. Del Castillo** Separate Concurring Opinion **J. Perlas-Bernabe** Concurring Opinion **J. Leonen**

• **Issues:**

- I. Whether or not the DAP violates the principle "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law" (Sec. 29(1), Art. VI, Constitution).
- II. Whether or not the DAP realignments can be considered as impoundments by the executive.
- III. Whether or not the DAP realignments/transfers are constitutional.
- IV. Whether or not the sourcing of unprogrammed funds to the DAP is constitutional.
- V. Whether or not the Doctrine of Operative Fact is applicable.

• **HELD:**

- **I.** No, the DAP did not violate Section 29(1), Art. VI of the Constitution. DAP was merely a

program by the Executive and is not a fund nor is it an appropriation. It is a program for prioritizing government spending. As such, it did not violate the Constitutional provision cited in Section 29(1), Art. VI of the Constitution. In DAP no additional funds were withdrawn from the Treasury otherwise, an appropriation made by law would have been required. Funds, which were already appropriated for by the GAA, were merely being realigned via the DAP.

- **II.** No, there is no executive impoundment in the DAP. Impoundment of funds refers to the President's power to refuse to spend appropriations or to retain or deduct appropriations for whatever reason. Impoundment is actually prohibited by the GAA unless there will be an unmanageable national government budget deficit (which did not happen). Nevertheless, there's no impoundment in the case at bar because what's involved in the DAP was the transfer of funds.
- **III.** No, the transfers made through the DAP were unconstitutional. It is true that the President (and even the heads of the other branches of the government) are allowed by the Constitution to make realignment of funds, however, such transfer or realignment should only be made "within their respective offices". Thus, no cross-border transfers/augmentations may be allowed. But under the DAP, this was violated because funds appropriated by the GAA for the Executive were being transferred to the Legislative and other non-Executive agencies.
- Further, transfers "within their respective offices" also contemplate realignment of funds to an existing project in the GAA. Under the DAP, even though some

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projects were within the Executive, these projects are non-existent insofar as the GAA is concerned because no funds were appropriated to them in the GAA. Although some of these projects may be legitimate, they are still non-existent under the GAA because they were not provided for by the GAA. As such, transfer to such projects is unconstitutional and is without legal basis.

- *On the issue of what are "savings"*
- These DAP transfers are not "savings" contrary to what was being declared by the Executive. Under the definition of "savings" in the GAA, savings only occur, among other instances, when there is an excess in the funding of a certain project once it is completed, finally **discontinued**, or finally abandoned. The GAA does not refer to "savings" as funds withdrawn from a slow moving project. Thus, since the statutory definition of savings was not complied with under the DAP, there is no basis at all for the transfers. Further, savings should only be declared at the end of the fiscal year. But under the DAP, funds are already being withdrawn from certain projects in the middle of the year and then being declared as "savings" by the Executive particularly by the DBM.
- **IV.** No. Unprogrammed funds from the GAA cannot be used as money source for the DAP because under the law, such funds may only be used if there is a certification from the National Treasurer to the effect that the revenue collections have exceeded the revenue targets. In this case, no such certification was secured before unprogrammed funds were used.
- **V.** Yes. The Doctrine of Operative Fact, which recognizes the legal effects of an act prior to it being declared as unconstitutional by the Supreme Court, is applicable. The

DAP has definitely helped stimulate the economy. It has funded numerous projects. If the Executive is ordered to reverse all actions under the DAP, then it may cause more harm than good. The DAP effects can no longer be undone. The beneficiaries of the DAP cannot be asked to return what they received especially so that they relied on the validity of the DAP. However, the Doctrine of Operative Fact may not be applicable to the authors, implementers, and proponents of the DAP if it is so found in the appropriate tribunals (civil, criminal, or administrative) that they have not acted in good faith.

- **Dennis L. Go Vs. Republic of the Philippines** G.R. No. 202809. July 2, 2014

ISSUE: PETITION FOR NATURALIZATION

Citizenship is personal and more or less permanent membership in a political community. It denotes possession within that particular political community of full civil and political rights subject to special disqualifications. Reciprocally, it imposes the duty of allegiance to the political community.¹⁴ The core of citizenship is the capacity to enjoy political rights, that is, the right to participate in government principally through the right to vote, the right to hold public office and the right to petition the government for redress of grievance.¹⁵

No less than the 1987 Constitution enumerates who are Filipino citizens.¹⁶ Among those listed are citizens by naturalization, which refers to the legal act of adopting an alien and clothing him with the privilege of a native-born citizen. Under the present laws, the process of naturalization can be judicial or administrative. Judicially, C.A. No. 473 provides that after hearing the petition for citizenship and receipt of evidence showing that the petitioner has all the qualifications and none of the disqualifications required by law, the

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competent court may order the issuance of the proper naturalization certificate and the registration thereof in the proper civil registry. On the other hand, Republic Act (R.A.) No. 9139 provides that aliens born and residing in the Philippines may be granted Philippine citizenship by administrative proceeding by filing a petition for citizenship with the Special Committee, which, in view of the facts before it, may approve the petition and issue a certificate of naturalization.¹⁷ In both cases, the petitioner shall take an oath of allegiance to the Philippines as a sovereign nation.

It is a well-entrenched rule that Philippine citizenship should not easily be given away. All those seeking to acquire it must prove, to the satisfaction of the Court, that they have complied with all the requirements of the law.¹⁸ The reason for this requirement is simple. Citizenship involves political status; hence, every person must be proud of his citizenship and should cherish it. Verily, 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. Naturalization is not a right, but one of privilege of the most discriminating, as well as delicate and exacting nature, affecting, as it does, public interest of the highest order, and which may be enjoyed only under the precise conditions prescribed by law therefor.¹⁹

Jurisprudence dictates that in judicial naturalization, the application must show substantial and formal compliance with C.A. No. 473. 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.²⁰ In *Ong v. Republic of the Philippines*,²¹ the Court listed the requirements for character witnesses, namely:

- That they are citizens of the

Philippines;

- That they are "credible persons";
- That they personally know the petitioner;
- That they personally know him to be a resident of the Philippines for the period of time required by law;
- That they personally know him to be a person of good repute;
- That they personally know him to be morally irreproachable;
- That he has, in their opinion, all the qualifications necessary to become a citizen of the Philippines; and
- That he "is not in any way disqualified under the provisions" of the Naturalization Law.

In vouching for the good moral character of the applicant for citizenship, a witness, for purposes of naturalization, must be a "credible" person as he becomes an insurer of the character of the candidate.²

In this case, the OSG mainly harps on the petitioner's failure to prove that his witnesses are credible.

The Court agrees.

The records of the case show that the joint affidavits executed by petitioner's witnesses did not establish their *own* qualification to stand as such in a naturalization proceeding. In turn, petitioner did not present evidence proving that the persons he presented were credible. In the words of the CA, "he did not prove that his witnesses had good standing in the community, known to be honest and upright, reputed to be trustworthy and reliable, and that their word may be taken at face value, as a good warranty of the worthiness of

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petitioner.”²⁴

While there is no showing that petitioner’s witnesses were of doubtful moral inclinations, there was likewise no indication that they were persons whose qualifications were at par with the requirements of the law on naturalization. Simply put, no evidence was ever proffered to prove the witnesses’ good standing in the community, honesty, moral uprightness, and most importantly, reliability. As a consequence, their statements about the petitioner do not possess the measure of “credibility” demanded of in naturalization cases.

To the Court, this is a display of insincerity to embrace Filipino customs, traditions and ideals. This leads to the inescapable conclusion that petitioner failed to prove that he has all the qualifications entitling him to the grant of Philippine citizenship. Filipino citizenship is predicated upon oneness with the Filipino people. It is indispensable that an applicant for naturalization shows his identification with the Philippines as a country deserving of his wholehearted allegiance. Until there is a positive and unequivocal showing that this is so in the case of petitioner, the Court must selfishly decline to confer Philippine citizenship on one who remains an alien in principles and sentiment.

Finally, it is noteworthy that the OSG was correct in arguing that petitioner’s failure to state his former residence in the petition was fatal to his application for naturalization. Indeed, this omission had deprived the trial court of jurisdiction to hear and decide the case. Differently stated, the inclusion of present and former places of residence in the petition is a jurisdictional requirement, without which the petition suffers from a fatal and congenital defect which cannot be cured by evidence on the omitted matter at the trial.²⁵

Here, a character witness had unwittingly revealed that he and petitioner were neighbors in Sto. Cristo Street before the

latter’s family transferred to their declared residential address in Oroquieta Street. This proves that petitioner’s former residence was excluded in his allegations contained in the published petition. In effect, there was an unpardonable lapse committed in the course of petitioner’s compliance to the jurisdictional requirements set by law, rendering the trial court’s decision, not only as erroneous, but void.

- **Angel G. Naval Vs. Commission on Elections and Nelson B. Julia** G.R. No. 207851. July 8, 2014

The case before this Court is one of first impression.

A provincial board member cannot be elected and serve for more than three consecutive terms. But then, the Court is now called upon to resolve the following questions. *First.* What are the consequences to the provincial board member’s eligibility to run for the same elective position if the legislative district, which brought him or her to office to serve the first two consecutive terms, be reapportioned in such a way that 8 out of its 10 town constituencies are carved out and renamed as another district? *Second.* Is the provincial board member’s election to the same position for the third and fourth time, but now in representation of the renamed district, a violation of the three-term limit rule?

The Role of Elections in our Democratic and Republican State, and the Restraints Imposed Upon Those Who Hold Public Office

The Court begins with general and undeniable principles.

The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.²⁸ Hence, while it is settled that in elections, the first consideration of every democratic polity is to give effect to the expressed will of the majority, there are limitations to being elected to a public office.³³ Our Constitution and statutes are explicit anent the existence of term limits, the

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nature of public office, and the guarantee from the State that citizens shall have equal access to public service.³⁴ Section 8, Article X of our Constitution, on term limits, is significantly reiterated by Section 43(b) of the LGC. Moreover, the Court has time and again declared that a public office is a public trust and not a vested property right.³⁵

The Constitution mandates the strict implementation of the three-term limit rule.

The Court notes that in the process of drafting the Constitution, the framers thereof had not discussed with specificity the subject of the three-term limit rule's application on reapportioned districts.

From the above-cited deliberations, however, the divergent stances of the members of the Constitutional Commission on the general application of the three-term limit rule show. On one side were those who espoused the stern view that perpetual disqualification to hold public office after three consecutive terms would ensure that new blood would be infused into our political system. More choices for the voters would give fuller meaning to our democratic institutions. On the other side of the fence were those who believed that the imposition of term limits would be tantamount to squandering the experience of seasoned public servants and a curtailment of the power of the citizens to elect whoever they want to remain in office.

In the end, 26 members of the Commission cast their votes in favor of the proposal that no immediate re-election after three successive terms shall be allowed. On the other hand, 17 members stood pat on their view that there should be no further reelection after three successive terms.

Clearly, the drafters of our Constitution are in agreement about the possible attendant evils if there would be no limit to re-election. Notwithstanding their conflicting preferences on whether the

term limit would disqualify the elected official perpetually or temporarily, they decided that only three consecutive elections to the same position would be allowed. Thereafter, the public official can once again vie for the same post provided there be a gap of at least one term from his or her last election. 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.

The compromise agreed upon by the drafters of our Constitution was a result of exhaustive deliberations. The required gap after three consecutive elections is significant. Thus, the rule cannot be taken with a grain of salt. Nothing less than its strict application is called for.

Reapportionment and its Basis

Reapportionment is "the realignment or change in legislative districts brought about by changes in population and mandated by the constitutional requirement of equality of representation."⁴⁰ The aim of legislative apportionment is to equalize population and voting power among districts.⁴¹ 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.⁴²

R.A. No. 9716 and the Reapportioned Districts of Camarines Sur

As a result of the reapportionment made by R.A. No. 9716, the old Second District of Camarines Sur, minus only the two towns of Gainza and Milaor, is renamed as the Third District.

R.A. No. 9716 created a new Second District, but it merely renamed the other four.

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

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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 is the clear intent to create a sole new district in that of the Second, while merely renaming the rest.

In Naval's case, the words of R.A. No. 9716 plainly state that the new *Second District* is to be *created*, but the *Third District* is to be *renamed*. *Verba legis non est recedendum*. The terms used in a legal provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers mean what they say.⁴⁶

The verb *create* means to "*make or produce something new*."⁴⁷ On the other hand, the verb *rename* means to "*give a new name to someone or something*."⁴⁸ A complete reading of R.A. No. 9716 yields no logical conclusion other than that the lawmakers intended the old Second District to be merely renamed as the current Third District.

It likewise bears noting that the actual difference in the population of the old Second District from that of the current Third District amounts to less than 10% of the population of the latter. This numerical fact renders the new Third District as essentially, although not literally, the same as the old Second District. Hence, while Naval is correct in his argument that *Sanggunian* members are elected by district, it does not alter the fact that the district which elected him for the third and fourth time is the same one which brought him to office in 2004 and 2007.

The application upon Naval of the three-term limit rule does not

undermine the constitutional requirement to achieve equality of representation among districts.

The rationale behind reapportionment is the constitutional requirement to achieve equality of representation among the districts.⁴⁹ 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.

- **Heirs of Diosdado M. Mendoza, namely: Licinia V. Mendoza, et al. Vs. Department of Public Works and Highways, et al.** G.R. No. 203834. July 9, 2014

- *On Governmental v. Proprietary Functions*
-
- Petitioners assail the Court of Appeals' ruling that the contract entered into by the DPWH was made in the exercise of its governmental, not proprietary, function and was imbued with public interest. Petitioners likewise assail the Court of Appeals' ruling that the DPWH has no juridical personality of its own and thus, the suit was against the agency's principal, the State. Petitioners further argue that the DPWH entered into a contract with Mendoza and by its act of entering into a contract, it already waived its immunity from suit.
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- The doctrine of immunity from suit is anchored on Section 3, Article XVI of the 1987 Constitution which provides:

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- Section 3. The State may not be sued without its consent.
-
- The general rule is that a state may not be sued, but it may be the subject of a suit if it consents to be sued, either expressly or impliedly.³³ There is express consent when a law so provides, while there is implied consent when the State enters into a contract or it itself commences litigation.³⁴ This Court explained that in order to determine implied waiver when the State or its agency entered into a contract, there is a need to distinguish whether the contract was entered into in its governmental or proprietary capacity, thus:
-
- x x x. However, it must be clarified that when a state enters into a contract, it does not automatically mean that it has waived its non-suability. The State "will be deemed to have impliedly waived its non-suability [only] if it has entered into a contract in its proprietary or private capacity. [However,] when the contract involves its sovereign or governmental capacity[,] x x x no such waiver may be implied." Statutory provisions waiving [s]tate immunity are construed in *strictissimi juris*. For, waiver of immunity is in derogation of sovereignty.³⁵
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- In *Air Transportation Office v. Ramos*,³⁶ the Court expounded:
-
- An unincorporated agency without any separate juridical personality of its own enjoys immunity from suit because it is invested with an inherent power of sovereignty. x x x. However, the need to distinguish

between an unincorporated government agency performing governmental function and one performing proprietary functions has arisen. The immunity has been upheld in favor of the former because its function is governmental or incidental to such function; it has not been upheld in favor of the latter whose function was not in pursuit of a necessary function of government but was essentially a business.³⁷

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- Having made this distinction, we reiterate that the DPWH is an unincorporated government agency without any separate juridical personality of its own and it enjoys immunity from suit.³⁸

It is clear from the enumeration of its functions that the DPWH performs governmental functions. Section 5(d) states that it has the power to "[i]dentify, plan, secure funding for, program, design, construct or undertake prequalification, bidding, and award of contracts of public works projects x x x" while Section 5(e) states that it shall "[p]rovide the works supervision function for all public works construction and ensure that actual construction is done in accordance with approved government plans and specifications."

The contracts that the DPWH entered into with Mendoza for the construction of Packages VI and IX of the HADP were done in the exercise of its governmental functions. Hence, petitioners cannot claim that there was an implied waiver by the DPWH simply by entering into a contract. Thus, the Court of Appeals correctly ruled that the DPWH enjoys immunity from suit and may not be sued without its consent.

- **Department fo Agrarian Reform, rep by Secretary Nasser C. Pangandaman Vs. Spouses Diosdado Sta. Romana, et al.** G.R. No. 183290. July 9, 2014

For purposes of determining just compensation, the fair market value of an expropriated property is determined by its *character* and its *price* at the time of

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taking.⁴⁶ In addition, the factors enumerated under Section 17 of RA 6657,⁴⁷ i.e., (a) the acquisition cost of the land, (b) the current value of like properties, (c) the nature and actual use of the property, and the income therefrom, (d) the owner's sworn valuation, (e) the tax declarations, (f) the assessment made by government assessors, (g) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and (h) the non-payment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered.

- **Department of Agrarian Reform Vs. Salud Gacias Berina, et al./Land Bank of the Philippines Vs. Salud Gacias Berina, et al.** G.R. No. 183901/G.R. No. 183931. July 9, 2014

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guidelines in the remand of the case:

1. Compensation must be valued at the time of taking, or the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred in the name of the Republic of the Philippines.⁶³ Hence, the evidence to be presented by the parties before the trial court for the valuation of the subject portion must be based on the values prevalent at such time of taking for like agricultural lands.⁶⁴

2. The evidence must conform with Section 17 of RA 6657, as amended, prior to its amendment by RA 9700. It bears pointing out that while Congress passed RA 9700 on July 1, 2009, further amending certain provisions of RA 6657, as amended, among them, Section 17, and declaring "(t)hat all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of [RA 6657], as amended,"⁶⁵ the law should not be retroactively applied to pending claims/cases.

With this in mind, the Court, cognizant of the fact that the instant consolidated petitions for review on *certiorari* were filed in August 2008, or long before the passage of RA 9700, finds that **Section 17 of RA 6657, as amended, prior to its further amendment by RA No. 9700, should control the challenged valuation**.⁶⁶

3. The Regional Trial Court may impose interest on the just compensation as may be warranted by the circumstances of the case and based on prevailing jurisprudence.⁶⁷

In previous cases, the Court has allowed the grant of legal interest in expropriation cases where there is delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State.⁶⁸ Legal interest shall be pegged at the rate of 12% p.a. from the time of taking until June 30, 2013 only. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due the landowners shall earn interest at the new legal rate of 6% p.a. in line with the amendment introduced by BSP-MB Circular No. 799,⁶⁹ series of 2013.⁷⁰

4. The Regional Trial Court is reminded, however, that while it should take into account the different formula created by the DAR in arriving at the just compensation for the subject portion, it is not strictly bound thereto if the situations before it do not warrant their application.⁷

- **Jaime Dela Cruz Vs. People of the Philippines** G.R. No. 200748. July 23, 2014

- **The drug test in Section 15 does not cover**
- **persons apprehended or arrested for any**
- **unlawful act, but only for unlawful acts**
- **listed under Article II of R.A. 9165.**
- **First, "[a] person apprehended**

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or arrested” cannot literally mean any person apprehended or arrested for any crime. The phrase must be read in context and understood in consonance with R.A. 9165. Section 15 comprehends persons **arrested or apprehended for unlawful acts listed under Article II** of the law.

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- Hence, a drug test can be made upon persons who are apprehended or arrested for, among others, the “importation,”⁹ “sale, trading, administration, dispensation, delivery, distribution and transportation,”¹⁰ “manufacture”¹¹ and “possession”¹² of dangerous drugs and/or controlled precursors and essential chemicals; possession thereof “during parties, social gatherings or meetings”¹³; being “employees and visitors of a den, dive or resort”;¹⁴ “maintenance of a den, dive or resort”;¹⁵ “illegal chemical diversion of controlled precursors and essential chemicals”¹⁶; “manufacture or delivery”¹⁷ or “possession”¹⁸ of equipment, instrument, apparatus, and other paraphernalia for dangerous drugs and/or controlled precursors and essential chemicals; possession of dangerous drugs “during parties, social gatherings or meetings”¹⁹; “unnecessary”²⁰ or “unlawful”²¹ prescription thereof; “cultivation or culture of plants classified as dangerous drugs or are sources thereof”;²² and “maintenance and keeping of original records of transactions on dangerous drugs and/or controlled precursors and essential chemicals.”²³ To make the provision applicable to all persons arrested or apprehended for any crime not listed under Article II is tantamount to unduly expanding its meaning. Note that accused appellant here was arrested in the alleged act of extortion.

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- A charge for violation of Section 15 of R.A. 9165 is seen as expressive of the intent of the law to rehabilitate persons apprehended or arrested for the unlawful acts enumerated above instead of charging and convicting them of other crimes with heavier penalties.

Furthermore, making the phrase “a person apprehended or arrested” in Section 15 applicable to all persons arrested or apprehended for unlawful acts, not only under R.A. 9165 but for all other crimes, is tantamount to a mandatory drug testing of all persons apprehended or arrested for any crime. To overextend the application of this provision would run counter to our pronouncement in *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*,²⁵ to wit: clear

x x x [M]andatory drug testing can never be random and 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 6195. Drug testing in this case would violate a person’s right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused persons are veritably forced to incriminate themselves.**

The drug test is not covered by allowable non-testimonial

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compulsion.

We find that petitioner never raised the alleged irregularity of his arrest before his arraignment and raises the issue only now before this tribunal; hence, he is deemed to have waived his right to question the validity of his arrest curing whatever defect may have attended his arrest.²⁶ However, "a waiver of an illegal warrantless arrest does not mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest."²⁷

We are aware of the prohibition against testimonial compulsion and the allowable exceptions to such proscription. Cases where non-testimonial compulsion has been allowed reveal, however, that the pieces of evidence obtained were all **material to the principal cause of the arrest.**

In the instant case, we fail 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."

We note a case where a urine sample was considered as admissible. In *Gutang v. People*,²⁹ the petitioner therein and his companions were arrested in connection with the enforcement of a search warrant in his residence. A PNP-NARCOM team found and confiscated *shabu* materials and paraphernalias. The petitioner and his companions in that case were also asked to give urine samples, which yielded positive results. Later, the petitioner therein was found guilty of the crime of illegal possession and use of prohibited drugs. Gutang claimed that the latter's urine sample was inadmissible in evidence, since it was derived in effect from an uncounselled extrajudicial confession.

In the *Gutang et al.* case, the Court clarified that "what the Constitution prohibits is the use of physical or moral

compulsion to extort communication from the accused, but not an inclusion of his body in evidence, when it may be material." The situation in *Gutang* was categorized as falling among the exemptions under the freedom from testimonial compulsion since what was sought to be examined came from the body of the accused.

We emphasize that the circumstances in *Gutang* are clearly different from the circumstances of petitioner in the instant case. First, Gutang was arrested in relation to a drug case. Second, he volunteered to give his urine. Third, there were other pieces of evidence that point to his culpability for the crimes charged. In the present case, though, petitioner was arrested for extortion; he resisted having his urine sample taken; and finally, his urine sample was the only available evidence that was used as basis for his conviction for the use of illegal drugs.

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.

In the face of these constitutional guarantees, we cannot condone drug testing of all arrested persons regardless of the crime or offense for which the arrest is being made.

While we express our commendation of law enforcement agents as they vigorously track down offenders in their laudable effort to curb the pervasive and deleterious effects of dangerous drugs on our society, they must, however, be constantly mindful of the reasonable limits of their authority, because it is not unlikely that in their clear intent to purge society of its lawless elements, they may be knowingly or unknowingly transgressing the protected rights of its

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citizens including even members of its own police force.

- article 279 of the Labor Code is clear in providing that an illegally dismissed employee is entitled to his full backwages computed from the time his compensation was withheld up to the time of his actual reinstatement, to wit:

- **Art. 279. Security of tenure.** In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. **An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.**

- **Jose Tapaes Villarosa Vs. Romulo De Mesa Festin and Commission on Elections** G.R. No. 212953. August 5, 2014 Separate Concurring Opinion **J. Brion**

- **Propriety of certiorari in assailing COMELEC rulings**
- Petitioner's recourse, aside from being unsound in substance, is procedurally infirm. 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. (emphasis added)

- In the instructive case of *Ambil v. Commission on Elections*,⁴ We have interpreted the provision to limit the remedy of certiorari against **final orders, rulings and decisions** of the **COMELEC en banc** rendered in the exercise of its adjudicatory or quasi-judicial powers.⁵ Certiorari will not generally lie against an order, ruling, or decision of a COMELEC division for being premature, taking into account the availability of the plain, speedy and adequate remedy of a motion for reconsideration.

The above doctrine further gained force when it was reiterated in Our recent ruling in *Cagas v. COMELEC*,⁷ in which We held that a party aggrieved by an interlocutory order issued by a Division of the COMELEC in an election protest may not directly assail the said order in this Court through a special civil action for certiorari. The remedy is to seek the review of the interlocutory order during the appeal of the decision of the Division in due course.⁸

The exception in *Kho v. COMELEC* is inapplicable

As an exception to the cases of *Ambil* and *Cagas*, We have ruled in *Kho vs. COMELEC*⁹ that when it does not appear to be specifically provided under the COMELEC Rules of Procedure that the challenged final order or decision is one

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that the COMELEC *en banc* may sit and consider, the aggrieved party can, by necessity, directly resort to the Court as the proper forum for reviewing the ruling. Thus, We have granted, in the said case, the petition assailing an interlocutory order of a COMELEC division.

The exception, however, does not obtain herein. Noteworthy is that in 1997, when *Kho* was resolved, what was then in force was the COMELEC Rules of Procedure promulgated on February 15, 1993 (1993 COMELEC Rules). Patent in the above-cited provisions is that the COMELEC *en banc*, at that time, did not have the power to resolve motions for reconsideration with respect to interlocutory orders issued by a division. This circumstance was a controlling factor in Our ruling in *Kho*.

On the other hand, applicable in the instant petition is COMELEC Resolution No. 8804,¹⁰ promulgated on March 22, 2010.

Stark is the contrast between the two cited rules. To reiterate, under the 1993 COMELEC Rules, the COMELEC *en banc* is strictly prohibited from entertaining motions for reconsideration of interlocutory orders unless unanimously referred to the *en banc* by the members of the division that issued the same, whereas under COMELEC Resolution No. 8804, all motions for reconsideration filed with regard to decisions, resolutions, orders and rulings of the COMELEC divisions are automatically referred to the COMELEC *en banc*. Thus, in view of COMELEC Resolution No. 8804's applicability in the instant petition, a motion for reconsideration before the COMELEC *en banc* is available to petitioner herein unlike in *Kho*.

From the foregoing, petitioner's procedural lapse becomes manifest. With the availability of a plain, speedy, and adequate remedy at petitioner's disposal, his hasty resort to certiorari to this Court cannot be justified. On this ground alone, the instant petition can and should be dismissed outright.

Under Sec. 3, Art. IX-C of the 1987 Constitution, which provides:

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*. (emphasis added)

Evidently, it is pursuant to this mandate that the COMELEC promulgated Resolution No. 7808¹¹ on January 16, 2007. Sec. 6, Rule 3 of the said Resolution, in part, provides:

Sec. 6. Substitution of members of a Division. –

(a) Temporary vacancy. – Whenever **a member of a Division is on leave**, seriously ill, temporarily disabled, is absent, inhibits himself, or is disqualified from sitting in a case, **the junior member of the other Division shall substitute such Commissioner**, participating therein in an acting capacity, in addition to his regular membership in his own Division.

x x x x

Under either of the foregoing substitutions, the Division where the acting or signing member is assigned shall be designated as "Special First Division" or "Special Second Division," as the case may be, for purposes of the pertinent cases therein pending."

Thereafter, with the retirement of Commissioner Rene V. Sarmiento and Commissioner Armando Velasco, the above-quoted rule was amended by Resolution No. 9636¹² on February 13, 2013 to now read as:

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Sec. 6 Substitution of member of a Division. -

(a) Temporary vacancy. - **Whenever a member of a Division is on Leave, seriously ill, temporarily disabled, is absent, inhibits himself, or is disqualified from sitting in a case, the Chairman shall substitute him with another Commissioner, or the Chairman shall sit in place of said member, and in that event he will preside.**

x x x x

Under either of the foregoing substitutions, the Division where the acting or signing member is assigned shall be designated as "Special First Division" or "Special Second Division" as the case may be, for purposes of the pertinent case therein pending.

Invoking the rule, as amended, the COMELEC then issued Resolution No. 9868¹³ on April 8, 2014. The Resolution sought to address the temporary vacancies in both Divisions of the COMELEC in view of the pressing matters concerning overseas absentee voting that required the attention and presence abroad of Commissioners Lucenito N. Tagle and Christian Robert S. Lim of the COMELEC First Division, and of Commissioner Elias R. Yusoph of the Second Division.¹⁴

Due to the absences of the aforementioned Commissioners, and to constitute a quorum for the Divisions, Chairman Sixto S. Brillantes, Jr. sat as presiding Chairman for both Divisions until his colleagues' return.¹

With the foregoing discussion, it becomes indisputable that the formation of the Special Divisions is not only sanctioned by the COMELEC Rules but also by the Constitution no less.

No fault, let alone grave abuse of discretion, can be ascribed to the

COMELEC when the Special First Division issued the questioned writ of preliminary injunction. Contrary to petitioner's claim, it cannot be said that the First Division and the Special First Division are two distinct bodies and that there has been consequent transfers of the case between the two. Strictly speaking, the COMELEC did not create a separate Division but merely and temporarily filled in the vacancies in both of its Divisions. The additional term "special," in this case, merely indicates that the commissioners sitting therein may only be doing so in a temporary capacity or via substitution.

The COMELEC First Division exercises jurisdiction over the cases that were assigned to it before the substitution was made, including SPR (AEL) No. 04-2014. This jurisdiction was not lost by the subsequent formation of the Special First Division since this only entailed a change in the Division's composition of magistrates. Indeed, the case was not reassigned or re-raffled anew. If anything, it was only petitioner's naivety that misled him into interpreting the designation of the division as a "special" one, meaning it is distinct from the first. Corollarily, petitioner is also mistaken in claiming that the jurisdiction was eventually "re-acquired" by the First Division from the Special First Division by ruling on the motion to quash since the First Division never lost jurisdiction to begin with.

- **Department of Agrarian Reform, rep. by Hon. Nasser C. Pangandaman, in his capacity as DAR-OIC Secretary Vs. Susie Irene Galle/Land Bank of the Philippines Vs. Susie Irene Galle, et al.** G.R. No. 171836/G.R. No. 195213. August 11, 2014

It has been the consistent pronouncement of this Court that the determination of just compensation is basically a judicial function. Also, it is settled that in the computation of just compensation for land taken for agrarian reform, both Section 17 of Republic Act No. 6657 (RA 6657 or the Comprehensive Agrarian Reform Law of 1988/CARL) and the formula prescribed in the applicable Administrative Order of the

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Department of Agrarian Reform (DAR) should be considered.

- **Isabelita Vinuya, et al. Vs. Executive Secretary Alberto G. Romulo, et al.** G.R. No. 162230. August 12, 2014 Concurring Opinion **C.J. Sereno**

the Constitution has entrusted to the Executive Department the conduct of foreign relations for the Philippines. Whether or not to espouse petitioners' claim against the Government of Japan is left to the exclusive determination and judgment of the Executive Department. The Court cannot interfere with or question the wisdom of the conduct of foreign relations by the Executive Department. Accordingly, we cannot direct the Executive Department, either by writ of *certiorari* or injunction, to conduct our foreign relations with Japan in a certain manner.

- **Francis H. Jardeleza Vs. Chief Justice Maria Lourdes P. A. Sereno, The Judicial and Bar Council and Executive Secretary Paquito N. Ochoa, Jr.** G.R. No. 213181. August 19, 2014 Concurring Opinion
- **J. Leonardo-De Castro** Separate and Concurring Opinion **J. Brion** Separate Opinion **J. Peralta** Dissenting Opinion **J. Leonen**

A - The Court's Power of Supervision over the JBC

Section 8, Article VIII of the 1987 Constitution provides for the creation of the JBC. The Court was given supervisory authority over it. Section 8 reads: *Chapter 8. The Judicial and Bar Council*

Section 8.

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. [*Emphasis supplied*]

As a meaningful guidepost, jurisprudence provides the definition and scope of supervision. It is the power of oversight, or the authority to see that subordinate officers perform their duties. It ensures that the laws and the rules governing the conduct of a government entity are observed and complied with. Supervising officials see to it that rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.¹⁶

B- Availability of the Remedy of Mandamus

The Court agrees with the JBC that a writ of mandamus is not available. "*Mandamus* lies to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty. *Mandamus* will not issue to control or review the exercise of discretion of a public officer where the law imposes upon said public officer the right and duty to exercise his judgment in reference to any matter in which he is required to act. It is his judgment that is to be exercised and not that of the court.¹⁷ There is no question that the JBC's duty to nominate is discretionary and it may not be compelled to do something.

C- Availability of the Remedy of Certiorari

In this case, Jardeleza cries that although he earned a qualifying number of votes in the JBC, it was negated by the invocation of the "unanimity rule" on integrity in violation of his right to due process guaranteed not only by the

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Constitution but by the Council's own rules. For said reason, the Court is of the position that it can exercise the expanded judicial power of review vested upon it by the 1987 Constitution.

It has been judicially settled that a petition for *certiorari* is a proper remedy to question the act of any branch or instrumentality of the government on the ground 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*.¹⁹

In a case like this, where constitutional bearings are too blatant to ignore, the Court does not find passivity as an alternative. The *impasse* must be overcome.

II – Substantial Issues

Examining the Unanimity Rule of the JBC in cases where an applicant's integrity is challenged

The purpose of the JBC's existence is indubitably rooted in the categorical constitutional declaration that "[a] member of the judiciary must be a person of proven competence, integrity, probity, and independence." To ensure the fulfillment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified.

As disclosed by the guidelines and lists of recognized evidence of qualification laid down in JBC-009, "integrity" is closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable

conduct, and fidelity to **sound moral and ethical standards**. That is why proof of an applicant's reputation may be shown in certifications or testimonials from reputable government officials and non-governmental organizations and clearances from the courts, National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the applicant, the merits of which shall be verified and checked. As a qualification, the term is taken to refer to a virtue, such that, "integrity is the quality of person's character."²⁴

The foregoing premise then begets the question: Does Rule 2, Section 10 of JBC-009, in imposing the "unanimity rule," contemplate a doubt on the moral character of an applicant?

Section 2, Rule 10 of JBC-009 provides:

SEC. 2. Votes required when integrity of a qualified applicant is challenged. - In every case where the integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged, the affirmative vote of all the Members of the Council must be obtained for the favorable consideration of his nomination.

A simple reading of the above provision undoubtedly elicits the rule that a higher voting requirement is absolute in cases where the integrity of an applicant is questioned. Simply put, when an integrity question arises, the voting requirement for his or her inclusion as a nominee to a judicial post becomes "unanimous" instead of the "majority vote" required in the preceding section.²⁵ Considering that JBC-009 employs the term "integrity" as an essential qualification for appointment, and its doubtful existence in a person merits a higher hurdle to surpass, that is, *the unanimous vote of all the members of the JBC*, the Court is of the safe conclusion that "integrity" as used in the

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rules must be interpreted uniformly. Hence, Section 2, Rule 10 of JBC-009 envisions only a situation where an applicant's moral fitness is challenged. It follows then that the "unanimity rule" only comes into operation when the moral character of a person is put in issue. It finds no application where the question is essentially unrelated to an applicant's moral uprightness.

Examining the "questions of integrity" made against Jardeleza

The Court will now examine the propriety of applying Section 2, Rule 10 of JBC-009 to Jardeleza's case.

The minutes of the JBC meetings, attached to the Supplemental Comment-Reply, reveal that during the June 30, 2014 meeting, not only the question on his actuations in the handling of a case was called for explanation by the Chief Justice, but two other grounds as well tending to show his lack of integrity: a supposed extra-marital affair in the past and alleged acts of insider trading.²⁶

While Chief Justice Sereno claims that the invocation of Section 2, Rule 10 of JBC-009 was not borne out of a mere variance of legal opinion but by an "act of disloyalty" committed by Jardeleza in the handling of a case, the fact remains that the basis for her invocation of the rule was the "disagreement" in legal strategy as expressed by a group of international lawyers. The approach taken by Jardeleza in that case was opposed to that preferred by the legal team. For said reason, criticism was hurled against his "integrity." The invocation of the "unanimity rule" on integrity traces its roots to the exercise of his discretion as a lawyer and nothing else. No connection was established linking his choice of a legal strategy to a treacherous intent to trounce upon the country's interests or to betray the Constitution.

Verily, disagreement in legal opinion is but a normal, if not an essential form of,

interaction among members of the legal community. A lawyer has complete discretion on what legal strategy to employ in a case entrusted to him²⁸ provided that he lives up to his duty to serve his client with competence and diligence, and that he exert his best efforts to protect the interests of his client within the bounds of the law. Consonantly, a lawyer is not an insurer of victory for clients he represents. An infallible grasp of legal principles and technique by a lawyer is a utopian ideal. Stripped of a clear showing of gross neglect, iniquity, or immoral purpose, a strategy of a legal mind remains a legal tactic acceptable to some and deplorable to others. It has no direct bearing on his moral choices.

The Availability of Due Process in the Proceedings of the JBC

In advocacy of his position, Jardeleza argues that: 1] he should have been informed of the accusations against him in writing; 2] he was not furnished the basis of the accusations, that is, "a very confidential legal memorandum that clarifies the integrity objection"; 3] instead of heeding his request for an opportunity to defend himself, the JBC considered his refusal to explain, during the June 30, 2014 meeting, as a waiver of his right to answer the unspecified allegations; 4] the voting of the JBC was railroad; and 5] the alleged "discretionary" nature of Sections 3 and 4 of JBC-009 is negated by the subsequent effectivity of JBC-010, Section 1(2) of which provides for a 10-day period from the publication of the list of candidates within which any complaint or opposition against a candidate may be filed with the JBC Secretary; 6] Section 2 of JBC-010 requires complaints and oppositions to be in writing and under oath, copies of which shall be furnished the candidate in order for him to file his comment within five (5) days from receipt thereof; and 7] Sections 3 to 6 of JBC-010 prescribe a logical, reasonable and sequential series of steps in securing a candidate's right to due process.

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The JBC counters these by insisting that it is not obliged to afford Jardeleza the right to a hearing in the fulfillment of its duty to recommend. The JBC, as a body, is not required by law to hold hearings on the qualifications of the nominees. The process by which an objection is made based on Section 2, Rule 10 of JBC-009 is not judicial, quasi-judicial, or fact-finding, for it does not aim to determine guilt or innocence akin to a criminal or administrative offense but to ascertain the fitness of an applicant vis-à-vis the requirements for the position. Being *sui generis*, the proceedings of the JBC do not confer the rights insisted upon by Jardeleza. He may not exact the application of rules of procedure which are, at the most, discretionary or optional. Finally, Jardeleza refused to shed light on the objections against him. During the June 30, 2014 meeting, he did not address the issues, but instead chose to tread on his view that the Chief Justice had unjustifiably become his accuser, prosecutor and judge.

The crux of the issue is on the availability of the right to due process in JBC proceedings. 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.

The Court does not brush aside the unique and special nature of JBC proceedings. Indeed, they are distinct from criminal proceedings where the finding of guilt or innocence of the accused is *sine qua non*. The JBC's constitutional duty to recommend qualified nominees to the President cannot be compared to the duty of the courts of law to determine the commission of an offense and ascribe the same to an accused, consistent with established rules on evidence. Even the quantum of evidence required in criminal cases is far from the discretion accorded to the JBC.

The Court, however, could not accept, lock, stock and barrel, the argument that

an applicant's access to the rights afforded under the due process clause is discretionary on the part of the JBC. While the facets of criminal⁴² and administrative⁴³ due process are not strictly applicable to JBC proceedings, their peculiarity is insufficient to justify the conclusion that due process is not demandable.

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.**

As threshed out beforehand, due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself.⁵⁰ Even as Jardeleza was verbally informed of the invocation of Section 2, Rule 10 of JBC-009 against him and was later asked to explain himself during the meeting, these circumstances still cannot expunge an immense perplexity that lingers in the mind of the Court. What is to become of the procedure laid down in JBC-010 if the same would be treated with indifference and disregard? To repeat, as its wording provides, 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 period⁵¹ 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

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Jardeleza, by telephone, to a meeting that would be held on the same day when a resource person would shed light on the matter.

Consequences

To write finis to this controversy and in view of the realistic and practical fruition of the Court's findings, the Court now declares its position on whether or not Jardeleza may be included in the shortlist, just in time when the period to appoint a member of the Court is about to end.

The conclusion of the Court is hinged on the following pivotal points:

- There was a misapplication of the "unanimity rule" under Section 2, Rule 10 of JBC-009 as to Jardeleza's legal strategy in handling a case for the government.
- While Jardeleza's alleged extra-marital affair and acts of insider trading fall within the contemplation of a "question on integrity" and would have warranted the application of the "unanimity rule," he was not afforded due process in its application.
- The JBC, as the sole body empowered to evaluate applications for judicial posts, exercises full discretion on its power to recommend nominees to the President. The *sui generis* character of JBC proceedings, however, is not a blanket authority to disregard the due process under JBC-010.
- Jardeleza was deprived of his right to due process when, contrary to the JBC rules, he was neither formally informed of the questions on his integrity nor was provided a reasonable opportunity to prepare his defense.

With the foregoing, the Court is compelled to rule that Jardeleza should have been included in the shortlist submitted to the President for the vacated position of

Associate Justice Abad. This consequence arose not from the unconstitutionality of Section 2, Rule 10 of JBC-009, *per se*, but from the *violation by the JBC of its own rules of procedure and the basic tenets of due process*. By no means does the Court intend to strike down the "unanimity rule" as it reflects the JBC's policy and, therefore, wisdom in its selection of nominees. Even so, the Court refuses to turn a blind eye on the palpable defects in its implementation and the ensuing treatment that Jardeleza received before the Council. True, Jardeleza has no vested right to a nomination, but this does not prescind from the fact that the JBC failed to observe the minimum requirements of due process.

In criminal and administrative cases, the violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.⁵² This rule may well be applied to the current situation for an opposing view submits to an undue relaxation of the Bill of Rights. To this, the Court shall not concede. As the branch of government tasked to guarantee that the protection of due process is available to an individual in proper cases, the Court finds the subject shortlist as tainted with a vice that it is assigned to guard against. Indeed, the invocation of Section 2, Rule 10 of JBC-009 must be deemed to have never come into operation in light of its erroneous application on the original ground against Jardeleza's integrity. At the risk of being repetitive, the Court upholds the JBC's discretion in the selection of nominees, but its application of the "unanimity rule" must be applied in conjunction with Section 2, Rule 10 of JBC-010 being invoked by Jardeleza. Having been able to secure four (4) out of six (6) votes, the only conclusion left to propound is that a majority of the members of the JBC, nonetheless, found Jardeleza to be qualified for the position of Associate

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Justice and this grants him a rightful spot in the shortlist submitted to the President.

Need to Revisit JBC's Internal Rules

In the Court's study of the petition, the comments and the applicable rules of the JBC, the Court is of the view that the rules leave much to be desired and should be reviewed and revised. It appears that the provision on the "unanimity rule" is vague and unfair and, therefore, *can be misused or abused resulting in the deprivation of an applicant's right to due process.*

Primarily, the invocation of the "unanimity rule" on integrity is effectively a veto power over the collective will of a majority. This should be clarified. Any assertion by a member *after* voting seems to be unfair because it effectively gives him or her a veto power over the collective votes of the other members in view of the unanimous requirement. While an oppositor-member can recuse himself or herself, still the probability of annulling the majority vote of the Council is quite high.

Second, integrity as a ground has not been defined. While the initial impression is that it refers to the moral fiber of a candidate, it can be, as it has been, used to mean other things. In fact, the minutes of the JBC meetings in this case reflect the lack of consensus among the members as to its precise definition. Not having been defined or described, it is vague, nebulous and confusing. It must be distinctly specified and delineated.

Third, it should explicitly provide who can invoke it as a ground against a candidate. Should it be invoked only by an outsider as construed by the respondent Executive Secretary or also by a member?

Fourth, while the JBC vetting proceedings is "*sui generis*" and need not be formal or trial type, they must meet the minimum requirements of due process. As always, an applicant should be given a reasonable opportunity and time to be heard on the

charges against him or her, if there are any.

At any rate, it is up to the JBC to fine-tune the rules considering the peculiar nature of its function. It need not be stressed that the rules to be adopted should be fair, reasonable, unambiguous and consistent with the minimum requirements of due process.

One final note.

The Court disclaims that Jardeleza's inclusion in the shortlist is an endorsement of his appointment as a member of the Court. In deference to the Constitution and his wisdom in the exercise of his appointing power, the President remains the ultimate judge of a candidate's worthiness.

WHEREFORE, the petition is **GRANTED**. Accordingly, it is hereby declared that Solicitor General Francis H. Jardeleza is deemed **INCLUDED** in the shortlist submitted to the President for consideration as an Associate Justice of the Supreme Court vice Associate Justice Roberto A. Abad.

- **GMA Network, Inc. Vs. Commission on Elections/ABC Devt. Corp. Vs. COMELEC/Manila Broadcasting Co., Inc., et al. Vs. COMELEC/Kapisanan ng mga Brokaster ng Pilipinas, et al. Vs. COMELEC/Radio Mindanao Network, Inc. Vs. COMELEC** G.R. No. 205357/G.R. No. 205374/G.R. No. 205592/G.R. No. 205852/G.R. No. 206360. September 2, 2014 Separate Concurring Opinion **J. Carpio, J. Brion** Concurring Opinion
- **J. Leonen**

- "The clash of rights demands a delicate balancing of interests approach which is a 'fundamental postulate of constitutional law.'"¹
-
- Once again the Court is asked to draw a carefully drawn balance in the incessant conflicts between rights and regulations, liberties and limitations, and competing

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demands of the different segments of society. Here, we are confronted with the need to strike a workable and viable equilibrium between a constitutional mandate to maintain free, orderly, honest, peaceful and credible elections, together with the aim of ensuring equal opportunity, time and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates,² on one hand, and the imperatives of a republican and democratic state,³ together with its guaranteed rights of suffrage,⁴ freedom of speech and of the press,⁵ and the people's right to information,⁶ on the other.

-
- In a nutshell, the present petitions may be seen as in search of the answer to the question – **how does the Charter of a republican and democratic State achieve a viable and acceptable balance between liberty, without which, government becomes an unbearable tyrant, and authority, without which, society becomes an intolerable and dangerous arrangement?**
-
- Assailed in these petitions are certain regulations promulgated by the Commission on Elections (COMELEC) relative to the conduct of the 2013 national and local elections dealing with political advertisements. Specifically, the petitions question the constitutionality of the limitations placed on aggregate airtime allowed to candidates and political parties, as well as the requirements incident thereto, such as the need to report the same, and the sanctions imposed for violations.
-
- The five (5) petitions before the Court put in issue the alleged

unconstitutionality 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. They 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 forthcoming elections.

-
- The heart of the controversy revolves upon the proper interpretation of the limitation on the number of minutes that candidates may use for television and radio advertisements, as provided in Section 6 of Republic Act No. 9006 (*R.A. No. 9006*), otherwise known as the *Fair Election Act*.

Locus Standi

For petitioner-intervenor Senator Cayetano, he undoubtedly has standing since he is a candidate whose ability to reach out to the electorate is impacted by the assailed Resolutions.

For the broadcast companies, they similarly have the standing in view of the direct injury they may suffer relative to their ability to carry out their tasks of disseminating information because of the burdens imposed on them. Nevertheless, even in regard to the broadcast companies invoking the injury that may be caused to their customers or the public – those who buy advertisements and the people who rely on their broadcasts – what the Court said in *White Light Corporation v. City of Manila*²⁹ may dispose of the question. In that case, there was an issue as to whether owners of establishments offering “wash-up” rates may have the requisite standing on behalf of their patrons' equal

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protection claims relative to an ordinance of the City of Manila which prohibited "short-time" or "wash-up" accommodation in motels and similar establishments. The Court essentially condensed the issue in this manner: "[T]he crux of the matter is whether or not these establishments have the requisite standing to plead for protection of their patrons' equal protection rights."

If in regard to commercial undertakings, the owners may have the right to assert a constitutional right of their clients, with more reason should establishments which publish and broadcast have the standing to assert the constitutional freedom of speech of candidates and of the right to information of the public, not to speak of their own freedom of the press. So, we uphold the standing of petitioners on that basis.

SUBSTANTIVE ASPECTS

Aggregate Time Limits

COMELEC Resolution No. 9615 introduced a radical departure from the previous COMELEC resolutions relative to the airtime limitations on political advertisements. This essentially consists in computing the airtime on an **aggregate** basis involving all the media of broadcast communications compared to the past where it was done on a **per station** basis. Thus, it becomes immediately obvious that there was effected a drastic reduction of the allowable minutes within which candidates and political parties would be able to campaign through the air. The question is accordingly whether this is within the power of the Comelec to do or not. The Court holds that it is not within the power of the Comelec to do so.

From the foregoing, it does appear that the Comelec did not have any other basis for coming up with a new manner of determining allowable time limits except its own idea as to what should be the maximum number of minutes based on its exercise of discretion as to how to level the playing field. The same could be

encapsulized in the remark of the Comelec Chairman that "if the Constitution allows us to regulate and then it gives us the prerogative to amplify then the prerogative to amplify you should leave this to the discretion of the Commission."⁴⁰

The Court could not agree with what appears as a nonchalant exercise of discretion, as expounded anon.

COMELEC is duty bound to come up with reasonable basis for changing the interpretation and implementation of the airtime limits

There is no question that the COMELEC is the office constitutionally and statutorily authorized to enforce election laws but it cannot exercise its powers without limitations – or reasonable basis. It could not simply adopt measures or regulations just because it feels that it is the right thing to do, in so far as it might be concerned. It does have discretion, but such discretion is something that must be exercised within the bounds and intent of the law. The COMELEC is not free to simply change the rules especially if it has consistently interpreted a legal provision in a particular manner in the past. If ever it has to change the rules, the same must be properly explained with sufficient basis.

Based on the transcripts of the hearing conducted by the COMELEC after it had already promulgated the Resolution, the respondent did not fully explain or justify the change in computing the airtime allowed candidates and political parties, except to make reference to the need to "level the playing field." If the "per station" basis was deemed enough to comply with that objective in the past, why should it now be suddenly inadequate? And, the short answer to that from the respondent, in a manner which smacks of overbearing exercise of discretion, is that it is within the discretion of the COMELEC. As quoted in the transcript, "the right to amplify is with the COMELEC. Nobody can encroach in our

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right to amplify. Now, if in 2010 the Commission felt that per station or per network is the rule then that is the prerogative of the Commission then they could amplify it to expand it. If the current Commission feels that 120 is enough for the particular medium like TV and 180 for radio, that is our prerogative. How can you encroach and what is unconstitutional about it?"⁴¹

There is something basically wrong with that manner of explaining changes in administrative rules. For one, it does not really provide a good basis for change. For another, those affected by such rules must be given a better explanation why the previous rules are no longer good enough.

What the COMELEC came up with does not measure up to that level of requirement and accountability which elevates administrative rules to the level of respectability and acceptability. Those governed by administrative regulations are entitled to a reasonable and rational basis for any changes in those rules by which they are supposed to live by, especially if there is a radical departure from the previous ones.

The COMELEC went beyond the authority granted it by the law in adopting "aggregate" basis in the determination of allowable airtime

The law, which is the basis of the regulation subject of these petitions, pertinently provides:

6.2. (a) Each bona fide candidate or registered political party for a nationally elective office shall be entitled to not more than one hundred twenty (120) minutes of television advertisement and one hundred eighty (180) minutes of radio advertisement whether by purchase or donation.

(b) Each bona fide candidate or registered political party for a locally elective office shall be entitled to not more than sixty (60) minutes of television advertisement

and ninety (90) minutes of radio advertisement whether by purchase or donation; x x x

The law, on its face, does not justify a conclusion that the maximum allowable airtime should be based on the totality of possible broadcast in all television or radio stations. Senator Cayetano has called our attention to the legislative intent relative to the airtime allowed – that it should be on a "per station" basis.⁴³

This is further buttressed by the fact that the *Fair Election Act* (R.A. No. 9006) actually repealed the previous provision, Section 11(b) of Republic Act No. 6646,⁴⁴ which prohibited direct political advertisements – the so-called "political ad ban." If under the previous law, no candidate was allowed to directly buy or procure on his own his broadcast or print campaign advertisements, and that he must get it through the *COMELEC Time* or *COMELEC Space*, R.A. No. 9006 relieved him or her from that restriction and allowed him or her to broadcast time or print space subject to the limitations set out in the law. Congress, in enacting R.A. No. 9006, felt that the previous law was not an effective and efficient way of giving voice to the people. Noting the debilitating effects of the previous law on the right of suffrage and Philippine democracy, Congress decided to repeal such rule by enacting the Fair Election Act.

Given the foregoing background, it is therefore ineluctable to conclude that Congress intended to provide a more expansive and liberal means by which the candidates, political parties, citizens and other stake holders in the periodic electoral exercise may be given a chance to fully explain and expound on their candidacies and platforms of governance, and for the electorate to be given a chance to know better the personalities behind the candidates. In this regard, the media is also given a very important part in that undertaking of providing the means by which the political exercise becomes an interactive process. All of

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these would be undermined and frustrated with the kind of regulation that the respondent came up with.

Section 9 (a) of COMELEC Resolution No. 9615 on airtime limits also goes against the constitutional guaranty of freedom of expression, of speech and of the press

The guaranty of freedom to speak is useless without the ability to communicate and disseminate what is said. And where there is a need to reach a large audience, the need to access the means and media for such dissemination becomes critical. This is where the press and broadcast media come along. At the same time, the right to speak and to reach out would not be meaningful if it is just a token ability to be heard by a few. It must be coupled with substantially reasonable means by which the communicator and the audience could effectively interact. 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.

Political speech is one of the most important expressions protected by the Fundamental Law. "[F]reedom of speech, of expression, and of the press are at the core of civil liberties and have to be protected at all costs for the sake of democracy."⁵¹ Accordingly, the same must remain unfettered unless otherwise justified by a compelling state interest.

Section 9 (a) of COMELEC Resolution No. 9615 comes up with what is challenged as being an unreasonable basis for determining the allowable air time that candidates and political parties may avail of.

The assailed rule on "aggregate-based" airtime limits 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.

Section 9 (a) of Resolution 9615 is violative of the people's right to suffrage

Fundamental to the idea of a democratic and republican state is the right of the people to determine their own destiny through the choice of leaders they may have in government. Thus, the primordial importance of suffrage and the concomitant right of the people to be adequately informed for the intelligent exercise of such birthright.

It has also been said that "[c]ompetition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms."⁵⁷ Candidates and political parties need adequate breathing space – including the means to disseminate their ideas. This could not be reasonably

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addressed by the very restrictive manner by which the respondent implemented the time limits in regard to political advertisements in the broadcast media.

Resolution No. 9615 needs prior hearing before adoption

The COMELEC promulgated Resolution No. 9615 on January 15, 2013 then came up with a public hearing on January 31, 2013 to explain what it had done, particularly on the aggregate-based air time limits. This circumstance also renders the new regulation, particularly on the adoption of the **aggregate-based** airtime limit, questionable. It must not be overlooked that the new Resolution introduced a radical change in the manner in which the rules on airtime for political advertisements are to be reckoned. As such there is a need for adequate and effective means by which they may be adopted, disseminated and implemented. In this regard, it is not enough that they be published – or explained – after they have been adopted.

While it is true that the COMELEC is an independent office and not a mere administrative agency under the Executive Department, rules which apply to the latter must also be deemed to similarly apply to the former, not as a matter of administrative convenience but as a dictate of due process. And this assumes greater significance considering the important and pivotal role that the COMELEC plays in the life of the nation. Thus, whatever might have been said in *Commissioner of Internal Revenue v. Court of Appeals*,⁵⁸ should also apply *mutatis mutandis* to the COMELEC when it comes to promulgating rules and regulations which adversely affect, or impose a heavy and substantial burden on, the citizenry in a matter that implicates the very nature of government we have adopted: For failing to conduct prior hearing before coming up with Resolution No. 9615, said Resolution, specifically in regard to the new rule on aggregate airtime is declared defective and ineffectual.

Resolution No. 9615 does not impose

an unreasonable burden on the broadcast industry

It is a basic postulate of due process, specifically in relation to its substantive component, that any governmental rule or regulation must be reasonable in its operations and its impositions. Any restrictions, as well as sanctions, must be reasonably related to the purpose or objective of the government in a manner that would not work unnecessary and unjustifiable burdens on the citizenry.

Further, the petitioner in G.R. No. 205374 assails the constitutionality of such monitoring requirement, contending, among others, that it constitutes prior restraint. The Court finds otherwise. Such a requirement is a reasonable means adopted by the COMELEC to ensure that parties and candidates are afforded equal opportunities to promote their respective candidacies. Unlike the restrictive aggregate-based airtime limits, the directive to give prior notice is not unduly burdensome and unreasonable, much less could it be characterized as prior restraint since there is no restriction on dissemination of information before broadcast.

Comparing the original with the revised paragraph, one could readily appreciate what the COMELEC had done – to modify the requirement from “prior approval” to “prior notice.” While the former may be suggestive of a censorial tone, thus inviting a charge of prior restraint, the latter is more in the nature of a content-neutral regulation designed to assist the poll body to undertake its job of ensuring fair elections without having to undertake any chore of approving or disapproving certain expressions.

Also, the right to reply provision is reasonable

In the same way that the Court finds the “prior notice” requirement as not constitutionally infirm, it similarly concludes that the “right to reply” provision is reasonable and consistent with the constitutional mandate.

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The attack on the validity of the “right to reply” provision is primarily anchored on the alleged ground of prior restraint, specifically in so far as such a requirement may have a chilling effect on speech or of the freedom of the press.

The Constitution itself provides as part of the means to ensure free, orderly, honest, fair and credible elections, a task addressed to the COMELEC to provide for a right to reply.⁶⁶ Given that express constitutional mandate, it could be seen that the Fundamental Law itself has weighed in on the balance to be struck between the freedom of the press and the right to reply. Accordingly, one is not merely to see the equation as purely between the press and the right to reply. Instead, the constitutionally-mandated desiderata of free, orderly, honest, peaceful, and credible elections would necessarily have to be factored in trying to see where the balance lies between press and the demands of a right-to-reply.

Given the foregoing considerations, the traditional notions of preferring speech and the press over so many other values of society do not readily lend itself to this particular matter. Instead, additional weight should be accorded on the constitutional directive to afford a right to reply. If there was no such mandate, then the submissions of petitioners may more easily commend themselves for this Court’s acceptance. But as noted above, this is not the case. Their arguments simplistically provide minimal importance to that constitutional command to the point of marginalizing its importance in the equation.

In fine, when it comes to election and the exercise of freedom of speech, of expression and of the press, the latter must be properly viewed in context as being necessarily made to accommodate the imperatives of fairness by giving teeth and substance to the right to reply requirement.

Elections and Hernan D. Biron, Sr.
G.R. No. 199139. September 9, 2014

The issue is whether the relocation of the petitioner by respondent Municipal Mayor during the election period from her office as the Local Civil Registrar to the Office of the Mayor just a few steps away constituted a prohibited act under the *Omnibus Election Code* and the relevant Resolution of the Commission on Elections.

**Mayor Biron’s acts did not violate
the *Omnibus Election Code*
and the COMELEC Resolution**

The only personnel movements prohibited by COMELEC Resolution No. 8737 were transfer and detail. *Transfer* is defined in the Resolution as “any personnel movement from one government agency to another or from one department, division, geographical unit or subdivision of a government agency to another with or without the issuance of an appointment;” while detail as defined in the *Administrative Code of 1987* is the movement of an employee from one agency to another without the issuance of an appointment.³³ Having acquired technical and legal meanings, transfer and detail must be construed as such. Obviously, the movement involving Causing did not equate to either a *transfer* or a *detail* within the contemplation of the law if Mayor Biron only thereby physically transferred her office area from its old location to the Office of the Mayor “some little steps” away.³⁴ We cannot accept the petitioner’s argument, therefore, that the phrase “any transfer or detail whatsoever” encompassed “any and all kinds and manner of personnel movement,”³⁵ including the mere change in office location.

Moreover, Causing’s too-literal understanding of *transfer* should not hold sway because the provisions involved here were criminal in nature. Mayor Biron was sought to be charged with an election offense punishable under Section 264 of the *Omnibus Election Code*.³⁶ It is a basic rule of statutory construction that penal

• **Elsie S. Causing Vs. Commission on**

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statutes are to be liberally construed in favor of the accused. Every reasonable doubt must then be resolved in favor of the accused.³⁷ This means that the courts must not bring cases within the provision of a law that are not clearly embraced by it. In short, no act can be pronounced criminal unless it is clearly made so by statute prior to its commission (*nullum crimen, nulla poena, sine lege*). So, too, no person who is not clearly within the terms of a statute can be brought within them.

Equally material is that Mayor Biron's act of transferring the office space of Causing was rooted in his power of supervision and control over the officials and employees serving in his local government unit, in order to ensure the faithful discharge of their duties and functions.³⁸ His explanation that he transferred Causing's work station from her original office to his office in order to closely supervise her after his office received complaints against her could not be justly ignored. Verily, she thereafter continued to perform her tasks, and uninterruptedly received her salaries as the Municipal Civil Registrar even after the transfer to the Office of the Mayor.

The issuance of Office Order No. 13 by Mayor Biron detailing Belonio to the Office of the Local Civil Registrar was not proof of Mayor Biron's "crystal clear intention" to replace and transfer her during the election period.³⁹ As the COMELEC *En Banc* found, Belonio did not receive the order, and Causing remained as the Municipal Civil Registrar, leaving the detailing of Belonio uncompleted. Without the actual appointment of Belonio as the Municipal Civil Registrar, it would be unwarranted to criminally charge Mayor Biron of violating Section 261 of the *Omnibus Election Code*.

• 178733. September 15, 2014

- Indeed, contrary to petitioner's claims, it appears that the respondent public officers acted faithfully in carrying out the trial court's directives. If petitioner

doubted these directives – arguing as she does that the trial court lost jurisdiction over the case when her appeal was perfected – then she should have questioned them by filing the corresponding appeal or petition in order to set them aside. Punishing the respondents for contempt will not solve her dilemma; it will not reverse the effects of the trial court's orders and processes.

- And, speaking of contempt, the appellate court is likewise correct in its position that if respondent public officers should be punished for their perceived defiance or failure to abide by the trial court's directives and processes, then the contempt charge should have been initiated in the court *a quo*, and not in the CA. Sections 4 and 5, Rule 71 of the Rules of Court state, respectively, that "[p]roceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed" and "[w]here the charge for indirect contempt has been committed against a Regional Trial Court or a court of equivalent or higher rank, or against an officer appointed by it, the charge may be filed with such court."
- Besides, it cannot be said that the issuance and implementation by the individual respondents of the writ of execution pending appeal is a contemptible disregard of the CA's jurisdiction over CA-G.R. CV No. 86451. Apparently, the trial court had the authority to grant execution pending appeal on February 1, 2006 and issue the writ on February 15, 2006. The record of Civil Case No. 69213 was transmitted to the CA only on February 27, 2006. Prior to the transmittal of the original record, the trial court may order execution pending appeal.²¹ "The 'residual jurisdiction' of trial courts is

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available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal. This stage is reached upon the perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal. In either instance, the trial court still retains its so-called residual jurisdiction to issue protective orders, approve compromises, permit appeals of indigent litigants, order execution pending appeal, and allow the withdrawal of the appeal."²²

- **Most Rev. Pedro D. Arigo, et al. Vs. Scott H. Swift, et al.** G.R. No. 206510. September 15, 2014 Concurring Opinion **C.J. Sereno, J. Leonen**

Before us is a petition for the issuance of a Writ of *Kalikasan* with prayer for the issuance of a Temporary Environmental Protection Order (TEPO) under Rule 7 of A.M. No. 09-6-8-SC, otherwise known as the *Rules of Procedure for Environmental Cases* (Rules), involving violations of environmental laws and regulations in relation to the grounding of the US military ship *USS Guardian* over the Tubbataha Reefs.

LOCUS STANDI

As a preliminary matter, there is no dispute on the legal standing of petitioners to file the present petition.

Locus standi is "a right of appearance in a court of justice on a given question."¹⁰ Specifically, it is "a party's personal and substantial interest in a case where he has sustained or will sustain direct injury as a result" of the act being challenged, and "calls for more than just a generalized grievance."¹¹ However, the rule on standing is a procedural matter which this Court has relaxed for non-traditional plaintiffs like ordinary citizens, taxpayers and legislators when the public interest so requires, such as when the subject matter

of the controversy is of transcendental importance, of overreaching significance to society, or of paramount public interest.¹²

In the landmark case of *Oposa v. Factoran, Jr.*,¹³ we recognized the "public right" of citizens to "a balanced and healthful ecology which, for the first time in our constitutional history, is solemnly incorporated in the fundamental law." We declared that the right to a balanced and healthful ecology need not be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications. Such right carries with it the correlative duty to refrain from impairing the environment.¹⁴

On the novel element in the class suit filed by the petitioners minors in *Oposa*, this Court ruled that not only do ordinary citizens have legal standing to sue for the enforcement of environmental rights, they can do so in representation of their own and future generations.

Having settled the issue of *locus standi*, we shall address the more fundamental question of whether this Court has jurisdiction over the US respondents who did not submit any pleading or manifestation in this case.

The immunity of the State from suit, known also as the doctrine of sovereign immunity or non-suability of the State,¹⁷ is expressly provided in Article XVI of the 1987 Constitution which states:

Section 3. The State may not be sued without its consent.

This traditional rule of State immunity which exempts a State from being sued in the courts of another State without the former's consent or waiver has evolved into a restrictive doctrine which distinguishes sovereign and governmental

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acts (*jure imperii*) from private, commercial and proprietary acts (*jure gestionis*). Under the restrictive rule of State immunity, State immunity extends only to acts *jure imperii*. The restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs.²

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.

G.R. No. 206510, September 16, 2014 - MOST REV. PEDRO D. ARIGO, Vicar Apostolic of Puerto Princesa D.D.; MOST REV. DEOGRACIAS S. INIGUEZ, JR., Bishop-Emeritus of Caloocan, FRANCES Q. QUIMPO, CLEMENTE G. BAUTISTA, JR., Kalikasan-PNE, MARIA CAROLINA P. ARAULLO, RENATO M. REYES, JR., Bagong Alyansang Makabayan, HON. NERI JAVIER COLMENARES, BayanMuna Party-list, ROLAND G. SIMBULAN, PH.D., Junk VFAMovement, TERESITA R. PEREZ, PH.D., HON. RAYMOND V. PALATINO, Kabataan Party-list, PETER SJ. GONZALES, Pamalakaya, GIOVANNI A. TAPANG, PH. D., Agham, ELMER C. LABOG, Kilusang Mayo Uno, JOAN MAY E. SALVADOR, Gabriela, JOSE ENRIQUE A. AFRICA, THERESA A. CONCEPCION, MARY JOAN A. GUAN, NESTOR T. BAGUINON, PH.D., A. EDEL F. TUPAZ, Petitioners, v. SCOTT H. SWIFT in his capacity as Commander of the U.S. 7th Fleet, MARK A. RICE in his capacity as Commanding

Officer of the USS Guardian, PRESIDENT BENIGNO S. AQUINO III in his capacity as Commander-in-Chief of the Armed Forces of the Philippines, HON. ALBERT F. DEL ROSARIO, Secretary, Department of Foreign Affairs, HON. PAQUITO OCHOA, JR., Executive Secretary, Office of the President, HON. VOLTAIRE T. GAZMIN, Secretary, Department of National Defense, HON. RAMON JESUS P. PAJE, Secretary, Department of Environment and Natural Resources, VICE ADMIRAL JOSE LUIS M. ALANO, Philippine Navy Flag Officer in Command, Armed Forces of the Philippines, ADMIRAL RODOLFO D. ISORENA, Commandant, Philippine Coast Guard, COMMODORE ENRICO EFREN EVANGELISTA, Philippine Coast Guard Palawan, MAJOR GEN. VIRGILIO O. DOMINGO, Commandant of Armed Forces of the Philippines Command and LT. GEN. TERRY G. ROBLING, US Marine Corps Forces, Pacific and Balikatan 2013 Exercise Co-Director, Respondents.

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G.R. No. 206510, September 16, 2014
MOST REV. PEDRO D. ARIGO, Vicar Apostolic of Puerto Princesa D.D.; MOST REV. DEOGRACIAS S. INIGUEZ, JR., Bishop-Emeritus of Caloocan, FRANCES Q. QUIMPO, CLEMENTE G. BAUTISTA, JR., Kalikasan-PNE, MARIA CAROLINA P. ARAULLO, RENATO M. REYES, JR., Bagong Alyansang Makabayan, HON. NERI JAVIER COLMENARES, BayanMuna Party-list, ROLAND G. SIMBULAN, PH.D., Junk VFAMovement, TERESITA R. PEREZ, PH.D., HON. RAYMOND V. PALATINO, Kabataan Party-list, PETER SJ. GONZALES, Pamalakaya, GIOVANNI A. TAPANG, PH. D., Agham, ELMER C. LABOG, Kilusang Mayo Uno, JOAN MAY E. SALVADOR, Gabriela, JOSE ENRIQUE A. AFRICA, THERESA A. CONCEPCION, MARY JOAN A. GUAN, NESTOR T. BAGUINON, PH.D., A. EDEL F. TUPAZ, Petitioners, v. SCOTT H. SWIFT in his capacity as Commander of the U.S. 7th Fleet, MARK A. RICE in his capacity as Commanding Officer of the USS Guardian, PRESIDENT BENIGNO S. AQUINO III in his capacity as Commander-in-Chief of the Armed Forces

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of the Philippines, HON. ALBERT F. DEL ROSARIO, Secretary, Department of Foreign Affairs, HON. PAQUITO OCHOA, JR., Executive Secretary, Office of the President, HON. VOLTAIRE T. GAZMIN, Secretary, Department of National Defense, HON. RAMON JESUS P. PAJE, Secretary, Department of Environment and Natural Resources, VICE ADMIRAL JOSE LUIS M. ALANO, Philippine Navy Flag Officer in Command, Armed Forces of the Philippines, ADMIRAL RODOLFO D. ISORENA, Commandant, Philippine Coast Guard, COMMODORE ENRICO EFREN EVANGELISTA, Philippine Coast Guard Palawan, MAJOR GEN. VIRGILIO O. DOMINGO, Commandant of Armed Forces of the Philippines Command and LT. GEN. TERRY G. ROBLING, US Marine Corps Forces, Pacific and Balikatan 2013 Exercise Co-Director, Respondents.

DECISION

VILLARAMA, JR., J.:

Before us is a petition for the issuance of a Writ of Kalikasan with prayer for the issuance of a Temporary Environmental Protection Order (TEPO) under Rule 7 of A.M. No. 09-6-8-SC, otherwise known as the Rules of Procedure for Environmental Cases (Rules), involving violations of environmental laws and regulations in relation to the grounding of the US military ship USS Guardian over the Tubbataha Reefs.

Factual Background

The name "Tubbataha" came from the Samal (seafaring people of southern Philippines) language which means "long reef exposed at low tide." Tubbataha is composed of two huge coral atolls – the north atoll and the south atoll – and the Jessie Beazley Reef, a smaller coral structure about 20 kilometers north of the atolls. The reefs of Tubbataha and Jessie Beazley are considered part of Cagayancillo, a remote island municipality of Palawan.¹

In 1988, Tubbataha was declared a National Marine Park by virtue of

Proclamation No. 306 issued by President Corazon C. Aquino on August 11, 1988. Located in the middle of Central Sulu Sea, 150 kilometers southeast of Puerto Princesa City, Tubbataha lies at the heart of the Coral Triangle, the global center of marine biodiversity.

In 1993, Tubbataha was inscribed by the United Nations Educational Scientific and Cultural Organization (UNESCO) as a World Heritage Site. It was recognized as one of the Philippines' oldest ecosystems, containing excellent examples of pristine reefs and a high diversity of marine life. The 97,030-hectare protected marine park is also an important habitat for internationally threatened and endangered marine species. UNESCO cited Tubbataha's outstanding universal value as an important and significant natural habitat for in situ conservation of biological diversity; an example representing significant on-going ecological and biological processes; and an area of exceptional natural beauty and aesthetic importance.²

On April 6, 2010, Congress passed Republic Act (R.A.) No. 10067, otherwise known as the "Tubbataha Reefs Natural Park (TRNP) Act of 2009" "to ensure the protection and conservation of the globally significant economic, biological, sociocultural, educational and scientific values of the Tubbataha Reefs into perpetuity for the enjoyment of present and future generations." Under the "no-take" policy, entry into the waters of TRNP is strictly regulated and many human activities are prohibited and penalized or fined, including fishing, gathering, destroying and disturbing the resources within the TRNP. The law likewise created the Tubbataha Protected Area Management Board (TPAMB) which shall be the sole policy-making and permit-granting body of the TRNP.

The USS Guardian is an Avenger-class mine countermeasures ship of the US Navy. In December 2012, the US Embassy in the Philippines requested diplomatic

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clearance for the said vessel "to enter and exit the territorial waters of the Philippines and to arrive at the port of Subic Bay for the purpose of routine ship replenishment, maintenance, and crew liberty."⁴ On January 6, 2013, the ship left Sasebo, Japan for Subic Bay, arriving on January 13, 2013 after a brief stop for fuel in Okinawa, Japan.

On January 15, 2013, the USS Guardian departed Subic Bay for its next port of call in Makassar, Indonesia. On January 17, 2013 at 2:20 a.m. while transiting the Sulu Sea, the ship ran aground on the northwest side of South Shoal of the Tubbataha Reefs, about 80 miles east-southeast of Palawan. No one was injured in the incident, and there have been no reports of leaking fuel or oil.

On January 20, 2013, U.S. 7th Fleet Commander, Vice Admiral Scott Swift, expressed regret for the incident in a press statement.⁵ Likewise, US Ambassador to the Philippines Harry K. Thomas, Jr., in a meeting at the Department of Foreign Affairs (DFA) on February 4, "reiterated his regrets over the grounding incident and assured Foreign Affairs Secretary Albert F. del Rosario that the United States will provide appropriate compensation for damage to the reef caused by the ship."⁶ By March 30, 2013, the US Navy-led salvage team had finished removing the last piece of the grounded ship from the coral reef.

On April 17, 2013, the above-named petitioners on their behalf and in representation of their respective sector/organization and others, including minors or generations yet unborn, filed the present petition against Scott H. Swift in his capacity as Commander of the US 7th Fleet, Mark A. Rice in his capacity as Commanding Officer of the USS Guardian and Lt. Gen. Terry G. Robling, US Marine Corps Forces, Pacific and Balikatan 2013 Exercises Co-Director ("US respondents"); President Benigno S. Aquino III in his capacity as Commander-in-Chief of the Armed Forces of the Philippines (AFP),

DFA Secretary Albert F. Del Rosario, Executive Secretary Paquito Ochoa, Jr., Secretary Voltaire T. Gazmin (Department of National Defense), Secretary Jesus P. Paje (Department of Environment and Natural Resources), Vice-Admiral Jose Luis M. Alano (Philippine Navy Flag Officer in Command, AFP), Admiral Rodolfo D. Isorena (Philippine Coast Guard Commandant), Commodore Enrico Efen Evangelista (Philippine Coast Guard-Palawan), and Major General Virgilio O. Domingo (AFP Commandant), collectively the "Philippine respondents."

The Petition

Petitioners claim that the grounding, salvaging and post-salvaging operations of the USS Guardian cause and continue to cause environmental damage of such magnitude as to affect the provinces of Palawan, Antique, Aklan, Guimaras, Iloilo, Negros Occidental, Negros Oriental, Zamboanga del Norte, Basilan, Sulu, and Tawi-Tawi, which events violate their constitutional rights to a balanced and healthful ecology. 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.

Specifically, petitioners cite the following violations committed by US respondents under R.A. No. 10067: unauthorized entry (Section 19); non-payment of conservation fees (Section 21); obstruction of law enforcement officer (Section 30); damages to the reef (Section 20); and destroying and disturbing resources (Section 26[g]). Furthermore, petitioners assail certain provisions of the Visiting Forces Agreement (VFA) which they want this Court to nullify for being unconstitutional.

The numerous reliefs sought in this case are set forth in the final prayer of the petition, to
wit:chanRoblesvirtualLawlibrary

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• WHEREFORE, in view of the foregoing, Petitioners respectfully pray that the Honorable Court:chanRoblesvirtualLawlibrary

• Immediately issue upon the filing of this petition a Temporary Environmental Protection Order (TEPO) and/or a Writ of Kalikasan, which shall, in particular,

Order Respondents and any person acting on their behalf, to cease and desist all operations over the Guardian grounding incident;

Initially demarcating the metes and bounds of the damaged area as well as an additional buffer zone;

Order Respondents to stop all port calls and war games under 'Balikatan' because of the absence of clear guidelines, duties, and liability schemes for breaches of those duties, and require Respondents to assume responsibility for prior and future environmental damage in general, and environmental damage under the Visiting Forces Agreement in particular.

Temporarily define and describe allowable activities of ecotourism, diving, recreation, and limited commercial activities by fisherfolk and indigenous communities near or around the TRNP but away from the damaged site and an additional buffer zone;

•

• After summary hearing, issue a Resolution extending the TEPO until further orders of the Court;

• After due proceedings, render a Decision which shall include, without limitation:chanRoblesvirtualLawlibrary

Order Respondents Secretary of Foreign Affairs, following the dispositive portion of *Nicolas v. Romulo*, "to forthwith negotiate with the United States representatives for the appropriate agreement on [environmental guidelines and environmental accountability] under Philippine authorities as provided in Art. V[] of the VFA..."

Direct Respondents and appropriate agencies to commence administrative, civil, and criminal

proceedings against erring officers and individuals to the full extent of the law, and to make such proceedings public;

Declare that Philippine authorities may exercise primary and exclusive criminal jurisdiction over erring U.S. personnel under the circumstances of this case;

Require Respondents to pay just and reasonable compensation in the settlement of all meritorious claims for damages caused to the Tubbataha Reef on terms and conditions no less severe than those applicable to other States, and damages for personal injury or death, if such had been the case;

Direct Respondents to cooperate in providing for the attendance of witnesses and in the collection and production of evidence, including seizure and delivery of objects connected with the offenses related to the grounding of the Guardian;

Require the authorities of the Philippines and the United States to notify each other of the disposition of all cases, wherever heard, related to the grounding of the Guardian;

Restrain Respondents from proceeding with any purported restoration, repair, salvage or post salvage plan or plans, including cleanup plans covering the damaged area of the Tubbataha Reef absent a just settlement approved by the Honorable Court;

Require Respondents to engage in stakeholder and LGU consultations in accordance with the Local Government Code and R.A. 10067;

Require Respondent US officials and their representatives to place a deposit to the TRNP Trust Fund defined under Section 17 of RA 10067 as a bona fide gesture towards full reparations;

Direct Respondents to undertake measures to rehabilitate the areas affected by the grounding of the Guardian in light of Respondents' experience in the Port Royale grounding in 2009, among other similar grounding incidents;

Require Respondents to regularly publish on a quarterly basis and in the name of transparency and accountability

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such environmental damage assessment, valuation, and valuation methods, in all stages of negotiation;

Convene a multisectoral technical working group to provide scientific and technical support to the TPAMB;

Order the Department of Foreign Affairs, Department of National Defense, and the Department of Environment and Natural Resources to review the Visiting Forces Agreement and the Mutual Defense Treaty to consider whether their provisions allow for the exercise of erga omnes rights to a balanced and healthful ecology and for damages which follow from any violation of those rights;

Narrowly tailor the provisions of the Visiting Forces Agreement for purposes of protecting the damaged areas of TRNP;

Declare the grant of immunity found in Article V ("Criminal Jurisdiction") and Article VI of the Visiting Forces Agreement unconstitutional for violating equal protection and/or for violating the preemptory norm of nondiscrimination incorporated as part of the law of the land under Section 2, Article II, of the Philippine Constitution;

Allow for continuing discovery measures;

Supervise marine wildlife rehabilitation in the Tubbataha Reefs in all other respects; and

-
- Provide just and equitable environmental rehabilitation measures and such other reliefs as are just and equitable under the premises.⁷ (Underscoring supplied.)

Since only the Philippine respondents filed their comment⁸ to the petition, petitioners also filed a motion for early resolution and motion to proceed ex parte against the US respondents.⁹[cralawlibrary](#)

Respondents' Consolidated Comment

In their consolidated comment with opposition to the application for a TEPO and ocular inspection and production orders, respondents assert that: (1) the

grounds relied upon for the issuance of a TEPO or writ of Kalikasan have become fait accompli as the salvage operations on the USS Guardian were already completed; (2) the petition is defective in form and substance; (3) the petition improperly raises issues involving the VFA between the Republic of the Philippines and the United States of America; and (4) the determination of the extent of responsibility of the US Government as regards the damage to the Tubbataha Reefs rests exclusively with the executive branch.

The Court's Ruling

As a preliminary matter, there is no dispute on the legal standing of petitioners to file the present petition.

Locus standi is "a right of appearance in a court of justice on a given question."¹⁰ Specifically, it is "a party's personal and substantial interest in a case where he has sustained or will sustain direct injury as a result" of the act being challenged, and "calls for more than just a generalized grievance."¹¹ However, the rule on standing is a procedural matter which this Court has relaxed for non-traditional plaintiffs like ordinary citizens, taxpayers and legislators when the public interest so requires, such as when the subject matter of the controversy is of transcendental importance, of overreaching significance to society, or of paramount public interest.¹²[cralawlibrary](#)

In the landmark case of *Oposa v. Factoran, Jr.*,¹³ we recognized the "public right" of citizens to "a balanced and healthful ecology which, for the first time in our constitutional history, is solemnly incorporated in the fundamental law." We declared that the right to a balanced and healthful ecology need not be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications. Such right

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carries with it the correlative duty to refrain from impairing the environment.¹⁴chanRoblesvirtualLawlibrary

On the novel element in the class suit filed by the petitioners minors in Oposa, this Court ruled that not only do ordinary citizens have legal standing to sue for the enforcement of environmental rights, they can do so in representation of their own and future generations. Thus:chanRoblesvirtualLawlibrary

Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, inter alia, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.¹⁵ (Emphasis supplied.)

The liberalization of standing first enunciated in Oposa, insofar as it refers to minors and generations yet unborn, is now enshrined in the Rules which allows

the filing of a citizen suit in environmental cases. The provision on citizen suits in the Rules "collapses the traditional rule on personal and direct interest, on the principle that humans are stewards of nature."¹⁶chanRoblesvirtualLawlibrary

Having settled the issue of locus standi, we shall address the more fundamental question of whether this Court has jurisdiction over the US respondents who did not submit any pleading or manifestation in this case.

The immunity of the State from suit, known also as the doctrine of sovereign immunity or non-suability of the State,¹⁷ is expressly provided in Article XVI of the 1987 Constitution which states:chanRoblesvirtualLawlibrary

Section 3. The State may not be sued without its consent.

In *United States of America v. Judge Guinto*,¹⁸ we discussed the principle of state immunity from suit, as follows:chanRoblesvirtualLawlibrary

The rule that a state may not be sued without its consent, now expressed in Article XVI, Section 3, of the 1987 Constitution, is one of the generally accepted principles of international law that we have adopted as part of the law of our land under Article II, Section 2. x x x.

Even without such affirmation, we would still be bound by the generally accepted principles of international law under the doctrine of incorporation. Under this doctrine, as accepted by the majority of states, such principles are deemed incorporated in the law of every civilized state as a condition and consequence of its membership in the society of nations. Upon its admission to such society, the state is automatically obligated to comply with these principles in its relations with other states.

As applied to the local state, the doctrine of state immunity is based on the justification given by Justice Holmes that

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"there can be no legal right against the authority which makes the law on which the right depends." [Kawanakoa v. Polybank, 205 U.S. 349] There are other practical reasons for the enforcement of the doctrine. In the case of the foreign state sought to be impleaded in the local jurisdiction, the added inhibition is expressed in the maxim *par in parem, non habet imperium*. All states are sovereign equals and cannot assert jurisdiction over one another. A contrary disposition would, in the language of a celebrated case, "unduly vex the peace of nations." [De Haber v. Queen of Portugal, 17 Q. B. 171]

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. [Garcia v. Chief of Staff, 16 SCRA 120] In such a situation, the state may move to dismiss the complaint on the ground that it has been filed without its consent.¹⁹ (Emphasis supplied.)

Under the American Constitution, the doctrine is expressed in the Eleventh Amendment which reads:chanRoblesvirtualLawlibrary

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State. In the case of *Minucher v. Court of Appeals*,²⁰ we further expounded on the immunity of foreign states from the jurisdiction of local courts, as follows:chanRoblesvirtualLawlibrary

The precept that a State cannot be sued in the courts of a foreign state is a long-standing rule of customary international law then closely identified with the personal immunity of a foreign sovereign from suit and, with the emergence of democratic states, made to attach not just to the person of the head of state, or his representative, but also distinctly to the state itself in its sovereign capacity. If the acts giving rise to a suit are those of a foreign government done by its foreign agent, although not necessarily a diplomatic personage, but acting in his official capacity, the complaint could be barred by the immunity of the foreign sovereign from suit without its consent. Suing a representative of a state is believed to be, in effect, suing the state itself. The proscription is not accorded for the benefit of an individual but for the State, in whose service he is, under the maxim - *par in parem, non habet imperium* - that all states are sovereign equals and cannot assert jurisdiction over one another. The implication, in broad terms, is that if the judgment against an official would require the state itself to perform an affirmative act to satisfy the award, such as the appropriation of the amount needed to pay the damages decreed against him, the suit must be regarded as being against the state itself, although it has not been formally impleaded.²¹ (Emphasis supplied.)

In the same case we also mentioned that in the case of diplomatic immunity, the privilege is not an immunity from the observance of the law of the territorial sovereign or from ensuing legal liability; it is, rather, an immunity from the exercise of territorial jurisdiction.²²cralawlawlibrary

In *United States of America v. Judge Guinto*,²³ one of the consolidated cases therein involved a Filipino employed at Clark Air Base who was arrested following a buy-bust operation conducted by two officers of the US Air Force, and was eventually dismissed from his employment when he was charged in court for violation

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of R.A. No. 6425. In a complaint for damages filed by the said employee against the military officers, the latter moved to dismiss the case on the ground that the suit was against the US Government which had not given its consent. The RTC denied the motion but on a petition for certiorari and prohibition filed before this Court, we reversed the RTC and dismissed the complaint. We held that petitioners US military officers were acting in the exercise of their official functions when they conducted the buy-bust operation against the complainant and thereafter testified against him at his trial. It follows that for discharging their duties as agents of the United States, they cannot be directly impleaded for acts imputable to their principal, which has not given its consent to be sued.

This traditional rule of State immunity which exempts a State from being sued in the courts of another State without the former's consent or waiver has evolved into a restrictive doctrine which distinguishes sovereign and governmental acts (*jure imperii*) from private, commercial and proprietary acts (*jure gestionis*). Under the restrictive rule of State immunity, State immunity extends only to acts *jure imperii*. The restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs.²⁴ *cralawlibrary*

In *Shauf v. Court of Appeals*,²⁵ we discussed the limitations of the State immunity principle, thus: *chanRoblesvirtualLawlibrary*

It is a different matter where the public official is made to account in his capacity as such for acts contrary to law and injurious to the rights of plaintiff. As was clearly set forth by Justice Zaldivar in *Director of the Bureau of Telecommunications, et al. vs. Aligaen, etc., et al.*: "Inasmuch as the State authorizes only legal acts by its officers, unauthorized acts of government officials

or officers are not acts of the State, and an action against the officials or officers by one whose rights have been invaded or violated by such acts, for the protection of his rights, is not a suit against the State within the rule of immunity of the State from suit. In the same tenor, it has been said that an action at law or suit in equity against a State officer or the director of a State department on the ground that, while claiming to act for the State, he violates or invades the personal and property rights of the plaintiff, under an unconstitutional act or under an assumption of authority which he does not have, is not a suit against the State within the constitutional provision that the State may not be sued without its consent." The rationale for this ruling is that the doctrine of state immunity cannot be used as an instrument for perpetrating an injustice.

x x x x

The aforecited authorities are clear on the matter. They state that the doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his private and personal capacity as an ordinary citizen. The cloak of protection afforded the officers and agents of the government is removed the moment they are sued in their individual capacity. This situation usually arises where the public official acts without authority or in excess of the powers vested in him. It is a 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 and in bad faith, or beyond the scope of his authority or jurisdiction.²⁶ (Emphasis supplied.)

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.

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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.

During the deliberations, Senior Associate Justice Antonio T. Carpio took the position that the conduct of the US in this case, when its warship entered a restricted area in violation of R.A. No. 10067 and caused damage to the TRNP reef system, brings the matter within the ambit of Article 31 of the United Nations Convention on the Law of the Sea (UNCLOS). He explained that while historically, warships enjoy sovereign immunity from suit as extensions of their flag State, Art. 31 of the UNCLOS creates an exception to this rule in cases where they fail to comply with the rules and regulations of the coastal State regarding passage through the latter's internal waters and the territorial sea.

According to Justice Carpio, although the US to date has not ratified the UNCLOS, as a matter of long-standing policy the US considers itself bound by customary international rules on the "traditional uses of the oceans" as codified in UNCLOS, as can be gleaned from previous declarations by former Presidents Reagan and Clinton, and the US judiciary in the case of *United States v. Royal Caribbean Cruise Lines, Ltd.*²⁷[cralawlawlibrary](#)

The international law of the sea is generally defined as "a body of treaty rules and customary norms governing the uses of the sea, the exploitation of its resources, and the exercise of jurisdiction over maritime regimes. It is a branch of public international law, regulating the relations of states with respect to the uses of the oceans."²⁸ The UNCLOS is a multilateral treaty which was opened for signature on December 10, 1982 at Montego Bay, Jamaica. It was ratified by

the Philippines in 1984 but came into force on November 16, 1994 upon the submission of the 60th ratification.

The UNCLOS is a product of international negotiation that seeks to balance State sovereignty (*mare clausum*) and the principle of freedom of the high seas (*mare liberum*).²⁹ The freedom to use the world's marine waters is one of the oldest customary principles of international law.³⁰ The UNCLOS gives to the coastal State sovereign rights in varying degrees over the different zones of the sea which are: 1) internal waters, 2) territorial sea, 3) contiguous zone, 4) exclusive economic zone, and 5) the high seas. It also gives coastal States more or less jurisdiction over foreign vessels depending on where the vessel is located.³¹[cralawlawlibrary](#)

Insofar as the internal waters and territorial sea is concerned, the Coastal State exercises sovereignty, subject to the UNCLOS and other rules of international law. Such sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.³²[cralawlawlibrary](#)

In the case of warships,³³ as pointed out by Justice Carpio, they continue to enjoy sovereign immunity subject to the following exceptions:[chanRoblesvirtualLawlibrary](#)

Article 30

Non-compliance by warships with the laws and regulations of the coastal State

If any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial sea immediately.

Article 31

Responsibility of the flag State for damage caused by a warship or other government ship operated for non-commercial purposes

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The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law.

Article 32

Immunities of warships and other government ships operated for non-commercial purposes

With such exceptions as are contained in subsection A and in articles 30 and 31, nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes. (Emphasis supplied.)

A foreign warship's unauthorized entry into our internal waters with resulting damage to marine resources is one situation in which the above provisions may apply. But what if the offending warship is a non-party to the UNCLOS, as in this case, the US?

An overwhelming majority – over 80% -- of nation states are now members of UNCLOS, but despite this the US, the world's leading maritime power, has not ratified it.

Justice Carpio invited our attention to the policy statement given by President Reagan on March 10, 1983 that the US will "recognize the rights of the other states in the waters off their coasts, as reflected in the convention [UNCLOS], so long as the rights and freedom of the United States and others under international law are recognized by such coastal states", and President Clinton's reiteration of the US policy "to act in a manner consistent with its [UNCLOS] provisions relating to traditional uses of the oceans and to encourage other countries to do likewise." Since Article 31

relates to the "traditional uses of the oceans," and "if under its policy, the US 'recognize[s] the rights of the other states in the waters off their coasts,'" Justice Carpio postulates that "there is more reason to expect it to recognize the rights of other states in their internal waters, such as the Sulu Sea in this case."

As to the non-ratification by the US, Justice Carpio emphasizes that "the US' refusal to join the UNCLOS was centered on its disagreement with UNCLOS' regime of deep seabed mining (Part XI) which considers the oceans and deep seabed commonly owned by mankind," pointing out that such "has nothing to do with its [the US'] acceptance of customary international rules on navigation."

We fully concur with Justice Carpio's view that non-membership in the UNCLOS does not mean that the US will disregard the rights of the Philippines as a Coastal State over its internal waters and territorial sea. We thus expect the US to bear "international responsibility" under Art. 31 in connection with the USS Guardian grounding which adversely affected the Tubbataha reefs. Indeed, it is difficult to imagine that our long-time ally and trading partner, which has been actively supporting the country's efforts to preserve our vital marine resources, would shirk from its obligation to compensate the damage caused by its warship while transiting our internal waters. Much less can we comprehend a Government exercising leadership in international affairs, unwilling to comply with the UNCLOS directive for all nations to cooperate in the global task to protect and preserve the marine environment.

In fine, the relevance of UNCLOS provisions to the present controversy is beyond dispute. Although the said treaty upholds the immunity of warships from the jurisdiction of Coastal States while navigating the latter's territorial sea, the flag States shall be required to leave the territorial sea immediately if they flout the laws and regulations of the Coastal State,

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and they will be liable for damages caused by their warships or any other government vessel operated for non-commercial purposes under Article 31.

Petitioners argue that there is a waiver of immunity from suit found in the VFA. Likewise, they invoke federal statutes in the US under which agencies of the US have statutorily waived their immunity to any action. Even under the common law tort claims, petitioners asseverate that the US respondents are liable for negligence, trespass and nuisance.

We are not persuaded.

The VFA is an agreement which defines the treatment of United States troops and personnel visiting the Philippines to promote "common security interests" between the US and the Philippines in the region. It provides for the guidelines to govern such visits of military personnel, and further defines the rights of the United States and the Philippine government in the matter of criminal jurisdiction, movement of vessel and aircraft, importation and exportation of equipment, materials and supplies.³⁶ The invocation of US federal tort laws and even common law is thus improper considering that it is the VFA which governs disputes involving US military ships and crew navigating Philippine waters in pursuance of the objectives of the agreement.

As it is, the waiver of State immunity under the VFA pertains only to criminal jurisdiction and not to special civil actions such as the present petition for issuance of a writ of *Kalikasan*. In fact, it can be inferred from Section 17, Rule 7 of the Rules that a criminal case against a person charged with a violation of an environmental law is to be filed separately:

Sec. 17. *Institution of separate actions.*— The filing of a petition for the issuance of the writ of *kalikasan* shall not preclude the filing of separate civil, criminal or

administrative actions.

In any case, it is our considered view that a ruling on the application or non-application of criminal jurisdiction provisions of the VFA to US personnel who may be found responsible for the grounding of the *USS Guardian*, would be premature and beyond the province of a petition for a writ of *Kalikasan*. We also find it unnecessary at this point to determine whether such waiver of State immunity is indeed absolute. In the same vein, we cannot grant damages which have resulted from the violation of environmental laws. The Rules allows the recovery of damages, including the collection of administrative fines under R.A. No. 10067, in a separate civil suit or that deemed instituted with the criminal action charging the same violation of an environmental law.³⁷

Section 15, Rule 7 enumerates the reliefs which may be granted in a petition for issuance of a writ of *Kalikasan*, to wit:

Sec. 15. *Judgment.*—Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.

The reliefs that may be granted under the writ are the following:

(a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;

(b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;

(c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with

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the decision and orders of the court;

(d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and

(e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, **except the award of damages to individual petitioners.** (*Emphasis supplied.*)

We agree with respondents (Philippine officials) in asserting that this petition has become moot in the sense that the salvage operation sought to be enjoined or restrained had already been accomplished when petitioners sought recourse from this Court. But insofar as the directives to Philippine respondents to protect and rehabilitate the coral reef structure and marine habitat adversely affected by the grounding incident are concerned, petitioners are entitled to these reliefs notwithstanding the completion of the removal of the *USS Guardian* from the coral reef.

However, we are mindful of the fact that the US and Philippine governments both expressed readiness to negotiate and discuss the matter of compensation for the damage caused by the *USS Guardian*. The US Embassy has also declared it is closely coordinating with local scientists and experts in assessing the extent of the damage and appropriate methods of rehabilitation.

Exploring avenues for settlement of environmental cases is not proscribed by the Rules. As can be gleaned from the following provisions, mediation and settlement are available for the consideration of the parties, and which dispute resolution methods are encouraged by the court,

The Court takes judicial notice of a similar

incident in 2009 when a guided-missile cruiser, the *USS Port Royal*, ran aground about half a mile off the Honolulu Airport Reef Runway and remained stuck for four days. After spending \$6.5 million restoring the coral reef, the US government was reported to have paid the State of Hawaii \$8.5 million in settlement over coral reef damage caused by the grounding.³⁸

To underscore that the US government is prepared to pay appropriate compensation for the damage caused by the *USS Guardian* grounding, the US Embassy in the Philippines has announced the formation of a US interdisciplinary scientific team which will "initiate discussions with the Government of the Philippines to review coral reef rehabilitation options in Tubbataha, based on assessments by Philippine-based marine scientists." The US team intends to "help assess damage and remediation options, in coordination with the Tubbataha Management Office, appropriate Philippine government entities, non-governmental organizations, and scientific experts from Philippine universities."³⁹

A rehabilitation or restoration program to be implemented at the cost of the violator is also a major relief that may be obtained under a judgment rendered in a citizens' suit under the Rules,

In the light of the foregoing, the Court defers to the Executive Branch on the matter of compensation and rehabilitation measures through diplomatic channels. Resolution of these issues impinges on our relations with another State in the context of common security interests under the VFA. It is settled that "[t]he 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."⁴⁰

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On the other hand, we cannot grant the additional reliefs prayed for in the petition to order a review of the VFA and to nullify certain immunity provisions thereof.

As held in *BAYAN (Bagong Alyansang Makabayan) v. Exec. Sec. Zamora*,⁴¹ the VFA was duly concurred in by the Philippine Senate and has been recognized as a treaty by the United States as attested and certified by the duly authorized representative of the United States government. The VFA being a valid and binding agreement, the parties are required as a matter of international law to abide by its terms and provisions.⁴² The present petition under the Rules is not the proper remedy to assail the constitutionality of its provisions.

- **Republic of the Philippines Vs. Florendo B. Arias, Asst. Director, Bureau of Equipment, Department of Public Works and Highways** G.R. No. 188909. September 17, 2014

- **The failure of respondent to exercise his functions diligently when he recommended for approval documents for emergency repair and purchase in the absence of the signature and certification by the end-user, in complete disregard of existing DPWH rules, constitute gross neglect of duty and grave misconduct which undoubtedly resulted in loss of public funds thereby causing undue injury to the government.**

- In sum, this Court finds substantial evidence to hold respondent administratively liable.

- **Lina Dela Peña Jalover, et al. Vs. John Henry R. Osmeña, et al.** G.R. No. 209286. September 23, 2014

- The minimum requirement under our Constitution¹ and election laws² for the candidates' residency in the political unit they seek to represent has never been intended to be an empty formalistic condition; it

carries with it a very specific purpose: to prevent "stranger[s] or newcomer[s] unacquainted with the conditions and needs of a community" from seeking elective offices in that community.³

- The requirement is rooted in the recognition that officials of districts or localities should not only be acquainted with the metes and bounds of their constituencies; more importantly, they should know their constituencies and the unique circumstances of their constituents - their needs, difficulties, aspirations, potentials for growth and development, and all matters vital to their common welfare.⁴ Familiarity or the opportunity to be familiar with these circumstances can only come with residency in the constituency to be represented.⁵

Nature of the Case Subject of the Petition

The present petition arose from a ***petition to deny due course or to cancel Osmeña's COC.***

Section 74, in relation with Section 78 of the Omnibus Election Code governs the cancellation of, and grant or denial of due course to, the COCs. The combined application of these sections requires that the facts stated in the COC by the would-be candidate be true, as any false representation of a material fact is a ground for the COC's cancellation or the withholding of due course.

The false representation that these provisions mention pertains to a material fact, not to a mere innocuous mistake.⁵⁹ This is emphasized by the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, cannot serve; in both cases, he or she can be prosecuted for violation of the election laws.⁶⁰ Obviously, these facts are those that refer to a

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candidate's qualifications for elective office, such as his or her citizenship and residence.⁶¹

Separate from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible."⁶² In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. In *Mitra v. COMELEC*,⁶³ we held that the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception of the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run.⁶⁴

No grave abuse of discretion on the part of COMELEC

To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of this intention. It requires not only such bodily presence in that place but also a declared and probable intent to make it one's fixed and permanent place of abode.⁶⁵

The critical issue, however, pertains to Osmeña's bodily presence in Toledo City and the declaration he made in his COC on this point. The petitioners claim that Osmeña was only seen in Toledo City in the month of September 2012 to conduct political meetings. They also stress that the dilapidated property in Ibo, Toledo City is not even owned by Osmeña, and is not in keeping with the latter's stature — a former Senator and a member of a political clan.

As the COMELEC aptly found, Osmeña had sufficiently established by substantial evidence his residence in Toledo City,

Cebu.⁶⁸ As early as April 24, 2006,⁶⁹ Osmeña applied for the transfer of his voter's registration record to Toledo City, which was granted on April 24, 2012.⁷⁰ Osmeña likewise purchased a parcel of land in Ibo, Toledo City in 1995 and commenced the construction of an improvement, which would eventually serve as his residence since 2004.⁷¹ Osmeña even acquired another parcel of land⁷² in Das, Toledo City in December 2011⁷³ and transferred his headquarters to Poblacion⁷⁴ and Bato, Toledo City as early as 2011. **The existence of Osmeña's headquarters in Bato, Toledo City, was even confirmed by the Mr. Orlando Pama Casia, witness for the petitioners.**⁷⁵ Finally, Osmeña has always maintained profound political and socio-civic linkages in Toledo City—a fact that the petitioners never disputed.

The petitioners, in the present case, largely rely on statements that Osmeña was "hardly seen" in Toledo City, Cebu to support their claim of error of jurisdiction. These affidavits, however, deserve little consideration and loudly speak of their inherent weakness as evidence.

The law does not require a person to be in his home twenty-four (24) hours a day, seven (7) days a week, to fulfill the residency requirement.⁷⁶ In *Fernandez v. House Electoral Tribunal*,⁷⁷ we ruled that the "fact that a few barangay health workers attested that they had failed to see petitioner whenever they allegedly made the rounds in Villa de Toledo is of no moment, especially considering that there were witnesses (including petitioner's neighbors in Villa de Toledo) that were in turn presented by petitioner to prove that he was actually a resident of Villa de Toledo, in the address he stated in his COC. x x x It may be that whenever these health workers do their rounds petitioner was out of the house to attend to his own employment or business."

Under the circumstances, the evidence submitted by the petitioners do not conclusively prove that

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Osmeña did not in fact reside in Toledo City for at least the year before election day; most especially since the sworn statements of some Toledo City residents attesting that they never saw Osmeña in Toledo City were controverted by similar sworn statements by other Toledo City residents who claimed that Osmeña resided in Toledo City.

Similarly, the fact that Osmeña has no registered property under his name does not belie his actual residence in Toledo City because property ownership is not among the qualifications required of candidates for local election.⁷⁸ It is enough that he should live in the locality, even in a rented house or that of a friend or relative.⁷⁹ To use ownership of property in the district as the determinative indicium of permanence of domicile or residence implies that only the landed can establish compliance with the residency requirement.⁸⁰ In *Perez v. COMELEC*,⁸¹ we sustained the COMELEC when it considered as evidence tending to establish a candidate's domicile of choice the mere lease (rather than ownership) of an apartment by a candidate in the same province where he ran for the position of governor.

We cannot accord credence either to the petitioners' contention that the dilapidated house in Ibo, Toledo City, could not serve as Osmeña's residence in view of the latter's stature. At the outset, the photographs submitted by Osmeña in evidence show that **the house is modestly furnished and contains the comforts of a simple abode.** Moreover, the petitioners' **speculation involves the use of subjective non-legal standards, which we previously condemned** in the case of *Mitra v. Commission on Elections*.⁸²

Osmeña's actual physical presence in Toledo City is established not only by the presence of a place (Ibo, Toledo City, house and lot) he can actually live in, but also the affidavits of various persons in

Toledo City. Osmeña's substantial and real interest in establishing his domicile of choice in Toledo City is also sufficiently shown not only by the acquisition of additional property in the area and the transfer of his voter registration and headquarters, but also his participation in the community's socio-civic and political activities.

Osmeña has been proclaimed winner in the electoral contest and has therefore the mandate of the electorate

Before his transfer of residence, Osmeña already had intimate knowledge of Toledo City, particularly of the whole 3rd legislative district that he represented for one term. Thus, he manifests a significant level of knowledge of and sensitivity to the needs of the said community. Moreover, Osmeña won the mayoralty position as the choice of the people of Toledo City.

We find it apt to reiterate in this regard the principle enunciated in the case of *Frivaldo v. Comelec*,⁸⁴ that "[i]n any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority."⁸⁵

To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.⁸⁶ The reason for such liberality stems from the recognition that laws governing election contests must be construed to the end that the will of the people in the choice of public officials may

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not be defeated by mere technical objections.⁸⁷

Nonetheless, we wish to remind that COC defects *beyond matters of form* and that involve *material misrepresentations* cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken.⁸⁸ Where a *material COC misrepresentation under oath* is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws.⁸⁹ In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate's will.⁹⁰

With the conclusion that Osmeña did not commit any material misrepresentation in his COC, we see no reason in this case to appeal to the primacy of the electorate's will. We cannot deny, however, that the people of Toledo City have spoken in an election where residency qualification had been squarely raised and their voice has erased any doubt about their verdict on Osmeña's qualifications.

- **Rhonda Ave S. Vivares and Sps. Margarita and David Suzara Vs. St. Theresa's College, Mylene Rheza T. Escudero and John Does** G.R. No. 202666. September 29, 2014

- The individual's desire for privacy is never absolute, since participation in society is an equally powerful desire. Thus each individual is continually engaged in a personal adjustment process in which he balances the desire for privacy with the desire for disclosure and communication of himself to others, in light of the environmental conditions and social norms set by the society in which he lives.

- ~ Alan Westin, *Privacy and*

Freedom (1967)

The Facts

Nenita Julia V. Daluz (Julia) and Julienne Vida Suzara (Julienne), both minors, were, during the period material, graduating high school students at St. Theresa's College (STC), Cebu City. Sometime in January 2012, while changing into their swimsuits for a beach party they were about to attend, Julia and Julienne, along with several others, took digital pictures of themselves clad only in their undergarments. These pictures were then uploaded by Angela Lindsay Tan (Angela) on her Facebook³ profile.

Back at the school, Mylene Rheza T. Escudero (Escudero), a computer teacher at STC's high school department, learned from her students that some seniors at STC posted pictures online, depicting themselves from the waist up, dressed only in brassieres. Escudero then asked her students if they knew who the girls in the photos are. In turn, they readily identified Julia, Julienne, and Chloe Lourdes Taboada (Chloe), among others.

Using STC's computers, Escudero's students logged in to their respective personal Facebook accounts and showed her photos of the identified students, which include: (a) Julia and Julienne drinking hard liquor and smoking cigarettes inside a bar; and (b) Julia and Julienne along the streets of Cebu wearing articles of clothing that show virtually the entirety of their black brassieres. What is more, Escudero's students claimed that there were times when access to or the availability of the identified students' photos was not confined to the girls' Facebook friends,⁴ but were, in fact, viewable by any Facebook user.⁵

Upon discovery, 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. Thereafter, following an

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investigation, STC found the identified students to have deported themselves in a manner proscribed by the school's Student Handbook,

A week before graduation, or on March 23, 2012, Angela's mother, Dr. Armenia M. Tan (Tan), filed a Petition for Injunction and Damages before the RTC of Cebu City against STC, et al., docketed as Civil Case No. CEB-38594.⁷ In it, Tan prayed that defendants therein be enjoined from implementing the sanction that precluded Angela from joining the commencement exercises.

petitioners filed before the RTC a Petition for the Issuance of a Writ of Habeas Data, docketed as SP. Proc. No. 19251-CEB⁸ on the basis of the following considerations:

- The photos of their children in their undergarments (e.g., bra) were taken for posterity before they changed into their swimsuits on the occasion of a birthday beach party;
- The privacy setting of their children's Facebook accounts was set at "Friends Only." They, thus, have a reasonable expectation of privacy which must be respected.
- Respondents, being involved in the field of education, knew or ought to have known of laws that safeguard the right to privacy. Corollarily, respondents knew or ought to have known that the girls, whose privacy has been invaded, are the victims in this case, and not the offenders. Worse, after viewing the photos, the minors were called "immoral" and were punished outright;
- The photos accessed belong to the girls and, thus, cannot be used and reproduced without their consent. Escudero, however, violated their rights by saving digital copies of the photos and by subsequently showing them to STC's officials. Thus, the Facebook accounts of petitioners' children were intruded upon;
- The intrusion into the Facebook

accounts, as well as the copying of information, data, and digital images happened at STC's Computer Laboratory; and

All the data and digital images that were extracted were boldly broadcasted by respondents through their memorandum submitted to the RTC in connection with Civil Case No. CEB-38594.

The Issues

The main issue to be threshed out in this case is whether or not a writ of **habeas data** should be issued given the factual milieu. Crucial in resolving the controversy, however, is the pivotal point of whether or not there was indeed an actual or threatened violation of the right to privacy in the life, liberty, or security of the minors involved in this case.

Our Ruling

We find no merit in the petition.

Procedural issues concerning the availability of the Writ of Habeas Data

The writ of *habeas data* is 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.¹¹ It 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.¹²

In developing the writ of *habeas data*, the Court aimed to protect an individual's right to informational privacy, among

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others. A comparative law scholar has, in fact, defined *habeas data* as "a procedure designed to safeguard individual freedom from abuse in the information age."¹³ The writ, however, will not issue on the basis merely of an alleged unauthorized access to information about a person. Availment of the writ requires the existence of a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other.¹⁴ Thus, the existence of a person's right to informational privacy and a showing, at least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim are indispensable before the privilege of the writ may be extended.¹⁵

Without an actionable entitlement in the first place to the right to informational privacy, a *habeas data* petition will not prosper. Viewed from the perspective of the case at bar, this requisite begs this question: given the nature of an online social network (OSN)--(1) that it facilitates and promotes real-time interaction among millions, if not billions, of users, sans the spatial barriers,¹⁶ bridging the gap created by physical space; and (2) that any information uploaded in OSNs leaves an indelible trace in the provider's databases, which are outside the control of the end-users--**is there a right to informational privacy in OSN activities of its users?** Before addressing this point, We must first resolve the procedural issues in this case.

The writ of habeas data is not only confined to cases of extralegal killings and enforced disappearances Contrary to respondents' submission, the Writ of *Habeas Data* was not enacted **solely** for the purpose of complementing the Writ of *Amparo* in cases of extralegal killings and enforced disappearances.

Section 2 of the Rule on the Writ of Habeas Data provides:

Sec. 2. *Who May File.* – Any aggrieved party may file a petition for the writ of *habeas data*. However, **in cases of extralegal killings and enforced disappearances**, the petition may be filed by:

- (a) Any member of the immediate family of the victim, including children and parents; or
- (b) Any ascendant, descendant or collateral relative within the fourth civil degree of consanguinity or affinity of the victim, as provided in the preceding paragraph. (*emphasis supplied*)

Had the framers of the Rule intended to narrow the operation of the writ only to cases of extralegal killings or enforced disappearances, the above underscored portion of Section 2, reflecting a variance of *habeas data* situations, would not have been made.

Habeas data, to stress, was designed "to safeguard individual freedom from abuse in the information age."¹⁷ As such, it is erroneous to limit its applicability to extralegal killings and enforced disappearances only. In fact, the annotations to the Rule prepared by the Committee on the Revision of the Rules of Court, after explaining that the Writ of *Habeas Data* complements the Writ of *Amparo*, pointed out that:

The writ of *habeas data*, however, can be availed of as an independent remedy to enforce one's right to privacy, more specifically the right to informational privacy. The remedies against the violation of such right can include the updating, rectification, suppression or destruction of the database or information or files in possession or in control of respondents.¹⁸ (*emphasis Ours*)

Clearly then, the privilege of the Writ of *Habeas Data* may also be availed of in cases outside of extralegal killings and enforced disappearances.

Meaning of "engaged" in the gathering, collecting or storing of data or information Respondents' contention that

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the *habeas data* writ may not issue against STC, it not being an entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party, while valid to a point, is, nonetheless, erroneous.

To be sure, nothing in the Rule would suggest that the *habeas data* protection shall be available only against abuses of a person or entity engaged in the business of gathering, storing, and collecting of data. As provided under Section 1 of the Rule:

Section 1. *Habeas Data*. – The writ of *habeas data* is 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.** (emphasis Ours)

The provision, when taken in its proper context, as a whole, irresistibly conveys the idea that *habeas data* is a protection against unlawful acts or omissions of public officials and of private individuals or entities engaged in gathering, collecting, or storing data about the aggrieved party and his or her correspondences, or about his or her family. Such individual or entity need not be in the business of collecting or storing data.

To “engage” in something is different from undertaking a business endeavour. To “engage” means “to do or take part in something.”¹⁹ It does not necessarily mean that the activity must be done in pursuit of a business. What matters is that the person or entity must be gathering, collecting or storing said data or information about the aggrieved party or his or her family. Whether such undertaking carries the element of

regularity, as when one pursues a business, and is in the nature of a personal endeavour, for any other reason or even for no reason at all, is immaterial and such will not prevent the writ from getting to said person or entity.

To agree with respondents’ above argument, would mean unduly limiting the reach of the writ to a very small group, i.e., private persons and entities whose business is data gathering and storage, and in the process decreasing the effectiveness of the writ as an instrument designed to protect a right which is easily violated in view of rapid advancements in the information and communications technology—a right which a great majority of the users of technology themselves are not capable of protecting.

Having resolved the procedural aspect of the case, We now proceed to the core of the controversy.

The right to informational privacy on Facebook

The Right to Informational Privacy

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*,²⁰ where he explained the three strands of the right to privacy, viz: (1) locational or situational privacy;²¹ (2) informational privacy; and (3) decisional privacy.²² 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**.²³

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

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reasonable expectation of privacy in cyberspace. Several commentators regarding privacy and social networking sites, however, all agree that given the millions of OSN users, "[i]n this [Social Networking] environment, privacy is no longer grounded in reasonable expectations, but rather in some theoretical protocol better known as wishful thinking."²⁴

It is due to this notion that the Court saw the pressing need to provide for judicial remedies that would allow a summary hearing of the unlawful use of data or information and to remedy possible violations of the right to privacy.²⁵ In the same vein, the South African High Court, in its Decision in the landmark case, *H v. W*,²⁶ promulgated on January 30, 2013, recognized that "[t]he law has to take into account the changing realities not only technologically but also socially or else it will lose credibility in the eyes of the people. x x x It is imperative that the courts respond appropriately to changing times, acting cautiously and with wisdom." Consistent with this, the Court, by developing what may be viewed as the Philippine model of the writ of *habeas data*, in effect, recognized that, generally speaking, **having an expectation of informational privacy is not necessarily incompatible with engaging in cyberspace activities**, including those that occur in OSNs.

The question now though is up to what extent is the right to privacy protected in OSNs? Bear in mind that informational privacy involves personal information. At the same time, the very purpose of OSNs is socializing--sharing a myriad of information,²⁷ some of which would have otherwise remained personal.

Facebook's Privacy Tools: a response to the clamor for privacy in OSN activities

Briefly, the purpose of an OSN is precisely to give users the ability to interact and to stay connected to other members of the same or different social media platform

through the sharing of statuses, photos, videos, among others, depending on the services provided by the site. It is akin to having a room filled with millions of personal bulletin boards or "walls," the contents of which are under the control of each and every user. In his or her bulletin board, a user/owner can post anything--from text, to pictures, to music and videos--access to which would depend on whether he or she allows one, some or all of the other users to see his or her posts. Since gaining popularity, the 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), which, according to its developers, people use "to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them."²⁸

Facebook connections are established through the process of "friending" another user. By sending a "friend request," the user invites another to connect their accounts so that they can view any and all "Public" and "Friends Only" posts of the other. Once the request is accepted, the link is established and both users are permitted to view the other user's "Public" or "Friends Only" posts, among others. "Friending," therefore, allows the user to form or maintain one-to-one relationships with other users, whereby the user gives his or her "Facebook friend" access to his or her profile and shares certain information to the latter.²⁹

To address concerns about privacy,³⁰ but without defeating its purpose, Facebook was armed with different privacy tools designed to regulate the accessibility of a user's profile³¹ as well as information uploaded by the user. In *H v. W*,³² the South Gauteng High Court recognized this ability of the users to "customize their privacy settings," but did so with this caveat: "Facebook states in its policies that, although it makes every effort to protect a user's information, these privacy settings are not fool-

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proof.”³³

For instance, a Facebook user can regulate the visibility and accessibility of **digital images** (photos), posted on his or her personal bulletin or “wall,” except for the user’s profile picture and ID, by selecting his or her desired privacy setting:

- (a) Public - the default setting; every Facebook user can view the photo;
- (b) Friends of Friends - only the user’s Facebook friends and their friends can view the photo;
- (b) Friends - only the user’s Facebook friends can view the photo;
- (c) Custom - the photo is made visible only to particular friends and/or networks of the Facebook user; and
- (d) Only Me - the digital image can be viewed only by the user.

The foregoing are privacy tools, available to Facebook users, designed to set up barriers to broaden or limit the visibility of his or her specific profile content, statuses, and photos, among others, from another user’s point of view. In other words, Facebook extends its users an avenue to make the availability of their Facebook activities reflect their choice as to “when and to what extent to disclose facts about [themselves] – and to put others in the position of receiving such confidences.”³⁴ Ideally, the selected setting will be based on one’s desire to interact with others, coupled with the opposing need to withhold certain information as well as to regulate the spreading of his or her personal information. Needless to say, as the privacy setting becomes more limiting, fewer Facebook users can view that user’s particular post.

STC did not violate petitioners’ daughters’ right to privacy

Without these privacy settings, respondents’ contention that there is no reasonable expectation of privacy in Facebook would, in context, be correct.

However, such is not the case. **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.**³⁵

This, however, does not mean that any Facebook user automatically has a protected expectation of privacy in all of his or her Facebook activities.

Before one can have an expectation of privacy in his or her 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.**³⁶ 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.**³⁷

Therefore, a Facebook user who opts to make use of a privacy tool to grant or deny access to his or her post or profile detail should not be denied the informational privacy right which necessarily accompanies said choice.³⁸ Otherwise, using these privacy tools would be a feckless exercise, such that if, for instance, a user uploads a photo or any personal information to his or her Facebook page and sets its privacy level at “Only Me” or a custom list so that only the user or a chosen few can view it, said photo would still be deemed public by the courts as if the user never chose to limit the photo’s visibility and accessibility. Such position, if adopted, will not only strip these privacy tools of their function but it would also disregard the very intention of the user to keep said photo or information within the confines of his or her private space.

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We must now determine the extent that the images in question were visible to other Facebook users and whether the disclosure was confidential in nature. In other words, did the minors limit the disclosure of the photos such that the images were kept within their zones of privacy? This determination is necessary in resolving the issue of whether the minors carved out a zone of privacy when the photos were uploaded to Facebook so that the images will be protected against unauthorized access and disclosure.

Petitioners, in support of their thesis about their children's privacy right being violated, insist that Escudero intruded upon their children's Facebook accounts, downloaded copies of the pictures and showed said photos to Tigol. To them, this was a breach of the minors' privacy since their Facebook accounts, allegedly, were under "very private" or "Only Friends" setting safeguarded with a password.³⁹ Ultimately, they posit that their children's disclosure was only limited since their profiles were not open to public viewing. Therefore, according to them, people who are not their Facebook friends, including respondents, are barred from accessing said post without their knowledge and consent. As petitioner's children testified, it was Angela who uploaded the subject photos which were only viewable by **the five of them**,⁴⁰ although who these five are do not appear on the records.

Escudero, on the other hand, stated in her affidavit⁴¹ that "my students showed me some pictures of girls clad in brassieres. This student [sic] of mine informed me that these are senior high school [students] of STC, who are their friends in [F]acebook. x x x They then said [that] there are still many other photos posted on the Facebook accounts of these girls. At the computer lab, these students then logged into their Facebook account [sic], and accessed from there the various photographs x x x. They even told me that there had been times when these photos were 'public' i.e., not confined to their friends in Facebook."

In this regard, We cannot give much weight to the minors' testimonies for one key reason: failure to question the students' act of showing the photos to Tigol disproves their allegation that the photos were viewable only by the five of them. Without any evidence to corroborate their statement that the images were visible only to the five of them, and without their challenging Escudero's claim that the other students were able to view the photos, their statements are, at best, self-serving, thus deserving scant consideration.⁴²

It is well to note that not one of petitioners disputed Escudero's sworn account that her students, who are the minors' Facebook "friends," showed her the photos using their own Facebook accounts. This only goes to show that no special means to be able to view the allegedly private posts were ever resorted to by Escudero's students,⁴³ and that it is reasonable to assume, therefore, that the photos were, in reality, viewable either by (1) their Facebook friends, or (2) by the public at large.

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. The ensuing pronouncement in *US v. Gines-Perez*⁴⁴ is most instructive:

[A] person who places a photograph on the Internet precisely intends to forsake and renounce all privacy rights to such imagery, particularly under circumstances such as here, where the Defendant did not employ protective measures or devices that would have controlled access to the Web page or the photograph itself.⁴⁵

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Also, *United States v. Maxwell*⁴⁶ held that "[t]he more open the method of transmission is, the less privacy one can reasonably expect. Messages sent to the public at large in the chat room or e-mail that is forwarded from correspondent to correspondent loses any semblance of privacy."

That the photos are viewable by "friends only" does not necessarily bolster the petitioners' contention. In this regard, the cyber community is agreed that the digital images under this setting still remain to be outside the confines of the zones of privacy in view of the following:

- (1) Facebook "allows the world to be more open and interact and share in any conceivable way;"⁴⁷
- (2) A good number of Facebook users "befriend" other users who are not Facebook friends;⁴⁸
- (3) The sheer number of "Friends" one user has, usually in the hundreds, taken to task for the perceived privacy invasion into the lives of the former's Facebook friends who are not Facebook friends;⁴⁹
- (4) A user's Facebook friend can "share" the former's Facebook posts with the former, despite its being visible only to Facebook friends.⁵⁰

It is well to emphasize at this point that setting a post's or profile detail's privacy to "Friends" is no assurance that it can no longer be viewed by another user who is not Facebook friends with the source of the content. The user's own Facebook friend can share said content or tag his or her own Facebook friend thereto, regardless of whether the user tagged by the latter is Facebook friends or not with the former. Also, when the post is shared or when a person is tagged, the respective Facebook friends of the person who shared the post or who was tagged can view the post, the privacy setting of which was set at "Friends."

To illustrate, suppose A has 100 Facebook friends and B has 200. A and B are not Facebook friends. If C, A's Facebook friend, tags B in A's post, which is set at "Friends," the initial audience of 100 (A's own Facebook friends) is dramatically increased to 300 (A's 100 friends plus B's 200 friends or the public, depending upon B's privacy setting). As a result, the

audience who can view the post is effectively expanded--and to a very large extent.

This, along with its other features and uses, is confirmation of Facebook's proclivity towards user interaction and socialization rather than seclusion or privacy, as it encourages broadcasting of individual user posts. In fact, it has been said that OSNs have facilitated their users' self-tribute, thereby resulting into the "democratization of fame."⁵¹ Thus, it is suggested, that a profile, or even a post, with visibility set at "Friends Only" cannot easily, more so automatically, be said to be "very private," contrary to petitioners' argument.

As applied, however, using the tools in issue are visible only to the sanctioned students who are not Facebook friends; respondents by the hundreds are taken to task for the perceived privacy invasion into the lives of the former's Facebook friends who are not Facebook friends. 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.

Furthermore, petitioners failed to prove their contention that respondents reproduced and broadcasted the photographs. In fact, what petitioners attributed to respondents as an act of offensive disclosure was no more than the actuality that respondents appended said photographs in their memorandum submitted to the trial court in connection with Civil Case No. CEB-38594.⁵² These are not tantamount to a violation of the minor's informational privacy rights, contrary to petitioners' assertion.

In sum, there can be no quibbling that the

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images in question, or to be more precise, the photos of minor students scantily clad, are personal in nature, likely to affect, if indiscriminately circulated, the reputation of the minors enrolled in a conservative institution. However, the records are bereft of any evidence, other than bare assertions that they utilized Facebook's privacy settings to make the photos visible only to them or to a select few. Without proof that they placed the photographs subject of this case within the ambit of their protected zone of privacy, they cannot now insist that they have an expectation of privacy with respect to the photographs in question.

Had it been proved that the access to the pictures posted were limited to the original uploader, through the "Me Only" privacy setting, or that the user's contact list has been screened to limit access to a select few, through the "Custom" setting, the result may have been different, for in such instances, the intention to limit access to the particular post, instead of being broadcasted to the public at large or all the user's friends en masse, becomes more manifest and palpable.

On Cyber Responsibility

It has been said that **"the best filter is the one between your children's ears."**⁵³ This means that self-regulation on the part of OSN users and internet consumers in general is the best means of avoiding privacy rights violations.⁵⁴ As a cyberspace community member, one has to be proactive in protecting his or her own privacy.⁵⁵ It is in this regard that many OSN users, especially minors, fail. Responsible social networking or observance of the "netiquettes"⁵⁶ on the part of teenagers has been the concern of many due to the widespread notion that teenagers can sometimes go too far since they generally lack the people skills or general wisdom to conduct themselves sensibly in a public forum.⁵⁷

Respondent STC is clearly aware of this and incorporating lessons on good cyber

citizenship in its curriculum to educate its students on proper online conduct may be most timely. Too, it is not only STC but a number of schools and organizations have already deemed it important to include digital literacy and good cyber citizenship in their respective programs and curricula in view of the risks that the children are exposed to every time they participate in online activities.⁵⁸ Furthermore, considering the complexity of the cyber world and its pervasiveness, as well as the dangers that these children are wittingly or unwittingly exposed to in view of their unsupervised activities in cyberspace, the participation of the parents in disciplining and educating their children about being a good digital citizen is encouraged by these institutions and organizations. In fact, it is believed that "to limit such risks, there's no substitute for parental involvement and supervision."⁵⁹

As such, STC cannot be faulted for being steadfast in its duty of teaching its students to be responsible in their dealings and activities in cyberspace, particularly in OSNs, when it enforced the disciplinary actions specified in the Student Handbook, absent a showing that, in the process, it violated the students' rights.

OSN users should be aware of the risks that they expose themselves to whenever they engage in cyberspace activities. Accordingly, they should be cautious enough to control their privacy and to exercise sound discretion regarding how much information about themselves they are willing to give up. Internet consumers ought to be aware that, by entering or uploading any kind of data or information online, they are automatically and inevitably making it permanently available online, the perpetuation of which is outside the ambit of their control. Furthermore, and more importantly, information, otherwise private, voluntarily surrendered by them can be opened, read, or copied by third parties who may or may not be allowed access to such.

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It is, thus, incumbent upon internet users to exercise due diligence in their online dealings and activities and must not be negligent in protecting their rights. Equity serves the vigilant. Demanding relief from the courts, as here, requires that claimants themselves take utmost care in safeguarding a right which they allege to have been violated. These are indispensable. We cannot afford protection to persons if they themselves did nothing to place the matter within the confines of their private zone. OSN users must be mindful enough to learn the use of privacy tools, to use them if they desire to keep the information private, and to keep track of changes in the available privacy settings, such as those of Facebook, especially because Facebook is notorious for changing these settings and the site's layout often.

In finding that respondent STC and its officials did not violate the minors' privacy rights, We find no cogent reason to disturb the findings and case disposition of the court *a quo*.

• **Dr. Joy Margate Lee Vs. Pssupt. Neri A. Ilagan** G.R. No. 203254. October 8, 2014

Before the Court is a petition for review on *certiorari*¹ assailing the Decision² dated August 30, 2012 of the Regional Trial Court of Quezon City, Branch 224 (RTC) in SP No. 12-71527, which extended the privilege of the writ of *habeas data* in favor of respondent Police Superintendent Neri A. Ilagan (Ilagan).

The Court's Ruling

The petition is meritorious.

A.M. No. 08-1-16-SC, or the Rule on the Writ of *Habeas Data* (*Habeas Data* Rule), was conceived as a response, given the lack of effective and available remedies, to address the extraordinary rise in the number of killings and enforced disappearances.¹⁶ It was conceptualized as a judicial remedy enforcing the right to privacy, most especially **the right to informational privacy** of individuals,¹⁷ which is defined as "the right to control the collection, maintenance, use, and

dissemination of data about oneself."¹⁸

As defined in Section 1 of the *Habeas Data* Rule, the writ of *habeas data* now 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.**" Thus, in order to support a petition for the issuance of such writ, Section 6 of the *Habeas Data* Rule essentially requires that the petition sufficiently alleges, among others, "[t]he **manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party.**" In other words, the petition must adequately show that **there exists a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other**

.¹⁹ Corollarily, the allegations in the petition must be supported by **substantial evidence** showing an actual or threatened violation of the right to privacy in life, liberty or security of the victim.²⁰ In this relation, it bears pointing out that the writ of *habeas data* will not issue to protect purely property or commercial concerns nor when the grounds invoked in support of the petitions therefor are vague and doubtful.²¹

In this case, the Court finds that Ilagan was not able to sufficiently allege that his right to privacy in 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. Indeed, courts cannot speculate

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or contrive versions of possible transgressions. 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.

In fact, even discounting the insufficiency of the allegations, the petition would equally be dismissible due to the inadequacy of the evidence presented. As the records show, all that Ilagan submitted in support of his petition was his self-serving testimony which hardly meets the substantial evidence requirement as prescribed by the *Habeas Data* Rule. This is because 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 conclude²² 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.²³ 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.

- **Atty. Anacleto B. Buena, Jr., MNSA, etc. Vs. Dr. Sangcad D. Benito** G.R. No. 181760. October 14, 2014

- The Regional Governor of the Autonomous Region in Muslim Mindanao has the power to appoint officers in the region's civil service. However, if there is no regional law providing for the qualifications for the position at the time of appointment, the appointee must satisfy the civil service eligibilities

required for the position in the national government to be appointed in a permanent capacity.

•

The position of Assistant Schools Division Superintendent is a position in the Career Executive Service

Under the civil service law, positions in the Career Executive Service are: "Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service, and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President."⁷⁵

In the exercise of its legal mandate, the Career Executive Service Board issued Resolution No. 945 dated June 14, 2011, where it set the following criteria to determine whether a position belongs to the Career Executive Service:

- The position is career;
- The position is above division chief; and
- The position entails performance of executive and managerial functions.

Aside from satisfying the criteria set by the Career Executive Service Board, the holder of the position must also be a presidential appointee.⁷⁶

Applying these principles in this case, we rule that the position of Assistant Schools Division Superintendent belongs to the Career Executive Service.

The position of Assistant Schools Division Superintendent is a career position. Appointment to the position is based on merit and fitness and gives the appointee an opportunity for advancement to higher

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career positions,⁷⁷ such as Schools Division Superintendent. If permanently appointed, the appointee is guaranteed security of tenure.⁷⁸

The position is above Division Chief. An Assistant Schools Division Superintendent has a salary grade of 25.⁷⁹

It is settled, therefore, that the position of Assistant Schools Division Superintendent belongs to the Career Executive Service. The appointee to the position must be career executive service eligible.

Permanent appointment to positions in the Career Executive Service presupposes that the appointee has passed the Career Executive Service examinations.⁸⁴ In this case, respondent Dr. Benito does not possess the required career executive service eligibility. He, therefore, cannot be appointed to the position of Assistant Schools Division Superintendent in a permanent capacity. The Civil Service Commission cannot be compelled to attest to the permanent appointment of respondent Dr. Benito.

Nevertheless, when respondent Dr. Benito was appointed Assistant Schools Division Superintendent in 2005, there was yet no regional law providing for the qualifications for the Assistant Schools Division Superintendents of Divisions of the Department of Education in the Autonomous Region. Consequently, the civil service eligibilities required for positions in the national government shall likewise be required for appointments to positions in the Autonomous Region.

All told, respondent Dr. Benito did not possess the required civil service eligibility at the time he was appointed Assistant Schools Division Superintendent. Consequently, he cannot be appointed in a permanent capacity to the position. The Civil Service Commission cannot be compelled through a writ of mandamus to attest to the permanent appointment of

respondent Dr. Benito.

- **Remigio D. Espiritu and Noel Agustin Vs. Lutgarda Torres Del Rosario represented by Sylvia R. Asperilla**
G.R. No. 204964. October 15, 2014

Lands classified as non-agricultural in zoning ordinances approved by the Housing and Land Use Regulatory Board or its predecessors prior to June 15, 1998 are outside the coverage of the compulsory acquisition program of the Comprehensive Agrarian Reform Law. However, there has to be substantial evidence to prove that lands sought to be exempted fall within the non-agricultural classification.

- **Van D. Luspo Vs. People of the Philippines/Supt. Arturo H. Montano and Margarita B. Tugaoen Vs. People of the Philippines/C/Insp. Salvador C. Curan, Sr. Vs. People of the Philippines** G.R. No. 188487/G.R. No. 188541/G.R. No. 188556. October 22, 2014

- ***Signing the checks is not a ministerial duty***

- Contrary to Duran's claim, affixing his signature on the checks is not a ministerial duty on his part. As he himself stated in his petition and in his present motion, his position as Chief of the Regional Finance Service Unit of the North CAPCOM imposed on him the duty "to be responsible for the management and disbursement and accounting of PNP funds." This duty evidently gives him the discretion, within the bounds of law, to review, scrutinize, or countercheck the supporting documents before facilitating the payment of public funds.
- His responsibility for the disbursement and accounting of public funds makes him an accountable officer. Section 106 of Presidential Decree No. 1445 requires an accountable officer, who acts under the direction of a superior officer, to notify the latter

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of the illegality of the payment in order to avoid liability. This duty to notify presupposes, however, that the accountable officer had duly exercised his duty in ensuring that funds are properly disbursed and accounted for by requiring the submission of the supporting documents for his review.

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- By relying on the supposed assurances of his co-accused Montano that the supporting documents are all in order,²⁰ contrary to what his duties mandate, Montano simply assumed that these documents exist and are regular on its face even if nothing in the records indicate that they do and they are. The nature of his duties is simply inconsistent with his "ministerial" argument. With Duran's failure to discharge the duties of his office and given the circumstances attending the making and issuance of the checks, his conviction must stand.
-
- We clarify that the Court's finding of bad faith is not premised on Duran's failure "to prepare and submit" the supporting documents but for his failure to *require their submission for his review*. While the preparation and submission of these documents are not part of his responsibilities, his failure to require their submission for his review, given the circumstances, amply establishes his bad faith in preparing and issuing checks that eventually caused undue injury to the government.

Tugaoen's statement before the PNP investigating committee is admissible in evidence

Tugaoen though questions the admissibility of her statement before the investigating committee that she did not deliver any CCIE items in exchange for the checks on the ground that it violates her right under Section 12, Article III of the 1987 Constitution.

In *People v. Marra*,²² we held that custodial investigation involves any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. The rule on custodial investigation begins to operate **as soon as the investigation ceases to be a general inquiry** into an unsolved crime and the interrogation is then **aimed on a particular suspect** who has been taken into custody and to whom the police would then direct interrogatory questions that tend to elicit incriminating statements. The situation contemplated is more precisely described as one where –

After a person is arrested and his custodial investigation begins a confrontation arises which at best may be termed unequal. The detainee is brought to an army camp or police headquarters and there questioned and cross-examined not only by one but as many investigators as may be necessary to break down his morale. He finds himself in a strange and unfamiliar surrounding, and every person he meets he considers hostile to him. The investigators are well-trained and seasoned in their work. They employ all the methods and means that experience and study has taught them to extract the truth, or what may pass for it, out of the detainee. Most detainees are unlettered and are not aware of their constitutional rights. And even if they were, the intimidating and coercive presence of the officers of the law in such an atmosphere overwhelms them into silence xxx.²³

Accordingly, contrary to the accused Tugaoen's claim, the fact that she was "invited" by the investigating committee does not by itself determine the nature of the investigation as custodial. The nature of the proceeding must be adjudged on a case to case basis.

The Sandiganbayan correctly ruled that the investigation where Tugaoen made her statement was not a custodial investigation that would bring to the fore the rights of the accused and the

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exclusionary rule under paragraph 3, Section 12, Article III of the 1987 Constitution. The investigator's reminder to Tugaoen of her Miranda rights during the investigation cannot be determinative of the nature of the investigation. Otherwise, following the logic of this claim, the law enforcer's own failure or even disregard of his duty to inform an individual he investigates of his custodial investigation rights would suffice to negate the character of an investigation as legally a custodial investigation. Ultimately, the nature of the investigation must be determined by appreciating the circumstances surrounding it as a whole.

In the present case, the investigation conducted by the PNP GHQ-OIG, was prompted by the report from the COA regarding disbursement irregularities for CCIE items in Regions VII and VIII, North CAPCOM. In short, it was simply a *general inquiry* to clear the air of reported anomalies and irregularities within the PNP which a constitutional body found and reported as part of its constitutional power and duty. Naturally, this investigation would involve persons with whom the PNP had contracts that are subject of the COA scrutiny. That what was conducted is an ordinary administrative (and not custodial) investigation is supported by the fact that the investigating committee also took the statements of other PNP officials who ended up not being charged with a crime. The admitted non-delivery of the CCIE items by the supposed contractor, Tugaoen, well explains why Duran had to argue in vain that the making and issuance of the checks were ministerial on his part (despite his clear responsibility for the "management and disbursement and accounting of PNP funds"). Accordingly, the fact that none of the persons who executed the documents cited by the Court in its Decision testified in open court is not fatal to the accused's conviction. As we already observed in our February 14, 2011 Decision, the prosecution sufficiently discharged its burden of proof based on the confluence of evidence it presented showing the guilt of the accused beyond

reasonable doubt.

- **Joey M. Pestilos, Dwight Macapanas, et al. Vs. Moreno Generoso and People of the Philippines** G.R. No. 182601. November 10, 2014 Dissenting Opinion **J. Leonen**

- The petitioners primarily argue that they were not lawfully arrested. No arrest warrant was ever issued; they went to the police station only as a response to the arresting officers' invitation. They even cited the Affidavit of Arrest, which actually used the word "*invited*."
- The petitioners also claim that no valid warrantless arrest took place under the terms of Rule 112, Section 7 of the Revised Rules of Court. The incident happened two (2) hours before the police officers actually arrived at the crime scene. The police officers could not have undertaken a valid warrantless arrest as they had no personal knowledge that the petitioners were the authors of the crime.
- The petitioners additionally argue that the RTC's Order denying the Urgent Motion for Regular Preliminary Investigation is void because it was not properly issued.

The Court's Ruling

We find the petition unmeritorious and thus uphold the RTC Order. The criminal proceedings against the petitioners should now proceed.

It is unfortunate that the kind of motion that the petitioners filed has to reach this Court for its resolution. The thought is very tempting that the motion was employed simply to delay the proceedings and that the use of Rule 65 petition has been abused.

But accepting things as they are, this delay can be more than compensated by

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fully examining in this case the legalities surrounding warrantless warrants and establishing the proper interpretation of the Rules for the guidance of the bench and the bar. These Rules have evolved over time, and the present case presents to us the opportunity to re-trace their origins, development and the current applicable interpretation.

The Present Revised Rules of Criminal Procedure

Section 5(b), Rule 113 of the 1985 Rules of Criminal Procedure was further amended with the incorporation of the word "probable cause" as the basis of the arresting officer's determination on whether the person to be arrested has committed the crime.

Hence, as presently worded, **Section 5(b), Rule 113** of the Revised Rules of Criminal Procedure provides that:

When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.

From the current phraseology of the rules on warrantless arrest, it appears that for purposes of Section S(b), the following are the notable changes: **first**, the contemplated offense was qualified by the word "just," connoting immediacy; and **second**, the warrantless arrest of a person sought to be arrested should be based on probable cause to be determined by the arresting officer based on his **personal knowledge of facts and circumstances that the person to be arrested has committed it.**

It is clear that the present rules have objectified" the previously subjective determination of the arresting officer as to the (1) commission of the crime; and (2) whether the person sought to be arrested committed the crime. According to Feria, these changes were adopted to minimize arrests based on mere suspicion or

hearsay.⁵¹

As presently worded, the elements under **Section 5(b), Rule 113** of the Revised Rules of Criminal Procedure are: **first**, an offense has just been committed; and **second**, the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.

For purposes of this case, we shall discuss these elements separately below, starting with the element of probable cause, followed by the elements that the offense has just been committed, and the arresting officer's personal knowledge of facts or circumstances that the person to be arrested has committed the crime.

i) First Element of Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure: Probable cause

The existence of "probable cause" is now the "objectifier" or the determinant on how the arresting officer shall proceed on the facts and circumstances, within his personal knowledge, for purposes of determining whether the person to be arrested has committed the crime.

i.a) U.S. jurisprudence on probable cause in warrantless arrests

In *Payton v. New York*,⁵² the U.S. Supreme Court held that the Fourth Amendment of the Federal Constitution does not prohibit arrests without a warrant although such arrests must be reasonable. According to *State v. Quinn*,⁵³ the warrantless arrest of a person who was discovered in the act of violating the law is not a violation of due process.

The U.S. Supreme Court, however indicated in *Henry v. United States*⁵⁴ that the Fourth Amendment limited the circumstances under which warrantless arrests may be made. **The necessary inquiry is not whether there was a warrant or whether there was time to get one, but whether at the time of the arrest probable cause existed.** The term probable cause is synonymous to

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"reasonable cause" and "reasonable grounds."⁵⁵

In determining the existence of probable cause, the arresting officer should make a thorough investigation and exercise reasonable judgment. **The standards for evaluating the factual basis supporting a probable cause assessment are not less stringent in warrantless arrest situation than in a case where a warrant is sought from a judicial officer.** The probable cause determination of a warrantless arrest is based on information that the arresting officer possesses at the time of the arrest and not on the information acquired later.⁵⁶

In evaluating probable cause, probability and not certainty is the determinant of reasonableness under the Fourth Amendment. Probable cause involves probabilities similar to the factual and practical questions of everyday life upon which reasonable and prudent persons act. **It is a pragmatic question to be determined in each case in light of the particular circumstances and the particular offense involved.**⁵⁷

In determining probable cause, the arresting officer may rely on all the information in his possession, his fair inferences therefrom, including his observations. Mere suspicion does not meet the requirements of showing probable cause to arrest without warrant especially if it is a mere general suspicion. **Probable cause may rest on reasonably trustworthy information as well as personal knowledge.** Thus, the arresting officer may rely on information supplied by a witness or a victim of a crime; and under the circumstances, the arresting officer need not verify such information.⁵⁸

In our jurisdiction, the Court has likewise defined probable cause in the context of Section 5(b), Rule 113 of the Revised

Rules of Criminal Procedure.

In *Abelita III v. Doria et al.*,⁵⁹ the Court held that personal knowledge of facts must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion, therefore, must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.

i.b) Probable cause under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure, distinguished from probable cause in preliminary investigations and the judicial proceeding for the issuance of a warrant of arrest

The purpose of a **preliminary investigation** is to **determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty of the crime and should be held for trial.**⁶⁰ In *Buchanan v. Viuda de Esteban*,⁶¹ we defined probable cause as the existence of facts and circumstances as would excite the **belief** in a **reasonable mind, acting on the facts within the knowledge of the prosecutor**, that the person charged was guilty of the crime for which he was prosecuted.

In this particular proceeding, the finding of the existence of probable cause as to the guilt of the respondent **was based on the submitted documents of the complainant, the respondent and his witnesses.**⁶²

On the other hand, probable cause **in**

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judicial proceedings for the issuance of a warrant of arrest is defined as the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested.

Hence, before i suing a warrant of arrest, the judge **must be satisfied that based on the evidence submitted, there is sufficient proof that a crime has been committed and that the person to be arrested is probably guilty thereof.** At this stage of the criminal proceeding, the judge is not yet tasked to review in detail the evidence submitted during the preliminary investigation. It is sufficient that he personally evaluates the evidence in determining probable cause⁶³ to issue a warrant of arrest.

In contrast, **the arresting officer's determination of probable cause under Section 5(b), Rule 113** of the Revised Rules of Criminal Procedure is based on his personal knowledge of facts or circumstances that the person sought to be arrested has committed the crime. These facts or circumstances pertain to **actual facts or raw evidence, i.e.,** supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest

The probable cause to justify warrantless arrest ordinarily signifies a **reasonable ground of suspicion** supported by circumstances sufficiently strong in themselves to warrant a **cautious man** to believe that the person accused is guilty of the offense with which he is charged,⁶⁴ or an actual belief or reasonable ground of suspicion, based on actual facts.⁶⁵

It is clear therefore that the standard for determining "probable cause" is invariable for the officer arresting without a warrant,

the public prosecutor, and the judge issuing a warrant of arrest. **It is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested or held for trial, as the case may be.**

However, while the arresting officer, the public prosecutor and the judge all determine "**probable cause,**" within the spheres of their respective functions, its existence is influenced heavily by the available facts and circumstance within their possession. In short, although these officers **use the same standard of a reasonable man,** they possess dissimilar quantity of facts or circumstances, **as set by the rules,** upon which they must determine probable cause.

Thus, under the present rules and jurisprudence, the arresting officer should base his determination of probable cause on his personal knowledge of facts and circumstances that the person sought to be arrested has committed the crime; the public prosecutor and the judge must base their determination on the evidence submitted by the parties.

In other words, the arresting officer operates on the basis of more limited facts, evidence or available information that he must personally gather within a limited time frame.

Hence, in *Santos*,⁶⁶ the Court acknowledged the **inherent limitations of determining probable cause in warrantless arrests** due to the urgency of its determination in these instances. The Court held that one should not expect too much of an ordinary policeman. He is not presumed to exercise the subtle reasoning of a judicial officer. Oftentimes, he has no opportunity to make proper investigation **but must act in haste on his own belief to prevent the escape of the criminal.**⁶⁷

ii) Second and Third Elements of

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Section 5(b), Rule 113:

The crime has just been committed/personal knowledge of facts or circumstances that the person to be arrested has committed it

We deem it necessary to combine the discussions of these two elements as our jurisprudence shows that these were usually taken together in the Court's determination of the validity of the warrantless arrests that were made pursuant to Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure.

In *Posadas v. Ombudsman*,⁶⁸ the killing of Dennis Venturina happened on December 8, 1994. It was only on December 11, 1994 that Chancellor Posadas requested the NBI's assistance. On the basis of the supposed identification of two (2) witnesses, the NBI attempted to arrest Francis Carlo Tapanan and Raymundo Narag **three (3) days after the commission of the crime**. With this set of facts, it cannot be said that the officers have personal knowledge of facts or circumstances that the persons sought to be arrested committed the crime. Hence, the Court invalidated the warrantless arrest.

Similarly, in *People v. Burgos*,⁶⁹ one Cesar Masamlok personally and voluntarily surrendered to the authorities, stating that Ruben Burgos forcibly recruited him to become a member of the NPA, with a threat of physical harm. Upon receipt of this information, a joint team of PC-INP units was dispatched to arrest Burgos who was then plowing the field. Indeed, the arrest was invalid considering that the only information that the police officers had in effecting the arrest was the information from a third person. It cannot be also said in this case that there was certainty as regards the commission of a crime.

In *People v. del Rosario*,⁷⁰ the Court held

that the requirement that an offense has just been committed means that there must be a large measure of *immediacy* between the time the offense was committed and the time of the arrest. If there was an appreciable lapse of time between the arrest and the commission of the crime, a warrant of arrest must be secured.

The Court held that the arrest of del Rosario did not comply with these requirements because he was arrested only a day after the commission of the crime and not immediately thereafter. Additionally, the arresting officers were not present and were not actual eyewitnesses to the crime. Hence, they had no personal knowledge of facts indicating that the person to be arrested had committed the offense. They became aware of del Rosario's identity as the driver of the getaway tricycle only during the custodial investigation.

In *People v. Cendana*,⁷¹ the accused was arrested one (1) day after the killing of the victim and only on the basis of information obtained from unnamed sources. The unlawful arrest was held invalid.

In *Rolito Go v. CA*,⁷² the arrest of the accused six (6) days after the commission of the crime was held invalid because the crime had not just been committed. Moreover, the "arresting" officers had no "personal knowledge" of facts indicating that the accused was the gunman who had shot the victim. The information upon which the police acted came from statements made by alleged eyewitnesses to the shooting; one stated that the accused was the gunman; another was able to take down the alleged gunman's car's plate number which turned out to be registered in the name of the accused's wife. That information did not constitute "personal knowledge."

In *People v. Tonog, Jr.*,⁷³ the warrantless arrest which was done on the **same day** was held valid. In this case, the arresting

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officer had knowledge of facts which he personally gathered in the course of his investigation, indicating that the accused was one of the perpetrators.

In *People v. Gerente*,⁷⁴ the policemen arrested Gerente only about **three (3) hours** after Gerente and his companions had killed the victim. The Court held that the policemen had personal knowledge of the violent death of the victim and of facts indicating that Gerente and two others had killed him. The warrantless arrest was held valid.

In *People v. Alvario*,⁷⁵ the warrantless arrest came immediately after the arresting officers received information from the victim of the crime. The Court held that the personal knowledge of the arresting officers was derived from the information supplied by the victim herself who pointed to Alvario as the man who raped her at the time of his arrest. The Court upheld the warrantless arrest.

In *People v. Jayson*,⁷⁶ there was a shooting incident. The policemen who were summoned to the scene of the crime found the victim. The informants pointed to the accused as the assailant only moments after the shooting. The Court held that the arresting officers acted on the basis of personal knowledge of the death of the victim and of facts indicating that the accused was the assailant. Thus, the warrantless arrest was held valid.

In *People v. Acol*,⁷⁷ a group held up the passengers in a jeepney and the policemen immediately responded to the report of the crime. One of the victims saw four persons walking towards Fort Bonifacio, one of whom was wearing his jacket. The victim pointed them to the policemen. When the group saw the policemen coming, they ran in different directions. The Court held that the arrest was valid.

In *Cadua v. CA*,⁷⁸ there was an initial report to the police concerning a robbery. A radio dispatch was then given to the

arresting officers, who proceeded to Alden Street to verify the authenticity of the radio message. When they reached the place, they met with the complainants who initiated the report about the robbery. Upon the officers' invitation, the victims joined them in conducting a search of the nearby area where the accused was spotted in the vicinity. Based on the reported statements of the complainants, he was identified as a logical suspect in the offense just committed. Hence, the arrest was held valid.

In *Doria*,⁷⁹ the Court held that Section 5(b), Rule 113 of the 1985 Rules of Criminal Procedure does not require the arresting officers to personally witness the commission of the offense.

In this case, P/Supt. Doria alleged that his office received a telephone call from a relative of Rosa Sia about a shooting incident. He dispatched a team headed by SP03 Ramirez to investigate the incident. SP03 Ramirez later reported that a certain William Sia was wounded while Judge Abelita III, who was implicated in the incident, and his wife just left the place of the incident. P/Supt. Doria looked for Abelita III and when he found him, he informed him of the incident report. P/Supt. Doria requested Abelita III to go with him to the police headquarters as he had been reported to be involved in the incident. Abelita III agreed but suddenly sped up his vehicle and proceeded to his residence where P/Supt. Doria caught him up as he was about to run towards his house.

The police officers saw a gun in the front seat of the vehicle beside the driver's seat as Abelita III opened the door. They also saw a shotgun at the back of the driver's seat. The police officers confiscated the firearms and arrested Abelita III. The Court held that the petitioner's act of trying to get away, coupled with the incident report which they investigated, were enough to raise a reasonable suspicion on the part of the police authorities as to the existence of probable

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cause.

Based on these discussions, it appears that the Court's appreciation of the elements that "*the offense has just been committed*" and "*personal knowledge of facts and circumstances that the person to be arrested committed it*" depended on the particular circumstances of the case.

However, we note that the element of "*personal knowledge of facts or circumstances*" under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure requires clarification.

The phrase covers facts or, **in the alternative**, circumstances. According to the Black's Law Dictionary,⁸⁰ "*circumstances are attendant or accompanying facts, events or conditions.*" Circumstances may pertain to events or actions within the actual perception, personal evaluation or observation of the police officer at the scene of the crime. Thus, even though the police officer has not seen someone actually fleeing, he could still make a warrantless arrest if, based on his personal evaluation of the circumstances at the scene of the crime, he could determine the existence of probable cause that the person sought to be arrested has committed the crime. However, the determination of probable cause and the gathering of facts or circumstances should be made immediately after the commission of the crime in order to comply with the element of *immediacy*.

In other words, the clincher in the element of "*personal knowledge of facts or circumstances*" is the required element of immediacy within which these facts or circumstances should be gathered. This required time element acts as a safeguard to ensure that the police officers have gathered the facts or perceived the circumstances within a very limited time frame. This guarantees that the police officers would have no time to base their probable cause finding on facts or circumstances obtained after an

exhaustive investigation.

The reason for the element of the immediacy is this - as the time gap from the commission of the crime to the arrest widens, the pieces of information gathered are prone to become contaminated and subjected to external factors, interpretations and hearsay. On the other hand, with the element of immediacy imposed under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure, the police officer's determination of probable cause would necessarily be limited to **raw** or **uncontaminated** facts or circumstances, gathered as they were within a very limited period of time. The same provision adds another safeguard with the requirement of probable cause as the standard for evaluating these facts or circumstances before the police officer could effect a valid warrantless arrest.

In light of the discussion above on the developments of Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure and our jurisprudence on the matter, we hold that the following must be present for a **valid warrantless arrest**: **1)** the crime should have been just committed; and **2)** the arresting officer's exercise of discretion is limited by the standard of probable cause to be determined from the facts and circumstances within his personal knowledge. The requirement of the existence of probable cause **objectifies** the reasonableness of the warrantless arrest for purposes of compliance with the Constitutional mandate against **unreasonable** arrests.

Hence, for purposes of resolving the issue on the validity of the warrantless arrest of the present petitioners, the question to be resolved is whether the requirements for a valid warrantless arrest under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure were complied with, namely: **1)** has the crime just been committed when they were arrested? **2)** did the arresting officer have personal knowledge of facts and circumstances that the petitioners committed the crime? and

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3) based on these facts and circumstances that the arresting officer possessed at the time of the petitioners' arrest, would a reasonably discreet and prudent person believe that the attempted murder of Atty. Generoso was committed by the petitioners?

We rule in the affirmative.

III. Application of Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure in the present case: there was a valid warrantless arrest

We deem it necessary to review the records of the CA because it has misapprehended the facts in its decision.⁸¹ From a review of the records, we conclude that the police officers had personal knowledge of facts or circumstances upon which they had properly determined probable cause in effecting a warrantless arrest against the petitioners. We note, however, that the determination of the facts in the present case is purely limited to the resolution of the issue on the validity of the warrantless arrests of the petitioners.

Based on the police blotter⁸² entry taken at 4:15a.m. on February 20, 2005, the date that the alleged crime was committed, the petitioners were brought in for investigation at the Batasan Hills Police Station. The police blotter stated that the alleged crime was committed at **3:15 a.m.** on February 20, 2005, along Kasiyahan St., Brgy. Holy Spirit, Quezon City.

The time of the entry of the complaint in the police blotter at 4:15 a.m., with Atty. Generoso and the petitioners already inside the police station, would connote that the arrest took place **less than one hour** from the time of the occurrence of the crime. Hence, the CA finding that the arrest took place two (2) hours after the commission of the crime is unfounded.

The arresting officers' personal observation of Atty. Generoso's bruises when they arrived at the scene of the crime is corroborated by the petitioners' admissions that Atty. Generoso indeed suffered blows from petitioner Macapanas and his brother Joseph Macapanas,⁸³ although they asserted that they did it in self-defense against Atty. Generoso.

Atty. Generoso's bruises were also corroborated by the Medico-Legal Certificate⁸⁴ that was issued by East Avenue Medical Center on the same date of the alleged mauling. The medical check-up of Atty. Generoso that was made about 8:10 a.m. on the date of the incident, showed the following findings: "*Contusion Hematoma, Left Frontal Area; Abrasion, T6 area, right midclavicular line periorbital hematoma, left eye; Abrasion, distal 3rd posterolateral aspect of right forearm; Abrasion, 4th and fifth digit, right hand; Abrasion on area of 7th rib (L ant. Chest wall), tenderness on L peripheral area, no visible abrasion.* In addition, the attending physician, Dr. Eva P. Javier, diagnosed Atty. Generoso of *contusion hematoma, periorbital L., and traumatic conjunctivitis, o.s.*

To summarize, the arresting officers went to the scene of the crime upon the complaint of Atty. Generoso of his alleged mauling; the police officers responded to the scene of the crime **less than one (1) hour** after the alleged mauling; the alleged crime transpired in a community where Atty. Generoso and the petitioners reside; Atty. Generoso positively identified the petitioners as those responsible for his mauling and, notably, the petitioners⁸⁵ and Atty. Generoso⁸⁶ lived almost in the same neighborhood; more importantly, when the petitioners were confronted by the arresting officers, they did not deny their participation in the incident with Atty. Generoso, although they narrated a different version of what transpired.⁸⁷

With these facts and **circumstances** that the police officers gathered and which

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they have personally observed **less than one hour** from the time that they have arrived at the scene of the crime until the time of the arrest of the petitioners, we deem it reasonable to conclude that the police officers had personal knowledge of facts or *circumstances* justifying the petitioners' warrantless arrests. These circumstances were well within the police officers' observation, perception and evaluation at the time of the arrest. These circumstances qualify as the police officers' **personal observation, which are within their personal knowledge**, prompting them to make the warrantless arrests.

Similar to the factual antecedents in *Jayson*,⁸⁸ the police officers in the present case saw Atty. Generoso in his sorry bloodied state. As the victim, he positively identified the petitioners as the persons who mauled him; however, instead of fleeing like what happened in *Jayson*, the petitioners agreed to go with the police officers.

This is also similar to what happened in *People v. Tonog, Jr.*⁸⁹ where Tonog did not flee but voluntarily went with the police officers. More than this, the petitioners in the present case even admitted to have been involved in the incident with Atty. Generoso, although they had another version of what transpired.

In determining the reasonableness of the warrantless arrests, it is incumbent upon the courts to consider if the police officers have complied with the requirements set under Section S(b), Rule 113 of the Revised Rules of Criminal Procedure, specifically, the requirement of immediacy; the police officer's personal knowledge of facts or circumstances; and lastly, the propriety of the determination of probable cause that the person sought to be arrested committed the crime.

The records show that soon after the report of the incident occurred, SPOI Monsalve immediately dispatched the arresting officer, SP02 Javier, to render

personal assistance to the victim.⁹⁰ This fact alone negates the petitioners' argument that the police officers did not have personal knowledge that a crime had been committed — the police immediately responded and had personal knowledge that a crime had been committed.

To reiterate, personal knowledge of a crime just committed under the terms of the above-cited provision, does not require actual presence at the scene while a crime was being committed; it is enough that evidence of the recent commission of the crime is patent (as in this case) and the police officer has probable cause to believe based on personal knowledge of facts or circumstances, that the person to be arrested has recently committed the crime.

Considering the circumstances of the stabbing, particularly the locality where it took place, its occasion, the personal circumstances of the parties, and the immediate on-the-spot investigation that took place, the immediate and warrantless arrests of the perpetrators were proper. Consequently, the inquest proceeding that the City Prosecutor conducted was appropriate under the circumstances.

IV. The term "invited" in the Affidavit of Arrest is construed to mean as an authoritative command

After the resolution of the validity of the warrantless arrest, the discussion of the petitioners' second issue is largely academic. Arrest is defined as the taking of a person into custody in order that he may be bound to answer for the commission of an offense. An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest.⁹¹ Thus, application of actual force, manual touching of the body, physical restraint or a formal declaration of arrest is not required. It is enough that there be an intention on the part of one of the parties to arrest the other and the intent of the other to submit, under the belief and

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impression that submission is necessary.⁹²

Notwithstanding the term "*invited*" in the Affidavit of Arrest,⁹³ SP02 Javier could not but have the intention of arresting the petitioners following Atty. Generoso's account. SP02 Javier did not need to apply violent physical restraint when a simple directive to the petitioners to follow him to the police station would produce a similar effect. In other words, the application of actual force would only be an alternative if the petitioners had exhibited resistance.

To be sure, after a crime had just been committed and the attending policemen have acquired personal knowledge of the incidents of the crime, including the alleged perpetrators, the arrest of the petitioners as the perpetrators pointed to by the victim, was not a mere random act but was in connection with a particular offense. Furthermore, SP02 Javier had informed the petitioners, at the time of their arrest, of the charges against them before taking them to Batasan Hills Police Station for investigation.⁹⁴

V. The Order denying the motion for preliminary investigation is valid

In their last ditch attempt at avoidance, the petitioners attack the RTC Order denying the petitioners' urgent motion for regular preliminary investigation for allegedly having been issued in violation of Article VIII, Section 14 of the 1987 Constitution⁹⁵ and Rule 16, Section 3 of the Revised Rules of Court.⁹⁶

The RTC, in its Order dismissing the motion, clearly states that *the Court is not persuaded by the evidentiary nature of the allegations in the said motion of the accused. Aside from lack of clear and convincing proof, the Court, in the exercise of its sound discretion on the matter, is legally bound to pursue and hereby gives preference to the speedy disposition of the case.*"

We do not see any taint of impropriety or grave abuse of discretion in this Order. The RTC, in resolving the motion, is not required to state all the facts found in the record of the case. Detailed evidentiary matters, as the RTC decreed, is best reserved for the full-blown trial of the case, not in the preliminary incidents leading up to the trial.

Additionally, no less than the Constitution itself provides that it is the **decision** that should state clearly and distinctly the **facts and the law** on which it is based. In resolving a **motion**, the court is only required to state clearly and distinctly the **reasons** therefor. A contrary system would only prolong the proceedings, which was precisely what happened to this case. Hence, we uphold the validity of the RTC's order as it correctly stated the reason for its denial of the petitioners' Urgent Motion for Regular Preliminary Investigation.

- **Civil Aviation Authority of the Philippines Employees' Union (CAAP-EU) Vs. Civil Aviation Authority of the Philippines (CAAP), et al.** G.R. No. 190120. November 11, 2014

- Well entrenched in this jurisdiction is the rule that the power to abolish a public office is lodged with the legislature. This proceeds from the legal precept that the power to create includes the power to destroy. A public office is created either by the Constitution, by statute, or by authority of law. Thus, except where the office was created by the Constitution itself, it may be abolished by the same legislature that brought it into existence.⁷²
- Indubitably, this is the case at hand. The legislature through R.A. No. 9497 abolished the ATO as explicitly stated in Sections 4 and 85 thereof, viz:
- SEC. 4. *Creation of the Authority.* –

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There is hereby created an independent regulatory body with quasi-judicial and quasi-legislative powers and possessing corporate attributes to be known as the Civil Aviation Authority of the Philippines (CAAP), hereinafter referred to as the "Authority", attached to the Department of Transportation and Communications (DOTC) for the purpose of policy coordination. **For this purpose, the existing Air Transportation Office created under the provisions of Republic Act No. 776, as amended, is hereby abolished.**

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- x x x x
-
- SEC. 85. *Abolition of the Air Transportation Office.* - **The Air Transportation Office (ATO) created under Republic Act No. 776, a sectoral office of the Department of Transportation and Communications (DOTC), is hereby abolished.**
-
- All powers, duties and rights vested by law and exercised by the ATO is hereby transferred to the Authority.
-
- All assets, real and personal properties, funds and revenues owned by or vested in the different offices of the ATO are transferred to the Authority. All contracts, records and documents relating to the operations of the abolished agency and its offices and branches are likewise transferred to the Authority. Any real property owned by the national government or government-owned corporation or authority which is being used and utilized as office or facility by the ATO shall be transferred and titled in favor of the Authority. (Emphasis supplied)
-
- Verily, the question whether a law abolishes an office is a question of

legislative intent. In this case, petitioner tries to raise doubts as to the real intention of Congress. However, there should not be any controversy if there is an explicit declaration of abolition in the law itself.⁷³ For where a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempt to interpret. *Verba legis non est recedendum, index animi sermo est.* There should be no departure from the words of the statute, for speech is the index of intention.⁷⁴ The legislature, through Sections 4 and 85 of R.A. No. 9497, has so clearly provided. As the Court merely interprets the law as it is, we have no discretion to give statutes a meaning detached from the manifest intent and language thereof.⁷⁵

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- It is worth mentioning that this is not the first time for this Court to rule regarding the abolition of the ATO and the emergence of the CAAP by virtue of R.A. No. 9497. Holding that the CAAP, as the legal successor of the ATO, is liable to respondents therein for obligations incurred by ATO, this Court in *Air Transportation Office v. Ramos*,⁷⁶ in no uncertain terms, held that the ATO was abolished by virtue of Sections 4 and 85 of R.A. No. 9497.
-
- Thus, we find petitioner's assertion that the real intention of R.A. No. 9497 was merely the reorganization of the ATO and not its abolition devoid of merit.

Correlatively, we resolve the second issue in the negative.

For the ATO employees' security of tenure to be impaired, the abolition of the ATO must be done in bad faith.

At this juncture, our ruling in *Kapisanan*

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*ng mga Kawani ng Energy Regulatory Board v. Barin*⁷⁷ is instructive, to wit:

A valid order of abolition must not only come from a legitimate body, it must also be made in good faith. An abolition is made in good faith when it is not made for political or personal reasons, or when it does not circumvent the constitutional security of tenure of civil service employees. Abolition of an office may be brought about by reasons of economy, or to remove redundancy of functions, or a clear and explicit constitutional mandate for such termination of employment. Where one office is abolished and replaced with another office vested with similar functions, the abolition is a legal nullity. When there is a void abolition, the incumbent is deemed to have never ceased holding office.

We have also held that, other than the aforestated reasons of economy, making the bureaucracy more efficient is also indicative of the exercise of good faith in, and a valid purpose for, the abolition of an office.⁷⁸

The purpose for the abolition of the ATO is clearly manifested in Section 2 of R.A. No. 9497:

SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the State **to provide safe and efficient air transport and regulatory services in the Philippines** by providing for the creation of a civil aviation authority with jurisdiction over the restructuring of the civil aviation system, the promotion, development and regulation of the technical, operational, safety, and aviation security functions under the civil aviation authority. (Emphasis supplied)

It cannot be disregarded that in January 2008, before the enactment of R.A. No. 9497, the Philippines was again downgraded by the FAA to a Category 2 status because of air safety regulations,

practices and personnel which fell below the ICAO's standards. Hence, it is but reasonable to state that the purpose for the abolition of the ATO, as posited by petitioner itself, was *"to create a much more effective Agency in order to address the problems that go along with the fast emerging developments in the field of the globally-competitive aviation industry."*⁷⁹

On the other hand, circumstances evidencing bad faith are enumerated in Section 2 of R.A. No. 6656 which provides:

SEC. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when, pursuant to a *bona fide* reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:**

- (a) Where there is a significant increase in the of the department or agency concerned;
- (b) Where an office is abolished and another created;
- (c) Where incumbents are replaced by those of performance and merit;
- (d) Where there is a reclassification of offices in reclassified offices perform substantially the
- (e) Where the removal violates the order of separation (if supplied)

Petitioner posits that abolition of an office cannot have the effect of removing an officer holding it if the office is restored under another name. However, we find no bad faith in the abolition of the ATO as the latter was not simply restored in another name in the person of the CAAP. Thus, we compare the ATO and the CAAP.

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ATO was merely a sectoral office of the Department of Transportation and Communications (DOTC) and as such acted within the supervision of the latter and budgeted under it. As Section 2 of E.O. No. 125-A, series of 1987 deleted Section 12⁸⁰ of E.O. No. 125, series of 1987 which delineated the functions of the former BAT, we rely on R.A. No. 776 in citing the functions of the CAA which were succeeded by the ATO through the powers and duties of the CAA Administrator.

On the other hand, the CAAP is an independent regulatory body with quasi-judicial and quasi-legislative powers and possessing corporate attributes,⁸¹ having an authorized capital stock of fifty billion pesos (P50,000,000,000.00) which shall be fully subscribed by the Republic of the Philippines.⁸² It is attached to the DOTC only for the purpose of policy coordination.⁸³ While the Director General is responsible for the exercise of all powers and the discharge of all duties including the control over all personnel and activities of the CAAP,⁸⁴ the latter's corporate powers are vested in its Board of Directors.⁸⁵ It enjoys fiscal autonomy to fund its operations.⁸⁶ With quasi-judicial powers, the Director General has the power and authority to inspect aviation equipment and also from time to time, for any reason, re-inspect or reexamine the same.⁸⁷ If, as a result of any such re-inspection or reexamination, or if, as a result of any other investigation made by the Director General, he determines that safety in civil aviation or commercial air transport and the public interest requires, the Director General may issue an order amending, modifying, suspending or revoking, in whole or in part, any airworthiness certificate, airman certificate, air operator certificate or certificate for any airport, school, or approved maintenance organization.⁸⁸ Possessing quasi-legislative powers, CAAP's Board may authorize the Director General to issue or amend rules of procedures and practice as may be required, or issue and adopt rules and

regulations and other issuances of the ICAO.⁸⁹ Vested with corporate attributes, said Board, through a resolution, may empower the Director General to enter into, make and execute contracts of any kind with any person, firm, or public or private corporation.⁹⁰

Moreover, notable under R.A. No. 9497 is the establishment of permanent offices like the (a) Air Traffic Service; (b) Air Navigation Service; (c) Aerodrome Development and Management Service; (d) Administrative and Finance Service;⁹¹ (e) the Office of Enforcement and Legal Service;⁹² and (f) the Flight Standards Inspectorate Service.⁹³ The law also mandated the Director General to organize the Aircraft Accident Investigation and Inquiry Board.⁹⁴

Furthermore, R.A. No. 9497 manifested the adherence of the country to, and the adoption of, the Chicago Convention and ICAO standards⁹⁵ and other international conventions⁹⁶ with respect to matters relating to civil aviation.

After comparing the features and functions of the ATO and the CAAP, we find that CAAP indeed assumed the functions of the ATO. However, the overlap in their functions does not mean there was no valid abolition of the ATO.⁹⁷ The CAAP has new and expanded features and functions which are intended to meet the growing needs of a globally competitive civil aviation industry, adherent to internationally recognized standards.

To be precise, the case before us deals only with the issue of abolition and not removal. Besides, petitioner has failed to provide in detail any ATO personnel who had been removed from office on account of R.A. No. 9497.

Based on the premise that there was a valid abolition of ATO, in the absence of any bad faith, we rule that the ATO employees' right to security of tenure was not violated.

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The Court cannot agree to petitioner's supposition that there should be automatic absorption of all ATO employees to the CAAP. Indeed, there is no such thing as a vested interest in a public office, let alone an absolute right to hold it. Except 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 or its salary.¹⁰⁰ Public office is not property but a "public trust or agency." While their right to due process may be relied upon by public officials to protect their security of tenure which, in a limited sense, is analogous to property,¹⁰¹ such fundamental right to security of tenure cannot be invoked against a valid abolition of office effected by the legislature itself.

A petition for prohibition will prosper only if grave abuse of discretion is manifested. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.¹⁰²

We hold that there is no grave abuse of discretion when Section 60 of the IRR provided for a "hold-over" status on the part of ATO employees.

A careful perusal of Section 86 of R.A. No. 9497 reveals that the transfer of ATO personnel, unless they opted to retire from the service, to the CAAP implies the application of the hold-over principle. There being no express, much less implied prohibition of the application of the hold-over principle in R.A. No. 9497 *per se*, such proviso in the latter's IRR does not amount to grave abuse of discretion.

In *Lecaroz v. Sandiganbayan*,¹⁰³ we held:

Absent an express or implied constitutional or statutory provision to the

contrary, an officer is entitled to stay in office until his successor is appointed or chosen and has qualified. **The legislative intent of not allowing holdover must be clearly expressed or at least implied in the legislative enactment, otherwise it is reasonable to assume that the law-making body favors the same.**

The reason for the application of the hold-over principle is clearly stated also in *Lecaroz*,¹⁰⁴ to wit:

Indeed, **the law abhors a vacuum in public offices**, and courts generally indulge in the strong presumption against a legislative intent to create, by statute, a condition which may result in an executive or administrative office becoming, for any period of time, wholly vacant or unoccupied by one lawfully authorized to exercise its functions. **This is founded on obvious considerations of public policy, for the principle of holdover is specifically intended to prevent public convenience from suffering because of a vacancy and to avoid a hiatus in the performance of government functions.**

Indeed, the application of the hold-over principle preserves continuity in the transaction of official business and prevents a hiatus in government. Thus, cases of extreme necessity justify the application of the hold-over principle.¹⁰⁵

Petitioner itself states and this Court, without doubt, agrees that the CAAP is an agency highly imbued with public interest. It is of rational inference that a hiatus therein would be disastrous not only to the economy, tourism and trade of the country but more so on the safety and security of aircraft passengers, may they be Filipino citizens or foreign nationals.

A final note.

On April 9, 2014, based on a March 2014 FAA review of the CAAP, the FAA opined

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that the Republic of the Philippines complies with the international safety standards set by the ICAO and has been granted a Category 1 rating.¹⁰⁶ The European Union also lifted the ban on Philippine carriers.¹⁰⁷ Thus, it cannot be ignored that the creation of the CAAP through R.A. No. 9497, in one way or another, helped in upgrading the country's status in the arena of civil aviation. Absent any violation of the Constitution and the other pertinent laws, rules and regulations, this Court would not hinder in the continuous growth and improvement of the civil aviation industry of the country.

• **Edmund Sydeco y Sionzon Vs. People of the Philippines** G.R. No. 202692. November 12, 2014

- Peace officers and traffic enforcers, like other public officials and employees are bound to discharge their duties with prudence, caution and attention, which careful men usually exercise in the management of their own affairs.²²
-
- In the case at bar, the men manning the checkpoint in the subject area and during the period material appeared not to have performed their duties as required by law, or at least fell short of the norm expected of peace officers. They spotted the petitioner's purported swerving vehicle. They then signaled him to stop which he obeyed. But they did not demand the presentation of the driver's license or issue any ticket or similar citation paper for traffic violation as required under the particular premises by Sec. 29 of RA 4136, which specifically provides:
-
- **SECTION 29. Confiscation of Driver's License.** - Law enforcement and peace officers of other agencies duly deputized by the Director shall, in apprehending a driver for any

violation of this Act or any regulations issued pursuant thereto, or of local traffic rules and regulations x x x confiscate the license of the driver concerned and issue a receipt prescribed and issued by the Bureau therefor which shall authorize the driver to operate a motor vehicle for a period not exceeding seventy-two hours from the time and date of issue of said receipt. The period so fixed in the receipt shall not be extended, and shall become invalid thereafter, x x x (Emphasis added.)

-
- Instead of requiring the vehicle's occupants to answer one or two routinary questions out of respect to what the Court has, in *Abenes v. Court of Appeals*,²³ adverted to as the motorists' right of "free passage without [intrusive] interruption," P/Insp. Aguilar, et al. engaged petitioner in what appears to be an unnecessary conversation and when utterances were made doubtless not to their liking, they ordered the latter to step out of the vehicle, concluding after seeing three (3) empty cases of beer at the trunk of the vehicle that petitioner was driving under the influence of alcohol. Then petitioner went on with his "plain view search" line. The remark apparently pissed the police officers off no end as one of them immediately lashed at petitioner and his companions as "mga lasing" (drunk) and to get out of the vehicle, an incongruous response to an otherwise reasonable plea.

In fine, at the time of his apprehension, or when he was signaled to stop, to be precise, petitioner has not committed any crime or suspected of having committed one. "Swerving," as ordinarily understood, refers to a movement wherein a vehicle shifts from a lane to another or to turn aside from a direct course of action or

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movement.²⁵ The act may become punishable when there is a sign indicating that swerving is prohibited or where swerving partakes the nature of reckless driving, a concept defined under RA 4136, as:

SECTION 48. Reckless Driving. - No person shall operate a motor vehicle on any highway recklessly or without reasonable caution considering the width, traffic, grades, crossing, curvatures, visibility and other conditions of the highway and the conditions of the atmosphere and weather, or so as to endanger the property or the safety or rights of any person or so as to cause excessive or unreasonable damage to the highway.

Swerving is not necessarily indicative of imprudent behavior let alone constitutive of reckless driving. To constitute the offense of reckless driving, the act must be something more than a mere negligence in the operation of a motor vehicle, and a willful and wanton disregard of the consequences is required.²⁶ Nothing in the records indicate that the area was a "no swerving or overtaking zone." Moreover, the swerving incident, if this be the case, occurred at around 3:00 a.m. when the streets are usually clear of moving vehicles and human traffic, and the danger to life, limb and property to third persons is minimal. When the police officers stopped the petitioner's car, they did not issue any ticket for swerving as required under Section 29 of RA 4136. Instead, they inspected the vehicle, ordered the petitioner and his companions to step down of their pick up and concluded that the petitioner was then drunk mainly because of the cases of beer found at the trunk of the vehicle

Going over the records, it is fairly clear that what triggered the confrontational stand-off between the police team, on one hand, and petitioner on the other, was the latter's refusal to get off of the vehicle for a body and vehicle search juxtaposed by his insistence on a plain view search only.

Petitioner's twin gestures cannot plausibly be considered as resisting a lawful orders.²⁸ He may have sounded boorish or spoken crudely at that time, but none of this would make him a criminal. It remains to stress that the petitioner has not, when flagged down, committed a crime or performed an overt act warranting a reasonable inference of criminal activity. He did not try to avoid the road block established. He came to a full stop when so required to stop. The two key elements of resistance and serious disobedience punished under Art. 151 of the RPC are: (1) That a person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender; and (2) That the offender resists or seriously disobeys such person or his agent.²⁹

There can be no quibble that P/Insp. Aguilar and his apprehending team are persons in authority or agents of a person in authority manning a legal checkpoint. But surely petitioner's act of exercising one's right against unreasonable searches³⁰ to be conducted in the middle of the night cannot, in context, be equated to disobedience let alone resisting a lawful order in contemplation of Art. 151 of the RPC. As has often been said, albeit expressed differently and under dissimilar circumstances, the vitality of democracy lies not in the rights it guarantees, but in the courage of the people to assert and use them whenever they are ignored or worse infringed.³¹ Moreover, there is, to stress, nothing in RA 4136 that authorized the checkpoint-manning policemen to order petitioner and his companions to get out of the vehicle for a vehicle and body search. And it bears to emphasize that there was no reasonable suspicion of the occurrence of a crime that would allow what jurisprudence refers to as a "stop and frisk" action. As SPO4 Bodino no less testified, the only reason why they asked petitioner to get out of the vehicle was not because he has committed a crime, but because of their intention to invite him to Station 9 so he could rest before he resumes driving. But instead of a tactful

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invitation, the apprehending officers, in an act indicative of overstepping of their duties, dragged the petitioner out of the vehicle and, in the process of subduing him, pointed a gun and punched him on the face. None of the police officers, to note, categorically denied the petitioner's allegation about being physically hurt before being brought to the Ospital ng Maynila to be tested for intoxication. What the policemen claimed was that it took the three (3) of them to subdue the fifty-five year old petitioner. Both actions were done in excess of their authority granted under RA 4136. They relied on the medical certificate issued by Dr. Balucating attesting that petitioner showed no physical injuries. The medical certificate was in fact challenged not only because the petitioner insisted at every turn that he was not examined, but also because Dr. Balucating failed to testify as to its content. Ms. Delos Santos, the medical record custodian of the Ospital ng Maynila, testified, but only to attest that the hospital has a record of the certificate

In sum, the MeTC, as echoed by RTC and CA later, did not rely on the medical certificate Dr. Balucating issued on June 12, 2006 as to petitioner's intoxicated state, as the former was not able to testify as to its contents, but on the testimony of SPO4 Bodino, on the assumption that he and his fellow police officers were acting in the regular performance of their duties. It cannot be emphasized enough that smelling of liquor/alcohol and be under the influence of liquor are differing concepts. Corollarily, it is difficult to determine with legally acceptable certainty whether a person is drunk in contemplation of Sec. 56(f) of RA 4136 penalizing the act of driving under the influence of alcohol. The legal situation has of course changed with the approval in May 2013 of the *Anti-Drunk and Drugged Driving Act of 2013* (RA 10586) which also penalizes driving under the influence of alcohol (DUIA),³³ a term defined under its Sec. 3(e) as the "act of operating a motor vehicle while the driver's blood alcohol concentration level

has, after being subjected to a breath analyzer test reached the level of intoxication as established jointly by the [DOH], the NAPOLCOM] and the [DOTC]. And under Sec. 3(g) of the IRR of RA 10586, a driver of a private motor vehicle with gross vehicle weight not exceeding 4,500 kilograms who has BAC [blood alcohol concentration] of 0.05% or higher shall be conclusive proof that said driver is driving under the influence of alcohol. Viewed from the prism of RA 10586, petitioner cannot plausibly be convicted of driving under the influence of alcohol for this obvious reason: he had not been tested beyond reasonable doubt, let alone conclusively, for reaching during the period material the threshold level of intoxication set under the law for DUIA, i.e., a BAC of 0.05% or over. Under Art. 22 of the RPC,³⁴ penal laws shall be given retroactive insofar as they are favorable to the accused. Section 19 of RA 10586 expressly modified Sec. 56(f) of RA 4136. Verily, even by force of Art. 22 of the RPC in relation to Sec. 3(e) of RA 10586 alone, petitioner could very well be acquitted for the charge of driving under the influence of alcohol, even if the supposed inculpatory act occurred in 2006.

Parenthetically, the Office of the City Prosecutor of Manila, per its *Resolution*³⁵ of November 21, 2006 found, on the strength of another physical examination from the same Ospital ng Maynila conducted by Dr. Devega on the petitioner on the same day, June 12, but later hour, probable cause for slight physical injuries against P/Insp. Aguilar et al. That finding to be sure tends to indicate that the police indeed manhandled the petitioner and belied, or at least cancelled out, the purported Dr. Balucating's finding as to petitioner's true state.

The Court must underscore at this juncture that the petitioner, after the unfortunate incident, lost no time in commencing the appropriate criminal charges against the police officers and Dr. Balucating, whom he accused of issuing Exh. "F" even without examining him. The

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element of immediacy in the filing lends credence to petitioner's profession of innocence, particularly of the charge of disobeying lawful order or resisting arrest. Certainly not to be overlooked is the fact that petitioner, in so filing his complaint, could not have possibly been inspired by improper motive, the police officers being complete strangers to him and vice versa. Withal, unless he had a legitimate grievance, it is difficult to accept the notion that petitioner would expose himself to harm's way by filing a harassment criminal suit against policemen.

Conviction must come only after it survives the test of reason.³⁶ It is thus required that every circumstance favoring one's innocence be duly taken into account.³⁷ Given the deviation of the police officers from the standard and usual procedure in dealing with traffic violation by perceived drivers under the influence of alcohol and executing an arrest, the blind reliance and simplistic invocation by the trial court and the CA on the presumption of regularity in the conduct of police duty is clearly misplaced. As stressed in *People v. Ambrosio*,³⁸ the presumption of regularity is merely just that, a presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. And to be sure, this presumption alone cannot preponderate over the presumption of innocence that prevails if not overcome by proof that obliterates all doubts as to the offender's culpability. In the present case, the absence of conclusive proof being under the influence of liquor while driving coupled with the forceful manner the police yanked petitioner out of his vehicle argues against or at least cast doubt on the finding of guilt for drunken driving and resisting arrest.

In case of doubt as to the moral certainty of culpability, the balance tips in favor of innocence or at least in favor of the milder form of criminal liability. This is as it should be. For, it is basic, almost

elementary, that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its evidence and not on the weakness of the defense.

- **Retired SPO4 Bienvenido Laud Vs. People of the Philippines** G.R. No. 199032. November 19, 2014

• The Issues Before the Court

- The issues for the Court's resolution are as follows: (a) whether the administrative penalties imposed on Judge Peralta invalidated Search Warrant No. 09-14407; (b) whether the Manila-RTC had jurisdiction to issue the said warrant despite non-compliance with the compelling reasons requirement under Section 2, Rule 126 of the Rules of Court; (c) whether the requirements of probable cause and particular description were complied with and the one-specific-offense rule under Section 4, Rule 126 of the Rules of Court was violated; and (d) whether the applicant for the search warrant, i.e., the PNP, violated the rule against forum shopping.

The Court's Ruling

The petition has no merit.

A. Effect of Judge Peralta's Administrative Penalties.

Citing Section 5, Chapter III of A.M. No. 03-8-02-SC which provides that "[t]he 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 Search Warrant No. 09-14407 in view of the Court's Resolution in *Dee C. Chuan & Sons, Inc. v. Judge Peralta*³⁴ wherein he was administratively penalized with fines of P15,000.00 and P5,000.00.³⁵

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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 No. 09-14407 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*³⁶ 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,

The treatment of a *de facto* officer's acts is premised on the reality that third persons cannot always investigate the right of one assuming to hold an important office and, as such, have a right to assume that officials apparently qualified and in office are legally such.³⁸ Public interest demands that acts of persons holding, under color of title, an office created by a valid statute be, likewise, deemed valid insofar as the public – as distinguished from the officer in question – is concerned.³⁹ Indeed, it is far more cogently acknowledged that the *de facto* doctrine has been formulated, not for the protection of the *de facto* officer principally, but rather for the protection of the public and individuals who get involved in the official acts of persons discharging the duties of an office without being lawful officers.⁴⁰

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.⁴¹

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.⁴² Finally, Judge Peralta's actual physical possession of the said office is presumed to be in good faith, as the contrary was not established.⁴³ Accordingly, Judge Peralta can be considered to have acted as a *de facto* officer when he issued Search Warrant No. 09-14407, hence, treated as valid as if it was issued by a *de jure* officer suffering no administrative impediment.

Jurisdiction of the Manila-RTC to Issue Search Warrant No. 09-14407; Exception to the Compelling Reasons Requirement Under Section 2, Rule 126 of the Rules of Court.

Section 12, Chapter V of A.M. No. 03-8-02-SC states the requirements for the issuance of search warrants in **special criminal cases** by the **RTCs of Manila and Quezon City**. These special criminal cases pertain to those "involving **heinous crimes**, illegal gambling, illegal possession of firearms and ammunitions, as well as violations of the Comprehensive Dangerous Drugs Act of 2002, the Intellectual Property Code, the Anti-Money Laundering Act of 2001, the Tariff and Customs Code, as amended, and other relevant laws that may hereafter be enacted by Congress, and included herein by the Supreme Court." Search warrant applications for such cases may be filed by "the National Bureau of Investigation (NBI), the **Philippine National Police (PNP)** and the Anti-Crime Task Force

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(ACTAF)," and "personally endorsed by the heads of such agencies." As in ordinary search warrant applications, they "shall particularly describe therein the places to be searched and/or the property or things to be seized as prescribed in the Rules of Court." "The Executive Judges [of these RTCs] and, whenever they are on official leave of absence or are not physically present in the station, the **Vice-Executive Judges**" are authorized to act on such applications and "shall issue the warrants, if justified, **which may be served in places outside the territorial jurisdiction of the said courts.**"

The Court observes that all the above-stated requirements were complied with in this case.

As the records would show, the search warrant application was filed before the Manila-RTC by the PNP and was endorsed by its head, PNP Chief Jesus Ame Versosa,⁴⁴ particularly describing the place to be searched and the things to be seized (as will be elaborated later on) in connection with the heinous crime of Murder.⁴⁵ Finding probable cause therefor, Judge Peralta, in his capacity as 2nd Vice-Executive Judge, issued Search Warrant No. 09-14407 which, as the rules state, may be served in places outside the territorial jurisdiction of the said RTC.

Notably, the fact that a search warrant application involves a "special criminal case" excludes it from the compelling reason requirement under Section 2, Rule 126 of the Rules of Court which provides: shall

SEC. 2. Court where application for search warrant shall be filed. — An application for search warrant shall be filed with the following:

a) Any court within whose territorial jurisdiction a crime was committed.

b) For compelling reasons stated in the application, any court within the judicial region where the crime was

committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending. (*Emphasis supplied*)

As explicitly mentioned in Section 12, Chapter V of A.M. No. 03-8-02-SC, the rule on search warrant applications before the Manila and Quezon City RTCs for the above-mentioned special criminal cases "shall be an exception to Section 2 of Rule 126 of the Rules of Court." Perceptibly, the fact that a search warrant is being applied for in connection with a special criminal case as above-classified already presumes the existence of a compelling reason; hence, any statement to this effect would be superfluous and therefore should be dispensed with. By all indications, Section 12, Chapter V of A.M. No. 03-8-02-SC allows the Manila and Quezon City RTCs to issue warrants to be served in places outside their territorial jurisdiction for as long as the parameters under the said section have been complied with, as in this case. Thus, on these grounds, the Court finds nothing defective in the preliminary issuance of Search Warrant No. 09-14407. Perforce, the RTC-Manila should not have overturned it.

Compliance with the Constitutional Requirements for the Issuance of Search Warrant No. 09-14407 and the One-Specific-Offense Rule Under Section 4, Rule 126 of the Rules of Court.

In order to protect the people's right against unreasonable searches and seizures, Section 2, Article III of the 1987 Philippine Constitution (Constitution) provides that no search warrant shall issue except upon **probable cause** to be **determined personally by the judge** after examination under oath or affirmation of the complainant and the

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witnesses he may produce, and **particularly describing the place to be searched and the persons or things to be seized:**

SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Complementarily, Section 4, Rule 126 of the Rules of Court states that a search warrant shall not be issued except upon probable cause **in connection with one specific offense:**

SEC. 4. *Requisites for issuing search warrant.* - A search warrant shall not issue **except upon probable cause in connection with one specific offense** to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. (*Emphasis supplied*)

In this case, the existence of probable cause for the issuance of Search Warrant No. 09-14407 is evident from the first-hand account of Avasola who, in his deposition, stated that he personally witnessed the commission of the afore-stated crime and was, in fact, part of the group that buried the victims:

Verily, the facts and circumstances established from the testimony of Avasola, who was personally examined by Judge Peralta, sufficiently show that more likely than not the crime of Murder of six (6)

persons had been perpetrated and that the human remains in connection with the same are in the place sought to be searched.

In light of the foregoing, the Court finds that the quantum of proof to establish the existence of probable cause had been met. That a "considerable length of time" attended the search warrant's application from the crime's commission does not, by and of itself, negate the veracity of the applicant's claims or the testimony of the witness presented. As the CA correctly observed, the delay may be accounted for by a witness's fear of reprisal and natural reluctance to get involved in a criminal case.⁵⁰ Ultimately, in determining the existence of probable cause, the facts and circumstances must be personally examined by the judge in their totality, together with a judicious recognition of the variable complications and sensibilities attending a criminal case. To the Court's mind, the supposed delay in the search warrant's application does not dilute the probable cause finding made herein. In fine, the probable cause requirement has been sufficiently met.

The Court similarly concludes that there was compliance with the constitutional requirement that there be a particular description of "the place to be searched and the persons or things to be seized."

"[A] description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community. Any designation or description known to the locality that points out the place to the exclusion of all others, and on inquiry leads the officers unerringly to it, satisfies the constitutional requirement."⁵¹

Search Warrant No. 09-14407 evidently complies with the foregoing standard since it particularly describes the place to be searched, namely, the three (3) caves located inside the Laud Compound in

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Purok 3, Barangay Ma-a, Davao City:

You are hereby commanded to make an immediate search at any time [of] the day of the premises above describe[d] particularly **the three (3) caves (as sketched) inside the said Laud Compound, Purok 3, Brgy. Ma-a, Davao City** and forthwith seize and take possession of **the remains of six (6) victims who were killed and buried in the just said premises.**

x x x x⁵² (Emphases supplied)

For further guidance in its enforcement, the search warrant even made explicit reference to the sketch⁵³ contained in the application. These, in the Court's view, are sufficient enough for the officers to, with reasonable effort, ascertain and identify the place to be searched, which they in fact did.

The things to be seized were also particularly described, namely, the remains of six (6) victims who were killed and buried in the aforesaid premises. Laud's posturing that human remains are not "personal property" and, hence, could not be the subject of a search warrant deserves scant consideration. Section 3, Rule 126 of the Rules of Court states:

SEC. 3. *Personal property to be seized.* – A search warrant may be issued for the search and seizure of **personal property**:

(a) **Subject of the offense;**

(b) Stolen or embezzled and other proceeds, or fruits of the offense; or

(c) Used or intended to be used as the means of committing an offense. (Emphases supplied)

"Personal property" in the foregoing context actually refers to the thing's mobility, and not to its capacity to be

owned or alienated by a particular person. Article 416 of the Civil Code,⁵⁴ which Laud himself cites,⁵⁵ states that in general, all things which can be transported from place to place are deemed to be personal property. Considering that human remains can generally be transported from place to place, and considering further that they qualify under the phrase "subject of the offense" given that they prove the crime's *corpus delicti*,⁵⁶ it follows that they may be valid subjects of a search warrant under the above-cited criminal procedure provision.

Neither does the Court agree with Laud's contention that the term "human remains" is too all-embracing so as to subvert the particular description requirement. As the Court sees it, the description points to no other than the things that bear a direct relation to the offense committed, *i.e.*, of Murder. It is also perceived that the description is already specific as the circumstances would ordinarily allow given that the buried bodies would have naturally decomposed over time. These observations on the description's sufficient particularity square with the Court's pronouncement in *Bache and Co., (Phil.), Inc. v. Judge Ruiz*,⁵⁷ wherein it was held:

A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow (*People v. Rubio*, 57 Phil. 384 [1932]); or when the description expresses a conclusion of fact — not of law — by which the warrant officer may be guided in making the search and seizure (*idem.*, dissent of Abad Santos, J.); or **when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued** (Sec. 2, Rule 126, Revised Rules of Court) x x x If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence, other than those articles, to prove the said offense; and the articles

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subject of search and seizure should come in handy merely to strengthen such evidence. (Emphases supplied)⁵⁸

Consequently, the Court finds that the particular description requirement – both as to the place to be searched and the things to be seized – had been complied with.

Finally, the Court finds no violation of the one-specific-offense rule under Section 4, Rule 126 of the Rules of Court as above-cited which, to note, was intended to prevent the issuance of scattershot warrants, or those which are issued for more than one specific offense. The defective nature of scatter-shot warrants was discussed in the case of *People v. CA*⁵⁹ as follows:

There is no question that the search warrant did not relate to a specific offense, in violation of the doctrine announced in *Stonehill v. Diokno* and of Section 3 [now, Section 4] of Rule 126 providing as follows:

SEC. 3. *Requisites for issuing search warrant.* — A search warrant shall not issue but upon probable cause *in connection with one specific offense* to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized.

Significantly, the petitioner has not denied this defect in the search warrant and has merely said that there was probable cause, omitting to continue that it was in connection with one specific offense. He could not, of course, for the warrant was a scatter-shot warrant that could refer, in Judge Dayrit's own words, "to robbery, theft, qualified theft or estafa." On this score alone, the search warrant was totally null and void and was correctly declared to be so by the very judge who had issued it.⁶⁰

In *Columbia Pictures, Inc. v. CA*,⁶¹ the Court, however, settled that a search

warrant that covers several counts of a certain specific offense does not violate the one-specific-offense rule, viz.:

That there were **several counts of the offense** of copyright infringement and the search warrant uncovered several contraband items in the form of pirated video tapes is **not to be confused with the number of offenses charged**. The search warrant herein issued does not violate the one-specific-offense rule. (Emphasis supplied)⁶²

Hence, given that Search Warrant No. 09-14407 was issued only for one specific offense – that is, of Murder, albeit for six (6) counts – it cannot be said that Section 4, Rule 126 of the Rules of Court had been violated.

- **Social Justice Society (SJS) Officers etc. Vs. Alfredo S. Lim etc./Jose L. Atienza, Jr., et al. Vs. Mayor Alfredo S. Lim, et al./Chevron Phil., Inc., et al., Intervenors** G.R. No. 187836/G.R. No. 187916. November 25, 2014 Concurring and Dissenting Opinion **J. Leonen**

• **Our Ruling**

- We see no reason why Ordinance No. 8187 should not be stricken down insofar as the presence of the oil depots in Pandacan is concerned.

Requisites of judicial review

For a valid exercise of the power of judicial review, the following requisites shall concur: (1) the existence of a legal controversy; (2) legal standing to sue of the party raising the constitutional question; (3) a plea that judicial review be exercised at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.¹⁰⁵

Only the first two requisites are put in issue in these cases.

On the matter of the existence of a legal controversy, we reject the contention that the petitions consist of bare allegations

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based on speculations, surmises, conjectures and hypothetical grounds.

The Court declared Ordinance No. 8027 valid and constitutional and ordered its implementation. With the passing of the new ordinance containing the contrary provisions, it cannot be any clearer that here lies an actual case or controversy for judicial review. The allegation on this, alone, is sufficient for the purpose.

The second requisite has already been exhaustively discussed.

Proof of identification required in the notarization of the verification and certification against forum shopping in G.R. No. 187916

At the bottom of the Verification and Certification against Forum Shopping of the petition in G.R. No. 187916 is the statement of the notary public to the effect that the affiant, in his presence and after presenting "an integrally competent proof of identification with signature and photograph,"¹⁰⁶ signed the document under oath.

Citing Sec. 163 of the Local Government Code,¹⁰⁷ which provides that an individual acknowledging any document before a notary public shall present his Community Tax Certificate (CTC), Chevron posits that the petitioner's failure to present his CTC rendered the petition fatally defective warranting the outright dismissal of the petition.

We disagree.

The verification and certification against forum shopping are governed specifically by Sections 4 and 5, Rule 7 of the Rules of Court.

Section 4 provides that a pleading, when required to be verified, shall be treated as an unsigned pleading if it lacks a proper verification while Section 5 requires that the certification to be executed by the plaintiff or principal party be under oath.

These sections, in turn, should be read together with Sections 6 and 12, Rule 2 of the 2004 Rules on Notarial Practice.

Section 6¹⁰⁸ of the latter Rules, specifically, likewise provides that any competent evidence of identity specified under Section 12 thereof may now be presented before the notary public, SEC. 12. Competent Evidence of Identity. - The phrase "competent evidence of identity" refers to the identification of an individual based on:

- (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disable Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or

IV

It is the removal of the danger to life not the mere subdual of risk of catastrophe, that we saw in and made us favor Ordinance No. 8027. That reason, unaffected by Ordinance No. 8187, compels the affirmance of our Decision in G.R. No. 156052.

In striking down the contrary provisions of

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the assailed Ordinance relative to the continued stay of the oil depots, we follow the same line of reasoning used in G.R. No. 156052, to wit:

Ordinance No. 8027 was enacted "for the purpose of promoting sound urban planning, ensuring health, public safety and general welfare" of the residents of Manila. The *Sanggunian* was impelled to take measures to protect the residents of Manila from catastrophic devastation in case of a terrorist attack on the Pandacan Terminals. Towards this objective, the *Sanggunian* reclassified the area defined in the ordinance from industrial to commercial.

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, we hold that Ordinance No. 8187 in relation to the Pandacan Terminals is invalid and unconstitutional.

Neither is it necessary to discuss at length the test of police power against the assailed ordinance. Suffice it to state that the objective adopted by the *Sangguniang Panlungsod* to promote the constituents' general welfare in terms of economic benefits cannot override the very basic rights to life, security and safety of the people.

In G.R. No. 156052, the Court explained:

Essentially, the oil companies are fighting for their right to property. They allege that they stand to lose billions of pesos if forced to relocate. However, based on the hierarchy of constitutionally protected rights, the right to life enjoys precedence over the right to property. The reason is obvious: life is irreplaceable, property is not. When the state or LGU's exercise of police power clashes with a few

individuals' right to property, the former should prevail.¹³⁵

We thus conclude with the very final words in G.R. No. 156052:

On Wednesday, January 23, 2008, a defective tanker containing 2,000 liters of gasoline and 14,000 liters of diesel exploded in the middle of the street a short distance from the exit gate of the Pandacan Terminals, causing death, extensive damage and a frightening conflagration in the vicinity of the incident. Need we say anything about what will happen if it is the estimated 162 to 211 million liters [or whatever is left of the 26 tanks] of petroleum products in the terminal complex will blow up?¹³⁶

- **Emilio Ramon "E.R." P. Ejercito Vs. Hon. Commission on Elections, et al.** G.R. No. 212398. November 25, 2014

The petition filed by San Luis against Ejercito is for the latter's disqualification and prosecution for election offense

The purpose of a disqualification proceeding is to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws.⁵⁴ A petition to disqualify a candidate may be filed pursuant to Section 68 of the OEC, which states:

SEC. 68. **Disqualifications.** -- Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having: (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be

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disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

The prohibited acts covered by Section 68 (e) refer to election campaign or partisan political activity outside the campaign period (Section 80); removal, destruction or defacement of lawful election propaganda (Section 83); certain forms of election propaganda (Section 85); violation of rules and regulations on election propaganda through mass media; coercion of subordinates (Section 261 [d]); threats, intimidation, terrorism, use of fraudulent device or other forms of coercion (Section 261 [e]); unlawful electioneering (Section 261 [k]); release, disbursement or expenditure of public funds (Section 261 [v]); solicitation of votes or undertaking any propaganda on the day of the election within the restricted areas (Section 261 [cc], sub-par.6). All the offenses mentioned in Section 68 refer to election offenses under the OEC, not to violations of other penal laws. In other words, offenses that are punished in laws other than in the OEC cannot be a ground for a Section 68 petition.

The conduct of preliminary investigation is not required in the resolution of the electoral aspect of a disqualification case

Section 5, Rule 25 of COMELEC Resolution No. 9523 states:

Section 5. Effect of Petition if Unresolved Before Completion of Canvass. – If a Petition for Disqualification is unresolved by final judgment on the day of elections, the petitioner may file a motion with the Division or Commission *En Banc* where the case is pending, to suspend the proclamation of the candidate concerned, provided that the evidence for the grounds

to disqualify is strong. For this purpose, at least three (3) days prior to any election, the Clerk of the Commission shall prepare a list of pending cases and furnish all Commissioners copies of said the list.

In the event that a candidate with an existing and pending Petition to disqualify is proclaimed winner, the Commission shall continue to resolve the said Petition. It is expected that COMELEC Resolution No. 9523 is silent on the conduct of preliminary investigation because it merely amended, among others, Rule 25 of the COMELEC Rules of Procedure, which deals with disqualification of candidates. In disqualification cases, the COMELEC may designate any of its officials, who are members of the Philippine Bar, to hear the case and to receive evidence only in cases involving barangay officials.⁵⁹ As aforementioned, the present rules of procedure in the investigation and prosecution of election offenses in the COMELEC, which requires preliminary investigation, is governed by COMELEC Resolution No. 9386. Under said Resolution, all lawyers in the COMELEC who are Election Officers in the National Capital Region ("NCR"), Provincial Election Supervisors, Regional Election Attorneys, Assistant Regional Election Directors, Regional Election Directors and lawyers of the Law Department are authorized to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the COMELEC.⁶⁰

Clearly, the legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, *i.e.*, until judgment is rendered thereon. The word "shall" signifies that this requirement of the law is mandatory, operating to impose a positive duty which must be enforced. The implication is that the COMELEC is left with no discretion but to proceed with the disqualification case even after the election. Thus, in providing for the

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outright dismissal of the disqualification case which remains unresolved after the election, *Silvestre v. Duavit* in effect disallows what RA No. 6646 imperatively requires. This amounts to a quasi-judicial legislation by the COMELEC which cannot be countenanced and is invalid for having been issued beyond the scope of its authority. Interpretative rulings of quasi-judicial bodies or administrative agencies must always be in perfect harmony with statutes and should be for the sole purpose of carrying their general provisions into effect. By such interpretative or administrative rulings, of course, the scope of the law itself cannot be limited. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. Hence, in case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.

Besides, the deleterious effect of the *Silvestre* ruling is not difficult to foresee. A candidate guilty of election offenses would be undeservedly rewarded, instead of punished, by the dismissal of the disqualification case against him simply because the investigating body was unable, for any reason caused upon it, to determine before the election if the offenses were indeed committed by the candidate sought to be disqualified. All that the erring aspirant would need to do is to employ delaying tactics so that the disqualification case based on the commission of election offenses would not be decided before the election. This scenario is productive of more fraud which certainly is not the main intent and purpose of the law.⁶⁴

The "exclusive power [of the COMELEC] to conduct a preliminary investigation of all cases involving criminal infractions of the election laws" stated in Par. 1 of COMELEC Resolution No. 2050 pertains to the **criminal** aspect of a disqualification case. It has been repeatedly underscored that an election offense has its criminal and electoral aspects. While its criminal aspect

to determine the guilt or innocence of the accused cannot be the subject of summary hearing, its electoral aspect to ascertain whether the offender should be disqualified from office can be determined in an administrative proceeding that is summary in character.

The COMELEC En Banc properly considered as evidence the Advertising Contract dated May 8, 2013

Ejercito likewise asserts that the Advertising Contract dated May 8, 2013 should not have been relied upon by the COMELEC. *First*, it was not formally offered in evidence pursuant to Section 34, Rule 132⁶⁸ of the Rules and he was not even furnished with a copy thereof, depriving him of the opportunity to examine its authenticity and due execution and object to its admissibility. *Second*, even if Section 34, Rule 132 does not apply, administrative bodies exercising quasi-judicial functions are nonetheless proscribed from rendering judgment based on evidence that was never presented and could not be controverted. There is a need to balance the relaxation of the rules of procedure with the demands of administrative due process, the tenets of which are laid down in the seminal case of *Ang Tibay v. Court of Industrial Relations*.⁶⁹ And *third*, the presentation of the advertising contracts, which are highly disputable and on which no hearing was held for the purpose of taking judicial notice in accordance with Section 3, Rule 129⁷⁰ of the Rules, cannot be dispensed with by COMELEC's claim that it could take judicial notice.

Contrary to Ejercito's claim, Section 34, Rule 132 of the Rules is inapplicable. Section 4, Rule 1⁷¹ of the Rules of Court is clear enough in stating that it shall not apply to election cases except by analogy or in a suppletory character and whenever practicable and convenient. In fact, nowhere from COMELEC Resolution No. 9523 requires that documentary evidence should be formally offered in evidence.⁷² We remind again that the electoral aspect of a disqualification case is done through

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an administrative proceeding which is summary in character.

Granting, for argument's sake, that Section 4, Rule 1 of the Rules of Court applies, there have been instances when We suspended the strict application of the rule in the interest of substantial justice, fairness, and equity.⁷³ Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that the Court is empowered to suspend its rules or to exempt a particular case from the application of a general rule, when the rigid application thereof tends to frustrate rather than promote the ends of justice.⁷⁴ The fact is, even Sections 3 and 4, Rule 1 of the COMELEC Rules of Procedure fittingly declare that "[the] rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission" and that "[in] the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission."

Ejercito should be disqualified for spending in his election campaign an amount in excess of what is allowed by the OEC

Notably, R.A. No. 9006 explicitly directs that broadcast advertisements donated to the candidate shall not be broadcasted without the written acceptance of the candidate, which shall be attached to the advertising contract and shall be submitted to the COMELEC, and that, in every case, advertising contracts shall be signed by the donor, the candidate concerned or by the duly-authorized representative of the political party.⁸⁸ Conformably with the mandate of the law, COMELEC Resolution No. 9476 requires that election propaganda materials donated to a candidate shall not be

broadcasted unless it is accompanied by the written acceptance of said candidate, which shall be in the form of an official receipt in the name of the candidate and must specify the description of the items donated, their quantity and value, and that, in every case, the advertising contracts, media purchase orders or booking orders shall be signed by the candidate concerned or by the duly authorized representative of the party and, in case of a donation, should be accompanied by a written acceptance of the candidate, party or their authorized representatives.⁸⁹ COMELEC Resolution No. 9615 also unambiguously states that it shall be unlawful to broadcast any election propaganda donated or given free of charge by any person or broadcast entity to a candidate without the written acceptance of the said candidate and unless they bear and be identified by the words "airtime for this broadcast was provided free of charge by" followed by the true and correct name and address of the donor.⁹⁰

This Court cannot give weight to Ejercito's representation that his signature on the advertising contracts was a forgery. The issue is a belated claim, raised only for the first time in this petition for *certiorari*. It is a rudimentary principle of law that matters neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal before the Supreme Court.⁹¹ It would be offensive to the basic rules of fair play and justice to allow Ejercito to raise an issue that was not brought up before the COMELEC.⁹² While it is true that litigation is not a game of technicalities, it is equally true that elementary considerations of due process require that a party be duly apprised of a claim against him before judgment may be rendered.⁹³

Likewise, whether the advertising contracts were executed without Ejercito's knowledge and consent, and whether his signatures thereto were fraudulent, are issues of fact. Any factual challenge has

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no place in a Rule 65 petition. This Court is not a trier of facts and is not equipped to receive evidence and determine the truth of factual allegations.⁹⁴ Instead, the findings of fact made by the COMELEC, or by any other administrative agency exercising expertise in its particular field of competence, are binding on the Court.

Proceeding from the above, the Court shall now rule on Ejercito's proposition that the legislature imposes no legal limitation on campaign donations. He vigorously asserts that COMELEC Resolution No. 9476 distinguishes between "contribution" and "expenditure" and makes no proscription on the medium or amount of contribution made by third parties in favor of the candidates, while the limit set by law, as appearing in COMELEC Resolution No. 9615, applies only to election expenditures of candidates.

We deny.

Section 13 of R.A. No. 7166¹¹⁸ sets the current allowable limit on expenses of candidates and political parties for election campaign, thus:

SEC. 13. Authorized Expenses of Candidates and Political Parties. – The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows:

(a) For candidates – Ten pesos (P10.00) for President and Vice President; and for other candidates, Three pesos (P3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy: Provided, That, a candidate without any political party and without support from any political party may be allowed to spend Five pesos (P5.00) for every such voter; and

(b) For political parties - Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official

candidates.

Any provision of law to the contrary notwithstanding, any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission, shall not be subject to the payment of any gift tax.¹¹⁹

Sections 100, 101, and 103 of the OEC are not repealed by R.A. No. 7166.¹²⁰ These provisions, which are merely amended insofar as the allowable amount is concerned, read:

SECTION 100. Limitations upon expenses of candidates. – No candidate shall spend for his election campaign an aggregate amount exceeding one peso and fifty centavos for every voter currently registered in the constituency where he filed his candidacy: Provided, That the expenses herein referred to shall include those incurred or caused to be incurred by the candidate, whether in cash or in kind, including the use, rental or hire of land, water or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign: Provided, further, That where the land, water or aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.

SECTION 101. Limitations upon expenses of political parties. – A duly accredited political party may spend for the election of its candidates in the constituency or constituencies where it has official candidates an aggregate amount not exceeding the equivalent of one peso and fifty centavos for every voter currently registered therein. Expenses incurred by branches, chapters, or committees of such political party shall be included in the

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computation of the total expenditures of the political party.

Expenses incurred by other political parties shall be considered as expenses of their respective individual candidates and subject to limitation under Section 100 of this Code.

SECTION 103. Persons authorized to incur election expenditures. – No person, except the candidate, the treasurer of a political party or any person authorized by such candidate or treasurer, shall make any expenditure in support of or in opposition to any candidate or political party. Expenditures duly authorized by the candidate or the treasurer of the party shall be considered as expenditures of such candidate or political party.

The authority to incur expenditures shall be in writing, copy of which shall be furnished the Commission signed by the candidate or the treasurer of the party and showing the expenditures so authorized, and shall state the full name and exact address of the person so designated. *(Emphasis supplied)*¹²¹

The focal query is: How shall We interpret “the expenses herein referred to shall include those incurred or caused to be incurred by the candidate” and “except the candidate, the treasurer of a political party or any person authorized by such candidate or treasurer” found in Sections 100 and 103, respectively, of the OEC? Do these provisions exclude from the allowable election expenditures the contributions of third parties made with the consent of the candidate? The Court holds not.

The inclusion of the amount contributed by a donor to the candidate’s allowable limit of election expenses does not trample upon the free exercise of the voters’ rights of speech and of expression under Section 4, Article III of the Constitution. As a content-neutral regulation,¹²⁷ the law’s concern is not to

curtail the message or content of the advertisement promoting a particular candidate but to ensure equality between and among aspirants with “deep pockets” and those with less financial resources. Any restriction on speech or expression is only incidental and is no more than necessary to achieve the substantial governmental interest of promoting equality of opportunity in political advertising. It bears a clear and reasonable connection with the constitutional objectives set out in Section 26, Article II, Section 4, Article IX-C, and Section 1, Art. XIII of the Constitution.¹²⁸ Indeed, to rule otherwise would practically result in an unlimited expenditure for political advertising, which skews the political process and subverts the essence of a truly democratic form of government.

- **Dennis A. B. Funa Vs. The Chairman, Civil Service Commission, Francisco T. Duque III, Executive Secretary Leandro R. Mendoza, Office of the President** G.R. No. 191672. November 25, 2014

The independence of the Civil Service Commission (CSC) is explicitly mandated under Section 1,¹ Article IX-A of the 1987 Constitution. Additionally, Section 2,² Article IX-A of the 1987 Constitution prohibits its Members, during their tenure, from holding any other office or employment. These constitutional provisions³ are central to this special civil action for *certiorari* and prohibition brought to assail the designation of Hon. Francisco T. Duque III, Chairman of the CSC, as a member of the Board of Directors or Trustees in an *ex officio* capacity of the (a) Government Service Insurance System (GSIS); (b) Philippine Health Insurance Corporation (PHILHEALTH), (c) the Employees Compensation Commission (ECC), and (d) the Home Development Mutual Fund (HDMF).

Unconstitutionality of Duque’s designation as member of the governing boards of the GSIS, PHIC, ECC and HDMF

Nonetheless, this Court has exercised its

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power of judicial review in cases otherwise rendered moot and academic by supervening events on the basis of certain recognized exceptions, namely: (1) there is a grave violation of the Constitution; (2) the case involves a situation of exceptional character and is of paramount public interest; (3) the constitutional issue raised requires the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case is capable of repetition yet evading review.²⁸

The situation now obtaining definitely falls under the requirements for the review of a moot and academic case. For the guidance of and as a restraint upon the future,²⁹ the Court will not abstain from exercising its power of judicial review, the cessation of the controversy notwithstanding. We proceed to resolve the substantive issue concerning the constitutionality of Duque's *ex officio* designation as 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 provide:

Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

Section 2. No Member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be 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.

Section 1, Article IX-A of the 1987 Constitution expressly describes all the Constitutional Commissions as "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.³⁰ To safeguard the independence of these Commissions, the 1987 Constitution, among others,³¹ 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 his tenure;
- (b) Engaging in the practice of any profession;
- (c) Engaging in the active management or control of any business which 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. x x x

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

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or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

In *Funa v. Ermita*,³³ where petitioner 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.

x x x x

Since the evident purpose of the framers of the 1987 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, to wit: the Vice-President being appointed as a member of the Cabinet under Section 3, par. (2), Article VII; or acting as President in those instances provided under Section 7, pars. (2) and (3), Article VII; and, the Secretary of Justice being ex-officio member of the Judicial and Bar Council by virtue of Section 8 (1), Article VIII.³⁴

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.

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.

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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,³⁸ issuing guidelines for the accreditation of health care providers,³⁹ or approving restructuring proposals in the payment of unpaid loan amortizations.⁴⁰ 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*,⁴¹ 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 17,⁴² Article VII of the Constitution, the President exercises control over all government offices in the Executive Branch. An office that is legally not under the control of the President is

not part of the Executive Branch.⁴

As provided in their respective charters, PHILHEALTH and ECC have the status of a government corporation and are deemed attached to the Department of Health⁴⁵ and the Department of Labor,⁴⁶ respectively. On the other hand, the GSIS and HDMF fall under the Office of the President.⁴⁷ 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.

Effect of declaration of unconstitutionality of Duque's designation as member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF - The *De Facto* Officer Doctrine

In view of the application of the prohibition under Section 2, Article IX-A of the 1987 Constitution, Duque did not validly hold office as Director or Trustee of the GSIS, PHILHEALTH, ECC and HDMF concurrently with his position of CSC Chairman. Accordingly, he was not to be considered as a *de jure* officer while he served his term as Director or Trustee of these GOCCs. A *de jure* officer is one who is deemed, in all respects, legally appointed and qualified and whose term of office has not expired.⁴⁸

That notwithstanding, Duque was a *de*

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facto officer during his tenure as a Director or Trustee of the GSIS, PHILHEALTH, ECC and HDMF. In *Civil Liberties Union v. Executive Secretary*,⁴⁹ the Court has said:

During their tenure in the questioned positions, respondents may be considered *de facto* officers and as such entitled to emoluments for actual services rendered. It has been held that "in cases where there is no *de jure* officer, a *de facto* officer, who, in good faith has had possession of the office and has discharged the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office. This doctrine is, undoubtedly, supported on equitable grounds since it seems unjust that the public should benefit by the services of an officer *de facto* and then be freed from all liability to pay any one for such services. Any per diem, allowances or other emoluments received by the respondents by virtue of actual services rendered in the questioned positions may therefore be retained by them.

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.⁵⁰ He may also be one who is in possession of an office, and is discharging its 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.⁵¹ 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.⁵²

In order to be clear, therefore, the Court holds that all official actions of Duque as a Director or Trustee of the GSIS, PHILHEALTH, ECC and HDMF, were presumed valid, binding and effective as if he was the officer legally appointed and qualified for the office.⁵³ This clarification

is necessary in order to protect the sanctity and integrity of the dealings by the public with persons whose ostensible authority emanates from the State. Duque's official actions covered by this clarification extend but are not limited to the issuance of Board resolutions and memoranda approving appointments to positions in the concerned GOCCs, promulgation of policies and guidelines on compensation and employee benefits, and adoption of programs to carry out the corporate powers of the GSIS, PHILHEALTH, ECC and HDMF.

- **Feliciano B. Duyon, substituted by his children, namely: Maxima R. Duyon-Orsame, et al. Vs. Court of Appeals, et al.** G.R. No. 172218. November 26, 2014

- **court of Appeals' Jurisdiction Over**
- **the Criminal Aspect of the Case**

- Duyon was correct in his insistence that the Court of Appeals has no jurisdiction over the criminal aspect of an Ombudsman case. "The Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only. It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases."³²

- **Olivia De Silva Cerafica Vs. Commission on Elections** G.R. No. 205136. December 2, 2014

- **VALID SUBSTITUTION**

- In declaring that Kimberly, being under age, could not be considered to have filed a valid COC and, thus, could not be validly substituted by Olivia, we find that the Comelec gravely abused its discretion.
- Firstly, subject to its authority over nuisance candidates¹⁸ and its power to deny due course to or cancel COCs under Sec. 78, Batas Pambansa (B.P.) Blg. 881, the

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Comelec has the ministerial duty to receive and acknowledge receipt of COCs.¹⁹

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- In *Cipriano v. Comelec*,²⁰ we ruled that the Comelec has no discretion to give or not to give due course to COCs. We emphasized that the duty of the Comelec to give due course to COCs filed in due form is ministerial in character, and that while the Comelec may look into patent defects in the COCs, it may not go into matters not appearing on their face. The question of eligibility or ineligibility of a candidate is thus beyond the usual and proper cognizance of the Comelec.
-
- Section 77 of the Omnibus Election Code (B.P. Blg. 881) provides for the procedure of substitution of candidates, to wit:
- Sec. 77. **Candidates in case of death, disqualification or withdrawal of another.** – 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 election 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 candidate or, in case of candidates to be

voted for by the entire electorate of the country, with the Commission.

- Under the express provision of Sec. 77 of B. P. Blg. 881, not just any person, but only “an official candidate of a registered or accredited political party” may be substituted.²¹ In the case at bar, Kimberly was an official nominee of the Liberal Party;²² thus, she can be validly substituted.
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- The next question then is whether Olivia complied with all of the requirements for a valid substitution; we answer in the affirmative. First, there was a valid withdrawal of Kimberly’s COC after the last day for the filing of COCs; second, Olivia belongs to and is certified to by the same political party to which Kimberly belongs;²³ and third, Olivia filed her COC not later than mid-day of election day.²⁴
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- In *Luna v. Comelec*,²⁵ where the candidate, who was also under age, withdrew his COC before election day and was substituted by a qualified candidate, we declared that such substitution was valid. The Court eloquently explained:

Substitution of Luna for Hans Roger was Valid

Luna contends that Hans Roger filed a valid certificate of candidacy and, subsequently, upon Hans Roger’s withdrawal of his certificate of candidacy, there was a valid substitution by Luna.

On the other hand, the COMELEC ruled that Hans Roger, being under age, could not be considered to have filed a valid certificate of candidacy and, therefore, is not a valid candidate who could be substituted by Luna.

When a candidate files his certificate of candidacy, the COMELEC has a ministerial

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duty to receive and acknowledge its receipt. Section 76 of the Omnibus Election Code (Election Code) provides:

Sec. 76. Ministerial duty of receiving and acknowledging receipt. – The Commission, provincial election supervisor, election registrar or officer designated by the Commission or the board of election inspectors under the succeeding section shall have the ministerial duty to receive and acknowledge receipt of the certificate of candidacy.

In this case, when Hans Roger filed his certificate of candidacy on 5 January 2004, the COMELEC had the ministerial duty to receive and acknowledge receipt of Hans Roger's certificate of candidacy. Thus, the COMELEC had the ministerial duty to give due course to Hans Rogers certificate of candidacy.

On 15 January 2004, Hans Roger withdrew his certificate of candidacy. The Election Code allows a person who has filed a certificate of candidacy to withdraw the same prior to the election by submitting a written declaration under oath. There is no provision of law which prevents a candidate from withdrawing his certificate of candidacy before the election.

On the same date, Luna filed her certificate of candidacy as substitute for Hans Roger. Section 77 of the Election Code prescribes the rules on substitution of an official candidate of a registered political party who dies, withdraws, or is disqualified for any cause after the last day for the filing of certificate of candidacy. Section 77 of the Election Code provides:

Sec. 77. Candidates in case of death, disqualification or withdrawal of another. – 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 election 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 candidate or, in case of candidates to be voted for by the entire electorate of the country, with the Commission.

Since Hans Roger **withdrew** his certificate of candidacy and the COMELEC found that Luna complied with all the procedural requirements for a valid substitution, Luna can validly substitute for Hans Roger.

The COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in declaring that Hans Roger, being under age, could not be considered to have filed a valid certificate of candidacy and, thus, could not be validly substituted by Luna. The COMELEC may not, by itself, without the proper proceedings, deny due course to or cancel a certificate of candidacy filed in due form. In *Sanchez vs. Del Rosario*, the Court ruled that the question of eligibility or ineligibility of a candidate for non-age is beyond the usual and proper cognizance of the COMELEC.

Section 74 of the Election Code provides that the certificate of candidacy shall state, among others, the date of birth of the person filing the certificate. Section 78 of the Election Code provides that in case a person filing a certificate of candidacy has committed false material representation, a verified petition to deny due course to or cancel the certificate of candidacy of said person may be filed at any time not later than 25 days from the time of filing of the certificate of candidacy.

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If Hans Roger made a material misrepresentation as to his date of birth or age in his certificate of candidacy, his eligibility may only be impugned through a verified petition to deny due course to or cancel such certificate of candidacy under Section 78 of the Election Code.

In this case, there was no petition to deny due course to or cancel the certificate of candidacy of Hans Roger. The COMELEC only declared that Hans Roger did not file a valid certificate of candidacy and, thus, was not a valid candidate in the petition to deny due course to or cancel Luna's certificate of candidacy. In effect, the COMELEC, without the proper proceedings, cancelled Hans Roger's certificate of candidacy and declared the substitution by Luna invalid.

It would have been different if there was a petition to deny due course to or cancel Hans Roger's certificate of candidacy. For if the COMELEC cancelled Hans Roger's certificate of candidacy after the proper proceedings, then he is no candidate at all and there can be no substitution of a person whose certificate of candidacy has been cancelled and denied due course. However, Hans Roger's certificate of candidacy was never cancelled or denied due course by the COMELEC.

Moreover, Hans Roger already withdrew his certificate of candidacy before the COMELEC declared that he was not a valid candidate. Therefore, unless Hans Roger's certificate of candidacy was denied due course or cancelled in accordance with Section 78 of the Election Code, Hans Roger's certificate of candidacy was valid and he may be validly substituted by Luna.²⁶ (Emphases supplied.)

LACK OF DUE PROCESS

Moreover, in simply relying on the Memorandum of Director Amora-Ladra in cancelling Kimberly's COC and denying the latter's substitution by Olivia, and absent any petition to deny due course to or

cancel said COC, the Court finds that the Comelec once more gravely abused its discretion.

The Court reminds the Comelec that, in the exercise of its adjudicatory or quasi-judicial powers, the Constitution²⁷ mandates it to hear and decide cases first by Division and, upon motion for reconsideration, by the *En Banc*.

Where a power rests in judgment or discretion, so that it is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.²⁸ As cancellation proceedings involve the exercise of quasi-judicial functions of the Comelec, the Comelec in Division should have first decided this case.

In *Bautista v. Comelec, et al.*,²⁹ where the Comelec Law Department recommended the cancellation of a candidate's COC for lack of qualification, and which recommendation was affirmed by the Comelec *En Banc*, the Court held that the Comelec *En Banc* cannot short cut the proceedings by acting on the case without a prior action by a division because it denies due process to the candidate. The Court held:

A division of the COMELEC should have first heard this case. The COMELEC en banc can only act on the case if there is a motion for reconsideration of the decision of the COMELEC division. Hence, the COMELEC en banc acted without jurisdiction when it ordered the cancellation of Bautista's certificate of candidacy without first referring the case to a division for summary hearing.

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Under Section 3, Rule 23 of the 1993 COMELEC Rules of Procedure, a petition for the denial or cancellation of a certificate of candidacy must be heard summarily after due notice. It is thus clear that cancellation proceedings involve the

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exercise of the quasi-judicial functions of the COMELEC which the COMELEC *in division* should first decide. **More so in this case where the cancellation proceedings originated not from a petition but from a report of the election officer regarding the lack of qualification of the candidate in the *barangay* election. The COMELEC *en banc* cannot short cut the proceedings by acting on the case without a prior action by a division because it denies due process to the candidate.**³⁰ (*Emphasis supplied.*)

The determination of whether a candidate is eligible for the position he is seeking involves a determination of fact where parties must be allowed to adduce evidence in support of their contentions.³¹ We thus caution the Comelec against its practice of impetuous cancellation of COCs via minute resolutions adopting the recommendations of its Law Department when the situation properly calls for the case's referral to a Division for summary hearing.

WHEREFORE, premises considered, with the cautionary counsel that cancellation of certificate of candidacy is a quasi-judicial process, and accordingly is heard by the Commission on Elections in Division and *En Banc* on appeal, we **DISMISS** the present petition for being moot and academic.

- **Republic of the Philippines, represented by the National Power Corporation Vs. Heirs of Saturnina Borbon** G.R. No. 165354. January 12, 2015

- The expropriator who has taken possession of the property subject of expropriation is obliged to pay reasonable compensation to the landowner for the period of such possession although the proceedings had been discontinued on the ground that the public purpose for the expropriation had meanwhile ceased.

- **The Diocese of Bacolod, represented by the Most. Rev. Bishop Vicente M. Navarra, and The Bishop himself, in**

his personal capacity Vs. Commission on Elections and the Election Officer of Bacolod City, Atty. Marvil V. Majarucon G.R. No. 205728. January 21, 2015 Separate Concurring Opinion **J. Carpio, J. Perlas-Bernabe** Dissenting Opinion **J. Brion**

The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." – Article II, Section 1, Constitution

All governmental authority emanates from our people. No unreasonable restrictions of the fundamental and preferred right to expression of the electorate during political contests no matter how seemingly benign will be tolerated.

This case defines the extent that our people may shape the debates during elections. It is significant and of first impression. We are asked to decide whether the Commission on Elections (COMELEC) has the competence to limit expressions made by the citizens — who are not candidates — during elections.

I.D

The concept of a political question

The case before this court does not call for the exercise of prudence or modesty. There is no political question. It can be acted upon by this court through the expanded jurisdiction granted to this court through Article VIII, Section 1 of the Constitution.

A political question arises in constitutional issues relating to the powers or competence of different agencies and departments of the executive or those of the legislature. The political question doctrine is used as a defense when the petition asks this court to nullify certain acts that are exclusively within the domain of their respective competencies, as provided by the Constitution or the law. In such situation, presumptively, this court should act with deference. It will decline

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to void an act unless the exercise of that power was so capricious and arbitrary so as to amount to grave abuse of discretion.

The concept of a political question, however, never precludes judicial review when the act of a constitutional organ infringes upon a fundamental individual or collective right. Even assuming arguendo that the COMELEC did have the discretion to choose the manner of regulation of the tarpaulin in question, it cannot do so by abridging the fundamental right to expression.

II.A

COMELEC had no legal basis to regulate expressions made by private citizens

Respondents cite the Constitution, laws, and jurisprudence to support their position that they had the power to regulate the tarpaulin.¹¹³ However, all of these provisions pertain to candidates and political parties. Petitioners are not candidates. Neither do they belong to any political party. COMELEC does not have the authority to regulate the enjoyment of the preferred right to freedom of expression exercised by a non-candidate in this case.

Respondents considered the tarpaulin as a campaign material in their issuances. The above provisions regulating the posting of campaign materials only apply to candidates and political parties, and petitioners are neither of the two.

Section 3 of Republic Act No. 9006 on "Lawful Election Propaganda" also states that these are "allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party-list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorized expenses of candidates and political parties. . . ." Section 6 of COMELEC Resolution No. 9615 provides for a similar wording.

These provisions show that election propaganda refers to matter done by or on behalf of and in coordination with candidates and political parties. Some level of coordination with the candidates and political parties for whom the election propaganda are released would ensure that these candidates and political parties maintain within the authorized expenses limitation.

The tarpaulin was not paid for by any candidate or political party.¹²⁵ There was no allegation that petitioners coordinated with any of the persons named in the tarpaulin regarding its posting. On the other hand, petitioners posted the tarpaulin as part of their advocacy against the RH Law.

We distinguish between **political and commercial speech**. Political speech refers to speech "both intended and received as a contribution to public deliberation about some issue,"²⁰⁰ "foster[ing] informed and civic-minded deliberation."²⁰¹ On the other hand, commercial speech has been defined as speech that does "no more than propose a commercial transaction."²⁰²

The expression resulting from the content of the tarpaulin is, however, definitely political speech.

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.

Content-based regulation

Even with the clear and present danger test, respondents failed to justify the regulation. There is no compelling and substantial state interest endangered by the posting of the tarpaulin as to justify curtailment of the right of freedom of

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expression. There is no reason for the state to minimize the right of non-candidate petitioners to post the tarpaulin in their private property. The size of the tarpaulin does not affect anyone else's constitutional rights.

Content-based restraint or censorship refers to restrictions "based on the subject matter of the utterance or speech."²³² In contrast, content-neutral regulation includes controls merely on the incidents of the speech such as time, place, or manner of the speech.²³³

We reiterate that the regulation involved at bar is content-based. The tarpaulin content is not easily divorced from the size of its medium.

II.B.7

Justice Carpio and Justice Perlas-Bernabe suggest that the provisions imposing a size limit for tarpaulins are content-neutral regulations as these "restrict the *manner* by which speech is relayed but not the *content* of what is conveyed."²⁴⁸

*If we apply the test for content-neutral regulation, the questioned acts of COMELEC will not pass the three requirements for evaluating such restraints on freedom of speech.*²⁴⁹ "When the speech restraints take the form of a content-neutral regulation, only a substantial governmental interest is required for its validity,"²⁵⁰ and it is subject only to the intermediate approach.²⁵¹

This intermediate approach is based on the test that we have prescribed in several cases.²⁵² A content-neutral government regulation is sufficiently justified:

[1] if it is within the constitutional power of the Government; [2] if it furthers an important or substantial governmental interest; ³ if the governmental interest is unrelated to the suppression of free expression; and ⁴ if the incident restriction

on alleged [freedom of speech & expression] is no greater than is essential to the furtherance of that interest.²⁵³

On the first requisite, it is not within the constitutional powers of the COMELEC to regulate the tarpaulin. As discussed earlier, this is protected speech by petitioners who are non-candidates.

On the second requirement, not only must the governmental interest be important or substantial, it must also be compelling as to justify the restrictions made.

Compelling governmental interest would include constitutionally declared principles. We have held, for example, that "the welfare of children and the State's mandate to protect and care for them, as *parens patriae*,"²⁵⁴ constitute a substantial and compelling government interest in regulating . . . utterances in TV broadcast."²⁵⁵

In this case, the size regulation is not unrelated to the suppression of speech. Limiting the maximum size of the tarpaulin would render ineffective petitioners' message and violate their right to exercise freedom of expression.

The COMELEC's act of requiring the removal of the tarpaulin has the effect of dissuading expressions with political consequences. These should be encouraged, more so when exercised to make more meaningful the equally important right to suffrage.

The restriction in the present case does not pass even the lower test of intermediate scrutiny for content-neutral regulations.

The action of the COMELEC in this case is a strong deterrent to further speech by the electorate. Given the stature of petitioners and their message, there are indicators that this will cause a "chilling effect" on robust discussion during elections.

The form of expression is just as

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important as the message itself. In the words of Marshall McLuhan, "the medium is the message."²⁶⁶ McLuhan's colleague and mentor Harold Innis has earlier asserted that "the materials on which words were written down have often counted for more than the words themselves."²⁶⁷

The message of petitioners in this case will certainly not be what candidates and political parties will carry in their election posters or media ads. *The message of petitioner, taken as a whole, is an advocacy of a social issue that it deeply believes. Through rhetorical devices, it communicates the desire of Diocese that the positions of those who run for a political position on this social issue be determinative of how the public will vote. It primarily advocates a stand on a social issue; only secondarily – even almost incidentally – will cause the election or non-election of a candidate.*

The tarpaulins exaggerate. Surely, "Team Patay" does not refer to a list of dead individuals nor could the Archbishop of the Diocese of Bacolod have intended it to mean that the entire plan of the candidates in his list was to cause death intentionally. The tarpaulin caricatures political parties and parodies the intention of those in the list. Furthermore, the list of "Team Patay" is juxtaposed with the list of "Team Buhay" that further emphasizes the theme of its author: Reproductive health is an important marker for the church of petitioners to endorse.

The messages in the tarpaulins are different from the usual messages of candidates. Election paraphernalia from candidates and political parties are more declarative and descriptive and contain no sophisticated literary allusion to any social objective. Thus, they usually simply exhort the public to vote for a person with a brief description of the attributes of the candidate. For example "Vote for [x], Sipag at Tiyaga," "Vote for [y], Mr. Palengke," or "Vote for [z], Iba kami sa

Makati."

This court's construction of the guarantee of freedom of expression has always been wary of censorship or subsequent punishment that entails evaluation of the speaker's viewpoint or the content of one's speech. This is especially true when the expression involved has political consequences. In this case, it hopes to affect the type of deliberation that happens during elections. A becoming humility on the part of any human institution no matter how endowed with the secular ability to decide legal controversies with finality entails that we are not the keepers of all wisdom.

Humanity's lack of omniscience, even acting collectively, provides space for the weakest dissent. Tolerance has always been a libertarian virtue whose version is embedded in our Bill of Rights. There are occasional heretics of yesterday that have become our visionaries. Heterodoxies have always given us pause. The unforgiving but insistent nuance that the majority surely and comfortably disregards provides us with the checks upon reality that may soon evolve into creative solutions to grave social problems. This is the utilitarian version. It could also be that it is just part of human necessity to evolve through being able to express or communicate.

However, the Constitution we interpret is not a theoretical document. It contains other provisions which, taken together with the guarantee of free expression, enhances each other's value. Among these are the provisions that acknowledge the idea of equality. In shaping doctrine construing these constitutional values, this court needs to exercise extraordinary prudence and produce narrowly tailored guidance fit to the facts as given so as not to unwittingly cause the undesired effect of diluting freedoms as exercised in reality and, thus, render them meaningless.

IV

Right to property

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Other than the right to freedom of expression³¹¹ and the meaningful exercise of the right to suffrage,³¹² the present case also involves one's right to property.³¹³

Respondents argue that it is the right of the state to prevent the circumvention of regulations relating to election propaganda by applying such regulations to private individuals.³¹⁴

Certainly, any provision or regulation can be circumvented. But we are not confronted with this possibility. Respondents agree that the tarpaulin in question belongs to petitioners. Respondents have also agreed, during the oral arguments, that petitioners were neither commissioned nor paid by any candidate or political party to post the material on their walls.

Even though the tarpaulin is readily seen by the public, the tarpaulin remains the private property of petitioners. Their right to use their property is likewise protected by the Constitution.

Respondents ordered petitioners, who are private citizens, to remove the tarpaulin from their own property. The absurdity of the situation is in itself an indication of the unconstitutionality of COMELEC's interpretation of its powers.

Freedom of expression can be intimately related with the right to property. There may be no expression when there is no place where the expression may be made. COMELEC's infringement upon petitioners' property rights as in the present case also reaches out to infringement on their fundamental right to speech.

Respondents have not demonstrated that the present state interest they seek to promote justifies the intrusion into petitioners' property rights. Election laws and regulations must be reasonable. It must also acknowledge a private

individual's right to exercise property rights. Otherwise, the due process clause will be violated.

COMELEC Resolution No. 9615 and the Fair Election Act intend to prevent the posting of election propaganda in private property without the consent of the owners of such private property. COMELEC has incorrectly implemented these regulations. Consistent with our ruling in *Adiong*, we find that the act of respondents in seeking to restrain petitioners from posting the tarpaulin in their own private property is an impermissible encroachments on the right to property.

Tarpaulin and its message are not religious speech

We proceed to the last issues pertaining to whether the COMELEC in issuing the questioned notice and letter violated the right of petitioners to the free exercise of their religion.

At the outset, the Constitution mandates the separation of church and state.³²⁰ This takes many forms. Article III, Section 5 of the Constitution, for instance provides:

Section 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.

There are two aspects of this provision.³²¹ The first is the non-establishment clause.³²² Second is the free exercise and enjoyment of religious profession and worship.³²³

The second aspect is at issue in this case.

Clearly, not all acts done by those who are priests, bishops, ustadz, imams, or any other religious make such act immune

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from any secular regulation.³²⁴ The religious also have a secular existence. They exist within a society that is regulated by law.

The Bishop of Bacolod caused the posting of the tarpaulin. But not all acts of a bishop amounts to religious expression. This notwithstanding petitioners' claim that "the views and position of the petitioners, the Bishop and the Diocese of Bacolod, on the RH Bill is inextricably connected to its Catholic dogma, faith, and moral teachings. . . ."³²⁵

The difficulty that often presents itself in these cases stems from the reality that every act can be motivated by moral, ethical, and religious considerations. In terms of their effect on the corporeal world, these acts range from belief, to expressions of these faiths, to religious ceremonies, and then to acts of a secular character that may, from the point of view of others who do not share the same faith or may not subscribe to any religion, may not have any religious bearing.

Definitely, the characterizations of the religious of their acts are not conclusive on this court. Certainly, our powers of adjudication cannot be blinded by bare claims that acts are religious in nature.

This court also discussed the **Lemon test** in that case, such that a regulation is constitutional when: (1) it has a secular legislative purpose; (2) it neither advances nor inhibits religion; and (3) it does not foster an excessive entanglement with religion.³³¹

As aptly argued by COMELEC, however, the tarpaulin, on its face, "does not convey any religious doctrine of the Catholic church."³³² That the position of the Catholic church appears to coincide with the message of the tarpaulin regarding the RH Law does not, by itself, bring the expression within the ambit of religious speech. On the contrary, the tarpaulin clearly refers to candidates

classified under "Team Patay" and "Team Buhay" according to their respective votes on the RH Law.

A FINAL NOTE

We maintain sympathies for the COMELEC in attempting to do what it thought was its duty in this case. However, it was misdirected.

COMELEC's general role includes a mandate to ensure equal opportunities and reduce spending *among candidates and their registered political parties*. It is not to regulate or limit the speech of the electorate as it strives to participate in the electoral exercise.

The tarpaulin in question may be viewed as producing a caricature of those who are running for public office. Their message may be construed generalizations of very complex individuals and party-list organizations. They are classified into black and white: as belonging to "Team Patay" or "Team Buhay."

But this 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.

Some may have thought that there should be more room to consider being more broad-minded and non-judgmental. Some may have expected that the authors would give more space to practice forgiveness and humility.

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

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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.

Freedom for the thought we can disagree with can be wielded not only by those in the minority. This can often be expressed by dominant institutions, even religious ones. That they made their point dramatically and in a large way does not necessarily mean that their statements are true, or that they have basis, or that they have been expressed in good taste.

Embedded in the tarpaulin, however, are opinions expressed by petitioners. It is a specie of expression protected by our fundamental law. It is an expression designed to invite attention, cause debate, and hopefully, persuade. It may be motivated by the interpretation of petitioners of their ecclesiastical duty, but their parishioner's actions will have very real secular consequences.

Certainly, provocative messages do matter for the elections.

What is involved in this case is the most sacred of speech forms: expression by the electorate that tends to rouse the public to debate contemporary issues. This is not speech by candidates or political parties to entice votes. It is a portion of the electorate telling candidates the conditions for their election. It is the substantive content of the right to suffrage.

This is a form of speech hopeful of a quality of democracy that we should all deserve. It is protected as a fundamental and primordial right by our Constitution. The expression in the medium chosen by petitioners deserves our protection.

- **Atty. Alicia Risos-Vidal Vs. Commission on Elections and Joseph Ejercito Estrada**
G.R. No. 206666. January 21, 2015
Separate Opinion **J. Brion** Concurring Opinion **J. Mendoza** Dissenting Opinion **J. Leonen**

whether or not the COMELEC committed

grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that 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.

The Court's Ruling

The petition for *certiorari* lacks merit.

Former President Estrada was granted an **absolute** pardon that fully restored **all** his civil and political rights, which naturally includes the right to seek public elective office, the focal point of this controversy. The wording of the pardon extended to former President Estrada is complete, unambiguous, and unqualified. It is likewise unfettered by Articles 36 and 41 of the Revised Penal Code. The only reasonable, objective, and constitutional interpretation of the language of the pardon is that the same in fact conforms to Articles 36 and 41 of the Revised Penal Code.

Recall that the petition for disqualification filed by Risos-Vidal against former President Estrada, docketed as SPA No. 13---211 (DC), was anchored on Section 40 of the LGC, in relation to Section 12 of the OEC, that is, having been convicted of a crime punishable by imprisonment of one year or more, and involving moral turpitude, former President Estrada must be disqualified to run for and hold public elective office notwithstanding the fact that he is a grantee of a pardon that includes a statement expressing "[h]e is hereby restored to his civil and political rights."

Risos-Vidal theorizes that former President Estrada is disqualified from running for Mayor of Manila in the May 13, 2013 Elections, and remains disqualified to hold any local elective post despite the presidential pardon extended to him in 2007 by former President Arroyo for the reason that it (pardon) did not expressly provide for the remission of the penalty of perpetual absolute disqualification, particularly the restoration of his (former

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President Estrada) right to vote and be voted upon for public office. She invokes Articles 36 and 41 of the Revised Penal Code as the foundations of her theory.

It is insisted that, since a textual examination of the pardon given to and accepted by former President Estrada does not actually specify which political right is restored, it could be inferred that former President Arroyo did not deliberately intend to restore former President Estrada's rights of suffrage and to hold public office, or to otherwise remit the penalty of perpetual absolute disqualification. Even if her intention was the contrary, the same cannot be upheld based on the pardon's text.

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, along with other acts of executive clemency, to wit: xxxx

It is apparent from the foregoing 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.

The proper interpretation of Articles 36 and 41 of the Revised Penal Code.

The foregoing pronouncements solidify the thesis that Articles 36 and 41 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 Riso-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.

Again, Articles 36 and 41 of the Revised Penal Code provides:

ART. 36. *Pardon; its effects.* – A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, **unless such rights be expressly restored by the terms of the pardon.**

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.

x x x x

ART. 41. *Reclusion perpetua and reclusion temporal – Their accessory penalties.* – The penalties of *reclusion perpetua* and *reclusion temporal* shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer **even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.** (Emphases supplied.)

A rigid and inflexible reading of the above provisions of law, as proposed by Riso-Vidal, is unwarranted, especially so if it will defeat or unduly restrict the power of the President to grant executive clemency.

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.³¹ It is this Court's firm view that the phrase in the presidential pardon

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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.

With due respect, I disagree with the overbroad statement that Congress may dictate as to how the President may exercise his/her power of executive clemency. The form or manner by which the President, or Congress for that matter, should exercise their respective Constitutional powers or prerogatives cannot be interfered with unless it is so provided in the Constitution. This is the essence of the principle of separation of powers deeply ingrained in our system of government which "ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere."³³ Moreso, this fundamental principle must be observed if non-compliance with the form imposed by one branch on a co-equal and coordinate branch will result into the diminution of an exclusive Constitutional prerogative.

For this reason, Articles 36 and 41 of the Revised Penal Code should be construed in a way that will give full effect to the executive clemency granted by the President, instead of indulging in an overly strict interpretation that may serve to impair or diminish the import of the pardon which emanated from the Office of the President and duly signed by the Chief Executive himself/herself. The said codal provisions must be construed to harmonize the power of Congress to define crimes and prescribe the penalties for such crimes and the power of the President to grant executive clemency. All that the said provisions impart is that the pardon of the principal penalty does not carry with it the remission of the accessory penalties unless the President expressly includes said accessory penalties in the pardon. It still recognizes the Presidential prerogative to grant executive clemency and, specifically, to

decide to pardon the principal penalty while excluding its accessory penalties or to pardon both. Thus, Articles 36 and 41 only clarify the effect of the pardon so decided upon by the President on the penalties imposed in accordance with law.

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 Revised Penal Code, 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.

Thus, 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.

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.

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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.

Take notice that the applicability of Section 12 of the OEC to candidates running for local elective positions is not unprecedented. In *Jalosjos, Jr. v. Commission on Elections*,³⁷ the Court acknowledged the aforementioned provision as one of the legal remedies that may be availed of to disqualify a candidate in a local election filed any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation

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."⁴⁰ Whereas clauses do not form part of a statute because, strictly speaking, they are not part of the operative language of the statute.⁴¹ 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 fulfillment of the aforementioned commitment nor to limit the scope of the pardon.

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.

- **Senator Jinggoy Ejercito Estrada Vs. Office of the Ombudsman, Field Investigation Office, Office of the Ombudsman, National Bureau of Investigation and Atty. Levito D. Baligod** G.R. Nos. 212140-41. January 21, 2015 Dissenting Opinion **J. Brion**, **J. Velasco, Jr.** Concurring Opinion **J. Leonen**

It is a fundamental principle that the accused in a preliminary investigation has no right to cross-examine the witnesses which the complainant may present. **Section 3, Rule 112 of the Rules of Court expressly provides that the respondent shall only have the right to submit a counter-affidavit, to examine all other evidence submitted by the complainant** and, where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine.

First. There is no law or rule which requires the Ombudsman to furnish a respondent with copies of the counter-affidavits of his co-respondents.

Sen. Estrada claims that the denial of his Request for the counter-affidavits of his co-respondents violates his constitutional right to due process. **Sen. Estrada, however, fails to specify a law or rule**

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which states that it is a compulsory requirement of due process in a preliminary investigation that the Ombudsman furnish a respondent with the counter-affidavits of his co-respondents. Neither Section 3(b), Rule 112 of the Revised Rules of Criminal Procedure nor Section 4(c), Rule II of the Rules of Procedure of the Office of the Ombudsman supports Sen. Estrada's claim.

What the Rules of Procedure of the Office of the Ombudsman require is for the Ombudsman to furnish the respondent with a copy of the complaint and the supporting affidavits and documents **at the time the order to submit the counter-affidavit is issued to the respondent.** This is clear from Section 4(b), Rule II of the Rules of Procedure of the Office of the Ombudsman when it states, "[a]fter such affidavits [of the complainant and his witnesses] have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits x x x." At this point, there is still no counter-affidavit submitted by any respondent. **Clearly, what Section 4(b) refers to are affidavits of the complainant and his witnesses, not the affidavits of the co-respondents.** Obviously, the counter-affidavits of the co-respondents are not part of the supporting affidavits of the complainant. No grave abuse of discretion can thus be attributed to the Ombudsman for the issuance of the 27 March 2014 Order which denied Sen. Estrada's Request.

Although Section 4(c), Rule II of the Rules of Procedure of the Office of the Ombudsman provides that a respondent **"shall have access to the evidence on record,"** this provision should be construed in relation to Section 4(a) and (b) **of the same Rule,** as well as to the Rules of Criminal Procedure. *First*, Section 4(a) states that "the investigating officer

shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaint." The "supporting witnesses" are the witnesses of the complainant, and do not refer to the co-respondents.

Second, Section 4(b) states that "the investigating officer shall issue an order attaching thereto a copy of the affidavits and all other supporting documents, directing the respondent" to submit his counter-affidavit. The affidavits referred to in Section 4(b) are the affidavits mentioned in Section 4(a). Clearly, the affidavits to be furnished to the respondent are the affidavits of the complainant and his supporting witnesses. The provision in the immediately succeeding Section 4(c) of the same Rule II that a respondent shall have "access to the evidence on record" does not stand alone, but should be read in relation to the provisions of Section 4(a and b) of the same Rule II requiring the investigating officer to furnish the respondent with the "affidavits and other supporting documents" submitted by "the complainant or **supporting witnesses.**" Thus, a respondent's "access to evidence on record" in Section 4(c), Rule II of the Ombudsman's Rules of Procedure refers to the affidavits and supporting documents of "the complainant or **supporting witnesses**" in Section 4(a) of the same Rule II.

Third, Section 3(b), Rule 112 of the Revised Rules of Criminal Procedure provides that "[t]he respondent shall have **the right to examine the evidence submitted by the complainant** which he may not have been furnished and to copy them at his expense." A respondent's right to examine refers only to **"the evidence submitted by the complainant."**

Thus, whether under Rule 112 of the Revised Rules of Criminal Procedure or under Rule II of the Ombudsman's Rules of Procedure, there is no requirement whatsoever that the affidavits executed by

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the co-respondents should be furnished to a respondent.

SUMMARY

The Ombudsman, in furnishing Sen. Estrada a copy of the complaint and its supporting affidavits and documents, **fully complied** with Sections 3 and 4 of Rule 112 of the Revised Rules of Criminal Procedure, and Section 4, Rule II of the Rules of Procedure of the Office of the Ombudsman, Administrative Order No. 7. Both the Revised Rules of Criminal Procedure and the Rules of Procedure of the Office of the Ombudsman require the investigating officer to furnish the respondent with copies of the affidavits of the complainant and affidavits of his supporting witnesses. Neither of these Rules require the investigating officer to furnish the respondent with copies of the affidavits of his co-respondents. **The right of the respondent is only "to examine the evidence submitted by the complainant,"** as expressly stated in Section 3(b), Rule 112 of the Revised Rules of Criminal Procedure. This Court has unequivocally ruled in *Paderanga* that "Section 3, Rule 112 of the Revised Rules of Criminal Procedure expressly provides that the respondent shall only have the right to submit a counter-affidavit, to examine all other evidence submitted by the complainant and, where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine." Moreover, Section 4 (a, b and c) of Rule II of the Ombudsman's Rule of Procedure, **read together**, only require the investigating officer to furnish the respondent with copies of the affidavits of the complainant and his supporting witnesses. There is no law or rule requiring the investigating officer to furnish the respondent with copies of the affidavits of his co-respondents.

In the 7 May 2014 Joint Order, the Ombudsman **went beyond legal duty** and even furnished Sen. Estrada with

copies of the counter-affidavits of his co-respondents whom he specifically named, as well as the counter-affidavits of some of other co-respondents. In the 4 June 2014 Joint Order, the Ombudsman even held in abeyance the disposition of the motions for reconsideration because the Ombudsman granted Sen. Estrada five days from receipt of the 7 May 2014 Joint Order to formally respond to the claims made by his co-respondents. The Ombudsman faithfully complied with the existing Rules on preliminary investigation and even accommodated Sen. Estrada beyond what the Rules required. Thus, the Ombudsman could not be faulted with grave abuse of discretion. **Since this is a Petition for Certiorari under Rule 65, the Petition fails in the absence of grave abuse of discretion on the part of the Ombudsman.**

The constitutional due process requirements mandated in *Ang Tibay*, as amplified in *GSIS*, are not applicable to preliminary investigations which are creations of statutory law giving rise to mere statutory rights. A law can abolish preliminary investigations without running afoul with the constitutional requirements of due process as prescribed in *Ang Tibay*, as amplified in *GSIS*. The present procedures for preliminary investigations do not comply, and were never intended to comply, with *Ang Tibay*, as amplified in *GSIS*. Preliminary investigations do not adjudicate with finality rights and obligations of parties, while administrative investigations governed by *Ang Tibay*, as amplified in *GSIS*, so adjudicate. *Ang Tibay*, as amplified in *GSIS*, requires **substantial evidence** for a decision against the respondent in the administrative case. In preliminary investigations, only **likelihood or probability of guilt** is required. To apply *Ang Tibay*, as amplified in *GSIS*, to preliminary investigations will change the quantum of evidence required to establish probable cause. The respondent in an administrative case governed by *Ang Tibay*, as amplified in *GSIS*, has the right to an actual hearing and to cross-examine

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the witnesses against him. In preliminary investigations, the respondent has no such rights.

Also, in an administrative case governed by *Ang Tibay*, as amplified in *GSIS*, the hearing officer must be **impartial** and cannot be the fact-finder, investigator, and hearing officer at the same time. In preliminary investigations, the same public officer may be the investigator and hearing officer at the same time, or the fact-finder, investigator and hearing officer may be under the **control and supervision** of the same public officer, like the Ombudsman or Secretary of Justice. This explains why *Ang Tibay*, as amplified in *GSIS*, does not apply to preliminary investigations. To now declare that the guidelines in *Ang Tibay*, as amplified in *GSIS*, are fundamental and essential requirements in preliminary investigations will render all past and present preliminary investigations invalid for violation of constitutional due process. **This will mean remanding for reinvestigation all criminal cases now pending in all courts throughout the country.** No preliminary investigation can proceed until a new law designates a public officer, outside of the prosecution service, to determine probable cause. Moreover, those serving sentences by final judgment would have to be released from prison because their conviction violated constitutional due process.

Sen. Estrada did not file a Motion for Reconsideration of the 27 March 2014 Order in OMB-C-C-13-0313 denying his Request, which is the subject of the present Petition. He should have filed a Motion for Reconsideration, in the same manner that he filed a Motion for Reconsideration of the 15 May 2014 Order denying his motion to suspend proceedings. The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of the public respondent.⁵⁶ The plain, speedy and adequate remedy expressly provided

by law is a Motion for Reconsideration of the 27 March 2014 Order of the Ombudsman. Sen. Estrada's failure to file a Motion for Reconsideration renders this Petition **premature**.

Sen. Estrada also raised in this Petition the same issue he raised in his Motion for Reconsideration of the 28 March 2014 Joint Resolution of the Ombudsman finding probable cause. While his Motion for Reconsideration of the 28 March 2014 Joint Resolution was pending, Sen. Estrada did not wait for the resolution of the Ombudsman and instead proceeded to file the present Petition for Certiorari. The Ombudsman issued a Joint Order on 4 June 2014 and specifically addressed the issue that Sen. Estrada is raising in this Petition. Thus, Sen. Estrada's present Petition for Certiorari is **not only premature, it also constitutes forum shopping**.

- **In the matter of: Save the Supreme Court Judicial Independence Against the Abolition of the Judiciary Development Fund (JDF) and Reduction of Autonomy** UDK-15143. January 21, 2015

- This case involves the proposed bills abolishing the Judiciary Development Fund and replacing it with Judiciary Support Fund.

Petitioner Rolly Mijares (Mijares) prays for the issuance of a writ of mandamus in order to compel this court to exercise its judicial independence and fiscal autonomy against the perceived hostility of Congress.

I
The petition does not comply with the requisites of judicial review

No actual case or controversy

Petitioner's allegations show that he wants this court to strike down the proposed bills abolishing the Judiciary Development Fund. This court, however, must act only within its powers granted under the Constitution. This court is not empowered

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to review proposed bills because a bill is not a law.

his court has explained that the filing of bills is within the legislative power of Congress and is "not subject to judicial restraint[.]" "A proposed bill produces no legal effects until it is passed into law. Under the Constitution, the judiciary is mandated to interpret laws. It cannot speculate on the constitutionality or unconstitutionality of a bill that Congress may or may not pass. It cannot rule on mere speculations or issues that are not ripe for judicial determination. The petition, therefore, does not present any actual case or controversy that is ripe for this court's determination.

Petitioner has no legal standing

Even assuming that there is an actual case or controversy that this court must resolve, petitioner has no legal standing to question the validity of the proposed bill.

Petitioner has not shown that he has sustained or will sustain a direct injury if the proposed bill is passed into law. While his concern for judicial independence is laudable, it does not, by itself, clothe him with the requisite standing to question the constitutionality of a proposed bill that may only affect the judiciary.

The events feared by petitioner are contingent on the passing of the proposed bill in Congress. The threat of imminent injury is not yet manifest since there is no guarantee that the bill will even be passed into law. There is no transcendental interest in this case to justify the relaxation of technical rules.

Final note

The judiciary is the weakest branch of government. It is true that courts have power to declare what law is given a set of facts, but it does not have an army to enforce its writs. Courts do not have the power of the purse. "Except for a constitutional provision that requires that the budget of the judiciary should not go

below the appropriation for the previous year, it is beholden to the Congress depending on how low the budget is."

"Courts are not constitutionally built to do political lobbying. By

constitutional design, it is a co-equal department to the Congress and the

Executive. By temperament, our arguments are legal, not political. We are

best when we lay down all our premises in the finding of facts, interpretation

of the law and understanding of precedents. We are not trained to produce a

political statement or a media release."

"Because of the nature of courts, that is - that it has to decide in favor of one party, we may not have a political base.

Certainly, we should not even consider building a political base. All we have is an abiding faith that we should do what we could to ensure that the Rule of Law prevails. It seems that we have no champions when it comes to ensuring the material basis for fiscal autonomy or judicial independence."

For this reason, we appreciate petitioner's concern for the judiciary. It is often only through the vigilance of private citizens that issues relating to the judiciary can be discussed in the political sphere.

Unfortunately, the remedy he seeks cannot be granted by this court. But his crusade is not a lost cause. Considering that what he seeks to be struck down is a proposed bill, it would be better for him to air his concerns by lobbying in Congress. There, he may discover the representatives and senators who may have a similar enthusiastic response to truly making the needed investments in the Rule of Law.

- **Maria Carolina P. Araullo, et al. Vs. Benigno Simeon C. Aquino III, et**

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al./Augusto L. Syjuco, Jr. Vs. Florencio B. Abad, et al./Manuelito R. Luna Vs. Secretary Florencio Abad, et al./Atty. Jose Malvar, Villegas, Jr. Vs. The Honorable Executive Secretary Paquito N. Ochoa, Jr., et al./Philippine Constitution Association (PHILCONSA), et al. Vs. Department of Budget and Management and/or Hon. Florencio B. Abad/Integrated Bar of the Philippines (IBP) Vs. Secretary Florencio Abad of the Department of Budget and Management (DBM)/Greco Antonious Beda B. Belgica, et al. Vs. President Benigno Simeon C. Aquino III, et al./Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), et al. Vs. Benigno Simeon C. Aquino, III, et al./Volunteers Against Crime and Corruption (VACC) Vs. Paquito N. Ochoa, Jr., et al. G.R. No. 209287/G.R. No. 209135/G.R. No. 209136/G.R. No. 209155/G.R. No. 209164/G.R. No. 209260/G.R. No. 209442/G.R. No. 209517/G.R. No. 209569. February 3, 2015 Separate Opinion **J. Carpio Separate Opinion (Qualified Concurrence) **J. Brion** Concurring and Dissenting Opinion **J. Del Castillo** Concurring Opinion **J. Leonen****

The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude.¹

1.

The Court's power of judicial review

The respondents argue that the Executive has not violated the GAA because *savings* as a concept is an ordinary species of interpretation that calls for legislative, instead of judicial, determination.¹¹

This argument cannot stand.

The consolidated petitions distinctly raised

the question of the constitutionality of the acts and practices under the DAP, particularly their non-conformity with Section 25(5), Article VI of the Constitution and the principles of separation of power and equal protection. Hence, the matter is still entirely within the Court's competence, and its determination does not pertain to Congress to the exclusion of the Court. Indeed, the interpretation of the GAA and its definition of savings is a foremost judicial function. This is because the power of judicial review vested in the Court is exclusive.

2.

Strict construction on the accumulation and utilization of savings

The decision of the Court has underscored that the exercise of the power to augment shall be strictly construed by virtue of its being an exception to the general rule that the funding of PAPs shall be limited to the amount fixed by Congress for the purpose.¹⁴ Necessarily, savings, their utilization and their management will also be strictly construed against expanding the scope of the power to augment.¹⁵ Such a strict interpretation is essential in order to keep the Executive and other budget implementors within the limits of their prerogatives during budget execution, and to prevent them from unduly transgressing Congress' power of the purse.¹⁶ Hence, regardless of the perceived beneficial purposes of the DAP, and regardless of whether the DAP is viewed as an effective tool of stimulating the national economy, the acts and practices under the DAP and the relevant provisions of NBC No. 541 cited in the Decision should remain illegal and unconstitutional as long as the funds used to finance the projects mentioned therein are sourced from savings that deviated from the relevant provisions of the GAA, as well as the limitation on the power to augment under Section 25(5), Article VI of the Constitution. In a society governed by laws, even the best intentions must come

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within the parameters defined and set by the Constitution and the law. Laudable purposes must be carried out through legal methods.¹⁷

Section 38 refers to the authority of the President "to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act." When the President suspends or stops expenditure of funds, savings are not automatically generated until it has been established that such funds or appropriations are free from any obligation or encumbrance, and that the work, activity or purpose for which the appropriation is authorized has been completed, discontinued or abandoned.

Although the withdrawal of unobligated allotments may have effectively resulted in the suspension or stoppage of expenditures through the issuance of negative Special Allotment Release Orders (SARO), the reissuance of withdrawn allotments to the original programs and projects is a clear indication that the program or project from which the allotments were withdrawn has not been discontinued or abandoned. Consequently, as we have pointed out in the Decision, "the purpose for which the withdrawn funds had been appropriated was not yet fulfilled, or did not yet cease to exist, rendering the declaration of the funds as savings impossible."²¹ In this regard, the withdrawal and transfer of unobligated allotments remain unconstitutional. But then, whether the withdrawn allotments have actually been reissued to their original programs or projects is a factual matter determinable by the proper tribunal.

Also, withdrawals of unobligated allotments pursuant to NBC No. 541 which shortened the availability of appropriations for MOOE and capital outlays, and those which were transferred to PAPs that were not determined to be deficient, are still constitutionally infirm and invalid.

At this point, it is likewise important to underscore that the reversion to the General Fund of unexpended balances of appropriations – savings included – pursuant to Section 28 Chapter IV, Book VI of the *Administrative Code*²² does not apply to the Constitutional Fiscal Autonomy Group (CFAG), which include the Judiciary, Civil Service Commission, Commission on Audit, Commission on Elections, Commission on Human Rights, and the Office of the Ombudsman

On the other hand, Section 39 is evidently in conflict with the plain text of Section 25(5), Article VI of the Constitution because it allows the President to approve the use of *any* savings in the regular appropriations authorized in the GAA for programs and projects of *any* department, office or agency to cover a deficit in *any* other item of the regular appropriations. As such, Section 39 violates the mandate of Section 25(5) because the latter expressly limits the authority of the President to augment an item in the GAA to only those in his own Department out of the savings in other items of his own Department's appropriations. Accordingly, Section 39 cannot serve as a valid authority to justify cross-border transfers under the DAP. Augmentations under the DAP which are made by the Executive within its department shall, however, remain valid so long as the requisites under Section 25(5) are complied with.

In this connection, the respondents must always be reminded that the Constitution is the basic law to which all laws must conform. No act that conflicts with the Constitution can be valid.²

3.

The power to augment cannot be used to fund non-existent provisions in the GAA

The respondents posit that the Court has erroneously invalidated all the DAP-funded projects by overlooking the difference

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between an item and an allotment class, and by concluding that they do not have appropriation cover; and that such error may induce Congress and the Executive (through the DBM) to ensure that all items should have at least P1 funding in order to allow augmentation by the President.²⁸

At the outset, we allay the respondents' apprehension regarding the validity of the DAP funded projects. It is to be emphatically indicated that the Decision did not declare the *en masse* invalidation of the 116 DAP-funded projects. To be sure, the Court recognized the encouraging effects of the DAP on the country's economy,²⁹ and acknowledged its laudable purposes, most especially those directed towards infrastructure development and efficient delivery of basic social services.³⁰ It bears repeating that the DAP is a policy instrument that the Executive, by its own prerogative, may utilize to spur economic growth and development.

Nonetheless, the Decision did find doubtful those projects that appeared to have no appropriation cover under the relevant GAAs on the basis that: (1) the DAP funded projects that originally did not contain any appropriation for some of the expense categories (personnel, MOOE and capital outlay); and (2) the appropriation code and the particulars appearing in the SARO did not correspond with the program specified in the GAA.

The respondents assert, however, that there is no constitutional requirement for Congress to create allotment classes within an item. What is required is for Congress to create items to comply with the line-item veto of the President.³¹

After a careful reexamination of existing laws and jurisprudence, we find merit in the respondents' argument.

Indeed, Section 25(5) of the 1987 Constitution mentions of the term item

that may be the object of augmentation by the President, the Senate President, the Speaker of the House, the Chief Justice, and the heads of the Constitutional Commissions. In *Belgica v. Ochoa*,³² we said that an item that is the distinct and several part of the appropriation bill, in line with the item-veto power of the President, must contain "specific appropriations of money" and not be only general provisions

Accordingly, the *item* referred to by Section 25(5) of the Constitution is the last and indivisible purpose of a program in the appropriation law, which is distinct from the expense category or allotment class. There is no specificity, indeed, either in the Constitution or in the relevant GAAs that the object of augmentation should be the expense category or allotment class. In the same vein, the President cannot exercise his veto power over an expense category; he may only veto the item to which that expense category belongs to.

Further, in *Nazareth v. Villar*,³⁴ we clarified that there must be an existing item, project or activity, purpose or object of expenditure with an appropriation to which savings may be transferred for the purpose of augmentation. Accordingly, so long as there is an item in the GAA for which Congress had set aside a specified amount of public fund, savings may be transferred thereto for augmentation purposes. This interpretation is consistent not only with the Constitution and the GAAs, but also with the degree of flexibility allowed to the Executive during budget execution in responding to unforeseeable contingencies.

Nonetheless, this modified interpretation does not take away the caveat that only DAP projects found in the appropriate GAAs may be the subject of augmentation by legally accumulated savings. Whether or not the 116 DAP-funded projects had appropriation cover and were validly augmented require factual determination that is not within the scope of the present

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consolidated petitions under Rule 65.
<p>4.</p> <p>Cross-border transfers are constitutionally impermissible</p> <p>The respondents assail the pronouncement of unconstitutionality of cross-border transfers made by the President. They submit that Section 25(5), Article VI of the Constitution prohibits only the transfer of appropriation, not savings. They relate that cross-border transfers have been the practice in the past, being consistent with the President's role as the Chief Executive.³⁵</p> <p>In view of the clarity of the text of Section 25(5), however, the Court stands by its pronouncement, and will not brook any strained interpretations.</p>
<p>5.</p> <p>Unprogrammed funds may only be released upon proof that the total revenues exceeded the target</p> <p>Based on the 2011, 2012 and 2013 GAAs, the respondents contend that each source of revenue in the budget proposal must exceed the respective target to authorize release of unprogrammed funds. Accordingly, the Court's ruling thereon nullified the intention of the authors of the unprogrammed fund, and renders useless the special provisions in the relevant GAAs.³⁶</p> <p>The respondents' contentions are without merit.</p> <p>To recall, the respondents justified the use of unprogrammed funds by submitting certifications from the Bureau of Treasury and the Department of Finance (DOF) regarding the dividends derived from the shares of stock held by the Government in government-owned and controlled corporations.³⁷ In the decision, the Court has held that the requirement under the relevant GAAs should be construed in light</p>

of the purpose for which the unprogrammed funds were denominated as "standby appropriations." Hence, revenue targets should be considered as a whole, not individually; otherwise, we would be dealing with artificial revenue surpluses. We have even cautioned that the release of unprogrammed funds based on the respondents' position could be unsound fiscal management for disregarding the budget plan and fostering budget deficits, contrary to the Government's surplus budget policy.³⁸

While we maintain the position that aggregate revenue collection must first exceed aggregate revenue target as a pre-requisite to the use of unprogrammed funds, we clarify the respondents' notion that the release of unprogrammed funds may only occur at the end of the fiscal year.

There must be consistent monitoring as a component of the budget accountability phase of every agency's performance in terms of the agency's budget utilization as provided in Book VI, Chapter 6, Section 51 and Section 52 of the *Administrative Code of 1987*,

Pursuant to the foregoing, the Department of Budget and Management (DBM) and the Commission on Audit (COA) require agencies under various joint circulars to submit budget and financial accountability reports (BFAR) on a regular basis,³⁹ one of which is the Quarterly Report of Income or Quarterly Report of Revenue and Other Receipts.⁴⁰ On the other hand, as Justice Carpio points out in his Separate Opinion, the Development Budget Coordination Committee (DBCC) sets quarterly revenue targets for a specific fiscal year.⁴¹ Since information on both actual revenue collections and targets are made available every quarter, or at such time as the DBM may prescribe, actual revenue surplus may be determined accordingly and releases from the unprogrammed fund may take place even prior to the end of the fiscal

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year.⁴²

7.

The PAPs under the DAP remain effective under the operative fact doctrine

As a general rule, the nullification of an unconstitutional law or act carries with it the illegality of its effects. However, in cases where nullification of the effects will result in inequity and injustice, the operative fact doctrine may apply.⁵⁷ In so ruling, the Court has essentially recognized the impact on the beneficiaries and the country as a whole if its ruling would pave the way for the nullification of the P144.378 Billions⁵⁸ worth of infrastructure projects, social and economic services funded through the DAP. Bearing in mind the disastrous impact of nullifying these projects by virtue alone of the invalidation of certain acts and practices under the DAP, the Court has upheld the efficacy of such DAP-funded projects by applying the operative fact doctrine. For this reason, we cannot sustain the Motion for Partial Reconsideration of the petitioners in G.R. No. 209442.

- **Hon. Ramon Jesus P. Paje, in his capacity as Secretary of the Department of Environment and Natural Resources Vs. Hon. Teodoro A. Casiño, et al./Redondo Peninsula Energy, Inc. Vs. Teodoro A. Casiño, et al./Hon. Teodoro S. Casiño, et al. Vs. Ramon Jesus P. Paje, Subic Bay Metropolitan Authority, and Redondo Peninsula Energy, Inc./Subic Bay Metropolitan Authority Vs. Hon. Teodoro A. Casiño, et al.** G.R. No. 207257/G.R. No. 207256/G.R. No. 207282/G.R. No. 207366. February 3, 2015 Concurring Opinion **J. Velasco, Jr.** Concurring and Dissenting Opinion **J. Leonen**

- Preliminaries

- This case affords us an opportunity to expound on the nature and scope of the writ of *kalikasan*. It presents some interesting questions about law and justice in

the context of environmental cases, which we will tackle in the main body of this Decision.

The Rules on the Writ of *kalikasan*,¹⁰⁵ which is Part III of the Rules of Procedure for Environmental Cases,¹⁰⁶ was issued by the Court pursuant to its power to promulgate rules for the protection and enforcement of constitutional rights,¹⁰⁷ in particular, the individual's right to a balanced and healthful ecology.¹⁰⁸ Section 1 of Rule 7 provides:

Section 1. *Nature of the writ.* - The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

The writ is categorized as a special civil action and was, thus, conceptualized as an extraordinary remedy, which aims to provide judicial relief from threatened or actual violation/s of the constitutional right to a balanced and healthful ecology of a magnitude or degree of damage that transcends political and territorial boundaries.¹⁰⁹ It is intended "to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short"¹¹⁰ and seeks "to address the potentially exponential nature of large-scale ecological threats."¹¹¹

Under Section 1 of Rule 7, the following requisites must be present to avail of this extraordinary remedy: (1) there is an actual or threatened violation of the

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constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Expectedly, the Rules do not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage, so as to call for the grant of this extraordinary remedy. The gravity of environmental damage sufficient to grant the writ is, thus, to be decided on a case-to-case basis.

If the petitioner successfully proves the foregoing requisites, the court shall render judgment granting the privilege of the writ of *kalikasan*. Otherwise, the petition shall be denied. If the petition is granted, the court may grant the reliefs provided for under Section 15 of Rule 7, it must be noted, however, that the above enumerated reliefs are non-exhaustive. The reliefs that may be granted under the writ are broad, comprehensive and non-exclusive.¹¹²

Prescinding from the above, the DENR, SBMA and RP Energy are one in arguing that the reliefs granted by the appellate court, *i.e.* invalidating the ECC and its amendments, are improper because it had denied the Petition for Writ of *kalikasan* upon a finding that the Casiño Group failed to prove the alleged environmental damage, actual or threatened, contemplated under the Rules.

Ordinarily, no reliefs could and should be granted. But the question may be asked, could not the appellate court have granted the Petition for Writ of *kalikasan* on the ground of the invalidity of the ECC for failure to comply with certain laws and rules?

This question is the starting point for setting up the framework of analysis which should govern writ of *kalikasan* cases.

In their Petition for Writ of *kalikasan*,¹¹³ the Casiño Group's allegations, relative to the actual or threatened violation of the constitutional right to a balanced and healthful ecology, may be grouped into two.

The first set of allegations deals with the actual environmental damage that will occur if the power plant project is implemented. The Casiño Group claims that the construction and operation of the power plant will result in (1) thermal pollution of coastal waters, (2) air pollution due to dust and combustion gases, (3) water pollution from toxic coal combustion waste, and (4) acid deposition in aquatic and terrestrial ecosystems, which will adversely affect the residents of the Provinces of Bataan and Zambales, particularly the Municipalities of Subic, Morong and Hermosa, and the City of Olongapo.

The second set of allegations deals with the failure to comply with certain laws and rules governing or relating to the issuance of an ECC and amendments thereto. The Casiño Group claims that the ECC was issued in violation of (1) the DENR rules on the issuance and amendment of an ECC, particularly, DAO 2003-30 and the Revised Procedural Manual for DAO 2003-30 (Revised Manual), (2) Section 59 of the IPRA Law, and (3) Sections 26 and 27 of the LGC. In addition, it claims that the LDA entered into between SBMA and RP Energy violated Section 59 of the IPRA Law.

As to the first set of allegations, involving actual damage to the environment, it is not difficult to discern that, if they are proven, then the Petition for Writ of *kalikasan* could conceivably be granted.

However, as to the second set of

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allegations, a nuanced approach is warranted. The power of the courts to nullify an ECC existed even prior to the promulgation of the Rules on the Writ of *kalikasan* for judicial review of the acts of administrative agencies or bodies has long been recognized¹¹⁴ subject, of course, to the doctrine of exhaustion of administrative remedies.¹¹⁵

But the issue presented before us is not a simple case of reviewing the acts of an administrative agency, the DENR, which issued the ECC and its amendments. The challenge to the validity of the ECC was raised in the context of a writ of *kalikasan* case. The question then is, can the validity of an ECC be challenged via a writ of *kalikasan*?

We answer in the affirmative subject to certain qualifications.

As earlier noted, the writ of *kalikasan* is principally predicated on an actual or threatened violation of the constitutional right to a balanced and healthful ecology, which involves environmental damage of a magnitude that transcends political and territorial boundaries. A party, therefore, who invokes the writ based on alleged defects or irregularities in the issuance of an ECC must not only allege and prove such defects or irregularities, but must also provide a causal link or, at least, a reasonable connection between the defects or irregularities in the issuance of an ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules. Otherwise, the petition should be dismissed outright and the action re-filed before the proper forum with due regard to the doctrine of exhaustion of administrative remedies. This must be so if we are to preserve the noble and laudable purposes of the writ against those who seek to abuse it.

An example of a defect or an irregularity in the issuance of an ECC, which could conceivably warrant the granting of the

extraordinary remedy of the writ of *kalikasan*, is a case where there are serious and substantial misrepresentations or fraud in the application for the ECC, which, if not immediately nullified, would cause actual negative environmental impacts of the magnitude contemplated under the Rules, because the government agencies and LGUs, with the final authority to implement the project, may subsequently rely on such substantially defective or fraudulent ECC in approving the implementation of the project.

To repeat, in cases of defects or irregularities in the issuance of an ECC, it is not sufficient to merely allege such defects or irregularities, but to show a causal link or reasonable connection with the environmental damage of the magnitude contemplated under the Rules. In the case at bar, no such causal link or reasonable connection was shown or even attempted relative to the aforesaid second set of allegations. It is a mere listing of the perceived defects or irregularities in the issuance of the ECC. This would have been sufficient reason to disallow the resolution of such issues in a writ of *kalikasan* case.

However, inasmuch as this is the first time that we lay down this principle, we have liberally examined the alleged defects or irregularities in the issuance of the ECC and find that there is only one group of allegations, relative to the ECC, that can be reasonably connected to an environmental damage of the magnitude contemplated under the Rules. This is with respect to the allegation that there was no environmental impact assessment relative to the first and second amendments to the subject ECC. If this were true, then the implementation of the project can conceivably actually violate or threaten to violate the right to a healthful and balanced ecology of the inhabitants near the vicinity of the power plant. Thus, the resolution of such an issue could conceivably be resolved in a writ of *kalikasan* case provided that the case does not violate, or is an exception to the

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doctrine of exhaustion of administrative remedies and primary jurisdiction.¹¹⁶

As to the claims that the issuance of the ECC violated the IPRA Law and LGC and that the LDA, likewise, violated the IPRA Law, we find the same not to be within the coverage of the writ of *kalikasan* because, assuming there was non-compliance therewith, no reasonable connection can be made to an actual or threatened violation of the right to a balanced and healthful ecology of the magnitude contemplated under the Rules.

To elaborate, the alleged lack of approval of the concerned sanggunians over the subject project would not lead to or is not reasonably connected with environmental damage but, rather, it is an affront to the local autonomy of LGUs. Similarly, the alleged lack of a certificate precondition that the project site does not overlap with an ancestral domain would not result in or is not reasonably connected with environmental damage but, rather, it is an impairment of the right of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) to their ancestral domains. These alleged violations could be the subject of appropriate remedies before the proper administrative bodies (like the NCIP) or a separate action to compel compliance before the courts, as the case may be. However, the writ of *kalikasan* would not be the appropriate remedy to address and resolve such issues.

Be that as it may, we shall resolve both the issues proper in a writ of *kalikasan* case and those which are not, commingled as it were here, because of the exceptional character of this case. We take judicial notice of the looming power crisis that our nation faces. Thus, the resolution of all the issues in this case is of utmost urgency and necessity in order to finally determine the fate of the project center of this controversy. If we were to resolve only the issues proper in a writ of *kalikasan* case and dismiss those not proper therefor, that will leave such

unresolved issues open to another round of protracted litigation. In any case, we find the records sufficient to resolve all the issues presented herein. We also rule that, due to the extreme urgency of the matter at hand, the present case is an exception to the doctrine of exhaustion of administrative remedies.¹¹⁷ As we have often ruled, in exceptional cases, we can suspend the rules of procedure in order to achieve substantial justice, and to address urgent and paramount State interests vital to the life of our nation.

I.

Whether the Casiño Group was able to prove that the construction and operation of the power plant will cause grave environmental damage.

The alleged thermal pollution of coastal waters, air pollution due to dust and combustion gases, water pollution from toxic coal combustion waste, and acid deposition in aquatic and terrestrial ecosystems that will be caused by the project.

In its January 30, 2013 Decision, the appellate court ruled that the Casiño Group failed to prove the above allegations.

We agree with the appellate court.

Indeed, the three witnesses presented by the Casiño Group are not experts on the CFB technology or on environmental matters. These witnesses even admitted on cross-examination that they are not competent to testify on the environmental impact of the subject project. What is wanting in their testimonies is their technical knowledge of the project design/implementation or some other aspects of the project, even those not requiring expert knowledge, vis-à-vis the

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significant negative environmental impacts which the Casiño Group alleged will occur. Clearly, the Casiño Group failed to carry the onus of proving the alleged significant negative environmental impacts of the project. In comparison, RP Energy presented several experts to refute the allegations of the Casiño Group.

The alleged negative environmental assessment of the project by experts in a report generated during the social acceptability consultations

The Casiño Group also relies heavily on a report on the social acceptability process of the power plant project to bolster its claim that the project will cause grave environmental damage. We purposely discuss this matter in this separate subsection for reasons which will be made clear shortly.

We agree with the appellate court that the alleged statements by these experts cannot be given weight because they are hearsay evidence. None of these alleged experts testified before the appellate court to confirm the pertinent contents of the Final Report. No reason appears in the records of this case as to why the Casiño Group failed to present these expert witnesses.

We note, however, that these statements, on their face, especially the observations of Dr. Cruz, raise serious objections to the environmental soundness of the project, specifically, the EIS thereof. It brings to fore the question of whether the Court can, on its own, compel the testimonies of these alleged experts in order to shed light on these matters in view of the right at stake—not just damage to the environment but the health, well-being and, ultimately, the lives of those who may be affected by the project.

The Rules of Procedure for Environmental Cases liberally provide the courts with means and methods to obtain sufficient information in order to adequately protect or safeguard the right to a healthful and

balanced ecology. In Section 6 (l)¹⁴⁰ of Rule 3 (Pre-Trial), when there is a failure to settle, the judge shall, among others, determine the necessity of engaging the services of a qualified expert as a friend of the court (*amicus curiae*). While, in Section 12¹⁴¹ of Rule 7 (Writ of *kalikasan*), a party may avail of discovery measures: (1) ocular inspection and (2) production or inspection of documents or things. The liberality of the Rules in gathering and even compelling information, specifically with regard to the Writ of *kalikasan*, is explained in this wise: One virtue of li

[T]he writ of *kalikasan* was refashioned as a tool to bridge the gap between allegation and proof by providing a remedy for would-be environmental litigants to compel the production of information within the custody of the government. The writ would effectively serve as a remedy for the enforcement of the right to information about the environment. The scope of the fact-finding power could be: (1) anything related to the issuance, grant of a government permit issued or information controlled by the government or private entity and (2) [i]nformation contained in documents such as environmental compliance certificate (ECC) and other government records. In addition, the [w]rit may also be employed to compel the production of information, subject to constitutional limitations. This function is analogous to a discovery measure, and may be availed of upon application for the writ.¹⁴²

Clearly, in environmental cases, the power to appoint friends of the court in order to shed light on matters requiring special technical expertise as well as the power to order ocular inspections and production of documents or things evince the main thrust of, and the spirit behind, the Rules to allow the court sufficient leeway in acquiring the necessary information to rule on the issues presented for its resolution, to the end that the right to a healthful and balanced ecology may be adequately protected. To draw a parallel,

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in the protection of the constitutional rights of an accused, when life or liberty is at stake, the testimonies of witnesses may be compelled as an attribute of the Due Process Clause. Here, where the right to a healthful and balanced ecology of a substantial magnitude is at stake, should we not tread the path of caution and prudence by compelling the testimonies of these alleged experts?

After due consideration, we find that, based on the statements in the Final Report, there is no sufficiently compelling reason to compel the testimonies of these alleged expert witnesses for the following reasons.

First, the statements are not sufficiently *specific* to point to us a flaw (or flaws) in the study or design/implementation (or some other aspect) of the project which provides a causal link or, at least, a reasonable connection between the construction and operation of the project vis-à-vis potential grave environmental damage. In particular, they do not explain why the Environmental Management Plan (EMP) contained in the EIS of the project will not adequately address these concerns.

Second, some of the concerns raised in the alleged statements, like acid rain, warming and acidification of the seawater, and discharge of pollutants were, as previously discussed, addressed by the evidence presented by RP Energy before the appellate court. Again, these alleged statements do not explain why such concerns are not adequately covered by the EMP of RP Energy.

Third, the key observations of Dr. Cruz, while concededly assailing certain aspects of the EIS, do not clearly and specifically establish how these omissions have led to the issuance of an ECC that will pose significant negative environmental impacts once the project is constructed and becomes operational. The recommendations stated therein would seem to suggest points for improvement

in the operation and monitoring of the project, but they do not clearly show why such recommendations are indispensable for the project to comply with existing environmental laws and standards, or how non-compliance with such recommendations will lead to an environmental damage of the magnitude contemplated under the writ of *kalikasan*. Again, these statements do not state with sufficient particularity how the EMP in the EIS failed to adequately address these concerns.

Fourth, because the reason for the non-presentation of the alleged expert witnesses does not appear on record, we cannot assume that their testimonies are being unduly suppressed.

By ruling that we do not find a sufficiently compelling reason to compel the taking of the testimonies of these alleged expert witnesses in relation to their serious objections to the power plant project, we do not foreclose the possibility that their testimonies could later on be presented, in a proper case, to more directly, specifically and sufficiently assail the environmental soundness of the project and establish the requisite magnitude of actual or threatened environmental damage, if indeed present. After all, their sense of civic duty may well prevail upon them to voluntarily testify, if there are truly sufficient reasons to stop the project, above and beyond their inadequate claims in the Final Report that the project should not be pursued. As things now stand, however, we have insufficient bases to compel their testimonies for the reasons already proffered.

Refutation of the Partial Dissent.

Justice Leonen partially dissents from the foregoing disposition on the following grounds:

(a) Environmental cases, such as a petition for a writ of *kalikasan*, should not, in general, be litigated *via* a representative, citizen or class suit because of the danger of misrepresenting

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the interests— and thus, barring future action due to *res judicata*— of those not actually present in the prosecution of the case, either because they do not yet exist, like the unborn generations, or because the parties bringing suit do not accurately represent the interests of the group they represent or the class to which they belong. As an exception, such representative, citizen or class suit may be allowed subject to certain conditions

A.

Justice Leonen's proposition that environmental cases should not, in general, be litigated via a representative, citizen or class suit is both novel and ground-breaking. However, it is inappropriate to resolve such an important issue in this case, in view of the requisites for the exercise of our power of judicial review, because the matter was not raised by the parties so that the issue was not squarely tackled and fully ventilated. The proposition will entail, as Justice Leonen explains, an abandonment or, at least, a modification of our ruling in the landmark case of *Oposa v. Factoran*.²²⁹ It will also require an amendment or a modification of Section 5 (on citizen suits), Rule 2 of the Rules of Procedure for Environmental Cases. Hence, it is more appropriate to await a case where such issues and arguments are properly raised by the parties for the consideration of the Court.

Conclusion

We now summarize our findings:

1. The appellate court correctly ruled that the Casiño Group failed to substantiate its claims that the construction and operation of the power plant will cause environmental damage of the magnitude contemplated under the writ of *kalikasan*. On the other hand, RP Energy presented evidence to establish that the subject project will not cause grave environmental damage, through its Environmental Management Plan, which will ensure that the project will operate within the limits of

existing environmental laws and standards;

2. The appellate court erred when it invalidated the ECC on the ground of lack of signature of Mr. Aboitiz in the ECC's Statement of Accountability relative to the copy of the ECC submitted by RP Energy to the appellate court. While the signature is necessary for the validity of the ECC, the particular circumstances of this case show that the DENR and RP Energy were not properly apprised of the issue of lack of signature in order for them to present controverting evidence and arguments on this point, as the issue only arose during the course of the proceedings upon clarificatory questions from the appellate court. Consequently, RP Energy cannot be faulted for submitting the certified true copy of the ECC only after it learned that the ECC had been invalidated on the ground of lack of signature in the January 30, 2013 Decision of the appellate court. The certified true copy of the ECC, bearing the signature of Mr. Aboitiz in the Statement of Accountability portion, was issued by the DENR-EMB, and remains uncontroverted. It showed that the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008. Because the signing was done after the official release of the ECC on December 22, 2008, we note that the DENR did not strictly follow its rules, which require that the signing of the Statement of Accountability should be done before the official release of the ECC. However, considering that the issue was not adequately argued nor was evidence presented before the appellate court on the circumstances at the time of signing, there is insufficient basis to conclude that the procedure adopted by the DENR was tainted with bad faith or inexcusable negligence. We remind the DENR, however, to be more circumspect in following its rules. Thus, we rule that the signature requirement was substantially complied with *pro hac vice*.

3. The appellate court erred when it ruled that the first and second amendments to

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the ECC were invalid for failure to comply with a new EIA and for violating DAO 2003-30 and the Revised Manual. It failed to properly consider the applicable provisions in DAO 2003-30 and the Revised Manual for amendment to ECCs. Our own examination of the provisions on amendments to ECCs in DAO 2003-30 and the Revised Manual, as well as the EPRMP and PDR themselves, shows that the DENR reasonably exercised its discretion in requiring an EPRMP and a PDR for the first and second amendments, respectively. Through these documents, which the DENR reviewed, a new EIA was conducted relative to the proposed project modifications. Hence, absent sufficient showing of grave abuse of discretion or patent illegality, relative to both the procedure and substance of the amendment process, we uphold the validity of these amendments;

4. The appellate court erred when it invalidated the ECC for failure to comply with Section 59 of the IPRA Law. The ECC is not the license or permit contemplated under Section 59 of the IPRA Law and its implementing rules. Hence, there is no necessity to secure the CNO under Section 59 before an ECC may be issued, and the issuance of the subject ECC without first securing the aforesaid certification does not render it invalid;

5. The appellate court erred when it invalidated the LDA between SBMA and RP Energy for failure to comply with Section 59 of the IPRA Law. While we find that a CNO should have been secured prior to the consummation of the LDA between SBMA and RP Energy, considering that this is the first time we lay down the rule of action appropriate to the application of Section 59, we refrain from invalidating the LDA for reasons of equity;

6. The appellate court erred when it ruled that compliance with Section 27, in relation to Section 26, of the LGC (*i.e.*, approval of the concerned sanggunian requirement) is necessary prior to issuance of the subject ECC. The issuance

of an ECC does not, by itself, result in the implementation of the project. Hence, there is no necessity to secure prior compliance with the approval of the concerned *sanggunian* requirement, and the issuance of the subject ECC without first complying with the aforesaid requirement does not render it invalid. The appellate court also erred when it ruled that compliance with the aforesaid requirement is necessary prior to the consummation of the LDA. By virtue of the clear provisions of RA 7227, the project is not subject to the aforesaid requirement and the SBMA's decision to approve the project prevails over the apparent objections of the concerned sanggunians. Thus, the LDA entered into between SBMA and RP Energy suffers from no infirmity despite the lack of approval of the concerned sanggunians; and

7. The appellate court correctly ruled that the issue as to the validity of the third amendment to the ECC cannot be resolved in this case because it was not one of the issues set during the preliminary conference, and would, thus, violate RP Energy's right to due process.

- **General Miariano Alvarez Services Cooperative, Inc. (GEMASCO) Vs. National Housing Authority** G.R. No. 175417/G.R. No. 198923. February 9, 2015

- It is interesting to note that the water works system in General Mariano Alvarez, Cavite, including the three (3) water tanks subject of the assailed Writ of Execution in G.R. No. 198923, is devoted to public use and thus, property of public dominion, which GMAWD has the right to operate, maintain, and manage. Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public

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policy. Otherwise, essential public services would stop if properties of public dominion would be subject to encumbrances, foreclosures and auction sale.

Since it is GEMASCO which is liable for the payment of the separation pay and backwages to its illegally dismissed employees, any contemplated sale must be confined only to those properties absolutely owned by it and the subject water tanks must corollarily be excluded from the same.

- **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 Cataluña Causing Vs. 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)** G.R. No. 211362. February 24, 2015

- WHETHER THE PHILIPPINE MILITARY ACADEMY, THE HONOR COMMITTEE AND THE CADET REVIEW AND APPEALS BOARD COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING CADET FIRST CLASS ALDRIN JEFF P. CUDIA FROM THE ACADEMY IN UTTER DISREGARD OF HIS RIGHT TO DUE PROCESS

Propriety of a petition for mandamus

Respondents argue that the mandamus aspect of the petition praying that Cadet 1CL Cudia be included in the list of graduating cadets and for him to take part in the commencement exercises was already rendered moot and academic when the graduation ceremonies of the PMA Siklab Diwa Class took place on March 16, 2014.

In this case, there is a clear failure on petitioners' part to establish that the PMA has the ministerial duty to include Cadet

1CL Cudia in the list, much less award him with academic honors and commission him to the Philippine Navy.

We agree that a petition for mandamus is improper.

Under Section 3, Rule 65 of the Rules of Civil Procedure, a petition for mandamus may be filed when any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. It may also be filed when any tribunal, corporation, board, officer, or person unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled.

For mandamusto lie, the act sought to be enjoined must be a ministerial act or duty. An act is ministerial if the act should be performed "[under] a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of [the tribunal or corporation's] own judgment upon the propriety or impropriety of the act done." The tribunal, corporation, board, officer, or person must have no choice but to perform the act specifically enjoined by law. This is opposed to a discretionary act whereby the officer has the choice to decide how or when to perform the duty.

Anent the plea to direct the PMA to include Cadet 1CL Cudia in the list of graduates of Siklab Diwa Class of 2014 and to allow him to take part in the commencement exercises, the same was rendered moot and academic when the graduation ceremonies pushed through on March 16, 2014 without including Cadet 1CL Cudia in the roll of graduates.

With respect to the prayer directing the PMA to restore Cadet 1CL Cudia's rights and entitlements as a full-fledged graduating cadet, including his diploma, awards, and commission as a new Philippine Navy ensign, the same cannot

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be granted in a petition for mandamus on the basis of academic freedom, which We shall discuss in more detail below. Suffice it to say at this point that these matters are within the ambit of or encompassed by the right of academic freedom; therefore, beyond the province of the Court to decide.

The powers to confer degrees at the PMA, grant awards, and commission officers in the military service are discretionary acts on the part of the President as the AFP Commander-in-Chief.

Certainly, mandamus is never issued in doubtful cases. It cannot be availed against an official or government agency whose duty requires the exercise of discretion or judgment. For a writ to issue, petitioners should have a clear legal right to the thing demanded, and there should be an imperative duty on the part of respondents to perform the act sought to be mandated.

The same reasons can be said as regards the other reliefs being sought by petitioners, which pertain to the HC and the CRAB proceedings. In the absence of a clear and unmistakable provision of a law, a mandamus petition does not lie to require anyone to a specific course of conduct or to control or review the exercise of discretion; it will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do or give to the applicant anything to which he is not entitled by law.

Court's interference within military affairs

Admittedly, the Constitution entrusts the political branches of the government, not the courts, with superintendence and control over the military because the courts generally lack the competence and expertise necessary to evaluate military decisions and they are ill-equipped to determine the impact upon discipline that any particular intrusion upon military

authority might have.

In this jurisdiction, Section 1 Article VIII of the 1987 Constitution expanded the scope of judicial power by mandating that the duty of the courts of justice includes not only "to settle actual controversies involving rights which are legally demandable and enforceable" but also "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" even if the latter does not exercise judicial, quasi-judicial or ministerial functions.

The proceedings of the Cadet Honor Committee can, for purposes of the Due Process Clause, be considered a governmental activity.

Cadet's relinquishment of certain civil liberties

Of course, a student at a military academy must be prepared to subordinate his private interests for the proper functioning of the educational institution he attends to, one that is with a greater degree than a student at a civilian public school. In fact, the Honor Code and Honor System Handbook of the PMA expresses that, "[as] a training environment, the Cadet Corps is a society which has its own norms. Each member binds himself to what is good for him, his subordinates, and his peers. To be part of the Cadet Corps requires the surrender of some basic rights and liberties for the good of the group."

It is clear, however, from the teachings of Wasson and Hagopian, which were adopted by Andrews, that a cadet facing dismissal from the military academy for misconduct has constitutionally protected private interests (life, liberty, or property); hence, disciplinary proceedings conducted within the bounds of procedural due process is a must. For that reason, the PMA is not immune from the strictures of due process. Where a person's good

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name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirements of the due process clause must be satisfied. Likewise, the cadet faces far more severe sanctions of being expelled from a course of college instruction which he or she has pursued with a view to becoming a career officer and of probably being forever denied that career.

Academic freedom of the PMA

We have ruled that the school-student relationship is contractual in nature. Once admitted, a student's enrolment is not only semestral in duration but for the entire period he or she is expected to complete it. An institution of learning has an obligation to afford its students a fair opportunity to complete the course they seek to pursue. Such contract is imbued with public interest because of the high priority given by the Constitution to education and the grant to the State of supervisory and regulatory powers over all educational institutions.

The school-student relationship has also been held as reciprocal. "[It] has consequences appurtenant to and inherent in all contracts of such kind – it gives rise to bilateral or reciprocal rights and obligations. The school undertakes to provide students with education sufficient to enable them to pursue higher education or a profession. On the other hand, the students agree to abide by the academic requirements of the school and to observe its rules and regulations."

The schools' power to instill discipline in their students is subsumed in their academic freedom and that "the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival."

The power of the school to impose disciplinary measures extends even after

graduation for any act done by the student prior thereto. The PMA is not different. As the primary training and educational institution of the AFP, it certainly has the right to invoke academic freedom in the enforcement of its internal rules and regulations, which are the Honor Code and the Honor System in particular.

The Honor Code is a set of basic and fundamental ethical and moral principle. It is the minimum standard for cadet behavior and serves as the guiding spirit behind each cadet's action. It is the cadet's responsibility to maintain the highest standard of honor. Throughout a cadet's stay in the PMA, he or she is absolutely bound thereto. It binds as well the members of the Cadet Corps from its alumni or the member of the so-called "Long Gray Line."

Likewise, the Honor Code constitutes the foundation for the cadets' character development. It defines the desirable values they must possess to remain part of the Corps; it develops the atmosphere of trust so essential in a military organization; and it makes them professional military soldiers. As it is for character building, it should not only be kept within the society of cadets. It is best adopted by the Cadet Corps with the end view of applying it outside as an officer of the AFP and as a product of the PMA.

The Honor Code and System could be justified as the primary means of achieving the cadets' character development and as ways by which the Academy has chosen to identify those who are deficient in conduct. Upon the Code rests the ethical standards of the Cadet Corps and it is also an institutional goal, ensuring that graduates have strong character, unimpeachable integrity, and moral standards of the highest order.

Procedural safeguards in a student disciplinary case

The PMA Honor Code explicitly recognizes that an administrative proceeding

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conducted to investigate a cadet's honor violation need not be clothed with the attributes of a judicial proceeding. Like in other institutions of higher learning, there is aversion towards undue judicialization of an administrative hearing in the military academy. It has been said that the mission of the military is unique in the sense that its primary business is to fight or be ready to fight wars should the occasion arise, and that over-proceduralizing military determinations necessarily gives soldiers less time to accomplish this task. Extensive cadet investigations and complex due process hearing could sacrifice simplicity, practicality, and timeliness. Investigations that last for several days or weeks, sessions that become increasingly involved with legal and procedural points, and legal motions and evidentiary objections that are irrelevant and inconsequential tend to disrupt, delay, and confuse the dismissal proceedings and make them unmanageable. Excessive delays cannot be tolerated since it is unfair to the accused, to his or her fellow cadets, to the Academy, and, generally, to the Armed Forces. A good balance should, therefore, be struck to achieve fairness, thoroughness, and efficiency.

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.

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.

As to the right to be represented by a counsel –

Essentially, petitioners claim that Cadet 1CL Cudia is guaranteed the right to have his counsel not just in assisting him in the preparation for the investigative hearing before the HC and the CRAB but in participating fully in said hearings. The Court disagrees.

Consistent with *Lumiqued* and *Nera*, there is nothing in the 1987 Constitution stating that a party in a non-litigation proceeding is entitled to be represented by counsel. The assistance of a lawyer, while desirable, is not indispensable.

In the case before Us, while the records are bereft of evidence that Cadet 1CL Cudia was given the option or was able to

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seek legal advice prior to and/or during the HC hearing, it is indubitable that he was assisted by a counsel, a PAO lawyer to be exact, when the CRAB reviewed and reinvestigated the case. The requirement of due process is already satisfied since, at the very least, the counsel aided him in the drafting and filing of the Appeal Memorandum and even acted as an observer who had no right to actively participate in the proceedings (such as conducting the cross-examination). Moreover, not to be missed out are the facts that the offense committed by Cadet 1CL Cudia is not criminal in nature; that the hearings before the HC and the CRAB were investigative and not adversarial; and that Cadet 1CL Cudia's excellent academic standing puts him in the best position to look after his own vested interest in the Academy.

As to the confidentiality of records of the proceedings –

Basically, petitioners want Us to assume that the documents, footages, and recordings relevant to the HC hearings are favorable to Cadet 1CL Cudia's cause, and, consequently, to rule that respondents' refusal to produce and have them examined is tantamount to the denial of his right to procedural due process. They are mistaken.

In this case, petitioners have not particularly identified any documents, witness testimony, or oral or written presentation of facts submitted at the hearing that would support Cadet 1CL Cudia's defense. The Court may require that an administrative record be supplemented, but only "where there is a 'strong showing of bad faith or improper behavior' on the part of the agency," both of which are not present here. Petitioners have not specifically indicated the nature of the concealed evidence, if any, and the reason for withholding it. What they did was simply supposing that Cadet 1CL Cudia's guilty verdict would be overturned with the production and examination of such documents, footages, and recordings. As will be further shown in the

discussions below, the requested matters, even if denied, would not relieve Cadet 1CL Cudia's predicament. If at all, such denial was a harmless procedural error since he was not seriously prejudiced thereby.

As to the ostracism in the PMA –

We agree with respondents. Neither the petition nor the petition-in-intervention attached a full text copy or even a pertinent portion of the alleged Special Order No. 1, which authorized the ostracism of Cadet 1CL Cudia. Being hearsay, its existence and contents are of doubtful veracity. Hence, a definite ruling on the matter can never be granted in this case.

• Renato M. David Vs. Editha A. Agbay and People of the Philippines G.R. No. 199113. March 18, 2015

- In sum, the Court is asked to resolve whether (1) petitioner may be indicted for falsification for representing himself as a Filipino in his Public Land Application despite his subsequent re-acquisition of Philippine citizenship under the provisions of R.A. 9225; and (2) the MTC properly denied petitioner's motion for re-determination of probable cause on the ground of lack of jurisdiction over the person of the accused (petitioner).

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.

For the purpose of determining the citizenship of petitioner at the time of filing his MLA, it is not necessary to

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discuss the rulings in Frivaldo and Altarejos on the retroactivity of such reacquisition because R.A. 9225 itself treats those of his category as having already lost Philippine citizenship, in contradistinction to those natural-born Filipinos who became foreign citizens after R.A. 9225 came into force. In other words, Section 2 declaring the policy that considers Filipinos who became foreign citizens as not to have lost their Philippine citizenship, should be read together with Section 3, the second paragraph of which clarifies that such policy governs all cases after the new law's effectivity.

As to the letter-reply of BI, it simply quoted Section 2 of R.A. 9225 without any reference to Section 3 on the particular application of reacquisition and retention to Filipinos who became foreign citizens before and after the effectivity of R.A. 9225.

Petitioner's plea to adopt the interpretation most favorable to the accused is likewise misplaced. Courts adopt an interpretation more favorable to the accused following the time-honored principle that penal statutes are construed strictly against the State and liberally in favor of the accused. R.A. 9225, however, is not a penal law.

Falsification of documents under paragraph 1, Article 172 in relation to Article 171 of the RPC refers to falsification by a private individual, or a public officer or employee who did not take advantage of his official position, of public, private, or commercial documents.

Petitioner made the untruthful statement in the MLA, a public document, that he is a Filipino citizen at the time of the filing of said application, when in fact he was then still a Canadian citizen. Under CA 63, the governing law at the time he was naturalized as Canadian citizen, naturalization in a foreign country was among those ways by which a natural-born citizen loses his Philippine

citizenship. While he re-acquired Philippine citizenship under R.A. 9225 six months later, the falsification was already a consummated act, the said law having no retroactive effect insofar as his dual citizenship status is concerned. The MTC therefore did not err in finding probable cause for falsification of public document under Article 172, paragraph 1.

The MTC further cited lack of jurisdiction over the person of petitioner accused as ground for denying petitioner's motion for re-determination of probable cause, as the motion was filed prior to his arrest. However, custody of the law is not required for the adjudication of reliefs other than an application for bail.

Considering that petitioner sought affirmative relief in filing his motion for re-determination of probable cause, the MTC clearly erred in stating that it lacked jurisdiction over his person. Notwithstanding such erroneous ground stated in the MTC's order, the RTC correctly ruled that no grave abuse of discretion was committed by the MTC in denying the said motion for lack of merit.