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During the second year of President Benigno S. Aquino, III's term, he was criticized for the economic slowdown that resulted from a policy focused on deficit and from delays in the implementation of government contracts as a result of the introduction of a more stringent screening process. On 12 October 2011, Aquino approved the Disbursement Acceleration Program (DAP), aimed at improving government spending and accelerating economic expansion. Consequently, in 2013, Aquino approved Republic Act No. 10352 or the General Appropriations Act of 2013, including the Presidential Development Assistance Fund (PDAF), the Malampaya Fund, and the Presidential Social Fund.

The constitutionality of these programs would have never been brought under scrutiny, were it not for the disclosure of the corruption scheme allegedly initiated by Janet Lim-Napoles through sham corporations and fictional non-governmental organizations, involving the channeling of PDAF funds into the pockets of Napoles and several legislators. Petitions were filed challenging the constitutionality of the DAP and the PDAF. The Supreme Court decided these issues in the cases of *Belgica v. Ochoa* and *Araullo v. Aquino III*, ruling against their validity. The Court observed that there was unbridled exercise of Executive and Congressional discretion in deciding how public funds should be put to use — a complete disregard of established constitutional standards on appropriation.

In this Article, Sedfrey M. Candelaria analyzes the Court's decisions in *Belgica* and *Araullo*, particularly with respect to Congress' "power of the purse."

The Power of the Purse in Light of the *Belgica* and *Araullo* Rulings

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I. INTRODUCTION

The abuse of public office to enrich the incumbent at the expense of the many is sheer moral callousness. It is evil that is not easy to discover. However, the evil that men do cannot be hidden forever. In time, courage, skill[,] or serendipity reveals.

— Justice Marvic Mario Victor F. Leonen¹

The administration of President Benigno S. Aquino, III is once again challenged by a critical mass of opposition in light of its attempt to flex presidential muscles with regard to public funds.

Two recent decisions of the Supreme Court, namely *Belgica v. Ochoa, Jr.*² and *Araullo v. Aquino III*,³ incisively tempered an unbridled exercise of Executive and Congressional discretion to utilize public funds, disregarding clearly established constitutional standards on appropriation. The cold

1. *Belgica v. Ochoa, Jr.*, 710 SCRA 1, 273 (2013) (J. Leonen, concurring opinion).
2. *Belgica v. Ochoa, Jr.*, 710 SCRA 1 (2013).
3. *Araullo v. Aquino III*, 728 SCRA 1 (2014).

neutrality of an independent branch of government finds its beaming radiance in the magistrates' informed opinions on judicious handling of the purse.

This Article examines the constitutional limitations on the Congress' power of the purse. It then proceeds to synthesize the salient observations of the Court on how these standards are disregarded by different appropriations laws and programs, which were subjected to the constitutional challenge. The reactions of the Executive and Congress to the Court's ruling are scrutinized. The Article concludes with an observation that a more constructive engagement with the Judiciary will achieve healthy balance among the three branches of government.

II. CONSTITUTIONAL LIMITATIONS: RESTRICTIONS ON CONGRESS' POWER OF THE PURSE

The power of the purse is one of the constitutional powers primarily granted to the Congress of the Philippines.⁴ The Congress is the “guardian of the public treasury”⁵ wherein the spending of public funds can be made only upon an appropriation made by the legislature.⁶ No less than the Constitution explicitly provides that “no money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”⁷ Hence, the law requires an appropriation act, labelled as a “special type of legislation whose content is limited to specified sums of money dedicated to a specific public purpose or a separate fiscal unit.”⁸

After such appropriation law is passed, only then can the Executive actually spend the funds allotted for a particular public purpose. With this, it is worthy to note that the constitutional provision requiring congressional appropriation prior to release of any public fund is a limitation on the Executive, and not on the Legislature.⁹ Nevertheless, the over-arching power of the purse is not without any limitation. In fact, the Constitution is equipped with sufficient provisions to prevent any whimsical and arbitrary appropriation by the Legislature.

4. PHIL. CONST. art. VI, § 1.

5. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 811 (2009 ed.).

6. *Id.* at 812.

7. PHIL. CONST. art. VI, § 29 (1).

8. *National Food Authority v. Court of Appeals*, 253 SCRA 470, 481 (1996).

9. BERNAS, *supra* note 5, at 777.

Even without an express constitutional mandate, one of the inherent limitations of the power of the purse is that public funds must only be utilized for a public purpose.¹⁰ As explained by the Court in the 1960 case of *Pascual v. Secretary of Public Works*¹¹ —

Generally, under the express or implied provisions of the [C]onstitution, *public funds may be used only for a public purpose*. The right of the legislature to appropriate funds is *correlative with its right to tax*, and, under constitutional provisions against taxation except for public purposes and prohibiting the collection of a tax for one purpose and the devotion thereof to another purpose, *no appropriation of [S]tate funds can be made for other than a public purpose*.¹²

Thus, every fund appropriated by the Congress must be for the general welfare and not intended to benefit any private interest.¹³ The Court, however, recognizes that private interest may be served by an appropriation made by the Congress provided that this benefit is merely incidental.¹⁴ Every appropriation should primarily be for the general advantage, but only with the incidental benefit to private interests, and never the other way around. The Court expounds, saying that

[i]t is the essential character of the *direct* object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. *Incidental* advantage to the public or to the [S]tate, which results from the promotion of private interests and the property of private enterprises or business, does *not* justify their aid by use of public money.¹⁵

Moreover, the Constitution expressly provides for at least seven limitations on the Congress' power of the purse.¹⁶ For the first limitation, Section 24, Article VI provides that “[a]ll appropriations, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall *originate exclusively in the House of Representatives*, but the

10. See *Pascual v. Secretary of Public Works*, 110 Phil. 331 (1960).

11. *Id.*

12. *Id.* at 340.

13. *Id.*

14. *Id.*

15. *Id.*

16. See PHIL. CONST. art. VI, §§ 24 & 25.

Senate may propose or concur with amendments.”¹⁷ The rule that the aforementioned kinds of legislation must originate from the lower house stems from the belief that district representatives, compared to senators, are “closer to the pulse of the people[,]”¹⁸ hence, more capable of determining the needs and wants of their constituents.¹⁹

This provision was thoroughly explained by the Court in *Tolentino v. Secretary of Finance*,²⁰ the case that ruled on the constitutionality of the Expanded Value Added Tax Law.²¹ The Court said that while such bills (i.e., appropriations, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills) must originate from the House of Representatives, the same are subject to any proposal or amendment by the Senate.²² Hence, the Senate may propose an entirely different bill as a “substitute” to what was initiated at the House.²³ Giving due regard to the co-equality of the two chambers of Congress,²⁴ the provision merely means that no appropriation or revenue bill would be passed as long as no bill of such nature was filed in the House.²⁵ After such bill is passed on to the Senate, then the latter can approve its own version of the proposed law.²⁶ The Constitution unequivocally states that it is only the “bills” which must originate exclusively from the House, but the “law” shall still be a product of “total bicameral legislative process.”²⁷ The same ruling was made by the Court in *Alvarez v. Guingona, Jr.*,²⁸ involving a bill of local application converting the Municipality of Santiago, Isabela to the City of Santiago.²⁹

17. PHIL. CONST. art. VI, § 24 (emphasis supplied).

18. BERNAS, *supra* note 5, at 775.

19. *Id.*

20. *Tolentino v. Secretary of Finance*, 249 SCRA 629 (1995).

21. *Id.* at 635.

22. *Id.* at 643.

23. *Id.*

24. *Id.* at 641.

25. *Id.*

26. *Tolentino*, 249 SCRA at 641.

27. BERNAS, *supra* note 5, at 776

28. *Alvarez v. Guingona, Jr.*, 252 SCRA 695 (1996).

29. *Id.* at 704.

Other limitations on appropriation are found in Section 25, Article VI of the Constitution.³⁰ First, the “Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget.”³¹ Further, “[t]he form, content, and manner of preparation of the budget shall be prescribed by law.”³² It must be noted that this prohibition mainly concerns the prevention of “big budget deficits” and merely involves the presidential budget.³³ It does not involve the budget for the Congress and the Judiciary.³⁴

Second, “[n]o provision or enactment shall be embraced in the general appropriations bill [(GAB)] unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates.”³⁵ This prohibition is termed as the rule on “riders,” which proscribes the insertion of a non-appropriation item in an appropriation measure.³⁶ A “rider” is a provision which is “alien to or not germane to the subject or purpose of the bill in which is it incorporated.”³⁷ This provision greatly relates to Section 26 (1), Article VI which requires that every provision of a bill is germane to its title.³⁸ It aims to forestall log-rolling legislation, prevent fraud upon the legislature, and apprise the citizenry of the legislations being considered.³⁹

In *Garcia v. Mata*,⁴⁰ involving the appropriations for the fiscal year 1956 to 1957, the Court declared Paragraph 11 of the Special Provisions for the Armed Forces of the Philippines (AFP) as unconstitutional for being a rider.⁴¹ Such provision reads, “no reserve officer of the [AFP] may be called

30. PHIL. CONST. art. VI, § 25.

31. PHIL. CONST. art. VI, § 25 (1).

32. PHIL. CONST. art. VI, § 25 (1).

33. BERNAS, *supra* note 5, at 779.

34. *Id.*

35. PHIL. CONST. art. VI, § 25 (2).

36. *Atitiw v. Zamora*, 471 SCRA 329, 338 (2005).

37. *Id.* at 337.

38. This provision states that “[e]very bill passed by the Congress shall embrace only one subject which shall be expressed in the titles thereof.” PHIL. CONST. art. VI, § 26 (1).

39. *Atitiw*, 471 SCRA at 338.

40. *Garcia v. Mata*, 65 SCRA 517 (1975).

41. *Id.* at 522-23.

to a tour of active duty for more than two years during any period of five consecutive years[.]”⁴² The Court declared this paragraph unconstitutional for being apparently incongruent and irrelevant to the appropriations bill, hence, a rider.⁴³ However, the Court, in *Atituv v. Zamora*,⁴⁴ qualified the rule on “riders” by recognizing that appropriations bills are so broad that it would not be feasible to come up with a title that would embrace all the provisos in the bill.⁴⁵ Therefore, provisions that do not specifically relate to an appropriation may be included in the GAB, provided that it passed the “test of germaneness” or that it “[specifies] certain conditions and restrictions in the manner by which the funds to which they relate have to be spent.”⁴⁶

Third, in keeping with the equality of the three branches of the government, the Congress cannot enact a procedure different from other departments with regard to the approval of its own budget.⁴⁷ It shall “strictly follow the procedure for approving appropriations for other departments and agencies.”⁴⁸

Fourth, aside from the GAB, the Congress may also pass special appropriations bills provided that it shall specify its purpose and the same is supported by actually existing funds, as certified by the National Treasurer.⁴⁹ If no fund is available, the bill shall have a corresponding revenue proposal.⁵⁰

Fifth, “[n]o law shall be passed authorizing any transfer of appropriations[.]”⁵¹ However, a law may give the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the Heads of Constitutional Commissions the authority to increase any item in the general appropriations law for their

42. *Id.* at 520.

43. *Id.* at 521-22.

44. *See Atituv*, 471 SCRA at 329.

45. *Id.* at 338.

46. *Id.* at 338-39.

47. PHIL. CONST. art. VI, § 25 (3).

48. PHIL. CONST. art. VI, § 25 (3).

49. The provision provides that “[a] special appropriations bill shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified by the National Treasurer, or to be raised by a corresponding revenue proposal therein.” PHIL. CONST. art. VI, § 25 (4).

50. PHIL. CONST. art. VI, § 25 (4).

51. PHIL. CONST. art. VI, § 25 (5).

respective offices, provided that these funds shall be taken from the savings in their respective appropriations.⁵²

This prohibition, along with the other limitations of the Congress' power of the purse, is enacted primarily to forestall any temptation to embezzle public funds. Nevertheless, it is recognized that there is a need for a "considerable flexibility in the use of public funds and resources,"⁵³ hence, the Constitution gives the abovementioned officials the power to augment funds subject to certain limitations.⁵⁴ The Court pronounced in *Sanchez v. Commission on Audit*⁵⁵ that there are two essential requisites that need to be satisfied to have a valid transfer of appropriation.⁵⁶ First, there must be actual "savings in the programmed appropriation of the transferring agency"⁵⁷ and second, there must be "an existing item, project[,] or activity with an appropriation in the receiving agency to which the savings will be transferred."⁵⁸ Hence, it must be emphasized that the existence of actual savings is a condition sine qua non to a valid augmentation.⁵⁹ The operative word is "actual" which means that it is "real or substantial, or *exists presently in fact* as opposed to something which is merely theoretical, possible, potential[,] or hypothetical."⁶⁰

In *Demetria v. Alba*,⁶¹ the Court struck down Paragraph 1 of Section 44 of Presidential Decree (P.D.) No. 1177 for being violative of Section 16 (5), Article VII of the 1973 Constitution,⁶² a provision similar to Section 25 (5),

52. PHIL. CONST. art. VI, § 25 (5).

53. *Demetria v. Alba*, 148 SCRA 208, 214 (1987).

54. *Id.*

55. *Sanchez v. Commission on Audit*, 552 SCRA 471 (2008).

56. *Id.* at 497.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Demetria*, 148 SCRA at 208.

62. This provision reads —

No law shall be passed authorizing any transfer of appropriations, however, the President, the Prime Minister, the Speaker, the Chief Justice of the Supreme Court, and the heads of [C]onstitutional [C]ommissions may by law be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

Article VI of the present Constitution.⁶³ The Court invalidated the provision as it gave the President the power to indiscriminately transfer funds without regard as to whether the funds to be transferred are in fact savings.⁶⁴ By absolutely disregarding the safeguards provided by the Constitution, it was declared as an undue delegation of legislative power.⁶⁵

Additionally, in *Liga ng mga Barangay v. Commission on Elections*,⁶⁶ petitioners alleged that the Commission on Elections (COMELEC) “threatened” to source funds from the Executive and the Legislature in order to augment the funds for the 1994 barangay elections.⁶⁷ The case is a classic illustration of a violation of Section 25 (5), Article VI as the augmentation of the COMELEC’s budget was sourced from the appropriation of the Department of Interior and Local Government (DILG), the Countrywide Development Fund (CDF) of the House of Representatives and the Senate, and Internal Revenue Allotments of local governments.⁶⁸

The same constitutional provision was used by the Court in *Philippine Constitution Association v. Enriquez*⁶⁹ to strike down the Special Provision in the General Appropriations Act (GAA) of 1994 which allowed the AFP Chief of Staff to augment the pension fund of the armed forces.⁷⁰ The Court concluded that such realignment in the Executive can only be exercised by the President pursuant to a particular law.⁷¹ Also, in the recent case of *Sanchez*, funds of the DILG were transferred to the Office of the President by the Deputy Executive Secretary for the Ad Hoc Task Force for Inter-Agency Coordination to Implement Local Autonomy.⁷² The Court again

1973 PHIL. CONST. art. VIII, § 16 (5) (superseded 1987).

63. *Demetria*, 148 SCRA at 214. See PHIL. CONST. art. VI, § 25 (5).

64. *Id.* at 215.

65. *Id.*

66. *Liga ng mga Barangay v. Commission on Elections*, 232 SCRA 219 (1994).

67. The Court, however, dismissed the petition for lack of merit as the scheme complained of by the petitioners was based on a newspaper report. It was declared that the petitioners should have first obtained an official statement from the respondents as to the veracity of the news report. *Id.* at 224.

68. *Id.* at 220-21.

69. *Philippine Constitution Association v. Enriquez*, 235 SCRA 506 (1994).

70. *Id.* at 544.

71. *Id.*

72. *Sanchez*, 552 SCRA at 478-79.

declared that the list of officials in Section 25 (5) is exclusive and no other official may exercise such power to augment.⁷³ The augmentation made by the Deputy Executive Secretary was clearly not a move by the President nor were there savings that could have been utilized for the transfer.⁷⁴

The sixth limitation under Section 25 (5) provides that discretionary funds may be appropriated for particular officials “only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.”⁷⁵

And seventh, in case of failure of the Congress to pass a GAB at the end of the fiscal year, the Constitution provides for an automatic re-enactment of the general appropriations law of the preceding year and the same shall remain in force until a new GAB is passed.⁷⁶

The limitations on the Congress’ power of the purse are further strengthened by Section 22, Article VII which declares that the GAB should be based on the budget to be submitted by the President within 30 days from the opening of the Legislature’s regular session.⁷⁷ The budget shall include receipts and expenditures, and sources of financing, including those existing and proposed revenue measures.⁷⁸

The President, however, is not powerless over matters of money legislation. For one, the President has veto power as a means to control legislation.⁷⁹ Generally, when the President exercises his or her veto power, he or she exercises it over the entire bill. Nonetheless, the Constitution gives the Chief Executive an item-veto power with regard to appropriation, revenue, or tariff bills.⁸⁰ This is closely related to the “doctrine of inappropriate provisions,” which says that provisions which are incompatible in an appropriations bill may be a subject of an item-veto even if it is not an appropriation or revenue item.⁸¹ Nevertheless, despite this power of the

73. *Id.* at 493.

74. *Id.* at 494.

75. PHIL. CONST. art. VI, § 25 (6).

76. PHIL. CONST. art. VI, § 25 (7).

77. PHIL. CONST. art. VII, § 22.

78. PHIL. CONST. art. VII, § 22.

79. PHIL. CONST. art. VI, § 27 (1).

80. PHIL. CONST. art. VI, § 26 (2).

81. *See* Gonzales v. Macaraig, Jr., 191 SCRA 452, 467-70 (1990).

President, the Congress may override the presidential veto by a vote of two-thirds of all its members.⁸²

This function of the President emphasizes that the power of the Congress to appropriate public funds is subject to checks and balances of the other branches of the government — the Executive and the Judiciary. The Congress' power of the purse does not make the Legislature in any way superior over the other two branches. As expounded by Thomas McIntyre Colley,

[t]he [C]onstitution apportions the powers of government, but it does not make any one of the three departments subordinate to another [] when exercising the trust committed to it. The courts may declare legislative enactments unconstitutional and void in some cases, but not because the judicial power is superior in degree or dignity to the [L]egislative. Being required to declare what the law is in the cases which come before them, they must enforce the [C]onstitution, as the paramount law, whenever a legislative enactment comes in conflict with it.⁸³

With this being said, the Judiciary clearly has a huge role to play in the appropriations of public funds. It is the Court's ultimate duty to exercise its judicial power when the Executive and Legislature act beyond their constitutional mandates.⁸⁴ More than a power, it is the duty of the Judiciary to declare these acts of its co-equal branches as unconstitutional.⁸⁵ Particularly, it is also the Judiciary's obligation to ensure that public funds are appropriated within the limits prescribed by the Constitution.

III. CONSTITUTIONAL CHALLENGES: PRIORITY DEVELOPMENT ASSISTANCE FUND AND DISBURSEMENT ACCELERATION PROGRAM

The above-discussed limits set by the Constitution, however, have been continuously challenged in the Philippine political arena. Both the President and the Congress have been testing the boundaries of the separation of powers laid down by the fundamental law of the land. These challenges became clearly apparent when the pork barrel scam arose. Hence, this Chapter will briefly discuss the contemporary problem areas that have

82. PHIL. CONST. art. VI, § 26 (1) & BERNAS, *supra* note 5, at 789-90.

83. THOMAS MCINTYRE COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 159-60 (1868).

84. BERNAS, *supra* note 5, at 946-57.

85. *Id.*

plagued the separation of powers and checks and balances in the context of appropriations. First, the Congress' Priority Development Assistance Fund (PDAF), along with the President's Malampaya and Presidential Social Fund (PSF) will be discussed; followed by the President's Disbursement Acceleration Program (DAP).

A. Priority Development Assistance Fund, Malampaya Funds, and Presidential Social Fund

The term "pork barrel" is of American-English origin.⁸⁶ Conceptually, it refers to a "degrading ritual ... [of rolling out] a barrel stuffed with pork ... [to] a multitude of black slaves ... [who] would cast their famished bodies into the porcine feast to assuage their hunger with morsels coming from the generosity of their well-fed master."⁸⁷ This is the long-established metaphor for the legislators' practice of providing financial support to their constituents in expectation of possible political return or gain. Added to that, the Court, in its decision in *Belgica*, defined the pork barrel system as the "collective body of rules and practices that govern the manner by which lump-sum discretionary funds, primarily intended for local projects, are utilized through the respective participations of the Legislative and Executive branches of government, including its members."⁸⁸ This system has taken different forms since the pre-martial law era up to the present administration.⁸⁹

The system had been an unquestioned practice among legislators until it faced its first constitutional challenge in *Philippine Constitution Association*.⁹⁰ The petitioners in this case argued that the CDF was an encroachment by the Legislature on the Executive's power since the program allows legislators to propose and identify projects to be implemented by government agencies.⁹¹ The Court, however, upheld its constitutionality by ruling that legislators' proposals were "merely recommendatory."⁹²

Eight years after *Philippine Constitution Association*, the Court then again discharged the pork barrel system from constitutional infirmity in *Lawyers*

86. *Belgica*, 710 SCRA at 50.

87. BERNAS, *supra* note 5, at 813.

88. *Belgica*, 710 SCRA at 105 (emphasis omitted).

89. *See generally Belgica*, 710 SCRA at 52-75.

90. *See Philippine Constitution Association*, 235 SCRA at 506.

91. *Id.* at 522.

92. *Id.* at 523.

*Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management.*⁹³ The Court rationalized its decision by saying that there was no convincing proof that there were funds directly released to legislators, who would in turn spend it at their discretion.⁹⁴ There was “no concrete proof that [the] PDAF, in the guise of ‘pork barrel,’ is a source of ‘dirty money’ for unscrupulous lawmakers and other officials who tend to misuse their allocations.”⁹⁵

However, the Court’s deafening silence about the pork barrel was again disturbed by the three petitions filed challenging the constitutionality of the PDAF, particularly Article XLIV of Republic Act (R.A.) No. 10352 or the GAA of 2013,⁹⁶ along with the Malampaya Fund and the PSF,⁹⁷ the latter collectively known as the “Presidential Pork.”⁹⁸

First, the 2013 PDAF in the GAA, along with other congressional pork barrel laws, was challenged by the petitioners as violative of the constitutional principles of separation of powers, checks and balances, non-delegability of legislative power, and accountability, among others.⁹⁹

On the one hand, the 2013 GAA allocated for congressional districts or party-list representatives ₱30 million for soft programs and ₱40 million for infrastructure and other projects listed in Article XLIV.¹⁰⁰ On the other hand, senators were given ₱100 million each for soft and hard projects.¹⁰¹ The provision also gave district representatives the power to identify projects outside of his or her legislative district, provided that there was “written concurrence of the member of the House of Representatives of the recipient or beneficiary legislative district, endorsed by the Speaker of the House of

93. *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, 670 SCRA 373 (2012).

94. *Id.* at 381.

95. *Id.*

96. An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January One to December Thirty-One, Two Thousand and Thirteen, and for Other Purposes, Republic Act No. 10352, art. XLIV (2012) [hereinafter 2013 General Appropriations Act].

97. *Belgica*, 710 SCRA at 83.

98. *Id.* at 75-77.

99. *Id.* at 88.

100. 2013 General Appropriations Act, art. XLIV, Special Provision 3.

101. *Id.*

Representatives.”¹⁰² This poses more problems as it allows re-alignment of funds on the mere condition that the same shall be “submitted to the House Committee on Appropriations and the Senate Committee on Finance, for favorable endorsement to the [Department of Budget and Management (DBM)] or to the implementing agency, as the case may be.”¹⁰³ Notably, the funds shall only be released upon favorable endorsement by the said House and Senate committees.¹⁰⁴

Second, the PSF, as enshrined in P.D. Nos. 910¹⁰⁵ and 1869,¹⁰⁶ was challenged insofar as it constituted undue delegation of legislative power.¹⁰⁷

Petitioners assailed Section 8 of P.D. No. 910, which provides that fees and revenues of the Energy Regulatory Board are to be used “to finance energy resource development and exploitation programs and projects of the government and *for such other purposes as may be hereafter directed by the President.*”¹⁰⁸ Also, Section 12 of P.D. No. 1869 allows the use of PSF to “fund and finance infrastructure and/or socio-civic projects throughout the Philippines as may be *directed and authorized by the Office of the President[.]*”¹⁰⁹

102. *Id.* Special Provision 2.

103. *Id.* Special Provision 4.

104. *Id.* Special Provision 5.

105. Creating an Energy Development Board, Defining its Powers and Functions, Providing Funds Therefor, and for Other Purposes, Presidential Decree No. 910 (1976).

106. Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399, and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR), Presidential Decree No. 1869 (1983).

107. *Belgica*, 710 SCRA at 88.

108. Presidential Decree No. 910, § 8 (emphasis supplied).

109. Presidential Decree No. 1869, § 12 (as amended) (emphasis supplied).

I. Factual Antecedents

These constitutional challenges would not have reached the limelight were it not for the disclosure of the wide-scale corruption scheme allegedly initiated by Janet Lim-Napoles through her JLN Corporation and dummy non-governmental organizations (NGOs).¹¹⁰ This scam was disclosed to the media by Napoles' former finance officer, Benhur Luy, and five other whistle-blowers.¹¹¹ According to Luy, the corruption scheme was made possible through fraudulent NGOs created by Napoles; through which, the PDAF were channeled to legislators' and Napoles' pockets.¹¹² Luy alleged that Napoles and her cohorts were able to defraud the government of at least ₱10 billion of PDAF over the past 10 years.¹¹³

Also, at least ₱900 million worth of royalties from the operation of the Malampaya gas project was allegedly swindled by Napoles.¹¹⁴ According to Marilyn Suñas, Napoles' personal assistant-turned-whistle-blower, the agricultural kits that were supposed to be distributed to local government units were coursed through the bogus Napoles NGOs.¹¹⁵ However, "no delivery was ever made[;] all the receipts were manufactured for the liquidation of the funds[.]"¹¹⁶

On 16 August 2013, the Commission on Audit (COA) released a special report stating that some of the beneficiaries in the Napoles NGOs were actually taken from lists of board and bar examinations passers.¹¹⁷ The report further revealed that 2,615 named-beneficiaries of the NGO, ITO NA

110. Nancy C. Carvajal, *Malampaya fund lost ₱900M in JLN racket*, PHIL. DAILY INQ., July 16, 2013, available at <http://newsinfo.inquirer.net/445585/malampaya-fund-lost-p900m-in-jln-racket> (last accessed Sep. 30, 2014) [hereinafter Carvajal, *Malampaya fund*].

111. See Nancy C. Carvajal, *NBI probes ₱10-B scam*, PHIL. DAILY INQ., July 12, 2013, available at <http://newsinfo.inquirer.net/443297/nbi-probes-p10-b-scam> (last accessed Sep. 30, 2014) [hereinafter Carvajal, *NBI probe*].

112. *Id.*

113. *Id.*

114. Carvajal, *Malampaya fund*, *supra* note 110.

115. *Id.*

116. *Id.*

117. Camille Diola, *Pork beneficiaries' names randomly taken from exam passers lists*, PHIL. STAR, Aug. 16, 2013, available at <http://www.philstar.com/headlines/2013/08/16/1098401/pork-beneficiaries-names-randomly-taken-exam-passers-lists> (last accessed Sep. 30, 2014).

Movement Foundation, were extracted from the list of passers in the accountancy and nursing boards and bar exams in 2007 and 2008, respectively.¹¹⁸

On 26 August 2013, thousands of people from different parts of the Philippines, and diverse social or civic groups, marched to Rizal Park in Manila to join the “Million People March.”¹¹⁹ This movement, which started on the social networking website Facebook, called for the abolition of the PDAF through a peaceful assembly and rally.¹²⁰

Moreover, on 10 September 2013, upon the filing of the above-mentioned three petitions, the Court issued a Temporary Restraining Order (TRO) to bar the release of the remaining PDAF and the President’s Malampaya Funds.¹²¹

On 16 September 2013, the National Bureau of Investigation, with the Department of Justice (DOJ), filed charges of plunder and malversation of public funds with the Office of the Ombudsman against Napoles, Senators Juan Ponce Enrile, Jose “Jinggoy” Ejercito Estrada, and Ramon Revilla, Jr., along with five former congressmen and 29 other individuals.¹²²

And on 6 June 2014, the Office of the Ombudsman, headed by Ombudsman Conchita Carpio-Morales, filed separate informations against

118. *Id.*

119. Karlo Mikhail Mongaya, ‘Million People March’ Against Corruption in the Philippines, *available at* <http://globalvoicesonline.org/2013/08/27/million-people-march-against-corruption-in-the-philippines> (last accessed Sep. 30, 2014) & Kim Arveen Patria, ‘Million People March’ is ‘People Power’ against corruption, *available at* <https://ph.news.yahoo.com/-million-people-march--is--people-power--against-corruption-054443578.html> (last accessed Sep. 30, 2014).

120. *Id.*

121. Camille Diola, *SC issues TRO vs pork barrel*, PHIL. STAR, Sep. 10, 2013, *available at* <http://www.philstar.com/headlines/2013/09/10/1193901/sc-issues-tro-vs-pork-barrel> (last accessed Sep. 30, 2014).

122. Camille Diola, *Summary of plunder, malversation complaints vs Napoles, 8 lawmakers*, PHIL. STAR, Sep. 16, 2013, *available at* <http://www.philstar.com/headlines/2013/09/16/1217521/summary-plunder-malversation-complaints-vs-napoles-8-lawmakers> (last accessed Sep. 30, 2014).

the three senators, charging each of them of violation of R.A. No. 7080¹²³ or the law defining and penalizing plunder.¹²⁴

As of this writing, the three senators are detained at Camp Crame in Quezon City, while Napoles is being held at Camp Bagong Diwa in Taguig City.¹²⁵

2. *Belgica* Ruling

On 19 November 2013, the Court promulgated its historic decision declaring the entire 2013 PDAF article as unconstitutional.¹²⁶ Along with it were “all [the] legal provisions of past and present Congressional Pork Barrel [l]aws.”¹²⁷ The Court clearly declared that the Pork Barrel system contravened the well-established rule of separation of powers.¹²⁸ The Court said, to wit —

Clearly, these post-enactment measures which govern the areas of project identification, fund release[,] and fund realignment are not related to functions of congressional oversight and, hence, allow legislators to intervene and/or assume duties that properly belong to the sphere of budget execution. Indeed, by virtue of the foregoing, legislators have been, in one form or another, authorized to participate in — as *Guingona, Jr. [v. Carague]* puts it — ‘the various operational aspects of budgeting,’ including ‘the evaluation of work and financial plans for individual activities’ and the ‘regulation and release of funds’ in violation of the separation of powers principle.¹²⁹

In addition, Justice Marvic Mario Victor F. Leonen, in his separate opinion, unequivocally dubbed the PDAF as having “no discernable

123. An Act Defining and Penalizing the Crime of Plunder, Republic Act No. 7080 (1991).

124. *Plunder filed against Enrile, Jinggoy, Bong*, MANILA TIMES, June 6, 2014, available at <http://www.manilatimes.net/plunder-filed-against-enrile-jinggoy-bong/102255/> (last accessed Sep. 30, 2014).

125. See Amita O. Legaspi, Sotto, Honasan want Enrile, Jinggoy, Revilla to continue to stay in Crame, available at <http://www.gmanetwork.com/news/story/372419/news/nation/sotto-honasan-want-enrile-jinggoy-revilla-to-continue-to-stay-in-crame> (last accessed Sep. 30, 2014).

126. *Belgica*, 710 SCRA at 161-63.

127. *Id.* at 161.

128. *Id.* at 160.

129. *Id.* at 116 (citing *Guingona, Jr. v. Carague*, 196 SCRA 221 (1991)).

purpose.”¹³⁰ The system was a mere futility intended to introduce equal economic development among legislative districts.¹³¹ This is evidenced by the fact that legislative districts have received the same amount of PDAF, regardless of their varying needs and population — “had it been to address the developmental needs of the [l]egislative districts, then the amounts would have varied based on the needs of such districts.”¹³²

The Court also struck down the PDAF as an undue delegation of legislative power.¹³³ Such delegation, however, was not made in favor of a co-equal branch of government, but to the individual legislators themselves.¹³⁴ It was ruled that “post-enactment identification authority to individual legislators [] violates the principle of non-delegability since said legislators [were] effectively allowed to *individually* exercise the *power of appropriation*, which — as settled in [*Philippine Constitutional Association*] — is lodged in Congress.”¹³⁵

Aside from that, checks and balances were also impaired by the PDAF as its lump-sum and post-enactment identification budgeting system created a “budget within a budget.”¹³⁶ It “[subverted] the prescribed procedure of presentment”¹³⁷ and at the same time prejudiced the President’s power of item-veto by virtue of Section 27 (2), Article VI of the Constitution.¹³⁸ The Court particularly pointed that this form of system “forces” the President to choose either “[to accept] the entire ₱24.79 [b]illion PDAF allocation without knowing the specific projects of the legislators, which may or may

130. *Belgica*, 710 SCRA at 317 (J. Leonen, concurring opinion).

131. *Id.* at 320.

132. *Id.*

133. *Belgica*, 710 SCRA at 160.

134. *Id.*

135. *Id.* at 122.

136. *Id.* at 129.

137. *Id.*

138. This provision provides that “[t]he President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.” PHIL. CONST. art. VI, § 27 (2).

not be consistent with his national agenda[,]”¹³⁹ or “[to reject] the whole PDAF to the detriment of all other legislators with legitimate projects.”¹⁴⁰

More importantly, the Court took a huge leap by labelling the PDAF as unconstitutional as it impairs public accountability.¹⁴¹ The PDAF transformed the legislators from being “disinterested observers” to interested executors by virtue of the post-enactment authority conferred upon them.¹⁴² This runs afoul to Section 14, Article VI of the Constitution which provides that legislators “shall not intervene in any matter before any office of the [g]overnment for his pecuniary benefit or where he may be called upon to act on account of his office.”¹⁴³ Hence, the Court unequivocally declared that “allowing legislators to intervene in the various phases of project implementation — a matter before another office of government — renders them *susceptible to taking undue advantage of their own office.*”¹⁴⁴

Despite the apparent unconstitutionality of the PDAF, nevertheless, the Court ruled that the Malampaya Fund and the PSF were valid appropriation laws¹⁴⁵ as they “[set] apart a determinate or determinable amount of money [and] allocate[] the same for a particular public purpose.”¹⁴⁶

However, the phrase “and for such other purposes as may be hereafter directed by the President”¹⁴⁷ found in Section 8 of P.D. No. 910 was struck down as an undue delegation of legislative power.¹⁴⁸ According to the Court, it gave the President “wide latitude” to use the Malampaya Funds for purposes outside the limits defined by P.D. No. 910.¹⁴⁹ Also, Section 12 of P.D. No. 1869, particularly the phrase “*to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office*

139. *Belgica*, 710 SCRA at 129.

140. *Id.*

141. *Id.* at 133.

142. *Id.* at 132.

143. PHIL. CONST. art. VI, § 14.

144. *Belgica*, 710 SCRA at 133 (emphasis supplied).

145. *Id.* at 142.

146. *Id.* at 140-41 (emphasis omitted).

147. Presidential Decree No. 910, § 8, ¶ 2.

148. *Belgica*, 710 SCRA at 146.

149. *Id.*

of the President of the Philippines,”¹⁵⁰ suffered the same fate.¹⁵¹ Though the Court recognized the well-defined limit set by the law for its second purpose (i.e., to finance the restoration of damaged or destroyed facilities due to calamities), the first purpose, however, gave the President “*carte blanche* authority to use the same fund for any infrastructure project he may so determine as a ‘priority.’”¹⁵²

B. Disbursement Acceleration Program

1. Factual Antecedents

After his name was dragged into the PDAF scandal, Senator Jinggoy Ejercito Estrada, on 25 September 2013, delivered a privilege speech before the Senate of the Philippines, alleging that members of the upper house had received an “incentive” worth ₱50 million for voting in favor of the impeachment of Chief Justice Renato C. Corona.¹⁵³

As retaliation, Secretary Florencio B. Abad of the DBM issued a public statement seeking to clarify that the alleged “incentive” was part of the DAP of the DBM.¹⁵⁴ He labelled the DAP as a means to “ramp up spending and [to] help accelerate economic expansion.”¹⁵⁵ The DBM further defined and explained that

[t]he [DAP] is a stimulus package under the Aquino administration designed to fast-track public spending and push economic growth. This covers high-impact budgetary programs and projects which will be augmented out of the savings generated during the year and additional revenue sources. The DAP was approved by the President on [12 October]

150. Presidential Decree No. 1869, § 12, ¶ 2 (as amended) (emphasis supplied).

151. See *Belgica*, 710 SCRA at 149.

152. *Id.*

153. Andreo Calonzo, Jinggoy: ₱50M additional funds given to senators who voted to convict Corona, available at <http://www.gmanetwork.com/news/story/328109/news/nation/jinggoy-p50m-additional-funds-given-to-senators-who-voted-to-convict-corona> (last accessed Sep. 30, 2014).

154. Official Gazette, Statement: The Secretary of Budget and Management on the releases to senators as part of the Spending Acceleration Program, available at <http://www.officialgazette.gov.ph/2013/09/30/statement-the-secretary-of-budget-on-the-releases-to-senators> (last accessed Sep. 30, 2014).

155. *Id.*

2011 upon the recommendation of the Development Budget Coordination Committee (DBCC) and the Cabinet Clusters.¹⁵⁶

In rationalizing this move of the Aquino government, the DBM pointed the following as the legal bases for the DAP:

- (1) Section 25 (5), Article VI of the 1987 Constitution which granted to the President the authority to augment an item for his office in the general appropriations law;¹⁵⁷
- (2) Sections 49 (Authority to Use Savings for Certain Purposes) and 38 (Suspension of Expenditure Appropriations), Chapter 5, Book VI of Executive Order (E.O.) No. 292 (Administrative Code of 1987);¹⁵⁸ and
- (3) GAAs of 2011, 2012, and 2013, particularly their provisions on the use of savings; means of savings and augmentation; and priority in the use of savings.¹⁵⁹

Based on the factual antecedents laid down by the Court in *Araullo*, the DAP was first evidenced by a memorandum from Secretary Abad dated 12 October 2011, asking for the President's approval of its implementation.¹⁶⁰ The memorandum listed the sources of funds amounting to ₱72.11 billion and the proposed priority projects to be funded.¹⁶¹ It was followed by another memorandum dated 12 December 2011 requesting for an omnibus authority to consolidate the savings and unutilized balances for the fiscal year 2011.¹⁶² Subsequently, other memoranda dated 25 June 2012, 4 September

156. Department of Budget and Management, Frequently Asked Questions about the Disbursement Acceleration Program (DAP), *available at* <http://www.dbm.gov.ph/wp-content/uploads/DAP/DAP%20FAQs%20-%20OCT%205%202013.pdf> (last accessed Sep. 30, 2014) [hereinafter FAQs about the DAP].

157. PHIL. CONST. art. VI, § 25 (5).

158. *See* Instituting the “Administrative Code of 1987” [ADMIN. CODE], Executive Order No. 292 (1987).

159. *See* FAQs about the DAP, *supra* note 156.

160. *Araullo*, 728 SCRA at 102.

161. *Id.*

162. *Id.* at 108.

2012, 19 December 2012, 20 May 2013, and 25 September 2013 were sent to the President.¹⁶³

Moreover, on 18 July 2012, Secretary Abad issued National Budget Circular (NBC) No. 541¹⁶⁴ to implement the 25 June 2012 memorandum.¹⁶⁵ It specifically provides that

the President, per directive dated [27 June] 2012 authorized the withdrawal of unobligated allotments of agencies with low levels of obligations as of [30 June] 2012, both for continuing and current allotments. This measure will allow the maximum utilization of available allotments to fund and undertake other priority expenditures of the national government.¹⁶⁶

In other words, under NBC No. 541, unobligated allotments for fiscal year 2011 as of 30 June 2012 shall be “immediately considered for withdrawal.”¹⁶⁷

The funds used for the DAP, according to the DBM, were collected from the “savings” generated by the government, as well as the Unprogrammed Funds.¹⁶⁸ These “savings,” on the one hand, were sourced from: (a) unreleased appropriations for unfilled positions which will lapse at the end of the year; (b) available balances from completed or discontinued projects; (c) unreleased appropriations of slow moving projects and discontinued projects; and (d) withdrawn unobligated allotments which have earlier been released to national government agencies.¹⁶⁹

On the other hand, the Unprogrammed Funds were “standby appropriations authorized by [the] Congress in the annual [GAA.]”¹⁷⁰ These funds may be availed of only when any of the following instances occur:

163. *Id.* at 111-12.

164. Department of Budget and Management, Adoption of Operational Efficiency Measure — Withdrawal of Agencies’ Unobligated Allotments as of June 30, 2012, National Budget Circular No. 541 [NBC No. 541] (July 8, 2012).

165. *Araullo*, 728 SCRA at 112.

166. NBC No. 541, ratio., ¶ 6.

167. *Id.* no. 5.4.

168. FAQs about the DAP, *supra* note 156.

169. *Araullo*, 728 SCRA at 56-57. *See generally* FAQs about the DAP, *supra* note 156.

170. FAQs about the DAP, *supra* note 156.

- (a) Revenue collections exceed the original revenue targets in the Budget of Expenditures and Sources Financing (BESF) submitted by the President to Congress;
- (b) New revenues are collected [or] realized from sources not originally considered in the BESF submitted by the President to [the] Congress; or
- (c) Newly approved loans for foreign assisted projects are secured or when conditions are triggered for other sources of funds such as perfected loan agreements for foreign assisted projects.¹⁷¹

With the statement of Estrada and the defenses made by Abad, numerous queries on the legality of the DAP arose. This bold initiative by the Executive further rocked the already disturbed separation of powers and checks and balances among the supposed three co-equal branches of the government. Hence, from October to November 2013, nine petitions were filed before the Court challenging the constitutionality of the DAP, NBC No. 541, and related issuances of the DBM implementing the DAP.

2. *Araullo* Ruling

After a comprehensive discussion of the budget process, along with the dynamics of the DAP, the Court declared that the withdrawal of unobligated allotments, the cross-border transfers, and the funding of projects outside the GAA under the guise of the DAP were unconstitutional.¹⁷² According to the Court's ruling dated 1 July 2014, the aforementioned were violative of Section 25 (5), Article VI of the Constitution, which prohibits cross-border transfer of appropriations.¹⁷³ The Constitution allows an exception only in favor of the President, Senate President, House Speaker, Chief Justice, and Heads of Constitutional Commissions, provided that augmentations shall be within their respective offices.¹⁷⁴

One of the issues resolved by the Court was whether the appropriations and withdrawn unobligated allotments utilized for the DAP were "savings" in accordance with the above-mentioned constitutional provision.¹⁷⁵ It was

171. *Id.*

172. *Araullo*, 728 SCRA at 183-84.

173. *Id.* See PHIL. CONST. art. VI, § 25 (5).

174. PHIL. CONST. art. VI, § 25 (5).

175. See *Araullo*, 728 SCRA at 134.

ruled in the negative.¹⁷⁶ The Court declared that these were not “savings” in the constitutional sense and did not meet the requisites¹⁷⁷ for a valid transfer.¹⁷⁸ First, the GAAs of 2011 and 2012 lacked valid provisions to authorize transfers of funds under the DAP.¹⁷⁹ Second, there were no savings from which funds could be sourced for the DAP.¹⁸⁰ And third, no funds from the savings could be transferred under the DAP to augment deficient items not provided in the GAA.¹⁸¹

Despite the parameters set by the Constitution, cross-border augmentation by the Executive did transpire in the guise of “aid” for departments “in need of public funds.”¹⁸² Funds under the DAP totaling ₱143.7 million were transferred to the COA for its Information and Technology infrastructure program and additional litigation experts; while ₱250 million were given to the House of Representatives for the completion of the construction of the Congressional e-Library and the Legislative Library and Archives Building, among others.¹⁸³ This “aid” given by the Executive, according to the Court, clearly undermines the separation of powers enshrined in the Constitution.¹⁸⁴ Though the President has the constitutional mandate to faithfully execute the laws,¹⁸⁵ the same does not include “unfettered discretion ... to substitute his own will for that of Congress.”¹⁸⁶ In fact, it is the President’s duty to faithfully execute the provisions of no less than the GAA, which, for all intents and purposes, is a law. The “power of the purse” lies in the Congress.¹⁸⁷ It “wields control by specifying the [projects, activities, and programs (P/A/P)] for which public

176. *Id.* at 135-36.

177. *Id.*

178. *Id.* at 131-32.

179. *Id.* at 132.

180. *Id.* at 134.

181. *Araullo*, 728 SCRA at 149.

182. *Id.* at 162.

183. *Id.* at 160.

184. *Id.*

185. The Constitution provides that “[t]he President shall have control of all the executive departments, bureaus, and offices[; and] shall ensure that the laws are faithfully executed.” PHIL. CONST. art. VII, § 17.

186. *Araullo*, 728 SCRA at 155.

187. *Id.* at 156.

money should be spent[.]”¹⁸⁸ and it is the Executive’s obligation to implement it based on its tenor.

Corollary, the DAP was labelled by Justice Antonio T. Carpio, in his separate opinion, as a “castration of a vital part of the checks-and-balances enshrined in the Constitution.”¹⁸⁹ Though the majority opinion decided not to rule on the implications of the DAP on the principles of check-and-balance and of accountability between and among the Executive and Legislature, it is undeniable that these two are clearly intertwined. It continuously becomes more problematic as the Congress seems amenable to the acts and decisions of the Executive — from the words of Justice Carpio, “the branch adversely affected suicidally consents to it.”¹⁹⁰

IV. THE POST-*BELGICA* AND -*ARAUULLO* SCENARIO

A. *A New Budget Scheme*

Months before the Court’s decision in *Belgica*, President Aquino addressed the public and said, “[i]t is time to abolish the PDAF.”¹⁹¹ He further ordered the DOJ and other agencies under the Inter-Agency Anti-Graft Coordinating Council to investigate and to prosecute those who wrongfully benefited from the Pork Barrel system.¹⁹²

In consonance with this move of the Executive, the President signed the 2014 national budget on 20 December 2013.¹⁹³ The GAA of 2014 or the Republic Act (R.A.) No. 10633¹⁹⁴ was 13% or ₱258.7 billion higher than

188. *Id.*

189. *Id.* at 223 (J. Carpio, separate opinion).

190. *Id.*

191. Kristine Angeli Sabillo, *Aquino: It’s time to abolish pork barrel*, PHIL. DAILY INQ., Aug. 23, 2013, available at <http://newsinfo.inquirer.net/472911/time-to-abolish-pdaf-says-aquino> (last accessed Sep. 30, 2014).

192. *Id.*

193. Louis Bacani, *PNoy signs ‘pork-less’ P2.26T national budget for 2014*, PHIL. STAR, Dec. 20, 2013, available at <http://old.philstar.com:8080/headlines/2013/12/20/1270341/pnoy-signs-pork-less-p2.26t-national-budget-2014> (last accessed Sep. 30, 2014) [hereinafter Bacani, *PNoy signs 2014 budget*].

194. An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines for January One to December Thirty-One, Two

the 2013 budget.¹⁹⁵ As claimed by the government, it was apparent that the Special Provision on PDAF was not included anymore in the appropriations law. Some senators and most of the members of the House of Representatives were said to have realigned their shares to other programs.¹⁹⁶ Particularly, the 2014 budget renamed the former Calamity Fund to the National Disaster Risk Reduction Management Fund,¹⁹⁷ and increased its allotment from ₱7.5 billion in 2013 to ₱13 billion in 2014.¹⁹⁸ Also, a Rehabilitation and Reconstruction Program was created with a budget amounting to ₱20 billion.¹⁹⁹

Subsequent to this purported abolition of the PDAF, the Executive defended the DAP. Aquino, on 14 July 2014, made a public address and expressed his dismay over the Court's decision in *Araullo*.²⁰⁰ He said that the Court's decision was incomprehensible and expressed the Executive's decision to appeal the decision through a motion for reconsideration.²⁰¹ The Chief Executive warned the Court by saying, "[w]e do not want two equal branches of government to go head to head, needing a third branch to step in to intervene. We find it difficult to understand your decision."²⁰²

From this stubborn stance of the Executive, the President then said in his State of the Nation Address, on 28 July 2014, that the Executive seeks to comply with the decision of the Court.²⁰³ He declared that the government

Thousand and Fourteen, and for Other Purposes, Republic Act No. 10633 (2013) [hereinafter 2014 General Appropriations Act].

195. Bacani, *PNoy signs 2014 budget*, *supra* note 193.

196. *Id.*

197. 2014 General Appropriations Act, art. XLIII.

198. Bacani, *PNoy signs 2014 budget*, *supra* note 193.

199. *See* 2014 General Appropriations Act, art. XLV.

200. Louis Bacani, *Aquino tells SC: 'Huwag n'yo kaming hadlangan'*, PHIL. STAR, July 14, 2014, available at <http://www.philstar.com/headlines/2014/07/14/1346201/aquino-tells-sc-huwag-nyo-kaming-hadlangan> (last accessed Sep. 30, 2014).

201. *Id.*

202. The original text of the speech reads, "*Ayaw nating umabot pa sa puntong magbabanggaan ang dalawang magkapantay na sangay ng gobyerno, kung saan kailangan pang mamagitan ng ikatlong sangay ng gobyerno.*" *Id.*

203. Official Gazette, [English] Benigno S. Aquino III, Fifth State of the Nation Address, July 28, 2014, available at <http://www.officialgazette.gov.ph/2014/07/28/english-benigno-s-aquino-iii-fifth-state-of-the-nation-address-july-28-2014> (last accessed Sep. 30, 2014).

had to stop some projects to ensure that the Executive would remain faithful with the Court's decision on the DAP case.²⁰⁴ Hence, he asked the help of legislators for the passage of a supplemental budget for 2014 to ensure that "the implementation of ... programs and projects [would] not be compromised."²⁰⁵

Hence, on 30 July 2014, the Aquino administration called for the approval of the ₱2.6 trillion-budget for 2015.²⁰⁶ The said budget was 15.1% higher than the 2014 budget — almost ₱365 billion of which was allocated for the Department of Education and ₱300.5 billion for Department of Public Works and Highways.²⁰⁷ The budget, however, seeks to "institutionalize [a] DAP-like mechanism"²⁰⁸ by asking the Congress to allow the Aquino government to declare "savings" from the first semester of each year — the same scheme that led to the creation of the DAP.²⁰⁹ House Speaker Feliciano R. Belmonte, Jr., however, gave an assurance that there will be no PDAF-like scheme or any post-budget identification for legislators.²¹⁰

Further, the grass-roots participatory budgeting (GRPB) of the Aquino administration also gave rise to controversy. The GRPB, which replaced the bottom-up budgeting (BuB) system, aims "to ensure the inclusion of the funding requirements for the development needs as they are identified at the local level in the budget proposals of participating agencies."²¹¹ On the one hand, the former BuB system amounted only to ₱8.4 billion in 2013, and increased to ₱17.5 billion in 2014.²¹² On the other hand, under the GRPB

204. *Id.*

205. *Id.*

206. R.G. Cruz, Palace wants DAP system in 2015 budget, *available at* <http://www.abs-cbnnews.com/nation/07/30/14/palace-wants-dap-system-2015-budget> (last accessed Sep. 30, 2014).

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. Christian V. Esguerra, *Abad explains 'various projects' in 2015 budget*, PHIL. DAILY INQ., Aug. 22, 2014, *available at* <http://newsinfo.inquirer.net/631650/abad-explains-various-projects-in-2015-budget> (last accessed Sep. 30, 2014).

212. Tonette Orejas, *LP solon confirms pork lurks in budget*, PHIL. DAILY INQ., Aug. 15, 2014, *available at* <http://newsinfo.inquirer.net/629434/lp-solon-confirms-pork-lurks-in-budget> (last accessed Sep. 30, 2014).

in 2015, it ballooned to ₱20.8 billion.²¹³ Some lawmakers have expressed their disapproval of the GRPB by labelling it as “one of the Executive [d]epartment’s innovative schemes to expand its discretionary power over the budget”²¹⁴ or a scheme that excludes consultation with stakeholders, hence, defeating the purpose of the GRPB.²¹⁵

B. Political Repercussions

Aside from the changes and developments introduced in the national budget, one glaring aftermath of the *Belgica* and *Araullo* rulings was the apparent tug-of-war between the Executive and Legislature, on the one hand, and the Judiciary, on the other. For instance, the Executive’s proposed 2015 budget for the Judiciary was 38% or ₱12 billion less than what the latter actually sought.²¹⁶ Of the ₱32.6 billion budget recommended by the Judiciary, the Executive proposed only ₱20.2 billion.²¹⁷ This is, in fact, not new with the Judiciary which has been experiencing a downward trend in its share in the national budget since Aquino took office.²¹⁸ From 1.02% in 2010, it decreased to one percent in 2011, then to 0.95% in 2013.²¹⁹ It was further diminished to 0.88% in 2014, and to 0.82% in the proposed 2015 budget.²²⁰

Furthermore, two days after the President publicly expressed his dismay over the *Araullo* ruling, on 16 July 2014, two lawmakers from the Liberal Party filed separate bills seeking to abolish or to modify the Judiciary Development Fund (JDF).²²¹ The JDF was a creation of former President

213. *Id.*

214. Xianne Arcangel, Lawmaker: Grassroots Participatory Budgeting a new form of ‘pork’, available at <http://www.gmanetwork.com/news/story/369667/news/nation/lawmaker-grassroots-participatory-budgeting-a-new-form-of-pork> (last accessed Sep. 30, 2014).

215. Orejas, *supra* note 212.

216. Xianne Arcangel, DBM cuts judiciary’s budget proposal by ₱12 billion, available at <http://www.gmanetwork.com/news/story/374823/news/nation/dbm-cuts-judiciary-s-budget-proposal-by-p12-billion> (last accessed Sep. 30, 2014).

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. Jess Diaz, *House bill seeks to abolish JDF*, PHIL. STAR, July 16, 2014, available at <http://www.philstar.com/headlines/2014/07/16/1346808/house-bill-seeks-abolish-jdf> (last accessed Sep. 30, 2014) [hereinafter Diaz, *HB to abolish JDF*].

Ferdinand E. Marcos through P.D. No. 1949.²²² The fund shall be derived from legal fees — 80% of which shall be used for the cost-of-living allowances of the members and personnel of the Judiciary, while the remaining 20% shall be for office equipment and facilities of the courts.²²³ In addition, the Chief Justice shall have the sole power and duty to administer, allocate, and approve the disbursements and expenditures of the fund.²²⁴

The JDF was labelled as problematic by Ilocos Norte Representative Rodolfo C. Fariñas, member of the Liberal Party and one of the lead prosecutors on the impeachment of former Chief Justice Corona.²²⁵ Fariñas seeks to amend P.D. No. 1949 through House Bill No. 4690 wherein collections of the JDF shall be turned over to the National Treasury and may be disbursed only through an appropriation made by the Congress.²²⁶ He emphasized that the Judiciary's constitutional grant of fiscal autonomy²²⁷ cannot overrule the “constitutional principles of transparency, accountability[,] and good governance.”²²⁸

Also, Iloilo Representative Neil C. Tupas, Jr., another lead prosecutor during the Corona impeachment, filed House Bill No. 4738 which shall repeal the JDF and institutionalize the Judiciary Support Fund (JSF).²²⁹ Under the proposed JSF, the funds shall only be released once the Court submits a budget proposal to the DBM.²³⁰ Tupas further accused the Court of judicial legislation when it expanded the coverage of the JDF to include

222. Establishing a Judiciary Development Fund and for Other Purposes, Presidential Decree No. 1949 (1984).

223. *Id.* § 1.

224. *Id.* § 2.

225. Jess Diaz, *Another House bill filed vs JDF*, PHIL. STAR, July 17, 2014, available at <http://www.philstar.com/headlines/2014/07/17/1347045/another-house-bill-filed-vs-jdf> (last accessed Sep. 30, 2014) [hereinafter Diaz, *HB filed vs JDF*].

226. *Id.*

227. PHIL. CONST. art. VIII, § 3.

228. Diaz, *HB filed vs JDF*, *supra* note 225.

229. Diaz, *HB to abolish JDF*, *supra* note 221.

230. *Id.*

“forfeited cash bonds, rentals[,] and interest income on deposits, among other incomes.”²³¹

The conflict between the Court and the Congress further intensified as Chief Justice Maria Lourdes P.A. Sereno was invited by Representative Tupas, as the Chairperson of the House Committee on Justice, for the “initial deliberation” of the two House bills.²³² The hearing supposedly aimed to shed light on the alleged overspending by the Court of its JDF,²³³ its deposit of more than ₱300 million in a high-yield savings account, and ₱10 million allotment for employee loans.²³⁴ Fariñas argued that the fiscal autonomy granted to the Judiciary was limited to the non-reduction of the appropriations for the Judiciary in a level “below the amount appropriated for the previous year and, after approval, [the budget] shall be automatically and regularly released.”²³⁵ Hence, the Court may not invoke fiscal autonomy over the JDF as it was without an appropriation by Congress.

However, instead of appearing in the said hearing before the House Committee on Justice, Chief Justice Sereno opted to send a strongly-worded letter to House Speaker Belmonte explaining equality of the three branches of government and judicial independence.²³⁶ The chief magistrate said that the hearing was “premature” and “inadequate” in light of the pending motion for reconsideration of the *Araullo* case before the Court.²³⁷

The imbalance among the supposed co-equal branches and their campaign against the Judiciary continues as legislators expressed their interest

231. *Id.* See Supreme Court, Resolution Providing for Other Sources of the Judiciary Development Fund, Administrative Matter No. 99-8-01-SC [A.M. No. 99-8-01-SC] (Sep. 14, 1999).

232. Rey G. Panaligan, *Sereno lectures Belmonte*, MANILA BULL., Aug. 6, 2014, available at <http://www.mb.com.ph/sereno-lectures-belmonte> (last accessed Sep. 30, 2014).

233. John Carlo Cahinhinan, House panel invites Sereno to JDF hearing, available at <http://www.sunstar.com.ph/manila/local-news/2014/07/26/house-panel-invites-sereno-jdf-hearing-356093> (last accessed Sep. 30, 2014).

234. Xianne Archangel, Tupas: SC used JDF to invest in high-yield account, give motorcycle loans, available at <http://www.gmanetwork.com/news/story/373490/news/nation/tupas-sc-used-jdf-to-invest-in-high-yield-account-give-motorcycle-loans> (last accessed Sep. 30, 2014).

235. PHIL. CONST. art. VIII, § 3.

236. Panaligan, *supra* note 232.

237. *Id.*

in filing an impeachment case against Chief Justice Sereno. The 1999 Resolution of the Court extending the sources of JDF to include proceeds from the sale of court decisions, books, periodicals, and pamphlets;²³⁸ fees collected from Bar candidates;²³⁹ and confiscated cash bonds,²⁴⁰ among others, was tagged as a form of judicial legislation — a culpable violation of the Constitution.²⁴¹ Also, the alleged misuse of the JDF, if proven, according to Oriental Mindoro Representative Reynaldo Umali, would amount to technical malversation, graft, and corruption.²⁴² For the utilization of the JDF outside the scope provided for by law, Fariñas said that it is a form of betrayal of public trust.²⁴³ These assertions by legislators posed a serious threat against the Judiciary by asserting the Congress' power to remove the Chief Justice by initiating impeachment complaints.²⁴⁴

These maneuvers by Malacañang's allies to shake up the Judiciary were, according to Kabataan Party-list Representative Terry Ridon, a means to "exact revenge" against the Court's ruling against the DAP.²⁴⁵ Also, Renato Reyes, Jr., Secretary-General of the militant group Bagong Alyansang Makabayan, tagged the impeachment belling as "hypocritical and ridiculous" as the ₱1.7 billion allegedly misused sums from the JDF was far less than the ₱144 billion of the DAP funds.²⁴⁶ Despite these speculations, the Aquino government denied collaborating with the Congress against the Judiciary.²⁴⁷

238. A.M. No. 99-8-01-SC, no. 2 (a) (1).

239. *Id.* (b).

240. *Id.* (f).

241. Xianne Arcangel, Lawmakers mulls filing impeachment raps vs. CJ Sereno over JDF, *available at* <http://www.gmanetwork.com/news/story/373739/news/nation/lawmaker-mulls-filing-impeachment-raps-vs-cj-sereno-over-jdf> (last accessed Sep. 30, 2014).

242. Paolo Romero, *House leaders say Sereno could be impeached*, PHIL. STAR, Aug. 7, 2014, *available at* <http://www.philstar.com/headlines/2014/08/07/1354726/house-leaders-say-sereno-could-be-impeached> (last accessed Sep. 30, 2014).

243. *Id.*

244. PHIL. CONST. art. XI, § 3 (1).

245. Panaligan, *supra* note 232.

246. R.G. Cruz, PNoy allies told: Stop bullying SC, *available at* <http://www.abs-cbnnews.com/nation/08/07/14/pnoy-allies-told-stop-bullying-sc> (last accessed Sep. 30, 2014).

247. Louis Bacani, *Palace hands-off on impeach moves vs. Sereno*, PHIL. STAR, Aug. 7, 2014, *available at* <http://www.philstar.com/headlines/2014/08/07/1354922/>

They dubbed the legislative dynamics as a normal congressional inquiry on the JDF by a separate and co-equal branch of government.²⁴⁸

Finally, as of this writing, only the bicameral conference is left to be done by both Houses of the Legislature for the finalization of the ₱2.606 trillion budget for the year 2015. The question now is — would the legislators faithfully comply with the Court’s ruling in *Belgica* and *Araullo*? The issue of “savings,” as one of the “major agreeing provisions”²⁴⁹ between the Houses, should be examined. According to Senator Francis G. Escudero, the Chairman of the Senate Committee on Finance, the Senate now defines savings in this manner — “the money must first be released and entered into exceptions before it can be declared savings.”²⁵⁰ The Senate further sheds light on the meaning of “augmentation” by declaring that “savings cannot be used to augment a non-existent [P/A/P] through the use of an appropriation not otherwise authorized in the subject [GAA].”²⁵¹

Moreover, in the House of Representatives, “savings” was referred to as “portions or balances of any programmed appropriations in [the GAA] which have not been released or obligated as a result” of certain circumstances.²⁵² Hence, in the House version of the GAA, money need not

palace-hands-impeach-moves-vs.-sereno (last accessed Sep. 30, 2014) & Romero, *supra* note 242.

248. *Id.*

249. Rappler.com, ‘Savings’ trouble in bicam? Level heads will prevail — Escudero, available at <http://www.rappler.com/nation/76352-2015-budget-chiz-escudero> (last accessed Sep. 30, 2014).

250. *Id.*

251. Lira Fernandez, Social Watch Philippines’ Briones scores Senate over definition of savings, available at <http://www.interaksyon.com/article/100111/social-watch-philippines-briones-scores-senate-for-definition-of-savings> (last accessed Sep. 30, 2014).

252. According to House Bill No. 4968, “savings” are a result of any of the following:

- (1) Discontinuance or abandonment of the program, activity[,] or project (P/A/P) resulting from natural or man-made calamities[,] which would render it not possible for the agency to implement the said P/A/P at any time during the validity of the appropriations;
- (2) Non-commencement of the P/A/P for which the appropriations is released at the beginning of the year unless the implementing agency shows that the P/A/P may still be undertaken or

be released first to be declared as savings, provided that such funds have not been obligated.

With these redefinitions of “savings,” funds may still be declared by the Executive as savings at any time²⁵³ — the same unconstitutional scheme struck down by the Court. Also, Senator Miriam Defensor-Santiago differentiated the old and the new definitions of “savings” in this wise — “To summarize, the use of savings under the 2015 budget is broader. The old definition referred to final discontinuance or abandonment. The new definition refers to discontinuance or abandonment at any time[.]”²⁵⁴

Hence, with the redefinition of savings, can one conclude that the Legislature listened to the ultimate call of the Court? Would this huge leap of the Legislature provide for a balance of power or would it be a mere futile effort? Such dynamics at hand, one could not help but ask — what does this say about the state of separation of powers and checks-and-balances here in the Philippines? Are we nearing a constitutional crisis?

In this scenario, one can visualize two branches of the government, the Executive and the Legislature, ganging up against the other supposed co-equal branch — the Judiciary. The decisions of the Court in *Belgica* and *Araullo*, as a means of checks-and-balances by the Judiciary to the

accomplished in [Fiscal Year (F.Y.)] 2015. For this purpose, non-commencement shall refer to the inability of the agency or its duly authorized procurement agent to obligate an allotment within the first semester of [F.Y.] 2015;

- (3) Decreased cost resulting from improved efficiency during the implementation or after the completing by agencies of their P/A/Ps to deliver the targets and services approved in this Act;
- (4) Difference between the approved budget for the contract and the contract/bid price.

Office of Representative Isidro T. Ungab, Clarification on the false and erroneous report re: amended definition of savings in 2015 GAB, *available at* <http://congress.gov.ph/press/details.php?pressid=8277> (last accessed Sep. 30, 2014).

253. Fernandez, *supra* note 251.

254. Maila Ager, *Santiago hits pork barrel, ‘savings’ definition in 2015 budget*, PHIL. DAILY INQ., Nov. 24, 2014, *available at* <http://newsinfo.inquirer.net/652536/santiago-hits-pork-barrel-savings-definition-in-2015-budget> (last accessed Nov. 24, 2014).

Legislature, have led to political undertakings that overwhelmingly affected the balance among the co-equal branches.

V. CONCLUSION

The aftermath of the two landmark rulings saw the Executive and Legislative branches in a reluctant stance to accept a diametrically opposed interpretation of the application of the constitutional standards to the PDAF and DAP. In fact, initial reactions bordered along irreverence toward a co-equal branch. However, the better part of prudence prevailed in a momentary period of reflection by the President and his allies in the Congress.

In a recent scheme to define “savings,” presumably in light of the pronouncements of the Court, the Aquino administration is walking on a tightrope once more; but this time, with a more calculating approach. Executive action is highly cautioned even by close allies in Congress who warned of serious constitutional consequences if another attempt is made to recklessly disregard the Court’s rulings. The character of an astute leader is often tested in the manner that one translates an overwhelming defeat into an opportunity. Constructive engagement with the Judiciary is the reasonable track at this late stage of the Aquino presidency.