EN BANC

G.R. No. 210503 – GRECO ANTONIOUS BEDA B. BELGICA, *petitioner, versus* **THE HONORABLE EXECUTIVE SECRETARY, THE HONORABLE SECRETARY OF BUDGET, AND THE PHILIPPINE CONGRESS, AS REPRESENTED BY THE HONORABLE SENATE PRESIDENT AND THE HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES,** *respondents*.

Promulgated:

October 8, 2019

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SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

The Court has decided to limit the disposition with respect to the specifically assailed appropriations, namely, the Unprogrammed Fund, the Contingent Fund, the E-Government Fund (E-Gov Fund), and the Local Government Support Fund (LGSF) (collectively, the specifically assailed lump-sum appropriations). I agree that these lump-sum funds are constitutional.

I nonetheless register my opinion on the arguments presented in the case which had not been touched upon by the majority decision.

To recall, on November 19, 2013, the Court issued its Decision in *Belgica v. Ochoa, Jr.*[1] (2013 *Belgica* case), declaring certain provisions of the 2013 GAA unconstitutional. The dispositive portion reads:

> **WHEREFORE**, the petitions are **PARTLY GRANTED**. In view of the constitutional violations discussed in this Decision, the Court hereby declares as **UNCONSTITUTIONAL**: **(a)** the entire 2013 [Priority Development Assistance Fund (PDAF)] Article; **(b)** all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and [Countrywide Development Fund (CDF)] Articles and the various Congressional Insertions, which authorize/d legislators — whether individually or collectively organized into committees — to intervene, assume or participate in any of the various post-enactment stages of the budget execution, such as but not limited to the areas of project identification, modification and revision of project identification, fund release and/or fund realignment, unrelated to the power of congressional oversight; **(c)** all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions, which confer/red personal, lump-sum allocations

[1] 721 Phil. 416 (2013).

> to legislators from which they are able to fund specific projects which they themselves determine; **(d)** all informal practices of similar import and effect, which the Court similarly deems to be acts of grave abuse of discretion amounting to lack or excess of jurisdiction; and **(e)** the phrases (1) "and for such other purposes as may be hereafter directed by the President" under Section 8 of Presidential Decree No. 910 and (2) "to finance the priority infrastructure development projects" under Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, for both failing the sufficient standard test in violation of the principle of non-delegability of legislative power.
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> Accordingly, the Court's temporary injunction dated September 10, 2013 is hereby declared to be **PERMANENT**. Thus, the disbursement/release of the remaining PDAF funds allocated for the year 2013, as well as for all previous years, and the funds sourced from (1) the Malampaya Funds under the phrase "**and for such other purposes as may be hereafter directed by the President**" pursuant to Section 8 of Presidential Decree No. 910, and (2) the Presidential Social Fund under the phrase "**to finance the priority infrastructure development projects**" pursuant to Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, which are, at the time this Decision is promulgated, not covered by Notice of Cash Allocations (NCAs) but only by Special Allotment Release Orders (SAROs), whether obligated or not, are hereby **ENJOINED**. The remaining PDAF funds covered by this permanent injunction shall not be disbursed/released but instead reverted to the unappropriated surplus of the general fund, while the funds under the Malampaya Funds and the Presidential Social Fund shall remain therein to be utilized for their respective special purposes not otherwise declared as unconstitutional.[2] (Additional emphasis supplied)

Petitioner anchors the present challenge on a reading of the 2013 *Belgica* Decision as invalidating lump-sum appropriations that he characterizes as "Presidential pork barrel." In particular, Petitioner asserts that the lump-sum discretionary funds in the 2014 GAA were passed in violation of the Constitution, since these funds are of the same character as the pork barrel funds which were declared unconstitutional in the 2013 *Belgica* case, and should thus be prohibited.

This is based on the following quoted portion of the Court's Decision in the said case which, according to Petitioner, amounts to a wholesale declaration of unconstitutionality of all lump-sum discretionary funds:

> Further, it is significant to point out that an item of appropriation must be an item characterized by **singular correspondence** — meaning an allocation of a **specified singular amount for a specified singular purpose**, otherwise known as a "**line-item**." This treatment not only allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly veto the same. Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as

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[2] Id. at 582-583.

"line-item" appropriations which are rightfully subject to item veto. Likewise, **it must be observed that an appropriation may be validly apportioned into component percentages or values; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item.** Moreover, as Justice Carpio correctly pointed out, **a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, *e.g.*, MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power.** Finally, special purpose funds and discretionary funds would equally square with the constitutional mechanism of item-veto **for as long as they follow the rule on singular correspondence** as herein discussed. Anent special purpose funds, it must be added that Section 25 (4), Article VI of the 1987 Constitution requires that the "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**." Meanwhile, with respect to discretionary funds, Section 25 (6), Article VI of the 1987 Constitution requires that said funds "shall be disbursed only for public purposes to be **supported by appropriate vouchers and subject to such guidelines as may be prescribed by law**."

In contrast, what beckons constitutional infirmity are appropriations which merely provide for a **singular lump-sum amount** to be tapped as a source of funding for **multiple purposes**. Since such appropriation type necessitates the further determination of **both** the **actual amount** to be expended **and** the **actual purpose** of the appropriation which must still be chosen from the multiple purposes stated in the law, it cannot be said that the appropriation law already indicates a "specific appropriation of money" and hence, without a proper line-item which the President may veto. As a practical result, the President would then be faced with the predicament of either vetoing the entire appropriation if he finds some of its purposes wasteful or undesirable, or approving the entire appropriation so as not to hinder some of its legitimate purposes. Finally, it may not be amiss to state that such arrangement also raises non-delegability issues considering that the implementing authority would still have to determine, again, both the actual amount to be expended and the actual purpose of the appropriation. Since the foregoing determinations constitute the integral aspects of the power to appropriate, the implementing authority would, in effect, be exercising legislative prerogatives in violation of the principle of non-delegability.[3] (Additional emphasis supplied)

Prohibited lump-sums in the 2013 *Belgica* case — appropriations that violate separation of powers

The Court's decision in the 2013 *Belgica* case clearly signals that there are prohibited lump-sums and allowable lump-sum appropriations. The Court therein drew the parameters which distinguish those prohibited from those allowed.

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[3] Id. at 551-553.

In the said case, the standards prescribed by the phrases "other purposes as may be hereafter directed by the President," and "priority infrastructure development projects" for the use of the President's Social Fund and the Malampaya Fund, respectively, were struck down because they were found insufficient for purposes of checking and limiting the President's discretion in the use of said funds. Implicit in the holding is its converse — *i.e.*, had the standards been sufficient to curb the President's discretion, the President's Social Fund and Malampaya Fund, despite being appropriated for multiple public purposes, would have been considered as valid items of appropriation.

The Court also affirmed the validity of certain appropriations notwithstanding the generality or multiplicity of their specified purposes. These lump-sum appropriations, which contemplated multiple purposes within them, were deemed valid items of appropriation.

Identifying the Calamity Fund, the Contingent Fund, and the Intelligence Fund as valid appropriations, the Court explained that:

> x x x Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as "line-item" appropriations which are rightfully subject to item veto. Likewise, **it must be observed that an appropriation may be validly apportioned into component percentages or values; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item**. x x x[4] (Additional emphasis supplied)

This implied dichotomy between allowable and prohibited lump-sums in the Decision is further reinforced by no less than three Justices in their separate opinions in the 2013 *Belgica* case. These separate opinions sought to make clear that the level of specificity of an appropriation as a test for its constitutionality *and* the ruling on the constitutionality of lump-sum appropriations *per se* did not form part of the disposition in the said case.

In his Concurring and Dissenting Opinion, Justice Arturo D. Brion stated the following:

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

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4 Id. at 552.

5 Id. at 728.

As for Justice Maria Lourdes P. A. Sereno, she opined:

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

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

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

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

Given the circumscribed parameters of our decision, **it is clear that this Court made no doctrinal pronouncement that all lump-sum appropriations *per se* are unconstitutional.**[6] (Additional emphasis and underscoring supplied)

Finally, Justice Marvic Mario Victor F. Leonen elucidated:

In some instances, the purpose of the funding may be general because it is a requirement of either constitutional or statutory autonomy.

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6 Id. at 586-588. Citations omitted.

> Thus, the ideal would be that this Court would have just one item with a bulk amount with the expenditures to be determined by this Court's *En Banc*. State universities and colleges may have just one lump sum for their institutions because the purposes for which they have been established are already provided in their charter.
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> While I agree generally with the view of the *ponencia* that "an item of appropriation must be an item characterized by a singular correspondence — meaning an allocation of a specified singular amount for a specified singular purpose," our opinions on the generality of the stated purpose should be limited only to the [PDAF] as it is now in the [2013 GAA]. The agreement seems to be that the item has no discernible purpose.
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> There may be no need, for now, to go as detailed as to discuss the fine line between "line" and "lump sum" budgeting. **A reading of the *ponencia* and the Concurring Opinions raises valid considerations about line and lump sum items. However, it is a discussion which should be clarified further in a more appropriate case.**
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> Our doctrine on unlawful delegation of legislative power does not fully square in cases of appropriations. Budgets are integral parts of plans of action. There are various ways by which a plan can be generated and fully understood by those who are to implement it. There are also many requirements for those who implement such plans to adjust to given realities which are not available through foresight.
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> The Constitution should not be read as a shackle that bounds creativity too restrictively. Rather, it should be seen as a framework within which a lot of leeway is given to those who have to deal with the fundamental vagaries of budget implementation. What it requires is an appropriation for a discernable purpose. x x x[7] (Emphasis supplied)

To my mind, based on its *ratio* and *fallo* (save the rule on singular correspondence which I will discuss later), the decision to strike down the 2013 PDAF Article in the 2013 *Belgica* case was primarily because the participation of individual legislators in the identification of projects post-enactment, contrary to the well-defined roles of the political branches in the different stages of the budget cycle, violated the principle of separation of powers.

Therefore, from the parameters clearly inferable from the 2013 *Belgica* case, only those lump-sum appropriations that implicate separation of powers, specifically, the Presidential item veto power and non-delegability and undue delegation of legislative powers are prohibited. **There is no blanket declaration of unconstitutionality of lump-sum appropriations *per se* in the 2013 *Belgica* case.**

Key budgetary concepts

This case and the parties' submissions demonstrate that there remains a gap in jurisprudence to guide the Bench, the Bar, and the public, on fundamental constitutional concepts with respect to national budgeting.

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7 Id. at 700-701. Citations omitted.

Verily, the starting point of any decision involving national budgeting requires a common definition or understanding of certain key concepts, without which, any decision may suffer from ambiguity or imprecision.

Foremost among these are: appropriation, item of appropriation, line-item appropriation, lump-sum appropriation; Funds, Programs, Activities, and Projects (PAPs), and allotment class.

Appropriation

Section 29(1),[8] Article VI of the Constitution requires that any public expenditure must be made through an appropriation made by law. Such appropriation law may either originate from a bill in the House of Representatives under Section 24[9] of the same Article or a budget proposal from the President in the form of the National Expenditure Program (NEP) in the case of the national budget, as prescribed by Article VII, Section 22.[10]

However, while the Constitution identifies the vehicle by which an appropriation should be made (*i.e.,* by law),[11] the statutory definition of an appropriation is found *not* in the Constitution, but in the Administrative Code of 1987 (Administrative Code). Section 2(1), Chapter 1 of Book VI on Government Budgeting defines appropriation as "an authorization made by law or other legislative enactment, directing payment out of government funds under specified conditions or for specified purposes."[12]

An early case defining an appropriation is *Gonzales v. Raquiza*,[13] where the Court held that:

> In a strict sense, *appropriation* has been defined "as nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the Treasury", while *appropriation made by law* refers to "the act of the legislature setting apart or assigning to a particular use a certain sum to be used in the payment of debt or dues from the State to its creditors."[14]

Inasmuch as the Constitution adopts the United States (U.S.) budget framework, the definition of appropriation in this jurisdiction remains consistent with that recognized under the U.S. Constitution: Section 9, Article

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8 Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

9 Section 24. All appropriation, 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 Senate may propose or concur with amendments.

10 Section 22. The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

11 See CONSTITUTION, Art. VI, Sec. 29(1).

12 See ADMINISTRATIVE CODE OF 1987, Book VI, Chapter 1, Sec. 2(1); see also Section 2(i) of Presidential Decree No. (PD) 1177 or the BUDGET REFORM DECREE OF 1977, July 30, 1977.

13 259 Phil. 736 (1989).

14 Id. at 743, citing Martin, "New Constitution of the Philippines", p. 399, 1987 edition.

I, Clause 7 of the U.S. Constitution, otherwise referred to as the "Appropriations Clause."[15] The U.S. budget authorities take the foregoing clause to mean "that it is up to Congress to decide whether or not to provide funds for a particular program or activity and to fix the level of that funding."[16] The clause has been characterized as "the most important single curb in the [U.S.] Constitution on Presidential power."[17]

There being no prescribed form for an appropriation, there is very little sound legal basis to argue that appropriations can only be made through line-items.

Line-item and lump-sum appropriations

Indeed, a line-item and a lump-sum appropriation are conceptually mutually exclusive — a line-item is an appropriation for a single purpose and a lump-sum is an appropriation for multiple purposes. To say that the mere nature of an appropriation as a lump-sum violates the principle of separation of powers or prevents the exercise of the President's item veto is error.

The explicit recognition by certain laws of the function of lump-sum appropriations in the budget belies this haphazard proposition.

As early as 1937, Commonwealth Act No. 246[18] or the *Budget Act* already mentioned lump-sum appropriations and provided the guidelines for the use thereof.[19] In 1972, the Integrated Reorganization Plan had mentioned

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15 U.S. CONSTITUTION, art. I, § 9, cl. 7. "No Money shall be drawn from the Treasury, but in consequence of Appropriations made by Law x x x"; see also U.S. CONST., art. I, § 29.

16 GAO-04-261SP Appropriations Law-Vol. I, p. I-5.

17 Id. at I-4.

18 AN ACT PRESCRIBING THE FORM OF THE BUDGET AND REGULATING THE EXPENDITURE OF AUTHORIZED APPROPRIATIONS, December 17, 1937.

19 SECTION 7. *Provisions Governing the Expenditure of Authorized Appropriations.* — Unless otherwise expressly provided in the law authorizing an appropriation, the following general and special provisions shall govern the expenditure of appropriations authorized by any annual General Appropriation Act and other acts:

I. *General Provisions*

x x x x

(4) ***Allotment of lump-sum appropriations and special and other funds; plantilla of personnel.*** — The provisions of any law to the contrary notwithstanding, expenditures from lump-sum appropriations authorized for any executive department in any annual General Appropriation Act or other act and from all special, bond, trust, and other funds shall be made in accordance with a budget to be approved by the President, which shall include the plantilla of personnel, showing the number of each kind of positions, the designations, the salary proposed for the fiscal year for which the appropriation is intended and the salary actually received. This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for certain specific purposes, aids and donations for carrying out certain activities, or deposits made to cover the cost of special services to be rendered to private parties.

Except when stipulated otherwise as a condition for the expenditure of an aid or donation, and in the case of officers and employees receiving higher rates at the time of the approval of this Act, no officer or employee whose salary, not being fixed by law, is paid from any lump-sum appropriation or from any special, bond, trust, revolving, or other fund, shall receive a compensation of more than twelve pesos per day or more than three hundred pesos per month. This limitation shall not apply to the appropriations for "expert and technical personnel" under the Office of the President and the various executive departments.

lump-sum appropriations and identified certain independent and autonomous agencies whose budgets should be lump-sum appropriations.[20]

In the same manner, Presidential Decree No. (PD) 1177[21] and Book VI, Chapter 3 of the Administrative Code allowed lump-sum appropriations for coordinating bodies.[22]

Lump-sum appropriations are also mentioned in Section 40 of PD 1177, which provides:

> SECTION 40. *Special Budgets for Lump-Sum Appropriations.* — **Expenditures from lump-sum appropriations authorized for any purpose or for any department, office or agency in any annual General Appropriations Act of other Act and from any fund of the National Government, shall be made in accordance with a special budget to be approved by the Presiden**t, which shall include but shall not be limited to the number of each kind of position, the designations, and the annual salary proposed for which an appropriation is intended. This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for certain specific purposes, aids and donations for carrying out certain activities, or deposits made to cover the cost of

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In the case of any lump-sum appropriation for salaries and wages of temporary laborers and employees provided in any General Appropriation Act or other act, the expenditure of such appropriation shall be limited to the employment of laborers paid by the month, by the day, or by the hour, and of emergency employees other than laborers, the office of the President, the Bureau of Health, the craftsman, helpers, and other employees of the Bureau of Printing, the justices of the peace, the officers and employees of the Bureau of Public Works whose salaries and wages are payable from appropriations for projects authorized in any act, and the officers and employees of the Bureau of Quarantine Service, shall, in no case, be paid a salary in excess of forty pesos per month, nor shall their employment continue for more than six months. (Emphasis supplied)

20 Part I, Chapter I, Article VI (5). The following agencies shall be independent and autonomous: (a) Central Bank; (b) National Economic Development Authority; (c) Economic Development Council; and (d) Office of the Citizen's Counselor. **The budgets of these independent agencies shall be in the form of lump sum appropriations and shall not be subject to the usual review and release by the Budget Commission.** *(Integrated Reorganization Plan, [1972])*; See Part VI, Chapter I, Article III (11) and Part XIII, Chapter I, Article II (15) of the Integrated Reorganization Plan.

21 REVISING THE BUDGET PROCESS IN ORDER TO INSTITUTIONALIZE THE BUDGETARY INNOVATIONS OF THE NEW SOCIETY, June 30, 1977.

22 PD 1177, Sec. 21 provides:

SECTION 21. *Coordinating Bodies.* — The budgets of coordinating agencies, councils, task forces, authorities, committees, or other similar bodies shall be limited to and used to fund only such planning, coordinating and monitoring functions as are assigned to it. Funds for implementation shall be budgeted and released to the line implementing agencies concerned: *provided*, that **the budgets of coordinating bodies may include a lump-sum for purposes related to their assigned functions**, which lump-sum shall be sub-allotted to implementing agencies and not used by the agency for its own operations: *provided, further*, that funds budgeted for a given agency falling within the jurisdiction of a coordinating body, may be subject to release upon approval by the coordinating agency of such release or of the agency's work program.

ADMINISTRATIVE CODE, Book VI, Chapter 3 provides:

SECTION 18. *Coordinating Bodies.* —The budgets of coordinating agencies, councils, task forces, authorities, committees, or other similar bodies shall be limited to and used to fund only such planning, coordinating and monitoring functions as are assigned to it. Funds for implementation shall be budgeted and released to the line implementing agencies concerned: *Provided*, That **the budgets of coordinating bodies may include a lump-sum for purposes related to their assigned functions**, which lump-sum shall be sub-allotted to implementing agencies and not used by the agency for its own operations: *Provided, further*, That funds budgeted for a given agency falling within the jurisdiction of a coordinating body, may be subject to release upon approval by the coordinating agency of such release or of the agency's work program.

> special services to be rendered to private parties. Unless otherwise expressly provided by law, when any Board, head of department, chief of bureau or office, or any other official, is authorized to appropriate, allot, distribute or spend any lump-sum appropriation or special, bond, trust, and other funds, such authority shall be subject to the provisions of this section.
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> **In case of any lump-sum appropriation for salaries and wages of temporary and emergency laborers and employees, including contractual personnel, provided in any General Appropriation Act or other Acts**, the expenditure of such appropriation shall be limited to the employment of persons paid by the month, by the day, or by the hour. (Emphasis supplied)

This provision on the use of lump-sum appropriations in the budget was reiterated in Section 35 in Title II, Book VI, Chapter 5 of the Administrative Code.

To be sure, neither the Constitution nor applicable statutes require that an appropriation only cover a single purpose. Apart from the rule on singular correspondence in the 2013 *Belgica* case relied upon by Petitioner, there is no other jurisprudence which can be read to mean that *all* kinds of lump-sum appropriations are unconstitutional. Similarly, there is no jurisprudence setting the limit of executive or legislative discretion in terms of the constitutionally acceptable level of specificity or singularity of public purpose of a proposed expenditure in the NEP and an appropriation in the GAA.

This is again consistent with the following interpretation of the General Administration Office (GAO), the U.S. budget authority:

> A *lump-sum appropriation* is one that is made to cover a number of specific programs, projects, or items. (The number may be as small as two.) In contrast, a *line-item appropriation* is available only for the specific object described.[23]

It is well-settled that the contemporaneous interpretation of administrative officials with respect to a law they are duty bound to enforce or implement deserves great weight.[24] The contemporaneous interpretation of the Department of Budget and Management (DBM) and the GAO, being the administrative bodies tasked to implement and interpret the budgetary laws of the Philippines and the U.S., respectively, command great weight in the determination of what constitutes a valid appropriation as contemplated in the Constitution, considering the American origins of the Philippines' budget framework.

While it is conceded that the contemporaneous interpretation of administrative bodies is not necessarily binding or conclusive on the courts,[25] the hesitation to accord great weight to such interpretation only relates to those

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23 GAO-06-382SP Appropriations Law-Vol. II, pp. 6-5

24 *Pascual v. Director of Lands*, 119 Phil. 623, 627 (1964), citing *Madrigal v. Rafferty*, 38 Phil. 414, 423 (1918) and *Government of the P.I. v. Municipality of Binalonan*, 32 Phil. 634 (1915).

25 *Alternative Center for Organizational Reforms and Dev't., Inc. (ACORD) v. Zamora*, 498 Phil. 615, 635 (2005).

that "distort or in any way change [the] natural meaning [of a constitutional provision]" and exempts those matters committed by the Constitution itself to the discretion of some other department.[26]

Here, the contemporaneous interpretation of the DBM with respect to appropriations being allowed to take the form of either line-item or lump-sum in laws and executive issuances predating the Constitution, taken together with the silence of the Constitution as to the form of appropriation and the level of specificity required, leads to the inevitable conclusion that valid items of appropriations may take the form of either a line-item or lump-sum.

The budget process is textually committed to the political departments. Several facets of this power and duty are clear political questions, primarily the use and the propriety of line-items and lump-sum items in the national budget.

There is nothing in the Constitution, law, or jurisprudence that requires a budgeting modality that only accepts line-item appropriations as valid items of appropriation. As implied by law and supported by administrative practice, lump-sum appropriations are considered valid items of appropriation. In this regard, both line-item and lump-sum appropriations are susceptible to the test for compliance with the item veto and valid delegation.

PAPs v. allotment class

Petitioner claims that only line-item appropriations are valid items of appropriation so that there can only be line-items in the GAA, based on the language of Section 23, Chapter 4, Book VI of the Administrative Code, which provides:

> SEC. 23. *Content of the General Appropriations Act.* – The General Appropriations Act shall be presented in the form of budgetary programs and projects for each agency of the government, with the corresponding appropriations for each program and project, including statutory provisions of specific agency or general applicability. The General Appropriations Act shall not contain any itemization of personal services, which shall be prepared by the Secretary after enactment of the General Appropriations Act, for consideration and approval of the President.

Verily, Section 23 makes mention of "budgetary programs and projects x x x with the corresponding appropriations for each program and project."

Predating the provision in the Administrative Code, these terms have already been defined as early as 1977. In Section 2 of PD 1177, paragraph (l) provides that "[p]rogram" refers to the functions and activities necessary for the performance of a major purpose for which a government entity is

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[26] *Tañada v. Cuenco*, 103 Phil. 1051, 1075-1076 (1957).

established; while paragraph (m) provides that "[p]roject" means a component of a program covering a homogeneous group of activities that result in the accomplishment of an identifiable output. These are the very definition of "program"[27] and "project"[28] reenacted under Section 2 of Book VI, Chapter 1 of the Administrative Code.

These definitions clearly indicate that even specific programs and projects can contemplate several or/multiple related activities and components.

In increasing level of specificity, appropriations may be made for a certain program, project, or activity. A program is comprised of several projects and activities;[29] a project is composed of several activities. Therefore, even adopting the language of Section 23 and Petitioner's contention that the budget must contain "budgetary programs and projects x x x with the corresponding appropriations for each program and project," the core question redounds to the level of specificity with which the validity of a certain appropriation can be tested.

Since the identification of such level of specificity falls within the scope of the Congress and Executive's joint prerogative to determine the contours of the budget — and both singular and multiple purposes are contemplated by law in the terms "programs" and "projects," it can easily be discerned that the level of specificity or multiplicity of purposes of an appropriation falls squarely within the first three badges of a political question: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; and (3) the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion. The only limit to this discretion is the principle of separation of powers, specifically in this case, that the item does not constitute undue delegation or violate the President's item veto power.

Item of appropriation

As regards the item veto power of the President over an appropriation bill, an item of appropriation must be defined. In *Bengzon v. Secretary of Justice*,[30] deciding a question of the exercise of the Governor General of his item veto power, the Court defined an item, thus:

> x x x An appropriation is the setting apart by law of a certain sum from the public revenue for a specified purpose. An item is the particulars,

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27 ADMINISTRATIVE CODE, Book VI, Chapter 1, Sec. 2(12)

28 Id., Sec. 2(13).

29 Contemporaneous interpretation of the term program as now understood by the executive agencies responsible for setting and implementing the fiscal and development policies of the government (*i.e.*, DBM, DOF and NEDA) further subdivides a program into sub-programs that may in itself have its own projects and activities nestled within them.

30 *Bengzon v. Secretary of Justice*, 62 Phil. 912 (1936).

> the details, the distinct and severable parts of the appropriation or of the bill. No set form of words is needed to make out an appropriation or an item.[31] (Citations omitted.)

This was again defined in the case of *Bengzon v. Drilon*,[32] thus:

> The Constitution provides that only a particular item or items may be vetoed. The power to disapprove any item or items in an appropriate bill does not grant the authority to veto a part of an item and to approve the remaining portion of the same item. (*Gonzales v. Macaraig, Jr.*, 191 SCRA 452, 464 [1990]).
>
> We distinguish an item from a provision in the following manner:
>
> > "The terms *item* and *provision* in budgetary legislations and practice are concededly different. An *item* in a bill refers to the particulars, the details, the distinct and severable parts x x x of the bill (Bengzon, *supra*, at 916). It is an indivisible sum of money dedicated to a stated purpose (*Commonwealth v. Dodson*, 11 S.E., 2d 120, 124, 125, etc.,176 Va. 281). The United States Supreme Court, in the case of *Bengzon v. Secretary of Justice* (299 U.S. 410, 414, 57 Ct 252, 81 L. Ed.,312) declared 'that an 'item' of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some *general provision of law*, which happens to be put into an appropriation bill.'" (id. at page 465).[33]

The definition of an item — the particulars, the details, the distinct and severable parts of the appropriation or of the bill — was again brought to the fore as one of the issues decided by the Court in the *Araullo v. Aquino III*[34] (*Araullo*) cases.

In the *Araullo* cases, the petitioners claimed that the funds from the Disbursement Acceleration Program (DAP) were used to support PAPs that had not been covered with appropriations in the respective GAAs. In other words, the claim was that augmentation was done for non-existent items of appropriation.

In the *Araullo* Decision,[35] the Court agreed with the petitioners. It found, among others, that the Disaster Risk, Exposure, Assessment and Mitigation (DREAM) project did not have an appropriation in the GAA. It ratiocinated:

> Aside from this transfer under the DAP to the DREAM project exceeding by almost 300% the appropriation by Congress for the program *Generation of new knowledge and technologies and research capability*

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31 Id. at 916.
32 284 Phil. 245 (1992).
33 Id. at 261-262.
34 *Araullo* Decision, 737 Phil. 457 (2014); *Araullo* Resolution, 752 Phil. 716 (2015).
35 737 Phil. 457 (2014).

> *building in priority areas identified as strategic to National Development*, the Executive allotted funds for personnel services and capital outlays. The Executive thereby substituted its will to that of Congress. Worse, the Executive had not earlier proposed any amount for personnel services and capital outlays in the NEP that became the basis of the 2011 GAA.
>
> It is worth stressing in this connection that **the failure of the GAAs to set aside any amounts for an expense category sufficiently indicated that Congress purposely did not see fit to fund, much less implement, the PAP concerned.** This indication becomes clearer when even the President himself did not recommend in the NEP to fund the PAP. The consequence was that any PAP requiring expenditure that did not receive any appropriation under the GAAs could only be a new PAP, any funding for which would go beyond the authority laid down by Congress in enacting the GAAs. x x x[36] (Emphasis and underscoring supplied; italics omitted)

Thus, the Court held in its dispositive portion that "[t]he funding of projects, activities and programs that were not covered by any appropriation in the General Appropriations Act" as one of the "acts and practices under the Disbursement Acceleration Program, National Budget Circular No. 541 and related executive issuances **UNCONSTITUTIONAL** for being in violation of Section 25(5), Article VI of the 1987 Constitution and the doctrine of separation of powers."[37]

Later, however, reconsidering this point, and quoting Justice Carpio's position as adopted by the majority in the 2013 *Belgica* case and reiterated in his Separate Opinion in this case, Chief Justice Bersamin in the *Araullo* Resolution[38] clarified:

> 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*, 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, thus:
>
> > For the President to exercise his item-veto power, it necessarily follows that there exists a proper "item" which may be the object of the veto. An item, as defined in the field of appropriations, pertains to "the particulars, the details, the distinct and severable parts of the appropriation or of the bill." In the case of *Bengzon v. Secretary of Justice of the Philippine Islands*, the US Supreme Court characterized an item of appropriation as follows:

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36 Id. at 599.
37 Id. at 625, 626.
38 752 Phil. 716 (2015).

> An item of an appropriation bill obviously means an item which, in itself, is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. (Emphases supplied)

On this premise, it may be concluded that an appropriation bill, to ensure that the President may be able to exercise his power of item veto, must contain "specific appropriations of money" and not only "general provisions" which provide for parameters of appropriation.

Further, it is significant to point out that an item of appropriation must be an item characterized by singular correspondence – meaning an allocation of a specified singular amount for a specified singular purpose, otherwise known as a "line-item." This treatment not only allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly veto the same. Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as "line-item" appropriations which are rightfully subject to item veto. Likewise, it must be observed that an appropriation may be validly apportioned into component percentages or values; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item. Moreover, as Justice Carpio correctly pointed out, a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, *e.g.*, MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power. Finally, special purpose funds and discretionary funds would equally square with the constitutional mechanism of item-veto for as long as they follow the rule on singular correspondence as herein discussed. x x x

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.[39] (Citations omitted; emphasis and underscoring supplied)

The *Araullo* Resolution therefore ruled that an "item" that can be subject of augmentation under Section 25(5) does not mean allotment class or

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[39] Id. at 769-771.

expense category — Personal Services (PS), Maintenance and Other Operating Expenses (MOOE), and Capital Outlay (CO), meaning these are not the constitutional conception of an "item" — but the program, activity or project (PAP) to which these allotment classes pertain. So again, this shows that for the purpose of determining the constitutional specificity of an item, either by compliance with standards of non-delegability or item veto power, the Court has recognized the interpretation of the administrative agency responsible for executing the budget — that the item is the **PAP** for line-items or the **Fund** or **one of the component purposes** with a specific amount in case of lump-sum appropriations.

While a valid item of appropriation **may** have several related purposes which incidentally are by accounting and budgeting practice considered as one purpose (which is ultimately grouping by allotment class[40] or expense category) so as to be acceptable under the rule of singular correspondence as affirmed in the 2013 *Belgica* case, this standard is permissive and can serve as a badge of a valid item. However, this is not necessarily the new standard of a constitutional "item" of appropriation as defined in *Bengzon v. Secretary of Justice*[41] and subsequently developed in the *Araullo* Resolution.

In the *Araullo* Resolution, the "item" that needs to be extant in the GAA to trigger the availability of the power to augment under Article VI, Section 25(5) of the Constitution is not the allotment class but the PAP itself. Nothing in the development in law and jurisprudence or the arguments in this Petition presents a compelling reason to reconsider this constitutional conception of an "item," over which the President can exercise his item veto.

To my mind, this is where much of the disconnect occurs. We have a decision that requires a rule on singular correspondence (read literally to mean a singular amount for a singular purpose) and designates the Contingent Fund (demonstrably a true lump-sum appropriation) as a valid "line-item."

Hence the need to clarify:

A Fund, as a designation or aggrupation of moneys based on source, purpose, or some other standard, does not automatically constitute an appropriation. In the same manner, a Fund is not automatically a lump-sum appropriation. There are several permutations as to the budgeting of these Funds that can be illustrated by provisions of the 2014 GAA.

Singular Fund intended for multiple component purposes with corresponding component amounts. In this case, the component purposes function as line-items in themselves. An example of this is the 2014 GAA

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40 **Object of Expenditures.** Refers to a classification under an allotment class, based on type of goods or services consistent with COA Government Accounting Manual (GAM) and Unified Accounts Code Structure (UACS) Manual. Available at <https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2019/GLOSSARY.pdf>.

41 Supra note 30.

provision for the Unprogrammed Fund that has specific purposes with corresponding specific amounts under Annex A. The President can exercise his item veto power over any of the component purposes because they are items (*i.e.*, a fund designated for a specific purpose), or over the entire Fund that will carry with it the veto of all sub- or component items within the Unprogrammed Fund. Another example of this is the Miscellaneous Personnel Benefit Fund in the 2014 GAA.

Singular Fund intended for multiple component purposes without corresponding component amounts. In this case, the Fund is a true lump-sum appropriation. An example of this is the 2014 GAA provision for the Contingent Fund. It appropriates the entire amount of ₱1,000,000,000.00 as funding source for: (1) new and/or urgent projects and activities that need to be implemented during the year; and (2) augmentation of existing appropriations for local and foreign travels of the President. As held in the 2013 *Belgica* case, the Fund is susceptible to item veto power because it has a corresponding amount. The purposes, being part of the provisions, while not subject to direct veto, may be subjected to conditional implementation during budget authorization. Again, the Contingent Fund in its true lump-sum formulation has been accepted by the Court as a valid item susceptible to item veto.

Rule on singular correspondence

In this regard, I differ from the opinion of Justice Bernabe when she states that "a lump-sum amount may still be considered as a valid item subject to the President's item veto power for as long as the lump-sum amount is meant as a funding source for multiple programs, projects, or activities that may be all clearly classified as falling under one singular appropriation purpose. In this sense, the 'lump-sum' effectively functions as a 'line-item' that is compliant with the doctrine of singular correspondence."[42]

As well, I differ with the position taken by Senior Associate Justice Carpio when he "reiterate[s] his position in [the 2013 *Belgica* case] that lump-sum appropriations for multiple purposes negate the President's exercise of the line-item veto power, and are thus unconstitutional. On the other hand, lump-sum appropriations with specified and single purpose that allow the President to exercise his line[-]item veto power is constitutional."[43] He also adverts to "a lump-sum appropriation that has a single purpose but multiple sub-items" and "singular lump-sum appropriations for multiple purposes."

To reiterate, line-item appropriations and lump-sum appropriations are distinct. A line-item designates a fund intended for a singular purpose; a lump-sum appropriation, for multiple purposes. Thus, there can be a singular fund intended for multiple purposes (a lump-sum appropriation), but there cannot be a "singular lump-sum" or a "singularly correspondent lump-sum." While

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42 Separate Concurring Opinion of Justice Bernabe, p. 4; emphasis omitted.
43 Separate Opinion of Justice Carpio, p. 4.

much of the difference may be considered semantics, it is important for the Court to be precise in making a rule that has far-reaching implications in the operations of government.

In line with the discussion above that there is nothing in law or jurisprudence that requires a specific form of appropriation or an item, including its singularity or multiplicity of purpose, **the exercise of item veto only requires the existence an item, that is, an appropriation severable from other parts of the appropriations bill and not a provision.** To my mind, this requirement is met by a correspondence of a fund and a stated public purpose (as in line-items) or purposes (as in true lump-sum appropriations like the Contingent Fund provisions in the 2013 and 2014 GAAs).

In this formulation, consistent with the rule on singular correspondence in the 2013 *Belgica* case and the conception of an "item" in the *Araullo* Resolution, it is the last and indivisible PAP (or purpose, in the case of lump-sum appropriations) in the GAA and the amount allocated for the same as the last indivisible purpose and sum of money that constitute an item — for purposes of not offending the Presidential item veto power. This then harmonizes squarely with the ruling in the 2013 *Belgica* case that the Contingent Fund is a valid appropriation subject of item veto for being an amount intended for a program despite being lump-sum intended for two distinct purposes, and does not strictly follow the rule of singular correspondence or even the requirement of "clearly classified as falling under one singular appropriation purpose."

As already shown, the language of the 2013 Contingent Fund appropriation was enacted as the 2014 Contingent Fund appropriation *verbatim*, containing two purposes: (1) for funding new and urgent projects that have to be implemented during the year; and (2) for travel expenses of the President. These two purposes are clearly not disaggregated into two separate specific amounts, but are considered two authorized public purposes serving a clearly classified singular appropriation purpose, which is to meet contingencies, for which the single Contingent Fund will be tapped. This is a clear deviation if the rule on singular correspondence for the purpose of determining the validity of lump-sum appropriations is to be taken to strictly mean single highly specific purpose for a single fund or only line-items as Petitioner claims the rule to be.

As well, as shown above, the uses of the Contingent Fund based on the formulation that already passed judicial approbation show that they are varied purposes that cannot be considered as "several related purposes that are by accounting and budgeting practice," clearly negating the standard of a valid item at the level of an allotment class or expense category. Ultimately, the level of disaggregation and multiplicity of purpose implicate the non-delegability issue and not the item veto power, because items of appropriation can take the form of lump-sum.

This analysis again is consistent with the examination which was made in the 2013 *Belgica* case for the Malampaya Fund and the Presidential Social Fund (both demonstrably intended for multiple purposes). Again, based on the Court's holding on the validity of those Funds as appropriation, the reason the purposes of "priority infrastructure development projects" and "such other purposes as the President may determine" were struck down was ultimately a finding of insufficient standards, **and not because the Presidential Social Fund and the Malampaya Funds did not follow the rule on singular correspondence.**

Challenges against lump-sum appropriations in the budget

Lump-sum appropriations and non-delegability or undue delegation

On the allocation of the power to prepare, enact, and implement the national budget, the Constitution provides:

> **Article VI**
>
> Section 24. All appropriation, 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 Senate may propose or concur with amendments.
>
> Section 25. (1) The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law.
>
> x x x x
>
> Section 27. x x x
>
> (2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.
>
> Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.
>
> x x x x
>
> **Article VII**
>
> Section 22. The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

This textual commitment of the budgetary operations for the government to the political branches translates to broad constitutional authority, subject only to the standards set by the Constitution. Therefore, the

formulation of the national budget through the balancing of competing demands for public funds in the operation of the government is a political question, subject only to judicial review to test for grave abuse of discretion (*i.e.*, violations of the Constitution).

In the case of *Baker v. Carr*[44] which laid down the classic formulation of the political question doctrine, the Court declared that a case involves a political question when there is: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving the issue; (3) an impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; (4) an impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.[45]

The political departments are responsible for setting the country's fiscal policy — the interplay of the taxing and spending functions of the government in order to affect the economy. This fiscal policy is largely visible in a national budget that requires a delicate balancing of competing demands for public funds consistent with the country's development goals.

The delineation of tasks between the Executive and Legislative is as much a consequence of the principle of separation of powers as it is of necessity since, under the current structure of the Philippine government, it is the Executive that is equipped to determine the operational aspects incidental to the implementation of the national budget.

That said, there are laws and jurisprudence that determine the contours of allowable discretion of the political departments in budget preparation.

Section 13, Book VI, Chapter 3 of the Administrative Code provides:

> SEC. 13. *Budget Levels.* — The ordinary income of government shall be used primarily to provide appropriations for current operations, except in case of a national emergency or serious financial stress, the existence of which has been duly proclaimed by the President.
>
> The level of aggregate revenue expenditure and debt shall be jointly recommended to the President by the Department of Budget and Management, the Department of Finance, the National Economic and Development Authority and the Central Bank of the Philippines, acting within the Development Budget Coordination Committee of the National Economic and Development Authority.

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44 369 U.S. 186 (1962).

45 Id. at 217.

> **No appropriations for current operations and capital outlays of the Government shall be proposed unless the amount involved is covered by the ordinary income, or unless it is supported by a proposal creating additional sources of funds or revenue, including those generated from domestic and foreign borrowings, sufficient to cover the same.** Likewise, no appropriation for any expenditure, the amount of which is not covered by the estimated income from the existing sources of revenue or available current surplus, may be proposed, unless it is supported by a proposal creating an additional source of funds sufficient to cover the same.
>
> Proposals creating additional sources of funds shall be prepared in the form of revenue bills.
>
> The provisions of this section shall not be construed as impairing in any way the power of the Congress to enact revenue and appropriation bills, nor the authority of the President to propose special revenue and appropriation bills after the submission of the budget. (Emphasis supplied)

This requirement of a correspondence between spending and source of revenue has been imposed as early as the Budget Act.[46] Verily, it is contrary to the prevailing balanced budget policy to program appropriations without a corresponding source of revenue to fund the same. Hence, the creation of the Unprogrammed Fund as a standby appropriation and the identification of the programs to be funded by it constitute a prior determination on the part of the

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[46] COM. ACT NO. 246, Sec. 5 provides:

> SECTION 5. *Budget to be Balanced.* — The ordinary income shall be used primarily to provide for the ordinary operating expenses of the Government. Except in case of a national emergency or serious financial stress, the existence of which has been duly proclaimed by the President, **the total authorized appropriations for the ordinary expenditures shall not exceed the ordinary income**; and, unless extraordinary circumstances justify it, the total estimated ordinary income shall not only cover the total estimated ordinary expenditures, but it shall leave a reasonable surplus besides. No appropriations for the ordinary operating expenses of the Government may be proposed, unless the amount thereof is covered by the ordinary income, and, likewise, no appropriation for any extraordinary expenditure, the amount of which is not covered by the estimated income from the existing sources of revenues or available current surplus, may be proposed, unless it be supported by a proposal creating an additional source of fund sufficient to cover the same.

Sec. 13 of Republic Act No. (RA) 992 (AN ACT TO PROVIDE FOR A BUDGET SYSTEM FOR THE NATIONAL GOVERNMENT, otherwise known as "THE REVISED BUDGET ACT," June 4, 1954) provides:

> SECTION 13. *Balanced Budget.* — The ordinary income shall be used primarily to provide for the current operation of the Government. Except in case of a national emergency or serious financial stress, the existence of which has been duly proclaimed by the President, the total authorized appropriations for the current operations shall not exceed the ordinary income; and, unless extraordinary circumstances justify it, the total estimated ordinary income shall not only cover the total estimated appropriations for current operations and capital outlays but it shall leave a reasonable surplus besides.
>
> No appropriations for the current operations and capital outlays of the Government shall be proposed, unless the amount involved is covered by the ordinary income, or unless it be supported by a proposal creating an additional source of funds or revenue, sufficient to cover the same. Likewise, no appropriation for any other expenditures, the amount of which is not covered by the estimated income from the existing sources of revenues or available current surplus, may be proposed unless it be supported by a proposal creating an additional source of fund sufficient to cover the same.
>
> The proposals creating additional sources of funds shall be prepared in the form of revenue bills which shall be appended to the Budget.
>
> The provisions of this section shall not be constituted as impairing in any way the power of Congress to enact revenue and appropriation bills, nor the authority of the President to propose special revenue and appropriation bills after the submission of the budget.

Executive (in their inclusion in the NEP) and the Legislature (in the retention of the identification in the enacted GAA) to allot unexpected, excess, or windfall revenue for the specific programs identified thereunder. Therefore, the provision for the Unprogrammed Fund is consistent with the national budget policy and cannot therefore be characterized as avoiding the appropriation procedure.

In the case of *Araullo*, the Court nullified the release of the Unprogrammed Fund for not having complied with the conditions contained in the GAA (*i.e.,* Special Provision No. 1 on the release of funds under the Unprogrammed Fund appropriation). **Implicit in this pronouncement is the recognition that the Executive and Legislative are given sufficient discretion in the budgetary process, consistent with the prevailing balanced budget or surplus policy of the government, not to propose and authorize — not to program, respectively, appropriations that are not supported by expected sources of revenue or financing**. The practical effect of the exercise of this discretion is the provision of the Unprogrammed Fund to cover unexpected, excess, or windfall revenue that may only be used to fund the specified public purposes upon compliance with the conditions for its release.

Extent of executive discretion

At budget preparation, the Executive exercises discretion as it makes macro-economic assumptions and determines budget ceilings and fiscal targets at the beginning of budget preparation. In line with these assumptions and targets, it crafts a budget through allocation of corresponding amount of revenue and sources of financing to the existing programs and obligations of agencies, and thereafter allocates the remaining fiscal space to new programs that are consistent with national priorities.

Section 22,[47] Article VII of the Constitution requires the President to submit the budget to Congress within thirty days from the opening of every regular session. These budget documents include the Budget of Expenditures and Sources Financing (BESF) and the NEP, which are products of the exercise of Executive budget preparation.

For the 2014 GAA, the budget documents had to be submitted sometime in July 2013. It must be noted, however, that the entire budget preparation process begins as early as the budget call two years before the year for which the annual budget is prepared. As an exemplar, the budget preparation for the 2014 GAA began with a budget call in December 2012, followed by the holding of budget forums and the setting of indicative budget ceilings, macroeconomic assumptions and fiscal targets in January 2013. The

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[47] CONSTITUTION, Article VII, Sec. 22 provides:

> SECTION 22. The President shall submit to the Congress, within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

deadline for agencies to submit their respective budget proposals was set in mid-April, with technical budget hearings ending in May 2013.[48]

There is, therefore, a very real possibility that a change of circumstances may lead to the requirement of higher or lower funding for the stated public purposes, programs, or projects proposed by the President to be authorized by the Legislature, and the appropriations thus enacted by the Legislature. In fact, in accordance with the national developmental and budget framework, the President may even be constrained, during budget execution, as he is statutorily authorized, to suspend, discontinue, or abandon a program.[49] **It is with the recognition of this level of budget certainty that the Executive's power of apportionment or allocation is not only allowed as a corollary to the power to implement laws, specifically, to implement the national budget, but also as a requirement of the realities of the operations of the national government.**

Recognizing this reality, the Court in the *Araullo* Decision laid down the scope of the Executive's power during the budget execution phase:

> **We begin this dissection by reiterating that Congress cannot anticipate all issues and needs that may come into play once the budget reaches its execution stage. Executive discretion is necessary at that stage to achieve a sound fiscal administration and assure effective budget implementation.** The heads of offices, particularly the President, require flexibility in their operations under performance budgeting to enable them to make whatever adjustments are needed to meet established work goals under changing conditions. In particular, the power to transfer funds can give the President the flexibility to meet unforeseen events that may otherwise impede the efficient implementation of the [programs, activities or projects] set by Congress in the GAA.
>
> **Congress has traditionally allowed much flexibility to the President in allocating funds pursuant to the GAAs, particularly when the funds are grouped to form lump sum accounts.** It is assumed that the agencies of the Government enjoy more flexibility when the GAAs provide broader appropriation items. This flexibility comes in the form of policies that the Executive may adopt during the budget execution phase. The [Disbursement Acceleration Program] — as a strategy to improve the country's economic position — was one policy that the President decided to carry out in order to fulfill his mandate under the GAAs.
>
> Denying to the Executive flexibility in the expenditure process would be counterproductive. In *Presidential Spending Power*, Prof. Louis Fisher, an American constitutional scholar whose specialties have included budget policy, has justified extending discretionary authority to the Executive thusly:
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> > [T]he impulse to deny discretionary authority altogether should be resisted. There are many number of reasons why obligations and outlays by administrators may

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48 See Annex "D" of the National Budget Memorandum No. 115, December 28, 2012.

49 See ADMINISTRATIVE CODE, Chapter V, Book 6, Sec. 38.

> have to differ from appropriations by legislators. **Appropriations are made many months, and sometimes years, in advance of expenditures. Congress acts with imperfect knowledge in trying to legislate in fields that are highly technical and constantly undergoing change.** New circumstances will develop to make obsolete and mistaken the decisions reached by Congress at the appropriation stage. It is not practicable for Congress to adjust to each new development by passing separate supplemental appropriation bills. **Were Congress to control expenditures by confining administrators to narrow statutory details, it would perhaps protect its power of the purse but it would not protect the purse itself. The realities and complexities of public policy require executive discretion for the sound management of public funds.**
>
> x x x x
>
> x x x The expenditure process, by its very nature, requires substantial discretion for administrators. They need to exercise judgment and take responsibility for their actions, but those actions ought to be directed toward executing congressional, not administrative policy. **Let there be discretion, but channel it and use it to satisfy the programs and priorities established by Congress.**[50] (Emphasis supplied)

Contrary to Petitioner's assertion, allowance for executive discretion does not *per se* constitute a violation of the principle of separation of powers in the context of the budget process if: (1) the function entrusted by the Legislative to the Executive requires it to exercise such acts which fall within the sphere of powers properly allocated to it under the Constitution; and (2) such acts are accordingly exercised during the proper phase of the budget process.

The Legislature's check on the President's power to execute the budget

The enforcement of laws is a specific power that is *textually* committed to the Executive, and not merely one that is granted to the Executive "by default" (*i.e.*, a power that is not specifically allocated by the Constitution to the Executive, but is deemed executive in nature as it is neither inherently legislative nor judicial in nature).[51]

Moreover, the Executive's discretion in implementing the budget, while resting on constitutional grounds, is also sufficiently canalized by the policy and limits found in budgetary laws. Among these are those that provide the budget policy and the manner of preparation, form, and content of the budget.

PD 1177, promulgated in 1977, is one of the oldest budgetary laws that remains effective. It set the government's budget policy, thus:

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50 *Araullo* Decision, supra note 34, at 572-574.

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

> SECTION 3. *Declaration of Policy.* – It is hereby declared the policy of the State to formulate and implement a National Budget that is an instrument of national development, reflective of national objectives, strategies and plans. **The budget shall be supportive of and consistent with the socio-economic development plan and shall be oriented towards the achievement of explicit objectives and expected results, to ensure that funds are utilized and operations are conducted effectively, economically and efficiently**. The national budget shall be formulated within the context of a regionalized government structure and of the totality of revenues and other receipts, expenditures and borrowings of all levels of government and of the government-owned or controlled corporations. The budget shall likewise be prepared within the context of the national long-term plan and of a long-term budget program. (Emphasis supplied)

This was largely retained and reenacted in the Administrative Code:

> SECTION 1. *Declaration of Policy.*—The national budget shall be formulated and implemented as an instrument of national development, reflective of national objectives and plans, supportive of and consistent with the socio-economic development plans and oriented towards the achievement of explicit objectives and expected results, to ensure that the utilization of funds and operations of government entities are conducted effectively; formulated within the context of a regionalized governmental structure and within the totality of revenues and other receipts, expenditures and borrowings of all levels of government and of government-owned or controlled corporations; and prepared within the context of the national long-term plans and budget programs of the Government.[52]

Finally, as to the form of the budget, the Budget Act, as reenacted in PD 1177 and the Administrative Code, provides:

> SEC. 3. *Form of the Budget.* — The Budget, which shall be prepared and submitted to the National Assembly in accordance with the provisions of section 19 Article VI of the Constitution, shall comprise the general fund and all classes of special and trust funds under the care and control of the different branches or offices of the National Government.
>
> The receipts accruing to any fund and the expenditures therefrom shall be shown in detail in conformity with the classification of accounts prescribed by the Auditor General, segregated into ordinary and extraordinary income and expenditures.
>
> The appropriations for salaries and wages shall specify the positions, the number of each class, the respective designations, the salary rates authorized for the current year and those proposed for the ensuing year, and the items shall be grouped by bureaus and offices. The items of appropriations for each class of sundry expenses, furniture and equipment, and those for special purposes for the different bureaus and offices shall be consolidated for each corresponding department. Together with the proposed appropriations for each department, there shall be shown the amount of the actual expenditures for the preceding year and the estimated

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52 ADMINISTRATIVE CODE, Book IV, Title XVII, Chapter 1.

expenditures for the current and ensuing years from appropriations that are authorized by existing laws and from the special and trust funds.[53]

x x x x

SECTION 8. *Form and content. — The Budget shall consist of two parts* — (1) *the current operating expenditures, and* (2) *the capital outlays.* — **Each part of the Budget shall comprise the general fund and all classes of special, operating trust funds, and bond funds under the care and control of the different departments and agencies**. The Budget shall embody as appendices the proposed General Appropriation Act, the Public Works Act, and other appropriation Acts to cover the budget proposals.

The Budget shall also contain:

(a) a budgetary message setting forth in brief the significance of the appropriations proposed;

(b) a brief summary of the functions and activities of the Government; and

(c) summary of financial statements setting forth:

(1) the estimated expenditures and proposed appropriations necessary for the support of the Government for the ensuing fiscal year;

(2) the estimated receipts during the ensuing fiscal year under laws existing at the time the Budget is transmitted, and under the revenue proposals, if any, contained in the Budget;

(3) the actual appropriations, expenditures, and receipts during the last completed fiscal year;

(4) the estimated expenditures and receipts and actual or proposed appropriations during the fiscal year in progress;

(5) balanced statements of the condition of the National Treasury at the end of the last completed fiscal year, the estimated condition of the Treasury at the end of the fiscal year in progress, and the estimated condition of the Treasury at the end of the ensuing fiscal year, if the financial proposals contained in the Budget are adopted, showing, at the same time, the unencumbered and unobligated cash resources;

(6) all essential facts regarding the bonded and other long-term obligations and indebtedness of the Government; and

(7) such other financial statements and data as are deemed necessary or desirable in order to make known in all practicable detail the financial conditions of the Government.[54]

x x x x

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[53] COM. ACT NO. 246, December 17, 1937.
[54] RA 992, June 4, 1954.

SECTION 15. *Allotment of appropriations.* — To prevent the incurrence of deficits, authorized appropriations shall be allotted in accordance with the procedure outlined hereunder:

(a) No appropriation authorized for any department and agency of the Government shall be available for expenditure until the head of each department or agency shall have submitted to the Budget Commissioner a request for allotment of funds showing the estimated amounts needed for each function, activity, or purpose for which the funds are to be expended during the applicable allotment period and until the request shall have been approved by the Commissioner as hereinafter provided. The form of the request for allotment shall be prescribed by the Commissioner and shall be submitted to him at least twenty-five days prior to the beginning of the fiscal year showing the proposed quarterly allotments of the whole authorized appropriation for the department or agency.

(b) For purposes of the administration of the allotment system herein provided, each fiscal year shall be divided into four quarterly allotment periods beginning, respectively, on the first day of July, October, January, and April: *Provided*, That in any case where the quarterly allotment period is found to be impracticable, the Commissioner may prescribe a different period suited to the circumstances but not extending beyond the end of the fiscal year.

(c) Each request for allotment shall be reviewed by the Budget Commissioner and the respective amounts therein shall be allotted for expenditures, provided the estimate therein is within the terms of the appropriations as to amount and purposes, having due regard for the probable future needs of the bureau, office or agency for the remainder of the fiscal year or other term for which the appropriation was made, and provided the bureau, office or agency contemplates expenditure of the allotment during the period. Otherwise, the said Budget Commissioner shall modify the estimate so as to conform with the terms of the appropriation and the prospective needs of the bureau, office or agency, and shall reduce the amount to be allotted accordingly. The Budget Commissioner shall act promptly upon all requests for allotment and shall notify every bureau, office or agency of its allotments at least five days before the beginning of each allotment period. The total amount allotted to any bureau, office or agency for the fiscal year or other term for which the appropriation was made shall not exceed the amount appropriated for said year or term. The notification, which will be sufficient authority for the Chief Accountant to enter the allotment in the books, shall include an explanation for any decrease or increase in the request of the head of the department or agency.

(d) At the end of each quarter, each department or agency must report to the Commissioner the current status of its appropriations, the cumulative allotments, obligations, expenditures, and unliquidated obligations and unobligated and unexpected balances; and the results of expended

> appropriations. Such department or agency may, at any time, initiate or request for a change in allotments in order to adopt its functions or activities to altered conditions.
>
> (e) The Commissioner shall have authority also at any time to modify or amend any allotment previously made by him. In case he shall find at any time that the probable receipts from taxes or other sources for any fund will be less than were anticipated and that as a consequence the amount available for the remainder of the term of the appropriations, or for any allotment period will be less than the amount estimated or allotted therefor, he shall with the approval of the President, and after notice to the department or agency concerned, reduce the amount or amounts to be allotted so as to prevent deficits.
>
> (f) The Commissioner shall promptly transmit records and modifications thereof to the Auditor General, the Chairman of the Committee on Finance of the Senate and the Chairman of the Committee on Appropriations and Chairman of the Committee on Ways and Means of the House of Representatives and the Secretary of Finance.
>
> (g) The Commissioner shall maintain control records showing quarterly by funds, accounts, and other pertinent classifications, the amounts appropriated, the estimated revenues, the actual revenues or receipts, the amounts allotted and available for expenditures, the unliquidated obligations, actual balances on hand, and the unencumbered balances of the allotments for each agency of the Government.[55] (Emphasis supplied)

Even assuming that the power to apportion or allocate is not inherently executive as a facet of budget execution, and only a product of delegation by the legislative, **the mere nature of an appropriation as lump-sum does not automatically constitute undue delegation.**

In determining the constitutionality of two lump-sum funds administered by the Executive (*i.e.*, the Malampaya Funds and the Presidential Social Fund), the Court in the 2013 *Belgica* case explained that while the designation of a determinate or determinable amount for a particular public purpose is sufficient for a legal appropriation to exist, the appropriation law must contain adequate legislative guidelines if the same law delegates rule-making authority to the Executive either for the purpose of: (1) filling up the details of the law for its enforcement, known as supplementary rule-making; or (2) ascertaining facts to bring the law into actual operation, referred to as contingent rule-making.[56]

The first test is called the "**completeness test**." According to the 2013 *Belgica* case, a law is complete when it sets forth therein the policy to be executed, carried out, or implemented by the delegate.[57]

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55 Id.

56 *Belgica*, supra note 1, at 568.

57 Id.

The second test is called the "**sufficient standard test.**" A law lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy, and identify the conditions under which it is to be implemented.[58]

Verily, as shown in the analysis in the 2013 *Belgica* case, lump-sum appropriations, like line-item appropriations, are susceptible to the completeness and sufficient standards tests.

Discretionary v. non-discretionary appropriations

At their core, all appropriations in the general appropriation acts are discretionary appropriations because these are subject to the projected level of funds to support agency programs, activities, and projects that are evaluated according to the budget priorities set by the Executive to be included in the NEP during budget preparation, and then the evaluation by the Legislature during the budget legislation stage. The exception is automatic appropriations[59] which are statutorily required to be appropriated without latitude for discretion on the part of either the Executive or the Legislative departments during their respective stage of the budget process (*e.g.*, debt servicing, internal revenue allotments, payment of retirement and life insurance premiums, and special accounts in the general fund).[60]

In this sense, the exercise of discretion in determining whether to spend and the level of spending for discretionary appropriations is in line with the exercise of constitutional powers of the political departments in their respective roles in setting fiscal policy and executing the national budget. This is the proper context of discretionary appropriations during budget preparation and budget authorization.

Appropriation vis-à-vis apportionment

These premises, as budgetary concepts and as realities of the operations of government, show where the constitutional lines are drawn between the discretionary prerogatives of the Executive and Legislative in the budget process. As discussed above, the power to appropriate is legislative, while the power to apportion is executive. **The exercise of executive discretion by**

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58 Id.

59 See RA 10633, p. 1125.

60 ADMINISTRATIVE CODE, Book VI, Chapter 4 provides:

> SEC. 26. *Automatic Appropriations.* – All expenditures for (1) personnel retirement premiums, government service insurance, and other similar fixed expenditures, (2) principal and interest on public debt, (3) national government guarantees of obligations which are drawn upon, are automatically appropriated: *Provided*, That no obligations shall be incurred or payments made from funds thus automatically appropriated except as issued in the form of regular budgetary allotments.

apportionment of lump-sum appropriations does not violate separation of powers and non-delegability.

Now, as to Executive discretion after budget authorization and during budget execution, we distinguish apportionment of lump-sum appropriations and appropriation.

The implementation of the budget by the Executive includes not only implementation of the programs, activities, and projects of the Executive department, but also the timing and making of allotments and releases in favor of all agencies of the funds required to pay for government obligations authorized by the appropriations.

An appropriation is an authorization to pay out public funds for a specific public purpose. **To be clear, an appropriation is not a directive to pay funds, but in reality, a setting of ceiling or higher limit of spending for a specific public purpose or aggregation of public purposes corresponding to the amount.** By appropriating a specific amount, the Legislature sets the policy (*e.g.,* that a certain program deserves a part of public funds, to the maximum determined amount). It does not, through the appropriation, **direct an agency** to spend the entire amount for the public purpose. It only means that the agency is allowed to obligate (meaning enter into obligations and thereafter pay for these obligations) up to the set ceiling. In fact, even if an appropriation is made by the Legislature, with well-defined exceptions, the implementing agency cannot obligate or spend the same unless the DBM issues allotment authorization (SARO or ABM), cash allocation (NCA) and money is certified as actually available and allotted to a specific program or project.[61]

As well, it must be understood that an appropriation does not mean that the amount appropriated is actually already supported by available funds at the time of the passage of the GAA. The only assumption for appropriations is that they will be supported by revenue or receipts expected to be realized within the same fiscal year. This is true for all programmed appropriations in the national budget, except for those that are in the nature of trust funds, which are already segregated from the mass of funds in the general fund by virtue of the provisions of the law which created them. On the other side of the spectrum are standby appropriations (*i.e.,* the specific items in the special provisions of the Unprogrammed Fund) which allows unexpected or excess income or receipts to be spent for predetermined public purposes.

Therefore, by necessity, the Executive, or an agency with respect to its own agency-specific budget,[62] must exercise discretion to allocate or apportion (*i.e.*, to determine which of the appropriations should be funded

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[61] See ADMINISTRATIVE CODE, Book V, Subtitle B, Chapter 8, Sec. 47; PD 1445, Sec. 86.

[62] See also the treatment of lump-sum appropriations in the budgets of coordinating bodies and implementing agencies in supra note 22.

ahead of others, or how the resources will be distributed among the specified public purposes authorized to be funded) as funds become available. **This executive power or discretionary authority to allocate takes place at budget execution.**

The law authorizes the Executive's exercise of discretion from the early budget laws and their latest re-enactment in the Administrative Code with respect to the issuance or modification of allotments as a function of apportionment during budget execution.[63]

In interpreting the federal budget, the GAO defines apportionment as "[t]he action by which the Office of Management and Budget (OMB) distributes amounts available for obligation, including budgetary reserves established pursuant to law, in an appropriation or fund account."[64] It continues:

> x x x An apportionment divides amounts available for obligation by specific time periods (usually quarters), activities, projects, objects, or a combination thereof. The amounts so apportioned limit the amount of obligations that may be incurred. An apportionment may be further subdivided by an agency into allotments, suballotments, and allocations. x x x
>
> The apportionment process is intended to (1) prevent the obligation of amounts available within an appropriation or fund account in a manner that would require deficiency or supplemental appropriations and (2) achieve the most effective and economical use of amounts made available for obligation. x x x[65]

Petitioner decries this executive exercise of apportionment within appropriations as "Presidential pork" which he asks the Court to declare as unconstitutional for constituting "[an] informal [practice] of similar import and effect, which the Court similarly deems to be acts of grave abuse of discretion amounting to lack or excess of jurisdiction" in the 2013 *Belgica* case.[66] **Contrary to his claims, however, this practice of apportionment rests on solid constitutional and statutory grounds**.

The implementation of the national budget consistent with the long-term economic and development plans of the government properly belongs to the President as a facet of executive power.[67] This power is exercised through the DBM as provided in several laws.

In 1976, the Budget Commission (now DBM) was tasked to "assist the President in the preparation of a national resources and expenditures budget;

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63 See RA 992, Sec. 15; PD 1177, Sec. 38 and ADMINISTRATIVE CODE, Sec. 33.
64 GAO-05-734SP Budget Glossary, p. 12.
65 Id. at 12-13.
66 See *Belgica*, supra note 1, at 582.
67 CONSTITUTION, Art. VII, Sec. 17.

preparation, execution and control of the national budget; preparation and maintenance of accounting records and reports of the national government and design of accounting systems essential to the budgetary process; achievement of more economy and efficiency in the management of government operations; administration of compensation and position classification systems; and review and evaluation of legislative proposals having budgetary or organizational implications."[68]

A year later, the power of the Budget Commission to administer lump-sum funds was recognized in PD 1177:

> SECTION 53. *Administration of Lump-Sum Funds.* – The Budget Commission shall administer the Lump-Sum Funds appropriated in the General Appropriations Act, except as otherwise specified therein, including the issuance of Treasury Warrants covering payments to implementing agencies or other creditors, as may be authorized by the President.

In 1978, the Budget Commission was converted into the Ministry of Budget through PD 1405,[69] and later, the Office of Budget and Management by virtue of Executive Order No. 711[70] in 1981. Finally, the Office of Budget and Management was renamed as the DBM through the Administrative Code. Despite these changes in nomenclature, however, the DBM's powers and functions, including the power to administer lump-sum funds, have remained intact.[71]

Therefore, the mere nature of an appropriation as lump-sum does not automatically offend the principle of separation of powers and non-delegability of legislative power, or automatically constitute Presidential pork barrel.

While Congress has the power of the purse, *i.e.* power to authorize the expenditure of public funds for public purposes, the President has the power to implement the budget, *i.e.*, fill in the details, allot and apportion the funds authorized to be expended in the appropriation law. **Thus, when Congress passes an appropriation law that taps a single funding source for multiple purposes, it does not restrict or otherwise compel the President to equally fund a purpose he considers wasteful vis-à-vis that which he considers useful. This is because he has the power to allot and apportion public funds during budget execution, a power recognized by the Legislature when it passes a budget that contains lump-sum appropriations.** Allowing agency discretion over lump-sum appropriations has been recognized in

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68 PD 899, REORGANIZING THE BUDGET COMMISSION, March 3, 1976, Sec. 1.

69 CONVERTING THE BUDGET COMMISSION AND THE NATIONAL SCIENCE DEVELOPMENT BOARD INTO MINISTRIES, June 11, 1978.

70 RECLASSIFYING CERTAIN AGENCIES OF THE GOVERNMENT, July 28, 1981.

71 PD 1177, Sec. 53 was reenacted as Section 47 of Book VI, Chapter 5 of the ADMINISTRATIVE CODE.

American jurisprudence, when the US Supreme Court in *Lincoln v. Vigil*[72] (*Lincoln*) stated:

> The allocation of funds from a lump-sum appropriation is another administrative decision traditionally regarded as committed to agency discretion. After all, the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way. See *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America* v. *Donovan,* 241 U. S. App. D. C. 122, 128, 746 F. 2d 855, 861 (1984) (Scalia, J.) ("A lump-sum appropriation leaves it to the recipient agency (as a matter of law, at least) to distribute the funds among some or all of the permissible objects as it sees fit") (footnote omitted), cert. denied *sub nom. Automobile Workers* v. *Brock,* 474 U. S. 825 (1985); 2 United States General Accounting Office, Principles of Federal Appropriations Law, p. 6-159 (2d ed. 1992). For this reason, a fundamental principle of appropriations law is that where "Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on" the agency. *LTV Aerospace Corp.,* 55 Compo Gen. 307, 319 (1975); cf. *American Hospital Assn.* v. *NLRB,* 499 U. S. 606, 616 (1991) (statements in committee reports do not have the force of law); *TVA* v. *Hill,* 437 U. S. 153, 191 (1978) ("Expressions of committees dealing with requests for appropriations cannot be equated with statutes enacted by Congress"). Put another way, a lump-sum appropriation reflects a congressional recognition that an agency must be allowed "flexibility to shift x x x funds within a particular x x x appropriation account so that" the agency "can make necessary adjustments for "unforeseen developments'" and "'changing requirements.'" *LTV Aerospace Corp., supra,* at 318 (citation omitted).
>
> Like the decision against instituting enforcement proceedings, then, an agency's allocation of funds from a lump-sum appropriation requires "a complicated balancing of a number of factors which are peculiarly within its expertise": whether its "resources are best spent" on one program or another; whether it "is likely to succeed" in fulfilling its statutory mandate; whether a particular program "best fits the agency's overall policies"; and, "indeed, whether the agency has enough resources" to fund a program "at all." *Heckler,* 470 U. S., at 831. As in *Heckler,* so here, the "agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities." *Id.,* at 831-832. Of course, an agency is not free simply to disregard statutory responsibilities: Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes (though not, as we have seen, just in the legislative history). See *id.*, at 833. And, of course, we hardly need to note that an agency's decision to ignore congressional expectations may expose it to grave political consequences. But as long as the agency allocates funds from a lump-sum appropriation to meet permissible statutory objectives, § 701(a)(2) gives the courts no leave to intrude. "[T]o [that] extent," the decision to allocate funds "is committed to agency discretion by law." §701(a)(2).[73]

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[72] 508 U.S. 182 (1993).

[73] Id. at 192-193.

Therefore, by no stretch of imagination may it be considered that the President therefore colludes with the Congress, when it submits a NEP with lump-sum appropriations and the Congress on the other hand passes the appropriation law retaining these lump-sum appropriations.

These are exercises of constitutionally-committed powers of budget authorization and budget execution that requires a delicate balancing of competing public interests and available public funds. Unlike the clear infirmity in a situation where legislators are given post-enactment authority to identify projects during budget execution, the preparation, passage, and execution of a general appropriations act that contains multi-purpose funds or lump-sum appropriations subject to apportionment by the Executive during budget execution do not violate any constitutional provision.

As earlier discussed, all appropriations that are not automatic are in the nature of discretionary appropriations on the part of the Legislature. The discretion of the Executive over lump-sum appropriations administered by the DBM (and the discretion of agencies over their own agency-specific budgets including CFAGs), including the use of the amounts that may be released are merely considered as apportionment or allocation — functions during budget execution over which the Executive (or the agency) has discretionary authority. Taking for example the Unprogrammed Fund, the occasion for the President's exercise of the power to allocate arises from the nature of Unprogrammed Fund. Naturally, the amount of funds that may be utilized for the identified programs and projects will depend on how much revenue windfall was realized. There is no specific amount *precisely* because it is subject to the production of funds in excess of the projected revenue and other income to be collected in 2014.[74] If there is unexpected or windfall revenue sufficient to cover all specified purposes, then all these purposes may be funded; if there is not enough revenue, then the Executive discretion to allocate comes into play.

The same is true for Programmed Special Purpose Funds (Programmed SPFs) including the specifically assailed Funds in the Petition: the Contingent Fund, the E-Gov Fund, and the LGSF. Programmed SPFs are budgetary allocations in the GAA allocated for specific purposes, already disaggregated from the mass of funds not otherwise appropriated. After the disaggregation based on purpose, these are still inevitably lump-sum either by necessity or by design, as the recipient departments or agencies and/or the specific programs and projects have not yet been identified during budget preparation and legislation.

These are then made available for allocation to agencies in addition to their built-in appropriations during budget execution, pursuant to special

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[74] *Reply*, p. 16; *rollo*, p. 88.

provisions and conditions pertaining to the SPF.[75] Necessarily, because these are cross-agency or multi-user funds that are not yet part of the agency or end-user budgets, these are administered by the DBM.

This is, in fact, similar to the treatment of the budgets of agencies belonging to the constitutional fiscal autonomous group (CFAGs). Under the Constitution, the annual appropriations of these bodies shall be automatically and regularly released.[76] In compliance with the Constitution, their budgets are released to the agency after the passage of the GAA through the issuance of cash allocations (NCAs) based on the disbursement program of the agency itself. **The power to apportion or allocate their own appropriations is committed to the discretion of the CFAGs, similar to that exercised by the Executive over lump-sum appropriations that it administers.** This as well is similar to the situation discussed in *Lincoln.*

Lump-sum appropriations and item veto power

Lump-sum appropriations do not by their nature as such automatically violate the President's item veto power.

Article VI, Section 27[77] governing the Presidential item veto power under the Constitution draw its roots from American origins and have been adopted in this jurisdiction through the enactment of the Jones Law of 1916.[78] The relevant provision thereof state:

> SECTION 19 — *Procedure for Law-Making*
>
> x x x x
>
> (b) *The veto on appropriations.* —The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the Legislature without his approval.

As to what is subject to the President's item veto power, we look again to jurisprudence as to the constitutional concept of an "item." Again, in the

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75 A BRIEF ON THE SPECIAL PURPOSE FUNDS IN THE NATIONAL BUDGET. *Notes by the Department of Budget and Management.* Published on October 2013, available at <https://www.dbm.gov.ph/wp-content/uploads/DAP/Note%20on%20the%20Special%20Purpose%20Funds%20_Released%20-%20Oct%202013_.pdf.>

76 See Art. VIII, Sec. 3 for the Judiciary, Art. IX, Sec. 5, Common Provisions for the Civil Service Commission, Commission on Elections, and the Commission on Audit, Art. XI, Sec. 14 for the Office of the Ombudsman, Art. XIII, Sec. 17(4) for the Commission on Human Rights; see also Art. X, Sec. 6 requiring the automatic release of the just share of local government units in the national taxes.

77 Section 27. (1) x x x
(2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

78 J. Sereno, Concurring Opinion, *Belgica,* supra note 1, at 606.

Araullo Resolution, the Court had occasion to clarify the constitutional concept of an "item" for purposes of the power to augment, thus:

> 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.[79]

With respect to the claim that there must be a proper "item" which may be the object of the veto, *Gonzales v. Macaraig, Jr.*[80] must be understood in the context of distinguishing an item in an appropriation bill from a provision or rider, which is a provision that does not appropriate funds for a specific purpose. This case, interpreted together with the requirement of singular correspondence in the 2013 *Belgica* case, can hardly now be support to say that lump-sum appropriations cannot be subject of a Presidential item veto.

Again, even as the Court described the 2013 GAA provision for the Contingent Fund as a "line-item" appropriation, its formulation as a true lump-sum appropriation (meaning two purposes without corresponding amounts) already passed the Court's approval as an item of appropriation in the same case relied upon by Petitioner to argue against its constitutionality:

> x x x Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as "line- item" appropriations which are rightfully subject to item veto. Likewise, it must be observed that an appropriation may be validly apportioned into component percentages or values; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item. x x x[81] (Emphasis omitted)

In practice and interpretation already recognized by the Court,[82] the President is empowered and has exercised his power of item veto not merely on singular line-item appropriations, but also on lump-sum appropriations and had historically subjected special provisions that earmark certain amounts for specific purposes for conditional implementation.[83] This must be so, because

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79 *Araullo* Resolution, supra note 34, at 771.
80 269 Phil. 472 (1990).
81 *Belgica*, supra note 1, at 552.
82 *Araullo* Decision, supra note 34.
83 Which is in fact what was done to the provisions in the 2014 Local Government Support Fund, discussed elsewhere in this Decision.

there is nothing in the Constitution or in jurisprudence that limits the exercise of the Presidential power of item veto to the class of line-item appropriations only.[84]

In reality, finding infirmity on account of multiplicity of purposes for a specific amount based on the fear that the President will not be able to exercise his power to veto an item over a wasteful purpose that is lumped together with one that he considers useful is an issue more apparent than real.

The Petitioner's fear that "the President would then be faced with the predicament of either vetoing the entire appropriation if he finds some of its purposes wasteful or undesirable, or approving the entire appropriation so as not to hinder some of its legitimate purposes"[85] is unfounded.

The President therefore, by practice and by law, is not constrained to veto an entire appropriation if he finds a certain purpose in a lump-sum appropriation wasteful, or perhaps less important than others, because during budget authorization, he has the power to veto a lump-sum appropriation in its entirety (when there are no component amounts within the said item), or a single purpose in a lump-sum appropriation (if there are specific amounts appropriated for component items) or subject the provision to conditional implementation. During budget execution, he has the power to allocate resources among the authorized purposes within true lump-sum appropriations under his administration. **These purposes are deemed competing interests that the President through the DBM will have to prioritize in terms of allocation, timing, and release of funding.**

An example of conditional implementation can be found in the LGSF provision of the 2014 GAA. The earmarking of "One Hundred Million Pesos (P100,000,000) for the City of Manila, Fifty Million Pesos (P50,000,000) for the City of Caloocan and Fifty Million Pesos (P50,000,000) for the Municipality of Lal-lo, Cagayan."[86] This special provision was made subject to conditional implementation by the President.[87]

In view of the foregoing discussion, lump-sum appropriations are not unconstitutional *per se*. As well, in line with the 2013 *Belgica* case:

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[84] CONSTITUTION, Art. VI, Sec. 27 provides: Section 27. (1) x x x

(2) **The President shall have the power to veto any particular item or items in an appropriation**, revenue, or tariff **bill**, but the veto shall not affect the item or items to which he does not object. (Emphasis supplied)

[85] *Rollo*, p. 18.

[86] RA 10633, p. 850.

[87] President's Veto Message, December 20, 2013, page 1109, R.A. No. 10633, which reads:

F. LOCAL GOVERNMENT SUPPORT FUND

The earmarking of specific appropriations for selected local government units (LGUs) under the **ALGU-Local Government Support Fund, Special Provision No. 1 "Local Government Support Fund," page 850**, may not be consistent with the objectives and prioritization of the Local Government Support Fund. Accordingly, I hereby direct the DBM to issue the guidelines in the equal availment of the Fund by LGUs. Indeed, National Government support ought to be responsive to the actual requirements of LGUs in the interest of genuine local development. (Emphasis supplied)

1. An appropriation, whether line-item or lump-sum, is subject to the item veto power of the President as long it constitutes an item — *i.e.*, a correspondence of amount and purpose or purposes severable from other parts of an appropriation bill.

2. A lump-sum appropriation that hurdles the completeness and sufficient standards test is constitutional.

Accordingly, I vote to **DISMISS** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court