G.R. No. 230642 – Oscar B. Pimentel, *et al.*, *Petitioners* v. Legal Education Board, as represented by its Chairperson, Hon. Emerson B. Aquenda, *et al.*, *Respondents*; Attys. Anthony D. Bengzon, Ferdinand M. Negre, *et al.*, *Respondents-in-Intervention*; April D. Caballero, *et al.*, *Petitioners-Intervenors*; and G.R. No. 242954 – Francis Jose Lean L. Abayata, *et al.*, *Petitioners* v. Hon. Salvador Medialdea, Executive Secretary, *et al.*, *Respondents.*

Promulgated:

September 10, 2019

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur in the result,[1] but I tender this opinion to briefly explain my reasons as to why the provisions of Legal Education Board (LEB) Memorandum Order No. 7, Series of 2016[2] (LEBMO No. 7-2016) that mandatorily require the passing of the Philippine Law School Admission Test (PhiLSAT) as a pre-requisite for admission to any law school violate institutional academic freedom and hence, unconstitutional.

Section 5 (2), Article XIV of the 1987 Constitution guarantees that "**[a]cademic freedom** shall be enjoyed in **all institutions of higher learning**."[3] According to case law, "[t]his institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them **free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint**. The essential freedoms subsumed in the term 'academic freedom' encompasses the freedom to determine for itself on academic grounds: (1) [w]ho may teach, (2) [w]hat may be taught, (3) [h]ow it shall be taught, and (4) **[w]ho may be admitted to study**."[4] This fourth freedom of law schools to determine "who may be admitted to study" is at the core of the present controversy involving the PhiLSAT.

The PhiLSAT is essentially a standardized aptitude test measuring the examinees' communications and language proficiency, critical thinking skills, and verbal and quantitative reasoning.[5] It is designed to measure the

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1 See *fallo* of the *ponencia*, pp. 101-103.

2 "POLICIES AND REGULATIONS FOR THE ADMINISTRATION OF A NATIONWIDE UNIFORM LAW SCHOOL ADMISSION TEST FOR APPLICANTS TO THE BASIC LAW COURSES IN ALL LAW SCHOOLS IN THE COUNTRY," issued on December 29, 2016.

3 Emphases supplied.

4 *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 455-456 (2000); emphases and underscoring supplied.

5 *Rollo* (G.R. No. 230642), Vol. I, p. 216.

academic potential of the examinee to pursue the study of law.[6] One of the essential provisions of LEBMO No. 7-2016 is paragraph 9, which states that passing the PhiLSAT is required for admission to any law school in the Philippines, and that no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within two (2) years before the start of the study. The PhiLSAT has a passing score of 55%.[7] To concretize the mandatory nature of the PhiLSAT, paragraph 15 of LEBMO No. 7-2016 provides that law schools that violate the issuance shall be administratively sanctioned and/or fined in the amount of up to ₱10,000.00 for each infraction. The administrative sanctions direly encompass: (*a*) termination of the law program (closing the law school); (*b*) phasing out of the law program; and (*c*) provisional cancellation of the Government Recognition and putting the law program of the substandard law school under Permit Status.[8] As the PhiLSAT is a requirement mandatorily imposed by LEBMO No. 7-2016, non-compliance therewith would result into these potential consequences.

Compliance with the PhiLSAT effectively means a surrender of the law schools' academic freedom to determine who to admit to their institutions for study. This is because the PhiLSAT operates as a sifting mechanism that narrows down the pool of potential candidates from which law schools may then select their future students. With the grave administrative sanctions imposed for non-compliance, the surrender of this facet of academic freedom is clearly compulsory, because failing to subscribe to the PhiLSAT requirement is tantamount to the law school risking its complete closure or the phasing out of its law program. **This effectively results in the complete control – not mere supervision – of the State over a significant aspect of the institutions' academic freedom.**

Notably, the core legal basis for the PhiLSAT is derived from Section 7 (e) of Republic Act No. 7662[9] which empowers the LEB "to prescribe the minimum standards for law admission x x x." On a broader scale, Section 7 (b) of the same law empowers the LEB "to supervise the law schools in the country x x x." This is a specific iteration of Section 4 (1), Article XIV of the 1987 Constitution which provides that "**[t]he State x x x shall exercise reasonable supervision and regulation of all educational institutions.**"[10] "**Reasonable supervision," as the Framers intended, meant only "external" and not "internal" governance; as such, it is meant to exclude the right to manage, dictate, overrule, prohibit, and dominate.**[11]

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6 See LEBMO No. 7-2016, paragraph 2.

7 See LEBMO No. 7-2016, paragraph 14.

8 See LEBMO No. 2-2013, "LEGAL EDUCATION BOARD MEMORANDUM ORDER NO. 2: ADDITIONAL RULES IN THE OPERATION OF THE LAW PROGRAM" (June 1, 2014), Section 32.

9 Entitled "AN ACT PROVIDING FOR REFORMS IN LEGAL EDUCATION, CREATING FOR THE PURPOSE A LEGAL EDUCATION BOARD, AND FOR OTHER PURPOSES," otherwise known as the "LEGAL EDUCATION REFORM ACT OF 1993," approved on December 23, 1993.

10 Emphasis and underscoring supplied.

11 See Amicus Brief dated March 27, 2019 of Dean Sedfrey M. Candelaria, p. 5; emphasis and underscoring supplied.

As elucidated in the fairly recent case of *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*:[12]

> **The Framers were explicit, however, that this supervision refers to *external governance*, as opposed to *internal governance* which was reserved to the respective school boards**, thus:
>
> > Madam President, Section 2(b) introduces four changes: one, the addition of the word "reasonable" before the phrase "supervision and regulation"; two, the addition of the word "quality" before the word "education"; three, the change of the wordings in the 1973 Constitution referring to a system of education, requiring the same to be relevant to the goals of national development, to the present expression of "relevant to the needs of the people and society"; and four, the explanation of the meaning of the expression "integrated system of education" by defining the same as the **recognition and strengthening of the complementary roles of public and private educational institutions as separate but integral parts of the total Philippine educational system.**
> >
> > **When we speak of State supervision and regulation, we refer to the external governance of educational institutions**, particularly private educational institutions as distinguished from the internal governance by their respective boards of directors or trustees and their administrative officials. Even without a provision on external governance, the State would still have the inherent right to regulate educational institutions through the exercise of its police power. We have thought it advisable to restate the supervisory and regulatory functions of the State provided in the 1935 and 1973 Constitutions with the addition of the word "reasonable." We found it necessary to add the word "reasonable" because of an *obiter dictum* of our Supreme Court in a decision in the case of *Philippine Association of Colleges and Universities vs. The Secretary of Education and the Board of Textbooks* in 1955. In that case, the court said, and I quote:
> >
> > > It is enough to point out that local educators and writers think the Constitution provides for control of education by the State.
> > >
> > > The Solicitor General cites many authorities to show that the power to regulate means power to control, and quotes from the proceedings of the Constitutional Convention to prove that State control of private education was intended by organic law.
>
> **The addition, therefore, of the word "reasonable" is meant to underscore the sense of the committee, that when the Constitution speaks of State supervision and regulation, it does not in any way mean control. We refer only to the power of the State to provide regulations and to see to it that these regulations are duly followed and implemented. It does not include the right to manage, dictate, overrule and prohibit. Therefore, it does not include the right to dominate.**[13] (Emphases and underscoring supplied)

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12 See G.R. Nos. 216930, 217451, 217752, 218045, 218098, 218123 and 218465, October 9, 2018.

13 See id.

As pointed out by Dean Sedfrey M. Candelaria (Dean Candelaria) in his Amicus Brief, "[w]hen [the] LEB took over the functions of the [Commission on Higher Education (CHED)] in relation to law schools, it is safe to presume that the scope of power of [the] LEB should be no more than what [the] CHED had traditionally exercised over law schools."[14] As to what he insinuates as "reasonable supervision" over institutions of higher learning, the State may, through the appropriate agency, determine the: (*a*) minimum unit requirements for a specific academic program; (*b*) general education distribution requirements; and (*c*) specific professional subjects as may be stipulated by the various licensing entities.[15] These activities may ostensibly fall under the category of "external governance" and hence, "reasonable supervision," as compared to a mandatory, exclusively State-crafted aptitude test which not only operates as a predetermination of the schools' potential candidates for admission but also brandishes the total closure of the institution or phasing out of the academic program as punishment for noncompliance. The latter is, to my mind, a form of State-domination that translates to "internal governance" and hence, the exercise of the State's control over academic freedom. As earlier intimated, this strays from the intent of the Framers of our Constitution.

While the more intricate contours of "academic freedom" have yet to be charted in our jurisprudence as compared to other individual liberties, Dean Candelaria, in his Amicus Brief, also broached the idea that academic freedom is an aspect of the freedom of expression, and hence, any regulation thereof is subject to strict scrutiny.[16] The tie between academic freedom and freedom of expression has yet to be definitively settled in our jurisprudence, Nevertheless, there is ostensible merit in this theory since an institution of higher learning may be treated as the embodiment of the composite rights of its individual educators, and ultimately, an educational method of instruction is a form of communication. Learning necessarily connotes an exchange of ideas. The transmission of knowledge does not happen in a vacuum but within a framework that the school autonomously determines – subject only to reasonable State regulation – a cognate part of which is who it deems fit for its instruction. As Associate Justice Marvic M.V.F. Leonen eloquently stated in his Separate Dissenting and Concurring Opinion, academic discussions and other forms of scholarship are manifestations and extensions of an individual's thoughts and beliefs.[17] Academic freedom is anchored on the recognition that academic institutions perform a social function, and its business is conducted for the common good; that is, it is a necessary tool for critical inquiry of truth and its free exposition. Thus, the guarantee of academic freedom is complementary to the freedom of expression and the freedom of the mind.[18]

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14 See Amicus Brief, p. 12.
15 Id. at 7.
16 Id. at 12-13.
17 See Justice Leonen's Separate Dissenting and Concurring Opinion.
18 See id.

The theoretical transposition of the concept of freedom of expression/ freedom of the mind to institutional academic freedom would greatly impact the dynamic of how this Court would henceforth deal with regulations affecting institutions of higher learning because, as mentioned, the test to be applied would be strict scrutiny.[19] "Strict scrutiny entails that the presumed law or policy must be justified by a compelling state or government interest, that such law or policy must be narrowly tailored to achieve that goal or interest, and that the law or policy must be the least restrictive means for achieving that interest."[20]

In this case, while the policy of the State to "uplift the standards of legal education" [21] may be characterized as a compelling State interest, the means of achieving this goal, through the PhiLSAT, together with its mandatory and exclusionary features as above-discussed, do not appear to be narrowly tailored or the least restrictive means for achieving this interest. There is no concrete showing why the implementation of a standardized but optional State aptitude exam, which schools may freely adopt in their discretion as a tool for their own determination of who to admit (such as the National Medical Aptitude Test for medical schools or the Law School Admission Test in the United States of America), would be less of a "sifting" measure than a mandatory and exclusively State-determined one (such as the PhiLSAT). This is especially so since, as conceded by LEB Chairperson Emerson B. Aquende during the oral arguments in this case, there is no statistical basis[22] to show the propensity of the PhiLSAT to improve the quality of legal education. Furthermore, no other study or evaluation regarding the viability of the PhiLSAT was shown to this effect. It is true that in a general sense, the PhiLSAT operates as a basic aptitude exam which seeks to test skills that have rational connection to the field of law, *i.e.*, communications and language proficiency, critical thinking, and verbal and quantitative reasoning. However, because the test was solely crafted by the LEB, it completely excludes the law schools' input and participation, and worse, even puts their very existence in jeopardy should there be non-subservience. Verily, an absolutist approach in any facet of academic freedom would not only result in an overly restrictive State regulation, it would also be practically counterproductive because law schools, being at the forefront, are the quintessential stakeholders to the mission of improving legal education. Again, by constitutional fiat, the State's role is limited to reasonable supervision, not control. For these reasons, the provisions of LEBMO No. 7-2016 on the PhiLSAT clearly transgress institutional academic freedom.

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19 Strict scrutiny applies to "laws dealing with freedom of the mind." It is also "used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection." (See *White Light Corporation v. City of Manila*, 596 Phil. 444, 462-463[2009].)

20 *Divinagracia v. Consolidated Broadcasting System, Inc.*, 602 Phil. 625, 663 (2009); underscoring supplied.

21 See Republic Act No. 7662, Section 2.

22 See TSN, March 5, 2019, pp. 171-182.

Accordingly, I concur in the result.

ESTELA M. PERLAS-BERNABE
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court