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G.R. No. 230642 – OSCAR B. PIMENTEL, ERROL B. COMAFAY, JR., RENE B. GOROSPE, EDWIN R. SANDOVAL, VICTORIA R. LOANZON, ELGIN MICHAEL C. PEREZ, ARNOLD E. CACHO, AL CONRAD B. ESPALDON, ED VINCENT S. ALBANO, LEIGHTON R. SIAZON, ARIANNE C. ARTUGUE, CLARABEL ANNE R. LACSINA, KRISTINE JANE R. LIU, ALYANNA MARI C. BUENVIAJE, IANA PATRICIA DULA T. NICOLAS, IRENE A. TOLENTINO, and AUREA I. GRUYAL, *Petitioners*, v. LEGAL EDUCATION BOARD, as represented by its Chairperson, HON. EMERSON B. AQUENDE, and LEB Member HON. ZENAIDA N. ELEPAÑO, *Respondents*; ATTYS. ANTHONY D. BENGZON, FERDINAND M. NEGRE, MICHAEL Z. UNTALAN, JONATHAN Q. PEREZ, SAMANTHA WESLEY K. ROSALES, ERIKA M. ALFONSO, KRYS VALEN O. MARTINEZ, RYAN CEAZAR P. ROMANO, and KENNETH C. VARONA, *Respondents-in-Intervention*; APRIL D. CABALLERO, JEREY C. CASTARDO, MC WELLROE P. BRINGAS, RHUFFY D. FEDERE, CONRAD THEODORE A. MATUTINO, and numerous others similarly situated, ST. THOMAS MORE SCHOOL OF LAW AND BUSINESS, INC., represented by its President RODOLFO C. RAPISTA, for himself and as Founder, Dean, and Professor of the College of Law, JUDY MARIE RAPISTA-TAN, LYNNART WALFORD A. TAN, IAN M. ENTERINA, NEIL JOHN VILLARICO as law professors and as concerned citizens, *Petitioners-in-Intervention*;

G.R. No. 242954 – FRANCIS JOSE LEAN L. ABAYATA, GRETCHEN M. VASQUEZ, SHEENAH S. ILUSTRISMO, RALPH LOUIE SALAÑO, AIREEN MONICA B. GUZMAN, DELFINO ODIAS, DARYL DELA CRUZ, CLAIRE SUICO, AIVIE S. PESCADERO, NIÑA CHRISTINE DELA PAZ, SHEMARK K. QUENIAHAN, AL JAY T. MEJOS, ROCELLYN L. DAÑO, MICHAEL ADOLFO, RONALD A. ATIG, LYNETTE C. LUMAYAG, MARY CHRIS LAGERA, TIMOTHY B. FRANCISCO, SHEILA MARIE C. DANDAN, MADELINE C. DELA PEÑA, DARLIN R. VILLAMOR, LORENZANA L. LLORICO, and JAN IVAN M. SANTAMARIA, *Petitioners*, v. HON. SALVADOR MEDIALDEA, Executive Secretary, and LEGAL EDUCATION BOARD, herein represented by its Chairperson, EMERSON B. AQUENDE, *Respondents*;

A.M. No. 20-03-04-SC – RE: REQUEST FOR CLARIFICATION REGARDING THE STATUS AND TREATMENT OF THE PHILIPPINE LAW SCHOOL ADMISSION TEST [PHILSAT] IN THE LIGHT OF THE SUPREME COURT DECISION IN G.R. NO. 230642 (OSCAR B. PIMENTEL, ET AL. V. LEGAL EDUCATION BOARD) AND G.R. NO. 242953 (FRANCIS JOSE LEAN L.

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**ABAYATA, ET AL. V. HON. SALVADOR MEDIALDEA AND  
LEGAL EDUCATION BOARD [G.R. NOS. 230642 AND 242954];****THE BOARD OF TRUSTEES OF THE PHILIPPINE ASSOCIATION  
OF LAW SCHOOLS, represented by its Chairperson, Dean Joan S.  
Largo, and its President, DEAN MARISOL DL. ANENIAS, *Intervenor.*****Promulgated:**

November 9, 2021

X----------X**DISSENTING AND CONCURRING OPINION****LEONEN, J.:**

Educational institutions play an important role in a democracy: They are spaces meant for the creation and flourishing of diverse ideas that improve society and enrich public debate. The academe and the space it requires are protected by the constitutional canon called academic freedom. This freedom assures an intellectual debate that is vigorous in its inquiry into the truth, unobstructed by fear of any governmental intervention, be it coercive or suggestive.

The academic freedom accorded to educational institutions is intertwined with the very concept of individual expression—the very core of human liberty and the bedrock of a democratic society. The right to pursue learning, both of the institution and the individual, must be “free from internal and external interference or pressure.”<sup>1</sup> An educational institution’s right to determine who to admit as its students, as a facet of its institutional academic freedom, is absolute. Any form of State intrusion into its admission policies, no matter how benign, should be rejected.

For this, I maintain that the Philippine Law School Admission Test is unconstitutional, be it just a guide or an absolute requirement for admission. Not only is it an affront to a law school’s discretion in determining who to admit to study, but it is also an arbitrary and unreasonable policy that violates an applicant’s right to due process. Beyond that, the law and rules giving the Legal Education Board the power to prescribe minimum standards for law school admission are themselves unconstitutional, for they infringe on law schools’ academic freedom and violate due process.

To recall, in its September 10, 2019 Decision, this Court declared unconstitutional the Philippine Law School Admission Test, as it had been

<sup>1</sup> *Ateneo de Manila University v. Capulong*, 292 Phil. 654, 673 (1993) [Per J. Romero, En Banc].



crafted, for being “a totalitarian scheme” as a requirement to qualify for law school. Nonetheless, the majority maintained that Republic Act No. 7662, or the Legal Education Reform Act of 1993, is a reasonable State supervision on law schools, particularly on who they admit to study. To the majority, the Philippine Law School Admission Test may be administered, but would not be mandatory to enter law schools.<sup>2</sup>

The law, upheld by the majority, empowers the Legal Education Board to prescribe minimum standards for law admission. Rejecting the argument that this encroaches on the Supreme Court’s rule-making power, the majority ruled that this Court’s power does not extend to the study of law. But while the Board had power that extended to prescribing minimum qualifications of faculty members, this Court found that the manner of its imposition was unreasonable as it usurped the “freedom of the institution to evaluate the qualifications of its own teachers on an individual basis.”<sup>3</sup>

In its Partial Motion for Reconsideration, the Legal Education Board maintained that the exercise of academic freedom still allows the State to impose reasonable restrictions on law schools.<sup>4</sup> It argued that the Philippine Law School Admission Test is merely a minimum qualification for admission to law schools and not an unfair and unreasonable academic requirement.<sup>5</sup> It further reasoned that this policy promotes the right to quality education, advances public welfare, and ensures that law schools comply with the requirements set by the State.<sup>6</sup>

However, for petitioners and intervenor, law schools have already determined their own admission policies and crafted law admission tests long before the Philippine Law School Admission Test came around.<sup>7</sup> This test, then, supposedly infringed on their right to freely determine who may be admitted to study.<sup>8</sup> They added that the policy usurps the school’s right to assess the fitness and aptitude of its faculty.<sup>9</sup>

It was also claimed that since admission to the Bar necessarily encompasses admission to law school,<sup>10</sup> Republic Act No. 7662, the law creating the Legal Education Board, is unconstitutional for infringing on the constitutional power of this Court.<sup>11</sup>

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<sup>2</sup> *Pimentel v. Legal Education Board*, G.R. Nos. 230642 and 242954, September 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65751>> [Per J. J. Reyes, Jr., En Banc].

<sup>3</sup> *Id.*

<sup>4</sup> Resolution, p. 7.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.* at 7.

<sup>7</sup> Petition-in-Intervention, p. 12.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.*

<sup>10</sup> Resolution, p. 8.

<sup>11</sup> *Id.*

The Resolution issued by the majority upheld the constitutionality of Republic Act No. 7662 for being a valid exercise of the State's police power. Citing problems besetting legal education, it reasoned that the law is necessary to reform and elevate law school standards. Thus, giving the Legal Education Board power to set minimum requirements for admission to law schools was deemed imperative to realize the law's intent.<sup>12</sup>

Veering away from the original September 10, 2019 Decision, the Resolution explained that the Legal Education Board's authority to regulate legal education can be reconciled with this Court's power to supervise admission to the Bar.<sup>13</sup> It held that this Court has legitimate interests over legal education, although admitted that no constitutional text supports this.<sup>14</sup> It reasoned that legal education cannot be treated separately from the legal profession because the skills and values of lawyers are developed foremost in law schools.<sup>15</sup>

Nevertheless, the Resolution found that the Philippine Law School Admission Test unreasonably intrudes into the academic freedom of law schools.<sup>16</sup> It reasoned that while improving legal education through regulating admission was a lawful subject permitting the exercise of police power, the Philippine Law School Admission Test failed the test of lawful method because it took away the autonomy of law schools.<sup>17</sup> Thus, it declared the entire LEB Memorandum Order No. 7-2016, which imposed this examination, unconstitutional.<sup>18</sup> It also set aside all relevant memoranda, circulars, and issuances pertaining to the test, finding that its compulsory imposition was "violative of academic freedom."<sup>19</sup>

## I

I fully agree that the Philippine Law School Admission Test, as with the entire LEB Memorandum Order No. 7-2016, is unconstitutional.

Academic freedom is a constitutionally guaranteed protection accorded to educational institutions. Article XIV, Section 5(2) of the Constitution is clear: "Academic freedom shall be enjoyed in all institutions of higher learning."

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<sup>12</sup> Id. at 11–15.

<sup>13</sup> Id. at 15.

<sup>14</sup> Id. at 16.

<sup>15</sup> Id.

<sup>16</sup> Id. at 24.

<sup>17</sup> Id. at 26.

<sup>18</sup> Id. at 29–30.

<sup>19</sup> Id. at 34.



In *Garcia v. The Faculty Admission Committee, Loyola School of Theology*,<sup>20</sup> this Court first discussed the nature and scope of academic freedom with respect to academic institutions:

For it is to be noted that the reference is to the “institutions of higher learning” as the recipients of this boon. *It would follow then that the school or college itself is possessed of such a right. It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students.* This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose, nullify its intent. Former President Vicente G. Sinco of the University of the Philippines, in his Philippine Political Law, is similarly of the view that it “definitely grants the right of academic freedom to the university as an institution as distinguished from the academic freedom of a university professor.”<sup>21</sup> (Emphasis supplied, citation omitted)

Out of this guarantee flows four essential freedoms that academic institutions can determine: (1) who may teach; (2) what may be taught; (3) how it shall be taught; and (4) who may be admitted to study.<sup>22</sup>

Academic institutions are self-governed. They can refuse to admit students who fail to meet the qualifications and requirements they set.<sup>23</sup> This discretion extends to their determination of who to dismiss<sup>24</sup> and the right to discipline their students.<sup>25</sup>

This wide autonomy springs from the fundamental social function that academic institutions perform. They create and encourage an environment of critical discussion and inquiry. Individuals’ thoughts are formed and honed through intellectual exchange within the academic domain. Academic institutions promote the freedoms of expression and of the mind.

Because of their role and the spaces they require, academic institutions are given the autonomy to determine for themselves their “aims and objectives and how best to attain them.”<sup>26</sup> For that, they must have a degree of independence and protection from outside interference:

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<sup>20</sup> 160-A Phil. 929 (1975) [Per J. Fernando, En Banc].

<sup>21</sup> Id. at 943.

<sup>22</sup> Id. at 944.

<sup>23</sup> *Tangonan v. Pano*, 221 Phil. 601 (1985) [Per J. Cuevas, Second Division]; *San Sebastian College v. Court of Appeals*, 274 Phil. 414 (1991) [Per J. Medialdea, First Division].

<sup>24</sup> *Ateneo De Manila University v. Capulong*, 294 Phil. 654 (1993) [Per J. Romero, En Banc]; *Licup v. University of San Carlos*, 258-A Phil. 417 (1989) [Per J. Gancayco, First Division].

<sup>25</sup> *Miriam College Foundation, Inc v. Court of Appeals*, 401 Phil. 431 (2000) [Per J. Kapunan, First Division]; *Angeles v. Sison*, 197 Phil. 713 (1982) [Per J. Fernandez, Second Division].

<sup>26</sup> *Garcia v. Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 944 (1975) [Per J. Fernando, En Banc].

Notwithstanding the increasingly broad reach of academic freedom and the current emphasis on the essentiality of autonomy for academic institutions, the freedom of individual faculty members against control of thought or utterance from either within or without the employing institutions remains the core of the matter. If this freedom exists and reasonably adequate academic administration and methods of faculty selection prevail, intellectual interchange and pursuit of knowledge are secured. A substantial degree of institutional autonomy is both a usual prerequisite and a normal consequence of such a state of affairs. . . . Hence the main concern over developing and maintaining academic freedom in this country has focused upon encouragement and protection of the freedom of the faculty member.<sup>27</sup>

Academic freedom cannot be divorced from the freedoms of thought, speech, expression, and the press.<sup>28</sup> The level of protection accorded to freedom of expression must extend to academic freedom. Any form of State interference must be heavily scrutinized.

Viewed in this light, imposing the Philippine Law School Admission Test as a mandatory examination infringes on academic freedom. As a state-sponsored test, it tends to influence the admission policy of law schools, intruding into the internal affair of determining who to admit to study, when they have already determined their own admission policies and created their respective admission tests. The Philippine Law School Admission Test, crafted by the Legal Education Board without consulting law schools, effectively railroaded their admission policies. Its mandatory imposition would make it integral to the admission processes of all law schools. This was not only a superfluity, but a violation of law schools' institutional academic freedom.

State intrusion, whatever form it may be, stifles the ability of an academic institution to be critical. It undermines the crucial function of law schools as learning institutions and birthplaces of opinion and analysis, which may ripen into a critique of government. As I have explained in my earlier opinion for these cases, law schools should be spaces for intellectual discourse without fear of governmental intrusion of any kind:

Law schools are the principal institutions that have the space to analyze, deconstruct, and even critique our laws and jurisprudence. They not only teach doctrine, but examine its fundamentals.

The kind of freedom of expression contained in academic freedom is different from political expression. Within political or creative spaces, freedom of expression takes an almost unqualified immunity. Any thought, whether or not it is hated by the dominant, finds protection

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<sup>27</sup> Ralph F. Fuchs, *Academic Freedom: Its Basic Philosophy, Function and History*, 28 *Law and Contemporary Problems* 431, 433 (1963), available at <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2963&context=lcp>> (last visited on June 8, 2021).

<sup>28</sup> *Ateneo De Manila University v. Capulong*, 292 Phil. 654, 672–673 (1993) [Per J. Romero, En Banc].

without regard to its slant or falsity. In the sphere of political debate, falsehoods are platforms for testing reason and providing opportunities to publicly advocate what is true persuasively.

On the other hand, within the academe, falsities in method and content are deliberately rooted out, exposed, and marginalized so that the public debate is enriched, whether among the institution's students or the world beyond its walls. Academic freedom is the constitutional canon that protects this space from politics. It is the freedom that assures academic intellectual debate without fear of any governmental intervention of any kind, be it coercive or suggestive.

Government-sponsored standardized admission tests infringe on this freedom without reason.<sup>29</sup>

I fully concur with the Resolution in saying that, in its current formulation, the Philippine Law School Admission Test is not merely recommendatory, but an absolute requirement on law school applicants. That the applicants are not required to pass the examination does not change this. As long as taking it is mandatory, the State effectively dictates on law schools who may be admitted to study by predetermining who may enroll in them. This governmental attempt to interfere with law schools' discretion infringes on academic freedom and violates the Constitution.

Moreover, I find that the imposition of the Philippine Law School Admission Test fails to satisfy the requirement of due process.

While State action is not entirely proscribed, due process demands that the intrusion on an individual's right to life, liberty, and property neither be arbitrary nor unreasonable.<sup>30</sup> In *Ichong v. Hernandez*:<sup>31</sup>

The due process clause has to do with the reasonableness of legislation enacted in pursuance of the police power, Is there public interest, a public purpose; is public welfare involved? Is the Act reasonably necessary for the accomplishment of the legislature's purpose; is it not unreasonable, arbitrary or oppressive? Is there sufficient foundation or reason in connection with the matter involved; or has there not been a capricious use of the legislative power? Can the aims conceived be achieved by the means used, or is it not merely an unjustified interference with private interest? These are the questions that we ask when the due process test is applied.

The conflict, therefore, between police power and the guarantees of due process and equal protection of the laws is more apparent than real. Properly related, the power and the guarantees are supposed to coexist. The balancing is the essence or, shall it be said, the indispensable means for the attainment of legitimate aspirations of any democratic society.

<sup>29</sup> J. Leonen, Separate Dissenting and Concurring Opinion in *Pimentel v. Legal Education Board*, G.R. Nos. 230642 and 242954, September 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65751>> [Per J. J. Reyes, Jr., En Banc].

<sup>30</sup> *Ichong v. Hernandez*, 101 Phil. 1155, 1166 (1957) [Per J. Labrador, En Banc].

<sup>31</sup> 101 Phil. 1155 (1957) [Per J. Labrador, En Banc].

There can be no absolute power, whoever exercise it, for that would be tyranny. Yet there can neither be absolute liberty, for that would mean license and anarchy. So the State can deprive persons of life, liberty and property, provided there is due process of law[.]<sup>32</sup>

An individual's choice of pursuing an education is within the sphere of the rights to life, liberty, and property. The rights to life and liberty do not only ensure physical existence and subsistence, but embrace the right to fully maximize and attain one's potential, such as the right to enjoy their faculties, the right to choose a profession, and the right to pursue an education.<sup>33</sup> Hence, when the State tends to interfere with these choices, it effectively infringes on the rights to life and liberty.

In this case, the imposition of the Philippine Law School Admission Test violates due process for being arbitrary and unreasonable.

To begin with, equating admissions policy to the quality of law schools is *non sequitur*. The standard for admissions is different from the standard for ensuring the quality of legal education. In admissions, applicants are evaluated and filtered through factors entirely unrelated to the quality of legal education. For instance, entrance examinations do not measure intelligence and are admittedly not an accurate assessment of merit. They only provide a measure of correlation between the score and the applicant's predicted first-year grades.

Other indicators, such as the applicant's undergraduate grades, honors, and school are immaterial to the improvement of the quality of legal education. Thus, the students that a law school eventually admits as first-year students are no reflection of the quality of instruction that they will receive from that school. The quality of a law school's legal instruction depends heavily on its internal administration and policies, such as its medium of instruction, the composition of its faculty, the subjects and the curriculum it offers, and the grading system it implements.

Even if these were related, the Philippine Law School Admission Test remains arbitrary for lack of substantial basis. It appears that the Legal Education Board merely relied on anecdotal evidence.

The creation of the Philippine Law School Admission Test was admittedly not based on scientific research. To justify the examination, the Legal Education Board simply said during the oral arguments that it was an imitation of the Law School Admission Test in the United States, and nothing more. No study was conducted to show the applicability of this foreign framework to Philippine law schools. Certainly, the creation of

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<sup>32</sup> Id. at 1165.

<sup>33</sup> *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 316 (2005) [Per J. Tinga, En Banc].



educational institutions' admission processes requires carefully crafted rubrics on which to base this important academic decision. The test in question merely imposes additional burden, the legitimacy of which has not been shown. This violates substantive due process.

The Philippine Law School Admission Test likewise violates due process for being unreasonable. Imposing the test is based on the basic idea that a written test can determine which applicants are likely to survive law school. This single criterion, decided by the Legal Education Board, would supposedly determine if one is qualified for law education.

Using a one-size-fits-all determinant cannot satisfy the demands of due process. Reasonableness requires a multifaceted approach to evaluate law school applicants.

Moreover, by requiring all applicants to take the Philippine Law School Admission Test, the Legal Education Board is able to impose an additional admission requirement on law schools. Whether or not they will consider the results of the test, law schools are compelled to only accept applicants who have taken the examination regardless of their scores. The test's mandatory character amounts to an oppressive and arbitrary measure as it effectively excludes, qualifies, and restricts admission to law schools. The gate-keeping function of determining who to the study of law is being exercised by the Legal Education Board, instead of the law schools.

Worse, these standardized tests employ the meritocratic method, which does not necessarily mean that the most qualified students are admitted.<sup>34</sup>

Meritocracy is a myth. While examinations present themselves as equalizers, in the end they only unduly favor the elite.<sup>35</sup> The irony inherent in standardized testing is that it attempts to judge applicants based on merit but ultimately fails to recognize the barriers it sets up for a lot of them. The Philippine Law School Admission Test, intended to be an aptitude test for all its examinees, has already become exclusionary even before all aspiring law students are given the opportunity to take it.

Incidentally, retaining the test perpetuates the stigma that attaches to an applicant who passes but scores relatively low. Law schools are persuaded to accept applicants with a nominal high score, without fully knowing the quality and content of the examination.

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<sup>34</sup> *Racelis v. Spouses Javier*, G.R. No. 189609, January 29, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63801>> [Per J. Leonen, Third Division].

<sup>35</sup> Jo Littler, *Meritocracy: the great delusion that ingrains inequality*, THE GUARDIAN, March 20, 2017, available at <<https://www.theguardian.com/commentisfree/2017/mar/20/meritocracy-inequality-theresa-may-donald-trump>> (last accessed on June 8, 2021).

Finally, the Philippine Law School Admission Test violates the right to property. Taking a mandatory examination necessarily entails financial and opportunity costs. Not all applicants have the same luxury of time and money, and many will be prevented from pursuing legal education simply because of the costs associated with having to take this aptitude test. These are difficulties that many of those who wish to pursue a degree in law will have to unnecessarily face.

By imposing another test on top of the requirements and separate entrance tests imposed by law schools, the Legal Education Board only burdens an applicant with unnecessary financial costs at the expense of their time, prospects, and other opportunities. It provides an exclusionary measure that unreasonably excludes applicants who simply cannot afford the costs.

A law school must determine for itself the standard it will require for the admission of its students. This includes the type and content of the examination it will employ as a measure of this standard. The Legal Education Board cannot force its own academic standard to law schools through an examination it formulated and administered alone.

Thus, I agree that the Philippine Law School Admission Test, as with the entirety of LEB Memorandum Order No. 7-2016, must be struck down for being unconstitutional. It not only violates law schools' institutional academic freedom in deciding who to admit as their students, but also the substantive due process rights of applicants for being an arbitrary and unreasonable exercise of State power.

## II

Despite striking down the Philippine Law School Admission Test,<sup>36</sup> the Resolution refused to strike down the statute creating the Legal Education Board. It upheld Republic Act No. 7662, relying mainly on the presumption of constitutionality of statutes. It found no cogent reason to declare the law unconstitutional.<sup>37</sup>

Moreover, the Resolution held that the State's regulation of the exercise of academic freedom is within the ambit of police power.<sup>38</sup> It ruled that the supervision and regulation of legal education through Republic Act

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<sup>36</sup> Resolution, p. 34.

<sup>37</sup> Id. at 15.

<sup>38</sup> Id. at 19.



No. 7662 was valid because the promotion of education was a legitimate objective of police power.<sup>39</sup>

On this, I disagree. Beyond the issuances related to the Philippine Law School Admission Test, the question of the encroachment on law schools' institutional academic freedom ultimately boils down to the State intrusion through the statutorily created Legal Education Board.

Republic Act No. 7662 created the Legal Education Board and granted it authority to administer legal education, supervise, and accredit law schools; prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members; prescribe basic curricula for the course of law; establish a law practice internship as a requirement for taking the Bar; and adopt a system of continuing legal education. Sections 7(c) and 7(e) state:

(c) to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities, without encroaching upon the academic freedom of institutions of higher learning;

.....

(e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members[.]<sup>40</sup>

I dissent from the Resolution's view that Republic Act No. 7662 is a legitimate and reasonable exercise of police power, owing to the pressing need for a reform in legal education. The provisions of the law encroach on the law school's exercise of academic freedom.

The entire concept of the Legal Education Board is unconstitutional for intruding on the academic freedom of law schools and the universities and colleges to which they belong.

The quality of legal education should be guaranteed by the faculty and administration of a law school. A law school, in turn, may be part of a university or college. Thus, the law school is accountable to its academic councils for its approaches to teaching, qualifications, and promotion of its professors, as well as the full contents of its curriculum.

The broad and ambiguous rubric of police power should not be made an excuse to provide government oversight on purely academic matters, or even academic matters that appear to be administrative issues.

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<sup>39</sup> Id.

<sup>40</sup> Republic Act No. 7662 (1993), sec. 7.

Allowing any form of State intrusion into academic freedom, such as creating a regulatory body like the Legal Education Board, results in a degree of homogeneity among institutions of higher learning. Imposing an admission requirement that schools must integrate into their own policies forces these institutions, as with the applicants, to fit a certain mold set by the State. It endangers these academic institutions' purpose of being spaces that encourage diverse and critical thinking.

Academic freedom protects educational institutions from being confined to orthodoxies prescribed by the State, allowing professors and students to freely take part in critical discourse and scholarship.<sup>41</sup> This function is frustrated when the State imposes its own policies and standards on universities and colleges. Laws and regulations can discourage heterodoxy by imposing "a self-perpetuating academic establishment with identifiable standards for teaching and scholarship."<sup>42</sup> Standards may be imposed on faculty qualifications, methods of teaching, curriculum structure, and procedure for admission.<sup>43</sup>

Such intrusion into the academe's prerogatives is an incursion into the freedom of thought that characterizes our society as a democratic one. Institutions of higher learning which study various disciplines should be able to pursue their goals without restraint. When rigid standards on faculty qualifications and student admissions are imposed, they frustrate the diversity of the faculty and students. They promote a homogeneous community with people of similar leanings and backgrounds, suppressing divergence in ideas. Even attempts to homogenize course curricula prevent the university and faculty from examining other academic disciplines and fields. This is particularly detrimental to law schools, as institutions of higher learning, where political and social discourses are paramount.

Ultimately, State interference into academic affairs, particularly the admissions processes, affects the quality of participation of its citizens in this democratic space. The Legal Education Board—composed of *appointed public officials*—is in no position to dictate matters that are exclusively the policy choices of the academe. Through Republic Act No. 7662, the State exposes the academe, although indirectly, to undue influence from political appointees. The criteria for determining who to admit as a student, and how these criteria are determined and implemented, should belong solely to academics and school administrators.

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<sup>41</sup> J. Peter Bryne, *Academic Freedom: A Special Concern of the First Amendment*, 99 YALE L.J. 251, 297–298 (1989).

<sup>42</sup> *Id.* at 297.

<sup>43</sup> *Id.* at 297–298.

The entire concept of the Legal Education Board—appointed public officials interfering with law schools’ academic freedom as if their appointments had given them academic expertise—is precisely what academic freedom enshrined in Article XIV, Section 5(2) of the Constitution prohibits. There are better ways to ensure the quality of legal education, none of which involves a super body like the Legal Education Board.

Thus, for creating this body, Republic Act No. 7662 must be struck down as unconstitutional.

### III

In assailing the Legal Education Board’s constitutionality, it was argued that this Court’s power to supervise the legal profession was violated, since admission to the Bar necessarily encompasses admission to law school. This was rejected in the Resolution, which ruled that the Legal Education Board can work alongside this Court in regulating legal education.

In so ruling, the Resolution said that this Court has “legitimate interests”<sup>44</sup> in the standards of legal education based on its constitutional power concerning admission to the practice of law. It maintained that legal education cannot be treated separately from the legal profession.<sup>45</sup>

I disagree with both views.

Neither the Legal Education Board nor this Court—or even when they work together—has the power to encroach on academic freedom. I maintain my position that the regulation on the teaching of law as an academic degree is different from the regulation on the practice of law as a profession. This distinction highlights the extent and importance of the academic freedom enjoyed by educational institutions.

The law as taught in law schools properly belongs to the sphere of the academe where law is taught, examined, and even criticized. These institutions provide the space where law can be learned not only for its practical functions of facilitating transactions, regulating relations, or fulfilling a requirement for future legal practice, but more important, law is also studied as a discipline in itself. This is the unique role which academic institutions—law schools in particular—fulfill in their pursuit for truth and critical inquiry, which is intimately related to the freedoms of expression and of the mind, the bedrock of democracy.

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<sup>44</sup> Resolution, p. 21.

<sup>45</sup> Id. at 20–22.

For this reason, the regulation of law as an academic discipline should always be measured against the standard of academic freedom as expressed in Article XIV, Section 5(2), which also relates to freedoms enshrined in Article III, Section 4<sup>46</sup> of the Constitution.

In contrast, the regulation on the practice of professions is covered by Article XIV, Section 5(3)<sup>47</sup> of the Constitution. More specific for the legal profession, the power to “promulgate rules concerning . . . the admission to the practice of law” is granted to this Court under Article VIII, Section 5(5).<sup>48</sup> Policies and requirements set by this Court for the practice of law come from this express power and not from academic freedom.

Thus, law as an academic discipline is an aspect of higher education leading to an academic degree, while law as a profession may require a degree, yet the degree alone does not qualify one to practice law. They are distinct from each other. It is precarious to say that this Court performs a role, no matter how small, in the regulation of legal education because of its power to regulate the legal profession. This perception runs the risk of this Court intruding into the academic freedom of educational institutions.

It is not within this Court’s power to regulate academic matters. No matter how noble its intentions are, this Court cannot arrogate upon itself a power and function that is not constitutionally sanctioned. More so, this Court should refrain from intruding into the exercise of academic freedom—a right clearly allocated by the Constitution to the sovereign.

Nonetheless, the Resolution also ruled that the Legal Education Board’s requirement that each faculty member of law schools must have a master’s degree is a violation of academic freedom.<sup>49</sup>

On that score, I agree. Police power cannot be ambiguously claimed as an excuse for government intrusion on purely academic matters.

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<sup>46</sup> CONST., art. III, sec. 4 states:

SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

<sup>47</sup> CONST., art. XIV, sec. 5(3) states:

(3) Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements.

<sup>48</sup> CONST., art. VIII, sec. 5(5) states:

SECTION 5. The Supreme Court shall have the following powers:

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

<sup>49</sup> Id. at 36.



In line with their right to determine who may teach as among the four essential freedoms, only law schools may determine the composition and qualifications of their faculties. The Legal Education Board's power to dictate certain qualifications, such as requiring a master's degree, will effectively infringe on this right.

#### IV

Supervision over the academe is best done by academics. It cannot be done by a super body created, funded, and appointed by the State. To do so would unnecessarily place the academic freedom of law schools at the disposal of appointed public officials, who may not even possess the necessary postgraduate academic, teaching, or administrator credentials. Being appointees, they are prone to influences by their appointing power. This undermines the academe's most significant roles: to inquire into the truth, to powerfully disseminate this truth, and to speak this truth to power.

Legal education cannot be supervised in the way pre-school or basic education is supervised. Law schools, which offer what amounts to a postgraduate degree, are institutions of higher learning, and are entitled to academic freedom. The entire concept of the Legal Education Board as a supervisory body is what is exactly proscribed by Article XIV, Section 5(2) of the Constitution.


Educational institutions' right to determine who to admit is fundamental in its academic freedom. This right is manifested in the creation of admission policies, in the determination of the applicants' qualifications, or in the formulation of the test that the academic institutions will employ. Academic freedom must be exercised free from the influence and intrusion by the State. Even if the consideration of the Philippine Law School Admission Test score were made optional to the law schools, the results will ultimately affect their admissions policies.

The maintenance and promotion of the quality of law education are essential, but there are ways to attain these goals without compromising academic freedom. The calibrated approach taken by the Resolution will only legitimize the State's interference on academic freedom despite its far-reaching implications.

**ACCORDINGLY**, I vote to **GRANT** the Partial Motion for Reconsideration of petitioners in G.R. No. 242954 and the Petition-in-Intervention of the Philippine Association of Law Schools in A.M. No. 20-03-04-SC. The Motion for Reconsideration of the Legal Education Board is **DENIED**. The entire LEB Memorandum Order No. 7-2016 and its related issuances must be declared unconstitutional. Republic Act No. 7662, or the



Legal Education Reform Act of 1993, must also be declared unconstitutional.



**MARVIC M.V.F. LEONEN**  
Associate Justice