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G.R. No. 263590 – ATTY. ROMULO B. MACALINTAL, Petitioner, v. COMMISSION ON ELECTIONS and THE OFFICE OF THE PRESIDENT, through EXECUTIVE SECRETARY LUCAS P. BERSAMIN, Respondents.

G.R. No. 263673 – ATTY. ALBERTO N. HIDALGO, ATTY. ALUINO O. ALA, ATTY. AGERICO A. AVILA, ATTY. TED CASSEY B. CASTELLO, ATTY. JOYCE IVY C. MACASA, and ATTY. FRANCES MAY C. REALINO, Petitioners, v. EXECUTIVE SECRETARY LUCAS P. BERSAMIN, THE SENATE OF THE PHILIPPINES, duly represented by its Senate President, JUAN MIGUEL ZUBIRI, THE HOUSE OF REPRESENTATIVES, duly represented by its Speaker of the House, FERDINAND MARTIN ROMUALDEZ, and THE COMMISSION ON ELECTIONS, duly represented by its Chairman, GEORGE ERWIN M. GARCIA, Respondents.

Promulgated:

June 27, 2023

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SEPARATE CONCURRING OPINION

LEONEN, J.:

I concur in the result that the assailed statute is unconstitutional. However, in reviewing statutes that postpone elections, I submit that this Court must apply the strict scrutiny test; it is not sufficient that the assailed statute satisfies the requirements of substantive due process. Moreover, the assailed statute is unconstitutional because it tramples upon the Commission on Elections' independence and fiscal autonomy as a constitutional commission.

I

This Court, by the exercise of its judicial power, bears a special burden of exercising judicial power while “remaining concerned, realistic, and alert to the political and social and even economic significance of what it is doing.”¹

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¹ JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 996 (2009).

“While this Court should presume representation in the deliberative and political forums, it should not be blind to present realities.”²

We must be mindful of the preparations required for the conduct of elections and the practical effects of postponing it.

The conduct of elections requires meticulous assessment and logistical planning, such as the preparing and procuring election paraphernalia and services, registering voters, processing certificates of candidacies of those seeking to run for public office, installing polling booths, training personnel, and monitoring election offenses, among others. The conduct of elections entails expenditures and therefore, the release of public funds to various stakeholders ahead of the date of elections.

Furthermore, the postponement of elections to another month or year is not inconsequential; it requires planning and has a range of anticipated consequences. As expounded during the oral arguments:

SENIOR ASSOCIATE JUSTICE LEONEN:

So, last year when they were considering the budget, they already knew. Congress already knew that there was a possibility. In fact they gave you the capability to actually conduct the elections on December 5, 2022. Is that not correct?

CHAIRPERSON GARCIA:

That is correct, your Honor, by giving us the money, your Honor.

SENIOR ASSOCIATE JUSTICE LEONEN:

Yes, and before you entered COMELEC as Chair, the COMELEC already knew, at least with the Acting Chair, I think it was Acting Chair Inting. They already knew that they were going to conduct after the National Elections, the Barangay and the Sangguniang Kabataan Elections, is that not correct?

CHAIRPERSON GARCIA:

That is correct, your Honor. We're already preparing by that time, your Honor.

SENIOR ASSOCIATE JUSTICE LEONEN:

So, by the time that you were conducting the National Elections, COMELEC was also looking forward because I know all of you to be very good managers and administrators. You were already looking forward preparing yourselves and your staff to conduct the Barangay Elections on December 5, is that right?

CHAIRPERSON GARCIA:

Yes, your Honor, because we need several months to prepare for the Barangay and SK Elections.

² J. Leonen, Concurring Opinion in *GIOS-SAMAR, Inc. v. Department of Transportation and Communications*, 849 Phil. 120, 196 (2019) [Per J. Jardeleza, *En Banc*].

SENIOR ASSOCIATE JUSTICE LEONEN:

So, you had the will, you had the capability, you had the experience, you had the funds to actually do it by, let us say, June of this year, correct?

CHAIRPERSON GARCIA:

That is correct, your Honor.

SENIOR ASSOCIATE JUSTICE LEONEN:

By September of this year, you were also prepared to actually conduct it, correct?

CHAIRPERSON GARCIA:

That is right, your Honor.

SENIOR ASSOCIATE JUSTICE LEONEN:

And, the only thing that blocked you was not anything, was not your incapability, not your lack of management skill. Not your lack of experience, not the lack of budget but this law. Is that correct?

CHAIRPERSON GARCIA:

That is correct, your Honor.

SENIOR ASSOCIATE JUSTICE LEONEN:


In other words, the only thing that made it impossible for you to conduct the elections is this law that postponed it?

CHAIRPERSON GARCIA:

Yes, your Honor[.]³

Commission on Elections Chairperson George Erwin Garcia (Garcia) narrated the activities done by the Commission upon signing of the assailed law and the logistical implications of postponing the elections:

Upon the signing by the President on October 10, 2022 of the [l]aw, we suspended the printing of the ballots simply because the ballot does not reflect the date that the election will be continued which will be on October 31 of next year, 2023. And if we are to count the number of ballots that have not been printed during this period, from October 10 to the present then if we are supposed to print 3 million ballots per day, twelve days then that will be about 36 million ballots, Your Honor. And from now to the conduct of election on December 5 almost at least 44 days. Definitely, Your Honor, we would not be able to finish printing the ballots. Now, as regards the other election paraphernalia such as for example indelible ink. We have been preparing for the procurement of indelible ink. But, however, indelible ink will be expiring by one year. And so if we'll proceed with the procurement of indelible ink even after the signing by the President on October 10 then there is already a law which said that the election is postponed then definitely by next year, all of these indelible ink will dry up. So, surely, we will not proceed with the procurement of the indelible ink. Such other election paraphernalia, Your Honor, we have a legal issue and the legal issue is whether we can legally proceed with the procurement despite the postponement of the election. And so we instructed our Law Department, to inquire and to make a recommendation to the COMELEC



³ TSN, COMELEC Chairperson George Erwin Garcia, October 21, 2022, pp. 113–115.

En Banc what the COMELEC *En Banc* will be doing as regards the pending award of contracts, the pending notice to proceed. Because we do not want to violate any auditing rules, and we do not want that [the Commission on Audit] will be giving notices to the Commission as far as this award is concerned. So, we are in a dire predicament, Your Honors[.]⁴

Notably, this was not the first time that the barangay elections have been postponed:

CHIEF JUSTICE GISMUNDO:

Okay. Thank you. May I ask one question or two questions with the petitioner?

How many times has Congress postponed Barangay elections?

ATTY. MACALINTAL:

Excuse me, Your Honor, I just look into my records, Your Honor.

Congress postponed barangay elections on the following years: No. 1, May 9, 1988. It was postponed to November 1988. The November 14, 1988 was postponed to 1989. The October 31, 2005 was postponed to 2007. The October 30, 2019 was postponed to 2017 (sic; should be October 31, 2016 was postponed to 2017 per Republic Act No. 10923). The October 29, 2017 was postponed to 2018. The May 12, 2020 was postponed to December 2022. In other words, 1, 2, 3, 4, 5, 6. Six already and if this Honorable Court will sustain Republic Act 11935, then it would be the seventh [7th] time.⁵

The postponement of elections also triggers the application of the holdover doctrine. While the term of incumbent public officers is not extended, their tenure, that is, the actual holding of public office, is effectively extended.

The *ponencia* explained that this Court frowns upon any interpretation of a law that “would have the effect of hindering, in any way, . . . the free and intelligent casting of votes in an election.”⁶ This being the case, quoting *Reynolds v. Sims*,⁷ the *ponencia* stated that “any alleged infringement on the right of citizens to vote must be carefully and meticulously scrutinized.”⁸

The *ponencia*, instead of applying the strict scrutiny test, utilized the two-prong requirements under the substantive due process clause, that is, the existence of a lawful subject and the employment of reasonable means.⁹ Contrary to the position adopted by the majority, I submit that any legislative act that tends to impede, however lightly, the actual exercise of the right of suffrage and the State’s concomitant obligation and duty to hold elections at

⁴ TSN, COMELEC Chairperson George Erwin Garcia, October 21, 2022, pp. 44–45.

⁵ TSN, Atty. Romulo B. Macalintal, October 21, 2022, p. 138.

⁶ *Ponencia*, p. 34.

⁷ 377 U.S. 533 (1964).

⁸ *Ponencia*, p. 34.

⁹ *Id.*

regular intervals, must pass the strict scrutiny test, especially, when it is alleged to be unjustified and unconstitutional under the circumstances.

In *Samahan ng mga Progresibong Kabataan v. Quezon City*,¹⁰ this Court established the three tests of judicial scrutiny used in reviewing statutes allegedly violative of fundamental rights and basic liberties. It enumerated:

Philippine jurisprudence has developed three (3) tests of judicial scrutiny to determine the reasonableness of classifications. The strict scrutiny test applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the rational basis test applies to all other subjects not covered by the first two tests.¹¹ (Citations omitted)

In *Zafe III v. People*,¹² this Court discussed the application of the strict scrutiny test:

Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there [b]e a compelling state interest and that the means employed to effect it are narrowly-tailored, actually-not only conceptually-being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms.¹³ (Citation omitted)

The danger of the propositions adopted by the *ponencia* is that it does not seem to acknowledge the importance of the right of suffrage in a democratic and republican society, as well as international covenants that require the Philippines to safeguard the right to cast a vote for a chosen elective local official at an expected time.

The right of suffrage is a basic fundamental, primordial, and constitutional right. It involves the right to vote, the right to choose government leaders, and registered voters should be able to exercise such right at certain intervals. Its importance was further discussed in *Pabillo v. Commission on Elections*:¹⁴

¹⁰ 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].

¹¹ *Id.* at 1113–1114.

¹² G.R. No. 226993, May 3, 2021 [Per J. Leonen, Third Division].

¹³ *Id.*

¹⁴ 758 Phil. 806 (2015) [Per J. Perlas Bernabe, *En Banc*].

On election day, the country's registered voters will come out to exercise the sacred right of suffrage. Not only is it an exercise that ensures the preservation of our democracy, the coming elections also embodies our people's last ounce of hope for a better future. It is the final opportunity, patiently awaited by our people, for the peaceful transition of power to the next chosen leaders of our country. If there is anything capable of directly affecting the lives of ordinary Filipinos so as to come within the ambit of a public concern, it is the coming elections[.]¹⁵ (Citation omitted)

International covenants and agreements also emphasize the right of suffrage. The Universal Declaration of Human Rights states:

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Meanwhile, Article 25 of the International Covenant on Civil and Political Rights provides:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

During the oral arguments, Justice Ramon Paul Hernando (Justice Hernando) highlighted the right of suffrage as embodied in these international instruments:

ASSOCIATE JUSTICE HERNANDO:

And, then we ratified it in 1986, and it's a convention that has been passed by the United Nations consistent with the universal declaration of human rights, and this involves the right to vote. The convention recognizes that every citizen has a right to take part in public affairs and the embodiment of the taking part is through the exercise of the will of the people through voting. And, the convention says that the right to vote includes: the right to vote, and to be elected a "*genuine periodic elections.*"

¹⁵ *Id.* at 838.

ATTY. MACALINTAL:

Yes.

ASSOCIATE JUSTICE HERNANDO:

“Genuine periodic elections.” Well, it’s a convention that’s new to you but having heard that, how would you interpret that, petitioner Macalintal? “Genuine periodic elections”?

ATTY. MACALINTAL:

Well, I agree, Your Honor. “Genuine periodic election” which means that (*interrupted*)

ASSOCIATE JUSTICE HERNANDO:

This act of postponing does not or is transgressive of genuine periodic elections?...

ATTY. MACALINTAL:

I would say yes, Your Honor...

ASSOCIATE JUSTICE HERNANDO:

... to which the Philippines has acceded as a State party to the convention?

ATTY. MACALINTAL:

Yes, Your Honor, postponing and extending the term of office, Your Honor, is a violation of this principle of having a genuine periodic election. Precisely, all these laws on barangay elections, they contain specific term of office for the barangay officials to be elected but what has happened in the past and up to the present, they kept on changing and amending this period of elections and at the same time (*interrupted*)

ASSOCIATE JUSTICE HERNANDO:

Well, I guess, what you’re trying to say to us is, ‘*yung* right to vote *ng isang tao ‘pag binoto ka, sabi ng tao sa iyo, “Eto hanggang three years ka lang.”*’

ATTY. MACALINTAL:

Yes, Your Honor, that is our contract.

ASSOCIATE JUSTICE HERNANDO:

... “*Kasi ‘nung bumoto kami sa iyo, ito ‘yung batas.’*”

ATTY. MACALINTAL:

Yes, Your Honor. Precisely, I was saying that, “*Ito ang ating kontrata. When I wrote your name in the ballot, I know that I am only paying you for three years.*” The ballot does not say that you should be extended. Now, once the term is extended, that violates that contract between me and that particular candidate, Your Honor.¹⁶ (Emphasis in the original)

Similar to the position adopted by Justice Hernando during the oral arguments, I submit that when registered voters do not know when they will be able to exercise their right to vote, it is almost the same as restricting the exercise of such a right:

¹⁶ TSN, Atty. Romulo B. Macalintal, October 21, 2022, pp. 93–95.

CHAIRPERSON GARCIA:

Disenfranchisement would mean that voters will not be allowed to vote. When we reset the election, they would not be allowed to vote on the day of the election is supposed to be conducted. But, however, if there is a later date for the conduct of the election, then there is no disenfranchisement, Your Honor.

ASSOCIATE JUSTICE HERNANDO:

Based on the standards set out in the International Covenant on Civil and Political Rights, were there should be genuine periodic elections. Don't you think that that would constitute a form of disenfranchisement?

CHAIRPERSON GARCIA:

May I respectfully explain, Your Honor? Under the principle of transformation, definitely the International Covenant on Civil and Political Rights will form part of the law of the land. But, however, under the principle of, the Congress by itself will enact law, it would appear to be that international law on this case or this treaty will be subservient to what is provided for by the Constitution, and that is Article X, Section 8.

ASSOCIATE JUSTICE HERNANDO:

Of course, that is a given, domestic laws would always be given primacy over treaties and covenants that we are a state party to. But the thing is, that genuine periodic elections would go hand in hand with the right of suffrage of every individual. *Kung ipo-postpone mo yan*, very irregular, two years now, three years later, etcetera. *I think the effect on the stabilization that will have on electoral process is really very frightening. Instead of stabilizing, it destabilizes the process.* That's what we're just saying. (Emphasis supplied)¹⁷

It bears noting that the exercise of the right of suffrage is related to the freedom of expression. As stated in the *ponencia*, the right to participate in electoral processes is "one of the most consequential expressive acts in a person's life, when a voice becomes an action[.]"¹⁸

Seeing as what is at stake in the case at hand is the freedom of expression, a fundamental right guaranteed by no less than our Constitution,¹⁹ I submit that the applicable test to determine the constitutionality of the assailed law is the strict scrutiny test.

Registered voters should have a reasonable expectation of when they would be able to exercise the right to vote. Thus, I disagree with Solicitor General Menardo Gueverra's submission that "the matter of postponing any election does not really have any effect on the right of suffrage"²⁰ and that "it's just that the timing of the exercise of that right is the one affected."²¹ On

¹⁷ TSN, COMELEC Chairperson George Erwin Garcia, October 21, 2022, pp. 151–152.

¹⁸ *Ponencia*, p. 18. (Citation omitted)

¹⁹ *White Light Corporation v. City of Manila*, 596 Phil. 444, 463 (2009) [Per J. Tinga, *En Banc*].

²⁰ TSN, Solicitor General Menardo Gueverra, October 21, 2022, p. 88.

²¹ *Id.*

the contrary, the regulation of the means, manner, date, and time of elections directly affects the constitutional right to suffrage.

II

Another reason why the questioned law should be declared unconstitutional is that it tramples upon the independence of the Commission on Elections as a constitutional commission.²²

In *Macalintal v. Commission on Elections*,²³ this Court explained that the scope of legislative power is circumscribed by constitutional provisions such as Article IX-A, Section 1, which mandates the independence of constitutional commissions like the Commission on Elections.

In *Araullo v. Aquino*,²⁴ this Court explained that the president is generally accorded flexibility in the execution of the General Appropriations Act, except for funds allocated to agencies with fiscal autonomy. Justice Alfredo Benjamin Caguioa pointed this out during the oral arguments:

ASSOCIATE JUSTICE CAGUIOA:

Now, can I call back, Mr. Chairman. Chairman I have a basic conundrum here. Article 9, Section 5 of the Constitution, speaking of Constitutional Commissions, says, "The Commission, and this includes the Commission on Elections shall enjoy fiscal autonomy, their approved annual appropriations shall be automatically and regularly released." Correct?

CHAIRPERSON GARCIA:

That is correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:

In common parlance, "Isang bagsakan lang ito, di ba?"

CHAIRPERSON GARCIA:

Tama po, your Honor.

ASSOCIATE JUSTICE CAGUIOA:

Kailan ito binagsak?

CHAIRPERSON GARCIA:

It was given to us, for this year, your Honor?

ASSOCIATE JUSTICE CAGUIOA:

Yes.

²² Article IX-A (Common Provisions) of the Constitution states:
Section 1. The Constitutional Commissions, which shall be *independent*, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit. (Emphasis supplied)

²³ 453 Phil. 586 (2003) [Per J. Austria-Martinez, *En Banc*].

²⁴ 737 Phil. 457 (2014) [Per J. Bersamin, *En Banc*].

CHAIRPERSON GARCIA:

P8.441 billion.

ASSOCIATE JUSTICE CAGUIOA:

When was it given?

CHAIRPERSON GARCIA:

It was given sometime, March of this year.

ASSOCIATE JUSTICE CAGUIOA:

March of this year?

CHAIRPERSON GARCIA:

Yes, your Honor.

ASSOCIATE JUSTICE CAGUIOA:

Therefore, the money is no longer with the Philippine Treasury, it is with you, correct?

CHAIRPERSON GARCIA:

That is correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:

And since you are a CFAG or a Constitutional Fiscal Autonomy Group, the alignment of these funds to fund social civic project or other public projects is not by legislature, correct?

CHAIRPERSON GARCIA:

That is not by Legislature.

ASSOCIATE JUSTICE CAGUIOA:

It's by you?

CHAIRPERSON GARCIA:

Yes, your Honor.

ASSOCIATE JUSTICE CAGUIOA:

Therefore, when they say that the money for this can be used for other projects, what are they talking about?

CHAIRPERSON GARCIA:

With all due respect, your Honor, I really do not know because as far as the law is concerned, it says, that the fund is subject to a continuing appropriation by the Commission on Elections.

ASSOCIATE JUSTICE CAGUIOA:

Exactly, and that fund is earmarked, correct?

CHAIRPERSON GARCIA:


Correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:

It's earmarked for elections?

CHAIRPERSON GARCIA:

That is right.



ASSOCIATE JUSTICE CAGUIOA:

It cannot be used for any purpose other than election?

CHAIRPERSON GARCIA:

You are correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:

It cannot be realigned by the President, by the Supreme Court Chief Justice, by the Senate President. It cannot be realigned because they are not COMELEC?

CHAIRPERSON GARCIA:

Only by the COMELEC, your Honor.

ASSOCIATE JUSTICE CAGUIOA:

Only by you?

CHAIRPERSON GARCIA:

Yes, your Honor.

ASSOCIATE JUSTICE CAGUIOA:

Therefore, when you give as a reason for this law that, I, government, can use that 8.8 billion to fight the pandemic, that is not the correct reason, do you agree?

CHAIRPERSON GARCIA:

I would like to agree, your Honor.

ASSOCIATE JUSTICE CAGUIOA:

And, therefore, we are now faced with the situation with the law that says, it doesn't say what its reason is but the proposed reason coming from the proposals do not appear to be correct? Correct?

CHAIRPERSON GARCIA:

That may be the conclusion that will be derived from the series of questions.

ASSOCIATE JUSTICE CAGUIOA:

That is right. And, therefore, the Supreme Court can in fact look into this law, bakit nga ba? and say . . .

CHAIRPERSON GARCIA:

No doubt on the power of the Supreme Court to inquire into the validity and constitutionality of this law.

ASSOCIATE JUSTICE CAGUIOA:

Okay. That is all. Thank you.²⁵

This Court has had the opportunity to explain the meaning of the phrase “automatically and regularly released” in relation to fiscal autonomy granted by the Constitution to constitutional commissions:

²⁵ TSN, COMELEC Chairperson George Erwin Garcia, October 21, 2022, pp. 108–111.

Webster's Third New International Dictionary defines "automatic" as "involuntary either wholly or to a major extent so that any activity of the will is largely negligible; of a reflex nature; without volition; mechanical; like or suggestive of an automaton." Further, the word "automatically" is defined as "in an automatic manner: without thought or conscious intention." Being "automatic," thus, connotes something mechanical, spontaneous and perfunctory. As such the [Constitutional Commissions] are not required to perform any act to receive the "just share" accruing to them from the national coffers[.]²⁶

*Bengzon v. Drilon*²⁷ defined the scope and extent of fiscal autonomy:

As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.

The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. In the interest of comity and cooperation, the Supreme Court, Constitutional Commissions, and the Ombudsman have so far limited their objections to constant reminders. We now agree with the petitioners that this grant of autonomy should cease to be a meaningless provision.²⁸

This was also discussed in a separate opinion in *Belgica v. Executive Secretary*:²⁹

Fiscal autonomy means, among others, that the budget of the Judiciary must be released "automatically" after the General Appropriations Act becomes

²⁶ *Civil Service Commission v. Department of Budget and Management*, 502 Phil. 372, 385 (2005) [Per J. Carpio Morales, *En Banc*].

²⁷ 284 Phil. 245 (1992) [Per J. Gutierrez, Jr., *En Banc*].

²⁸ *Id.* at 268–269.

²⁹ 864 Phil. 461 (2019) [*Per Curiam, En Banc*].

law. The President cannot reduce, withhold, delay, or in any manner tinker with, in the guise of budget execution, the appropriations for the Judiciary and the Constitutional Commissions. The President cannot amend, change, supplant, deduct, diminish or add to the budget of the Judiciary and Constitutional Commissions, as approved in the General Appropriations Act. The President cannot decide, as part of “budget execution,” what purposes to fund, and by how much, after the General Appropriations Act becomes a law. To rule otherwise will compel the Chief Justice to lobby with the President to allocate specific amounts for specific purposes - the very evil that the fiscal autonomy provisions of the Judiciary, and of the Constitutional Commissions, were designed to prevent to preserve the very independence of the Judiciary and of the Constitutional Commissions.³⁰

By vesting itself with the powers to realign the appropriations for the elections towards other objectives, the Congress went beyond its constitutional authority and trampled upon the independence of the Commission on Elections. Under such a situation, this Court is left with no option but to withdraw from its usual reticence in declaring a provision of law unconstitutional.

ACCORDINGLY, I vote to **GRANT** the consolidated Petitions and to declare Republic Act No. 11935 **UNCONSTITUTIONAL**.



MARVIC M.V.F. LEONEN
Senior Associate Justice

³⁰ J. Carpio, Separate Opinion in *Belgica v. Executive Secretary*, 864 Phil. 461, 533–534 (2019) [*Per Curiam, En Banc*].

