EN BANC

G.R. No. 209287: Maria Carolina P. Araullo, et al., petitioners v. Benigno Simeon C. Aquino, III, et al., respondents; **G.R. No. 209135**: Augusto L. Syjuco, Jr., petitioner v. Florencio B. Abad, et al., respondents; **G.R. No. 209136**: Manuelito R. Luna, petitioner v. Secretary Florencio Abad, et al., respondents; **G.R. No. 209155**: Jose Malvar Villegas, Jr., petitioner v. The Honorable Executive Secretary Paquito N. Ochoa, Jr., et al., respondents; **G.R. No. 209164**: Philippine Constitution Association (PHILCONSA), et al., petitioners v. The Department of Budget and Management and/or Hon. Florencio B. Abad, respondents; **G.R. No. 209260**: Integrated Bar of the Philippines (IBP), petitioner v. Secretary Florencio Abad of the Department of Budget and Management (DBM), respondent; **G.R. No. 209442**: Greco Antonious Beda B. Belgica, et al., petitioners v. President Benigno Simeon C. Aquino III, et al., respondents; **G.R. No. 209517**: Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), et al., petitioners v. His Excellency Benigno Simeon C. Aquino III, et al., respondents; **G.R. No. 209569**: Volunteers against Crime and Corruption (VACC), petitioner v. Hon. Paquito N. Ochoa, Jr., et al., respondents.

Promulgated:
February 3, 2015

x----------x

SEPARATE OPINION

CARPIO, *J.*:

The Motion for Reconsideration filed by respondents must be denied for lack of merit.

I. Statutorily-defined "savings" does not make the issues raised in the petitions less constitutional.

In their Motion for Reconsideration, respondents contend, among others, that "the issues [in these consolidated cases] were mischaracterized and unnecessarily constitutionalized." Respondents argue that "[w]hile "savings" is a constitutional term, its meaning is entirely legislatively determined. x x x." Respondents assert that the question of "whether the Executive properly accumulated savings is a matter of statutory

interpretation involving the question of administrative compliance with the parameters set by the GAA, not by the Constitution."

Indeed, the term "savings," as used in Section 25(5), Article VI of the Constitution, is defined by law, the General Appropriations Act (GAA).

However, the definition of the term "savings" by statute does not make the threshold issue in these petitions purely a question of statutory interpretation. Whether respondents violated the prohibition in Section 25(5), Article VI of the Constitution, regarding "savings" and "augmentation," falls squarely within the category of a constitutional issue which in turn necessarily demands a careful examination of the definition of these terms under the relevant GAAs in relation to the use of these terms in the Constitution.

Significantly, aside from the term "savings," there are other words found in several provisions of the Constitution which are defined by law. The terms "contract," "capital" and "political dynasty," found in the following provisions of the Constitution, are defined or to be defined either by law or jurisprudence.[1]

> Art. III, Sec. 10
> Section 10. No law impairing the obligation of contracts shall be passed.
>
> Article XII, Sec. 11
> Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose *capital* is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

---

[1] Other terms in the Constitution that are defined or to be defined by statute or by jurisprudence:

1. social justice (Article II, Sec. 10 and Art. XIII)
2. due process and equal protection (Art. III, Sec. 1)
3. taking of private property (Article III, Sec. 9)
4. writ of habeas corpus (Article III, Sec. 15)
5. ex-post facto law and bill of attainder (Article III, Sec. 22)
6. naturalized citizen (Article IV, Sec. 1)
7. martial law (Article VII, Sec. 18)
8. reprieve, commutation and pardon (Article VII, Sec. 19)
9. engaged in the practice of law (Article IX, Sec. 1)
10. academic freedom (Article XIV, Sec. 5[2])

Article II, Sec. 26

> Section 26. The State shall guarantee equal access to opportunities for public service and prohibit *political dynasties* as may be defined by law.

While these terms in the Constitution are statutorily defined, a case involving their usage does not automatically reduce the case into one of mere statutory interpretation. On the contrary, it highlights the dynamic process of scrutinizing the statutory definition of certain terms and determining whether such definition conforms to the intent and language of the Constitution.

II. The definition of the term "savings" has been consistent. Any redefinition of the term must not violate the Constitution.

Prior to 2003, the term "savings" has been consistently defined in the GAAs as "portions or balances of any programmed appropriation x x x free of any obligation or encumbrance still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized, or arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay."

Beginning 2003, a third source of savings was added. Thus, "savings" has been defined in the GAAs as "portions or balances of any programmed appropriation x x x free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriations balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriations balances realized from the implementation of collective negotiation agreements which resulted in improved systems and efficiencies and thus enabled an agency to meet and deliver the required or planned targets, programs and services x x x at a lesser cost."

Assuming redefining the term "savings" is deemed necessary by Congress, such redefinition must be consistent with the Constitution. For example, "savings" cannot be declared at anytime, like on the first day of the fiscal year, since it will negate or render useless the power of Congress to appropriate. "Savings" cannot also be declared out of **future** Maintenance and Other Operating Expenses (MOOE) since such declaration will deprive a government agency of operating funds during the rest of the fiscal year, effectively abolishing the agency or paralyzing its operations. Any declaration of "savings" must be reasonable, that is, there must be appropriations that are no longer needed or can no longer be used for the

purpose for which the appropriations were made by Congress.

III. Respondents' consistent argument of mootness defeats their newly-raised contention of adverse effects as a result of the decision in this case.

In their Motion for Reconsideration, respondents allege that the DAP was a response to a fiscal emergency[2] and DAP had already become operationally dead.[3]

During the Oral Arguments, respondents asserted that the present petitions be dismissed on the ground of mootness. Respondents maintained that the DAP has become *functus officio*.

(1) Presentation of Secretary Abad

> In conclusion, Your Honors, may I inform the Court that because the DAP has already fully served its purpose, the Administration's economic managers have recommended its termination to the President. Thank you and good afternoon.[4]

(2) Presentation of the Solicitor General

> Your Honors, what we have shown you is how the DAP was used as a mechanism for building the DREAM and other projects. This constitutional exercise, repeated 115 times, is the story of the DAP. **As Secretary Abad showed you, the circumstances that justified the creation of DAP no longer obtained. The systematic issues that slowed down public spending have been resolved, and line agencies now have normal levels of budget utilization. This is indicated by the diminishing use of DAP, which lapsed into complete disuse in the second half of 2013, and thus became legally functus officio. The President no longer has any use for DAP in 2014.** This is a compelling fact and development that we respectfully submit undermines the viability of the present petitions and puts in issue the necessity of deciding these cases in the first place. The same constitutional authority used by the President to pump-rise the economy in the first half of his Administration has not transitioned to providing relief and rehabilitation in areas of our country struck by destructive calamities. This only emphasized our point that generic constitutional tools can take on different purposes depending on the exigencies of the moment.
>
> **DAP as a program, no longer exists, thereby mooting these present cases brought to challenge its constitutionality. Any constitutional challenge should no longer be at the level of the program, which is now extinct, but at the level of its prior applications or the specific disbursements under the now defunct policy**.[5] x x x. (Emphasis supplied)

---

[2] Motion for Reconsideration, p. 9.
[3] Motion for Reconsideration, p. 11.
[4] TSN, 28 January 2014, p. 14.
[5] TSN, 28 January 2014, p. 23.

(3) Justice Leonen's questions

JUSTICE LEONEN:

Ok, you are now saying... Alright, I heard it twice: Once, by the DBM Secretary and second, by your representations that DAP is no longer there.

SOLICITOR GENERAL JARDELEZA:

That's right.

JUSTICE LEONEN:

Did I hear you correctly?

SOLICITOR GENERAL JARDELEZA:

That's correct, Your Honor.

JUSTICE LEONEN:

Is there an amendatory.... is there a document, an officially released document that would clearly say that there is no longer DAP?

SOLICITOR GENERAL JARDELEZA:

I do not believe so, Your Honor, but as the Secretary has said the economic managers have, in fact, already recommended to the President that there is no need for DAP.

JUSTICE LEONEN:

Is it because the case has been filed, or because of another reason?

SOLICITOR GENERAL JARDELEZA:

No, Your Honor, because the DAP 541 has become *functus officio*.

JUSTICE LEONEN:

So it was not applicable in fiscal year 2013, there was no DAP in 2013?

SOLICITOR GENERAL JARDELEZA:

There was still some diminishing DAP application up to the middle of 2013 but none in the second half, Your Honor.

JUSTICE LEONEN:

Again, can you enlighten us what is "diminishing" means, what project?

SOLICITOR GENERAL JARDELEZA:

For 2013, the DAP application was only.... in the first half of 2013, it was only 16.03 Billion, Your Honor.

JUSTICE LEONEN:

Still a large amount.

SOLICITOR GENERAL JARDELEZA:

Still a large amount but if we have given the total applications approved was a Hundred and Forty-Nine Million, Your Honor.

JUSTICE LEONEN:

Okay. The good Secretary mentioned the Disbursement Acceleration Program is more that just savings and more that just unprogrammed funds containing the GAA that it was a package of reforms meant to accelerate the spending of government so as to expand the economy by saying that the DAP is no longer there, do you mean the entire thing or only the portion that mean savings and the unprogrammed funds?

SOLICITOR GENERAL JARDELEZA:

By that we mean, Circular 51, Your Honor.

JUSTICE LEONEN:

Circular 541, therefore, is no longer existing.

SOLICITOR GENERAL JARDELEZA:

Yes, Your Honor.[6]

(4) Justice Abad's questions

JUSTICE ABAD:

Yes. So, can we not presume from this, that this government know its departments and agencies whether it has capability to spend so much money before proposing it to Congress and that in five months you are going to say, "I just discovered they cannot do it and I'm going to abandon some of these projects and use the money for other things." Is that.... that seems logical for a government that proposes budget to be spent for a specific purpose and then within five months abandon them. How can you explain that?

SOLICITOR GENERAL JARDELEZA:

Again, my explanation. Your Honor, is that logic and our wish may not be reality. The reality was: on 2010 the administration comes in, they have managers, the orders given, use it or lose it; there is slippage, there is delay. By the middle of 2013, they have gotten their act together, they are now spending to the tune, to the clip because the president wants them to do. Therefore, there is no more DAP.[7]

x x x x

JUSTICE ABAD:

It worked for you?

SOLICITOR GENERAL JARDELEZA:

It worked, Your Honor.

JUSTICE ABAD:

But why are you abandoning it already when....

---

[6] TSN, 28 January 2014, pp. 81-83.

[7] TSN, 28 January 2014, p. 103.

SOLICITOR GENERAL JARDELEZA:
Because it worked, Your Honor.

JUSTICE ABAD:
...in the future such problems as calamities, etc., can take place, if it's not an admission that something is wrong with it?

SOLICITOR GENERAL JARDELEZA:
It has stopped because it worked, Your Honor.[8]

Likewise, in their Memorandum, respondents averred that "[t]he termination of the DAP has rendered these cases moot, leaving any question concerning the constitutionality of its prior applications a matter for lower courts to decide." Respondents alleged:

1. DAP, as a program, no longer exists.

82. As respondents manifested before this Honorable Court during the second hearing, the DAP no longer exists. The President's economic advisers have reported to him that the systemic issues that had slowed down public spending have been resolved, and line agencies now had normal levels of budget utilization. This is indicated by the diminishing use of DAP, which downward shift continued in 2012 and 2013, and its total disuse by the last quarter of 2013. Thus, even before the various present petitions were filed, DAP had already become operationally dead. Contrary to what some have intimated, DAP was not stopped or withdrawn because there was "something wrong with it" - rather, it became *functus officio* because it had already worked. Petitioners are challenging the ghost of a program.

83. The President no longer has any use for DAP in 2014 and its total disuse means that [] there is no longer an ongoing program that the Honorable Court can enjoin. This is a compelling fact that undermines the viability of the present cases, and puts in issue the necessity of deciding these cases in the first place. Moreover, the same constitutional authority used by the President to pump-prime the economy in the first half of his administration has now transitioned to providing relief and rehabilitation to areas of our country struck by destructive calamities. This only emphasizes respondents' point that generic constitutional tools can take on different purposes depending on the exigencies of the moment.[9]

Clearly, respondents' argument of mootness on the ground that the DAP had served its purpose negates the government's fears of the "chilling effect" of the Decision to the economy and the rest of the country. If the DAP had already achieved its goal of stimulating the economy, as respondents repeatedly and consistently argued before the Court, then no adverse economic effects could possibly result in the declaration of unconstitutionality of the DAP and the practices undertaken under the DAP.

---

[8] TSN, 28 January 2014, p. 105.
[9] Memorandum, p. 30.

Hence, the grim scenario of prolonging assistance to victims in case of calamities due to this Court's decision has no basis precisely because to repeat, according to respondents, the DAP had already served its purpose. Significantly, the President has an almost unlimited resources that he can tap and juggle for reconstruction and rehabilitation of affected areas in cases of emergencies and calamities. For these unforeseen tragic natural events, the President can certainly utilize the Calamity Fund or the Contingent Fund in the GAA, as well as his Discretionary Fund and Presidential Social Fund.

In the 2011 GAA, the Calamity Fund amounted to ₱5,000,000,000 while the Contingent Fund amounted to ₱1,000,000,000. In the 2012 GAA, the Calamity Fund amounted to ₱7,500,000,000 while the Contingent Fund amounted to ₱1,000,000,000. For 2013, the Calamity Fund amounted to ₱7,500,000,000 while the Contingent Fund amounted to ₱1,000,000,000. For 2014, the National Disaster Risk Reduction and Management Fund amounted to ₱13,000,000,000 while the Contingent Fund amounted to ₱1,000,000,000. In addition, the 2014 GAA provided for Rehabilitation and Reconstruction Program (for rehabilitation, repair and reconstruction works and activities of areas affected by disasters and calamities, both natural and man-made including the areas devastated by typhoons "Yolanda," "Santi," "Odette," "Pablo," "Sendong," "Vinta" and "Labuyo," the 7.2 magnitude earthquake in Bohol and Cebu and the siege and unrest in Zamboanga City) amounting to ₱20,000,000,000.

Moreover, the President has more than enough time to observe and comply with the law and request for a supplemental budget from Congress. In the PDAF cases, I pointed out:

> x x x. When the Gulf Coast of the United States was severely damaged by Hurricane Katrina on 29 August 2005, the U.S. President submitted to the U.S. Congress a request for an emergency supplemental budget on 1 September 2005. The Senate passed the request on 1 September 2005 while the House approved the bill on 2 September 2005, and the U.S. President signed it into law on the same day. It took only two days for the emergency supplemental appropriations to be approved and passed into law. There is nothing that prevents President Benigno S. Aquino III from submitting an emergency supplemental appropriation bill that could be approved on the same day by the Congress of the Philippines. x x x.

IV. The earmarking of judiciary savings for the construction of the Manila Hall of Justice is not a cross-border transfer of funds.

In their Motion for Reconsideration, respondents point out that this Court itself committed a cross-border transfer of funds, citing the Court's 17 July 2012 Resolution that approved the earmarking of ₱1,865,000,000 for the construction of the Manila Hall of Justice. Respondents allege that the construction of the Manila Hall of Justice was an item in the appropriations for Department of Justice in the 2012 GAA. Respondents assumed,

obviously incorrectly, that this Court transferred the amount of ₱1,865,000,000 to augment the items appropriated to the DOJ for the construction of the Manila Hall of Justice.

Pursuant to its "fiscal automony"[10] under the Constitution, the Court on 17 July 2012 adopted a Resolution setting aside and earmarking from its savings ₱1,865,000,000 for the construction costs of the Manila Hall of Justice. The amount was earmarked for a particular purpose, specifically the construction of the Manila Hall of Justice. However, contrary to respondents' allegation, the amount for this purpose was never transferred to the Department of Justice or to any agency under the Executive branch. In fact, the Court kept the entire amount in its own account because it intends to construct the Manila Hall of Justice by itself. There is nothing in the language of the 17 July 2012 Resolution transferring the amount to the DOJ.

Notably, under the 2013 GAA, the Construction/Repair/Rehabilitation of Halls of Justice was already placed under the budget of the Judiciary. Under the 2014 GAA, the provision on Capital Outlays (Buildings and Other Structures) remains under the Judiciary (Annex A of the 2014 GAA). There is no provision in the 2013 and 2014 GAAs for the construction of any Hall of Justice under the DOJ.

The construction and maintenance of the Halls of Justice are essentially among the responsibilities of the Judiciary. As such, they should necessarily be included in the annual appropriations for the Judiciary. However, before 2013, Congress placed the construction and maintenance of the Halls of Justice under the DOJ. The inclusion of such item in the DOJ budget clearly creates an anomaly where the Judiciary will have to request the DOJ, an Executive department, to construct a Hall of Justice for the Judiciary. Not only does this undermine the independence of the Judiciary, it also violates ultimately the constitutional separation of powers because one branch is made to beg for the appropriations of another branch to be used in the operations of the former.

V. Various other local projects (VOLP) is not an item in the GAA.

As I stated in my Separate Concurring Opinion, "[a]ttached to DBM Secretary Abad's Memorandum for the President, dated 12 October 2011, is a Project List for FY 2011 DAP. The last item on the list, item no. 22, is for PDAF augmentation in the amount of ₱6.5 billion, also listed as **"various other local projects**."[11]

---

[10] SECTION 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

[11] *Rollo* (G.R. No. 209287), p. 536.

"Savings can augment any ***existing*** item in the GAA, provided such item is in the "respective appropriations" of the same branch or constitutional body. As defined in Section 60, Section 54, and Section 53 of the General Provisions of the 2011, 2012 and 2013 GAAs, respectively, "augmentation implies the **existence x x x of a program, activity, or project with an appropriation**, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. **In no case shall a non-existent program, activity, or project, be funded by augmentation from savings** x x x."

It must be noted that the item **"various other local projects"** in the DBM's Memoradum to the President is not an existing item in the 2011, 2012 and 2013 GAAs. In respondents' Seventh Evidence Packet, the term "other various local projects" refers not to a specific item in the GAAs since no such term or item appears in the relevant GAAs. Rather, such term refers to various soft and hard projects to be implemented by various government offices or local government units. Therefore, to augment "various other local projects," a non-existing item in the GAA, violates the Constitution which requires the existence of an item in the general appropriations law. Likewise, it defies the express provision of the GAA which states that "[i]n no case shall a non-existent program, activity, or project, be funded by augmentation from savings x x x."

VI. Release of the Unprogrammed Fund

One of the sources of the DAP is the Unprogrammed Fund under the GAA. The 2011, 2012, and 2013 GAAs have a common condition on the Release of the [Unprogrammed] Fund: that the "**amounts authorized herein shall be released *only* when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution x x x**." The condition in these provisions is clear and thus needs no interpretation, but only application. In other words, this express condition, that actual revenue collections must exceed the original revenue targets for the release of the Unprogrammed Fund, must be strictly observed. It is not for this Court to interpret or lift this condition. To do so is tantamount to repealing these provisions in the GAA and giving the President unbridled discretion in the disbursement of the Unprogrammed Fund.

The disbursement of the Unprogrammed Fund is determined on a quarterly basis. The revenue targets are set by the Development Budget Coordination Committee (DBCC) for each quarter of a specific fiscal year. The DBCC bases its quarterly fiscal targets on historical cumulative revenue collections. For instance, in FY 2013, the quarterly fiscal targets are as follows:

2013 QUARTERLY FISCAL PROGRAM[12]

PARTICULARS	LEVELS (in billion pesos)					% DISTRIBUTION				
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
Revenues	378.8	482.2	434.2	450.6	1,745.9	21.7	27.6	24.9	25.8	100
Disbursements	452.7	493.0	494.0	544.2	1,983.9	22.8	24.9	24.9	27.4	100
Surplus/(Deficit)	(73.9)	(10.8)	(59.8)	(93.6)	(238.0)	31.0	4.5	25.1	39.3	100

Considering that revenue targets are determined quarterly, revenue collections are ascertained on a quarterly basis as well. Therefore, if the government determines that revenue collections for a certain quarter exceed the revenue target for the same quarter, the government can lawfully release the appropriations under the Unprogrammed Fund. In other words, the government need not wait for the end of the fiscal year to release and spend such funds if at the end of each quarter, it has already determined an excess in revenue collections.

There are two kinds of funds under the GAA – the programmed fund and the unprogrammed fund. Under the programmed fund, there is a definite amount of spending authorized in the GAA, regardless of whether the government collects the full amount of its revenue targets for the fiscal year. Any deficit can be funded from borrowings. Such deficit spending from the programmed fund is acceptable and is carefully calculated not to trigger excessive inflation. On the other hand, under the unprogrammed fund, the government can only spend what it collects; otherwise, it may trigger excessive inflation. That is why the GAA prohibits spending from the unprogrammed fund unless the corresponding amounts are actually collected. To allow the disbursement of the unprogrammed fund without complying with the express condition imposed under the GAA will send a negative signal to businessmen and creditors because the government will be spending beyond its means – in effect borrowing or printing money. This will adversely affect investments and interest rates. Compliance or non-compliance with the express condition reflects the government's fiscal discipline or lack of it.

VII. The applicability of the doctrine of operative fact

I reiterate my position that the operative fact doctrine never validates or constitutionalizes an unconstitutional law.[13]

---

[12] http://www.dbm.gov.ph/wp-content/uploads/DBCC_MATTERS/Fiscal_Program/FiscalProgramOfNGFy_2013.pdf (visited on 20 January 2015).

[13] *League of Cities of the Philippines v. Commission on Elections*, G.R. Nos. 176951, et al., 24 August 2010, 628 SCRA 819.

An unconstitutional act confers no rights, imposes no duties, and affords no protection.[14] An unconstitutional act is inoperative as if it has not been passed at all.[15] The exception to this rule is the doctrine of operative fact. Under this doctrine, the law or administrative issuance is recognized as unconstitutional but **the effects** of the unconstitutional law or administrative issuance, prior to its declaration of nullity, may be left undisturbed as a matter of **equity and fair play**.[16]

As a rule of equity, the doctrine of operative fact can be invoked only by those who relied in good faith on the law or the administrative issuance, prior to its declaration of nullity. Those who acted in bad faith or with gross negligence cannot invoke the doctrine. Likewise, those **directly responsible** for an illegal or unconstitutional act cannot invoke the doctrine. He who comes to equity must come with clean hands,[17] and he who seeks equity must do equity.[18] **Only those who merely relied in good faith on the illegal or unconstitutional act, without any direct participation in the commission of the illegal or unconstitutional act, can invoke the doctrine**.

To repeat, the power to realign savings is vested in the President with respect to the executive branch, the Speaker for the House of Representatives, the Senate President for the Senate, the Chief Justice for the Judiciary, and the Heads of the Constitutional Commissions.

In these cases, it was the President who approved NBC 541, and it was the DBM Secretary who issued and implemented it. NBC 541 directed the "withdrawal of unobligated allotments of agencies with low level of obligations as of June 30, 2012" to augment or fund "priority and/or fast moving programs/projects of the national government." As discussed, unobligated allotments are not savings, which term has a specific and technical definition in the GAAs. Further, paragraph 5.7.3 of NBC 541 authorizing the augmentation of "projects not considered in the 2012 budget" is unconstitutional because under Section 25(5), Article VI of the Constitution, what is authorized is "to augment any item in the general appropriations law for their respective offices."

Since the President and the DBM Secretary approved and issued NBC 541, they are considered the authors of the unconstitutional act. As a consequence, neither the President nor the DBM Secretary can invoke the equitable doctrine of operative fact although they may raise other defenses.

---

[14] *Chavez v. Judicial and Bar Council*, G.R. No. 202242, 16 April 2013, 696 SCRA 496, 516.

[15] Id.

[16] *League of Cities of the Philippines v. Commission on Elections*, G.R. Nos. 176951, et al., 24 August 2010, 628 SCRA 819, 832; *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 8 October 2013, 707 SCRA 66.

[17] *Chemplex (Phils.), Inc. v. Pamatian*, 156 Phil. 408 (1974); *Spouses Alvendia v. Intermediate Appellate Court*, 260 Phil. 265 (1990).

[18] *Arcenas v. Cinco*, 165 Phil. 741 (1976).

As authors of the unconstitutional act, they have to answer for such act.

The proponents and implementors of the projects under the DAP are presumed to have relied in good faith that the source, or realignment, of the funds is valid. To illustrate, a governor, who proposes to the President or DBM to build a school house and receives funds for such project, simply accepts and spends the funds, and would have no idea if the funds were validly realigned or not by the President. Another example is a district engineer, who receives instructions to construct a bridge and receives funds for such project. The engineer is solely concerned with the implementation of the project, and thus would also have no idea whether the funds were validly realigned or not by the President. Clearly, the proponents and implementors, who had no direct participation in the commission of the unconstitutional act and merely relied in good faith that such funds were validly appropriated or realigned for the projects, cannot be held liable for the unconstitutional act, unless they themselves committed an illegal act, like pocketing the funds.

ACCORDINGLY, I vote to **DENY** the respondents' Motion for Reconsideration.

ANTONIO T. CARPIO
Associate Justice