**EN BANC**

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

**Promulgated:**
February 3, 2015

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

## CONCURRING OPINION

**LEONEN, *J.*:**

I concur, in the result, with the denial of the Motions for Reconsideration filed by petitioners. I concur with the partial grant of the Motion for Reconsideration filed by respondents clarifying (a) the concept of appropriation item as differentiated from allotment classes and (b) the effect of the interpretation of the statutory provisions on the use of unprogrammed funds. I vote to add that there are other situations when unprogrammed funds can be used without regard to whether the total quarterly or annual collections exceed the revenue targets.

I clarify these positions in this separate opinion.

### I

### The General Appropriations Act authorizes, not compels, expenditures

The General Appropriations Act is the law required by the Constitution to authorize expenditures of public funds for specific purposes.[1] Each appropriation item provides for the limits of the amount that can be spent by any office, agency, bureau or department of government.[2] The provision of an appropriation item does not require that government must spend the full amount appropriated. In other words, the General Appropriations Act provides authority to spend; it does not compel actual expenditures.

By providing for the maximum that can be spent per appropriation item, the budget frames a plan of action. It is enacted on the basis of projections of what will be needed within a future time frame — that is, the next year in the case of the General Appropriations Act. Both the Constitution and the law provide that the President initially proposes projects, activities, and programs to meet the projected needs for the next year.[3] Congress scrutinizes the proposed budget and is the constitutional authority that passes the appropriations act that authorizes expenditures of the entire budget through appropriation items[4] subject to the flexibilities provided in the Constitution,[5] existing law, and in the provisions of the General Appropriations Act[6] not inconsistent with the Constitution or existing law.[7]

To read the Constitution as requiring that every appropriation item be spent only in the full and exact amount provided in the appropriation item — and nothing less than the full amount — is absurd. Reality will not always be as predicted by the President and Congress as they deliberated on the budget. Obviously, reality is far richer than our plans.

The Constitution should be read as having intended reasonable outcomes on the basis of the values congealed in the text of its provisions enlightened by the precedents of this court.

Thus, there is nothing unconstitutional or illegal when the President establishes his priorities. He is expected to exhort and provide fiscal discipline for executive offices within his control.[8] He may, in line with

---

1 CONST., art. VI, sec. 29(1).
2 CONST., art. VI, sec. 29(1).
3 CONST., art. VII, sec. 22; Exec. Order No. 292 (1987), book I, ch. 3, sec. 11; Exec. Order No. 292 (1987), book VI, ch. 2, sec. 3; Exec. Order No. 292 (1987), book VI, ch. 1, sec. 2(3).
4 CONST., art. VI, secs. 24 and 26.
5 CONST., art. VI, sec. 25(5).
6 Rep. Act No. 10155, GAA Fiscal Year 2012, General Provisions, sec. 54; Rep. Act No. 10352, GAA Fiscal Year 2013, General Provisions, sec. 53; Rep. Act No. 10147, GAA Fiscal Year 2011, General Provisions, sec. 60.
7 *See also* 1 GOVERNMENT ACCOUNTING AND AUDITING MANUAL Book III, Title 3, art. 2, secs. 162–166.
8 CONST., art. VII, sec. 17.

public expectations, do things more effectively, economically, and efficiently. This is inherent in the executive power vested on him.[9] He is expected to fully and faithfully execute all laws.[10] This constitutional flexibility, while not unlimited, is fundamental for government to function.

Disagreements as to the priorities of a President are matters of political accountability. They do not necessarily translate into juridical necessities that can invoke the awesome power of judicial review. This court sits to ensure that political departments exercise their discretions within the boundaries set by the constitution and our laws.[11] We do not sit to replace their political wisdom with our own.[12]

## II

## Withholding unobligated allotments is not unconstitutional per se

Setting priorities generally means that the President decides on which project, activity, or program within his department will be funded first or last within the period of effectivity of the appropriation items.

The Constitution provides for clear delineations of authority. Congress has the power to authorize the budget.[13] However, it is the President that generally decides on when and how to allocate funds, order or encourage agencies to obligate, and then cause the releases of the funds to contracted entities.[14] The process of obligation, which includes procurement as well as the requirements for the payment, or release of funds may be further limited by law.[15]

Thus, withholding unobligated allotments is not unconstitutional per se. It can be done legitimately for a variety of reasons. The revenues expected by government may not be forthcoming as expected. The office or agency involved may not have the capacity to spend due to organizational problems, corruption issues, or even fail to meet the expectations of the President himself. In my view, the President can withhold the unobligated allotment until the needed corrective measures are done within the office or

---

9 CONST., art. VII, sec. 1.
10 CONST., art. VII, sec. 5.
11 *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936) [Per J. Laurel, En Banc].
12 Id.
13 CONST., art. VI, sec. 24.
14 As discussed in my concurring opinion to the main decision, "The president's power or discretion to spend up to the limits provided by law is inherent in executive power." J. Leonen, concurring opinion in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 <http://sc.judiciary.gov.ph/jurisprudence/2014/july2014/209287_leonen.pdf> 7 [Per J. Bersamin, En Banc]. *See also* CONST., art. VII, sec. 17.
15 *See for example* Rep. Act No. 9184 (2003).

agency. With the amount withheld, the President may also ensure that the other appropriations items are fully funded as authorized in the general or in any supplemental appropriations act.

This flexibility is subject to several constitutional constraints. First, he can only spend for a project, activity, or program whose expenditure is authorized by law.[16] Second, he cannot augment any appropriations item within his department unless it comes from savings.[17]

## III

## Withheld unobligated allotments are not necessarily "savings"

Savings is a term that has a constitutionally relevant meaning. The constitutional meaning of the term savings allows Congress to further refine its details.

To underscore the power of Congress to authorize appropriations items, the Constitution prohibits their augmentation. There is no authority to spend beyond the amounts set for any appropriations item.[18] Congress receives information from the executive as to the projected revenues prior to passing a budget. Members of Congress deliberate on whether they will agree to the amounts allocated per project, activity, or program and thus, the extent of their concurrence with the priorities set by the President with the latter's best available estimates of what can happen the following year. The authorities that will eventually spend the amounts appropriated cannot undermine this congressional power of authorization.

However, the Constitution itself provides for an exception. Appropriated items may be augmented but only from savings and only if the law authorizes the heads of constitutional organs or departments to do so.[19] It is in this context that savings gains constitutional relevance.

From a constitutional perspective, I view "savings" as related only to the privilege to augment. As a constitutional concept, it cannot be endowed with a meaning that will practically undermine the constitutional grant of power to Congress to limit and authorize appropriations items. There must be a reasonable justification for the failure of the spending authority to spend the amount declared as savings from an appropriated item. This reasonable

---

[16] CONST., art. VI, sec. 29(1).
[17] CONST., art. VI, sec. 25(5).
[18] CONST., art. VI, sec. 25(1).
[19] CONST., art. VI, sec. 25(5).

justification must be based on causes external to the authority deciding when to declare actual savings.

On the other hand, given that the power of Congress to determine when the heads of constitutional organs and departments may exercise the prerogative of augmentation,[20] Congress, too, may define the limits of the concept of savings but only within the parameters of its constitutional relevance.

In the General Appropriations Acts of 2011,[21] 2012,[22] and 2013,[23] savings was defined as:

> Savings refer to portions or balances of any programmed appropriation in this Act 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 measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

Currently, the definition of savings in the General Appropriations Act of 2014[24] is as follows:

> Sec. 68. **Meaning of Savings and Augmentation**. Savings refer to portions or balances of any programmed appropriation in this Act 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 appropriation balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriation balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.
>
> Augmentation implies the existence in this Act 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 or by the use of appropriations otherwise authorized in this Act.

---

[20] *See* CONST., art. VI, sec. 25(5).
[21] Rep. Act No. 10147, GAA Fiscal Year 2011, General Provisions, sec. 60.
[22] Rep. Act No. 10155, GAA Fiscal Year 2012, General Provisions, sec. 54.
[23] Rep. Act No. 10352, GAA Fiscal Year 2013, General Provisions, sec. 53.
[24] Rep. Act No. 10633, GAA Fiscal Year 2014, General Provisions, sec. 68.

Definitely, the difference between the actual expenditure and the authorized amount appropriated by law as a result of the completion of a project is already savings that can be used to augment other appropriations items within the same department.

Analogously, the expense category called Personnel Services (PS) within an appropriations item also creates savings during the year. Thus, for various reasons, when an executive office is able to hire less than the authorized plantilla funded by the appropriation item, the President may declare the compensation and benefits corresponding to the unfilled items after any payroll period as "savings" that can be used for augmentation.[25] Certainly, the monies that should have been paid for personnel services for positions that were unfilled for a certain period will no longer be used until the end of the year. Similarly, there is savings when the actual expenditure for Maintenance and Other Operating Expenses (MOOE) is less than what was planned for a given period. There is no need to wait until the end of the year to declare savings for purposes of augmentation.

The justification for projects, activities, and programs to be considered as "finally discontinued" and "abandoned" must be clear in order that their funds can be considered savings for purposes of augmentation. Thus, in my Concurring Opinion in the main Decision of this case, I clarified that this should be read in conjunction with the Government Accounting and Auditing Manual (GAAM)[26] provisions that state:

> **Sec. 162. Irregular expenditures.-** The term "irregular expenditure" signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law. Irregular expenditures are incurred without conforming with prescribed usages and rules of discipline. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set, is deemed irregular. An anomalous transaction which fails to follow or violate appropriate rules of procedure is likewise irregular. Irregular expenditures are different from illegal expenditures since the latter would pertain to expenses incurred in violation of the law whereas the former in violation of applicable rules and regulations other than the law.

---

[25] See the definition of savings under the general provisions of the General Appropriations Act in a given year.

[26] The Government Accounting and Auditing Manual (GAAM) was issued pursuant to Commission on Audit Circular No. 91-368 dated December 19, 1991. The GAAM is composed of three volumes: Volume I – Government Auditing Rules and Regulations; Volume II – Government Accounting; and Volume III – Government Auditing Standards and Principles and Internal Control System. In 2002, Volume II of the GAAM was replaced by the New Government Accounting System as per Commission on Audit Circular No. 2002-002 dated June 18, 2002.

> **Sec. 163. Unnecessary expenditures.-** The term "unnecessary expenditures" pertains to expenditures which could not pass the test of prudence or the obligation of a good father of a family, thereby non-responsiveness to the exigencies of the service. Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This could also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which cannot be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditure must be considered in determining whether or not the expenditure is necessary.
>
> **Sec. 164. Excessive expenditures.-** The term "excessive expenditures" signifies unreasonable expense or expenses incurred at an immoderate quantity or exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.
>
> **Sec. 165. Extravagant expenditures.-** The term "extravagant expenditures" signifies those incurred without restraint, judiciousness and economy. Extravagant expenditures exceed the bounds of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, wasteful, grossly excessive, and injudicious.
>
> **Sec. 166. Unconscionable expenditures.-** The term "unconscionable expenditures" signifies expenses without a knowledge or sense of what is right, reasonable and just and not guided or restrained by conscience. These are unreasonable and immoderate expenses incurred in violation of ethics and morality by one who does not have any feeling of guilt for the violation.

The President's power to suspend a project *in order to declare savings for purposes of augmentation* may be statutorily granted in Section 38 of the Revised Administrative Code, but it cannot be constitutional unless such grounds for suspension are reasonable and such reasonable grounds are statutorily provided. Under the present state of our laws, it will be reasonable when read in relation to the GAAM. As I explained in my Concurring Opinion[27] to the main Decision:

> Of course, there are instances when the President must mandatorily withhold allocations and even suspend expenditure in an obligated item. This is in accordance with the concept of "fiscal responsibility": a duty imposed on heads of agencies and other government officials with authority over the finances of their respective agencies.
>
> Section 25 (1) of Presidential Decree No. 1445, which defines the powers of the Commission on Audit, states:

---

[27] J. Leonen, concurring opinion in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 <http://sc.judiciary.gov.ph/jurisprudence/2014/july2014/209287_leonen.pdf> [Per J. Bersamin, En Banc].

> Section 25. Statement of Objectives. –
>
> . . . .
>
> (1) To determine whether or not the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged;
>
> . . . .

This was reiterated in Volume I, Book 1, Chapter 2, Section 13 of the Government Accounting and Auditing Manual, which states:

> **Section 13. The Commission and the fiscal responsibility of agency heads. –** One primary objective of the Commission is to determine whether or not the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged.
>
> The head of an agency and all those who exercise authority over the financial affairs, transaction, and operations of the agency, shall take care of the management and utilization of government resources in accordance with law and regulations, and safeguarded against loss or wastage to ensure efficient, economical, and effect operations of the government.

*Included in fiscal responsibility is the duty to prevent irregular, unnecessary, excessive, or extravagant expenses.* Thus:

> Section 33. Prevention of irregular, unnecessary, excessive, or extravagant expenditures of funds or uses of property; power to disallow such expenditures. The Commission shall promulgate such auditing and accounting rules and regulations as shall prevent irregular, unnecessary, excessive, or extravagant expenditures or uses of government funds or property.

The provision authorizes the Commission on Audit to promulgate rules and regulations. But, this provision also guides all other government agencies *not to make any expenditure that is "irregular, unnecessary, excessive, or extravagant."* The President should be able to prevent unconstitutional or illegal expenditure based on any allocation or obligation of government funds.

. . . .

The President can withhold allocations from items that he deems will be "irregular, unnecessary, excessive or extravagant." ***Viewed in another way, should the President be confronted with an expenditure that is clearly "irregular, unnecessary, excessive or extravagant," it may be an abuse of discretion for him not to withdraw the allotment or withhold or suspend the expenditure***

> ***For purposes of augmenting items — as opposed to realigning funds — the President should be able to treat such amounts resulting from otherwise "irregular, unnecessary, excessive or extravagant" expenditures as savings.***[28] (Emphasis in the original, citations omitted)

## IV

## "Appropriation covers" does not always justify proper augmentation

Fundamental to a proper constitutional exercise of the prerogative to augment is the existence of an appropriations item.[29]

But it is not only the existence of an appropriation item that will make augmentation constitutional. It is likewise essential that it can be clearly and convincingly shown that it comes from legitimate savings in a constitutional and statutory sense.[30] In other words, having appropriation covers to the extent of showing that the item being funded is authorized is not enough. For each augmentation, the source in savings must likewise be shown.[31]

This is why constitutional difficulties arose in the kind of pooled funds done under the Disbursement Allocation Program (DAP). There was the wholesale assertion that all such funds came from savings coming from slow moving projects. This is not enough to determine whether the requirements of constitutionality have been met. For there to be valid savings of every centavo in the pooled funds, there must be a showing (a) that the activity has been completed, finally discontinued and abandoned;[32] and (b) why such activity was finally discontinued and abandoned and its consistency with existing statutes.[33] Pooled funds make it difficult, for purposes of this determination, to make this determination. DAP may be the mechanism to ensure that items that needed to be augmented be funded in order to allow efficiencies to occur. However, this mechanism should be grounded and limited by constitutional acts. The source of the funds in the pool called DAP should be shown to have come from legitimate savings in order that it can be used to augment appropriations items.

---

28 J. Leonen, concurring opinion in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 < http://sc.judiciary.gov.ph/jurisprudence/2014/july2014/209287_leonen.pdf> 15–18 [Per J. Bersamin, En Banc].

29 CONST., art. VI, sec. 25(5).

30 CONST., art. VI, sec. 25(5).

31 CONST., art. VI, sec. 25(5).

32 Rep. Act No. 10155, GAA Fiscal Year 2012, General Provisions, sec. 54. *See also* Rep. Act No. 10352, GAA Fiscal Year 2013, General Provisions, sec. 53 and Rep. Act No. 10147, GAA Fiscal Year 2011, General Provisions, sec. 60.

33 *See also* 1 GOVERNMENT ACCOUNTING AND AUDITING MANUAL Book III, Title 3, art. 2, secs. 162–166; Exec. Order No. 292, book VI, ch. 5, sec. 38.

The amount of augmentation is not constitutionally limited when there are legitimate savings and statutory authority to modify an appropriations item.[34] Furthermore, there is a difference between an appropriations item and the expense categories within these items. The Constitution only mentions that the entire appropriations item may be augmented from savings.[35] Neither the Constitution nor any provision of law limits the expense category that may be used within the item that will be augmented. Thus, I agree with the ponencia that when an item is properly augmented, additional funds may be poured into Personnel Services, MOOE, or Capital Outlay even if originally the appropriations item may not have had a provision for any one of these expense categories.

## V

## Augmentation may only be within a constitutional department

The Solicitor General strains the meaning of Article VI, Section 25(5) to the point of losing its spirit.[36] He proposes that augmentation by the President is allowable when there is a request coming from another constitutional organ or department.[37] He parses the provision to show that one sentence is meant to contain two ideas: first, the transfer of appropriation and second, the power to augment.

This is a novel idea that is not consistent with existing precedents. Besides, such interpretation does not make sense in the light of the fundamental principle of separation of powers and the sovereign grant to Congress to authorize the budget. The proposed interpretation undermines these principles to the point of rendering them meaningless.

Contemporaneous construction by the political departments aids this court's exercise of its constitutional duty of judicial review. Contemporaneous construction does not replace this power.

Parenthetically, the Solicitor General asserts in his Motion for Reconsideration that:

> 77. This understanding of the Constitution is not exclusive to the political branches of government. Documentary evidence exists to show that the Supreme Court itself has (1) approved the allocation of amounts from its savings to augment an item within the Executive and (2) sought funds from the Executive for transfer to the Judiciary. These practices validate respondents' theory of benign and necessary interdepartmental augmentations.

---

34 CONST., art. VI, sec. 25(5).
35 CONST., art. VI, sec. 25(5).
36 Respondents' Motion for Reconsideration, pp. 25–29.
37 Id. at 26.

78. On 17 July 2012, when Justice Antonio T. Carpio was Acting Chief Justice, the Supreme Court *en banc* issued a Resolution in A.M. No. 12-7-14-SC, which reads:

> The Court Resolved to APPROVE the allocation, from existing savings of the Court, of the following amounts for the construction of courthouses:
>
> | | | |
> |---|---|---|
> | 1. | Manila Hall of Justice (120 courts) | □1,865,000,000.00 |
> | 2. | Cebu Court of Appeals Building | 266,950,000.00 |
> | 3. | Cagayan de Oro Court of Appeals Building | 251,270,000.00 |
> | | **TOTAL** | □2,383,220,000.00 |
>
> The foregoing amounts are hereby set aside and earmarked for the construction costs of the said buildings.

79. As can be gleaned from the above Resolution, the Supreme Court earmarked its existing savings of P1.865 billion to augment the P100 million budget for the Manila Hall of Justice, which is an item (B.I.d.—"Civil Works and Construction Design for the Manila Hall of Justice") in the 2012 budget of the Department of Justice-Office of the Secretary, which is within the Executive Department. This is an example of the benign and necessary interaction between interdependent departments. Obviously, the Supreme Court has an interest in the construction of Halls of Justice, and no one can say that this cross-border augmentation was a means by which the judiciary tried to co-opt the Executive.

80. Moreover, on 05 March 2013, the Supreme Court *en banc* issued a Resolution in A.M. No. 13-1-4-SC, the dispositive portion of which reads:

> **WHEREFORE,** the Court hereby requests the Department of Budget and Management to approve the transfer of the amount of One Hundred Million Pesos (□100,000,000.00) which was included in the DOJ-JUSIP budget for Fiscal Year 2012 for the Manila Hall of Justice to the budget of the Judiciary, subject to existing budget policies and procedures, to be used for the construction of the Malabon Hall of Justice.

81. In the above Resolution, the Supreme Court requested the DBM to transfer the P100 million in the budget of the DOJ for the Manila Hall of Justice to the Judiciary, which it intended to utilize to fund the construction of the Malabon Hall of Justice. This means that the P100 million allocation will be taken away from the Manila Hall of Justice, which has an item in the 2012 GAA under the Executive, and used instead to fund the construction of the Malabon Hall of Justice, which has no item in the 2012 or the 2013 GAA.

82. When the petitions were filed and while they were being heard, Chief Justice Sereno, in a letter dated 23 December 2013, informed the

> DBM that the Supreme Court was withdrawing its request to realign the P100 million intended for the Manila Hall of Justice to the budget of the Judiciary. These two instances show both cross-border transfers on the part of the Supreme Court—(a) the augmentation of an item in the Executive from funds in the Judiciary; and (b) the "transfer" of funds from the Executive to the Supreme Court, whether or not for purposes of augmentation.
>
> 83. With all due respect, this is by no means a disapprobation of the Honorable Court. But it does serve to highlight the fact that the Honorable Court's practice was based on an understanding of the constitutional provision that coincides with the government's.[38] (Citations omitted)

I concur with Justice Carpio's observations in his Separate Opinion resolving the present Motions for Reconsideration. Earmarking savings for a particular purpose without necessarily spending it is not augmentation.[39] It is a prerogative that can be exercised within the judiciary's prerogative of fiscal autonomy. With respect to the alleged request to allocate funds from the Department of Justice for the judiciary's construction of the Malabon Halls of Justice, suffice it to say that this resolution was not implemented. The Chief Justice withdrew the request seasonably. This withdrawal was confirmed by a Resolution issued by this court. Decisions of this court En Banc are subject to limited reconsideration. Reconsideration presupposes that this court also has the ability to correct itself in a timely fashion.

***The more salient question is why both the President and Congress insist that the items for renovation, repair and construction of court buildings should not be put under the judiciary. Instead it is alternatively provided in the General Appropriations Act under the budget of either the Department of Justice or the Department of Public Works and Highways. Both of these agencies are obviously under the executive.[40] This produces excessive entanglements between the judiciary and the executive and undermines the constitutional requirement of independence. In my view, these appropriation items are valid but its location (under the executive) is unconstitutional. These items should be read and deemed a part of the judiciary's budget.***

## VI

## The liabilities of any party were not issues in these cases

---

38 Id. at 26–28.

39 *See* J. Carpio, separate opinion, pp. 9–10.

40 CONST., art. VII, sec. 17.

I fully concur with the ponencia's characterization that the pronouncements of good faith or bad faith of authors, proponents, and implementors of the DAP are obiter. ***Obiter dictum is part of the flourish of writing an opinion. They serve the purpose of elucidation but should not be read as binding rule of the case (ratio decidendi). This is so because the parties did not litigate them as issues. They are not essential to arrive at a resolution of the issues enumerated by this court as fundamental to reach the disposition of this case***.[41]

There was neither a declaration of illegality or unconstitutionality of any of or all of the 116 projects identified to have benefitted from the DAP mechanism nor was there a declaration that the DAP mechanism per se was unconstitutional. That the administration chose to stop or suspend all these projects was not called for by the decision. The dispositive of the decision (*fallo*) only declared acts or practices under the DAP[42] as unconstitutional, *e.g.* cross-border transfers, funding of programs not covered by any appropriation under the General Appropriations Act, and the declaration of savings without complying with the requirements under the General Appropriations Act. Unless all the DAP projects were considered by the executive as having elements of the unconstitutional acts, the decision to stop or suspend was theirs alone.

Anxiety for the party losing a case is natural. These anxieties are normally assuaged by better legal advice. Sobriety follows good legal advice. After all, our opinions form part of jurisprudence, which are principal sources for the bar to give good legal advice and the bench to decide future cases. Bad legal advice given to the President as to the import of our rulings may have dire consequences, but it does not change what we have declared or proclaimed. We can only do so much in our opinions.

## VII

## Release of unprogrammed funds

---

41 *The City of Manila v. Entote*, 156 Phil. 498, 510–511 (1974) [Per J. Muñoz Palma, First Division], *citing Morales v. Paredes*, 55 Phil. 565, 567 [Per J. Ostrand, En Banc], states: "A remark made, or opinion expressed, by a judge, in his decision upon a cause, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, is an obiter dictum and as such it lacks the force of an adjudication and is not to be regarded as such."

42 (a) The withdrawal of unobligated allotments from the implementing agencies, and the declaration of the withdrawn unobligated allotments and unreleased appropriations as savings prior to the end of the fiscal year and without complying with the statutory definition of savings contained in the General Appropriations Acts;
(b) The cross-border transfers of the savings of the Executive to augment the appropriations of other offices outside the Executive; and
(c) The funding of projects, activities and programs that were not covered by any appropriation in the General Appropriations Act.

The Office of the Solicitor General points out that this court is mistaken in ruling that:

> [R]evenue collections must exceed the total of the revenue targets stated in the Budget for Expenditures and Sources of Financing (BESF) before expenditures under the Unprogrammed Fund can be made.[43] (Citation omitted)

The Office of the Solicitor General argues that in reality, "the government's total revenue collections have never exceeded the total original revenue targets"[44] and that the proper interpretation is:

> [E]xcess revenue collections refer to the excess of actual revenue collections over estimated revenue targets, not the difference between revenue collections and expenditures.[45]

In my Concurring Opinion to the July 1, 2014 Decision, I initially agreed with the majority decision that "[s]ourcing the DAP from unprogrammed funds despite the original revenue targets not having been exceeded was invalid"[46] referred to total revenue targets, not revenue target per income class.

The interpretation of the article on Unprogrammed Funds covered by the period when DAP was in place deserves closer scrutiny. The resolution of whether authorization to spend income ***only*** upon a showing that ***total*** collected revenues exceed ***total*** targeted revenues requires examination of the entire structure of the article and not only its first provision.

In the original Decision, we focused on the first special provision. In the FY 2011 General Appropriations Act, this provision states:

> Special Provision(s)
>
> 1. Release of Fund. 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, including savings generated from programmed appropriations for the year: PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering

---

43 Respondent's Motion for Reconsideration, p. 29.

44 Id.

45 Id. at 29–30.

46 *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/july2014/209287.pdf> 77 [Per J. Bersamin, En Banc].

> the loan proceeds: PROVIDED, FURTHERMORE, That if there are savings generated from the programmed appropriations for the first two quarters of the year, the DBM may, subject to the approval of the President, release thepertinent [sic] appropriations under the Unprogrammed Fund corresponding to only fifty percent (50%) of the said savings net of revenue shortfall: PROVIDED, FINALLY, That the release of the balance of the total savings from programmed appropriations for the year shall be subject to fiscal programming and approval of the President.[47]

However, this is not the only special provision for this appropriations item.

A

**Use of savings in programmed funds for purposes enumerated for Unprogrammed Funds**

The article on Unprogrammed Funds is generally the appropriations item that allows expenditures from income arising from collected revenues exceeding those targeted. Starting from the General Appropriations Act of 2012, the applicable laws consistently no longer included the clause, "*including savings generated from programmed appropriations for the year*", found in the General Appropriations Act of 2011 from the common first special provision. This manifests the clear intention that none of the *savings from programmed appropriation* will be used for any of the purposes enumerated in the article on Unprogrammed Funds. These purposes are:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Strategic Government Reforms
3. Support to Foreign-Assisted Projects
4. General Fund Adjustments
5. Support for Infrastructure Projects and Social Programs
6. Support for Pre-School Education
7. Collective Negotiation Agreement
8. Payment of Total Administrative Disability Pension[48]

---

[47] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV. Similar provisions are found in art. XLVI of Rep. Act No. 10155, GAA Fiscal Year 2012 and art. XLV of Rep. Act No. 10352, GAA Fiscal Year 2013. In the 2014 GAA, the purposes and specific allocations are found in art. [X]LVI, Annex A and the special provisions are in art. XLVI of Rep. Act No. 10633, GAA Fiscal Year 2014. For FY 2011, total Unprogrammed Funds authorized was □66.9 B; in 2012, □152.8 B; in 2013, □117.6 B; and in 2014, □139.9.

[48] In the 2012 GAA, only four (4) of the eight (8) purposes enumerated in the 2011 GAA were retained. The 2012 GAA also introduced two (2) purposes not contemplated in the 2011 GAA. The authorized purposes in the 2012 GAA were:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Support to Foreign-Assisted Projects
3. General Fund Adjustments
4. Support for Infrastructure Projects and Social Programs
5. Disaster Risk Reduction and Management

***Starting FY 2012, therefore, expenditures from the purposes enumerated in Unprogrammed Funds using "savings" from programmed appropriations would be void for lack of statutory authority to spend for such purposes in such manner.***

*Use of excess revenue collections*

Generally, revenue collections in excess of targeted revenues cannot be considered as "savings" in the concept of Article VI, Section 25(5) of the Constitution. However, the disposition of these funds may also be provided in the General Appropriations Act or in a supplemental budget. This is consistent with the basic principle that Congress authorizes expenditures of public funds as found in Article VI, Section 29(1) of the Constitution, to wit:

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

Thus, apart from the first special provision, the ninth provision states:

> 9. Use of Income. In case of deficiency in the appropriations for the following business-type activities, departments, bureaus, offices and agencies enumerated hereunder and other agencies as may be determined by the Permanent Committee are hereby authorized to use their respective income collected during the year. Said income shall be deposited with the National Treasury, chargeable against Purpose 4 - General Fund Adjustments, to be used exclusively for the purposes indicated herein or such other purposes authorized by the Permanent Committee, as may be required until the end of the year, subject to the submission of a Special

---

6. Debt Management Program

The 2013 GAA retained the four (4) purposes retained by the 2012 GAA from the 2011 GAA and reinstated a fifth purpose from the 2011 GAA. It retained one (1) of the two (2) purposes introduced by the 2012 GAA and introduced two new purposes. The authorized purposes in the 2013 GAA were:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Support to Foreign-Assisted Projects
3. General Fund Adjustments
4. Support for Infrastructure Projects and Social Programs
5. AFP Modernization Program
6. Debt Management Program
7. Payment of Total Administrative Disability Pension
8. People's Survival Fund

The 2014 GAA retained all the purposes indicated in the 2013 GAA and added three (3) others. The authorized purposes in the 2014 GAA were:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Support to Foreign-Assisted Projects
3. General Fund Adjustments
4. Support for Infrastructure Projects and Social Programs
5. AFP Modernization Program
6. Debt Management Program
7. Risk Management Program
8. Disaster Relief and Mitigation Fund
9. Reconstruction and Rehabilitation Program
10. Total Administrative Disability Pension
11. People's Survival Fund

Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292, s. 1987:

| DEPARTMENT / AGENCY | SOURCE OF INCOME | PURPOSE |
|---|---|---|
| ENVIRONMENT AND NATURAL RESOURCES | | |
| National Mapping and Resource Information Authority | Proceeds from Sales of Maps and Charts | For reproduction of maps and charts and printing publications |
| FINANCE | | |
| Bureau of Customs | Sale of Accountable Forms | For the printing of accountable forms |
| FOREIGN AFFAIRS | | |
| Office of the Secretary | Issuance of Passport Booklets | For the procurement of additional passport booklets |
| JUSTICE | | |
| National Bureau of Investigation | Urine Drug Testing and DNA Analysis | For the purchase of reagents, drug testing kits and other consumables |
| | Issuance of Clearance | For the procurement of additional materials and payment of rentals for the laser photo system used in the issuance of NBI clearance |
| TRANSPORTATION AND COMMUNICATIONS | | |
| Land Transportation Office | Issuance of Driver's License, Plates, Tags and Stickers | For the production of additional driver's license, plates, tags and stickers[49] |

[49] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV, Unprogrammed Fund, Special Provision(s) (compare with provisions in the rest of the GAAs). Exec. Order No. 292 (1987), book VI, ch. 5, sec. 35, contains the procedure for expenditures from Lump Sum Appropriations, thus:
SECTION 35. Special Budgets for Lump-Sum Appropriations.—Expenditures from lump-sum appropriations authorized for any purpose or for any department, office or agency in any annual General Appropriations Act or other Act and from any fund of the National Government, shall be made in accordance with a special budget to be approved by the President, which shall include but shall not be limited to the number of each kind of position, the designations, and the annual salary proposed for which an appropriation is intended. This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for certain specific purposes, aids and donations for carrying out certain activities, or deposits made to cover to cost of special services to be rendered to private parties. Unless otherwise expressly provided by law, when any Board, head of department, chief of bureau or office, or any other official, is authorized to appropriate, allot, distribute or spend any lump-sum appropriation or special, bond, trust, and other funds, such authority shall be subject to the provisions of this section.
In case of any lump-sum appropriation for salaries and wages of temporary and emergency laborers and employees, including contractual personnel, provided in any General Appropriation Act or other Acts, the expenditure of such appropriation shall be limited to the employment of persons paid by the month, by the day, or by the hour.

The deficiency referred to in this special provision refers to the inadequacy of the amount already appropriated. The purpose of addressing the deficiency is to ensure that the income generating activities of the offices and agencies continue. It grants flexibility in as much as the actual demand for the government services enumerated might not be exactly as predicted. *To achieve this flexibility, this special provision does not require that there be a showing that total collected revenue for all sources of funds exceed total targeted revenue.*

The tenth special provision for Unprogrammed Funds in the General Appropriations Act of 2011 more specifically addresses the use of excess income for revenue generating agencies and offices:

> 10. Use of Excess Income. Agencies collecting fees and charges as shown in the FY 2011 Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 4 - General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.[50]

---

[50] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV (compare with similar provisions in GAAs for 2012, 2013, 2014).

The counterpart provision in the 2012 GAA reads:

> 4. Use of Excess Income. Agencies collecting fees and charges as shown in the FY 2012 Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 3 – General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292; PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.
>
> Implementation of this section shall be subject to guidelines issued by the DBM.

The counterpart provision in the 2013 GAA reads:

> 4. Use of Excess Income. Departments, bureaus and offices authorized to collect fees and charges as shown in the FY 2013 BESF may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 3-General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.
>
> Implementation of this provision shall be subject to the guidelines issued by the DBM.

The counterpart provision in the 2014 GAA reads:

> 5. Use of Excess Income. Departments, bureaus and offices authorized to collect fees and charges as shown in the FY 2014 BESF may be allowed to use their income realized and deposited with the National Treasury: PROVIDED, That said income shall be in excess of the collection targets presented in the BESF: PROVIDED, FURTHER, That it shall be chargeable against Purpose 3: PROVIDED, FURTHERMORE, That it shall only be used to augment their respective current appropriations during the year: PROVIDED, FINALLY, That said income shall not be used to augment Personnel Services appropriations including payment of discretionary and representation expenses.
>
> Releases from said income shall be subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292.
>
> Implementation of this provision shall be subject to the guidelines issued by the DBM.

This special provision specifically authorizes the use of the excess in collected revenue over targeted revenue for the collecting agency. This flexibility in the budget allows government to continually ensure that income-generating activities of government do not come to a standstill for lack of funds. More than an expense, this funding can be seen as an investment into the operations of these special offices and agencies.

*Again, similar to the ninth special provision, there is no need to show that the total revenue collections of government exceed their submitted total targeted collections.*

Other than these statutory authorities, Unprogrammed Funds or revenue collected in excess of the submitted targets may not be used to augment programed appropriations. Any such expenditure will be void for lack of statutory authority required by the Constitution.

B

Apart from these special provisions, the absolute and universal requirement that expenditures from Unprogrammed Funds will only be allowed when the total revenue collected exceeds the submitted targets may not be supported even by the text of the first special provision.

The text of the first special provision reads: "Release of Funds . . . shall be released only when the revenue collections exceed the original revenue targets submitted by the President[.]"[51] Revenue targets are in plural form. The provision also fails to qualify that the basis for reckoning whether the excess is the ***total*** "original revenue target[s]". The absence of the adjective "total" is palpable and unmistakable.

The ponencia proposes that we discover an unequivocal intent on the part of this statute that the authority to spend for any purpose covered by this title (Unprogrammed Funds) is present only when the actual revenue collection exceeds the total revenue target submitted by the President. While this interpretation may have its own reasonable merit, it is not the only interpretation possible. There can be other interpretations that would be fully supported by the text of the provision. There can be other interpretations which will not require that this court make generalizations and surmises.

At best, therefore, the universal qualifier for the use of Unprogrammed Funds may just be one interpretation; but, it is not the only one.

---

[51] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV, Special Provision(s)(1).

The text of this statutory provision can also be reasonably interpreted as allowing expenditures for the purposes enumerated when it can be shown that the actual revenue collection ***in an income source exceeds the target for that source*** as submitted by the President in his National Expenditure Program. There is no need to show that the ***total*** revenue collection exceeds the ***total*** revenue targets.

This alternative interpretation, apart from being plainly supported by the text, is also reasonable to achieve discernable state interests.

For instance, different departments and agencies are responsible for varying sources of revenue. The Bureau of Internal Revenue ensures a viable tax collection rate. The Bureau of Customs oversees the collection of tariffs and other customs duties. Each of these agencies is faced with their own ambient and organizational challenges. The leadership styles of those given charge of these offices will be different resulting in varying results in terms of their collection efforts. Similarly, the problems of government financial institutions (GFIs) and government-owned and controlled corporations (GOCC) may require different interventions to improve their profitability and efficiencies. Thus, when each of these agencies and offices actually exceed their revenue collection over their targets is dependent on a lot of factors, many of which are not common to all of them.

It is as reasonable to infer that Congress may have intended to provide incentives — and its corresponding flexibility — to the President as his team is able to solve the challenges of each of the agencies involved in generating revenues. It is reasonable also to assume that members of Congress were pragmatic and that they expected that the problems of collection (including leakages) in some agencies, such as the Bureau of Customs, would be difficult to solve as compared with GFIs and GOCCs. Thus, authority to spend for the purposes enumerated in the article on Unprogrammed Funds will depend on the success of each of the agencies involved.

The provision in question is sufficiently broad to carry either or both interpretations: (a) targeted revenues refer to *total* revenues, and (b) that targeted revenues refer to revenues *per income class*. Both can be supported by their own set of reasons, but the first option — that of considering targeted revenues as *total* revenues — carries the potential of being absurd. Thus, the real question is whether it is within our power to choose which interpretation is the more pragmatic and sound policy. This decision is different from whether the provision itself or its application is consistent with a provision in the Constitution. It is a choice of the wiser or more politically palatable route. It is a question of wisdom.

Judicial review should take a more deferential temperament when the interpretation of a statutory provision involves political choices. At the very least, these questions should be deferred until parties in the proper case using the appropriate remedy are able to lay down the ambient facts that can show that one interpretation adopted by government respondents clearly and categorically runs afoul of any law or constitutional provision. In my separate opinion in *Umali v. Commission on Elections*,[52] I noted:

> Our power to strike down an act of co-equal constitutional organs is not unlimited. When we nullify a governmental act, we are required "to determine whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."
>
> No less than three constitutional organs have interpreted the law and the relevant provision of the Constitution. I am of the view that our power to strike down that interpretation should not be on the basis of the interpretation we prefer. Rather, Governor Umali should bear the burden of proving that the interpretation of the law and the Constitution in the actual controversy it presents is not unreasonable and not attended by any proven clear and convincing democratic deficit. We should wield the awesome power of judicial review awash with respectful deference that the other constitutional organs are equally conscious of the mandate of our people through our Constitution.[53] (Emphasis and citation omitted)

When judicial review is being applied to check on the powers of other constitutional departments or organs, it should require deference as a constitutional duty. This proceeds from the idea that the Constitution, as a fundamental legal document, contains norms that should also be interpreted by other public officers as they discharge their functions within the framework of their constitutional powers.

To this extent, I qualify my concurrence to the declaration that the expenditures under DAP from Unprogrammed Funds is void without conditions. I suspend judgment for the more appropriate case where facts have been properly adjudicated in the proper forum. Perhaps, this will be a certiorari or prohibition case arising out of an actual disallowance of the Commission on Audit of an expenditure claimed under Unprogrammed Funds.

Assuming without conceding that the interpretation that Unprogrammed Funds can only be sourced from the excess over the *total* revenue targets is a new construction on a statutory provision. It is not a

---

[52] G.R. No. 203974, April 22, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/203974.pdf> [Per J. Velasco, Jr., En Banc].

[53] J. Leonen, dissenting opinion in *Umali v. Commission on Elections*, G.R. No. 203974, April 22, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/203974_leonen.pdf> 8 [Per J. Velasco, Jr., En Banc].

finding that there is a constitutional violation. Thus, fairness to concerned parties requires that it be prospective in its effect. In this regard, I concur with the ponencia's view that the majority's interpretation should be prospective without conceding the points I have made in this Opinion.

My concurrence relating to the three acts and practices under the DAP that are considered unconstitutional and the application of the operative fact doctrine for third-party beneficiaries remains vigorously unaltered.

C

During the deliberation in this case, Justice Carpio suggested that the value of the article on Unprogrammed Funds was to assure all actors in our economy that government will not print money just to be able to make expenditures. Printing money or increasing money supply generally has inflationary effects. That is, the prices of all goods and services may increase not because of the scarcity of these items but because there is a surplus of currency floating in the economy. Thus, the title on Unprogrammed Funds require actual revenue collections vis-à-vis a fixed base such as submitted revenue targets that cannot be further modified.

I agree. The entire discussion thus far requires *actual* collection and an excess of these *actual* collections over revenue targets.

Justice Carpio next pointed out the consequences of the special provision on reportorial requirements. This provides:

> 11. Reportorial Requirement. The DBM shall submit to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and purposes thereof, and the recipient departments, bureaus, agencies or offices, GOCCs and GFIs, including the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.[54]

I agree that this special provision debunks the Solicitor General's argument that Unprogrammed Funds using the interpretation of this court's original majority opinion will never be used because it can only be assessed the following year. The provision clearly allows use of the funds within the year because it contemplates quarterly reports, which it requires to be made with Congress.

---

[54] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV, Special Provision(s)(11). Similar provisions are found in art. XLVI of Rep. Act No. 10155, GAA Fiscal Year 2012, art. XLV of Rep. Act No. 10352, GAA Fiscal Year 2013, and art. XLVI of Rep. Act No. 10633, GAA Fiscal Year 2014.

However, I regret that I cannot agree that this special provision implies a resolution of the basis for construing what targeted revenue means. On a quarterly basis, government can assess either total quarterly revenue or quarterly revenue per income source. There is also need for quarterly reports in view of the ninth and tenth special provision in the article on Unprogrammed Funds in the General Appropriations Act of 2011, which are similar to the corresponding special provisions in subsequent General Appropriations Acts.

**ACCORDINGLY**, with these clarifications, I vote:

(a) to **DENY** the Motions for Reconsideration of petitioners for lack of merit;

(b) to **PARTIALLY GRANT** the Motion for Reconsideration of respondents in relation to the concept of expense classes as opposed to appropriation items; and

(c) with respect to Unprogrammed Funds, to **DECLARE** that the use of Unprogrammed Funds to augment programmed appropriations is **VOID** unless consistent with the special provisions. However, this interpretation on the use of Unprogrammed Funds should be applied prospectively.

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