

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

FILIPINO CITIZENS Worldwide,

1. *Petitioner,*

-- *versus* --

G.R. No. _____

For: Certiorari and Prohibition with
Urgent Prayer for the Issuance of a
Temporary Restraining Order
and/or Writ of Injunction

THE HONORABLE EXECUTIVE
SECRETARY PAQUITO N.
OCHOA JR., THE SECRETARY
OF BUDGET AND
MANAGEMENT FLORENCIO B.
ABAD, THE NATIONAL
TREASURER ROSALIA V. DE
LEON, THE SENATE OF THE
PHILIPPINES, represented by
FRANKLIN M. DRILON, in his
capacity as Senate President, THE
HOUSE OF REPRESENTATIVES
represented by FELICIANO
BELMONTE in his capacity as
Speaker of the House.

2.

Respondents.

x-----x

2.

3. URGENT PETITION FOR CERTIORARI

4. AND PROHIBITION

[With Prayer For The Immediate Issuance of

Temporary Restraining Order And/Or Writ of Preliminary Injunction

Petitioner _____, by counsel, respectfully alleges:

PREFATORY STATEMENT

Unmitigated power and the lack of accountability are twin evils that the 1987 Constitution, and every society, absolutely abhors. Of all the corrupted mechanisms of governance, the subject of this Petition is somewhat unique in this respect. For it is only the “Pork Barrel System” that merges both evils so seamlessly that both political branches are willingly caught in its unconstitutional embrace - and neither is inclined to break it. Neither the Executive nor the Legislative dispute the fact that billions of pesos have been squandered. A sitting senator has called it a “multi-billion peso racket”.¹ In recognition of this fact, their promise to prosecute the guilty is irrelevant to the question of whether an inherently unconstitutional system should continue to be tolerated.

Petitioners file this case against the backdrop of the Commission on Audit's Special Audits Office Report No. 2012-03, entitled *Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)* (referred herein as the “COA Report”)². In its 462 pages, the COA Report provides definitive documentary proof that Congress has breached the limits of the power given it by the Constitution on budgetary matters, and together with the Executive has been engaged in acts of grave abuse of discretion. In the same vein, unchecked power to spend lies in the hands of the Executive in the guise of lump-sum, “discretionary funds” or colloquially “Special Purpose Funds” (“SPFs”) which, has steadily risen in the past three years and is based on the National Expenditure Program for 2014 now pegged in the hundreds of billions. Taken individually or together, these funds form the “Pork Barrel System”, which petitioners assail on the basis that it is: (1) unconstitutional; and (2) a continuing act of grave abuse of discretion. [*Tanada vs. Angara*, 272 SCRA 18 (1997)].

¹ Another Senator Seeks Scrapping of ‘Pork Barrel’, Maila Ager, Philippine Daily Inquirer, 22 August 2013. Available at <http://newsinfo.inquirer.net/471895/another-senator-seeks-scrapping-of-pork-barrel>.

² The voluminous COA Report is accessible from the COA website at http://coa.gov.ph/GWSPA/2012/SAO_Report2012-03_PDAF.pdf. Nonetheless, petitioners attach select pages of the 462-page document for easy reference as Annex “__”.

Due to the COA Report and the latest scandal concerning the Pork Barrel System, the President through an official statement released on 23 August 2013³ ostensibly declared that “it is time to abolish PDAF”. The actual text of his proclamation however, indicates otherwise. Indeed, “PDAF” as a label will be scrapped but, the unconstitutional system it embodies will remain - only to resurface with a new name presumably once the outcry has gone down. This is further confirmed by the respondent Budget Secretary's own statement that the amount allocated for the Pork Barrel System's legislative component will remain in the 2014 budget.⁴ The Executive component of the Pork Barrel System, though largely assailed, is not to be touched, and in fact, based on the 2014 National Expenditure Program will reach the highest expenditure in history.

The scenario is despairingly familiar. In 1996, a similar public outcry occurred when the Countrywide Development Fund (“CDF”) scam was exposed with billions of pesos lost and wasted. A similar promise to the one made today was given – the “CDF will be scrapped” and “Loopholes will be plugged”. Seventeen (17) years after, we are back to the same situation. It has become a pernicious cycle. And in between the decades spanning each new “version” or “iteration” of the pork barrel system, billions of taxpayers’ money is lost to corruption. The President's statement to “abolish” (in truth, only revise) the PDAF is simply the start of another cycle. Just like what happened in the aftermath of the CDF scandal, the same dog will just resurface wearing a different collar.

The fear is neither hypothetical nor unfounded. It is engendered by no less than the official statement of the President himself insisting that, “[t]here is nothing *intrinsically* wrong” with the “Pork Barrel System.” With this categorical statement in mind, petitioners submit that only the Honorable Court has jurisdiction over the fundamental question of “intrinsic constitutionality” of the “Pork Barrel System”, as well as the moral suasion to finally put it to rest. Contrary to the position taken by the political branches, petitioners respectfully submit that the “Pork Barrel System” is repugnant to several constitutional provisions.

First, it is unconstitutional because by its very nature, it violates a key principle of Separation of Powers. Congress wields the power of appropriation only insofar as identifying and proposing where public funds should be spent. Indeed, the power to

³ The full text of the Statement dated 23 August 2013 is available at the official government site at <http://www.gov.ph/2013/08/23/english-statement-of-president-aquino-on-the-abolition-of-pdaf-august-23-2013/> a printout of the Statement dated 23 August 2013 is attached as Annex “___”.

⁴ “Palace: P25B Pork Stays in 2014 Budget”, Michael Lim Ubac, Philippine Daily Inquirer, 25 August 2013.

“specify the project or activity” has been held by this Honorable Court to be as “detailed and as broad” as Congress wants it to be. [*Philconsa vs. Enriquez*, 235 SCRA 506]. It is the Executive however, who wields the power to actually spend and implement the budget once Congress passes it. The “pork barrel system” - whatever name or form it takes – breaches this wall. The COA Report shows that despite *two (2) decades* of plugging loopholes and using “safeguards”, legislators continue to flout constitutional limits and are directly engaged in project implementation. It has come to such extreme levels that according to the COA Report, the lawmakers' ability to hi-jack Executive agency discretion extends to the release of funds to their preferred entities (i.e. NGOs) on the strength of a simple “recommendation” or letter.

Second, the “Pork Barrel System” is unconstitutional because it renders both the Executive and Legislative branches practically incapable of checking each other on budgetary and other matters, thereby wrecking the system of Checks and Balances. The other half of the “Pork Barrel System” is embodied by the unbridled Executive discretion to spend hundreds of billions under the various lump sum, discretionary funds, some of which (i.e. Malampaya Funds) are not even included in the budget (“off-budget”) and thus beyond Congressional power to monitor. Any congressional interest to check these funds for abuses is tempered by the threat of losing access to PDAF. As such, the Executive maintains PDAF in whatever form so as to keep the Legislative from checking how executive pork is spent. And the cycle continues. This uneasy alliance between the political branches might be politically expedient but, it is certainly not constitutional under a system of checks and balances.

Third, the “Pork Barrel System” is unconstitutional because it is repugnant to the provisions of the Accountability provisions of the Constitution. Again, the COA Report shows that the “Pork Barrel System” is impervious to any attempt to make it comply with constitutional provisions on accountability. For instance, most of the Seven (7) “new safeguards” mentioned in the President's Statement dated 23 August 2013 are already in existence – some since 1996. What the COA Report definitively establishes however is that after nearly *two (2) decades* of trying, these safeguards simply do not work in actual practice. Any mechanism of governance that consistently demonstrates immunity from accountability safeguards is anathema to the Constitution, especially if that mechanism involves Billions of public funds. In a similar vein, the Executive's SPF violates constitutional accountability because it: (a) evades collective and deliberative process of budgeting public funds; (b) being lump sums dispensed on the Executive's sole discretion, allows diversion of funds to any purpose without practical limits. Worse, the off-budget funds evade congressional oversight altogether.

Fourth, the continued funding and utilization of the “Pork Barrel System” is an act of grave abuse of discretion by the Executive and Legislative Branch. The Executive's use of the various lump sum, discretionary funds, including the SPF, constitutes undue delegation since each component fund lacks a clear standard. For instance, the Executive spends billions from the Malampaya Fund: (a) without submitting it to the budgetary process; and (b) relying on the vague standard of “such other purposes”.⁵ The combination of these two factors is stark: Reports now indicate that P900M of the Malampaya has been “lost” and has ended up in the hands of one notorious “fake NGO”. The Executive has not denied this, and only insists that it occurred under the “previous administration”. In the same vein, the COA Report establishes that both the Executive and the Legislative branches repeatedly abuse their discretion in utilizing the PDAF. Based on paper safeguards, it should be impossible for PDAF funds to end up in the hands of legislators, their relatives or allied interests. The COA Report details several instances where PDAF funds even end up in organizations owned or run by legislators or their families.

Fifth, the “Pork Barrel System” is a superfluous, costly and failed experiment that violates the mandate of the Local Government Code that prioritizes the funding and empowerment of Local Government Units. The cited rationale of the PDAF is to empower national legislators who are “better informed” as to the needs of their districts. The rationale is legally and factually flawed. The Local Government Code assigns this responsibility to governors, mayors and local government councils. More importantly, national legislators spend most of their time in the Senate and the House and are certainly not as knowledgeable as local government officials.

The 1987 Constitution stands as the ultimate check against abuse and corruption. Its defining characteristic is its ability to provide relief to the public when neither of the two political branches are interested in giving it. That is the exact situation our nation finds itself in today. The repeating cycles of scams and the COA Report show that textual safeguards in the Constitution and statutes are futile checks on the Pork Barrel System. Worse, both political branches have officially made it clear that they see nothing intrinsically wrong with the Pork Barrel System despite the havoc it wreaks on basic constitutional principles. The current administration's insistence on its integrity is not only irrelevant to the constitutional question, but it is also not a safeguard against future abuses. The constitutionality of a governance mechanism should not and does not depend on the personal integrity of the

⁵ Presidential Decree 910, Section 8 of which reads: “—Section 8. x x x production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President.”

occupant. The environment and public reaction is becoming uncertain. With the current impasse, petitioners can only look to the Constitution and the Honorable Court for redress. The rule of law, not politics or greed, must prevail.

NATURE AND TIMELINESS OF THE PETITION

- 1.1. This is a Petition for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction (the “instant Petition”) filed under Rule 65 of the Rules of Court, seeking to annul and set aside the Pork Barrel System presently embodied in the provisions of the General Appropriations Act (“GAA”) of 2013 providing for the Legislature's Priority Development Assistance Fund or any replacement thereto, and the Executive's various lump sum, discretionary funds colloquially referred to as the Special Purpose Funds. Both components of the Pork Barrel System are included and identified in the National Expenditure Program of 2014⁶ with increased allocations.
- 1.2. There is a need for a definitive ruling from the Honorable Court on the matter of whether the “Pork Barrel System” is constitutional or not.
- 1.3. First, the President's statement dated 23 August 2013 claims that “there is nothing intrinsically wrong” with the “Pork Barrel System”. This ignores the sheer strain the pork barrel causes on the principles of Separation of Powers and Accountability. By virtue of the anomalous existence it bears, the “Pork Barrel System” is intrinsically unconstitutional and must be completely abandoned.
- 1.4. Second, the two (2) cited precedents in defense of the Pork Barrel System – *Philconsa vs. Enriquez* and *Lawyers Against Monopoly and Poverty vs. Secretary of Budget* – are rendered inapropos to the current context considering the recent findings of the COA relating to the acts of public officials belonging to both the Executive and Legislative branches. Coupled with the official reactions of the Executive and the Legislative, there is a need to properly channel their efforts on the field of budgetary and appropriation matters.

⁶ The full text of the National Expenditure Program for 2014 is available at the DBM's website at http://www.dbm.gov.ph/?page_id=6697. Nonetheless, petitioners attached select pages of the voluminous document for easy reference as Annex “_”.

- 1.5. Third, as the funding and the implementation of the “Pork Barrel System” amounts to grave abuse of discretion of which officials belonging to both the Executive and Legislative are cited of being participants (i.e. COA Report), judicial review of those acts is inescapable. This is in recognition of the doctrine that when the Executive and the Legislative branches are assailed to have committed unconstitutional acts, it is the duty of the Honorable Court to step in.
- 1.6. Fourth, the steady increase in allocations to lump sum and discretionary funds will be reaching unheard of amounts - P449.95 Billion in 2014 – coalescing too much of government resources within the discretion of a single individual – the President – with Congress being both incapable and disinterested in checking it.
- 1.7. Fifth, in view of its intrinsic unconstitutionality, the continued existence of the “Pork Barrel System” cannot be left at the discretion of the political branches that may revive or reform it at will regardless of the system's repugnance.
- 1.8. Finally, considering the patent unconstitutionality of the “Pork Barrel System” and the financial and social costs it creates, a definitive ruling by the Honorable Court is needed such that the two (2) political branches of government will be so guided as not to even attempt to recreate or refashion a substitute for the system in the future.
- 1.9. As will be shown below, by maintaining the “Pork Barrel System” and its components – (a) the PDAF or any of its versions; and (b) the Executive's lump sum, discretionary funds, respondents are perpetuating a violation of the Constitution, as well as committing acts of grave abuse of discretion.

THE PARTIES

- 2.1. Petitioner _____ is a _____ duly registered with and accredited by the _____ with address located at the _____. For purposes of the instant Petition, petitioner may be served with the orders and other legal

processes of the Honorable Court, as well as with pleadings, papers and other documents through the undersigned counsel.

- 2.2. Petitioner is composed of citizens and taxpayers who have been dutifully contributing to the coffers of the National Treasury. Suffering under a sustained and increasing tax burden, petitioners are appalled to discover through recent national events that the money they willingly give up to the government is simply squandered by people who have they entrusted to do the exact opposite. Considering the issues involved, petitioners likewise seek redress on their own standing as citizens since both political branches have officially made it clear that they will continue the “Pork Barrel System” despite its patent unconstitutionality.
- 2.3. Further, in view of the fact that the issue involves a public right⁷, and the subject is of paramount importance – the constitutionality of the entire nation's budgeting system – it is submitted that petitioners as citizens possess legal personality and standing to challenge the acts of the two (2) political branches, to wit:

“In *Tañada v. Tuvera*, the Court asserted that when the issue concerns a public right and the object of mandamus is to obtain the enforcement of a public duty, the people are regarded as the real parties in interest; and because it is sufficient that petitioner is a citizen and as such is interested in the execution of the laws, he need not show that he has any legal or special interest in the result of the action.[18] In the aforesaid case, the petitioners sought to enforce their right to be informed on matters of public concern, a right then recognized in Section 6, Article IV of the 1973 Constitution,[19] in connection with the rule that laws in order to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated. In ruling for the petitioners’ legal standing, the Court declared that the right they sought to be enforced “is a public right recognized by no less than the fundamental law of the land.” [*Chavez v. PCGG*, G.R. No. 130716. December 9, 1998]

- 2.4. Respondent Office of the Executive Secretary is one of the agencies of

⁷ *Avelino v. Cuenco*, 83 Phil 17 (1949); *Basco v. PAGCOR*, 197 SCRA 52, May 14, 1991; *Kapatiran ng Mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*, 163 SCRA 371, June 30, 1988.

the executive department of the Philippine government and is currently headed by Executive Secretary Paquito S. Ochoa. Respondent Executive Secretary is primarily responsible for, among others, implementing presidential directives, orders and decision and deciding, for and in behalf of the President, matters not requiring personal presidential attention.⁸ Respondent Executive Secretary may be served with pleadings, notices and other legal processes of the Honorable Court at their office at Premiere House Guest, Malacañang Palace Compound, J.P. Laurel St., San Miguel, Manila.

- 2.5. Respondent Department of Budget and Management is one of the agencies of the executive department of the Philippine government, which is headed by the Secretary of Budget. Respondent Secretary of Budget is primarily responsible for the formulation and implementation of the National Budget with the goal of attaining national socio-economic plans and objectives⁹ and is also responsible for preparing the National Expenditure Program and lead the annual executive effort to have the General Appropriations Act passed by Congress, and subsequently to monitor, process and release funds under it. Respondent Secretary of Budget may be served with pleadings, notices and other legal processes of the Honorable Court at their office at the Department of Budget and Management, General Solano St., San Miguel, Manila.
- 2.6. Respondent Bureau of Treasury is one of the agencies of the executive department of the Philippine government, which is headed by respondent National Treasurer. Respondent National Treasurer is, along with the DBM, responsible for the formulation and implementation of the National Budget, and specifically acts as the principal custodian of financial assets of the government, its agencies and instrumentalities. Respondent National Treasurer may be served with pleadings, notices and other legal processes of the Honorable Court at their office at the Bureau of Treasury, Palacio del Gobernador Bldg., Intramuros, Manila.
- 2.7. Respondent Senate of the Philippines is one of the branches of the Legislative Department of the Philippine government. Respondent Senate participates and concurs with all appropriation and revenue Bills enacted by the House of Representatives. Respondent Senate may be

⁸ Section 27, Chapter 9, Title III of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

⁹ Section 2, Chapter 1, Title XVII of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

served with pleadings, notices and other legal processes of the Honorable Court at their office at GSIS Headquarters Building, Financial Center, Roxas Blvd., Pasay City.

- 2.8. Respondent House of Representatives of the Philippines is one of the branches of the Legislative Department of the Philippine government. Respondent House of Representatives is primarily responsible for the enactment of all revenue and tariff bills of the Philippines, as well as appropriation measures. Respondent House may be served with pleadings, notices and other legal processes of the Honorable Court at their office at the House of Representatives Complex, Constitution Hills, 1126 Quezon City.
- 2.9. Considering that the instant case involves the constitutionality of legislative acts and executive functions, and the foregoing respondents are all public officials sued in their official capacities, notice of this Petition is likewise given to the **Office of the Solicitor General, Amorsolo Street, Legaspi Village, Makati City.**

STATEMENT OF FACTS AND ANTECEDENT PROCEEDINGS

- 3.1. The Pork Barrel System is embodied in the annual allocation of funds in the following categories: (a) the Legislative branches PDAF; and (b) the Executive's various lump sum and discretionary funds taken together as the SPF.
- 3.2. The Legislative component of the "Pork Barrel System" was initially established during the term of President Corazon Aquino with the creation of the Country Wide Development Fund ("CDF") in 1990 with around P2.3 billion in annual funding.
- 3.3. The current form of the Legislative Pork Barrel is designated as the PDAF, which was created during the time of President Joseph Ejercito Estrada in 2000.
- 3.4. The renaming of the CDF into PDAF was preceded by public outcry stemming from the exposes that funds allocated for the CDF were squandered.

- 3.5. The avowed purpose of both the Executive and the Legislative then was to “REFORM” the CDF and institute safeguards that will prevent abuses from occurring.
- 3.6. In a 2012 position paper entitled “Understanding the Pork Barrel”, then Speaker Prospero C. Nograles and Cong. Edcel C. Lagman, Chairperson of the House Committee on Appropriations¹⁰ (“Nograles Paper”), cited that the current form of legislative pork barrel has incorporated several layers of safeguards, to wit:

“The congressional “soft” and “hard” projects are definitely far departures from the original American pork barrel system and from the practice of the old Congress before it were abolished by Marcos. Now, the utilization of the CDF or PDAF is strictly circumscribed by a shortlist or menu of qualified projects, requirement of utility and relevance, stringent procurement and public bidding procedures, accountable implementing agencies and mandatory post-audit review by the Commission on Audit (COA), among other safeguards.”

- 3.7. As a form of further assurance, it was also asserted in the Nograles Paper that “Innovative Measures” added yet another level of protection against abuse, to wit:

“The new leadership of the House of Representatives has directed, for further transparency and accountability, the publication in a congressional website all of the projects and programs identified by House Members under their respective lists of “soft” and “hard” projects. The website will also include the progress status and accomplishment of the projects. This innovation will afford the public the opportunity to assess the importance of and the need for the congressional projects and enhance the people’s right to make reasonable protests and complaints.”

¹⁰ Understanding the Pork Barrel, Speaker Prospero C. Nograles, Hon. Edcel C. Lagman, an electronic copy of which is available at http://web.archive.org/web/20120417145905/http://www.congress.gov.ph/pdaf/news/pork_barrel.pdf. A copy of the paper is attached is Annex “__”.

3.8. As reflected in each year's General Appropriations Act, the purported textual safeguards have been set in place for the Legislature's PDAF. The 2009 General Appropriations Act for instance contains:

“Special Provision

1. Use and Release of the Fund. The amount appropriated herein shall be used to fund priority programs and projects under the Ten-Point Legacy Agenda of the national government, and shall be released directly to the implementing agencies as indicated hereunder, to wit: xxx PROVIDED, That in the procurement of common-use supplies, the implementing agencies shall adhere to the price list and the rules and regulations to be issued by the Government Procurement Policy Board.”

3.9. Similar safeguards appear in the 2012 General Appropriations Act, with respect to identification of projects and beneficiaries for instance:

“shall conform to the priority list, standard or design prepared by each implementing agency... preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the National Household Targeting System for Poverty Reduction by the DSWD. For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act.”

3.10. In the same vein, each year's General Appropriations Act contained lump sum, discretionary funds for the Executive Branch. Although, the composition and nature of the funds vary from year to year, a common denominator is that their aggregate amount or total steadily increased from one year to the next.

3.11. Based on the confluence of two (2) recent events, it appears however, that all these post-CDF scam innovations were useless against the brilliant and enterprising minds possessed by government officials and private individuals who saw the Pork Barrel System as too tempting to refuse.

3.12. On 16 August 2013, the Commission on Audit released its Special Audits Office Report No. 2012-03, entitled *Priority Development Assistance*

*Fund (PDAF) and Various Infrastructures including Local Projects (VILP)*¹¹
examining PDAF expenditure and implementation from 2007 to 2009.

3.12.1. According to the COA Report, the total allocations for PDAF and VILP in the years 2007 to 2009 amounted to P 79.878 Billion.

3.12.2. Of this amount, the COA Report's Audit was only able to cover P8.374 Billion in PDAF releases, and P32.664 Billion in VILP releases, or 58% of total PDAF releases and 32% of total VILP releases for the period.

3.13. Significantly, the COA Report's explanation of its inability to audit the entire amount of PDAF releases revealed the inherent vulnerability of the Pork Barrel System to unaccountable spending practices. The COA Report states:

“The DBM could not provide the Team, despite repeated requests, with complete schedule of releases per legislator from PDAF for soft projects and VILP for hard projects. Only the schedule of releases from VILP for hard projects identified by the legislators named therein was provided covering releases of P 32.347 Billion (Table 9) during CYs 2007 to 2009 which was found deficient.”¹²

3.14. In view of the DBM's refusal, the COA had to be resourceful and check the implementing agencies, i.e. DPWH, and was able to discover that the schedule it was provided by the DBM “excluded around P 69.261 Billion”. Unfortunately, without the DBM's data, the COA noted that, [t]he concerned legislators of such releases, cannot, however, be identified.”

3.15. Some of the major findings of the COA Report include:

3.15.1. Despite the rule that each legislator has fixed allocations (i.e. P 70 Million for Congressmen), a total of Seventy-Four (74) legislators

¹¹ The voluminous COA Report is accessible from the COA website at http://coa.gov.ph/GWSPA/2012/SAO_Report2012-03_PDAF.pdf . Nonetheless, petitioners attach select pages of the 462-page document for easy reference as **Annex “—”**.

¹² COA report, page 5.

exceeded their respective allocations.¹³

3.15.2. Despite the rule in that expenditures should be within the respective districts, the DBM released funds for projects outside the legislative districts of sponsoring congressmen.¹⁴

3.15.3. Funds were released to Implementing Agencies (“IA”) with “no administrative and technical capabilities to implement the project.”

3.15.4. Funds were released to implementing agencies “for no specific purpose or for projects outside of the IAs mandated functions.

3.16. Worse, the COA Report also found out that the IAs of the Executive branch, instead of providing the necessary “check” on the PDAF and VILP releases, virtually aided and abetted the abuse, to wit:

“The IAs in turn, used the funds without due regard to existing rules and regulations. Substantial amounts were transferred to NGOs, without any appropriation law or ordinance authorizing such transfer and were used for projects not eligible under the program. Worse, the reported projects were supported with questionable and/or spurious documents. Infrastructure projects were not effectively implemented as a number were found deficient or implemented in private lots, among others, which is prohibited under the law.”¹⁵

3.17. A key finding of the COA however involves the undeniable power that the legislator directly wields in the actual implementation of the projects funded by his PDAF.

3.17.1. The COA Report establishes that NGO recipients “were selected on the basis alone of the purported endorsement by the supporting legislators.”

3.17.2. Worse, despite existing laws and administrative regulations, the COA Report found that the legislator's power to select the NGO came

¹³ cf. Table 10 of the COA Report.

¹⁴ cf. Table 11 of the COA Report.

¹⁵ cf. COA Report, page 14.

without public bidding as “required under GPPB Resolution No. 12-2007”.¹⁶

3.18. A total of 82 releases were made to NGOs according to the COA Report, reflecting the sum of P 6.156 Billion in total.

3.18.1. In complete defiance of existing rules and regulations, the COA Report found that of these recipient NGOs, Six (6) were incorporated by the legislators themselves or their relatives.

3.19. The COA Report adds that “the implementation of various livelihood projects” funded by a total of P52.408 Million PDAF releases were similarly tainted. R.A. 9184 was flouted. Projects were not advertised and simply “awarded to suppliers identified by the legislator and/or of questionable legal and physical existence.”

3.20. Not even the Honorable Court's rulings and decisions were enough to stop or channel the abuses. The COA found that Fifty-four (54) infrastructure projects were constructed “in private lots without any document to support the turnover of such properties to the government”¹⁷ in complete defiance of the Honorable Court's landmark decision in *Pascual vs. Secretary of Public Works*.¹⁸

3.21. From 09 July to 15 September 2012, the implementing agencies were asked by the COA to comment on their audit highlights. Not all IAs submitted comments but, of those who did, several requested for extensions.

3.22. Of all the implementing agencies who submitted comments to the findings of the COA Team, the defense made by the National Livelihood Development Corporation (“NLDC”) is the most telling in terms of how far legislative encroachment in project implementation has gone. The COA Report details the NLDC's comments thus:

¹⁶ cf. COA Report, Part III, Chapter 2.

¹⁷ cf. Table 43, COA Report.

¹⁸ G.R. No. L-10405 dated 29 December 1960.

- “NLDC has fully relied on the Office of the Legislators to supervise and ascertain project implementation. xxx
- NLDC has been looking into interlocking personalities, establishing the legal and physical existence of NGOs endorsed by the legislators, blacklisted a number of NGOs, and has initially expressed hesitance in being part of the PDAF implementation as early as November 2008...
- The project implementation is directly participated by the proponent legislators.”

3.23. Finally, in its list of recommendations, the COA Report explicitly states:

“For Legislators. Limit participation in the implementation of PDAF project to identification of projects and IAs.”

3.24. The COA Report's release coincided with the growing concern about a scandal involving some P10 Billion of PDAF releases. Reports based on sworn affidavits submitted to the National Bureau of Investigation indicated that several legislators were acting in cooperation with the accused individuals in siphoning PDAF releases into “fake NGOs”.

3.25. In 13 August 2013, the Secretary of the Department of Justice indicated that it is investigating the scandal and will in fact be prosecuting the legislators concerned since the Department was “able to confirm the involvement of some lawmakers”, to wit:

“We cannot mention names at this point because of the pending investigation by the NBI. We are still in the process of validation but we were already able to confirm the involvement of some lawmakers, both from the House and the Senate. The filing will be dictated by evidence and will be done in a few weeks,”¹⁹

3.26. Following these two events, the President initially announced that he is not in favor of abolishing the PDAF.

¹⁹ “DOJ Set to File Raps Vs. Congressmen, Senators Over PDAF Scam” Llanesca T. Panti, Manila Times, 13 August 2013, available at <http://www.manilatimes.net/doj-set-to-file-raps-vs-congressmen-senators-over-pdaf-scam/29028/>.

3.27. By 23 August 2013 however, as stated above, the President issued a Statement of even date indicating that, “It is time to abolish the PDAF.”

3.28. Despite this, the General Appropriations Act for 2013 continues to carry both forms of the “Pork Barrel System” by providing amounts pertaining to the Legislative's PDAF which amounted in total to P24.79 Billion, while the Executive's lump sum, discretionary funds include but, is not limited to, the following:

- E-government Funds -
- Unprogrammed Funds – which will be increased in 2014 by P22B from last year.
- Budgetary support to Government Corporations Fund
- Intelligence Fund
- Priority Social and Economic Projects Fund

3.29. Similarly, the National Expenditure Program for 2014 contains funding for both components of the Pork Barrel System:

3.29.1. The Legislative component of the Pork Barrel System is pegged at P25.24 Billion.

3.29.2. On the other hand, the funds making up the Executive component of the Pork Barrel System are repeated from the 2013 Fiscal Year with the following new lump sum, discretionary funds :

- Tax Expenditures Fund – P26.9 Billion
- Feasibility Studies Fund – P 400 Million

3.30. Through subsequent statements, Respondent Secretary of Budget has confirmed the President's statement that the “Pork Barrel System” pertaining to the PDAF will not be abolished and instead will simply be reformed.

3.31. In another statement, Respondent Secretary of Budget maintained the need for the Executive to have access to its component of the “Pork Barrel System” embodied in the various lump sum, discretionary funds, as well as similar funds that exist off-budget.²⁰

3.32. Hence, this Petition.

**ARGUMENTS IN SUPPORT OF
THE INSTANT PETITION FOR CERTIORARI AND PROHIBITION**

I

**THE HONORABLE COURT HAS JURISDICTION OVER
THE INSTANT PETITION**

- A. THE QUESTION OF THE PORK BARREL SYSTEM'S INTRINSIC CONSTITUTIONALITY IS SOLELY WITHIN THE HONORABLE COURT'S DOMAIN.**
- B. THE EXECUTIVE AND LEGISLATIVE BRANCHES CANNOT USE THE POLITICAL QUESTION DOCTRINE TO EVADE JUDICIAL REVIEW ON THIS MATTER.**

II

THE PORK BARREL SYSTEM IS UNCONSTITUTIONAL.

- A. THE PORK BARREL SYSTEM VIOLATES SEPARATION OF POWERS BY ALLOWING CONGRESS TO INTRUDE INTO THE EXECUTIVE DOMAIN OF PROJECT IMPLEMENTATION.**
- B. THE PORK BARREL SYSTEM RENDERS THE EXECUTIVE AND THE LEGISLATIVE BRANCHES PRACTICALLY INCAPABLE OF CHECKING EACH OTHER IN BUDGETARY AND OTHER MATTERS,**

²⁰ Abad Defends Retention of President's Pork, Julliane Love De Jesus Philippine Daily Inquirer, 24 August 201, <http://newsinfo.inquirer.net/473631/abad-defends-retention-of-presidents-pork#ixzz2d3DbeUP0>.

THEREBY OFFENDING THE PRINCIPLE OF CHECKS AND BALANCES.

- C. THE PORK BARREL SYSTEM OFFENDS THE ACCOUNTABILITY PROVISIONS OF THE CONSTITUTION BY CONSISTENTLY DEMONSTRATING OVER THE PAST DECADES THAT IT IS IMPERVIOUS TO PRACTICAL CONTROL AND ACCOUNTABILITY MEASURES.

III

THE CONTINUED FUNDING AND IMPLEMENTATION OF THE PORK BARREL SYSTEM AMOUNTS TO ACTS OF GRAVE ABUSE OF DISCRETION.

IV

THE PORK BARREL SYSTEM IS A SUPERFLUOUS AND UNNECESSARY MECHANISM THAT OFFENDS THE PROVISIONS OF THE CONSTITUTION ON LOCAL AUTONOMY AND THE LOCAL GOVERNMENT CODE.

V

THE PORK BARREL SYSTEM ENABLES THE CONTINUED NON-REALIZATION, IF NOT OUTRIGHT VIOLATION OF VARIOUS CONSTITUTIONAL MANDATES, INCLUDING THE PROSCRIPTION AGAINST POLITICAL DYNASTIES.

DISCUSSION

I. THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT PETITION.

- A. THE QUESTION OF THE PORK BARREL SYSTEM'S CONSTITUTIONALITY IS SOLELY

WITHIN THE HONORABLE COURT'S DOMAIN.

The President has officially stated that there is nothing “intrinsicly wrong” with the Pork Barrel System even if, on the basis of the COA Report and the repeated scandals over the decades, it has been established that the said system offends separation of powers, wrecks checks and balances, and flouts accountability. Both houses of Congress have indicated an intent to maintain the system as well.

As such, this Petition is filed under the Honorable Court's certiorari jurisdiction precisely on the question of whether the continued existence of the Pork Barrel System is justified under the provisions of the Constitution. What is questioned is not the power of the Executive to propose which items to spend on, or the power of Congress to determine which items proposed will actually be funded by the government through its appropriation acts. Rather, the question is aimed directly at the mechanism and conduct of those functions, insofar as they are done in violation of constitutionally-designated limits.

In other words, petitioners do not question the “wisdom” of the Pork Barrel System. Rather, it is being asserted that contrary to the stand of the political branches, it is: (a) unconstitutional; and (b) amounts to grave abuse of discretion, which places the instant petition within the Honorable Court's jurisdiction.²¹

In this sense, it is worth stating that any act of government – be it Executive or Legislative in nature – is subsumed by the requirement of constitutionality. And any act even if within the power of a branch must always be measured against the “legal standards of the Constitution”. In *Garcia v. Executive Secretary*²², the Honorable Court stated:

“The power of judicial review is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution. Through such power, the judiciary enforces and upholds the supremacy of the Constitution.”

²¹ Tanada v. Angara, 272 SCRA 18, 47, May 2, 1997.

²² G.R. No. 157584, April 2, 2009.

Because of the constitutional issues raised assailing the very existence of the Pork Barrel System, the Executive branch and the Legislative Branch can not claim supremacy over the Honorable Court and insist simply on their interpretation that the said system is constitutional.

The power of budgeting priorities might be exclusively “political” but, the manner by which the power is exercised is certainly not. The Honorable Court has exercised judicial review on similar occasions. Most notable of these instances is the case of *Pascual v. Secretary of Public Works*²³, wherein the Honorable Court exercised jurisdiction despite an attempt by the public respondent's to resist citing the supremacy of congress in all matters pertaining to the power to legislate:

“Respondents do not deny the accuracy of this conclusion, which is self-evident. However, respondent Zulueta contended, in his motion to dismiss that:

'A law passed by Congress and approved by the President can never be illegal because Congress is the source of all laws . . . Aside from the fact that movant is not aware of any law which makes illegal the appropriation of public funds for the improvement of what we, in the meantime, may assume as private property . . . (Record on Appeal, p. 33.)'

The first proposition must be rejected most emphatically, it being inconsistent with the nature of the Government established under the Constitution of the Republic of the Philippines and the system of checks and balances underlying our political structure. Moreover, it is refuted by the decisions of this Court invalidating legislative enactments deemed violative of the Constitution or organic laws.”

The existence of a patently unconstitutional act cannot be left to depend on the political whims of the two branches. Even assuming that the Executive abolishes the Pork Barrel System in its present form, the same does not guarantee against the revival of the system on a later date, quite possibly when another person occupies the office in the future. Finally, it is solely within the Honorable Court's power to definitively rule on the validity of this mechanism of governance such that its

²³ Supra at note 18.

adoption or abolition will be definite and will no longer depend on the personal integrity of the current occupant.

B. THE EXECUTIVE AND LEGISLATIVE BRANCHES CANNOT USE THE POLITICAL QUESTION DOCTRINE TO EVADE JUDICIAL REVIEW ON THIS MATTER.

Even assuming that the issue concerns a “political question”, the Honorable Court retains jurisdiction to resolve the instant Petition.

Under the 1987 Constitution, the fact that a matter concerns a “political question” is not a shield against judicial scrutiny. The 1987 Constitution is explicit in defining the scope of judicial power with the authority of the courts to determine in an appropriate action the validity of the acts of the political departments,

“Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not 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.” [Art. VIII, Sec. 1 par. 2]

This expanded certiorari power has resulted in several cases wherein the Honorable Court assumed jurisdiction even if the issue was political in nature. The rulings of the Honorable Court in the cases of *Daza vs. Singson*, *Coseteng vs. Mitra Jr.*, and *Guingona Jr. vs. Gonzales* for instance resolved issues assailing the acts of the leaders of both Houses of Congress in apportioning among political parties the seats to which each chamber was entitled in the Commission on Appointments – a clearly “political” act. Nonetheless, the Honorable Court ruled the issues were justiciable since it involved the legality - not the wisdom - of the manner of filling the Commission on Appointments as prescribed by Section 18, Article VI of the Constitution.

A public official who willingly continues or allows to continue any act or program that violates the provisions of the Constitution is engaged in acts of grave abuse of discretion. Within this formulation, the instant Petition falls within the

Honorable Court's power to review since a key allegation herein is that through the continued funding and implementation of the components of the Pork Barrel System, the two (2) political branches are engaged in acts of grave abuse of discretion. It must be stated that the constitutive acts of grave abuse [i.e. allowing legislators to retain PDAF even if it is unconstitutional, continuing lump sum, discretionary funds, and allowing similar funds to exist off-budget] are not even denied by the public respondents, and instead are being justified as not being “intrinsicly wrong” and necessary for effective governance. The Executive and the Legislative branches do not even dispute that billions are lost every year to corruption under the Pork Barrel System. And yet the system is maintained despite the acknowledged susceptibility to corruption simply because both branches are caught by the lure of discretionary and - as established by the COA Report - unaccountable spending.

In *Estrada v. Desierto*²⁴ the Honorable Court likewise rendered the issue justiciable when it ruled that the 1987 Constitution has enabled it to exercise judicial review whenever there is any occasion of grave abuse of discretion, to wit:

“To a great degree, the 1987 Constitution has narrowed the reach of the political doctrine when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable and enforceable but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Heretofore, the judiciary has focused on the “thou shalt not’s” of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Clearly, the new provision did not just grant the Court power of doing nothing. In sync and symmetry with this intent are other provisions of the 1987 Constitution trimming the so called political thicket. xxxx”

If there ever was a decisive instance where the 1987 Constitution's expanded judicial power would be justified, that would be this controversy since both political branches are caught in a self-serving, unconstitutional impasse that neither is inclined to break. In the meantime, each year that the Pork Barrel System is maintained, billions are lost every year to corruption.

²⁴ G.R. Nos. 146710-15. March 2, 2001.

II. THE PORK BARREL SYSTEM IS UNCONSTITUTIONAL.

A. THE PORK BARREL SYSTEM VIOLATES SEPARATION OF POWERS BY ALLOWING CONGRESS TO INTRUDE INTO THE EXECUTIVE DOMAIN OF PROJECT IMPLEMENTATION.

Throughout constitutional histories across nations, a wall has been maintained in recognition of the simple fact that even the truest of statesmen might falter when given the combined power to choose *where to spend* public money, and the power to *actually spend* it. This doctrine is embodied by our own Constitution wherein through various provisions, it specifically allocates power over the budget between the Executive branch and the Legislature.²⁵ As such, while the Legislature holds the power to approve the budget, it is the Executive that creates the annual proposal or the National Expenditure Program.

²⁵ Some of the relevant provisions include:

“Section 24. All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills, shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

Section 25.

The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law.

No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates.

The procedure in approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for other departments and agencies.

Section 29.

No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. xxx

All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

Article VII

Section 22. The President shall submit to the Congress, within thirty days from the opening of every regular session as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.”

When the Countrywide Development Fund (CDF) was challenged before the Honorable Court, the Honorable Court explained the permissible boundaries within which each Branch of government may participate in the budgetary process. Thus, the Honorable Court stated in *Philconsa vs. Enriquez*²⁶,

“The authority given to the members of Congress is only to propose and identify projects to be implemented by the President. Under Article XLI of the GAA of 1994, the President must perforce examine whether the proposals submitted by the members of Congress fall within the specific items of expenditures for which the Fund was set up, and if qualified, he next determines whether they are in line with other projects planned for the locality. Thereafter, if the proposed projects qualify for funding under the Funds, it is the President who shall implement them. In short, the proposals and identifications made by the members of Congress are merely recommendatory.[Underscoring supplied]

Philconsa v. Enriquez allowed the existence of the CDF only if Congress is limited to its constitutionally permissible role of “identifying projects” and did not in actuality participate in the “implementation” of public projects. Notably, the crux of the reasoning is the condition that Congress must only recommend, not dictate.

A subsequent challenge against the Pork Barrel System was dismissed because it failed to provide proof that members of Congress had in fact crossed the constitutional boundaries laid out in *Philconsa v. Enriquez*. In *Lawyers Against Monopoly and Poverty v. Secretary of Budget*²⁷, the Honorable Court although recognizing the paramount interest involved and the seriousness of the allegations that merited attention, declined jurisdiction in view of the lack of proof that the two (2) political branches were transgressing their constitutional limits, to wit:

“Regrettably, these allegations lack substantiation. No convincing proof was presented showing that, indeed, there were direct releases of funds to the Members of Congress, who actually spend them according to their sole discretion. Not even a documentation of the disbursement of funds by the DBM in favor of the Members of Congress was

²⁶ G.R. No. 113105, August 19, 1994.

²⁷ G.R. No. 164987, April 24, 2012.

presented by the petitioner to convince the Court to probe into the truth of their claims. Devoid of any pertinent evidentiary support that illegal misuse of PDAF in the form of kickbacks has become a common exercise of unscrupulous Members of Congress, the Court cannot indulge the petitioner's request for rejection of a law which is outwardly legal and capable of lawful enforcement. In a case like this, the Court's hands are tied in deference to the presumption of constitutionality lest the Court commits unpardonable judicial legislation. The Court is not endowed with the power of clairvoyance to divine from scanty allegations in pleadings where justice and truth lie. Again, newspaper or electronic reports showing the appalling effects of PDAF cannot be appreciated by the Court, "not because of any issue as to their truth, accuracy, or impartiality, but for the simple reason that facts must be established in accordance with the rules of evidence."

In a paper entitled "Understanding the Pork Barrel"²⁸, ("Nograles Paper") then Speaker of the House Prospero Nograles and Cong. Edcel C. Lagman, Chairperson of the House Committee of Appropriations declared that the Legislative Pork Barrel is constitutional using *Philconsa v. Enriquez*, because:

"Even more fail to realize that since the advent of the CDF in 1990 and the institution of the PDAF in 2000 up to the present, there has been no post-audit report by the Commission on Audit (COA) directly associating any Member of Congress to a serious abuse, misuse and/or infraction in the utilization and implementation of the much-maligned congressional funds...This is a gross misconception because Members of Congress neither handle the funds nor implement the projects. Their authority is limited to the identification of projects and designation of beneficiaries, subject to a specific menu. The implementation is undertaken by the appropriate government agency after an open public bidding." [Underscoring supplied]

Recently, when asked why the PDAF is maintained, respondent Secretary of Budget invoked the Constitution:

²⁸ Understanding the Pork Barrel, Speaker Prospero C. Nograles, Hon. Edcel C. Lagman, an electronic copy of which is available at http://web.archive.org/web/20120417145905/http://www.congress.gov.ph/pdaf/news/pork_barrel.pdf. A copy of the paper is attached is Annex "___".

“Lawmaking is a function of Congress. An important function of Congress besides making laws is what we call the power of the purse. We can’t remove from the lawmakers the power to scrutinize the budget and make sure that that budget is a budget aligned with the priorities of the government,’ he said. ‘Because once you remove that power from them, what will, who will, fulfill that function? What we should watch out for is the meddling (of lawmakers) that distort the budget,”²⁹

It is respectfully submitted that, the recently released COA Report fills the gap described by all of these statements.

While it is still true that textually, the various general appropriations acts still purport to limit legislators to a recommendatory role, the COA Report demonstrates that these limits are often recognized in the breach and have in fact, been rendered inutile. Indeed, the contents of the COA Report show that “Pork Barrel System” has allowed the Legislative branch to “hi-jack” the entire bureaucracy. In *Bermudez et al. vs. Executive Secretary et al*³⁰, the Honorable Court stated that a power remains recommendatory only if the exhortation or endorsement is “persuasive in character and not binding or obligatory upon the party to whom it is made.”

A summary of the major findings of the COA include the following:

- Despite guidelines that each legislator has fixed allocations (i.e. P 70 Million for Congressmen), a total of Seventy-Four (74) legislators exceeded their respective allocations.³¹
- Despite guidelines that expenditures should be within the respective districts, the DBM released funds for projects outside the legislative districts of sponsoring congressmen.³²
- The COA Report establishes that NGO recipients “were selected on the basis alone of the purported endorsement by the supporting legislators.”
- Despite existing laws and administrative regulations, the COA Report found that the legislator's power to select the NGO came without

²⁹ See “Palace: P25-B pork stays in 2014 budget”, Michael Lim Ubac, Philippine Daily Inquirer, 25 August 2013. Available at <http://newsinfo.inquirer.net/473637/pork-barrel-stays-in-2014-budget-says-abad#ixzz2d2imD9nI>.

³⁰ G.R. No. 131429, 04 August 1999.

³¹ cf. Table 10 of the COA Report.

³² cf. Table 11 of the COA Report.

any public bidding as “required under GPPB Resolution No. 12-2007”.³³

- In complete defiance of existing rules and regulations, the COA Report found that some recipient NGOs [6 in total] were incorporated by the legislators themselves or their relatives. According to the COA Report, releases to NGOs reached P 6.156 Billion.
- “[T]he implementation of various livelihood projects” funded by a total of P152.408 Million PDAF releases were similarly tainted. R.A. 9184 was flouted. Projects were not advertised and simply “awarded to suppliers identified by the legislator and/or of questionable legal and physical existence.”
- The COA found that Fifty-four (54) infrastructure projects were constructed “in private lots without any document to support the turn over of such properties to the government”³⁴ in complete defiance of the Honorable Court's landmark decision in *Pascual vs. Secretary of Public Works*.³⁵ Interestingly, the private properties benefited by the infrastructure projects were subdivision, some of which received funds several times.

As stated earlier, from 09 July to 15 September 2012, the implementing agencies were asked by the COA to comment on their audit highlights. The defense made by the National Livelihood Development Corporation (“NLDC”) is the most telling as relayed by the COA Report thus:

“NLDC has fully relied on the Office of the Legislators to supervise and ascertain project implementation. xxx

NLDC has been looking into interlocking personalities, establishing the legal and physical existence of NGOs endorsed by the legislators, blacklisted a number of NGOs, and has initially expressed hesitance in being part of the PDAF implementation as early as November 2008...

The project implementation is directly participated by the proponent legislators.”

³³ cf. COA Report, Part III, Chapter 2.

³⁴ cf. Table 43, COA Report.

³⁵ G.R. No. L-10405 dated 29 December 1960.

The COA Report spans 2007 to 2009. Within this period, several statutory and administrative “safeguards” were already in existence as a fall-out from the 1996 CDF scam. R.A. 9184 is but one of them. Another class would be the Government Procurement Policy Board Resolutions. In fact, one need not go far and simply quote the Constitutional reminder prohibiting a member of Congress from being directly interested in government contracts

“Section 14. No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.”

None of these proscriptions mattered to the legislators. As the COA Report details, constitutional, statutory, administrative and even judicial safeguards were all similarly disregarded.

The findings of the COA Report have not been credibly disputed. And neither can it be. The COA Report does precisely what the Nograles Paper refers to as a “post-audit report by the Commission on Audit (COA) directly associating any Member of Congress to a serious abuse, misuse and/or infraction in the utilization and implementation”. A Senator implicated at first tried to show that his handwriting was forged but, the COA has indicated that they have documents showing that the Senator had confirmed to them the veracity of his signatures in the PDAF releases.³⁶

On the other hand, the Executive branch has officially cited the COA Report as its basis in releasing the Statement dated 23 August 2013, as well as implementing an “abolition” of the PDAF:

³⁶ “Sen. Revilla himself verified pork barrel transaction signatures – COA” GMA Network News, 22 August 2013 Available at <http://www.gmanetwork.com/news/story/323190/news/nation/sen-revilla-himself-verified-pork-barrel-transaction-signatures-coa>.

“There are those who treat the PDAF as their own private fund, to use as they please. This is clearly wrong: What is involved here is the people’s money; it should be used for the benefit of the people, and not for the benefit of a few greedy individuals. The shocking revelations of this misuse—the latest being the COA Special Audit Report in the 2007-2009 PDAF which was released this past week—are truly scandalous, and so the time has come to do two things.”

Moreover, the release of the official Statement of the Executive Branch was made in live television where the heads of both Houses of Congress were seen behind the President as he delivered these words affirming official action on the basis of the COA Report.

The COA Report indisputably demonstrates the stark reality that legislators have been engaged in “implementation” by wielding powers so far beyond the contemplation of mere recommendations that it has allowed absurdity to seep in. In one particular instance, a legislator was cited by the COA for releasing his PDAF to a foundation bearing his father's name. As detailed in the findings above, the fact that legislators can compel the award of projects on the strength of a mere recommendation alone renders the pretense that he is merely “recommending” an abject lie. The fact that a legislator's letter can award projects without any bidding, produces the same effect. And perhaps worst of all, the fact that legislators can award projects to their own “NGOs” gives the lie to any claim that his word is only “persuasive”.

Finally, an illustration of how absolute and definitive the power legislators wield over project implementation in complete violation of constitutional principles can also be traced from one of the recommendations made by the COA:

“It also recommended that legislators *limit their participation to identification* of projects, and ensure that such projects are eligible under the terms and provisions of the General Appropriations Act”

For the COA to actually recommend that in the future, legislators limit their participation and avoid implementing projects is a stark recognition that the Status Quo is that legislators **are** the ones dictating and who practically implement PDAF-funded projects.

To insist that the public and the Constitution should be comforted by what looks good on paper – that legislators remain “recommenders” - and ignore reality as shown by the COA's Report is too much to ask. The extent of actual participation, if not control wielded by legislators over the PDAF has wrecked the constitutional boundaries, as described by the Honorable Court in *Lawyers vs. Secretary*:

“So long as there is no showing of a direct participation of legislators in the actual spending of the budget, the constitutional boundaries between the Executive and the Legislative in the budgetary process remain intact.”

To paraphrase the Honorable Court's words in *Lawyers v. Secretary*, the existence of the COA Report establishes that the unconstitutional nature of the Pork Barrel System is now beyond “surmises and conjectures”.

**B. THE PORK BARREL SYSTEM
RENDERS THE EXECUTIVE AND
THE LEGISLATIVE BRANCHES
PRACTICALLY INCAPABLE OF
CHECKING EACH OTHER IN
BUDGETARY AND OTHER MATTERS,
THEREBY OFFENDING THE
PRINCIPLE OF CHECKS AND
BALANCES.**

It is a fundamental principle in a constitutional system that the aims of govern under our Constitution's system of checks and balances, one department is given certain powers by which it may definitely restrain the others from exceeding constitutional authority. It may object or resist any encroachment upon its authority, or it may question, if necessary any act or acts which unlawfully interferes with its sphere of jurisdiction and authority. This is best achieved if the system of checks and balances is observed.

The textual safeguards of checks and balance applicable to the relationship between the Executive and the Legislature are:

1. The Executive alone can craft the budget proposal and its proposed amounts cannot be exceeded by Congress;

2. The Legislature may choose to reduce the Executive's budgetary proposals;
3. The Legislature's power to deny the proposed budget.
4. The Executive power to time the release of funds;
5. The Legislature's power of Impeachment.

These “checks” working together ensure that our government is not held captive by self-interest. By completely segregating the functions in the budgetary process and virtually pitting one branch against the other, the framers intended a precarious balance that will protect public interest by making it nearly impossible for the two political branches to collude in the use of public funds.

The Legislature is programmed to scrutinize the Executive's budget proposals. In turn, the Executive is intended to be shielded from the pandering of individual legislators for funding. Legislative influence can only extend to identifying projects but, the Executive alone determines who to award it to as a shield against Legislators generating business for themselves or their families.

The Pork Barrel System wrecks this balance.

By introducing the two (2) components of the Pork Barrel System: (1) the Legislature's PDAF; and (2) the Executive's ever increasing lump sum, discretionary funds, some of which are not even found in the budget, the Pork Barrel System has engendered a culture of cooptation instead of the guarded cooperation the constitution envisioned.

To begin with, the Pork Barrel System did the unthinkable – it gave each legislator a direct, personal interest in the passage of the yearly budget. With P 70 Million or P 200 Million at stake every year, each member of Congress has been transformed from a disinterested participant or fiscalizer into a direct partner invested in the success of the budgetary process.

The COA Report's findings show that despite all textual exhortations of dispassionate scrutiny, arm's length dealing, and non-involvement in project implementation, legislators and their families cannot help but be directly involved in the spending of their respective allocations.

Moreover, the inclusion of huge lump sum, discretionary funds in the National Expenditure Program should theoretically not pass muster under Congressional scrutiny. Instead however, the years have seen these funds increase dramatically. Nearly unbridled power to spend in the hands of one person should trouble any legislator, but no successful attempt to stem the rise of say, “Unprogrammed Funds” has been successful. The answer may lie in the realization that the corresponding PDAF allocations through the same periods have also been increased by the Executive in its yearly proposals.

Another imbalance attributable to the Pork Barrel System is found in the Legislature's continued inability to pass laws to check the Executive's discretionary spending as required by the Constitution, to wit:

“Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.”

Ostensibly, the general appropriations act should serve as the “law” that provides guidelines for discretionary funds wielded by the Executive. But recent experience shows that lump sum discretionary funds continue to be governed by vague, unclear guidelines that serve little utility in channeling Executive discretion, if any are imposed at all.

The President's Social Fund, sourced from the earnings of the Philippine Amusement and Gaming Corporation and the Philippine Charity Sweepstakes Office is another example. The COA has previously flagged this fund in its 2010 report. Noting therein that of the P1.268 billion available in the fund, around P391 million was transferred to several NGOs without disbursement vouchers and supporting document.³⁷ Up till now however, the Legislature is unable to move to pass laws that would channel the discretion in the use of these funds within constitutional limits.

The Pork Barrel System is likewise responsible for the mutation of the Executive's power to time the release of funds. Without the Pork Barrel System, a legislator is not directly interested in a particular funds release. With the introduction of Legislative PDAF, each Congressman anxiously waits for his or her annual P 70 Million allocation, while Senators are similarly concerned with their P 200 Million

³⁷ COA Questions Presidential Fund Disbursements, Leila B. Salaverria, Philippine Daily Inquirer, 15 January 2012. Available at <http://newsinfo.inquirer.net/128111/coa-questions-presidential-fund-disbursements#ixzz2d4Gxtofb>.

allocations. The Executive's Power to dictate the “Release” of PDAF renders the balance between the two branches impracticable because while the text of the annual General Appropriations Act may provide for certain funds due under PDAF, the Executive's control over the timing of their “Release” - if at all - holds the individual legislators hostage to the whims of the Executive. By operation, the PDAF's existence has in effect rendered Congress' “Power of the Purse” illusory. A congressman who fiscalizes the Executive's budget proposal is subject to retaliation through the “delayed release” of PDAF.

The disruption of the system of checks and balances also explains the COA Report findings on how legislators are able to cause fund releases without bidding, to their own “NGOs”, and on the basis of mere letters, in complete defiance of existing laws and regulations. Implementing Agencies belonging to the Executive branch though textually empowered to check these unwarranted releases are held hostage by the legislators' threat of similarly denying the Executive's largesse embodied in the lump sum, discretionary funds.

Indeed, instead of checking each other's possible abuses, the Pork Barrel System has institutionalized collusion between the two political branches to facilitate the continuity of their respective unconstitutional and unaccountable spending. There is little incentive to scrutinize the excesses of the other Branch.

Finally, the Pork Barrel System materially impairs the single most important check the Legislature wields over Executive branch – the power of impeachment. Recent political history has witnessed that the chief executive has little to fear from impeachment because under the Pork Barrel System a President may stave off impeachment:

- a) directly through the individual PDAF of legislators; or
- b) indirectly through the power over lump sum, discretionary funds

The honesty and integrity of the current occupants of the public offices who wield discretion over these funds is not relevant to the issue of the funds' propriety under the Constitution. If the funds by their nature, are prone to abuse and create a culture inimical to checks and balances, then they cannot survive constitutional scrutiny no matter who actually wields them.

C. THE PORK BARREL SYSTEM OFFENDS THE ACCOUNTABILITY PROVISIONS OF THE CONSTITUTION BY CONSISTENTLY DEMONSTRATING OVER THE PAST DECADES THAT IT IS IMPERVIOUS TO PRACTICAL CONTROL AND ACCOUNTABILITY MEASURES.

The Pork Barrel System is also unconstitutional for consistently offending and remaining impervious to accountability provisions of the Constitution.

Article XI, of the Constitution states:

“Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.”

In relation thereto, Article VI, Section 29 states:

“No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. xxx

All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.”

Sections 27 and 28 of Article II complement these provisions by stating thus:

“Section 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

Section 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.”

In order to achieve these goals, the Constitution imposes several safeguards to ensure that public funds are not abused, most especially by the people entrusted with their safe-keeping. The interest of the Constitution in Accountability requires that any governance mechanism - and the officials who implement it - remains accountable to the checks enacted and created thereunder, if not through other laws.

As such the provisions on the Commission on Audit in Article IX-D, Section 2 state:

“The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post- audit basis: xxx

The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.”

As stated earlier, the Constitution also prohibits government officials, most especially members of Congress, from being directly interested in government contracts or for intervening in any matter before government for his pecuniary benefit. The Constitutional provisions on the Ombudsman and the Sandiganbayan operate to act as deterrent mechanisms to complement the earlier provisions.

To further the interests of accountability, several pieces of legislation have been passed to govern the use of public funds, most notable of which is Republic Act No. 9184 [Government Procurement Reform Act or “An Act Providing for the

Modernization, Standardization and Regulation of the Procurement Activities of the Government and For other Purposes]. The Anti-Graft and Corrupt Practices Act or RA 3019 complements these measures as well.

As shown by the COA Report, the Pork Barrel System however has shown immunity to all of these constitutionally-mandated measures despite decades of trying to stem the abuse. It has become clear that the very fact that the PDAF system exists outside any constitutional process renders it impervious to any effective and practical check by the Constitution's design. The fact that Pork Barrel Funds are according to the COA repeatedly anomalously availed of, and in some instances utilized in direct violation of pre-existing guidelines and legal requirements, indicates that the number and strength of safeguards matter little to those who seek to abuse the system.

Worse, in the wake of the latest scandal's revelations, admissions by lawmakers³⁸ about being unable to “monitor” the funds they gave away evidence that PDAF spending cannot be effectively policed. The admissions are made more alarming because the lawmakers who made them are not “political neophytes” or imbeciles. If such wise and experienced legislators readily confess of their inability to safeguard the billions they spend each year, then accountability within the Constitution's parameters is certainly not feasible. On the other hand, mayors who have been cited as PDAF recipients have gone to enforcement authorities to complain about forged signatures.³⁹

Refuge under the Implementing Agencies' various powers as custodians and implementers are unavailing. For instance, in the case of the Department of Budget and Management (“DBM”), while on paper there is supposed to be a form of control, the COA Report explicitly states that the DBM “failed to keep proper records of and efficiently monitor releases per legislator, such that it could not provide a complete schedule despite repeated requests.” More to the point, in the actual implementation of fund releases, the COA Report details that the DBM's “paper powers” - and other implementing agencies - are in practice actually ignored.

Perhaps the best illustration of the futility of purported “new safeguards” is the fact that the safeguards being peddled today are the same safeguards peddled 17 years

38 “Jinggoy: We're Not Obligated to Check NGOs Getting Pork.” Ryan Chua, ABS-CBN News, 15 August 2013, available at <http://www.abs-cbnnews.com/focus/08/15/13/jinggoy-were-not-obliged-check-ngos-getting-pork>

39 Ex-Mayor Appears Before NBI to Shed Light on PDAF Scam. ABS-CBN 14 August 2013, available at <http://www.abs-cbnnews.com/nation/08/14/13/ex-mayor-appears-nbi-shed-light-pdaf-scam>. See also “Ex-Mayors from Bataan Deny Involvement in PDAF Scam, Central Luzon Daily, 08 August 2013, available at <http://www.centralluzondaily.net/bataan-mayors-deny-involvement-in-p10b-pdaf-scam/>.

ago. When former Cong. Romeo Candazo died recently, his role as the whistleblower of the 1996 CDF scam was revealed by the broadsheet that led the expose, which likewise shared glimpses of its reporters' interviews with him. A telling passage is reproduced below:

“He said the kickbacks were ‘SOP’ (standard operating procedure) among legislators and ranged from a low 19 percent to a high 52 percent of the cost of each project, which could be anything from *dredging, rip rapping, asphaltting, concreting* and construction of school buildings.”⁴⁰
[Italics supplied]

Interestingly, the Statement dated 23 August 2013 of the President contains the following assertion:

“They cannot be temporary infrastructure, and neither can they be dredging, de-silting, re-gravelling, or asphalt overlay projects.”

In other words, the “new” safeguards announced in the President's statements are not only rehashed, they were already factored in before and were in existence for the past two decades since the 1996 CDF scam. And yet, they were still insufficient to curb or prevent the sandal being faced today. There is no reasonable expectation that their rehash will result differently.

On the other hand, as earlier laid out, the ability of Congress to exercise its power to check Executive spending of lump sum, discretionary funds is held hostage by the self-preservatory interest generated by the PDAF system. As such, the nation has seen the continued existence of lump sum, discretionary appropriations, and worse “off-budget” lump sum funds that are not even included in normal budgetary deliberations as required by the Constitution.⁴¹

Despite the mandate of Section 27 and Section 28 of Article II, of the Constitution, the public is hardly ever in a position to monitor the expenditure of these funds. In fact, even legislators themselves are complaining about the “opaque”

⁴⁰ Candazo, First Whistle-Blower on Pork Barrel Scam, Dies; 61, Philippine Daily Inquirer, 20 August 2013, available at <http://newsinfo.inquirer.net/469439/candazo-first-whistle-blower-on-pork-barrel-scam-dies-61#ixzz2d1samUKJ>

⁴¹ cf. Section 24, 25 and 29 of Article VI, Constitution.

nature of these funds. The Malampaya Fund is a prime example. Presidential Decree No. 910, which created the said fund states:

“Section 8. x x x production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President.”

Under these terms, the Malampaya Fund's utilization cannot be effectively monitored by Congress. First, it is allowed to remain outside the budgetary process, and thus escapes the usual scrutiny of legislators. Second, because of the broad and vague parameters that govern its use (i.e. such other purposes) that until now, and despite several scandals reported about its misuse (the latest being P 900 Million being implicated to NGOs involved in the P 10 Billion PDAF scam), remain unrevised by Congress.

As earlier pointed out, the Presidential Social Fund is also similarly questionable in that it exists outside the budgetary process and no suitably defined parameters exist on its proper use such that the discretion afforded to the President is overbroad and lacks appropriate standards.

The unlimited discretion wielded over both funds – Malampaya and the Presidential Social Fund – are claimed as justifiable because of allegedly being backed by law. But, to the extent that the law's on which they rely on provided no discernible and practically applicable standard that can meet the Constitution's requirements for Accountability, both are considered undue delegations. In *Abakada v. Ermita*⁴², the Honorable Court laid out the tests for valid delegation:

“Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate. It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the

⁴² G.R. Nos. 168056, 168207, 168461, 168463 & 168730, 01 September 2005.

delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented.”

Under this test, “such other purposes” does not qualify as a discernible standard since it does not provide “adequate guidelines or limitations” to map out the “boundaries of the delegate’s authority”. In the case of the Malampaya Fund, the sorry history attesting to its misuse is the best example of how the phrase “such other purposes” is so broad, it provides no standard at all. Unfortunately, through the ill effects of the Pork Barrel System's ability to tempt self-interest, the Legislature remains pliant and has left this aberration unchecked.

Finally, in terms of exacting accountability from those directly implicated in the misuse of Pork Barrel System, one realizes that the traditional textual accountability safeguards of the Constitution are also rendered meaningless.

As stated earlier, it has become clear that so long as the Pork Barrel System remains, no President will ever be reasonably checked by the power of impeachment. The ability to wield both Legislative PDAF (through timed releases) and the Executive Pork Barrel (through discretionary use of lump sum funds) is a potent combination which can stave off several impeachment attempts.

In the same vein, members of Congress are immune from their own accountability measures. The Constitution provides that a member of Congress may be removed by the House wherein he sits for certain grave offenses, which presumably would involve misuse of PDAF funds. In reality however, no member of Congress has ever been subjected to such disciplinary proceedings. And the COA Report provides the reason why. The sheer amounts of funds misused by several individuals indicate that there is little likelihood that a majority can be sufficiently motivated to expel a fellow member.

Even the ultimate check for accountability under democratic societies is defeated by the Pork Barrels System – election. The Pork Barrel System excels in self-perpetuation since it provides the means – millions of money to be used as campaign funds - by which the abusive official can perpetuate himself in power.

III. THE CONTINUED FUNDING AND IMPLEMENTATION OF THE PORK

BARREL SYSTEM AMOUNTS TO ACTS OF GRAVE ABUSE OF DISCRETION.

Against the backdrop established, the continued funding, allocation and use for the two (2) components of the Pork Barrel System is likewise unconstitutional for being acts of grave abuse of discretion.

First, not only have both the Executive and Legislative closed their eyes to the unconstitutional nature of the Pork Barrel System it being against Separation of Powers and Checks and Balances, they continue to take advantage of its proceeds – The legislature continues to avail of the PDAF and implement projects directly, while the Executive continues to evade budgetary processes through its combined discretionary use of lump sum funds, and off-budget mechanisms.

Second, the sheer fact that over the span of almost two decades, plunder of public funds is repeatedly and systematically committed and yet the political branches remain insistent on maintaining the Pork Barrel System reveals a toleration of systemic, institutional corruption accomplished under a system that undeniably cultivates patronage and reinforces corrupt political power through the same funds taken advantage of.

Third, by maintaining the Pork Barrel System, both the Executive and Legislative allow the continued proliferation of undeniably corrupt acts which experience has shown to be inseparable from the Pork Barrel System itself. To recount a few examples. The COA Report has indicated that one of the most important lines of doctrine regarding Accountability and Public Spending, which states that public funds cannot be used on projects that involve private interests and property as stated in the definitive case of *Pascual v. Secretary of Public Works and Highways*, is systematically flouted. COA report shows that legislators are spending PDAF for non-public purposes through Fifty-four (54) infrastructure projects costing PHP 161.5 Million. As aforesaid, the COA's 2010 Report has flagged the Presidential Social Fund for similar misuse. And the Malampaya Fund proceeds are now being investigated for having lost P 900 Million to a “fake NGO.” Such tolerance in the face of irrefutable proof provided by repeated scandals and now, the COA Report constitutes grave abuse of discretion which must be checked by the Honorable Court.

Further, a primary reason why the Honorable Court upheld the CDF in *Philconsa v. Enriquez* was the avowed policy that the “Countrywide Development

Fund attempts to make equal the unequal.” Decades later, the COA Report reveals the simple truth that this aim has never been met. With findings that indicate that seventy-four (74) legislators exceeded their allocations by several millions, the COA Report makes it clear that “equality” among legislators and their districts is far from the reality.

IV. THE PORK BARREL SYSTEM IS A SUPERFLUOUS AND UNNECESSARY MECHANISM THAT OFFENDS THE PROVISIONS OF THE CONSTITUTION ON LOCAL AUTONOMY AND THE LOCAL GOVERNMENT CODE.

Any mechanism of governance, be it police power or not, is subject to the measure of whether its aims are best achieved by the means employed and the cost entailed. The Pork Barrel System fails this measure since the same means can be achieved through less onerous and more importantly, constitutional means.

The avowed purpose of the PDAF system is to “equalize” development across all districts and provinces of the country. As such the Nograles Paper⁴³ maintains:

“Many more fail to see that the relatively small projects implemented under the PDAF complement and link the national development goals to the countryside and grassroots as well as to depressed areas which are overlooked by central agencies which are preoccupied with mega-projects.”

A similar justification is found in the President's Statement dated 23 August 2013.

The decades of tolerating the ills of the Pork Barrel System have conveniently overlooked that this avowed purpose is both superfluous and offensive to the Constitution's provisions on local autonomy and the Local Government Code.

⁴³ Supra.

This is contained in the Constitutional exhortation that a “system of decentralization” of national powers and functions be focused on local government as Article X, Section 3 of the Constitution states:

“Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.”

In relation to this, Article X of the Constitution likewise states:

“Article X

Section 14. The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region.”

The function sought to be served by the Pork Barrel System is already specifically met by Local Development Councils (“LDC”) created in Section 106 of the Local Government Code of 1991, to wit:

“TITLE VI: LOCAL DEVELOPMENT COUNCILS

Section 106. Local Development Councils. - (a) Each local government unit shall have a comprehensive multi-sectoral development plan to be initiated by its development council and approved by its *Sanggunian*. For this purpose, the development council at the provincial, city, municipal, or barangay level, shall assist the corresponding *Sanggunian* in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction.”

As such, both constitutional and statutory policies require that devolution of national functions be coursed through the Local Government Units (“LGU”). The Pork Barrel System offends this mandate by channeling the funds and the power to dispense them to national legislators instead of the LGU officials.

The fact that the Pork Barrel System is superfluous is further highlighted by Section 107 of the Local Government Code, which provides the composition of the LDCs. According to Section 107, one of the members of the LDC is the “representative of the congressman” or in some cases (i.e municipal LDC), the Congressman himself. Clearly, if the purpose is simply to benefit from the knowledge and insight of the legislative member, then the best channel to take advantage of that insight is the LDC. This is not only what the Constitution and the Local Government Code requires, it also evades all the pernicious effects of the Pork Barrel System.

Other than that the Local Government Code's provisions already address the aims sought to be achieved by the Pork Barrel System, there is also the fact that Local Governments are in an even better position to do this function than national legislators. Senators being nationally elected are less knowledgeable than local government officials like Mayors about what their respective municipalities need. Congressmen, whose jobs require them to be in Manila most of the time fare no better. Clearly, even assuming it is constitutional to provide legislators unmitigated power to implement spending, the rationale behind that power is superfluous.

V. THE PORK BARREL SYSTEM ENABLES THE CONTINUED NON-REALIZATION, IF NOT OUTRIGHT VIOLATION OF VARIOUS CONSTITUTIONAL MANDATES, INCLUDING THE PROSCRIPTION AGAINST POLITICAL DYNASTIES.

As a final ground of unconstitutionality, petitioners highlight two (2) undeniable effects of the Pork Barrel System that offend our constitutional order: (1) it stains the right of suffrage; and (2) it operates as the reason why the constitutional mandate banning political dynasties will never be realized.

Suffrage is the supreme political right of every citizen. The right to vote and to be voted upon is protected not just in terms of being able to vote, but also in terms of being able to have real choices as to who will lead, with no monopoly of public position. Article II, Section 26 of the Constitution embodies this principle states:

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

While the provision is admittedly not self-executing, the offense to the Constitution remains in that the Pork Barrel System through the use of patronage and similarly repugnant means, enables the monopoly of public office by individuals and their families.

As verified by the COA Report, in not a few instances, the Pork Barrel allocation is the ends sought by several legislators. What is even more constitutionally appalling is that the Pork Barrel System has also become the “means” to perpetuate the ability to access public funds for personal use. The COA Report details how several legislators funneled their PDAF to their family foundations or “NGOs”, which in some cases the legislators shamelessly incorporated themselves. The diversion of funds to family enterprises and organizations evidenced the intent to use said funds to perpetuate themselves in power.

Under this set-up, there is no incentive for any legislator to pass the required implementing legislation against political dynasties. Indeed, to pass such a law would mean that the continued access to Pork Barrel will be imperiled. As such, the existence of the Pork Barrel System renders the Constitution's mandate a pipe dream.

In the process, the right of suffrage is directly impaired. The public though ostensibly empowered to vote their leaders is in reality rendered helpless to break it because the corruption engendered by the “Pork Barrel System” has pervaded the electoral process. The past elections offer a stark example. In several areas, not only have families maintained sway for decades but, it has actually reached the point where the contending candidates belong to the same family. Grandfathers running against their grandchildren, uncles against their nephews.

A political dynasty is not inclined to abolish the pork barrel when it is the easiest way to perpetuate their stranglehold over a locality.

In conclusion, despite two decades of the Pork Barrel System, provinces remain poor and under-developed. Poverty index remains high in the same areas despite the billions allocated each year for their development. The COA Report shows that the funds meant to check poverty have instead gone to organizations whose sole purpose is to perpetuate the lawmaker and his families hold over their position. Political dynasties perpetuate, corruption thrives, and the nation continues to suffer for it. All for the sake of maintaining a system which all this time has always been unconstitutional from the start.

**ALLEGATIONS IN SUPPORT OF THE
APPLICATION FOR THE ISSUANCE OF A TEMPORARY
RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY
INJUNCTION**

Petitioners re-plead, by reference, the foregoing allegations.

Rule 57, Sec. 3 of the Rules of Court provides:

“Section 3. *Grounds for issuance of Preliminary Injunction.* – A Preliminary Injunction may be granted when it is established:

(a) **That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of,** or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) **That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant;** or

(c) **That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.** [Emphasis supplied]

In *Filipino Metals Corporation vs. Secretary, Department of Trade and Industry*, 463 SCRA 616 (2005), the Supreme Court laid down the requisites for the issuance of a writ of preliminary injunction:

“Only two requisites are necessary for a preliminary injunction to issue: **(1) the existence of a right to be protected and (2) the facts, against which the injunction is to be directed violate said right.** While a clear showing of the right is necessary, its existence need not be conclusively established. In fact, the evidence required to justify the issuance of a writ of preliminary injunction need not be conclusive or complete. The evidence need only give the court an idea of the justification for the preliminary injunction, pending the decision of the case on the merits. Thus, to be entitled to the writ, petitioners are only required to show that they have an ostensible right to the final relief prayed for in their complaint.” [at page 625; emphasis supplied]

The Legislature's encroachment upon the province of the Executive and, to a large extent, the entire bureaucracy, to the detriment of the taxpayers including petitioners entitles petitioners to the issuance of writs prayed for.

Indeed, the continued insistence that the Pork Barrel System is constitutional despite the consistent findings through the decades that it is not, and has in the process led to the dissipation of billions of public funds, require the immediate protection of the Honorable Court.

Petitioner has a clear legal right that merits protection.

Petitioners' right to the issuance of a temporary restraining order and/or writ of preliminary injunction is indisputable. Petitioners as taxpayers have the right to file suit to enjoin or prevent the illegal disbursement or improper use of public funds, or their wastage through the enforcement of an invalid or unconstitutional law. [*Lawyers Against Monopoly and Poverty vs. Secretary of Budget, supra*]

In addition, petitioners have the right to vote and to be voted upon. Such right is a primary right in our democratic and republican state.⁴⁴

Petitioners' foregoing rights are continuously being violated by respondents

⁴⁴ Constitution, Art. II, Sec. 1; Art. V, Sec. 1.

through the implementation of the “Pork Barrel System”, thus warranting the issuance of a temporary restraining order and/or writ of preliminary injunction.

Respondents have been and continue to implement the “Pork Barrel System” which is unconstitutional and void. The “Pork Barrel System” is violative of the principle of separation of powers as it has allowed legislators to intrude into an Executive prerogative, i.e., to “implement” public projects. Notwithstanding the “safeguards” provided for in the “Pork Barrel System”, legislators have and continue to act in excess of their authority of identifying public projects by actually “implementing” the same. Indeed, the major findings contained in the COA Report prove that legislators have exceeded their authority of identifying public projects: (a) by selecting the recipients of public funds on the basis solely of their endorsement, including NGOs which have been incorporated by the legislators themselves; (b) by exceeding their respective budgetary allocation, (c) by releasing funds for projects outside of their respective legislative district, (d) by disregarding the requirements under Republic Act No. 9184 which the Legislative branch itself enacted; and (e) by releasing funds to infrastructure projects constructed “in private lots without any document to support the turn over of such properties to the government”, in complete defiance of the Honorable Court's landmark decision in *Pascual vs. Secretary of Public Works*.

The “Pork Barrel System” has destroyed the system of checks and balances placed under the 1987 Constitution. The Legislative branch has practically abdicated its duty to check and scrutinize the Executive branch’s budget proposals, and continue to allow the President to allocate funding under the Special Purpose Funds and such other discretionary funds in the 2014 National Expenditure Program without any law to check or control the manner by which the President disburses said funds. The Executive branch, in turn, releases the P70 Million and P200 Million allotment to each legislator as incentive for allowing it to continue allotting funds to the Special Purpose Funds and other discretionary funds in the annual National Expenditure Program. This has practically allowed both branches to look the other way around so that both continue to enjoy the benefits of the “Pork Barrel System”.

While there are constitutional, statutory, administrative and even judicial safeguards imposed on the “Pork Barrel System”, these were not only disregarded, but also rendered inutile. The “Pork Barrel System” has turned into a system where public funds can no longer be accounted for. Even the legislators themselves admitted that there is no way for them to monitor and account for the funds that have been disbursed. That after 17 years, the safeguards imposed on the “Pork Barrel System”

could not deter legislators from exercising the power to implement public project under the system is testament that the safeguards are not only ineffective, but inutile.

Worse, the Legislative branch has failed to pass the needed laws to police and account for the disbursement of the President's discretionary funds under the Special Purpose Funds and the "Malampaya funds". At present, the Executive branch is granted unbridled discretion to do as it pleases with the Special Purpose Funds and the "Malampaya funds", thus rendering nugatory the accountability provisions of the 1987 Constitution.

The "Pork Barrel System" is likewise unconstitutional as it violates the provisions of the 1987 Constitution and the 1991 Local Government Code calling for a decentralization of national powers in favor of local government units.

The "Pork Barrel System" is unconstitutional as it violates petitioners' right to suffrage, to vote for and be voted upon, and perpetuates the existence of political dynasties which is abhorred under the 1987 Constitution.

Respondents committed grave abuse of discretion in continuing to implement the "Pork Barrel System" considering that the system is, as has been shown before, unconstitutional and void.

There is extreme urgency for the issuance of a temporary restraining order and/or writ of preliminary injunction.

At present, respondents are continuing to implement the 2013 General Appropriations Act which houses the "Pork Barrel System", in the same way that they have implemented the "Pork Barrel System" in the previous General Appropriations Act. Likewise, as shown in the 2014 National Expenditure Program for 2014, respondents have again included the "Pork Barrel System" for consideration and deliberation.

Hence, there is extreme urgency for the issuance of a temporary restraining order and/or a writ of preliminary injunction in order to preserve the rights of the petitioners. Unless an injunctive writ is issued, the public respondent will implement the 2013 General Appropriations Act and deliberate on the National Expenditure Program for 2014, both of which will expose millions of public funds to the ills of the "Pork Barrel System".

Petitioner will suffer grave irreparable injury unless public respondents are restrained.

Petitioner stands to suffer tremendous and irreparable injury, and will continue to suffer such injury if the implementation of the “Pork Barrel System” under the General Appropriations Act, the 2014 National Expenditure Program and such other future legislation calling for the disbursement of discretionary funds as may be passed by the Legislative branch is enjoined.

Unless a temporary restraining order and/or writ of preliminary injunction is issued, public respondents will continue to implement the “Pork Barrel System” and millions of pesos in public funds will continue to be squandered and unaccounted for. As a result, Filipino people in general will suffer grave and irreparable injury. Their hard-earned money which they have given up as taxes will continue to be wasted and wasted. They will continue to suffer and be deprived of beneficial projects for public health, safety and welfare that can only be derived from the proper use and accounting of public funds. The recent heavy rains and floods that have plagued Metro Manila and certain parts in Luzon are testament of the much needed reforms and programs that the Filipino people need badly, reforms and programs which can never be realized because public funds are illicitly siphoned to be used elsewhere.

Lastly, as the current situation stands, each day that the respondents exercise the powers challenged herein, tremendous damage to the public and to national resources is being wrought. Unless a temporary restraining order and/or writ of preliminary injunction is issued, the government’s purse will continue to bleed and dry up. Without an injunctive writ, the National Treasury will one day end up with an empty coffer. Without public funds, the National and Local government will be unable to perform its duties and ensure the safety and welfare of the Filipino people. Chaos will ensue in the streets of our nation. The bleeding must stop now.

Petitioner is ready, willing and able to post an injunction bond in such reasonable amount which this Honorable Court may fix in the exercise of its sound discretion to answer for damages which the Respondent might sustain should it finally be determined that petitioner is not entitled to the issuance of a restraining order/writ of preliminary injunction.

Petitioner is clearly entitled to the reliefs prayed for, and part of such reliefs

consist of enjoining and restraining the respondents.

PRAYER

WHEREFORE, Petitioners respectfully pray that this Honorable Court:

- a. Give due course to the instant *Petition*;
- b. Immediately issue a Temporary Restraining Order and/or Writ of Preliminary Injunction enjoining:
 1. **The Executive Secretary, Department of Budget and Management** and those acting for and/or under them, from
 - releasing funds in relation to the Legislature's Priority Development Assistance Fund [or its components the: (1) Priority Development Assistance Fund; and (2) the Various Infrastructures and Local Projects Fund]; the Executive's lump sum, discretionary appropriations in the present General Appropriations Act of 2013 except the Calamity Fund and Contingent Fund; and the Executive's off-budget lump sum, discretionary funds including the Malampaya Fund and the Social Fund;
 - seeking Congressional approval of the portions of the National Expenditure Program of 2014 pertaining to the “unified” Priority Development Assistance Fund and the Executive's lump sum, discretionary appropriations except the Calamity Fund and Contingent Fund; and
 - from continuing with any further proceedings relevant to, arising out of or in connection with the same;
 2. **The Philippine Senate and the House of Representatives** and those acting for and/or under them, from taking up in their deliberations any item relating to the approval of the 2014 National Expenditure Program's items relating to the: “unified” Priority Development Assistance Fund [or its components: (1) Priority Development Assistance Fund; and (2) the Various Infrastructures and Local Projects Fund.]; and the Executive's lump sum, discretionary funds except the

Calamity Fund and Contingent Fund; and

3. **The National Treasurer**, from any act that seeks to enforce the (a) Priority Development Assistance Fund; (b) the Various Infrastructures and Local Projects Fund; (c) the Executive's lump sum, discretionary funds except the Calamity Fund and the Contingent Fund, under the General Appropriations Act of 2013 and other laws.

5. c. After further proceedings, grant the instant *Petition*:
 1. declaring the (1) the Executive's Lump Sum, Discretionary funds, except the Calamity fund and the Contingent fund; (2) the Priority Development Assistance Fund; and (3) the Various Infrastructures and Local Projects Fund or any other permutation thereof, null and void for being unconstitutional;
 2. declaring the assailed (1) the Executive's Lump Sum, Discretionary funds, except the Calamity fund and the Contingent fund; (2) the Priority Development Assistance Fund; and (3) the Various Infrastructures and Local Projects Fund or any other permutation thereof null and void, for being acts of grave abuse of discretion;
 3. ordering the Executive Secretary, the Department of Budget and Management, the National Treasurer and those acting for and/or under them, to immediately cease any expenditure under (a) the Priority Development Assistance Fund; (b) the Various Infrastructures and Local Projects Fund or any permutation thereof; and (c) the Executive's Lump Sum, Discretionary funds, except the Calamity fund and the Contingent fund; under the General Appropriations Act of 2013 and other laws;
 4. ordering the inclusion in budgetary deliberations with the Congress of all presently off-budget, lump sum, discretionary funds including, but not limited to, proceeds from the Malampaya project or the Malampaya Fund, remittances from the Philippine Amusement and Gaming Corporation and the Philippine Charity Sweepstakes Office or the Executive's Social Fund;
 5. Ordering respondents Executive Secretary and/or Department of Budget and Management to:

- Release to the Commission on Audit and to the public the complete schedule/list of legislators who have availed of their PDAF and VILP from the years 2003 to 2013, specifying the use of the funds, the project or activity and the recipient entities or individuals, and all pertinent data thereto.
- Release to the Commission on Audit and to the public the use of the Executive's Lump Sum, Discretionary funds, including the proceeds from the Malampaya project or the Malampaya Fund, remittances from the Philippine Amusement and Gaming Corporation and the Philippine Charity Sweepstakes Office or the Executive's Social Fund from 2003 to 2013, specifying the use of the funds, the project or activity and the recipient entities or individuals, and all pertinent data thereto.
- Henceforth provide detailed reports of the expenditure of all off-budget, lump sum, discretionary funds in the annual National Expenditure Program submitted to Congress.

6. prohibiting all public respondents herein from proposing, allocating, including and approving in any National Expenditure Program, General Appropriations Act or other legislation, the (1) Priority Development Assistance Fund; (2) the Various Infrastructures and Local Projects Fund; (3) the Executive's Lump Sum, Discretionary funds, except the Calamity fund and the Contingent fund; (4) any item, fund or appropriation similar in operation thereto; (5) or any item, fund or appropriation allowing the allocation and disbursement of public funds under the instruction, recommendation or direction of any legislative official or persons acting for and/or under them; and

(e) declaring the injunction permanent.

Other reliefs just and equitable under the premises are likewise prayed for.

_____ City for the City of Manila, Metro Manila, 27 August 2013.

**MOTION FOR LEAVE TO FILE AND ADMIT THE INSTANT
SUPPLEMENT TO THE PETITION FOR CERTIORARI**

- AND -

**SUPPLEMENTAL PLEADING TO THE
PETITION FOR CERTIORARI DATED __ AUGUST 2013
[WITH APPLICATION FOR THE ISSUANCE OF A TEMPORARY
RESTRAINING ORDER
AND/OR A WRIT OF PRELIMINARY INJUNCTION]**

Petitioner _____, by counsel, respectfully states:

1. On __ August 2013, Petitioner filed an Urgent Petition for Certiorari and Prohibition of even date with the Honorable Court with a Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction (the “Petition”).
2. Among the issues raised in the Petition was the constitutionality of all lumpsum discretionary funds wielded by the Executive Branch, including those that are not presented by it to Congress as part of the normal budgetary process.
3. One such “off-budget” lumpsum fund is the Malampaya Fund whose use and disposition has been the subject of several controversies over the years.
4. Subsequent to the filing of the Petition, several events have transpired to lead herein Petitioner to file the instant Supplement in order to fully address the issues raised by them and seek affirmative relief from the Honorable Court so that a holistic resolution of the issues presented by the Petition may be achieved.
5. As will be shown hereunder, these events bolster the main proposition of the Petition that lumpsum discretionary funds by the Executive are unconstitutional for: violating Separation of Powers; disrupting Checks and Balances specifically by rendering the Executive ill-poised to check Congress; and being repugnant to the accountability provisions enshrined in the Constitution.
6. More importantly, these issues and events give even more credence to

the grave and irreparable harm that Petitioner may suffer should the acts sought to be restrained under the Petition are not so restrained by the Honorable Court, thus necessitating the immediate issuance of a temporary restraining order and/or a writ of preliminary injunction.

7. Considering the foregoing are intertwined with the issues raised in the Petition and to prevent multiplicity of suits, petitioner most respectfully moves that he be granted leave to file the instant Supplement, and that the same be admitted and duly considered by the Honorable Court.

ARGUMENTS IN SUPPORT OF THE SUPPLEMENT TO THE PETITION DATED __ AUGUST 2013

8. As stated in the Petition, the use and disposition of the Malampaya Fund, and other funds of a similar nature is governed primarily by Section 8, Presidential Decree No. 910, which states:
“Section 8. Appropriations. The sum of Five Million Pesos out of any available funds from the National Treasury is hereby appropriated and authorized to be released for the organization of the Board and its initial operations. Henceforth, funds sufficient to fully carry out the functions and objectives of the Board shall be appropriated every fiscal year in the General Appropriations Act.

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for **such other purposes as may be hereafter directed by the President.**”[Underscoring and emphasis supplied]

9. Even if it was created during the time of martial law, PD 910 was not meant to fashion a personal kitty for the President to lavish and use as he or she may please. Based on the above-quoted provision, funds under PD 910 can only be used to “finance energy resource development and

- exploitation programs and projects of the government”.
10. However, by using the tail-end of the last sentence in Section 8, the Executive branch has repeatedly taken the position – a position that Petitioner has discovered it adheres to until today - that the proceeds from the Malampaya Fund can be used to finance **any project the President desires**.
 11. To be precise, the basis for the said position is the last sentence of the second paragraph of Section 8, particularly the phrase “and for such other purposes as may hereafter directed by the President.” Recent events have shown that this anomalous position has been enforced by the previous administration and to the Petitioner's grave consternation the present one as well.
 12. Petitioner argued in the Petition that this phrase violates the principle of proper delegation of power since “such other purposes as may hereafter directed by the President” is too broad and vague it permits no standard other than the personal discretion of the President himself.
 13. In *Abakada v. Ermita*⁴⁵, the Honorable Court laid out the tests for valid delegation:

“Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate. It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate’s authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate’s authority, announce the legislative policy and identify the conditions under which it is to be implemented.”
 14. The Executive Branch's interpretation of “such other purposes” to mean virtually anything the President desires renders Section 8 of PD 910 without a discernible standard since it does not provide “adequate guidelines or limitations” to map out the “boundaries of the delegate’s authority”. This broad and vague approach to interpretation has been affirmed recently by the statements of the President's own spokesperson.
 15. Although PD 910 ostensibly regulates Presidential discretion by the standard that the Malampaya Fund be used only for energy related projects, this statutory standard is rendered useless by the above-quoted phrase which allows the President to use the fund “for such other purposes” that he may desire. In other words, the express standard of

the law is rendered useless and inutile because of this phrase and the kind of interpretation the Executive Branch has accorded to it.

16. The unconstitutionality of this can be seen through the slew of what one member of Congress has described as “irregularities and discriminatory allocation of funds to presidential friends and pet projects”.
17. One such undeniable instance has been brought to light as part of the Senate Investigation of the Napoles Pork Barrel Scam, specifically the allocation and use of around Nine Hundred Million Pesos (P900 Million) of the said fund for the benefit of “fake NGOs” whose purported purpose was to serve agrarian reform beneficiaries.
18. Petitioner however emphasizes that even without the revelations aligned with the Senate's investigatory efforts, the unconstitutionality of the use of the Malampaya Fund is patent by simply considering the fact that its proceeds were being used for “agrarian reform” purposes when the law clearly mandates that it can only be used for energy-related projects. In other words, the mere fact that monies from the Malampaya Fund was being used to buy “fertilizers” is already proof of the constitutional violation. Indeed, as to how “agrarian reform” can in any way be “energy-related” escapes both logic and reason, not to mention the clear mandate of PD 910. And yet, recent events have shown that it is not denied by both the previous and the present administrations that hundreds of millions of the Malampaya Funds are being funneled for similarly unrelated purposes.
19. In addition, the Secretary of Agrarian Reform himself has recently confirmed to the Senate, in a session that occurred after the filing of the Petition, that indeed P 900 Million has been siphoned from the Malampaya Fund for purposes unrelated to energy development. The Secretary of Agrarian Reform has also gone on record that he and his subordinates are collating documents that would establish that there was misuse of the funds.
20. The Secretary of Justice herself has recently admitted that her investigations in relation to the Malampaya Fund pertain to the misuse occasioned by allotting funds from it for the benefit of “typhoon recovery efforts”. The nobility of the label attached to the reason for expenditure should not determine whether it is constitutional. “Typhoon recovery” might be laudable on its face but it has no relation whatsoever to “energy development” which is the only purpose PD 910 allows for the use of the Malampaya Fund. This emphasizes how vague and broad Presidential discretion to use the fund has come to be interpreted. A tradition that has led to abuse and misuse that has cost taxpayers billions

of hard-earned money.

21. Petitioner submits that this is the scourge that unmitigated discretion brings and will keep on bringing so long as the Executive insists that it can use trillions of pesos “for such other purposes” the President may desire. As alleged in the Petition, it is not a matter of personal integrity, it is a matter of constitutional governance.
 1. More to the point, “Typhoon recovery efforts” like “agrarian reform” are not only improper purposes under PD 910, they are worthy endeavors that have been bastardized by being deliberately misused in order to mask the illegalities committed in spending the fun. Like genuine NGOs, these worthy endeavors will continue to be sullied and tainted by scams so long as unmitigated discretion in spending lumpsum funds is allowed to exist.
22. In addition, as raised and argued in the Petition, this form of absolute discretion offends the accountability provisions of the Constitution especially since the Malampaya Fund is not subjected to the normal budgetary process. Despite the clear mandate of Section 27 and Section 28 of Article II, of the Constitution, both Congress and the public is hardly ever in a position to monitor the expenditure of these funds. This only serves to highlight the importance of striking down the pernicious phrasing of last portion of the last sentence of Section 8, PD 910. Otherwise, Presidents will continue to treat funds like the Malampaya Fund as personal kitties to be dispensed at whim and for any purpose he or she may desire.

PRAYER

WHEREFORE, premises considered, Petitioner _____ respectfully prays of the Honorable Court that:

- a. Petitioner be granted leave to file a Supplement to the Petition dated __ August 2013 and that the instant Supplemental Pleading be admitted and duly considered by the Honorable Court;

- b. Upon filing of the instant Motion for Leave to File and Admit Attached Supplement to the Petition dated __ August 2013 and the instant Supplemental Pleading, the Honorable Court act on petitioner’s application for the issuance of a temporary restraining order and/or writ of preliminary injunction and issue a temporary restraining order as prayed for herein and in the Petition dated __ August 2013;

c. After consideration, a writ of preliminary injunction be issued, on such bond as the Honorable Court may require, enjoining the respondents as prayed for herein and in the Petition dated __ August 2013,

ci. After further proceedings, grant all the reliefs prayed for in the Petition dated __ August 2013; and

d. ANNULING and STRIKING DOWN, for being unconstitutional, the portion of the last sentence of section 8, of presidential decree no. 910 stating “and for such other purposes as may be hereafter directed by the President.”

Other reliefs just and equitable under are likewise prayed for.

Other reliefs just and equitable under the premises are likewise prayed for.

_____ City for the City of Manila, Metro Manila, 7 September 2013.

SIGNED: