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[G.R. No. 166715, August 14, 2008]

ABAKADA GURO PARTY LIST (FORMERLY AASJS) * OFFICERS/MEMBERS SAMSON S. ALCANTARA, ED VINCENT S. ALBANO, ROMEO R. ROBISO, RENE B. GOROSPE AND EDWIN R. SANDOVAL, PETITIONERS, VS. HON. CESAR V. PURISIMA, IN HIS CAPACITY AS SECRETARY OF FINANCE, HON. GUILLERMO L. PARAYNO, JR., IN HIS CAPACITY AS COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, AND HON. ALBERTO D. LINA, IN HIS CAPACITY AS COMMISSIONER OF BUREAU OF CUSTOMS, RESPONDENTS.

D E C I S I O N

CORONA, J.:

This petition for prohibition[1] seeks to prevent respondents from implementing and enforcing Republic Act (RA) 9335[2] (Attrition Act of 2005).

RA 9335 was enacted to optimize the revenue-generation capability and collection of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC). The law intends to encourage BIR and BOC officials and employees to exceed their revenue targets by providing a system of rewards and sanctions through the creation of a Rewards and Incentives Fund (Fund) and a Revenue Performance Evaluation Board (Board).[3] It covers all officials and employees of the BIR and the BOC with at least six months of service, regardless of employment status.[4]

The Fund is sourced from the collection of the BIR and the BOC in excess of their revenue targets for the year, as determined by the Development Budget and Coordinating Committee (DBCC). Any incentive or reward is taken from the fund and allocated to the BIR and the BOC in proportion to their contribution in the excess collection of the targeted amount of tax revenue.[5]

The Boards in the BIR and the BOC are composed of the Secretary of the Department of Finance (DOF) or his/her Undersecretary, the Secretary of the Department of Budget and Management (DBM) or his/her Undersecretary, the Director General of the National Economic Development Authority (NEDA) or his/her Deputy Director General, the

Commissioners of the BIR and the BOC or their Deputy Commissioners, two representatives from the rank-and-file employees and a representative from the officials nominated by their recognized organization.[6]

Each Board has the duty to (1) prescribe the rules and guidelines for the allocation, distribution and release of the Fund; (2) set criteria and procedures for removing from the service officials and employees whose revenue collection falls short of the target; (3) terminate personnel in accordance with the criteria adopted by the Board; (4) prescribe a system for performance evaluation; (5) perform other functions, including the issuance of rules and regulations and (6) submit an annual report to Congress.[7]

The DOF, DBM, NEDA, BIR, BOC and the Civil Service Commission (CSC) were tasked to promulgate and issue the implementing rules and regulations of RA 9335,[8] to be approved by a Joint Congressional Oversight Committee created for such purpose.[9]

Petitioners, invoking their right as taxpayers filed this petition challenging the constitutionality of RA 9335, a tax reform legislation. They contend that, by establishing a system of rewards and incentives, the law "transform[s] the officials and employees of the BIR and the BOC into mercenaries and bounty hunters" as they will do their best only in consideration of such rewards. Thus, the system of rewards and incentives invites corruption and undermines the constitutionally mandated duty of these officials and employees to serve the people with utmost responsibility, integrity, loyalty and efficiency.

Petitioners also claim that limiting the scope of the system of rewards and incentives only to officials and employees of the BIR and the BOC violates the constitutional guarantee of equal protection. There is no valid basis for classification or distinction as to why such a system should not apply to officials and employees of all other government agencies.

In addition, petitioners assert that the law unduly delegates the power to fix revenue targets to the President as it lacks a sufficient standard on that matter. While Section 7(b) and (c) of RA 9335 provides that BIR and BOC officials may be dismissed from the service if their revenue collections fall short of the target by at least 7.5%, the law does not, however, fix the revenue targets to be achieved. Instead, the fixing of revenue targets has been delegated to the President without sufficient standards. It will therefore be easy for the President to fix an unrealistic and unattainable target in order to dismiss BIR or BOC personnel.

Finally, petitioners assail the creation of a congressional oversight committee on the ground that it violates the doctrine of separation of powers. While the legislative function is deemed accomplished and completed upon the enactment and approval of the law, the creation of the congressional oversight committee permits legislative participation in the implementation and enforcement of the law.

In their comment, respondents, through the Office of the Solicitor General, question the petition for being premature as there is no actual case or controversy yet. Petitioners have

not asserted any right or claim that will necessitate the exercise of this Court's jurisdiction. Nevertheless, respondents acknowledge that public policy requires the resolution of the constitutional issues involved in this case. They assert that the allegation that the reward system will breed mercenaries is mere speculation and does not suffice to invalidate the law. Seen in conjunction with the declared objective of RA 9335, the law validly classifies the BIR and the BOC because the functions they perform are distinct from those of the other government agencies and instrumentalities. Moreover, the law provides a sufficient standard that will guide the executive in the implementation of its provisions. Lastly, the creation of the congressional oversight committee under the law enhances, rather than violates, separation of powers. It ensures the fulfillment of the legislative policy and serves as a check to any over-accumulation of power on the part of the executive and the implementing agencies.

After a careful consideration of the conflicting contentions of the parties, the Court finds that petitioners have failed to overcome the presumption of constitutionality in favor of RA 9335, except as shall hereafter be discussed.

ACTUAL CASE AND RIPENESS

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial adjudication.[10] A closely related requirement is ripeness, that is, the question must be ripe for adjudication. And a constitutional question is ripe for adjudication when the governmental act being challenged has a direct adverse effect on the individual challenging it.[11] Thus, to be ripe for judicial adjudication, the petitioner must show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision of the Court.[12]

In this case, aside from the general claim that the dispute has ripened into a judicial controversy by the mere enactment of the law even without any further overt act,[13] petitioners fail either to assert any specific and concrete legal claim or to demonstrate any direct adverse effect of the law on them. They are unable to show a personal stake in the outcome of this case or an injury to themselves. On this account, their petition is procedurally infirm.

This notwithstanding, public interest requires the resolution of the constitutional issues raised by petitioners. The grave nature of their allegations tends to cast a cloud on the presumption of constitutionality in favor of the law. And where an action of the legislative branch is alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute.[14]

ACCOUNTABILITY OF PUBLIC OFFICERS

Section 1, Article 11 of the Constitution states:

> Sec. 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.

Public office is a public trust. It must be discharged by its holder not for his own personal gain but for the benefit of the public for whom he holds it in trust. By demanding accountability and service with responsibility, integrity, loyalty, efficiency, patriotism and justice, all government officials and employees have the duty to be responsive to the needs of the people they are called upon to serve.

Public officers enjoy the presumption of regularity in the performance of their duties. This presumption necessarily obtains in favor of BIR and BOC officials and employees. RA 9335 operates on the basis thereof and reinforces it by providing a system of rewards and sanctions for the purpose of encouraging the officials and employees of the BIR and the BOC to exceed their revenue targets and optimize their revenue-generation capability and collection.[15]

The presumption is disputable but proof to the contrary is required to rebut it. It cannot be overturned by mere conjecture or denied in advance (as petitioners would have the Court do) specially in this case where it is an underlying principle to advance a declared public policy.

Petitioners' claim that the implementation of RA 9335 will turn BIR and BOC officials and employees into "bounty hunters and mercenaries" is not only without any factual and legal basis; it is also purely speculative.

A law enacted by Congress enjoys the strong presumption of constitutionality. To justify its nullification, there must be a clear and unequivocal breach of the Constitution, not a doubtful and equivocal one.[16] To invalidate RA 9335 based on petitioners' baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.

Public service is its own reward. Nevertheless, public officers may by law be rewarded for exemplary and exceptional performance. A system of incentives for exceeding the set expectations of a public office is not anathema to the concept of public accountability. In fact, it recognizes and reinforces dedication to duty, industry, efficiency and loyalty to public service of deserving government personnel.

In *United States v. Matthews*,[17] the U.S. Supreme Court validated a law which awards to officers of the customs as well as other parties an amount not exceeding one-half of the net proceeds of forfeitures in violation of the laws against smuggling. Citing *Dorsheimer v. United States*,[18] the U.S. Supreme Court said:

> The offer of a portion of such penalties to the collectors is to stimulate and reward their zeal and industry in detecting fraudulent attempts to evade payment of duties and taxes.

In the same vein, employees of the BIR and the BOC may by law be entitled to a reward when, as a consequence of their zeal in the enforcement of tax and customs laws, they exceed their revenue targets. In addition, RA 9335 establishes safeguards to ensure that the reward will not be claimed if it will be either the fruit of "bounty hunting or mercenary activity" or the product of the irregular performance of official duties. One of these precautionary measures is embodied in Section 8 of the law:

> SEC. 8. *Liability of Officials, Examiners and Employees of the BIR and the BOC.* – The officials, examiners, and employees of the [BIR] and the [BOC] who violate this Act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of their duties shall be held liable for any loss or injury suffered by any business establishment or taxpayer as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.

EQUAL PROTECTION

Equality guaranteed under the equal protection clause is equality under the same conditions and among persons similarly situated; it is equality among equals, not similarity of treatment of persons who are classified based on substantial differences in relation to the object to be accomplished.[19] When things or persons are different in fact or circumstance, they may be treated in law differently. In *Victoriano v. Elizalde Rope Workers' Union*,[20] this Court declared:

> The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the [S]tate. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. **The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different**. **It does not prohibit legislation which is limited either in the object to which it is directed** or by the territory within which it is to operate.
>
> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality.

> The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. **All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class**. This Court has held that **the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary**.
>
> In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence, legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.[21] (emphasis supplied)

The equal protection clause recognizes a valid classification, that is, a classification that has a reasonable foundation or rational basis and not arbitrary.[22] With respect to RA 9335, its expressed public policy is the optimization of the revenue-generation capability and collection of the BIR and the BOC.[23] Since the subject of the law is the revenue-generation capability and collection of the BIR and the BOC, the incentives and/or sanctions provided in the law should logically pertain to the said agencies. Moreover, the law concerns only the BIR and the BOC because they have the common distinct primary function of generating revenues for the national government through the collection of taxes, customs duties, fees and charges.

The BIR performs the following functions:

> Sec. 18. *The Bureau of Internal Revenue*. - The Bureau of Internal Revenue, which shall be headed by and subject to the supervision and control of the Commissioner of Internal Revenue, who shall be appointed by the President upon the recommendation of the Secretary [of the DOF], shall have the following functions:
>
> (1) **Assess and collect all taxes, fees and charges and account for all revenues collected**;
> (2) Exercise duly delegated police powers for the proper performance of its functions and duties;
> (3) Prevent and prosecute tax evasions and all other illegal economic activities;

(4) Exercise supervision and control over its constituent and subordinate units; and

(5) Perform such other functions as may be provided by law.[24]

xxx xxx xxx (emphasis supplied)

On the other hand, the BOC has the following functions:

> Sec. 23. *The Bureau of Customs*.– The Bureau of Customs which shall be headed and subject to the management and control of the Commissioner of Customs, who shall be appointed by the President upon the recommendation of the Secretary[of the DOF] and hereinafter referred to as Commissioner, shall have the following functions:
>
> (1) **Collect custom duties, taxes and the corresponding fees, charges and penalties**;
> (2) **Account for all customs revenues collected**;
> (3) Exercise police authority for the enforcement of tariff and customs laws;
> (4) Prevent and suppress smuggling, pilferage and all other economic frauds within all ports of entry;
> (5) Supervise and control exports, imports, foreign mails and the clearance of vessels and aircrafts in all ports of entry;
> (6) Administer all legal requirements that are appropriate;
> (7) Prevent and prosecute smuggling and other illegal activities in all ports under its jurisdiction;
> (8) Exercise supervision and control over its constituent units;
> (9) Perform such other functions as may be provided by law.[25]
>
> xxx xxx xxx (emphasis supplied)

Both the BIR and the BOC are bureaus under the DOF. They principally perform the special function of being the instrumentalities through which the State exercises one of its great inherent functions - taxation. Indubitably, such substantial distinction is germane and intimately related to the purpose of the law. Hence, the classification and treatment accorded to the BIR and the BOC under RA 9335 fully satisfy the demands of equal protection.

UNDUE 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.[26] 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.[27] 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.[28]

RA 9335 adequately states the policy and standards to guide the President in fixing revenue targets and the implementing agencies in carrying out the provisions of the law. Section 2 spells out the policy of the law:

> SEC. 2. *Declaration of Policy*. - It is the policy of the State to optimize the revenue-generation capability and collection of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) by providing for a system of rewards and sanctions through the creation of a Rewards and Incentives Fund and a Revenue Performance Evaluation Board in the above agencies for the purpose of encouraging their officials and employees to exceed their revenue targets.

Section 4 "canalized within banks that keep it from overflowing"[29] the delegated power to the President to fix revenue targets:

> SEC. 4. *Rewards and Incentives Fund*. - A Rewards and Incentives Fund, hereinafter referred to as the Fund, is hereby created, to be sourced from the collection of the BIR and the BOC in excess of **their respective revenue targets of the year, as determined by the Development Budget and Coordinating Committee (DBCC)**, in the following percentages:
>
> | Excess of Collection of the Excess the Revenue Targets | Percent (%) of the Excess Collection to Accrue to the Fund |
> |---|---|
> | 30% or below | - 15% |
> | More than 30% | - 15% of the first 30% plus 20% of the remaining excess |
>
> The Fund shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released on the same fiscal year.
>
> **Revenue targets shall refer to the original estimated revenue collection expected of the BIR and the BOC for a given fiscal year as stated in the Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress.** The BIR and the BOC shall submit to the DBCC the distribution of the agencies' revenue targets as allocated among its revenue districts in the case of the BIR, and the collection districts in the case of the BOC.
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> xxx xxx xxx (emphasis supplied)

Revenue targets are based on the original estimated revenue collection expected respectively of the BIR and the BOC for a given fiscal year as approved by the DBCC and stated in the BESF submitted by the President to Congress.[30] Thus, the determination of revenue targets does not rest solely on the President as it also undergoes the scrutiny of the DBCC.

On the other hand, Section 7 specifies the limits of the Board's authority and identifies the conditions under which officials and employees whose revenue collection falls short of the target by at least 7.5% may be removed from the service:

> SEC. 7. *Powers and Functions of the Board.* - The Board in the agency shall have the following powers and functions:
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> (b) To set the criteria and procedures for **removing from service officials and employees whose revenue collection falls short of the target by at least seven and a half percent (7.5%), with due consideration of all relevant factors affecting the level of collection** as provided in the rules and regulations promulgated under this Act, **subject to civil service laws, rules and regulations and compliance with substantive and procedural due process**: Provided, That the following exemptions shall apply:
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> 1. Where the district or area of responsibility is newly-created, not exceeding two years in operation, as has no historical record of collection performance that can be used as basis for evaluation; and
>
> 2. Where the revenue or customs official or employee is a recent transferee in the middle of the period under consideration unless the transfer was due to nonperformance of revenue targets or potential nonperformance of revenue targets: Provided, however, That when the district or area of responsibility covered by revenue or customs officials or employees has suffered from economic difficulties brought about by natural calamities or *force majeure* or economic causes as may be determined by the Board, termination shall be considered only after careful and proper review by the Board.
>
> (c) To terminate personnel in accordance with the criteria adopted in the preceding paragraph: Provided, That such decision shall be immediately executory: Provided, further, That **the application of the criteria for the separation of an official or employee from service under this Act shall be without prejudice to the application of other relevant laws on accountability of public officers and employees, such as the Code of Conduct and Ethical Standards of Public Officers and Employees and the**

Anti-Graft and Corrupt Practices Act;

xxx xxx xxx (emphasis supplied)

Clearly, RA 9335 in no way violates the security of tenure of officials and employees of the BIR and the BOC. The guarantee of security of tenure only means that an employee cannot be dismissed from the service for causes other than those provided by law and only after due process is accorded the employee.[31] In the case of RA 9335, it lays down a reasonable yardstick for removal (when the revenue collection falls short of the target by at least 7.5%) with due consideration of all relevant factors affecting the level of collection. This standard is analogous to inefficiency and incompetence in the performance of official duties, a ground for disciplinary action under civil service laws.[32] The action for removal is also subject to civil service laws, rules and regulations and compliance with substantive and procedural due process.

At any rate, this Court has recognized the following as sufficient standards: "public interest," "justice and equity," "public convenience and welfare" and "simplicity, economy and welfare."[33] In this case, the declared policy of optimization of the revenue-generation capability and collection of the BIR and the BOC is infused with public interest.

SEPARATION OF POWERS

Section 12 of RA 9335 provides:

> SEC. 12. *Joint Congressional Oversight Committee*. – There is hereby created a Joint Congressional Oversight Committee composed of seven Members from the Senate and seven Members from the House of Representatives. The Members from the Senate shall be appointed by the Senate President, with at least two senators representing the minority. The Members from the House of Representatives shall be appointed by the Speaker with at least two members representing the minority. After the Oversight Committee will have approved the implementing rules and regulations (IRR) it shall thereafter become *functus officio* and therefore cease to exist.

The Joint Congressional Oversight Committee in RA 9335 was created for the purpose of approving the implementing rules and regulations (IRR) formulated by the DOF, DBM, NEDA, BIR, BOC and CSC. On May 22, 2006, it approved the said IRR. From then on, it became *functus officio* and ceased to exist. Hence, the issue of its alleged encroachment on the executive function of implementing and enforcing the law may be considered moot and academic.

This notwithstanding, this might be as good a time as any for the Court to confront the issue of the constitutionality of the Joint Congressional Oversight Committee created under RA 9335 (or other similar laws for that matter).

The scholarly discourse of Mr. Justice (now Chief Justice) Puno on the concept of congressional oversight in *Macalintal v. Commission on Elections*[34] is illuminating:

> *Concept and bases of congressional oversight*
>
> Broadly defined, **the power of oversight embraces all activities undertaken by Congress to enhance its understanding of and influence over the *implementation* of legislation it has enacted. Clearly, oversight concerns *post-enactment* measures undertaken by Congress: (a) to monitor bureaucratic compliance with program objectives, (b) to determine whether agencies are properly administered, (c) to eliminate executive waste and dishonesty, (d) to prevent executive usurpation of legislative authority, and (d) to assess executive conformity with the congressional perception of public interest.**
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> The power of oversight has been held to be intrinsic in the grant of legislative power itself and integral to the checks and balances inherent in a democratic system of government. x x x x x x x x x
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> Over the years, Congress has invoked its oversight power with increased frequency to check the perceived "exponential accumulation of power" by the executive branch. By the beginning of the 20th century, Congress has delegated an enormous amount of legislative authority to the executive branch and the administrative agencies. Congress, thus, uses its oversight power to make sure that the administrative agencies perform their functions within the authority delegated to them. x x x x x x x x x
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> *Categories of congressional oversight functions*
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> The acts done by Congress purportedly in the exercise of its oversight powers may be divided into *three* categories, namely: *scrutiny*, *investigation* and *supervision*.
>
> *a. Scrutiny*
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> Congressional *scrutiny* implies a lesser intensity and continuity of attention to administrative operations. Its primary purpose is to determine economy and efficiency of the operation of government activities. In the exercise of legislative scrutiny, Congress may request information and report from the other branches of government. It can give recommendations or pass resolutions for consideration of the agency involved.
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> *b. Congressional investigation*

While congressional scrutiny is regarded as a passive process of looking at the facts that are readily available, *congressional investigation involves a more intense digging of facts*. The power of Congress to conduct investigation is recognized by the 1987 Constitution under section 21, Article VI, xxx
xxx xxx

c. Legislative supervision

The third and *most encompassing* form by which Congress exercises its oversight power is thru legislative supervision. "Supervision" connotes a continuing and informed awareness on the part of a congressional committee regarding *executive operations* in a given administrative area. While both congressional scrutiny and investigation involve inquiry into *past executive branch actions* in order to influence future executive branch performance, *congressional supervision allows Congress to scrutinize the exercise of delegated law-making authority, and permits Congress to retain part of that delegated authority*.

Congress exercises supervision over the executive agencies through its veto power. It typically utilizes veto provisions when granting the President or an executive agency the power to promulgate regulations with the force of law. These provisions require the President or an agency to present the proposed regulations to Congress, which retains a "right" to approve or disapprove any regulation before it takes effect. Such legislative veto provisions usually provide that a proposed regulation will become a law after the expiration of a certain period of time, only if Congress does not affirmatively disapprove of the regulation in the meantime. Less frequently, the statute provides that a proposed regulation will become law if Congress affirmatively approves it.

Supporters of legislative veto stress that it is necessary to maintain the balance of power between the legislative and the executive branches of government as it offers lawmakers a way to delegate vast power to the executive branch or to independent agencies while retaining the option to cancel particular exercise of such power without having to pass new legislation or to repeal existing law. They contend that this arrangement promotes democratic accountability as it provides legislative check on the activities of unelected administrative agencies. One proponent thus explains:

> It is too late to debate the merits of this delegation policy: the policy is too deeply embedded in our law and practice. It suffices to say that the complexities of modern government have often led Congress- whether by actual or perceived necessity- to legislate by declaring broad policy goals and general statutory standards, leaving the choice of policy options to the discretion of an executive officer.

> Congress articulates legislative aims, but leaves their implementation to the judgment of parties who may or may not have participated in or agreed with the development of those aims. Consequently, absent safeguards, in many instances the reverse of our constitutional scheme could be effected: Congress proposes, the Executive disposes. One safeguard, of course, is the legislative power to enact new legislation or to change existing law. But without some means of overseeing post enactment activities of the executive branch, Congress would be unable to determine whether its policies have been implemented in accordance with legislative intent and thus whether legislative intervention is appropriate.

Its opponents, however, *criticize the legislative veto* as **undue encroachment upon the executive prerogatives**. They urge that **any post-enactment measures undertaken by the legislative branch should be limited to scrutiny and investigation; any measure beyond that would undermine the separation of powers guaranteed by the Constitution**. They contend that legislative veto constitutes an impermissible evasion of the President's veto authority and intrusion into the powers vested in the executive or judicial branches of government. Proponents counter that legislative veto enhances separation of powers as it prevents the executive branch and independent agencies from accumulating too much power. They submit that reporting requirements and congressional committee investigations allow Congress to scrutinize only the exercise of delegated law-making authority. They do not allow Congress to review executive proposals before they take effect and they do not afford the opportunity for ongoing and binding expressions of congressional intent. In contrast, legislative veto permits Congress to participate prospectively in the approval or disapproval of "*subordinate law*" or those enacted by the executive branch pursuant to a delegation of authority by Congress. They further argue that legislative veto "is a necessary response by Congress to the accretion of policy control by forces outside its chambers." In an era of delegated authority, they point out that legislative veto "is the most efficient means Congress has yet devised to retain control over the evolution and implementation of its policy as declared by statute."

In *Immigration and Naturalization Service v. Chadha*, **the U.S. Supreme Court resolved the validity of legislative veto provisions**. The case arose from the order of the immigration judge suspending the deportation of Chadha pursuant to § 244(c)(1) of the Immigration and Nationality Act. The United States House of Representatives passed a resolution vetoing the suspension pursuant to § 244(c)(2) authorizing either House of Congress, by resolution, to invalidate the decision of the executive branch to allow a particular deportable alien to remain in the United States. The immigration judge reopened the deportation proceedings to implement the House order and the alien was ordered deported. The Board of Immigration Appeals dismissed the alien's appeal, holding that it

had no power to declare unconstitutional an act of Congress. The United States Court of Appeals for Ninth Circuit held that the House was without constitutional authority to order the alien's deportation and that § 244(c)(2) violated the constitutional doctrine on separation of powers.

On appeal, the U.S. Supreme Court declared § 244(c)(2) unconstitutional. **But the Court shied away from the issue of separation of powers** and instead held that the provision violates the presentment clause and bicameralism. It held that the one-house veto was essentially legislative in purpose and effect. As such, it is subject to the procedures set out in Article I of the Constitution requiring the passage by a majority of both Houses and presentment to the President. x x x x x x x x x

Two weeks after the *Chadha* decision, the Court upheld, in memorandum decision, two lower court decisions invalidating the legislative veto provisions in the Natural Gas Policy Act of 1978 and the Federal Trade Commission Improvement Act of 1980. Following this precedence, lower courts invalidated statutes containing legislative veto provisions although some of these provisions required the approval of both Houses of Congress and thus met the bicameralism requirement of Article I. Indeed, some of these veto provisions were not even exercised.[35] (emphasis supplied)

In *Macalintal*, given the concept and configuration of the power of congressional oversight and considering the nature and powers of a constitutional body like the Commission on Elections, the Court struck down the provision in RA 9189 (The Overseas Absentee Voting Act of 2003) creating a Joint Congressional Committee. The committee was tasked not only to monitor and evaluate the implementation of the said law but also to review, revise, amend and approve the IRR promulgated by the Commission on Elections. The Court held that these functions infringed on the constitutional independence of the Commission on Elections.[36]

With this backdrop, it is clear that congressional oversight is not unconstitutional *per se*, meaning, it neither necessarily constitutes an encroachment on the executive power to implement laws nor undermines the constitutional separation of powers. Rather, it is integral to the checks and balances inherent in a democratic system of government. It may in fact even enhance the separation of powers as it prevents the over-accumulation of power in the executive branch.

However, to forestall the danger of congressional encroachment "beyond the legislative sphere," the Constitution imposes two basic and related constraints on Congress.[37] It may not vest itself, any of its committees or its members with either executive or judicial power.[38] And, when it exercises its legislative power, it must follow the "single, finely wrought and exhaustively considered, procedures" specified under the Constitution,[39] including the procedure for enactment of laws and presentment.

Thus, any post-enactment congressional measure such as this should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following:

(1) scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation[40] and

(2) investigation and monitoring[41] of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.[42]

Any action or step beyond that will undermine the separation of powers guaranteed by the Constitution. Legislative vetoes fall in this class.

Legislative veto is a statutory provision requiring the President or an administrative agency to present the proposed implementing rules and regulations of a law to Congress which, by itself or through a committee formed by it, retains a "right" or "power" to approve or disapprove such regulations before they take effect. As such, a legislative veto in the form of a congressional oversight committee is in the form of an inward-turning delegation designed to attach a congressional leash (other than through scrutiny and investigation) to an agency to which Congress has by law initially delegated broad powers.[43] It radically changes the design or structure of the Constitution's diagram of power as it entrusts to Congress a direct role in enforcing, applying or implementing its own laws.[44]

Congress has two options when enacting legislation to define national policy within the broad horizons of its legislative competence.[45] It can itself formulate the details or it can assign to the executive branch the responsibility for making necessary managerial decisions in conformity with those standards.[46] In the latter case, the law must be complete in all its essential terms and conditions when it leaves the hands of the legislature.[47] Thus, what is left for the executive branch or the concerned administrative agency when it formulates rules and regulations implementing the law is to fill up details (supplementary rule-making) or ascertain facts necessary to bring the law into actual operation (contingent rule-making).[48]

Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect.[49] Such rules and regulations partake of the nature of a statute[50] and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.[51] Congress, in the guise of assuming the role of an overseer, may not pass upon their legality by subjecting them to

its stamp of approval without disturbing the calculated balance of powers established by the Constitution. In exercising discretion to approve or disapprove the IRR based on a determination of whether or not they conformed with the provisions of RA 9335, Congress arrogated judicial power unto itself, a power exclusively vested in this Court by the Constitution.

CONSIDERED OPINION OF MR. JUSTICE DANTE O. TINGA

Moreover, the requirement that the implementing rules of a law be subjected to approval by Congress as a condition for their effectivity violates the cardinal constitutional principles of bicameralism and the rule on presentment.[52]

Section 1, Article VI of the Constitution states:

> Section 1. **The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives**, except to the extent reserved to the people by the provision on initiative and referendum. (emphasis supplied)

Legislative power (or the power to propose, enact, amend and repeal laws)[53] is vested in Congress which consists of two chambers, the Senate and the House of Representatives. A valid exercise of legislative power requires the act of both chambers. Corrollarily, it can be exercised neither solely by one of the two chambers nor by a committee of either or both chambers. Thus, assuming the validity of a legislative veto, both a single-chamber legislative veto and a congressional committee legislative veto are invalid.

Additionally, Section 27(1), Article VI of the Constitution provides:

> Section 27. (1) **Every bill passed by the Congress shall, before it becomes a law, be presented to the President**. If he approves the same, he shall sign it, otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by *yeas* or *nays*, and the names of the members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it. (emphasis supplied)

Every bill passed by Congress must be presented to the President for approval or veto. In the absence of presentment to the President, no bill passed by Congress can become a law.

In this sense, law-making under the Constitution is a joint act of the Legislature and of the Executive. Assuming that legislative veto is a valid legislative act with the force of law, it cannot take effect without such presentment even if approved by both chambers of Congress.

In sum, two steps are required before a bill becomes a law. First, it must be approved by both Houses of Congress.[54] Second, it must be presented to and approved by the President.[55] As summarized by Justice Isagani Cruz[56] and Fr. Joaquin G. Bernas, S.J.[57], the following is the procedure for the approval of bills:

> A bill is introduced by any member of the House of Representatives or the Senate except for some measures that must originate only in the former chamber.
>
> The first reading involves only a reading of the number and title of the measure and its referral by the Senate President or the Speaker to the proper committee for study.
>
> The bill may be "killed" in the committee or it may be recommended for approval, with or without amendments, sometimes after public hearings are first held thereon. If there are other bills of the same nature or purpose, they may all be consolidated into one bill under common authorship or as a committee bill.
>
> Once reported out, the bill shall be calendared for second reading. It is at this stage that the bill is read in its entirety, scrutinized, debated upon and amended when desired. The second reading is the most important stage in the passage of a bill.
>
> The bill as approved on second reading is printed in its final form and copies thereof are distributed at least three days before the third reading. On the third reading, the members merely register their votes and explain them if they are allowed by the rules. No further debate is allowed.
>
> Once the bill passes third reading, it is sent to the other chamber, where it will also undergo the three readings. If there are differences between the versions approved by the two chambers, a conference committee[58] representing both Houses will draft a compromise measure that if ratified by the Senate and the House of Representatives will then be submitted to the President for his consideration.
>
> The bill is enrolled when printed as finally approved by the Congress, thereafter authenticated with the signatures of the Senate President, the Speaker, and the Secretaries of their respective chambers...[59]

The President's role in law-making.

> The final step is submission to the President for approval. Once approved, it takes effect as law after the required publication.[60]

Where Congress delegates the formulation of rules to implement the law it has enacted pursuant to sufficient standards established in the said law, the law must be complete in all its essential terms and conditions when it leaves the hands of the legislature. And it may be deemed to have left the hands of the legislature when it becomes effective because it is only upon effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. Subject to the indispensable requisite of publication under the due process clause,[61] the determination as to when a law takes effect is wholly the prerogative of Congress.[62] As such, it is only upon its effectivity that a law may be executed and the executive branch acquires the duties and powers to execute the said law. Before that point, the role of the executive branch, particularly of the President, is limited to approving or vetoing the law.[63]

From the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional. Under this principle, a provision that requires Congress or its members to approve the implementing rules of a law after it has already taken effect shall be unconstitutional, as is a provision that allows Congress or its members to overturn any directive or ruling made by the members of the executive branch charged with the implementation of the law.

Following this rationale, Section 12 of RA 9335 should be struck down as unconstitutional. While there may be similar provisions of other laws that may be invalidated for failure to pass this standard, the Court refrains from invalidating them wholesale but will do so at the proper time when an appropriate case assailing those provisions is brought before us.[64]

The next question to be resolved is: what is the effect of the unconstitutionality of Section 12 of RA 9335 on the other provisions of the law? Will it render the entire law unconstitutional? No.

Section 13 of RA 9335 provides:

> SEC. 13. *Separability Clause*. - If any provision of this Act is declared invalid by a competent court, the remainder of this Act or any provision not affected by such declaration of invalidity shall remain in force and effect.

In *Tatad v. Secretary of the Department of Energy*,[65] the Court laid down the following rules:

> The *general rule* is that where part of a statute is void as repugnant to the

> Constitution, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. The presence of a separability clause in a statute creates the presumption that the legislature intended separability, rather than complete nullity of the statute. To justify this result, the valid portion must be so far independent of the invalid portion that it is fair to presume that the legislature would have enacted it by itself if it had supposed that it could not constitutionally enact the other. Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent. x x x
>
> The *exception to the general rule* is that when the parts of a statute are so mutually dependent and connected, as conditions, considerations, inducements, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, the nullity of one part will vitiate the rest. In making the parts of the statute dependent, conditional, or connected with one another, the legislature intended the statute to be carried out as a whole and would not have enacted it if one part is void, in which case if some parts are unconstitutional, all the other provisions thus dependent, conditional, or connected must fall with them.

The separability clause of RA 9335 reveals the intention of the legislature to isolate and detach any invalid provision from the other provisions so that the latter may continue in force and effect. The valid portions can stand independently of the invalid section. Without Section 12, the remaining provisions still constitute a complete, intelligible and valid law which carries out the legislative intent to optimize the revenue-generation capability and collection of the BIR and the BOC by providing for a system of rewards and sanctions through the Rewards and Incentives Fund and a Revenue Performance Evaluation Board.

To be effective, administrative rules and regulations must be published in full if their purpose is to enforce or implement existing law pursuant to a valid delegation. The IRR of RA 9335 were published on May 30, 2006 in two newspapers of general circulation[66] and became effective 15 days thereafter.[67] Until and unless the contrary is shown, the IRR are presumed valid and effective even without the approval of the Joint Congressional Oversight Committee.

WHEREFORE, the petition is hereby **PARTIALLY GRANTED.** Section 12 of RA 9335 creating a Joint Congressional Oversight Committee to approve the implementing rules and regulations of the law is declared **UNCONSTITUTIONAL** and therefore **NULL** and **VOID.** The constitutionality of the remaining provisions of RA 9335 is **UPHELD**. Pursuant to Section 13 of RA 9335, the rest of the provisions remain in force and effect.

SO ORDERED.

Puno, C. J., Quisumbing, Ynares-Santiago, Austria-Martinez, Carpio Morales, Azcuna, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and *Brion, JJ.*, concur.
Carpio, J., See separate concurring opinion.

Tinga, J., Please see concurring opinion.

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* Advocates and Adherents of Social Justice for School Teachers and Allied Workers.

[1] Under Rule 65 of the Rules of Court.

[2] An Act to Improve Revenue Collection Performance of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) Through the Creation of a Rewards and Incentives Fund and of a Revenue Performance Evaluation Board and for Other Purposes.

[3] Section 2, RA 9335.

[4] Section 3, id.

[5] Section 4, id.

[6] Section 6, id.

[7] Section 7, id.

[8] Section 11, id.

[9] Section 12, id.

[10] Cruz, Isagani, PHILIPPINE CONSTITUTIONAL LAW, 1995 edition, p. 23.

[11] Bernas, Joaquin, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 1996 edition, pp. 848-849.

[12] *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904 (2000). (Vitug, J., separate opinion)

[13] *See La Bugal-B'Laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, 01 December 2004, 445 SCRA 1.

[14] *Tañada v. Angara*, 338 Phil. 546 (1997).

[15] Section 2, id.

[16] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, 15 December 2004, 446 SCRA 299.

[17] 173 U.S. 381 (1899).

[18] 74 U.S. 166 (1868).

[19] BLACK'S LAW DICTIONARY, SPECIAL DE LUXE 5th Edition, West, p. 481.

[20] 158 Phil. 60 (1974).

[21] Id. Citations omitted.

[22] *Ambros v. Commission on Audit*, G.R. No. 159700, 30 June 2005, 462 SCRA 572.

[23] Section 2, RA 9335.

[24] Section 18, Chapter 4, Title II, Book IV, Administrative Code of 1987.

[25] Section 23, id.

[26] *Pelaez v. Auditor General*, 122 Phil. 965 (1965).

[27] *Eastern Shipping Lines, Inc. v. POEA,* G.R. No. L-76633, 18 October 1988, 166 SCRA 533.

[28] Cruz, Isagani, PHILIPPINE POLITICAL LAW, 1991 edition, p. 97.

[29] *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), (Cardozo, J., dissenting).

[30] Section 5, Rule II, Implementing Rules and Regulations of RA 9335.

[31] *De Guzman, Jr. v. Commission on Elections*, 391 Phil. 70 (2000).

[32] *See* Section 46(b)(8), Chapter 6, Title I, Subtitle A, Book V, Administrative Code of 1987.

[33] *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, G.R. No. 152214, 19 September 2006, 502 SCRA 295.

[34] 453 Phil. 586 (2003). Mr. Justice (now Chief Justice) Puno's separate opinion was adopted as part of the *ponencia* in this case insofar as it related to the creation of and the powers given to the Joint Congressional Oversight Committee.

[35] Id. (italics in the original)

[36] Id.

[37] *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252 (1991).

[38] Id.

[39] Id.

[40] *See* Mr. Justice (now Chief Justice) Puno's separate opinion in *Macalintal*.

[41] *E.g.*, by requiring the regular submission of reports.

[42] *See* Mr. Justice (now Chief Justice) Puno's separate opinion in *Macalintal.*

[43] *See* Tribe, Lawrence, I American Constitutional Law 131 (2000).

[44] Id.

[45] Id. at 141.

[46] *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Airport Noise*, *supra*.

[47] *Edu v. Ericta*, 146 Phil. 469 (1970).

[48] Bernas, Joaquin, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 2003 edition, p. 664 citing *Wayman v. Southward*, 10 Wheat 1 (1852) and *The Brig Aurora*, 7 Cr. 382 (1813)).

[49] *Eslao v. Commission on Audit*, G.R. No. 108310, 01 September 1994, 236 SCRA 161; *Sierra Madre Trust v. Secretary of Agriculture and Natural Resources*, 206 Phil. 310 (1983).

[50] *People v. Maceren*, 169 Phil. 437 (1977).

[51] See *Eslao v. Commission on Audit*, *supra*.

[52] It is also for these reasons that the United States Supreme Court struck down legislative vetoes as unconstitutional in *Immigration and Naturalization Service v. Chadha* (462 U.S. 919 [1983]).

[53] Nachura, Antonio B., OUTLINE REVIEWER IN POLITICAL LAW, 2006 edition, p. 236.

[54] Section 26, Article VI of the Constitution provides:

Section 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

(2) No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the *yeas* and *nays* entered in the Journal.

[55] *See* Bernas, *supra* note 48, p. 762.

[56] PHILIPPINE POLITICAL LAW, 2002 edition, Central Lawbook Publishing Co., Inc., pp. 152-153.

[57] THE PHILIPPINE CONSTITUTION FOR LADIES, GENTLEMEN AND OTHERS, 2007 edition, Rex Bookstore, Inc., pp. 118-119.

[58] The conference committee consists of members nominated by both Houses. The task of the conference committee, however, is not strictly limited to reconciling differences. Jurisprudence also allows the committee to insert new provision[s] not found in either original provided these are germane to the subject of the bill. Next, the reconciled version must be presented to both Houses for ratification. (Id.)

[59] *Supra* note 56.

[60] *Supra* note 57.

[61] See Section 1, Article III of the Constitution. In *Tañada v. Tuvera* (230 Phil. 528), the

Court also cited Section 6, Article III which recognizes "the right of the people to information on matters of public concern."

[62] As much is recognized in Article 2 of the Civil Code which states that "Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette, or in a newspaper of general circulation in the Philippines, unless it is otherwise provided." *Tañada* recognized that "unless it is otherwise provided" referred to the date of effectivity. Simply put, a law which is silent as to its effectivity date takes effect fifteen days following publication, though there is no impediment for Congress to provide for a different effectivity date.

[63] It has been suggested by Mr. Justice Antonio T. Carpio that Section 12 of RA 9335 is likewise unconstitutional because it violates the principle of separation of powers, particularly with respect to the executive and the legislative branches. Implicit in this claim is the proposition that the ability of the President to promulgate implementing rules to legislation is inherent in the executive branch.

There has long been a trend towards the delegation of powers, especially of legislative powers, even if not expressly permitted by the Constitution. (I. Cortes, Administrative Law, at 12-13.) Delegation of legislative powers is permissible unless the delegation amounts to a surrender or abdication of powers. (Id.) Recent instances of delegated legislative powers upheld by the Court include the power of the Departments of Justice and Health to promulgate rules and regulations on lethal injection (*Echegaray v. Secretary of Justice*, 358 Phil. 410 [1998]); the power of the Secretary of Health to phase out blood banks (*Beltran v. Secretary of Health*, G.R. No. 133640, 133661, & 139147, 25 November 2005, 476 SCRA 168); and the power of the Departments of Finance and Labor to promulgate Implementing Rules to the Migrant Workers and Overseas Filipinos Act. (*Equi-Asia Placement v.DFA*, G.R. No. 152214, 19 September 2006, 502 SCRA 295.)

The delegation to the executive branch of the power to formulate and enact implementing rules falls within the class of permissible delegation of legislative powers. Most recently, in *Executive Secretary v. Southwing Heavy Industries* (G.R. Nos. 164171, 164172 &168741, 20 February 2006, 482 SCRA 673), we characterized such delegation as "confer[ring] upon the President quasi-legislative power which may be defined as the **authority delegated by the law-making body to the administrative body to adopt rules and regulations** intended to carry out the provisions of the law and implement legislative policy." (Id., at 686, citing Cruz, Philippine Administrative Law, 2003 Edition, at 24.) Law book authors are likewise virtually unanimous that the power of the executive branch to promulgate implementing rules arises from legislative delegation. Justice Nachura defines the nature of the rule-making power of administrative bodies in the executive branch as "**the exercise of delegated legislative power**, involving no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of a policy set out in the law itself." (A.E. Nachura, Outline Reviewer in Political Law [2000 ed.], at 272.) He further explains that rules and regulations that "fix the details in the execution and enforcement of a policy set out in the law" are called "supplementary or detailed

legislation". (Id., at 273.) Other commentators such as Fr. Bernas (Bernas, supra note 48, at 611), De Leon and De Leon (H. De Leon & H. De Leon, Jr., Administrative Law: Text and Cases (1998 ed), at 79-80; citing 1 Am. Jur. 2d 891) and Carlos Cruz (C. Cruz, Philippine Administrative Law (1998 ed), at 19-20, 22, 23) have similar views.

The Congress may delegate the power to craft implementing rules to the President in his capacity as the head of the executive branch, which is tasked under the Constitution to execute the law. In effecting this delegation, and as with any other delegation of legislative powers, Congress may impose conditions or limitations which the executive branch is bound to observe. A usual example is the designation by Congress of which particular members of the executive branch should participate in the drafting of the implementing rules. This set-up does not offend the separation of powers between the branches as it is sanctioned by the delegation principle.

Apart from whatever rule-making power that Congress may delegate to the President, the latter has inherent ordinance powers covering the executive branch as part of the power of executive control ("The President shall have control of all the executive departments, bureaus and offices..." Section 17, Article VII, Constitution.). By its nature, this ordinance power does not require or entail delegation from Congress. Such faculty must be distinguished from the authority to issue implementing rules to legislation which does not inhere in the presidency but instead, as explained earlier, is delegated by Congress.

The marked distinction between the President's power to issue intrabranch orders and instructions or internal rules for the executive branch, on one hand, and the President's authority by virtue of legislative delegation to issue implementing rules to legislation, on the other, is embodied in the rules on publication, as explained in *Tañada v. Tuvera* (G.R. No. L-63915, 29 December 1986, 146 SCRA 446). The Court held therein that internal regulations applicable to members of the executive branch, "that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties." (*Id., at* 454) The dispensation with publication in such instances is rooted in the very nature of the issuances, *i.e.*, they are not binding on the public. They neither create rights nor impose obligations which are enforceable in court. Since they are issued pursuant to the power of executive control, and are directed only at members of the executive branch, there is no constitutional need for their publication.

However, when the presidential issuance does create rights and obligations affecting the public at large, as implementing rules certainly do, then publication is mandatory. In explaining why this is so, the Court went as far as to note that such rules and regulations are designed "to enforce or implement existing law **pursuant to a valid delegation."** (Id., at 254.) **The Court would not have spoken of "valid delegation" if indeed the power to issue such rules was inherent in the presidency.** Moreover, the creation of legal rights and obligations is legislative in character, and the President in whom legislative power does not reside cannot confer legal rights or impose obligations on the people absent the

proper empowering statute. Thus, any presidential issuance which purports to bear such legal effect on the public, such as implementing rules to legislation, can only emanate from a legislative delegation to the President.

The prevalent practice in the Office of the President is to issue orders or instructions to officials of the executive branch regarding the enforcement or carrying out of the law. This practice is valid conformably with the President's power of executive control. The faculty to issue such orders or instructions is distinct from the power to promulgate implementing rules to legislation. The latter originates from a different legal foundation - the delegation of legislative power to the President.

Justice Carpio cites an unconventional interpretation of the ordinance power of the President, particularly the power to issue executive orders, as set forth in the Administrative Code of 1987. Yet, by practice, implementing rules are never contained in executive orders. They are, instead, contained in a segregate promulgation, usually entitled "Implementing Rules and Regulations," which derives not from the Administrative Code, but rather from the specific grants in the legislation itself sought to be implemented.

His position does not find textual support in the Administrative Code itself. Section 2, Chapter 2, Title 1, Book III of the Code, which defines "Executive orders" as "[a]cts of the President providing for rules of a general or permanent character **in the implementation or execution of constitutional or statutory powers**". Executive orders are not the vehicles for rules of a general or permanent character in the **implementation or execution of laws**. They are the vehicle for rules of a general or permanent character in the **implementation or execution of the constitutional or statutory powers of the President** himself. Since by definition, the statutory powers of the President consist of a specific delegation by Congress, it necessarily follows that the faculty to issue executive orders to implement such delegated authority emanates not from any inherent executive power but from the authority delegated by Congress.

It is not correct, as Justice Carpio posits, that without implementing rules, legislation cannot be faithfully executed by the executive branch. Many of our key laws, including the Civil Code, the Revised Penal Code, the Corporation Code, the Land Registration Act and the Property Registration Decree, do not have Implementing Rules. It has never been suggested that the enforcement of these laws is unavailing, or that the absence of implementing rules to these laws indicates insufficient statutory details that should preclude their enforcement. (See *DBM v.Kolonwel Trading*, G.R. Nos. 175608, 175616 & 175659, 8 June 2007, 524 SCRA 591, 603.)

In rejecting the theory that the power to craft implementing rules is executive in character and reaffirming instead that such power arises from a legislative grant, the Court asserts that Congress retains the power to impose statutory conditions in the drafting of implementing rules, provided that such conditions do not take on the character of a legislative veto. Congress can designate which officers or entities should participate in the drafting of implementing rules. It may impose statutory restraints on the participants in the

drafting of implementing rules, and the President is obliged to observe such restraints on the executive officials, even if he thinks they are unnecessary or foolhardy. The unconstitutional nature of the legislative veto does not however bar Congress from imposing conditions which the President must comply with in the execution of the law. After all, the President has the constitutional duty to faithfully execute the laws.

[64] This stance is called for by judicial restraint as well as the presumption of constitutionality accorded to laws enacted by Congress, a co-equal branch. It is also finds support in *Pelaez v. Auditor General* (122 Phil. 965 [1965]).

[65] 346 Phil. 321 (1997). Emphasis in the original.

[66] In particular, the Philippine Star and the Manila Standard.

[67] Section 36, IRR of RA 9335.

CONCURRING OPINION

Tinga, *J.*:

I join Justice Corona's lucid opinion – one of the more legally significant decisions of this Court of recent years because it concludes for the first time that legislative vetoes are impermissible in this jurisdiction. I fully concur with the majority's reasoning for declaring legislative veto as invalid. Yet even as the *ponencia* aligns with most of my views, I write separately to fully explain my viewpoint.

I

The controversy rests on the so-called "legislative veto", defined by Tribe as "measures allowing [Congress], or one of its Houses or committees, to review and revoke the actions of federal agencies and executive departments."[1] Our Constitution specifically neither prohibits nor allows legislative vetoes, unlike presidential vetoes, which are formally authorized under Section 27, Article VI. Until today, Court has likewise declined so far to pass judgment on the constitutionality of a legislative veto.[2]

The Court is unanimous that a legislative veto, such as that contained in Section 12 of Rep. Act No. 9335 is unconstitutional. Such a ruling would be of momentous consequence, not only because the issue has never been settled before, but also because many of our statutes incorporate a similarly worded provision that empowers members of Congress to approve

the Implementing Rules of various particular laws. Moreover, the invalidation of legislative vetoes will send a definite signal to Congress that its current understanding of the extent of legislative powers is awry.

Concededly, our ruling will greatly affect the workings of the legislative branch of government. It would thus be intellectually honest to also consider the question from the perspective of that branch which is the branch most affected by that ruling. Of course, the perspective of the executive should be reckoned with as well since it has traditionally inveighed against legislative vetoes. Still, if we are to consider the congressional perspective of the question, there will emerge important nuances to the question that should dissuade against any simplistic analysis of the issue.

II.

I have previously intimated that the President, in chartering the extent of his plenary powers, may be accorded a degree of flexibility for so long as he is not bound by any specific constitutional proscription. That same degree of deference should be extended to Congress as well. Thus, I wish to inquire into whether there is a constitutionally justifiable means to affirm legislative vetoes.

The emergence of the legislative veto in the United States coincided with the decline of the non-delegation doctrine, which barred Congress from delegating its law-making powers elsewhere.[3] Modern jurisprudence has authorized the delegation of lawmaking powers to administrative agencies, and there are resulting concerns that there is no constitutional assurance that the agencies are responsive to the people's will.[4] From that framework, the legislative veto can be seen as a means of limiting agency rule-making authority by lodging final control over the implementing rules to Congress. "But instead of controlling agency policy in advance by laying out a roadmap in the statute creating the agency, Congress now proposes to control policy as it develops in notice-and-comment rulemaking, after the agency's expert staff and interested members of the public have had an opportunity to assist in its formation."[5] It is a negative check by Congress on policies proposed by the agencies, and not a means for making policy directly.[6]

From the perspective of Congress, the legislative veto affords maximum consideration to the plenary power of legislation, as it bolsters assurances that the legislative policy embodied in the statute will be faithfully executed upon its implementation. The faithful execution of the laws of the land is a constitutional obligation imposed on the President[7], yet as a matter of practice, there could be a difference of opinion between the executive and legislative branches as to the meaning of the law. The clash may be especially telling if the President and Congress are politically hostile with each other, and it bears notice that the legislative veto in the United States became especially popular beginning in the early 1970s, when the ties between the Democratic-controlled Congress and the Republican President Richard Nixon were especially frayed.[8] More recently, the current U.S. President Bush has had a penchant of attaching "signing statements" to legislation he has

approved, such statements indicating his own understanding of the bill he is signing into law. The legislative veto, as a practical matter, allows Congress to prevent a countervailing attempt by the executive branch to implement a law in a manner contrary to the legislative intent.

There is nothing obnoxious about the policy considerations behind the legislative veto. Since the courts, in case of conflict, will uphold legislative intent over the executive interpretation of a law, the legislative veto could ensure the same judicially-confirmed result without need of elevating the clash before the courts. The exercise of the legislative veto could also allow both branches to operate within the grayer areas of their respective constitutional functions without having to resort to the judicial resolution of their potentially competing claims. As the future U.S. Supreme Court Justice Stephen Breyer once wrote:

> The [legislative] veto sometimes offers a compromise of important substantive conflicts embedded deeply in the Constitution. How are we to reconcile the Constitution's grant to Congress of the power to declare war with its grant to the President of authority over the Armed Forces as their Commander in Chief? The War Powers Act approaches the problem, in part, by declaring that the President cannot maintain an armed conflict for longer than ninety days if both Houses of Congress enact a resolution of disapproval. Similar vetoes are embedded in laws authorizing the President to exercise various economic powers during times of "national emergency". To take another example, how are we to reconcile article I's grant to Congress of the power to appropriate money with article II's grant to the President of the power to supervise its expenditure? Must the President spend all that Congress appropriates? Congress has addressed this conflict, authorizing the President to defer certain expenditures subject to a legislative veto.[9]

There are practical demerits imputed as well to the legislative veto, such as the delay in the implementation of the law that may ensue with requiring congressional approval of the implementing rules.[10] Yet the question must ultimately rest not on the convenience or wisdom of the legislative veto device, but on whether it is constitutionally permissible.

In 1983, the United States Supreme Court struck a decisive blow against the legislative veto in *INS v. Chadha*[11], a ruling which essentially held the practice as unconstitutional. It appears that the foremost consideration of the majority opinion in *Chadha* were the issues of bicameralism and presentment, as discussed by the Chief Justice in his Separate Opinion in *Macalintal v. COMELEC*[12]. The twin issues of presentment and bicameralism would especially come to fore with respect to the Joint Congressional Oversight Committee under Rep. Act No. 9335, composed as it is by seven Members from the Senate and seven Members from the House of Representatives.[13]

Chadha emphasized that the bills passed by the U.S. Congress must be presented for

approval to the President of the United States in order that they may become law.[14] Section 27(1), Article VI of our Constitution imposes a similar presentment requirement. *Chadha* also noted that a bill must be concurred in by a majority of both Houses of Congress. Under our Constitution, Congress consists of a House of Representatives and a Senate, and the underlying uncontroverted implication is that both Houses must concur to the bill before it can become law. Assuming that the approval of the Implementing Rules to Rep. Act No. 9335 by seven Members from each House of Congress is a legislative act, such act fails either the presentment or bicameralism requirement. Such approval is neither presented to the President of the Philippines for consent, nor concurred in by a majority of either House of Congress.

Yet with respect to the implications of *Chadha* on the principle of separation of powers, there are critical informed comments against that decision. *Chadha* involved the statutory authority of either House of Congress to disapprove the decision of the executive branch to allow a deportable alien to remain in the United States. The majority had characterized such disapproval as a legislative act, since it "had the purpose and effect of altering the legal rights, duties and relations of persons".[15] Yet that emphasis "on the labels of legislative, executive and judicial" was criticized as "provid[ing] the rhetorical ammunition for a variety of cases seeking judicial reassessment of the constitutionality not only of the great number of statutes that have incorporated some kind of legislative veto mechanism, but of regulatory statutes in general that sought to delegate legislative, executive and judicial power, and various combinations thereof, to the unelected officials that run the various federal agencies."[16]

Fisher presents a veritable laundry list of criticisms of the *Chadha* reasoning, replete with accusations that the analysis employed on separation of powers detracted from the intent of the Framers, resulting in giving the "executive branch a one-sided advantage in an accommodation that was meant to be a careful balancing of executive and legislative interests".[17] He further observed:

> The Court's misreading of history and congressional procedures has produced some strange results. Its theory of government is too much at odds with the practices developed over a period of decades by the political branches. Neither administrators nor congressmen want the static model proferred by the Court. The conditions that spawned the legislative veto a half century ago have not disappeared. Executive officials still want substantial latitude in administering delegated authority; legislators still insist on maintaining control without having to pass another law. The executive and legislative branches will, therefore develop substitutes to serve as the functional equivalent of the legislative veto. Forms will change but not power relationships and the need for *quid pro quo*. [18]

And Tribe himself finds flaw in the *Chadha* analysis of what constituted a legislative act:

> And why, precisely, did the veto of the suspension of Chadha's deportation have to be deemed legislative? It was "essentially legislative," according to the Court, because it "had the purpose and effect of altering the legal rights, duties and relations of persons ... outside the legislative branch". Without Congress' exercise of the legislative veto in his case, Chadha would have remained in America; without the veto provision in the immigration statute, the change in Chadha's legal status could have been wrought only be legislation requiring his deportation. The difficulty with this analysis is that the same observations apply with equal validity to nearly all exercises of delegated authority, whether by a House of Congress or by an executive department or an administrative agency. Both through rule-making and through case-by-case adjudication, exercises of delegated authority change legal rights and privileges no less than do full-fledged laws.
>
> There was perhaps less need than the Court perceived to squeeze the legislative veto into one of the three pigeonholes envisioned by the Framers. Even if Congress' action had been deemed "executive" in nature, it presumably would have been unconstitutional, since Congress may make, but not execute the laws. And if the legislative veto had been deemed "judicial," it would still have violated the separation of powers, as Justice Powell recognized in his concurring opinion.[19]

The majority in *Chadha* did not address the reality that the U.S. Congress had relied on the legislative veto device for over five decades[20], or for that matter, the valid concerns over the executive usurpation of legislative prerogatives that led to the invention of the veto as a countervailing measure. Justice Byron White relied extensively on these concerns in his dissenting opinion in *Chadha*.

Nonetheless, the invalidation of the legislative veto in *Chadha* has caused serious discussion as to alternative constitutional means through which Congress could still ensure that its legislative intentions would not be countermanded by the executive branch. On one extreme, a Republican congressman, Nick Smith of Michigan, filed a bill requiring that significant new regulations adopted by administrative agencies be approved by a joint resolution of Congress before they would become effective.[21] Less constitutionally controversial perhaps were the suggestions of Justice Breyer in remarks he made after *Chadha* was decided. He explained that "Congress unquestionably retains a host of traditional weapons in its legislative and political arsenal that can accomplish some of the veto's objectives."[22]

> These include the power to provide that legislation delegating authority to the executive expires every so often. To continue to exercise that authority, the executive would have to seek congressional approval, at which point past agency behavior that Congress disliked would become the subject of serious debate. Moreover, Congress might tailor its statutes more specifically, limiting

> executive power. Further, Congress can require the President, before taking action, to consult with congressional representatives whose views would carry significant political weight. Additionally, Congress can delay implementation of an executive action (as it does when the Supreme Court promulgates rules of civil procedure) until Congress has had time to consider it an to enact legislation preventing the action from taking effect. Finally, each year Congress considers the agency's budget. If a significant group of legislators strongly opposes a particular agency decision, it might well succeed in including a sentence in the appropriations bill denying the agency funds to enforce that decision.[23]

I raise these points because even with the invalidation of the legislative veto, Congress need not simply yield to the executive branch. The invalidation of the legislative veto can be mistakenly perceived as signal by the executive branch that it can, in the guise of rule-making power, adopt measures not authorized or even forbidden in the enabling legislation. If that happens, undue weight will be shifted to the executive branch, much like what had happened when former President Marcos exercised both executive and legislative powers. One might correctly argue that the judicial branch may still exercise corrective relief against such unauthorized exercise by the executive[24], yet the relief may not come for years to come, considering the inherently deliberative judicial process.

I do believe that there is a constitutionally sound mechanism through which Congress may validly influence the approval of a law's Implementing Rules. Section 12 of Rep. Act No. 9335 may not be such a means, but I maintain that it would be highly useful for the Court to explain how this can be accomplished. In this light, I submit the following proposed framework for invalidating the legislative veto while recognizing the pre-eminent congressional prerogative in defining the manner how legislation is to be implemented.

III.

We can consider that in the enactment and implementation of a law, there is a legislative phase and an executive phase. The legislative phase encompasses the period from the initiation of a bill in Congress until it becomes effective as a law. On the other hand, the executive phase begins the moment the law is effective and falls within the capacity of the executive branch to enforce.

Notably, as such, it is only upon the effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. Now, subject to the indispensable requisite of publication under the due process clause,[25] the determination as to when a law takes effect is wholly the prerogative of Congress.[26] As such, it is only upon effectivity that the law may be executed, and the executive branch acquires the duties and powers to execute that law. Before that point, the role of the executive branch, particularly the President, is limited to signing or vetoing the law. All other powers of government that attach to the proposed law are exercised exclusively by Congress and are hence, legislative in character. In fact, the United States Supreme Court,

speaking through Justice Black, has gone as far as to hold that the Constitution "limits [the President's] functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad."[27]

It is viable to hold that any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law after the execution phase has begun violates the principle of separation of powers and is thus unconstitutional. Under this principle, a provision that requires Congress or its members to approve the Implementing Rules after the law has already taken effect is unconstitutional, as is a provision that allows Congress or its members to overturn any directive or ruling made by those members of the executive branch charged with the implementation of the law.

This time or phase demarcation not only affords a convenient yardstick by which to assess the constitutionality of a legislated role for Congress vis-à-vis a law, it also hews to the proper allocation of governmental powers. Again, the exercise of executive powers relative to a statute can only emanate after the effectivity of the law, since before that point, said law cannot be executed or enforced. Until a law becomes effective, there are no executive functions attached to the law.

Of course, following this rationale, Section 12 of Rep. Act No. 9335 will have to be invalidated. To cite one outstanding example of what else would be invalidated as a result is the Joint Congressional Power Commission established in the EPIRA (Rep. Act No. 9136), where the Commission composed of several members of Congress exercises a continuing role in overseeing the implementation of the EPIRA.[28] The functions of the Joint Congressional Power Commission are exercised in the execution phase, and thus beyond the pale of legislative power. There are many other provisions in our laws, such as those similar to Section 12 of Rep. Act No. 9335, that will similarly not pass muster after this ruling, and the Court will have to reckon with the real problem as to whether this decision effectively nullifies those provisions as well. Nonetheless, the Court need not invalidate those provisions in other laws yet and await the appropriate cases to do so, similar to the approach previously taken on the invalidation of municipalities created by the President in *Pelaez v. Auditor General*.[29]

IV.

I seriously disagree with Justice Carpio's assertion that the power to formulate or adopt implementing rules inheres in the executive function. That power is a legislative function traditionally delegated by Congress to the executive branch. The *ponencia* satisfactorily asserts this point through its Footnote No. 63, and I need not belabor it.

One option for congressional control over executive action is to be very specific and limiting in the delegation of power to agencies, so that their rulemaking power will in turn be limited.[30] The power to make rules and regulation is that kind of legislative power which may be delegated.[31] In practice, the United States Congress has engaged frequently

in broad delegations that in effect require agencies to make specific sub-rules — i.e., to exercise legislative power.[32] This practice has drawn some criticism that power is now concentrated in the executive branch and that it is thus necessary to restore Congress to its original status of preeminence.[33] The growth of an enormous national bureaucracy, operating for the most part within the executive branch, may have fundamentally altered the original constitutional framework and requires some sort of response if the original constitutional concerns are to be satisfied.[34]

Section 12 of Rep. Act No. 9335, or any other provision of law granting components of the executive branch the power to formulate implementing rules, is a delegation of legislative power belonging to Congress to the executive branch. Congress itself has the power to formulate those particular rules and incorporate them in the law itself. What I believe Congress is precluded from doing is to exercise such power after the law has taken effect, in other words, after the execution phase has begun. Unless such a limitation were laid down, there would ensue undue encroachment by Congress in the exercise of legislative power.

This delegable rule-making power may be classified into two types: (1) rules intended to regulate the internal management of the agencies themselves; and (2) rules supplementing a statute and intended to affect persons and entities outside the government made subject to agency regulation.[35] Either case, the power of the executive branch to promulgate such rules springs from legislative delegation. In the Philippines, the power of executive officials to enact rules to regulate the internal management of executive departments was specifically allocated to them by a statute, the Administrative Code of 1987, promulgated by President Aquino in the exercise of her then extant legislative powers. With respect to supplementary rules to particular legislation, the power of executive officials to formulate such rules derives from the legislation itself. But in no case does such power emanate actually from inherent executive power.

The rule need not be hard and fast. We may as well pay heed to Blackstone's practical observation that the "manner, time and circumstances of putting laws in execution must frequently be left to the discretion of the executive magistrates".[36] But by and large, any problem left by the absence of clear and explicit statutory language is avoided in turn by the statutory delegation of legislative power to executive officials to vest them sufficient discretion to fill in the details.[37]

We thus cannot detract from the fundamental principle that rule-making power is legislative in character and exercised by executive officials only upon a statutory delegation of legislative power. As Fisher summarizes the peculiar dynamic:

> **Presidents are obligated under the Constitution to take care that the laws be "faithfully executed." The often conflicting and ambiguous passages within a law must be interpreted by executive officials to construct the purpose and intent of Congress**. As important as intent is the extent to which

a law is carried out. President Taft once remarked, "Let anyone make the laws of the country, if I can construe them."

To carry out the laws, administrators issue rules and regulations of their own. The courts long ago appreciated this need. Rules and regulations "must be received as the acts of the executive, and as such, be binding upon all within the sphere of his legal and constitutional authority. Current law authorizes the head of an executive department or military department to prescribe regulations "for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

These duties, primarily of a "housekeeping" nature, relate only distantly to the citizenry. Many regulations, however, bear directly on the public. **It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for the general policymaking that Congress enacts in the form of a public law. Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations is not an independent source of power to make laws. Agency rulemaking must rest on authority granted directly or indirectly by Congress.**[38]

The Court's rightful rejection of Justice Carpio's premise that the power of the President of promulgate Implementing Rules and Regulations is inherently executive provides a necessary clarification that is critical to the understanding of the Court's ruling today. Had Justice Carpio's position been adopted by the Court, the result would have been a presidency much stronger than the Constitution envisioned. Acceding to the President the power to craft Implementing Rules to legislation even if Congress specifically withholds such power to the Chief Executive would have upset the finely measured schematic of balanced powers, to the benefit of the President. Fortunately, with the disavowal of that theory, greater consideration is accorded to legislative prerogatives without compromising the important functions of the presidency.

V.

Thusly, there is nothing inherently unconstitutional in congressional participation in the formulation of implementing rules of legislation since that power is legislative in character. Yet there still are multiple roadblocks impeding a constitutionally valid exercise of that prerogative by Congress. The matters of bicameralism and presentment, as expounded in *Chadha*, are hurdles which I submit should bind the Philippine Congress as it exercises its legislative functions. Section 12 of Rep. Act No. 9335 can be struck down on that ground alone.[39] Moreover, imposing a rule barring a legislative role in the implementation of a law after the statute's effectivity will sufficiently preserve the integrity of our system of separation of powers.

At the same time, the concerns of Congress that may have animated the rise of the legislative veto should not be disrespected by simply raising formalistic barriers against them. In practice, the legislative veto is an effective check against abuses by the executive branch. The end may not justify unconstitutional means, yet we should leave ample room for Congress to be able to address such concerns within broad constitutional parameters.

There are a myriad of creative ways by which Congress may influence the formulation of Implementing Rules without offending the Constitution. If there are especially problematic areas in the law itself which Congress is not minded to leave any room for interpretative discretion by executive officials, then the provision involved can be crafted with such specificity to preclude alternative interpretations. At the same time, commonly, legislators and their staffs may lack the expertise to draft specific language.[40] Speaking from my own legislative experience, it is in the drafting of the Implementing Rules, rather than in the statute itself, that the particular expertise of the agency officials and experts tasked with the implementation of the law become especially vital.

Also, Congress can dictate which particular executive officials will draft the implementing rules, prescribe legal or factual standards that must be taken into account by such drafters, or otherwise impose requirements or limitations which such drafters are bound to comply with. Again, because the power to draft implementing rules is delegated legislative power, its exercise must be within the confines of the authority charted by Congress.

And because executive functions cannot commence until after the effectivity of the law, Congress may very well adopt creative but constitutional measures that suspend the effectivity of the law until implementing rules to its liking are crafted. There is nothing unconstitutional with suspending the effectivity of laws pending the occurrence of a stipulated condition. "[I]t is not always essential that a legislative act should be a completed statute which must in any event take effect as a law, at the time it leaves the hands of the legislative department. A statute may be conditional, and its taking effect may be made to depend upon some subsequent event."[41]

The requirements of bicameralism and especially presentment may pose insurmountable hurdles to a provision that plainly suspends the effectivity of a law pending approval by Congress or some of its members of the implementing rules.[42] At the same time, it should be recognized that Congress does have the prerogative to participate in the drafting of the rules, and if it finds a means to do so before the execution phase has begun, without offending bicameralism or presentment, such means may be upheld.

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[1] L. Tribe, I. American Constitutional Law 142 (3rd ed., 2000.) , at 142.

[2] See, e.g., *PHILCONSA v. Enriquez*, G.R. Nos. 113105, 113174, 113766, 113888, 19 August 1994, 234 SCRA 506. Neither was the question considered by the majority opinion

in *Macalintal v. COMELEC*, 453 Phil. 586 (2003).

[3] See., e.g., *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935). See also H. Bruff & E. Gellhorn, "Congressional Control of Administrative Regulation: A Study of Legislative Vetoes", 90 Harv. L. Rev. 1369, 1372-1373 (1977).

[4] Bruff & Gellhorn, supra note 3, at 1373.

[5] Ibid.

[6] Ibid.

[7] See Sec. 17, Article VII, Constitution.

[8] "One survey found five such [legislative veto clauses] enacted between 1932 and 1939, nineteen in the 1940's, thirty four in the 1950's, forty-nine in the 1960's, and eighty-nine enacted between 1970 and 1975." S. Breyer, The Legislative Veto After Chadha, 72 Geo. L.J. 785, 786 (1984)

[9] Breyer, supra note 8, at 789.

[10] Bruff & Gellhorn, supra note 3, at 1379.

[11] 462 U.S. 919 (1983).

[12] 453 Phil. 586 (2003). "[T]he Court [in *Chadha*] shied away from the issue of separation of powers and instead held that the provision violates the presentment clause and bicameralism. It held that the one-house veto was essentially legislative in purpose and effect. As such, it is subject to the procedures set out in Article I of the Constitution requiring the passage by a majority of both Houses and presentment to the President.xxx" Id., at 763 (J. Puno, Separate Opinion)

[13] See Section 12, Rep. Act No. 9335.

[14] "The records of the Constitutional Convention reveal that the requirement that all legislation be presented to the President before becoming law was uniformly accepted by the Framers. Presentment to the President and the Presidential veto were considered so imperative that the draftsmen took special pains to assure that these requirements could not be circumvented." *INS v. Chadha*, supra note 11, at 946-947.

[15] Id., at 952.

[16] A. Aman & W. Mayton, Administrative Law (2nd ed., 2001), at 594.

[17] L. Fisher. Constitutional Conflicts Between Congress and the President. (4th ed., 1997), at 153.

[18] Id., at 155.

[19] Tribe, supra note 1, at 144. Citations omitted.

[20] See note 8.

[21] N. Smith, "Restoration of Congressional Authority and Responsibility Over the Regulatory Process. 33 Harv. J. on Legis. 323 (1996).

[22] S. Breyer, supra note 8, at 792.

[23] Ibid.

[24] See, e.g., *John Hay People's Alternative Coalition v. Lim,* 460 Phil. 530 (2003).

[25] See Section1, Article III, Constitution. In *Tañada v. Tuvera*, 230 Phil. 528 (1986), the Court also cited Section 6 of the Bill of Rights, which recognized "the right of the people to information on matters of public concern", as a constitutional basis for mandating publication of laws.

[26] As much is recognized in Article 2 of the Civil Code, which states that "Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette, or in a newspaper of general circulation in the Philippines, unless it is otherwise provided." The Court in *Tañada* recognized that "unless it is otherwise provided" referred to the date of effectivity. Simply put, a law which is silent as to its effectivity date takes effect fifteen days following publication, though there is no impediment for Congress to provide for a different effectivity date.

[27] *Youngstown Co. v. Sawyer*, 343 U.S. 579, 587 (1952)

[28] See Section 62, Rep. Act No. 9136, which provides:

Section 62: Joint Congressional Power Commission.

Upon the effectivity of this Act, a congressional commission, hereinafter referred to as the

"Power Commission", is hereby constituted. The Power Commission shall be composed of fourteen (14) members with the chairmen of the Committee on Energy of the Senate and the House of Representatives and six (6) additional members from each House, to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to pro rata representation but shall have at least one (1) representative in the Power Commission.

The Commission shall, in aid of legislation, perform the following functions, among others:

a. Set the guidelines and overall framework to monitor and ensure the proper implementation of this Act;
b. Endorse the initial privatization plan within one (1) month from submission of such plan to the Power Commission by PSALM Corp. for approval by the President of the Philippines;
c. To ensure transparency, require the submission of reports from government agencies concerned on the conduct of public bidding procedures regarding privatization of NPC generation and transmission assets;
d. Review and evaluate the performance of the industry participants in relation to the objectives and timelines set forth in this Act;
e. Approve the budget for the programs of the Power Commission and all disbursements therefrom, including compensation of all personnel;
f. Submit periodic reports to the President of the Philippines and Congress;
g. Determine inherent weaknesses in the law and recommend necessary remedial legislation or executive measures; and
h. Perform such other duties and functions as may be necessary to attain its objectives.

In furtherance hereof, the Power Commission is hereby empowered to require the DOE, ERC, NEA, TRANSCO, generation companies, distribution utilities, suppliers and other electric power industry participants to submit reports and all pertinent data and information relating to the performance of their respective functions in the industry. Any person who willfully and deliberately refuses without just cause to extend the support and assistance required by the Power Commission to effectively attain its objectives shall, upon conviction, be punished by imprisonment of not less than one (1) year but not more than six (6) years or a fine of not less than Fifty thousand pesos (P50,000.00) but not more than Five hundred thousand pesos (P500,000.00) or both at the discretion of the court.

The Power Commission shall adopt its internal rules of procedures; conduct hearings and receive testimonies, reports and technical advice; invite or summon by subpoena ad testificandum any public official, private citizen or any other person to testify before it, or require any person by subpoena duces tecum to produce before it such records, reports, documents or other materials as it may require; and generally require all the powers necessary to attain the purposes for which it is created. The Power Commission shall be assisted by a secretariat to be composed of personnel who may be seconded from the Senate and the House of Representatives and may retain consultants. The secretariat shall be headed by an executive director who has sufficient background and competence on the

policies and issues relating to electricity industry reforms as provided in this Act. To carry out its powers and functions, the initial sum of twenty- five million pesos (P25,000,000.00) shall be charged against the current appropriations of the Senate. Thereafter, such amount necessary for its continued operation shall be included in the annual General Appropriations Act.

The Power Commission shall exist for period of ten (10) years from the effectivity of this Act and may be extended by a joint concurrent resolution.

[29] 122 Phil. 965 (1965).

[30] K. Sullivan & G. Gunther, Constitutional Law (14th ed., 2001), at 351.

[31] *State ex .rel. Wis. Inspection Bureau v. Whitman*, 196 Wis. 427, 220 N.W. 929 (1928)

[32] Sullivan & Gunther, supra note 30, at 351.

[33] G. Stone, L. Seidman, C. Sunstein, and M. Tushnet, Constitutional Law (4th ed., 2001), at 334.

[34] Ibid.

[35] Ibid.

[36] W. Blackstone, Commentaries, Book 1, 270.

[37] "The nature of government often requires Congress to pass general legislation and leave to other branches the responsibility to fill in the details". Fisher, supra note 17, at 90, citing *Wayman v. Southard*, 10 Wheat. 1, 46 (1825).

[38] Id., at 106-107. Citations omitted.

[39] The twin issues of presentment and bicameralism would especially come to fore with respect to the Joint Congressional Oversight Committee under Rep. Act No. 9335, composed as it is by seven Members from the Senate and seven Members from the House of Representatives. *Chadha* emphasized that the bills passed by the U.S. Congress must be presented for approval to the President of the United States in order that they may become law.[39] Section 27(1), Article VI of our Constitution imposes a similar presentment requirement. *Chadha* also noted that a bill must be concurred in by a majority of both Houses of Congress. Under our Constitution, Congress consists of a House of Representatives and a Senate, and the underlying uncontroverted implication is that both Houses must concur to the bill before it can become law. Assuming that the approval of the

Implementing Rules to Rep. Act No. 9335 by seven Members from each House of Congress is a legislative act, such act fails either the presentment or bicameralism requirement. Such approval is neither presented to the President of the Philippines for consent, nor concurred in by a majority of either House of Congress.

[40] Fisher, supra note 17, at 91.

[41] 4 Cooley on Constitutional Limitations, cited in *Ex parte Mode*, 77 Tex. Crim. 432, 441, 180 S.W. 708, Am. Ann. Cas. 1918E (1915).

[42] Of course, the problem of presentment would be avoided if the implementing rules would also be submitted for approval to the President, but this roundabout manner should be discouraged, since it could be avoided simply by having those rules previously incorporated in the law earlier presented to the President.
