NOT A LOT TO ALLOT: A REVIEW OF LEGISLATIVE, EXECUTIVE AND JUDICIAL DECISIONS ON INTERNAL REVENUE ALLOTMENT (IRA)*

*Romeo Raymond C. Santos***

Promoting the development of local government units (LGUs), by itself, is a given in any national polity. No less than the framers of the 1987 Constitution sought to strengthen local autonomy by providing local governments with resources to fund the implementation of their respective programs and projects. This basically encapsulates the concept of the internal revenue allotment, more commonly known as IRA. Without the IRA, LGUs with low levels of local revenue generation cannot function adequately.

The IRA was lately thrust into the limelight in the case of *League of Cities of the Philippines v. Commission on Elections,*[1] where the petitioner and intervening cities disputed the validity of the conversion of sixteen (16) municipalities into cities. Petitioner raised the issue that creation of 16 new cities would violate the right of existing cities to a just and equitable share in the proceeds of the national taxes. Existing cities feared that accommodating the conversion of the new cities would effectively reduce their IRA.

The case represented the very first occasion where LGUs in large numbers squabbled over the IRA, not only in the Supreme Court, but also in print and broadcast media. The controversy gained much attention from the public after the Supreme Court in February 2011 reversed itself for the third time, which was unusual. There was much speculation about the role of politics in the fickleness of the Supreme Court.

Accounting for 15-20% of expenditures,[2] the IRA is a significant item in the national budget, second only to debt servicing in proportion to the total budget. This, along with socio-political realities, makes the IRA extremely vulnerable to machinations by political actors. Since the effectivity of the Local

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** LL.B., University of the Philippines (1993); M.A. in Public Administration, University of the Philippines (2011); A.B., University of the Philippines (1989).

[1] G.R. No. 176951, Feb. 15, 2011; G.R. No. 176951, Apr. 12 2011.

[2] *See* General Appropriations Acts 2001-2010.

Government Code in 1992, a sizable volume of legislative, executive and judicial decisions has accumulated.

This article attempts to present and analyze the state of the law on the IRA.

I. THE IRA AS AN INTERGOVERNMENTAL TRANSFER

The IRA is the share of LGUs in the internal revenues collected by the national government. As an intergovernmental transfer or intergovernmental fiscal transfer, it is intended to supply the fiscal inadequacies of the recipients and thereby enable them to deliver mandated services and enhance development.[3] The IRA is a bloc grant, an all-purpose general allotment to which LGUs are entitled: no condition or requirement is attached for its release.[4]

Aside from the IRA, other intergovernmental transfers in the Philippines include shares of LGUs in the proceeds of the national wealth, specific allotments to Virginia tobacco-producing provinces and the calamity fund, which are special purpose grants.[5] In contrast, other countries distinguish between general grants, which serve as equalization funds, and specific grants to less developed local units with low levels of revenue generation.[6]

II. ORIGINS OF THE IRA

One of the earliest statutory provisions for the IRA was Commonwealth Act (C.A.) No. 466 (entitled *An Act to Revise, Amend and Codify the Internal Revenue Laws of the Philippines*), enacted in 1939, providing for internal revenue allotments to LGUs based on the sole criterion of population.[7] Title XII of C.A. No. 466 classifies allotments as either special allotments (Chapter I) or allotments in general

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[3] Larry Schroeder & Paul Smoke, *Intergovernmental Fiscal Transfers: Concepts, International Practice, and Policy Issues, in* INTERGOVERNMENTAL TRANSFERS IN ASIA: CURRENT PRACTICES AND CHALLENGES FOR THE FUTURE 21-22 (Paul Smoke & Yun-Hwan Kim eds., 2002).

[4] LOCAL GOV'T CODE, § 6.

[5] *See* General Appropriations Acts, tit. XXXVI.

[6] *See* Schroeder & Smoke, *supra* note 3. Indonesia has both revenue-sharing and grant instruments; Regions in India base grants to local governments on specified taxes; they also have income-based formulas for determination of grants. *See also* NURIA BOSCH & MARTA ESPASA, LOCAL GOVERNMENT FINANCE IN THE EUROPEAN UNION (EU-15) (2001). Britain, France, Italy, Spain and Germany all distinguish between general, all-purpose and equalization grants, and formula and data-based, specific grants based on local needs.

[7] Sec. 367. *Apportionment to be based upon census population.* — Apportionment of national internal revenue under the provisions of this Title shall be based on population as shown by the latest official census.

(Chapter II). Special allotments allocated specific shares of a level of an LGU to certain taxes, or for identified projects such as construction of roads and bridges.

The 1973 Constitution devoted an entire article (article XI) on local government, emphasizing the need for effective local governance. However, it did not provide for the IRA, which remained a legislative grant.

The allotments and allocations under the Tax Code of 1939 were abrogated in 1973 by former Pres. Ferdinand E. Marcos under Presidential Decree (P.D.) No. 144, which revised the system of allocation and distribution under C.A. No. 466. The law sought to equalize the distribution of allotments by instituting a more formula-based set of criteria, allocation and distribution. P.D. No. 144 removed the distinction between general and special allotments. Instead, it provided for a general allotment for all levels of LGUs. Under P.D. No. 144, twenty percent (20%) of internal revenues not otherwise accruing to special funds and special accounts in the general fund, accrued to LGUs based on the collections of the third preceding fiscal year. Thirty percent (30%) of the amount was allocated to provinces, forty-five percent (45%) to municipalities, and twenty-five (25%) to cities. The share of each LGU was based on the formula of seventy percent (70%) population, twenty percent (20%) land area, and ten percent (10%) equal sharing. P.D. No. 144 also provided that each province, city and municipality appropriate in its annual general fund budget no less than twenty percent (20%) of its annual allotment for development projects. The basic provisions of P.D. No. 144 would later form the basis of provisions on the IRA of the Local Government Code.

Batas Pambansa (B.P.) Blg. 337 *(The Local Government Code of 1983)* did not amend P.D. No. 144. It did not contain provisions on the share of LGUs in the national internal revenues. The IRA at that time was considered more a matter of tax administration and enforcement rather than an integral part of local governance and local government.

III. CONSTITUTIONAL BASIS OF THE IRA

The 1987 Constitution contains an entire article on local government (art. X), which represents an expansion of local autonomy provided earlier under the 1973 Constitution.[8] The underlying principles of article X are local autonomy, including both fiscal autonomy and administrative autonomy, and decentralization.

[8] CONST. art. X, §§ 2, 3, 5, 6, 14.

Section 2, article X grants LGUs the right of local autonomy, providing that: *"(t)he territorial and political subdivisions shall enjoy local autonomy."* Fiscal autonomy, a component of local autonomy, is recognized under section 5 which empowers LGUs to generate their own sources of revenues, and to levy taxes, fees and charges, subject only to such limitations as Congress may provide. This is followed immediately by the provision on the IRA, *to wit*: "(l)ocal government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them."[9]

This provision indicates that the IRA is a major component of local government and governance, and even of national governance. The IRA is both a matter of principle and policy; violation of said provision would be unconstitutional. The provision may not be ignored or abrogated, except by way of adoption of another constitution. It also hints that it is in furtherance of the policies of local autonomy and decentralization. Article X begins with the adoption of said general policies and delves into specifics as it unfolds. There is no reason to include the IRA under article X unless it was in furtherance of said general policies.

The term "just share" in the provision may be interpreted in several ways. It was left for Congress to determine the standard for determining compliance with this mandate. Moreover, LGUs have the prerogative to use the IRA pursuant to their autonomy. The national government cannot supersede the authority of LGUs to determine utilization of the IRA.[10]

More importantly, the provision clarifies that the IRA is a demandable and enforceable right on the part of LGUs. The national government must *automatically* release IRA in full without any deduction or holdback as a matter of obligation. In the event of non-observance, LGUs may properly compel through a suit observance of that right by any person or entity. The Supreme Court is enjoined to protect such entitlement.

As evidenced by the proceedings of the 1986 Constitutional Commission, automatic release of the IRA was intended to guarantee and promote local autonomy. As said by Commissioners Jose N. Nolledo and Regalado M. Maambong:[11]

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[9] LOCAL GOV'T CODE, § 6.

[10] The only exception is the requirement under the Local Government Code of 1991 that at least 20% of the IRA should be allocated for local development programs.

[11] Province of Batangas v. Romulo, G.R. No. 152774 (hereinafter "Province of Batangas"), 429 SCRA 736, 764-765, May 27, 2004.

> MR. MAAMBONG. x x x [U]nder article II, section 10 of the 1973 Constitution, we have a provision which *(sic)* states:
>
> > The State shall guarantee and promote the autonomy of local government units, especially the barrio, to insure their fullest development as self-reliant communities. x x x
>
> Also, this provision on "automatic release of national tax share" points to more local autonomy. Is this the intention?
>
> MR. NOLLEDO. Yes, the Commissioner is perfectly right.

The concept of local autonomy was explained by the Supreme Court in *Ganzon v. Court of Appeals* in this wise:[12]

> As the Constitution itself declares, local autonomy "means a more responsive and accountable local government structure instituted through a system of decentralization. The Constitution . . . . 'liberate[s] the local governments from the imperialism of Manila.' Autonomy, however, is not meant to end the relation of partnership and interdependence between the central administration and local government units, or otherwise, to usher in a regime of federalism.
>
> x x x
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> Further, a basic feature of local fiscal autonomy is . . . automatic release of the shares of LGUs in the national internal revenue.

Consequently, if Congress imposes additional requirements on LGUs to claim their IRA, this would violate the Constitution. Similarly, if the executive employs informal norms or bureaucratic wrangling to deprive LGUs of their IRA, it would transgress the constitutional intent. Congress cannot pass laws that prevent the executive from releasing the IRA automatically. Otherwise, the President may disregard the Constitution since he must execute the law; this would make the Constitution amendable by law.[13]

Even if Congress and the President intended to avert a fiscal crisis, "[t]he rule of law requires that even the best intentions must be carried out within the parameters of the Constitution and the law."[14]

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[12] *Id.* at 766-767.

[13] Alternative Center for Organizational Reforms, Inc. (ACORD) v. Ronaldo Zamora, G.R. No. 144256 (hereinafter "ACORD"), 459 SCRA 578, Jun. 8, 2005.

[14] Province of Batangas, 429 SCRA 736, 766-767, May 27, 2004.

IV. LEGAL PROVISIONS ON THE IRA

The principles of decentralization, local administrative and fiscal autonomy, and devolution were adopted in Republic Act (R.A.) No. 7160, or the Local Government Code of 1991 (LGC), which was enacted pursuant to article X, section 3 of the 1987 Constitution. Echoing the Constitution, the LGC provides that LGUs shall be entitled to a share in the national taxes, through the IRA.

A. The Local Government Code of 1991 (LGC)

The LGC contextualizes the IRA within the administrative and fiscal autonomy enjoyed by LGUs, as follows:

> "Sec. 18. *Power to Generate and Apply Resources.* Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenue and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; **to have a just share in national taxes which shall be automatically and directly released to them without need of further action** (Emphasis supplied).

The basic policy is framed within the broader setting of decentralization:

> Sec. 3. *Operative Principles of Decentralization.* - The formulation and implementation of policies and measures on local autonomy shall be guided by the following operative principles:
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> x x x
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> (d) **The vesting of duty, responsibility, and accountability in local government units shall be accompanied with provision for reasonably adequate resources to discharge their powers and effectively carry out their functions: hence, they shall have the power to create and broaden their own sources of revenue and the right to a just share in national taxes** and an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas; x x x (Emphasis supplied)[15]

[15] *See* Dante B. Gatmaytan, *Cost and Effect: The Impact and Irony of the Internal Revenue Allotment,* 75 PHIL. L.J. 630, 633-634 (2000).

1. The Share of IRA in National Internal Revenues

Section 284 provides:

> *Allotment of Internal Revenue Taxes.* – **Local government units shall have a share in the national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of the Code, thirty percent (30%);
> (b) On the second year, thirty-five percent (35%); and
> (c) On the third year and thereafter, forty percent (40%). x x x"
>
> *Provided,* That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, ... to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third year preceding the current fiscal year. x x x (Emphasis supplied)

The IRA or share of LGUs is collected from the national taxes only and not from the total national budget for a fiscal year; it is pegged at forty percent (40%). In the event of an "unmanageable public sector deficit," the President may adjust that proportion upon concurrence of certain requirements. In such case, the IRA may be reduced to not less than thirty percent (30%) of national taxes collected.

Section 284 provides that the IRA is based on tax collections on the third fiscal year preceding the current year. A probable reason for the time lag is the need for the national government to make projections in the preparation of the budget: the clearer the pattern of tax collections, the more accurate the computation of IRA. Another is to lessen the fiscal burden on the national government which faces multiple and simultaneous budgetary responsibilities to government agencies and instrumentalities.

In the event of an unmanageable public sector deficit, the President may adjust said share, subject to the following requirements:[16]

a. Recommendation of the Secretary of Finance;
b. Recommendation of the Secretary of the Interior and Local Government;
c. Recommendation of the Secretary of Budget and Management;

[16] LOCAL GOV'T CODE, § 284.

d. Consultations with the Senate President and Speaker of the House of Representatives;
e. Consultations with the Presidents of the various *liga* of provinces, cities, municipalities and barangays;
f. That any adjustments on IRA shall not be less than thirty percent (30%).

The Implementing Rules and Regulations (IRR) of the LGC includes another requirement: that any such adjustment shall be effected only after a corresponding reduction of the national government expenditures including cash and non-cash budgetary aids to government-owned and controlled corporations (GOCCs), government financial institutions (GFIs), the Oil Price Stabilization Fund (OPSF), and the Bangko Sentral ng Pilipinas (BSP).[17] This rule is not specifically provided in section 284 of the LGC.

Section 284 provides the proportion of the national internal revenues to which LGUs are entitled as IRA. However, the text of section 284 and the Constitution do not indicate the gauge or standard used in determining this share. About the only measure provided under the Constitution is the standard of *just share in the national taxes.* Whether this was empirically warranted or whether this proportion accords with the standard of justice lay within the prerogative of Congress. The minutes of the proceedings on the IRA provisions show that Congress arrived at the figure arbitrarily, without any attempt to justify it.[18]

Section 284 also emphasizes that the IRA shall always be reckoned at forty percent (40%) of internal revenues after the third year of effectivity of the LGC and be reduced or increased through the General Appropriations Act (GAA) since the text does not state *at least forty percent (40%),* which would suggest that the IRA can actually be increased by a concurrence of legislative and executive wills. The non-impairment of the 40% requirement calls to mind the non-political nature of the IRA: that it cannot be subject to legislative or executive caprices.[19] That would probably reinforce the political and fiscal autonomy of LGUs.

The same provision supplies the exception to the rule that the IRA may not be diminished. If the national government incurs an unmanageable public sector deficit, the President may effect the necessary adjustments in the IRA subject to various recommendations and consultations as discussed above.

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[17] Art. 379, Part One, Rule XXXII.

[18] House of Representatives, Minutes of the Hearings and Deliberations on the Proposed Local Government Code, May 17, 1990, Jan. 17, 24 & 30, 1991.

[19] *See* § 389(c), Implementing Rules and Regulations of the Local Government Code: "Adjustments to the IRA share of LGUs shall be made only after effecting a corresponding reduction of the national government expenditures, including cash and non-cash budgetary aids to government-owned and controlled corporations, government financial institutions, the Oil Price Stabilization Fund, and the Central Bank."

Recommendation in section 284 signifies the factual finding by the concerned secretaries of the existence of an unmanageable public sector deficit. The significance of consultations lies in the political necessity of prior notice and of arriving at a political consensus through negotiations on material terms. This would also limit capricious exercise of executive prerogative in a country with a fairly recent history of restoration of democracy.

Another limit to the executive is the minimum limit of reduction of the IRA, that is, not lower than thirty percent (30%) of taxes collected. This ensures that LGUs receive an amount that could still enable LGUs to operate. However, a ten percent (10%) reduction of the IRA might not be sufficient for the national government to cope with the unmanageable public sector deficit. If so, it might only provoke the national government to borrow more and thereby exacerbate the public sector deficit.

The reduction of the IRA under section 284 may not even provide immediate fiscal relief. The base period might be favorable for tax collections yet wholesale application even of a thirty percent (30%) IRA thereon for a budget for enactment three years later might be fiscally burdensome. Besides, instead of relieving the fiscal situation, the declaration of the existence of an unmanageable public sector deficit might provoke creditors into declaring due and demandable all obligations owed by the Philippine government.

Section 284 does not define what constitutes an *unmanageable public sector deficit.* Obviously, it is intended to address conflicting needs of the national government and LGUs in *extreme cases,* and must be used sparingly. A fluid conception of the term might even be necessary in such an occasion. The national government may be faced in a situation of balancing conflicting fiscal demands of national government and LGUs, in which case, the interests of the national collectivity are deemed superior to local necessities.

In fact, in *Pimentel v. Aguirre,*[20] the Supreme Court stated that:

> [Under] the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units is expected to propel social and economic growth and

[20] Pimentel v. Aguirre, G.R. No. 132988 (hereinafter "Pimentel"), 336 SCRA 201, 217, Jul. 19, 2000.

> development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated... towards a common national goal.

These statements clarify the bounds of local autonomy: while LGUs enjoy this privilege, they remain *alter egos* of the national government. In the event of conflict between the broader national interests and localized needs, the former will still prevail.[21]

The minutes of the Bicameral Conference Committee[22] show that Senator Aquilino Q. Pimentel was the proponent of the measure. He insisted that it would "give some flexibility to the national government to address certain . . . movements in the matter of deficits that we might not be able to foresee at the present." Some members of the Committee, especially Senators Pimentel, Emilio R. Osmena, and Rene A.V. Saguisag were insistent on the inclusion of a standard as basis for determining the existence of an unmanageable public sector deficit. In the end, the panel agreed with Rep. Exequiel Javier that using a standard would be difficult: what could be manageable at present might not be manageable in the future. The panel resolved to omit any reference which would allow for greater flexibility for the national government.[23] The same minutes also do not reflect the complicated recommendations and consultations except for the recommendation of the Department of Finance (DOF) which Sen. Pimentel originally proposed.

Section 284 seems clear on the share of the IRA in the national taxes. In practice, before the forty percent (40%) share of IRA in the national internal revenues is computed, the national government deducts from the total internal revenue collection amounts mandated under various laws.[24] There have been discrepancies between the 40% share of IRA as computed by the Bureau of Internal Revenue (BIR) and the Department of Budget and Management (DBM), as regards strict adherence to section 284 of the LGC. Flores[25] reports that from 1992-1999, the DBM's computation is roughly P5 billion less than the BIR's. The

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[21] *See* Magtajas v. Pryce, G.R. No. 111097, 234 SCRA 255, Jul. 20, 1994; Laguna Lake Development Authority v. Court of Appeals, G.R. No. 120865-71, 251 SCRA 42, Dec. 7, 1995.

[22] 1-15, May 28, 1991.

[23] The LGC was enacted during the administration of President Corazon C. Aquino in 1991: the EDSA Revolution took place just more than five years before approval of the LGC.

[24] *See* GAA 2010, tit. XXXVI, and titles of past GAAs under the heading Allocations to Local Government Units. Article 378 of the Implementing Rules and Regulations (IRR) of the LGC mandates the BIR to certify the amount of internal revenue taxes actually realized during the appropriate base year, and DBM to determine the share of LGUs (the IRA) that will be incorporated in the GAA.

[25] Atty. Florecita Flores, A Study of Legal Deductions on the Internal Revenue Allotment for Local Government Units (2007) (unpublished report to the United States Agency for International Development (USAID), Ateneo de Manila University, and Economic Policy Reform and Advocacy), *citing* Raul G. Bito-on, A Study on the Legality of Deducting Certain Taxes and Special Levies Before Determining the IRA Shares of the LGU.

conflicting figures result from what constitutes *basic income* as defined by the BIR and used as the basis for computation of the IRA:[26] "the sum of all internal revenue tax collections only during the base year less the amount released during the same year for tax refunds, payments for informer's reward, and any portion of internal revenue tax collections which are presently set aside, or hereafter earmarked under special laws for payment to third persons, such as the amount intended for payment to the Commission on Audit, insurance benefits, etc." Base year refers to the third preceding fiscal year preceding the current fiscal year.[27]

The power of the President to diminish the IRA under section 284 has provoked a question on its constitutionality. Calida argued that the Constitution does not grant the President the power to diminish the IRA in the event of an unmanageable public sector, which he also interprets as an undue delegation of legislative power.[28] Section 284 fails the completeness and sufficient standard tests, and thus, the power of the President therein cannot qualify as an emergency power, citing the case of *US v. Ang Tang Ho.*[29]

There are two exceptions to the rule that legislative power cannot be delegated to the executive, namely: (1) *contingent legislation,* where Congress may enact a law complete in its terms to become operative only upon the happening of a subsequent event and this event may be the subject of control by human agencies; and (2) *subordinate legislation,* in which administrative agencies fill up details often considered too minute or too technical for Congress to discuss and legislate.[30]

Section 284 may be upheld as constitutional. First, the President will not do anything more than declare the existence of an unmanageable public sector deficit upon the concurrence of certain events and facts. The finding of the existence of an unmanageable public sector deficit lies with the concerned Secretaries who act not as *alter egos* of the President but as agents of Congress.[31] The word *unmanageable* while not defined in the provision should be interpreted flexibly to suit the exigencies of the situation. It might be serious enough to merit swift executive action in order to avert total financial collapse as had happened in 1997 to some Asian economies. If the collectivity has to survive, the government

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[26] *Id., citing* Memorandum dated Sep. 14, 1993, Comm. Liwayway Vinzons-Chato.

[27] *Id.*

[28] Josef Calida, Show Them the Money: Why the President Cannot Reduce and Withhold the IRAs of Local Government Units (2003) (a dissertation for Juris Doctor School of Law, Ateneo de Manila University)..

[29] G.R. No. 17122, 43 Phil. 1, Feb. 27, 1922.

[30] Eastern Shipping Lines v. Philippine Overseas Employment Administration, G.R. No. 76633, Oct. 18,1988.

[31] *See* Abakada Guro Party List v. Ermita, G.R. No. 168056, 562 SCRA 251, Aug. 14, 2008.

should be empowered to avert total financial collapse which could result in far greater evils.

Second, the provision lays down the extent for reduction of the IRA which is not more than ten percent (10%). Again, there should be flexibility in this regard to balance both national and local needs, which is supported by the recommendatory and consultative requirements, hence the latitude for reduction of the IRA. A mathematical formula that pegs the extent of the deficit to a fixed proportion of the diminished IRA would be highly impractical and overly academic if the threat of financial implosion requires swift action. Further, a rigid standard could only fail to satisfy the needs of national and local governments without much impact on the public deficit that the President seeks to alleviate.

Third, the provision itself suggests that the reduction of the IRA will only last for the duration of the existence of the unmanageable public sector deficit. When the public deficit ceases to be unmanageable, the President may restore the usual proportion of the IRA. Any party in interest may bring an action if the condition ceases and the President fails to restore the usual proportion of the IRA.

The provision makes a possible abuse of power by the President difficult. This complex process of recommendation and consultation suggests that the President's power to act is very limited; it is reasonable to suppose that the President would not and cannot abuse his power in reducing the IRA. The framers of this provision certainly felt that enough safeguards were in place to avert any abuse of discretion. The impact alone of declaring the existence of an unmanageable public sector deficit on the country's credit standing should make the President weigh his possible options before reducing the IRA's share.

A case can also be made in support of diminution of the IRA: the provision of the Constitution on the IRA as only an entitlement to LGUs and its automatic release. Even its use of *just* share in the national taxes suggests that the value of the IRA may be modified by Congress from time to time, since the Constitution does not define the term *just.*

In *Abakada Guro Party List v. Executive Secretary Eduardo Ermita,*[32] the Supreme Court held that delegation of legislative power is valid if the President retains only the discretion on the execution of the law, which in that case was upon the determination of certain fiscal data by the Secretary of Finance. Thus, if the Secretaries of Finance, Interior and Local Government, and Budget and Management as agents of Congress recommend the reduction of the IRA upon the

[32] G.R. No. 168056, 562 SCRA 251, Aug. 14, 2008.

finding of an existence of an unmanageable public sector deficit, the President may thereupon lawfully invoke section 284 of the LGC.

2. Distribution and Release of the IRA

Section 285 of the LGC provides that provinces shall receive twenty-three (23%) of the total IRA; cities, twenty-three (23%); municipalities, thirty-four (34%); and barangays, twenty percent (20%). The share of each province, city and municipality shall be based on a formula of fifty (50%) for population, twenty-five (25%) for land area, and twenty (25%) for equal sharing. The formula for barangays is sixty (60%) for population, and forty (40%) for equal sharing.

The formula and allocation of the IRA are carry-overs from P.D. No. 144, which identified the same criteria, population, land area, and equal sharing although at different proportions. The minutes of the proceedings do not show that Congress considered the very purposes of IRA, namely, to achieve local fiscal autonomy and to equalize development. Congress did not employ empirical criteria in the deliberations; neither did Congress compare the existing policy in other countries that could have improved the distribution and formula under P.D. No. 144. The silence of the Constitution on the formula and allocation indicates that Congress may in the future supplant or supplement the IRA with some other grant to LGUs without depriving LGUs of their rightful share in the national taxes and without violating this basic provision. As it is, Congress preferred to provide for a general, all-purpose grant rather than special grants that are intended to distribute funds to less developed LGUs.

The formula for distributing IRA among LGUs under section 285 assumes that LGUs with large areas and populations might need larger financial assistance from the national government. Hence, the formula is biased in favor of provinces with relatively large territories, and those with large populations. But it is also biased against provinces small in both land area and population, which tend to have less capacity for generating their own revenues and have higher incidences of poverty. The formula totally ignored population density, income class and incidence of poverty as a way to ensure equitability.[33]

The LGC is biased toward cities, which are entitled to twenty-three (23%) of the entire IRA as against thirty-four (34%) for municipalities. The number of municipalities stands at over 1,500 with cities at 138. Apportioning the respective shares of cities and municipalities in the IRA would yield higher proportions for

[33] *See* Ebinezer Florano, Towards an Equitable Distribution of the IRA: A Policy Analysis (1995) (an unpublished policy paper for Master of Public Administration, National College of Public Administration and Governance, University of the Philippines).

each city given the lower divisor. Little wonder that the number of cities in the country continues to grow. Indeed, section 285 is inextricably linked to section 450[34] of the LGC.

Despite the legislative intent to enhance local autonomy through the IRA, LGUs remain dependent on the IRA.[35] This suggests that LGUs failed to exploit the revenue generating measures provided in the LGC and that the IRA as a bloc grant has had a disincentive effect of local revenue generation and tax administration. Dependence can make LGUs vulnerable to executive manipulation. Dependence on the IRA is most apparent in the number of municipalities that have sought conversion into cities[36], which suggests that the IRA has been used to augment local revenues and that local tax administration is stagnant. Hence, the number of cities rose from 61 in 1977 to 138 according to the latest ruling of the Supreme Court in *League of Cities* case.[37]

According to Sen. Pimentel, the original requirement on income for municipalities seeking conversion into cities, namely, P20 million in 1991[38] was based on locally generated funds exclusive of their share in the IRA.[39] He blamed the executive department and the LGUs for distorting the income requirement as inclusive of the IRA.[40] However, from a statist point of view, the fact remains that the Supreme Court in *Alvarez v. Guingona*[41] had ruled that the IRA should be included in the computation of income for purposes of conversion into cities. To limit the increase in the number of cities, Pimentel proposed amending the income

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[34] This provision, as will be discussed in the later part of the paper, enumerates the requisites for the creation of new cities, one of which is the income minimum threshold.

[35] *See* Gatmaytan, *supra* note 15. Sulu, Kalinga, Eastern Samar and Davao Oriental derived more than 90% of their revenues from the IRA in 2008 (Bureau of Local Government Finance). More affluent provinces such as Cebu and Tarlac derived 57% of revenues from the IRA. The share of the IRA in total revenues in the cities of Sipalay, San Carlos (Pangasinan), Gingoog and Puerto Princesa for the same year exceeded 80%. In contrast, the proportion of IRA to total revenues in Pasay and Pasig was less than 12%. The IRA of Makati accounted for only 5% of total revenues.

[36] *See* Rosario G. Manasan *IRA Design Issues and Challenges,* PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES (PIDS) POLICY NOTES NO. 2007-9; Gilberto M. Llanto, *Fiscal Decentralization and Local Finance Reforms in the Philippines,* PIDS DISCUSSION PAPER SERIES NO. 2009-10.

[37] National Statistical Coordination Board, *at* http://www.nscb.gov.ph/factsheet/pdf07/FS-200712-PP2-01.asp, which noted the conversion into cities of Tayabas, Quezon; Carcar and Naga, Cebu; Guihulngan, Negros Oriental and Cabadbaran, Agusan del Norte. The other new cities are the eleven others in the *League of Cities* case.

[38] Privilege Speech, Sep. 6, 2006: Sen. Pimentel said 1991 was the year when the LGC took effect. In truth, it took effect on Jan. 1, 1992.

[39] This should also include shares in the national wealth.

[40] Sen. Pimentel did not make reference to *Alvarez v. Guingona* where the Supreme Court held that the IRA should be included in the computation of income for purposes of conversion into cities because the IRA is a recurring income. If there was collusion between the executive and the LGUs, the Supreme Court merely gave its imprimatur. If there was none, LGUs can take comfort in the fact that the Supreme Court gave jurisprudential basis for their aspirations to cityhood.

[41] *Alvarez v. Guingona* , G.R. No. 118303 (hereinafter "Alvarez"), 252 SCRA 695, Jan. 31, 1996.

requirement from P20 million to P100 million, which materialized in 2001 as Republic Act (R.A.) No. 9009. The latest decision of the Supreme Court in *League of Cities* case suggests that more exceptions to the general rule under R.A. No. 9009 would be allowed.

Section 286 of the LGC provides for the automatic release of the IRA, as follows:

> *Automatic Release of Shares.* – (a) The share of each local government unit shall be released, **without need of any further action,** directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose. (Emphasis supplied)

This provision substantially reiterates section 6, article X of the 1987 Constitution, which provides that the just share of LGUs in the national taxes shall be promptly and automatically released to them (that is, *without need of any further action*). It emphasizes that release of the IRA is not discretionary on the part of the national government. The provision does not contemplate the usual budgetary, fiscal, administrative and legal requirements.

Section 286 actualizes the fiscal autonomy of LGUs by exempting release of the IRA from any lien or holdback that the national government may impose. This implicitly acknowledges the function of IRA as contributive to its local autonomy which the national government must respect.

Section 286 requires predictable and timely release of the IRA. If seen in relation to section 284, that is tax collections in the third preceding fiscal year, the requirement for predictability becomes clear.

Consistent with section 286, section 288 provides that:

> *Rules and Regulations.* - The Secretary of Finance, in consultation with the Secretary of Budget and Management, shall promulgate the necessary rules and regulations for a simplified disbursement scheme designed for the speedy and effective enforcement of the provisions of this Chapter.

3. Utilization of the IRA

Section 287 provides an exception to the general rule that LGUs enjoy the prerogative to use their IRA: it requires LGUs to appropriate in their annual budget at least twenty percent (20%) of the IRA for local development projects, as follows:

> *Local Development Projects.* – Each local government unit shall appropriate in its annual budget no less than twenty percent (20%) of its annual internal revenue allotment for development projects. Copies of the development plans of local government units shall be furnished the Department of Interior and Local Government.

The so-called 20% development fund under section 287 is actually a carryover from P.D. No. 144, rather clumsily worded as: "Each province, city and municipality shall appropriate in its annual general fund budget no less than 20% of its annual allotment for development projects."[42] The difference between the section 287 of the LGC and P.D. No. 144 is the inclusion of *barangays* in the former, with the all-inclusive clause "[E]ach local government unit."

Legislative deliberations do not show that the provision was tackled. This suggests that Congress merely *intuited* that the 20% figure sufficiently addresses the developmental needs of LGUs and copied, as with other IRA provisions, previous legislation.

B. The National Internal Revenue Code

Prior to the effectivity of the LGC of 1991, the legal provisions relating to IRA were incorporated into the tax statutes, such as C.A. 466 and P.D. No. 144. One attempt at codifying tax laws was P.D. No. 1158 (1977), otherwise known as the National Internal Revenue Code (NIRC). The NIRC of 1977 incorporated the allotments provided in P.D. No. 144. This law would be later amended by P.D. No. 1994 and Executive Order (E.O.) No. 273 (1988). Later amendments were the Comprehensive Tax Reform Act of 1997 (R.A. No. 8424) and the rate increases in value-added tax in 2005 and 2006.

Section 283 of R.A. No. 8424 provides that national internal revenue collected shall accrue to the National Treasury, and except for the IRA, shall be available for general purposes of the government. In addition to the IRA, cities and municipalities are entitled to receive an additional amount of the increase in collections in various forms of Value-Added Tax (VAT) of the immediately preceding year.

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[42] P.D. No. 144, para. 6.

V. LEGISLATIVE AND EXECUTIVE ACTION

The mandate of the Constitution for the IRA is actualized through the Local Government Code and funded through appropriations laws. The LGC and the General Appropriations Acts (GAAs) are enactments of Congress. The executive department distributes the IRA, an item in the budget, by disbursing it, and exercises some supervision over LGUs relative to utilization of the IRA.

A. The GAA and the Reenacted GAA

Allocation for the IRA is provided in the National Expenditure Program (NEP) which the DBM prepares and the President approves. The NEP is submitted to Congress at the beginning of the budget authorization phase.

The National Expenditure Program and the GAA

Former Pres. Joseph Ejercito Estrada submitted the NEP to Congress for Fiscal Year 2000 proposing an IRA in the amount of P121.778 billion. Estrada later signed the appropriations bill into law, with an IRA therein of only P111.778 or P10 billion less than that of the NEP. In another part of the GAA (*Unprogrammed Fund),* P10 billion was identified to fund the IRA, which amount would be released only when the original revenue targets submitted by the President could be realized based on a quarterly assessment to be conducted by the Senate Committee on Finance, the House Committee on Appropriations and the Development Budget Coordinating Committee (DBCC). The Supreme Court would later invalidate the segregation of said P10 billion from the IRA in *ACORD v. Zamora.*[43]

The Reenacted Budget

In anticipation of the possible failure of Congress to approve the budget bill and of the President to sign it into law, the Constitution provides a built-in guarantee for the normal flow of the operations of government: the reenacted budget. Section 25(7), article VI provides that *"(i)f by the end of any fiscal year, the Congress shall have failed to pass the general appropriations law for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress."* This provision is incorporated into the GAA.

[43] 459 SCRA 578, 583-586, Jun. 8, 2005.

Reenactment poses a legal and administrative issue insofar as budgeting for the IRA is concerned. Since national internal revenue collections vary yearly, and since the IRA is based on tax collections on the third preceding fiscal year, the IRA under the reenacted budget may not correspond to the proportion provided under section 284 of the LGC.[44]

The Supplemental Budget of 2006

Congress approved the Supplemental Budget of 2006 after failing to approve the appropriations bill on time. Congress denominated the IRA differential as *Allocation to Local Government Units (ALGU-IRA),* providing that *"[ALGU-IRA] is considered automatically appropriated. Future local government share* (sic) *in the national internal revenue taxes or IRA shall henceforth be automatically appropriated."* This provision removes the IRA from congressional discussion as in the case of debt repayments or servicing, thereby facilitating approval of the budget but failed to lay the basis for the computation of the IRA.

The legal issue in the measure is whether a *mere* supplemental budget could lawfully bind general appropriations acts in the future. The meaning of the text may be construed as preventing Congress from fully exercising its appropriations and oversight powers over executive agencies involved in the computation, release, and distribution of the IRA. Whether the computation for the IRA is correct, and whether the national government might diminish the IRA through the use of administrative techniques or subject its release to conditions, could now be interpreted as beyond debate. This might be interpreted as a kind of collusion between Congress and the executive. In fact, Congress had illegally permitted the diminution of the IRA by including a portion in the unprogrammed fund.[45]

Another issue is whether the approval of the supplemental budget was valid in view of the fact that at that time, Congress failed to enact an appropriations law; the government was operating under a reenacted budget, i.e. the immediately preceding year's budget.

B. Executive Action and Executive-Legislative Collaboration on the IRA

The issues in executive and executive-legislative decisions on the IRA involve its diminution, withholding, and conditional release contrary to the Constitution and the LGC.

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[44] *See* GAAs 1998-2005. The shortfall amounted to P20 billion.

[45] *See Province of Batangas*, 429 SCRA 736, 764-765, May 27, 2004; *ACORD,* 459 SCRA 578, Jun. 8, 2005.

Withholding a Portion of the IRA

Former Pres. Fidel V. Ramos wanted to spare the country from the effects of the Asian financial crisis of 1997, and issued Administrative Order (A.O.) No. 372 in December 1997, requiring LGUs to limit expenditures of the IRA. Pres. Ramos' goal was to match expenditures with available resources, which were presumably depleted at the time due to economic difficulties brought about by the depreciation of the peso.[46] The order required all government agencies, state universities and colleges, government-owned and controlled corporations, and LGUs to reduce total expenditures by at least twenty-five percent (25%). The national government would also withhold ten percent (10%) of the IRA of LGUs pending assessment and evaluation by the DBCC of the emerging fiscal situation. President Estrada later issued A.O. No. 43 in December 1998, lowering to five percent (5%) the amount to be withheld from the IRA. The Supreme Court invalidated said provisions of the two orders as unconstitutional in the case of *Pimentel v. Aguirre.*

Administrative Measures to Reduce the IRA

Former Pres. Estrada issued E.O. No. 48 in December 1998 establishing a program for devolution adjustment and equalization through a fund to be sourced from availing savings of the national government for fiscal year 1998. The fund was to be administered by an *ad hoc* administrative entity, the Oversight Committee on Devolution (OCD). The required amount was to be incorporated in the 1999 GAA and succeeding years. The 1999 GAA renamed the above fund as the Local Government Service Equalization Fund (LGSEF) amounting to P5 billion, which was taken from the total IRA share of LGUs. Release was subject to rules issued by OCD, which provided for a tranche-by-tranche release of LGSEF following the prorated share of each LGU under the LGC. The OCD required LGUs to submit project proposals which it would approve.[47]

LGUs did not receive their shares amounting to P1 billion in LGSEF; neither the Executive Secretary nor the President were clear how the remaining P2.5 billion in 2000 would be distributed and released. The constitutionality of the above provision of the 1999 GAA was later challenged before the Supreme Court, which invalidated it in the case of *Province of Batangas vs. Romulo.*[48]

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[46] *See* the preambular clauses. *See also Pimentel,* 336 SCRA 201, 209-212, Jul. 19, 2000.
[47] *Province of Batangas,* 429 SCRA 736, 743-751, May 27, 2004.
[48] G.R. No. 152774, 429 SCRA 736, May 27, 2004.

This experience was not unique. From 1994-1997, Congress approved *de facto* revisions in the IRA through the GAA. In 1994, fifty percent (50%) of the actual Cost of Devolved Functions (CODEF) and the cost of city-funded hospitals existing as of 31 December 1992 were deducted from the IRA. Only upon deduction of CODEF was the IRA allocated and distributed to LGUs. Congress used the same tactic in 1995 (100% of CODEF), 1996 (50%), and 1997 (100%).[49]

Installment Payment of Unreleased IRA

In compliance with the Supreme Court's decision in the *ACORD* case, former Pres. Gloria Macapagal Arroyo issued on 18 January 2006, Executive Order (E.O.) No. 494 *(Release of Unprogrammed Internal Revenue Allotment (IRA) in CY 2000 and 2001 Amounting to P17.5 Billion"),* recognizing the unconstitutionality of segregating portions of the IRA and lumping them under the *Unprogrammed Funds* of GAAs. E.O. No. 494 stated that of the P20 billion owed by the national government to LGUs, only P2.5 billion had been released, leaving a balance of P17.5 billion: *"in accordance with the constitutional mandate, the President has agreed to release to local government units the IRA balance of 17.5 billion* (sic)."

E.O. No. 494 provided for a scheme where LGUs would receive their respective shares of the IRA from the Unprogrammed Funds in 2000 and 2001 on installment basis for a period of seven years from 2007 to 2013, or avail in advance said shares from the unreleased IRA through a monetization program.[50] Said monetization program, as initiated by the various Leagues,[51] entitled LGUs to collect in advance from the trustee bank their shares from the unreleased IRA at a discounted value, net of interest and other charges.[52] The DBM shall determine the share of each LGU in the unpaid IRA on the basis of the IRA formula under the LGC and issue the corresponding notice of payment schedule to inform LGUs of their share and the schedule of payment.[53] The DOF shall confirm that the P17.5 billion is an obligation of the Republic of the Philippines; that it shall process and implement the monetization program.[54] The DILG shall provide assistance to the LGUs opting to monetize the fund, and inform DBM which LGUs will avail of the program.[55] Some P2 billion of the amount was included in the 2007 GAA and P2.5 billion in the 2008 GAA.[56]

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[49] GAAs of the referenced years.

[50] § 1.

[51] The Leagues of Provinces, Cities and Municipalities, and the Liga ng mga Barangay.

[52] § 2.

[53] § 3.

[54] § 3.

[55] § 3.

[56] GAAs (2007 & 2008), tit. XXXVII.

The measure is dubious on several counts.

The President failed to identify the source of funding for the disbursement and release of the IRA. There is no basis in the national budget for its release, and neither did Congress authorize its release from the national treasury at the time of its issuance. If E.O. No. 494 suggests that the President is empowered to release funds from the national treasury, it would be unconstitutional. E.O. No. 494 ignored unearned interest due LGUs from the time of withholding the IRA until actual receipt of the amount due them. Release of the IRA was subjected to the monetization scheme that not only diminishes the IRA but also subjects it to installment payments over a seven-year period, contrary to the automatic release of the IRA mandated under the LGC and the Constitution. The lawfulness of using other government funds for the purpose of complying with the decision of the Supreme Court in the *ACORD* case is doubtful: existing funds even in trustee banks may only be used for the purpose for which they are intended.

It would be odd for the President to be ignorant of Congress' appropriations power. E.O. No. 494 would therefore appear merely as a symbolic assurance from the President that the government is addressing the issue of the unpaid IRA due LGUs. At any rate, Congress has included payment of the P17.5 billion in IRA arrears in the budget since 2007. No one has disputed the validity of this provision of the GAAs.

C. Creation of and Limits to Creation of New Cities

The number of cities in the Philippines has risen steadily through the years: from sixty-one (61) in 1977, it has grown to one hundred thirty-eight (138) after rapid acceleration in the 1990s.[57] Most are classified as component cities. Conversion ensures larger IRA shares for new cities based on the allocation under section 285 of the LGC. In this sense, creation of new cities calls into question whether the ensuing distribution would continue to be *just* in accordance with the Constitution, and whether local autonomy guaranteed by the same Constitution would be enhanced thereby.

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[57] The status of Vigan as a chartered city was recognized in RA No. 8988 entitled *An Act Validating and Recognizing the Creation of the City of Vigan by the Royal Decree of Sep. 7, 1757, Issued by Fernando VI, King of Spain.* Until then, Vigan was considered a municipality. It is not clear whether Vigan could claim unpaid IRA as a city until the effectivity of R.A. No. 8988.

The Rise in the Number of Cities (1998-2001)

Creation of cities under the old provision of the LGC was as follows:

> Sec. 450. *Requisites for Creation.* - (a) A municipality or a cluster of barangays may be converted into a component city if it has an **average annual income, as certified by the Department of Finance, of at least Twenty million pesos (P20,000,000.00) for the last two (2) consecutive years based on 1991 constant prices, and if it has either of the following requisites: (i) a contiguous territory of at least one hundred (100) square kilometers, as certified by the Lands Management Bureau; or, (ii) a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office:** Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein. (Emphasis supplied).

The number of cities rose after the enactment of the LGC. During the 11th Congress (1998-2001) alone, Congress enacted into law thirty-three (33) bills converting municipalities into cities including Cauayan, Muñoz, and Bayawan. The conversion of Santiago (Isabela) into a city based on total revenues inclusive of IRA which the Supreme Court upheld in *Alvarez v. Guingona*[58] provided judicial basis for this rise.

R.A. No. 9009 (2001)

Sen. Pimentel stated that when the LGC took effect in 1992, few municipalities had income of at least P20 million.[59] The original intent was that the income requirement would constitute only locally-sourced revenues; Pimentel blamed the executive and LGUs for interpreting *income* as inclusive of the IRA. If a five percent (5%) inflation rate per annum is assumed, the present equivalent of P20 million in 1992 would be almost P100 million. The minutes do not show any reason for the adoption of the P20 million income requirement. If Pimentel's statements were true, there was a conscious effort in Congress to limit the number of cities that could weaken distribution of the IRA.

The situation held until 2001 with the approval of R.A. No. 9009 amending section 450 of the LGC; the new law eliminated the ambiguity. Section 1 thereof provides:

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[58] 252 SCRA 695, Jan. 31, 1996.

[59] Privilege Speech, *We Must Adopt a Non-Partisan Policy on the Creation of Cities,* Sep. 11, 2006.

Sec. 450 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, is hereby amended to read as follows:

Sec. 450. *Requisites for Creation.* —

(a) A municipality or a cluster of barangays may be converted into a component city if it has a **locally generated average annual income, as certified by the Department of Finance, of at least One hundred million pesos (P100,000,000.00) for the last two (2) consecutive years based on 2000 constant prices,** and if it has either of the following requisites: (i) a contiguous territory of at least one hundred (100) square kilometers, as certified by the Land Management Bureau; or (ii) a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office.

The creation thereof shall not reduce the land area, population and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two or more islands.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income.

Sixteen New Cities (2007)

While Congress created thirty-three (33) new cities during the 11th Congress (1998-2001), it did not act on twenty-four (24) similar bills. Congress enacted R.A. No. 9009 during the 12th Congress (2001-2004). The House of Representatives of that Congress adopted Joint Resolution (J.R.) No. 29, exempting from the P100 million income requirement in R.A. No. 9009 the twenty-four (24) municipalities whose conversions were not approved during the 11th Congress. The Senate failed to approve J.R. No. 29 during the 12th Congress.

The lower house readopted J.R. No. 29 during the 13th Congress (2004-2007) which the Senate again failed to approve. Upon the advice of Sen. Pimentel,

the sponsors of the sixteen (16) municipalities filed individual bills with common provisions for exemption from the minimum income under R.A. No. 9009. The bills lapsed into law without the President's signature.[60] The constitutionality of these laws was assailed in the Supreme Court in the *League of Cities* case, after existing cities saw large cuts in their IRA.

The exemptions under the charters from the new income requirement under R.A. No. 9009 seemed to contradict the congressional intent under that law to limit the number of new cities.[61] There was yet no judicial precedent to weigh the validity of the exemption of the municipalities from income requirement under R.A. No. 9009.

Analysis

Congress' decisions affecting the IRA involve the appropriations laws, the creation of new cities and the restrictions in the creation of new cities. Congress left the IRA system under the LGC intact, which indicates that it has not seen any reason for its amendment. The legislative decisions above affect the appropriations stage only since it was left for the executive department to implement the budgetary release.

Under the approved budget for 1999, Congress removed P5 billion in IRA and reclassified it as LGSEF. The practice was repeated in 2000 and in 2001 as the reenacted budget. The said budgets empowered an *ad hoc* administrative office to approve the LGUs' proposed projects. The Supreme Court would later declare the practice invalid.[62] The GAA of 2000 removed a part of the IRA and lumped it in the unprogrammed fund.[63] In both cases, Congress defied the constitutional mandate that LGUs shall be entitled to a just share in the internal revenues. In both cases too, the executive department had tolerated Congress' act; the DBM compiled the proposed budget with the approval of the President, who later signed the appropriation bills into law. Even prior to computation of the IRA for the proposed budget, the executive department continues to deduct various

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[60] The municipalities converted into cities were (1) Baybay, Leyte; (2) Bogo, Cebu; (3) Catbalogan, Western Samar; (4) Tandag, Surigao del Sur; (5) Borongan, Eastern Samar; (6) Tayabas, Quezon; (7) Lamitan, Basilan; (8) Tabuk, Kalinga; (9) Bayugan, Agusan del Sur; (10) Batac, Ilocos Norte; (11) Mati, Davao Oriental; (12) Guihulngan, Negros Oriental; (13) Cabadbaran, Agusan del Norte; (14) Carcar, Cebu; (15) El Salvador, Misamis Oriental; and (16) Naga, Cebu.

[61] Nine municipalities, including Imus, Cabuyao, Marilao and Biñan were qualified for conversion in 2008 yet remained municipalities. San Juan in Metro Manila, lacked the land area and population required for conversion yet Congress approved its conversion in 2007 (R.A. No. 9388). Biñan was converted into a city only in 2010.

[62] *Province of Batangas*, 429 SCRA 736, 764-765, May 27, 2004.

[63] *ACORD*, 459 SCRA 578, Jun. 8, 2005.

amounts from internal revenues that diminish the IRA, a practice without direct sanction in the LGC.[64]

Congress had tended to diminish the IRA, or impose conditions for its release, illegal acts that defeat and undermine local autonomy. A reenacted budget also poses a danger to the right of LGUs to the full amount of their IRA since that budget appropriates only the amount computed by the executive for a given budget year. If Congress does not provide for adjustments or enacts a supplemental budget for the purpose, the integrity of the IRA would be impaired.

The 2006 Supplemental Budget's automatic appropriation for the IRA effectively ensures that IRA would be beyond the ambit of congressional debate and that its appropriations would not be delayed by unnecessary congressional debates. It also facilitates congressional action on the general appropriations bill the approval of which may be delayed. Nevertheless, it may also be construed as preventing Congress from fully exercising its appropriations and oversight powers over executive agencies involved in the computation, release, and distribution of the IRA. Whether the computation for the IRA is correct, and whether the national government might diminish the IRA through the use of administrative techniques or subject its release to conditions, could now be interpreted as beyond debate. Hence, the clause might be interpreted as collusion between Congress and the executive. In fact, Congress illegally permitted the diminution of the IRA by including a portion in the unprogrammed fund.[65]

Despite the foregoing, future GAAs should duplicate this provision but the correct amount of the IRA must be reflected and documented. *Inclusion of this provision should not be interpreted as preventing Congress from exercising oversight functions over executive agencies to forestall manipulations that would undermine local autonomy.*

Until amendment, the text of the original section 450 of the LGC was not clear on whether the IRA should be included in the average annual income of a municipality for purposes of conversion into a city. The Supreme Court, as will be seen later, responded in the affirmative in *Alvarez vs. Guingona,* which gave basis for the creation of new cities in the coming years. R.A. No. 9009 sought to limit creation of new cities by restricting income to locally generated revenues.

There are serious policy issues in the creation of new cities *vis-à-vis* distribution of the IRA to existing cities: they need not be discussed in this article. For that matter, the wisdom and possible consequences of R.A. No. 9009 is a

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[64] *See* Flores, *supra* note 25.

[65] *See Province of Batangas*, 429 SCRA 736, 764-765, May 27, 2004; *ACORD*, 459 SCRA 578, Jun. 8, 2005.

political issue. Still, the creation of sixteen new cities occasioned the *League of Cities* case in which existing cities as petitioners, claimed that said creation impinged on their right to a just share in the national taxes. The case also involved a question of whether the legislative power of Congress (and the exercise of its political prerogatives in creating new cities) could be limited by earlier legislation (such as the LGC). Ultimately, such political prerogatives of Congress would clash with section 10, article X of the Constitution providing that creation of new LGUs should be in accordance with the criteria established in the local government code.

Executive decisions should have been confined only to releasing and supervision of utilization of the IRA but said decisions discussed above clearly went overboard. The executive, like the legislative, had diminished or subjected release of the IRA to administrative approval.

Issuance of an administrative order reducing the IRA by P10 billion and subjecting it to the approval of a mere *ad hoc* administrative agency exemplifies the executive violation of the Constitution and the LGC. The same administrative order said nothing of the period within which the DBCC should make the assessment and evaluation of the emerging fiscal situation. In the meantime, the measure implies that the government could use the amount to stabilize the national fiscal situation, an act not sanctioned under the LGC.

E.O. No. 494 was intended to address the shortfall in the IRA occasioned by a reenacted budget, and to comply with the decision of the Supreme Court in the *ACORD* case through a monetization scheme. As discussed above, this mode of payment or satisfaction is unconstitutional and illegal. However, because only Congress could authorize appropriations, it was left for Congress to effect the corresponding appropriations (in staggered amounts) under subsequent GAAs, thereby perpetuating the impairment of release of the IRA. Strangely, the order in its whereas clauses acknowledged that local governments (through the various *liga*) were duly consulted, and presumably, had accepted the tenor of the measure; no LGU disputed the validity of the order and the GAAs in the Supreme Court.[66]

VI. JURISPRUDENCE ON THE IRA

There have been six cases relevant to the IRA decided by the Supreme Court: *Pimentel v. Aguirre*;[67] *Province of Batangas v. Romulo, et al*;[68] *Alternative Center for*

[66] The irony of the IRA, according to Gatmaytan, *supra,* is that while ostensibly a means to achieve local fiscal autonomy, it also bred a relationship of dependence of local governments on the national government.

[67] GR No. 132988, 336 SCRA 201, Jul. 19, 2000.

Organizational Reforms, Inc. (ACORD) v. Zamora,[69] *Alvarez v. Guingona*,[70] *League of Cities of the Philippines v. Commission on Elections*,[71] and *Dadole v. Commission on Audit*.[72]

The first three cases mentioned above involved the policy on local fiscal autonomy, and the intent to keep the IRA intact and available. The next two cases involved a link between the IRA and creation of new cities. The last case involved the constitutionality of an administrative ruling disallowing the grant to judges of allowances sourced from the IRA.

A. The Limits of Presidential Power over IRA and LGUs

The Supreme Court explored the limits of the President's power in *Pimentel v. Aguirre*.[73]

Sen. Pimentel assailed the validity of sections 1[74] and 4 (as amended)[75] of Administrative Order (A.O.) No. 372, claiming that the order was issued in grave abuse of discretion, since the President sought to control LGUs rather than exercise mere supervision, which was unconstitutional. Further, diminishing the IRA and subjecting its release to DBCC's discretion was violative of the Constitution.[76]

The Supreme Court held that section 1 was merely advisory: it does not impose any authority on the President to take legal action against LGUs that do not comply with the order. The Court delved into the nature of local autonomy and the extent of the President's power of supervision. Local fiscal autonomy, it held, does not rule out any manner of national government intervention by way of supervision, in order to ensure that local programs, fiscal and otherwise, are consistent with national goals. In this case, the President sought to limit expenditures to avert a financial crisis. But since the tenor of section 1 is not

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[68] GR No. 152774, 429 SCRA 736, May 27, 2004.

[69] GR No. 144256, 459 SCRA 578, Jun. 8, 2005.

[70] GR No. 118303, 252 SCRA 695, Jan. 31, 1996.

[71] GR No. 176951, 571 SCRA 263, Nov. 18, 2008; 608 SCRA 636, Dec. 21, 2009; 628 SCRA 819, Aug. 24, 2010; Feb. 15, 2011; Apr. 12, 2011.

[72] GR No. 125350, 393 SCRA 262, Dec. 3, 2002.

[73] GR No. 132988, 336 SCRA 201, Jul. 19, 2000.

[74] "All government departments and agencies, including state universities and colleges, government-owned and controlled corporations and local governments units will identify and implement measures in FY 1998 that will reduce total expenditures for the year by at least 25% of authorized regular appropriations for non-personal services items, along the following suggested areas xxx"

[75] "Pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation, the amount equivalent to 5% of the internal revenue allotment to local government units shall be withheld."

[76] *See* discussion above on A.O. No. 372.

mandatory but merely advisory, there cannot be any conflict between local autonomy and the power of supervision. The Court therefore sustained its validity.

Section 4 of A.O. 372 however, orders the withholding of ten percent (10%) of the LGUs' IRA pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation. Although temporary, it is equivalent to a holdback. It also amounts to control over LGUs because the President interferes with local budgeting processes. These acts amount to control of LGUs rather than supervision.[77]

The ruling clarifies that LGUs may demand automatic release of the IRA as a matter of right, and as such, the President, or his departments and offices, cannot reduce or subject the IRA to any lien or holdback, or retained for whatever purpose even if only temporarily. Neither can the President, Congress, the DBCC or any similar executive body, subject the release of the IRA to their approval, and impose conditions for its release. Otherwise, release of the IRA would no longer be automatic, in violation of the Constitution.

The President's power of supervision over LGUs does not include the power to interfere in the formulation of the local budget which amounts to control. The President may only correct the errors of LGUs and require them to be undone for purposes of complying with the law.

B. The Limits of Congressional Power over the IRA

In *Province of Batangas v. Executive Secretary Alberto Romulo,*[78] the petitioner assailed the validity of provisions of the GAA which lopped off P5 billion in IRAs by renaming a portion thereof as the *Local Government Service Equalization Fund* (LGSEF).[79] The issue was whether the provisions of the 1999, 2000 and 2001 GAAs on LGSEF and the resolutions of the Oversight Committee on Devolution (OCD) are valid.[80] To resolve the issue, the Supreme Court reviewed the declaration of policy (section 2 of the LGC) and the Constitution's mandate on automatic release of the IRA to LGUs.

Interpreting section 6, article X of the Constitution, the Court stated that this provision mandates that LGUs shall have a *just share* in the national taxes; the

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[77] *See* Mondano v. Silvosa, G.R. No. 7708, 97 Phil. 143, May 30, 1955); Taule v. Santos, G.R. No. 90336, 200 SCRA 512, Aug. 12, 1991, *cited in Pimentel*, 336 SCRA 201, 217, Jul. 19, 2000.

[78] *Supra.*

[79] *See* discussion on EO No. 48 above.

[80] The Court, even if supervening events rendered the petition moot and academic, decided to issue a ruling: the acts complained of are "capable of repetition yet avoiding review." The GAAs in the coming years may contain provisos similar to those sought to be voided.

just share shall be *determined by law;* and the *just share* shall be automatically released to the LGUs.[81]

Being *automatic* connotes something mechanical, spontaneous and perfunctory. As such, the LGUs are not required to perform any act to receive the just share accruing to them from the national treasury. As emphasized by the LGC, the *just share* of LGUs shall be released to them *without need of further action.* The *just share* of LGUs in the national taxes is incorporated as the IRA in the appropriations law or GAA enacted by Congress annually.

Automatic release of the IRA serves a purpose: to guarantee and promote local autonomy, more particularly, local fiscal autonomy.[82] It is difficult to conceive of fiscally autonomous LGUs that are subjected to the caprices of Congress and the President.

If therefore, Congress segregates a portion of the IRA and renames it (in this case, the LGSEF) and subjects its release to the approval of an *ad hoc* committee upon compliance with certain conditions, such act of Congress would be invalid as a violation of section 6, article X of the Constitution, and would be a disregard of the local autonomy of LGUs. LGUs may thus demand the full and automatic release of IRA.

Can the phrase *as determined by law* be interpreted as a license for Congress to increase or decrease the *just share* of LGUs through the appropriations statute, an enactment of Congress, particularly since section 6, article X of the Constitution does not specify that said just share *shall only be determined by the Local Government Code?*

If the *just share* of LGUs in the national taxes is defined in the local government code (in small letters), which is a substantive law, amendment thereof cannot be done through an appropriations law but through a separate substantive law. As stated earlier, an appropriations law merely incorporates the appropriations for the *just share* of LGUs in the national taxes already defined in the Local Government Code. Modifying the IRA of LGUs or amending their percentage sharing, which are fixed in the LGC, are matters of general and substantive law. If not, Congress could undertake amendments to the LGC through GAAs every year, and would have the unconstitutional authority to violate local autonomy.[83] Both the President and Congress are enjoined from withholding or diminishing

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[81] *Province of Batangas*, 429 SCRA 736, 764-765, May 27, 2004.

[82] *Id., citing* 3 RECORD OF THE CONSTITUTIONAL COMMISSION 231 anent discussions between Messrs. Jose N. Nolledo and Regalado M. Maambong.

[83] *Province of Batangas*, 429 SCRA 736, 769-770, May 27, 2004.

the IRA. The President cannot issue orders diminishing or withholding the IRA or a part of it, and neither can Congress do the same through the GAA.

The GAA provides the budgetary basis for the IRA which the executive department, in implementation thereof, should release to LGUs *automatically* as the Constitution mandates. However, in one case,[84] it was argued that said constitutional provision is addressed not to the legislature but only to the executive; it does not prevent Congress from imposing conditions for the release of IRA, and quoted the minutes of the proceedings of the Constitutional Convention of 1986.[85] Respondents inferred that the subject constitutional provision prevents the executive branch of the government from unilaterally withholding the IRA, but not the Congress, from authorizing the executive branch to withhold the same.

The Court clarified the issue: the Constitution lays upon the executive the duty to automatically release the just share of LGUs in national taxes but it also enjoins Congress not to pass laws that might prevent the executive from performing this duty. If not, the executive branch may disregard constitutional provisions by citing congressional acts. However, this would make the Constitution amendable by statute which is, absurd.

The validity of legislative acts should therefore be assessed in light of section 6, article X of the Constitution. The same would have to be assessed in terms of the automatic release of the IRA. If the GAA withholds release pending an uncertain event, that provision would be a violation of the Constitution which rules out conditional release.[86]

C. The IRA and Creation of New Cities

Alvarez involved the issue of income for purposes of conversion, while *League of Cities* involved the question of the validity of congressional charters exempting municipalities from the income requirement in section 450 of the LGC as amended. R.A. No. 9009, which increased the income requirement for conversion from P20 million to P100 million based only on locally-sourced funds, has also rendered *Alvarez* stale. The common thread of the two cases is the IRA as integral to the revenues of a municipality for purposes of conversion into a city

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[84] *ACORD*, 459 SCRA 578, Jun. 8, 2005.

[85] *Province of Batangas*, 429 SCRA 736, 766-767, May 27, 2004; respondents quoted the minutes of the proceedings of the Constitutional Convention of 1986, III RECORD 479-480.

[86] The rulings in *ACORD* came too late: it had been five years since the effectivity of the 2000 GAA which was reenacted once, in 2001. The result was a suspended implementation of the full release of the IRA. That left the national government owing P20 billion in unpaid IRA to LGUs.

under the old law, and as a motive for creating new cities. Both cases underscore the fiscal implications of the IRA in relation to local autonomy.

In the first case, Sen. Alvarez sought to declare the unconstitutionality of R.A. No. 7720 creating the city of Santiago, Isabela, claiming that Santiago's average annual income for the last two (2) consecutive years based on 1991 constant prices fell below the required annual income of P20 million under the section 450 of the LGC.[87] This provision was ambiguous: it did not explicitly define or qualify *income* as inclusive of the IRA or restricted to incomes derived from local sources.

The Supreme Court held that the IRA forms part of the income of LGUs, reasoning that the issue must be seen in light of contextual explanations of the meaning of IRA *vis-à-vis* the notion of income of LGUs and the principles of local autonomy and decentralization.[88] The IRA accrues to the LGU's general fund; it is an item of income, accruing regularly and automatically to the local treasury.[89] It should be included in the average annual income of a municipality to qualify as a city. R.A. No. 7720 was therefore valid.

As earlier observed, *Alvarez v. Guingona* provided judicial basis for a looser interpretation of section 450 of the LGC, with the consequence that the number of cities rose in the next few years. Congress sought to restrict the number of cities, enacting R.A. No. 9009 (amending section 450) which increased and qualified the income requirement to P100 million in locally generated revenues, i.e. excluding the IRA. Predictably, legal issues are bound to crop up if Congress exempted some municipalities from the income requirement: can Congress validly make such exemptions despite the new income requirement under R.A. No. 9009, and section 10, article X of the Constitution which mandates that creation of new LGUs should be in accordance with the local government code?[90] More tangentially in the case of the IRA, does creation of new cities deprive existing cities of their *just share* in the national taxes?[91]

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[87] Prior to amendment under RA No. 9009. Sen. Alvarez excluded the IRA in computing the average annual income of Santiago. However, there was evidence from the Commission on Audit that Santiago had enough income to qualify as a city if the IRA is included therein. *See Alvarez*, 252 SCRA 695, 697-698, Jan. 31, 1996.

[88] *Alvarez*, 252 SCRA 695, 699-700, Jan. 31, 1996.

[89] *Id.* at 702.

[90] The attraction of conversion into cities lies in larger IRA shares. From the standpoint of policy, creation of new cities underscores the apparent conflict between the political prerogatives of Congress and the need to enhance local autonomy in the sense of the capacity of local units to generate local revenues. Conversion into cities may actually have a disincentive effect on local revenue generation. IRA then breeds a dole-out mentality. See Gatmaytan, *supra;* Manasan and Llanto at footnote 35.

[91] The League of Cities of the Philippines computed the resulting loss in IRAs of existing cities as P4.7 billion to accommodate 16 new cities.

Section 10, article X of the Constitution provides:

> No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the **criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. (Emphasis supplied)

In 2007, Congress approved the conversion of sixteen municipalities into cities despite their non-compliance with the new income requirement under R.A. No. 9009.[92] The charters contained a common provision: that the new city would be exempted from the income requirement under the said law. In truth, this was a disguised attempt to evade compliance with section 450 of the LGC, as amended by R.A. No. 9009. Congress could not make a direct reference to section 450 for that would have been a violation of section 10, article X.

In its first decision in *League of Cities v. Commission on Elections*,[93] the Supreme Court interpreted section 10, article X as referring to the LGC of 1991. It held that Congress cannot write such criteria in any other law (such as the charters) to insure that creation of cities follows the same uniform, non-discriminatory criteria found in the LGC. Any deviation from said criteria violates section 10, article X. Section 450 as amended by R.A. No. 9009, does not contain any exemption from this income requirement.[94] Thus, the exemption granted under the charters violates section 10, article X.

The Supreme Court also held that uniform and non-discriminatory criteria in the LGC are essential to implement a fair and equitable distribution of the IRA to all LGUs, consistent with section 6, article X. A city with an annual income of only ₱20 million should not receive the same share in the IRA as a city with an annual income of ₱100 million or more. The criteria as prescribed in section 450 must be strictly followed: they are material in determining the *just* share of LGUs in national taxes.[95] The cityhood laws do not follow the new income criterion and prevent the just distribution of the IRA and are therefore unconstitutional.

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[92] *See* discussion in pp. 19-20.

[93] The petitioner League of Cities sued the Commission on Elections and the sixteen new cities claiming that provision in the charters exempting the municipalities from the income requirement violated art. X, § 10 and the equal protection clause. Petitioner also claimed that creation of the new cities will reduce the IRA share of existing cities: more cities will share the amount of the IRA set aside for all cities under § 285 of the LGC, thereby preventing the just and equitable distribution of IRA.

[94] 571 SCRA 263, 281-283, Nov. 18, 2008.

[95] *Id.* at 287-290.

However, the Supreme Court reversed itself in its second decision.[96] It looked into the speech of Sen. Pimentel for the bill that would eventually be approved as R.A. No. 9009. Sen. Pimentel explicitly assured the Senate President that pending bills on conversion of municipalities into cities would not be affected by the passage of R.A. No. 9009. In other words, Congress *knew* that at the time that R.A. No. 9009 was being approved, the subject cityhood bills were pending. The sixteen units met the income requirement under section 450 of the LGC.[97] The author of R.A. No. 9009 himself, the Court found, had sought exemption for the sixteen units whose bills for conversion remained pending. This intention was bolstered by Senate Resolutions No. 29 and No. 1.[98]

The Supreme Court also held that consistent with its plenary legislative power, Congress can, via either a consolidated set of laws or a much simpler, single-subject enactment, impose the said verifiable criteria of viability. These criteria need not be embodied in the local government code, albeit this code is the ideal repository to ensure, as much as possible, the element of uniformity. Congress can even, after making a codification, enact an amendatory law, adding to the existing layers of indicators earlier codified, just as efficaciously as it may reduce the same. At the end of the day, the passage of amendatory laws is no different from the enactment of laws, i.e., the cityhood laws specifically exempting a particular political subdivision from the criteria earlier mentioned. Congress, in enacting the exempting law/s, effectively decreased the already codified indicators.[99] In short, section 10, article X cannot be interpreted as a limit on Congress' power to legislate.

The Court further held that the equal protection clause applies where deprivation of property results through the enactment of the charters. The reduction of IRA of LCP's member-cities cannot suffice: IRA is not their property *because it has yet to be allocated.* The conversion into a city only affects status as a political unit but not property rights.[100]

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[96] 608 SCRA 637, Dec. 21, 2009. Respondents filed a prohibited second motion for reconsideration, which the Court denied per Resolution dated Apr. 28, 2009, absent a majority vote. They later filed a motion to amend said Resolution and to admit the second motion for reconsideration. The Court, led by Associate Justices Teresita L. De Castro and Lucas Bersamin later voted to grant this motion. The Court proceeded to hear the case anew, waiving its own procedural laws. By a vote of 6-4, the Supreme Court granted the respondent LGUs' motion for reconsideration and other motions.

[97] As clarified in *Alvarez*, the income for purposes of conversion was inclusive of the IRA and not restricted to locally-generated revenues.

[98] Sen. Pimentel himself stated in a privilege speech on Sep. 11, 2006 that he sought exemption of the cityhood bills of Bogo, Cebu; Bayugan, Agusan del Sur and Carcar, Cebu, from R.A. No. 9009.

[99] *See* 655-665.

[100] 669-670.

The Supreme Court issued a third ruling after the petitioner filed a motion to annul the decision of 21 December 2009.[101] It observed that after the finality of the 18 November 2008 decision and without any exceptional and compelling reason, the Court *en banc* reversed the first decision by upholding the constitutionality of the cityhood laws in the second. The Court granted the motions and reinstated the original decision and its reasoning; it declared the cityhood laws unconstitutional.

The Supreme Court held that in enacting R.A. No. 9009, Congress did not grant any exemption to respondent municipalities, even though their cityhood bills were pending in Congress when Congress passed said law. The cityhood laws, all enacted *after* the effectivity of R.A. No. 9009, explicitly exempt respondent municipalities from the increased income requirement in section 450 of the LGC, as amended by R.A. No. 9009. Such exemption clearly violates section 10, article X of the Constitution and is thus patently unconstitutional. To be valid, such exemption must be written in the LGC and not in any other law, including the cityhood laws. The clear intent of the Constitution is to insure that the creation of cities and other political units must follow the same uniform, non-discriminatory criteria found solely in the LGC.

The Court found no substantial distinction between municipalities with pending cityhood bills and municipalities that did not have pending bills. The mere pendency of a cityhood bill is not a material difference to distinguish one municipality from another for the purpose of the income requirement. The pendency of a cityhood bill does not affect or determine the level of income of a municipality. In short, the classification criterion – mere pendency of a cityhood bill – is not rationally related to the purpose of the law which is to prevent fiscally non-viable municipalities from converting into cities.

The case however was not to end. The sixteen new cities moved to reconsider the last resolution which the petitioner. By a vote of 7-6 with two abstentions, the Supreme Court upheld the constitutionality of the sixteen cityhood laws, granted the new cities' motion for reconsideration, and reversed and set aside said resolution.

The Supreme Court used the familiar grounds in the second decision: (1) that Congress was fully aware of the pendency of the bills converting the sixteen municipalities into cities (and that the provision on their exemption from the income requirement in R.A. No. 9009 was merely pursuant to the apparent

[101] Resolution dated Aug. 24, 2010, 628 SCRA 819.

intention of some legislators approving it);[102] (2) the cityhood laws do not violate the equal protection clause: there are substantial distinctions between the sixteen new cities and municipalities without pending cityhood bills at the time of the approval of R.A. No. 9009, namely, the pendency of the bills and the declared intention of some members of Congress to exempt them from the income requirement of R.A. No. 9009.

The Court went further in bolstering this argument: the income requirement in R.A. No. 9009 was arbitrary. More than fifty existing cities do not meet this threshold, and R.A. No. 9009 incongruously places component cities on higher footing than highly urbanized cities.[103] Besides, the Court reasoned that the intention of Congress was to *"recognize the capacity and viability of respondent municipalities to become the State's partners in accelerating economic growth and development in the provincial regions, which is the very thrust of the LGC,"* citing section 2 of the LGC. Using data supplied by the DBM, the Supreme Court debunked the claim of petitioners that existing cities experienced a reduction in their shares of the IRA: invoking section 6, article X was baseless.[104] It also noted that the sixteen new cities had already entered into contracts with new employees and undertaken new projects. Lastly, the Court appealed to the interests of substantial justice waiving thereby rules of procedure, especially if there are doubts on the constitutionality of statutes: to doubt is to sustain their constitutionality.

E. Utilization of IRA

Dadole v. Commission on Audit[105] originated in 1986 from the grant of monthly allowances amounting to P1,260 each to judges of the Regional and Municipal Trial Courts. The Sangguniang Panlungsod of Mandaue City increased this in 1991 to P1,500. In 1994, the DBM issued Local Budget Circular (L.B.C.) No. 55 providing limits to additional allowances to national government officials and employees assigned in the locality. Petitioners disputed the validity of the circular. The Commission on Audit (COA) contended that the ordinances granting

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[102] The Supreme Court even tried to bolster its reasoning by citing the explanatory notes of the cityhood bills to the effect that the sixteen are centers of trade, commerce, and transportation services. Notably, the references are not restricted to locally-generated revenues in the last two years prior to the filing of the bills.

[103] "Sec. 452. *Highly Urbanized Cities.* – (a) Cities with a minimum population of two hundred thousand (200,000) inhabitants, as certified by the National Statistics Office, and with the latest annual income of at least Fifty Million Pesos (₱50,000,000.00) based on 1991 constant prices, as certified by the city treasurer, shall be classified as highly urbanized cities. (b) Cities which do not meet above requirements shall be considered component cities of the province in which they are geographically located." The income requirement for component cities is therefore higher than that for highly urbanized cities.

[104] The Supreme Court however, did not compare the amounts that older cities would receive if the sixteen units remained municipalities.

[105] GR No. 125350, 393 SCRA 262, Dec. 3, 2002.

additional allowances to judges are void. The IRA cannot be used for such purpose. The COA further claimed that Mandaue's funds consisted of locally generated revenues and the IRA. Since the city's yearly expenditures exceeded locally generated revenues, the IRA enabled Mandaue to incur a surplus. Thus, Mandaue had used its IRA for said additional allowances contrary to the GAAs which do not allow the IRA to be used for that purpose.

The Supreme Court disagreed. The COA failed to prove that Mandaue used its IRA for judges' additional allowances. Just because Mandaue's locally generated revenues were not enough to cover expenditures did not mean that the additional allowances of petitioner judges were actually taken from the IRA.[106]

Analysis of Decisions

In the above cases, the Supreme Court has properly situated the IRA within the context of the Constitution, particularly, the principles of decentralization and local autonomy. It viewed the IRA as an indispensable tool of LGUs to enjoy local fiscal autonomy and pursue their own development through a decentralized approach. To assist LGUs in achieving these goals, the Supreme Court defined the limits of presidential and congressional power over the IRA and over LGUs themselves. It therefore reiterated and expanded the conception of IRA under the Constitution: that LGUs are entitled to their just share in the national taxes which shall be released automatically. Every qualifying phrase in this provision had been tackled in the jurisprudence cited above.

The case of *Pimentel vs. Aguirre* is the first under the regime of the LGC of 1991 that involved a controversy between the executive department and the LGUs.[107] It coincided with the Asian financial crisis in 1997, when the government embarked on a fiscal austerity program aimed at limiting expenditures. The term *expenditure* reveals the focus of the austerity measures in A.O. No. 372. The IRA and debt servicing make up two of the largest expenditures in any budget year.[108] The government would never impair debt servicing during a time of crisis: the IRA became a target for the austerity program. The Ramos government's recourse would have been the reduction of IRA up to thirty percent (30%) as provided in

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[106] 393 SCRA 252, 276.

[107] Gov. Roberto Pagdanganan of Bulacan, President of the League of Provinces and of the League of Leagues of Local Governments, intervened on behalf of the LGUs.

[108] *See* Benjamin Diokno, *The Philippines: Fiscal Behavior in Recent History,* Discussion Paper No. 0804, June 2008, School of Economics for comparison of fiscal behavior from the Marcos era to the present Arroyo administration or in the last twenty-seven (27) years; and Leonor M. Briones, *The Fiscal Crisis: A Matter of Life and Debt,* Presentation (2004).

section 284, LGC: in the event of an unmanageable public sector deficit, but which would have exacerbated the fiscal situation, or provoked an implosion.

The Supreme Court sustained the contentions of the petitioner. It was unnecessary to discuss at length the environmental setting of the IRA and local autonomy because the text of the LGC is clear enough. It used the novelty of the case to make pronouncements on the nature of the IRA in that context. The *Pimentel* case would later serve as a precedent for future cases; it will remain a classic.

The Court found in *Batangas* and *ACORD* that the President and Congress colluded into reducing the IRA. The proposed budget provided for the devolution fund (renamed as LGSEF) not from available savings but from the IRA. The effect was reduction of the IRA. Government could claim that it was assisting LGUs when in fact, it was deceiving LGUs. Congress abetted this and approved it, later reiterated in two subsequent budgets. The effort was deliberate as circumstances show. It is difficult to believe that the *proviso* in the original issuance would have been ignored by the DBM and the Office of the President as it was obvious on the face of the President's issuance. The executive might have devoted the amount diminished from the IRA for some *other* purpose: LGUs had to finance the budget gap. It was also inconceivable that Congress failed to exercise due diligence in the conduct of the budget process. Congress and the President allowed the devolution fund to be deducted from the IRA and written as a separate expenditure.

The complications of reenacted budgets figured in *ACORD* where discrepancies in the computation of IRA arose in the GAA. The first instance was occasioned by Congress' failure to approve the budget due to the political turbulence of 2000-2001. Eventually, LGUs and civil society organizations discovered the budget discrepancies. Respondent officials argued that the Constitution and LGC compel the executive but not the legislature to release the IRA automatically. Congress is free to impose conditions for the release of the IRA through the GAA. It may be recalled in this case that although the executive determined the amount of the IRA for the coming budget year, Congress reduced it by P10 billion, which was placed under *nprogrammed Fund,* an expense conditioned on the availability of funds. It would have justified the diminution of the IRA in future GAAs: neither the Constitution nor the LGC are clear which branch of government is obliged to respect the IRA's true value.

The Supreme Court could have simply adverted to section 284 of the LGC which pegs the IRA at forty percent (40%) of internal taxes collected in the third preceding fiscal year, and to section 285, which does not authorize any

holdback or deduction. It held that Congress is obligated *not* to enact laws that prevent the executive from releasing the IRA automatically. If not, Congress could unilaterally abrogate the exercise of popular sovereignty to amend the Constitution. The automatic release of the IRA therefore, binds Congress and the executive department.

ACORD was instituted by NGOs interested in the proper functioning of government. Respondents disputed the legal standing of petitioners to file the petition, claiming that only LGUs may do so. The Court however noted the timely intervention of the Provinces of Batangas and Nueva Ecija. The contention that ACORD and other organizations may not have the legal standing is probably correct if they failed to allege themselves as taxpayers. A taxpayers' suit would have prospered because the IRA involves expenditures of public funds. Still, the suit by NGOs is the sort of action that enables key actors in the budget process to *participate* in a meaningful way in government expenditures. It should be encouraged in order to compel the National Government to observe the standards of the Constitution. Only Batangas and Nueva Ecija among Philippine provinces and LGUs intervened in the case; it does not appear from the decision itself that other LGUs participated in the case. The Court proceeded to hear *Batangas* and *ACORD* even if the issues had become moot.

In *Dadole,* the petitioning judges – also actors and parties in interest in the local budget of Mandaue – brought suit to demand for their rights. The Court did not fault them since their personality to institute the suit is beyond dispute.

League of Cities was instituted by the *liga* on behalf of all existing cities. Individual cities also joined in the petition, understandably because they stand to suffer the most in the event that the cityhood laws' validity is upheld. As early as the congressional debates, existing cities had made their opposition felt, again an indication that participation is crucial. The cityhood laws were enacted despite their vigorous opposition at the legislative forums.

The local government context of the judicial decisions is based on the need for the IRA. However, the non-participation of most LGUs in the judicial cases may be attributed to the political environment. Thus, concern of LGUs for the quality of governance is likely less of a factor than financial and political considerations. The participation of NGOs in *ACORD* indicates that they are more concerned about governance than LGUs.

Nonetheless, the context of the decisions shows that the Supreme Court delayed resolution in *Batangas* and *ACORD* which involved large funds that had already been expended. It took three years to decide *Batangas* and five, *ACORD.*

By the Court's own admission, the value of its statements lies in guiding future decisions of Congress and the executive branch but not for the parties in the case. The delay left the National Government indebted to LGUs, and the latter, with budget shortfalls. It was not due to the difficulty of the issues as the Court as shown by voting patterns: in *Batangas* and *ACORD,* all of the voting justices voted favorably, and there was no dissent or minority opinion. This delay indicates some difficulty that is not doctrinal in nature.

The Supreme Court may not have appreciated the value of a timely decision in a case involving the constitutionality of government acts involving billions of pesos, and hence basic services to struggling LGUs. If possible violations of the Constitution are in issue, the Court should step in forthwith to make a decision. The proper functioning of the system of government and of the Constitution itself, should have been given due importance.

Indeed, predictability is crucial in the IRA. Along with the rule of law, it forms the crux of jurisprudence of the IRA.

The cases above show that the IRA should be released in a determinable amount equivalent to forty percent of internal revenues collected in the third preceding fiscal year. As a rule, distribution of the IRA must follow the allocation among levels of LGUs under the LGC based on the formula defined in the LGC. The IRA should be released automatically by the executive department without need of further action by the LGU; it cannot be subject to any condition or approval by any government agency[109] except as regards the development fund required by the LGC. Congress and the President cannot reduce the amount of IRA as computed by BIR. There should be no variance between said computation and the GAA. Consistent application of the rules and requirements for the conversion of municipalities to cities should enable existing cities to make sound, accurate, and balanced projections of income and expenditures.[110]

Predictability eliminates or lessens caprice, abuse, negligence, and inaction by the executive department and Congress. Anent conversion of cities, both Congress and the Supreme Court should be bound by the standard of predictability: the consequences of a politicized and polarizing government are held in check.

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[109] *See Province of Batangas*, 429 SCRA 736, 764-765, May 27, 2004.; *ACORD*, 459 SCRA 578, Jun. 8, 2005; *Pimentel*, 336 SCRA 201, 217, Jul. 19, 2000..

[110] The DBM recomputes the IRA due LGUs; in Local Budget Memorandum 59 (2009), the DBM based the finality of IRA allocation on the outcome of the League of Cities case, Sema v. Commission on Elections (GR No. 178628, 558 SCRA 700, 16 July 2008) which involved the constitutionality of the creation of the province of Shariff Kabunsuan, and the results of the 2007 census.

Batangas and *ACORD* highlight the requirement of predictability: Congress and the President cannot make use of executive issuances or the GAA to reduce IRA capriciously. The amount of the IRA is fixed and determinable and may only be reduced in the manner and in such proportion as the LGC provides. *Pimentel* shows that the President cannot withhold a portion of the IRA. LGUs have the unqualified right to expect its full and timely release.

League of Cities is the exception in the consistent rulings of the Supreme Court. Section 450 of the LGC, as amended by RA No. 9009, ensured predictability in the conversion of cities. The Court had insinuated in its second decision that Congress now has free rein to grant city charters to undeserving municipalities in seeming defiance of section 10, article X. It would have been increasingly difficult for older, IRA-dependent cities to predict their revenues and expenditures as their respective IRA diminishes. Projections would have been rendered useless and subject to a volatile congressional will.

Related to predictability is the rule of law, which compels observance by Congress and the President of judicial decisions and the statutes concerning the IRA, so as to ensure predictability in funding, release, appropriation and utilization. It would approximate a ministerial function for the legislative and the executive to appropriate and release the IRA. This is evident in the treatment of the IRA in *Batangas, ACORD* and *Pimentel.*

Provision for the IRA in the Constitution indicates that it is a major feature of governance and government operations, similar to democratic and republican principles, such as separation of powers, the bill of rights, etc. The IRA is both a matter of principle and policy; violation of said provision would be unconstitutional.[111] The Constitution also compelled Congress to enact a local government code containing provisions on the IRA. Conceivably, the IRA strengthens local autonomy and decentralization in line with the principles and policies on decentralization and local autonomy.

The IRA is a legally demandable and enforceable right of LGUs. The National Government must *automatically* release the IRA as a matter of obligation.[112] LGUs may compel respect and observance of that right by the national government through the courts. The Supreme Court in turn, guarantees that right of LGUs. Automatic release of the IRA is clearly a safeguard against its

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[111] The issues in *Province of Batangas, ACORD* and *Pimentel* involved constitutionality of legislative and executive acts and decisions.

[112] *Province of Batangas*, 429 SCRA 736, 764-765, May 27, 2004.; *ACORD*, 459 SCRA 578, Jun. 8, 2005; *Pimentel*, 336 SCRA 201, 217, Jul. 19, 2000..

use as a tool to extract political allegiance and support. The rule of law ordains the IRA as a tool that actualizes the fiscal autonomy of LGUs: it cannot be subject to any lien or holdback that the national government may impose. This implicitly acknowledges the role of the IRA in local autonomy.

The IRA is immune from executive caprice. It cannot be reduced by the executive except in the event of an unmanageable public sector deficit, and only in the manner provided under the LGC.[113]

One aspect of the rule of law is local autonomy. If the government abuses its power to appropriate the IRA in the GAA and attaches administrative conditions for its release or resorts to political influence to affect the outcome of IRA, local autonomy would not be achieved; the government will make a mockery of the Constitution. LGUs will remain in an infantile state, dependent on the political moods of Congress and the President. The rule of law also demands a correlative *obligation* upon LGUs to assert their right to IRA and demand faithful compliance with the policy on the IRA. The failure, inability or negligence of LGUs to do so would embolden national government to abuse its powers, and terrorize them into submission. Assertion of that demandable right is correlative: the burden of good governance does not fall upon the shoulders of the national government alone. All actors in the polity should participate in the governance of the nation. But the weight of that correlative obligation falls squarely on LGUs because they stand to lose in a tangible way if national government abuses its powers. The Supreme Court recognized the right of LGUs to assert their rights in *Batangas, ACORD* and *League of Cities.*

The decision in *Dadole v. COA* is based on a technical ground: that COA failed to prove that Mandaue City used its IRA to fund judges' allowances, an item of expenditure not allowed under the LGC. Even if locally generated revenues are not sufficient to cover expenditures, this does not mean that Mandaue actually funded the allowances from the IRA. This is consistent with the common fund doctrine; once funds from various sources are lumped together, it would be impossible to determine the source of expenditures, i.e., whether from the IRA or locally generated revenues. If COA succeeded in proving that Mandaue used its IRA to fund the allowances, the Court's decision suggests that these might be illegal expenditures. Still, the Supreme Court implicitly sustained COA: the IRA cannot be used to fund judges' allowances.

The two cases involving creation of new cities *(Alvarez and League of Cities)* are controversial because of their complex political nature, and the tangible

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[113] *Pimentel,* 336 SCRA 201, Jul. 19, 2000., *cited in ACORD,* 459 SCRA 578, Jun. 8, 2005.

consequence of lower IRAs that existing cities will experience if the Supreme Court makes a definitive decision, or of higher IRAs for new, IRA-dependent cities despite lack of qualification or a static local tax administration.[114] *Alvarez* provided the judicial basis for the culture of dependence. In the years after 1992, the number of cities rose.

The sixteen units that figured in the *League of Cities* case may represent the last of the new cities under the old requirement. They wanted to remain cities with large IRAs with the approval of the court despite non-compliance with R.A. No. 9009. Congress could not explicitly state that the newly-created city shall be exempted from the income requirement prescribed under section 450, LGC as amended by R.A. No. 9009 since that would amount to a violation of section 10, article X. Congress' attempt under the charters, therefore, to exempt the new cities from the income requirement prescribed under R.A. No. 9009[115] was a disguise to circumvent section 10, article X. The members of the Court led by Justices Bersamin and De Castro would have to find some basis under the law to justify reversal of the first decision. They also had to find a good reason to review the first decision even after entry of judgment, and despite the prohibited second motion for reconsideration.

The lone dissent of Justice Carpio, which focused on purely technical matters, is the more convincing treatment of the final judgment of the 2008 Decision and the second motion for reconsideration.[116] Once a case has attained finality, entry of judgment having been made, a case can no longer be disturbed. Litigations must end and terminate at some point. *In the present cases, that point must be reckoned after the lapse of 15 days from the date of receipt by respondents' counsel of the 28 April 2009 Resolution denying the second motion for reconsideration or on 21 May 2009, as certified by the Deputy Clerk of Court and Chief of the Judicial Records Office. Whether respondents understood, or simply refuse to understand, the meaning of this statement, there is no other meaning than to consider the case finally closed and terminated on 21 May 2009.*[117] A decision that has acquired finality should be immutable and unalterable, no longer

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[114] The League of Cities of the Philippines reports in a private document shared with the writer that existing cities stood to lose more than P4 billion in IRA in 2008. Losses of some cities in 2008 were as follows: Makati, P130 million; Davao, P125 million; Puerto Princesa, P79 million; and Zamboanga, P63 million.

[115] For instance, R.A. No. 9393 (Converting the Municipality of Lamitan in the Province of Basilan into a Component City to be Known as the City of Lamitan), § 62 provides: "Exemption from Republic Act No. 9009. - The City of Lamitan shall be exempted from the income requirement prescribed under Republic Act No. 9009."

[116] 608 SCRA 636, 678-698.

[117] *Id.* at 694.

subject to attack and cannot be modified directly or indirectly and the court which rendered it, including the Supreme Court, had lost jurisdiction to modify it.[118]

But this was not the first time that the Supreme Court assumed jurisdiction even after it had ordered entry of judgment.[119]

The Court reversed the first decision in *League of Cities*: the cityhood laws do not violate section 10, article X. It held that the *local government code* mentioned in this provision refers to a law to be enacted by Congress. It can only mean that Congress has the power to impose criteria for creating LGUs. Congress, whether through the provisions of the *local government code or some other piece of legislation,* could provide for the criteria for creating LGUs. If the Constitution intended that the only requirements for creating LGUs should be based on a *local government code,* it was in reference to the law in place at the time, namely the Local Government Code of 1983.

The substantive grounds for reversal of the first decision are not convincing. The Court's reasoning is a strained reading of the Constitution, and is open to dispute.[120]

Congress had the duty to enact a local government code: the current LGC. Thus, the requirements of the present LGC must apply in creating new cities. If the Court reasoned that B.P. 337 should have been incorporated in the text of section 10, article X, it would have realized that this law had been superseded by the LGC of 1991. Even if the old law had been referenced, the fact remains that the LGC is the newer law; creation of LGUs would still have made reference to the LGC.

If Congress could redefine the criteria for creating LGUs in the city charters, this ignores section 10, article X. LGUs can only be created by meeting

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[118] *Id.* at 695, *citing* Ginete v. Court of Appeals, G.R. No. 127596, 296 SCRA 36, Sep. 24, 1998; Legarda v. Court of Appeals, G.R. No. 94457, 280 SCRA 642, Oct. 16, 1997.

[119] In Manotok v. Heirs of Barque (G.R. No. 162335, 628 SCRA 668, Dec. 18, 2008, as brought up by Prof. Pangalangan, *supra*), the Supreme Court reopened the case three years after Associate Justice Consuelo Yñares Santiago (by then retired) penned her decision in favor of the Barque family. Two years after the Supreme Court promulgated the decision, Associate Justice Santiago was accused by a columnist for allegedly having received bribes in the case, which involved valuable real properties in Quezon City (*see* http://newsinfo.inquirer.net/breakingnews/nation/view/20070924-90447/SC_to_investigate_bribery_allegations_vs_one_of_its_justices). For putative technical reasons, the Supreme Court, in a decision written by Associate Justice Dante O. Tinga, reversed itself and remanded the case to the Court of Appeals for further proceedings. Perhaps it was a turn for the better, if it was indeed true that Justice Santiago received bribes. Whatever the outcome in Manotok, the second decision in League of Cities is flawed on several counts. The Supreme Court would later rule in favor of the National Government of the Republic of the Philippines in its decision of Aug. 24, 2010.

[120] Interview with Prof. Dante B. Gatmaytan (Feb. 5, 2010).

the requirements in the LGC. The cityhood laws cannot be considered the LGC or parts thereof.

The Supreme Court perceived a conflict between the power of Congress to legislate and the limitation imposed by section 10, article X. Article VI defines the extent of Congress' power to enact laws but also restricts it, e.g., the equal protection clause and prohibition against *ex post facto* laws. Article X is a further limit to legislative power. The intent in Article X is to prevent abuse of power through the creation of LGUs by imposing upon Congress the duty to enact a *local government code.* If section 10, article X. is a restriction of Congress' power, the Court should have considered that Congress enacted the LGC. If Congress felt that it could exempt municipalities from the requirements therein, it should have included such in the LGC. Congress did not; it rightfully bound itself to observe section 10, article X of the Constitution.

Delving into the deliberations of R.A. No. 9009 was unnecessary; there is no ambiguity in relevant provisions of the law. Dissecting Sen. Pimentel's statements in the deliberations of R.A. No. 9009 only proves that the author himself sought exemption of municipalities with pending bills. Congress placed no such *proviso* in the text of R.A. No. 9009; hence, the Court should have simply applied that law.

The case recalls *Torralba v. Sibagat,*[121] which is directly applicable to *League of Cities.* In that case, petitioners challenged the creation of the Municipality of Sibagat, Agusan del Sur under B.P. Blg. 56. Section 3, article XI of the 1973 Constitution, then in effect at the time of approval of said law in 1980, provided:

> No province, city, municipality, or barrio may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the Local Government Code, and subject to the approval by a majority of the votes cast in a plebiscite in the unit or units affected.

Petitioners argued that the LGC must first be enacted to set the criteria for the creation, division, etc. of an LGU, or substantial alteration of its boundaries; that since no such code had as yet been enacted as of the date B.P. Blg. 56 was passed, that statute could not have possibly complied with any criteria when Sibagat was created, hence, it is void.

The Supreme Court saw no merit in this argument, and held:[122]

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[121] G.R. No. 59180, 147 SCRA 390, Jan. 29, 1987.
[122] 147 SCRA 390, 394.

> It is a fact that the Local Government Code came into being only on 10 February 1983 so that when BP 56 was enacted, the code was not yet in existence. The evidence likewise discloses that a plebiscite had been conducted among the people of the unit/units affected by the creation of the new Municipality, who expressed approval thereof;
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> x x x
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> We find no trace of invalidity of BP 56. The absence of the Local Government Code at the time of its enactment did not curtail nor was it intended to cripple legislative competence to create municipal corporations. **Section 3, art. XI of the 1973 Constitution does not proscribe nor prohibit the modification of territorial and political subdivisions before the enactment of the Local Government Code. It contains no requirement that the Local Government Code is a condition *sine qua non* for the creation of a municipality, in much the same way that the creation of a new municipality does not preclude the enactment of a Local Government Code. What the Constitutional provision means is that once said Code is enacted, the creation, modification or dissolution of local government units should conform with the criteria thus laid down.** In the interregnum before the enactment of such Code, the legislative power remains plenary except that the creation of the new local government unit should be approved by the people concerned in a plebiscite called for the purpose. (Emphasis supplied)

The sentences in bold require that laws creating LGUs should meet the criteria under the LGC. If the charters were enacted during the regime of the LGC, they should comply with its requirements. Since it does not contain any exemption from the income requirement, the exemptions under the charters were void. In the first decision, the Court's concern was the intent of the Constitution: "[t]he clear intent of the Constitution is to insure that the creation of cities and other political units must **follow the same uniform, non-discriminatory criteria found solely in the LGC**. Any derogation or deviation from the criteria prescribed in the Local Government Code violates section 10, article X of the Constitution."[123]

Any departure from these standards must be justified under our equal protection jurisprudence.[124] However, the charters did not lay the basis in exempting the new cities from the income requirement: had they been passed, they would have violated the equal protection clause; the Court completely ignored *Torralba.*

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[123] Torralba v. Sibagat, G.R. No. 59180, 147 SCRA 390, Jan. 29, 1987.

[124] Interview with Prof. Gatmaytan, *supra* note 120.

The Court also ignored the nature of the IRA as ruled in *Alvarez*: it is a recurring source of income of LGUs, regularly appropriated. There will never be a point in time under the Constitution and during the effectivity of the LGC, when the government will *not* release it. Regular appropriation and release of the IRA are enough to vest existing cities with proprietary basis to complain.

It is misleading to say that the sixteen municipalities cannot be faulted for non-approval of the cityhood bills since they are not parties in legislation. The fault may lie with their representatives or with Congress itself in failing to insert an exempting clause in R.A. No. 9009, but the Court cannot look into the failures of members of Congress. Therefore, no substantial distinction exists between the sixteen municipalities and the other municipalities: *ubi lex non distinguit, nec non distinguere debemus.* In fact, the Supreme Court conveniently ignored the fact that many cities attained cityhood through their effort to comply stringently with the provisions of the LGC on income. A substantial distinction exists between them and the sixteen LGUs. The sixteen LGUs belatedly sought conversion after R.A. No. 9009 was enacted when they had plenty of opportunities before that. The Court failed to delve into this matter; until then, municipalities followed the LGC, aided by the ruling in *Alvarez*. The Court should have realized this in its second decision.

The third decision was based on the discomfort of the majority[125] with the circumstances that led to the second decision. It was difficult for members of the Court to explain away whatever led it to reopen the case despite the filing of a prohibited second motion for reconsideration. The majority was uncomfortable that the second decision would lead to a precedent which threatened to damage the credibility of a court. The amount involved billions of pesos of IRA not just for a given budget year but perhaps for decades to come; it stresses the importance of this influence and of the case itself. Even if there were cogent grounds to justify the outcome in the second decision, the majority seemed to have studied the wider impact of the Supreme Court's decisions[126] on the socio-political environment and invoked the simplicity of the applicable issuances. As Justice Carpio[127] warned:

> Any ruling of this Court that a tie-vote on a motion for reconsideration reverses a prior majority vote on the main decision would wreak havoc on well-settled jurisprudence of this Court. Such an unprecedented ruling would resurrect contentious political issues long ago settled, such as the

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[125] Associate Justice Antonio T. Carpio, joined by Associate Justices Conchita C. Morales, Arturo D. Brion, Diosdado M. Peralta, Martin S. Villarama, Jr., Jose C. Mendoza and Maria Lourdes A. Sereno. Two Justices, Antonio B. Nachura and Mariano C. Del Castillo took no part.

[126] The Supreme Court used the phrase "set a dangerous precedent", 628 SCRA 819 at 832.

[127] *Id.* at 697-698.

> PIRMA initiative in *Santiago* and the people's initiative in *Lambino*. Countless other decisions of this Court would come back to haunt it, long after such decisions have become final and executory following the tie-votes on the motions for reconsideration which resulted in the denial of the motions. Such a ruling would destabilize not only this Court, but also the Executive and Legislative Branches of Government. Business transactions made pursuant to final decisions of this Court would also unravel for another round of litigation, dragging along innocent third parties who had relied on such prior final decisions of this Court. This Court cannot afford to unleash such a catastrophe on the nation.

The implications of the second, third and fourth decisions in this case merit further discussion in view of their effects in judicial decision-making and legislative decisions creating new cities. The legislative and administrative implications of the second decision in *League of Cities* may be seen in its possible consequences, not all of which are desirable.

If Congress can exempt municipalities from the income requirement, nothing prevents further exemptions. This renders useless the enactment of R.A. No. 9009, and for that matter, section 450 of the LGC.[128] A fifth class municipality with annual income of less than P5 million could be converted into a city. By the same token, there is nothing to hinder Congress from exempting them from the requirements on land area and population. A municipality with a population of 5,000 could therefore be converted into a city. In both cases, Congress is given the prerogative to amend section 10, article X by invoking its plenary power to legislate. Congress will capitalize on the decision to explore further avenues to affect the allocation and distribution of the IRA.

In the scenario of more new cities, existing cities will receive less and less of the IRA through the years, making it more difficult for them, especially those that are heavily dependent on the IRA, to anticipate revenues and expenditures. Full releases of the IRA from the DBM would be subject to the approval of pending cityhood bills. The quality of services in existing cities is bound to suffer. This should make the need for a more efficient tax administration more acute in the coming years for cities. Ironically, the desire for a larger IRA which was the prime consideration in their conversion, could probably be matched inversely by the desire to fund the shortfall through taxes and other means. Cities and municipalities aspiring for conversion into cities will experience conflict in the future. It will be most felt in provinces with existing cities and municipalities that

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[128] Prof. Gatmaytan is of the same view: "[T]he plenary power extends even beyond the enactment of a code. The implication of this new ruling is that there is nothing in the Code that can bind Congress. What is to prevent Congress from disregarding the land area or population requirements in the future? Could we make a city out of Barangay Krus na Ligas? What is to prevent Congress from lavishing specific local government officials with more powers than others?"

seek conversion, especially if the local leaders in both are political enemies. It will be exacerbated by the declaration of the status of highly urbanized city in provinces that seek to rein in politically such city. Fragmentation of political units will be exacerbated by the drive toward cityhood, as cities will take the lead in segregating themselves from provinces by gobbling up surrounding municipalities. Provinces will suffer.

In all, the second decision of the Supreme Court, in effect, eradicates the binding effect of the LGC, as Congress could eventually resist compliance with its provisions.

The second decision also had judicial implications. It gave rise to speculations that the decision was motivated by politics, a charge easily made but difficult to prove.[129] If some Justices sympathized with the cause of respondents, politics played a part in the reversal. The implication is the same: members of the Court could be swayed to decide a case in favor of a litigant, if politics figured in the equation. It does not help that the procedural and substantive grounds for reversal of the first decision were unconvincing. It was necessary for the Supreme Court to delve into the equal protection clause in an attempt to justify the behavior of Congress. It was the only way to give constitutional protection to the act of Congress.[130]

The Supreme Court eventually reinstated its original decision. The third decision addressed squarely the flaws of the second decision discussed above. The majority looked back at the first decision, and affirmed the simplicity of the language in R.A. No. 9009. It also explored the notion that Congress may amend the LGC through a separate legislation. Amendment of portions of the LGC, such as section 450 may validly be made. Hence, future legislation – including those creating new cities – must conform to the LGC, including amendments thereto such as R.A. No. 9009. Beyond the rules of statutory construction, the Supreme Court justified the reversion to the first decision by looking at the equal protection clause. There was no valid distinction between the municipalities exempted from the income requirement with pending cityhood bills during the Eleventh Congress and those municipalities that had no such bills. Any distinction was imaginary.

However, the Supreme Court flip-flopped for the third time, which is probably unique in the history of jurisprudence. The second resolution reversed the first, and thus, reverted to the second decision. *The Court however made a valid*

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[129] Interview with Prof. Gatmaytan, *supra* note 120.

[130] Interview with Dr. Raul C. Pangalangan, Feb. 9, 2010.

observation on the incongruity of component cities having a higher income requirement than highly urbanized cities. The rest of the decision however is a reiteration of the unconvincing grounds in the second decision. The second resolution might prove to be a Pandora's Box in the future, as litigants exploit the nuances of disturbing the finality of a decision, and as Congress abuses its power to create new cities. This might set a very dangerous precedent

Still, *League of Cities* may be interpreted in a different way. As *Alvarez* provided the jurisprudential basis for the disproportionate increase in the number of cities, *League of Cities* might provide basis to arrest further conversion – if the Supreme Court restricts its application to the sixteen new cities only.

The Supreme Court gauged its decisions from the standards of the Constitution and the LGC, as well as the legislative intent in these statutes. This is the reason why the jurisprudence on the IRA is basically consistent. The only departure from this concordance was the second decision in *League of Cities* with the Court's strained interpretation of the Constitution. In *Alvarez,* the Court was correct in interpreting the income requirement for conversion into a city as inclusive of the IRA because of the failure of the text of the law to adhere to the legislative intent to include only locally generated revenues. Whatever undesirable consequences or effects in its decisions, particularly in *Batangas, Pimentel* and *ACORD,* is beyond the Court's powers. This question is due largely to the nature of the IRA as a general purpose allotment without any qualification or condition for distribution.

To sum up, the Supreme Court's decisions are consistent with the Constitution where cases call for unambiguous interpretation of statutes. Said decisions are efforts at promoting local autonomy and the right of LGUs to IRA which had been much abused by Congress and the executive department. National government will find it increasingly difficult to manipulate LGUs and their IRA. The trend will likely apply where the cases are free from any taint of politics. The second decision in *League of Cities* defies this trend. *League of Cities* is fiscally significant with far-reaching, tangible consequences through time for national government and LGUs: lobbying was intense as hinted by Justice Carpio.

The adverse effects on local autonomy, the IRA process and the good governance setting in that decision stresses why the Supreme Court should strive to uphold the Constitution in its decisions. If the legislative and executive departments have shown the proclivity to manipulate the IRA (with LGUs acquiescing to it), and IRA-dependent LGUs quarrel over the IRA, the Supreme Court's role in governance would be crucial. These difficulties could only be

resolved credibly by an independent-minded Supreme Court. Only then would local autonomy and good governance be achieved.

VII. CONCLUSION

Despite the intention under the Constitution and the LGC to liberate the IRA from legislative and executive manipulations, both Congress and the President have devised ways to reduce and withhold the IRA. The Supreme Court has tended to uphold the Constitution and the LGC provisions on the IRA thereby sustaining the principle of local autonomy of LGUs. The controversies over the IRA largely involved the national and local governments. Local governments clashed for the first time in the highly charged case of *League of Cities*. The second decision of the Supreme Court in that case is the exception to the trend. The same case also suggests that contrary to the purpose of promoting local autonomy, the IRA has also proven to perpetuate a dependence of LGUs on the national government as municipalities have sought conversion into cities. *League of Cities* also highlights the disincentive effect of IRA on local revenue generation for some municipalities.

The decisions and actions of Congress, the President, and LGUs suggest that the current law on the IRA, a general, all-purpose grant, is prone to be abused. National leaders may have to craft alternatives such as special allotments to deserving LGUs based on statistical and empirical socio-economic data to supplant the IRA (not otherwise in violation of the Constitution) or supplemental forms of allotments in addition to the IRA or a reduced proportion of IRA to internal revenues. Such measures may be more consistent with the constitutional intent to promote genuine local autonomy.

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