

FORCE OF BUDGET LAW: PRESERVING THE INTEGRITY OF THE GENERAL APPROPRIATIONS ACT*

*Tanya Renee F. Rosales***

ABSTRACT

Budget integrity requires that the budget disbursed by the government be the same budget authorized by Congress. However, realities on the ground demand flexibility in budget execution. This Note analyzes the extent of the President's power to adjust the general appropriations law. Using a rule-of-law framework, it is argued that the President's power of augmentation, as permitted by existing statutes, does not meet constitutional standards due to the absence of meaningful limitations in its exercise. This is aggravated by the perennial problem of underspending, which enables the transfer of billions of pesos from one item to another in the appropriations law. It is recommended that for the Executive to meet its mandate of the faithful execution of laws, tightened requirements for augmentation and other reforms be institutionalized in a separate budget systems law.

* Cite as Tanya Renee F. Rosales, *Force of Budget Law: Preserving the Integrity of the General Appropriations Act*, 95 PHIL. L.J. 48, [page cited] (2022).

** Juris Doctor, Dean's Medalist for Academic Excellence, University of the Philippines College of Law (2021); A.B. Development Studies and B.S. Legal Management, *cum laude*, Ateneo de Manila University (2014). The author expresses her gratitude to former Department of the Interior and Local Government Undersecretary Francisco Fernandez, whose mentorship allowed the ideas in this Note to develop, and to Atty. Danilo Ballesteros for his valuable inputs on fraud audit.

I. INTRODUCTION

In a public health emergency, government underspending can cost lives. As families in Metro Manila desperately search for vacant hospital beds amid the COVID-19 pandemic,¹ news broke out that 20 billion pesos in calamity funds under the 2021 General Appropriations Act (GAA) remained untouched as of the first quarter of Fiscal Year (“FY”) 2021.² Then Presidential Spokesperson Herminio “Harry” L. Roque, Jr. explained this away by saying that the 2021 budget “should remain unused as there “could be other problems in 2021” for which the funds could be used.³

Although the government hailed the 2021 GAA as the “first COVID-19 budget[.]”⁴ critics attacked the 4.506-trillion peso national budget for not being attuned to the needs of a pandemic-stricken nation.⁵ The 2021 GAA appropriated a total of 210.2 billion pesos to the Department of Health (DOH), an amount which pales in contrast to the 695.7-billion peso total appropriations of the Department of Public Works and Highways (DPWH).⁶ The DPWH saw a striking increase in its budget by 61.34% from the preceding fiscal year, despite being the biggest under-spender among the line departments with its measly 37.8% disbursement rate for the first three quarters of 2020⁷ when the budget for FY 2021 was being deliberated.

¹ Sofia Tomacruz & Bonz Magsambol, *Philippines’ COVID-19 surge tears through families*. RAPPLER, Apr. 17, 2021, available at <https://www.rappler.com/newsbreak/in-depth/philippines-covid-19-surge-tears-through-families-lives>.

² Ben de Vera, *P25 billion in calamity funds unspent amid pandemic*. INQUIRER.NET, May 3, 2021, available at <https://newsinfo.inquirer.net/1426367/p25b-in-cal-amity-funds-unspent-amid-pandemic>.

³ Samuel Medenilla, *Roque: Unspent P25 billion in calamity funds being kept on standby*, BUSINESS MIRROR, May 3, 2021, available at <https://businessmirror.com.ph/2021/05/03/roque-unspent-p25-billion-in-cal-amity-funds-being-kept-on-standby>.

⁴ Jon Cabuenas, *2021 GAA to Be First COVID-19 Budget —Palace*. RAPPLER, Apr. 26, 2020, available at <https://www.rappler.com/nation/duterte-signs-2021-budget-bill-into-law/>.

⁵ Sofia Tomacruz, *Duterte signs pandemic-era 2021 budget into law*, RAPPLER, Dec. 28, 2020, available at <https://www.rappler.com/voices/thought-leaders/analysis-2021-budget-duterte-funds-dubious-infra-projects-not-vaccines>.

⁶ Rep. Act No. 11518 [hereinafter “2021 GAA”], (2020).

⁷ DEPARTMENT OF BUDGET AND MANAGEMENT, FY 2020 STATEMENT OF APPROPRIATIONS, ALLOTMENTS, OBLIGATIONS, DISBURSEMENTS, AND BALANCES FY JANUARY 1 – SEPTEMBER 30, 2020, at https://www.dbm.gov.ph/wp-content/uploads/e-Fund_Releases/SAOB2020/3rdQuarter/ANNEX-A-FY-2020-STATEMENT-OF-APPROPRIATIONS-ALLOTMENTS_-OBLIGATIONS_-DISBURSEMENTS-AND-BALANCES-as-of-September-30_-2020.pdf (last visited Jan. 24, 2021).

For policy commentators, the apparent prioritization of infrastructure over health is likely linked to the upcoming 2022 national elections.⁸ Infrastructure projects, especially the construction of roads and bridges, are a known sizable source of pork barrel and campaign funds.⁹

Simply put, pork barrel funds are budgetary allocations to individual legislators, the form of which has metamorphosed over the years.¹⁰ One such form was the Priority Development Assistance Fund (PDAF), a lump-sum, discretionary appropriation which allowed legislators to identify projects and select beneficiaries after the enactment of the GAA. The Supreme Court struck down the PDAF as unconstitutional in 2013, ruling that legislative participation in budget execution other than oversight encroached on executive power.¹¹ However, abolishing the PDAF did not end pork barreling, which remains a driving force in clientelism and patronage politics. To comply with the Supreme Court ruling on PDAF, pork barrel funds now take the form of itemized congressional insertions in the budgets of national government agencies. This has led to bloated budgets, which, in turn, have been pointed to as “one obvious culprit of underspending.”¹² According to one senator, from 2010 to 2020, the average unused appropriations amounted to 328.5 billion pesos per year.¹³

Since the President is constitutionally vested with exclusive control over budget preparation and execution,¹⁴ the budget process can be the President’s most powerful playing card in shaping political relationships and advancing political interests.

This Note analyzes the extent of the President’s power over the budget process. Part II explores the concept of the proverbial “power of the purse,” its place in our Constitution, and two presidential powers—the power to impound and the power to augment—which alter its exercise. Part III tests

⁸ Raissa Robles, *In Duterte’s Budget for Philippines, Critics See Skewed Priorities*, SOUTH CHINA MORNING POST, Jan. 1, 2021, available at <https://www.scmp.com/week-asia/politics/article/3116127/dutertes-budget-philippines-critics-see-skewed-priorities-and>.

⁹ Earl Parreño, *Pork, in PORK AND OTHER PERKS: CORRUPTION AND GOVERNANCE IN THE PHILIPPINES*, at 47–54 (1998).

¹⁰ Ronald Holmes, *Congressional Oversight: The Power of the Purse, Presidential Prerogatives, and Pork Barrel* in BUDGET REFORM IN THE PHILIPPINES 88–96 (2008).

¹¹ *Belgica v. Ochoa*, G.R. No. 208566, 710 SCRA 1, Nov. 19, 2013.

¹² Camille Elemia, *Lacson questions DPWH budget for right-of-way acquisitions*, RAPPLER, Oct. 11, 2017, available at <https://www.rappler.com/nation/lacson-right-of-way-acquisitions-dpwh-budget-2018>.

¹³ Christia Marie Ramos, *Lacson: Government’s yearly unused budget is P328.5 billion on average since 2010*, INQUIRER.NET, Nov. 25, 2021, available at <https://newsinfo.inquirer.net/1519943/lacson-governments-yearly-unused-budget-is-p328-5-billion-on-average-since-2010>.

¹⁴ CONST. art. VII, § 22.

whether the President may share the power of the purse through the power to augment. Two main arguments are advanced: *first*, that the purpose of the constitutional requirement that all appropriations be made “by law” is to subject all government spending under the rule of law; and *second*, that the power to augment, as authorized by existing statutes, defeats the rule of law. Part IV illustrates how the power to augment is fueled by a colossal failure in budget execution: underspending, which may be treated as a violation of the President’s duty to faithfully execute the law.

Finally, Part V looks into the sufficiency of the proposed Budget Reform Act¹⁵ and concludes that budget reforms can make meaningful, lasting impact only when they are institutionalized.

II. POWER OF THE PURSE

“[T]he budget process is essentially a political process. The allocation of public funds [...] is essentially an exercise of power. But it is exercised not by just one person nor one office but by and with so many competing players in different arenas[.]”

—Florencio Abad, former Budget and Management Secretary¹⁶

A. Congressional Control

Despite the President’s prominent role in the national budgeting process, Congress remains the repository of the power of the purse. The power of the purse is “the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people[.]”¹⁷ Notwithstanding this consensus, the Constitution itself is silent as to what exactly this power is. The traditional view holds that it is equivalent to power

¹⁵ H. No. 2807, 18th Cong., 1st Sess. (2019).

¹⁶ FLORENCIO ABAD, *The Budget as an Instrument for Governance Reform* in BUDGET REFORM IN THE PHILIPPINES, at 55 (2008).

¹⁷ Joachim Wehner, *Assessing the Power of the Purse: An Index of Legislative Budget Institutions*, 54 POL. STUD. 767, 767 (2006) citing JAMES MADISON, THE FEDERALIST PAPERS NO. 58 (1788).

to appropriate funds,¹⁸ while a more holistic view includes the power of legislative oversight in its contemplation.¹⁹

1. *Power to appropriate*

Congress' power to appropriate is enshrined in the Appropriations Clause of the Constitution, which provides that “[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”²⁰ This may be construed in two ways: negatively, as the power to deny access to public funds;²¹ and positively, as the power to authorize the use of public funds.

In its negative sense, the Appropriations Clause is a crucial check on the exercise of vast executive power. By withholding or reducing funds, Congress can circumscribe the overarching operations of the executive branch.²² In the United States, the Appropriations Clause has historically been leveraged to control not just administrative affairs but even foreign policy and military action. For instance, the 1973 Case-Church Amendment, which cut off funding for all military combat activities in North and South Vietnam, Laos, and Cambodia, effectively ended the United States' direct involvement in the Vietnam War.²³ Since 1986, the US Congress has also withheld foreign aid for countries whose duly elected head of state has been deposed in a military coup.²⁴ Arguably, even in the domain of international relations where the President is acknowledged as the sole organ of the state,²⁵ presidential action cannot escape the “omnipresent legislative veto” exercisable under the Appropriations Clause.²⁶

¹⁸ SEAN STIFF, CONG. RESEARCH SERV., R4617, CONGRESS'S POWER OVER APPROPRIATIONS: CONSTITUTIONAL AND STATUTORY PROVISIONS, 1–2 (2020), available at <https://crsreports.congress.gov/product/pdf/R/R46417>.

¹⁹ See Wehner, *supra* note 17.

²⁰ CONST. art. VI, § 29(1).

²¹ Zachary S. Price, *Funding Restrictions and Separation of Powers*, 71 VAND. L. REV. 357, 357 (2018).

²² *Id.* at 366.

²³ JOSH CHAFETZ, CONGRESS'S CONSTITUTION: LEGISLATIVE AUTHORITY AND THE SEPARATION OF POWERS 88 (2017).

²⁴ *Id.*

²⁵ *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319–20 (1936).

²⁶ See Gregory Sidak, *The President's Power of the Purse*, 1989 DUKE L.J. 1162, 1162 (1989). Sidak notes that the “Principle of Appropriations Control” proposed by Kate Stith in *Congress' Power of the Purse*, 97 YALE L.J. 1343 (1988), envisioned the appropriations power as “an omnipresent legislative veto on presidential action”; *but cf.* H. Jefferson Powell, *The President's Authority Over Foreign Affairs: An Executive Branch Perspective*, 67 GEO. WASH. L. REV. 527, 551–52 (1998) (describing the use of appropriations power to control an autonomous presidential power as invalid and unconstitutional).

In its positive sense, the Appropriations Clause affirms the role of Congress in declaring national priorities. By determining which specific program, activity, or project (“P/A/P”) to fund, Congress decides how the country’s coffers should be allocated. The Appropriations Clause also implies that all government actors are ultimately accountable to Congress for all public expenditures. Concomitant with the power to authorize spending is the power to ensure that such spending is made in accordance with the authority granted. Otherwise, Congress is reduced to a rubber stamp devoid of any real control over the public purse. In the United States, the Appropriations Clause is regarded as a source of the power of congressional oversight.²⁷ Such power is so interrelated with the appropriations power that the failure of Congress to exercise scrutiny over government spending may be deemed an abdication of the power of the purse itself.²⁸

2. *Power of oversight*

Unlike in other jurisdictions, the Philippine Congress derives its oversight power from the express provisions of the Constitution. Article VI, Section 21²⁹ of the Constitution empowers Congress to “conduct inquiries in aid of legislation[.]” while Article VI, Section 22³⁰ enables Congress to request the appearance of executive heads in a hearing on “any matter pertaining to their departments.” The latter provision, the power to conduct a question hour,³¹ is less intense since it does not involve the “digging of facts” but is merely a passive continuing process designed to determine administrative efficiency.³² Nonetheless, it is broader in scope than a legislative inquiry under

²⁷ See L. ELAINE HALCHIN & FREDERICK KAISER, CONG. RESEARCH SERV., RL32525, CONGRESSIONAL OVERSIGHT, 2–3 (2001) They note that while the US Constitution does not expressly provide for congressional authority to oversee or investigate government administration, Congress’s oversight powers may be implied in its “impressive array of enumerated powers.”

²⁸ Stith, *supra* note 26 at 1345.

²⁹ CONST. art. VI, § 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

³⁰ Art. VI, § 22. The heads of departments may upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

³¹ Senate v. Ermita [Hereinafter “*Ermita*”], G.R. No. 169777, 488 SCRA 1, 52, Apr. 20, 2006.

³² Macalintal v. Comm’n on Elections [hereinafter “*Macalintal*”], G.R. No. 157013, 405 SCRA 614, 712, July 10, 2003 (Puno, J., *concurring and dissenting*).

Section 21 in that its subject matter need not be related to or to further a possible legislation.³³

The power to conduct question hour has been said to be the essence of budgetary oversight.³⁴ It suits the scope and nature of the budget, which virtually covers all government operations and requires continuous scrutiny. In the annual appropriations process, the question hour is held through regular budget hearings during budget legislation.³⁵ Budget hearings create an avenue for legislators to not just look into the proposed targets and expenditures for the succeeding fiscal year, but also to examine an agency's track record in implementing the budget for the prior fiscal years.

Perhaps a downside of treating budget hearings as a form of question hour is its noncompulsory nature. Unlike in a legislative inquiry, the attendance of executive officials in question hour is not mandatory.³⁶ During the 2019 budget deliberations, amid allegations of anomalies in the proposed budget, former Budget Secretary Benjamin Diokno declared that he would no longer appear before the House of Representatives.³⁷ This move was backed by the Office of the President, which had earlier expressed support for the embattled secretary.³⁸ Nonetheless, the House responded by issuing a subpoena,³⁹ which may be justified as an exercise of the power of legislative inquiry since, after all, budget hearings are conducted in aid of budget legislation.

Quite ironically, the conduct of legislative inquiry finds more common acceptance after the budget law has already been enacted. In practice, the appropriate congressional committee investigates irregularities in the budget law implementation. In some instances, all members of the House or of the Senate convene as a Committee of the Whole. For example, in the

³³ *Senate v. Ermita*, G.R. No. 169777, 488 SCRA 1, 56–7, Apr. 20, 2006. *But see* Neri v. Senate Comm. on Accountability of Pub. Officers & Investigations, G.R. No. 180643, 564 SCRA 152, 284, Mar. 25, 2008 (Carpio, J., *concurring and dissenting*). The legislature can conduct inquiries not specifically to enact laws but to oversee their implementation. This is the mandate of various legislative oversight committees which inquire on how laws are implemented.

³⁴ *Macalintal*, 405 SCRA 614, 707–08 (Puno, J., *concurring and dissenting*).

³⁵ *Id.*

³⁶ *Ermita*, 488 SCRA 1, 56.

³⁷ Aika Rey, *Enough for Diokno: No House probes, but open to Senate*, RAPPLER, Jan. 15, 2019, available at <https://www.rappler.com/nation/enough-for-diokno-no-house-probes-open-senate>.

³⁸ Pia Ranada, *Malacañang: Cabinet members can leave Congress hearings if shonn 'disrespect'*, RAPPLER, Dec. 14, 2018, available at <https://www.rappler.com/nation/malacanang-cabinet-members-leave-congress-hearings-disrespected>.

³⁹ Pathricia Roxas, *House issues subpoena vs Diokno, DBM officials*. INQUIRER.NET, Feb. 7, 2019, available at <https://newsinfo.inquirer.net/1082744/look-house-issues-subpoena-vs-diokno-dbm-officials>.

recent 15 billion peso corruption scandal involving the Philippine Health Insurance Corporation, the House Committee on Public Accounts and the House Committee on Good Government and Public Accountability jointly probed the reportedly massive misuse of public funds,⁴⁰ while the Senate Committee of the Whole conducted its own investigation.⁴¹

Congress's exercise of budget oversight functions has been more reactionary than continuous. That it has no permanent or standing committee on budget oversight, despite its power of the purse, is quite telling. The Joint Congressional Committee on Public Expenditures, tasked to monitor the use of public funds, is constituted only under the annual GAAs, and the 2013 GAA notably even omitted to provide for its creation.⁴² Legislative inquiries are launched only upon being triggered by a high-profile or politically motivated budget controversy. One study on the Philippines' public financial management practices concluded: "Congress engages in little scrutiny of in-year or ex-post budget execution data, which in any case are not made available regularly to Congress, nor to the public."⁴³

B. Presidential Prerogatives

Weak oversight compromises budget integrity as the lack of accountability permits greater leeway in the disbursement of public funds.⁴⁴ According to Diokno, by failing to scrutinize how appropriation laws are implemented, Congress itself has voluntarily surrendered its power of the purse to the President.⁴⁵ The past years, however, showed a hint of improvement in the exercise of budget oversight. As assessed by the International Budget Partnership, Congress's post-budget enactment

⁴⁰ Mara Cepeda, *House panels wrap up PhilHealth probe, to file cases vs erring officials*, RAPPLER, Sep. 2, 2020, available at <https://www.rappler.com/nation/house-panels-wrap-up-philhealth-probe-file-cases-erring-officials>.

⁴¹ Glee Jalea & Janine Peralta, *Whistleblower claims P15 billion stolen by PhilHealth execs in fraud schemes*, CNN PHILIPPINES, Aug. 4, 2020, available at <https://cnnphilippines.com/news/2020/8/4/PhilHealth-P15-billion-stolen-mafia-execs.html>.

⁴² Rep. Act No. 10352 [hereinafter "2013 GAA"] (2012).

⁴³ WORLD BANK, PHILIPPINES PUBLIC EXPENDITURE AND FINANCIAL ACCOUNTABILITY, 6 (2010). [Hereinafter "2010 PEFA Assessment"].

⁴⁴ Abad, *supra* note 16, at 65.

⁴⁵ Benjamin Diokno, *Giving back to Congress the power of the purse*, PER SE, Sep. 29, 2012, available at <https://econ.upd.edu.ph/perse/?p=1605>.

oversight score rose from “weak” in 2015,⁴⁶ to “limited” in 2017,⁴⁷ to “adequate” in 2019.⁴⁸

However, congressional budget oversight is just one of the many factors affecting budget integrity. Throughout the year-long effectivity of an appropriation law, changes are bound to occur in the country’s fiscal conditions and administrative operations. Thus, while budget integrity may be ideal in theory, it may not be desirable when the government needs to quickly respond to the exigencies of the times. Thus, various jurisdictions have adopted institutional mechanisms allowing the President to adjust the spending levels set in the appropriation law. Among these, the most significant—and controversial—are impoundment and augmentation.

1. *Power to impound*

Impoundment is broadly defined as the President’s refusal, for whatever reason, to spend funds made available by Congress.⁴⁹ It has been viewed to be an inherent executive power,⁵⁰ since the President cannot be expected to disburse funds when doing so would defeat fiscal discipline, frustrate public policy, or no longer serve the purpose of the appropriation law. Impoundment has also been justified by giving the appropriation law a “permissive” character: it does not mandate that the appropriated amounts be spent in full, but only sets the absolute ceiling on expenditure.⁵¹

Yet, the permissive character of appropriation laws has opened the floodgates for “policy impoundments” or the refusal to spend the

⁴⁶ *Open Budget Survey 2015 Philippines*, INTERNATIONAL BUDGET PARTNERSHIP, at <http://internationalbudget.org/wp-content/uploads/OBS2015-CS-Philippines-English.pdf>.

⁴⁷ *Open Budget Surveys 2017 Philippines*, INTERNATIONAL BUDGET PARTNERSHIP at <https://www.internationalbudget.org/wp-content/uploads/philippines-open-budget-survey-2017-summary.pdf>. The indicators used in the 2017 assessment were revised, therefore the inference is not from direct comparison.

⁴⁸ *Open Budget Surveys 2019 Philippines*, INTERNATIONAL BUDGET PARTNERSHIP at <https://www.internationalbudget.org/sites/default/files/country-surveys-pdfs/2019/open-budget-survey-philippines-2019-en.pdf>. This represents the average of the pre-budget enactment oversight score and post-budget enactment oversight score. The disaggregated data is unavailable in this edition.

⁴⁹ *Phil. Const. Ass’n. v. Enriquez* [hereinafter “*Philconsa*”], G.R. No. 113105, 235 SCRA 506, 545, Aug. 19, 1994.

⁵⁰ See Note, *Presidential Impoundment: Constitutional Theories and Political Realities*, 61 GEO. L.J. 1295, 1299–1300 (1973). The article identifies two principal sources of impoundment power: (1) presidential power as the administrative head of the nation; and (2) commander-in-chief and foreign affairs powers. See also Neil M. Soltman, *The Limits of Executive Power: Impoundment of Funds*, 23 CATH. U.L. REV. 359 (1973). The article discusses presidential power to impound and against an inherent presidential power to impound.

⁵¹ Soltman, *supra* note 50, at 367–68.

appropriated funds because the President disagrees with the policy behind the funding.⁵² In the United States, police impoundments were carried on such a disproportionate scale during Richard Nixon's presidency that Congress eventually passed the Impoundment Control Act of 1974.⁵³ The law installed strict standards for funding deferrals and required the President to seek congressional approval in case of funding rescissions.

In the Philippines, similar efforts by Congress to curb the impoundment power were largely unsuccessful. Despite some indignation over the allegedly systematic impoundment of funds by former President Gloria Macapagal-Arroyo,⁵⁴ none of the budget impoundment control bills introduced during her administration got past the legislative committee level.⁵⁵

Unlike in other countries,⁵⁶ the authority to withhold appropriated funds can be traced to Philippine statutes.⁵⁷ Book VI, Chapter 5, Section 38 of the Revised Administrative Code of 1987 permits the President "to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the [GAA]," unless otherwise provided by the GAA itself.⁵⁸ This provision was directly lifted from the Budget Reform Decree of 1977,⁵⁹ which has notably been criticized for arrogating the power of the purse unto the President, especially since it was promulgated during martial law, when the President wielded both executive and legislative powers.⁶⁰

The constitutionality of impoundment was first challenged when former President Fidel V. Ramos required prior presidential approval to implement a special provision in the 1994 GAA. In *Philippine Constitution Association v. Enriquez*,⁶¹ the Supreme Court upheld the President's right to defer or reduce spending, as nothing in the language of the 1994 GAA implied

⁵² Chafetz, *supra* note 23.

⁵³ *Id.*

⁵⁴ *Arroyo Has Used 'Pork' as a Political Tool - Chiz*, SENATE OF THE PHIL. WEBSITE, at http://legacy.senate.gov.ph/press_release/2010/0105_escudero1.asp.

⁵⁵ Senate Bill Nos. 810, 2995, and 3121 were introduced during the 14th Congress and were referred to the Committee on Finance on Sept. 3, 2007, Jan. 21, 2009, and Apr. 13, 2009, respectively.

⁵⁶ See Ian Leinert & Moo-Kyung Jung, *The Legal Framework for Budget Systems: An International Comparison*, 4 OECD J. BUDGETING 3, 110 (2004). The executive departments in nearly all OECD countries have no statutory authority to cancel or limit spending of appropriated funds.

⁵⁷ Abad, *supra* note 16, at 81.

⁵⁸ REV. ADM. CODE, bk. VI, ch. 5, § 38.

⁵⁹ Pres. Dec. No. 1177 (1977), § 43.

⁶⁰ *Who really holds the "power of the purse?"* 1-2 (Phil Inst. Of Dev. Stud., Policy Note No. 2009-08, 2009), available at <https://dirp4.pids.gov.ph/ris/pn/pidspn0908.pdf>.

⁶¹ *Philconsa*, 235 SCRA 506.

that Congress intended to deny it.⁶² Interestingly, the *ponencia* made no mention of the Administrative Code when it probed the source of the presidential impoundment power, possibly because the provision in the Administrative Code does not contemplate funding deferrals or reductions *prior* to the actual implementation of the GAA. The words “suspend” and “stop further expenditure” used by the law imply that an initial expenditure of the appropriated amount has already been made or, at the very least, that such amount has already been “obligated.”⁶³

This distinction between “obligated” and “unobligated” funds within the context of impoundment was made clear in the landmark case of *Araullo v. Aquino*.⁶⁴ There, the Court categorically expressed that Book VI, Chapter 5, Section 38 of the Administrative Code “authorized only the suspension or stoppage of further expenditures, not the withdrawal of unobligated allotments[.]”⁶⁵ In ascertaining whether the assailed withdrawals by the Executive constituted a valid impoundment, the Court again referred to the GAAs as it did in *Philconsa*. It found that the GAAs “authorized impoundment only in case of unmanageable National Government budget deficit,”⁶⁶ but the actual controversy was not impoundment because the same amounts withdrawn were used on faster-moving P/A/Ps. The expenditure was said to have negated the allegation of impoundment, they being mutually exclusive of each other.

Two things can be gleaned here. *First*, the authority granted under the Administrative Code to defer or rescind expenditure of *obligated* funds is not treated as an impoundment power under our jurisdiction. Although this may not be readily appreciated in the Court’s definition of impoundment as a general “refusal by the President, for whatever reason, to spend funds made available by Congress[.]”⁶⁷ such view is consistent with an obligation-based budget system where obligated funds are already considered spent.⁶⁸ Thus, where a contract has already been entered into for the implementation of a P/A/P, the funds committed would no longer be considered impounded even

⁶² *Id.* at 546.

⁶³ *See* 1 GOVERNMENT ACCOUNTING MANUAL FOR NATIONAL GOVERNMENT AGENCIES 16, which states: Funds are duly obligated upon approval by the [Department of Budget and Management] of the contracting or implementing agency’s request to incur an obligation. An obligation is defined as “an act of a duly authorized official which binds the government to the immediate or eventual payment of a sum of money.”

⁶⁴ [Hereinafter “*Araullo*”], G.R. No. 209287, 728 SCRA 1, July 1, 2014.

⁶⁵ *Id.* at 148.

⁶⁶ *Id.* at 146.

⁶⁷ *Id.*

⁶⁸ *Budget Sec. Diokno shares fiscal reforms of the Duterte Administration*, DEP’T OF BUDGET AND MGMT. WEBSITE, at <https://www.dbm.gov.ph/secretary-s-corner/press-releases/list-of-press-releases/683-budget-sec-diokno-shares-fiscal-reforms-of-the-duterte-administration>.

if actual payment is subsequently cancelled or suspended by order of the President.

Second, impoundment—i.e., the refusal to spend appropriated but *unobligated* funds—is not unconstitutional per se, and the validity of its exercise has consistently been tested against the governing GAA.⁶⁹ Herein lies the gap in our existing laws and jurisprudence: If the GAA does not grant the power to impound, does the President have the inherent power to exercise it?

A reading of the GAAs in relation to *Philconsa* suggests that impoundment is still recognized as an inherent presidential power under our jurisdiction. The GAAs only contain a qualified prohibition which restricts its exercise, but it does not purport to be the enabling law granting the authority to impound. However, Justice Antonio Carpio's separate opinion in *Araullo* strongly supports the contrary view that the President has no impoundment power, it being fundamentally irreconcilable with the President's duty to faithfully execute the laws. The GAA is a law directing that the public funds be spent for a particular public purpose; failure or refusal to spend constitutes a violation of law.⁷⁰

2. Power to augment

Virement or augmentation is the act of transferring funds from one budget item to another during the budget implementation phase.⁷¹ It is an exception to the rule that “[a]ll moneys appropriated for functions, activities, projects[,] and programs shall be available solely for the specific purposes for which these are appropriated.”⁷² Augmentation, however, is a dormant power

⁶⁹ The exception is when it involves funds appropriated for an office vested with fiscal autonomy by the Constitution. In *Civil Service Comm'n v. Dep't of Budget and Mgmt.*, G.R. No. 158791, 464 SCRA 115, 127, July 22, 2005, the Court ruled that “while the retention or reduction of appropriations for an office is generally allowed when there is an unmanageable budget deficit, the Year 2002 GAA, in conformity with the Constitution, *excepted* from such rule the appropriations for entities vested with fiscal autonomy.” (Emphasis in original.)

⁷⁰ *Araullo*, 728 SCRA 1, 213–14 (Carpio, J., *separate opinion*).

⁷¹ Wehner, *supra* note 17, at 770. See generally Leinert & Jung, *supra* note 56, at 206 & 245 (noting that in some countries such as France and Germany, there is a distinction between “virement” and “transfer.” The former is used for intra-ministry, or intra-department, reallocation of funds, while the latter is used for inter-ministry reallocation of funds).

⁷² REV. ADM. CODE, bk. VI, ch. 5, § 32.

under Article VI, Section 25(5)⁷³ of the Constitution, made operative only by legislative fiat.⁷⁴ Three constitutional requisites must concur for its valid exercise by the President: *first*, a law must expressly authorize the President to transfer funds; *second*, the funds to be transferred must constitute savings generated from the appropriations for the President’s office; and *third*, the object of the transfer must be another existing item of appropriation for the President’s office.⁷⁵

i. First requisite: Statutory authority

The GAA is the law authorizing the President to transfer appropriations.⁷⁶ For FY 2021, such authority is specifically found under the General Provisions of the GAA. Section 68 provides:

The President of the Philippines, the President of the Senate of the Philippines, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of the Civil Service Commission, the Commission on Elections, and the [Commission on Audit] are hereby authorized to declare and use savings in their respective appropriations to augment actual deficiencies incurred for the current year in any item of their respective appropriations.

The provision is almost a reproduction of Article VI, Section 25(5) of the Constitution save for two things: *first*, it vests the authority to declare savings in the constitutional officers exercising the power to augment; and *second*, it requires that an actual deficiency in the item of appropriation to be augmented exists. The GAAs for the past fiscal years contained a similar

⁷³ CONST. art. VI, § 25(5) states: “law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.”

⁷⁴ *Goh v. Bayron* (hereinafter “*Goh*”), G.R. No. 212584, 742 SCRA 303, 341, Nov. 25, 2014.

⁷⁵ *Araullo*, 728 SCRA 1, 131–32.

⁷⁶ *Id.*; REV. ADM. CODE, bk. VI, ch. 5, § 39 likewise provides for the authority to use savings, unless otherwise provided in the GAA, to cover deficits in any other item of appropriation. In *Araullo v. Aquino* [hereinafter “*Araullo Resolution*”], G.R. No. 209287, 749 SCRA 283, 317, Feb. 3, 2015, this provision was found “in conflict with the plain text of Section 25(5), Article VI of the Constitution” because it did not prohibit the President from making transfers to items of appropriation outside the office. Thus, the Court held that “Section 39 cannot serve as a valid authority to justify cross-border transfers under the DAP. Augmentations under the DAP which are made by the Executive within its department shall, however, remain valid so long as the requisites under Section 25(5) are complied with.” The *fallo* of the Resolution did not declare the provision unconstitutional.

provision,⁷⁷ but the requirement of an actual deficiency was introduced only in the 2013 GAA.⁷⁸

This grant of authority by law to transfer appropriations has been held to be a delegation of legislative power.⁷⁹ To promote the efficient use of public funds and prevent them from being idle, Congress “diminishes its own power of the purse, for it delegates a fraction of its power to the Executive.”⁸⁰ Indeed, this grant is so powerful and prone to abuse that the Supreme Court resolved to interpret it as a “limitation on the President’s discretion over the appropriations during the Budget Execution Phase.”⁸¹ Accordingly, any law granting the power to augment must be strictly construed, and its exercise must be strictly confined within the parameters of the law.

As a delegation of legislative power, the authority to augment must also pass the tests to determine valid delegation. The first, the completeness test, posits that the law be “complete in all its terms and conditions when it leaves the legislature”⁸² such that the delegate need only enforce it. The second, the sufficient standard test, requires that the law have “adequate guidelines [...] to map out the boundaries of the delegate’s authority and prevent the delegation from running riot.”⁸³

The requirement of an actual deficiency, however, may not be enough for the appropriations law to pass either test. This is because the President remains armed with full discretion in deciding which to fund among the vast selection of P/A/Ps with deficiencies. That the GAAs simply reiterate Article VI, Section 25(5) of the Constitution, without laying down substantial

⁷⁷ Rep. Act No. 11465 [hereinafter “2020 GAA”] (2020), General Provisions, § 66.; Rep. Act No. 11260 [hereinafter “2019 GAA”] (2019), General Provisions, § 73.; Rep. Act No. 10964 [hereinafter “2018 GAA”] (2017), General Provisions, § 68.; Rep. Act No. 10924 [hereinafter “2017 GAA”] (2016), General Provisions, § 66.; Rep. Act No. 10717 [hereinafter “2016 GAA”] (2015), General Provisions, § 72.; Rep. Act No. 10651 [hereinafter “2015 GAA”] (2014), General Provisions, § 69.; Rep. Act No. 10633 [hereinafter “2014 GAA”] (2013), General Provisions, § 67; 2013 GAA, General Provisions, § 52.; Rep. Act No. 10155 [hereinafter “2012 GAA”] (2011), General Provisions, § 53.; Rep. Act No. 10147 [hereinafter “2011 GAA”] (2010), General Provisions, § 60.; Rep. Act No. 9970 [hereinafter “2010 GAA”] (2010), General Provisions, § 60.

⁷⁸ 2012 GAA, General Provisions, § 53 only states: “The President of the Philippines, the Senate President, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of Constitutional Commissions enjoying fiscal autonomy, and the Ombudsman are hereby authorized to augment any item in this Act from savings in other items of their respective appropriations.”

⁷⁹ *Araullo*, 728 SCRA 1, 136.

⁸⁰ *Id.*

⁸¹ *Id.* at 131. (Emphasis omitted.)

⁸² *Eastern Shipping Lines, Inc. v. Phil. Overseas Emp’t Admin.*, G.R. No. 76633, 166 SCRA 533, 543, Oct. 18, 1988.

⁸³ *Id.*

restrictions, reduces the constitutional requirement of statutory authority into a formality, especially when one considers that Congress would not altogether withhold such authority lest it compromise the sound management of public funds.

ii. Second requisite: Actual savings

The requirement of actual savings is a *sine qua non* to a valid transfer of appropriations.⁸⁴ However, the Constitution does not define what “savings” is; its definition is likewise supplied in the annual GAA.⁸⁵ For FY 2021, the GAA defines savings as follows:

Meaning of Savings. Savings refer to portions or balances of any released appropriations in this Act which have not been obligated as a result of any of the following:

- (a) completion, final discontinuance, or abandonment of a program, activity or project for which the appropriation is authorized; or
- (b) implementation of measures resulting in improved systems and efficiencies and thus enabled an agency to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

In case final discontinuance or abandonment is used as basis for declaration of savings, such discontinued or abandoned program, activity or project shall no longer be proposed for funding in the next two (2) fiscal years.

Allotments that were not obligated due to the fault of the agency concerned shall not be considered savings.⁸⁶

How the GAA defines savings plays a crucial role in preserving budget integrity. To date, its two fundamental features have served this goal. *First*, savings can only be generated from appropriations whose purpose no longer exists.⁸⁷ This means that such purpose must either be already fulfilled

⁸⁴ Sanchez v. Comm'n on Audit, G.R. No. 127545, 552 SCRA 471, 497, Apr. 23, 2008.

⁸⁵ 2020 GAA, General Provisions, § 67; 2019 GAA, General Provisions, § 74; 2018 GAA, General Provisions, § 69; 2017 GAA, General Provisions, § 67; 2016 GAA, General Provisions, § 73; 2015 GAA, General Provisions, § 70; 2014 GAA, General Provisions, § 68; 2013 GAA, General Provisions, § 53; 2012 GAA, General Provisions, § 54; 2011 GAA, General Provisions, § 61; 2010 GAA, General Provisions, § 61.

⁸⁶ 2021 GAA, § 69.

⁸⁷ *Arullo*, 728 SCRA 1, 137.

or finally abandoned. *Second*, if the purpose is abandoned, the reason must not be attributable to the concerned agency's fault. A government program, therefore, cannot be deliberately discontinued to generate savings.

Furthermore, the discontinuance or abandonment of a P/A/P has a serious consequence since the GAA effectively bars the same P/A/P from being funded for the next two years. This proviso was first inserted only in the 2018 GAA and has since been carried over to the succeeding GAAs. The two-year ban makes no distinction whether the discontinuance was due to or without the fault of the agency concerned.

iii. Third requisite: Item of appropriation within the office

The third requisite of augmentation entails that the object of the transfer meet two conditions: (1) it must be an existing item in the appropriations law; and (2) it must be within the office of the constitutional officer making the transfer.

Jurisprudence defines an “item” as “the last and indivisible purpose of a program” in the GAA.⁸⁸ In *Gob v. Bayron*,⁸⁹ it was clarified that the Constitution only requires an item to have “a corresponding appropriation for a specific purpose or program, not for the sub-set of projects or activities.”⁹⁰

This third requisite is perhaps the most crucial in preserving the separation of powers. Limiting the transfers to an existing item prevents the President from effectively creating new items of appropriation, a function that is exclusively within the domain of Congress. Meanwhile, the prohibition against inter-office transfers or “cross-border augmentation”⁹¹ ensures the independence of each branch of government, ensuring that the President is prevented from leveraging the substantial savings generated by the Executive branch, to influence the members of Congress.⁹²

Despite their importance, these safeguards can hardly be considered an actual limitation on the President's power to augment. Since the President's “office” in this context refers to the entire executive branch,⁹³ savings generated from all government operations may be transferred for any purpose, whether for health, education, social housing, agriculture, public

⁸⁸ *Arullo Resolution*, 749 SCRA 283, 322.

⁸⁹ *Gob*, 742 SCRA 303, Nov. 25, 2014.

⁹⁰ *Id.* at 349. (Emphasis omitted.)

⁹¹ *Arullo*, 728 SCRA 1, 157.

⁹² 2 RECORD CONST. COMM'N 36, 88 (July 22, 1986).

⁹³ *Arullo*, 728 SCRA 1, 158.

works, or national security.⁹⁴ This includes the Confidential and Intelligence Funds,⁹⁵ the Contingent Fund,⁹⁶ and the Calamity Fund,⁹⁷ which, despite being lump-sum appropriations, are treated as items under the “one singular appropriation purpose” principle.⁹⁸ Under this principle, an item need not be dedicated to a specific P/A/P “as long as the lump-sum amount is meant as a funding source for multiple programs, projects, or activities that may all be clearly classified as falling under one singular appropriation purpose.”⁹⁹ Following this principle, lump-sum discretionary funds in the GAA are valid objects of augmentation as they fall within the meaning of the words “any item” unrestricted by the GAAs.

The “one singular appropriation purpose” principle finds greater relevance in the emergency measures adopted by the government to address the COVID-19 pandemic. On March 24, 2020, Republic Act No. 11469 or the Bayanihan to Heal as One Act was passed into law.¹⁰⁰ Section 4(x) empowered the President to “reprogram, reallocate, and realign from savings on other items of appropriations in the FY 2020 GAA in the Executive Department, as may be necessary and beneficial to fund measures that address and respond to the COVID-19 emergency,”¹⁰¹ while Section 4(y) authorized the President “to allocate cash, funds, investments, including unutilized or

⁹⁴ See *Araullo (Resolution)*, 749 SCRA 283, 322. The Court held that “so long as there is an item in the GAA for which Congress had set aside a specified amount of public fund, savings may be transferred thereto for augmentation purposes.”

⁹⁵ COA-DBM-DILG-Governance Commission for GOCCs-DND J. Circ. No. 2015-01 (2015) § 3.7, 3.14. The Confidential Fund is a lump-sum amount for expenses related to surveillance activities in civilian government agencies, to support the mandate or operations of the agency. The Intelligence Fund is a lump-sum amount related to intelligence information-gathering activities of uniformed and military personnel and intelligence practitioners that have direct impact to national security. The use of these funds is generally classified by nature.

⁹⁶ DEP’T OF BUDGET AND MGMT., A BRIEF ON THE SPECIAL PURPOSE FUNDS IN THE NATIONAL BUDGET 3 (2013) at https://www.dbm.gov.ph/wp-content/uploads/DAP/Note%20on%20the%20Special%20Purpose%20Funds%20_Release%20-%20Oct%202013_.pdf. The Contingent Fund is administered by the Office of the President, used exclusively for requirements of new and/or urgent projects and activities that need to be implemented during the year. This fund may also be used to augment existing appropriations for local and foreign travels of the President.

⁹⁷ *Id.* at 2. The Calamity Fund is “for the relief, rehabilitation, reconstruction[,] and other works or services in connection with the occurrence of natural calamities, epidemics, crises resulting from armed conflicts, and other catastrophes.” Since these occurrences cannot be predicted, the Calamity Fund is necessarily a standby lump-sum fund.

⁹⁸ *Belgica v. Exec. Sec’y*, G.R. No. 210503, Oct. 8, 2019, at 8–9. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

⁹⁹ *Id.* at 8.

¹⁰⁰ Rep. Act No. 11469 (2020).

¹⁰¹ § 4(x).

unreleased subsidies and transfers, held by any GOCC or any national government agency in order to address the COVID-19 emergency[.]”¹⁰²

These provisions reveal the lack of specific P/A/Ps to which the President may transfer appropriations. Nonetheless, the transfer may be justified by the singular purpose of battling the COVID-19 pandemic. The entire COVID-19 fund may be treated as akin to the Calamity Fund, which is a valid item of appropriation. With the multifaceted impact of COVID-19, such singular purpose involves a wide range of possible P/A/Ps, including even road construction under the claim that big-ticket infrastructure projects are vital in mitigating the economic impact of the pandemic.¹⁰³

III. THE MYTH OF BUDGET AUTHORIZATION

“[T]he Budget is only as good as those that handle it.”

— Former DBM
Secretary Emilia
Boncodin¹⁰⁴

The President’s substantial budget prerogatives, while justified by the need for flexibility in budget execution, should not be exercised to an extent that undermines budget integrity. The Constitution’s mandate remains unequivocal in that “[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”¹⁰⁵ Regardless of the contingencies that may arise during the fiscal year, legislative authorization in the disbursement of public funds cannot be dispensed with. This is why, even amid the unprecedented COVID-19 pandemic, Congress still had to enact emergency measures to swiftly fund the government response. This strongly suggests that even in situations requiring urgent presidential action, the President has no power to appropriate.

An apparent irreconcilability exists between the President’s lack of authority to appropriate and augmentation as a delegation of the power of the purse. In *Araullo*, the Court clarified that the exercise of the power to augment does not involve “appropriation in the strict sense because the money had been already set apart from the public treasury by Congress through the

¹⁰² § 4(y).

¹⁰³ Ferdinand Patinio, *Infra projects to aid economic recovery amid Covid-19: DPWH exec*, PHIL. NEWS AGENCY, Jan. 29, 2021, at <https://www.pna.gov.ph/articles/1128998>.

¹⁰⁴ Abad, *supra* note 16, at 51.

¹⁰⁵ CONST. art. VI, § 29(1).

GAAs.”¹⁰⁶ An appropriation is made when two acts concur: (1) the setting apart of a determinate or determinable amount of money; and (2) the allocation of such amount of money for a particular public purpose.¹⁰⁷ In the strict sense, a determinate amount of money is set apart when savings are declared, and an allocation is made when such savings are used to augment any item with deficiency in the GAA.

A. Appropriation by the President

A leading theory in support of the President’s power of the purse is the principle of minimum obligational authority.¹⁰⁸ Gregory Sidak, its proponent, offers the unorthodox view that the President has an implied constitutional power to appropriate, at least for the minimum amount necessary, to perform the duties and prerogatives of the office.¹⁰⁹ This principle is grounded on the premise that the requirement of an appropriation made *by law* simply directs that public spending be governed not by legislation, but *by the rule of law*. The phrase “by law” therefore assumes an expanded interpretation which includes constitutional authority.¹¹⁰ Sidak argues that legislative authorization may be dispensed with so long as the payment of money out of the Treasury meets two requisites: (1) its object is a “textually demonstrable duty or prerogative of the President under [the Constitution]”; and (2) it is limited to the minimum amount necessary to produce the desired public outcome.¹¹¹

The principle of minimum obligational authority is akin to the President’s residual powers. *Marcos v. Manglapus*¹¹² defines such powers as those “implicit in and correlative to the paramount duty [of the President] to safeguard and protect general welfare.”¹¹³ Following Sidak’s theory, in the context of appropriations, residual power to promote general welfare may be invoked where insufficient government funding would gravely impair the delivery of essential public goods and services.¹¹⁴ Interestingly, during the oral arguments for *Araullo*, the respondent argued that the residual powers are the

¹⁰⁶ *Araullo*, 728 SCRA 1, 122.

¹⁰⁷ *Belgica v. Ochoa* (hereinafter “*Belgica*”), G.R. No. 208566, 710 SCRA 1, 140–41, Nov. 19, 2013.

¹⁰⁸ See Sidak, *supra* note 26.

¹⁰⁹ *Id.* at 1194.

¹¹⁰ *Id.* at 1168. Sidak notes that “law” can consist of the Constitution, legislation, treaties, the common law, and contract, but the conventional notion of Congress’s power of the purse “rests on an unstated (and unsubstantiated) assumption that ‘by Law’ envisions only legislation.”

¹¹¹ *Id.* at 1196–97.

¹¹² G.R. No. 88211, 177 SCRA 668, Sep. 15, 1989.

¹¹³ *Id.* at 695.

¹¹⁴ See *Araullo*, 728 SCRA 1.

basis for the President having the responsibility to transfer savings to a constitutional office such as the Commission on Elections, upon request and in the form of “aid,” to prevent failure of the conduct of elections.¹¹⁵ This argument, however, was not discussed in the *Araullo* decision.

The principle of minimum obligational authority may also be a strategic deterrent to Congress, in case it leverages the Appropriations Clause to thwart executive policy actions.¹¹⁶ To protect the constitutional separation of powers, lack of funds should not paralyze a co-equal branch of government.

Yet, in that case, a paradox arises. The determination of what a *textually demonstrable duty or prerogative of the President under the Constitution* is calls for constitutional interpretation—a function that is reserved for the Judiciary. Where Congress does not fund a P/A/P which the President deems indispensable to the discharge of their constitutional functions, an inter-branch conflict exists. Under the Constitution, the Judiciary is the only organ charged with adjudicating such conflict.¹¹⁷ The principle of minimum obligational authority, therefore, invites encroachment on judicial authority, disrupting the very separation of powers it seeks to protect.

B. Appropriation by Legislation

Discussions on the power of the purse have mainly focused on “an appropriation made by law”¹¹⁸ solely as a positive act of Congress. This framing has unfortunately detracted from the essence of legislation as a constitutional process. Viewed from the latter perspective, it would not be necessary to expand the meaning of the phrase “by law” to incorporate the rule of law in the budget system. Legislating the budget guarantees the rule of law in at least four ways.

First, it formalizes the government’s spending mandate and protects it from the whims of public officers. A law has a character of permanence as it can only be amended or supplemented by another law. Once the appropriation law is enacted, the President becomes duty bound to execute it and legislators are precluded from interfering with its execution by engaging in post-enactment measures,¹¹⁹ such as project identification and fund realignments. When an appropriation is made by law—i.e., through legislation—it binds not only the President, but even Congress itself. Not

¹¹⁵ *Id.* at 163.

¹¹⁶ Sidak, *supra* note 26, at 1195.

¹¹⁷ *Angara v. Electoral Comm’n*, 63 Phil. 139, 157 (1936).

¹¹⁸ CONST. art. VI, § 29(1).

¹¹⁹ *Belgica*, 710 SCRA 1, 110.

even a joint resolution of both Houses of Congress can alter the provisions of a duly enacted appropriation law.¹²⁰

Second, legislating the budget ensures transparency in the process of appropriations. A bill is enacted into law through three readings on separate days to sufficiently notify the public that it is being considered, as well as to allow interested parties to submit their positions on the matter.¹²¹ Furthermore, a law must be published before it becomes effective. These requirements ensure that every object of expenditure is open to public scrutiny from the time they are proposed up to the time they are implemented.

Third, legislating the budget triggers the system of checks and balances. It enables the exercise of the President's line-item veto power,¹²² which functions as a "give-and-take mechanism between the legislative and executive branches[.]"¹²³ It provides an opportunity for the [resident to object to any item of appropriation and for Congress to consider the President's objections.¹²⁴ In *Belgica v. Ochoa*, the Court acknowledged that the Legislature cannot adopt a mode of appropriation that would render this constitutionally given line-item veto power useless.¹²⁵ An appropriation not made through legislation would be constitutionally infirm for violating the system of checks and balances.

Fourth, a legislated budget creates accountability in government spending. Public officers who are entrusted with administering public funds earmarked by law for a particular purpose may be guilty of technical malversation for their misuse, regardless of criminal intent.¹²⁶ Without a duly enacted appropriation law, there would be nothing to violate. Mishandling of public funds will have to be established on a case-to-case basis and without fixed standards.

¹²⁰ See *Ang Nars Party-List v. Exec. Sec'y*, G.R. No. 215746, Oct. 8, 2019, at 39. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website. The Court discussed the distinction between a joint resolution and a bill, holding that "[a]n implementing resolution, like Joint Resolution No. 4, not being a separate law itself, cannot amend prior laws."

¹²¹ *Id.*

¹²² CONST. art. VI, § 27(2) states: "The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object."

¹²³ Nicholas Passarello, *The Item Veto and the Threat of Appropriations Bundling in Alaska*, 30 ALASKA L. REV. 125, 128 (2013).

¹²⁴ *Id.* at 128–29.

¹²⁵ *Belgica*, 710 SCRA, at 129.

¹²⁶ *Ysidoro v. People*, G.R. No. 192330, 685 SCRA 637, 644–45, Nov. 14, 2012.

These points clearly establish that legislative authorization cannot be dispensed with without running afoul of basic constitutional principles. Without the power to legislate, the President may not be granted the power to appropriate, which under the Constitution may only be made by law.

C. Augmentation versus Appropriation

Therefore, to distinguish between the power to augment and the power to appropriate, it is necessary to reexamine the elements of an item of appropriation: amount and purpose. As to the amount element, practical realities demand that the President in certain conditions be able to adjust the appropriations to fulfill the purpose of appropriation. As to the purpose element, altering the purpose destroys the unity between the two elements as it “fundamentally chang[es] the item into something else not enacted by the [L]egislature.”¹²⁷ To prevent the President from usurping the power to appropriate, augmentation must be made solely to preserve the purpose of appropriation as already determined by Congress in the GAA.

Augmentation is a mere prerogative in budget execution, not a replacement for congressional authorization to spend. As part of the budget execution process, all transfers of appropriation must similarly be governed by the rule of law. A closer look at augmentation as defined under the GAAs shows that it does not meet the four standards established in the previous section.

1. Unchecked discretion to juggle funds

As discussed in Part II, augmentation is made by transferring savings to another item with a deficiency. A deficiency may result from unforeseen adjustments in the P/A/P, additional requirements, or reassessment of the distribution of resources.¹²⁸ While there appears to be control of the transfer by limiting it to the amount of the deficiency, the law does not put a cap on how much additional funding a deficient item may receive.

It is tempting to justify such lack of ceiling on transfers by the more pressing mandate to deliver the targets approved in the GAA, as well as to use billions of pesos of savings from completed, abandoned, or finally discontinued P/A/Ps which would otherwise be idle and result in waste. Yet, this justification ignores the institutional character of the budget process as one that involves months of administrative planning and preparation. Although it is impossible for any programmed appropriation to be disbursed

¹²⁷ Passarello, *supra* note 123, at 135.

¹²⁸ 2021 GAA, General Provisions, § 70.

exactly as planned and approved, it is only responsible to have a projection of the reasonable adjustments that may be necessary throughout the fiscal year. Without extraordinary circumstances, significant adjustments in the amount of appropriation clearly indicate poor planning or an anomaly in budget execution.

The lack of ceiling on additional funding subverts the nature of the GAA as the most tangible representation of and key instrument for pursuing national priorities.¹²⁹ The GAA embodies Congress's imprimatur and the President's commitment to the various sectors of society. As such, it is greater than the sum of its parts. Uncontrolled transfers distort these priorities and commitments, especially if substantial amounts are injected to augment items that are deemed of low priority under the GAA. Augmentation as presently authorized by statute gives the President *carte blanche* to reallocate resources without legislative authorization.

2. *Lack of and obscure processes of approving and effecting transfers*

Unlike amounts of appropriation which go through the legal process of administrative planning and legislative vetting, amounts transferred through augmentation are chiefly dependent on the President's discretion. The executive department does not seek input from Congress when shifting funds within or among government agencies.¹³⁰ This leaves no opportunity to scrutinize the so-called "in-year amendments" to the national budget.¹³¹

The GAA does require the *ex post facto* publication of the modifications to the approved budget under the Transparency Seal maintained in the websites of all government agencies.¹³² The Department of Budget and Management (DBM) is also legally obliged to submit to Congress quarterly reports, which include such modifications.¹³³ Despite this, it is still difficult to track the amounts transferred by way of augmentation due to the absence of "consolidated, comparable numbers for actual disbursements[.]"¹³⁴ This is largely attributable to the decentralized accounting processes of government offices, as well as the "sporadic use of technology" in collating budget data.¹³⁵ In the most recent in-depth analysis of public financial

¹²⁹ Mendoza & Timberman, *Introduction: The Significance of Budget Reform in the Philippines* in BUDGET REFORM IN THE PHILIPPINES 3 (2008).

¹³⁰ Holmes, *supra* note 10, at 86.

¹³¹ 2010 PEFA Assessment, *supra* note 43, at 86.

¹³² 2021 GAA, General Provisions, § 94.

¹³³ § 92.

¹³⁴ WORLD BANK, REPUBLIC OF THE PHILIPPINES PFM STRATEGY IMPLEMENTATION SUPPORT, at xv (2016).

¹³⁵ *Id.* at 19.

management in the Philippines, budget integrity was just measured using the available data on aggregate obligations incurred vis-à-vis the original appropriations.¹³⁶

3. *Circumvention of the line-item veto system*

Just as Congress cannot make appropriations in a manner that escapes the President's constitutional line-item veto power, neither should the President be permitted to reinvent the budget without an opportunity for Congress to exercise a check on the President's act. This is why when the President vetoes an item, the Constitution permits the Legislature to override such veto by a two-thirds vote of each House voting separately.¹³⁷ That the procedure for a law's passage is "finely wrought and exhaustively considered"¹³⁸ forms an integral part of the system of checks and balances, and should always be maintained in budget legislation to protect taxpayers' money.¹³⁹

The line-item veto system also plays a special role in budget legislation because the GAA is the only law that can be initiated exclusively by the President's proposal,¹⁴⁰ and which is bound by its parameters.¹⁴¹ This begs the question of why the President would need a power to veto an item of appropriation that the President himself proposed for funding. The framers of the Constitution discussed this apparent quandary in this wise:

MR. DAVIDE: [...] Congress cannot increase what is appropriated by the Office of the President for the operation of the government as specified in the budget. So, necessarily, we feel that there is no sense for the President to veto a particular item for the judiciary or the constitutional commissions which have been granted fiscal autonomy when he, himself, is the original proponent of the budget for these entities.

¹³⁶ *Id.* at 18.

¹³⁷ CONST. art. VI, § 27 (1).

¹³⁸ *Belgica*, 710 SCRA 1, 124.

¹³⁹ *Id.* at 226. (Carpio, J., *concurring*).

¹⁴⁰ CONST. art. VII, § 22 states: "The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures."

¹⁴¹ Art. VI, § 25(1) states: "The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law."

MR. OPLE: If the possibility of veto is so remote and so absurd, why do we have to provide this provision in the Constitution?

Thank you, Madam President.

MR. DAVIDE. We have to, because there may be some other items in the appropriations as approved. Perhaps, these may be decreased by the legislature, and the President may not agree to a decrease in the appropriations for certain items regarding the operation of the government.¹⁴²

The power to augment defeats this well-established system by allowing the President to simply retain the decreased appropriations and increase them later using savings—the very scheme that had been assailed in *Gonzales v. Macaraig*.¹⁴³ The main contention in that case was likewise the President's line-item veto power, except that it was applied not against items of appropriation, but against certain *provisions* in the GAA. These vetoed provisions expressly prohibited the President from augmenting all items of appropriation whose amounts have been reduced by Congress during budget legislation. In upholding the President's veto, the Supreme Court rested its conclusion on two grounds.

First, the provisions were “inappropriate provisions”¹⁴⁴ as they did not relate to a particular appropriation. As provided in the Constitution, all provisions in the general appropriations bill “shall be limited in its operation to the appropriation to which it relates.”¹⁴⁵ For purposes of the President's line-item veto, inappropriate provisions shall be treated as items. The rationale behind this is that the line-item veto, as the name suggests, is likewise limited in its application to an entire item of appropriation. Congress cannot immunize a legislative measure against executive veto by carefully placing non-budgetary provisions in an appropriations bill.¹⁴⁶

Second, the vetoed provisions abridged the President's power to augment. The Supreme Court held that once statutory authority to augment has been granted, the authorized constitutional officers are “afforded considerable flexibility in the use of public funds and resources.”¹⁴⁷ The prohibitions against the increase of appropriations “impair the constitutional

¹⁴² 2 RECORD CONST. COMM'N 37, 170 (July 23, 1986).

¹⁴³ [Hereinafter “*Gonzales*”], G.R. No. 87636, 191 SCRA 452, Nov. 19, 1990.

¹⁴⁴ *Id.* at 467.

¹⁴⁵ CONST. art. VI, § 25(2).

¹⁴⁶ *Gonzales*, 191 SCRA 452, 467–68.

¹⁴⁷ *Id.* at 472.

and statutory authority [...] to augment *any item or any appropriation* from savings in the interest of expediency and efficiency.”¹⁴⁸

The justices who dissented in *Gonzales* penned strong opinions that are worth revisiting. They averred that it is precisely because the power to augment is granted by law that it may also be impaired by law. Thus, a delegate cannot challenge the conditions of the delegation. When Congress decides to grant the authority to augment, there is no reason why it cannot also decide which items may not be augmented. This is especially so because “the fundamental policy of the Constitution is against transfer of appropriations even by law, since this ‘juggling’ of funds is often a rich source of unbridled patronage, abuse[,] and interminable corruption.”¹⁴⁹

4. *Nulla poena sine lege*

The shifting of funds from one budget item to another creates an avenue for leakages. In 2019, it was estimated that for the immediately preceding two fiscal years, the government lost around 1.4 trillion pesos to corruption.¹⁵⁰ This accounts for roughly one-fifth of the total appropriations under the 2017 and 2018 GAAs combined. For FY 2017, an analysis of the Commission on Audit (COA) Reports on 323 national government agencies and government-owned and controlled corporations revealed that excessive expenditures on travel alone cost the government PHP 587,612,458.¹⁵¹ Several projects of the DPWH Road Board were also found to be overpriced by the millions.¹⁵²

“Excessive” expenditure is defined as “expenses incurred at an immoderate quantity and exorbitant price.”¹⁵³ Overpricing, inflated quotations, and unreasonable allowances for trainings and seminars are just some examples of excessive expenditure.¹⁵⁴

¹⁴⁸ *Id.* (Emphasis in original.)

¹⁴⁹ *Id.* at 484 (Padilla, J., *dissenting*.)

¹⁵⁰ Gerg Cahiles, *Gov't may have lost ₱1.4 trillion in the past two years due to corruption – Deputy Ombudsman*, CNN PHILIPPINES, Aug. 16, 2019, available at <https://cnnphilippines.com/news/2019/8/16/Government-corruption-loss-deputy-ombudsman-Cyril-Ramos.html?fbclid=IwAR2OQ90yWjXFHGA4r4HD117irm9FsuzE6--DIrV0A1PmTn9fM3YHtxripGx8>.

¹⁵¹ Lian Buan, *Corruption Red Flags: Excesses in government spending*, RAPPLER, July 15, 2019, available at <https://www.rappler.com/newsbreak/in-depth/excesses-government-agencies-spending-travel-ghosts-coa-reports-2017-part-2>.

¹⁵² *Id.*

¹⁵³ COA Circ. No. 2012-003 (2012), § 5.1. Updated Guidelines for the Prevention and Disallowance of Irregular, Unnecessary, Excessive, Extravagant, and Unconscionable Expenditures.

¹⁵⁴ Annex D.

Expenditures may also be classified as “unnecessary,”¹⁵⁵ “extravagant,”¹⁵⁶ or “unconscionable.”¹⁵⁷ An expenditure is unnecessary when it does not support the objectives of the agency concerned, or does not respond to “the demands of good government,”¹⁵⁸ as in the case of redundancy in the hiring of consultants.¹⁵⁹ An expenditure is extravagant when it is incurred “without restraint, judiciousness[,] and economy.”¹⁶⁰ A classic example in the civil service is the conduct of expensive out-of-town meetings which could have been made within the office premises.¹⁶¹ Meanwhile, an unconscionable expenditure is one which “no [person] in [their] right sense would make, nor a fair and honest [person] would accept as reasonable[.]”¹⁶² This includes the grant of exorbitant bonuses and fringe benefits especially to high-ranking government officials.¹⁶³

As distinguished from illegal expenditures, unnecessary, excessive, extravagant, and unconscionable (“UEEU”) expenditures do not contravene a direct provision of law. In the exercise of the power to augment, this distinction is significant on two levels.

First, since there is no statutory ceiling to transgress, the use of augmented funds, no matter how arbitrary or despotic, would not amount to an illegal expenditure unless their application or payment violated a non-budgetary law (e.g., procurement law). It may, however, be classified as a UEEU expenditure. Although criminal liability may arise from UEEU expenditures under Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act,¹⁶⁴ it would be more difficult to prosecute because of their inherent subjectivity. Unlike illegal expenditures, where the act of payment itself is punishable by law, UEEU expenditures are not as straightforward. For instance, under Section 3(b) of Republic Act No. 3019, requesting a share, percentage, or benefit in connection with the contract or transaction must still be proven.¹⁶⁵ To be criminally liable even where no personal benefit is derived, Section 3(g) requires that there must be gross and manifest disadvantage to the government.¹⁶⁶

¹⁵⁵ § 4.0.

¹⁵⁶ § 6.0.

¹⁵⁷ § 7.0.

¹⁵⁸ § 4.1.

¹⁵⁹ Annex C.

¹⁶⁰ § 6.1.

¹⁶¹ Annex E.

¹⁶² § 7.1.

¹⁶³ Annex F.

¹⁶⁴ Rep. Act No. 3019 (1960).

¹⁶⁵ § 3(b).

¹⁶⁶ § 3(g).

Second, UEEU expenditures may result in actual deficiencies which enable the augmentation of funds. If, for instance, 50 million pesos is budgeted for 100,000 packs of relief goods, overpricing by 20% would either decrease the number of packs by over 16,000 or produce the same number of packs for a lesser quality. To attain the same quantity and quality at a higher cost, additional funding would be required. In 2018, the Department of Social Welfare and Development (DSWD) released 883 million pesos to augment the funds of its field offices for the Marawi City relief efforts. The Philippine Center for Investigative Journalism discovered that three suppliers of the DSWD Field Office in Region XII increased the prices of canned goods, soap, and sanitary napkins by a few pesos, which “may not seem much per unit of product but multiplied by the tens of thousands that DSWD-FO XII purchased, the amount translates to hundreds of millions of pesos.”¹⁶⁷

IV. THE COST OF UNDERSPENDING

“[F]or budgets to have an impact, the money must be spent.”

— Toby
Monsod¹⁶⁸

Augmenting funds for an item presupposes that the government generated savings from another. As explained in Part II, savings come from completed, finally discontinued, or abandoned P/A/Ps. The first is ideal, but the latter two are often the reality. Although there may be legitimate reasons for the abandonment or discontinuance, such as when the circumstances render it unnecessary, a perusal of the COA’s Annual Audit Reports (“AARs”) from FY 2018 to FY 2020 reveals massive underspending by various government agencies due to delays, procurement issues, lack of coordination, and other inefficiencies in project implementation. Below are findings for the DPWH, the Department of Education (DepEd), and the DOH, which

¹⁶⁷ Malou Mangahas & Karol Ilagan, *Price check: Hygiene kit items cost more than DTI, retail chain rates*, PHIL. CENTER FOR INVESTIGATIVE JOURNALISM, May 28, 2018, available at <https://pcij.org/article/902/price-check-hygiene-kit-items-cost-more-than-dti-retail-chain-rates-3>.

¹⁶⁸ TOBY MONSOD, INTERNATIONAL BUDGET PARTNERSHIP, BUDGET CREDIBILITY IN THE PHILIPPINES’ HEALTH SECTOR: REGIONAL COMPARISONS AND CASE STUDIES 4 (2019), available at <https://www.internationalbudget.org/wp-content/uploads/budget-credibility-in-the-philippines-health-sector-ibp-2019.pdf>.

historically have the biggest backlogs and are known to handle pet pork barrel projects.¹⁶⁹

Agency	Appropriations	Allotments ¹⁷⁰	Obligations incurred	Disbursements
Current year 2018 (amounts in millions)				
DPWH	759,151.03	752,066.41	696,212.95	298,439.65
DepEd	511,340.41	494,590.86	470,710.77	N/A ¹⁷¹
DOH	112,798.91	109,491.61	103,295.39	66,876
Current year 2019 (amounts in millions)				
DPWH	492,461.48	545,356.84	480,533.14	N/A ¹⁷²
DepEd	549,172.47	543,438.50	516,669.32	N/A ¹⁷³
DOH	114,829.68	110,245.171	97,089.80	71,592.07
Current year 2020 (amounts in millions)				
DPWH	619,021.32	501,425.72	465,633.41	N/A ¹⁷⁴
DepEd	537,850.14	531,729.17	511,570.07	N/A ¹⁷⁵
DOH	205,620.79	200,855.45	176,214.33	141,718.48

Table 1: Summary of the year-end status of appropriations of selected departments based on the COA AARs for 2018, 2019, and 2020

¹⁶⁹ Marlon Ramos, *DPWH, DOH, DepEd budgets to undergo House scrutiny anew*, INQUIRER.NET, Aug. 20, 2018, available at <https://newsinfo.inquirer.net/1022971/dpwh-doh-deped-budgets-to-undergo-house-scrutiny-anew#ixzz7LzA08HuZ>.

¹⁷⁰ Allotments refer to the authorization issued by the DBM to an implementing agency to incur obligations.

¹⁷¹ Disbursements amounted to PHP 438,868.75 (in millions) based on the DBM Statement of Allotments, Obligations, and Balances 2018; however, since the timing of these reports is different, the figures slightly vary. The amounts in the COA AARs are lower since they are prepared earlier than the final DBM Statement of Allotments, Obligations, and Balances.

¹⁷² PHP 271,087.05 (in millions) based on the DBM Statement of Allotments, Obligations, and Balances 2019.

¹⁷³ PHP 485,895.66 based on the DBM Statement of Allotments, Obligations, and Balances 2019.

¹⁷⁴ PHP 145,251.28 (in millions) based on the DBM Statement of Allotments, Obligations, and Balances 2020.

¹⁷⁵ PHP 492,671.04 (in millions) based on the DBM Statement of Allotments, Obligations, and Balances 2020.

The DPWH, which received a lion's share of the 2018 GAA, was found to have disbursed only 298 billion pesos in 2018.¹⁷⁶ This leaves around 454 billion pesos of its allotted budget undisbursed. Among the COA's findings was the non-implementation of projects worth 188 billion pesos due to the DPWH's failure to establish their technical viability. Similar findings were made in 2019 and 2020, resulting in the delayed completion and non-implementation of 2,411 projects totaling 101.69 billion pesos¹⁷⁷ and 3,283 projects totaling P108.32 billion,¹⁷⁸ respectively. Worth noting is how in 2019, the DPWH's total allocation was 52.89 billion pesos more than its total appropriations, which meant that the DPWH actually received additional funding despite underspending.

The DepEd also had serious problems in its budget utilization. Based on the 2018 COA AAR, its non-expenditure of more than 15 billion pesos was mainly due to its unimplemented P/A/Ps and unfilled plantilla positions for teaching and non-teaching personnel.¹⁷⁹ In 2019, the DepEd failed to spend more than 26 billion pesos for the same reasons. Among the COA's recommendations to the DepEd were to formulate a realistic budget plan to ensure that targets would be achieved; to identify and address the lapses in its procurement process so that the learning resources may be timely delivered to the recipient schools; and to publish its vacant plantilla positions.¹⁸⁰ In 2020, the cost of the lapses in budget utilization decreased to around 3 billion pesos, but the COA observed discrepancies amounting to more than 40

¹⁷⁶ COMMISSION ON AUDIT, COA CONSOLIDATED ANNUAL AUDIT REPORT ON THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS FOR THE YEAR ENDED DECEMBER 31, 2018, at vi, *available at* <https://www.coa.gov.ph/index.php/national-government-agencies/2018/category/7762-department-of-public-works-and-highway>.

¹⁷⁷ COMMISSION ON AUDIT, COA CONSOLIDATED ANNUAL AUDIT REPORT ON THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS FOR THE YEAR ENDED DECEMBER 31, 2019, at ix, *available at* <https://www.coa.gov.ph/index.php/national-government-agencies/2019/category/8638-department-of-public-works-and-highways>.

¹⁷⁸ COMMISSION ON AUDIT, COA CONSOLIDATED ANNUAL AUDIT REPORT ON THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS FOR THE YEAR ENDED DECEMBER 31, 2020, at x, *available at* <https://www.coa.gov.ph/index.php/national-government-agencies/2020/category/9306-department-of-public-works-and-highways>.

¹⁷⁹ COMMISSION ON AUDIT, COA CONSOLIDATED ANNUAL AUDIT REPORT ON THE DEPARTMENT OF EDUCATION FOR THE YEAR ENDED DECEMBER 31, 2018, at ix, *available at* <https://www.coa.gov.ph/index.php/national-government-agencies/2018/category/7479-department-of-education>.

¹⁸⁰ COMMISSION ON AUDIT, COA CONSOLIDATED ANNUAL AUDIT REPORT ON THE DEPARTMENT OF EDUCATION FOR THE YEAR ENDED DECEMBER 31, 2019, at iv and xx *available at* <https://www.coa.gov.ph/index.php/national-government-agencies/2019/category/8560-department-of-education>.

billion pesos, which affected the reliability of the DepEd's financial statements.¹⁸¹

Compared with the DPWH and the DepEd, the DOH had a relatively smaller share of the national budget. Nevertheless, it did not fare better in terms of budget utilization. Eight of its nine major programs in 2018 had a high obligation rate but alarmingly low disbursement rate of 0% to 40.98%.¹⁸² The COA noted that the DOH had been bulk-awarding contracts and purchase orders at the last quarter of the year instead of consistently granting the same in a timely manner throughout the year.¹⁸³ In 2019, the DOH was able to disburse 64.94% of its 110-billion peso total allocation, but this was mainly due to the partial implementations of its programs. Accordingly, the COA concluded that the department's "inability to optimize the utilization of its authorized appropriations for CY 2019 [deprived] the intended beneficiaries of immediate access to additional safe and reliable health care systems, hospital equipment and facilities."¹⁸⁴ In 2020, despite the national emergency due to COVID-19, the DOH failed to obligate more than 24 billion pesos of funds intended to buttress the healthcare delivery system.¹⁸⁵

A. Underspending as an Economic and Governance Issue

The fund disbursement rate alone is not a conclusive indicator of the government's ineptitude. In an analysis of the government's underspending problem from 2011 to 2015, economics professor Toby Monsod observes that although the shortfalls in disbursements had been doubling, the "planned or targeted disbursements increased at a much faster rate than actual

¹⁸¹ COMMISSION ON AUDIT, COA CONSOLIDATED ANNUAL AUDIT REPORT ON THE DEPARTMENT OF EDUCATION FOR THE YEAR ENDED DECEMBER 31, 2020, at xiv., *available at* <https://coa.gov.ph/index.php/national-government-agencies/2020/category/8997-department-of-education>.

¹⁸² COMMISSION ON AUDIT, COA CONSOLIDATED ANNUAL AUDIT REPORT ON THE DEPARTMENT OF HEALTH FOR THE YEAR ENDED DECEMBER 31, 2018, at v, *available at* <https://www.coa.gov.ph/index.php/national-government-agencies/2018/category/7770-department-of-health>. The disbursement rate is equivalent to the amount disbursed divided by the amount of allocation.

¹⁸³ *Id.*

¹⁸⁴ COMMISSION ON AUDIT, COA CONSOLIDATED ANNUAL AUDIT REPORT ON THE DEPARTMENT OF HEALTH FOR THE YEAR ENDED DECEMBER 31, 2019, at vi, *available at* <https://www.coa.gov.ph/index.php/national-government-agencies/2019/category/8645-department-of-health>.

¹⁸⁵ COMMISSION ON AUDIT, COA CONSOLIDATED ANNUAL AUDIT REPORT ON THE DEPARTMENT OF HEALTH FOR THE YEAR ENDED DECEMBER 31, 2020, at viii, *available at* <https://coa.gov.ph/index.php/national-government-agencies/2020/category/9305-department-of-health>.

disbursements.”¹⁸⁶ The growing fiscal space due to increasing revenues allowed the government to set higher targets. Monsod therefore notes that “it may be ambition rather than incompetence that explains the 2011 to 2015 underspending at the aggregate level”¹⁸⁷—only that the government cannot keep up with its own ambition. Structural bottlenecks, outdated protocols, and weak institutional capacities beset the “inertia-laden bureaucracy” which, after three decades of maneuvering in a very tight fiscal space, is suddenly pressured to spend.¹⁸⁸

A number of factors also affect cash disbursements after obligations have already been incurred. For example, the timeliness of billings or encashment by suppliers and contractors may decrease the disbursement rate even if the P/A/P has already been accomplished. From a macroeconomic perspective, two obligation-based indices better indicate how fast the agencies roll out P/A/Ps:¹⁸⁹ the obligation rate, which is equivalent to the obligations incurred divided by the total appropriations; and the allotment utilization index, which is equivalent to the obligations incurred divided by the amount of allotments.¹⁹⁰

A prevalent budgeting practice, however, severely undermines the reliability of the obligation-based indices. Known as the “parking” of funds, it involves the transfer of allocations from one government agency to another by subcontracting or similar agreement. Once transferred, the allotments become obligated even if no contractual agreement was entered into for the implementation of a P/A/P. This arrangement is usually entered into to prevent funds from lapsing and reverting to the Treasury. In 2020, the amount discovered to be “parked” in the Philippine International Trading Corporation (PITC) alone reached 33.4 billion pesos. Of this amount, around 1.35 billion pesos came from the budget of the Philippine National Police in FY 2016—five fiscal years ago—for the purchase of firearms. To date, the PITC has delivered only 311 million pesos worth of firearms.¹⁹¹

The DBM sought to address this loophole by pushing for the annual cash-based budgeting system to replace the multi-year obligations-based

¹⁸⁶ Toby Monsod, *Government “Underspending” in Perspective: Incompetence, Inertia, or Indigestion?*, in BUDGET REFORM IN THE PHILIPPINES 101, 129 (2008).

¹⁸⁷ *Id.* at 111.

¹⁸⁸ *Id.* at 112.

¹⁸⁹ *Id.* at 105.

¹⁹⁰ *Id.*

¹⁹¹ Hannah Torregoza, *Drilon sees P33.4B in parked State funds at PITC*, MANILA BULLETIN, Nov. 23, 2020, available at <https://mb.com.ph/2020/11/23/drilon-sees-p33-4-b-in-parked-state-funds-at-pitc/>.

budgeting system.¹⁹² Cash-based budgeting limits the obligation and disbursement of funds within the same fiscal year¹⁹³ and allows for an “extended payment period” of only three months after the same fiscal year.¹⁹⁴ This means that, whether the funds have already been obligated or not, the money will have to revert to the Treasury once the authority to use the cash expires. This system is also expected to help address underspending because agencies would then have to expedite the use of their funds to prevent them from lapsing.¹⁹⁵

B. Underspending as a Legal Issue

The Disbursement Acceleration Program (DAP) controversy in 2013 heightened the public’s consciousness of the issue of underspending.¹⁹⁶ The program, which was designed to speed up the use of public funds,¹⁹⁷ was branded by opposition critics as “one big ‘pork barrel’ that the President can use at his whim for political patronage.”¹⁹⁸ But unlike the pork barrel, which is a lump-sum, discretionary appropriation, the DAP is not a fund, but a spending mechanism which involves the pooling and transfer of savings from the sluggish P/A/Ps to the faster-moving, high-impact ones. It is a systematic flex of the power to augment against underspending.

As discussed in the previous chapters, *Araullo* settled the legality of certain executive practices under the DAP. While recognizing its positive social impact as an economic stimulus, the Supreme Court declared that cross-border transfers and premature declaration of savings made under the program were unconstitutional. For the first time, the Court was asked to rule on a budget measure directed at underspending. Yet, the root of the evil, underspending itself, remained a topic within the domain of politics and economics.

¹⁹² DBM: *Gov’t ready to transition to annual cash-based budgeting in FY 2019*, DEPARTMENT OF BUDGET AND MANAGEMENT WEBSITE, at <https://www.dbm.gov.ph/index.php/secretary-s-corner/press-releases/list-of-press-releases/696-dbm-gov-t-ready-to-transition-to-annual-cash-based-budgeting-in-fy-2019>.

¹⁹³ Exec. Order No. 91 (2019), § 1(a).

¹⁹⁴ § 1(a) and (c).

¹⁹⁵ DBM, *supra* note 192.

¹⁹⁶ *See* Abad, *supra* note 16, at 73. Abad notes that while the controversy was a huge setback for the Aquino administration, the public’s sudden exposure to and interest in PFM was a welcome development.

¹⁹⁷ *Id.*

¹⁹⁸ March Jayson Cayabyab, *Complainants call DAP one big ‘pork barrel’ of Aquino*, INQUIRER.NET, July 21, 2014, available at <https://newsinfo.inquirer.net/621962/complainants-call-dap-one-big-pork-barrel-of-aquino>.

One of the principles *Araullo* laid down in the construction of savings may very well be a case against the legality of underspending itself. As the Supreme Court said:

The second principle is that the Executive, as the department of the Government tasked to enforce the laws, is expected to faithfully execute the GAA and to spend the budget in accordance with the provisions of the GAA. The Executive is expected to faithfully implement the [P/A/Ps] for which Congress allocated funds, and to limit the expenditures within the allocations, unless exigencies result to deficiencies for which augmentation is authorized, subject to the conditions provided by law.¹⁹⁹

Underspending due to massive failures in budget execution is arguably a derogation of the duty to faithfully execute the GAA. When appropriated funds are not utilized and P/A/Ps are not fulfilled due to fraud, malice, or gross negligence, executive officials violate the law by omission. As noted in Part II, although the GAAs beginning FY 2018 contain an express policy against the abandonment or discontinuance of P/A/Ps due to the implementing agency's fault—a proviso that such discontinued or abandoned P/A/P will be barred from being funded for the next two years—the law does not impose any penalty. Instead, the intended beneficiaries of these P/A/Ps are made to bear the single consequence of such fault.

Under our laws and jurisprudence, willful failure or refusal to spend the funds appropriated by law is not treated as a breach of law. The provisions against malversation²⁰⁰ and technical malversation²⁰¹ under the Revised Penal Code require that the funds be *applied* to a private or a different public purpose, respectively. Neither does such failure or refusal result in administrative liability. Book VI, Chapter 5, Section 43 of the Administrative Code only penalizes an “*expenditure* or *obligation* authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act[.]”²⁰² while Book VI, Chapter 7, Section 80 only penalizes the misapplication of government funds or property “to any use other than for which such fund or property is appropriated by laws[.]”²⁰³

The absence of statutory liability is a solid manifestation of the prevailing mindset that the GAA is a law that permits—but does not necessarily order—the *use* of appropriated funds. As pointed out in the earlier

¹⁹⁹ *Araullo*, 728 SCRA 1, 136. (Emphasis omitted, citation omitted.)

²⁰⁰ REV. PEN. CODE, § 217.

²⁰¹ § 220.

²⁰² REV. ADM. CODE, bk. VI, ch. 5, § 43. (Emphasis supplied.)

²⁰³ Bk. VI, ch. 7, § 80.

discussion on impoundment, jurisprudence has been lukewarm in treating the GAAs as a law of mandatory nature. In *Commission on Elections v. Quijano-Padilla*,²⁰⁴ the Supreme Court declared that “the precise import of the Appropriation Clause is to require the various agencies to *limit* their expenditures within the appropriations made by law for each fiscal year.”²⁰⁵ In *Technical Education and Skills Development Authority (TESDA) v. The Commission on Audit*,²⁰⁶ the Court made the unequivocal statement that the GAA is not a self-executory law, since under Book VI, Chapter 5, Section 34 of the Administrative Code, it is still subject to a program of expenditure to be approved by the President.²⁰⁷ The relevant provision states:

The Secretary of Budget shall recommend to the President the year’s program of expenditure for each agency of the government on the basis of authorized appropriations. The approved expenditure program shall constitute the basis for fund release during the fiscal period, subject to such policies, rules and regulations as may be approved by the President.

Since 2014, the government has adopted the policy of the GAA-as-Release-Document (“GAARD”).²⁰⁸ Under the GAARD regime, appropriations are considered released as allotments when the GAA takes effect. With the exception of lump-sum appropriations, which would still be itemized and approved, the disaggregated funds may already be obligated on the first working day of the fiscal year without the need to secure release documents.²⁰⁹ These release documents have been the subject of many irregularities and unscrupulous transactions. Therefore, the GAARD regime not only accelerates fund utilization but also eliminates a lair of corruption in the budgeting process.

Whether the GAA has grown its teeth in the advent of the GAARD regime remains to be answered. If the GAA is permissive, then Congress may legislate a lump-sum budget for the entire Executive. Providing a minutely detailed appropriation law is a futile exercise when the Executive can just massively underspend on one hand, and uncontrollably augment on the other, without even the slightest slap on the wrist. However, if the GAA is mandatory, then the budget system must be reformed to guarantee not just

²⁰⁴ G. R. No. 151992, 389 SCRA 353, Sept. 18, 2002. (Emphasis supplied.)

²⁰⁵ *Id.* at 367.

²⁰⁶ G.R. No. 196418, 750 SCRA 247, Feb. 10, 2015.

²⁰⁷ *Id.* at 258.

²⁰⁸ 2014 GAA, General Provisions, § 63.

²⁰⁹ DBM: *General Appropriations Act reforms break ground for transparency, accountability*, OFFICIAL GAZETTE, Jan. 2, 2014, available at <https://www.officialgazette.gov.ph/2014/01/02/dbm-general-appropriations-act-reforms-break-ground-for-transparency-accountability/>.

accountability in budget execution, but also the feasibility of faithfully executing the appropriation law by setting reasonable parameters in its implementation.

V. CONCLUSION: SPENDING UNDER THE RULE OF LAW

In spite of the gaps in the present budget regime, significant steps toward reform have been made over the past years. The zero-based budgeting policy, which required the review of all proposed items of appropriation, instead of using historical budget as basis, was said to have terminated problematic programs and expanded well-performing priority ones.²¹⁰ The Transparency Seal, which required the posting of budget data in government websites, has empowered the public to be more critical of how the government uses its funds.²¹¹

Yet these reforms are, at most, embodied in the general provisions of the GAA, a law that is replaced every year. The annual budget process is highly political and volatile. A sound budget policy adopted by one administration may be dropped by the next. Not only does this prevent reforms from gaining a foothold, but it also results in fragmented, confusing rules in budget execution.

The practice of having general provisions in the GAA is also constitutionally unsound in light of the ruling in *Gonzales*. In Part III, it was briefly discussed how provisions that do not relate to a specific item in the GAA fail the test of appropriateness under the Constitution. Statements of budgetary policy and general budget procedures inserted in the GAA are treated as “inappropriate provisions” and should properly be enacted in a separate, substantive legislation.²¹² These include the provisions on the definition of savings, the creation of the congressional oversight committee, the requirement to submit quarterly reports, and other accountability measures, all of which are carried over year after year to the next GAA anyway.

Another provision which is a recent addition is the one on cash-based budgeting. Introduced in the 2019 GAA, it was adamantly opposed by legislators who belatedly realized that this new system resulted in slashed funds (or less bloated budgets) for agencies under the 2019 general

²¹⁰ Abad, *supra* note 16, at 54.

²¹¹ *See* Medenilla, *supra* note 3. The discovery of the unspent calamity funds was made upon examination of the data posted at the DBM website.

²¹² *Id.*

appropriations bill (“GAB”).²¹³ Compliance with the test of appropriateness would prevent a deadlock over non-budgetary items from holding the budget hostage.

In sum, the enactment of a comprehensive, substantive budget system law is needed to provide stability in the budget process and to institutionalize the gains in budget reform. The DBM has undertaken this task, but unfortunately does not seem to have the support of Congress. In 2018, the DBM pushed for the passage of the Budget Reform Bill,²¹⁴ which failed to hurdle the 17th Congress because it contained the adoption of the cash-based budgeting system.²¹⁵ It was refiled under House Bill No. 2807,²¹⁶ but it appears that this bill will suffer the same fate, as it has been pending with the House Committee on Appropriations since July 2019.

Aside from a cash-based budgeting system, the Budget Reform Bill contains important provisions which could tame the President’s power to rewrite the GAA. Section 40 of House Bill No. 2807 creates a framework on the impoundment of appropriations which, as discussed in Part II, is a gray area in the faithful execution of the GAA. The bill requires legislative approval for impoundment and further provides that impounded appropriations will no longer be available for expenditure, except by subsequent legislative enactment. This means impounded funds are not converted to savings, and could therefore not be used to augment another item of appropriation. Meanwhile, Section 67 of the bill mandates the submission of reports on all savings and augmentations made throughout the fiscal year.

An additional measure to curb the unchecked cycle of underspending and augmentation is further restricting the definition of savings. The Budget Reform Bill merely adopted the GAA’s definition of savings, including the caveat “[a]llotments that are not obligated due to the fault of the agency concerned shall not be considered savings.”²¹⁷ It is still unclear how exactly this is being enforced.

For years, agencies have raised the defense of structural bottlenecks and absorptive capacity.²¹⁸ While these may generally be causes beyond an implementing agency’s control, allowing them not to be considered as “fault”

²¹³ Mara Cepeda, *Lawmakers cross party lines to oppose cash-based budget in 2019*, RAPPLER, Aug. 9, 2018, available at <https://www.rappler.com/nation/lawmakers-cross-party-lines-resolution-oppose-cash-based-budget-2019>.

²¹⁴ H. No. 7302, 17th Cong., 2nd Sess. (2018).

²¹⁵ Cepeda, *supra* note 213.

²¹⁶ H. No. 2807, 18th Cong., 1st Sess. (2019).

²¹⁷ H. No. 2807, 18th Cong., 1st Sess. § 42 (2019).

²¹⁸ Monsod, *supra* note 186, at 101-2.

muddles objective standards and incentivizes poor budget planning. Since the caveat spelled out in the GAAs covers only *unobligated* funds, it can easily be circumvented by entering into contractual agreements. As illustrated in Part IV, hundreds of billions of pesos were obligated but undisbursed due to glaring structural bottlenecks. Under the present definition of savings, these may still be channeled into other purposes through augmentation.

The requirement of actual deficiency in augmentation should be threshed out. The Budget Reform Bill also incorporated the GAA provision that a deficiency may arise from (1) “[u]nforeseen modifications or adjustments in the item of appropriation”; and (2) “[r]eassessment in the use, prioritization and/or distribution of resources.”²¹⁹ To preserve the purpose of appropriation as discussed in Part III, the determination of actual deficiency should not be left solely to the subjective judgment of the President. Definite safeguards should be in place in establishing actual deficiency, which should also be reasonable, justified, and verifiable.

Lastly, proper delegation of the power to augment demands that legislative authorization itself govern transfers of appropriations. The augmentation power granted under the Budget Reform Bill²²⁰ should be subject to the provisions of the annual GAAs, which in turn should be more circumspect in allowing adjustments. If the GAA limits or denies additional funding for low-priority or low-impact P/A/Ps, this should prevail over the general statutory authority. The President cannot be permitted to invoke the delegated power of augmentation to defeat the Legislature’s power to appropriate.

Like any great power, the power to augment may be wielded for the common good or for selfish ends. As former Budget Secretary Emilia Boncodin said, “[I]t is a very good budget under a very good President, and a very bad budget under a very bad one.”²²¹ When trillions of taxpayers’ hard-earned money are involved, the responsibility cannot be left solely to the hands of one person. Stronger formal rules and democratic institutions must be built, so that the discourse will finally shift from who truly holds the power of the purse to whether the power of the purse has been exercised under the rule of law.

- o0o -

²¹⁹ H. No. 2807, 18th Cong., 1st Sess. § 43 (2019).

²²⁰ H. No. 2807, 18th Cong., 1st Sess. § 41 (2019).

²²¹ Abad, *supra* note 16, at 51.