

Republic of the Philippines
SUPREME COURT
Manila

SUPREME COURT
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**REP. EDCEL C. LAGMAN,
REP. GABRIEL H. BORDADO,
JR., AND REP. MUJIV S.
HATAMAN,**

PETITIONERS,

- versus -

**THE CONGRESS OF THE
PHILIPPINES, CONSISTING
OF THE SENATE OF THE
PHILIPPINES, AS
REPRESENTED BY SENATE
PRESIDENT JUAN MIGUEL F.
ZUBIRI, AND THE HOUSE OF
REPRESENTATIVES, AS
REPRESENTED BY SPEAKER
FERDINAND MARTIN G.
ROMUALDEZ; HON. JUAN
EDGARDO M. ANGARA,
CHAIRMAN OF THE SENATE
COMMITTEE ON FINANCE AND
CO-CHAIRMAN OF THE
BICAMERAL CONFERENCE
COMMITTEE ON THE 2024
GENERAL APPROPRIATIONS
BILL (GAB); HON. ELIZALDY
CO, CHAIRMAN OF THE HOUSE
COMMITTEE ON
APPROPRIATIONS AND CO-
CHAIRMAN OF THE
BICAMERAL CONFERENCE
COMMITTEE ON THE 2024
GENERAL APPROPRIATIONS
BILL; HON. LUCAS P.
BERSAMIN, EXECUTIVE
SECRETARY; HON. AMENAH F.
PANGANDAMAN, SECRETARY
OF THE DEPARTMENT OF**

**G.R. No. 271059
Petitions for Certiorari
and Prohibition with
Prayer for Temporary
Restraining Order or
Writ of Preliminary
Injunction**

**BUDGET AND MANAGEMENT;
AND HON. ROSALIA V. DE LEON,
TREASURER OF THE
PHILIPPINES**

RESPONDENTS.

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PETITION

PETITIONERS respectfully file the instant petition before the Honorable Supreme Court in accordance with the following submission:

NATURE OF THE PETITION

1. This is a petition for certiorari and prohibition pursuant to Sec. 1 of Article VIII of the Constitution in relation to Rule 65 of the New Revised Rules of Court on petitions for certiorari and prohibition.

(a) Sec. 1 of Article VIII of the Constitution provides:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

(b) Sections 1 and 2 of Rule 65 of the New Revised Rules of Court provide:

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain,

speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

Section 2. *Petition for prohibition.* — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

2. Aggrieved Petitioners have no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law except the filing of the instant Petition.

3. This Petition is limited to the declaration of nullity and unconstitutionality of the excess of P449.5-B in unprogrammed appropriations inserted by the Bicameral Conference Committee in the 2024 General Appropriations Bill (GAB), which was co-chaired by respondents Angara and Co, over the recommended ceiling of P289.1-B in the President's National Expenditure Program (NEP) for 2024.

4. This petition does not question or affect the validity and implementation of the other appropriations for fiscal year 2024 as contained in the 2024 General Appropriations Act or Republic Act No. 11975.

5. Moreover, this petition does not seek to stop or derail the operation of the National Government under Republic Act No. 11975, except to pray for the nullification of the constitutionally infirm excess of P449.5-B in unprogrammed appropriations.

STATEMENT OF THE LAW

6. Section 25(1) of Article VI of the 1987 Constitution unequivocally provides:

"The Congress may not increase the appropriations recommended by the President for the operation of the government as specified in the budget." (Emphasis supplied).

The prohibition on the Congress of not exceeding the appropriations recommended by the President in the National Expenditure Program is absolute and refers to the separate totality of the two general kinds of appropriations, which are the **programmed appropriations** and the **unprogrammed appropriations**.

(a) Programmed appropriations are those fully funded with available and adequate funding sources as reflected in the Budget of Expenditures and Sources of Financing (BESF).

(b) Unprogrammed appropriations are items of expenditures whose funding is contingent on the happening of any of the following events during the fiscal year or budget implementation: (1) release of proceeds of new loans

supporting foreign-assisted projects; (2) revenue collections from new taxes implemented during the fiscal year which are not included or projected in the BESF; and (3) increase in the collection of non-revenue measures over the target collections.

7. Since the Constitution does not distinguish on which the ban shall be imposed, consequently the prohibition on increasing the totality of the appropriations refers separately to both the programmed appropriations and the unprogrammed appropriations.

8. Settled is the rule that if the law or Constitution does not distinguish, neither should we distinguish. *Ubi lex non distinguit nec nos distinguere debemos.*

a) In **Amores v. House of Representatives Electoral Tribunal** (G.R. No. 189600, June 29, 2010), it was held that "A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application."

b) In **Candelario v. Candelario** (G.R. No. 222068, July 25, 2023) it was ruled that:

"Otherwise stated, nowhere does it state that Art. 36 cannot be retroactively applied to marriages that were celebrated prior to the effectivity of the Family Code. Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish. Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable purpose; neither may it engraft into the law qualifications not contemplated."

9. The purpose of the prohibition is to maintain fiscal discipline and to avoid excessive public expenditures which would balloon the budget deficit.

10. Consistent with this intention, the following deliberations in the Constitutional Commission of 1986 are enlightening:

"MR. NATIVIDAD. So, we have a situation where the President prepares the budget every year based on the expected receipts and earnings of the government. The Constitution gives the President that duty because the President knows the expected earnings of the government. Traditionally, Congress will decrease certain items of the budget but it is not constitutionally authorized to increase because the various items in the budget will be increased, the earnings of the government as expected from the receipts and taxes may not be enough and there will be a big budget deficit.

"MR. DAVIDE. Madam President, the further answer to the question is contained in the section itself, which reads:

In other words, Congress cannot increase because there is a limitation: the budget should be based on existing and proposed revenue measures.

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"MR. NATIVIDAD. As the Gentleman knows, the budget receipts and proposed revenue measures is ambivalent. There is nothing sure about that because that is just a projection of future earnings and we do not know exactly if 80 percent will be realized or not. So, this is just a projection of the future earnings of the government.

"MR. DAVIDE. That is exactly the reason why Congress cannot go beyond that because what may be collected of the expected revenues may be only very much less than 100 percent."

PARTIES

11. Petitioners are the following:

a) Rep. Edcel C. Lagman, the incumbent Representative of the First District of Albay who can be served with the processes and notices of the Honorable Supreme Court at his congressional address at North Wing 411, House of Representatives, Batasan Road, Diliman, Quezon City;

b) Rep. Gabriel H. Bordado, Jr. the incumbent Representative of the Third District of Camarines Sur, who can be served with the processes and notices of the Honorable Supreme Court at his congressional address at North Wing 205, House of Representatives, Batasan Road, Diliman, Quezon City; and

c) Rep. Mujiv S. Hataman, the incumbent Representative of the Lone District of Basilan, who can be served with the processes and notices of the Honorable Supreme Court at his congressional address at South Wing Annex 310, House of Representatives, Batasan Road, Diliman, Quezon City.

As duly elected Representatives of their respective congressional districts, the petitioners are aggrieved together with the sovereign people they represent, by the subject unconstitutional act of the Congress of the Philippines in unduly and unconstitutionally enlarging the unprogrammed appropriations over and above the total limit or ceiling proposed by the President in the NEP, through the furtive insertion of P449.5-B by the bicameral conference committee in excess of the President's proposal.

Moreover, in **Padilla v. Congress of the Philippines** (G.R. No. 231671, July 25, 2017); **Tañada v. Congress of Philippines** (G.R. No. 231694, July 25, 2017); and **Lagman v. Ochoa, Jr.** (G.R. No. 193036, December 7, 2010), the Supreme Court ruled that legislators are proper petitioners in cases like the instant petition.

The ruling in **Padilla** and **Tañada** explains that:

The Court has recognized that every citizen has the right, if not the duty, to interfere and see that a public offense be properly pursued and punished, and that a public grievance be remedied. When a citizen

exercises this "public right" and challenges a supposedly illegal or unconstitutional executive or legislative action, he represents the public at large, thus, clothing him with the requisite *locus standi*. He may not sustain an injury as direct and adverse as compared to others, but it is enough that he sufficiently demonstrates in his petition that he is entitled to protection or relief from the Court in the vindication of a public right.

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The present petitions have been filed by individuals asserting that the Senate and the House of Representatives have breached an allegedly constitutional duty to convene in joint session to deliberate on Presidential Proclamation No. 216. The citizen-petitioners' challenge of a purportedly unconstitutional act in violation of a public right, done on behalf of the general public, gives them legal standing.

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We have ruled that legislators have legal standing to ensure that the constitutional prerogatives, powers, and privileges of the Members of the Congress remain inviolate. Thus, they are allowed to question the validity of any official action – or in these cases, inaction – which, to their mind, infringes on their prerogatives as legislators.

In **Lagman** it was similarly held:

Indeed, legislators have a legal standing to see to it that the prerogative, powers and privileges vested by the Constitution in their office remain inviolate. Thus, they are allowed to question the validity of any official action which, to their mind, infringes on their prerogatives as legislators.

12. The respondents are the following:

(a) The Congress of the Philippines which is the constitutional Legislature of the Republic of the Philippines. It may be served with summons, processes and notices of the Honorable Supreme Court through Senate President Juan Miguel F. Zubiri at Rm. 606 & 521B, 20, 211 (Extension) Senate of the Philippines, GSIS Bldg., Financial Center, Diokno Blvd., Pasay City, and Speaker Ferdinand Martin G. Romualdez at his congressional address at Office of the Speaker, Main Building, House of Representatives, Batasan Road, Diliman, Quezon City;

(b) Hon. Juan Edgardo M. Angara, is the Chairman of the Senate Committee on Finance and Co-Chairman of the Bicameral Conference Committee on the 2024 General Appropriations Bill and he can be served with the summons, processes, and notices of the Honorable Supreme Court at Rm. 521-A & 21, New Wing 5/F, Senate of the Philippines, GSIS Bldg., Financial Center, Diokno Blvd., Pasay City;

(d) Hon. Elizaldy Co, is the Chairman of the House Committee on Appropriations and Co-Chairman of the Bicameral Conference Committee on the 2024 General Appropriations Bill and he can be served with the summons, processes, and notices of the Honorable Supreme Court at Committee on Appropriations, 2/F Mitra Building, House of Representatives, Batasan Road, Diliman, Quezon City;

(e) Executive Secretary Lucas P. Bersamin can be served with the summons, processes, and notices of the Honorable Supreme Court at the Office of the President, Malacañang Palace Compound, J.P. Laurel St., San Miguel, Manila. He is impleaded in his official capacity as the "Little President" who acts on behalf of the President of the Republic of the Philippines;

(f) Hon. Amenah F. Pangandaman can be served with the summons, processes, and notices of the Honorable Supreme Court at the Office of the Secretary, Department of Budget and Management, Boncodin Hall, General Solano St., San Miguel, Manila. She is impleaded in her official capacity as Secretary of the Department of Budget and Management; and

(g) Hon. Rosalia V. De Leon who is impleaded in her official capacity as National Treasurer of the Republic of the Philippines can be served with the summons, processes, and notices of the Honorable Supreme Court at the Bureau of Treasury, Ayuntamiento Building, Cabildo Street corner A. Soriano Avenue, Intramuros, Manila.

Respondents Angara and Co are sued as the Co-Chairmen of the Bicameral Conference Committee on the 2024 GAB which clandestinely inserted the challenged excess in the unprogrammed appropriations.

ANTECEDENT FACTS

13. On 02 August 2023 President Ferdinand Marcos, Jr., through Budget Secretary Amenah F. Pangandaman, submitted to the House of Representatives the President's National Expenditure Program (NEP) for 2024, a copy of which was also sent to the Senate of the Philippines.

14. Consistent with tradition, the 2024 NEP consisted generally of two (2) types of appropriations: programmed appropriations and unprogrammed appropriations. For 2024, the grand total of the programmed appropriations is P5.768-T and the ceiling of the unprogrammed appropriations is P289.1-B.

15. The unprogrammed appropriations of P289.1-B for 2024 proposed by the President are found from pages 1024 to 1031 of the NEP, copies of which are attached as **Annexes "A", "A-1", "A-2", "A-3", "A-4", "A-5", "A-6", and "A-7"**. Since the NEP is an issuance of the Executive Department, it is entitled to mandatory judicial notice under Rule 129 of the New Revised Rules of Court.

16. With respect to the subject unprogrammed appropriations, the General Appropriations Bill or House Bill No. 8980 copied ***in toto*** the total amount of P289.1-B as proposed by the President.

17. The third reading copy of the GAB approved by the House of Representatives likewise reflected the total of P289.1-B of unprogrammed appropriations.

18. The Senate version of the GAB similarly appropriated the same amount of P289.1-B of unprogrammed appropriations.

19. Consequently, there was no difference between the House version and the Senate version on the unprogrammed appropriations which were both consistent with the total proposal of the President in the amount of P289.1-B. Since there was no difference in the total of the House of Representatives and Senate versions on the unprogrammed appropriations, there was nothing to harmonize in the Bicameral Conference Committee with respect specifically to unprogrammed appropriations.

20. However, in the Bicameral Conference Committee on the "disagreeing provisions" of the House and Senate versions of the appropriations bill, the amount of P449.5-B was inserted in the unprogrammed appropriations over and above the P289.1-B as proposed by the President, which is also the same amount approved by the House of Representatives and the Senate of the Philippines on third and final reading of the GAB.

21. Verily, since there was no difference between the House and Senate versions of the GAB pegging the amount of P289.1-B as proposed by the President, there was nothing to reconcile.

22. Below is the comparative table of the unprogrammed appropriations in the NEP and the GAB in the amount of P281,908,056,000.00 before the insertion by the Bicameral Conference Committee, and the ensuing bloated unprogrammed appropriations in the total amount of P731,448,566,000.00 in the General Appropriations Act (GAA) after the insertion by the Bicameral Conference Committee of the huge excess of P449,540,510,000.00:

UNPROGRAMMED APPROPRIATIONS (2024)

Source: NEP 2023, GAB 2024, GAA 2024

PURPOSE	NEP 2024 GAB 2024	GAA 2024
Strengthening Assistance for Government	P 50,033,172,000	P 225,376,980,000

Infrastructure and Social Programs		
Budgetary Support to Government-Owned and/or -Controlled Corporations	110,157,162,000	20,157,162,000
Support to Foreign-Assisted Projects	117,725,162,000	178,805,063,000
Risk Management Program	1,000,000,000	1,000,000,000
Refund of the Service Development Fee for the Right to Develop the Nampeidai Property in Tokyo, Japan	210,579,000	210,579,000
Prior Years' LGU Shares	14,623,000	14,623,000
Public Health Emergency Benefits and Allowances for Health Care and Non-Healthcare Workers	2,351,880,000	2,351,880,000
Fiscal Support Arrearages for Comprehensive Automotive Resurgence Strategy (CARS) Program	415,458,000	415,458,000
Panay-Guimaras-Negros (PGN) Island Bridges Project		3,180,000,000
Universal Access to Quality Tertiary Education (UAQTE)		7,058,843,000
Priority Social Programs for Health (including Health Facilities Enhancement Program), Social Welfare and Development, Higher Education and Technical and Vocational Education		59,020,000,000
Revised AFP Modernization Program		10,000,000,000
For payment of Right-of-Way		3,000,000,000
Pre-feasibility studies/preliminary and detailed engineering		3,000,000,000

Public-Private Partnership – Strategic Support Fund (including Right-of-Way and Subsidy)		3,000,000,000
Maintenance, repair and rehabilitation of infrastructure facilities (routine maintenance of national roads)		3,000,000,000
For government counterpart of foreign-assisted projects		51,500,000,000
For the repair/rehabilitation/expansion of Laoag International Airport, Ilocos Norte		1,000,000,000
For payment of personnel benefits		59,000,000,000
Pension and Gratuity Fund		40,250,000,000
PUV Service Contracting (Libreng Sakay)		500,000,000
Screening and Anti-Terrorist Equipment and Body Camera		980,000,000
National Data Privacy Program		620,000,000
Preparatory for National and Local Elections		1,500,000,000
Construction/Repair of NFA Warehouse Facilities and Purchase of Drying Equipment		5,000,000,000
Development of Modernization Plan on Infrastructure for Iwahig Prison Penal Farm in Palawan		70,000,000
Financial Subsidy for Purchase of Photovoltaic Mainstreaming (Solar Home System) for Rural Electrification		3,000,000,000
Acquisition of firetrucks		1,050,000,000
Construction of 66km Circumferential Road to complement the		800,000,000

transport and road system in Cagayan Economic Zone		
Repair, Rehabilitation and Maintenance of the Breakwater in the Cagayan Economic Zone		200,000,000
Repair/Rehabilitation and Construction of Farm-to-Market Road Projects in Designated Key Production Areas		2,357,500,000
Digital Agriculture Project		1,050,000,000
Cold Storage Expansion Program		500,000,000
Aquaculture and Mariculture Expansion and Invigoration Project		500,000,000
Fisheries Infrastructure Development Program		500,000,000
Construction/Rehabilitation of NIA Warehouse and Purchase of Dryer		2,000,000,000
Marawi Siege Victims Compensation Program		6,000,000,000
Supplementary Feeding Program		2,000,000,000
Creation of lawyer positions in the Public Attorney's Office		507,712,000
OPAPRU Mandatories for operations and support services		23,325,000
Establishment and operationalization of the National Amnesty Commission		60,109,000
Management and supervision of the Comprehensive Peace Process		688,261,000
GPH and the MNLF Peace Process Transformation Program		128,071,000
Construction of a Super Maximum Security Facility		1,000,000,000

Land Acquisition for Office of the Vice President		1,800,000,000
Pambansang Pabahay Para sa Pilipino (4PH) Program		8,000,000,000
Social pension for indigent senior citizens		5,793,000,000
Support to the Barangay Development Program of the NTF-ELCAC		6,480,000,000
Green Green Green Program		1,000,000,000
OWWA Welfare Services		1,000,000,000
Local Government Support Fund		5,000,000,000
TOTAL	P281,908,056,000	P731,448,566,000
	Total Excess of	P449,540,510,000

23. As a result of the insertion made by the Bicameral Conference Committee and ratified by the House of Representatives and the Senate, the GAA carries the infirm appropriation of P731,448,566,000.00, of which P449,540,510,000.00 is the exorbitant excess.

24. Attached as **Annexes "B", "B-1", "B-2", "B-3", "B-4", "B-5", "B-6", and "B-7"** are the corresponding pages (737-744) in the GAA on the unprogrammed appropriations. Like the NEP, these portions of the GAA must be given judicial notice as an Act of the Congress.

25. The constitutionally infirm action of the Bicameral Conference Committee was ratified with alacrity by the House of Representatives and the Senate of the Philippines on 11 December 2023, on the leadership and behest of Senate President Zubiri and Speaker Romualdez, respectively, without revealing and explaining the bloated unprogrammed appropriations.

26. All the Petitioners did not vote to ratify the Bicameral Conference Committee Report.

ISSUES

The following issues are simple and clear:

I. Whether or not the prohibition on the Congress of not exceeding the total appropriations proposed by the President includes the ban on both the programmed and unprogrammed appropriations.

II. Whether or not unprogrammed appropriations form part of the total national expenditures.

III. Whether or not the appropriation of P449.5-B in unprogrammed appropriations over the unprogrammed appropriations proposed by the President of only P289.1-B is unconstitutional and should be struck down as a nullity, and also for being tainted with grave abuse of discretion amounting to lack or excess of congressional jurisdiction.

ARGUMENTS

I. THE CONSTITUTIONAL PROHIBITION ON THE CONGRESS FROM EXCEEDING THE TOTALITY OR CEILING OF THE APPROPRIATIONS PROPOSED BY THE PRESIDENT IN THE NATIONAL EXPENDITURE PROGRAM INCLUDES THE BAN ON INCREASING THE AMOUNT PROPOSED BY THE CHIEF EXECUTIVE FOR BOTH THE PROGRAMMED AND UNPROGRAMMED APPROPRIATIONS.

II. THE UNPROGRAMMED APPROPRIATIONS ARE ESSENTIAL COMPONENTS OF THE TOTAL NATIONAL EXPENDITURES.

III. THE EXCESS OF P449.5-B OVER THE P289.1-B PROPOSED BY THE PRESIDENT FOR UNPROGRAMMED APPROPRIATIONS IS AN UNCONSTITUTIONAL ACT OF THE CONGRESS WHICH IS TAINTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS CONGRESSIONAL JURISDICTION, AND PERFORCE MUST BE NULLIFIED.

DISCUSSION

I. THE CONSTITUTIONAL PROHIBITION ON CONGRESS FROM EXCEEDING THE TOTALITY OR CEILING OF THE APPROPRIATIONS PROPOSED BY THE PRESIDENT IN THE NATIONAL EXPENDITURE PROGRAM INCLUDES THE BAN ON INCREASING THE AMOUNT PROPOSED BY THE CHIEF EXECUTIVE FOR BOTH THE PROGRAMMED AND UNPROGRAMMED APPROPRIATIONS.

27. This year's General Appropriations Act (GAA) which took effect on 01 January 2024 suffers a constitutional infirmity insofar as the bicameral conference committee inserted P449.5 billion in excess of the unprogrammed appropriations of P281.9 billion recommended by the President in the national budget or the National Expenditure Program (NEP). The respondent Congress of the Philippines ratified the Bicameral Report which included the prohibited excess.

28. The President's utter failure to veto the excess items aggravated the constitutional defect.

29. Consequently, this constitutional challenge before the Honorable Supreme Court is to cleanse the GAA of a fatal defect and give guidance to the Congress and the President in the future budget considerations.

30. The Constitution unequivocally provides in Section 25 (1) of Article VI that: "The Congress may not increase the appropriations recommended by the President for the operation of the government as specified in the budget" or the NEP.

31. The prohibition on the Congress from increasing the appropriations recommended by the President covers both the programmed appropriations, which have available funding sources, and the unprogrammed appropriations, which have only contingent funding sources limited to (a) release of new loan proceeds for foreign-assisted projects; (b) revenue collections from new tax laws; and (c) increase in non-tax revenue collections over target.

32. The 2024 NEP recommended a total of P5.768 trillion for programmed appropriations and P289.1 billion for unprogrammed appropriations. The respective ceilings of each cannot be breached by the Congress.

33. It is well settled that when the Constitution or the law does not distinguish, we must not distinguish.

34. Verily, since the Constitution does not distinguish between the programmed appropriations and the unprogrammed appropriations with respect to the congressional ban, the ceiling of both cannot be exceeded by the Congress.

35. Through the years, the errant interpretation is that only the totality of the programmed appropriations cannot be increased by the Congress so much so that it is the unprogrammed appropriations which have been invariably increased annually to accommodate even partisan and pet projects which could be subsequently funded and released during the fiscal year under the pretext that contingent funding has been realized. This erroneous interpretation must be stopped. Since the ban on not exceeding the totality of both the programmed and unprogrammed appropriations is clear, there is no need to interpret but only apply the constitutional prohibition.

36. What is worse is the scheme of transferring funded projects to the unprogrammed appropriations in order to accommodate replacement pet projects which are then assured of funding.

37. The unprogrammed appropriations have become the sanctuary of partisan and pet projects where funding and releases for implementation could even antedate the implementation of programmed appropriations.

II. THE UNPROGRAMMED APPROPRIATIONS ARE ESSENTIAL COMPONENTS OF THE TOTAL NATIONAL EXPENDITURES.

38. It is crystal clear that the unprogrammed appropriations are principal components of the total national expenditures. In fact, no one denies that the annual budget submitted by the President to the Congress, which is officially known as the President's National Expenditure Program (NEP), includes both programmed and unprogrammed appropriations. This is so because like the programmed appropriations, the unprogrammed appropriations would form part of the national expenditures the moment they are funded and released for implementation.

39. In the interchange between Commissioner Teodulo C. Natividad and Commissioner Hilario G. Davide, Jr. during the 1986 Constitutional Commission, as cited above, it was clear that the projected revenues are "ambivalent" because they may not be totally realized. It is for this reason that the Congress is prohibited from increasing the ceiling of the appropriations (programmed and unprogrammed) proposed by the President in order that the fiscal deficit will not be unduly increased.

40. If unprogrammed appropriations are increased beyond the ceiling imposed by the President, their subsequent funding and release, whether righteous or contrived, will balloon the government's expenditures beyond the fiscal program.

III. THE EXCESS OF P449.5-B OVER THE P289.1-B PROPOSED BY THE PRESIDENT FOR UNPROGRAMMED APPROPRIATIONS IS AN UNCONSTITUTIONAL ACT OF THE CONGRESS WHICH IS TAINTED WITH GRAVE ABUSE OF DISCRETION

AMOUNTING TO LACK OR EXCESS OF CONGRESSIONAL JURISDICTION, AND PERFORCE MUST BE NULLIFIED AND EXPUNGED FROM THE 2024 GENERAL APPROPRIATIONS ACT OR RA NO. 11975.

41. It is indubitable that the excess of P449.5-B in unprogrammed appropriations is constitutionally infirm. It is an expenditure outlay outside of the Constitution. It is akin to an outlaw which must be slain on sight.

42. This unconstitutional excess outlay was appropriated with grave abuse of discretion.

43. "By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction." (**Pascual v. Burgos**, *G.R. No. 171722, Jan. 11, 2016*).

44. The worst instance of grave abuse of discretion is a blatant violation of the Constitution (**Ifurung v. Carpio-Morales**, *G.R. No. 232131, April 24, 2018*).

45. The malevolence evidencing grave abuse of discretion amounting to lack or excess of congressional jurisdiction is manifest in the following incontrovertible facts obtaining in this case:

(a) The excess of P449.5-B in unprogrammed appropriations was clandestinely inserted by the Bicameral Conference Committee in the 2024 General Appropriations Bill without the prior knowledge or consent of the greater membership of the House of Representatives and the Senate of the Philippines, who were not privy to the proceedings of the Bicameral Conference Committee.

(b) The House of Representatives and the Senate ratified the Bicameral Conference Report with dubious alacrity, upon the bidding of Senate President Zubiri and House Speaker Romualdez, without any prior revelation or explanation of the huge insertion.

(c) The P449.5-B furtive appropriations and their probable release for implementation were premeditated by the leadership of the Committee on Appropriations chaired by respondent Co who recommended the Plenary approval of House Bill No. 9513 entitled, "An Act Providing Additional Criterion for the Availment of Unprogrammed Appropriations, amending for the Purpose Republic Act No. 11963 or the 2023 General Appropriations Act". This bill was approved on third reading by the House of Representatives and is now pending in the Senate.

(d) This bill proposes to sequester the "excess" income of Government-Owned and Controlled Corporations (GOCCs) in order to fund the unprogrammed appropriations, over the reasonable objections of concerned GOCCs.

(e) Although the bill is supposed to amend only the 2023 General Appropriations Act, it can be modified and extended to cover subsequent General Appropriations Acts which have huge unprogrammed appropriations.

(f) A copy of Committee Report No. 859 dated 14 November 2023 wherein respondent Co recommended the approval of HB No. 9513 is attached as **Annex "C"**, and a copy of HB No. 9513, as approved on third reading, is attached as **Annex "D"**.

(g) During the deliberations on the aforesaid House Bill No. 9513, its principal sponsor, Representative Joey Salceda, made revealing admissions on legislative malpractices surrounding the project substitution and increase in unprogrammed appropriations. The following transcript of stenographic notes on 15 November 2023 says it all:

REP. LAGMAN. Does the Sponsor recall instances when the Programed Appropriations are realigned to Unprogrammed Appropriations in order to give way to some items of expenditures which will have certainty of funding?

REP. SALCEDA. Your Honor, during, in periods of implementation, no. **But during the process of budget or appropriations cycle, the – it's up to the Supreme power,**

in their exercise of the power of the purse that this Congress may shift on an item to item ... for as long as the total of the appropriations and the Unprogrammed Appropriations do not exceed what was submitted to Congress.

REP. LAGMAN. Mm-hmm. In other words, it is correct that there were instances or even many instances in the past when Programmed Appropriations with certainty of funding are realigned to the Unprogrammed so that that would give way to expenditure items with certainty of appropriation or funding source. Is that correct?

REP. SALCEDA. **That is correct during the appropriation process ...**

X X X X X X X X X

Rep. Lagman. ... Now could you give us instances, Mr. Speaker, Mr. Sponsor, when the Congress or the House, or the Senate realigned or exported Programmed Appropriations to Unprogrammed Appropriations to give way to certain favored projects?

X X X X X X X X X

Rep. Salceda. Example, your Honor is P145 billion for priority infrastructure program for roads, bridges, multi-purpose building facilities, flood control and water system. This is a Programmed and that was essentially transferred to Unprogrammed.

Another one would be the payment of right of way of P17.5-B, so ...

X X X X X X X X X

Rep. Lagman.... Ah, dear colleagues, I will just give you a very simple illustration on how this

would affect the budget. For example, a barangay hall which is Programmed for say P5 million, needed by a barangay and funded under the agency's program is transferred to the Unprogrammed where there is no certainty of being implemented, and in lieu of the transferred, ah, Programmed Appropriation for the school--for the barangay hall, a basketball court is the replacement project. It is a pet project by a legislator or by anyone who would, ah, risk to take that project funded.

I am the first one to say that Congress must have the power of the purse, but Congress must never abuse this power of the purse. The realignment of Programmed Appropriations and buried to the Unprogrammed Appropriations is not an exercise of the power of the purse. It is an abuse of the power of the purse. And now, we would like the government – the GOCCs – to fund what was promised or previously already funded because it was transferred to the Unprogrammed. That is a very clear example of an abuse of the power of the purse. (Emphasis supplied).

46. From the foregoing transcript of stenographic notes of the pertinent deliberations, the following are clear and evident:

(a) The unprogrammed appropriations are used as a sanctuary for pet and partisan projects, mixed with substantial allocations, and a graveyard for replaced or disfavored projects originally under the programmed appropriations.

(b) Programs and projects in the programmed appropriations are realigned or transferred to the unprogrammed appropriations in order to assure available funding for substitute pet and partisan projects.

(c) With respect to the classic example where a funded barangay hall was "exported" to the unprogrammed appropriations in order to accommodate a basketball court

under the programmed appropriations, Representative Salceda did not make any rejoinder, denial or justification of the said juggling of projects.

47. Incidentally, Rep. Salceda, a former Chairman of the Committee on Appropriations, candidly admitted that the President's total unprogrammed appropriations shall not be exceeded by the Congress. Salceda said: **"as long as total of the appropriations and the Unprogrammed Appropriations do not exceed what was submitted to Congress"**.

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER OR WRIT OF PRELIMINARY INJUNCTION

48. Petitioners replead and incorporate all the foregoing averments insofar as they are relevant and material to support the prayer for the issuance of a Temporary Restraining Order or Writ of Preliminary Injunction.

49. Injunction is a preservative remedy for the protection of one's substantive right or interest (**Land Bank of the Philippines v. Listana, Sr.**, 408 SCRA 328). As an extraordinary remedy, injunction is designed to preserve or maintain the status quo and is generally availed of to prevent actual or threatened acts until the merits of the case can be heard and resolved (**Toyota Motor Philippines Corporation Worker's Association v. Court of Appeals**, 412 SCRA 69).

50. The unconstitutional act complained of, if not restrained before the matter can be heard on notice pending litigation, will result in grave injustice to the petitioners.

51. The petitioners, as Members of the House of Representatives, are sworn to protect the sanctity of the Constitution from all abuses and transgressions, including those of their own Chamber.

52. Any precipitate funding and release of the infirm excess in the unprogrammed appropriations proposed by the President will damage the petitioners' rights and interests and render their remedy nugatory.

53. Petitioners are willing to post a bond, in an amount to the fixed by the Honorable Supreme Court, to answer for any damage which the respondents may suffer as a consequence of the issuance of an injunctive relief.

PRAYER

ACCORDINGLY, petitioners pray that the Honorable Supreme Court:

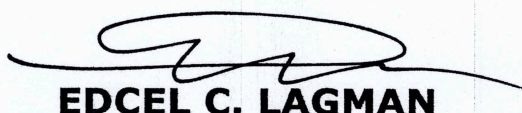
1. ISSUES a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, upon the filing of the instant Petition or soonest thereafter, restraining the respondents from funding, releasing, and implementing the constitutionally infirm excess appropriation of P449.5-B over the proposal of the President of P289.1-B in unprogrammed appropriations.

2. RENDERS a decision after due proceedings nullifying the challenged excess of P449.5-B in unprogrammed appropriations clandestinely embedded in the 2024 General Appropriations Act or RA No. 11975.

3. ISSUES a Writ of Prohibition directed to any and all respondents, and all other public functionaries acting on their behalf, permanently prohibiting them from funding, releasing, and implementing the excess items of expenditure consisting of P449.5-B.

Petitioners pray for other just and equitable reliefs.

Quezon City for Manila
15 January 2024

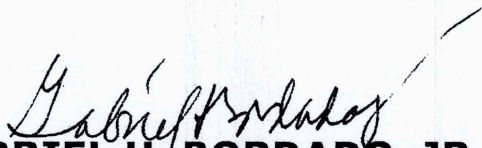


EDCEL C. LAGMAN

Roll of Attorneys No. 021381

PTR No. 5548338/Quezon City/11 January 2024

IBP Lifetime Number 923026/CALMANA



GABRIEL H. BORDADO, JR.

Unified Multi-Purpose ID No. CRN-006-0012-7449-9

Valid until: September 2026

Issued by: GSIS Manila



MUJIV S. HATAMAN

Philippine Passport No. P8891787B

Valid until: 08 February 2032

Issued by: DFA Manila

**VERIFICATION AND CERTIFICATION
ON NON-FORUM SHOPPING**

I, Rep. Edcel C. Lagman, of legal age, on my own behalf and in representation of my co-petitioners, Rep. Gabriel H. Bordado, Jr. and Rep. Mujiv S. Hataman, after having been sworn in accordance with law, depose and state that:

1. I personally prepared the foregoing petition on my behalf and on behalf of my aforementioned co-petitioners who have read and understood the same.

2. The allegations contained in the subject petition are true and correct.

3. I hereby certify that: (a) the petitioners have not heretofore commenced any action or proceeding involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof or any other tribunal or agency; (b) no such action or proceeding is pending in the Supreme Court, the Court of Appeals or different divisions thereof or any other tribunal or agency; (c) if there is such other actions or proceedings pending, I and my co-petitioners shall state the status of the same; and (d) if I and my co-petitioners should thereafter learn that a similar action of proceeding has been filed or is pending before Supreme Court, the Court of Appeals

or different divisions thereof or any other tribunal or agency, I and my co-petitioners undertake to promptly inform the Honorable Supreme Court of the said fact within five (5) days therefrom.

IN WITNESS WHEREOF, I hereby affix my signature this 15th day of January 2024 in Quezon City, Metro Manila.


EDCEL C. LAGMAN

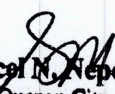
Republic of the Philippines) S.S.
Quezon City)

Subscribed and sworn to before me, a Notary Public for Quezon City, this 15th day of January 2024, affiant attesting to the truth of the foregoing Verification and Certification on Non-Forum Shopping, and he exhibited to me his Philippine Passport No. P0552328C, valid until 15 June 2032 and issued by the Department of Foreign Affairs, Manila.

WITNESS MY HAND AND SEAL, on the date and place first above written.

Notary Public

Doc. No. 267 ;
Page No. 55 ;
Book No. I ;
Series of 2024


Socorro Maricel M. Nepomuceno
Notary Public for Quezon City
A.M. No. 049 (2023-2024) until December 31, 2024
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IBP No. 249988 - 1/17/2023
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