G.R. No. 199802 (*Congressman Hermilando I. Mandanas, Mayor Efren B. Diona, Mayor Antonino Aurelio, Kagawad Mario Ilagan, Barangay Chair Perlito Manalo, Barangay Chair Medel Medrano, Barangay Kagawad Cris Ramos, Barangay Kagawad Elisa D. Balbago, and Atty. Jose Malvar Villegas v. Executive Secretary Paquito Ochoa, Secretary Cesar Purisima, Secretary Florencio H. Abad, Commissioner Kim Jacinto-Henares, and National Treasurer Roberto Tan*); and

G.R. No. 208488 (*Honorable Enrique T. Garcia, Jr. v. Honorable Paquito N. Ochoa, Honorable Cesar V. Purisima, Honorable Florencio H. Abad, Honorable Kim Jacinto-Henares, and Honorable Rozzano Rufino B. Biazon*).

Promulgated: July 3, 2018

DISSENTING OPINION

REYES, JR., *J.*:

At the root of the controversy is the basis for computing the share of Local Government Units (LGUs) in the national taxes. The petitioners in these cases argue that certain national taxes were excluded from the amount upon which the Internal Revenue Allotment (IRA) was based, in violation of the constitutional mandate under Section 6, Article X of the 1987 Constitution.[1]

The *ponencia* agreed with the petitioners and declared the term "*internal revenue*" in Sections 284 and 285 of the Local Government Code (LGC)[2] of 1991 as constitutionally infirm. I respectfully dissent from the majority Decision for unduly encroaching on the plenary power of Congress to determine the just share of LGUs in the national taxes.

As exhaustively discussed in the majority Decision, the 1987 Constitution emphasized the thrust towards local autonomy and decentralization of administration.[3] The Constitution also devised ways of expanding the financial resources of LGUs, in order to enhance their ability

---

1 Decision, pp. 2-5.

2 *Republic Act No. 7160.* Approved on October 10, 1991.

3 1987 CONSTITUTION, Article X, Section 2.

to operate and function.[4] LGUs were granted broad taxing powers,[5] an equitable share in the proceeds of the utilization and development of national wealth,[6] and a just share in the national taxes.[7]

Yet, despite the recognition to decentralize the administration for a more efficient delivery of services, the powers and authorities granted to LGUs remain constitutionally restrained through one branch of the government—Congress. This is apparent from the following provisions of the 1987 Constitution:

> Article X
> Local Government
>
> General Provisions
>
> x x x x
>
> SECTION 3. **The Congress shall enact a local government code** which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, **allocate among the different local government units their powers, responsibilities, and resources**, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.
>
> x x x x
>
> SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges **subject to such guidelines and limitations as the Congress may provide**, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.
>
> SECTION 6. Local government units shall have a just share, **as determined by law**, in the national taxes which shall be automatically released to them.
>
> SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, **in the manner provided by law**, including sharing the same with the inhabitants by way of direct benefits. (Emphasis and underscoring Ours)

---

4 *Sen. Alvarez v. Hon. Guingona, Jr.*, 322 Phil. 774, 783 (1996); *See also R.A. No. 7160*, Section 3(d).

5 1987 CONSTITUTION, Article X, Section 5.

6 Id. at Article X, Section 7.

7 Id. at Article X, Section 6.

In line with the mandate to enact a local government code, Congress passed Republic Act (R.A.) No. 7160, otherwise known as the LGC of 1991, to serve as the general framework for LGUs. The LGC of 1991 laid down the general powers and attributes of LGUs, the qualifications and election of local officials, the power of LGUs to legislate and create their own sources of revenue, the scope of their taxing powers, and the allocated share of LGUs in the national taxes, among other things.

Under Section 6 of the LGC of 1991, Congress also retained the power to create, divide, merge or abolish a province, city, municipality, or any other political subdivision.[8] Thus, LGUs have no inherent powers, and they only derive their existence and authorities from an enabling law from Congress. The power of Congress, in turn, is checked by the relevant provisions of the Constitution. The Court, in *Lina, Jr. v. Paño*,[9] discussed this principle as follows:

> Nothing in the present constitutional provision enhancing local autonomy dictates a different conclusion.
>
> > The basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax (citing Art. X, Sec. 5, Constitution), which cannot now be withdrawn by mere statute. **By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.**[10] (Emphasis Ours)

While the discussion in *Lina* relates specifically to the legislative power of LGUs, the Court has applied the same principle with respect to the other powers conferred by Congress.[11] **In other words, despite the shift towards local autonomy, the National Government, through Congress, retains control over LGUs—albeit, in a lesser degree.**

---

8 *See* 1987 CONSTITUTION, Article X, Sections 10-12; *See* also *R.A. No. 7160*, Section 9.

9 416 Phil. 438 (2001).

10 Id. at 448, citing *Mayor Magtajas v. Pryce Properties Corp., Inc.*, 304 Phil. 428, 446 (1994).

11 *See Basco, et al. v. Philippine Amusement and Gaming Corp.*, 274 Phil. 323, 340-341 (1991); *See* also *Batangas CATV, Inc. v. CA*, 482 Phil. 544, 599-560 (2004).

Reyes

With respect to the share of LGUs in the national taxes, Section 6, Article X of the 1987 Constitution limits the power of Congress in three (3) ways: (a) the share of LGUs must be *just*; (b) the just share in the national taxes must be *determined by law*; and (c) the share must be *automatically released* to the LGU.[12] The Constitution, however, does not prescribe the exact percentage share of LGUs in the national taxes. It left Congress with the authority to determine how much of the national taxes are the LGUs' rightly entitled to receive.

Concomitant with this authority is the mandate granted to Congress to allocate these resources among the LGUs, in a local government code.[13] Accordingly, in Section 284 of the LGC of 1991, Congress established the IRA providing LGUs with a 40% share in "*the national* ***internal revenue*** *taxes based on the collection of the third fiscal year preceding the current fiscal year.*"[14] This percentage share may not be changed, unless the National Government incurs an unmanageable public-sector deficit. The National Government may not also lower the IRA to less than 30% of the national internal revenue taxes collected on the third fiscal year preceding the current fiscal year.[15] The LGC of 1991 further requires the quarterly release of the IRA, within five (5) days after the end of each quarter, without any lien or holdback imposed by the national government for whatever purpose.[16]

In this case, the petitioners notably do not assail the percentage share (*i.e.*, 40%) of LGUs in the national taxes. They instead challenge the base amount of the IRA from which the 40% is taken, arguing that all "*national taxes*" and not only "*national internal revenue taxes*" should be included in the computation of the IRA. The majority Decision agreed with this argument.

Again, I respectfully disagree.

The plain text of Section 6, Article X of the 1987 Constitution requires Congress to provide LGUs with a just share in the national taxes, which should be automatically released to them. **Nowhere in this provision does the Constitution specify the taxes that should be included in the just share of LGUs. Neither does the Constitution mandate the inclusion of *all* national taxes in the computation of the IRA or in any other share granted to LGUs.**

---

12 *See Gov. Mandanas v. Hon. Romulo*, 473 Phil. 806, 830 (2004).

13 1987 CONSTITUTION, Article X, Section 3.

14 *R.A. No. 7160*, Section 284; *See also* Administrative Order No. 270 (Prescribing the Implementing Rules and Regulations of the Local Government Code of 1991), Rule XXXII, Part I, Article 378.

15 Id.

16 *R.A. No. 7160*, Section 286(a).

The IRA is only one of several other block grants of funds from the national government to the local government. It was established in the LGC of 1991 not only because of Section 6, Article X of the 1987 Constitution but also pursuant to Section 3 of the same article mandating Congress to "allocate among the different local government units their x x x resources x x x." Clearly, Section 6, Article X of the 1987 Constitution is not solely implemented through the IRA of LGUs. Congress, in several other statutes other than the LGC of 1991, grant certain LGUs an additional share in some—not all—national taxes, *viz.*:

> (a) **R.A. No. 7171**,[17] which grants 15% of the excise taxes on locally manufactured Virginia type cigarettes to provinces producing Virginia tobacco;
>
> (b) **R.A. No. 8240**,[18] which grants 15% of the incremental revenue collected from the excise tax on tobacco products to provinces producing burley and native tobacco;
>
> (c) **R.A. Nos. 7922**,[19] and **7227**,[20] as amended by R.A. No. 9400, which grants a portion of the gross income tax paid by business enterprises within the Economic Zones to specified LGUs;
>
> (d) **R.A. No. 7643**,[21] which grants certain LGUs an additional 20% share in 50% of the national taxes collected under Sections 100, 102, 112, 113, and 114 of the National Internal Revenue Code, in excess of the increase in collections for the immediately preceding year; and

---

[17] AN ACT TO PROMOTE THE DEVELOPMENT OF THE FARMER IN THE VIRGINIA TOBACCO PRODUCING PROVINCES. Approved on January 9, 1992.

[18] AN ACT AMENDING SECTIONS 138, 140, & 142 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES. Approved on January 1, 1997.

[19] AN ACT ESTABLISHING A SPECIAL ECONOMIC ZONE AND FREE PORT MUNICIPALITY OF SANTA ANA AND THE NEIGHBORING ISLANDS IN THE MUNICIPALITY OF APARRI, PROVINCE OF CAGAYAN, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved on February 14, 1995.

[20] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES. Approved on March 13, 1992.

[21] AN ACT TO EMPOWER THE COMMISSIONER OF INTERNAL REVENUE TO REQUIRE THE PAYMENT OF THE VALUE-ADDED TAX EVERY MONTH AND TO ALLOW LOCAL GOVERNMENT UNITS TO SHARE IN VAT REVENUE, AMENDING FOR THIS PURPOSE CERTAIN SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE. Approved on December 28, 1992.

peyes

(e) **R.A. Nos. 7953**[22] and **8407**,[23] granting LGUs where the racetrack is located a 5% share in the value-added tax[24] paid by the Manila Jockey Club, Inc. and the Philippine Racing Club, Inc.

Under the foregoing laws, Congress did not include the entirety of the national taxes in the computation of the LGUs' share. **Thus, inasmuch as Congress has the authority to determine the exact percentage share of the LGUs, Congress may likewise determine the basis of this share and include some or all of the national taxes for a given period of time**. This is consistent with the plenary power vested by the Constitution to the legislature, to determine by law, the just share of LGUs in the national taxes. This plenary power is subject only to the limitations found in the Constitution,[25] which, as previously discussed, includes providing for a *just* share that is automatically released to the LGUs.

Furthermore, aside from the express grant of discretion under Sections 3 and 6, Article X of the 1987 Constitution, **Congress possesses the power of the purse**. Pursuant to this power, Congress must make an appropriation measure every time money is paid out of the National Treasury.[26] In these appropriation bills, Congress may not include a provision that does not specifically relate to an appropriation.[27]

Since the IRA involves an intergovernmental transfer of public funds from the National Treasury to the LGUs, Congress necessarily makes an appropriation for these funds in favor of the LGUs.[28] However, Congress cannot introduce amendments or changes to the LGUs' share in the appropriation bill, especially with respect to the 40% share fixed in Section 284 of the LGC of 1991. Congress may only increase or decrease this percentage in a separate law for this purpose.[29]

---

22 AN ACT AMENDING REPUBLIC ACT NUMBERED 6632, ENTITLED 'AN ACT GRANTING THE PHILIPPINE RACING CLUB, INC., A FRANCHISE TO OPERATE AND MAINTAIN A RACE TRACK FOR HORSE RACING IN THE PROVINCE OF RIZAL,' AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE YEARS FROM THE EXPIRATION OF THE TERM THEREOF. Approved on March 30, 1995.

23 AN ACT AMENDING REPUBLIC ACT NUMBERED 6631, ENTITLED 'AN ACT GRANTING MANILA JOCKEY CLUB, INC., A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RACETRACK FOR HORSE RACING IN THE CITY OF MANILA OR ANY PLACE WITHIN THE PROVINCES OF BULACAN, CAVITE OR RIZAL' AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE (25) YEARS FROM THE EXPIRATION OF THE TERM THEREOF. Approved on November 23, 1997.

24 *R.A. No. 7716*, as amended by R.A. No. 8241.

25 *Vera v. Avelino*, 77 Phil. 192, 212 (1946).

26 1987 CONSTITUTION, Article VI, Section 29(1).

27 Id. at Article VI, Section 25(2).

28 Id. at Article VI, Section 29(1).

29 *Gov. Mandanas v. Hon. Romulo,* supra note 12, at 839.

Verily, there are several parameters in determining whether Congress acted within its authority in granting the just share of LGUs in the national taxes. *First,* the General Appropriations Act (GAA) should not modify the percentage share in the national internal revenue taxes prescribed in Section 284 of the LGC of 1991.[30] *Second,* there must be no direct or indirect lien on the release of the IRA, which must be automatically released to the LGUs.[31] And, *third*, the LGU share must be *just.*[32] Outside of these parameters, the Court cannot examine the constitutionality of Sections 284 and 285 of the LGC of 1991, and the IRA appropriation in the GAA.

It bears noting at this point that the IRA forms part of the national government's major current operating expenditure.[33] By increasing the base of the IRA, the national budget for other government expenditures such as debt servicing, economic and public services, and national defense, is necessarily reduced. This is effectively an adjustment of the national budget—a function solely vested in Congress and outside the authority of this Court.

Ultimately, the determination of Congress as to the base amount for the computation of the IRA is a policy question of policy best left to its wisdom.[34] This is an issue that must be examined through the legislative process where inquiries may be made beyond the information available to Congress, and studies on its overall impact may be thoroughly conducted. Again, the Court must not intrude into "areas committed to other branches of government."[35] Matters of appropriation and budget are areas firmly devoted to Congress by no less than the Constitution itself, and accordingly, **the Court may neither bind the hands of Congress nor supplant its wisdom.**

For these reasons, the Court should have limited its review on whether Congress exceeded the boundaries of its authority under the Constitution. In declaring the term "*internal revenue*" in Section 284 of the LGC of 1991 as unconstitutional, the Court in effect dictated the manner by which Congress should exercise their discretion beyond the limitations prescribed in the

---

30 Id. at 832.

31 *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000.

32 *Gov. Mandanas v. Hon. Romulo,* supra note 12.

33 Department of Budget and Management, Expenditure Categories and their Economic Importance, <https://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B4.pdf> accessed last July 2, 2018.

34 *See Mayor Magtajas v. Pryce Properties Corp., Inc.,* supra note 10, at 447, in which the Court held that:

"This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. **The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall.** True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it." (Emphasis Ours)

35 *Francisco, Jr., et al. v. Toll Regulatory Board, et al.*, 648 Phil. 54, 84-85 (2010).

Constitution. The majority Decision's determination as to what should be included in the LGUs' just share in the national taxes is an encroachment on the legislative power of Congress.

In light of the foregoing, I vote to dismiss the petitions.

ANDRES B. REYES, JR.
Associate Justice