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G.R. No. 230642 OSCAR B. PIMENTEL, et al., petitioners, versus LEGAL EDUCATION BOARD, as represented by its Chairperson, HON. EMERSON B. AQUENDE, and LEB Member HON. ZENAIDA N. ELEPAÑO, respondents.

G.R. No. 242954 FRANCIS JOSE LEAN L. ABAYATA, et al., petitioners, versus HON. SALVADOR MEDIALDEA, Executive Secretary, and LEGAL EDUCATION BOARD, herein represented by its Chairperson, EMERSON B. AQUENDE, respondents.

A.M. 20-03-04-SC RE: REQUEST FOR CLARIFICATION REGARDING THE STATUS AND TREATMENT OF THE PHILSAT, filed by THE BOARD OF TRUSTEES OF THE PHILIPPINE ASSOCIATION OF LAW SCHOOLS (PALS), REPRESENTED BY ITS CHAIRPERSON, DEAN JOAN S. LARGO, AND ITS PRESIDENT DEAN MARISOL DL. ANENIAS, intervenors.

Promulgated:

November 9, 2021

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CONCURRING and DISSENTING OPINION

LAZARO-JAVIER, J.:

My esteemed and learned friend Associate Justice Rodil V. Zalameda resolves to partially grant the respective partial motions for reconsideration of the petitioners and respondents, thus:

WHEREFORE, premises considered, the Partial Motion for Reconsideration with Joint Comment/Opposition on Respondents' Motion for Reconsideration of petitioners in GR No. 242954 is **PARTIALLY GRANTED**. The Petition-in-Intervention of the Philippine Association of Law Schools is likewise **PARTIALLY GRANTED**. Accordingly:

- a) LEBMC No. 6-2017, LEB Resolution No. 2012-02, and Resolution No. 2012-06 are declared **INVALID** insofar as these issuances require the law schools to submit a letter and Certification in place of a Special Order.
- b) The entire LEBMO No. 7-2016 is declared **UNCONSTITUTIONAL**. Consequently, all existing memoranda, circulars, issuances by the Legal Education Board relating to LEBMO No. 7-2016 and the conduct of the current Philippine Law School Admission Test administered by the Legal Education Board are hereby **VACATED** and **SET ASIDE**. They are deemed without force and effect.



The Motion for Reconsideration (of the Decision dated September 10, 2019) filed by respondents Legal Education Board and Executive Secretary Salvador Medialdea is **PARTIALLY GRANTED**, in that paragraphs 1 and 2 of Section 15, LEBMO No. 1-2011 are declared **VALID**.

All other claims of petitioner, respondents, and the Philippine Association of Law Schools are **DENIED**.

The Court's Decision dated 10 September 2019 **STANDS** in all other respects.

SO ORDERED.

I agree with the above disposition insofar as it upheld the validity of paragraphs 1 and 2 of Section 15, LEBMO No. 1-2011. These provisions simply require those who go into law school to present a certification from the Secretary of Education that they have completed the necessary studies to ensure to take up the course. I also agree with the partial denial of petitioners' respective motions for reconsideration. Although, I would like to discuss the basis for my partial dissent:

First. I maintain my position that passing the Philippine Law School Admissions Test (PHILSAT) as a minimum requirement in law school admission does not transgress academic freedom.

While jurisprudence recognizes autonomy of institutions of higher learning in the exercise of their academic freedom,¹ academic freedom is **not the trump card** that *annihilates* the exercise of police power. The former may limit the latter, but it **does not mean** that police power cannot be exercised since a fundamental right is impacted. If this were the case, police power would be inutile in **almost all** of our daily lives and **living in a commonwealth** of diverse and often **conflicting** personalities, interests and rights would be **unthinkable**. Too, as aptly discussed by the *ponencia*, institutions of higher learning, while in the exercise of their academic freedom should not only guard their so-called freedom from State restraint but must guard their freedom against their action, which could trigger intrusion by the State. The institution's freedom carries the concomitant obligation to see that its activities inside the school would not merit interference from any branch of the State.

More important, it is *precisely because* a **fundamental right is at stake** that **police power** has to **comply with the requisites** for its validity. As explained in *Zabal v. Duterte*:²

¹ *University of the Philippines Board of Regents v. Ligot-Telan*, 227 SCRA 342, G.R. No. 110280, October 21, 1993; *University of San Agustin, Inc. v. Court of Appeals*, G.R. No. 100588, March 7, 1994; and *De La Salle University, Inc. v. Court of Appeals*, 565 Phil. 330, 355 (2007).

² G.R. No. 238467, February 12, 2019.

Police power, amongst the three fundamental and inherent powers of the state, is the most pervasive and comprehensive. It has been defined as the **“state authority to enact legislation that may interfere with personal liberty or property in order to promote general welfare.”** “As defined, it consists of (1) imposition or restraint upon liberty or property, (2) in order to foster the common good. It is not capable of exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensive embrace.” The police power “finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter” since “it is inborn in the very fact of statehood and sovereignty.” It is said to be the “inherent and plenary power of the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of the society.” Thus, **police power constitutes an implied limitation on the Bill of Rights. After all, “the Bill of Rights itself does not purport to be an absolute guaranty of individual rights and liberties. ‘Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one’s will.’ It is subject to the far more overriding demands and requirements of the greater number.”**

“Expansive and extensive as its reach may be, **police power is not a force without limits.**” “**It has to be exercised within bounds - lawful ends through lawful means, i.e., that the interests of the public generally, as distinguished from that of a particular class, require its exercise, and that the means employed are reasonably necessary for the accomplishment of the purpose while not being unduly oppressive upon individuals.**” (Emphases added)

This pronouncement on the **nature of police power vis-à-vis fundamental rights**, including academic freedom, has long been a doctrine. It is no wonder that great thinkers in this Court, like Justice Marvic F. Leonen, often referred to this doctrine in dismissing petitions assailing the constitutionality of legislations or administrative regulations:

At present, the due process clause, the equal protection clause, and the takings clause of the Constitution serve as protections from the government’s taking of property. The non-impairment clause may likewise be invoked if the property taken is in the nature of a contract. **In any case, all these constitutional limits are subject to the fundamental powers of the State, specifically, police power. As such, the burden of proving that the taking is unlawful rests on the party invoking the constitutional right.**³ (Emphasis added)

Academic freedom **cannot overrun** the exercise of police power **that complies with the requisites** of compelling, lawful, and public objectives in reasonable and proportional means.

³ *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 259 (2018).



Even the **original intent** of the Constitutional Commission **accepted** this doctrine as an **imperative** in the **operationalization** of the **constitutional right of academic freedom**.

For one, despite the several thoughts on the **permissible** extent of State intervention in education, the Constitutional Commission **accepted** that **state regulation** is a **reality**; that **it must co-exist** with **academic freedom**; and that one is **not mutually exclusive** of the other:

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, if it will make the committee any happier, I would like to indicate that I am all for the statement of academic freedom in the Constitution depending on the formulation. I would also like to associate myself with the statement of Commissioner Azcuna that **academic freedom is a very dynamic concept** and so even if we turn ourselves blue, quoting Arthur Lovejoy, or the American Association of University Professors, or the case of *Keyishian v. Board of Regents* (385 U.S. 589), a U.S. case on academic freedom, we will never get anywhere. So, **I would like this concept to be open-ended. However, I would like to ask the committee that perhaps we could concretize the problem by saying that there is some sort of required harmonization between the constitutional provision on supervision and regulation and academic freedom, on the other hand.** Is that not the problem? It is actually the kind of harmonization between supervision and regulations and academic freedom on the other hand.

MS. ROSARIO BRAID: Yes, I think **it is the harmonization of the two concepts — regulation and freedom.**

MR. VILLACORTA: Is the fact that there is a conflict between supervision and regulation and academic freedom the premise of this Commissioner?

MR. MAAMBONG: Yes, that is actually one part of the problem. When a student or a professor or the institution itself exercises academic freedom, he could get into conflict with the other constitutional provision on supervision and regulation of the school itself and that becomes a part of the conflict. I am just asking the committee if we agree on that.

MR. VILLACORTA: Madam President, the analogy seems to be **the relationship between the State and the individual. The State regulates to a certain extent the behavior and actions of an individual citizen**, but that citizen has inherent and inalienable rights which the State cannot take away from him.

So there is no conflict in such a relationship, in the same manner that **state regulation of schools does not conflict with the academic freedom of universities and colleges.**

MR. MAAMBONG: That is precisely my point of reference, because we have to establish a concept wherein the State



has supervision and regulation of institutions of learning; whereas, we are trying to put in the concept of academic freedom inside the institutions of learning. These two concepts could get into trouble with each other, and that is just the point I am trying to ask the committee.

MS. ROSARIO BRAID: Yes. If the Commissioner means **some degree of state regulation or school regulation in terms of prescribed curricula, still we encourage the freedom to search or to go beyond them.** Hence, these are the kinds of concepts that have to be harnessed.

I would like to follow up Commissioner Azcuna's concept of dynamic definition of freedom, because we have been defining it as individual freedom of inquiry to search. **This freedom, however, has to be matched with social responsibility** and has to be seen also in terms of the students' freedom to demand even a restructuring of orientations and of existing curricula which may be orientations of institutions of faculty that are not appropriate. Thus, even the orientation towards overacademization and towards too much emphasis on open education with unlimited opportunities may give the student a false notion of the society in which he finds himself.

These are exactly some of the rights that should be guaranteed to the student beyond the individual right of inquiry. So by broadening this, we make it more relevant to the social realities of the times.

MR. MAAMBONG: What I am trying to say is that we have bogged down in this discussion because we do not see how we can reconcile a concept of state regulation and supervision with the concept of academic freedom.

MR. GASCON: When we speak of state regulation and supervision, that does not mean dictation, because we have already defined what education is. Hence, in the pursuit of knowledge in schools we should provide the educational institution as much academic freedom as it needs. **When we speak of regulation, we speak of guidelines and others. We do not believe that the State has any right to impose its ideas on the educational institution because that would already be a violation of their constitutional rights.**

There is no conflict between our perspectives. When we speak of regulations, we speak of providing guidelines and cooperation in as far as defining curricula, et cetera, but that does not give any mandate to the State to impose its ideas on the educational institution. That is what academic freedom is all about.

MR. ROMULO: Madam President, what is the parliamentary situation?

THE PRESIDENT: Commissioner Treñas has to be recognized. Shall we hear him first before we proceed further?

MR. TREÑAS: **Insofar as academic freedom is concerned, I believe that it is not absolute. It is subject to reasonable regulations of the school and to our laws. So there**

seems to be no conflict in this matter, because while it is true that the school, the institution, the faculty, as well as the students on one hand, enjoy academic freedom, we still recognize that freedom is not absolute, since it is always subject to reasonable regulation of the school.

Furthermore, while it may be constitutionally recognized that schools, institutions, faculty, as well as students, enjoy academic freedom, this is subject to all laws on the matter. So, that is my simple interpretation of academic freedom without going into these details, and there should be no conflict whatsoever.

MR. MAAMBONG: **We agree with that.**

THE PRESIDENT: I think Commissioner Maambong has been given sufficient time. May we now hear from Commissioner Monsod?

MR. MAAMBONG: May I just put in one sentence so that I can sit down, Madam President.

Precisely, the cases of Garcia and Montemayor came about because there seemed to be some conflict. However, let me just point out that there seems to be some problem also between the concept of academic freedom and the freedom of expression. So, maybe some other speakers can talk about it later on.

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MR. SUAREZ: I am satisfied with the explanation of the Commissioner. But may I go to another point. **Commissioner Bernas uses the phrase "PROTECT AND PROMOTE." This is a little bothersome because it could lead to unnecessary litigations. Let us take the case of a simple Juan de la Cruz going to court compelling, by a mandamus action that a certain university should provide quality education. Does the Commissioner not think that under this provision, if we do not delete the phrase "PROTECT AND PROMOTE," we may be swamped with unnecessary litigations, Madam President?** Notwithstanding the observation of the Honorable Guingona, there may indeed be some "diploma mills" abounding all over the country. What is the Commissioner's thinking about this, Madam President?

FR. BERNAS: My thinking about that, Madam President, is that I do not think we really need to fear because concretely, for instance, **if a student were studying in a school and found out that the teachers were unqualified, the facilities were not as promised and so forth, then he could appeal to this provision. He should have a right to appeal to this.**

MR. SUAREZ: Precisely, **that student will seek the protection of the State.**

FR. BERNAS: **Correct.**

MR. SUAREZ: **He can do this by compelling that university or school to improve the quality of its education. Can he do that?**

FR. BERNAS: **Yes, or if one wants that school to continue its operation, the complaints could be addressed also to Congress. Usually [,] a school is unable to continue because it needs money. Precisely [,] a school could have a low standard because it does not have the money to pay qualified teachers, to buy good books and so forth. Hence, students could address their complaints to the State also, telling the State: "Look, if you want the school to continue, it is your duty to support it."**

MR. SUAREZ: I have been handling a number of cases in behalf of student demonstrators who were demanding quality education in the form of good teachers, good books, academic freedom, improved facilities. Will this statement "The State shall protect and promote the right of all citizens to quality education at all levels," be a license or permission for them to go before our courts and demand the protection which is provided under this provision?

FR. BERNAS: The answer would have to be in the affirmative, with proper explanation. If the school involved is a state school, then I think the State can easily answer that. But if the school involved is a private school, which is precisely in such situation because the State is not allowing a private school to collect the tuition that is necessary to raise its quality, then the private school would have a proper defense. **This will awaken the eyes of the State to the fact that, if the private schools are to deliver quality education, then there must be some reasonableness in the regulation of tuition fees.**

MR. SUAREZ: So who, in the ultimate analysis, will determine whether a certain school is providing quality education or not? Would it be the courts or the State through its instrumentalities or agencies like the Ministry of Education, Culture and Sports?

FR. BERNAS: Certainly, **the State, by its police power, can insure (sic) that there are minimal levels of quality education. But there are other ways of insuring quality. Private accrediting associations, for instance,** are very effective in raising the quality of education and part of the thing which can be done by the State is to recognize private schools that are already delivering quality education. Hence, we should not just lump them together with everybody else in terms of regulation.

MR. SUAREZ: Under the Commissioner's theory, that assumes that there will be practically a reexamination or review of the quality of the education now being given by these private schools. Is that what the Commission has in mind?

FR. BERNAS: We are entering into the area of accreditation. **Certainly, the State has some authority to determine at least minimum levels of quality.** But private educators also have the right to require even more.

MR. SUAREZ: Can we agree on the procedural matters to be taken up regarding the matter of providing quality education? I asked so because I would like to prevent the proliferation of suits against the State or the school. Can we put in the record that under this provision, what is contemplated is that a complaining student can address his protest against the State instrumentalities or agencies before going to the courts for seeking refuge under this particular provision?

FR. BERNAS: Under the principles of exhaustion of administrative remedies, yes.

MR. SUAREZ: Thank you.

For another, the Constitutional Commission accepted that the State has the duty to provide for means to achieve quality education for all, but at the same time recognized that education at the tertiary level is a right only to those qualified for it, thus:

FR. BERNAS: Madam President, I would like to **introduce the concept of quality as early as possible. We are trying to raise the standards of education.** And if we say that our aim is any type of education, then we would be diluting our aim. So I would like to **introduce the concept of quality as early as possible** in the very first sentence of the Article on Education.

MR. RAMA: Madam President.

THE PRESIDENT: Commissioner Rama is recognized.

MR. RAMA: I was insisting on the inclusion of the words "QUALITY EDUCATION," because we have a peculiar problem in this country. There has been a survey which shows that many of our schools are "diploma mills." That is a peculiar problem of this country. In other words, we should frame a Constitution not in the vacuum of theories and principles from other countries. We should address this peculiar problem.

Now why quality education? **It would be defeating our purpose if we give education to everybody. And with the kind of education that we have which is farcical, it gives no education at all. So this is a peculiar problem that I believe is one of the biggest rackets in this country.** The parents are made to pay and sacrifice all their lives to send their children to school to get inferior or no education at all. And that is a waste of money and the biggest racket of which the parents in this country are victims. So I hope that we maintain the words "QUALITY EDUCATION" to address a peculiar problem in this country.

MR. GUINGONA: Madam President, I would like to take exception to the particular remark of the [H]onorable Floor Leader that there is rampant existence of "diploma mills." I do not know of the survey he is talking about. If he is talking of the SOUTELLE survey, what was shown there was that, in general, public education in the elementary and secondary level performs in a less efficient

manner than that in the private schools. If he is referring to the Monroe survey, that occurred more than 30 years ago.

What I am trying to say, Madam President, is that generally, our educational system, both public and private, is providing quality education because, clearly, the fact that we have had graduates whom I said had distinguished themselves in many areas of activities and that we have been attracting even foreign students to this country mean that we are not providing a very poor type of education really.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Although Commissioner Guingona, our vice-chairman on Education, has made substantive research on this matter, we still agree with the proponents that on the primary level, particularly in barangay schools, there is much to be desired in terms of quality of education. So I think, generally, the committee accepts the concept of quality which we have included on page 2, Section 1 (c). The proponents would like to transpose this to Section 1 (a) as its first sentence, because we will note that it is on page 2.

BISHOP BACANI: Madam President.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: Actually, my proposal also includes that — that **we just state in Section 1 (a) that the State shall protect and promote the right to education of all citizens and amend Section 1 (b) to read: “The State shall establish and maintain a system of free public ELEMENTARY education AND SHALL PROVIDE MEASURES THAT WILL MAKE ACCESSIBLE TO ALL EDUCATION AT THE ELEMENTARY AND HIGH SCHOOL LEVELS AND AT THE TERTIARY LEVEL FOR THOSE QUALIFIED.”** (Emphasis supplied)

MR. GUINGONA: Madam President, may I invite the attention of the [H]onorable Commissioner that at our caucus held two days ago, the committee agreed that we would deliberate on this proposed article on a section-to-section basis. The [H]onorable Commissioner Bernas is now going to the next section.

Actually, we agreed that the sequencing would not be done by us here on the floor. We have taken into consideration the proposals of the [H]onorable Commissioners Maambong and Monsod and we have, in fact, already prepared our sequencing which we are ready to distribute either this afternoon or tomorrow in final form.

So we believe that the sequencing is not to be considered here. What we should consider is the substance of the various sections. If Commissioner Davide has his own proposal regarding sequencing, we would also be glad to take that into consideration so we should first take the proposal of Commissioner Bernas with regard to Section 1 (a) and proceed to Section 1 (b).

BISHOP BACANI: Madam President, the reason I came in at this point is that **precisely I have a difficulty establishing a right of all citizens to education at the tertiary level. I have no difficulty affirming strongly that that should be made accessible to all and that those qualified should be admitted. But I cannot, at this point, affirm that every citizen has a right to education at the tertiary level. That it should be made accessible to all, is quite clear to me; but that everybody has a right to that, is not clear to me.** That is the reason I formulated my amendment in that way.

MR. GASCON: I believe Commissioner Tan, who is a member of the committee, wishes to present something.

THE PRESIDENT: Commissioner Tan is recognized.

SR. TAN: I have been feeling confused because we have been talking about quality education and evidently our concept of quality education is different. Some of us believe that we do not have quality education and others believe that we are so great in quality education that foreigners come to our country to be educated.

Since this is very substantial and important for all of us more than sequencing, I would like to ask the president of the Ateneo University to let us know what his ideas are about quality education.

FR. BERNAS: Education is a combination of many things. It involves acquisition of information, development of critical thinking, one's artistic talents, moral qualities and his sensitivity to the needs of others, and so forth. All of these, as much as possible, should be maximized. That is my concept of quality education.

Perhaps, it is easier to define what is not quality education. One has to have, at least, the minimum — reading, writing and arithmetic — at least, mastery of a certain language and reading and writing. That is very basic as far as skills are concerned.

And I think it is generally accepted that education, especially in the elementary level, has deteriorated so much. When a person who has the basic talent is accepted into the secondary school and he or she will be capable of receiving instruction proper to secondary schools. This affects the whole chain. If one has poor quality on the basic level of education, it affects the entire system.

What we are trying to say is that the State should attend to this, and this will have to be very gradual. At the moment, for instance, the emphasis, I think, of the government is on making sure that basic education is really solid, because if it is not solid, it affects the quality of secondary education. If secondary education is poor, then the person goes to college unprepared for college work. And if he is allowed to graduate again with a poor quality college education, he goes to university professional education even more unprepared. So this is my understanding of quality education.

What I am trying to say is that the State should recognize its duty to promote quality education and as much as possible

make this accessible to all and not just to the wealthy. (Emphasis supplied)

THE PRESIDENT: Commissioner Padilla is seeking recognition.

MR. PADILLA: Madam President, I am in favor of the proposal of Commissioner Aquino which is more simple and clear. Our country, Madam President, was one of the highest in literacy rate in Asia. Unfortunately, we have illiterates that count to millions. In fact, we wanted to qualify suffrage to the literates but, apparently, the "Rama resolution" objected to it. Many of our people do not even have the basic three "Rs"; they cannot read or write.

I think the primary purpose of state education, if not private education, is to make all our people, if possible, literate, and that is only the primary grades. Then comes the elementary grades, high school and tertiary education: college, university and other higher branches of learning. Madam President, I am in favor of "quality education," because even law students sometimes have no adequate qualification. Many of them cannot even write clear and correct English. But to say that we must assure quality education from the primary or elementary grades to the tertiary level is a beautiful dream. I am not against quality education, but to impose it from the very start when we cannot even make all our people literate is somewhat visionary. We have to be a little more practical and make our people first literate through the primary grades. I have been mentioning minimum requirements to prevent some schools that others call "diploma mills" to operate as sources of profit without the real purpose of true education. But finding or qualifying with the minimum requirements does not necessarily mean high quality education. Why do we not just say, as Commissioner Aquino stated "EVERY CITIZEN HAS AN EQUAL RIGHT TO EDUCATION. THE STATE GUARANTEES THAT NO ONE SHALL BE LEFT WITHOUT ACCESS TO EDUCATION"? It is very simple as the first paragraph. And later on we may mention elementary, secondary and tertiary education. **I do not believe that the State has a right or duty to give all the citizens tertiary education. That will be limited to some students, whom God has given more talents, who are qualified for higher learning.** After the elementary grades, and even before high school, many students go to technological schools rather than pursue liberal education. I am in favor of liberal education, with the basic principles of logic, but that cannot be extended to all citizens and, inevitably, not as a mandatory duty of the State.

Thank you, Madam President.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: May I just reiterate that when the proposal here says that all citizens should aspire for quality education or that the State should protect and promote the right of all citizens to quality education, it does not mean that everyone is entitled to go to UP. That is not what it means. **What it means is that all citizens are entitled to quality education according to their level of talent. At**

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least on the elementary level he should have quality education, but if he has the talent to go further, then he should be given quality education in the secondary level. And if he has the talent to go further, he should be given quality education in the tertiary level. I would like to emphasize the idea of “quality” because we are living in a context of a Philippine situation where educators are precisely deploring the deterioration of education in the Philippines. So, if we just mention education in general again, we are losing this opportunity to emphasize the urgency of raising the level of education in the Philippines. We had a fairly good system of public education some years ago, but it is commonly accepted that both on the private and the public levels, there has been a very serious deterioration in education. And we must address this. We have the opportunity, and we do this by emphasizing “quality.” **I am telling the State: Do what you can to improve the quality, and do what you can to make sure that this quality education is accessible not just to those who can afford to pay high tuition but to everybody. In other words, to be more concrete, for instance, the State maintains the University of the Philippines. And anyone who is qualified has a right to try to get into UP. We are telling the State here, as much as possible, to establish more state colleges and universities around the Philippines. Or, if this is not acceptable, at least, give subsidies to students so they can go to private schools. This is what we are saying. We are not saying that everyone should go to the university level. We are not saying that at all.**

MR. SARMIENTO: Madam President.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Before I propound one question to Commissioner Bernas, may I just say that with that explanation, I think this provision is not visionary nor idealistic, but practical and good for our people. When the Commissioner speaks of quality education at all levels, will this include quality education at the pre-school?

FR. BERNAS: I do not know what the status of pre-schooling is now. I think preschool means “before the school.”

MR. SARMIENTO: Let us say, nursery and kindergarten. Would these be covered?

FR. BERNAS: I would say no.

MR. SARMIENTO: I thank the Commissioner.

MR. GUINGONA: Madam President, Commissioner Bernas spoke of Philippine conditions and I had made reference to the degree of the quality of education. In relation to tertiary education, if we try to compare, for example, a Filipino student with an American student, then perhaps we could say with reasonable certainty that the first year student in the United States would be better qualified. But that is due to other factors. For example, in the

United States, to finish secondary level, the student has to go through 12 years of elementary and secondary education. Here, we only require ten years. So, actually, a first year student in the tertiary level in the Philippines would only be a fifth year high school student in the United States.

FR. BERNAS: Madam President, my own experience is that when some students from some schools in the Philippines go to the United States, they try to enter the equivalent level of the school in the United States. They get in there and they are immediately accelerated. There are some quality schools here.

THE PRESIDENT: May the Chair know whether or not the committee accepts this new formulation.

MR. VILLACORTA: Madam President, before we announce our decision, we would like to point out that things would have been simpler if the body accepted the original formulation of the committee which says:

Education is the right of every citizen of the Philippines. The State recognizes its duty of providing education to all citizens.

But after conferring with the members of our committee, we are accepting the Bernas, Rama, Aquino and Davide amendments.

MR. GASCON: Madam President, what we would like to emphasize first is that we are now discussing Section 1 (a) and these are the basic principles we would like the body to discuss: the right of every citizen to education and the duty of the State to provide for such education. We are not yet speaking of the different levels and others.

Now there have been proposed reformulations of the basic principles. For example, in the Aquino, Bernas, Davide and Rama amendments, when we speak of the duty of the State, of course, we are already taking as a basic premise the primary right and duty of the parents. This is already an assumed premise. The duty of the State to provide education is included in the phrase "The State shall protect and promote." Then the provision defines that there is such a right to education of all citizens. It continues to define further its duty by stating that it shall take appropriate steps to make education accessible, which is the basic essence of the second sentence in our original proposal. There is a new added concept, which is the concept of quality education, the definition of education that not only is it the duty of the State to support the citizen's right to education but also to assure that whatever education such a citizen thinks as his right, should be quality.

We do not define quality as the levels of education alone — primary, secondary, tertiary. There could be different forms of quality education. So this is a new added concept to our original proposal; that is why we have accepted the proposed section. We feel that it still reflects our basic principles of defining the right of the citizen to education and the duty of the State to provide for such.

I have earlier expounded in my Concurring and Dissenting Opinion my analysis and reasons for maintaining that the **police power measure of requiring the PHILSAT is valid.**



Suffice it to state that my analysis and reasons are supported not only by the **doctrinal tenets** defining the *breadth of police power vis-à-vis* academic freedom but also by the **original intent** of the **framers of the Constitution** on the *breadth of academic freedom* insofar as the **admission of students to tertiary education** is concerned.

There has been **so much focus on the four freedoms** that underlie **institutional academic freedom** – the institution is to determine for itself on academic grounds: (1) who may teach, (2) what may be taught, (3) how it shall be taught, and (4) who may be admitted to study.

While admittedly this has been **how academic freedom has mutated** in Philippine jurisprudence, academic freedom **started** as a **specie of free speech or expression**. The State **cannot interfere** with the **teacher's right to inquire and pursue such inquiry**, a right that slowly cascaded to students and institutions alike.

In his Concurring and Dissenting Opinion, Justice Leonen's survey of case law on academic freedom **correctly canvassed the issue so far directly settled** in our jurisprudence – the **right of the students** to obtain tenure in their school and course *vis-à-vis* the **right of the institutions** to refuse admittance to students or to discontinue their tenure.

The **takeaways** from these cases are **two-fold**.

First, the State has the **right to intervene** in defense of the right of one or the other.

Second, the State has the **right to impose minimum admission requirements** and **students cannot question this police power measure when it is properly exercised**. This was demonstrated in the dispute over the validity of the national admission test to medical schools, or the National Medical Admission Test, as held in *Tablarin v. Gutierrez*⁴ and *Department of Education, Culture, and Sports v. San Diego*.⁵

It has been suggested that *Tablarin* and *San Diego* are **not controlling** in the present cases **because here the law schools themselves oppose** the PHILSAT and other impositions of the Legal Education Board (LEB).

I most respectfully **disagree**.

Both *Tablarin* and *San Diego* have held that the National Medical Admission Test is a **valid exercise of police power**. Since the **test of validity of police power is the same regardless of the identity of the right-holder**, it **should not matter** that the *complaining parties* in these cited cases were

⁴ See 236 Phil. 768 (1987).

⁵ See 259 Phil. 1016 (1989).

students who were denied admittance *and not the medical schools* with whom they sought enrolment.

The requisites of a **valid police power measure** are: (a) the **interests of the public generally**, as distinguished from those of a particular class, require the interference of the State, and (b) the **means employed are reasonably necessary to the attainment of the object** sought to be accomplished and **not unduly oppressive upon individuals**.

The **requisite public interests** are the same regardless of the stakeholder – student or school. The **first prong** of the **proportionality test** is the same regardless again of the stakeholder – student or school. This is because the **nexus** of this first prong is **between the public interests involved and the means used**, the requisite proportion being reasonable necessity. The **second prong** of the **proportionality test**, *i.e.*, unduly oppressive upon the right-holder, will call for an inquiry into the **specific circumstances** of the right-holder, here, the school.

In the case of students and schools, I **cannot find any significant differences** between them. In other words, since a national admission test is **not unduly oppressive** to aspiring medical students, it **should not also be unduly oppressive** to medical schools. We go back to the **basic premise of tertiary education** as envisioned by the **Constitutional Commission** whose work is reflected in the *Constitution* on academic freedom. Entry to **higher learning** is **not a right** and **may be availed of only by those having the requisite capacity as defined by the schools themselves** and if **valid** as a **police power measure** by the State as well.

This is the doctrine in *Tablarin* and *San Diego*. I respectfully submit that **the ruling in these cases should apply** to the present cases and therefore **the result should be similar** for all these cases.

The **compelling public interest** to achieve **quality** education in law schools for law students **cannot be disputed**. The **means** to accomplish this goal **need not be absolutely necessary** – the test is simply **reasonable necessity**. Imposing a **screening and testing mechanism** as the PHILSAT in the forms it was previously administered **will certainly help** determine and instill a **modicum of essential skills** among aspiring law students. To be sure, PHILSAT is **not the cure-all** for **mediocrity** or even **baseness** among law students, **but it will certainly help**. Once again, absoluteness is **not** the test but only reasonableness of PHILSAT's necessity.

Indeed, if **admission tests** are **not at all helpful**, why do *some* law schools impose them?

The PHILSAT was **not envisioned** for the ivy-league law schools. Rather, it was designed for all aspiring law students and law schools that have been left behind. It is a **minimum** criterion that is meant to sift through the

variety skills that this cohort of students has and will need to have in a law school.

In any event, the way PHILSAT has been designed by the LEB is **very accommodating of various circumstances** to address the public goals that PHILSAT was set to achieve. The **accommodations** are available to both the aspiring law students **and** the law schools. I have detailed these accommodations in my Concurring and Dissenting Opinion and do not have to needlessly repeat them here.

It has also been suggested that admission tests like PHILSAT are elitist and for this reason they are wrong. If this is the case, then we should **scrap** all admission tests. UPCAT and PSHS admission test are difficult to hurdle. So are the other admission tests of Ateneo, La Salle, San Beda, UST, just to name a few due to space constraints. But by design, admission tests are by and large elitist. There are accommodations by way of **prerogatives** but even these **have been assessed** to be **patriarchal, feudal, and in the end anti-egalitarian**.

The real issue is **not the admission tests** themselves. It is the **preparatory education going backwards**. The admission tests are just the messenger of a woeful primary and secondary education. **But** to the passers of these admission tests, obtaining admittance is a **badge of family honor and individual accomplishment**. This has always been the case, whether or not we accept. Hence, let us **not shoot the messenger** for the woeful message, if any, it brings.

The **paradigm of restraining the enforcement of the PHILSAT** is also to me **not acceptable**. Let us allow the LEB to **do its mandate** and **from there** see if grave abuse of discretion has attended such exercise. As of now, **only speculations** of disastrous consequences have been propounded. Since the *Constitution* itself allows State regulation of admission to tertiary schools, especially the professional ones, and this regulation can **coexist** with academic freedom, **only by letting the plant grow and the flower to bloom** will we be able to judge for ourselves the **unreasonableness** of this entire exercise. **Only until then**, the challenge to PHILSAT will remain **speculative and biased turf-protection**.

Second, I am against the conclusion of the *ponencia* that PHILSAT's passing mark of 55% is unconstitutional for being unreasonable. This passing mark requirement is more of a policy decision than a legal one since there is no constitutional rule against imposing a passing mark, let alone, a passing mark of 55%. The results of the administration of past PHILSAT examinations will show relatively high passing rates. The individual questions themselves demand a demonstration of just a modicum of grammar, reasoning, and verbal organization skills. With the layers of accommodations for both students and schools alike, I cannot see how this particular design of PHILSAT could be egregious and oppressive.

Finally. I maintain my position that Section 7 (g) of Republic Act No. 7662⁶ (RA 07662) pertaining to the law practice internship requirement prior to taking the bar examinations and Section 7 (h) of the same law relative to the adoption of a system of continuing legal education, are **not unconstitutional**.

Section 7 (g) and (h) empower the LEB –

x x x x

g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar xxx and:

h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of practising lawyers in such courses and for such duration as the Board may deem necessary.

x x x x

As elucidated in my earlier Opinion, both Sections 7 (g) and 7 (h) have a **dual aspect** that cater to both **legal education** and **practice of law**. Whether the **particular activities** involved in the **actual exercise** of the powers mentioned in (g) and (h) would belong to one or the other would **have to be determined from the specific circumstances** of the activities concerned. **But this early, we cannot say** for sure that Sections 7 (g) and 7 (h) are unconstitutional because insofar as the LEB is concerned, the **core** of these mandates has to do with **legal education** over which the Supreme Court has **no authority**.

At any rate, the main Decision upheld the validity of Section 7 (f)⁷ of RA 7662 which grants the LEB the power *to prescribe the basic curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, and such other courses of study as may be prescribed by the law schools and colleges under the different levels of accreditation status*. Thus, the LEB has the right to include an apprenticeship program in the basic curriculum for law study pursuant to said provision, aligned as it is to law practice and social consciousness.

⁶ AN ACT PROVIDING FOR REFORMS IN THE LEGAL EDUCATION, CREATING FOR THE PURPOSE, A LEGAL EDUCATION BOARD AND FOR OTHER PURPOSES.

⁷ (f) to prescribe the basic curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, and such other courses of study as may be prescribed by the law schools and colleges under the different levels of accreditation status;

CONCLUSION

Accordingly, I respectfully register both my concurrence with and dissent from the majority opinion in the present cases. I agree that paragraphs 1 and 2 of Section 15, LEBMO No. 1-2011 are valid. I, too, concur in the partial denial of petitioners' respective motions for reconsideration. I nevertheless maintain my stand that (1) PHILSAT is a valid exercise of police power; (2) the requirement of obtaining a passing rate in PHILSAT to law school admission does not transgress academic freedom; and (3) Section 7 (g) and (h) of RA 7662 are constitutional as these provisions do not encroach upon the power of the Supreme Court over the practice of the legal profession.


AMY C. LAZARO-JAVIER
Associate Justice