EN BANC

G.R. No. 257608 — THE SENATE OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT VICENTE C. SOTTO, III, SENATE PRESIDENT PRO TEMPORE RALPH G. RECTO, SENATE MAJORITY FLOOR LEADER JUAN MIGUEL F. ZUBIRI, SENATE MINORITY FLOOR LEADER FRANKLIN M. DRILON, AND SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS CHAIRPERSON RICHARD J. GORDON, and in their official and individual capacities as members of the Senate of the Philippines, *petitioners*, ***versus*** **THE EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA AND SECRETARY OF HEALTH FRANCISCO T. DUQUE, III,** *respondents*.

Promulgated:

July 5, 2022

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DISSENTING OPINION

In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

– ***Angara v. Electoral Commission***[1]

CAGUIOA, *J.*:

The President, through Executive Secretary Salvador C. Medialdea, issued a Memorandum[2] dated October 4, 2021 (subject Memorandum) directing all officials and employees of the Executive Department to cease from attending the Senate Blue Ribbon Committee (SBRC) inquiries on the government's disbursement of the Coronavirus Disease 2019 (COVID-19) funds. After the issuance of the subject Memorandum, the executive officials

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[1] 63 Phil. 139, 157 (1936).

[2] Re: Attendance in the Senate Blue Ribbon Committee Hearings on the 2020 Commission on Audit Report, issued by President Rodrigo R. Duterte through Executive Secretary Salvador C. Medialdea.

invited to attend the inquiries begged off from the hearings, citing the said directive from the President.[3]

Thus, the Senate of the Philippines (Senate) filed the instant petition for *certiorari* and prohibition which primarily seeks to declare the subject Memorandum null and void for being unconstitutional.[4]

The *ponencia* dismisses the petition on procedural grounds. Ultimately, it finds that there is no actual case or controversy ripe for judicial adjudication.[5] This finding is premised on the availability of a remedy under the *Senate Rules of Procedure Governing Inquiries in Aid of Legislation* (Senate Rules), which, according to the *ponencia*, the Senate should have first resorted to prior to filing the present petition for *certiorari*.[6] The *ponencia* posits that the subject Memorandum is actually a jurisdictional objection which the Senate should have first overruled based on Section 3[7] of the Senate Rules. Likewise, the *ponencia* submits that there is no immediate or threatened injury to the powers of the Senate because it has not exercised them.[8]

I vigorously dissent.

I.

It is true that even with the expanded power of judicial review, courts are required under Section 1, Article VIII of the Constitution "to settle actual controversies involving rights which are legally demandable and enforceable." Thus, in order to be justiciable, there should be an existing case or controversy that is appropriate or ripe for determination. It should not be conjectural or anticipatory, as courts do not give out advisory opinions on hypothetical or assumed facts.[9]

The Court has repeatedly recognized that an actual case or controversy exists when the parties to the proceeding assert conflicting legal rights, or when there is "a contrariety of legal rights that can be interpreted and enforced

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3 *Rollo*, Vol. 1, p. 18.

4 Id. at 3-81.

5 *Ponencia*, p. 18.

6 Id. at 12-19.

7 Sec. 3. *Jurisdictional Challenge.* If the jurisdiction of the Committee is challenged on any ground, the said issue must first be resolved by the Committee before proceeding with the inquiry.

If the Committee, by a majority vote of its members present there being a quorum, decides that its inquiry is pertinent or relevant to the implementation or re-examination of any law or appropriation or in connection with any pending or proposed legislation or will aid in the review or formulation of a new legislative policy or enactment, or extends to any and all matters vested by the Constitution in Congress and/or in the Senate alone, it shall overrule such objection and proceed with the investigation.

Only one challenge on the same ground shall be permitted.

The filing or pendency or any prosecution of criminal or administrative action shall not stop or abate any inquiry to carry out a legislative purpose.

8 *Ponencia*, p.18.

9 *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 123 (2014).

on the basis of existing law and jurisprudence."[10] The issue must also be ripe for adjudication or it must pose an "immediate or threatened injury to [the petitioner] as a result of the challenged action."[11] Without a complete action on the part of the respondent, or a concrete threat of injury to the petitioning party, there is no controversy ripe for judicial review.[12]

These procedural requirements for the exercise of the power of judicial review is particularly relevant in cases such as the present petition, as these prevent the Court from unnecessarily intruding into areas committed to other branches of the government.[13] But while these requirements are essential to the Court's exercise of its judicial power, the majority should not resort to these technicalities to conveniently justify the dismissal of the present petition, and ultimately, evade its obligation to be the final arbiter on questions involving the validity of the legislative or executive's exercise of its authority.

The Court's expanded power of judicial review is, at its core, predicated on the "**duty** to settle actual controversies x x x 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."[14] Thus, more than a power or authority to settle disputes, the Court has a duty to fulfill its role in the system of checks and balances. In the seminal case of *Francisco, Jr. v. House of Representatives*,[15] the Court acknowledged the significance of this task:

> As indicated in *Angara v. Electoral Commission*, judicial review is indeed an integral component of the delicate system of checks and balances which, together with the corollary principle of separation of powers, forms the bedrock of our republican form of government and insures that its vast powers are utilized only for the benefit of the people for which it serves.
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> > The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government x x x. **And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to**

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10 *Belgica v. Ochoa*, 721 Phil. 416, 519 (2013), citing *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 589 Phil. 387 (2008).

11 Id. at 520

12 See *AMCOW v. GAMCA*, 802 Phil. 116, 146 (2016).

13 *Belgica v. Ochoa*, supra note 10, at 525, citing *Francisco, Jr. v. Toll Regulatory Board*, 648 Phil. 54 (2010).

14 CONSTITUTION, Art.VIII, Sec. 1. (Emphasis supplied)

15 460 Phil. 830 (2003).

> **determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.**
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> In the scholarly estimation of former Supreme Court Justice Florentino Feliciano, "x x x judicial review is essential for the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of government **through the definition and maintenance of the boundaries of authority and control between them**." To him, "[j]udicial review is the chief, indeed the only, medium of participation — or instrument of intervention — of the judiciary in that balancing operation."[16] (Emphasis supplied)

While the Court's duty has often been emphasized in relation to the political question doctrine, there is no reason to discount its significance in relation to the requirement of a justiciable controversy. In fact, the Court has repeatedly echoed this duty when rejecting arguments that raise the prematurity of a petition where the Court is asked to clarify the boundaries of the constitutional authority of its co-equal branches.[17]

In *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*[18] (*Province of North Cotabato*), the Court rejected the Solicitor General's argument that there was no justiciable controversy because the Memorandum of Agreement on the Ancestral Domain was only a proposal that did not create demandable rights and obligations. The Court reasoned: "[t]hat the law or act in question is not yet effective does not negate ripeness."[19]Since the petitions therein alleged that a branch of government has infringed the Constitution, a justiciable controversy was deemed to exist, which the judiciary "not only [has] the right but in fact the duty x x x to settle."[20]

Later, in *Spouses Imbong v. Ochoa, Jr.*,[21] the Court reiterated its ruling in *Province of North Cotabato* that a singular violation of the law or the Constitution is sufficient to "awaken judicial duty."[22] Thus, the mere enactment of the Reproductive Health Law[23] and its implementing rules and regulations, which were alleged as unconstitutional for a variety of reasons, was deemed adequate for purposes of establishing that the case is ripe for judicial review, to wit:

> In this case, the Court is of the view that an actual case or controversy exists and that the same is ripe for judicial determination. Considering that the RH Law and its implementing rules have already taken effect and that budgetary measures to carry out the law have already been passed, it is evident that the subject petitions present a justiciable

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16 Id. at 882-883.
17 See also *Pimentel, Jr. v. Aguirre*, 391 Phil. 84 (2000).
18 Supra note 10.
19 Id. at 484
20 Id. at 486.
21 Supra note 9.
22 Id. at 124.
23 Republic Act No. 10354, AN ACT PROVIDING FOR A NATIONAL POLICY ON RESPONSIBLE PARENTHOOD AND REPRODUCTIVE HEALTH, approved on December 21, 2012.

> controversy. **As stated earlier, when an action of the legislative branch is seriously alleged to have infringed the Constitution, it not only becomes a right, but also a duty of the Judiciary to settle the dispute.**[24] (Emphasis supplied)

Here, following the issuance of the subject Memorandum, Department of Health (DOH) Secretary Francisco Duque III (Secretary Duque) sent a letter dated October 5, 2021 to the SBRC,[25] extending his regrets for not being able to send representatives to the scheduled hearing. He cited the subject Memorandum as basis for not attending the SBRC inquiry. In his subsequent letters to the SBRC, DOH Secretary Duque repeatedly cited the subject Memorandum to justify his absence during the hearings.[26] It is noteworthy that up until the issuance of the subject Memorandum, officials from the concerned departments of the executive, including DOH Secretary Duque, regularly attended the hearings.[27] Naturally, the queries of some Senators during the inquiry remained unanswered since the appropriate official was not present to respond.[28]

Thus, it is completely illogical to claim that "[t]here is no immediate or threatened injury to the powers of the Senate."[29] The issuance of the subject Memorandum, coupled with the glaring absence of the concerned officials of the executive department during the hearings, clearly contradicts this proposition. In fact, the injury, *i.e.*, that the inquiry did not move forward, was already inflicted — no longer simply "threatened" — when the executive officials did not attend the hearings. I therefore disagree with the pretextual dismissal of the petition because of the supposed absence of an actual case or controversy before the Court. This is simply not the case.

To be sure, the issue before the Court is not novel. In *Senate v. Ermita*[30] (*Ermita*), various committees of the Senate conducted inquiries in aid of legislation, which called for the attendance of officials and employees from the executive department, including those employed in the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). Former President Gloria Macapagal-Arroyo issued Executive Order (E.O.) No. 464,[31] directing all heads of departments to "secure the consent of the President prior to appearing before either House of Congress."[32]

Thereafter, the officials invited to appear at the Senate expressed that they would not be able to attend as they had not secured the consent of the President, pursuant to E.O. No. 464. This constrained the Senate, and several

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24 *Sps. Imbong v. Ochoa*, supra note 9, at 124.
25 *Rollo*, Vol. 1, p. 88.
26 Id. at 276, 283.
27 Id. at 102-171.
28 *See* id. at 229-231.
29 *Ponencia*, p. 18.
30 522 Phil. 1 (2006).
31 "Ensuring Observance of the Principle of Separation of Powers, Adherence to the Rule on Executive Privilege and Respect for the Rights of Public Officials Appearing in Legislative Inquiries in Aid of Legislation Under the Constitution, and For Other Purposes," issued on September 26, 2005.
32 *Senate v. Ermita*, supra note 30, at 42-43.

other groups, to file a petition before the Court assailing the constitutionality of E.O. No. 464.[33]

The respondents in *Ermita* argued that there was no case or controversy, there being no showing that the President had actually withheld her consent or prohibited the officials from attending the inquiry. The Court categorically rejected this argument, holding that it was "immaterial" to the determination of whether there is a justiciable controversy:

> Respondents thus conclude that the petitions merely rest on an unfounded apprehension that the President will abuse its power of preventing the appearance of officials before Congress, and that such apprehension is not sufficient for challenging the validity of E.O. 464.
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> The Court finds respondents' assertion that the President has not withheld her consent or prohibited the appearance of the officials concerned immaterial in determining the existence of an actual case or controversy insofar as E.O. 464 is concerned. For E.O. 464 does not require either a deliberate withholding of consent or an express prohibition issuing from the President in order to bar officials from appearing before Congress.
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> **As the implementation of the challenged order has already resulted in the absence of officials invited to the hearings of petitioner Senate of the Philippines, it would make no sense to wait for any further event before considering the present case ripe for adjudication. Indeed, it would be sheer abandonment of duty if this Court would now refrain from passing on the constitutionality of E.O. 464.**[34] (Emphasis and underscoring supplied)

Clearly, *Ermita* ruled that the issue was ripe for adjudication because the officials invited to attend the hearings already failed to attend following E.O. No. 464 — regardless of whether the President actually withheld her consent.

After *Ermita*, the Court was faced with another controversy surrounding E.O. No. 464, this time involving military personnel. In *Gudani v. Senga*,[35] the Court clarified the remedy for the legislature in instances when it requires the attendance of military personnel in any of its hearings in aid of legislation and the President withholds his or her consent — *i.e.*, file a case in court. Thus:

> x x x At the same time, we also hold that any chamber of Congress which seeks the appearance before it of a military officer against the consent of the President has adequate remedies under law to compel such attendance. Any military official whom Congress summons to testify before it may be compelled to do so by the President. **If the President is not so inclined, the President may be commanded by judicial order to compel the attendance of the military officer. Final judicial orders have the**

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33 *See* id.

34 Id. at 32-33.

35 530 Phil. 398 (2006).

> **force of the law of the land which the President has the duty to faithfully execute.**[36] (Emphasis and underscoring supplied)

Considering these, it is therefore untenable to argue that the present petition does not satisfy the requirement of having an actual case or controversy. If the Court, in *Ermita*, found that there was a justiciable issue when the former President issued E.O. No. 464, which did not even explicitly prohibit cabinet officials from appearing in Congress, there should be more reason for the Court to take cognizance of this case. To emphasize, herein subject Memorandum did not merely require prior consent from the President to attend the inquiry in aid of legislation. It directly prohibited officials from attending the SBRC hearings. Worse, the invited officials heeded the directive in the subject Memorandum by not actually attending the hearings. By these undisputed circumstances, there is simply no reason for the Court to shirk its duty and refuse to settle the controversy.

Furthermore, by dismissing the petition on the ground of prematurity, the Court deliberately closed its eyes to the public statements of the President prior to and contemporaneous with the issuance of the subject Memorandum.

As aptly pointed out in the Petition, President Duterte publicly directed his Cabinet members and officials not to attend the hearing, even under pain of contempt:

> 3.14. In the same 30 September 2021 address, the President (a) challenged the Senate to exercise its contempt power at their peril, [*i.e.*], at the risk that the President will himself order the arrest of the Senate [sergeant-at-arms]; (b) instructed the [PNP] and the [AFP] to disobey any arrest orders from the SBRC; and (c) threatened a full-blown "constitutional crisis", with the AFP and the PNP backing him up:
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> x x x x
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> x x x So ngayon, I'm sure that you will use your contempt powers. Hanggang diyan ka lang. Sergeant-at-arms mo? Susmaryosep, ipaaresto ko 'yan eh.
>
> x x x x
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> 3.23. On 06 October 2021, the President reiterated his orders (1) for Cabinet members and other Executive Branch officials and employees not to attend the Subject Hearings; and (2) for the PNP and AFP not to cooperate in case the SBRC exercises its power of contempt, belittling the Senate – an organ of the Legislative Department, the Executive's co-equal branch – and threatening it with physical harm in the process:
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> x x x x
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> Ang problema lang niyan kay may kaunting powers (*sic*) pero huwag kayong matakot kasi sabi ko wala naman silang mauutusan. Iyong sergeant-at-arms nila it's an office,

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[36] Id. at 427.

> maybe they have one or two or three assistants there. Iyan lang ang matawagan nila para i-detain kayo. Pero 'pag nangyari 'yan, I am giving this warning to the Senate: ayaw ko ng gulo. We recognize your power to cite people to help you in aid of legislation. Baka 'yang inyong 'in aid' maging first aid 'yan.[37]

There is therefore no doubt as to whether the President would eventually allow the invited cabinet officials to attend the SBRC hearings. This statement also further establishes that far from being premature, the challenged action is complete and ripe at the time of the filing of the petition.

There being an assertion by the Senate that the subject Memorandum is unconstitutional for infringing on its authority to conduct inquiries in aid of legislation, and an opposite claim on the part of the executive, it cannot be concluded that there is no actual case or controversy before the Court. The controversy involves two co-equal branches no less and raises a question on the application or interpretation of the Senate's constitutionally mandated authority.

II.

I disagree with the *ponencia*'s characterization of the subject petition. The Court, in *Padlan v. Spouses Dinglasan*,[38] held that:

> x x x The **nature of an action**, as well as which court or body has jurisdiction over it, **is determined based on the allegations contained in the complaint of the plaintiff**, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted.[39] (Emphasis supplied)

Respectfully, a perusal of the petition would show that the instant *certiorari* is not and should not be treated as one filed by the executive for the purpose of challenging the jurisdiction of the SBRC.[40] In fact, the executive never filed such a petition even before the Senate and simply proceeded with the issuance of the subject Memorandum prohibiting the concerned officials from attending the hearings. The subject Memorandum was also only addressed to the executive officials, not to the Senate or the SBRC. Without a jurisdictional challenge lodged with the Senate, it is incongruous to argue that the Senate should wield its power provided under Section 3 of the Senate Rules. Verily, contrary to the presuppositions advanced by the *ponencia*, there is no other plain, speedy, and adequate remedy available to the Senate.

In any case, I stress that the Senate itself filed the petition before the Court mainly to question the constitutionality of the subject Memorandum of

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37 *Rollo*, Vol. 1, pp. 15-19.
38 707 Phil. 83 (2013)
39 Id. at 91
40 *Ponencia*, p. 18.

the President.[41] *Ergo*, the Senate maintains that the subject hearings in response to the findings of the Commission on Audit were conducted pursuant to its authority to conduct an investigation in aid of legislation. Thus, even assuming that the issuance of the subject Memorandum presented a jurisdictional challenge before the Senate, **to require the Senate to first rule on it under Section 3 of its own rules before filing the instant petition will just be a trivial and vain exercise.**

To be sure, the Senate alleges that by issuing the subject Memorandum, the Executive Secretary, under the authority of the President, blatantly frustrated the exercise of its constitutional power.[42] This bone of contention presented by the Senate is already beyond and above a mere assertion of its jurisdiction to conduct the inquiries and to compel the executive officials to again attend the hearings. This time, the Senate is already questioning the constitutionality of the action of a co-equal branch.

These issues are evidently outside the purview of the Senate's own rules. Therefore, the instant petition is not premature. By constitutional design, the task to determine whether the issuance of a co-equal branch of government is violative of the Constitution falls on the Court. As the Court in *Angara v. Electoral Commission* put it, "[i]n cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof."[43] **In other words, when there is a perceived encroachment by one branch of the government on the mandate and functions of the other, there is no other arbiter than the Court itself.**

Finally, as in *Ermita*, the Senate was able to establish that the requirements for judicial review are present in this case. The majority's rigid application of the procedural rules does not give due regard to the legal implication of the petition's dismissal — which is to effectively cloak the President's actions with some semblance of legitimacy. I submit that when the question presented to the Court is justiciable — *i.e.*, whether the President's directive prohibiting executive officials from attending the Senate hearings on the government's disbursement of COVID-19 funds violates the Constitution — the majority should not hide behind these procedural requirements and refuse to rule on the issue. The Court has the duty to adjudicate, not just to settle conflicts between the executive and the legislative, but more importantly for the people and the discerning electorate. To rule otherwise could possibly lay the groundwork for the Court to easily evade this constitutionally mandated duty.

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41 *Rollo*, Vol. 1, p. 66; *rollo*, Vol. 3, no pagination, Petitioner's Reply, p. 4.
42 *Rollo*, Vol. 1, pp. 43-46.
43 *Angara v. Electoral Commission*, supra note 1.

In view of the foregoing, I strongly dissent from the majority. The petition should NOT be dismissed based merely on procedural grounds. Instead, the Court should decide on the constitutionality of the October 4, 2021 Memorandum of the President based on established jurisprudence.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice