G.R. No. 210503 – GRECO ANTONIOUS BEDA B. BELGICA, *Petitioner* v. THE HONORABLE EXECUTIVE SECRETARY, THE HONORABLE SECRETARY OF BUDGET AND MANAGEMENT, and THE PHILIPPINE CONGRESS, as represented by THE HONORABLE SENATE PRESIDENT and HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES, *Respondents.*

Promulgated:
October 8, 2019

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. Based on the reasons herein discussed, the present petition assailing the constitutionality of the 2014 General Appropriations Act (GAA) provisions on the Unprogrammed Fund, the Contingent Fund, the E-Government Fund, and the Local Government Support Fund[1] should be dismissed for lack of merit.

Petitioner Greco Antonious Beda B. Belgica (petitioner) mainly asserts that all lump-sum discretionary funds – including the foregoing appropriations as provided for under the 2014 GAA – are unconstitutional on the basis of certain pronouncements made in the Court's Decision dated November 19, 2013 in *Belgica v. Ochoa*[2] (*2013 Belgica*).

Petitioner's reliance on the *2013 Belgica* Decision is misplaced.

To recount, in the *2013 Belgica* case, the 2013 Priority Development Assistance Fund (PDAF) Article, together with all the legal provisions that "authorize/d legislators – whether individually or collectively organized into committees – to intervene, assume or participate in any of the various post-enactment stages of the budget execution," as well as those that "confer/red personal, lump-sum allocations to legislators from which they are able to fund specific projects which they themselves determine,"[3] were declared

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[1] See Item XLVI (Unprogrammed Fund), Item XXXVII (Contingent Fund), Item XXXIX (E-Government Fund, and Item XXXVI (D) (Local Government Support Fund) of Republic Act No. (RA) 10633, entitled "AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND FOURTEEN, AND FOR OTHER PURPOSES," approved on December 20, 2013.

[2] 721 Phil. 416 (2013).

[3] Id. at 582. The dispositive portion thereof partly reads (see id. at 582-584):

> "**WHEREFORE**, the petitions are **PARTLY GRANTED**. In view of the constitutional violations discussed in this Decision, the Court hereby declares as **UNCONSTITUTIONAL**: **(a)** the entire 2013 PDAF Article; **(b)** all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional

unconstitutional. For its proper context, the pertinent arguments of the parties therein were as follows:

> b. Application.
>
> In these cases, petitioners claim that "in the current x x x system where the PDAF is a lump-sum appropriation, the legislator's identification of the projects after the passage of the GAA denies the President the chance to veto that item later on." Accordingly, they submit that the "item veto power of the President mandates that appropriations bills adopt line-item budgeting" and that "Congress cannot choose a mode of budgeting [which] effectively renders the constitutionally-given power of the President useless."
>
> On the other hand, **respondents maintain that the text of the Constitution envisions a process which is intended to meet the demands of a modernizing economy and, as such, <u>lump-sum appropriations are essential to financially address situations which are barely foreseen when a GAA is enacted</u>. They argue that the decision of the Congress to create some lump-sum appropriations is constitutionally allowed and textually-grounded.**[4] (Emphasis and underscoring supplied)

As it turned out, the Court agreed with the position of therein petitioners, essentially holding that the ₱24.79 Billion appropriation in the 2013 PDAF Article was nothing more than a "collective allocation limit" which amount would be later "divided among individual legislators who would then receive personal lump-sum allocations and could, after the GAA is passed, effectively appropriate PDAF funds based on their own discretion. As these intermediate appropriations are made by the legislators only after the GAA is passed and hence, outside of the law, it necessarily means that the actual items of PDAF appropriation would not have been written into the General Appropriations Bill, and thus, effectuated without veto consideration."[5] Accordingly, the 2013 PDAF Article was characterized by the Court as a "**<u>lump-sum/post-enactment legislative identification budgeting system</u>** x x x which subverts the prescribed procedure of presentment and consequently impairs the President's power of item veto x x

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Insertions, which authorize/d legislators – whether individually or collectively organized into committees – to intervene, assume or participate in any of the various post-enactment stages of the budget execution, such as but not limited to the areas of project identification, modification and revision of project identification, fund release and/or fund realignment, unrelated to the power of congressional oversight; <u>(c)</u> all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions, which confer/red personal, lump-sum allocations to legislators from which they are able to fund specific projects which they themselves determine; <u>(d)</u> all informal practices of similar import and effect, which the Court similarly deems to be acts of grave abuse of discretion amounting to lack or excess of jurisdiction; and <u>(e)</u> the phrases (1) "and for such other purposes as may be hereafter directed by the President" under Section 8 of Presidential Decree No. 910 and (2) "to finance the priority infrastructure development projects" under Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, for both failing the sufficient standard test in violation of the principle of non-delegability of legislative power.

x x x x

SO ORDERED. (Emphases in the original)

4 Id. at 553.
5 Id. at 554.

x[,]"[6] such that he would be forced "to decide between (*a*) accepting the entire ₱24.79 Billion PDAF allocation without knowing the specific projects of the legislators, which may or may not be consistent with his national agenda[;] and (*b*) rejecting the whole PDAF to the detriment of all other legislators with legitimate projects."[7]

Notably, the Court further held that "**<u>even without its post-enactment legislative identification feature</u>**, the 2013 PDAF Article would remain constitutionally flawed since it would then **<u>operate as a prohibited form of lump-sum appropriation x x x above-characterized</u>**."[8] As may be gleaned from the preliminary discussions in the Court's ruling portion, the phrase "*prohibited form of lump-sum appropriation x x x above-characterized*" pertains to those lump-sum appropriations which negate the President's proper exercise of his item veto power. In this regard, the Court discussed that "**<u>an item of appropriation must be an item characterized by singular correspondence – meaning, an allocation of a specified singular amount for a specified singular purpose, otherwise known as a 'line-item</u>**.' This treatment not only allows the item to be consistent with its definition as a 'specific appropriation of money' but also ensures that the President may discernibly veto the same."[9] In the same light, the Court added that "**<u>what beckons constitutional infirmity are appropriations which merely provide for a singular lump-sum amount to be tapped as a source of funding for multiple purposes</u>**. Since such appropriation type necessitates the further determination of both the actual amount to be expended and the actual purpose of the appropriation which must still be chosen from the multiple purposes stated in the law, it cannot be said that the appropriation law already indicates a 'specific appropriation of money' and hence, without a proper line-item which the President may veto."[10]

Applying these precepts on a matter directly at issue in the *2013 Belgica* case (and hence, not mere *obiter dictum*), the Court thus ruled that "the lump-sum amount of ₱24.79 Billion" – again, even without its post-enactment legislative identification feature – would remain unconstitutional because it "would be treated as a mere funding source allotted for multiple purposes of spending, *i.e.*, scholarships, medical missions, assistance to indigents, preservation of historical materials, construction of roads, flood control, *etc.* This setup connotes that the appropriation law leaves the actual amounts and purposes of the appropriation for further determination and, therefore, does not readily indicate a discernible item which may be subject to the President's power of item veto."[11]

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6 Id.; emphasis and underscoring supplied.
7 Id.
8 Id.; emphases and underscoring supplied.
9 Id. at 551-552; emphasis and underscoring supplied.
10 Id. at 552-553; emphasis and underscoring supplied.
11 Id. at 554.

To note, the above-stated holding is in contrast to the Court's observation, also in the *2013 Belgica* case, regarding "the existing **Calamity Fund, Contingent Fund[,] and the Intelligence Fund**."[12] These were classified as "appropriations which state a specified amount for a specific purpose"[13]; hence, "**considered as 'line-item' appropriations which are rightfully subject to item veto**."[14] Likewise, the Court pointed out that "**an appropriation may be validly apportioned into component percentages or values**; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item."[15] Moreover, it was further discussed that "**a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, *e.g.*, MOOE (maintenance and other operating expenses)**, in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power."[16]

Again, it should be reiterated that the Court's disquisition regarding "line-item" and "lump-sum" appropriations all hearken to compliance with the constitutional postulates on separation of powers and Presidential item veto. Relatedly, **the rule on singular correspondence**, as discussed in the 2013 *Belgica*, was therefore meant to subserve these principles. That being said, not all "lump-sum" amounts would defy this rule should observance of these principles be preserved. **It is hence, my opinion that a lump-sum amount may still be considered as a valid item subject to the President's item veto power for as long as the lump-sum amount is meant as a funding source for multiple programs, projects, or activities that may be all *clearly classified as falling under one singular appropriation purpose*. In this sense, the "lump-sum" effectively functions as a "line-item" that is compliant with the doctrine of singular correspondence as amply discussed in the 2013 *Belgica* Decision.**

To elaborate, Section 23, Chapter 4, Book VI of the Administrative Code of 1987,[17] requiring the contents of an appropriation law, provides that:

> Section 23. *Content of the General Appropriations Act.* – The General Appropriations Act shall be presented in the form of budgetary programs and projects for each agency of the government, with the corresponding appropriations for each program and project, including statutory provisions of specific agency or general applicability. The General Appropriations Act shall not contain any itemization of personal services, which shall be prepared by the Secretary after enactment of the General Appropriations Act, for consideration and approval of the President. (Underscoring supplied)

[12] Id. at 552; emphasis supplied.
[13] Id.
[14] Id.; emphasis supplied.
[15] Id.; emphasis supplied.
[16] Id.; emphasis supplied.
[17] Executive Order No. 292, entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987,'" approved on July 25, 1987.

Under Section 2 of Presidential Decree No. 1177,[18] "programs" are "functions and activities necessary for the performance of a major purpose for which a government entity is established,"[19] while "projects" pertain to "component of a program covering a homogenous group of activities that result in the accomplishment of an identifiable output."[20]

By recognizing the more specific categories of "programs," "projects," and even "activities," our budgeting laws do not prohibit general items of appropriation, which may be classified as lump-sums if they are meant to fund these more specific entries in the appropriation law. On this score, it must be pointed out that the level of generality or specificity of an item falls within the Congress's discretion. After all, as held in *Bengzon v. The Secretary of Justice*,[21] the Court had only defined an "item" as "the particulars, the details, the distinct and severable parts of the appropriation or of the bill[,]" and that "[n]o set form of words is needed to make out an appropriation or an item."[22]

However, as in all exercises of discretion, the limit of one's authority must always square with the framework of the Constitution. The fact that a matter is within a political department's prerogative – such as determining the generality or specificity of an item – does not, as it should not, preclude the Court from canalizing these powers within the contours of proper constitutional order. Thus, as a limitation on "lump-sum" appropriations, I submit that every lump-sum amount, for the same to be permissible, must be singularly correspondent – and hence, effectively functions as a proper "line-item" – so that it may, in the spirit of the 2013 *Belgica* ruling, be susceptible to the proper exercise of the President's line-item veto power, and in so doing, preserves the in-built cohesion between checks and balances and separation of powers.

At the risk of belaboring the point, a valid item is one characterized by singular correspondence – meaning, an allocation of a specified singular amount for a specified singular purpose. A lump-sum, albeit meant as a funding source for multiple programs, projects or activities, may effectively function as a proper "line-item" for as long as these multiple programs, projects or activities are clearly classified as falling under one singular appropriation purpose. ***This singular purpose may be as general or specific as the legislative department deems it to be, provided that such generality or specificity does not negate the President's proper exercise of his item veto power***. This danger was what was clearly contemplated and showcased by the 2013 PDAF Article because the lump-sum amount of ₱24.79 Billion was treated as a funding source for multiple ***unrelated*** purposes such as, as noted

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[18] Entitled "REVISING THE BUDGET PROCESS IN ORDER TO INSTITUTIONALIZE THE BUDGETARY INNOVATIONS OF THE NEW SOCIETY," otherwise known as the "BUDGET REFORM DECREE OF 1977" (July 30, 1977).

[19] Presidential Decree No. 1177, Section 2 (l).

[20] Presidential Decree No. 1177, Section 2 (m).

[21] 62 Phil. 912 (1936).

[22] Id. at 916.

in the case, "scholarships, medical missions, assistance to indigents, preservation of historical materials, construction of roads, flood control, *etc.*"[23] Worse, these multiple unrelated purposes were all made to fall under the ***vague and amorphous*** term "Priority Development Assistance Fund," which ultimately allowed those who were disbursed with the funds (*i.e.*, individual legislators) to decide whatever public purpose they deemed as a "priority." As such, this created a budgeting setup wherein there is no more discernible item left for the exercise of the President's veto power and hence, constitutionally infirm.

On the other hand, an example of a valid lump-sum, because of the overall singularity of its purpose, would actually be the 2014 E-Government Fund assailed in the present petition. The said fund is, by nature, "created as a source of funding for strategic ICT[24] ***projects*** of government that are mission-critical, high-impact, and cross-agency in nature."[25] To note, Section 68 of Republic Act No. 9206 or the "General Appropriations Act of 2003," which first created the E-Government Fund, provides:

> Section 68. *Establishment of E-Government Fund.* — The Secretary of Budget and Management is authorized to establish the E-Government Fund to finance major information and communication technology projects of the government **as may be determined by the Information Technology and E-Commerce Council.** Said fund may be sourced from appropriations authorized in this Act, subject to the approval of the President of the Philippines. (Emphasis and underscoring supplied)

From the foregoing, it can be gathered that the projects for which the E-Government Fund may be utilized will be determined by the Information and Technology and E-Commerce Council (ITECC), which has since been abolished[26] and replaced by the Commission on Information and Communications Technology[27] (CICT) under the Office of the President, and thereafter, reorganized and renamed as the Information and Communications Technology Office[28] (ICTO) and transferred to the Department of Science and Technology (DOST). The annual allocation of the E-Government Fund was increased from ₱1,000,000,000.00 to ₱2,478,900,000.00 in the 2014 GAA

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23 *2013 Belgica*, supra note 3, at 554.

24 "Information and Communications Technology."

25 See Section 68 of Republic Act No. 9206, entitled "AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND THREE, AND FOR OTHER PURPOSES," otherwise known as the "GENERAL APPROPRIATIONS ACT OF 2003" (January 1, 2003). See also Department of Information and Communications Technology website, <https://dict.gov.ph/e-government/> (last visited October 7, 2019).

26 Per Executive Order No. 334, entitled "ABOLISHING THE INFORMATION TECHNOLOGY AND ELECTRONIC COMMERCE COUNCIL AND TRANSFERRING ITS BUDGET, ASSETS, PERSONNEL, PROGRAMS AND PROJECTS TO THE COMMISSION ON INFORMATION AND COMMUNICATIONS TECHNOLOGY" (July 20, 2004).

27 The CICT was created under Executive Order No. 269, entitled "CREATING THE COMMISSION ON INFORMATION AND COMMUNICATIONS TECHNOLOGY" (January 12, 2004).

28 Per Executive Order No. 47, entitled "REORGANIZING, RENAMING AND TRANSFERRING THE COMMISSION ON INFORMATION AND COMMUNICATIONS TECHNOLOGY AND ITS ATTACHED AGENCIES TO THE DEPARTMENT OF SCIENCE AND TECHNOLOGY, DIRECTING THE IMPLEMENTATION THEREOF AND FOR OTHER PURPOSES," approved on June 23, 2011.

"**for strategic [(ICT)] projects** in public financial management, basic and higher education, health, justice, peace and order, transport, land use, open government/ open data, climate change and citizen frontline delivery services. These projects are bound to strictly comply with all the criteria and guidelines jointly prescribed by the ICTO-DOST, DBM and NEDA."[29] Hence, the E-Government Fund serves as a *lump-sum amount for a discernibly singular purpose* – that is, for funding of strategic ICT projects that may be thereafter determined as necessary, not by any individual or person, but by the appropriate government agency, *i.e.*, the ICTO-DOST, subject to the criteria and guidelines for validity. As such, the E-Government Fund is constitutional.

Similarly constitutional are the 2014 Unprogrammed Fund, Contingent Fund, and Local Government Support Fund.

As for the Unprogrammed Fund, the same was divided into several purposes, *i.e.,* (1) Budgetary Support to Government-Owned and/or-Controlled Corporations; (2) Support to Foreign-Assisted Projects; (3) General Fund Adjustments; (4) Support for Infrastructure Projects and Social Programs; (5) AFP Modernization Program; (6) Debt Management Program; (7) Risk Management Program; (8) Disaster Relief and Mitigation Fund; (9) Reconstruction and Rehabilitation Program; (10) Total Administrative Disability Pension; and (11) People's Survival Fund, *which all had specific items of appropriation.* It is therefore not considered as a prohibited lump-sum fund because these purposes have specific amounts allocated to each. The specificity of the purposes and the amounts allocated for every item allows the President to exercise the line-item veto power. As such, the Unprogrammed Fund complies with the requirements for a valid appropriation and is therefore constitutional.[30]

Finally, the constitutionality of the Contingent Fund, same as its 2013 version, had already been upheld by the Court in the *2013 Belgica* case as a valid item of appropriation,[31] and hence, needs no more elaboration. The same goes for the Local Government Support Fund because the entire amount of ₱405,000,000.00[32] has been specifically allotted as an expenditure under the MOOE, "in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power,"[33] as held in the *2013 Belgica* Decision.

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29 <https://dict.gov.ph/e-government/> (last visited October 7, 2019). DBM refers to the "Department of Budget and Management," while NEDA refers to the "National Economic and Development Authority."

30 See Separate Opinion of Senior Associate Justice Antonio T. Carpio (Justice Carpio), pp. 10-12.

31 See *2013 Belgica*, supra note 3, at 551-552. See also Concurring Opinion of Justice Carpio in the *2013 Belgica*, id. at 645.

32 RA 10633, Item XXXVI (D) <https://www.dbm.gov.ph/wpcontent/uploads/GAA/GAA2014/ALGU/D.pdf> (last visited October 7, 2019).

33 Supra note 3, at 552.

In view of the foregoing disquisitions, I vote to **DISMISS** the petition.

ESTELA M. PERLAS-BERNABE
Associate Justice

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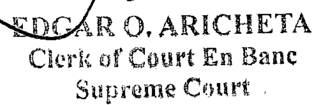

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