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[G.R. No. 230642; November 9, 2021]

OSCAR B. PIMENTEL, ERROL B. COMAFAY, JR., RENE B. GOROSPE, EDWIN R. SANDOVAL, VICTORIA B. LOANZON, ELGIN MICHAEL C. PEREZ, ARNOLD E. CACHO, AL CONRAD B. ESPALDON, ED VINCENT S. ALBANO, LEIGHTON R. SIAZON, ARIANNE C. ARTUGUE, CLARABEL ANNE R. LACSINA, KRISTINE JANE R. LIU, ALYANNA MARI C. BUENVIAJE, IANA PATRICIA DULA T. NICOLAS, IRENE A. TOLENTINO AND AUREA I. GRUYAL, *Petitioners*, *v.* **LEGAL EDUCATION BOARD (LEB), REPRESENTED BY ITS CHAIR, HON. EMERSON B. AQUENDE, AND LEB MEMBER, HON. ZENAIDA N. ELEPAÑO,** *Respondents*.

ATTYS. ANTHONY D. BENGZON, FERDINAND M. NEGRE, MICHAEL Z. UNTALAN, JONATHAN Q. PEREZ, SAMANTHA WESLEY K. ROSALES, ERIKA M. ALFONSO, KRYS VALEN O. MARTINEZ, RYAN CEAZAR P. ROMANO AND KENNETH C. VARONA, *Respondents-in-Intervention*.

APRIL D. CABALLERO, JEREY C. CASTARDO, MC WELLROE P. BRINGAS, RHUFFY D. FEDERE, CONRAD THEODORE A. MATUTINO AND NUMEROUS OTHER SIMILARY SITUATED, ST. THOMAS MORE SCHOOL OF LAW AND BUSINESS, INC., REPRESENTED BY ITS PRESIDENT, RODOLFO C. RAPISTA, FOR HIMSELF AND AS FOUNDER, DEAN AND PROFESSOR, OF THE COLLEGE OF LAW, JUDY MARIE RAPISTA-TAN, LYNNART WALFORD A. TAN, NEIL JOHN VILLARICO AS LAW PROFESSORS AND AS CONCERNED CITIZENS, *Petitioners-Intervenors*.

Supreme Court E-Library

[G.R. No. 242954; November 9, 2021]

FRANCIS JOSE LEAN L. ABAYATA, GRETCHEN M. VASQUEZ, SHEENAH S. ILUSTRISMO, RALPH LOUIE SALAÑO, AIREEN MONICA B. GUZMAN, DELFINO ODIAS, DARYL DELA CRUZ, CLAIRE SUICO, AIVIE S. PESCADERO, NIÑA CHRISTINE DELA PAZ, SHEMARK K. QUENIAHAN, AL JAY T. MEJOS, ROCELLYN L. DAÑO,[*] MICHAEL ADOLFO, RONALD A. ATIG, LYNETTE C. LUMAYAG, MARY CHRIS LAGERA, TIMOTHY B. FRANCISCO, SHIELA MARIE C. DANDAN, MADELINE C. DELA PEÑA, DARLIN R. VILLAMOR, LORENZANA L. LLORICO, AND JAN IVAN M. SANTAMARIA, *Petitioners*, *v.* **HON. SALVADOR MEDIALDEA, EXECUTIVE SECRETARY AND LEGAL EDUCATION BOARD, HEREIN REPRESENTED BY ITS CHAIRPERSON, EMERSON B. AQUENDE,** *Respondents*.

[A.M. No. 20-03-04-SC; November 9, 2021]

RE: REQUEST FOR CLARIFICATION REGARDING THE STATUS AND TREATMENT OF THE PHILIPPINE LAW SCHOOL ADMISSION TEST (PHILSAT) IN THE LIGHT OF THE SUPREME COURT DECISION IN G.R. NO. 230642 (OSCAR B. PIMENTEL, ET AL. vs. LEGAL EDUCATION BOARD) AND G.R. NO. 242954 (FRANCIS JOSE LEAN L. ABAYATA, ET AL. vs. HON. SALVADOR MEDIALDEA, EXECUTIVE AND LEGAL EDUCATION BOARD, HEREIN REPRESENTED BY ITS CHAIRPERSON, EMERSON B. AQUENDE)

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, *Intervenor*.

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[*] Also referred to as "Jocelyn L. Daño" in some parts of the *rollo*.

Supreme Court E-Library

R E S O L U T I O N

ZALAMEDA, *J.*:

Congress, with the expressed policy of "uplifting" the standards of legal education, passed Republic Act No. (RA) 7662 and introduced certain reforms to the legal education system, including the creation of an administrative body with the power to, among others, prescribe minimum standards for law school admission and law school accreditation. These reforms, however, were met with resistance, on constitutional grounds, from those who seek to impart, as well as those who strive to acquire, legal knowledge. The Court, as the final arbiter of all legal questions properly brought before it, will strive to put these legal issues to rest.

The Case

This resolves the joint Motion for Reconsideration (of the Decision dated 10 September 2019)[1] of respondents Legal Education Board (LEB) and Executive Secretary Salvador Medialdea (respondents, collectively), filed through the Office of the Solicitor General (OSG), the Partial Motion for Reconsideration with Joint Comment/ Opposition on respondent's Motion for Reconsideration[2] (Partial Motion for Reconsideration) of petitioners in G.R. No. 242954 (petitioners), and the Petition-In-Intervention[3] of the Philippine Association of Law Schools (PALS). The aforesaid motions and petition seek reconsideration of the Decision dated 10 September 2019,[4] rendered by the Court *En Banc*, through former Associate Justice Jose C. Reyes, Jr., in the consolidated petitions, docketed as G.R. Nos. 242954 and 230642. The dispositive portion of said Decision reads:

WHEREFORE, the petitions are **PARTLY GRANTED**.

The jurisdiction of the Legal Education Board over legal education is **UPHELD**.

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[1] *Rollo*, Vol. IV, pp. 2185-2209.

[2] *Id.* at 2241-2277.

[3] *Id.* at 2304-2327.

[4] *Id.* at 1893-1999.

Supreme Court E-Library

The Court further declares:

As **CONSTITUTIONAL**:

1. Section 7 (c) of R.A. No. 7662 insofar as it gives the Legal Education Board the power to set the standards of accreditation for law schools taking into account, among others, the qualifications of the members of the faculty without encroaching upon the academic freedom of institutions of higher learning; and

2. Section 7 (e) of R.A. No. 7662 insofar as it gives the Legal Education Board the power to prescribe the minimum requirements for admission to legal education and minimum qualifications of faculty members without encroaching upon the academic freedom of institutions of higher learning.

As **UNCONSTITUTIONAL** for encroaching upon the power of the Court:

1. Section 2, par. 2 of R.A. No. 7662 insofar as it unduly includes "continuing legal education" as an aspect of legal education which is made subject to Executive supervision and control;

2. Section 3(a)(2) of R.A. No. 7662 and Section 7(2) of LEBMO No. 1-2011 on the objective of legal education to increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society;

3. Section 7(g) of R.A. No. 7662 and Section 11(g) of LEBMO No. 1-2011 insofar as it gives the Legal Education Board the power to establish a law practice internship as a requirement for taking the Bar; and

4. Section 7(h) of R.A. No. 7662 and Section 11(h) of LEBMO No. 1-2011 insofar as it gives the Legal Education Board the power to adopt a system of mandatory continuing legal education and to provide for the mandatory attendance of practicing lawyers in such courses and for such duration as it may deem necessary.

As **UNCONSTITUTIONAL** for being *ultra vires*:

1. The act and practice of the Legal Education Board of excluding, restricting, and qualifying admissions to law schools in violation of the institutional academic freedom on who to admit, particularly:

    a. Paragraph 9 of LEBMO No. 7-2016 which provides that all college graduates or graduating students applying for admission to the basic law course shall be required to pass

Supreme Court E-Library

the PhiLSAT as a requirement for admission to any law school in the Philippines and that no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within two years before the start of studies for the basic law course;

b. LEBMC No. 18-2018 which prescribes the passing of the PhiLSAT as a prerequisite for admission to law schools;

Accordingly, the temporary restraining order issued on March 12, 2019 enjoining the Legal Education Board from implementing LEBMC No. 18-2018 is made **PERMANENT**. The regular admission of students who were conditionally admitted and enrolled is left to the discretion of the law schools in the exercise of their academic freedom; and

c. Sections 15, 16, and 17 of LEBMO No. 1-2011;

2. The act and practice of the Legal Education Board of dictating the qualifications and classification of faculty members, dean, and dean of graduate schools of law in violation of institutional academic freedom on who may teach, particularly:

   a. Sections 41.2(d), 50, 51, and 52 of LEBMO No. 1-2011;

   b. Resolution No. 2014-02;

   c. Sections 31(2), 33, 34, and 35 of LEBMO No. 2;

   d. LEBMO No. 17-2018; and

3. The act and practice of the Legal Education Board of dictating the policies on the establishment of legal apprenticeship and legal internship programs in violation of institutional academic freedom on what to teach, particularly:

   a. Resolution No. 2015-08;

   b. Section 24(c) of LEBMO No. 2; and

   c. Section 59(d) of LEBMO No. 1-2011.

SO ORDERED.

After the rendition of the Court's Decision, PALS filed a Letter dated 27 February 2020, docketed as A.M. No. 20-03-04-SC (Re: Request for Clarification Regarding the Status and Treatment

Supreme Court E-Library

of the PhiLSAT) and consolidated with G.R. Nos. 230642 and 242954.[5] Thereafter, the Court issued a Resolution dated 16 June 2020, treating the letter as a Motion for Leave to Intervene, and required PALS to file the proper pleading-in-intervention and the other parties to file their respective comments thereto.

On 28 August 2020, the Court received a copy of the Petition-in-Intervention filed by PALS.[6] With its continuing mission to uplift the standards of Philippine legal education to meet global standards of excellence, PALS claims that it stands to be adversely affected by any decision rendered by the Court on the constitutional issues raised in G.R. Nos. 230642 and 242954.

In the main, PALS prays for the declaration of unconstitutionality of LEB Memorandum Order No. 7, Series of 2016 (LEBMO No. 7-2016) in its entirety. It submits, in particular, that: (1) LEBMO No. 7-2016 is unconstitutional as it infringes upon academic freedom insofar as it prescribes a passing score to qualify for admission to law school;[7] (2) the status of the PhiLSAT as a pre-requisite for admission to law school is unclear despite the Court's nullification of Section 9 of LEBMO No. 7-2016 in view of the LEB's issuance of Memorandum Circular No. 52 dated 26 February 2020 (LEBMC No. 52-2020), allowing the conditional admission of enrollees who have not taken the PhiLSAT;[8] (3) discussions on amendments to LEBMO No. 7-2016 should be held in abeyance pending final resolution by this Court of the issues against it;[9] and (4) following the suggestion of former Associate (now Chief) Justice Alexander G. Gesmundo (Chief Justice Gesmundo), the PhiLSAT should be set aside and PALS, under the supervision of the LEB, should instead be authorized to conduct a unified, standardized, and acceptable law school admission examination.[10] PALS likewise posits that LEB

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[5] *Rollo*, (A.M. No. 20-03-04-SC), pp. 6-16.

[6] *Rollo*, (G.R. No. 230642), Vol. 4, pp. 2304-2323.

[7] *Id.* at 2309.

[8] *Id.*

[9] *Id.* at 2380.

[10] *Id.*

Supreme Court E-Library

Memorandum Order No. 22, Series of 2019 (LEBMO No. 22-2019), in conjunction with LEB Memorandum Circular No. 6 dated 14 July 2017 (LEBMC No. 6-2017) and LEB Resolution No. 2012-02, which additionally require law schools to report the number and date of the LEB Certification (LEBC) issued to the student in their Transcript of Records (TOR), infringes on the Court's power to promulgate rules concerning admission to the practice of law and interferes with the administration by law schools of their graduating students.[11]

For their part, respondents reiterate their position that the protection of academic freedom does not make schools immune from reasonable restrictions imposed by the State to promote the right of all citizens to quality education at all levels and to advance public welfare.[12]

In defending the constitutionality of LEBMO No. 7-2016, respondents emphasize that striking down the issuance in its entirety would render meaningless this Court's declarations sustaining the State's supervisory and regulatory authority over legal education and power to impose a standardized admission test, and the reasonableness of the issuance.[13]

Respondents further contend that the mandatory nature of the PhiLSAT was articulated in the Court's ruling and maintain that there is no reason to invalidate the same considering that (i) it is similar to the National Medical Admission Test (NMAT) which was declared constitutional;[14] (ii) there is compelling State interest to ensure the highest quality of legal education and impose a law school qualifying examination;[15] and (iii) it does not constitute an unfair and unreasonable academic requirement as it is merely a minimum qualification for students' admission to law schools and only those who want to obtain a Bachelor of Laws or Juris Doctor degree are required to pass the same, while those who merely want

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[11] *Id.* at 2319-2321.

[12] *Id.* at 2365-2368.

[13] *Id.* at 2370.

[14] *Id.* at 2368-2370.

[15] *Id.* at 2370-2374.

Supreme Court E-Library

to have basic knowledge of the law may learn from audit classes allowed under Section 2(c) of LEB Memorandum Order No. 2 (LEBMO No. 2).[16] They likewise claim that discussions on the PhiLSAT aim to give stakeholders every opportunity to be heard. Any agreement reached during consultation will only be effected after the finality of this case.[17]

As to the other LEB issuances, respondents asseverate that (i) the requirement relative to the TOR under LEBMO No. 22-2019 is a necessary consequence of the examination results which the Court had declared to be unconstitutional; (ii) Sections 15, 16, and 17 of LEB Memorandum Order No. 1, Series of 2011 (LEBMO No. 1-2011), which provide for the requirements for admission of foreign graduates, Bachelor of Laws and/or Doctor of Jurisprudence programs, and graduate programs in law, respectively, are reasonable measures adopted pursuant to the State's power to supervise and regulate legal education;[18] and (iii) the prescribed minimum qualifications for faculty members and deans of law schools are reasonable requirements germane to the State's objective of promoting quality of legal education, pursuant to the State's role as *parens patriae*.[19]

Finally, respondents pray for the Court to declare as valid: 1) paragraph 9 of LEBMO No. 7-2016; 2) LEB Memorandum Circular No. 18 dated 08 June 2018 (LEBMC No. 18-2018); 3) Sections 15, 16, and 17 of LEBMO No. 1-2011; 4) Sections 41.2 (d), 50, 51, and 52 of LEBMO No. 1-2011; 5) Resolution No. 2014-02; 6) Sections 31 (2), 33, 34, and 35 of LEBMO No. 2; 7) LEB Memorandum Order No. 17, Series of 2018 (LEBMO No. 17-2018); 8) Resolution No. 2015-08; 9) Section 24(c) of LEBMO No. 2; and 10) Section 59(d) of LEBMO No. 1-2011. They also prayed for the lifting of the TRO.[20]

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[16] *Id.* at 2365-2366.

[17] *Id.* at 2380-2382.

[18] *Id.* at 2219-2222.

[19] *Id.* at 2223-2229.

[20] *Id.* at 2233.

Supreme Court E-Library

In their Partial Motion for Reconsideration, petitioners remain adamant that RA 7662 is unconstitutional as the LEB infringes upon the constitutional power and prerogative of the Supreme Court. According to petitioners, the power of the Supreme Court to admit people to the practice of law encompasses the admission of law students to law schools. They reiterate that the Supreme Court's involvement in the study of law is manifested in Section 5, Rule 138 of the Rules of Court, which provides the minimum standards for the law school curricula, and Rule 138-A of the same Rules, which allows the appearance of law students before judicial and quasi-judicial bodies.[21] They point out that while there may be a few who do not intend to practice law after graduating, the *raison d'etre* of studying law is still to produce lawyers. As such, the curricula of law schools must conform to the minimum requirements set by the Supreme Court for taking the Bar exams.

Petitioners also differentiate NMAT and PhiLSAT as to impact of the cut-off score in the admission policies and standards of the schools and the sanctions for non-compliance thereto.

Likewise, petitioners claim that Sections 15, 16, and 17 of LEBMO No. 1-2011 were correctly declared unconstitutional as they unduly restrict the academic freedom of law schools in determining who to accept as students.[22]

Petitioners further insist that while the Court affirmed the LEB's authority to impose minimum requirements on faculty hiring, the LEB's execution of such power through its various issuances was arbitrary and unreasonable. They argue that the master's degree requirement for faculty members is unrealistic in light of logistical and financial considerations. Moreover, they asseverate that the LEB usurps the right of schools to assess the fitness and aptitude of its faculty member to teach; failing to consider that legal expertise is not only obtained through continued studies but likewise through law practice in specialized fields. The arbitrariness of

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[21] *Id.* at 2250-2251.

[22] *Id.* at 2267.

Supreme Court E-Library

such a requirement is even highlighted by the fact that members of the LEB are themselves not holders of a master's degree.[23]

Ultimately, petitioners seek to declare the unconstitutionality of RA 7662 in its entirety, deny the motion for reconsideration of respondents, and affirm the Court's ruling in all other respects.

Issues

Summarizing the various arguments of the herein parties, the issues for the Court's resolution are as follows:

1. Whether there is a cogent reason for this Court to invalidate, on the ground of unconstitutionality, the entirety of RA 7662 and LEBMO No. 7-2016, instead of merely portions thereof;
2. Whether the Court erred in upholding the jurisdiction of the LEB over legal education;
3. Whether the Court erred in holding that the requirement to pass the PhiLSAT or have a valid certificate of exemption within two (2) years prior to application in law school, along with the imposition by the LEB of a passing score of 55%, is unconstitutional for violating the academic freedom of law schools on who may be admitted as its students;
4. Whether the Court's ruling rendered the PhiLSAT optional;
5. Whether the Court erred in making permanent the TRO it issued on 12 March 2019, where regular admission of students who were conditionally admitted and enrolled is left to the discretion of the law schools in the exercise of their academic freedom;
6. Whether the Court erred in invalidating Sections 15, 16, and 17 of LEBMO No. 1-2011;
7. Whether there is cogent reason to amend or reverse the Court's declaration as to the unconstitutionality of the LEB's issuances relating to the minimum requirements on qualifications and classification of faculty members,

[23] *Id.* at 2269-2273.

Supreme Court E-Library

dean, and dean of graduate schools of law, in violation of institutional academic freedom on who may teach, particularly: a.) Sections 41.2 (d), 50, 51, and 52 of LEBMO No. 1-2011; b.) Resolution No. 2014-02; c.) Sections 31 (2), 33, 34, and 35 of LEBMO No. 2; and d.) LEBMO No. 17-2018; and

8. Whether LEBMO No. 22-2019, LEBMC No. 6-2017, and LEB Resolution No. 2012-02 are unconstitutional because they unduly infringe on the law schools' administration of their graduating students, and arbitrarily put more burden on the graduating class.

Ruling of the Court

Before this Court resolves the foregoing issues, We deem it proper to address first the propriety of PALS' intervention purportedly in representation of the interests of one hundred and twenty-seven (127) law schools from all over the country whose exercise of academic freedom will ultimately be affected by this case.[24]

Indeed, in several cases, associations were accorded legal personality to represent its members,[25] especially where said associations advanced constitutional issues which deserved the attention of this Court in view of said issues' seriousness, novelty, and weight as precedents.[26] Here, apart from a general averment regarding its representation of the interests of its constituent members, PALS did not offer any other argument to justify its intervention. Considering, however, the lack of objection on the part of respondents and the importance of the resolution of this

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[24] *Id.* at 2306.

[25] *Chinese Flour Importers Association, Manila, Phils. v. Price Stabilization Board*, 89 Phil. 439 (1951) [Per J. Bautista Angelo] citing *Gallego, et al. v. Kapisanan Timbulan ng mga Manggagawa*, 83 Phil. 124 (1949).

[26] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 897-898 (2003), G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, 160360, 160362, 160370, 160376, 160392, 160397, 160403 & 160405, 10 November 2003 [Per J. Carpio Morales].

Supreme Court E-Library

case not only to the public, but also to the Bench and the Bar,[27] the Court, in the exercise of its sound discretion, finds cause to allow PALS to intervene. Prudence and public interest considerations warrant the allowance of the intervention of PALS to make way for fuller ventilation of all substantive issues relating to the matter at hand.[28]

Guided by the legal issues raised, the Court embarked on another zealous assessment of the prevailing circumstances, as well as a conscientious reexamination of the pronouncements made in the assailed Decision. After thorough deliberations, the Court resolves the pending incidents as follows:

The Court stresses that there is a compelling State interest to uplift the quality of legal education

Nelson Mandela once said that **education is the most powerful weapon which you can use to change the world**. However, having such a weapon is one thing; ensuring your weapon is sharp, and top-grade is another.

Considering the current state of legal education in the country, the Court agrees with the respondents that there is a compelling State interest to ensure the country's highest quality of legal education.[29] As former Associate Justice Andres B. Reyes, Jr. (former Justice A.B. Reyes, Jr.) remarked, "there is no doubt that the ultimate goal of attaining quality legal education is a legitimate and lofty objective."[30]

In the Philippines, legal education, at first blush, appears to be all well and good. That is mainly attributable to the old folks putting lawyers and the study of law on a pedestal, far from the reach of any other professions, including medicine. This theory,

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[27] *Garcillano v. House of Representatives Committees on Public Information*, 595 Phil. 775, 796 (2008), G.R. Nos. 170338 & 179275, 23 December 2008 [Per J. Nachura].

[28] *See Francisco, Jr. v. House of Representatives*, *supra* at note 6.

[29] *Rollo*, p. 2370.

[30] *See* Former J. A.B. Reyes, Jr. Concurring Opinion in *Pimentel v. LEB*, p. 15.

Supreme Court E-Library

in turn, may have been conjured primarily because of the much-ballyhooed Bar examination. Viewed from a broader and modern perspective, however, the country's legal education indubitably needs some housecleaning to reach the touchstone of excellence set by the international arena.

In his essay entitled *The State of Philippine Legal Education Revisited*, Mariano F. Magsalin, Jr. (Dean Magsalin), former Dean of Arellano Law School and Secretary-General of PALS, perceptively remarked on this pressing and important matter, thus:

> Imagine a "virtual" panel of the most erudite and specialized law mentors imparting their field of expertise, assisted and complemented by the state-of-the-art teaching tools, in downloadable real time for the consumption of students in the comfort and convenience of their homes, workstations or wherever their personal digital assistants would take them. Feedback or recitation, examinations and grade dissemination are all done through e-mail or its faster and higher-resolution counterpart. Verily, the paper chase is still on but pursued in a different matrix. This is, or should be, according to some Western legal educators, legal education in the digital age.
>
> A counterpoint to this idyllic scenario is Philippine legal education, the development of which may be characterized at best, as spinning on its wheels. For decades, the future of law students has been obdurately consigned to an impractical, inefficient, wagering system, totally subservient to an antiquated bar examination requirement. Many Philippine lawyers have labelled themselves as the best in Asia because of what they perceive to be a difficult rite of passage that is the bar examination, and yet, the Philippine law schools have not figured at all as a factor in surveys of the best universities in Asia.
>
> Reforms in Philippine legal education have moved glacially. While many foreign schools have already responded and adapted to the demands of an increasingly globalized and borderless world, the concerns of many law schools in the Philippines are still centered on survival and viability. Competition is at best described as cutthroat and unfair.[31]

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[31] Magsalin, M.F., Jr., (July 2003). The State of Philippine Legal Education Revisited, *Arellano Law and Policy Review*, Volume 4 No. 1, p. 40. <https://arellanolaw.edu/alpr/v4n1c.pdf> (accessed on 23 August 2021).

Supreme Court E-Library

Certainly, such a noble aspiration is not far-fetched. The country does not need to pray for the stars to align to achieve such a goal. It can happen if all the stakeholders want it to happen. Dean Magsalin wrote the essay in July 2003. Seventeen (17) years later, his dream was finally realized with a virtual school employed since the past school year, not only by law schools but all academic institutions in the Philippines. Unfortunately, it was not directly caused by any reform initiated by schools. This breakthrough was impelled, of all things, by the inappropriate intervention of the coronavirus disease pandemic.

Notwithstanding the development caused by the pandemic, the country's legal education could be careering to a rabbit hole, or perhaps, unheedingly already lingering there. Since the 90s, the Bar examinations — which attracts thousands of hopefuls year in and year out — yielded a passing rate ranging from below 20% to a bit above 30%, with the 1999 result of 16.59% as the lowest recorded.[32] The 2016 examination, which netted a percentage of 59.06%, seemingly was an aberration.[33] The historical passing rate may have led to the view that the Bar examination is a combination of difficulty and luck. However, it cannot be denied that many examinees are ill-prepared to face, let alone hurdle, the examination. This situation persists, notwithstanding that the curriculum of every law school is heavily Bar-centered. What is more, it cannot be discounted that, as pointed out in the Court's ruling, there is a chronic malady permeating the educational

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[32] In a Philippine Daily Inquirer story, it was noted that the 1999 Bar result was the lowest while 2012 result, with a 17.76%, was the second lowest. The Committee was even constrained to reduce the passing percentage from 75% to only 70%, otherwise only 361 or 6% of the 5,343 Bar examinees would have passed the examination. Torres-Tupas, Tetch. *2012 bar result is second lowest passing rate in history-SC Committee*. newsinfo.inquirer.net, Philippine Daily Inquirer, 20 March 2013, <https://newsinfo.inquirer.net/376867/2012-bar-result-is-second-lowest-passing-rate-in-history-sc-committee#ixzz74MKgoO6a> (accessed on 23 August 2021).

[33] The 2016 result broke the 16-year old record of 39.63% obtained in the 1998 Bar examination. It is now the second highest record, with 75.17% set in 1954 Bar examination as the highest. Lopez, Virgil. *Provincial law grads dominate Bar Top 10; passing rate at 59.06*. gmanetwork.com, GMA News Online Your News Authority, <https://www.gmanetwork.com/news/news/nation/609309/59-06-percent-pass-2016-bar-exams-report/story/> (accessed on 23 August 2021).

Supreme Court E-Library

institutions where a great majority of schools are money-making devices of persons who organize and administer them.[34]

Corollary to this, Dean Sedfrey M. Candelaria admitted the existence of non-performing law schools.[35] Other luminaries and academicians have expressed a similar observation. As Dean Magsalin spelled out in his essay:

> x x x From the listing of schools whose graduates took the bar examinations from 1992-2002 and the number of their graduates who passed the bar examinations, it can be easily seen that there are many schools that have dismally failed to prepare their students for these examinations. Twenty-six of seventy-five law schools had a zero passing average at least twice, with two schools having zero average at least eight times, during the 11-year period. Only around fifteen schools have managed to consistently produce annually at least 15 new lawyers with seven schools having at least 35 new lawyers a year.
>
> x x x
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> Indeed, these complaints have beset Philippine law schools for decades and they will continue to pester the legal education system for years to come unless something is seriously done to address the situation. For example, the lack of funding and adequate facilities is a matter directed to the government agency in charge of licensing or accrediting law schools. A school without adequate funding and facilities should not be allowed to operate in the first place. Certainly, a school should not depend solely on tuition fees to maintain itself but it should have adequate funding from alternative resources.[36]

These are just a few notable circumstances showing that legal education has long been primed for some facelift. Legal education in the Philippines has lagged because of the stakeholders' laxity or complacency and failure or refusal to adapt and evolve. For instance, most schools in the country have been, for a long time, stuck with the archaic Socratic-Langdellian modes of teaching. However, some students do not have the mettle to argue orally and

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[34] *See Pimentel v. Legal Education Board*, G.R. Nos. 230642 & 242954, 10 September 2019 [Per J. J.C. Reyes, Jr.], p. 40.

[35] *See* J. Jardeleza's Concurring and Dissenting Opinion in *Pimentel v. LEB*, p. 13.

[36] Magsalin, *The State of Philippine Legal Education Revisited*, 44-45.

Supreme Court E-Library

spontaneously but have what it takes to perform well and excel when presented with other methods of learning, such as problem-based teaching and clinical legal education.

While other jurisdictions have long recognized and adopted alternative teaching options suited for such students, a few law schools in the Philippines have injected much-needed changes here and there, but only because they can, not because they need to. On the other hand, most schools still have not strived to do better because there is nothing to incentivize them. Worse, there is nothing to demotivate them from being deficient and indolent.

RA 7662 serves the call to revamp legal education. It is a necessary evil, if it can be fairly called as such, paving the way for the much-needed uplifting of the standards of legal education in the Philippines through the LEB.

Petitioners failed to proffer a cogent reason for the Court to declare the entire RA 7662 unconstitutional

Even after another rumination, the Court still sees no cogent reason to declare the entire RA 7662 unconstitutional based on the alleged encroachment of the Supreme Court's authority[37] and violation of academic freedom.[38] As Associate Justice Amy C. Lazaro-Javier (Justice Lazaro-Javier) aptly pointed out, the presumption is that the legislature intended to enact a valid, sensible, and just law that operates no further than may be necessary to effectuate the specific purpose of the law.[39] Every presumption should be indulged in favor of constitutionality. The burden of proof is on the party alleging an unequivocal breach of the Constitution.[40] Moreover, the invocation of the abovementioned constitutional aphorisms, without more, cannot invalidate a law. Jurisprudence teaches that to justify the nullification of the law,

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[37] *Rollo*, p. 2245.

[38] *Id.* at 2256.

[39] *See* J. Lazaro-Javier's Concurring and Dissenting Opinion in *Pimentel v. LEB*, p. 27.

[40] *See Fariñas v. The Executive Secretary*, 463 Phil. 179, 197 (2003) [Per J. Callejo, Sr.].

Supreme Court E-Library

there must be a clear and unequivocal breach of the Constitution, not a doubtful and equivocal breach.[41] As the landmark case of *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*[42] instructs, "there being a presumption of validity, the necessity for evidence to rebut it is unavoidable, unless the statute or ordinance is void on its face."

Accordingly, petitioners have the heavy burden of proving by sufficient evidence the unconstitutionality of RA 7662. As it is, however, except for the provisions of RA 7662 which the Court had earlier declared unconstitutional on their face, petitioners miserably failed to yield a solid and persuasive reason against the constitutionality of the subsisting provisions of RA 7662. Thus, the presumption of the constitutionality of the law must prevail.

Sections 2 paragraphs 2 and 3(a)(2), as well as Section 7(g) and (h), of RA 7662 remain unconstitutional for unduly encroaching on the power of the Supreme Court

The above notwithstanding, the Court hastens to clarify that Sections 2 paragraphs 2, 3(a)(2), 7(g), and 7(h) of RA 7662 remain unconstitutional as declared in the Decision of the Court. These provisions read:

Section 2. *Declaration of Policies*. It is hereby declared the policy of the State to uplift the standards of legal education x x x

Towards this end, the State shall undertake appropriate reforms in the legal education system, require proper selection of law students, maintain quality among law schools, and **require** legal apprenticeship and **continuing legal education**.

Section 3. *General and Specific Objective of Legal Education*. - (a) Legal education in the Philippines is geared to attain the following objectives:

x x x

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[41] *See* J. Panganiban's Dissenting Opinion in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 652 (2004) [Per CJ Puno].

[42] 127 Phil. 306, 315 (1967) [Per J. Fernando].

Supreme Court E-Library

(2) **to increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society**; x x x

Section 7. *Powers and Functions*. - For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions;

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.

(h) **to adopt a system of continuing legal education**. For this purpose, the Board may provide for the **mandatory attendance of practicing lawyers** in such courses and for such duration as the Board may deem necessary; and x x x [*Emphases supplied.*]

Indeed, the foregoing provisions unduly infringed on matters which fall within the **exclusive** domain of the Supreme Court.

Sections 2 paragraphs 2, 3(2), and 7(h) were struck down by this Court because, **by their very terms**, these provisions pertain to matters affecting members of the legal profession.

Admittedly, the study of the law is a comprehensive, widespread, and life-long process. Hence, it is not confined to the four corners of a law school and its pedagogy. However, synthesizing Section 3(b) of RA 7662, there should be no question that the legislative purpose of the law is aimed particularly towards law students. The goal of RA 7662 is to improve legal education for law students to learn the essential skills and competencies that would make them not only strive but thrive in the fast-changing world outside the law school.

The Court finds no difficulty upholding the purpose of the law to improve legal education in the country. However, extending the LEB's authority to those who have already been accepted to the bar is a legislative overreach. As explained in the Decision, in authorizing the LEB to compel mandatory attendance of practicing

Supreme Court E-Library

lawyers in such courses and for such duration as the LEB deems necessary, the legislature encroached upon the Court's power to promulgate rules concerning the Integrated Bar.[43] Respondents' tenuous assertion that the continuing legal education under RA 7662 is limited to the training of **lawyer-professors** does not justify the existence of said provision.[44] It still unlawfully intruded into the power of the Court to promulgate rules concerning the Integrated Bar, which necessarily includes the continuing legal education of lawyer-professors, as the term practice of law encompasses the teaching thereof.[45]

Similarly, the Court declared Section 7(g) unconstitutional because its phraseology unduly stretched the authority of the LEB by authorizing it "to establish a law practice internship as a requirement for taking the Bar." With Section 7(g), "the LEB is no longer confined within the parameters of legal education, but now dabbles on the requisites for admissions to the bar examinations, and consequently, admissions to the bar."[46] As underscored in the Decision, however, "the jurisdiction to determine whether an applicant may be allowed to take the bar examinations belongs to the Court."[47] Section 7(g) unlawfully encroached into the constitutionally sanctioned authority of the Supreme Court to promulgate rules concerning the admission to the practice of law.

It is worth noting, as well, that in the Decision, the Court had explained that Section 7(g) was likewise violative of the academic freedom of law schools. As the Court held, while the clause **legal internship** does not immediately strike as being intrusive of the academic freedom of law schools, how the LEB exercised its authority under Section 7(g) effectively amounted to control. It blatantly overstepped the authority of law schools to determine what to teach by dictating upon the law schools how to undertake the legal apprenticeship and requiring law schools to submit their

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[43] *See Pimentel v. LEB*, *supra* at note 14, p. 76.

[44] *Id.*

[45] *Id.*

[46] *Id.* at 74.

[47] *Id.*

Supreme Court E-Library

apprenticeship program for assessment and evaluation prior to endorsement of the same to this Court for approval.[48]

For the foregoing reasons, the Court cannot agree with the proposition that Section 7, paragraphs (g) and (h) is not unconstitutional in view of their "**dual aspect** that caters to both **legal education** and **practice of law**,"[49] and that the determination of whether the particular activities involved in the **actual exercise** of the powers mentioned therein would belong to one or the other would have to be made from the specific circumstances of the activities concerned.[50]

In sum, the Court acknowledges and upholds the authority of the LEB to carry out the purpose of the law, which is in line with the State's constitutional mandate to promote quality education. However, the foregoing provisions unduly expand the scope of the LEB's authority by giving a construction to the term "legal education" inconsistent with the law's clear intent. By their terms, the provisions no longer just ventured into improving the study of the law in law schools, but clearly and directly encroached upon the Court's **exclusive** constitutional authority to promulgate rules concerning the Integrated Bar, the practice of law, and admissions to the bar. As such, they cannot be given imprimatur by this Court.

The Court reiterates that the authority to supervise and regulate legal education is lodged with the political departments, as exercised through regulatory measures enacted through the police power of the State[51]

There is no merit in petitioners' insistence that RA 7662 must be struck down as the study of law is not covered by the regulatory

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[48] *Id.* at 100-101.

[49] Concurring and Dissenting Opinion of J. Lazaro-Javier, p. 17.

[50] *Id.*

[51] *See Pimentel v. LEB*, *supra* at note 14, p. 55.

Supreme Court E-Library

powers of the Executive branch,[52] and that supervising legal education legally and rightfully belongs to the Supreme Court.[53]

As highlighted by former Justice A.B. Reyes, Jr., "education is a continuing concern that is impressed with public interest. The importance of education in our country is apparent from the numerous constitutional provisions highlighting the obligation of the State to nurture and protect the quality of our educational system x x x and x x x make it x x x relevant to the needs of the people and the society."[54] Moreover, the Court had belabored to clarify that historically and constitutionally, the political departments, not the Supreme Court, have actually and directly exercised supervision and regulation over legal education.[55] "The legislative history of the Philippine legal educational system, [as extensively discussed in the Decision], evinces that the State, through statutes enacted by the Congress and administrative regulations issued by the Executive, consistently exercises police power over legal education."[56]

Jurisprudence describes police power as the power to regulate the exercise of rights, including all constitutional rights, by prescribing regulations, to promote the health, morals, peace, **education**, good order or safety, and general welfare of the people.[57] It flows from the recognition that *salus populi est suprema lex* — the welfare of the people is the supreme law.[58] While police power rests primarily with the legislature, such power may be delegated. By a valid delegation, the power may be exercised by the President and administrative boards, as well as the lawmaking bodies of municipal corporations or local governments under an express

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[52] *Rollo*, p. 2245.

[53] *Id.* at 2244.

[54] Former J. A. Reyes, Jr.'s Concurring Opinion in *Pimentel v. LEB*, pp. 2-3.

[55] *See Pimentel v. LEB*, *supra* at note 14, pp. 38-53.

[56] *Id.* at 55.

[57] *See Primicias v. Fugoso*, 80 Phil. 71, 175 (1948) [Per J. Feria]; emphasis and italics supplied.

[58] *See Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, 557 Phil. 121, 141 (2007) [Per J. Carpio Morales].

Supreme Court E-Library

delegation by the Local Government Code of 1991.[59] In the case of legal education, the legislature, through Section 4 of RA 7662, created the LEB to carry out the purpose of the law of uplifting the standards of legal education in the country.

From the foregoing, it is indubitable that "as a professional educational program, legal education properly falls within the supervisory and regulatory competency of the State."[60] It belongs to the political departments as an exercise of the State's police power.[61]

The authority of the State, through the LEB, to supervise and regulate legal education can be read together with the power of the Court concerning the admission to the practice of law

In the Decision, this Court held:

> In general, R.A. No. 7662, as a law meant to uplift the quality of legal education, does not encroach upon the Court's jurisdiction to promulgate rules under Section 5 (5), Article VIII of the Constitution. It is well-within the jurisdiction of the State, as an exercise of its inherent police power, to lay down laws relative to legal education, the same being imbued with public interest.
>
> **While the Court is undoubtedly an interested stakeholder in legal education, it cannot assume jurisdiction where it has none. Instead, in judicial humility, the Court affirms that the supervision and regulation of legal education, is a political exercise, where judges are nevertheless still allowed to participate not as an independent branch of government, but as part of the sovereign people**.[62]

Relative to this, petitioners persist in arguing that the Supreme Court's power to admit individuals in the legal profession extends to the admission of law students to law schools as legal education is a facet of lawyerhood, the former being the preliminary step to

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[59] *Id.*

[60] *Pimentel v. LEB*, *supra* at note 14, p. 55.

[61] *Id.* at 53 and 55.

[62] *Id.* at 102; emphasis supplied.

Supreme Court E-Library

the practice of law. They assert that the practice of law and the study of law are intimately intertwined, made pronounced by RA 7662's declaration that legal education in the Philippines aims to prepare the students for law practice.

These contentions seem to operate on the presumption that the grant, *per se*, of the power to the LEB to regulate legal education does not (or will not) leave room for the Court's exercise of its constitutional power over admissions to the Bar (and as petitioners argue, over legal education), such that upholding one would necessarily mean an infringement or interference in the exercise of the other. The Court thus takes this occasion to clarify its ruling.

Indeed, while the Constitution does not textually confer upon this Court the power to regulate legal education, it is undeniable that it has legitimate interests thereon.

To be clear, the Court reiterates its stance that it will not arrogate unto itself the powers Congress vested upon the LEB. However, there is nothing in RA 7662 which states that the LEB has authority over all matters relating to legal education to the absolute exclusion of all others, including the Supreme Court. In fact, a fair and conscientious reading of the law would support the view that Congress specifically intended for all stakeholders to have a say in matters of legal education. For one, the LEB is itself composed of individuals coming from the Integrated Bar of the Philippines, active law practitioners, PALS, and even from the sector of law students. The LEB Chairman is, under the terms of the statute, preferably a former justice of the Supreme Court or the Court of Appeals.[63] In addition, the members of the LEB are to be appointed by the President from a list of nominees prepared with prior authorization from the Supreme Court, through the Judicial and Bar Council. To the mind of the Court, this is an acknowledgment on the part of the Congress of the pivotal role played by the judiciary over legal education.

More importantly, there is nothing to gain from treating legal education and the legal profession as separate, discrete, and completely unrelated fields for purposes of uplifting legal

[63] RA 7662, Sec. 4.

Supreme Court E-Library

education standards. Rather, one should look at legal education and practice as segments in a continuum:

> x x x the skills and values of competent and responsible lawyers are developed along a continuum that neither begins nor ends in law school, but starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout the lawyer's professional career.[64]

Fittingly, Chief Justice Gesmundo conveyed the same view as he elucidated on the impossibility of completely separating the interests of the Supreme Court and the law schools and the other branches of government with respect to legal education.[65]

The Court makes this conclusion bearing in mind that where one interpretation divines a conflict between this Court and an administrative agency over the matter of legal education, while another allows for administrative regulation to subsist peacefully with the interests of this Court, the latter should be favored:

> We must be reminded that the government (through the administrative agencies) and the courts are not adversaries working towards different ends; our roles are, rather, complementary. As the United States Supreme Court said in *Far East Conference v. United States*:
>
> > x x x [C]ourt and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. **Court and agency are the means adopted to attain the prescribed end, and, so far as their duties are defined by the words of the statute, those words should be construed so**

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[64] See Robert MacCrate, Esq.'s Foreword. Stuckey, R. and others. (2007). *Best Practices in Legal Education: A Vision and a Roadmap*. Clinical Legal Education Association, p.vi. <https://www.cleaweb.org/Resources/Documents/best_practices-full.pdf>.

Foreword referred to the conclusion of The Task Force on Law Schools and the Profession: Narrowing the Gap which is found in the Report published in July 1992 entitled Legal Education and Professional Development, otherwise known as the Macrate Report.

[65] *See* CJ Gesmundo's Concurring and Dissenting Opinion in *Pimentel v. LEB*, p. 19.

Supreme Court E-Library

> **as to attain that end through coordinated action**. Neither body should repeat in this day the mistake made by the courts of law when equity was struggling for recognition as an ameliorating system of justice; neither can rightly be regarded by the other as an alien intruder, to be tolerated if must be, but never to be encouraged or aided by the other in the attainment of the common aim.[66]

The public would be better served by a system that welcomes input from agencies of government working together, within and across institutions,[67] instead of one which pits government agencies against each other.

RA 7662 is not necessarily repugnant to the academic freedom of law schools

The Court respectfully disagrees with the proposition that RA 7662 and the "entire concept of the Legal Education Board, are unconstitutional for intruding on the academic freedom of law schools and the universities and colleges to which they belong."[68]

Institutional academic freedom encompasses the essential freedoms of a university to determine for itself on academic grounds (i) who may teach, (ii) what may be taught, (iii) how it shall be taught, and (iv) who may be admitted to study.[69]

It may be said that the broad grant of academic freedom in favor of institutions of higher learning is in recognition of the critical role these institutions play in society. An academician postulated that academic freedom should preserve the indigenous values served by universities, *i.e.*, (i) a detached or disinterested pursuit of knowledge and understanding, (ii) a manner of discourse that,

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[66] *Alfonso v. Land Bank of the Philippines*, 801 Phil. 217 (2016), G.R. Nos. 181912 & 183347, 29 November 2016 (Per J. Jardeleza] citing *Far East Conference v. United States*, 342 U.S. 570 (1952).

[67] *See* Sullivan, W.M., et al. (2007). *Educating Lawyers: Preparation for the Profession of Law*. The Carnegie Foundation for the Advancement of Teaching, pp. 4 and 10. <http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf>.

[68] J. Leonen's Dissenting and Concurring Opinion in *Pimentel v. LEB*, p. 2.

[69] *Garcia v. Faculty Admission Committee*, 160-A Phil. 929, 944 (1975) [Per J. Fernando].

Supreme Court E-Library

at its best, is careful, critical, and ambitious, and (iii) a capacity for mature and independent judgment to those entering adulthood.[70]

In this country, Section 5(2), Article XIV of the 1987 Constitution, dictates that all institutions of higher learning shall enjoy academic freedom. However, the concept of academic freedom is not native to this jurisdiction. It began in medieval Europe and gained more popularity in academic and legal circles as a formidable shield against State interference after United States of America (US) Justice Felix Frankfurter (Justice Frankfurter) included it in his Concurring Opinion in the celebrated case of *Sweezy v. New Hampshire*.[71]

While forever etched in the annals of American jurisprudence, Justice Frankfurter's insightful articulation failed to delineate the limit of such freedom as he merely lifted it from the 1957 Open Universities of Africa. Therein, two (2) faculty members opposed the South African government's plan to pursue its apartheid program to bar admission of non-whites into the universities.[72]

The vacuum in Justice Frankfurter's discourse left the interpretation of his prominent quote to the wide imagination of its readers. Some assumptions eventually gave birth to the notion that the four (4) essential freedoms subsumed in academic freedom are an all-encompassing authority of schools of higher learning to exist freely without government intervention. Upon the other hand, some scholars have propounded a sound interpretation on Justice Frankfurter's quote that "[i]t is the business of a university to provide that atmosphere which is most conducive to speculation, experiment, and creation. . . . " For these scholars, this means that the institution's freedom carries the concomitant obligation to see

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[70] *See* Byrne, J.P. (1989). Academic Freedom: A "Special Concern of the First Amendment. *The Yale Law Journal, 99* (251) <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=7244&context=ylj>.

[71] 354 U.S. 234 (1957).

[72] *See* Hiers, R.H. (2004). Institutional Academic Freedom — A Constitutional Misconception: Did Grutter v. Bollinger Perpetuate the Confusion. Journal of College and University Law, 30(3), 533-534 [citation omitted]. <https://scholarship.law.ufl.edu/cgi/viewcontent.cgireferer=https://www.google. com/&httpsredir=1&article=1755&context-facultypub> (accessed on 23 August 2021).

Supreme Court E-Library

that its activities inside the school would not merit interference from any branch of the State.[73] Put differently, institutions of higher learning 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. This interpretation has found support from subsequent rulings of the US Supreme Court and in this jurisdiction.

In the Philippine setting, the four (4) essential freedoms subsumed in the concept of academic freedom of institutions of higher learning were, as pointed out by Justice Leonen, first discussed in the seminal 1975 case of *Garcia v. The Faculty Admission Committee, Loyola School of Theology (Garcia)*.[74] From then on, jurisprudence has continued to recognize the autonomy of institutions of higher learning in the exercise of their academic freedom. This includes the autonomy to determine who may be admitted to study,[75] which extends to the right to decide whom to exclude or expel[76] and whom to confer the honor and distinction of being their graduates.[77] Such discretion may not generally be disturbed. It may only be successfully impugned when there is a clear showing of grave abuse of discretion in its exercise[78] or if the

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[73] *Id.*

[74] *Garcia*, *supra* at note 69.

[75] *Tangonan v. Paño*, 221 Phil. 601 (1985) [Per J. Cuevas]; *University of the Philippines Board of Regents v. Ligot-Telan*, 298 Phil. 108 (1993) [Per J. Romero]; *University of San Agustin, Inc. v. Court of Appeals*, 300 Phil. 819 (1994) [Per J. Nocon]; and *De La Salle University, Inc. v. Court of Appeals*, 565 Phil. 330 (2007) [Per J. Reyes, R.T.].

[76] *Licup v. University of San Carlos*, 258-A Phil. 417 (1989) [Per J. Gancayco] and *Ateneo De Manila University v. Capulong*, 294 Phil. 654, 676-677. [Per J. Romero].

[77] *University of the Philippines Board of Regents v. Court of Appeals*, 372 Phil. 287, 307 (1999) [Per J. Mendoza]; and *Morales v. Board of Regents of the University of the Phils.*, 487 Phil. 449, 474 (2004) [Per J. Chico-Nazario].

[78] *University of San Carlos v. Court of Appeals*, 248 Phil. 798, 803 (1988) [Per J. Gancayco] and *Calawag v. University of the Philippines Visayas*, 716 Phil. 208 (2013) [Per J. Brion].

Supreme Court E-Library

said freedom collides with a student's exercise of constitutionally preferred rights such as religious freedom[79] and free speech.[80]

Nevertheless, *Garcia* and subsequent rulings of the Court, far from legitimizing an unimpeded exercise of academic freedom by institutions of higher learning, had, in fact, readily acknowledged the existence of the State's right to reasonably interfere with the exercise of academic freedom "when the overriding public welfare calls for some restraint."[81]

Clearly, the cry for academic freedom, without more, cannot be a sufficient justification to invalidate the law. To quote Justice Lazaro-Javier, "[a]cademic freedom is **not the trump card** that annihilates the exercise of police power."[82] Academic freedom is not absolute, with its optimum impact best realized where the freedom is exercised judiciously and does not degenerate into an unbridled license.[83] Instead, it is a privilege that assumes a correlative duty to exercise it responsibly.[84] It is thus difficult to accept that the State has no right to participate or be involved in the education the academic institutions of higher learning provide. On the contrary, it would be an abandonment of duty on the part of the State if it does not supervise and regulate educational institutions on a simplistic invocation of academic freedom by the law schools. Academic freedom cannot derogate the State's constitutional authority to reasonably supervise and regulate schools.

Corollarily, while enshrined in the Constitution, academic freedom and police power cannot be exercised without any restraint. A delineation on these rights is inherently imposed as

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[79] *Valmores v. Achacoso*, 813 Phil. 1032 (2017) [Per J. Caguioa].

[80] *Villar v. TIP*, 220 Phil. 379, 382-383 (1985) [Per CJ Fernando].

[81] *Garcia*, *supra* at note 69.

[82] Concurring and Dissenting Opinion of J. Lazaro-Javier, p. 2.

[83] *See Ateneo de Manila University v. Hon. Capulong*, *supra* note 76 at 673.

[84] *See Cudia v. Philippine Military Academy*, 754 Phil. 590 (2015) [Per CJ Peralta].

Supreme Court E-Library

it has been said that absolute power corrupts absolutely[85] while absolute freedom often leads to anarchy and chaos. Thus, a law school and the people comprising it must exercise academic freedom responsibly. The State, on the other hand, can wield its police power on the condition that the same must be done reasonably and proportionately, at the very least. Though presumably done lawfully pursuant to academic freedom or police power, any act cannot be stamped with validity by this Court when it fails to comply with such parameters.

Former Associate Justice Francis H. Jardeleza was on point in stating that the exercise of academic freedom must be balanced with vital state interest such as prescribing regulations to promote education and the general welfare of the people.[86] The need for harmony and balance in the exercise of academic freedom and police power was likewise aptly encapsulated by former Associate Justice Arturo D. Brion in his Manila Bulletin article, captioned *Legal Education and Law Schools*, thus:

> When police power and academic freedom intersect, as they inevitably must in legal education, lessons from the Constitution hold that the State has the upper hand, but only *to the extent necessary to serve the demands of public interest*. In this calibrated manner, academic freedom is meaningfully preserved.[87]

To be sure, balancing and harmonizing the pertinent provisions of the Constitution, instead of adopting an absolutist approach of one constitutional provision over the other, is a settled rule in constitutional construction, thus:

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[85] "This famous sentence is attributed to Lord Acton. It is stated that John Edward Acton, the first baron, has expressed this opinion in his letter written to Bishop Mandell. The letter was written in 1887. The original statements go thus[:] 'Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men.' However, it is stated that Lord Acton is not the primary originator of this quotation." Retrieved from https://literarydevices.net/absolute-power-corrupts-absolutely/. (accessed on 23 August 2021)

[86] *See* former J. Jardeleza's Concurring and Dissenting Opinion in *Pimentel v. LEB*, p. 12.

[87] <https://mb.com.ph/2019/07/17/legal-education-and-law-schools/> (accessed on 23 August 2021).

Supreme Court E-Library

It is a well-established rule in Constitutional construction that **no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together**.

In other words, **the Court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory**.[88] [Emphases supplied.]

In line with this, it bears to note that Senior Associate Justice Estela M. Perlas-Bernabe (Justice Perlas-Bernabe) agrees that "**State participation in admission requirements is not completely foreclosed by academic freedom**."[89] Referring to the constitutional deliberations, she emphasized that the right of every citizen to select a course of study under Section 5 (3), Article XIV of the 1987 Constitution is subject to fair, reasonable, and equitable admission and academic requirements, which "requirements refer not only to those imposed by the educational institutions but also by the government" and the Framers "left it to Congress to determine what these requirements will be, including the decision on whether to retain or abolish the then national college entrance examination, as a prerequisite to admission to institutions of higher learning."[90]

Chief Justice Gesmundo is likewise on the same side, affirming the authority of the State, through the LEB, to supervise and regulate law schools, but subject to the latter's academic freedom.[91] He even emphasized the importance of the role of the

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[88] *Civil Liberties Union v. The Executive Secretary*, 272 Phil. 147, 162 (1991) [Per CJ Fernan].

[89] Concurring Opinion of SAJ Perlas-Bernabe, p. 9 [emphasis supplied].

[90] *Id.*, *see* note at 32, citing Record, Constitutional Commission (R.C.C.) No. 71, Vol. IV, 01 September 1986.

[91] *See* CJ Gesmundo's Concurring Opinion in *Pimentel v. LEB*, p. 26.

Supreme Court E-Library

LEB, in coordination with various stakeholders, in improving legal education.[92]

The Court cautions anew that the State's exercise of its authority over legal education extends only to reasonable supervision and regulation, not control

The mandate of the LEB to supervise and regulate law schools is a police power measure in furtherance of RA 7662's objective to promote quality legal education. However, while the academic freedom of law schools under the Constitution cannot derogate the State's constitutional authority to supervise and regulate schools, the Court stresses once again, as it did in its Decision, that the exercise of such authority, through the LEB, must be merely supervisory and regulatory. It should not amount to control.[93] The State's supervisory authority over legal education is one of oversight. It includes the authority to check, but not to interfere.[94] Moreover, the supervision and regulation of legal education as an exercise of police power, to be valid, must be reasonable and should not transgress the Constitution.[95] Its reasonableness must be viewed in relation to the public's right to education concomitant with the State's constitutional duty to protect and promote the right of its citizens to quality education at all levels.[96]

Given the foregoing, the Court reiterates that "Section 7 (e) of R.A. No. 7662, insofar as it gives the LEB the power to prescribe the minimum standards for law admission is faithful to the reasonable supervision and regulation clause. It merely authorizes the LEB to prescribe minimum requirements not amounting to control."[97] However, the LEB will do well to

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[92] *Id.* at 27.

[93] *See Pimentel v. LEB*, *supra* at note 34, pp. 60 and 102. *See* also J. Caguioa's Concurring Opinion in *Pimentel v. LEB*, pp. 5-7.

[94] *See Pimentel v. LEB*, *supra* at note 34, p. 57.

[95] *Id.* at 58.

[96] *Id.* at 64.

[97] *Id.* at 78.

Supreme Court E-Library

remember to exercise its discretion soundly, consistent only with its authority under the statute and the Constitution. It should not gravely abuse its discretion as this Court shall not shirk from its sworn duty to enforce the Constitution. In clear cases, it will not hesitate to give effect to the supreme law by setting aside a statute in conflict therewith.[98] The Court shall exercise the power of judicial review by the mere enactment of a law or approval of a challenged action when such is seriously alleged to have infringed the Constitution.[99] This includes violation of the fundamental rights of institutions of higher learning under their academic freedom.[100]

The imposition of taking an aptitude exam as a requirement for law school admission is not per se unreasonable; the imposition of a minimum passing rate, however, unreasonably infringes on the freedom of schools to determine who to accept as students

Being a composite part of the education system, legal education may be regulated and supervised by the political departments through a valid exercise of police power as part of the State's policy and duty to provide quality education that suits the needs of people and society. Following the Constitution, however, the exercise of police power must be reasonable and must not be violative of the academic freedom of schools; otherwise, the exercise thereof may not pass the test of constitutionality. The legislature made sure to acknowledge these constitutional limits with the unequivocal language employed in RA 7662.

How far police power can go against the academic freedom of schools is essentially subject to the test of lawful subject and lawful method. The test to determine the validity of a police

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[98] *See Kilusang Mayo Uno v. Hon. Aquino III*, G.R. No. 210500, 02 April 2019, 899 SCRA 492, citation omitted [Per J. Leonen].

[99] *See Pimentel v. LEB*, *supra* at note 34, at 30; *See* also CJ Gesmundo's Concurring and Dissenting Opinion in *Pimentel v. LEB*, p. 27.

[100] *See* CJ Gesmundo's Concurring and Dissenting Opinion in *Pimentel v. LEB*, p. 27.

Supreme Court E-Library

measure are as follows: (1) the interests of the public generally, as distinguished from those of a particular class, requires its exercise; and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.[101] Further instructive on this matter is *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*,[102] where the Court examined the intent of the Framers concerning Section 4 (1), Article XIV of the Constitution, to wit:

> . . . The Framers were explicit, however, that this supervision refers to *external governance*, as opposed to *internal governance* which was reserved to the respective school boards, thus:
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> x x x
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> **When we speak of State supervision and regulation, we refer to the external governance of educational institutions**, particularly private educational institutions as distinguished from the internal governance by their respective boards of directors or trustees and their administrative officials. Even without a provision on external governance, the State would still have the inherent right to regulate educational institutions through the exercise of its police power. We have thought it advisable to restate the supervisory and regulatory functions of the State provided in the 1935 and 1973 Constitutions with the addition of the word "reasonable." We found it necessary to add the word "reasonable" because of an *obiter dictum* of our Supreme Court in a decision in the case of *Philippine Association of Colleges and Universities v. The Secretary of Education and the Board of Textbooks* in 1955.
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> **The addition, therefore, of the word "reasonable" is meant to underscore the sense of the committee, that when the Constitution speaks of State supervision and regulation, it does not in any way mean control. We refer only to the power of the State to provide regulations and to see to it that these regulations are duly followed and implemented**. It does

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[101] *See Planters Products, Inc. v. Fertiphil Corporation*, 572 Phil. 270, 283 (2008) [Per J. Reyes, R.T.].

[102] G.R. Nos. 216930, 217451, 217752, 218045, 218098, 218123 & 218465, 09 October 2018 [Per J. Caguioa].

Supreme Court E-Library

> not include the right to manage, dictate, overrule and prohibit. Therefore, it does not include the right to dominate." [Emphases in the original; underscoring supplied.]

Here, the Court maintains that the State has the authority to administer an aptitude test in the exercise of its police power and given the existence of a compelling State interest to uplift the standards of legal education.

In the study of medicine, the Court accentuated this compelling State interest when it upheld the State's three-flunk rule in the qualifying examination of prospective students in medicine in *Department of Education Culture and Sports v. San Diego (San Diego)*,[103] thus:

> It is time indeed that the State took decisive steps to regulate and enrich our system of education by directing the student to the course for which he is best suited as determined by initial tests and evaluations. Otherwise, we may be "swamped with mediocrity," in the words of Justice Holmes, not because we are lacking in intelligence but because we are a nation of misfits.[104]

Similarly, the compelling State interest in law schools is spurred primarily by the need to upgrade the quality of legal education that has become languid over time and infiltrated by individuals or organizations who are not qualified. It is in this light that the legislature, during the Senate deliberations on RA 7662, recognized the necessity of prescribing an aptitude test for this purpose.[105] The Court later acknowledged it through its approval of the Committee on Legal Education and Bar Matter's proposed amendment to Section 7(e) of RA 7662, as well as in Bar Matter No. 1161.[106]

Following the constitutionally-provided limits, however, the LEB must still show that the current PhiLSAT, being a State-sanctioned exam, is reasonably necessary to accomplish the

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[103] 259 Phil. 1016 (1989) [Per J. Cruz].

[104] *Id.* at 1024.

[105] *See Pimentel v. LEB, supra* at note 34, at 79-80.

[106] *Id.* at 80-81.

Supreme Court E-Library

purpose of RA 7662 and not unduly invasive and oppressive of private rights, particularly the academic freedom of law schools.

In this respect, the Court is of the considered view that the requirement of the LEB for prospective students to take the PhiLSAT does not *per se* render it unconstitutional for as long as the results will only be recommendatory, with the law schools retaining the discretion to accept the applicant based on their policies and standards. As an eligibility requirement, though, the current PhiLSAT is not a lawful method to attain the lawful subject of the State. Requiring the schools to accept only those who took and passed the exam amounts to a dictatorial control of the State, through LEB, and runs afoul of the intent of the Constitution.

As Associate Justice Marvic M.V.F. Leonen (Justice Leonen) aptly noted, the PhiLSAT, in its current formulation, is not merely recommendatory but is an absolute requirement on law school applicants and effectively dictates upon law schools who may be admitted to study.[107] It takes away the autonomy of law schools and unduly replaces it with the ministerial duty to comply with the LEB's order. A law school's admission policy becomes confined to follow the standards imposed by the LEB under pain of sanctions and fines provided in Section 15 of LEBMO No. 7-2016. This is an impermissible intrusion into the academic freedom of law schools. In the metaphorical road towards the legal profession, where the law schools are the vehicles and the administrators are the drivers, the State has the authority to impose safety rules, post guide signs, and establish checkpoints. However, it is not the business of the State to determine and dictate who may ride the vehicle.

What makes matters worse is that the LEB did not even seek the participation of law schools in any discussion before formulating the relevant issuances relating to the current PhiLSAT. There was also no prior study conducted to determine the propriety of PhiLSAT. The LEB merely likened it to the NMAT of medical schools and the Law School Admission Test abroad.[108] It is crystal

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[107] Dissenting and Concurring Opinion of J. Leonen, p. 5.

[108] *See* J. Leonen's Concurring and Dissenting Opinion in *Pimentel v. LEB*, pp. 17-18.

Supreme Court E-Library

clear that the LEB arbitrarily flexed its power and exceeded its permissible authority by totally depriving law schools of a fair and reasonable opportunity to be heard given the lack of consultations before the formulation of LEBMO No. 7-2016. Indeed, it is quite ironic that the formulation of PhiLSAT, as one of the State's measures to uplift the standard of legal education by doing away with mediocrity, appears to have been done haphazardly.

Respondents persevere in arguing for the continued existence of the current PhiLSAT by likening it to the NMAT, an aptitude exam taken by prospective medical students, the validity of which was upheld by the Court in *Tablarin v. Hon. Gutierrez (Tablarin)*.[109]

PhiLSAT may be said to be akin to, but also different from, the Board of Medical Education (BME)'s legally mandated NMAT for prospective medical students. Indeed, the path of PhiLSAT may be said to mirror that of its counterpart. The NMAT came about after Congress enacted RA 2382,[110] which created the BME. Under the said law, the BME was authorized, *inter alia*, to determine and prescribe the requirements for admission into a recognized college of medicine. Those minimum requirements for applicants to medical schools were further encapsulated in the law, particularly Section 7 thereof. One of these minimum requirements was the issuance of a certificate of eligibility (COE) for entrance to a medical school, which then spawned Department Order No. 52, Series of 1985 (DO No. 52-1985), establishing the NMAT as an additional requirement for the issuance of a COE for admission into medical schools starting the school year 1986-1987.[111]

The NMAT was naturally met with howls of protest from the affected sectors, leading to several cases, including the petition in *Tablarin*, which the Court ultimately resolved in favor of the State's exercise of police power. Three (3) decades later, the legal world — or at least the legal education — was introduced to a similar situation with the PhiLSAT.

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[109] 236 Phil. 768 (1987) [Per J. Feliciano].

[110] The Medical Act of 1959 (1959).

[111] *See Tablarin supra* at note 109.

Supreme Court E-Library

A solid argument against calls for the nullification of the PhiLSAT is the Court's previous declaration to uphold the constitutionality of the pertinent statute and order creating the NMAT. In *Tablarin*, the Court ruled in favor of the constitutionality, reasonableness, and value of the NMAT in this wise:

> We believe that the government is entitled to prescribe an admission test like the NMAT as a means for achieving its stated objective of "upgrading the selection of applicants into [our] medical schools" and of "improv[ing] the quality of medical education in the country." Given the widespread use today of such admission tests in, for instance, medical schools in the United States of America (the Medical College Admission Test [MCAT]) and quite probably in other countries with far more developed educational resources than our own, and taking into account the failure or inability of the petitioners to even attempt to prove otherwise, we are entitled to hold that the NMAT is reasonably related to the securing of the ultimate end of legislation and regulation in this area. That end, it is useful to recall, is the protection of the public from the potentially deadly effects of incompetence and ignorance in those who would undertake to treat our bodies and minds for disease or trauma.[112]

Tablarin may be old, but the above-quoted elucidation still holds relevance in this day and age. It may have involved students from medicine, but the desideratum for quality education applies to all. There is no rhyme or reason to distinguish between medical and law students regarding the expectation of quality education. Under Section 1, Article XIV of the 1987 Constitution, the State is required to protect and promote the right of all citizens to quality education **at all levels**. This mandate encompasses all forms of threats and hurdles against quality education. Such constitutional mandate is executed through enactments by which the State can exercise reasonable regulatory and supervisory authority over **all** educational institutions.[113] Just like in the study of medicine, the need for quality education in law cannot be overemphasized. The products of law schools will have the

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[112] *Id.* at 109.

[113] Constitution, Article XIV, Section 4. (1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.

significant task of helping in the dispensation of justice and the protection of life, liberty, and property.

At this juncture, PhiLSAT's parallelism with NMAT ends.

As explained at length by the Court in its Decision, LEBMO No. 7-2016, which gave birth to the PhiLSAT, suffers from several constitutional infirmities. The two (2)-year limitation for prospective students to take the PhiLSAT, together with the additional requirement to pass the same, or have an unexpired certificate of exemption, as set forth under Sections 7, 8, 9, and 10 of LEBMO No. 7-2016, are arbitrary and *ultra vires* in nature; hence, unconstitutional. Although the State has a compelling interest to uplift the standards of legal education in the country, Section 9 of LEBMO No. 7-2016 is unconstitutional for unreasonably encroaching into the sphere of academic freedom of law schools to determine for themselves who to admit as students.

In this vein, respondents' analogy between PhiLSAT and NMAT becomes amiss. A perusal of DO No. 52-1985 reveals that the BME uses percentile rank for its cut-off score for the NMAT, which cut-off score is determined in consultation with the Association of Philippine Medical Colleges. In stark contrast, the LEB solely determined the 55% passing score for the PhiLSAT without providing any justification for how it arrived with the same. Also, the PhiLSAT uses a straightforward, absolute metric by using the percentage score obtained by an individual test-taker, which involves determining how many right and wrong answers an individual obtained in the test. The NMAT, on the other hand, uses percentile ranking wherein the percentile scores show how well a test-taker did relative to others who have taken the test. While the use of the percentage score may be replaced with a percentile score under LEBMO No. 7-2016, only the LEB may prescribe the same.

Markedly, with the foregoing dissimilarities between NMAT and PhiLSAT, it is not difficult to see why the ruling in *Tablarin* upholding the validity of NMAT cannot be invoked by respondents. While *Tablarin* may be used to uphold the authority of the State to administer an aptitude exam, it cannot justify the LEB's control over the affairs of law schools, particularly concerning their discretion in choosing their enrollees.

Supreme Court E-Library

Relative to this, it bears noting that *Tablarin* and the other cases involving NMAT did not touch on the academic freedom of medical schools. Petitioners therein, who were prospective medical students, questioned the validity of the NMAT based on their right to quality education and the equal protection clause. As astutely underscored by Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa), the Court might have even arrived at a different conclusion in *Tablarin* had the issues been examined through the lens of institutional academic freedom.[114] However, as no medical school participated in the proceedings therein, the Court was not exposed to the broad spectrum of the NMAT and decided the petition only through the prism of the State's police power. In the end, *Tablarin* confirmed the State's right to regulate education only; it did not discuss allowable limits of such regulatory authority in the context of academic freedom and legal education. Thus, while the Court upheld the NMAT as a valid exercise of police power, it was not adjudicated to be a reasonable supervisory and regulatory measure.

Fortunately, the right to academic freedom has been opportunely invoked by petitioner-intervenor St. Thomas More School of Law and Business, which claims injury "in the form of reduced number of enrollees due to the PhiLSAT requirement and the curtailment of its discretion on who to admit in its law school."[115] Borrowing the wise words of former Associate Justice Isagani A. Cruz, "[r]ights are but weapons on the wall if, like expensive tapestry, all they do is embellish and impress. Rights, as weapons, must be a promise of protection. They become truly meaningful, and fulfill the role assigned to them in the free society, if they are kept bright and sharp with use by those who are not afraid to assert them."[116] Accordingly, the failure of medical schools to invoke their right in *Tablarin* should not prejudice the law schools who are now wielding their weapon and asserting their right to academic freedom.

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[114] Concurring Opinion of J. Caguioa, pp. 3-4; *See* also J. Leonen's Dissenting and Concurring Opinion in *Pimentel v. LEB*, p. 12.

[115] *Pimentel v. LEB*, *supra* at note 34, at 36.

[116] *Ynot v. Intermediate Appellate Court*, 232 Phil. 615 (1987), G.R. No. 74457, 20 March 1987 [Per J. Cruz].

Supreme Court E-Library

LEBMO No. 7-2016 should be stricken down in its entirety, along with all the LEB memoranda, circulars, and issuances pertaining thereto and the PhiLSAT

A perusal of the Decision reveals that while it declared unconstitutional the act and practice of the LEB of excluding, restricting, and qualifying admissions to law schools, only Section 9 of LEBMO No. 7-2016 was categorically invalidated for being unconstitutional; all the other provisions in the LEBMO, including Section 1 which declares as a policy the requirement of taking the LEB-administered PhiLSAT, were given force and effect.

Notably, both PALS and petitioners claim that the Court's ruling on the PhiLSAT is ambiguous on whether the requirement to take the PhiLSAT is now optional or mandatory. The ambiguity is sowing confusion because PALS presumes that by striking down Section 9 of LEBMO No. 7-2016, the Court has rendered the PhiLSAT optional. In contrast, respondents construe the ruling of the Court as still giving authority to the LEB to conduct the PhiLSAT, thereby prompting it to issue LEBMC No. 52-2020.

The Court declares the entire LEBMO No. 7-2016 unconstitutional.

Synthesizing the provisions of LEBMO No. 7-2016, it is evident that unless prospective students have a certificate of exemption, they are compelled to **take** and **pass** the said exam as an eligibility requirement for law school. Under pain of sanction or fine, law schools are prohibited from accepting prospective students who do not meet the said requirements. For being unreasonably exclusionary, restrictive, and qualifying, the Court declared Section 9 of LEBMO No. 7-2016 unconstitutional. Indeed, Justice Perlas-Bernabe was apt to call the requirements under Section 9 thereof as an effective "sifting mechanism"[117] in which "[t]he token regard for institutional academic freedom comes into play,

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[117] SAJ Perlas-Bernabe's Concurring Opinion in *Pimentel v. LEB*, p. 2.

Supreme Court E-Library

if at all, only after the applicants had been 'pre-selected' without the school's participation."[118]

With the unconstitutionality of Section 9 of LEBMO No. 7-2016, the other provision which provides life support to the current exclusionary, restrictive, and qualifying PhiLSAT is Section 1 thereof. As it is, even without Section 9, prospective students must still take a rigorous eligibility exam, or they would not qualify for law school. Being a compulsory eligibility requirement, it is violative of academic freedom.

Similar to the requirement of passing, the act of mandating the taking of PhiLSAT as an admission requirement to any basic law course under Section 1 is an unreasonable imposition which unduly limits the choice of law schools on who to admit. It impairs the law schools' *de facto* control over the admission and examination of their students. Law schools are left with no other recourse but to refuse the admission of those who failed to take the compulsory exam, regardless of the merit of the student's reason for such failure. This is an absurdity that is difficult to justify even by the noble aspirations of the State, more so when one considers LEB Chairperson Emerson B. Aquende's revelation that "there is no statistical basis to show the propensity of the PhiLSAT to improve the quality of legal education."[119]

To be sure, many potentially qualified students could not take the exam due to various reasons. Some of these reasons are even attributable to the LEB. The exam entails financial costs that not every prospective law student can easily afford without suffering any financial dent. Chief Justice Gesmundo aptly discussed the financial and logistical burdens which the current admission examination brings to the prospective examinees, thus:

> Under the PhiLSAT, the LEB initially imposed a testing fee of ₱1,500.00 per examination, which was subsequently lowered to ₱1,000.00; and there are only seven (7) testing centers across the country-Baguio City, Metro Manila, Legazpi City, Iloilo City, Cebu City, Davao City, and Cagayan De Oro City. Also, the LEB failed to explain why it had to impose said fee for a mere written examination. x x x

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[118] *Pimentel v. LEB, supra* at note 34, at 86.

[119] SAJ Perlas-Bernabe's Concurring Opinion in *Pimentel v. LEB*, p. 5.

Supreme Court E-Library

Further, the LEB also failed to consider the transportation and logistical expenses that would be incurred by an examinee coming from the far-flung areas to take the examination in the limited seven (7) testing centers. A student from the province [of Leyte] explained the immense difficulty of taking the PhiLSAT [in Cebu City]. x x x

It must be underscored that the study of law should not be hindered by financial and geographical hardships; rather, it must be reasonable and accessible to the examinees. Otherwise, it would defeat the purpose of a unified admission examination — to ensure that those intellectually capable to become law students, regardless of social status, shall be admitted to the study of law.[120]

With the foregoing, the Court must likewise pull the plug on Section 1 and thereby put an end to the exclusionary and unreasonably intrusive eligibility exam under LEBMO No. 7-2016.

More importantly, the Court holds that the entire memorandum must be struck down. As intimated by Justice Perlas-Bernabe[121] and Justice Caguioa,[122] despite the separability clause in LEBMO No. 7-2016, several other provisions must likewise be invalidated for being closely related and meant to implement the PhiLSAT as a mandatory and exclusionary exam.

Generally, with a separability clause, the nullity of one provision shall not invalidate the act's other provisions.[123] However, when the parts of a statute are so mutually dependent and connected, as conditions, considerations, inducements, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, the nullity of one part will vitiate the rest.[124] Moreover, it is a general rule of construction that the meaning of the law

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[120] CJ Gesmundo's Separate Concurring and Dissenting Opinion in *Pimentel v. LEB*, pp. 17-19.

[121] *See* Concurring Opinion of SAJ Perlas-Bernabe, pp. 5-8.

[122] *See* Concurring Opinion of J. Caguioa, pp. 4-7.

[123] *See Film Development Council of the Phils. v. Colon Heritage Realty Corp.*, 760 Phil. 519 (2015), G.R. Nos. 203754 & 204418, 16 June 2015 [Per J. Velasco, Jr.].

[124] *Id.*

Supreme Court E-Library

is not to be extracted from a single part but from a general consideration or view of the act as a whole.[125] Particular words, clauses, and phrases should not be studied as detached and isolated expressions.[126]

The legal basis from which the PhiLSAT draws its existence is LEBMO No. 7-2016. However, since the overall intent behind LEBMO No. 7-2016 is to administer an exclusionary test through PhiLSAT,[127] "[a]ll of its provisions, whether key or ancillary, form an integral composite that lays down a holistic framework that is operatively interdependent and hence, cannot be extricated from one another."[128]

Notably, Section 7 of LEBMO No. 7-2016 sets the passing score at 55% **"or such percentile score as may be prescribed by the LEB"**; Section 8 refers to the issuance of a COE only to those who passed the test; Section 10 exempts certain graduates from "taking and passing" it; Section 11 states that law schools can prescribe additional requirements such as a PhiLSAT score **"higher than the cut-off or passing score set by the LEB"**; Section 12 requires the schools to submit reports indicating the PhiLSAT scores of the admitted students; Section 14 obligates law school deans to submit to LEB written justifications for the admission of applicants below the cut-off or passing score of the PhiLSAT; and Section 15 imposes severe administrative sanctions on law schools that violate LEBMO No. 7-2016. It is unmistakably clear that these provisions are intimately connected to, or are necessary components of, the LEB's measure in excluding, restricting, and qualifying admissions to law schools. Thus, they must be declared unconstitutional.

With the unconstitutionality of the foregoing provisions, what remains is the availability of the PhiLSAT as an aptitude test. Sections 2, 3, 4, 6, and 13 of LEBMO No. 7-2016 respectively

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[125] *Aquino v. Quezon City*, 529 Phil. 486, 498 (2006) [Per J. Azcuna].

[126] *National Tobacco Administration v. COA*, 370 Phil. 793 (1999) [Per J. Purisima].

[127] *Id.*

[128] Concurring Opinion of SAJ Perlas-Bernabe, p. 5.

Supreme Court E-Library

provide the test design of the PhiLSAT, who may qualify to take the same, who will administer the exam, the schedule and venue, the testing fee, and the removal of the general average requirement under LEBMO No. 1-2011. Sections 16, 17, and 18 of LEBMO No. 7-2016 provide the Separability, Repealing, and Effectivity Clauses, respectively.

These remaining provisions are not unconstitutional or invalid *per se*. However, Sections 16, 17, and 18 of LEBMO No. 7-2016, being merely ancillary, can no longer stand on their own. Meanwhile, the rest would appear that they can stand on their own, in furtherance of the State's authority, through the LEB, to administer a constitutionally compliant aptitude test pursuant to its powers under RA 7662. To stress, however, the problems created by the current PhiLSAT were precisely because the LEB set the parameters by itself. The LEB failed to collaborate with the law schools and conduct relevant studies before formulating LEBMO No. 7-2016. The opinion of law schools on the propriety and rationality of the provisions of LEBMO No. 7-2016 was undeniably vital in crafting a reasonable aptitude exam. Sections 5 and 6, for instance, appear to make an aptitude exam impractical and arbitrary due to the financial burdens linked to the testing fees and logistical considerations.

Accordingly, it would be more appropriate to strike down all remaining provisions. This gives the LEB a fresh start, devoid of any arbitrary preconceived ideas when it sits down with the law schools or PALS for genuine and meaningful discussions on a possible acceptable replacement of the present PhiLSAT.

To this end, it is fitting to point all the stakeholders to Chief Justice Gesmundo's win-win solution which provides viable parameters that the parties may adopt in coming up with a standardized and acceptable law admission test. Among other things, the examination must be unrestrictive of academic freedom, cost-efficient, accessible, and an effective tool in assessing incoming law students. The law admission test should likewise not be the sole basis for admission to the study of the law. Undergraduate achievements, motivation, or cultural backgrounds that the admission test cannot measure must also be considered.

Supreme Court E-Library

Besides the admission test, the law school must still be given the discretion to determine who to admit as students consistent with its academic freedom.[129]

With LEBMO No. 7-2016 being unconstitutional, all the LEB memoranda, circulars, and issuances pertaining to it and the PhiLSAT, which are inconsistent with this Court's declaration, are deemed vacated and of no force and effect. Accordingly, the Court no longer finds it necessary to dwell on respondents' prayer to lift the TRO, which enjoined the LEB from implementing LEBMC No. 18-2018. All conditionally-admitted students may thus continue their enrollment and be regularized in accordance with the exercise of the academic freedom of their respective law schools. With this, the students may now take off the suffocating mask of uncertainty over their status and breathe in all the legal knowledge they can absorb.

Sections 15 (3), 16, and 17 of LEBMO No. 1-2011 are unconstitutional for being ultra vires

Respondents argue that paragraph 3 of Section 15 of LEBMO No. 1-2011, which pertains to the LEB's sole authority to determine the eligibility of a foreign graduate to enter law school, is a valid exercise of police power to place our local students on equal footing with their foreigner counterparts. Under this provision, while local students would need to prove to the government that they studied a requisite pre-law course, foreigners who want to enter a Philippine law school need only present their credentials to their school of choice without being subjected to validation by the government. Additionally, respondents asseverate that assuming for the sake of argument this paragraph is void, the entire provision should not be struck down, considering that the first paragraph was upheld by the Court, and given that the petitioners failed to point out any objectionable part to it.

The Court partially agrees.

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[129] *See* CJ Gesmundo's Concurring and Dissenting Opinion in *Pimentel v. LEB*, pp. 18-19.

Supreme Court E-Library

The requirement regarding admission of international students is legally impermissible as the students' eligibility is strictly left for the LEB to decide. This unduly takes away the right of the academic institution to exercise its discretion whether to accept the student or not, thereby transgressing its academic freedom to determine who to admit.

This notwithstanding, the Court agrees with respondents that the entirety of Section 15 should not be invalidated. Notably, the first paragraph pertains to the requirement for a certification from the Secretary of Education that the applicant completed the required four (4)-year pre-law course. Far from being arbitrary, Section 15(1) is a reasonable requirement to ensure that the applicant is qualified to take the course. The Court even similarly requires it for admission to the Bar examination.

On Section 16 of LEBMO No. 1-2011, which additionally requires a prescribed number of units in Mathematics, Science, and English for admission, respondents argue anew that the said requirement is a valid exercise of the State's supervisory regulatory power. Corollarily, respondents assert that the existence of Rule 138 of the Rules of Court is of no moment as said rule concerns only admission to the Bar examinations, not to law school.

Indeed, Rule 138 of the Rules of Court pertains only to the requirement of the Court anent the Bar examinations, thus, irrelevant to the determination of the validity of the questioned provision. Nevertheless, Section 16 is still void as it is couched in a language that effectively denies the academic institution's autonomy to, at the very least, conditionally accept the student with deficient units in Mathematics, English, and Social Science subjects. Trite to point out, the LEB, in the exercise of the delegated police power of the State, may impose reasonable and minimum qualifications of prospective law students for as long as it does not suppress the autonomy of the academic institution to choose its students.

Finally, the Court sustains its ruling that the prohibition against accepting applicants for the Master of Laws without a Bachelor of Laws or Juris Doctor degree under Section 17 of LEBMO No. 1-2011 is void for infringing the right of the school to determine

Supreme Court E-Library

who to admit to their graduate degree programs. This section provides:

> Section 17. **Board Prerequisites for Admission to Graduate Programs in Law**. — Without prejudice to other requirements that graduate schools may lay down, **no applicant shall be admitted for the Master of Laws (Ll.M.) or equivalent master's degree in law or juridical science, without an Ll.B. or a J.D. degree**. Admission of non-Members of the Philippine Bar to the master's degree shall be freedom vested in the graduate school of law. **The candidate for the doctorate degree in juridical science, or doctorate in civil law or equivalent doctorate degree must have completed a Master of Laws (Ll.M.) or equivalent degree**.
>
> Graduate degree programs in law shall have no bearing on membership or non-membership in the Philippine Bar. [Emphases supplied.]

To recall, the Court held that such requirement "effectively nullifies the option of admitting non-law graduates on the basis of **relevant professional experience** that a law school, pursuant to its own admissions policy, may otherwise have considered."[130]

There is no monopoly of knowledge. Legal education would be more robust by allowing an engineer, a metallurgist, a businessperson, an agriculturist, and other graduates to further improve their crafts through this course. To note, it is also the general objective of RA 7662 to train persons for leadership and to contribute towards the promotion and advancement of justice and the improvement of its administration, the legal system, and legal institutions in light of the historical and contemporary development of law in the Philippines and other countries. Certainly, the pursuit of these objectives is not exclusive for law students or law practitioners.

Associate Justice Japar B. Dimaampao (Justice Dimaampao) expressed his objection against the constitutionality of Section 17 of LEBMO No. 1-2011. He proffers that the Master of Laws programs should be restricted to those who have completed a law course so that the purpose of RA 7662 may be genuinely accomplished.[131] He posits that in as much as constitutionality

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[130] *Pimentel v. LEB*, *supra* at note 34.

[131] Separate Concurring of J. Dimaampao, p. 4.

Supreme Court E-Library

of the requirement of aptitude exam is upheld as a reasonable exercise of the State's police power, "all the more reason should the prerequisite of an Ll.B. or J.D. degree be rendered as sensibly logical before someone may enroll in an LL.M. course."[132]

As underscored in the Decision, Section 5 (2), Article XIV of the Constitution guarantees all institutions of higher learning academic freedom. Nothing short of marked arbitrariness, or grave abuse of discretion on the part of the schools, or overriding public welfare could justify State interference with the academic judgment of higher educational institutions.[133] It has been the Court's firm stance ever since, and the facts before Us show no reason to apply the exception in this case.

Being a non-law graduate *per se* is not a compelling reason for the State to interfere with the law schools' academic freedom by requiring them to completely discriminate against non-law graduates when it comes to their Masters of Laws program. True, a "*Magister Legum* is not a mere frivolous epithet, and achieving it is not a doddle.[134] Nonetheless, the questions regarding the challenges of non-law graduates to a Master of Laws program are limiting beliefs that could even be a roadblock to developing and expanding the master's program in Philippine law schools. Such fear may even be overstated since non-law graduates studying abroad have shown that they can cope, nay excel in LL.M. programs, and assimilate with other students despite the considerable handicap they initially have:

> The ways that they improve the classroom is that they tend to be the students who think outside the box." Nottingham's Sangeeta Shah says. They don't think in terms of rigid laws. They think, this is where I need to get, let me figure out how to do it. They tend to be creative thinkers. Not that law students aren't creative thinkers, but it just enriches the classroom. It makes it a better place.[135]

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[132] *Id.* at 10.

[133] *Garcia*, *supra* at note 69 at 494 citing former Justice Teehankee's Concurring Opinion in Garcia.

[134] Reflections of J. Dimaampao, p. 11.

[135] <https://llm-guide.com/articles/pursuing-an-llm-without-a-background-in-law, citing the response of Sangeeta Shah, an Associate Professor in the School of Law of the University of Nottingham> (accessed on 21 October 2021).

Supreme Court E-Library

While it may be true that "one can become word-perfect in all the law materials available yet could still be inept if one did not experience the opposite priming and inculcation which is law school,"[136] it is not always the case. A person may brag about being a graduate of law but still deficient, if not inept. In the same breadth, a non-law graduate could very well have a deep understanding of the law through self-learning, guidance from mentors, or even through related work experience.

To be sure, the great Abraham Lincoln had received little formal education in his life, and yet through continuous learning and constant hunger for self-improvement, he was able to become a lawyer successfully, and then as a president of the United States of America. In the Philippine setting, former Senator Jose W. Diokno topped the Philippine bar examinations without a law degree.[137] It can be said that these success stories are extreme and rare instances of greatness, but they still buttress the argument that a non-law student can cope and excel in a Master of Laws program if they want to.

Illustrating the wisdom of Section 17, Justice Dimaampao observed that the LL.M. programs in the Philippines show the need for foundational knowledge and are structured in a particular format that incontrovertibly intends to prepare lawyers, judges, and law professors for global legal practice.[138] By way of an example, he extensively discussed the current structure and parameters of the master's curriculum of the University of the Philippines (UP) College of Law.

It must be emphasized that the Master of Laws curriculum of the UP College of Law was designed based on the criteria it personally crafted. **The eligibility requirements were formulated thusly not because of a State decree, but precisely because the college has the freedom to determine for itself, on academic grounds, the curriculum it will offer for its master's program and who may be qualified to enroll therein**. In line with this, the Court

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[136] Reflections of J. Dimaampao, p. 10.

[137] <https://diokno.ph/jwd> (accessed on 21 October 2021).

[138] Separate Concurring Opinion of J. Dimaampao, p. 4.

Supreme Court E-Library

find it *apropos* to state that the UP College of Law, for all of its greatness, is still just one of the many law schools in the country. Its Master of Laws program does not represent what the other schools offer or would like to offer, in as much as the curriculum of one university cannot accurately reflect the trend in legal studies in the country.

Further, in other jurisdictions, students from non-law backgrounds can pursue LL.M.[139] Foreign schools are able to do this through viable workarounds, such as requiring the kind and number of non-legal students they accept or requiring non-law students to demonstrate an interest in law,[140] as in the case of one law school in England:

7. Can I apply if I do not have a law degree?

Students without a law background may apply to the LLM programme, but they need to demonstrate a high level of professional or academic experience in areas closely related to the subjects they wish to study. Recent graduates who have neither studied law nor passed a "conversion" course are only admitted in exceptional circumstances.[141]

Similarly, University of Queensland in Australia provides the same opportunity to non-law graduates, thus:

Which postgraduate law degrees can I apply for if I don't have a law degree?

If you hold a non-law bachelor degree, you may wish to consider the Master of International Commercial Law, Masters of International Commercial Law/Commerce, Master of International Law, or Masters of International Relations/International Law. The Master of International Commercial Law (& dual) is designed for business, finance, commerce, accounting or economics graduates. The Master of International Law (& dual) is designed for social science, political science and arts graduates.[142]

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[139] *Id.*

[140] <https://llm-guide.com/articles/pursuing-an-llm-without-a-background-in-law#:~:text=Some%20schools%20don't%20accept, apply%20to%20similar%20master's%20degrees> (accessed on 20 October 2021).

[141] <https://www.lse.ac.uk/law/study/llm/faqs> (accessed on 20 October 2021).

[142] <https://support.future-students.uq.edu.au/app/answers/detail/a_id/1277/~/which-postgraduate-law-degrees-can-i-apply-for-if-i-dont-have-a-law-degree%3F> (accessed on 20 October 2021).

Supreme Court E-Library

The State and this Court would do well to let the law schools exercise their authority to adopt a similar program or adjust their current Master of Laws curriculum to align with their organizational mission and vision or what they believe could help the school thrive and be globally competitive.

In the medical field, the country has had an influx of international students who opted to enroll in various medical courses offered in the country for a multitude of good reasons, including the renowned academic excellence and cost competitiveness of our medical schools. With Section 17 of LEBMO No. 1-2011, law schools will be unduly denied the similar opportunity to be marketable among foreign non-law graduates who would like to pursue a master's degree in law. In addition, the country's own non-law graduates would be constrained to pursue their master's degree outside the country instead of being proud products of Philippine graduate schools of law. It is disheartening to think that Filipino non-law graduates could create a name for themselves outside the country as barristers or international human rights advocate because the foreign law schools gave them a chance that their country unreasonably denied them.

Clearly, for the Court to declare the constitutionality of Section 17 of LEBMO No. 1-2011 would unduly give the State the right to order at once the disqualification of a non-law graduate from being considered for admission, even though the law schools can, in the exercise of their academic freedom, find a way to sufficiently address the perceived deficiency of these prospective students. Viewed in this light, the requirement of having a J.D. or Ll.B. for purposes of admission into a Master of Laws program will be no different from the imposition of the current PhiLSAT.

Ultimately, the Court holds that the questions raised pertaining to the fitness of a student to endeavor a higher level of legal studies should be matters exclusively for the law schools to consider and thresh out in the exercise of their academic freedom.

The LEB issuances prescribing the qualifications and classifications for faculty members, deans, and deans of graduate schools of law violate the

Supreme Court E-Library

academic freedom of law schools on who may teach

Respondents contend that the LEB's authority to prescribe the minimum qualifications of faculty members and deans of law schools cannot be made subservient to the demands of academic freedom, as there is an inherent limit to the right of the school to choose who may teach. Furthermore, the requirement for a professor in law school to have a master's degree is germane to the State's objective of promoting quality education in law schools. According to respondents, the State is just fulfilling its role to act as *parens patriae*.

Additionally, respondents assert that the requirement for a master's degree is reasonable because law schools have sufficient time to comply, and since the same applies only to those who do not possess the requisite experience. In any case, aside from the existence of numerous exemptions thereto, this requirement has already been partially complied with by the schools and is supported by the ruling in *Son v. University of Santo Tomas*,[143] where the Court upheld the master's degree requirement for faculty members in tertiary education.

The Court affirms its ruling.

There is no question that the master's degree requirement for tertiary education teachers is permissible. This is settled. Here, what is unacceptable for being unreasonable is how the LEB exercised its authority to impose such requirement as discussed at length in the assailed Decision. The issuances under consideration violate the law schools' right to set their own faculty standards and evaluate the qualifications of their teachers. In so doing, the LEB issuances infringe on the academic freedom of the schools to choose who may teach their students. While the State may act in furtherance of its role as *parens patriae*, it should not act like an overbearing parent who makes life choices for its adult child without regard to the latter's own choices or opinion.

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[143] G.R. No. 211273, 18 April 2018 [Per J. Del Castillo].

Supreme Court E-Library

LEBMC No. 6-2017, LEB Resolution No. 2012-02, and LEB Resolution No. 2012-06 are invalid insofar as they require the submission of an application for LEB Certification

PALS and Justice Caguioa[144] correctly pointed out that LEBMC No. 6-2017 and LEB Resolution No. 2012-02 unduly interfere with the law schools' management of their graduating students.

In the Whereas Clause of LEB Resolution 2012-12,[145] it was spelled out that a special order[146] (S.O.) is not an imperative requirement for higher education institutions to graduate. It was also stated that since state colleges are exempt from the requirement of S.O. for their graduates, higher private education institutions shall also enjoy such exemption. In lieu of the S.O., however, same resolution requires law schools to submit a letter and a certification under oath, within 60 days before the end of the academic year, signed by the registrar and the law dean and noted by the school president or head. Complementing said resolution, the LEB issued Resolution No. 2012-06, relieving law schools of the need to secure the Revised CHED Form for their graduates but requiring the law schools to instead submit a letter and a Certification containing the names of the graduating students and the exact date of graduation, *inter alia*. Respondents justify the new requirement as giving effect to the LEB's regulatory authority and providing a reasonable check on the exercise by law schools of the freedom to determine who should graduate from their law course.

Since an S.O. is not required for graduating law students, the LEB should have contented itself with eliminating such requirement or coming up with a less burdensome and non-

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[144] *See* J. Caguioa's Concurring Opinion in *Pimentel v. LEB*, p. 39.

[145] Entitled "A Resolution Eliminating the Requirement of Special Orders for Graduates of the Basic Law Degrees and Graduate Law Degrees and Replacing them with a Per Law School Certification Approved by the Legal Board."

[146] An S.O. is a document issued by the CHED certifying that students have completed the required four (4)-year course and complied with all the requirements.

Supreme Court E-Library

intrusive replacement. Instead, the LEB imposed inflexible and burdensome requirements under LEBMC No. 6-2017, such as, (i) requiring the inclusion of the names of all students expected to graduate in the application for LEBC, "notwithstanding that some of them have yet to comply with the requirements for graduation fully and may possibly not graduate," thereby imposing additional burden on the part of the school to notify the LEB for the cancellation of the LEBC Number corresponding to the student/s who failed to graduate; (ii) mandating the law schools to observe the required signatories for the letter and certification, disallowing substitution by subordinate or other school officials; and (iii) enjoining the law schools to fix their graduations dates ahead of the 60-day deadline for submission. "Appropriate sanctions" await law schools that allow their students to graduate without the LEBC Numbers, while incomplete applications or those without the signatures of the required signatories will be returned. All of these amount to control, not regulation.

Consequently, the Court declares invalid LEBMC No. 6-2017, LEB Resolution No. 2012-02, and Resolution No. 2012-06 insofar as these issuances require law schools to submit a letter and Certification instead of an S.O.

As a final note, once the dust settles after the battle between police power and academic freedom, the hope is that the LEB and law schools collaborate towards the shared goal of uplifting legal education in the country. The resistance by the law schools against the initial measures implemented by the LEB should not be seen as an act against the advancement of legal education, but as an opportunity for improvement. After all, the enemy of progress is not opposition but complacency.

WHEREFORE, premises considered, the Partial Motion for Reconsideration with Joint Comment/Opposition on Respondent's Motion for Reconsideration of petitioners in G.R. 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

Supreme Court E-Library

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 petitioners, 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.

Gesmundo, C.J., Hernando, Carandang, Inting, M. Lopez, Gaerlan, Rosario, and *J. Lopez, JJ.*, concur.

Perlas-Bernabe, Caguioa and Dimaampao, JJ., see separate concurring opinions.

Leonen and *Lazaro-Javier, JJ.*, see concurring and dissenting opinions.

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Supreme Court E-Library

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. However, I write this opinion to particularly highlight the reasons for my concurrence with respect to the striking down of LEB Memorandum Order No. 7, Series of 2016[1] (LEBMO 7) in its entirety.

At the onset, it should be emphasized that the State has an interest in uplifting the standards of legal education in the country. Thus, it can issue reasonable regulations to attain that objective, including those that would "require [the] proper selection of law students."[2] However, in exercising its role as regulator, the State must take caution not to infringe the academic freedom of institutions as guaranteed under the Constitution.[3] As explained in my Opinion in this case on the main, when it comes to regulating institutional academic freedom, the State is not allowed to exercise control, but only reasonable supervision:

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[1] "*Policies and Regulations for the Administration of a Nationwide Uniform Law School Admission Test for Applicants to the Basic Law Courses in All Law Schools in the Country*," <https://leb.gov.ph/wp-content/uploads/2018/01/LEBMO-No.-7-PhiLSAT.pdf> (last visited October 26, 2021).

[2] See Republic Act No. 7662, entitled "AN ACT PROVIDING FOR REFORMS IN LEGAL EDUCATION, CREATING FOR THE PURPOSE A LEGAL EDUCATION BOARD, AND FOR OTHER PURPOSES" approved on December 23, 1993, Section 2 of which provides:

> Section 2. *Declaration of Policies*. — It is hereby declared the policy of the State to uplift the standards of legal education in order to prepare law students for advocacy, counselling, problem-solving, and decision-making, to infuse in them the ethics of the legal profession; to impress on them the importance, nobility and dignity of the legal profession as an equal and indispensable partner of the Bench in the administration of justice and to develop social competence.
>
> Towards this end, the State shall undertake **appropriate reforms** in the legal education system, **require proper selection of law students**, maintain quality among law schools, and require legal apprenticeship and continuing legal education. (Emphases supplied)

[3] Section 5 (2), Article XIV of the Constitution states: "Academic freedom shall be enjoyed in all institutions of higher learning."

Supreme Court E-Library

Section 5 (2), Article XIV of the 1987 Constitution guarantees that "**[a]cademic freedom** shall be enjoyed in **all institutions of higher learning**." According to case law, "[t]his institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them **free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint**. The essential freedoms subsumed in the term 'academic freedom' encompasses the freedom to determine for itself on academic grounds: (1) [w]ho may teach, (2) [w]hat may be taught, (3) [h]ow it shall be taught, and (4) **[w]ho may be admitted to study**." This fourth freedom of law schools to determine "who may be admitted to study" is at the core of the present controversy involving the PhiLSAT.

The PhiLSAT is essentially a standardized aptitude test measuring the examinees' communications and language proficiency, critical thinking skills, and verbal and quantitative reasoning. It is designed to measure the academic potential of the examinee to pursue the study of law. One of the essential provisions of LEBMO No. 7-2016 is paragraph 9, which states that passing the PhiLSAT is required for admission to any law school in the Philippines, and that no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within two (2) years before the start of the study. The PhiLSAT has a passing score of 55%. To concretize the mandatory nature of the PhiLSAT, paragraph 15 of LEBMO No. 7-2016 provides that law schools that violate the issuance shall be administratively sanctioned and/or fined in the amount of up to ₱10,000.00 for each infraction. The administrative sanctions direly encompass: *(a)* termination of the law program (closing the law school); *(b)* phasing out of the law program; and *(c)* provisional cancellation of the Government Recognition and putting the law program of the substandard law school under Permit Status. As the PhiLSAT is a requirement mandatorily imposed by LEBMO No. 7-2016, non-compliance therewith would result into these potential consequences.

Compliance with the PhiLSAT effectively means a surrender of the law schools' academic freedom to determine who to admit to their institutions for study. This is because the PhiLSAT operates as a sifting mechanism that narrows down the pool of potential candidates from which law schools may then select their future students. With the grave administrative sanctions imposed for non-compliance, the surrender of this facet of academic freedom is clearly compulsory, because failing to subscribe to the PhiLSAT requirement is tantamount to the law school risking its complete closure or the phasing out of its law program. **This effectively**

Supreme Court E-Library

results in the complete control — not mere supervision — of the State over a significant aspect of the institutions' academic freedom.

Notably, the core legal basis for the PhiLSAT is derived from Section 7 (e) of Republic Act No. 7662 which empowers the LEB "to prescribe the minimum standards for law admission x x x." On a broader scale, Section 7 (b) of the same law empowers the LEB "to supervise the law schools in the country x x x." This is a specific iteration of Section 4 (1), Article XIV of the 1987 Constitution which provides that **"[t]he State x x x shall exercise reasonable supervision and regulation of all educational institutions." "Reasonable supervision," as the Framers intended, meant only "external" and not "internal" governance; as such, it is meant to exclude the right to manage, dictate, overrule, prohibit, and dominate**. x x x[4] (Emphases in the original)

As will be expounded on below, LEBMO 7's overall intent is to administer an exclusionary test with severe administrative sanctions on the law schools in case of non-compliance. As such, the regulation is not merely tantamount to State supervision but rather, a form of control that unduly encroaches upon institutional academic freedom; perforce, it is unconstitutional.

At its core, LEBMO 7 provides for the administration of a "nationwide **uniform** law school admission test" called the Philippine Law School Admission Test (PhiLSAT). As stated in its paragraphs 1 and 9, LEBMO 7's core policy is to **require** all those seeking admission to law schools **to take** and **pass** the PhiLSAT.[5]

In this Court's 2019 Decision on the main,[6] it was stated that "paragraphs 7, 9, 11, and 15" of LEBMO 7 "exclude and disqualify those examinees who fail to reach the prescribed passing score

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[4] See Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe (SAJ Perlas-Bernabe) in *Pimentel v. Legal Education Board*, G.R. Nos. 230642 & 242954, September 10, 2019 (Main Decision).

[5] Item 1 of LEBMO 7 provides:

1. Policy and Rationale - to improve the quality of legal education, **all those seeking admission** to the basic law courses leading to either a Bachelor of Laws or Juris Doctor degree shall be **required to take the Philippine Law School Admission Test (PhiLSAT)**, a nationwide **uniform** admission test to be administered under the control and supervision of the LEB."

[6] *Pimentel v. Legal Education Board*, G.R. Nos. 230642 & 242954, September 10, 2019 (Main Decision).

Supreme Court E-Library

from being admitted to any law school in the Philippines." By doing so, "the PhiLSAT usurps the right and duty of the law school to determine for itself the criteria for the admission of students," and hence, violates their institutional academic freedom.[7] The Court added that as an aptitude test, the PhiLSAT is "reasonably related to the State's unimpeachable interest in improving the quality of legal education," but it "**should not be exclusionary, restrictive, or qualifying as to encroach upon institutional academic freedom**."[8]

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[7] Main Decision, id., *viz.*:

In mandating that only applicants who scored at least 55% correct answers shall be admitted to any law school, **the PhiLSAT actually usurps the right and duty of the law school to determine for itself the criteria for the admission of students and** thereafter, to apply such criteria on a case-by-case basis. It also mandates law schools to absolutely reject applicants with a grade lower than the prescribed cut-off score and those with expired PhiLSAT eligibility. The token regard for institutional academic freedom comes into play, if at all, only after the applicants had been "preselected" without the school's participation. The right of the institutions then are constricted only in providing "additional" admission requirements, admitting of the interpretation that the preference of the school itself is merely secondary or supplemental to that of the State which is antithetical to the very principle of reasonable supervision and regulation.

The law schools are left with absolutely no discretion to choose its students at the first instance and in accordance with its own policies, but are dictated to surrender such discretion in favor of a **State-determined pool of applicants, under pain of administrative sanctions and/or payment of fines**. Mandating law schools to reject applicants who failed to reach the prescribed PhiLSAT passing score or those with expired PhiLSAT eligibility transfers complete control over admission policies from the law schools to the LEB. As *Garcia* tritely emphasized: "[c]olleges and universities should [not] be looked upon as public utilities devoid of any discretion as to whom to admit or reject. Education, especially higher education, belongs to a different, and certainly higher category." (Emphases supplied)

[8] The Court held thus:

Moreover, in the exercise of their academic freedom to choose who to admit, the law schools should be left with the discretion to determine for themselves how much weight should the results of the PhiLSAT carry in relation to their individual admission policies. At all times, it is understood that the school's exercise of such academic discretion should not be gravely abused, arbitrary, whimsical, or discriminatory. (See Main Decision)

Supreme Court E-Library

This notwithstanding, this Court, in the 2019 Decision, did not expressly strike down the entire LEBMO 7.[9] Notably, while the *fallo* thereof states that the *"**act and practice** of the Legal Education Board of **excluding, restricting, and qualifying admissions** to law schools in violation of the institutional academic freedom on who to admit"* was *ultra vires*, **only paragraph 9 of LEBMO 7 was explicitly declared to be invalid**.[10] This resulted in an ambiguity to the stakeholders as to whether the Court's ruling rendered the PhiLSAT optional or mandatory.[11]

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[9] The Court held thus:

> With the conclusion that the PhiLSAT, when administered as an aptitude test, passes the test of reasonableness, there is **no reason to strike down the PhiLSAT in its entirety**. Instead, the Court takes a calibrated approach and **partially nullifies LEBMO No. 7-2016** insofar as it absolutely prescribes the passing of the PhiLSAT and the taking thereof within two years as a prerequisite for admission to any law school which, on its face, run directly counter to institutional academic freedom. **The rest of LEBMO No. 7-2016, being free from any taint of unconstitutionality, should remain in force and effect, especially in view of the separability clause therein contained**. (See Main Decision; emphases and underscoring supplied)

[10] The Court held thus:

> The Court further declares:
>
> x x x x
>
> As UNCONSTITUTIONAL for being *ultra vires*:
>
> 1. The **act and practice of** the Legal Education Board of **excluding, restricting, and qualifying admissions to law schools** in violation of the institutional academic freedom on who to admit, **particularly**:
>
> a. **Paragraph 9** of [LEBMO 7] which provides that all college graduates or graduating students applying for admission to the basic law course shall be **required to pass** the PhiLSAT as a requirement for admission to any law school in the Philippines and that **no applicant shall be admitted** for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor **unless he/she has passed the PhiLSAT taken within two years before the start of studies** for the basic law course;
>
> x x x x (Emphases supplied)

[11] See *ponencia*, pp. 33-34, which summarized the concern as follows:

> The ambiguity is sowing confusion because PALS presumes that by striking Section 9 of LEBMO [7], the Court has rendered the PhiLSAT **optional**.

Supreme Court E-Library

LEBMO 7 should, however, be viewed as an integral whole, and its constitutionality should be scrutinized accordingly. The applicable hornbook principle is that "every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment." As explained in the case of *Philippine International Trading Corporation v. Commission on Audit*:[12]

> Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[13]

Palpably, when read as a whole, **the overall intent behind LEBMO 7 is to administer an exclusionary test (*i.e.*, the PhiLSAT)** which students **must take and pass** before they can be admitted to law school. All of its provisions, whether key or ancillary, form an integral composite that lays down a holistic framework that is operatively interdependent and hence, cannot be extricated from one another.

To demonstrate, LEBMO 7's **paragraph 1** *requires* prospective law students to take an admission test as contemplated in the latter provisions; **paragraph 7** sets the passing score at 55% *"or such percentile score as may be prescribed by the LEB"*; **paragraph 8** refers to the issuance of a certificate of eligibility only to those who passed the test; **paragraph 10** exempts certain graduates from "taking and passing" it; **paragraph 11** states that law schools can

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In contrast, respondents construe the ruling of the Court as still giving authority to the LEB to conduct the PhiLSAT, thereby prompting it to issue LEBMC No. 52-2020.

This need for clarification on the Court's ruling led to the question of **whether or not the Court's ruling rendered the PhiLSAT optional**.

[12] 635 Phil. 447 (2010).

[13] Id. at 454.

Supreme Court E-Library

prescribe additional requirements such as a PhiLSAT score *"higher than the cut-off or passing score set by the LEB"*; **paragraph 12** requires the schools to submit reports indicating the PhiLSAT scores of the admitted students; and **paragraph 15** imposes severe administrative sanctions on law schools that violate LEBMO 7.[14] As the Court held in its 2019 Decision, "[m]andating law schools to reject applicants who failed to reach the prescribed PhiLSAT passing score or those with expired PhiLSAT eligibility transfers **complete control over admission policies** from the law schools to the LEB."[15]

The fact that only Section 9 was explicitly declared void in the *fallo* of the Court's 2019 Decision does not save these other provisions from invalidity. Since **paragraphs 1, 7, 8, 10, 11, 12, and 15 of LEBMO 7** retain the exclusionary nature of the exam which the Court held as violative of institutional academic freedom, then they, too, must be declared unconstitutional.

However, as the ponencia now holds,[16] ***it is not enough to strike out only the above-mentioned key provisions***. As earlier intimated, the remaining provisions are merely **ancillary to the key provisions** of LEBMO 7; hence, they should not survive on their own.

In particular, **paragraph 2**[17] merely states that the test will be conducted in one day and will measure the "academic

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[14] As stated in my Opinion on the Main Decision: "To concretize the mandatory nature of the PhiLSAT, paragraph 15 of LEBMO No. 7-2016 provides that law schools that violate the issuance shall be administratively sanctioned and/or fined in the amount of up to [₱]10,000.00 for each infraction. The administrative sanctions direly encompass: *(a)* termination of the law program (closing the law school); *(b)* phasing out of the law program; and *(c)* provisional cancellation of the Government Recognition and putting the law program of the substandard law school under Permit Status. As the PhiLSAT is a requirement mandatorily imposed by LEBMO No. 7-2016, non-compliance therewith would result into these potential consequences."

[15] See Main Decision; emphasis supplied.

[16] See *ponencia* p. 39.

[17] Paragraph 2 of LEBMO 7 provides:

> 2. Test Design – The PhiLSAT shall be designed as a one-day aptitude test that can measure the academic potential of the examinee to pursue the study of law. It shall test communications and language proficiency, critical thinking skills, and verbal and quantitative reasoning.

Supreme Court E-Library

potential of the examinee" to pursue legal studies based on three skill sets. **Paragraph 3**[18] lists the persons qualified to take the test. **Paragraph 4**[19] discusses the qualifications of the test administrator who will design the exam, formulate the questions, and correct the answers. **Paragraph 5**[20] specifies the schedule and test locations. **Paragraph 6**[21] indicates the testing fee. **Paragraph**

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[18] Paragraph 3 of LEBMO 7 provides:

3. Qualified examinees – The following are qualified to take the PhiLSAT:
   a. Graduates of 4-years bachelor's degrees, or its equivalent, from duly recognized higher education institutions in the Philippines;
   b. Those expecting to graduate with 4-years bachelor's degrees or its equivalent, from duly recognized higher educations institutions in the Philippines at the end of the school year when the PhiLSAT was administered;
   c. Graduates from foreign higher education institutions with degrees equivalent to a 4-year bachelor's degree as certified by the Commission on Higher Education.

A qualified examinee may take the PhiLSAT for as many times as he/she wants, without any limit.

[19] Paragraph 4 of LEBMO 7 provides:

4. Testing Administrator – For purposes of designing the examinations, formulating the questions, administering the tests, correcting the answers, the LEB may designate, as testing administrator, an independent third-party testing provider that meets all the following qualifications:
   a. Five (5) years experience in designing a government academic examination in the Philippines;
   b. Three (3) years experience in administering an examination simultaneously in five (5) or more testing sites located in Luzon, Visayas, and Mindanao areas;
   c. Three (3) years experience in designing, formulating and administering an admission test for law schools in the Philippines.

[20] Paragraph 5 of LEBMO 7 provides:

5. Test Administration Schedule and Locations – The PhiLSAT shall be administered at least once a year on or before April 16 in testing centers located in Metro Manila, Baguio City, Legazpi City, Cebu City, Iloilo City, Davao City, and Cagayan de Oro City. Additional testing schedules and centers may be fixed by the LEB as necessary.

[21] Paragraph 6 of LEBMO 7 provides:

6. Testing Fee – The testing administrator shall be authorized to collect from every examinee such amount as to cover the cost and expenses for the development, design, and administration of the PhiLSAT, which in

Supreme Court E-Library

13[22] removes the required general average indicated in another LEB issuance. Finally, **paragraphs 14, 16, 17, and 18**[23] contain the transitory, separability, repealing, and effectivity clauses.

Although these ancillary provisions are not *per se* invalid, they were intended to be read together as one composite unit with the key provisions that should be declared unconstitutional. **This version of the PhiLSAT, as created in LEBMO 7, should be characterized as a mandatory type of exam, which was intended to carry the features and operative workings of all its provisions. As such, with the key provisions being struck down, the ancillary provisions lose their purposive anchor**.

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no case shall exceed the amount of One Thousand Five Hundred Pesos (₱1,500.00) per examination, unless otherwise expressly permitted by the LEB.

[22] Paragraph 13 of LEBMO 7 provides:

13. General Average – Beginning in Academic/School Year 2018-2019, the requirement of a general average of not less than eighty percent (80%) or 2.5 for admission in the basic law course under Section 23 of LEB Memorandum Order No. 1, Series of 2011 shall be withdrawn and removed.

[23] Paragraphs 14, 16, 17, and 18 of LEBMO 7 provide:

14. Transitory Provision – During the initial year only of the implementation order in Academic/School Year 2017-2018, the cut-off or passing score shall not be enforced, and law schools shall have the discretion to admit in the basic law courses, as first year students, applicants who scored less than 55% correct answers, provided, that the law dean shall submit to the LEB, together with the required report in Section 12 (a) above, a written justification for each applicant below 55% explaining the reasons for admitting him/her and the general weighted average obtained of the applicant for his/her bachelor's degree."

x x x x

16. Separability Clause – If any part or provision of this memorandum order is declared invalid or unconstitutional, all other provisions shall remain valid and effective.

17. Repealing Clause – All previous resolutions, memoranda, orders, circulars, and other issuances, or parts thereof, that are contrary or inconsistent with this memorandum order, or provisions hereof, are hereby repealed or modified accordingly.

18. Effectivity – This LEBMO shall effect fifteen (15) days from publication in a newspaper of general circulation and filing with the National Administrative Register in the UP Law Center.

Supreme Court E-Library

Notably, the fact that LEBMO 7 contains a **separability clause** does not justify upholding its validity despite the declared unconstitutionality of its **core provisions**.[24] Case law holds that:[25]

[T]o determine whether or not a particular provision is separable, the courts should consider the intent of the legislature. It is true that most of the time, such intent is expressed in a separability clause stating that the invalidity or unconstitutionality of any provision or section of the law will not affect the validity or constitutionality of the remainder. Nonetheless, **the separability clause only creates a presumption that the act is severable**. It is **merely an aid in statutory construction**. It is not an inexorable command. **A separability clause does not clothe the valid parts with immunity from the invalidating effect the law gives to the inseparable blending of the bad with the good**. The separability clause cannot also be applied if it will produce an absurd result. In sum, **if the separation of the statute will defeat the intent of the legislature, separation will not take place** despite the inclusion of a separability clause in the law.

In issuing LEBMO 7, the LEB intended to administer an exclusionary admission test and the ancillary provisions were added to carry out such test. Accordingly, it is reasonable to presume that the LEB would not have enacted the ancillary provisions independently as these would present an incomplete picture of the test to be administered, its purpose, and effects. Verily, allowing LEBMO 7 to subsist containing only these ancillary provisions will defeat the LEB's intent to implement its intended PhiLSAT version. Hence, despite the presence of a separability clause, the

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[24] In the Main Decision, the Court justified the partial nullification of LEBMO 7 based on the separability clause, *viz.*:

> With the conclusion that the PhiLSAT, when administered as an aptitude test, passes the test of reasonableness, there is no reason to strike down the PhiLSAT in its entirety. Instead, the Court takes a calibrated approach and partially nullifies LEBMO No. 7-2016 insofar as it absolutely prescribes the passing of the PhiLSAT and the taking thereof within two years as a prerequisite for admission to any law school which, on its face, run directly counter to institutional academic freedom. **The rest of LEBMO No. 7-2016, being free from any taint of unconstitutionality, should remain in force and effect**, especially **in view of the separability clause**.

[25] *Tatad v. Secretary of the Department of Energy*, 347 Phil. 1, 23 (1997).

Supreme Court E-Library

ancillary provisions cannot be considered separable from the key provisions.[26]

For all these reasons, I therefore concur with the *ponencia* to declare the entirety of LEBMO 7 as unconstitutional. At the risk of belaboring the point, LEBMO 7, which implements the present version of the PhiLSAT, is unconstitutional because — as explained in the 2019 Decision — it leaves law schools with "**absolutely no discretion to choose [their] students at the first instance** and in accordance with its own policies, but are dictated to surrender such discretion in favor of a State-determined pool of applicants, **under pain of administrative sanctions and/or payment of fines**."[27] It involves the "[transfer of] **complete control over admission policies** from the law schools to the LEB."[28] Therefore, all its provisions, including those ancillary provisions discussed above, should be struck down.

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[26] The Concurring and Dissenting Opinion of Associate Justice Santiago M. Kapunan (ret.) in *Tatad v. Secretary of the Department of Energy* (id. at 29-30, citing Ruben E. Agpalo, Statutory Construction 1990, pp. 27-28) stated the following as regards separability clause:

> The **general rule** is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, **if separable from the invalid, may stand and be enforced**. The presence of a separability clause in a statute creates the presumption that the legislature intended separability, rather than complete nullity of the statute. To justify this result, **the valid portion must be so far independent of the invalid portion that it is fair to presume that the legislature would have enacted it by itself if it had supposed that it could not constitutionally enact the other. Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent**.
>
> The **exception to the general rule** is that when the parts of a statute are so mutually dependent and connected, as conditions, considerations, inducements, or compensations for each other, as to **warrant a belief that the legislature intended them as a whole**, the nullity of one part will vitiate the rest. In making the parts of the statute dependent, conditional, or connected with one another, the legislature **intended the statute to be carried out as a whole** and **would not have enacted it if one part is void**, in which case if some parts are unconstitutional, all the other provisions thus dependent, conditional, or connected must fall with them. (Emphases supplied)

[27] See Main Decision.

[28] See id.

Supreme Court E-Library

The foregoing notwithstanding, it should still be borne in mind that State participation in admission requirements is not completely foreclosed by academic freedom. In fact, during the constitutional deliberations, the Framers acknowledged that the government may impose admission requirements on institutions of higher learning.[29] However, the admission requirement contained in LEBMO 7 unfortunately exceeded the boundaries of constitutionally permissible regulation; hence, the Court's present disposition.

As a final point, it is apt to highlight that the issue of whether the LEB can require students to take an aptitude exam in general is not an issue before the Court. In this case, LEBMO 7 is the only aptitude exam regulation subject of constitutional scrutiny. Thus, in my view, the ruling of unconstitutionality in this case is limited to the version of the PhiLSAT embodied in LEBMO 7. In consequence, it is therefore possible for the LEB to issue another regulation that contains a different version of the PhiLSAT, or any other aptitude exam, in its capacity as regulator of legal education, and within the proper auspices of the State's power to supervise institutional academic freedom under the Constitution. Of course, it goes without saying that only when such new regulation is assailed should the Court step in to assess the constitutionality of its parameters in the proper case therefor.

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[29] Section 5 (3), Article XIV of the 1987 Constitution states that "[e]very citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable **admission** and academic **requirements**." (Emphasis supplied)

> The Framers of the Constitution explained that such requirements refer not only to those imposed by the educational institutions **but also by the government**. During the deliberations, Commissioner Guingona stated that "this qualification **refers to both governmental requirements as well as institutional requirements** and would refer not only to the matter of **admission,** but to promotion and even graduation." (See R.C.C. No. 71, Vol. IV, September 1, 1986)
>
> The Framers also expressed that "competence and certain requirements are needed for tertiary education" which is provided by institutions of higher learning. However, they left it to Congress to determine what these requirements will be, including the decision on whether to retain or abolish the then national college entrance examination, as a prerequisite to admission to institutions of higher learning.

Supreme Court E-Library

CONCURRING OPINION

CAGUIOA, *J.*:

The *ponencia* partially grants the Partial Motion for Reconsideration with Joint Comment/Opposition of the petitioners in G.R. No. 242954, as well as the Petition-in-Intervention of the Philippine Association of Law Schools (PALS). Accordingly, the *ponencia* rules that: a) Legal Education Board (LEB) Memorandum Circular (MC) No. 6-2017,[1] LEB Resolution No. 2012-02,[2] and Resolution No. 2012-06[3] are invalid insofar as these issuances require the law schools to submit a letter and Certification in place of a Special Order; and b) the entire LEB Memorandum Order (LEBMO) No. 7-2016[4] is unconstitutional; hence, all existing memoranda, circulars, issuances by the Legal Education Board related to LEBMO No. 7-2016 and the conduct of the current Philippine Law School Admission Test (PhiLSAT) are vacated and set aside.

The *ponencia*, in addition to the foregoing, partially grants the Motion for Reconsideration filed by respondents LEB and the Executive Secretary, in that paragraphs 1[5] and 2[6] of Section 15, Article III of LEBMO No. 1-2011 are declared valid.

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[1] Applications for LEB Certification Numbers.

[2] A Resolution Eliminating the Requirement of Special Orders for Graduates of the Basic Law Degrees and Graduate Law Degrees and Replacing Them with a Per Law School Certification Approved by the Legal Education Board.

[3] Requiring Confirmatory Certification that a Student has Satisfactory Complied with the Requirements of LEB for Graduation.

[4] Policies and Regulations for the Administration of a Nationwide Uniform Law School Admission Test for Applicants to the Basic Law Courses in All Law Schools in the Country.

[5] Section 15. *Prerequisites to admission to Law School*. — Section 6, Rule 138 of the Rules of Court prescribes "No applicant for admission to the Bar Examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, English, Spanish, history and economics."

Supreme Court E-Library

Finally, the *ponencia* rules that all other claims of the parties are denied and the Court's September 10, 2019 Decision (main Decision) stands in all other respects.

I concur. I submit this Opinion to further elucidate on the nature of PhiLSAT in relation to academic freedom.

The taking of the PhiLSAT is not and should not be made mandatory

As with the requirement to *pass* the PhiLSAT, the requirement to *take* the same should not be considered mandatory before one is admitted to a law school.

While the LEB is empowered to administer the PhiLSAT as an aptitude exam, it cannot mandate law schools to adopt or require the *taking* of the same as a pre-requisite for admission to a law school. This goes against the very *ratio* of the main Decision which recognizes the law school's academic freedom to determine "who may be admitted." If the authority to determine who may be admitted lies with the law school and not the LEB, then it is the law school and not the LEB that may require the *taking* of the PhiLSAT.

As explained in my *Separate Concurring Opinion* in the main Decision, the guarantee of institutional academic freedom enshrined in Section 5 (2), Article XIV of the Constitution includes "the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint."[7] This right necessarily includes the

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[6] Section 15. *Prerequisites to admission to Law School*. — x x x

For purposes of the present Memorandum Order, the above quoted rule on the requirement of a certification of satisfaction shall be deemed fulfilled upon admission of the student by the Dean of a law school, complying with all that may hereunder be provided as well as those set forth in the Rules of Court.

[7] Separate Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Pimentel v. Legal Education Board*, G.R. Nos. 230642 & 242954, September 10, 2019, p. 5, citing *Miriam College Foundation, Inc. v. Court of Appeals*, G.R. No. 127930, December 15, 2000, 348 SCRA 265, 284-285.

Supreme Court E-Library

essential freedom to determine: 1) who may teach, 2) what may be taught, 3) how to teach, and 4) who may be admitted.[8]

The academic freedom to determine *who may be admitted to study* is an integral component of an educational institution's constitutional right to academic freedom.[9] In this regard, I am in full accord with Associate Justice Marvic M.V.F. Leonen's pronouncement in his *Separate Dissenting and Concurring Opinion* in the main Decision that "[i]n ascertaining who to admit in their institutions, law schools should be given autonomy in establishing their own policies, including the examination that they will employ."[10] I likewise agree that the Court might have arrived at a different conclusion in *Tablarin v. Gutierrez*[11] regarding the constitutionality of the National Medical Admissions Test had the issues been examined through the lens of institutional academic freedom. This has also been recognized by the *ponencia*.[12]

The freedom to determine "who to teach" includes the right to determine the admissions criteria and eligibility requirements that will allow an institution to ultimately select the students that will best inculcate its academic values. As such, I reiterate my position in my *Separate Concurring Opinion* in the main Decision that

> the *ponencia* is correct in holding that the PhiLSAT is violative of academic freedom. Mandating legal education institutions to reject examinees who failed to obtain the prescribed passing score amounts to a *complete transfer of control* over student admissions from the law schools to the LEB. To emphasize, the permissible power of the State over institutions of higher learning is limited to supervision and regulation, *not control*.[13]

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[8] *Garcia v. Faculty Admission Committee*, G.R. No. L-40779, November 28, 1975, 68 SCRA 277, 285.

[9] Id.

[10] Separate Dissenting and Concurring Opinion of Associate Justice Marvic M.V.F. Leonen in *Pimentel v. Legal Education Board*, G.R. Nos. 230642 & 242954, September 10, 2019, p. 2.

[11] 236 Phil. 768 (1987).

[12] *Ponencia*, p. 33.

[13] Separate Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Pimentel v. Legal Education Board*, G.R. Nos. 230642 & 242954, September 10, 2019, p. 34.

Supreme Court E-Library

In like manner, mandating law schools to automatically reject applicants who have not taken the PhiLSAT, even if said applicants otherwise qualify under the law school's own eligibility standards, is an unreasonable intrusion into the law schools' right to determine the standards for admission and to evaluate the qualifications of prospective students on an individual basis. On a practical note, requiring students to take an exam that law schools will not even take into consideration is not only an utter waste of time and effort, but also imposes an unwarranted financial burden on the student. Indeed, the *ponencia* appears to recognize as much when it quotes the discussion of Chief Justice Alexander G. Gesmundo on the financial and logistical burdens which the current admission examination brings to prospective examinees.[14]

In sum, while the LEB may offer to administer the PhiLSAT to *guide* schools in selecting applicants, I find that the decision to mandate the *taking* of the exam, to impose the minimum passing score, or to give weight to the scores ultimately obtained — all these fall entirely within the prerogative of the law school. The deliberations of the Constitutional Commission make it clear that reasonable supervision and regulation by the State over educational institutions does not include the power to control, manage, dictate, overrule, prohibit, and dominate.[15] To impose the exam requirement would sanction government control over the academic affairs of law schools.

Thus, the LEB cannot compel law schools to require its prospective students to *take* and *pass* the PhiLSAT. I believe that this was the import of the main Decision, which is now upheld by the *ponencia*.

I submit that the State's exercise of reasonable supervision and regulation over legal education is achieved by the LEB making available — but not requiring — the PhiLSAT to any and all students who are required by a law school to take such exam. In this regard, the following excerpt from Senior Associate Justice

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[14] *Ponencia*, p. 35.

[15] *See* IV RECORD, CONSTITUTIONAL COMMISSION, No. 078 (September 9, 1986), accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/24/51504>.

Supreme Court E-Library

Estela M. Perlas-Bernabe's *Separate Concurring Opinion* in the main Decision is on point:

> In this case, while the policy of the State to "uplift the standards of legal education" may be characterized as a compelling State interest, the means of achieving this goal, through the PhiLSAT, together with its mandatory and exclusionary features as above-discussed, do not appear to be narrowly tailored or the least restrictive means for achieving this interest. **There is no concrete showing why the implementation of a standardized but optional State aptitude exam, which schools may freely adopt in their discretion as a tool for their own determination of who to admit** (such as the National Medical Aptitude Test for medical schools or the Law School Admission Test in the United States of America), **would be less of a "sifting" measure than a mandatory and exclusively State-determined one** (such as the PhiLSAT). This is especially so since, as conceded by LEB Chairperson Emerson B. Aquende during the oral arguments in this case, there is no statistical basis to show the propensity of the PhiLSAT to improve the quality of legal education. Furthermore, no other study or evaluation regarding the viability of the PhiLSAT was shown to this effect. It is true that in a general sense, the PhiLSAT operates as a basic aptitude exam which seeks to test skills that have rational connection to the field of law, *i.e.*, communications and language proficiency, critical thinking, and verbal and quantitative reasoning. However, because the test was solely crafted by the LEB, it completely excludes the law schools' input and participation, and worse, even puts their very existence in jeopardy should there be non-subservience. Verily, an absolutist approach in any facet of academic freedom would not only result in an overly restrictive State regulation, it would also be practically counterproductive because law schools, being at the forefront, are the quintessential stakeholders to the mission of improving legal education. Again, by constitutional fiat, the State's role is limited to reasonable supervision, not control. For these reasons, the provisions of LEBMO No. 7-2016 on the PhiLSAT clearly transgress institutional academic freedom.[16] (Emphasis supplied)

The entire LEBMO No. 7, series of 2016 must be struck down

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[16] Separate Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe in *Pimentel v. Legal Education Board*, G.R. Nos. 230642 & 242954, September 10, 2019, p. 5.

Supreme Court E-Library

In its Petition-in-Intervention, PALS brings to the fore the confusion that ensued after the promulgation of the main Decision:

> 28. Among law deans, in light of the Court's Decision, the emerging discussion centers on whether the PhiLSAT is mandatory or optional for law students. **There are varying interpretations due to the *latent ambiguity* in the body of the decision and the dispositive portion by nullifying Section 9 of LEBMO No. 7, and retaining all other provisions under this executive issuance. With no categorical statement on whether the PhiLSAT is mandatory or optional for law students, there is a danger of different interpretations in the implementation of the consolidated cases in *Pimentel and Abayata***.
>
> 29. Inasmuch as it is only Section 9 of LEBMO No. 7 that was invalidated by the Honorable Supreme Court as unconstitutional, **the remaining provisions that were not stricken down by the Honorable Court remain valid by virtue of its Separability Clause** which states that if any part or provision of this memorandum order is declared invalid or unconstitutional, all other provisions shall remain valid and effective.
>
> 30. Be that as it may, it is respectfully submitted by the Intervenor that at the very least, the PhiLSAT is optional. By striking down Section 9 of LEBMO No. 7, Series of 2016, the Honorable Supreme Court ruled that the PhiLSAT is not mandatory as a requirement for all law students to gain entry into law schools.
>
> x x x x
>
> 32. **The *latent ambiguity* on the PhiLSAT has led to subsequent executive issuances that may result in inadvertently undermining the decision of the Court** in the consolidated cases at bar.
>
> 33. To illustrate this point, may we invite the High Court's attention on LEBMC No. 52, dated February 26, 2020, which is faithfully reproduced as follows:
>
> ADVISORY ON THE PHILSAT (February 26, 2020)
>
> x x x the Legal Education Board En Banc decided to defer the administration of the [PhiLSAT] scheduled this coming April, 2020 for reasons of public health concern arising from the COVID-19 and logistical consideration. For purposes of admission

Supreme Court E-Library

of new first/freshmen year students in the law program leading to the Juris Doctor degree in the 1st Semester of Academic Year 2020-2021, law schools will be permitted to admit on conditional enrollment applicants who have not yet taken the PhiLSAT, subject to taking the next PhiLSAT in September, 2020. The LEB will issue additional guidelines to facilitate admission of conditional enrollees.

Meanwhile, consultations on the proposed revisions to LEB Memorandum Order No. 7, Series of 2016, will continue.

34. LEBMC No. 52 was promulgated five (5) months after the decision of the Court was promulgated on September 10, 2019.

35. From the tenor of LEBMC No. 52, PhiLSAT is still construed by the LEB as mandatory to administer.[17] (Emphasis supplied)

To recall, the dispositive portion in the main Decision declares as unconstitutional for being *ultra vires* the following issuances in relation to the PhiLSAT:

1. The act and practice of the Legal Education Board of excluding, restricting, and qualifying admissions to law schools in violation of the institutional academic freedom on who to admit, particularly:

   a. Paragraph 9 of LEBMO No. 7-2016 which provides that all college graduates or graduating students applying for admission to the basic law course shall be required to pass the PhiLSAT as a requirement for admission to any law school in the Philippines and that no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within two years before the start of studies for the basic law course;

   b. LEBMC No. 18-2018 which prescribes the passing of the PhiLSAT as a prerequisite for admission to law schools;

   Accordingly, the temporary restraining order issued on March 12, 2019 enjoining the Legal Education Board from implementing LEBMC No. 18-2018 is made **PERMANENT**. The regular admission of students who were conditionally

[17] *Rollo*, pp. 2316-2318. Emphasis omitted.

Supreme Court E-Library

> admitted and enrolled is left to the discretion of the law schools in the exercise of their academic freedom[.][18]

For reference, paragraph 9 of LEBMO No. 7-2016 states:

> 9. Admission Requirement — All college graduates or graduating students applying for admission to the basic law course shall be required to pass the PhiLSAT as a requirement for admission to any law school in the Philippines. Upon the effectivity of this memorandum order, no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within 2 years before the start of studies of the basic law course and presents a valid COE as proof thereof.

The Court correctly nullified the above-mentioned provision. However, as pointed out by PALS, with the Separability Clause in LEBMO No. 7-2016 coupled with the absence of any categorical statement from the main Decision that the taking of PhiLSAT is not mandatory, confusion would indeed ensue as evidenced by LEBMC No. 52-2020. At this juncture, I wish to highlight the following provisions in LEBMO No. 7-2016 which were not struck down in the main Decision but are intimately connected with paragraph 9:

> 1. Policy and Rationale — To improve the quality of legal education, all those seeking admission to the basic law course leading to either a Bachelor of Laws or Juris Doctor degree shall **be required to take the [PhiLSAT]**, a nationwide uniform admission test to be administered under the control and supervision of the LEB.
>
> x x x x
>
> 7. Passing Score — The **cut-off or passing score for the PhiLSAT shall be FIFTY-FIVE PERCENT (55%) correct answers, or such score as may be prescribed by the LEB**.
>
> 8. Test Results — Every examinee who passed the PhiLSAT shall be issued by the testing administrator **a CERTIFICATE OF ELIGIBILITY (COE)**, which shall contain the examinee's test score/rating and general average in the bachelor's degree

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[18] Main Decision in *Pimentel v. Legal Education Board*, G.R. Nos. 230642 & 242954, September 10, 2019, pp. 104-105.

Supreme Court E-Library

completed. Examinees who fail to meet the cut-off or passing score shall be issued a Certificate of Grade containing his/her test score/rating. **The COE shall be valid for two (2) years and shall be submitted to the admitting law school by the applicant**.

x x x x

10. **Exemption** — Honor graduates granted professional civil service eligibility pursuant to Presidential Decree No. 907 who are enrolling within two (2) years from their college graduation are exempted from taking and passing the PhiLSAT for purposes of admission to the basic law course.

11. **Institutional Admission Requirements** — The PhiLSAT shall be without prejudice to the right of a law school in the exercise of its academic freedom to prescribe or impose **additional requirements for admission**, such as but not limited to:

    a. A score in the PhiLSAT higher than the cut-off or passing score set by the LEB;
    b. Additional or supplemental admission tests to measure the competencies and/or personality of the applicant;
    c. Personal interview of the applicant.

12. Reportorial Requirement — **All law schools shall regularly submit to the LEB the following written reports** in such forms as may be prescribed by the LEB Chairman:

    a. Within forty-five (45) days from the start of every semester or term, the names of the first year students admitted and enrolled for the first time in the basic law course and **their PhiLSAT scores**;

    b. Within sixty (60) days after the end of every semester or term, the subjects enrolled in by every first year student and the final grades received in said subjects.

x x x x

15. Sanctions — **Law schools violating this Memorandum Order shall be imposed the administrative sanctions** prescribed in Section 32 of LEBMO No. 2, Series of 2013 and/or fine of up to Ten Thousand Pesos (₱10,000) for each infraction. (Emphasis supplied)

Since paragraph 9 of LEBMO No. 7-2016 mandating the taking and passing of the PhiLSAT is invalid, the foregoing

Supreme Court E-Library

provisions should likewise be nullified to obviate any further confusion regarding the limited authority of the LEB to require an aptitude exam as a condition for admission. In this regard, Senior Associate Justice Perlas-Bernabe astutely points out that despite the presence of a separability clause, the ancillary provisions cannot be considered separable from the key provisions as these provisions paint a complete picture of the test to be administered, its purpose, and effects.[19] Thus, I agree with the *ponencia* when it correctly struck down the entire LEBMO No. 7-2016 as all its provisions are meant to implement the PhiLSAT as a mandatory and exclusionary exam.[20]

Based on these premises, I submit my **concurrence** with the *ponencia*.

SEPARATE CONCURRING OPINION

DIMAAMPAO, *J.*:

Foremost, I signify my concurrence with the ingenious *ponencia* of Justice Rodil Zalameda. However, I take exception to the striking down of Section 17 of LEBMO No. 1-2011 insofar as it allows non-law graduates to be admitted in the Master of Laws program.

The *ponencia* enunciated that "*the prohibition against accepting applicants for the Master of Laws without a Bachelor of Laws or Juris Doctor degree under Section 17 of LEBMO No. 1-2011 is void for infringing the right of the school to determine who to admit to their graduate degree programs*."

I respectfully beg to differ.

Given the inauspicious repercussions it will bring, it is apropos to delve into the disquisition with a fine-tooth comb.

The *ponencia* ratiocinated in this prose:

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[19] Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 7-8.

[20] *Ponencia*, p. 36.

Supreme Court E-Library

"There is no monopoly of knowledge. Legal education would be more robust by allowing an engineer, a metallurgist, a businessperson, an agriculturist, and other graduates to further improve their crafts through this course. To note, it is also the general objective of RA 7662 to train persons for leadership and to contribute towards the promotion and advancement of justice and the improvement of its administration, the legal system, and legal institutions in light of the historical and contemporary development of law in the Philippines and other countries. Certainly, the pursuit of these objectives is not exclusive for law students or law practitioners."

Conversely, it explicitly declared that RA 7662 is not necessarily repugnant to the academic freedom of law schools in this wise:

"x x x x x x

Nevertheless, *Garcia* and subsequent rulings of the Court, far from legitimizing an impeded exercise of academic freedom by institutions of higher learning, had, in fact, readily acknowledged the existence of the State's right to reasonably interfere with the exercise of academic freedom "when the overriding public welfare is at stake."

Clearly, the cry for academic freedom, without more, cannot be a sufficient justification to invalidate the law. To quote Justice Lazaro Javier, "[a]cademic freedom is **not the trump card** that annihilates the experience of police power." Academic freedom is not absolute, with its optimum impact best realized where the freedom is exercised judiciously and does not degenerate into an unbridled license. Instead, it is a privilege that assumes a correlative duty to exercise it responsibly. It is thus difficult to accept that the State has no right to participate or be involved in the education the academic institutions of higher learning provide. On the contrary, it would be an abandonment of duty on the part of the State if it does not supervise and regulate educational institutions on a simplistic invocation of academic freedom by the law schools. Academic freedom cannot derogate the State's constitutional authority to reasonably supervise and regulate schools.

Corollarily, while enshrined in the Constitution, academic freedom and police power cannot be exercised without any restraint. A delineation on these rights is inherently imposed as it has been said that absolute power corrupts absolutely while absolute freedom often leads to anarchy and chaos. Thus, a law school and the people comprising it must exercise academic freedom responsibly. The State, on the other hand, can wield its police power on the condition that the same must be done reasonably

Supreme Court E-Library

and proportionately, at the very least. Though presumably done lawfully pursuant to academic freedom or police power, any act cannot be stamped with validity by this Court when it fails to comply with such parameters.

Former Associate Justice Francis H. Jardeleza was on point in stating that the exercise of academic freedom must be balanced with vital state interest such as prescribing regulations to promote education and the general welfare of the people. The need for harmony and balance in the exercise of academic freedom and police power was likewise aptly encapsulated by former Associate Justice Arturo D. Brion in his Manila Bulletin article, captioned Legal Education and Law schools, thus:

> When police power and academic freedom intersect, as they inevitably must in legal education, lessons from the Constitution hold that the State has the upper hand, but only *to the extent necessary to serve the demands of public interest*. In this calibrated manner, academic freedom is meaningfully preserved."

It further ordained that the enforcement of taking an aptitude exam as a condition for law school admission is not per se unreasonable and that the State has the prerogative to administer such test in the exercise of its police power, given the existence of a compelling State interest to uplift the standards of legal education.

To bolster this proposition, jurisprudence affirms the doctrine that *police power* is the most pervasive and comprehensive among the three fundamental powers of the State, thusly —

"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**

Supreme Court E-Library

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**."[1]

It is a cold hard fact that the Master of Laws programs (LL.M.), here in the Philippines or abroad, are ordinarily afforded to lawyers or law graduates who aspire to attain a distinct specialization in the field of law. Apparently, the said degree can be deemed as an augmentation of the study of law since its predominant purpose is to ameliorate the knowledge of those already erudite in the field.

Albeit some jurisdictions allow non-law graduates to take the aforementioned curriculum, it is still my respectful submission that to genuinely accomplish the objectives of R.A. 7662 and to refine the country's legal instruction, such program should be restricted only to those who have completed a law course (either LL.B. or J.D.).

An insightful scrutiny of the LL.M. programs in the Philippines evinces that they necessitate foundational knowledge of the subject. They are structured in a particular format which incontrovertibly intends to prepare lawyers, judges, and law professors for global legal practice through indoctrination of international legislation and its impact on and correlation with local law.

For instance, in 2019, the University of the Philippines (UP) College of Law launched its LL.M. program with the following vision:

"**The Master of Laws (LL.M.) Program of the University of the Philippines aims to prepare local and international legal practitioners, law professors, and government lawyers and judges for an increasingly cross-border, internationalized legal practice**. The Program will familiarize its students with the intricacies of the

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[1] *Sabal v. Duterte*, G.R. No. 238467, February 12, 2019. Emphasis supplied.

Supreme Court E-Library

evolving body of ASEAN regional law and international law, bridging it with Southeast Asian national legal traditions undergoing ASEAN Charter-based integration.

The Program offers core courses that provide students with a solid foundation in ASEAN law and international law. Through the master's thesis, students have the opportunity to undertake innovative legal research and develop law reform proposals."[2]

According to the UP College of Law website, graduate level courses emphasize the development of analytical skills, application of advanced legal thought, and production of insightful research. *Since LL.M. students are expected to be full-fledged lawyers possessed of certain competencies, courses are not going to be taught in the same way as undergraduate law courses. LL.M. courses are expected to be conducted in an environment of peer-learning and exchange, where teachers and students can learn from each other's backgrounds and experiences and help each other achieve their respective academic goals*. Graduates of the LL.M. Program are expected to become leaders in their respective fields of practice and expertise.[3]

Appositely, UP offers two specialization tracks which implement the following curricula:

In Master of Laws (Cross Border and Regional Practice)[4] —

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[2] Master of Laws (LL.M. Program), UP College of Law (9 October 2021, 7:53 PM), https://law.upd.edu.ph/llm/. Emphasis supplied.

[3] Frequently Asked Questions for LL.M., UP College of Law (9 October 2021, 8:19 PM), https://law.upd.edu.ph/llm-faqs/. Emphasis supplied.

[4] Curriculum of UP LL.M. in Cross Border and Regional Practice (9 October 2021, 8:43 PM), https://law.upd.edu.ph/wp-content/uploads/2021/02/LLM-courses-Specialization-1-Cross-Border-and-Regional-Practice.pdf.

Supreme Court E-Library

Course Code	Course Title	Number of Units	Description
LAW 242	International Arbitration, Negotiations, and Dispute Settlement	5	This highly practice-based course trains lawyers for the substantive and procedural laws and treaties governing international commercial and investment arbitration, including techniques on effective oral and written advocacy, presentation of evidence, provisional measures, recognition and enforcement of arbitral awards. The course also incorporates techniques for multi-party negotiations prior to or pending arbitration, and other dispute settlement procedures such as conciliation, mediation, mini-trials, among others.
LAW 243	Cross-Border Legal Ethics	3	This course focuses on recurring issues of legal ethics in cross-border legal practice, including managing and avoiding conflicts of interest in cross-border client representation, client confidentiality and required disclosures, structuring fees, and discharging concurrent responsibilities to courts, clients, and the general public. The course will use practical case studies in a laboratory format that encourages students to explore ethical solutions for the client.
LAW 245	International Banking and Finance Law	4	This course focuses on the study of the principles of international commercial, trust, and investment banking law and regulations. It will examine cross-border and domestic laws affecting retail banking relationships and investment and trust relationships in international private banks, the regulation of financial markets, as well as the laws regulating international finance transactions of private entities raising debt financing in international debt and capital markets.
LAW 246	International Project Finance	5	This course scrutinizes the legal structuring, contract and bond documentation for project financing, particularly in the areas of energy, telecommunications, shipping, aviation, transportation, infrastructure (public-private partnerships), and natural resources (mining, oil, and gas). The course will compare and contrast approaches to structuring, financing, project oversight, debt defaults, and workouts based on English law, New York law, individual laws of ASEAN countries, and Islamic finance law.

Supreme Court E-Library

LAW 247	International Trade and Investment Law	5	This course examines the structure and substance of multilateral, plurilateral, regional, and bilateral treaties, international agreements governing the world trading system and the international investment system, the dispute resolution mechanisms separately available under trade law regimes and investment law regimes, and the corresponding jurisprudence of the WTO dispute settlement panels and the Appellate Body and investor-State arbitration tribunals.
LAW 248	International Intellectual Property Law	4	This course examines intersecting multilateral and bilateral agreements, and harmonization of national laws, in the areas of intellectual property laws governing patent, copyrights, trademarks, trade secrets, licensing, domain names and software, and technological innovations. This course also explores issues of cross-border intellectual property enforcement and regulatory interests, such as those on preservation and access to traditional knowledge, privacy and data mining, public health and access to essential medicines, among others.
LAW 249	International Taxation	3	This course applies tax principles under foreign laws to a multi-country, multi-jurisdictional transaction to evaluate and assess tax consequences for various multinational entities in the sample transactions/case studies. It examines the role of tax treaties and international agreements in preventing double taxation and ensuring the harmonization and coordination of tax rules between different tax jurisdictions.
LAW 252	Cross-Border Securities Regulation Law	3	This course examines principles that determine the applicable national law to different transnational securities transactions, such as the law applicable to public offerings, registration, transfers or pledges of securities, swaps, among others, and the regulation of financial intermediaries trading in securities. It compares US Securities Laws with securities regulation models in Singapore, the European Union, and Hong Kong, as well as applicable ASEAN jurisdictions.

Supreme Court E-Library

LAW 253	International Insolvency Law	2	This course focuses on the key principles governing international insolvency rules in various jurisdictions (e.g., the United States, Europe, ASEAN jurisdictions, and other country case studies), and examines policies on creditor-debtor protection, insolvency workouts, corporate reorganizations, stays on claimants, stays on creditors, creditor attachments, the management of insolvency proceedings, rescue priorities, creditor priorities, among others.
LAW 254	Contract Drafting for Cross-border Business Transactions	2	This course employs a practice-based approach to the drafting, review, and revision of complex commercial contracts, intended to sharpen lawyer's skills for crossborder contract documentation.
LAW 255	Cross-Border Mergers and Acquisitions Law	3	This course compares US, European, Hong Kong, and Singapore laws on cross-border mergers and acquisitions, and assesses merger and acquisition developments in ASEAN jurisdictions with practical case studies that identify regulatory compliance issues, required disclosures, and explores the suitability of various strategies for client needs.

In Master of Laws (Government, Public Advocacy, and Judging)[5] —

Course Code	Course Title	Number of Units	Description
LAW 262	International Anti-Corruption Compliance	3	This course focuses on various cross-border, regional, and international laws and instruments aimed at eliminating corruption, such as laws against money laundering, promoting government transparency and freedom of information, laws against organized crime, trade and investment regulations.

[5] Curriculum of UP LL.M. in Government, Public Advocacy, and Judging (9 October 2021, 8:54 PM), https://law.upd.edu.ph/wp-content/uploads/2021/02/LLM-courses-Specialization-2-GovernmentPublic-Advocacy-and-Judging.docx.pdf.

Supreme Court E-Library

LAW 264	Government Contracts, Procurement, and Public Policy	5	This course uses a comparative approach in studying the laws and common principles involved in government contracting, including treaties and national laws (from United States law, English law, EU law, and Southeast Asian laws) on the public procurement of goods and services, and adopts a public policy theoretical lens for evaluating law reforms in government contracting.
LAW 265	International Criminal Law and Transnational Crimes	4	This course examines the body of public law designed to ensure accountability and prevent impunity of perpetrators of serious atrocities, as well as the body of treaties and laws that address transnational crimes.
LAW 266	International Human Rights and Humanitarian Law	4	The course provides an integrated, theoretical and practical case-based approach to the study of the international, regional, and national legal regimes and institutional systems designed to protect individuals and groups in times of peace and times of armed conflict. The course will place these bodies of laws in historical context, and then situate them in the legal analysis of current world problems and conflict situations.
LAW 268	International Environmental Law and Policy	3	This course examines international treaties, related laws and soft instruments on environmental protection and sustainability, and also gives focus to incipient and evolving cross-border policies on environmental protection in Southeast Asia through ASEAN case studies.
LAW 274	Comparative Competition Law	3	This course examines laws that promote or maintain market competition by regulating private companies' anti-competitive conduct through public and private enforcement models. The course, in particular, examines new competition laws in ASEAN jurisdictions, and compares the same with competition law regimes in the United States, Australia, and the European Union. For those who have taken a basic competition law course or training in their home country, this course will supplement the knowledge they already have.

Supreme Court E-Library

LAW 275	Comparative Corporate Governance	3	The course examines and analyzes various models of corporate governance in ASEAN countries in a comparative format. Comparisons with corporate governance models in the United States and the European will also be made. In tackling the subject matter, the course problematizes internal control and regulatory issues of accountability between and among corporate executives, directors, shareholders, corporate fiduciaries, and other corporate stakeholders.

In any case, candidates of either of the two specialization tracks are mandated to hurdle the two core courses of the LL.M. Program, *i.e.*, *International Law from Multiple Perspectives and ASEAN Law*, in addition to the requirements of Master's thesis-writing and defense.[6]

Veritably, fundamental knowledge in this case should not be construed in its unembellished import. For purposes of supplemental studies in the said discipline, it should be interpreted as training through the four-year law course.

In the case of UP, it requires its applicants to meet the following requirements in order to be eligible for admission to its LL.M. Program:

> 1. A prior law degree (LL.B., J.D., B.C.L. or equivalent) from any jurisdiction in the world;
>
> 2. A demonstrated aptitude for law studies in the English language (through IELTS, TOEFL or analogous evidence), or previously pursued law studies taught in English; and
>
> 3. A strong academic record or a demonstrated strength in legal practice, dispute settlement, governmental or intergovernmental counseling work, or law teaching.[7]

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[6] UP LL.M. Core Courses and Thesis Course (9 October 2021, 9:05 PM), https://law.upd.edu.ph/wp-content/uploads/2021/04/LLM-courses-Core-and-Thesis.pdf.

[7] LL.M. Admission, UP College of Law (9 October 2021, 9:15 PM), https://law.upd.edu.ph/llm-admission/.

Supreme Court E-Library

The foregoing eligibilities breathe life into the very purpose why UP offered a Master of Laws Program, *i.e., to arm its graduates, who were already law practitioners upon their admission, with the necessary knowledge and skill set for 'an increasingly cross-border and internationalized legal practice.'*

The aspiration to open the doors of LL.M. study to non-law degree holders is laudable but will render the goal to enhance the legal system chimeric.

Should a non-law graduate be permitted to take the Master of Laws program, these queries come down the pike: 1) How can such an individual cope, let alone excel, if they do not possess a rudimentary understanding of the statutes taught in law school, more so when the LL.M. instructors' assignments, lectures, and lessons inevitably encompass the learnings obtained during the preceding course and the primary mode of instruction consists of sharing of practical experiences of law practitioners, law professors, government lawyers, and judges? 2) How will the student truly assimilate? 3) How can it be useful to the student or to the public? 4) Elsewise stated, how can one be an expert in a specified academic work if one did not go through the punctilious process of accomplishing its prerequisite baccalaureate program? 5) Can one truly be a master in a sphere in which he has never been a proper novice of?

There is no gainsaying that the title *Magister Legum* is not a mere frivolous epithet and achieving it is not a doddle. In respecting academic freedom, the least that the State can do is to ensure that it will be genuinely advantageous not only to the individual but to public interest as well. Quite palpably, one can become word-perfect in all the law materials available yet could still be inept if one did not experience the apposite priming and inculcation which is law school.

In sooth, academic freedom is neither unconditional nor limitless, and the State, in the exercise of police power, can regulate and supervise it by establishing minimum requirements for admission in the program.

In light of the aforementioned tests for a valid exercise of police power, such qualification that candidates for the Master of

Supreme Court E-Library

Laws program be holders of LL.B. or J.D. degrees, aside from satisfying the lawful subject requirement, is fairly rational and does not encroach on the institution's academic freedom.

Just as the *ponencia* propounded that the requirement of an aptitude exam is constitutional since it is a reasonable exercise of the State's police power, all the more reason should the prerequisite of an Ll.B. or J.D. degree be rendered as sensibly logical before someone may enroll in an LL.M. course.

As aptly articulated by Associate Justice Lazaro-Javier:

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

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

Invariably, exclusivity of knowledge should not be countenanced. Achievement of certain titles necessitates particular constraints.

At this juncture, the intricacies of the discipline cannot be overemphasized. This is not to say that the realm of legal studies is superior to others. Rather, it is more accurately described as one deeply imbued with the protection of life and liberty. It is so intertwined with a being's life that a fallacious application or explication shall culminate in the curtailment or even deprivation of these cherished rights. Indeed, the law is an esoteric province and that there are notable distinctions between holders of a law degree and those who are not. Along this grain, *Biraogo v. The Philippine Truth Commission of 2010*[8] is quite instructive:

"According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed." It requires public bodies and institutions to treat similarly situated individuals in a similar manner." "The purpose of the equal protection clause is to secure

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[8] G.R. No. 192935, 7 December 2010.

Supreme Court E-Library

every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities." In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective."

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Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class. "Superficial differences do not make for a valid classification."

Recently, the case of *Zomer Development Company, Inc. v. Court of Appeals*[9] imparted enriching discourse, *viz.*:

"The right to equal protection of the laws guards "against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality." Equal protection, however, was not intended to prohibit the legislature from enacting statutes that either tend to create specific classes of persons or objects, or tend to affect only these specific classes of persons or objects. Equal protection "does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced." As aptly discussed in *Victoriano v. Elizalde Rope Workers Union*:

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that

[9] G.R. No. 194461, 7 January 2020.

Supreme Court E-Library

are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class.

This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety.

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Invariably, *Mosqueda et al. v. Pilipino Banana Growers & Exporters Association, Inc., et al.*[10] teaches Us that:

"Equal treatment neither requires universal application of laws to all persons or things without distinction, nor intends to prohibit legislation by limiting the object to which it is directed or by the territory in which it is to operate. The guaranty of equal protection envisions equality among equals determined according to a valid classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another."

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[10] G.R. No. 189185, 16 August 2016.

Supreme Court E-Library

True it is that no one has the monopoly of knowledge. Still and all, equally true is the fact that the condition of being a law graduate (either LL.B. or J.D.) in order to be eligible for admission in a Master of Laws program rests on substantial distinctions.

Along this vein, the Legal Education Board under *Resolution No. 2019-406*[11] ordained:

"**Whereas**, it is equitable and fair to consider the basic law degrees, now consolidated to J.D. Degree, equivalent to an academic doctoral degree in other disciplines for the following reasons:

- The total aggregate graduate-level curricular requirement to finish a doctoral degree is approximately 100 units (combined for master's and doctoral studies), with a dissertation, while the curricular requirement to finish the J.D. Degree Non-Thesis (previously Ll.B. Degree) and the J.D. Degree with Thesis are 152 units and 168 units respectively;
- While the basic law degrees do not require a dissertation, its curricular requirement is, however, significantly more than that for doctoral studies; and
- The curricular duration to complete the combined master's and doctoral studies is substantially the same as that for the basic law course[.]"

Accordingly, it resolved as follows:

"**Wherefore, be it resolved**, as it is hereby resolved that the basic law degrees (whether Ll.B. or J.D.) earned from law schools recognized or supervised by the LEB and its predecessor regulatory agencies shall be considered as equivalent to doctoral degrees in other non law academic disciplines for purposes of "appointment/employment, ranking, and compensation."

Evidently, a Bachelor of Laws degree is in a dissimilar position juxtaposed with other baccalaureates or even post-graduate diplomas. *Such condition is germane to the purpose of the law*. To reiterate, RA 6772 seeks to boost the standards of legal education.

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[11] A Resolution Setting the Graduate-Level Degree Equivalency of the Basic Law Course.

Supreme Court E-Library

It cannot be stressed enough that the requirement shall ensure that those who will take the Master of Laws program are qualified in a sense that they are well-equipped to further concentrate on their selected area of law and their triumph though their contributions thereafter will unequivocally refine legal education and benefit society.

The said imperative is not confined to existing conditions only as it applies equally to all members of the same class since the proscription shall be enforced to all non-law graduates.

Suffice it to say that as long as the classification is valid and not trivial, a statute that treats one class differently from another class will not contravene the equal protection clause.

One of the reasons conveyed in the *ponencia* is that: "the general objective of RA 7662 to train persons for leadership and to contribute towards the promotion and advancement of justice and the improvement of its administration, the legal system, and legal institutions in light of the historical and contemporary development of law in the Philippines and other countries. Certainly, the pursuit of these objectives is not exclusive for law students or law practitioners."

I opine otherwise.

Noscitur a sociis—where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of the words in which it is found or with which it is associated, or stated differently, its obscurity or doubt may be reviewed by reference to associated words.[12]

Upon this point, the basic statutory construction principle of *ejusdem generis* states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to

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[12] See *Oil and Natural Gas Commission v. Court of Appeals*, G.R. No. 114323, 23 July 1998.

Supreme Court E-Library

include—or to be restricted to—things akin to or resembling, or of the same kind or class as, those specifically mentioned.[13]

The purposes are reproduced in full, hereunder:

Section 3. *General and Specific Objective of Legal Education*. - (a) Legal education in the Philippines is geared to attain the following objectives:

(1) to prepare students for the practice of law;
(2) to increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society;
(3) to train persons for leadership;
(4) to contribute towards the promotion and advancement of justice and the improvement of its administration, the legal system and legal institutions in the light of the historical and contemporary development of law in the Philippines and in other countries.

(b) Legal education shall aim to accomplish the following specific objectives:

(1) to impart among law students a broad knowledge of law and its various fields and of legal institutions;
(2) to enhance their legal research abilities to enable them to analyze, articulate and apply the law effectively, as well as to allow them to have a holistic approach to legal problems and issues;
(3) to prepare law students for advocacy, counselling, problem-solving and decision-making, and to develop their ability to deal with recognized legal problems of the present and the future;
(4) to develop competence in any field of law as is necessary for gainful employment or sufficient as a foundation for future training beyond the basic professional degree, and to develop in them the desire and capacity for continuing study and self-improvement;
(5) to inculcate in them the ethics and responsibilities of the legal profession; and
(6) to produce lawyers who conscientiously pursue the lofty goals of their profession and to fully adhere to its ethical norms.[14]

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[13] See *Emeteria Liwag v. Happy Glen Loop Homeowners Association, Inc.*, G.R. No. 189755, 4 July 2012.

[14] Republic Act No. 7662 (An Act Providing for Reforms in the Legal Education, Creating for the Purpose, a Legal Education Board and for Other Purposes).

Supreme Court E-Library

Given the foregoing, the phrase "to train persons for leadership . . . " should be accentuated vis-à-vis the avowed relevant objectives. Such general words pertain to those who are law students, law graduates, legal practitioners, and other members of the legal profession in accordance with the other itemized intentions.

A final word. In the *ponencia's* thorough exploration of the legal system's desideratum to improve, only the foregoing individuals were alluded to. Needless to state, the unequivocal purpose of the law is to encompass only this classification of people.

With this discourse, I take exception to the declaration of unconstitutionality of Section 17 of *LEBMO No. 1-2011*. Nonetheless, I concur with the rest of the *ponencia's* disquisitions.

DISSENTING AND CONCURRING OPINION

LEONEN, *J.*:

Educational institutions play an important role in a democracy: They are spaces meant for the creation and flourishing of diverse ideas that improve society and enrich public debate. The academe and the space it requires are protected by the constitutional canon called academic freedom. This freedom assures an intellectual debate that is vigorous in its inquiry into the truth, unobstructed by fear of any governmental intervention, be it coercive or suggestive.

The academic freedom accorded to educational institutions is intertwined with the very concept of individual expression — the very core of human liberty and the bedrock of a democratic society. The right to pursue learning, both of the institution and the individual, must be "free from internal and external interference or pressure."[1] An educational institution's right to determine who to admit as its students, as a facet of its institutional academic freedom, is absolute. Any form of State intrusion into its admission policies, no matter how benign, should be rejected.

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[1] *Ateneo de Manila University v. Capulong*, 292 Phil. 654, 673 (1993) [Per J. Romero, En Banc].

Supreme Court E-Library

For this, I maintain that the Philippine Law School Admission Test is unconstitutional, be it just a guide or an absolute requirement for admission. Not only is it an affront to a law school's discretion in determining who to admit to study, but it is also an arbitrary and unreasonable policy that violates an applicant's right to due process. Beyond that, the law and rules giving the Legal Education Board the power to prescribe minimum standards for law school admission are themselves unconstitutional, for they infringe on law schools' academic freedom and violate due process.

To recall, in its September 10, 2019 Decision, this Court declared unconstitutional the Philippine Law School Admission Test, as it had been crafted, for being "a totalitarian scheme" as a requirement to qualify for law school. Nonetheless, the majority maintained that Republic Act No. 7662, or the Legal Education Reform Act of 1993, is a reasonable State supervision on law schools, particularly on who they admit to study. To the majority, the Philippine Law School Admission Test may be administered, but would not be mandatory to enter law schools.[2]

The law, upheld by the majority, empowers the Legal Education Board to prescribe minimum standards for law admission. Rejecting the argument that this encroaches on the Supreme Court's rule-making power, the majority ruled that this Court's power does not extend to the study of law. But while the Board had power that extended to prescribing minimum qualifications of faculty members, this Court found that the manner of its imposition was unreasonable as it usurped the "freedom of the institution to evaluate the qualifications of its own teachers on an individual basis."[3]

In its Partial Motion for Reconsideration, the Legal Education Board maintained that the exercise of academic freedom still allows the State to impose reasonable restrictions on law schools.[4] It argued that the Philippine Law School Admission Test

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[2] *Pimentel v. Legal Education Board*, G.R. Nos. 230642 and 242954, September 10, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65751> [Per J. J. Reyes, Jr., En Banc].

[3] Id.

[4] Resolution, p. 7.

Supreme Court E-Library

is merely a minimum qualification for admission to law schools and not an unfair and unreasonable academic requirement.[5] It further reasoned that this policy promotes the right to quality education, advances public welfare, and ensures that law schools comply with the requirements set by the State.[6]

However, for petitioners and intervenor, law schools have already determined their own admission policies and crafted law admission tests long before the Philippine Law School Admission Test came around.[7] This test, then, supposedly infringed on their right to freely determine who may be admitted to study.[8] They added that the policy usurps the school's right to assess the fitness and aptitude of its faculty.[9]

It was also claimed that since admission to the Bar necessarily encompasses admission to law school,[10] Republic Act No. 7662, the law creating the Legal Education Board, is unconstitutional for infringing on the constitutional power of this Court.[11]

The Resolution issued by the majority upheld the constitutionality of Republic Act No. 7662 for being a valid exercise of the State's police power. Citing problems besetting legal education, it reasoned that the law is necessary to reform and elevate law school standards. Thus, giving the Legal Education Board power to set minimum requirements for admission to law schools was deemed imperative to realize the law's intent.[12]

Veering away from the original September 10, 2019 Decision, the Resolution explained that the Legal Education Board's authority to regulate legal education can be reconciled with this Court's

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[5] Id. at 8.

[6] Id. at 7.

[7] Petition-in-Intervention, p. 12.

[8] Id. at 6.

[9] Id.

[10] Resolution, p. 8.

[11] Id.

[12] Id. at 11-15.

Supreme Court E-Library

power to supervise admission to the Bar.[13] It held that this Court has legitimate interests over legal education, although admitted that no constitutional text supports this.[14] It reasoned that legal education cannot be treated separately from the legal profession because the skills and values of lawyers are developed foremost in law schools.[15]

Nevertheless, the Resolution found that the Philippine Law School Admission Test unreasonably intrudes into the academic freedom of law schools.[16] It reasoned that while improving legal education through regulating admission was a lawful subject permitting the exercise of police power, the Philippine Law School Admission Test failed the test of lawful method because it took away the autonomy of law schools.[17] Thus, it declared the entire LEB Memorandum Order No. 7-2016, which imposed this examination, unconstitutional.[18] It also set aside all relevant memoranda, circulars, and issuances pertaining to the test, finding that its compulsory imposition was "violative of academic freedom."[19]

I

I fully agree that the Philippine Law School Admission Test, as with the entire LEB Memorandum Order No. 7-2016, is unconstitutional.

Academic freedom is a constitutionally guaranteed protection accorded to educational institutions. Article XIV, Section 5(2) of the Constitution is clear: "Academic freedom shall be enjoyed in all institutions of higher learning."

In *Garcia v. The Faculty Admission Committee, Loyola School of Theology*,[20] this Court first discussed the nature and scope of academic freedom with respect to academic institutions:

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[13] Id. at 15.

[14] Id. at 16.

[15] Id.

[16] Id. at 24.

[17] Id. at 26.

[18] Id. at 29-30.

[19] Id. at 34.

[20] 160-A Phil. 929 (1975) [Per J. Fernando, En Banc].

Supreme Court E-Library

For it is to be noted that the reference is to the "institutions of higher learning" as the recipients of this boon. *It would follow then that the school or college itself is possessed of such a right. It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students*. This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose, nullify its intent. Former President Vicente G. Sinco of the University of the Philippines, in his Philippine Political Law, is similarly of the view that it "definitely grants the right of academic freedom to the university as an institution as distinguished from the academic freedom of a university professor."[21] (Emphasis supplied, citation omitted)

Out of this guarantee flows four essential freedoms that academic institutions can determine: (1) who may teach; (2) what may be taught; (3) how it shall be taught; and (4) who may be admitted to study.[22]

Academic institutions are self-governed. They can refuse to admit students who fail to meet the qualifications and requirements they set.[23] This discretion extends to their determination of who to dismiss[24] and the right to discipline their students.[25]

This wide autonomy springs from the fundamental social function that academic institutions perform. They create and encourage an environment of critical discussion and inquiry. Individuals' thoughts are formed and honed through intellectual

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[21] Id. at 943.

[22] Id. at 944.

[23] *Tangonan v. Pano*, 221 Phil. 601 (1985) [Per J. Cuevas, Second Division]; *San Sebastian College v. Court of Appeals*, 274 Phil. 414 (1991) [Per J. Medialdea, First Division].

[24] *Ateneo De Manila University v. Capulong*, 294 Phil. 654 (1993) [Per J. Romero, En Banc]; *Licup v. University of San Carlos*, 258-A Phil. 417 (1989) [Per J. Gancayco, First Division].

[25] *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431 (2000) [Per J. Kapunan, First Division]; *Angeles v. Sison*, 197 Phil. 713 (1982) [Per J. Fernandez, Second Division].

Supreme Court E-Library

exchange within the academic domain. Academic institutions promote the freedoms of expression and of the mind.

Because of their role and the spaces they require, academic institutions are given the autonomy to determine for themselves their "aims and objectives and how best to attain them."[26] For that, they must have a degree of independence and protection from outside interference:

> Notwithstanding the increasingly broad reach of academic freedom and the current emphasis on the essentiality of autonomy for academic institutions, the freedom of individual faculty members against control of thought or utterance from either within or without the employing institutions remains the core of the matter. If this freedom exists and reasonably adequate academic administration and methods of faculty selection prevail, intellectual interchange and pursuit of knowledge are secured. A substantial degree of institutional autonomy is both a usual prerequisite and a normal consequence of such a state of affairs. . . . Hence the main concern over developing and maintaining academic freedom in this country has focused upon encouragement and protection of the freedom of the faculty member.[27]

Academic freedom cannot be divorced from the freedoms of thought, speech, expression, and the press.[28] The level of protection accorded to freedom of expression must extend to academic freedom. Any form of State interference must be heavily scrutinized.

Viewed in this light, imposing the Philippine Law School Admission Test as a mandatory examination infringes on academic freedom. As a state-sponsored test, it tends to influence the admission policy of law schools, intruding into the internal affair of determining who to admit to study, when they have

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[26] *Garcia v. Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 944 (1975) [Per J. Fernando, En Banc].

[27] Ralph F. Fuchs, *Academic Freedom: Its Basic Philosophy, Function and History*, 28 Law and Contemporary Problems 431, 433 (1963), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2963&context=lcp> (last visited on June 8, 2021).

[28] *Ateneo De Manila University v. Capulong*, 292 Phil. 654, 672-673 (1993) [Per J. Romero, En Banc].

Supreme Court E-Library

already determined their own admission policies and created their respective admission tests. The Philippine Law School Admission Test, crafted by the Legal Education Board without consulting law schools, effectively railroaded their admission policies. Its mandatory imposition would make it integral to the admission processes of all law schools. This was not only a superfluity, but a violation of law schools' institutional academic freedom.

State intrusion, whatever form it may be, stifles the ability of an academic institution to be critical. It undermines the crucial function of law schools as learning institutions and birthplaces of opinion and analysis, which may ripen into a critique of government. As I have explained in my earlier opinion for these cases, law schools should be spaces for intellectual discourse without fear of governmental intrusion of any kind:

> Law schools are the principal institutions that have the space to analyze, deconstruct, and even critique our laws and jurisprudence. They not only teach doctrine, but examine its fundamentals.
>
> The kind of freedom of expression contained in academic freedom is different from political expression. Within political or creative spaces, freedom of expression takes an almost unqualified immunity. Any thought, whether or not it is hated by the dominant, finds protection without regard to its slant or falsity. In the sphere of political debate, falsehoods are platforms for testing reason and providing opportunities to publicly advocate what is true persuasively.
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> On the other hand, within the academe, falsities in method and content are deliberately rooted out, exposed, and marginalized so that the public debate is enriched, whether among the institution's students or the world beyond its walls. Academic freedom is the constitutional canon that protects this space from politics. It is the freedom that assures academic intellectual debate without fear of any governmental intervention of any kind, be it coercive or suggestive.
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> Government-sponsored standardized admission tests infringe on this freedom without reason.[29]

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[29] J. Leonen, Separate Dissenting and Concurring Opinion in *Pimentel v. Legal Education Board*, G.R. Nos. 230642 and 242954, September 10, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65751> [Per J. J. Reyes, Jr., En Banc].

Supreme Court E-Library

I fully concur with the Resolution in saying that, in its current formulation, the Philippine Law School Admission Test is not merely recommendatory, but an absolute requirement on law school applicants. That the applicants are not required to pass the examination does not change this. As long as taking it is mandatory, the State effectively dictates on law schools who may be admitted to study by predetermining who may enroll in them. This governmental attempt to interfere with law schools' discretion infringes on academic freedom and violates the Constitution.

Moreover, I find that the imposition of the Philippine Law School Admission Test fails to satisfy the requirement of due process.

While State action is not entirely proscribed, due process demands that the intrusion on an individual's right to life, liberty, and property neither be arbitrary nor unreasonable.[30] In *Ichong v. Hernandez*:[31]

> The due process clause has to do with the reasonableness of legislation enacted in pursuance of the police power, Is there public interest, a public purpose; is public welfare involved? Is the Act reasonably necessary for the accomplishment of the legislature's purpose; is it not unreasonable, arbitrary or oppressive? Is there sufficient foundation or reason in connection with the matter involved; or has there not been a capricious use of the legislative power? Can the aims conceived be achieved by the means used, or is it not merely an unjustified interference with private interest? These are the questions that we ask when the due process test is applied.
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> The conflict, therefore, between police power and the guarantees of due process and equal protection of the laws is more apparent than real. Properly related, the power and the guarantees are supposed to coexist. The balancing is the essence or, shall it be said, the indispensable means for the attainment of legitimate aspirations of any democratic society. There can be no absolute power, whoever exercise it, for that would be tyranny. Yet there can neither be absolute liberty, for that would mean license and anarchy. So the State can deprive persons of life, liberty and property, provided there is due process of law[.][32]

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[30] *Ichong v. Hernandez*, 101 Phil. 1155, 1166 (1957) [Per J. Labrador, En Banc].

[31] 101 Phil. 1155 (1957) [Per J. Labrador, En Banc].

[32] Id. at 1165.

Supreme Court E-Library

An individual's choice of pursuing an education is within the sphere of the rights to life, liberty, and property. The rights to life and liberty do not only ensure physical existence and subsistence, but embrace the right to fully maximize and attain one's potential, such as the right to enjoy their faculties, the right to choose a profession, and the right to pursue an education.[33] Hence, when the State tends to interfere with these choices, it effectively infringes on the rights to life and liberty.

In this case, the imposition of the Philippine Law School Admission Test violates due process for being arbitrary and unreasonable.

To begin with, equating admissions policy to the quality of law schools is *non sequitur*. The standard for admissions is different from the standard for ensuring the quality of legal education. In admissions, applicants are evaluated and filtered through factors entirely unrelated to the quality of legal education. For instance, entrance examinations do not measure intelligence and are admittedly not an accurate assessment of merit. They only provide a measure of correlation between the score and the applicant's predicted first-year grades.

Other indicators, such as the applicant's undergraduate grades, honors, and school are immaterial to the improvement of the quality of legal education. Thus, the students that a law school eventually admits as first-year students are no reflection of the quality of instruction that they will receive from that school. The quality of a law school's legal instruction depends heavily on its internal administration and policies, such as its medium of instruction, the composition of its faculty, the subjects and the curriculum it offers, and the grading system it implements.

Even if these were related, the Philippine Law School Admission Test remains arbitrary for lack of substantial basis. It appears that the Legal Education Board merely relied on anecdotal evidence.

The creation of the Philippine Law School Admission Test was admittedly not based on scientific research. To justify the

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[33] *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 316 (2005) [Per J. Tinga, En Banc].

Supreme Court E-Library

examination, the Legal Education Board simply said during the oral arguments that it was an imitation of the Law School Admission Test in the United States, and nothing more. No study was conducted to show the applicability of this foreign framework to Philippine law schools. Certainly, the creation of educational institutions' admission processes requires carefully crafted rubrics on which to base this important academic decision. The test in question merely imposes additional burden, the legitimacy of which has not been shown. This violates substantive due process.

The Philippine Law School Admission Test likewise violates due process for being unreasonable. Imposing the test is based on the basic idea that a written test can determine which applicants are likely to survive law school. This single criterion, decided by the Legal Education Board, would supposedly determine if one is qualified for law education.

Using a one-size-fits-all determinant cannot satisfy the demands of due process. Reasonableness requires a multifaceted approach to evaluate law school applicants.

Moreover, by requiring all applicants to take the Philippine Law School Admission Test, the Legal Education Board is able to impose an additional admission requirement on law schools. Whether or not they will consider the results of the test, law schools are compelled to only accept applicants who have taken the examination regardless of their scores. The test's mandatory character amounts to an oppressive and arbitrary measure as it effectively excludes, qualifies, and restricts admission to law schools. The gate-keeping function of determining who to the study of law is being exercised by the Legal Education Board, instead of the law schools.

Worse, these standardized tests employ the meritocratic method, which does not necessarily mean that the most qualified students are admitted.[34]

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[34] *Racelis v. Spouses Javier*, G.R. No. 189609, January 29, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63801> [Per J. Leonen, Third Division].

Supreme Court E-Library

Meritocracy is a myth. While examinations present themselves as equalizers, in the end they only unduly favor the elite.[35] The irony inherent in standardized testing is that it attempts to judge applicants based on merit but ultimately fails to recognize the barriers it sets up for a lot of them. The Philippine Law School Admission Test, intended to be an aptitude test for all its examinees, has already become exclusionary even before all aspiring law students are given the opportunity to take it.

Incidentally, retaining the test perpetuates the stigma that attaches to an applicant who passes but scores relatively low. Law schools are persuaded to accept applicants with a nominal high score, without fully knowing the quality and content of the examination.

Finally, the Philippine Law School Admission Test violates the right to property. Taking a mandatory examination necessarily entails financial and opportunity costs. Not all applicants have the same luxury of time and money, and many will be prevented from pursuing legal education simply because of the costs associated with having to take this aptitude test. These are difficulties that many of those who wish to pursue a degree in law will have to unnecessarily face.

By imposing another test on top of the requirements and separate entrance tests imposed by law schools, the Legal Education Board only burdens an applicant with unnecessary financial costs at the expense of their time, prospects, and other opportunities. It provides an exclusionary measure that unreasonably excludes applicants who simply cannot afford the costs.

A law school must determine for itself the standard it will require for the admission of its students. This includes the type and content of the examination it will employ as a measure of this standard. The Legal Education Board cannot force its own academic standard to law schools through an examination it formulated and administered alone.

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[35] Jo Littler, *Meritocracy: the great delusion that ingrains inequality*, THE GUARDIAN, March 20, 2017, available at <https://www.theguardian.com/commentisfree/2017/mar/20/meritocracy-inequality-theresa-may-donald-trump> (last accessed on June 8, 2021).

Supreme Court E-Library

Thus, I agree that the Philippine Law School Admission Test, as with the entirety of LEB Memorandum Order No. 7-2016, must be struck down for being unconstitutional. It not only violates law schools' institutional academic freedom in deciding who to admit as their students, but also the substantive due process rights of applicants for being an arbitrary and unreasonable exercise of State power.

II

Despite striking down the Philippine Law School Admission Test,[36] the Resolution refused to strike down the statute creating the Legal Education Board. It upheld Republic Act No. 7662, relying mainly on the presumption of constitutionality of statutes. It found no cogent reason to declare the law unconstitutional.[37]

Moreover, the Resolution held that the State's regulation of the exercise of academic freedom is within the ambit of police power.[38] It ruled that the supervision and regulation of legal education through Republic Act No. 7662 was valid because the promotion of education was a legitimate objective of police power.[39]

On this, I disagree. Beyond the issuances related to the Philippine Law School Admission Test, the question of the encroachment on law schools' institutional academic freedom ultimately boils down to the State intrusion through the statutorily created Legal Education Board.

Republic Act No. 7662 created the Legal Education Board and granted it authority to administer legal education, supervise, and accredit law schools; prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members; prescribe basic curricula for the course of law; establish a law practice internship as a requirement for taking the

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[36] Resolution, p. 34.

[37] Id. at 15.

[38] Id. at 19.

[39] Id.

Supreme Court E-Library

Bar; and adopt a system of continuing legal education. Sections 7(c) and 7(e) state:

> (c) to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities, without encroaching upon the academic freedom of institutions of higher learning;
>
> . . . .
>
> (e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members[.][40]

I dissent from the Resolution's view that Republic Act No. 7662 is a legitimate and reasonable exercise of police power, owing to the pressing need for a reform in legal education. The provisions of the law encroach on the law school's exercise of academic freedom.

The entire concept of the Legal Education Board is unconstitutional for intruding on the academic freedom of law schools and the universities and colleges to which they belong.

The quality of legal education should be guaranteed by the faculty and administration of a law school. A law school, in turn, may be part of a university or college. Thus, the law school is accountable to its academic councils for its approaches to teaching, qualifications, and promotion of its professors, as well as the full contents of its curriculum.

The broad and ambiguous rubric of police power should not be made an excuse to provide government oversight on purely academic matters, or even academic matters that appear to be administrative issues.

Allowing any form of State intrusion into academic freedom, such as creating a regulatory body like the Legal Education Board, results in a degree of homogeneity among institutions of higher learning. Imposing an admission requirement that schools must integrate into their own policies forces these institutions, as with the applicants, to fit a certain mold set by the State. It

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[40] Republic Act No. 7662 (1993), sec. 7.

Supreme Court E-Library

endangers these academic institutions' purpose of being spaces that encourage diverse and critical thinking.

Academic freedom protects educational institutions from being confined to orthodoxies prescribed by the State, allowing professors and students to freely take part in critical discourse and scholarship.[41] This function is frustrated when the State imposes its own policies and standards on universities and colleges. Laws and regulations can discourage heterodoxy by imposing "a self-perpetuating academic establishment with identifiable standards for teaching and scholarship."[42] Standards may be imposed on faculty qualifications, methods of teaching, curriculum structure, and procedure for admission.[43]

Such intrusion into the academe's prerogatives is an incursion into the freedom of thought that characterizes our society as a democratic one. Institutions of higher learning which study various disciplines should be able to pursue their goals without restraint. When rigid standards on faculty qualifications and student admissions are imposed, they frustrate the diversity of the faculty and students. They promote a homogeneous community with people of similar leanings and backgrounds, suppressing divergence in ideas. Even attempts to homogenize course curricula prevent the university and faculty from examining other academic disciplines and fields. This is particularly detrimental to law schools, as institutions of higher learning, where political and social discourses are paramount.

Ultimately, State interference into academic affairs, particularly the admissions processes, affects the quality of participation of its citizens in this democratic space. The Legal Education Board—composed of *appointed public officials*—is in no position to dictate matters that are exclusively the policy choices of the academe. Through Republic Act No. 7662, the State exposes the academe, although indirectly, to undue influence from political

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[41] J. Peter Bryne, *Academic Freedom: A Special Concern of the First Amendment*, 99 YALE L.J. 251, 297-298 (1989).

[42] Id. at 297.

[43] Id. at 297-298.

Supreme Court E-Library

appointees. The criteria for determining who to admit as a student, and how these criteria are determined and implemented, should belong solely to academics and school administrators.

The entire concept of the Legal Education Board—appointed public officials interfering with law schools' academic freedom as if their appointments had given them academic expertise—is precisely what academic freedom enshrined in Article XIV, Section 5(2) of the Constitution prohibits. There are better ways to ensure the quality of legal education, none of which involves a super body like the Legal Education Board.

Thus, for creating this body, Republic Act No. 7662 must be struck down as unconstitutional.

III

In assailing the Legal Education Board's constitutionality, it was argued that this Court's power to supervise the legal profession was violated, since admission to the Bar necessarily encompasses admission to law school. This was rejected in the Resolution, which ruled that the Legal Education Board can work alongside this Court in regulating legal education.

In so ruling, the Resolution said that this Court has "legitimate interests"[44] in the standards of legal education based on its constitutional power concerning admission to the practice of law. It maintained that legal education cannot be treated separately from the legal profession.[45]

I disagree with both views.

Neither the Legal Education Board nor this Court—or even when they work together—has the power to encroach on academic freedom. I maintain my position that the regulation on the teaching of law as an academic degree is different from the regulation on the practice of law as a profession. This distinction highlights the extent and importance of the academic freedom enjoyed by educational institutions.

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[44] Resolution, p. 21.

[45] Id. at 20-22.

Supreme Court E-Library

The law as taught in law schools properly belongs to the sphere of the academe where law is taught, examined, and even criticized. These institutions provide the space where law can be learned not only for its practical functions of facilitating transactions, regulating relations, or fulfilling a requirement for future legal practice, but more important, law is also studied as a discipline in itself. This is the unique role which academic institutions—law schools in particular—fulfill in their pursuit for truth and critical inquiry, which is intimately related to the freedoms of expression and of the mind, the bedrock of democracy.

For this reason, the regulation of law as an academic discipline should always be measured against the standard of academic freedom as expressed in Article XIV, Section 5(2), which also relates to freedoms enshrined in Article III, Section 4[46] of the Constitution.

In contrast, the regulation on the practice of professions is covered by Article XIV, Section 5(3)[47] of the Constitution. More specific for the legal profession, the power to "promulgate rules concerning . . . the admission to the practice of law" is granted to this Court under Article VIII, Section 5(5).[48] Policies and requirements set by this Court for the practice of law come from this express power and not from academic freedom.

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[46] CONST., art. III, sec. 4 states:

SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

[47] CONST., art. XIV, sec. 5(3) states:

(3) Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements.

[48] CONST., art. VIII, sec. 5(5) states:

SECTION 5. The Supreme Court shall have the following powers:

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of

Supreme Court E-Library

Thus, law as an academic discipline is an aspect of higher education leading to an academic degree, while law as a profession may require a degree, yet the degree alone does not qualify one to practice law. They are distinct from each other. It is precarious to say that this Court performs a role, no matter how small, in the regulation of legal education because of its power to regulate the legal profession. This perception runs the risk of this Court intruding into the academic freedom of educational institutions.

It is not within this Court's power to regulate academic matters. No matter how noble its intentions are, this Court cannot arrogate upon itself a power and function that is not constitutionally sanctioned. More so, this Court should refrain from intruding into the exercise of academic freedom—a right clearly allocated by the Constitution to the sovereign.

Nonetheless, the Resolution also ruled that the Legal Education Board's requirement that each faculty member of law schools must have a master's degree is a violation of academic freedom.[49]

On that score, I agree. Police power cannot be ambiguously claimed as an excuse for government intrusion on purely academic matters.

In line with their right to determine who may teach as among the four essential freedoms, only law schools may determine the composition and qualifications of their faculties. The Legal Education Board's power to dictate certain qualifications, such as requiring a master's degree, will effectively infringe on this right.

IV

Supervision over the academe is best done by academics. It cannot be done by a super body created, funded, and appointed by the State. To do so would unnecessarily place the academic freedom of law schools at the disposal of appointed public officials, who may not even possess the necessary postgraduate academic, teaching, or administrator credentials. Being appointees, they are

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procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[49] Id. at 36.

Supreme Court E-Library

prone to influences by their appointing power. This undermines the academe's most significant roles: to inquire into the truth, to powerfully disseminate this truth, and to speak this truth to power.

Legal education cannot be supervised in the way pre-school or basic education is supervised. Law schools, which offer what amounts to a postgraduate degree, are institutions of higher learning, and are entitled to academic freedom. The entire concept of the Legal Education Board as a supervisory body is what is exactly proscribed by Article XIV, Section 5 (2) of the Constitution.

Educational institutions' right to determine who to admit is fundamental in its academic freedom. This right is manifested in the creation of admission policies, in the determination of the applicants' qualifications, or in the formulation of the test that the academic institutions will employ. Academic freedom must be exercised free from the influence and intrusion by the State. Even if the consideration of the Philippine Law School Admission Test score were made optional to the law schools, the results will ultimately affect their admissions policies.

The maintenance and promotion of the quality of law education are essential, but there are ways to attain these goals without compromising academic freedom. The calibrated approach taken by the Resolution will only legitimize the State's interference on academic freedom despite its far-reaching implications.

ACCORDINGLY, I vote to **GRANT** the Partial Motion for Reconsideration of petitioners in G.R. No. 242954 and the Petition-in-Intervention of the Philippine Association of Law Schools in A.M. No. 20-03-04-SC. The Motion for Reconsideration of the Legal Education Board is **DENIED**. The entire LEB Memorandum Order No. 7-2016 and its related issuances must be declared unconstitutional. Republic Act No. 7662, or the Legal Education Reform Act of 1993, must also be declared unconstitutional.

Supreme Court E-Library

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 G.R. 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

Supreme Court E-Library

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]

> 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**."

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[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.

Supreme Court E-Library

"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)

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

Supreme Court E-Library

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.

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.

Supreme Court E-Library

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**

Supreme Court E-Library

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**

Supreme Court E-Library

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

Supreme Court E-Library

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:

Supreme Court E-Library

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.

Supreme Court E-Library

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**

Supreme Court E-Library

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.

Supreme Court E-Library

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.

Supreme Court E-Library

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 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 preschool?

Supreme Court E-Library

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.

Supreme Court E-Library

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**

Supreme Court E-Library

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 *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

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[4] See 236 Phil. 768 (1987).

[5] See 259 Phil. 1016 (1989).

Supreme Court E-Library

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**.

Supreme Court E-Library

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

Supreme Court E-Library

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. 7662[6] (RA 7662) 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

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

Supreme Court E-Library

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 x x x 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.

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

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[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;

Supreme Court E-Library

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.