G.R. No. 230642 — 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,* ***versus*** **LEGAL EDUCATION BOARD, as represented by its Chairperson, 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,** *intervenors;* **APRIL D. CABALLERO, JEREY C. CASTRADO, MC WELLROE P. BRINGAS, RHUFFY D. FEDERE, CONRAD THEODORE A. MATUTINO and numerous others similarly situated, ST. THOMAS MORE SCHOOL OF LAW AND BUSINESS, 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, IAN M. ENTERINA, NEIL JOHN VILLARICO as law professors and as concerned citizens,** *petitioners-intervenors.*

G.R. No. 242954 — FRANCIS JOSE LEAN L. ABAYATA, GRETCHEN M. VASQUEZ, SHEENAH S. ILUSTRISMO, RALPH LOUIE SALAÑO, AIREEN MONICA B. GUZMAN, DELFINO ODIAS, JR., DARYL DELA CRUZ, CLAIRE SUICO, AIVIE S. PESCADERO, NIÑA CHRISTINE DELA PAZ, SHEMARK K. QUENIAHAN, ALJAY T. MEJOS, ROCELLYN L. DAÑO, MICHAEL ADOLFO, RONALD A. ATIG, LYNNETTE 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,* ***versus*** **HON. SALVADOR MEDIALDEA, Executive Secretary, AND LEGAL EDUCATION BOARD, herein represented by its Chairperson, EMERSON B. AQUENDE,** *respondents.*

Promulgated:

September 10, 2019

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SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia*. I write this opinion only to further expand on the points raised therein, with emphasis on the primordial issue of academic freedom.

The Scope of the Court's Review

The *ponencia* declares as constitutional the power of the Legal Education Board (LEB) to set the standards of accreditation for law schools, minimum qualifications of law school faculty members, and the minimum requirements for admission to legal education, granted under Sections 7(c) and 7(e) of Republic Act No. (R.A.) 7662.[1]

In turn, the *ponencia* declares as unconstitutional for encroaching upon the Court's rule-making powers the powers of the LEB to establish a law practice internship as a requirement for taking the Bar examinations,[2] and to adopt a system of continuing legal education for lawyers.[3] The *ponencia* also declares as unconstitutional for being *ultra vires* a number of resolutions, memoranda, and circulars issued by the LEB for violating the law schools' academic freedom.

I agree with the scope and extent of the Court's disposition in the instant case, as indeed, the Court is not limited only to the issue of the requirement of Philippine Law School Admission Test (PhiLSAT). Apart from the reasons already stated in the *ponencia*, I note that the petitioners, particularly those in G.R. No. 230642, questioned the entire law, not just the provision empowering the LEB to impose standards for admission into law schools. Moreover, the substantive issues in this case had been expanded in the Advisory for the oral arguments, to cover the following:

> **3.** Whether or not R.A. No. 7662 violates the academic freedom of law schools, specifically:
>
> **a.** Section 7(c) which empowers the LEB 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[;]
>
> **b.** Section 7(e) which empowers the LEB to prescribe minimum standards for law admission;
>
> **c.** Section 7(e) which empowers the LEB to prescribe minimum qualifications and compensation of faculty members[;]
>
> **d.** Section 7(f) which empowers the LEB to prescribe the basic curricula for the course of study; and
>
> **4.** Whether or not R.A. No. 7662 is a valid police power measure.[4]

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

2 R.A. 7662, Sec. 7, par. (g).

3 Id. at par. (h).

4 Advisory, p. 3.

Clearly, the issues now before the Court go beyond the PhiLSAT. As there are other pressing concerns about the operations of the LEB — vis-à-vis academic freedom, the *ponencia* was correct in looking into the LEB's issuances and rulings beyond those covering the PhiLSAT. Stated otherwise, the Court is called upon to look at the entirety of R.A. 7662, as well as the issuances of the LEB, and to test their validity on the basis of the primordial issue of whether they violate the academic freedom of law schools: an exercise the Court is actually called upon to do given that there are no factual issues involved.

While it is true that, on the surface, the issue on the validity of the PhiLSAT is the centerpiece of the instant petitions, a deeper understanding of the issues raised herein, as well as the discussions that arose from the oral arguments, readily reveals that at the heart of the instant controversy is the constitutionality of the LEB's powers under R.A. 7662 **and the reasonableness of the exercise of such powers**, as measured through the yardstick of academic freedom.

It must not be lost on the Court that the exercise by the LEB of its powers under the aforesaid law, including its exercise of control over the law schools' operations, the qualifications of the deans and professors, and especially the curriculum, are even more intrusive and invasive than the PhiLSAT, which only deals with admission to law school. Therefore, it would be a wasted opportunity for the Court to adopt a short-sighted approach and shirk away from delving into the constitutionality of the other powers and acts of the LEB, especially considering that, as extensively shown herein, the LEB's exercise of these powers is punctuated by blatant violations of academic freedom. The Court's ruling in *Pimentel Jr. v. Hon. Aguirre*[5] teaches:

> x x x By the **mere enactment** of the questioned law or the **approval of the challenged action,** the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. x x x
>
> x x x x
>
> By the same token, when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws, as in the present case, settling the dispute becomes the duty and the responsibility of the courts.[6] (Emphasis and underscoring supplied)

I submit that the Court not only has the opportunity but, in fact, the duty to settle the disputes given the serious allegations of infringement of the

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5 391 Phil. 84 (2000).
6 Id. at 107-108.

Constitution. The Court should thus not foster lingering or recurring litigation as this case already presents the opportune time to rule on the constitutionality of the LEB's statutory powers and how the LEB exercises the same. Hence, I maintain that the Court's disposition of the instant case should not be unduly restricted to only the question of the PhiLSAT's constitutionality.

For ease of reference, quoted below are the functions and powers of the LEB under R.A. 7662:

> SEC. 7. *Powers and Functions.* — For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:
>
> a) to administer the legal education system in the country in a manner consistent with the provisions of this Act[;]
>
> b) to supervise the law schools in the country, consistent with its powers and functions as herein enumerated;
>
> 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;
>
> d) to accredit law schools that meet the standards of accreditation;
>
> e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members;
>
> 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;
>
> 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 practising lawyers in such courses and for such duration as the Board may deem necessary; and
>
> i) to perform such other functions and prescribe such rules and regulations necessary for the attainment of the policies and objectives of this Act.

Much like the *ponencia*, I have undertaken the same exercise of evaluating, through the lens of academic freedom, the powers of the LEB **and how the same are and have been exercised**. As a result, I have identified several other LEB issuances beyond those identified by the *ponencia* which are arbitrary and unreasonable, and thus null and void.

A. Issues on Academic Freedom

The guarantee of academic freedom is enshrined in Section 5(2), Article XIV of the Constitution, which states that: "[a]cademic freedom shall be enjoyed in all institutions of higher learning." This 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."[7] The essential freedoms subsumed in the term "academic freedom" are: 1) who may teach; 2) what may be taught; 3) how it shall be taught; and 4) who may be admitted to study.[8]

Nevertheless, the Constitution also recognizes the State's power to regulate educational institutions. Section 4(1), Article XIV of the Constitution provides that: "[t]he 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." As gleaned from the quoted provision, the State's power to regulate is subject to the requirement of *reasonableness*.

The limitation on the State's power to regulate was introduced in the 1987 Constitution. Under the 1973 Constitution, it only states that "[a]ll educational institutions shall be under the supervision of, and subject to regulation by, the State."[9] The framers of the current Constitution saw the need to add the word "reasonable" before the phrase "supervision and regulation" in order to qualify the State's power over educational institutions. This is extant from the deliberations of the Constitutional Commission on August 29, 1986:

> MR. GUINGONA. x x x
>
> x x x x
>
> 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*

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7 *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 455-456 (2000).
8 *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 944 (1975).
9 Art. XV, Sec. 8, par. (1).

Universities vs. The Secretary of Education and the Board of Textbooks in 1955. In that case, the court said, and I quote:

> It is enough to point out that local educators and writers think the Constitution provides for control of education by the State.
>
> The Solicitor General cites many authorities to show that the power to regulate means power to control, and quotes from the proceedings of the Constitutional Convention to prove that State control of private education was intended by organic law.

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 not include the right to manage, dictate, overrule and prohibit. Therefore, it does not include the right to dominate.

x x x x

Delegate Clemente, chairman of the 1973 Constitutional Convention's Committee on Education, has this to say about supervision and regulation, and I quote:

> While we are agreed that we need some kind of supervision and regulation by the State, there seems to be a prevailing notion among some sectors in education that there is too much interference of the State in the management of private education. If that is true, we need some kind of re-examination of this function of the State to supervise and regulate education because we are all agreed that there must be some kind of diversity, as well as flexibility, in the management of private education. (Minutes of the November 27, 1971 meeting of the Committee on Education of the 1971 Constitutional Convention, pages 10 and 11.)[10] (Emphasis and underscoring supplied)

Further, the Constitutional Commission deliberations on September 9, 1986 also discuss:

> 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

[10] IV RECORD, CONSTITUTIONAL COMMISSION 56-57.

> schools we should provide the educational institution as much academic freedom as it needs. **When we speak of regulation, we speak of guidelines and others. We do not believe that the State has any right to impose its ideas on the educational institution because that would already be a violation of their constitutional rights.**
>
> **There is no conflict between our perspectives. When we speak of regulations, we speak of providing guidelines and cooperation in as far as defining curricula, et cetera, but that does not give any mandate to the State to impose its ideas on the educational institution**. That is what academic freedom is all about.[11] (Emphasis and underscoring supplied)

In sum, **"reasonable supervision and regulation" by the State over educational institutions does not include the power to control, manage, dictate, overrule, prohibit, and dominate**.

As applied to the instant case, in order to determine whether the LEB's functions violate the academic freedom of law schools, it must be ascertained whether the LEB's discharge of its functions is reasonable.

However, a review of the issuances of the LEB (*i.e.*, memorandum orders, memorandum circulars and resolutions), **of which this Court can take judicial notice**,[12] and in which there are no factual questions, reveals that the LEB has gone beyond its powers of reasonable supervision and regulation of the law schools. Dean Sedfrey M. Candelaria (Dean Candelaria), as *amicus curiae* for this case, expressed a similar view in his *Amicus Brief*: "[i]t is my considered view that a number of LEB issuances may have overstepped the limits of its jurisdiction, powers and functions. The problem areas have been on the power to prescribe minimum standards for (a) law admission; (b) qualification and compensation of faculty members; and, (c) basic curriculum."[13]

I accordingly discuss these LEB issuances in relation to the essential freedoms inherent in academic freedom:

i. Who may teach

As already explained, the Constitution protects the right of institutions of higher learning to academic freedom,[14] the first aspect of which is the right to determine "who may teach"[15] and to fix "the appointment and tenure of

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11 IV RECORD, CONSTITUTIONAL COMMISSION 441.

12 RULES OF COURT, Rule 129, Sec. 1: "*Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions." (Underscoring supplied)

13 *Amicus Brief*, p. 6.

14 CONSTITUTION, (1987), Art. XIV, Sec. 5, par. (2).

15 *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, supra note 8.

office of academic staff."[16] This aspect protects an institution's right to select and to assemble a roster of faculty members that best suits its academic aims, objectives and standards, subject only to minimal state interference when some overwhelming public interest calls for the exercise of reasonable supervision and never repressive or dictatorial control.[17] The power to select educators is not some esoteric concept, but involves an institution's freedom to: determine the eligibility of faculty members and other academic staff; categorize their positions and ranks; evaluate their performance; establish quality and retention standards; determine work load and work hours; determine, subject to applicable labor laws, the appropriate compensation and benefits to be given; and choose the facilities that will be made available for their use.

R.A. 7662 purportedly empowers the LEB to prescribe *minimum* qualifications and compensation of faculty members, to wit:

> SEC. 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 x
>
> 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;
>
> x x x x
>
> e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members[.] (Underscoring supplied)

In the exercise of this power, however, the LEB has grossly violated the academic freedom of law schools **by going beyond reasonable supervision and regulation in their issuances**. To illustrate:

First. In the guise of accreditation, the LEB has gravely abused its minimal supervisorial authority by requiring as part of an institution's application for a permit[18] to operate: a) "a copy of the roster of its administrative officials, including the members of the Board of Trustees or Directors,"[19] b) "a roster of its faculty members for the proposed law school, x x x [including] the academic credentials and personal data sheets of the dean

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16 Id.

17 Id. at 943.

18 LEB Memorandum Order No. 1, Series of 2011 (LEBMO No. 1-2011), ***Section 31.1.*** A **PERMIT** entitles a law school to open and to offer the subjects of the first year of the law curriculum. A permit must be obtained before each academic year to enable the law school to operate on the succeeding academic year.

19 Id. at Sec. 33.1, par. (4). *See* also Section 20 of the same LEBMO, which states that "The law school shall be headed by a properly qualified dean, maintain a corps of professors drawn from the ranks of leading and acknowledged practitioners as well as academics and legal scholars or experts in juridical science, properly equipped with the necessities of legal education, particularly library facilities including reliable internet access as well as suitable classrooms and a Moot Court room. There shall likewise be provided a faculty lounge for the convenience of members of the faculty."

and of the faculty members,"[20] c) "the present library holdings for law as well as the name and qualifications of the law librarian"[21] and, quite ridiculously, d) "pictures of [, among others, the] dean's office, and faculty lounge of the law school."[22] Under LEB Memorandum Order No. 1, Series of 2011 (LEBMO No. 1-2011), the application for a permit to operate may be denied upon evaluation and ocular inspection,[23] if the LEB finds that the law program is "substandard in the quality of its operation[,] x x x when surrounding circumstances make it very difficult for it to form a suitable faculty or for any valid and weighty reasons, the proposed law school could not possibly deliver quality legal education."[24]

The foregoing grounds for denial of an application to operate under LEBMO No. 1-2011 are not only vague and arbitrary but worse, blatantly violative of an institution's academic freedom. By insisting that it can review 1) the "suitability" of the faculty and personnel through the submission of their academic credentials and personal data sheets, and 2) the "quality" of a school's operations through an evaluation of an institution's library holdings and faculty facilities, **the LEB has unreasonably interfered with an institution's right to select its faculty and staff and to determine the facilities and benefits that will be made available for their use**.

Second. Again in the guise of accreditation, the LEB overreached its mandate anew by authorizing itself to interview[25] the dean and faculty members of schools applying for recognition status[26] in order for it to determine whether "its students are prepared for the last year of the law curriculum, and that the professors who are to teach review subjects are prepared for the last year of the law course."[27] This requirement is so unreasonable that if an institution undergoing accreditation is found deficient, recognition may be denied and the law school may be closed.[28]

LEB Memorandum Order No. 2, Series of 2013 (LEBMO No. 2-2013) likewise provides that law schools that have a "weak faculty,"[29] "inadequate library research facilities,"[30] "no faculty syllabus,"[31] "no moot court room,"[32]

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20 Id. at par. (5); underscoring supplied.
21 Id. at par. (7); underscoring supplied.
22 Id. at par. (8); underscoring supplied.
23 Id. at Sec. 34.
24 Id. at par. (d); underscoring supplied.
25 Id. at Sec. 35, par. (3).
26 Id. at Sec. 31.2. "A **RECOGNITION** constitutes full mandatory accreditation. It allows the law school to graduate its students, to confer upon them their degrees and titles and to endorse them to the Office of the Bar Confidant for the Bar Examinations."
27 Id. at Sec. 35, par. (1).
28 Id. at Sec. 37.
29 Sec. 31, par. (2), which defines that "[a]s indicated, among others, by the fact that most of the members are neophytes in the teaching of law or their ratings in the students' and deans' evaluations are below 75% or its equivalent in other scoring system;" underscoring supplied.
30 Id.
31 Id.
32 Id.

and "no faculty lounge,"[33] as determined by the LEB, shall be considered "substandard,"[34] and shall be "unfit to continue operating a law program."[35]

The LEB's supposed authority to review 1) an individual faculty member's ability to teach and 2) the strength or weakness of the faculty as a whole, is not only presumptuous but is a gross violation of an institution's right to set academic standards and procedures for evaluating the qualifications and performance of its own educators.

Third. In gross violation of an institution's right to select "who may teach," the LEB has also imposed the requirement that the members of the faculty, in addition to their respective law degrees and Bar memberships, must likewise possess Masters of Law degrees (LLM). LEBMO No. 1-2011 pertinently provides:

> ***Section 50.*** The members of the faculty of a law school should, at the very least, possess a Ll.B. or a J.D. degree and should be members of the Philippine Bar. In the exercise of academic freedom, the law school may also ask specialists in various fields of law with other qualifications, provided that they possess relevant doctoral degrees, to teach specific subjects.
>
> Within a period of five (5) years of the promulgation of the present order, members of the faculty of schools of law shall commence their studies in graduate schools of law.
>
> Where a law school offers the J.D. curriculum, a qualified Ll.B. graduate who is a member of the Philippine Bar may be admitted to teach in the J.D. course and may wish to consider the privilege granted under Section 56 hereof. (Underscoring supplied)

LEB Resolution No. 2014-02 and LEB Memorandum Order No. 17, Series of 2018 (LEBMO No. 17-2018), which implement the foregoing provision, mandate that law schools comply with the following percentages and schedules, **under pain of downgrading, phase-out, and eventual closure**. LEB Resolution No. 2014-02 provides:

> 2. The law faculty of all law schools shall have the following percentage of holders of the master of laws degree:
>
> 2.1. School Year – 2017-2018 – 20%
> 2.2. School Year – 2018-2019 – 40%
> 2.3. School Year – 2019-2020 – 60%
> 2.4. School Year – 2020-2021 – 80%
>
> In computing the percentage, those who are exempted from the rule shall be included.

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33 Id.
34 Id. at par. (1).
35 Id.

> 3. Exempted from this requirement of a master's degree in law are the following:
>
> The Incumbent or Retired Members of the:
>
> 3.1 Supreme Court;
> 3.2 Court of Appeals, Sandiganbayan and Court of Tax Appeals;
> 3.3 Secretary of Justice and Under-Secretaries of Justice, Ombudsman, Deputy Ombudsmen, Solicitor General and Assistant Solicitors General;
> 3.4 Commissioners of the National Labor Relations Commission who teach Labor Laws;
> 3.5 Regional Trial Court Judges;
> 3.6 DOJ State and Regional State Prosecutors and Senior Ombudsman Prosecutors who teach Criminal Law and/or Criminal Procedure;
> 3.7 Members of Congress who are lawyers who teach Political Law, Administrative Law, Election Law, Law on Public Officers and other related subjects;
> 3.8 Members of Constitutional Commissions who are Lawyers;
> 3.9 Heads of bureaus who are lawyers who teach the law subjects which their respective bureaus are implementing;
> 3.10 Ambassadors, Ministers and other diplomatic Officers who are lawyers who teach International Law or related subjects;
> 3.11 Those who have been teaching their subjects for 10 years or more upon recommendation of their deans; and
> 3.12 Other lawyers who are considered by the Board to be experts in any field of law provided they teach the subjects of their expertise. (Underscoring supplied)

To ensure compliance with the foregoing, LEBMO No. 17-2018 imposes strict reportorial requirements, including the regular submission of various certifications and even the faculty members' LLM diplomas.[36]

The foregoing requirements impose unreasonable burdens on incumbent and potential faculty members and unduly infringe on an institution's right to select the legal experts and practitioners that will educate its students and further its academic aspirations. More importantly, the requirement is arbitrary and miserably fails to take into account the distinct nature of the legal profession, *i.e.*, that legal expertise is not necessarily developed or acquired only through further studies but also (**or more so**) through constant and continuous law practice in various specialized fields.

Under the foregoing rule, a seasoned law practitioner with 10 or 20 years of experience from an established law firm will not be qualified to teach in a law school without an LLM, unless he or she is able to prove to the LEB (not to the institution) that he or she is an expert in the subject he or she seeks to teach. This does not only prejudice the institution, but more so the law student who is, by LEB fiat, senselessly deprived of the opportunity to learn from the wisdom of experience. The significance of actual law practice vis-à-

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[36] Sec. 8.

vis law study is highlighted by the fact that a minimum number of years in the former is required as a qualification for appointment as a judge.[37] In contrast, an LLM degree is not even required for members of the Court.

The LEB also failed to consider that 1) LLM programs impose onerous financial/time constraints and opportunity costs on incumbent or potential faculty members, 2) few schools in the Philippines offer LLM programs, and 3) LLM programs abroad teaching foreign laws do not necessarily augment legal expertise, knowledge, and experience in Philippine law. As Dean Candelaria accurately noted in his *Amicus Brief*, "[t]he mandatory requirement of graduate degrees in law for deans and faculty members under LEB policies, while laudable and ideal, may not be easily realizable in light of the practical difficulties in accessing and maintaining enrollment in graduate programs."[38] Upon being asked during the oral arguments to expound on this matter, Dean Candelaria elucidated as follows:

> **ASSOCIATE JUSTICE CAGUIOA:**
>
> Okay, on page seven (7) of your Brief, you mentioned that the master's requirement while laudable, may not be easily realizable in light of the practical difficulties in accessing and maintaining enrollment in graduate programs. Can you inform the Court exactly what [these] practical difficulties are?
>
> **DEAN CANDELARIA:**
>
> Your Honor, I teach at least in two (2) schools where there is graduate degree being offered, the Ateneo and San Beda Graduate School of Law with the consortium with the academy, and I have seen the difficulties in particular, for instance, for sitting deans or faculty members, to appropriate the time to actually access the centers for learning, because we don't have as much presence, perhaps, in the Visayas or Mindan[a]o. And of course, we have to ad[a]pt now, because some schools now are going out there, like Ateneo De Naga, has actually requested on-site the offerings. So, difficulties really abound insofar as remote areas are concerned. Manila is not so much problematic, for those who teach in Manila. But for those who would have to fly, from Samar, I know I have a student from Samar, from Mindanao, who would tranche a weekend curriculum, let's say at San Beda…

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[37] Batas Pambansa Blg. 129 (1983), provides:

> SEC. 15. *Qualifications.*–No persons shall be appointed Regional Trial Judge unless he is a natural-born citizen of the Philippines, at least thirty-five years of age, and, for at least ten years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite.
>
> x x x x
>
> SEC. 26. *Qualifications.*–No person shall be appointed judge of a Metropolitan Trial Court, Municipal Trial Court, or Municipal Circuit Trial Court unless he is a natural-born citizen of the Philippines, at least 30 years of age, and, for at least five years, has been engaged in the practice of law in the Philippines, or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite. (Underscoring supplied)

[38] *Amicus Brief*, p. 7.

> **ASSOCIATE JUSTICE CAGUIOA:**
> So, in other words, Dean, what you are saying is that, as an example, the physical location or the topography of the area is such that, insisting on this requirement would be a grave prejudice to these other law schools because they cannot, in fact, access further higher learning to comply with the requirements of [the] LEB.
>
> **DEAN CANDELARIA:**
> At this stage, Your Honor, as the lack of institutions is really evident, I think we may have to work on this progressively in the near future. With the cooperation of the Bench, the Bar, the Association of Law Schools, and also the Philippine Association of Law Professors, to be able to achieve that goal.[39]

Undoubtedly, the LEB overreaches its authority in requiring an LLM as a "minimum qualification." **In imposing the foregoing requirement, the LEB arbitrarily usurped an institution's academic authority to gauge and to evaluate the qualifications of its educators on an individual basis, and hastily reduced the pool of expertise available for selection — to the detriment of the institution, the faculty, the students, and the profession as a whole.**

Fourth. The same observations may be made about the qualifications imposed on deans of law schools and graduate law schools, who are required to possess a Master's or Doctorate Degree, respectively. LEBMO No. 1-2011 states:

> ***Section 51.*** The dean should have, aside from complying with the requirements above, at least a Master of Laws (Ll.M.) degree or a master's degree in a related field, and should have been a Member of the Bar for at least 5 years prior to his appointment as dean.
>
> ***Section 52.*** The dean of a graduate school of law should possess at least a doctorate degree in law and should be an acknowledged authority in law, as evidenced by publications and membership in learned societies and organizations; members of the faculty of a graduate school of law should possess at least a Master of Laws (Ll.M.) degree or the relevant master's or doctor's degrees in related fields.
>
> Aside from the foregoing, retired justices of the Supreme Court, the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals may serve as deans of schools of law, provided that: they have had teaching experience as professors of law and provided further that, with the approval of the Legal Education Board, a graduate school of law may accredit their experience in the collegiate appellate courts and the judgments they have penned towards the degree ad eundem of Master of Laws. (Underscoring supplied)

The unreasonableness of the foregoing provisions is exemplified by the fact that deans are primarily "school administrators." While certainly, many legal luminaries have occupied, and currently occupy, the position of dean,

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[39] TSN, March 5, 2019, pp. 102-103.

there is no justifiable reason to absolutely require (rather than encourage or recommend) an LLM (for law deans) and Doctorate Degree (for graduate law deans), when the same would not necessarily improve the management or administration of a law institution. **On the other hand, if legal scholarship and authority were to be made the standard, it is peculiar that even a retired Member of the Court would prove unfit, unless otherwise approved by the members of the LEB**.

Notably, the members of the LEB – while seeing it fit to impose arbitrary requirements to gauge the suitability of faculty members, and to evaluate the strength or weakness of the faculty as a whole – are themselves not subjected to the same educational qualifications. As pointed out by Justice Marvic M.V.F. Leonen during the oral arguments:

> **JUSTICE LEONEN:**
> Excuse me, for a moment, you are requiring from all Deans, which you supervise, [and] law professors that they have an advanced degree, yet the LEB does not have an advanced degree, how do you explain this?
>
> **[MR.] AQUENDE:**
> Your Honor, the justification or the rationale that was prepared by the previous Board because it was not approved during our term, the previous Board looked into the function of the LEB and which is not academic in nature, Your Honor.
>
> x x x x
>
> **JUSTICE LEONEN:**
> And in LEB, maybe, even perhaps, you should take care first that the LEB members are all, at minimum, have masteral degrees from reputable law schools here or abroad or a doctoral degree for that matter before you apply it to your constituents, but my point is, isn't that unreasonable x x x
>
> x x x x
>
> x x x that you require deans to take an advance[d] degree x x x
>
> x x x x
>
> In other words, you imposed an educational requirement on law schools and certainly according to our jurisprudence, who to teach is an academic matter? It is a mission of a school and it is protected by academic freedom on the basis of your LLB or JD degrees?
>
> **[MR.] AQUENDE:**
> Yes, Your Honor. The point, Your Honor, is that the fact that the members of the LEB [do] not have x x x higher degrees [is] because the law does not require it. However, that does not mean that we could not x x x
>
> x x x x

JUSTICE LEONEN:

If the law does not require it, it doesn't mean that anything you do will be reasonable. You have to actually prove to us because, again, from my point of view, the degree of judicial scrutiny of any interference on academic freedom x x x the degree of scrutiny should be very tight. So again, my point is, perhaps you can address the reasonability of the requirement, etcetera x x x[40]

Fifth. Finally, the LEB impairs institutional academic freedom by categorizing faculty members and interfering with faculty load, as follows:

> **Section 33. Full-time and Part-time Faculty.** There are two general kinds of faculty members, the full-time and part-time faculty members.
>
> a) A full-time faculty member is one:
>
> 1) Who possesses the minimum qualification of a member of the faculty as prescribed in Sections 50 and 51 of LEBMO NO. 1;
> 2) Who devotes not less than eight (8) hours of work for the law school;
> 3) Who has no other occupation elsewhere requiring regular hours of work, except when permitted by the higher education institution of which the law school is a part; and
> 4) Who is not teaching full-time in any other higher education institution.
>
> b) A part-time faculty member is one who does not meet the qualifications of a full-time professor as enumerated in the preceding number.
>
> **Section 34. Faculty Classification and Ranking.** Members of the faculty may be classified, in the discretion of the higher education institution of which the law school is a part, according to academic proceeding, training and scholarship into Professor, Associate Professor, Assistant Professor, and Instructor.
>
> Part-time members of the faculty may be classified as Lecturers, Assistant Professorial Lecturers, Associate Professorial Lecturers and Professorial Lecturers. The law schools shall devise their scheme of classification and promotion not inconsistent with these rules.
>
> **Section 35. Faculty Load.** Generally, no member of the faculty should teach more than 3 consecutive hours in any subject nor should he or she be loaded with subjects requiring more than three preparations or three different subjects (no matter the number of units per subject) in a day.
>
> However, under exceptionally meritorious circumstances, the law deans may allow members of the faculty to teach 4 hours a day provided that there is a break of 30 minutes between the first 2 and the

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40 Id. at 173-175.

last 2 hours.[41] (Underscoring supplied)

The foregoing provisions unequivocally show that the LEB has not only overreached its authority to set minimum qualifications for faculty members, **it has arbitrarily dabbled in the internal affairs of law schools, including the grant of faculty positions and titles, the regulation of work hours and occupations, and the assignment of work load**. While presumably imposed for the benefit of the students and the professor, the imposition of the foregoing is better left to the individual institution which would be in a better position to determine the needs and capacities of its students and its faculty.

To reiterate, academic institutions are free to select their faculty, to fix their qualifications, to evaluate their performance, and to determine their ranks, positions, and teaching loads. The LEB's purported power to prescribe *minimum* qualifications and compensation of faculty members should be construed to cover only minimal state interference when some important public interest calls for the exercise of reasonable supervision. **It does *not* include a blanket authority to impose trivial rules as it sees fit. In the exercise of the LEB's purported power to supervise law schools, it has engaged in the unreasonable and invalid regulation, control, and micromanagement of law schools. The LEB has become, for lack of a better word, a tyrant**.

ii. What may be taught

The second aspect of academic freedom involves the right of institutions of higher learning to determine "what may be taught,"[42] *i.e.*, to design the curricula (what courses to offer, when to offer them, and in what sequence) and to craft the appropriate syllabi (course description, coverage, content, and requirements).

The importance of this right cannot be overemphasized. An academic institution should be given the necessary independence to identify, design and establish the courses and subjects that it deems crucial to a student's personal and professional development and what it believes will best reflect and inculcate its fundamental academic values. Protecting an institution's right to select various fields of study and to design the corresponding curricula and syllabi fosters critical thinking, diversity, innovation, and growth, encourages the free exchange of ideas, **and protects the youth from potential indoctrination by the State**.

Similar to the right of an academic institution to determine "who may teach" therefore, the Constitution likewise safeguards its right to determine

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41 LEBMO No. 2-2013, Sec. 33-35. See also LEB Memorandum Circular No. 14, Series of 2018 (LEBMC No. 14-2018).

42 *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, supra note 8.

what to teach and how to teach, free from undue interference "except when there is an overriding public welfare which would call for some restraint."[43]

While R.A. 7662 empowers the LEB to prescribe "the *basic* curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness,"[44] **it does *not* grant the LEB unbridled authority to impose unreasonable requirements in contravention of an academic institution's fundamental right to determine what to teach and how to go about it**.

A review of LEB's various memoranda evinces no other conclusion than that it has grossly overstepped this authority, as shown below:

LEBMO No. 1-2011 requires institutions 1) to submit its curriculum for evaluation and approval as a requirement for accreditation,[45] 2) to comply with the minimum unit requirements for each legal education course, *i.e.*, Bachelor of Laws (LLB) (152 units), Juris Doctor (JD) (168 units), LLM (36 units) and Doctor of Juridical Science (SJD) or Doctor of Civil Law (DCL) (60 units),[46] 3) to follow a specific and highly inflexible model curricula,[47] and 4) to comply with the course names, prescribed number of units, number of hours, course descriptions, and prerequisites.[48]

In LEBMO No. 2-2013, the LEB unequivocally stated that "in the exercise of its regulatory authority, [it may] void the graduation of any law student and/or impose appropriate sanctions on any law school that has not complied with the curricular requirements, as well as policy and standards required by the Board."[49]

A perusal of the mandatory model curricula unmistakably shows that the LEB has gone far beyond the mere prescription of a "basic curricula." For instance, all the following subjects as specifically described in the course descriptions, in the corresponding number of units, during the semester indicated. This is illustrated by the mandatory first year courses of a JD degree, as follows:

First Year[50]

1st SEMESTER		2nd SEMESTER	
COURSE	**UNIT**	**COURSE**	**UNIT**
Introduction to Law	1	Obligations and Contracts	5

43 *Cudia v. The Superintendent of the Philippine Military Academy*, 754 Phil. 590, 655 (2015).
44 R.A. 7662, Sec. 7, par. (f).
45 Sec. 33, par (6) and 53.
46 Id. at Sec. 54.
47 Id. at Sec. 55.
48 Id. at Sec. 58.
49 Sec. 3.
50 LEBMO No. 1-2011, Sec. 55.2.

Persons and Family Relations	4	Constitutional Law II	3
Constitutional Law I	3	Criminal Law II	4
Criminal Law I	3	Legal Technique and Logic	2
Statutory Construction	2	Legal Writing	2
Philosophy of Law	2	Basic Legal Ethics	3
Legal Research and Thesis Writing	2		
Legal Profession	1		
TOTAL	**18**	**TOTAL**	**19**

In relation thereto, Section 58.2 of the same issuance particularly describes each course, the required units and hours per week, and even the manner by which each class should be conducted. Sample course descriptions of the first year courses of JD degree are shown below:

COURSE NAME/NUMBER OF UNITS/CONTACT HOURS/ PREREQUISITES	**COURSE DESCRIPTION**
First Year – First Semester	
INTRODUCTION TO LAW Cases, recitations and lectures; 1 hour a week; 1 unit	A general course given to freshmen, providing for an overview of the various aspects of the concept of law, with emphasis on the relationship between law, jurisprudence, equity, courts, society and public policy, presented through selected provisions of law, cases and other materials depicting settled principles and current developments, both local and international, including a review of the evolution of the Philippine legal system.
PERSONS AND FAMILY RELATIONS Cases, recitations and lectures; 4 hours a week; 4 units	A basic course on the law of persons and the family which first views the effect and application of laws, to examine the legal norms affecting civil personality, marriage, property relations between husband and wife, legal separation, the matrimonial regimes of absolute community, conjugal partnership of gains, and complete separation of property; paternity and filiation, ad[o]ption, guardianship, support, parental authority, surnames, absence and emancipation, including the rules of procedure relative to the foregoing.

CONSTITUTIONAL LAW I Cases, recitations and lectures; 3 hours a week; 3 units	A survey and evaluation of basic principles dealing with the structure of the Philippine Government.
CRIMINAL LAW I Cases, recitations and lectures; 3 hours a week; 3 units	A detailed examination into the characteristics of criminal law, the nature of felonies, stages of execution, circumstances affecting criminal liability, persons criminally liable[,] the extent and extinction of criminal liability as well as the understanding of penalties in criminal law, their nature and theories, classes, crimes, habitual delinquency, juvenile delinquency, the Indeterminate Sentence Law and the Probation Law. The course covers Articles 1-113 of the Revised Penal Code and related laws.
STATUTORY CONSTRUCTION Cases, recitations and lectures; 2 hours a week; 2 units	A course that explores the use and force of statutes and the principles and methods of their construction and interpretation.
PHILOSOPY OF LAW 2 hours a week; 2 units	A study of the historical roots of law from Roman times, the schools of legal thought that spurred its growth and development, and the primordial purpose of law and legal education.
LEGAL RESEARCH AND THESIS WRITING Lectures, reading and practical work; 2 hours a week; 2 units	The course will introduce structures to the methodology of legal research and the preparation of legal opinions, memoranda, or expository or critical paper on any subject approved by the faculty member teaching it.
LEGAL PROFESSION Cases, recitations and lectures 1 hour a week; 1 unit	The history and development of the legal profession in the Philippines, its current problems, goals, and role in society. Also covered are the methodologies in the preparation of J.D. thesis
First Year – Second Semester	
OBLIGATIONS AND CONTRACTS Cases, recitations and lectures; 5 hours a week; 5 units	An in-depth study of the nature, kinds and effect of obligations and their extinguishment[,] contracts in general, their requisites, form and interpretation[,] defective contracts, quasi contracts, natural obligations, and estoppel.
CONSTITUTIONAL LAW II Cases, recitations and lectures; 3 hours a week; 3 units	A comprehensive study of the Constitution, the bill of rights and judicial review of the acts affecting them.

CRIMINAL LAW II Cases, recitations and lectures; 4 hours a week; 4 units	A comprehensive appraisal of specific felonies penalized in Book II of the Revised Penal Code, as amended, their nature, elements and corresponding penalties.
LEGAL TECHNIQUE AND LOGIC Recitations and lectures; 2 hours a week; 2 units	A course on the methods of reasoning, syllogisms, arguments and expositions, deductions, the truth table demonstrating invalidity and inconsistency of arguments. It also includes the logical organization of legal language and logical testing of judicial reasoning.
LEGAL WRITING Lectures, reading and practical work; 2 hours a week; 2 units	An introduction to legal writing techniques; it involves applied legal bibliography, case digesting and reporting analysis, legal reasoning and preparation of legal opinions or memoranda.
BASIC LEGAL ETHICS Cases, recitations and lectures; 3 hours a week; 3 units	A course that focuses on the canons of legal ethics involving the duties and responsibilities of the lawyer with respect to the public or society, the bar or legal profession, the courts and the client.

The LEB mandate that law schools offer *specifically* described subjects during a *specific* semester is a manifest violation of academic freedom, both individual and institutional.[51] It does not only deprive the faculty member of his or her academic right to design the coverage of the course and to conduct classes as he or she sees fit, but also unreasonably usurps the academic institution's right to decide for itself 1) the subjects law students must take (core subjects) and the subjects law students may opt to take (non-core subjects/electives); 2) the coverage and content of each subject; and 3) the sequence by which the subjects should be taken.

The abuse of power does not end there.

The LEB has not only taken it upon itself to require subjects such as *Agrarian Law and Social Legislation*,[52] *Special Issues in International Law*,[53] and *Human Rights Law*,[54] which are subjects of special interest or specialization that law schools may have only previously offered as electives, it has also usurped the institution's right to design and develop its own

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51 *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, supra note 8.

52 LEBMO No. 1-2011, Sec. 58.1 and 58.2, Second Year, First Semester, 2-unit subject, described as "A study of Presidential Decree No. 27, the Comprehensive Agrarian Reform Program and related laws and regulations, and the Special Security Act and the Government Service Insurance Act."

53 Id. at Sec. 58.2, Second Year, Second Semester, 2-unit subject described as "This is an elective subject that allows for more concentrated study on any of the following possible areas of international law: a. International Criminal Law: that should be taken with reference to R.A. 9851; b. The Law of the Sea: which should be of special interest to the Philippines because we are an archipelagic state; and c. International Trade Law: particularly the regime of the World Trade Organization."

54 Id. at Sec. 58, Second Year, Second Semester, 2-unit subject described as "Study focused on the aspects of protecting, defending and seeking redress for violations of human rights in the Philippines."

electives. Significantly, LEBMO No. 1-2011 provides a list of "suggested" electives,[55] including but not limited to the following:

SUGGESTED ELECTIVES (DESCRIPTION)

x x x x

JURIS DOCTOR (J.D.) PROGRAM

ADMIRALTY
The course covers the history or the genesis of the Carriage of Goods by Sea Act, up to the advent of the contentious Hague Rules of 1924, Hague Visby Rules of 1968 and Hamburg Rules of 1978, including aspects of bills of lading, charter parties, collision, salvage, towage, pilotage, and the Ship Mortgage Act. (2 units)

ADVANCED TAXATION
A seminar designed for students who are seriously considering tax practice. It examines the procedural requirements of the Internal Revenue Code. This includes a detailed look at the audit process from the examination of a return, and ending with a consideration of the questions surrounding the choice of a forum when litigation is appropriate. It also exposes students to some of the intellectual rigors of a high level tax practice. (Prerequisites: Taxation I and Taxation II) (2 units)

APPELLATE PRACTICE AND BRIEF MAKING
The course is designed to provide students with the skills necessary to successfully litigate appeals before the Court of Appeals and Supreme Court. Emphasis will be placed on practical training including appellate procedure, oral and written presentation and methodology. Brief writing and other aspects of modern appellate practice are also covered. (2 units)

ARBITRATION LAWS
A study of the Philippine laws on Arbitration, the ICC Rules on Arbitration, the Conventions on the Recognition and Enforcement of Foreign Arbitral Awards, and the settlement of investment disputes between states and nationals of other states. (2 units)

BANKING LAW I (GENERAL BANKING)
The course covers the study of the rules and regulations governing banks and non-bank financial intermediaries, including the New Central Bank Act, the General Banking Law of 2000, and Bangko Sentral ng Pilipinas circulars, rules and regulations. (2 units)

BANKING LAWS II (INVESTMENT BANKING)
A study of the Finance Company Act, the Investment House Law and the Investment Company Act, and related Bangko Sentral ng Pilipinas and Securities and Exchange Commission regulations. (1 unit)

CHILDREN'S RIGHTS LAW
This elective course aims to introduce the students to the legal

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[55] Id.

> framework of protection for children and the psycho-social dimensions of handling children's rights cases. The Convention on the Rights of the Child is used to provide the background on an international level. The course is divided further into specific clusters of rights of children in relation to Philippine laws, issuances, rules of court and jurisprudence. In each cluster the legal and psycho-social issues affecting certain groups of children (sexually and physically abused children in conflict with the law, child laborers, children in situations of armed conflict, trafficked children, displaced and refugee children, indigenous children, etc...) are discussed in order to understand in a holistic manner the plight of children within the legal system. The methods used in teaching the course include lectures, workshop exercises and mock trial. Students will also be exposed to actual case handling. (2 units)
>
> **CLINICAL LEGAL EDUCATION I AND II**
> Supervised student practice under Rule 138-A (Law Student Practice Rule) of the Rules of Court including conference with clients, preparation of pleadings and motions, appearance in court, handling of trial, preparation of memorandum. The course will include the use of video equipments and computers to enhance training in direct and cross-examination techniques. (4 units)
>
> **COLLECTIVE BARGAINING AND ALTERNATIVE DISPUTE RESOLUTIONS**
> An introduction to the collective bargaining process, negotiations, mediation, and arbitration as experienced in both the private and government sectors, with emphasis on practice. (2 units)[56]

While suggesting electives may be acceptable and even commendable, LEB Memorandum Order No. 14, Series of 2018 (LEBMO No. 14-2018) has 1) atrociously **prohibited** law schools from offering elective subjects not falling within the LEB's "suggested" list of electives, without prior LEB approval[57] and 2) penalized the same with fines, and threats of downgrading, phase out, and/or eventual closure.[58] This is grave abuse of the power to prescribe "*basic* curricula."

Further, and as equally appalling, the LEB now mandates a prescribed sequence, again under pain of downgrading, phase-out, and eventual closure,[59] by which subjects must be taken. LEBMO No. 2-2013 provides:

> **Section 4. Advanced Subjects and Back Subjects.** As a general rule, a student shall not be permitted to take any advanced subject until he has satisfactorily passed the prerequisite subject or subjects.

In relation thereto, LEB Memorandum Order No. 5, Series of 2016 (LEBMO No. 5- 2016) dictates "what subjects need to be taken and passed

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56 Id.
57 Par. (3).
58 Id. at par. (7).
59 LEB Memorandum Order No. 5, Series of 2016 (LEBMO No. 5- 2016), par. (4).

by students in the basic law courses before being allowed to take the advanced subjects"[60] as follows:

ADVANCED SUBJECT(S)	PRE-REQUISITE SUBJECT(S)
Administrative and Election Laws or Administrative Law, Law on Public Officers and Election Law	Constitutional Law I
Agency, Trust and Partnership	Obligations and Contracts
Civil Law Review I	Persons and Family Relations Property Succession
Civil Law Review II	Civil Law Review I
Civil Procedure	Persons and Family Relations Obligations and Contracts
Commercial Law Review	Agency, Trust and Partnership Transportation Credit Transaction Corporation Law Negotiable Instruments Law Insurance
Constitutional Law Review	Constitutional Law I Constitutional Law II
Criminal Law Review	Criminal Law I Criminal Law II
Credit Transaction	Obligations and Contracts
Criminal Law II	Criminal Law I
Criminal Procedure	Criminal Law I Criminal Law II
Evidence	Criminal Procedure Civil Procedure
Human Rights Law	Constitutional Law II
Insurance	Obligations and Contracts
Labor Law II	Labor Law I
Labor Law Review	Labor Law I Labor Law II
Legal Forms	Obligations and Contracts Property Sales Credit Transactions Negotiable Instruments Law Agency, Trust and Partnership Land Titles and Deeds Criminal Procedure Civil Procedure
Legal Counseling and Social Responsibility	Basic Legal Ethics Problem Areas in Legal Ethics Criminal Procedure Civil Procedure Evidence
Legal Medicine	Criminal Law II
Obligations and Contracts	Persons and Family Relations
Practice Court I	Criminal Procedure Civil Procedure

[60] Id. at par. (1).

	Evidence Special Proceedings Legal Forms
Practice Court II	Practice Court I
Problem Areas in Legal Ethics	Basic Legal Ethics
Property	Obligations and Contracts
Remedial Law Review I	Criminal Procedure Civil Procedure Evidence Special Proceedings
Remedial Law Review II	Remedial Law Review I
Sales	Obligations and Contracts
Special Proceedings	Succession
Succession	Persons and Family Relations Property
Taxation I	Constitutional Law I
Taxation II	Persons and Family Property Taxation I Succession
Torts and Damages	Obligations and Contracts
Transportation	Obligations and Contracts

The foregoing cannot, in any way, be construed as falling within the LEB's power to prescribe *basic* curricula. The basis for delineating "pre-requisites" vis-à-vis "advanced subjects" is not only arbitrary, it is fundamentally flawed. To illustrate:

1) *Persons and Family Relations* has been made a pre-requisite for *Obligations and Contracts*, while *Persons and Family Property* and *Succession* have been made pre-requisites for *Taxation II*,[61] even though knowledge of the aforementioned "pre-requisite" may not necessarily be essential for studying the corresponding "advanced subject;"

2) *Persons and Family Relations*, *Property*, and *Succession* have been made pre-requisites to *Civil Law Review I* and *Civil Law Review II*, but curiously, *Obligations and Contracts* was not made a pre-requisite for either of the Civil Law Review subjects;[62]

3) *Agency, Trust and Partnerships* has been made a pre-requisite for *Commercial Law Review*,[63] even though it has traditionally been treated as a Civil Law subject in the Bar; and

4) *Legal Forms* (a mere 2-unit subject) has been arbitrarily assigned 9 pre-requisites while *Practice Court* (which is not even a Bar subject) has been assigned 5 pre-requisites.[64]

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61 Id.
62 Id.
63 Id.
64 Id.

The inflexibility of the mandate has also, as Dean Candelaria explained, "led to implementation problems affecting student tenure, faculty assignments, **tuition rates**, among others."[65] Upon being asked to elaborate, he further elucidated on this matter during the oral arguments, to wit:

> **DEAN CANDELARIA:**
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> x x x [O]n student tenure, there had been changes in recent years, whereby they add or split courses. I'll give you an example concretely. When I took Administrative Law, it was offered with Public Corporation, I think it was also with Election Law, and Public Officers. That has been the experience for a long time. In more recent times, there had been splits by the Legal Education Board, and the problem that students who have taken it, or who are about to take it for instance, would be displaced in terms of the ladder of courses that they will take. So, we've had students who have had tenure problems, because they have to take one which, at that time, was actually not offered so, there is an administrative problem imputing the number of units, that's one concrete problem. On faculty for instance, the assignment, there have been changes when it comes to faculty assignments and I think the problem with many law schools also, is hiring. Faculty members who may have to teach new courses also that are now being required by the Legal Education Board. I think for instance, Environmental Law. I know Environmental Law is booming in this country, there is a roster of lawyers right now who have gone into Environmental Law. But there are other subjects, of course, that are being introduced that may really be not, I think, easily taught by incumbent faculty members. **And the last one is tuition rates. When you start tampering with the number of units, in a law school operation, and recommending changes, it will affect tuition rates for many law schools. At least those who are reliant on private tuition.**[66] (Emphasis and underscoring supplied)

While the Court does not pass upon questions regarding the wisdom of the LEB's prescribed curriculum, the Court is duty-bound to uphold an educational institution's right to determine and evaluate the propriety of assigning pre-requisites as an aspect of its right to determine what to teach and how to do so.

If only to highlight the gross and patent abuse by the LEB of its power to prescribe the *basic* curricula, it bears emphasis that the Commission on Higher Education (CHED), which was empowered to set "(a) minimum unit requirements for specific academic programs; (b) general education distribution requirements as may be determined by the Commission; and (c) specific professional subjects as may be stipulated by the various licensing entities,"[67] *subject to* an educational institution's academic right to "curricular freedom,"[68] has only seen fit to ***recommend*** sample curricula and sample syllabi to meet a minimum set of desired program outcomes. For instance, CHED Memorandum

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65 *Amicus Brief*, p. 7.
66 TSN, March 5, 2019, pp. 106-107.
67 R.A. 7722, Sec. 13.
68 Id.

Order No. 041-17,[69] which prescribes the Standards and Guidelines for Journalism majors, states:

> Per Section 13 of RA 7722, the higher education institution shall exercise academic freedom in its curricular offerings but must comply with the minimum requirements for specific academic programs, the general education distribution requirements and the specific professional courses.
>
> **Section 3.** The Articles that follow set minimum standards and other requirements and prescriptions that all HEIs must adopt. These standards are expressed as a minimum set of **desired program outcomes**, as enumerated under Article IV, Section 6. The CHED designed the curricula to attain such outcomes. These curricula are shown in Article V, Section 9 as **sample curricula.** The numbers of units for these curricula are herein prescribed as the "minimum unit requirement" pursuant to Section 13 of RA 7722. In designing the curricula, the CHED employed a curriculum map for each program, **samples** of which are shown in Article V, Section 10.
>
> Using an outcomes-based approach, the CHED also determined the appropriate curriculum delivery methods shown in Article V, Section 11. The **sample course syllabus** given in Article V, Section 12 shows some of these methods.
>
> x x x x
>
> **Section 4. In recognition of the HEIs' vision, mission and contexts under which they operate, the HEIs may design curricula suited to their own needs. However, the HEIs must demonstrate that the same leads to the attainment of the required minimum set of outcomes. In the same vein, they have latitude in terms of curriculum delivery and in specifying and deploying human and physical resources as long as they attain the program outcomes and satisfy program educational objectives.** (Emphasis and underscoring supplied)

Similarly worded provisions appear in the Standards and Guidelines for degrees in Computer Engineering,[70] Political Science,[71] Communications,[72] Business Administration,[73] Statistics,[74] Education,[75] among others.

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69 POLICIES, STANDARDS AND GUIDELINES FOR BACHELOR IN JOURNALISM (B JOURNALISM) AND BACHELOR OF ARTS IN JOURNALISM (BA JOURNALISM) PROGRAMS, May 12, 2017.

70 POLICIES, STANDARDS AND GUIDELINES FOR THE BACHELOR OF SCIENCE IN COMPUTER ENGINEERING (BSCPE) EFFECTIVE (AY) 2018-2019, CHED Memorandum Order No. 087-17, December 4, 2017.

71 POLICIES AND STANDARDS FOR THE BACHELOR OF ARTS IN POLITICAL SCIENCE (BA POS) PROGRAM, CHED Memorandum Order No. 051-17, May 31, 2017.

72 REVISED POLICIES, STANDARDS, AND GUIDELINES (PSGS) FOR BACHELOR OF ARTS IN COMMUNICATION (BA COMM) PROGRAM, CHED Memorandum Order No. 035-17, May 11, 2017.

73 REVISED POLICIES, STANDARDS AND GUIDELINES FOR BACHELOR OF SCIENCE IN BUSINESS ADMINISTRATION, CHED Memorandum Order No. 017-17, May 9, 2017.

74 POLICIES, STANDARDS, AND GUIDELINES FOR THE BACHELOR OF SCIENCE IN STATISTICS (BS STAT) PROGRAM, CHED Memorandum Order No. 042-17, May 17, 2017.

75 POLICIES, STANDARDS AND GUIDELINES FOR BACHELOR OF SECONDARY EDUCATION (BSED), CHED Memorandum Order No. 075-17, November 2, 2017.

In contrast with the **curricular flexibility** provided by the CHED, the LEB did not merely prescribe minimum unit requirements, desired program outcomes, or a sample curricula. The LEB gravely abused its authority and violated the law schools' curricular freedom when it ***imposed*** the above-described curriculum, ***usurped*** the law schools' right to determine appropriate pre-requisites and ***prohibited*** law schools from designing their own electives.

Clearly, the right to formulate the curriculum belongs to the educational institutions, subject to reasonable guidelines that may be provided by the State. On the dangers of having the State actually prescribe what may be taught in educational institutions of higher learning, the Constitutional Commissioners had this to say:

> FR. BERNAS. **What I am concerned about, and I am sure the committee is concerned about also, is the danger always of the State prescribing subjects**. I recall that when the sponsor was the dean of Arts and Sciences in La Salle, his association of private school deans was precisely fighting the various prescriptions imposed by the State — that the schools must teach this, must teach that. Are we opening that up here?
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> MR. VILLACORTA. The Commissioner is right in describing these as guidelines. This is not to say that there will be specific subjects that will embody these principles on a one-to-one correspondence. In other words, we are not saying that there should be a subject called nationalism or ecology. That was what we were fighting against in the Association of Philippine Colleges of Arts and Sciences. The government always came up with what they called thrusts, and therefore the corresponding subjects imposed on schools that are supposed to embody these thrusts. So, we had current issues. It was a course that was required on the tertiary level. Then there was a time when they required subjects that dealt with green revolution; and then agrarian reform. Taxation is in fact still a required course. We are not thinking in those terms. These are merely guidelines.
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> FR. BERNAS. **In other words, while the State will give the goals and guidelines, as it were, how these are to be attained is to be determined by the institution by virtue of its academic freedom**.
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> MR. VILLACORTA. That is right, Mr. Presiding Officer. I invite, of course, my fellow members in the committee who might have some reservations on the points I raised.
>
> FR. BERNAS. But I guess what I am trying to point out is: Are we really serious about academic freedom?
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> MR. VILLACORTA. Definitely, we are. Would the Commissioner have certain misgivings about the way we defined it?
>
> FR. BERNAS. I would, **if the committee goes beyond mere guidelines, because if we allow the State to start dictating what subjects should be taught and how these would be taught, I think it would be very harmful for the educational system.** Usually,

> legislation is done by legislators who are not educators and who know very little about education. Perhaps education should be left largely to educators, with certain supervision, and so forth.
>
> MR. VILLACORTA. Excuse me, Mr. Presiding Officer, if I may interject. I am sure the Honorable Bernas, being very much experienced in education, is aware of the fact that there is this great need to develop certain priority concerns in the molding of our youths' mind and behavior. For example, love of country is something that is very lacking in our society and I wonder if the Honorable Bernas would have any reservation against giving emphasis to nationalism.
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> FR. BERNAS. I have nothing against motherhood concepts, Mr. Presiding Officer.
>
> MR. VILLACORTA. But this is always the dilemma of educators. To what extent do we give freedom as to the subject matter and manner of teaching versus certain imperatives of national development? In the last dispensation, we found a lopsided importance given to so-called national development which turned out to be just serving the interest of the leadership. The other members of the committee are fully aware of the dangers inherent in the State spelling out the priorities in education, but at the same time, we cannot overlook the fact that there are certain areas which must be emphasized in a developing society. Of course, we would wish that we shall not always be a developing society bereft of economic development as well as national unity. But we like the advise of the Honorable Bernas, as well as our colleagues in the Commission, on how we can constitutionalize certain priorities in educational development as well as curricular development without infringing necessarily on the goals of academic freedom. Moreover, jurisprudence accords academic freedom only to institutions of higher learning.
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> FR. BERNAS. So, I am quite satisfied that **these are guidelines**.[76] (Emphasis and underscoring supplied)

In sum, the LEB's authority to prescribe the "basic curricula" is limited by the Constitutional right of law schools to academic freedom and to the due process standard of reasonableness. When the LEB (or any branch of government for that matter) interferes with Constitutional rights and freedoms and overreaches its authority, **as it has done in this case**, it is the Court's Constitutional duty to make it tow the line.

iii. How to teach

As regards the aspect of academic freedom on *how to teach*, several issuances of the LEB readily reveal that, over the years, the LEB has exercised considerable power in *controlling*, and not merely recommending or supervising, the manner by which legal education institutions and law school professors conduct the teaching of law courses.

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76 IV RECORD, CONSTITUTIONAL COMMISSION 77 (August 29, 1986).

To cite a concrete example of how the LEB interferes with the law schools' right to determine the manner of instruction, the LEB issued LEBMO No. 1-2011, which, as earlier discussed, introduced policies and standards of legal education and provided for a manual of regulations for law schools. **The said LEBMO is riddled with various rules, regulations, and restrictions that go into the manner by which law schools teach their students**.

For instance, according to Section 18(a) of LEBMO No. 1-2011, with respect to the LLB curriculum, the LEB requires law schools to complete the teaching of all subjects in the LLB curriculum within the entire semester as prescribed by the model curriculum provided in the LEBMO. Law schools are prohibited from completing the curriculum in *modular fashion*, *i.e.*, completing the subject by a class held continuously for a number of days, although satisfying the required number of hours. Evidently, the manner by which the law schools implement its curriculum is restricted.

The said provision also prohibits distance education, unless otherwise provided for by the LEB. For instance, if a law school professor wishes to conduct class through a video teleconference when he/she is temporarily outside of the country, because LEBMO No. 1-2011 prohibits distance education unless approved by the LEB, the professor cannot do so. Clearly, this illustrates how the LEB interferes with the professors' prerogative to determine what methods they will employ in teaching their respective classes.

Further, under Section 18(c), the LEB imposes the total number of credits that shall be awarded to a student pursuing his/her LLM, as well as the specific number of units to be credited upon a successful defense before a Panel of Oral Examiners. The said provision also dictates upon the law school the specific type of output that a student must submit in a non-thesis master's program. Similarly, under Section 18(d), the issuance not only determines the minimum academic credits as regards the degree of SJD or DCL; even the specific number of pages of a doctoral dissertation is imposed, *i.e.*, 200 pages. In fact, under Section 20 of the same issuance, legal education institutions are mandated to utilize internet access and to put up a Moot Court room in the process of teaching their students.

With respect to assessing the respective faculties of the law schools, under Section 41.2 of the issuance, the LEB is allowed to revoke the permits or recognitions given to legal education institutions when the LEB deems that there is gross incompetence on the part of the dean and the corps of professors or instructors. Simply stated, under the issuance, the LEB is permitted to assess the teaching performance of law school faculty members and mete out penalties in line with such assessment. The evaluation of the performance and competence of faculty members is part and parcel of a law school's right to determine its own manner of instruction. **Worse, the said issuance is silent as to how the LEB gauges gross incompetence**.

As discussed earlier, under Section 58 of LEBMO No. 1-2011, the LEB prescribes course specifications, wherein the names of the courses, the number of units per course, the number of hours to be spent per week, and the various methods of instruction that must be utilized are dictated upon the legal education institution and the law school professors who teach the various courses indicated therein.

As a glaring example, under Section 58.1 of the aforesaid issuance, on the course of *Persons and Family Relations* in the LLB program, the instructor is specifically required to conduct "[c]ases, recitations and lectures" for 4 hours a week. For *Legal Technique and Logic*, on the other hand, the teaching methods prescribed are limited to "[r]ecitations and lectures" only, for 2 hours per week. Does this mean that professors who teach *Persons and Family Relations* and *Legal Technique and Logic* are discouraged, or worse, prohibited, to require group work or group presentations in their respective classes, considering that these methods of instruction were not included in the course specifications? That seems to be the case, based on a reading of the said issuance.

To stress, as clearly illustrated in the foregoing examples, the LEB, through LEBMO No. 1-2011, **dictates with much particularity and, therefore, unduly restricts** the method of teaching that may be adopted by the law school professors. This does not merely encroach on the academic freedom of the legal education institutions as to how to teach; the academic freedom of the faculty members themselves is directly infringed.

It must equally be stressed that the imposition of the course specifications provided under LEBMO No. 1-2011 is not merely recommendatory. It is *mandatory* in nature, considering that under Section 58 of the issuance, the law schools may provide their own course descriptions *only* when the same are not provided under the issuance and if in conformity with the subject titles stated in the model curricula provided in the issuance.

Astonishingly, under Section 59 of LEBMO No. 1-2011, the LEB even imposes specific rules and regulations on the manner by which the law schools grade its students. Law schools are even required to submit their grading system and a complete explanation thereof before the LEB.

To further illustrate how the LEB meddles with the right of the law schools to determine their own grading system, Section 59(a) specifies certain factors that must be considered by the law school professor in determining the student's final grade, *i.e.*, "[p]articipation in class through recitation, exchange of ideas, presentation of reports, and group discussion."

Under Section 59(b), law schools are forced to drop students who incur absences totaling 20% of the total number of contact hours or required hours

(units) for the subject. Worse, law schools are required to inscribe the entry "FA" (Failed due to Absences) in the student's official transcript of records.

Section 59(d), on the other hand, interferes with the law schools' management of their respective apprenticeship programs. Under the said provision, when apprenticeship is required by the law school and the student does not complete the mandated number of apprenticeship hours, or the person supervising the apprenticeship program deems the performance of the student unsatisfactory, the law school dean is forced to "require of the student such number of hours more in apprenticeship as will fulfill the purposes of the apprenticeship program."

Also, under Section 59(e), when a program requires the submission and defense of a thesis, in a situation where a student fails to submit or receives a failing grade, the issuance directs law schools to allow students to "improve, correct or change the thesis and present it anew for the evaluation of the law school, through its dean or the professor assigned to direct thesis-writing." It is readily apparent that the very manner by which legal education institutions conduct their thesis program is interfered with.

Beyond LEBMO No. 1-2011, various rules and regulations that interfere in the legal education institutions' right to determine their manner of teaching are likewise found in LEBMO No. 2-2013.

In the said issuance, the LEB imposes several restrictions as to the allowable load of students in the law schools. As previously discussed, under Section 4 of LEBMO No. 2-2013, students are not permitted to take any advanced subject until passing prerequisite subjects. Further, under Section 5, the LEB sets the maximum number of academic units in excess of the normal load that may be allowed for graduating students, *i.e.*, six units. Under Sections 6 and 8, the requirements for the cross enrollment and transfer of students from one law school to another, respectively, are imposed.

Several impositions are also made even on the most miniscule of details regarding the request, transfer, and release of school records and transfer credentials.[77] Interestingly, even the *format* of the school records is forced upon the law schools, as found in Section 7[78] of the issuance. Under Section 12, the rules on denial of final examinations, withholding of grades, and refusal to re-enroll are likewise dictated upon the legal education institutions.

Under Section 14 of LEBMO No. 2-2013, which mirrors Section 59(b) of LEBMO No. 1-2011, the LEB requires that professors fail students who

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77 LEBMO No. 2-2013, Sec. 7-11,

78 **Section 7. School Records of a Student.** The school record of every student shall contain the final rating in each subject with the corresponding credits, and the action thereon preferably indicated by "passed" or "failed". No final record may contain any suspensive mark such as "Inc.". The student must either be given a passing or a failing grade in the final record.

incur absences of more than 20% of the prescribed number of class hours. This provision is a clear example of how the LEB directly interferes with the law professors' freedom to manage their respective classes.

LEBMO No. 2-2013 even imposes upon the legal education institutions the manner by which they should conduct their respective apprenticeship programs, determining the list of specific activities that should be required for students undergoing the apprenticeship programs.[79]

As regards the law schools' right to determine which of their students are eligible to graduate, Section 16 of the issuance imposes residency requirements for graduation, establishing the rule that no student shall be allowed to graduate from any law school where he or she has not established academic residency for at least the two last semesters of his or her course of study. In fact, to further underscore the high level of interference and overreach exercised by the LEB, LEBMO No. 2-2013 even imposes upon the law schools certain rules on determining which students may participate in the commencement exercise of the law schools.[80]

The interference of the LEB with the manner by which law schools implement their curriculum is so pervasive that, under LEBMO No. 2-2013, in order for a law school to open another branch[81] or hold extension classes,[82] prior approval of the LEB is required.[83]

Aside from the foregoing provisions of the LEBMO, I invite the Court's attention to Article III of the said issuance, which imposes numerous restrictions on *the power of law schools to maintain discipline and to determine the manner by which they conduct administrative proceedings*.

For example, under Section 20, the LEB forces upon law schools certain rules on when and how they can preventively suspend, suspend, expel, and not readmit their students.

The law school may only preventively suspend a student "when the evidence of guilt is strong and the Dean is morally convinced that the continued stay of the student pending investigation would cause sufficient distraction to the normal operations of the law school, or would pose real or imminent threat or danger to persons and property inside the law school's premises."[84]

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79 Sec. 24.
80 Id. at Sec. 15.
81 Id. at Sec. 25.
82 Id. at Sec. 26.
83 Id. at Sec. 27.
84 Id. at Sec. 20, par. (a).

If the law school decides to suspend a student, its action is constrained to denying the erring student from attending classes for a period not exceeding 20% of the prescribed total class days for the school term.[85]

With respect to the penalty of non-readmission, when meting out the said penalty, the law school is forced to allow the student to complete the current school term when the resolution for non-readmission was promulgated. The law school is likewise mandated to issue the transfer credentials of the erring student upon promulgation.[86]

As regards the penalty of exclusion, the LEB allows the law schools to mete out such penalty "for acts or offenses such as dishonesty, hazing that involves physical, moral or psychological violence that does not result in death of a student, carrying deadly weapons, immorality, selling and/or possession of prohibited drugs, drug dependency, drunkenness, hooliganism, vandalism and other offenses analogous to the foregoing."[87]

The said issuance also confines the power of law schools to expel a student. Under LEBMO No. 2-2013, the permissible instances when law schools can expel a student are limited to (a) participation of a student as a principal in a fraternity hazing that results in the death of a law student; (b) unlawful physical assault of higher education institution officials inside the school campus; and (c) commission of an offense with an imposable minimum penalty of more than 12 years.[88] Hence, based on this provision, if a student participates in a fraternity hazing wherein the death of a non-law student occurs, absurdly, the law school has no power to expel a student.

Further, in cases wherein the administrative charge filed against a student amounts to a criminal offense, Section 22 of the LEBMO requires law schools to proceed with the administrative proceedings until termination even if the criminal case has not yet been decided by the court.

Notably, under Section 19 of LEBMO No. 2-2013, if the law school imposes a sanction of expulsion against a student, the student may appeal the disciplinary action meted out by the school before the LEB. **The latter is empowered under the LEBMO to *reverse and set aside* the school's decision to expel the student**. Without a shred of doubt, this is a clear derogation of the law school's right to discipline its students.

It must be emphasized that the right of the school to discipline its students is an integral aspect of the academic freedom of how to teach.[89] Because the schools' power to instill discipline in their students is subsumed in their academic freedom, the Court has generally adopted a stance of

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85 Id. at Sec. 20, par. (b)(1).
86 Id. at Sec. 20, par. (b)(2).
87 Id. at Sec. 20, par. (b)(3).
88 Id. at Sec. 20, par. (b)(4).
89 *Miriam College Foundation, Inc. v. Court of Appeals*, supra note 7.

deference and non-interference, declining to meddle with the right of schools to impose disciplinary sanctions, which includes the power to dismiss or expel, students who violate disciplinary rules.[90] In fact, the power of schools to discipline their students is so established and recognized that, in our jurisprudence, even the power to impose disciplinary measures has extended to schools even after graduation for any act done by the student prior thereto.[91]

Hence, the various rules imposed by the LEB that control and unduly restrict the law schools' determination of the manner by which they discipline their students undoubtedly amount to a serious breach of their academic freedom to determine how to teach.

Another exemplar of the LEB's unwarranted and undue interference in the law schools' prerogative to control the manner of instruction is LEB Memorandum Order No. 10, Series of 2017 (LEBMO No. 10-2017), which imposes guidelines on the adoption of the academic/school calendar. While the said LEBMO allows law schools to establish their own academic/school calendars and set their own opening dates, it nevertheless restrictively confines the academic/school calendar to no less than 36 weeks, wherein the total number of days shall not be less than 200 per calendar year. Moreover, the issuance requires law schools to set the start of their school calendar not earlier than the last week of May, but not later than the last day of August. The law schools' discretion to determine the amount of weeks and days in their academic/school calendars, as well as the period of commencement of the academic year, is clipped.

The aforementioned issuances and their provisions are but examples of how the LEB has exercised the power of control — not supervision — over the legal education institutions' rights to determine the manner by which law courses are taught and how such institutions manage their internal affairs.

iv. Who may be admitted

With respect to the academic freedom aspect of who may be admitted to the schools, I reiterate my position 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*.

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90 *Cudia v. The Superintendent of the Philippine Military Academy*, supra note 43, at 655-656.

91 Id. at 657-658, citing *University of the Phils. Board of Regents v. Court of Appeals*, 372 Phil. 287, 306-308 (1999).

Beyond the PhiLSAT, however, the LEB has imposed other restrictions that similarly interfere with the law school's right to determine who to admit and teach.

Under LEBMO No. 1-2011, where the applicant for admission into a law school is a graduate of a foreign institution, instead of allowing the law schools to determine for themselves whether to admit the student or not, the matter is referred exclusively to the LEB, who shall determine the eligibility of the candidate for admission to law school.[92] Hence, under the LEBMO, the LEB is given complete control and discretion as to the admissions of foreign graduates. This is a clear derogation of the right of law schools to determine who to admit.

Further, under Section 16 of the same LEBMO, the LEB forces law schools to reject applicants for admission to the LLB or JD program of studies who failed to earn at least 18 units in English, 6 units in Mathematics, and 18 units of social science subjects. **Such requirement has no basis under the Rules of Court or under any law**. The aforesaid requirement is purely the creation of the LEB. The same may be said with respect to the rules on the prerequisites for admission to graduate programs in law imposed under Section 17.

B. Other Issues Under the LEB Law

i. LEB's power to accredit is too broad and unreasonable

Beyond the four essential aspects of academic freedom, several other issuances of the LEB may also be classified as unreasonable.

Under R.A. 7662, the LEB is empowered to supervise and regulate law schools or legal educational institutions through accreditation.[93] Without encroaching upon the schools' academic freedom, the LEB shall set the standards of accreditation, taking into account, among others, "the size of enrollment, the qualifications of the members of the faculty, the library and other facilities."[94] Educational institutions may only operate a law school upon accreditation by the LEB.[95] Should the law school fail to maintain these standards, the LEB may withdraw or downgrade its accreditation.[96] To implement the provisions of R.A. 7662, the LEB issued LEBMO No. 1-2011 entitled *Policies and Standards of Legal Education and Manual of Regulations for Law Schools*.

Under LEBMO No. 1-2011, accreditation is either **mandatory or**

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92 Sec. 15.
93 R.A. 7662, Sec. 7, par. (d).
94 Id. at par. (c).
95 Id. at Sec. 8.
96 Id. at Sec. 9.

voluntary.[97] With mandatory accreditation, a law school is authorized and recognized by the LEB to operate and to endorse its graduates for the Bar Examinations.[98] On the other hand, voluntary accreditation "refers to the processes that may be devised by private accrediting agencies, recognized by [the LEB], that confer marks of distinction on law schools that surpass the minimum requirements and standards" under LEBMO No. 1-2011.[99] Mandatory accreditation consists of two stages: **Permit Stage and Recognition Stage**.[100] A Permit status, which must be obtained before each academic year, allows the law school to open and offer subjects of the first year of the law curriculum.[101] Meanwhile, a Recognition status constitutes full mandatory accreditation which allows the law school's students to graduate, to be conferred degrees and to be endorsed to the Office of the Bar Confidant for the Bar Examinations.[102]

R.A. 7662 provides that the grant, denial, withdrawal and downgrading of a school's accreditation must be subject to the standards to be set by the LEB. Under LEBMO No. 1-2011, some of these standards are that a law school: (a) shall be headed by a properly qualified dean;[103] (b) shall maintain a corps of professors drawn from the ranks of leading and acknowledged practitioners as well as academics and legal scholars or experts in juridical science;[104] (c) shall be properly equipped with the necessities of legal education, particularly library facilities, including reliable internet access, as well as suitable classrooms and a Moot Court room;[105] (d) shall have a faculty lounge for the convenience of members of the faculty;[106] and (e) shall publish a research journal.[107] A private higher education institution applying for Permit status to open a law school must include in its application, among others, the present library holdings, as well as the name and qualifications of the law librarian, and pictures of the classrooms, moot court, library, dean's office, and faculty lounge.[108]

Verily, I find these standards to be unreasonable impositions on law schools, if not a patent violation of their academic freedom, as previously discussed.

Moreover, some of the provisions in LEBMO No. 1-2011 lack legal basis in R.A. 7662 and can be classified as arbitrary. Consider the following:

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97 Sec. 30.
98 Id.
99 Id.
100 Id. at Sec. 31.
101 Id. at Sec. 31.1.
102 Id. at Sec. 31.2.
103 Id. at Sec. 20.
104 Id.
105 Id.
106 Id.
107 Id. at Sec. 24. ***In LEB Memorandum Order No. 23, Series of 2019 (LEBMO No. 23-2019), the LEB saw fit, under pain of administrative sanctions, to regulate the establishment of Law Journals, including the composition, position, and powers of the Editorial Board, the frequency of publication, and even a Law Journal's format and style.***
108 Id. at Sec. 33.1.

(a) the LEB shall assure accessibility of legal education by seeing to the proportional distribution of law schools throughout the country;[109] (b) in the exercise of LEB's "sound discretion," it may deny an application to open another law school "if x x x there is/are existing law school/s which adequately serve/s the legal education needs" in a given area;[110] and (c) it may also deny an application if it determines based on the records that a law school is "substandard in the quality of its operation or when surrounding circumstances make it very difficult for it to form a suitable faculty, or for any valid and weighty reasons," it could not deliver quality legal education.[111] Further, in spite of the serious consequences of the denial of recognition, *i.e.*, closure or phase out of the law school, there is no provision on grounds for such denial.[112]

Lastly, LEBMO No. 1-2011 also provides that the LEB shall take "cognizance of all matters involving acts or omissions" in relation to R.A. 7662, related laws and issuances and it may impose administrative sanctions.[113] While these sanctions are not defined in the said issuance, it may be inferred that it refers to a denial, withdrawal or downgrading of a law school's accreditation.

The above provisions show that the LEB's discretion to grant, deny, withdraw or downgrade a school's accreditation is too broad and overreaching, contrary to the constitutional provisions on reasonable supervision and regulation and on academic freedom.

Other issuances of the LEB which are seemingly void for being either unreasonable or issued *ultra vires* are as follows:

1. LEB Resolution No. 7, Series of 2010 (LEB Resolution No. 7-2010), Declaring a 3-Year Moratorium on the Opening of New Law Schools – The Whereas Clauses stated that: (a) based on LEB's opinion, the 128 law schools as of that time are more than enough; (b) the proliferation of law schools has been identified as one of the causes of the poor quality of legal education; and (c) the LEB needs a 3-year period to inspect and monitor the performances of existing law schools and "to focus on the introduction of reform measures in our legal education system." Thus, the LEB declared a 3-year moratorium on opening of new law schools.

   This unilateral declaration, **which is merely based on the LEB's opinion**, seems to have been undertaken without consultation with stakeholders, specifically the law schools, which the LEB plans to inspect and monitor.

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109 Id. at Sec. 21.
110 Id. at Sec. 34, par. (d).
111 Id.
112 Id. at Sec. 37.
113 Id. at Sec. 43.

2. LEB Resolution No. 16, Series of 2011 (LEB Resolution 16-2011) – The LEB considers a small student population in a law school as not financially viable and would result in "substandard legal education," unless subsidized by the management. Thus, a law school with less than 15 students in the first semester of the first level or with a school population of less than 60 students is required to explain in writing why it should be allowed to continue its operations or what remedial measures it shall undertake to address the low enrollment.

   It seems that the LEB has arbitrarily determined that a law school with a school population of less than 60 students is not financially viable unless subsidized by the management. **As stated in the Whereas Clause, the basis for LEB's conclusion that the cost of legal education determines its quality is merely stated as "experience, observation and information."** To my mind, the LEB cannot dictate to a law school whether or not it is financially viable to continue its operation as the latter can, and should, make its own business decisions.

3. LEB Memorandum Circular No. 2, Series of 2017 (LEBMC No. 2-2017), Submission of Schedule of Tuition and Other School Fees – All law schools are reminded to follow section/paragraph 13 of LEB Memorandum Order No. 8, Series of 2016 (LEBMO No. 8-2016), *i.e.*, to submit to the LEB the approved schedule of tuition and other school fees for S.Y. 2015-2016 and S.Y. 2016-2017. This Circular also provides that failure to seasonably submit the said schedule will bar the non-compliant law school from increasing its tuition and other school fees in S.Y. 2017-2018.

   This Circular's provision on barring a non-compliant law school from increasing its tuition and other fees has no legal basis and constitutes undue interference with the law school's management and operations.

4. LEB Memorandum Circular No. 4, Series of 2017 (LEBMC No. 4-2017), Reminder to Submit Duly Accomplished LSIR Form – The LEB reminded the law schools to submit the Law School Information Report (LSIR) Form for the second semester of AY 2016-2017 as required under LEB Memorandum Order No. 6, Series of 2016, (LEBMO No. 6-2016). This Circular also served as a "warning" that "non-compliant law schools shall be subject to appropriate administrative sanctions, including the imposition of fine up to P10,000."

   It is not clear what these "appropriate administrative sanctions" are. Moreover, it is also unclear what the legal basis is for the said administrative sanctions and for the imposition of fine up to ₱10,000.00.

5. LEB Memorandum Circular No. 6, Series of 2017 (LEBMC No. 6-2017), Applications for LEB Certification Numbers – This Circular provides that, in lieu of Special Orders issued by the CHED, legal education institutions are required under LEB Resolution No. 2012-02 to secure LEB Certification Numbers for graduating students of law programs. This issuance also provides that "LEIs that graduate students without LEB Certification Numbers due to late submission of applications" shall be imposed the appropriate sanctions.

   Similar to the previous issuances above, it is not clear what these sanctions are. In addition, **the LEBMC unduly interferes with the management of the law schools regarding their graduating students.**

6. LEB Memorandum Order No. 16, Series of 2018 (LEBMO No. 16-2018), Policies, Standards, and Guidelines for the Academic Law Libraries of Law Schools – Pursuant to LEB Resolution No. 2018-207, this issuance contains detailed requirements for the operation of a law library, such as: (a) its size should "adequately contain the entire law collection and seat comfortably fifteen percent (15%)" of the entire law school population; (b) there should be an exclusive reading area for faculty members; (c) the operating hours shall not be less than 6 hours a day; (d) qualifications and development training of the librarian; (e) required number of copies and kinds of books, as well as foreign and online/digital sources; (f) if wireless internet connection is not available to students, the required number of internet workstations shall be increased to such number equivalent to the ratio of 1 for every 50 students; (g) transitory provisions which states that non-compliant law schools shall be given three (3) months to meet this issuance requirements; and (h) failure to meet any of the requirements shall constitute non-compliance with the prescribed minimum standards for the law program and shall be subject to the appropriate administrative sanctions under Nos. 1 and 2 of the said issuance.

   While the objectives of providing for a good law library is laudable, the stringent requirements **and its corresponding costs** may strain the law school's resources, **or worse, unduly burden the students with increased fees simply to allow the law school to immediately comply with the provisions of the said issuance**.

7. LEB Memorandum Order No. 18, Series of 2018 (LEBMO No. 18-2018), Guidelines on Cancellation or Suspension of Classes in All Law Schools – Pursuant to LEB Resolution No. 2018-344, this LEBMO provides that there will be automatic national suspension of classes upon declaration of the Office of the President or when Signal No. 3 is raised by Philippine Atmospheric, Geophysical and Astronomical Services Administration. Without these conditions, the suspension shall depend on Local Government Unit declaration.

> Since this issuance merely provides for guidelines on cancellation or suspension of classes in law schools, it is bemusing that there is a clause therein which states that failure to comply with any of its provisions shall be subject to appropriate administrative sanctions under Nos. 1 and 2 of the said issuance.

These issuances by the LEB can evidently be classified as unreasonable and unduly burden some to the operations of the law schools — which clearly go beyond its mandate. The LEB ought to be reminded that under administrative law, "administrative authorities should not act arbitrarily and capriciously in the issuance of rules and regulations. To be valid, such rules and regulations must be reasonable and fairly adapted to secure the end in view. If shown to bear no reasonable relation to the purposes for which they are authorized to be issued, then they must be held to be invalid."[114]

ii. R.A. 7662's provision on law practice internship

With regard to the provision in R.A. 7662 empowering the LEB to impose an internship requirement as a prerequisite to take the Bar examinations, I agree with the *ponencia*'s ruling[115] that the said provision of law is unconstitutional on its face. Section 7(g) of R.A. 7662 provides that the LEB is granted the power:

> 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.

To my mind, the *ponencia* correctly holds that the aforequoted provision encroaches on the power of the Supreme Court to prescribe the requirement for admission to the Bar as provided under Section 2 of Rule 138 of the Rules of Court, to wit:

> SEC. 2. *Requirements for all applicants for admission to the bar.*— Every applicant for admission as a member of the bar must be a citizen of the Philippines, at least twenty-one years of age, of good moral character, and a resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character, and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines.

In his *Amicus Brief*, Dean Candelaria also noted that some of the provisions of R.A. 7662 are in apparent conflict with the power of the Court to promulgate rules and that law practice internship and mandatory continuing

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114 *Lupangco v. Court of Appeals*, 243 Phil. 993, 1005 (1988).

115 Ponencia, p. 102.

legal education are both subjects of Court rules and issuances.[116]

From the foregoing, it is my view that the *ponencia* was justified in striking down the particular provision of R.A. 7662 for being unconstitutional.

Conclusion

To end, I reiterate my agreement with the *ponencia*'s conclusions for the reasons I have already discussed above.

Verily, after a meticulous review of the circulars, memorandum orders and other issuances of the LEB, it has become apparent that the LEB has committed acts of overreach, clearly going beyond mere supervision of law schools. A careful analysis of how the LEB exercised and continues to exercise its powers readily reveals that the LEB is already unduly interfering and meddling with the law schools' right to determine who may teach, what may be taught, how to teach and who may be admitted to study. As illustrated above, the exercise of the LEB's powers are evidently beyond *reasonable* supervision and regulation by the State.

Perhaps, if the various LEB rules and regulations cited here were merely recommendatory in nature or were mere guidelines (following the intent of the Constitutional Commissioners), then the exercise of the LEB's power could possibly pass constitutional muster. ***However, this is not the case***. As seen from the discussion above, the many issuances of the LEB were imposed on the law schools under pain of administrative sanctions — which include the closing down of the law school for non-compliance. **The questionable issuances cited here show that the LEB is exercising the power to control, manage, dictate, overrule, prohibit and dominate the law schools — in absolute disregard of the Constitutional guarantee of academic freedom**. As such, the Court is called upon ***in this case*** to curb the abuse, and to strike down these issuances for being violative of the Constitutional right of the law schools to exercise academic freedom.

In view of the foregoing, I concur with the *ponencia* in **PARTLY GRANTING** the petitions and in declaring the following:

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

[116] *Amicus Brief*, p. 4.

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 State 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 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 2 years before the start of studies for the basic law course;

b. LEBMC No. 18-2018 which prescribes the taking and 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, 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; [and]
d. LEBMO No. 17, Series of 2018; and (*sic*)

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. Sections 24(c) of LEBMO No. 2; and
c. Sections 59(d) of LEBMO No. 1-2011.[117]

Additionally, after reviewing the various issuances of the LEB beyond those covering the PhiLSAT, I also vote to declare the following as **UNCONSTITUTIONAL** for violating the institutional academic freedom of the law schools as well as the individual academic freedom of the law faculty:

1. 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 and individual academic freedom on **who may teach**, particularly:

a. Sections 33.1(4), 33.1 (5), 34(d), 35(1) and 35(3) of LEBMO No. 1-2011.

[117] *Ponencia*, pp. 101-103.

2. The act and practice of the Legal Education Board of dictating the policies on the establishment of legal apprenticeship and legal internship programs, as well as its unreasonable intrusion into the formulation of the law schools' curricula, in violation of institutional academic freedom on **what to teach**, particularly:

   a. Sections 3 and 4 of LEBMO No. 2-2013;
   b. Sections 33(6), 53, 54, 55 and 58 of LEBMO No. 1-2011;
   c. LEBMO No. 5-2016; and
   d. LEBMO No. 14-2018.

3. The act and practice of the Legal Education Board of dictating the manner by which legal education institutions and law school professors conduct the teaching of law courses, in violation of institutional and individual academic freedom on **how to teach**, particularly:

   a. Sections 18(a), 18(c) 18(d), 20, 41.2, 58 and 59 of LEBMO No. 1-2011;
   b. Sections 4, 5, 6, 7, 8, 12, 14, 15, 16, 19, 20, 22, 24, 25, 26 and 27 of LEBMO No. 2-2013; and
   c. LEBMO No. 10-2017.

4. Other issuances of the Legal Education Board which are arbitrary, unreasonable, or issued *ultra vires*, *i.e.*:

   a. Sections 20, 21, 24, 33.1, 34, 37, 43 of LEBMO No. 1-2011;
   b. LEBMO No. 23-2019;
   c. LEBMO No. 16-2018;
   d. LEBMO No. 18-2018;
   e. LEB Resolution No. 7-2010;
   f. LEB Resolution No. 16-2011;
   g. LEBMC No. 2-2017;
   h. LEBMC No. 4-2017; and
   i. LEBMC No. 6-2017.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court