

EN BANC

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. ESPALDO, 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, IREN 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, *respondents-in-intervention*

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

G.R. No. 242954 — FRANCIS JOSE LEAN L. ABAYATA, GRETCHEN M. VASQUEZ, SHEENAH S. ILUSTRISMO, RALPH LOUIE SALAÑO, AIREEN MONICA B. GUZMAN, DELFINO ODIAS, DARYL DELA CRUZ, CLAIRE SUICO, AIVIE S. PESCADERO, NIÑA CHRISTINE DELA PAZ, SHEMARK K. QUENIAHAN, AL JAY T. MEJOS, ROCELLYN L. DAÑO,\* MICHAEL ADOLFO, RONALD A. ATIG, LYNETTE C. LUMAYAG, MARY CHRIS LAGERA, TIMOTHY B. FRANCISCO, SHIELA MARIE C. DANDAN, MADELINE C. DELA PEÑA, DARLIN R. VILLAMOR, LORENZANA L. LLORICO, AND JAN IVAN M. SANTAMARIA, *petitioners, versus* HON. SALVADOR MEDIALDEA, EXECUTIVE SECRETARY, AND LEGAL EDUCATION BOARD, HEREIN REPRESENTED BY ITS CHAIRPERSON, EMERSON B. AQUENDE, *respondents*.

A.M. 20-03-04-SC — RE: REQUEST FOR CLARIFICATION REGARDING THE STATUS AND TREATMENT OF THE PHILIPPINE LAW SCHOOL ADMISSION TEST (PHILSAT) IN THE LIGHT OF THE SUPREME COURT DECISION IN G.R. NO. 230642

\* Also referred to as "Jocelyn Daño" in some parts of the record.

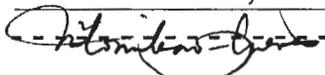


**(OSCAR B. PIMENTEL, ET AL. *versus* LEGAL EDUCATION BOARD) AND G.R. NO. 242954 (FRANCIS JOSE LEAN L. ABAYATA, ET AL. vs. HON. SALVADOR MEDIALDEA, EXECUTIVE AND LEGAL EDUCATION BOARD, HEREIN REPRESENTED BY ITS CHAIRPERSON, EMERSON B. AQUENDE)**

**THE BOARD OF TRUSTEES OF THE PHILIPPINE ASSOCIATION OF LAW SCHOOLS (PALS), REPRESENTED BY ITS CHAIRPERSON, DEAN JOAN S. LARGO, AND ITS PRESIDENT DEAN MARISOL DL. ANENIAS, *intervenors*.**

Promulgated:

November 9, 2021

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### CONCURRING OPINION

**CAGUIOA, J.:**

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

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

<sup>1</sup> Applications for LEB Certification Numbers.

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

<sup>3</sup> Requiring Confirmatory Certification that a Student has Satisfactorily Complied with the Requirements of LEB for Graduation.

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

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

<sup>6</sup> Section 15. *Prerequisites to admission to Law School*. — x x x



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

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

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

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

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

As explained in my *Separate Concurring Opinion* in the main Decision, the guarantee of institutional academic freedom enshrined in Section 5(2), Article XIV of the Constitution includes "the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint."<sup>7</sup> This right necessarily includes the essential freedom to determine: 1) who may teach, 2) what may be taught, 3) how to teach, and 4) who may be admitted.<sup>8</sup>

The academic freedom to determine *who may be admitted to study* is an integral component of an educational institution's constitutional right to academic freedom.<sup>9</sup> In this regard, I am in full accord with Associate Justice Marvic M.V.F. Leonen's pronouncement in his *Separate Dissenting and Concurring Opinion* in the main Decision that "[i]n ascertaining who to admit in their institutions, law schools should be given autonomy in establishing their own policies, including the examination that they will employ."<sup>10</sup> I

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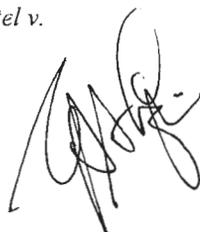
For purposes of the present Memorandum Order, the above quoted rule on the requirement of a certification of satisfaction shall be deemed fulfilled upon admission of the student by the Dean of a law school, complying with all that may hereunder be provided as well as those set forth in the Rules of Court.

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

<sup>8</sup> *Garcia v. Faculty Admission Committee*, G.R. No. L-40779, November 28, 1975, 68 SCRA 277, 285.

<sup>9</sup> *Id.*

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



likewise agree that the Court might have arrived at a different conclusion in *Tablarin v. Gutierrez*<sup>11</sup> regarding the constitutionality of the National Medical Admissions Test had the issues been examined through the lens of institutional academic freedom. This has also been recognized by the *ponencia*.<sup>12</sup>

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

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

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

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

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<sup>11</sup> 236 Phil. 768 (1987).

<sup>12</sup> *Ponencia*, p. 33.

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

<sup>14</sup> *Ponencia*, p. 35.

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



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

I submit that the State's exercise of reasonable supervision and regulation over legal education is achieved by the LEB making available — but not requiring — the PhiLSAT to any and all students who are required by a law school to take such exam. In this regard, the following excerpt from Senior Associate Justice Estela M. Perlas-Bernabe's *Separate Concurring Opinion* in the main Decision is on point:

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

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

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

28. Among law deans, in light of the Court's Decision, the emerging discussion centers on whether the PhiLSAT is mandatory or optional for law students. **There are varying interpretations due to the latent**

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



***ambiguity in the body of the decision and the dispositive portion by nullifying Section 9 of LEBMO No. 7, and retaining all other provisions under this executive issuance. With no categorical statement on whether the PhiLSAT is mandatory or optional for law students, there is a danger of different interpretations in the implementation of the consolidated cases in *Pimentel and Abayata*.***

29. Inasmuch as it is only Section 9 of LEBMO No. 7 that was invalidated by the Honorable Supreme Court as unconstitutional, **the remaining provisions that were not stricken down by the Honorable Court remain valid by virtue of its Separability Clause** which states that if any part or provision of this memorandum order is declared invalid or unconstitutional, all other provisions shall remain valid and effective.

30. Be that as it may, it is respectfully submitted by the Intervenor that at the very least, the PhiLSAT is optional. By striking down Section 9 of LEBMO No. 7, Series of 2016, the Honorable Supreme Court ruled that the PhiLSAT is not mandatory as a requirement for all law students to gain entry into law schools.

x x x x

32. **The latent ambiguity on the PhiLSAT has led to subsequent executive issuances that may result in inadvertently undermining the decision of the Court** in the consolidated cases at bar.

33. To illustrate this point, may we invite the High Court's attention on LEBMC No. 52, dated February 26, 2020, which is faithfully reproduced as follows:

ADVISORY ON THE PHILSAT  
(February 26, 2020)

x x x the Legal Education Board En Banc decided to defer the administration of the [PhiLSAT] scheduled this coming April, 2020 for reasons of public health concern arising from the COVID-19 and logistical consideration. For purposes of admission of new first/freshmen year students in the law program leading to the Juris Doctor degree in the 1<sup>st</sup> Semester of Academic Year 2020-2021, law schools will be permitted to admit on conditional enrollment applicants who have not yet taken the PhiLSAT, subject to taking the next PhiLSAT in September, 2020. The LEB will issue additional guidelines to facilitate admission of conditional enrollees.

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

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

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

<sup>17</sup> *Rollo*, pp. 2316-2318. Emphasis omitted.



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

1. The act and practice of the Legal Education Board of excluding, restricting, and qualifying admissions to law schools in violation of the institutional academic freedom on who to admit, particularly:
  - a. Paragraph 9 of LEBMO No. 7-2016 which provides that all college graduates or graduating students applying for admission to the basic law course shall be required to pass the PhiLSAT as a requirement for admission to any law school in the Philippines and that no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within two years before the start of studies for the basic law course;
  - b. LEBMC No. 18-2018 which prescribes the passing of the PhiLSAT as a prerequisite for admission to law schools;

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

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

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

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

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



1. Policy and Rationale – To improve the quality of legal education, all those seeking admission to the basic law course leading to either a Bachelor of Laws or Juris Doctor degree shall **be required to take the [PhiLSAT]**, a nationwide uniform admission test to be administered under the control and supervision of the LEB.

x x x x

7. Passing Score – The **cut-off or passing score for the PhiLSAT shall be FIFTY-FIVE PERCENT (55%) correct answers, or such score as may be prescribed by the LEB.**
8. Test Results – Every examinee who passed the PhiLSAT shall be issued by the testing administrator a **CERTIFICATE OF ELIGIBILITY (COE)**, which shall contain the examinee's test score/rating and general average in the bachelor's degree completed. Examinees who fail to meet the cut-off or passing score shall be issued a Certificate of Grade containing his/her test score/rating. **The COE shall be valid for two (2) years and shall be submitted to the admitting law school by the applicant.**

x x x x

10. **Exemption** – Honor graduates granted professional civil service eligibility pursuant to Presidential Decree No. 907 who are enrolling within two (2) years from their college graduation are exempted from taking and passing the PhiLSAT for purposes of admission to the basic law course.
11. **Institutional Admission Requirements** – The PhiLSAT shall be without prejudice to the right of a law school in the exercise of its academic freedom to prescribe or impose **additional requirements for admission**, such as but not limited to:
  - a. A score in the PhiLSAT higher than the cut-off or passing score set by the LEB;
  - b. Additional or supplemental admission tests to measure the competencies and/or personality of the applicant;
  - c. Personal interview of the applicant.
12. Reportorial Requirement – **All law schools shall regularly submit to the LEB the following written reports** in such forms as may be prescribed by the LEB Chairman:
  - a. Within forty-five (45) days from the start of every semester or term, the names of the first year students admitted and enrolled for the first time in the basic law course and **their PhiLSAT scores**;
  - b. Within sixty (60) days after the end of every semester or term, the subjects enrolled in by every first year student and the final grades received in said subjects.

x x x x

15. Sanctions -- **Law schools violating this Memorandum Order shall be imposed the administrative sanctions** prescribed in Section 32 of



LEBMO No. 2, Series of 2013 and/or fine of up to Ten Thousand Pesos (₱10,000) for each infraction. (Emphasis supplied)

Since paragraph 9 of LEBMO No. 7-2016 mandating the taking and passing of the PhiLSAT is invalid, the foregoing provisions should likewise be nullified to obviate any further confusion regarding the limited authority of the LEB to require an aptitude exam as a condition for admission. In this regard, Senior Associate Justice Perlas-Bernabe astutely points out that despite the presence of a separability clause, the ancillary provisions cannot be considered separable from the key provisions as these provisions paint a complete picture of the test to be administered, its purpose, and effects.<sup>19</sup> Thus, I agree with the *ponencia* when it correctly struck down the entire LEBMO No. 7-2016 as all its provisions are meant to implement the PhiLSAT as a mandatory and exclusionary exam.<sup>20</sup>

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



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>19</sup> Concurring Opinion of Senior Associate Justice Esteia M. Perlas-Bernabe, pp. 7-8.

<sup>20</sup> *Ponencia*, p. 36.