

EN BANC

G.R. No. 274778 — AQUILINO PIMENTEL III; ERNESTO OFRACIO; JANICE LIRZA MELGAR; MARIA CIELO MAGNO; MA. DOMINGA CECILIA B. PADILLA; DANTE B. GATMAYTAN; IBARRA M. GUTIERREZ; SENTRO NG MGA NAGKAKAISA AT PROGRESIBONG MANGGAGAWA; PUBLIC SERVICES LABOR INDEPENDENT CONFEDERATION FOUNDATION, INC.; and PHILIPPINE MEDICAL ASSOCIATION, Petitioners, v. HOUSE OF REPRESENTATIVES represented by the Speaker Ferdinand Martin Romualdez; SENATE OF THE REPUBLIC OF THE PHILIPPINES, represented by SENATE PRESIDENT FRANCIS ESCUDERO; DEPARTMENT OF FINANCE SECRETARY RALPH RECTO; EXECUTIVE SECRETARY LUCAS BERSAMIN; and PHILIPPINE HEALTH INSURANCE CORPORATION represented by its President Emmanuel R. Ledesma, Jr., Respondents.

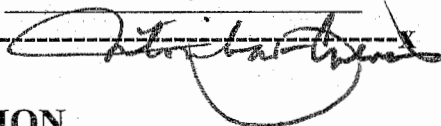
G.R. No. 275405 — BAYAN MUNA CHAIRMAN NERI COLMENARES, BAYAN MUNA VICE CHAIRMAN TEODORO A. CASIÑO, BAYAN MUNA EXECUTIVE VICE PRESIDENT CARLOS ISAGANI T. ZARATE, and FORMER BAYAN MUNA REPRESENTATIVE FERDINAND R. GAITE, Petitioners, v. PRESIDENT FERDINAND ROMUALDEZ MARCOS, EXECUTIVE SECRETARY LUCAS P. BERSAMIN, SENATE OF THE PHILIPPINES and THE HOUSE OF REPRESENTATIVES, Respondents.

G.R. No. 276233 — MEMBERS OF U.P. LAW CLASS 1975 namely: JOSE P.O. ALILING IV, AUGUSTO H. BACULIO, EDGARDO R. BALBIN, MOISES B. BOQUIA, ANTONIO T. CARPIO, MANUEL C. CASES, JR., RICHARD J. GORDON, OSCAR L. KARAAN, BENJAMIN L. KALAW, LUCAS C. LICREIO, TOMAS N. PRADO, ELIZER A. ODULIO, OSCAR M. ORBOS, AURORA A. SANTIAGO, EMILY SIBULO-HAYUDINI, CONRAD D. SORIANO, and JOSE B. TOMIMBANG; FORMER OMBUDSMAN CONCHITA CARPIO MORALES; SENIOR FOR SENIORS ASSOCIATION, INC., represented by MS. CAROL BLANCO BENAVIDES; KIDNEY FOUNDATION OF THE PHILIPPINES, represented by ATTY. VICENTE GREGORIO; and ATTY. CHRISTOPHER JOHN P. LAO, Petitioners, v. HOUSE OF REPRESENTATIVES represented by the Speaker, FERDINAND MARTIN ROMUALDEZ; SENATE OF THE REPUBLIC OF THE PHILIPPINES represented by Senate President; DEPARTMENT OF FINANCE SECRETARY RALPH RECTO; EXECUTIVE SECRETARY LUCAS BERSAMIN; and PHILIPPINE HEALTH INSURANCE CORPORATION represented by its President, EMANNUEL R. LEDESMA, JR., Respondents.

Promulgated:

December 3, 2025

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**CONCURRING OPINION****Rosario, J.:**

I concur in the result and join the *ponencia* in full. I write separately to reinforce specifically the reasoning meticulously developed by the *ponente* that the assailed Special Provision 1(d), Chapter XLIII (Special Provision 1[d]) of Republic Act No. 11975¹ or the General Appropriations Act of 2004 (GAA) and Department of Finance (DOF) Circular No. 003-2024 are unconstitutional.

I also seek to clarify an issue raised by the petitioners that this Court should make a finding that those who participated in the implementation of Special Provision No. 1(d) and DOF Circular No. 003-2024 may be held criminally liable for plunder or technical malversation. As I will explain further in this Concurring Opinion, the petitions before the Court are not the proper forum for the adjudication of criminal guilt. Moreover, even assuming that criminal liability may be somehow evaluated in this proceeding, none of the elements of these crimes have been established by the undisputed facts on record.

*Special Provision 1(d) and DOF
Circular No. 003-2024 are
unconstitutional*

The *ponencia* eloquently demonstrates that Special Provision 1(d), as interpreted and implemented through DOF Circular No. 003-2024, constitutes an impermissible statutory re-engineering of the Universal Health Care Act (UHCA)² and the Sin Tax Laws. I write separately to reinforce the institutional and constitutional stakes.

Article VI, Section 25(1) of the Constitution provides a fundamental limit to the Congressional power to enact a general appropriations bill. It states:

SECTION 25.

....

¹ Approved on July 24, 2023. An Act Appropriating Funds For the Operation of the Government of the Republic of the Philippines from January One to December Thirty One, Two Thousand and Twenty Four.
² Approved on July 23, 2018. An Act Instituting Universal Health Care for All Filipinos, Prescribing Reforms in the Health Care System, and Appropriating Funds Therefor.

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(2) No provision or enactment shall be embraced in the general appropriations bill unless *it relates specifically to some particular appropriation therein*. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates. (Emphasis supplied)

The Court explained the precise contours of this limit in *Philippine Constitution Association v. Hon. Enriquez*.³ The Court said:

As the Constitution is explicit that the provision which Congress can include in an appropriations bill must “relate specifically to some particular appropriation therein” and “be limited in its operation to the appropriation to which it relates,” it follows that *any provision which does not relate to any particular item, or which extends in its operation beyond an item of appropriation, is considered “an inappropriate provision” which can be vetoed separately from an item. Also to be included in the category of “inappropriate provisions” are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kind of laws have no place in an appropriations bill. These are matters of general legislation more appropriately dealt with in separate enactments.* Former Justice Irene Cortes, as *Amicus Curiae*, commented that Congress cannot by law establish conditions for and regulate the exercise of powers of the President given by the Constitution for that would be an unconstitutional intrusion into executive prerogative.⁴ (Emphasis supplied)

A general appropriations act cannot contain any provision that purports to amend other laws. I agree with the *ponencia* that Special Provision 1(d) and DOF Circular No. 003-24 did precisely what the Constitution, *Philippine Constitution Association*, and a plethora of other cases, forbid. They amended Section 11 of the UHCA.

Section 11 of the UHCA provides in full:

SEC. 11. Program Reserve Funds. - *PhilHealth shall set aside a portion of its accumulated revenues not needed to meet the cost of the current year's expenditures as reserve funds: Provided, That the total amount of reserves shall not exceed a ceiling equivalent to the amount actuarially estimated for two (2) years' projected Program expenditures: Provided, further, That whenever actual reserves exceed the required ceiling at the end of the fiscal year, the excess of the PhilHealth reserve fund shall be used to increase the Program's benefits and to decrease the amount of members' contributions.*

Any unused portion of the reserve fund that is not needed to meet the current expenditure obligations or support the abovementioned programs shall be placed in investments to earn an average annual income at prevailing rates of interest and shall be referred to as the Investment Reserve Fund. The Investment Reserve Fund shall be invested in any or all of the following:

³ 305 Phil. 546 (1994) [Per J. Quiason, *En Banc*].

⁴ *Id.* at 577-578.

(a) In interest-bearing bonds, securities or other evidences of indebtedness of the Government of the Philippines: Provided, That such investment shall be at least fifty percent (50%) of the reserve fund;

(b) In debt securities and corporate bonds of prime or solvent corporations created or existing under the laws of the Philippines: Provided, That the issuing or its predecessor entity shall not have defaulted in the payment of interest on any of its securities: Provided, further, That the securities are issued by companies with high growth opportunities and earnings potentials: Provided, finally, That such investment shall not exceed thirty percent (30%) of the reserve fund;

(c) In interest-bearing deposits and loans to or securities in any domestic bank doing business in the Philippines: Provided, That in the case of such deposits, this shall not exceed at any time the unimpaired capital and surplus or total private deposits of the depository bank, whichever is smaller: Provided, further, That the bank shall have been designated as a depository for this purpose by the Monetary Board of the Bangko Sentral ng Pilipinas;

(d) In preferred stocks of any solvent corporation or institution created or existing under the laws of the Philippines listed in the stock exchange with proven track record or profitability over the last three (3) years and payment of dividends for a period of at least three (3) years immediately preceding the date of investment in such preferred stocks;

(e) In common stocks of any solvent corporation or institution created or existing under the laws of the Philippines listed in the stock exchange with high growth opportunities and earnings potentials;

(f) In bonds, securities, promissory notes, or other evidences of indebtedness of accredited and financially sound medical institutions exclusively to finance the construction, improvement and maintenance of hospitals and other medical facilities: Provided, That such securities and instruments shall be guaranteed by the Republic of the Philippines or the issuing medical institution and the issued securities are both rated triple 'A' by authorized accredited domestic rating agencies: Provided, further, That said investments shall not exceed ten percent (10%) of the total reserve fund; and

(g) In debt instruments and other securities traded in the secondary markets with the same intrinsic quality as those enumerated in paragraphs (a) to (e) hereof, subject to the approval of the PhilHealth Board.

No portion of the reserve fund or income thereof shall accrue to the general fund of the National Government or to any of its agencies or instrumentalities, including government-owned or-controlled corporations.

As part of its investments operations, PhilHealth may hire institutions with valid trust licenses as its external local fund managers to manage the reserve fund, as it may deem appropriate, through public

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bidding. The fund manager shall submit an annual report on investment performance to PhilHealth.

The PhilHealth shall set up the following funds:

- (1) A fund to secure benefit payouts to members prior to their becoming lifetime members;
- (2) A fund to secure payouts to lifetime members; and
- (3) A fund for optional supplemental benefits that are subject to additional contributions.

A portion of each of the above funds shall be identified as current and kept in liquid instruments. In no case shall said portion be considered part of invested assets.

The PhilHealth shall allocate a portion of all contributions to the fund for lifetime members based on an allocation to be determined by the PhilHealth actuary based on a pre-determined percentage using the current average age of members and the current life expectancy and morbidity curve of Filipinos.

The PhilHealth shall manage the supplemental benefits and the lifetime members' fund in an actuarially sound manner.

The PhilHealth shall manage the supplemental benefits fund to the minimum required to ensure that the supplemental benefit payments are secure. (Emphasis supplied)

As the *ponencia* explains, Section 11 of the UHCA is a mandatory framework governing how PhilHealth's reserve funds must be computed, preserved, and deployed.

Section 11 creates a self-contained and strictly protected financial system for PhilHealth's reserve funds and categorically bars their use for any purpose outside the UHCA. In particular, Section 11 provides that PhilHealth may maintain reserves only to the extent of the actuarially determined amount needed for two years of projected program expenditures. The UHCA's design is deliberate: the reserve mechanism is intended to be dynamic, allowing contributions and revenues to accumulate until they naturally exceed the statutory ceiling. When this happens, as the law anticipates will occur in a well-functioning and solvent national health insurance program, the resulting excess is not a surplus to be clawed back or captured by the State but *a mandatory dividend to the Filipino people, distributable solely through expanded benefits and reduced member contributions*.

This structure demonstrates that the Legislature conceived the reserve fund as an instrument for continually improving the National Health Insurance Program, not as a reservoir of transferable public money. Any unused reserve amounts must remain within PhilHealth and be placed only in the Investment Reserve Fund, which the law restricts to a narrow set of conservative, safety-

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focused investment vehicles. Section 11 underscores that no part of the reserve fund or its income may accrue to the National Government, its general fund, its agencies, or any government-owned-and-controlled corporation. This is an unequivocal prohibition that erects a legal firewall around PhilHealth's resources.

By requiring actuarially sound management and forward-looking computations, the UHCA ensures that the reserve fund will eventually reach and surpass the statutory ceiling, thereby triggering the law's built-in mandate to return those gains to contributors and beneficiaries. Stated more simply, Section 11 is not merely a housekeeping rule on fund retention. It is a rights-enhancing mechanism crafted to ensure that the success and growth of PhilHealth's finances flow back to the people, and the law strictly forbids diverting these funds, or any income they generate, to purposes outside the UHCA and the National Health Insurance Program.

What Special Provision 1(d) and DOF Circular No. 003-24 attempted was to convert actuarially-determined reserves into a fungible fiscal surplus, available for general expenditure. This directly contradicted the UHCA, which explicitly bars any diversion of reserve funds to the General Fund or to any agency other than PhilHealth.

In imposing an entirely different formula for determining what it called a "fund balance," Special Provision 1(d) and DOF Circular No. 003-24 displaced the actuarial, forward-looking reserve structure chosen by Congress and replaced it with a retrospective averaging approach that is alien to the statute. Clearly, the impugned measures are prohibited riders in the GAA. They exceeded the narrow purposes of appropriations and entered the forbidden realm of statutory amendment.

This, I submit, is a true injury wrought against our constitutional system. The harm lies not merely in funds transferred, but in the structural violation inflicted when an appropriations act is used to smuggle in a substantive amendment to existing law. A rider in a general appropriations act inflicts constitutional injury the moment it is enacted because it circumvents the mandatory procedures of legislation, i.e., the three-reading rule, bicameral reconciliation, and presidential presentment. This circumvention prevents meaningful debate as to policy choices that the Legislature is tasked to make. Worse, it deprives the people of the transparency and accountability ensured by the lawmaking process.

Such a provision also distorts the separation of powers as it allows the budget process to intrude into the domain of substantive policymaking that belongs to ordinary legislation.

These structural harms are not speculative. They are complete the instant the Constitution's safeguards are bypassed. Special Provision 1(d) and DOF Circular No. 003-24 thus produced a real and cognizable injury—the erosion of the constitutional architecture that ensures that laws are made only through the channels the Constitution prescribes. These errors are even more critical especially in this case where the earmarked fund directly support the constitutional right to health. This case is not simply about fiscal arithmetic. It is about preserving the financial backbone of a social right that the Constitution declares as essential to the dignity of the Filipino people.

Thus, the Court is compelled to correct these errors, not because it exercises powers superior to that of the other branches of government, but because it has the fundamental duty to interpret and uphold the Constitution. In declaring Special Provision 1(d) and DOF Circular No. 003-2024 unconstitutional, the Court does not elevate itself above the political branches, nor does it presume a superior grasp of the nation's fiscal or social challenges. The Court acts here only in fidelity to its constitutional duty to police the boundaries that the Constitution imposes on all branches of government.⁵ Far from frustrating the efforts of Congress and the Executive to respond creatively to budgetary pressures and societal needs, the Court's ruling seeks to support those efforts by providing a clear and reliable articulation of the constitutional and statutory parameters within which such innovation must occur. *By clarifying what the Constitution permits and what it withholds, the Court aims to strengthen, not impede, the cooperative enterprise of democratic governance. In this sense, the judgment rendered today is not an act of supremacy, but an act of partnership. It is the Court's contribution to the difficult ongoing work of ensuring that every branch may pursue the public good with both vigor and respect for the Constitution.*

*There is no criminal liability for
plunder or technical
malversation*

Some of the petitioners have framed this case as implicating potential criminal wrongdoing on the part of the public officials involved in the drafting of Special Provision 1(d) and DOF Circular No. 003-24 and their implementation. This Concurring Opinion aims to clarify expectations and prevent a misreading of the Court's ruling.

These consolidated cases are petitions for *certiorari* and prohibition under Rule 65 of the Rules of Court. In this regard, the Rules of Court is clear. These procedural remedies pertain to the determination of the existence of grave abuse of discretion,⁶ not criminal liability.

⁵ See *Francisco v. House of Representatives*, 460 Phil. 830 (2003) [Per J. Carpio-Morales, *En Banc*].

⁶ RULES OF COURT, Rule 65, sec. 1 & 2.

That the Court cannot make conclusions as to criminal liability in a Rule 65 petition is a rule mandated by no less than the Constitution. The Constitution guarantees that no person shall be held to answer for a criminal offense *without due process of law*.⁷

The Constitution and the Rules of Criminal Procedure define what due process is in the context of criminal liability. In particular, the finding of criminal guilt requires a process which begins with the institution of a formal criminal action by the appropriate prosecutorial authority. There must be a finding of probable cause warranting the institution of a criminal complaint. Moreover, there must be a full criminal trial where the prosecution must prove the accused's guilt beyond reasonable doubt. Through all these, there must be a full observance of the constitutional rights of the accused, such as the right to cross-examination and the production of evidence on the accused's behalf. None of these constitutionally-mandated steps were observed in these consolidated cases, precisely because these are not required in a Rule 65 proceeding. It is patent, therefore, that no finding of criminal liability can be adjudged in these consolidated cases without violating constitutional due process.

A determination of grave abuse of discretion under Rule 65 is fundamentally different, both in nature and in consequence, from a finding of criminal liability in a criminal prosecution. Rule 65 operates within the Court's constitutional power of judicial review, expanded under Article VIII, Section 1 of the Constitution, which empowers the Court to correct acts of any branch or instrumentality of government that are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. The purpose of the remedy is institutional correction, not penal attribution. It does not involve an adjudication of individual wrongdoing. In contrast, as I have already explained, a finding of criminal guilt requires a full criminal proceeding governed by the Rules of Criminal Procedure and the constitutional guarantees attendant to criminal prosecution.

For these reasons, a ruling that an official committed grave abuse of discretion, or that an administrative or executive act is unconstitutional, does not and cannot amount to a judicial determination of criminal guilt. Grave abuse of discretion is a jurisdictional error while criminal guilt is a factual and evidentiary conclusion reached only after trial. The former corrects governmental acts for being undertaken without or in excess of lawful authority. The latter punishes individuals for violations of the penal law. The Constitution itself maintains this separation to ensure that judicial review remains a safeguard of legality, while criminal adjudication remains a safeguard of individual liberty.

⁷ CONST., art. III, sec. 14 (1).

Thus, this Court cannot declare any official guilty of plunder or technical malversation in these consolidated cases.

Even assuming that the Court may rule on the hypothetical question of whether the public officials involved in this case may be held criminally liable for plunder or technical malversation (the Court may not), I submit that the records of these consolidated cases do not permit such a conclusion.

The elements of plunder, penalized under Republic Act No. 7080, are the following: (a) the offender is a public officer who acts by themselves or in connivance with members of their family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) the offender amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1(d) of Republic Act No. 7080; and (c) the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least PHP 50 million.⁸

The “*corpus delicti* of plunder is the amassment, accumulation or acquisition of ill-gotten wealth valued at not less than [PHP] 50,000,000.00.”⁹ Proof that the offender obtained personal benefit is required.¹⁰ The hallmark of plunder is private gain.

Here, there is no indication that any public official involved in these consolidated cases personally benefitted from the remittance of PhilHealth’s funds to the National Treasury.

I cannot overemphasize that the transfer of funds in this case arose out of the Legislature’s decision to include Special Provision 1(d) in the GAA. The DOF and the PhilHealth then complied with Special Provision 1(d) as it was a provision carrying the force of law at that time. Policy-driven fiscal decisions, whether valid or invalid, cannot be equated with the criminal intent to amass ill-gotten wealth that the law punishes, especially where the public funds involved at no point became subject to the control of any of the public officials involved, for their own personal use and benefit.

Further, the transfer of funds, unconstitutional though it may be, resulted in the money being deposited into a public account. The act of transferring PHP 60 billion from the PhilHealth’s reserve funds to the National Treasury did not lead to any personal benefit on the part of any of the public officials involved in these consolidated cases. *These funds, it is worth reiterating, went to a public account intended for government expenditure. None of the public officials who included Special Provision 1(d) into the GAA, as well as those who drafted and implemented DOF Circular*

⁸ *Napoles v. Carpio-Morales*, 948 Phil. 169, 181–182 (2023) [Per J. Dimaampao, *En Banc*].

⁹ *Macapagal-Arroyo v. People*, 790 Phil. 367, 436 (2016) [Per J. Bersamin, *En Banc*].

¹⁰ *Id.*



No. 003-24, and complied with these directives to release the “fund balance” to the National Treasury amassed or accumulated wealth for their own personal benefit. The act may be unconstitutional, but it is not plunder.

The same conclusion applies to technical malversation. Technical malversation under Article 220 of the Revised Penal Code punishes a public officer who applies public funds to a public use other than that for which they were appropriated by law. The elements of technical malversation are:

(a) the offender is an accountable public officer; (b) he applies public funds or property under his administration to some public use; and (c) the public use for which the public funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance.¹¹

The gravamen of the offense is diversion of public funds, i.e. the officer knowingly allocates money that the law has earmarked for one purpose to an entirely different purpose. The offense exists to preserve the legislative intent embedded in appropriations laws and to ensure that public money is not diverted from the purpose that Congress has fixed. Its core element is diversion without lawful authority, and the crime is committed only when a public officer *knowingly* departs from the statutory appropriation.

The facts of this case do not satisfy the doctrinal elements of the crime. Here, the Legislature itself, through Special Provision No. 1(d), made a policy determination that what it termed the “fund balance” of GOCCs may be used to support unprogrammed appropriations. Whether or not this policy was ultimately unconstitutional, as the Court now holds, the provision was nonetheless part of a duly enacted statute, passed by Congress and approved by the President. As with all statutes, it carried a presumption of regularity and good faith, which public officers are entitled to rely upon.¹² In this regard, it is worth noting that the ultimate outcome of Special Provision 1(d)—which was to amend, albeit unconstitutional, Section 11 of the UHCA—is not something that is completely outside of the Legislature’s authority. To be sure, the Legislature has the legislative power to amend Section 11 of the UHCA. The constitutional issue in these consolidated cases is that the Legislature cannot do so through the inclusion of a rider in the GAA. Nonetheless, Special Provision 1(d) was an expression of what the Legislature believed to be necessary for the public interest, and its statutory command had the force of law until struck down.

In turn, the DOF complied with that statutory directive. It computed what it understood to be the “fund balance” and ordered the remittance of the amount necessary to carry out Special Provision No. 1(d). In doing so, the DOF did not substitute its own judgment for the law but merely followed it as

¹¹ *Parungao v. Sandiganbayan*, 274 Phil 451, 460 (1991) [Per J. Gutierrez, Jr., *En Banc*].

¹² *Cajayon v. Spouses Batuyong*, 517 Phil. 648, 661 (2006) [Per J. Tinga, Third Division].

written. *As the Executive's primary fiscal manager, the DOF cannot be faulted for implementing a GAA provision that was, at that moment, presumptively valid.* The Constitution does not permit administrative agencies to disregard statutory commands simply because they suspect that the law may later be challenged or struck down. *To insist that an agency should have unilaterally refused to enforce a statute on the belief that it was unconstitutional would set a dangerous precedent—one that allows executive officials to become arbiters of constitutionality.* This will undermine the rule of law and destabilize the predictable functioning of government.

PhilHealth was in the same position. Upon receiving the DOF's directive, it sought guidance and confirmation from the Office of the Government Corporate Counsel, Governance Commission for GOCCs, and from the Commission on Audit.¹³ PhilHealth complied only after receiving advice that the remittance was legally permissible. *These actions, far from showing criminal intent, affirm that PhilHealth acted cautiously, transparently, and in reliance on the existing legal framework and the opinions of the government's own counsel and auditor.*

Given this context, the statutory element that the public officer must divert funds appropriated by law for a specific purpose to another purpose can hardly be said to exist. The public officers involved here implemented the transfer of funds *with apparent legal authority—the GAA itself.* Indeed, it may even be said that as far as these public officers were concerned, Special Provision 1(d) mandated a specific use for the “fund balance” which they were duty bound to comply with. Even though Special Provision 1(d) was later declared unconstitutional, its implementation before such declaration was done under the mantle of legality and good faith. The subsequent invalidation of a statute does not retroactively transform faithful compliance into a criminal act, for criminal liability cannot arise from obedience to a law that is, at the time, operative and binding.

Given the foregoing, no liability for technical malversation may attach. The officials carried out the statutory commands in good faith, pursuant to a law then presumed valid, and without any intention to divert funds contrary to legislative will. The constitutional infirmity of Special Provision No. 1(d) renders the provision void—but it does not render criminal those who were duty-bound to follow it.

Not every flawed or subsequently invalidated policy judgment warrants the imposition of criminal liability upon government officials. The Constitution entrusts to the Legislature the authority, and the necessary leeway, to explore innovative solutions to evolving social and fiscal challenges, so long as these solutions remain within constitutional bounds. Policymaking is inherently experimental. Laws are often crafted against

¹³ Ponencia, p. 27.

shifting economic, administrative, and public welfare considerations. It is therefore neither realistic nor consistent with constitutional structure to presume that every policy choice later declared unconstitutional or contrary to statute must automatically expose its drafters or implementers to criminal prosecution. *Criminal liability demands intentional, unauthorized, and wrongful conduct, not the mere exercise of legislative or administrative judgment that is later determined, through judicial review, to have exceeded constitutional limits. The law must distinguish between good-faith innovation and willful violation, lest judicial review be transformed into a punitive instrument rather than a mechanism for clarifying constitutional boundaries.*

Our criminal laws are not designed to punish good-faith efforts to navigate the complexities of public administration. To hold otherwise would produce a profound chilling effect on the ability of government officers to perform their functions. Public officials would hesitate and even freeze in the face of urgent administrative or fiscal decisions, apprehensive that a law, regulation, or directive they rely upon today may later be declared void, and that their well-intentioned compliance could be retroactively recharacterized as a felony.

If every administrative or fiscal misinterpretation were treated as potential criminal conduct, the consequences for public service would be far-reaching. Government would lose the ability to innovate in responding to complex and evolving societal issues. Officers would grow risk-averse, preferring inaction over initiative, paralysis over problem-solving. Creative solutions to governance challenges, which often require reasonable discretion, would be stifled for fear that hindsight judicial scrutiny may criminalize decisions made in good faith. Such a regime would disincentivize creative thinking and discourage innovation in addressing the difficult, evolving problems of governance.

Over time, such an environment would deter competent and qualified individuals from entering government, unwilling to expose themselves to the specter of prosecution for faithfully implementing the laws as they understood them. Even more troubling, expanding criminal liability to encompass mere administrative error would invite the weaponization of criminal statutes, turning prosecution into a political tool rather than an instrument of justice. The rule of law requires predictability and fair notice. It cannot coexist with a system where faithful adherence to an enacted statute exposes an officer to retroactive criminal sanction. To be sure, our Constitution does not require a climate of fear in public administration, it only demands accountability.

The Court has already warned of this type of danger. In *Martel v. People*,¹⁴ the Court underscored that criminal liability cannot be imposed in corruption cases involving procurement issues for mere defects in the

¹⁴ 895 Phil. 270 (2021) [Per J. Caguioa, *En Banc*].

procurement procedure, in the absence of evident bad faith, gross inexcusable negligence, or manifest partiality on the part of the accused. I submit that the pronouncement of the Court in *Martel* is relevant in these consolidated cases:

The demand for accountability should not be at the expense of well-meaning public officials who may have erred in the performance of their duties but have done so without a criminal mind. Our penal laws against corruption in the government are meant to enhance, and not stifle, public service. If every mistake, error, or oversight is met with criminal punishment, then qualified individuals would be hindered in serving in the government. If we all continue to “weaponize” each misstep in governmental functions, we run the risk of losing the many good people in the government. Again, it should be underscored that while public office is a public trust, the constitutionally enshrined right to presumption of innocence encompasses all persons — private individuals or public servants alike.¹⁵

A Final Note

The Court is correct to strike down Special Provision No. 1(d) and DOF Circular No. 003-2024, for they infringe both the Constitution and the UHCA. *Yet our ruling should not be construed as a finding, explicit or implied, that any public official has committed plunder or technical malversation. Criminal liability demands processes, constitutional protections, and proof that this proceeding neither contemplates nor supplies. The factual record before us does not meet the doctrinal requirements of either offense, even in theory.*

In closing, I submit that the Court, through the *ponencia*, affirms the vital need to grant the Legislative and Executive branches adequate space to craft responsive and creative solutions to the nation’s evolving challenges. Policymaking in a constitutional democracy requires both imagination and flexibility, and the political branches must be allowed to innovate in pursuit of the public good. Yet it is equally the Court’s solemn duty to ensure that the constitutional parameters within which these solutions must operate remain clear, stable, and respected, so that creativity never comes at the expense of constitutional order.

The Court likewise recognizes the enduring importance of public accountability, especially in a political climate where public trust in institutions is fragile and vigilance against abuse is indispensable. But accountability must be tempered by an appreciation of good-faith public service (and the Court recognizes that there are honest, dedicated, and hard-working public servants, despite the prevailing political climate) without which government cannot function and no reform can succeed. The Court, in these consolidated cases, seeks to harmonize these imperatives—clarity in constitutional limits, respect for the policymaking role of the political branches, accountability for unlawful acts, and protection for good-faith

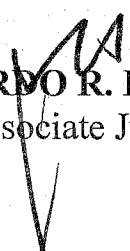
¹⁵ *Id.* at 314.

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governance—so that each branch of government may perform its role with both confidence and constitutional fidelity.

With these clarifications, I **CONCUR**.

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RICARDO R. ROSARIO
Associate Justice

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Deputy Clerk of Court and
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OCC-En Banc, Supreme Court