

**REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA**

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ANG NARS Party-list, represented by
**Rep. LEAH PRIMITIVA G.
SAMACO-PAQUIZ**, and **PUBLIC
SERVICES LABOR INDEPENDENT
CONFEDERATION (PSLINK)**,
represented by its **General Secretary
ANNIE E. GERON**,
Petitioners,

G.R. No. 215746

-versus-

CERTIORARI and MANDAMUS

**THE EXECUTIVE SECRETARY,
THE SECRETARY OF BUDGET and
MANAGEMENT, and the
SECRETARY OF HEALTH,**
Respondents,

X-----X

**PHILIPPINE NURSES
ASSOCIATION (PNA)**, represented
by its President, **DR. ERLINDA C.
PALAGANAS**,
Petitioner-Intervenor.

X-----X

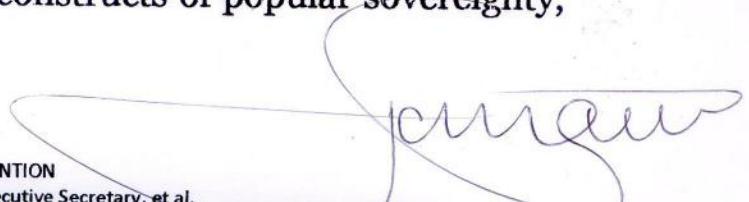
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PETITION-IN-INTERVENTION

Petitioner-Intervenor, through counsel, states –

PROLEGOMENA

1. Our democratic setup requires the government to uphold the majority, to protect the minority, and to listen to the opposition. In the process of making policies, the political system has to involve everyone so that their well-being and welfare will be enhanced. Governance must be for everyone. It must be guided by the basic constructs of popular sovereignty,



representative democracy, separation of powers, and checks and balances implicit in the design of the constitutional system.¹

2. Policies enacted in the participatory process are the result of the organic symbiosis between the government and the people. Within the government itself, there should be much respect also among the three equal branches: the legislative, executive, and the judiciary. The first two branches deal with politics and are the stages for deliberations and popular involvement. The latter only steps in when the political processes are abused and affect people. It is only in cases of conflict that the judiciary steps in and settle rights among parties.

Constitutional substance is like quicksilver: it slips from one's grasp. Constitutional form is like crystal: it is easily broken. It was the very purpose of constitutionalism to set in stone certain rules, principles, values, and institutional patterns. Judicial review has emerged as the most satisfactory means of guaranteeing constitutional substance against undesirable alterations.²

3. It is no surprise that courts only arbitrate, and not participate, in the policy-making process. Courts exist as impartial actors who review excesses of political actions and determine whether the rules set in place are respected. They put democracy back into action and maintain the respect for rules and regulations within the political and legal framework.

Judicial review can instantiate the commitment to citizen judgement, protest, rights, responsibilities, freedom and equality which characterize democratic arguments for electoral representation. It is no surprise, therefore, that judicial review can be justified democratically, even if its benefits are uncertain: for the same might be said of democratic government itself, and we have every reason to cherish that, and to seek to perfect and maintain it.³

4. In this Petition, Petitioner prays that the collective voices of all nurses in the democratic process must be heard and respected. If the law makers agree to respect it, then no rule should be passed that runs counter to this democratic setup. The fact remains, however, that the political abuse

¹ Jack Wade Nowlin (2001). *The Constitutional Illegitimacy of Expansive Judicial Power. A Populist Structural Interpretative Analysis*, 89 KY. L.J. 387. Cited by Labastilla, S. (2009). *Dealing with Mutant Judicial Power: The Supreme Court and its Political Jurisdiction*, 84 Phil. L. J. 2. (pdf available online)

² Baranger, D. (2011). 'The Language of Eternity: Judicial Review of the Amending Power in France (or the Absence Thereof)' in *Israel Law Review*. Vol. 44, No. 389, pages. 389-428. (pdf available online).

³ Lever, A. (2009). 'Democracy and Judicial Review: Are They Really Incompatible?' In *Democracy and Judicial Review*. Vol 7, No. 4, pages 805-822. (pdf available online).

made by one government department is more than simple error: it was tainted with caprice and whim.

NATURE OF THE PETITION

5. This is an action for certiorari and mandamus under Rule 65 of the Rules of Court with a prayer for temporary restraining order and/or writ of preliminary injunction, and permanent injunction.

6. Specifically, this Petition-in-intervention prays to—

- i. Strike down and declare as unconstitutional Executive Order (E.O.) No. 811;
- ii. Enjoin all the Respondents from implementing the above-mentioned presidential issuance, which has the force and effect of a law; and
- iii. Enjoin the release of public funds from the treasury relative to the assailed presidential issuance.

7. Petitioners invoke this Honorable Court's power to review political actions of the Executive Branch for having been exercised with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."⁴ In the same manner, there was grave abuse of discretion committed by the President when she issued an executive order under the assumption of an invalid delegation of legislative power, and also in clear violation of the separation of powers among the branches of the government.

8. Petitioners have properly verified this petition and duly certified the same against forum shopping. They have also served copies of the Petition upon the respondents by registered mail, as attested to by the attached affidavit of service. The corresponding docket fees were also paid upon the filing of the petition.

THE PARTIES

9. The **Philippine Nurses Association (PNA)** is a juridical entity formed under existing Philippine laws and with address at 1663 F.T. Benitez Street, Malate, Manila. For purposes of this suit, it is represented

⁴ Cruz and Cruz vs. People of the Philippines, G.R. No. 224974, July 3, 2017; citing Rodriguez v. Hon. Presiding Judge of the Regional Trial Court of Manila, Branch 17, et al., 518 Phil. 455, 462 (2006) [Per J. Quisumbing, En Banc] citing Zarate v. Maybank Philippines, Inc., 498 Phil. 825 (2005) [Per J. Callejo, Sr., Second Division].

by its National Present, Dr. Erlinda C. Palaganas, pursuant to a Board Resolution. PNA was founded in 1922, which was earlier called as Filipino Nurses Association (FNA). In 1966, the FNA became PNA.

10. PNA was created in order to: zealously provide strategic directions and programs that enhance the competencies of nurses to be globally competitive; passionately sustain the quality work life and collegial interactions with and among nurses; continuously strengthen the internal capacity and capabilities for quality care and services of the nurses; and enthusiastically explore possibilities of collaboration towards unification of nurses.⁵

11. Respondent Executive Secretary is sued in his official capacity. Under **Section 27, Chapter 9, Title III, Book III of the Revised Administrative Code**, s/he shall, subject to the control and supervision of the President, carry out the functions assigned by law to the Executive Office and shall perform such other duties as may be delegated to him/her. He may be served with summons, court orders, and notices at its address at the Malacañang Palace Compound, New Executive Building, J.P. Laurel Street, San Miguel, Manila.

12. Respondent Secretary of the Department of Budget and Management (DBM) is sued in his official capacity. Under **Section 1, Chapter 1, Title XVII, Book IV of the Revised Administrative Code**, the Secretary formulates and implements a national budget as an instrument of national development, among others. He may be served with summons, court orders, and notices at its address at the Office of the DBM, General Solano Street, San Miguel, Manila.

13. Respondent Secretary of the Department of Health (DOH) is the head of the principal health agency in the Philippines. It is responsible for ensuring access to basic public health services to all Filipinos through the provision of quality health care and regulation of providers of health goods and services.⁶

STATEMENT OF THE FACTS AND THE CASE

14. The present Petition-in-Intervention adopts the facts as presented in the main Petition, and in addition, presents the following:

15. On August 21, 1989, Congress enacted **Republic Act (R.A.) No. 6578**, otherwise known as the "**Compensation and Position Classification Act of 1989.**" **Section 2** of the said law provides -

⁵ <http://www.philippinenursingdirectory.com/associations/philippine-nurses-association-of-the-philippines-pna/>

⁶ www.doh.gov.ph/about-us

Section 2. *Statement of Policy.* - It is hereby declared the policy of the State to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in the private sector for comparable work. For this purpose, the Department of Budget and Managements (DBM) is hereby directed to establish and administer a unified Compensation and Position Classification System, hereinafter referred to as the System, as provided for in Presidential Decree No. 985, as amended, that shall be applied for all government entities, as mandated by the Constitution. (emphasis supplied)

16. Meanwhile, **Section 9** of the law classifies a Nurse I employee under Salary Grade 10, whereas under **Section 8** of the said law, s/he earns at least PHP3,102.00/month.

17. On October 21, 2009, **Republic Act (R.A.) No. 9173**, or the "**Philippine Nursing Act of 2002**," was enacted. **Section 2** provides –

Section 2. *Declaration of Policy.* – It is hereby declared the policy of the State to assume responsibility for the protection and improvement of the nursing profession by instituting measures that will result in relevant nursing education, humane working conditions, better career prospects and a dignified existence for our nurses.

The State hereby guarantees the delivery of quality basic health services through an adequate nursing personnel system throughout the country.

18. One of the salient features of the law is that it increases the salary grade of nurses. **Section 32** thereof provides –

Section 32. *Salary.* - In order to enhance the general welfare, commitment to service and professionalism of nurses the minimum base pay of nurses working in the public health institutions shall not be lower than salary grade 15 prescribed under Republic Act No. 6758, otherwise known as the "Compensation and Classification Act of 1989": *Provided,* That for nurses working in local government units, adjustments to their salaries shall be in accordance with Section 10 of the said law.

19. On July 28, 2008, Congress enacted **Joint Resolution No. 4,7** which provides as follows –

WHEREAS, Section 5, Article IX-B of the Philippine Constitution states that Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or -controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to and the qualifications required for their positions;

WHEREAS, Republic Act No. 6758 prescribes a revised Compensation and Position Classification System for civilian personnel in accordance with the above-cited constitutional provision and anchored on the basic principle of equal pay for substantially equal work;

WHEREAS, Joint Resolution No. 01 of the Senate and the House of Representatives approved by the President of the Philippines on March 7, 1994, urged the latter to revise the then existing Compensation and Position Classification System for civilian personnel and base pay of military and uniformed personnel to make it more responsive to the economic needs of government personnel, to provide adequate incentives to public servants and to improve the quality of public services;

WHEREAS, the present Compensation and Position Classification System has to be revised further to update the same, to further encourage excellent performance and productivity, and to clearly distinguish differences in levels of responsibility and accountability among government officials and employees;

WHEREAS, the current structure of the Salary Schedule causes the overlapping of salaries between salary grades, thereby resulting to salary inequities between positions;

WHEREAS, the grant of benefits to selected professions under special laws undermines the compensation standardization and equal protection of the law clauses in the Constitution, distorts the standardized compensation scheme and breeds demoralization among other government personnel;

WHEREAS, the military personnel of the Department of National Defense and uniformed personnel of the Department of the Interior and Local Government, the Philippine Coast Guard, and the National Mapping and Resource Information Authority are similarly in need of a modified base pay that

⁷ JOINT RESOLUTION AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO MODIFY THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM OF CIVILIAN PERSONNEL AND THE BASE PAY SCHEDULE OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES.

provides adequate remuneration and benefits in view of the vital role they play in internal security;

WHEREAS, in order to make the present Compensation and Position Classification System and Base Pay Schedule more effective in motivating government personnel and in invigorating public service, reforms in the present System and Pay Schedule need to be instituted: Now, therefore, be it:

Resolved, by the Senate and the House of Representatives in Congress assembled, To authorize the President of the Philippines to modify the existing Compensation and Position, Classification System of civilian personnel and Base Pay Schedule of military and uniformed personnel and to initially implement the same effective July 1, 2009 and in the case of local government units (LGUs) to take effect January 1, 2010.

Resolved, further, To express the strong sentiment of the Senate and the House of Representatives, that said modification must be in line with the governing principles, coverage and particulars of the Compensation and Position Classification System and Base Pay Schedule prescribed hereunder.

Resolved, finally, That the amendments of existing laws and issuances contrary to the provisions of this Joint Resolution shall be effective upon approval of this Joint Resolution.

20. Joint Resolution No. 4 is clear in **Section 6** thereof when it provides that –

(6) Magna Carta Benefits – Within ninety (90) days from the effectivity of this Joint Resolution, the DEM is hereby authorized to issue the necessary guidelines, rules and regulations on the grant of Magna Carta benefits authorized for specific officials and employees in the government to determine those that may be categorized in the Total Compensation Framework.

Nothing in this Joint Resolution shall be interpreted be reduce, diminish or, in any way, alter the benefits provided for in existing laws on Magna Carta benefits for specific officials and employees in government, regardless of whether said benefits have been already received or have yet to be implemented.

21. Likewise, in **Section 11**, thereof, it provides that –

11) Non-diminution in the Basic Salaries of Incumbent Employees– In no case shall there be any diminution in the

basic salaries of incumbent employees upon the implementation of this Joint Resolution. For this purpose, they shall receive the new salary rates prescribed herein, to be implemented in tranches, which in no case shall be less than their existing salary rates.

22. On June 17, 2009, then President Gloria Macapagal Arroyo issued **Executive Order (E.O.) No. 811**, which sought to (a) prescribe the first tranche of the modified salary schedule of civilian personnel and base pay schedule of military and uniformed personnel in the government, and (b) direct the review and modification of the position classification system.

23. Notwithstanding **Section 7** of E.O. No. 811, which guarantees the non-diminution in the basic salaries of incumbent government employees, **Section 6** thereof classified a Nurse I, among others, as a Salary Grade 11 employee. This opposes R.A. No. 9173, which provides that a Nurse I is classified as a Salary Grade 15 employee.

ISSUES TO BE RESOLVED

A. WHETHER RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY DISREGARDED REPUBLIC ACT NO. 9173, AND INSTEAD OBEYED E.O. NO. 811.

- i. E.O. No. 811, which changes the salary grades of nurses, is a violation of the Constitution. It likewise violates international law, which has become part of Philippine law.
- ii. E.O. No. 811 violates the doctrines of separation of powers and constitutional supremacy.
- iii. Joint Resolution No. 4 could not have repealed R.A. No. 9173.

B. WHETHER E.O. NO. 811 IS A USURPATION OF LEGISLATIVE POWER AS IT CREATES A LAW WITHOUT A VALID DELEGATION OF POWER

- i. There are no valid grounds for the delegation of legislative power to the Office of the President when it issued E.O. No. 811.
- ii. Joint Resolution No. 4 did not delegate to the President the power to repeal provisions of R.A. No. 9173.

ARGUMENTS and DISCUSSIONS

A.

E.O. NO. 811 VIOLATES THE
1987 CONSTITUTION AND
INTERNATIONAL LAW.

24. **Section 5, Article IX-B** of the **1987 Philippine Constitution** provides –

Section 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, their positions.

25. To give life to this constitutional provision, R.A. No. 6758, or the “Compensation and Position Classification Act of 1989” was enacted. Congress later enacted R.A. No. 9173 or the “Philippine Nursing Act of 2002” in order to increase the salary grade of government nurses.

26. It is therefore, clear, that there exists no conflict between R.A. No. 9173 and Section 5, Article IX-B of the 1987 Constitution. Both stand together in perfect harmony. For the Executive Department to issue E.O. 811 runs afoul to this constitutional provision and goes beyond the ambit of Congress’ Joint Resolution No. 4.

27. Moreover, the Philippines ratified the **Nursing Personnel Convention (C.149)** in 1979, and adopted by the **International Labour Organization (ILO)** and the **World Health Organization (WHO)**. These consisted of standards for adequate nursing personnel policies and working conditions. It was in 1977 when the ILO considered Nursing Personnel Convention (C. 149), and the accompanying Recommendation (R.157) as international labour instruments.⁸ This led to

⁸ Nursing Personnel Convention No. 149 (2005). International Labour Office, Geneva. https://www.who.int/hrh/nursing_midwifery/nursing_convention_C149. (pdf available online).

the Philippine Government enacting **Republic Act (R.A.) No. 7164**, or the "**Philippine Nursing Act of 1991**," the precursor of R.A. No. 9173.

28. When the Philippines ratified the Nursing Personnel Convention (C. 149) in 1979, it was adopting international law as part of the law of the land. Article II, Section 2 of the 1987 Constitution provides that –

Section 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

29. In *Pharmaceutical and Health Care Association vs. Health Secretary*,⁹ the Supreme Court clarified that –

Under the 1987 Constitution, international law can become part of the sphere of domestic law either by **transformation** or **incorporation**.¹¹ The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation. The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.¹⁰

Treaties become part of the law of the land through **transformation** pursuant to Article VII, Section 21 of the Constitution which provides that "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate." Thus, treaties or conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts.¹¹

30. There is no issue here as to how Nursing Personnel Convention (C.149) became part of the Philippine law because as earlier mentioned, Congress deemed it proper to transform its provisions and articulations in R.A. No. 7164 and later on, in R.A. No. 9173.

31. When E.O. No. 811 was issued, it violated certain constitutional and international law provisions. E.O. 811 cannot diminish the intent behind Article IX-B, Section 5 of the 1987 Constitution. E.O. 811 cannot likewise repeal, amend, or override R.A. 9173 because the latter is an act of a co-equal branch of the government.

⁹ G.R. No. 173034, October 9, 2007, 535 SCRA 265.

¹⁰ Citing Joaquin G. Bernas, S.J., *Constitutional Structure and Powers of Government (Notes and Cases) Part I* (2005).

¹¹ Citing Joaquin G. Bernas, S.J., *An Introduction to Public International Law*, 2002 Ed., p. 57.

THE EXECUTIVE DEPARTMENT HAS LIMITED THE SCOPE OF R.A. 9173, WHICH IS AN ACT OF CONGRESS. E.O. No. 811 IS A VIOLATION OF THE DOCTRINES OF SEPARATION OF POWERS AND CONSTITUTIONAL SUPREMACY.

32. Under the **doctrine of constitutional supremacy**, all laws must bow to the constitution as the fundamental law. In *Tawang Multipurpose Cooperative vs. La Trinidad Water District*,¹² it was re-emphasized:

It (the 1987 Constitution) is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution. **xxx(T)he Constitution is the highest law of the land. It is the basic and paramount law to which all other laws must conform. Xxx The Constitution is the fundamental and paramount law of the nation to which all other laws must conform** and in accordance with which all private rights must be determined and all public authority administered. Laws that do not conform to the Constitution shall be stricken down for being unconstitutional.xxx **(T)hat (u)nder the doctrine of constitutional supremacy, if a law or contract violates any norm of the constitution that law or contract whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect.** Thus, since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract. (Citations omitted)

33. The Executive Department cannot diminish the rights vested to nurses already recognized through a law passed by Congress. The State's policy to protect the nurses, enhance their welfare, and promote their well-being by increasing their compensation is given flesh by an enabling law, R.A. No. 9173. The constitutional reflection was not an empty promise. Higher compensation for government nurses is a social change that the law hoped to see. Yet, E.O. No. 811 clearly disregarded this constitutional policy when the Executive Department opted not to promote, but to weaken, the nurses' concerns.

¹² G.R. No. 166471, March 22, 2011.

34. Moreover, E.O. No. 811 is unconstitutional as its issuance violated the **separation of powers doctrine**. Congress enacted R.A. No. 9173 pursuant to its legislative power. Instead of implementing it, the Executive Department opted, however, to revise the very law that it seeks to implement.

35. *Angara vs. Electoral Commission*¹³ is explicit in saying that each of these three government branches holds supreme power over their areas within their constitutionally allocated sphere, thus –

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.

36. In the present case, Congress enacted R.A. No. 9173. Later, it issued Joint Resolution No. 4, authorizing the President, to “modify the existing Compensation and Position, Classification System of civilian personnel and Base Pay Schedule of military and uniformed personnel.” Section 6 thereof respected the spirit of R.A. No. 9173 when it stated that

Nothing in this Joint Resolution shall be interpreted be reduce, diminish or, in any way, alter the benefits provided for in existing laws on Magna Carta benefits for specific officials and employees in government, regardless of whether said benefits have been already received or have yet to be implemented.

37. Section 11 thereof provided even that there shall be no diminution in the basic salaries of incumbent employees, and they shall still receive the new salary rates prescribed, to be implemented in tranches, which in no case shall be less than their existing salary rates.

38. For the President to disregard R.A. No. 9173 by going beyond what Joint Resolution No. 4 recommends and authorizes him/her to do is clearly a violation of the separation of powers. In *Noblejas vs. Teehankee*,¹⁴ the petitioners therein sought to restrain the Secretary of Justice from

¹³ 63 Phil. 139 (1936).

¹⁴ G.R. No. L-28790, 23 SCRA 405 (1968).

investigating the official actuations of the Commissioner of Land Registration, and to declare inoperative his suspension by the Executive Secretary pending investigation. The issue before the Supreme Court was whether the Commissioner of Land Registration may only be investigated by the Supreme Court, in view of the conferment upon him by Republic Act 1151 and Appropriation Laws of the rank and privileges of a Judge of the Court of First Instance. The Supreme Court held that the administrative investigation of the Commissioner of Land Registration should be undertaken by the President of the Philippines and not the Supreme Court.

But the more fundamental objection to the stand of petitioner Noblejas is that, if the Legislature had really intended to include in the general grant of "privileges" or "rank and privileges of Judges of the Court of First Instance" the right to be investigated by the Supreme Court, and to be suspended or removed only upon recommendation of that Court, then such grant of privileges would be unconstitutional, since it would violate the fundamental doctrine of separation of powers, by charging this court with the administrative function of supervisory control over executive officials, and simultaneously reducing *pro tanto* the control of the Chief Executive over such officials.

Justice Cardozo ruled in *In re Richardson et al., Connolly vs. Scudder* (247 N. Y. 401, 160 N. E. 655), saying:

There is no inherent power in the Executive or Legislature to charge the judiciary with administrative functions except when reasonably incidental to the fulfillment of judicial duties.

The United States Supreme Court said in *Federal Radio Commission vs. General Electric Co., et al.*, 281 U.S. 469, 74 Law. Ed., 972, —

But this court cannot be invested with jurisdiction of that character, whether for purposes of review or otherwise. It was brought into being by the judiciary article of the Constitution, is invested with judicial power only and can have no jurisdiction other than of cases and controversies falling within the classes enumerated in that article. It cannot give decisions which are merely advisory; *nor can it exercise or participate in the exercise of functions which are essentially legislative or administrative.* *Keller v. Potomac Electric Power Co.*, *supra* (261 U.S. 444, 67 L. ed. 736, 43 Sup. Ct. Rep. 445) and cases cited; *Postum Cereal Co. vs. California Fig Nut Co.* *supra* (272 U.S. 700, 701, 71 L. ed. 481, 47 Sup. Ct. Rep. 284); *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 74, 71 L. ed. 541, 544, 47 Sup. Ct. Rep. 282; *Willing v. Chicago Auditorium Asso.* 277 U.S. 274, 289, 72 L. ed. 880, 884,

48 Sup. Ct. Rep. 507; *Ex parte Bakelite Corp.* 279 U.S. 438, 449, 73 L. ed. 789, 793, 49 Sup. Ct. Rep. 411. (Federal Radio Commission v. General Electric Company, 281 U.S. 469, 74 L. ed. 972.) (Emphasis supplied.)

In this spirit, it has been held that the Supreme Court of the Philippines and its members should not *and cannot* be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administration of judicial functions; and a law requiring the Supreme Court to arbitrate disputes between public utilities was pronounced void in *Manila Electric Co. vs. Pasay Transportation Co.* (57 Phil. 600) (emphasis supplied).

39. In the same vein, the President cannot simply brush aside what Congress enacted by issuing an executive order that runs afoul to constitutionally-given powers. R.A. No. 9173 cannot just bow to E.O. No. 811.

JOINT RESOLUTION NO. 4
COULD NOT HAVE REPEALED
R.A. 9173.

40. Regardless of the reason why Joint Resolution No. 4 was issued upon which E.O. No. 811 was based, it could not have repealed R.A. No. 9173 in any manner.

41. **Article 7 of the Civil Code** provides that –

Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.

42. Laws are repealed expressly or impliedly. However, it has been held that implied repeals are not looked upon with favour. This was held by the Supreme Court as early as 1916, when it stated in *U.S. vs. Palacio*¹⁵ that

Repeals by implications are not favored, and will not be decreed, unless it is manifest that the legislature so intended. As laws are presumed to be passed with deliberation and with full knowledge of all existing ones on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with or abrogate any former law relating to same matter, unless the repugnancy between the two is not only irreconcilable, but also clear and convincing, and flowing

¹⁵ G.R. No. L-11002, 33 Phil. 208.

necessarily from the language used, unless the later act fully embraces the subject matter of the earlier, or unless the reason for the earlier act is beyond peradventure removed. Hence, every effort must be used to make all acts stand and if, by any reasonable construction, they can be reconciled, the later act will not operate as a repeal of the earlier (citing 23 Am. and Eng. Ency. of Law, p. 489, and cases there cited [vol. 26, pp. 721, 726]).

43. In *Mecano vs. Commission on Audit*,¹⁶ the Supreme Court likewise held that under the rules of statutory construction, repeals of statutes by implication are not favored. "The presumption is against inconsistency and repugnancy for the legislature is presumed to know the existing laws on the subject and not to have enacted inconsistent or conflicting statutes."

44. There was no express repeal of R.A. No. 9173. Nor was there implied repeal. The latter cannot be upheld because as stated, repeals by implication are not greatly favored.

45. Even if Joint Resolution No. 4 does not expressly state that the entry level for government nurses shall be Salary Grade 11, and that it stands in harmony with the intent and spirit of R.A. No. 9173 (which is not), the fact remains that R.A. No. 9173 prevails as a law over a mere Congressional resolution. A law is a product of a legislative act. A resolution is only an expression of sentiment and is not a source of policy.

B.

E.O. NO. 811 IS A USURPATION OF LEGISLATIVE AUTHORITY AS IT CREATES A LAW WITHOUT DELEGATION OF POWER.

46. E.O. No. 811 is akin to an administrative order issued by the Executive Branch that seeks to implement a law. *Lokin vs. Commission on Elections*¹⁷ instructs us that to be valid, an administrative issuance "must comply with the following requisites: (1) Its promulgation must be authorized by the legislature; (2) It must be promulgated in accordance with the prescribed procedure; (3) It must be within the scope of the authority given by the legislature; and (4) It must be reasonable."

¹⁶ G.R. No. 103982 December 11, 1992.

¹⁷ G.R. Nos. 179431-32, June 22, 2010; also *Executive Secretary, et al. v. Southwing Heavy Industries, Inc.*, G.R. No. 164171, March 1 2006, 482 SCRA 673.

47. Moreover, permissible delegation can only be had in the following cases –

- i. Delegation of tariff powers to the President;
- ii. Delegation of emergency powers to the President;
- iii. Delegation to the people at large;
- iv. Delegation to local governments; and
- v. Delegation to administrative bodies.

48. In the present case, the delegation made by Congress to the President may fall under item (v) above. To the mind of Petitioners, however, the test of permissible delegation must still be examined strictly.

49. The Supreme Court held in *Smart Communications, Inc. (SMART) and Pilipino Telephone Corporation (PILTEL) vs. NTC*,¹⁸ –

The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law.¹⁹ They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute. In case of conflict between a statute and an administrative order, the former must prevail.²⁰

50. What is the status of E.O. No. 811 in relation to R.A. No. 9173? To be sure, E.O. No. 811 was issued right after Joint Resolution No. 4 and R.A. No. 9173 were enacted. Joint Resolution No. 4 and R.A. No. 9173 did not provide that the entry level for government nurses should be Salary Grade 11.

¹⁸ G.R. No. 151908, August 12, 2003.

¹⁹ Citing *Romulo, Mabanta, Buenaventura, Sayoc and De Los Angeles v. Home Development Mutual Fund*, G.R. No. 131082, 19 June 2000, 333 SCRA 777, 785-786.

²⁰ Citing *Conte, et al. v. Commission on Audit*, 332 Phil. 20, 36 [1996].

51. To the Petitioners' mind, E.O. No. 811 did not meet legislative restrictions. It provided contents that are inconsistent with R.A. No. 9173. It restricted the power of Congress in determining who gets to enjoy a Salary Grade 15 entry level for government nurses. In other words, what E.O. No. 811 did was to totally enjoy legislative power, one which Congress did not intend to abdicate in favor of the delegate.

52. On this point alone, the Honorable Court must strike down E.O. No. 811.

RESUME'

53. At present, there are currently around 500,000 registered nurses in the country. Every year, the Philippines produces about 38,000 nurses.²¹ Despite this number, there are few opportunities for nurses. In fact, nurses in the Philippines are among the most underpaid professionals. There are just not enough job opportunities even in government hospitals. To feed themselves and earn a better living, nurses go to practice abroad or even consider changing careers.²²

54. Under E.O. No. 811, a Salary Grade 11 government nurse would earn PHP14,198.00 per month on the first tranche. Compare the nurse to a lawyer. A lawyer with a position title of Attorney IV in the Philippine Competition Commission, for example, earns a basic salary of PHP886,800 a year, or PHP73,900.00 a month.²³ In the Commission on Elections (COMELEC), a lawyer with a position title of Attorney I has a salary grade of 16, which, as of January 2018, earns a basic monthly salary of PHP31,765.00.²⁴

55. What does this say? All it shows to the mind of the Petitioners is that there is discrimination against nurses. To become a nurse would mean finishing the four-year Bachelor of Science in Nursing (BSN) course, plus internship programs before one graduates. It is a judicial notice that the nursing course is an expensive one; it drives schools to charge higher tuition than expected. On the other hand, law schools do not necessarily collect the same rate tuition as nursing schools do, but some do not come cheap. Yet, when it comes to the practice of profession, nurses are classified in the "professional category" while lawyers are classified in the "executive category." The truth, however, is that each profession is unique in its own sphere. This classification under Joint Resolution No. 4 and E.O. No. 811

²¹ Del Mundo, H.J. 'Shortage of Hospitals and Health Workers in the Philippines.' February 14, 2018. <https://www.mricg.info/single-post/2018/02/14/Shortage-of-hospitals-and-health-workers-in-the-Philippines?fbclid=IwAR1cOrhr7eBXlh3SAcHFD3XKYNsykOzGBkp7Ymjhh3IFrOpJolSfBm28i8>.

²² Adrian, M. 'This is why Nurses are leaving the country.' August 29, 2018. https://www.imoney.ph/articles/nurse-salary-philippines-abroad/?fbclid=IwAR2JZc3xaXIR7pZgkVD6VpDpohOujldwXwXE6HtCD6pP212yRGGI_OlyUbl

²³ <https://phcc.gov.ph/careers/attorney-iv-anticipated/>

²⁴ http://www.comelec.gov.ph/?r=Vacancies/SalaryGradeTable#grade_16

treats government nurses differently. Government nurses, instead of enjoying a high salary, are given lower salary grades. Both lawyering and nursing are professions, and from a human rights perspective, there is no whale of difference between them.

56. Unless the disparity between nursing and other professions in the government is corrected, the country will lose more nurses to other countries. The Philippine Overseas Employment Agency (POEA) states that almost 19,000 nurses leave every year: a total of 92,277 nurses have left the country to work abroad since 2012.²⁵ The country will lose a huge source of human power as international recruitment will continue unless the economic disparity is corrected here. However, it has been recommended that associations (like the Philippine Nursing Association) will not stop to become advocates from seeking better wages and improved conditions for nurses so that the profession can continue to be practiced in the Philippines.²⁶

RELIEF

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court to –

1. **NULLIFY AND SET ASIDE Executive Order No. 811** for having been legislated or issued by the Respondents acting with grave abuse of discretion amounting to lack or excess of jurisdiction;
2. **ORDER**, by way of mandamus, the Office of the President to withdraw Executive Order No. 811; and
3. **ORDER**, by way of mandamus, the Respondents to implement Republic Act No. 9173.

Other reliefs just and equitable under the premises are likewise prayed for.

Baguio City for Manila, Philippines, this 28 May 2019.

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²⁵ Aranda, C. 'Nurses, Nurses Wanted Everywhere.' In The Manila Times, September 24, 2018. <https://www.manilatimes.net/nurses-nurses-wanted-everywhere/444563/?fbclid=IwAR0IrfHMHpak8ByvknzXU9sll9eJU1Vi3w2ExUCoTxwVOCvFOFY41eOkcQYs>

²⁶ Perin, M.E., Hagopian, A., Sales, A., and Huang B. (2007). 'Nurse Migration and its Implication for Philippine Hospitals.' In International Nursing Review, 54, 219-226. Pdf available online.

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