

EN BANC

G.R. No. 171396 – DAVID et al. v. ARROYO, etc., et al. and related cases (G.R. Nos. 171409, 171483, 171485, 171400, 171424 and 171489)

Promulgated on:

X ----- X

CONCURRING OPINION

PANGANIBAN, CJ:

I was hoping until the last moment of our deliberations on these consolidated cases that the Court would be unanimous in its Decision. After all, during the last two weeks, it decided with one voice two equally contentious and nationally significant controversies involving Executive Order No. 464¹ and the so-called Calibrated Preemptive Response policy.²

However, the distinguished Mr. Justice Dante O. Tinga's Dissenting Opinion has made that hope an impossibility. I now write, not only to express my full concurrence in the thorough and elegantly written *ponencia* of the esteemed Mme. Justice Angelina

¹ *Senate v. Ermita*, GR No. 169777, April 20, 2006.

² *Bayan v. Ermita*, GR No. 169838, April 25, 2006.

Sandoval-Gutierrez, but more urgently to express a little comment on Justice Tinga's Dissenting Opinion (DO).

The Dissent dismisses all the Petitions, grants no reliefs to petitioners, and finds nothing wrong with PP 1017. It labels the PP a harmless pronouncement -- "an utter superfluity" -- and denounces the *ponencia* as an "immodest show of brawn" that "has imprudently placed the Court in the business of defanging paper tigers."

Under this line of thinking, it would be perfectly legal for the President to reissue PP 1017 under its present language and nuance. I respectfully disagree.

Let us face it. Even Justice Tinga concedes that under PP 1017, the police -- "to some minds" -- "may have flirted with power." With due respect, this is a masterful understatement. PP 1017 may be a paper tiger, but -- to borrow the colorful words of an erstwhile Asian leader -- it has nuclear teeth that must indeed be defanged.

Some of those who drafted PP 1017 may be testing the outer limits of presidential prerogatives and the perseverance of this Court in safeguarding the people's constitutionally enshrined liberty. They are playing with fire, and unless prudently restrained, they may one day wittingly or unwittingly burn down the country. History will never forget, much less forgive, this Court if it allows such misadventure and refuses to strike down abuse at its inception. Worse, our people will surely condemn the misuse of legal *hocus pocus* to justify this trifling with constitutional sanctities.

And even for those who deeply care for the President, it is timely and wise for this Court to set down the parameters of power and to make known, politely but firmly, its dogged determination to perform its constitutional duty at all times and against all odds. Perhaps this country would never have had to experience the wrenching pain of dictatorship; and a past President would not have fallen into the precipice of authoritarianism, if the Supreme Court then had the moral courage to remind him steadfastly of his mortality and the inevitable historical damnation of despots and tyrants. Let not this Court fall into that same rut.

ARTEMIO V. PANGANIBAN
Chief Justice