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[G.R. No. 212426, January 12, 2016]

RENE A.V. SAGUISAG, WIGBERTO E. TAÑADA, FRANCISCO "DODONG" NEMENZO, JR., SR. MARY JOHN MANANZAN, PACIFICO A. AGABIN, ESTEBAN "STEVE" SALONGA, H. HARRY L. ROQUE, JR., EVALYN G. URSUA, EDRE U. OLALIA, DR. CAROL PAGADUAN-ARAUULLO, DR. ROLAND SIMBULAN, AND TEDDY CASINO, PETITIONERS, VS. EXECUTIVE PAQUITO N. OCHOA, JR., DEPARTMENT OF NATIONAL DEFENSE SECRETARY VOLTAIRE GAZMIN, OF FOREIGN AFFAIRS SECRETARY ALBERT DEL ROSARIO, JR., DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO ABAD, AND ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL EMMANUEL T. BAUTISTA, RESPONDENTS.

[G.R. No. 212444]

BAGONG ALYANSANG MAKABAYAN (BAYAN), REPRESENTED BY ITS SECRETARY GENERAL RENATO M. REYES, JR., BAYAN MUNA PARTY-LIST REPRESENTATIVES NERI J. COLMENARES AND CARLOS ZARATE, GABRIELA WOMEN'S PARTY-LIST REPRESENTATIVES LUZ ILAGAN AND EMERENCIANA DE JESUS, ACT TEACHERS PARTY-LIST REPRESENTATIVE ANTONIO L. TINIO, ANAKPAWIS PARTY-LIST REPRESENTATIVE FERNANDO HICAP, KABATAAN PARTY-LIST REPRESENTATIVE TERRY RIDON, MAKABAYANG KOALISYON NG MAMAMAYAN (MAKABAYAN), REPRESENTED BY SATURNINO OCAMPO AND LIZA MAZA, BIENVENIDO LUMBERA, JOEL C. LAMANGAN, RAFAEL MARIANO, SALVADOR FRANCE, ROGELIO M. SOLUTA, AND CLEMENTE G. BAUTISTA, PETITIONERS, VS. DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY VOLTAIRE GAZMIN, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERT DEL ROSARIO, EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL EMMANUEL T. BAUTISTA, DEFENSE UNDERSECRETARY PIO LORENZO BATINO, AMBASSADOR LOURDES YPARRAGUIRRE, AMBASSADOR J. EDUARDO MALAYA, DEPARTMENT OF JUSTICE UNDERSECRETARY FRANCISCO BARAAN III, AND DND ASSISTANT SECRETARY FOR STRATEGIC ASSESSMENTS RAYMUND JOSE QUILOP AS CHAIRPERSON AND MEMBERS, RESPECTIVELY, OF THE NEGOTIATING PANEL FOR THE PHILIPPINES ON EDCA, RESPONDENTS.

KILUSANG MAYO UNO, REPRESENTED BY ITS CHAIRPERSON, ELMER LABOG, CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), REPRESENTED BY ITS NATIONAL PRESIDENT FERDINAND GAITE, NATIONAL FEDERATION OF LABOR UNIONS-KILUSANG MAYO UNO, REPRESENTED BY ITS NATIONAL PRESIDENT JOSELITO USTAREZ, NENITA GONZAGA, VIOLETA ESPIRITU, VIRGINIA FLORES, AND ARMANDO TEODORO, JR., PETITIONERS-IN-INTERVENTION,

RENE A.Q. SAGUISAG, JR., PETITIONER-IN-INTERVENTION.

D E C I S I O N**SERENO, C.J.:**

The petitions^[1] before this Court question the constitutionality of the Enhanced Defense Cooperation Agreement (EDCA) between the Republic of the Philippines and the United States of America (U.S.). Petitioners allege that respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction when they entered into EDCA with the U.S.,^[2] claiming that the instrument violated multiple constitutional provisions.^[3] In reply, respondents argue that petitioners lack standing to bring the suit. To support the legality of their actions, respondents invoke the 1987 Constitution, treaties, and judicial precedents.^[4]

A proper analysis of the issues requires this Court to lay down at the outset the basic parameters of the constitutional powers and roles of the President and the Senate in respect of the above issues. A more detailed discussion of these powers and roles will be made in the latter portions.

I. BROAD CONSTITUTIONAL CONTEXT OF THE POWERS OF THE PRESIDENT: DEFENSE, FOREIGN RELATIONS, AND EDCA**A. The prime Duty of the Senate and the Consolidation of Executive Power in the President**

Mataimtim kong pinanunumpaang (o pinatotohanan) na tutuparin ko nang buong katapatan at sigasig ang aking mga tungkulin bilang Pangulo (o Pangalawang Pangulo o Nanunungkulang Pangulo) ng Pilipinas, pangangalagaan at ipagtatangol ang kanyang Konstitusyon, ipatutupad ang mga batas nito, magiging makatarungan sa bawat tao, at itatalaga ang aking sarili sa paglilingkod sa Bansa. Kasihan nawa ako ng Diyos.

— *Panunumpa sa Katungkulan ng Pangulo ng Pilipinas ayon sa Saligang Batas*^[5]

The 1987 Constitution has "vested the executive power in the President of the Republic of the Philippines."^[6] While the vastness of the executive power that has been consolidated in the person of the President cannot be expressed fully in one provision, the Constitution has stated the prime duty of the government, of which the President is the head:

The **prime duty of the Government is to serve and protect the people**. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service.^[7] (Emphases supplied)

B. *The duty to protect the territory and the citizens of the Philippines, the power to call upon the people to defend the State, and the President as Commander-in-Chief*

The duty to protect the State and its people must be carried out earnestly and effectively throughout the whole territory of the Philippines in accordance with the constitutional provision on national territory. Hence, the President of the Philippines, as the sole repository of executive power, is the guardian of the Philippine archipelago, including all the islands and waters embraced therein and all other territories over which it has sovereignty or jurisdiction. These territories consist of its terrestrial, fluvial, and aerial domains; including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas; and the waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions.^[8]

To carry out this important duty, the President is equipped with authority over the Armed Forces of the Philippines (AFP),^[9] which is the protector of the people and the state. The AFP's role is to secure the sovereignty of the State and the integrity of the national territory.^[10] In addition, the Executive is constitutionally empowered to maintain peace and order; protect life, liberty, and property; and promote the general welfare.^[11] In recognition of these powers, Congress has specified that the President must oversee, ensure, and reinforce our defensive capabilities against external and internal threats^[12] and, in the same vein, ensure that the country is adequately prepared for all national and local emergencies arising from natural and man-made disasters.^[13]

To be sure, this power is limited by the Constitution itself. To illustrate, the President may call out the AFP to prevent or suppress instances of lawless violence, invasion or rebellion,^[14] but not suspend the privilege of the writ of habeas corpus for a period exceeding 60 days, or place the Philippines or any part thereof under martial law exceeding that same span. In the exercise of these powers, the President is also duty-bound to submit a report to Congress, in person or in writing, within 48 hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus; and Congress may in turn revoke the proclamation or suspension. The same provision provides for the Supreme Court's review of the factual basis for the proclamation or suspension, as well as the promulgation of the decision within 30 days from filing.

C. *The power and duty to conduct foreign relations*

The President also carries the mandate of being the sole organ in the conduct of foreign relations.^[15] Since every state has the capacity to interact with and engage in relations with other sovereign states,^[16] it is but logical that every state must vest in an agent the authority to represent its interests to those other sovereign states.

The conduct of foreign relations is full of complexities and consequences, sometimes with life and death significance to the nation especially in times of war. It can only be entrusted to that department of government which can act on the basis of the best available information and can decide with decisiveness, x x x It is also the President who possesses the most comprehensive and the most confidential information about foreign countries for our diplomatic and consular officials regularly brief him on meaningful events all over the world. He has also unlimited access to ultra-sensitive military intelligence data. In fine, the presidential role in foreign affairs is dominant and the President is traditionally accorded a wider degree of discretion in the conduct of foreign affairs. The regularity, nay, validity of his actions are adjudged under less stringent standards, lest their judicial repudiation lead to breach of an international obligation, rupture of state relations, forfeiture of confidence, national embarrassment and a plethora of other problems with equally undesirable consequences.^[17]

The role of the President in foreign affairs is qualified by the Constitution in that the Chief Executive must give paramount importance to the sovereignty of the nation, the integrity of its territory, its interest, and the right of the sovereign Filipino people to self-determination.^[18] In specific provisions, the President's power is also limited, or at least shared, as in Section 2 of Article II on the conduct of war; Sections 20 and 21 of Article VII on foreign loans, treaties, and international agreements; Sections 4(2) and 5(2)(a) of Article VIII on the judicial review of executive acts; Sections 4 and 25 of Article XVIII on treaties and international agreements entered into prior to the Constitution and on the presence of foreign military troops, bases, or facilities.

D. *The relationship between the two major presidential functions and the role of the Senate*

Clearly, the power to defend the State and to act as its representative in the international sphere inheres in the person of the President. This power, however, does not crystallize into absolute discretion to craft whatever instrument the Chief Executive so desires. As previously mentioned, the Senate has a role in ensuring that treaties or international agreements the President enters into, as contemplated in Section 21 of Article VII of the Constitution, obtain the approval of two-thirds of its members.

Previously, treaties under the 1973 Constitution required ratification by a majority of the *Batasang Pambansa*,^[19] except in instances wherein the President "may enter into international treaties or agreements as the national welfare and interest may require."^[20] This left a large margin of discretion that the President could use to bypass the Legislature altogether. This was a departure from the 1935 Constitution, which explicitly gave the President the power to enter into treaties only with the concurrence of two-thirds of all the

Members of the Senate.^[21] The 1987 Constitution returned the Senate's power^[22] and, with it, the legislative's traditional role in foreign affairs.^[23]

The responsibility of the President when it comes to treaties and international agreements under the present Constitution is therefore shared with the Senate. This shared role, petitioners claim, is bypassed by EDCA.

II. Historical Antecedents of EDCA

A. U.S. takeover of Spanish colonization and its military bases, and the transition to Philippine independence

The presence of the U.S. military forces in the country can be traced to their pivotal victory in the 1898 Battle of Manila Bay during the Spanish-American War.^[24] Spain relinquished its sovereignty over the Philippine Islands in favor of the U.S. upon its formal surrender a few months later.^[25] By 1899, the Americans had consolidated a military administration in the archipelago.^[26]

When it became clear that the American forces intended to impose colonial control over the Philippine Islands, General Emilio Aguinaldo immediately led the Filipinos into an all-out war against the U.S.^[27] The Filipinos were ultimately defeated in the Philippine-American War, which lasted until 1902 and led to the downfall of the first Philippine Republic.^[28] The Americans henceforth began to strengthen their foothold in the country.^[29] They took over and expanded the former Spanish Naval Base in Subic Bay, Zambales, and put up a cavalry post called Fort Stotsenberg in Pampanga, now known as Clark Air Base.^[30]

When talks of the eventual independence of the Philippine Islands gained ground, the U.S. manifested the desire to maintain military bases and armed forces in the country.^[31] The U.S. Congress later enacted the Hare-Hawes-Cutting Act of 1933, which required that the proposed constitution of an independent Philippines recognize the right of the U.S. to maintain the latter's armed forces and military bases.^[32] The Philippine Legislature rejected that law, as it also gave the U.S. the power to unilaterally designate any part of Philippine territory as a permanent military or naval base of the U.S. within two years from complete independence.^[33]

The U.S. Legislature subsequently crafted another law called the Tydings-McDuffie Act or the Philippine Independence Act of 1934. Compared to the old Hare-Hawes-Cutting Act, the new law provided for the surrender to the Commonwealth Government of "all military and other reservations" of the U.S. government in the Philippines, except "naval reservations and refueling stations."^[34] Furthermore, the law authorized the U.S. President to enter into negotiations for the adjustment and settlement of all questions relating to naval reservations and fueling stations within two years after the Philippines would have gained independence.^[35] Under the Tydings-McDuffie Act, the U.S. President would proclaim the American withdrawal and surrender of sovereignty over the islands 10 years after the inauguration of the new government in the Philippines.^[36] This law eventually led to the promulgation of the 1935 Philippine Constitution.

The original plan to surrender the military bases changed.^[37] At the height of the Second World War, the Philippine and the U.S. Legislatures each passed resolutions authorizing their respective Presidents to negotiate the matter of retaining military bases in the country after the planned withdrawal of the U.S.^[38] Subsequently, in 1946, the countries entered into the Treaty of General Relations, in which the U.S. relinquished all control and sovereignty over the Philippine Islands, *except* the areas that would be covered by the American military bases in the country.^[39] This treaty eventually led to the creation of the post-colonial legal regime on which would hinge the continued presence of U.S. military forces until 1991: the Military Bases Agreement (MBA) of 1947, the Military Assistance Agreement of 1947, and the Mutual Defense Treaty (MDT) of 1951.^[40]

B. Former legal regime on the presence of U.S. armed forces in the territory of an independent Philippines (1946-1991)

Soon after the Philippines was granted independence, the two countries entered into their first military arrangement pursuant to the Treaty of General Relations - the 1947 MBA.^[41] The Senate concurred on the premise of "mutuality of security interest,"^[42] which provided for the presence and operation of 23 U.S. military bases in the Philippines for 99 years or until the year 2046.^[43] The treaty also obliged the Philippines to negotiate with the U.S. to allow the latter to expand the existing bases or to acquire new ones as military necessity might require.^[44]

A number of significant amendments to the 1947 MBA were made.^[45] With respect to its duration, the parties entered into the Ramos-Rusk Agreement of 1966, which reduced the term of the treaty from 99 years to a total of 44 years or until 1991.^[46] Concerning the number of U.S. military bases in the country, the Bohlen-Serrano Memorandum of Agreement provided for the return to the Philippines of 17 U.S. military bases covering a total area of 117,075 hectares.^[47] Twelve years later, the U.S. returned Sangley Point in Cavite City through an exchange of notes.^[48] Then, through the Romulo-Murphy Exchange of Notes of 1979, the parties agreed to the recognition of Philippine sovereignty over Clark and Subic Bases and the reduction of the areas that could be used by the U.S. military.^[49] The agreement also provided for the mandatory review of the treaty every five years.^[50] In 1983, the parties revised the 1947 MBA through the Romualdez-Armacost Agreement.^[51] The revision pertained to the operational use of the military bases by the U.S. government within the context of Philippine sovereignty,^[52] including the need for prior consultation with the Philippine government on the former's use of the bases for military combat operations or the establishment of long-range missiles.^[53]

Pursuant to the legislative authorization granted under Republic Act No. 9,^[54] the President also entered into the 1947 Military

Assistance Agreement^[55] with the U.S. This executive agreement established the conditions under which U.S. military assistance would be granted to the Philippines,^[56] particularly the provision of military arms, ammunitions, supplies, equipment, vessels, services, and training for the latter's defense forces.^[57] An exchange of notes in 1953 made it clear that the agreement would remain in force until terminated by any of the parties.^[58]

To further strengthen their defense and security relationship,^[59] the Philippines and the U.S. next entered into the MDT in 1951. Concurred in by both the Philippine^[60] and the U.S.^[61] Senates, the treaty has two main features: *first*, it allowed for mutual assistance in maintaining and developing their individual and collective capacities to resist an armed attack;^[62] and *second*, it provided for their mutual self-defense in the event of an armed attack against the territory of either party.^[63] The treaty was premised on their recognition that an armed attack on either of them would equally be a threat to the security of the other.^[64]

C. Current legal regime on the presence of U.S. armed forces in the country

In view of the impending expiration of the 1947 MBA in 1991, the Philippines and the U.S. negotiated for a possible renewal of their defense and security relationship.^[65] Termed as the Treaty of Friendship, Cooperation and Security, the countries sought to recast their military ties by providing a new framework for their defense cooperation and the use of Philippine installations.^[66] One of the proposed provisions included an arrangement in which U.S. forces would be granted the use of certain installations within the Philippine naval base in Subic.^[67] On 16 September 1991, the Senate rejected the proposed treaty.^[68]

The consequent expiration of the 1947 MBA and the resulting paucity of any formal agreement dealing with the treatment of U.S. personnel in the Philippines led to the suspension in 1995 of large-scale joint military exercises.^[69] In the meantime, the respective governments of the two countries agreed^[70] to hold joint exercises at a substantially reduced level.^[71]

The military arrangements between them were revived in 1999 when they concluded the first Visiting Forces Agreement (VFA).^[72]

As a "reaffirm[ation] [of the] obligations under the MDT,"^[73] the VFA has laid down the regulatory mechanism for the treatment of U.S. military and civilian personnel visiting the country.^[74] It contains provisions on the entry and departure of U.S. personnel; the purpose, extent, and limitations of their activities; criminal and disciplinary jurisdiction; the waiver of certain claims; the importation and exportation of equipment, materials, supplies, and other pieces of property owned by the U.S. government; and the movement of U.S. military vehicles, vessels, and aircraft into and within the country.^[75] The Philippines and the U.S. also entered into a second counterpart agreement (VFA II), which in turn regulated the treatment of Philippine military and civilian personnel visiting the U.S.^[76] The Philippine Senate concurred in the first VFA on 27 May 1999.^[77]

Beginning in January 2002, U.S. military and civilian personnel started arriving in Mindanao to take part in joint military exercises with their Filipino counterparts.^[78] Called *Balikatan*, these exercises involved trainings aimed at simulating joint military maneuvers pursuant to the MDT.^[79]

In the same year, the Philippines and the U.S. entered into the Mutual Logistics Support Agreement to "further the interoperability, readiness, and effectiveness of their respective military forces"^[80] in accordance with the MDT, the Military Assistance Agreement of 1953, and the VFA.^[81] The new agreement outlined the basic terms, conditions, and procedures for facilitating the reciprocal provision of logistics support, supplies, and services between the military forces of the two countries.^[82] The phrase "logistics support and services" includes billeting, operations support, construction and use of temporary structures, and storage services during an approved activity under the existing military arrangements.^[83] Already extended twice, the agreement will last until 2017.^[84]

D. The Enhanced Defense Cooperation Agreement

EDCA authorizes the U.S. military forces to have access to and conduct activities within certain "Agreed Locations" in the country. It was not transmitted to the Senate on the executive's understanding that to do so was no longer necessary.^[85] Accordingly, in June 2014, the Department of Foreign Affairs (DFA) and the U.S. Embassy exchanged diplomatic notes confirming the completion of *all* necessary internal requirements for the agreement to enter into force in the two countries.^[86]

According to the Philippine government, the conclusion of EDCA was the result of intensive and comprehensive negotiations in the course of almost two years.^[87] After eight rounds of negotiations, the Secretary of National Defense and the U.S. Ambassador to the Philippines signed the agreement on 28 April 2014.^[88] President Benigno S. Aquino III ratified EDCA on 6 June 2014.^[89] The OSG clarified during the oral arguments^[90] that the Philippine and the U.S. governments had yet to agree formally on the specific sites of the Agreed Locations mentioned in the agreement.

Two petitions for *certiorari* were thereafter filed before us assailing the constitutionality of EDCA. They primarily argue that it should have been in the form of a treaty concurred in by the Senate, not an executive agreement.

On 10 November 2015, months after the oral arguments were concluded and the parties ordered to file their respective memoranda, the Senators adopted Senate Resolution No. (SR) 105.^[91] The resolution expresses the "strong sense"^[92] of the Senators that for EDCA to become valid and effective, it must first be transmitted to the Senate for deliberation and concurrence.

III. Issues

Petitioners mainly seek a declaration that the Executive Department committed grave abuse of discretion in entering into EDCA in the form of an executive agreement. For this reason, we cull the issues before us:

A. Whether the essential requisites for judicial review are present

B. Whether the President may enter into an executive agreement on foreign military bases, troops, or facilities

C. Whether the provisions under EDCA are consistent with the Constitution, as well as with existing laws and treaties

IV. Discussion

A. Whether the essential requisites for judicial review have been satisfied

Petitioners are hailing this Court's power of judicial review in order to strike down EDCA for violating the Constitution. They stress that our fundamental law is explicit in prohibiting the presence of foreign military forces in the country, except under a treaty concurred in by the Senate. Before this Court may begin to analyze the constitutionality or validity of an official act of a coequal branch of government, however, petitioners must show that they have satisfied all the essential requisites for judicial review.

Distinguished from the general notion of judicial power, the power of judicial review specially refers to both the authority and the duty of this Court to determine whether a branch or an instrumentality of government has acted beyond the scope of the latter's constitutional powers. As articulated in Section 1, Article VIII of the Constitution, the power of judicial review involves the power to resolve cases in which the questions concern the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation.^[95] In *Angara v. Electoral Commission*, this Court exhaustively discussed this "moderating power" as part of the system of checks and balances under the Constitution. In our fundamental law, the role of the Court is to determine whether a branch of government has adhered to the specific restrictions and limitations of the latter's power.^[96]

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, x x x. **And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.**

x x x x

As any human production, **our Constitution** is of course lacking perfection and perfectibility, but as much as it was within the power of our people, acting through their delegates to so provide, that instrument **which is the expression of their sovereignty** however limited, **has established a republican government intended to operate and function as a harmonious whole, under a system of checks and balances, and subject to specific limitations and restrictions provided in the said instrument. The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms.** Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution, x x x. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of [the 1935] Constitution.

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. **And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.** This is in truth all that is involved in what is termed "judicial supremacy" **which properly is the power of judicial review under the Constitution,** x x x x. (Emphases supplied)

The power of judicial review has since been strengthened in the 1987 Constitution. The scope of that power has been extended to the determination of whether in matters traditionally considered to be within the sphere of appreciation of another branch of government, an exercise of discretion has been attended with grave abuse.^[97] The expansion of this power has made the political question doctrine "no longer the insurmountable obstacle to the exercise of judicial power or the impenetrable shield that protects executive and legislative actions from judicial inquiry or review."^[98]

This moderating power, however, must be exercised carefully and only if it cannot be completely avoided. We stress that our Constitution is so incisively designed that it identifies the spheres of expertise within which the different branches of government shall function and the questions of policy that they shall resolve.^[99] Since the power of judicial review involves the delicate exercise of examining the validity or constitutionality of an act of a coequal branch of government, this Court must continually exercise restraint