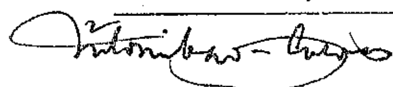
EN BANC

"G.R. No. 252578 (*Atty. Howard M. Calleja, et al. v. Executive Secretary, et al.*); G.R. No. 252579 (*Rep. Edcel C. Lagman v. Salvador C. Medialdea, et al.*); G.R. No. 252580 (*Melencio S. Sta. Maria, et al. v. Salvador C. Medialdea, et al.*); G.R. No. 252585 (*Bayan Muna Party-List Representative Carlos Isagani T. Zarate, et al. v. President Rodrigo Duterte, et al.*); G.R. No. 252613 (*Rudolf Philip B. Jurado v. The Anti-Terrorism Council, et al.*); G.R. No. 252623 (*CTUHR, et al. v. Hon. Rodrigo R. Duterte, et al.*); G.R. No. 252624 (*Christian S. Monsod, et al. v. Salvador C. Medialdea, et al.*); G.R. No. 252646 (*SANLAKAS v. Rodrigo R. Duterte, et al.*); G.R. No. 252702 (*Federation of Free Workers, et al. v. Office of the President, et al.*); G.R. No. 252726 (*Jose J. Ferrer, Jr. v. Salvador C. Medialdea, et al.*); G.R. No. 252733 (*Bagong Alyansang Makabayan, et al. v. Rodrigo R. Duterte, et al.*); G.R. No. 252736 (*Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.*); G.R. No. 252741 (*Ma. Ceres P. Doyo, et al. v. Salvador Medialdea, et al.*); G.R. No. 252747 (*National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al.*); G.R. No. 252755 (*Kabataang Tagapagtanggol ng Karapatan, et al. v. Executive Secretary*); G.R. No. 252759 (*Algamar A. Latiph, et al. v. Senate, et al.*); G.R. No. 252765 (*Alternative Law Groups, Inc. v. Salvador C. Medialdea*); G.R. No. 252767 (*Bishop Broderick S. Pabillo, et al. v. Rodrigo R. Duterte, et al.*); G.R. No. 252768 (*GABRIELA, et al. v. Rodrigo Duterte, et al.*); UDK 16663 (*Lawrence A. Yerbo v. Senate President, et al.*); G.R. No. 252802 (*Henry Abendan, et al. v. Salvador C. Medialdea, et al.*); G.R. No. 252809 (*Concerned Online Citizens, et al. v. Salvador C. Medialdea, et al.*); G.R. No. 252903 (*Concerned Lawyers for Civil Liberties, et al. v. Rodrigo Duterte, et al.*); G.R. No. 252904 (*Beverly Longid, et al. v. Anti-Terrorism Council, et al.*); G.R. No. 252905 (*Center for International Law, et al. v. Senate of the Philippines, et al.*); G.R. No. 252916 (*Main T. Mohammad v. Salvador C. Medialdea*); G.R. No. 252921 (*Brgy. Maglaking San Carlos City, Pangasinan Sangguniang Kabataan Chairperson Lemuel Gio Fernandez Cayabyab v. Rodrigo R. Duterte*); G.R. No. 252984 (*Association of Major Religious Superiors in the Phils., et al. v. Exec. Secretary Salvador C. Medialdea, et al.*); G.R. No. 253018 (*UP System Faculty Regent Dr. Ramon Guillermo, et al. v. Pres. Rodrigo R. Duterte, et al.*); G.R. No. 253100 (*Philippine Bar Association v. Executive Secretary, et al.*); G.R. No. 253118 (*Balay Rehabilitation Center, Inc., et al. v. Rodrigo R. Duterte, et al.*); G.R. No. 253124 (*Integrated Bar of the Phils., et al. v. Senate of the Philippines, et al.*); G.R. No. 253242 (*Coordinating Council for People's Development and Governance Inc., et al. v. Rodrigo R. Duterte, et al.*); G.R. No. 253252 (*Philippine Misereor Partnership, Inc., et al. v. Salvador C. Medialdea, et al.*); G.R. No. 253254 (*Pagkakaisa ng Kababaihan para sa Kalayaan, et al. v. Anti-Terrorism Council, et al.*); G.R. No. 253420 (*Haroun Alrashid Alonto Lucman, Jr., et al. v. Salvador C. Medialdea, et al.*); G.R. No. 254191 [Formerly UDK 16714] (*Anak Mindanao Party-List Representative Amihilda Sangcopan, et al. v. Salvador C. Medialdea, et al.*).

Promulgated:
December 7, 2021



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CONCURRING AND DISSENTING OPINION

GESMUNDO, *C.J.*:

"[T]he possibility of abuse is not argument against the concession of the power as there is no power that is not susceptible of abuse.... All the possible abuses of the government are not intended to be corrected by the judiciary.... All the agencies of the government were designed by the Constitution to achieve specific purposes, and each constitutional organ working within its own particular sphere of discretionary action must be deemed to be animated with the same zeal and honesty in accomplishing the great ends for which they were created by the sovereign will. That the actuations of these constitutional agencies might leave much to be desired in given instances, is inherent in the perfection of human institutions."

- Justice Jose P. Laurel in Angara v. Electoral Commission, *et al.*[1]

I submit this Concurring and Dissenting Opinion to reflect my views, perspectives, and conclusions on the rich yield of petitions, all of them challenging the constitutionality of the Anti-Terrorism Act of 2020 (R.A. No. 11479, or the "ATA," for brevity).[2]

I respectfully dissent from the majority vote on the following procedural issues, to wit:

1. That thirty-five (35) petitions are admissible for judicial review as **facial challenges** and **cases of transcendental importance**. I respectfully vote only to admit four (4) petitions - G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 – as as-applied challenges; and

2. That **strict scrutiny** is the appropriate level of the judicial review of the ATA.

The reasons for my dissent on the procedural issues are set out in this Opinion.

I concur with the following majority vote on the substantive issues, to wit:

[1] 63 Phil. 139, 177-178 (1936).

[2] R.A. No. 11479 was signed into law on July 3, 2020.

1. That **Sections 4(a), (b), (c), (d), (e)**; the phrase "*organized for the purpose of engaging in terrorism*" in **Section 10**; **Sections 26 to 28**; and **Section 29** of the ATA are not unconstitutional; and

2. That the **first and third modes of designation** as set out in **Section 25** of the ATA are not unconstitutional.

I respectfully dissent from the following majority vote on the substantive issues, to wit:

1. That the proviso "**which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety**" in **Section 4** of the ATA is unconstitutional; and

2. That the **second mode of designation** in **Section 25** of the ATA is unconstitutional.

The reasons for my concurrence and dissent on the substantive issues are set out in this Opinion.

My personal views on the above-mentioned provisions, as well as other assailed provisions of the ATA, in the context of the as-applied challenges presented by the four previously stated petitions, are contained in this Concurring and Dissenting Opinion.

PREFATORY STATEMENT

Thirty-seven (37) petitions (filed by 15 individuals, 7 organizations, and 15 combinations of individuals and organizations) are now before Us, challenging the constitutionality of the ATA – the government's most recent response to terrorism. This response and renewed will to fight terrorism come almost two (2) decades after the horrific World Trade Center bombing in New York City on September 11, 2001,[3] and almost three (3) years after our country's prolonged terrorism experience in Marawi City from May 23 to October 23, 2017.[4]

The Marawi carnage was no less gruesome than the World Trade Center terror attack: a 5-month long siege; the destruction of Marawi City;

[3] A total of 2,819 perished in New York City alone while 193 (68 of these on American Airlines Flight 77) died at Pentagon, Virginia. Another 45 lost their lives in the downing of United Airlines Flight 93 in Shanksville, Pennsylvania. In sum, 3,057 people expired on September 11, 2001 due to the coordinated terrorist attacks. (Population and Development Review, Vol. 28, No. 3, September 2002, p. 586); *see* The National Commission on Terrorist Attacks Upon the United States (2004, July 22) THE 9/11 COMMISSION REPORT: Final Report of the National Commission on Terrorist Attacks Upon the United States at https://www.govinfo.gov/content/pkg/GPO-911REPORT/pdf/GPO-911REPORT.pdf.
[4] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2017 (Bureau of Counterterrorism), pp. 60-62.

and multiple deaths: 150 security forces, 47 civilians, and more than 800 militants; with more than 1,780 hostages rescued and 400,000 residents of Marawi displaced.[5] It was also only one of the many terrorist attacks that the country suffered.

Before Marawi, terror attacks took place on November 27, 2011 at Zamboanga City;[6] on March 3, 2012 at Jolo;[7] and on September 2, 2016 at Davao City,[8] among others. After Marawi, other terrorist attacks came in varying levels of intensity and notoriety but all of them *taking their toll on innocent Filipino lives*. Among these attacks were: the January 27, 2019 Jolo Cathedral suicide bombing;[9] the June 28, 2019 Indanan suicide bombing perpetrated by the first known Filipino suicide bomber;[10] the September 8, 2019 bombing also in Indanan, Sulu,[11] and the August 24, 2020 Jolo suicide bombing.[12]

Because of these developments, I am not surprised that even some of the present petitioners acknowledge the need to fight terrorism. Interestingly, the consolidated petitions are not the first opposition to the country's anti-terrorism responses. The country's earliest response, R.A. No. 9372, or the Human Security Act of 2007[13] *(HSA),* was similarly challenged but the Court significantly upheld its constitutionality albeit under the *ponencia* of a magistrate who now stands as a petitioner opposing the ATA.[14]

Since Marawi, times have changed but terrorism still exists. It has not only flourished; it has worsened.[15] Thus, Congress thought it best, in the exercise not only of police power but also of collective and individual preservation, to craft another anti-terrorism law – the *Anti-Terrorism Act (ATA) of 2020* that the petitioners now challenge. The legislative decision involved a policy issue that lies within the prerogative of Congress; policy-wise and under the separation of powers principle, this law and its measures lie outside the reach of this Court, save only when grave abuse of discretion

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[5] Id. at 280.
[6] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2011 (Bureau of Counterterrorism), pp. 46-49.
[7] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2012 (Bureau of Counterterrorism), pp. 51-53.
[8] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2016 (Bureau of Counterterrorism), pp. 83-88.
[9] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2019 (Bureau of Counterterrorism), pp. 53-55.
[10] At least 8 persons perished while around 20 were wounded in this attack. (U.S. State Department, COUNTRY REPORTS ON TERRORISM 2019 (Bureau of Counterterrorism), p. 55.)
[11] Supra note 9 at 55.
[12] "The ASG killed more than a dozen people and injured more than 70 others in twin bombings. A female suicide bomber detonated a motorcycle bomb near a military truck next to a food market. An hour later, another female suicide bomber approached the area and detonated a bomb, likely targeting first respondents." (U.S. State Department, COUNTRY REPORTS ON TERRORISM 2020 (Bureau of Counterterrorism), pp. 55-56.)
[13] R.A. No. 9372 was passed on March 6, 2007.
[14] Justice Conchita C. Morales, in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010).
[15] Respondents' Memorandum, Vol. III, pp. 573-577.

or unconstitutionality intervenes.

In the present round of ATA challenges, the petitioners focus their objections on the means and measures that Congress has chosen to use in fighting terrorism. They claim that these are constitutionally unpalatable for exceeding established constitutional limits; the government, too, allegedly took unjustified liberties for its own private purposes in crafting the ATA.

The petitioners allege that the following constitutional provisions have been violated: the due process clause; the equal protection clause; the right against unreasonable searches and seizures; the right to privacy of communication and correspondence; the freedom of speech clause, along with its contingent rights; the free exercise clause; the right to travel; the right to information; the right of association; the right against incommunicado detention; the right to bail; the right to be presumed innocent; the rights of a person under custodial detention; the privilege of the writ of habeas corpus; the right to speedy disposition of cases; the prohibition against involuntary servitude; the right against cruel, degrading or inhuman punishment; the right against *ex post facto* laws and bills of attainder; the right to self-determination; the separation of powers among the three departments of the government; the principle of academic freedom; and the constitutionally prescribed procedure in passing legislation.

The petitioners likewise posit, along libertarian lines, that the Court should strictly adhere to constitutional terms in reading, interpreting, and applying the text of the Constitution to their challenges. They apparently expect the Court, under this norm, to conclude that the ATA is ridden with constitutional infirmities and should be declared wholly invalid.

I am fully aware of the level of scrutiny that must be observed in resolving the consolidated petitions, as no less than blood and guts issues are involved, pitting individual and collective claims of constitutional transgressions against the government's bid to protect national sovereignty, our people's security, and their right to life. It is undeniable that the highest individual and collective interests are at stake. This situation alone renders Us aware of the care and sensitivity that must be observed in acting and ruling on these cases.

For the sake of clarity, it must be remembered that our laws carry the disputable presumption of validity and their implementation is similarly presumed regular.[16] Thus, the petitioners carry the burden of showing that

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[16] In *Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management* 686 Phil. 357, 372-373 (2012), the Court reiterated that "[e]very statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. Every presumption should be indulged in favor of the constitutionality and the burden of proof is on the party alleging that there is a clear and unequivocal breach of the Constitution.

the disputed ATA violates the Constitution.[17] This has been this Court's starting premise from its earliest days in examining the validity of laws, regulations and governmental acts, and shall be the norm that this Court should now follow.[18]

Everyone should likewise remember, as a matter of established law, that any Constitution-based challenge to governmental actions is undertaken through constitutional litigation, a process that may not at all be easy to undertake: the process is not as simple as many people think it to be, nor is it as permissive as some of the petitions appear to suggest.

Another point that is best raised now – a mix of the legal and the practical – is that the Court's disquisition today is not and cannot be a complete solution to all the hidden and expressed woes on terrorism, whether from the government side or from those of the petitioners. Considering terrorism's complexity, as will amply be shown below, there is no magic wand to get all the attendant conflicts and problems immediately resolved.

Thus, the Court's ruling, although final on the litigated issues, may only be a beginning, an initial illumination to lighten the darkness that both parties predict will engulf the country should their respective causes fail. For this Court, I implore that We recognize that the country has a long way to go in its battle against terrorism; whichever way the present dispute might go, the fight against terrorism must proceed and should be as continuous as the efforts of the terrorists in sowing chaos for their nefarious aims. Only by continued and comprehensive efforts on everybody's part can we address the menace facing us. In the meanwhile, we need to address and resolve the doubts and misgivings hindering our national effort against terrorism.

What assumes importance for now is the airing and the resolution of all existing problems, disagreements and misgivings, and our continuing efforts to address them, either by the legislation that today is disputed and those that are yet to come; by the implementation that follows every legislative act; or by the adjudication, such as the current one, through which the country avoids festering disputes.

To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because 'to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.' This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down." (citations omitted)

[17] Id.

[18] See *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306 (1967); *Morfe v. Mutuc*, 130 Phil. 415 (1968).

The gravity of the issues before us – national sovereignty and national security (*that translates, at the individual level, to the protection of the right to life of innocent victims of terrorism*) versus the protection of individual legal and constitutional rights and of democratic ideals – cannot but play a big part in our actions on the consolidated petitions. We are assisted in this task, in no small measure, by the very enlightening counsel of our *amici curiae* – former Chief Justice Reynato Puno and former Associate Justice Francis Jardeleza.

Our former Chief Justice impressed upon us, after walking us through the evolution of terrorism, that what we see today are new developments in man's history of threats to peace and security.[19] Former Associate Justice Jardeleza, on the other hand, candidly outlined – through his *Gios-Samar v. Department of Transportation and Communications*[20] (*Gios-Samar,* for brevity) ruling – the fate that awaits this Court and the country if We would wholly and solely be swayed by idealism in conducting our adjudication; if We disdain concerns for practicality; and if We fail to show a firm hand in applying the brakes on the current and potential influx of cases from the litigating public.

Terrorism is destructive and deadly and is at the same time a more resilient and cunning foe: it is clandestine, swift, elusive and is difficult to immediately detect, deter, and apprehend.[21] It does not recognize front lines nor respect national boundaries; it can be anywhere and at the least expected places, and can change its face seemingly at will, as it mutates as actors, means, methods, and targets change. We cannot thus view terrorism as an act of violence alone that we can deal with in the manner we handle other criminal acts involving violence. We cannot simply act in the way the police and the prosecutors handle murder, or the rebellion that, at its worst, we can address through martial law.[22]

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[19] *See* Position Paper of Chief Justice Reynato Puno (ret.) as *amicus curiae*, undated.
[20] G.R. No. 217158, March 12, 2019.
[21] *See* Position Paper of Chief Justice Reynato Puno (ret.) as *amicus curiae*, undated.
[22] The 1987 Constitution provides:

SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and

In dealing with terrorism, we should utilize all possible kinds of legally available measures and approaches – **pre-emptive, preventive, proactive, remedial,** and **rehabilitative**. Lives saved through prevention are as important as the injured ones saved from death in the terrorism that we failed to prevent. We should similarly tread carefully in considering the merits of the present cases lest we defeat the legislative purpose and the objectives of our Constitution through overzealous legalism, imaginative speculation, or very narrow perspectives.

We should likewise be reminded that our anti-terrorist authorities cannot act alone in protecting the public whose physical safety as well as constitutional rights may be at risk in the fight against terrorism. Either way, we cannot allow our authorities to engage in their protective duties while ill-equipped. They need and must be given ample support by all our people and by government, from the lowest to the highest levels. With everybody's support, we can win and in fact have won many times under our chosen democratic ways.

To cite a notable past example, albeit a foreign one, the air-riding public must be aware that the airport authorities are now very strict in the regulation of airport pre-boarding procedures. What they may not know is the reason why air passengers' personal belongings, even their cosmetics and liquid personal effects, are now subjected to highly restrictive inspections and cannot simply be brought on board.

The reason arose from a highly successful but unheralded operation in 2006 against terrorists who sought to blow up planes coming from the United Kingdom to the United States. The plot sought to use liquid explosives to destroy the United States-bound aircrafts.[23]

According to news accounts concerning the incident, the terrorists, guided by the Al-Qaeda had been able to prepare bombs from materials commonly bought over the counter in our malls and groceries – hydrogen peroxide, a common orange drink, and AA batteries. It was further reported that the authorities in Britain believed that hydrogen peroxide was the liquid explosive component, the orange juice was the fuel component, and the AA batteries were intended to conceal the hexamethylene triperoxide diamine

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agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

[23] United States at the Ninth Meeting of Directors of Civil Aviation of the Central Caribbean (C/CAR/DCA/9) at Oranjestad Aruba, 9 to 12 July 2007. *Carriage of Duty Free Liquids, Gels, And Aerosols In Cabin Baggage –Working Toward A Global Response To Immediate Threats.* at https://www.icao.int/Meetings/AMC/MA/2007/9CCARDCA/9ccardcaip04.pdf

(*HMTD*), which constituted the detonator component.[24]

News accounts also recounted that the terrorists planned to bring these innocuous materials on board; mix them during flight; and set them to explode mid-flight. It was further reported that, as planned, 7 planes going to American and Canadian cities would have exploded at about the same time over the Atlantic Ocean, killing all those on board and at the same time obliterating traces of how the explosion happened.[25]

Counter-operations against these types of terrorism take time, open and covert efforts, substantial resources, political will, and a very significant amount of coordination and cooperation among nations at the international level.

As in any war, operations of this nature often translate to loss of lives of both friends and foes alike, and, at times, may cause the temporary loss or suspension of highly prized individual rights during unavoidable covert operations. When searches, seizures, surveillance, arrests, and detentions take place, lives may temporarily be disrupted and properties damaged or lost, with or without the strict observance of the legal niceties that normal times absolutely require.[26]

These realities are mentioned, not to justify any attendant or consequent illegalities nor to defend restrictive laws or regulations, *but simply to recognize that they do happen and to emphasize how vicious terrorism is and how urgent it needs to be adequately checked.*

We bury our heads in the sand if we say that these kinds of realities should now prevent us from passing laws requiring strict measures, both preventive and remedial, to address terrorism. We irresponsibly put the nation at risk when we say that we should not pass these laws because of the attendant and consequent illegalities and abuses that *could* take place.

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[24] "Using a sealed 17-ounce sports drink, the men planned to drain the plastic bottle through a tiny hole in the bottom and then inject an explosive mix of concentrated hydrogen peroxide, along with food coloring to make it look like the original beverage. An instant glue would seal it shut. AA batteries filled with the explosive HMTD would serve as the detonator; a disposable camera would serve as the trigger.
Prosecutors said the men had planned to carry the components onto seven trans-Atlantic planes, assemble them and then explode them in midair." (Sciolino, E. The New York Times. *In '06 Bomb Plot Trial, a Question of Imminence.* [July 15, 2008] at https://www.nytimes.com/2008/07/15/world/europe/15terror.html)

[25] Id.
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[26] Respondents' Memorandum, Volume III, p. 608.

To fully do our duty to protect the nation and the lives of our people, we must embrace reality and do what We must and can do, simply because terrorism, an intrinsic evil, exists and must be prevented and fought. Abuses are realities in the fight against terrorism, but these are separate problems which should not be confused with terrorism.

While there can be built-in, or the possibility of added, counter-abuse measures in the ATA to guard against or respond to the possibility of abuses, our role as a Court is not to inject these kinds of wisdom into, or second guess Congress which formulated these measures; Our role is simply to test the ATA against the requirements of our Constitution.

One guiding principle this Court observes in the exercise of judicial power and judicial review is to exercise *restraint* in recognition of the democratic mandate of the executive and legislative branches, as well as the vast resources and expertise that they contribute in the formulation of police power measures. Judicial restraint is not deference but simply a measured response in considering challenges to a law that has been forged for a public purpose by two co-equal branches of government.[27]

For now, practicality and the urgency of thwarting terrorism soonest demand that We rule on the ATA as We find it today and let Congress and the nation approach any possible abuses separately and differently; they constitute another kind of menace that require and are best met with separate and different approaches and counter-measures.

What We should not do or allow to be done, as a Court, is to consciously allow the passage or the interpretation of laws and measures that would and could foreseeably and unreasonably disregard the legal and constitutional rights and guarantees afforded citizens and the public in our normal lives under normal times.

If we stoop to this level, we would be no different from the terrorists who simply look to their objectives and disregard the legality or morality of their means. We must not, and we cannot, fight at this self-defeating level. If we do, we may temporarily save lives or notch temporary victories, but at the cost of our chosen way of life and, ultimately, even our basic and foundational values and beliefs as a people and as a nation. Real victory can only come if we fight terrorism under our own democratic and constitutional terms although we know that these approaches, at times, may not be the most expedient and the most immediately effective.

Like any other Filipino institution, the Court is obligated to join the nation's fight against terrorism. A measure it can undertake now, on Its own and as part of Its obligations under the Constitution, is to fully recognize and

[27] *Joint Ship Manning Group, Inc. v. Social Security System*, G.R. No. 247471, July 7, 2020.

adjust to the new realities that terrorism poses, without however bowing to and using terrorism's unlimited and ignoble goals, means, and methodologies. In so doing, We must ensure that the national effort is undertaken in a principled way, in the way of the Constitution that We are sworn to defend.

As We adjudicate today, the Court must be strict but it must – above all – be fair; it must be sensitive to the plight of the individual and his rights under the Constitution, but it must also be conscious of the State and of the State's own needs and purposes under the same Constitution. This is the sense of fairness the Court extends to the parties, and, most especially, to the Filipino people whose interests, though not fully articulated, should be foremost in our minds.

Our most available equalizer in undertaking our judicial duty is the keen awareness and the careful analysis we can give when we appreciate the facts and when we read and interpret our laws. We must remember the past; the evolution that terrorism has undergone; our previous encounters with terrorism inside and outside our courts (such as in our *Southern Hemisphere* ruling); and the developments that have transpired since then, nationally and internationally.

Moreover, this Court must never lose sight of the attributes and characteristics of the terrorism menace now facing the country. To its negative attributes, We must apply the full rigors of our laws while being sensitive to the rights and needs of individuals and the ideals that our democratic life imposes on us.

From a defensive perspective, this Court cannot and must not be tied to the remedial measures the country has applied in the past and which measures have failed us. Our approaches and rulings must also evolve in order to be ahead, or at the very least, be at pace with, terrorism's evolution. The Court cannot – as in simple mathematics – simply substitute and apply its *Southern Hemisphere* ruling to our present circumstances. Most of all, the Court must be very discerning and sensitive to changes and attendant nuances, and accept this awareness to be part of being strict and of being fair.

Lastly, the Court needs a grand view of the conflicting interests of the State and of individual citizens, and be ready to address their respective interests, if possible, without one fully negating the other. If this kind of choice is not possible, then the Court should not shirk from doing its sworn duty; It must then weigh and choose from among the open options to achieve the policy that the law seeks to put in place while protecting the nation and citizens' rights to the utmost. It must undertake this task while being sensitive and sufficiently prescient to the consequences of Its choices.

This approach is the **balancing approach** that, as applied to terrorism and the constitutional challenges now before the Court, considers the need to combat terrorism effectively but in a way that does not fully negate the individual constitutional rights of citizens if such ideal medium can be found.

This means that the Court shall not simply fully focus on one side or the other in the present dispute. It cannot give full protection to the interests of the State at the expense of the protection of individual constitutional rights, or *vice versa.* The Court must have all interests in mind - individual as well as collective, properly weighed and considered - in resolving the pending disputes.

The alternative to this balancing approach, to our mind, is to play into one of the unstated aims of the terrorists – to indirectly and *by slow accretion* destroy our society as a community existing under the rule of law, justice, and democracy. The terrorists would be one step closer to destroying our national sovereignty and security, if and when they achieve this unexpressed aim. I need not stress that our society cannot exist for long if terrorism triumphs, nor exist as a democracy without the respect for the Constitution and the individual rights it embodies.

Another aspect of judicial review that this proposal seeks to address is that, in the exercise of judicial power, a currently noticeable tendency in court rulings is to veer away from their sworn duty of settling rights and obligations or determining the presence of grave abuse of discretion on the part of the government by unwittingly determining policies themselves, an exercise of power reserved for the political branches. This anomaly has come to be known as "judicial legislation" where a court "engraft[s] upon a law something that has been omitted which [the court] believes ought to have been embraced," as opposed to finding a statute's true meaning by way of liberal construction.[28]

In cases that could give rise or lead to murky complications (as in counter-terrorism), courts often run the danger of judicially legislating their interpretations into the Constitution or into statute books in an attempt to balance civil liberties with compelling or legitimate State interests, albeit made with no intention to favor one side or the other. An alarming danger posed by this kind of move in situations ridden with complexities is either the exposure of civil liberties to State abuses, or the exposure of the People's safety and health to lawless elements. Both scenarios do not favor the People who should not be forced or be expected to choose between either ends of this spectrum. Thus, the courts should now recognize the need to refine judicial review tools to allow them to be used surgically to carve out the constitutionally offending parts of a penal or regulatory statute and preserve

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[28] *Tañada v. Yulo*, 61 Phil. 515, 519 (1935).

the compelling State interest component of an offending statute. This manner of judicial review is achieved by adopting the method of *narrow construction* or *tailoring*.[29]

A well-settled rule is that the Constitution, being the "fundamental paramount and supreme law" is deemed written in every statute.[30] Thus, all laws are invalidated or modified accordingly when the need or the occasion arises. In the exercise of its interpretative powers, the Court should always remember that It cannot and should not tread outside the bounds of Its judicial power by encroaching on the people's power to amend or revise the Constitution, or on the Legislative's plenary power to legislate and to determine the subjects of legislation. For the Court to exercise these powers is almost a fraud on the people by effectively changing the Constitution outside the prescribed constitutional modes of amendment or revision, or by determining policy in the guise of interpretation that amounts to judicial legislation.

An alternative for the Court – in fact, a new approach to judicial review – is through *narrow construction*. As opposed to judicial legislation, *narrow construction* does not add to the law; it merely recognizes the inherent limitations of an assailed statute as outlined in the Constitution that is deemed an integral part of every law. The Court, in other words, merely recognizes the bounds of an assailed law by pointing out the governing or applicable constitutional provisions and defining its scope in the exercise of the Court's power to interpret the Constitution. In effect, it is the Constitution itself, not the Court (itself a mere constitutional creature) which tailors the law into one that protects both civil liberties and the general welfare. Thus, instead of nullifying a penal statute containing a compelling and legitimate State interest in its entirety on the ground of being vague or overbroad, the Court merely sets out constitutional boundaries that are anyway deemed written into the laws.

Likewise, instead of "returning" nullified statutes to Congress, which then second-guesses the calibration of the statute to the level acceptable to the Court's sensibilities, the latter simply draws the outer limits of assailed statutes according to what the Constitution itself provides. In this manner, while the Court does not pre-empt the exclusive prerogative of the people and the Legislative Branch to choose policy directions and the subjects of governance or regulation, it still provides clear directions or guidance

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[29] See *Virginia v. American Booksellers Association, Inc.*, 484 U.S. 383 (1988), citations omitted; see also *Ward, et al. v. Rock Against Racism*, 491 U.S. 781 (1989), citations omitted.

"It has long been a tenet of First Amendment law that in determining a facial challenge to a statute, if it be "readily susceptible" to a narrowing construction that would make it constitutional, it will be upheld."

Skilling v. United States, 561 U.S. 358 (2010), citations omitted -- where the US Supreme Court said: "It has long been our practice, however, before striking a federal statute as impermissibly vague, to consider whether the prescription is amenable to a limiting construction."

[30] *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82, 101 (1997).

according to principles recognized by or institutionalized in the Constitution. Stated more succinctly, *narrow construction* is a method of enforcing constitutional provisions affecting the validity or implementation of a statute or its parts by limiting a statute's ostensible reach, thereby emphasizing constitutional—not judicial—supremacy.

To implement this concept of judicial review, the US Supreme Court in *New York v. Ferber*[31] suggested that, when an overbroad criminal statute is sought to be applied against a protected conduct, the proper recourse for the courts is "not to invalidate the law *in toto*, but rather to simply reverse the particular conviction." This course of action implies two things: (1) that there must first be a characterization of or determination whether a conduct is protected or not; and (2) that courts should only allow an as-applied challenge of overbroad penal statutes. These implications require courts to weigh unique factual circumstances and determine whether the act or acts of the accused constitute protected conduct or speech.

JURISDICTIONAL CONSIDERATIONS

I. Separation of Powers

Governmental power is generally divided into the powers exercised by the three great departments of government – the executive, the legislative and the judicial departments. The recognition of the Judiciary as a branch of government separate from the Legislative and the Executive started out when the Founding Fathers of the United States (US) of America proposed a system of checks-and-balances. In proposing the creation of the Judiciary as a separate branch, James Madison (one of the Founding Fathers) took the cue from Baron de Montesquieu's book (The Spirit of the Laws) where the latter pointed out that: (1) violence and oppression would result if judicial power is combined with executive power; and (2) life and liberty would be subjected to arbitrary control if judicial power is combined with legislative power.[32] In other words, the point of separating judicial power from legislative and executive power and of making it passive in the first place, is to prevent state abuses with the aid of magisterial powers.

For its part, the Philippine Constitution situates judicial power (Article VIII) vis-à-vis legislative power (Art. VI) and executive power (Art. VII). Constitutional law refers to this rule as the ***separation of powers*** principle. Accordingly, each branch of government is generally supreme in its constitutionally assigned tasks and cannot intrude into the tasks or powers of the others; an essence of the principle of separation of powers.[33]

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[31] 458 U.S. 747 (1982).
[32] James Madison, *Federalist No. 47*, The Gideon Edition, George W. Carey and James McClellan (Indianapolis, IN: Liberty Fund, 2001), pp. 251-255.
[33] "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

II. Definition and Inclusions of Judicial Power

A. Judicial Power Proper

Section 1, Art. VIII of the Constitution defines "judicial power" as follows:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Traditionally, judicial power is confined to settling actual controversies involving legally demandable and enforceable rights.[34] However, it comes in two modes, i.e., in the regular "***enforceable and demandable rights-based***" mode under the first clause of the 2nd paragraph (judicial power proper); and in the "expanded" and "***grave abuse of discretion-based***" mode of the 2nd clause which empowers courts to resolve complaints involving "*grave abuse of discretion*" on the part of any branch or instrumentality of government (judicial review).

B. Jurisdictional Requisites and Limitations

The Court in *Francisco v. House of Representatives*[35] laid down the limitations of judicial review which have since been recognized as its requisites, *viz.*:

1. There must be an actual case or controversy calling for the exercise of judicial power;

2. The person challenging the act must have legal "standing" or *locus standi* (demonstrated by a personal and substantial interest in a case which the challenger has sustained, or will sustain, direct injury as a result of an invalid statute or executive issuance's enforcement) to challenge;

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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." (*Angara v. Electoral Commission*, 63 Phil. 139, 156 (1936).

[34] See *Araullo v. Aquino, III*, 737 Phil. 457, 525 (2014).

[35] 460 Phil. 830 (2003).

3. The question of constitutionality must be raised at the earliest possible opportunity; and

4. The issue of constitutionality must be the very *lis mota* of the case.

The presence or absence of any of these elements determines whether the judicial review petition filed with the Court shall proceed for consideration on its merits, or be dismissed outright for not being justiciable, *i.e.*, for being inappropriate for the Court's consideration on the merits.

C. Exceptions to the Requirement of Legal Standing

A **first exception** provided by jurisprudence is the transcendental importance of the issue that the petition raised. By this exception, the Court recognized the primacy of issues raised that, in the Court's view, stand at a higher plane of constitutional importance than *locus standi* as a requirement in determining the justiciability of a petition.

While the term "transcendental importance" may carry a dictionary definition, the questions of "when," "how," "why," and the "extent of its application" could be problematic, as importance may vary from individual to individual; views on the importance of an issue and the level of its importance may not be uniform even within a small group.

Transcendental importance, to be considered in constitutional litigation, must be understood in the constitutional law sense and is not satisfied by the dictionary meaning, either of the term "transcendental importance" or of the issue involved. Neither will an unsubstantiated claim of transcendental importance in the petition suffice; the petitioner must **identify and explain** to the Court the issue involved and the **reasons for its importance.** Unless so explained, the Court would have no basis to justify its primacy over the required *locus standi.*

The Court, fortunately, has provided guidelines through the decided cases, in the form of listed *determinants* that the Court or the parties may use as standards, tests, or comparators in considering whether an issue is sufficiently important to be accepted for the Court's consideration. These determinants are: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) **the lack of any other party with a more direct and specific interest in the questions being raised.**[36]

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[36] *See* Concurring Opinion of Justice Florentino P. Feliciano in *Kilosbayan, Inc. v. Guingona, Jr.*, 302 Phil. 107, 174-176 (1994); and *Senate of the Philippines v. Ermita*, 522 Phil. 1, 31 (2006).

This enumeration, of course, is not exclusive but the nature of the listed items and the underlying reason for their inclusion in the list already suggest the filters and the levels of importance that the Court considers for recognition.

In *Pimentel, Jr. v. Aguirre*,[37] the Court set a very low threshold for the existence of a justiciable controversy when it held that "by the *mere enactment of the questioned law* or *the approval of the challenged action*, the dispute is said to have *ripened into a judicial controversy even without any other overt act*"[38] (violating the disputed law) and that *"when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws . . settling the dispute becomes the duty and the responsibility of the courts."* Bluntly stated, the *Pimentel* ruling – if followed – would allow the immediate judicial review of a disputed law once it is signed by the President; there would be no need for a petitioner to wait for the violation of the law or a regulation before the petitioner can bring a petition before the Court for recognition as a justiciable controversy and adjudication on the merits. *Pimentel's* trigger point, to be sure, is not difficult to appreciate and to apply. Its formulation, considered *together with the transcendental importance of the issue raised,* has been reiterated in several cases, among them, the recent *Pimentel v. Legal Education Board*.[39]

Moving beyond the mere executive approval that *Pimentel* required, the Court, in *Tatad v. Secretary of the Department of Energy,*[40] focused on the issue raised and injected its transcendental importance as basis for the petition's justiciability, explaining that its flexibility as a Court to admit cases with issues of this nature derives from the second strand of judicial review under the ruling that:

> Judicial power includes not only the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, but also the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. The courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. Where a statute violates the Constitution, it is not only the right but the duty of the judiciary to declare such act as unconstitutional and void.[41] (citations omitted)

On this reasoning, the Court considered the Rule 65 petition for *certiorari* and prohibition in *Tatad* to be justiciable. *Tatad*, however, may

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[37] *Pimentel, Jr. v. Aguirre*, 391 Phil. 84 (2000).
[38] Id. at 107.
[39] G.R. Nos. 230642 & 242954, September 10, 2019.
[40] 346 Phil. 321 (1997).
[41] Id. at 357.

not be as jurisprudentially significant when applied to the "actual controversy" and "transcendental importance" perspectives; transcendental importance is far from the grave abuse of discretion which the Constitution expressly recognizes under Art. VIII, Sec. 1, par. 2 as basis for justiciability. By this recognition, the Constitution effectively equated the presence of grave abuse of discretion to an "actual" controversy over which judicial power may be exercised.

Notably, other cases where transcendental importance also played a prominent role in considering justiciability pertained to issues on controls on housing rentals (1949);[42] the conduct of constitutional referendum (1975);[43] synchronization of elections (1991);[44] the distribution of election districts (1992);[45] limitation of election campaign airtime (1998); [46] the validity of the Visiting Forces Agreement (2000);[47] the bidding of infrastructure projects (2016);[48] compromise agreements on ill-gotten wealth (1998);[49] and an ordinance on oil depots (2007).[50] Parenthetically, the statutes involved in these cases are all non-penal, *i.e.,* they do not provide penalties for their violation. This characteristic is stressed at this point as jurisprudence has made an increasingly pronounced distinction between penal and non-penal statutes in determining the justiciability of cases whose issues are claimed to be transcendentally important, as the discussions below will show. Despite the number of these cited cases, the Court also notes that these cases do not appear to have established any clear and consistent guidelines on *how* and *why* the issues raised came to be recognized as transcendentally important and why such recognition became the determinative consideration in concluding that the petitions were fit for the Court's exercise of judicial power.

Interestingly, as early as 1994, an approach had already been made in a case, albeit in a Concurring Opinion, where *locus standi* and transcendental importance of the issues raised were major considerations in determining justiciability. In *Kilosbayan v. Guingona,*[51] Justice Florentino P. Feliciano sought to answer in his Concurring Opinion the question of "*x x x when, or in what types of cases, the Court should insist on a clear showing of locus standi understood as a direct and personal interest in the subject matter of the case at bar, and when the court may or should relax that apparently stringent requirement and proceed to deal with the legal or*

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[42] *Araneta v. Dinglasan,* 84 Phil. 368 (1949).
[43] *Aquino. v. COMELEC,* 159 Phil. 328 (1975).
[44] *Osmeña v. COMELEC,* 276 Phil. 830 (1991).
[45] *De Guia v. COMELEC,* 284 Phil. 565 (1992).
[46] *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. COMELEC,* 352 Phil. 153 (1998).
[47] *Bayan v. Zamora,* 396 Phil. 623 (2000); *Lim v. Executive Secretary,* 430 Phil. 555 (2002).
[48] *Osmeña III v. Abaya,* 778 Phil. 395 (2016).
[49] *Chavez v. Presidential Commission on Good Government,* 360 Phil. 133 (1998).
[50] *Social Justice Society v. Hon. Atienza, Jr.,* 568 Phil. 658 (2008).
[51] Supra note 36.

constitutional issues at stake in a particular case."[52] Furthermore, he opined that "*it is not enough for the Court simply to invoke 'public interest' or even 'paramount considerations of national interest,' and to say that the specific requirements of such public interest can only be ascertained on a 'case to case' basis.*"[53] Hence, he proposed three determinants that the Court could consider when the principle of transcendental importance is invoked as basis for a petition's justiciability. In short, he met *head-on* the issue of when the principle of transcendental importance may be invoked and be given primacy.[54]

The *Feliciano* Opinion, unfortunately, did not find its way into a main Court ruling until *Senate of the Philippines v. Exec. Sec. Ermita.*[55] These guidelines likewise later appeared in the Court's ruling in *CREBA v. Energy Regulatory Commission.*[56] The Court took another view of and approach to justiciability in *Gios-Samar* v. *Department of Transportation and Communications,*[57] when it held, among others, that to qualify as a case of transcendental importance, the question raised must be purely constitutional. Similar to a facial challenge, a case of transcendental importance is an exception to the general rule that the parties must have legal standing and raise an actual controversy.

In *Parcon-Song v. Parcon,*[58] on the other hand, the Court focused its attention on the "demonstrably and urgently egregious" character of the constitutional violation that it said must clearly be alleged and discussed in order to bring the case to the level of justiciability. This line of consideration is akin to one of the *Feliciano* determinants, with the added requirement that the plea for recognition of transcendental importance be clearly explained to the Court.

Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City,[59] (a challenge to curfew ordinances filed by the parents of the minors being subjected to the ordinance) made its own contribution to the justiciability issue *via* the prism of the Court's expanded jurisdiction, thus hewing to the Court's ruling in *Tatad v. Secretary of the Department of Energy*[60] mentioned above. In recognizing that an actual controversy existed and is thus justiciable, the Court said:

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[52] Concurring Opinion of Justice Florentino P. Feliciano in *Kilosbayan, Inc. v. Guingona, Jr.*, supra note 36 at 173.
[53] Id.
[54] Id.
[55] Supra note 36.
[56] 638 Phil. 542 (2010).
[57] Supra note 20.
[58] *Parcon-Song v. Parcon,* G.R. No. 199582, July 7, 2020.
[59] 815 Phil. 1067 (2017). Only one party was a minor.
[60] Supra note 40.

> Applying these precepts, this Court finds that there exists an actual justiciable controversy in this case given the evident clash of the parties' legal claims, particularly on whether the Curfew Ordinances impair the minors' and parents' constitutional rights, and whether the Manila ordinance goes against the provisions of RA 9344. Based on their asseverations, petitioners have — as will be gleaned from the substantive discussions below — conveyed a *prima facie* case of grave abuse of discretion, which perforce impels this Court to exercise its expanded jurisdiction. The case is likewise ripe for adjudication, considering that the Curfew Ordinances were being implemented until the court issued the TRO enjoining their enforcement. The purported threat or incidence of injury is, therefore, not merely speculative or hypothetical but rather, real and apparent.[61]

This statement, as in *Tatad,* confirms that a case raising a question of transcendental importance must clearly state the acts of grave abuse of discretion giving rise to the question.

The need to show direct injury to the petitioner as a factor in determining justiciability *when transcendental importance is likewise invoked,* was definitively recognized in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*[62] – the Court's first decided case on terrorism, an issue whose importance even then was undisputed. The Court ruled in said case that to justify direct recourse based on the transcendental importance of the issue of the constitutionality of a ***penal law***, *the petitioner must show personal and direct injury.* The Court said:

> While Chavez v. PCGG holds that transcendental public importance dispenses with the requirement that petitioner has experienced or is in actual danger of suffering direct and personal injury, cases involving the constitutionality of penal legislation belong to an altogether different genus of constitutional litigation. Compelling state and societal interests in the proscription of harmful conduct, as will later be elucidated, necessitate a closer judicial scrutiny of locus standi.
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> **Petitioners have not presented any personal stake in the outcome of the controversy. None of them faces any charge under RA 9372 [HSA].**
>
> x x x x
>
> **Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction.** Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.

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[61] Supra note 59 at 1074-1076. This requirement is reiterated in the Concurring Opinion of Justice Francis H. Jardeleza in *Nicolas-Lewis v. COMELEC*, 529 Phil. 642 (2006).

[62] Supra note 14; see also *Republic v. Roque*, 718 Phil. 294 (2013).

> **The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined.** Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. **Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.**[63] (citations omitted, emphases supplied)

Notably in this cited case, the disputed law, the HSA, is a penal legislation; hence, the ruling should particularly apply when the disputed law is penal, as distinguished from the other transcendental importance cases cited above,[64] which all involved non-penal statutes.

The Court considered the direct injury requirement satisfied in *Estipona v. Lobrigo,*[65] where the petition was filed by the person directly charged under the impugned law, R.A. No. 9165 (the Dangerous Drugs Act), even though the petition suffered from other technical defects, such as the failure to implead Congress and the collateral nature of the constitutional attack. In recognizing justiciability, the Court also cited the transcendental importance of the issues raised.[66]

In *Fuertes v. Senate of the Philippines,*[67] the Court allowed direct recourse to it by a person charged under the impugned law after, likewise, considering the transcendental importance of the issue raised.

In contrast, in *Private Hospitals Association of the Philippines, Inc. v. Medialdea,*[68] the Court gave *no weight and disregarded* transcendental importance as justification and disallowed the constitutional challenge to the penal provisions of R.A. No. 10932 (or *Anti-Hospital Deposit Law*) that the Association raised on the ground that the owners and managers of private hospitals (who were to bear the penalty) did not expressly authorize the Association to bring the case.

The cases of transcendental importance which the Court recognized despite the absence of a party with direct and immediate injury, have been outlined in *David v. Macapagal-Arroyo.*[69] The Court specifically said: "*(2) For taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; (3) for voters, there must be a showing of obvious interest in the validity of the election law in question x x x and (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.*"[70]

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[63] Id. at 472-482.
[64] Id.
[65] 816 Phil. 789 (2017).
[66] Id. at 798.
[67] G.R. No. 208162, January 7, 2020.
[68] G.R. No. 234448, November 6, 2018.
[69] 522 Phil. 705 (2006).
[70] Id. at 760.

In *Tañada v. Tuvera*[71] and *Joya v. PCGG*,[72] the Court required a citizen suit for "*mandamus to procure the enforcement of a public duty for the fulfilment of a public right recognized by the Constitution.*"[73] Thus, although the damage is not direct and immediate, for a case to be declared justiciable, there must nevertheless be a discernible conflict of interest traceable to the allegedly unconstitutional law for a case to be declared justiciable.

To articulate the implication from the trends that the above line of cases suggests, it seems that while the transcendental importance of the litigated issue may do away or lessen a party's need to establish direct legal standing to sue, such importance does not completely remove the need to clearly show the justiciability of a controversy through the existence of conflicting interests even if only remotely, as well as the ripeness of the issues raised for adjudication.[74] A separate class unto itself would be cases involving penal laws, where the rule is that the transcendental importance of the question must be accompanied by a prima facie showing of *locus standi*.

From the above analysis, it is clear that when the disputed law is non-penal, transcendental importance must be invoked as basis for justiciability through the *Feliciano* determinants first mentioned in *Kilosbayan* and later cited by the Court in its *Senate v. Ermita* and *CREBA v. Energy Regulatory Commission* rulings.

The **second exception** to *locus standi*, rooted in American jurisprudence and merely transplanted to Philippine jurisprudential soil, relates to the mode of challenge a petition undertakes. Direct damage or injury to the petitioner (and therefore his direct "standing" to sue) does not need to be actually shown in a facial challenge as the injury contemplated in this mode of challenge is potential, and it may affect third parties who are not before the Court.

The Court, under this situation, recognizes - as a consideration higher than *locus standi* (and the actual case or controversy of which is a part) - that a petitioner may sue under a statute potentially implicating fundamental freedom of expression, on behalf of parties not before the Court (third parties), whose exercise of these rights could be "chilled."

Initially developed based on the right to freedom of speech, the Court sought to avoid the situation when parties would refrain from engaging in constitutionally protected speech (*i.e.*, which would be chilled) due to the fear that their speech would violate a statute regulating speech. Whether and

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[71] 220 Phil. 422 (1985).
[72] 296-A Phil. 595 (1993).
[73] Id. at 603.
[74] *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas*, 809 Phil. 65, 85 (2017).

to what extent this Court would adopt the American facial challenge rule is a matter for the Court to definitively rule upon in light of the actual case or controversy provision of our Constitution which expressly requires the existence of an "actual" controversy, in contrast with the American Constitution which does not have a similar requirement and which relies merely on jurisprudence, *Marbury v. Madison*,[75] for its power of judicial review. Facial challenge and its complexities in the Philippine setting shall be discussed at length at its proper place below.

D. Hierarchy of Courts

One of the Constitution's built-in rules (by implication and by jurisprudence) in the exercise of judicial review is the application of the hierarchy of courts principle, *i.e.*, that cases falling within the concurrent jurisdiction of courts of different levels should be filed with the lowest court with jurisdiction over the matter.

In *Vergara, Sr. v. Suelto*,[76] a 1987 case, the Court already stressed that:

> **The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance.** Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. **This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.**[77] (emphases supplied)

This ruling has been repeated in a long line of cases, among them: *People v. Cuaresma*[78] in 1989; in *Ouano v. PGTT International Investment Corp*oration[79] in 2002; in *Bañez, Jr. v. Concepcion* in 2012;[80] and most recently in *Gios-Samar v. Department of Transportation and Communications*[81] in 2019, where the Court pointedly mentioned that one reason is to control its docket by preventing the filing of cases before the

[75] 5 U.S. 137 (1803).
[76] 240 Phil. 719 (1987).
[77] Id. at 732-733.
[78] 254 Phil. 418 (1989).
[79] 434 Phil. 28 (2002).
[80] 693 Phil. 399 (2012).
[81] Supra note 20.

Court when these same cases also fall within the jurisdiction of the lower courts.

A deeper reason for the application of this principle, however, relates to the differing powers of the Court and the lower courts with respect to the trial of facts.

Cases involving questions of fact are filed and tried before the lower courts because these courts are fully equipped by law to receive evidence during the trials conducted before them. The Court, on the other hand and by the nature of its powers and structure, is not a trial court and is not a trier of facts. It is not, in other words, designed to handle the reception of evidence in the way that the trial courts can. If no evidence has been presented before the lower courts and as this Court is not equipped to receive evidence or factual support for the petitions, there would therefore be no facts to support a decision on the merits at the level of the Court. Thus, petitions riddled with factual issues that are directly filed with the Court deserve outright dismissal.

As pointed out by the *amicus curiae* Justice Francis H. Jardeleza, *not one of the petitions passed through the lower courts*; they were all filed directly with this Court, although a few did satisfactorily explain the reasons for such. For the petitioners who violated the hierarchy of courts principle through their direct filing with this Court and who failed to explain the reasons for their move, the warning of dire consequences made by *Gios-Samar* should not be forgotten:

> Accordingly, for the guidance of the bench and the bar, we reiterate that when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.[82]

I likewise note that a few of the petitioners are also involved in existing actual or potential controversies where they can raise or potentially plead the constitutional concerns they now bring before this Court.[83] More importantly, they could have or still can, if they wanted to or now want to, introduce evidence of their interest/s and the damage or injuries these interests suffered. These petitioners have no excuse to directly file their

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[82] Id.

[83] Petitioners Maria Victoria Beltran, Joselito Saracho, and Arnel Barabarona in *National Union of Journalists of the Philippines v. Anti-Terrorism Council* (G.R. No. 252747); petitioners Main T. Mohammad, Jimmy P. Bla and Nazr S. Dilangalen in *Main T. Mohammad v. Executive Secretary* (G.R. No. 252916); and petitioner Joahanna Monta Veloso in *Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson Lemuel Gio Fernandez Cayabyab v. Rodrigo R. Duterte* (G.R. No. 252921).

petitions with this Court.

As in *Gios-Samar* (where the petitioners sought direct recourse to Us to prohibit the bidding process of allegedly illegally bundled projects that, to them, involved matters of public interest and transcendental importance), We have to fall back on the general rule that We cannot hear factual issues at the first instance. The only instance when the Court is constitutionally allowed to take cognizance of factual issues in the first instance is in the exercise of its constitutionally mandated task to review the sufficiency of the factual basis of the President's proclamation of martial law under Sec. 18, Art. VII of the 1987 Constitution - a far different case from the present petitions. The Court likewise would not dare to risk the possibility of denying litigants their right to due process by depriving them of the opportunity to completely pursue or defend their causes of actions through a premature and uncalled for intervention on factual issues.

I explain these operational concepts and interactions in the present dispute to allow our people to appreciate how the different governmental branches, all of them within one government and one system, check, balance, and interact with one another, to have a harmonious and unified whole acting together for the interest of the people. These constitutional rules likewise explain the limits and extent of this Court's adjudicative powers so that the people themselves can be sure that the Court, when adjudicating, acts within the limits of Its constitutional powers. The Court owes the people this explanation as It acts in the people's name and for their individual and collective interests; It must thus always act within the scope of the power the people granted It through the Constitution.

Thus, judicial review is framed by three basic principles. The first principle is that under Sec. 1, Art. VIII of the 1987 Constitution, judicial power is, all at once, vast and limited. Judicial power includes the power to strike down a legislative or executive act that contravenes the Constitution. However, the Court may exercise that power only after it has satisfied itself that a party with legal standing raised an actual controversy in a timely manner and after recourse to the hierarchy of the courts, and that resolution of the case pivots on the constitutional question. The second principle is that judicial power is activated only when the Court assumes jurisdiction over a petition that has passed through a well-defined procedural screening process. The third principle is that judicial power is exercised through judicial review by applying long established standards and levels of judicial scrutiny and/or tools of constitutional interpretation and statutory construction. I call these procedural filters and substantive standards of constitutional litigation.

I adhere to the foregoing parameters of the Court's discretion by observing judicial restraint. Judicial restraint is not deference but simply a measured response in considering constitutional challenges to a law that has

been forged for a public purpose by two co-equal branches of government.[84] It adopts a measured response by admitting into its jurisdiction only those cases that meet certain requirements and, having assumed jurisdiction, conducting judicial review using standardized methods of scrutiny and interpretation.

E. Types of Constitutional Challenges

i. Modes of Challenging the Constitutionality of Statutes

The judicial review of statutes, treaties (as well as other forms of international agreements), and quasi-legislative administrative issuances is wielded in cases where: (1) a statute assailed in view of underlying facts that are either substantiated before trial courts or presented to and admitted by the reviewing court at first instance; or (2) the face of an assailed statute contains provisions that patently contravene protected speech and separation of powers. The first is called an "as-applied" challenge; the second is referred to as a "facial" challenge.

a. As-Applied Challenge

An as-applied challenge calls for the determination of how the law measures up to the established constitutional limits when these limits are applied to the petitioner's conduct under the disputed law. The court declares the offending part of the law, if severable, to be unconstitutional without affecting the totality of the law.[85] In this kind of challenge, the language of the statute itself does not show an apparent hint of any fundamental flaw; the flaw, if one exists, only emerges when the statute is tested through the crucible of real-world circumstances.

The Court notably allowed the "as-applied" challenge in *People v. Nazario*,[86] *People v. Dela Piedra*,[87] *Estrada v. Sandiganbayan*,[88] *People v. Siton*,[89] and *Celdran v. People*.[90] It expounded on this challenge in *Disini, Jr. v. The Secretary of Justice*[91] but opted to accept the facial challenge under the unique circumstances of this case.

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[84] *Joint Ship Manning Group, Inc. v. Social Security System*, supra note 27.
[85] "[V]agueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant. x x x In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged." (*Estrada v. Sandiganbayan*, 421 Phil. 290, 355-356 [2001]).
[86] 247-A Phil. 276 (1988).
[87] 403 Phil. 31 (2001).
[88] Supra note 85.
[89] 616 Phil. 449 (2009).
[90] G.R. No. 220127 (Notice), November 21, 2018.
[91] 727 Phil. 28 (2014).

People v. Nazario[92] involved the charge of violating Ordinance No. 4, series of 1955, of Pagbilao, Quezon, for Nazario's failure to pay municipal taxes as a fishpond operator. Nazario averred, among others, that the ordinance is null and void for being ambiguous and uncertain.[93]

The Court considered the application of the ordinance and found Nazario to be within its coverage. As actual operator of the government-owned fishpond, he was the "manager" who should shoulder the tax burden since the government never shared in the profits. The Court further found no vagueness in the dates of payment since the liability for tax accrued on January 1, 1964 for fishponds in operation prior to Ordinance No. 12, and for new fishponds, three (3) years after their approval by the Bureau of Fisheries (October No. 15). The Court concluded that while the standards in the ordinances were not apparent from the faces, they were apparent from their intent.[94]

In *People v. Dela Piedra*,[95] Carol M. dela Piedra (*dela Piedra*) was indicted for and convicted of illegal recruitment in large scale under Sec. 13(b) of Presidential Decree (*P.D.*) No. 442, as amended. On appeal to the Court, she assailed the constitutionality of the law for its supposed vagueness and overbreadth. The Court's review treated the petition as an as-applied challenge since dela Pieda had been charged with the crime and had alleged violation of her own right.

The Court denied the challenge as it did not find the law – as applied to dela Piedra - to be vague; it was merely *couched in imprecise language* that could be salvaged by proper construction. Additionally, the Court denied that the law is overbroad as dela Pieda failed to specify the constitutionally protected freedoms embraced by the definition of "recruitment and placement."

In *Romualdez v. Sandiganbayan*,[96] the Presidential Commission on Good Government (*PCGG*) charged Alfredo T. Romualdez (*Romualdez*) for violation of Sec. 5, Republic Act No. 3019, as amended. After the Sandiganbayan's denial of his motion to dismiss, Romualdez questioned the denial through a petition for *certiorari* (under Rule 65 of the Rules of Court) filed with this Court. He assailed the denial on the ground, among others, that the provision under which he was charged, Sec. 5 of Republic Act No. 3019, was vague and impermissibly overbroad.

The Court held that an "as-applied" challenge, not a facial challenge, was appropriate as ***conduct, not speech****, was the object of the penal statute.*

[92] Supra note 86.
[93] Id.
[94] Id. at 291.
[95] Supra note 87.
[96] 479 Phil. 265 (2004).

The Court thereafter declared that the disputed Sec. 5 is not vague; it adequately answers the question of "What is the violation?" and that the term "intervene" should be understood in its ordinary and common meaning.

Another "as-applied" challenge was allowed in *People v. Siton*.[97] Evangeline Siton (*Siton*) and Krystal Kate Sagarano (*Sagarano*), charged with vagrancy under Art. 202(2) of the Revised Penal Code, filed a petition for *certiorari* and prohibition before the trial court, assailing the provision's constitutionality on the ground, among others, that it is vague as the definition of vagrancy includes persons otherwise performing ordinary peaceful acts. In support of their contention, they cited the U.S. case of *Papachristou v. City of Jacksonville,*[98] where the U.S. Supreme Court declared a Jacksonville vagrancy ordinance unconstitutional. The trial court sustained the petitioners' averments and declared Art. 202(2) unconstitutional.[99]

The Court, on appeal, reversed the trial court and upheld the constitutionality of Art. 202(2), ruling that the underlying principles in *Papachristou* (failure to give fair notice of what constitutes forbidden conduct, and the promotion of discriminatory law enforcement) are inapplicable in our jurisdiction.[100]

It held that, under our legal system, ignorance of the law is not an excuse for non-compliance - a principle of Spanish origin that governs and limits legal conduct. This principle is in contrast with its American counterpart where ignorance of the law is merely a traditional rule that admits of exceptions.[101]

The Court further distinguished the Jacksonville ordinance from our Art. 202(2), and likewise declared that our probable cause requirement is an acceptable limit on police or executive authority in enforcing Art. 202(2). Any claimed unfettered discretion given to enforcing bodies is checked by this constitutional requirement.[102]

In *Celdran v. People*,[103] the Court of Appeals (*CA*) found Carlo Celdran guilty of offending religious feelings under Art. 133 of the Revised Penal Code (*RPC*). The Court reversed the CA ruling on motion for reconsideration after considering that Art. 133 regulates the content of speech and its overbreadth and vagueness have resulted in a chilling effect on free speech. Notably, the Court resolved the case as an as-applied

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[97] Supra note 89.
[98] 405 U.S. 156, 31 L. Ed. 2d 110 (1972).
[99] *People v. Siton*, supra note 89.
[100] Id.
[101] Id.
[102] Id.
[103] Supra note 90.

challenge and discussed the application of facial and as-applied challenges in its ruling.

The Court rejected the use of a facial challenge made on the basis of vagueness and overbreadth, holding that Art. 133 of the RPC *does not encroach on freedom of expression because it regulates conduct, not free speech*. It observed that "[t]he gravamen of the penal statute is the disruption of a religious ceremony and/or worship by committing acts that are notoriously offensive to the feelings of the faithful inside a place devoted to religious worship or during the celebration of a religious ceremony. There is nothing in the provision that imposes criminal liability on anyone who wishes to express dissent on another religious group. It does not seek to prevent or restrict any person from expressing his political opinions or criticisms against the Catholic church, or any religion."

The Court also held that a facial challenge on the basis of overbreadth is impermissible because *Art. 133 does not regulate only spoken words*. It covers all *acts notoriously offensive* to the religious feelings, which is within the State's authority to regulate.

The Court likewise declared that the terms "notoriously offensive" and "religious feelings" are not utterly vague as they are words in common use. Hence, any person of ordinary intelligence may understand the words in their ordinary and usual meaning. The Court also noted that jurisprudence contains sufficient examples of acts considered notoriously offensive to religious feelings.

To summarize, *Romualdez* and *Celdran* make it clear that Art. III, Sec. 4 of the Constitution cannot serve as refuge for the use of facial challenge to claim free speech protection on the basis of alleged vagueness and overbreadth when the implicated statute involves acts or conduct, not speech.

b. Facial Challenge

The general mode of challenge of constitutionally-challenged statutes in our jurisdiction is through the "as-applied" mode, *i.e.*, by examining the statute through the prism of a concrete and discrete set of facts showing the substantial and direct impairment that the statute's enforcement has caused a petitioner's constitutional rights.[104] Under this mode, the petitioner can

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[104] See *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 125-126 (2014):

In United States (US) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only protected speech, but also all other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.

claim a violation of his constitutional rights such as abuse of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness, but can only do so only if he asserts the violation of his own right; he cannot assert the right of a third party who is not before the Court.[105]

For the most part, disputes that give rise to situations calling for an as-applied analysis of statutes often involve a complex interplay and occasional conflict between "legitimate and compelling" governmental interest in preventing crime and individual civil liberties guaranteed by the Bill of Rights;[106] the text of the law is always scrutinized in relation to actual facts experienced and presented as evidence by the parties to the dispute.

A facial challenge, in contrast with *and as an exception to an as-applied challenge*, can be made – as jurisprudence has established - even prior to the enforcement of a disputed law, based *solely* on alleged "*vagueness*" or "*overbreadth*" of what the law, *on its face*, provides. It can be made by a petitioner for himself or on behalf of third parties not before the court. Pursuant to the same line of jurisprudence, the challenge – if successful - can result in the invalidity of the entire law.[107]

In other words, the constitutional infirmities appear in the text or "face" of the statute itself even without considering surrounding facts, *i.e.* even before evidentiary facts have been presented before the court for consideration. The burden is for the challenger to show that no set of

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In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights. The underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution. (emphasis and citations omitted)

[105] *Disini, Jr. v. The Secretary of Justice*, supra note 91 at 121-122. *See* Separate Opinion of Justice V.V. Mendoza in *Estrada v. Sandiganbayan*, G.R. No. 148560, January 29, 2002, citing *Broaderick v. Oklahoma*, 413 U.S. 601, 612-613, 37 L.Ed.2d 830, 840-841 (1973); *United States v. Salerno*, 481 U.S. 739, 745, 95 L.Ed. 697, 707 (1987); *People v. Dela Piedra*, supra note 87.

[106] See *United States v. Salerno*, id.

[107] It must be emphasized that while, in theory, a facial invalidation may result in the invalidity of the entire law, in practice where the Court allowed a facial challenge, the Court only declared certain provisions of the assailed law void.

In *Disini, Jr. v. The Secretary of Justice*, supra note 91, the Court held that particular provisions of the Republic Act (R.A.) 10175, the Cybercrime Prevention Act of 2012, may be facially invalidated. The Court only declared Section 4 (c)(3) may be facially challenged. The Court only declared Section 4(c)(3) on the ground that it employs means that are overly broad and vague vis-à-vis the governmental purpose of the law.

Meanwhile, in *Spouses Imbong v. Ochoa, Jr.*, supra note 104, the Court allowed a facial challenge but only invalidated some provisions of Republic Act (R.A.) No. 10354, otherwise known as the Responsible Parenthood and Reproductive Health Act of 2012 (RH Law). It declared the RH Law as constitutional except for Section 7, Section 23(a)(1), Section 23(a)(2)(i), Section 23(a)(2)(i), Section 23(a)(3), Section 23(b), Section 17, Section 3.01 (a), and Section 3.01(j).

circumstances exists under which the assailed legislation could be valid.[108] In this kind of situation, the reviewing court must be careful not to go beyond the statute's face and speculate about "hypothetical" or "imaginary" scenarios.[109]

In the Philippine setting, facial challenge has been notably considered in the following cases:

First, in *Quinto v. COMELEC*,[110] the Court initially held that the right to run for public office and the right to vote are protected rights under Sec. 1 and Sec. 4 of Art. III. The Comelec resolution and the law it implements impair the protection by being overly broad in that they fail to distinguish between partisan and non-partisan appointive officials who will be deemed resigned by merely filing for candidacy.

On motion for reconsideration, however, the Court reversed itself and held that Sec. 4 is not implicated for there is no "fundamental right to express one's political views through candidacy."

Moreover, it found no overbreadth even as the resolution/law applies to both partisan and non-partisan employees. Citing *Broadrick v. Oklahoma*,[111] the Court held that as the disputed resolution/law regulates conduct rather than protected speech,[112] overbreadth must be substantial rather than merely real. The Court, moreover, adopted the following measure of the substantiality of a law's overbreadth:

> [It] would entail, among other things, a rough balancing of the number of valid applications compared to the number of potentially invalid applications. In this regard, some sensitivity to reality is needed; an invalid application that is far-fetched does not deserve as much weight as one that is probable. The question is a matter of degree. Thus, assuming for the sake of argument that the partisan-nonpartisan distinction is valid and necessary such that a statute which fails to make this distinction is susceptible to an overbreadth attack, the overbreadth challenge presently mounted must demonstrate or provide this Court with some idea of the number of potentially invalid elections (i.e., the number of elections that were insulated from party rivalry but were nevertheless closed to appointive employees) that may in all probability result from the enforcement of the statute.[113]

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[108] See *Rest v. Sullivan*, 500 U.S. 173 (1991).
[109] See *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008).
[110] 621 Phil. 236 (2009).
[111] 413 U.S. 601. Note that a facial challenge was not allowed in this case because the law was found to have a valid application to the litigants themselves, and that it was not substantially broad as to impair conduct.
[112] The distinction between conduct and speech was reiterated in *David v. Macapagal-Arroyo*, supra note 69.
[113] *Quinto v. COMELEC*, 627 Phil. 193, 261-262 (2010).

In addition to this measure of substantiality of overbreadth, the Court adopted the rule that there must be no countervailing weight against such substantiality. Otherwise, and as it ultimately concluded, the proper remedy is an as-applied challenge in which the Court may adopt a limiting interpretation.

Second, in *Adiong v. COMELEC,*[114] the Comelec resolution (implementing the Omnibus Election Code) was challenged for violation of Sec. 4 of the Bill of Rights, for prohibiting the posting of decals and stickers in mobile places like cars and other moving vehicles. The Court held that such prohibition implicates "freedom of expression ... not so much that of the candidate or the political party ... [but] of an individual to express his preference and, by displaying it on his car, to convince others to agree with him."

Overbreadth was also alleged as the restriction on "where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property." The Court allowed the facial challenge and, after subjecting the law to an intermediately level of scrutiny, concluded thus:

> [E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.[115]

The Court ultimately found the resolution unreasonable for being overly broad vis-à-vis the governmental purpose.

Third, in *Ople v. Ruben Torres,*[116] the Court allowed a facial challenge against an administrative order issued by the President instituting the national identification system on the ground that it was patently *ultra vires* and implicated Sec. 3(1) of the Bill of Rights on the right to privacy. Here, it reiterated the ruling in *Morfe v. Mutuc*[117] that privacy is constitutionally protected. There is impairment through overbreadth as there exists a wide range of technologies for obtaining biometrics, with some of them more intrusive than others. Yet, the administrative order does not specify the biological characteristics and biometric technology that shall be used.

Fourth, in *Biraogo v. Philippine Truth Commission,*[118] the Court allowed a pre-enforcement facial challenge against an executive order creating a truth commission. The order implicated Sec. 1 on equal protection. However, the impairment of Sec. 1, Art. III of the Constitution is

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[114] G.R. No. 103956, March 31, 1992, 267 SCRA 712.
[115] Id. at 720.
[116] 354 Phil. 948 (1998).
[117] Supra note 18.
[118] 651 Phil. 374 (2010).

not through overbreadth or vagueness but through an invalid classification that targeted the previous administration. It is notable that the parties here were part of the previous administration; hence, they stood to be prejudiced by the executive order.

Fifth, in *Disini, Jr. v. The Secretary of Justice,*[119] the Court allowed the pre-enforcement facial challenge on Sec. 5 of the Cybercrime Law.

The Court noted the Solicitor General's position that "the plain, ordinary, and common usage" of the terms "aiding and abetting" is sufficient to guide law enforcement agencies in enforcing the law and that the "legislature is not required to define every single word contained in the laws they craft." Their meaning is easily discernible through common sense and human experience.

Nonetheless, the Court held that such common understanding and application are incongruous in cyberspace where persons post, tweet, like, comment, share privately, or publicly. However, as other persons can repost or retweet these texts, images or videos, the original parties to the communication no longer have control over the subsequent dissemination. Hence, in this context, with respect to materials offending the Cybercrime Law, the terms aiding, abetting, and attempting would need to be more precisely defined.

The relevance of *Disini* to the current petitions, however, relates to the petitioners' recourse to facial challenge when the disputed law is penal, a position that I disagree with because terrorism involves acts or conduct and, hence, is not subject to facial challenge. If it involves speech at all, it is not speech protected by the freedom of speech in the same way that obscenity and defamation are not protected speeches.

Sixth, in *Nicolas-Lewis v. Commission on Elections,*[120] the Court allowed a pre-enforcement facial challenge against a Comelec resolution implementing a law on overseas voting. The resolution prohibited "partisan political activities" abroad during the 30-day overseas voting and was deemed to implicate protected speech under Sec. 4, Art. III of the Constitution.

Moreover, it impairs protected speech through overbreadth for the prohibition applies "abroad" rather than to well-defined premises where elections are conducted. As the mischief sought to be addressed by the resolution is the risk of threat to the integrity and order in the conduct of overseas voting, such mischief is likely to take place only in voting

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[119] Supra note 91.
[120] 529 Phil. 642 (2006).

premises, such as Philippine embassies, rather than the vast area termed "abroad."

A facial challenge was found appropriate because a protected right and an overextended statute were involved.

Seventh, in *Inmates of the New Bilibid Prison v. De Lima,*[121] the main and concurring Opinions agreed that a pre-enforcement facial challenge is viable against the implementing rules that prospectively applied the availability of good conduct time allowance under a new law. The implementing rules were found to impair equal protection under Sec. 1, Art. III of the Constitution through the adoption of an invalid classification system.

Lastly, We come to *Southern Hemisphere v. Inc. v. Anti-Terrorism Council.*[122] This case is most significant in considering the present petitions as it ruled on the constitutionality of the earlier anti-terror law – the HSA. The Court emphasized the rationale for the use of facial challenge and its non-availability in penal status, stating that:

> The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech x x x [T]his rationale is inapplicable to plain penal statutes that generally bear an "in *terrorem effect*" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.
>
> x x x If a facial challenge to a penal statute is permitted, the prosecution of crimes may be hampered. No prosecution would be possible x x x A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it.[123]

In my view, no less weighty than an alleged violation of a fundamental right in a facial challenge is the consideration of the State's interest involved in a disputed legislation. The ATA is not an ordinary legislation but a very weighty one that by nature is comprehensive; it encompasses both preventative and punitive interests and approaches. In direct conflict are both individual and collective interests that should be properly considered and weighed.

From another perspective, collective interests cannot be any less important than the individual interests that a facial challenge places and holds sacred in the altar of constitutional rights. Let it not be forgotten that individual rights can only be enjoyed if society continues to viably exist. A

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[121] G.R. Nos. 212719 & 214637, June 25, 2019.
[122] Supra note 14.
[123] Id. at 489-490.

contrary view could be blind idealism that disregards the reality of how life operates. The Constitution and its guaranteed rights will all be for naught if the State itself - that the Constitution supports - is extinguished. Survival is the law of life; where the life of the State is at stake, everything else takes secondary precedence.

Thus, the primary question in considering legislation like the ATA, whose aim is the defense of the State against those who threaten its survival, is or should be - should the Court maintain the current jurisprudence on the non-availability of facial challenge to penal laws such as the ATA?

The **first consideration**, as Associate Justice Mendoza fully explained in *Estrada,* is that the unavailability of a facial challenge cannot at all be equated to the denial or the non-recognition of an aggrieved individual's fundamental rights. Violation can still be alleged and proven, but these will have to be undertaken based on concretely adduced facts showing the prejudicial effect of a disputed statute on the individual, not on the basis of assumed facts that can border on speculation. In this manner, fairness prevails between the individual and the society in whose behalf and in whose defense the legislation was formulated and passed.

Let it not be forgotten in this regard that terrorism is a *socially harmful conduct*. Terrorism, like Covid-19, affects not only individuals but the nation as a whole[124] or at least a very substantial number of our

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[124] According to the United Nations Office on Drugs and Crime (*UNODC*), terrorism affects both individuals and communities. However, these effects are not to be considered as separate phenomena but are, in fact, interlinked and interdependent responses. In fact, a layering effect of trauma, so to speak, arises from terrorist acts, to wit:

The potential effects on victims of terrorism can be devastating and multiple; it may be experienced at many interrelated levels - individually, collectively and societally. From a victimological perspective, there are three circles of 'personal victimization' which are determined in accordance with their proximity to the direct victim: "*primary or first order victimization*, experienced by those who suffer harm directly, whether it is injury, loss or death*; secondary or second order victimization*, experienced by family members, relatives or friends of primary victims; and *tertiary or third order victimization*, experienced by those who observe the victimization, are exposed to it through TV or radio coverage of the victimization, or help and attend to victims" (Erez, 2006, p. 20). (italics supplied)

Unlike the effects of accidental injury or disease, research on the effects of crime has stressed mental, psychological and social effects, in contrast to physical or financial effects. This is attributable to the fact that crime is "qualitatively different from being the victim of an accident or disease, because it includes someone deliberately or recklessly harming you" (*Shapland and Hall, 2007,* p. 178).

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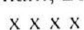
In addition to the psychological impact of terrorism-related violations experienced at an individual level, affected societies may suffer collective trauma which is particularly the case where attacks are targeted against a particular group or community. (*See* Alexander, 2012, who explores the development of social and cultural trauma; *see* also Weine, 1998, p. 1721). In such a situation, the sense of group identity and allegiance is heightened (Aroche and Coello, 2004, p. 56), producing collective solidarity, identity and mutual support (Modvig and Jaranson. 2004, p. 37). Because of that heightened allegiance, when the group, or members of it, are attacked, it may collectively experience symptoms of psychological trauma (De Jong, 2004, pp. 165 and 168).

x x x x

x x x Collectively, communities enter into shock, which is compounded by grief for the loss of the victim through either death, the debilitating physical and psychological impact of the violation, or, in the case of rape, familial and community rejection (Yohani and Hagen, 2010, pp. 208 and 214; Hagen and Yohani, 2010, p. 19).

x x x x



citizens.[125] By undisputed world experience, it is no longer a purely local concern that can be treated as an ordinary police matter. It has become a worldwide problem that has drawn the attention of no less than the United Nations.[126] It has been proven to cross borders into nations that have not properly or seasonably applied their anti-terrorism preventive measures.[127]

At its ugliest, terrorism can affect the sovereignty and security of a nation when terrorists aim for political power outside the limits that the Constitution narrowly allows. Unlike rebellion that is usually undertaken in the open, terrorism works insidiously and clandestinely.[128] A nation could thus fall incrementally in a long agonizing descent into chaos, or in one blow even before the government realizes what it is up against.[129]

Far from being conceptualized discretely, however, individual and societal forms of trauma are understood as interlinked and interdependent trauma responses. Gross violations of human rights can affect the individual not only as an individual per se, but also as a member of a community or of society more generally. In particular, community or societal allegiance or affiliation, as aspects of social and cultural identity, form part of the individual's personal identity system. Clinical literature describes a 'layering' of trauma, reflecting to some extent the 'victimization circles' referred to above, such that an individual, as a member of a particular group or of society more broadly, may experience the first phase of the traumatisation process with the onset or increase in group repression or persecution (which may include elements of social and political change). The period during which the individual personally becomes a victim of serious human rights violations marks the second phase in the traumatisation process. A third phase - characterized by dislocation and exile - arises where the victim is forced to flee their home to avoid the threat of harm (van der Veer, 1998, p. 5). Moreover, the societal response to individual and collective trauma has a significant impact on the rehabilitation of individual survivors (citations omitted). (*United Nations Office on Drugs and Crime.* E4J University Module Series: Counter-Terrorism, Module 14: Victims of Terrorism (July 2018) at https://www.unodc.org/e4j/en/terrorism/module-14/key-issues/effects-of-terrorism.html)

[125] Around 400,000 residents of Marawi were displaced due to the Marawi Seige. (U.S. State Department, COUNTRY REPORTS ON TERRORISM 2017 (Bureau of Counterterrorism), p. 280.)

[126] The United Nations claims to have been in the forefront of the fight against terrorism even prior to the 9/11 terrorist attack:

The United Nations was engaged with the issue of terrorism long before that calamitous September morning ten years ago. For decades, the Organization has brought the international community together to condemn terrorist acts and developed the international legal framework to enable states to fight the threat collectively. Sixteen international treaties have been negotiated at the United Nations and related forums that address issues as diverse as the hijacking of planes, the taking of hostages, the financing of terrorism, the marking of explosives, and the threat of nuclear terrorism. (Smith, M. Securing our Future: A Decade of Counter-terrorism Strategies. United Nations Chronicle (no date) at https://www.un.org/en/chronicle/article/securing-our-future-decade-counter-terrorism-strategies)

[127] Olof Skoog, Head of the European Union delegation, stated that "terrorism benefits from weak Government institutions, poor governance and porous borders, which lead to corruption, illicit trafficking and exploitation of natural resources" during the 8743rd meeting (AM) of the UN Security Council on March 11, 2020. (Security Council Issues Presidential Statement Calling for Greater Efforts to Help Africa Fight Terrorism, as Delegates Denounce 'Insufficient' Current Approaches. United Nations Meeting Coverage and Press Releases (March 11, 2020) at https://www.un.org/press/en/2020/sc14140.doc.htm)

"The idea that weak states can compromise security -- most obviously by providing havens for terrorists but also by incubating organized crime, spurring waves of migrants, and undermining global efforts to control environmental threats and disease -- is no longer much contested." (Grappling with State Failure. Washington Post. (June 9, 2004) at https://www.washingtonpost.com/archive/opinions/2004/06/09/grappling-with-state-failure/c5bd6d84-bd41-4255-96d1-72c0c31b1ad6/)

[128] "On May 23, 2017, Philippine forces launched an operation attempting to capture Hapilon in the city of Marawi. ASG fighters opened fire on security forces and called on support from the pro-ISIS Maute Group. Together, the ASG and Maute Group militants laid siege over Marawi and clashed with government forces until October." (U.S. State Department, COUNTRY REPORTS ON TERRORISM 2017 (Bureau of Counterterrorism), p. 280.) Evidently, these parties were lying in wait and only acted when Philippine forces attempted to capture Isnilon Hapilon. The Marawi Seige began from this context.

[129] A prime example of this is the siege of Marawi. As stated in the previous footnote, the siege began when Philippine forces tried to capture Abu Sayyaf leader Isnilon Hapilon. However, to their surprise, they were

The **last and most important consideration**, again taking cues from Justice V.V. Mendoza's Opinions, is that terrorism involves acts and conduct, not speech (except where speech integral to criminal conduct is involved, which is unprotected);[130] thus, any challenge to the ATA should be "as-applied."

This course of action offers the advantage of being fully consistent with the actual case or controversy that the Constitution requires. It is, at the same time, closer to the congressional intent of having a comprehensive anti-terrorism law. Respecting the wisdom of Congress when it passed the ATA would not at all signify the Court's subservience to a co-equal body; it is in fact its bow to the primacy of the Constitution.[131]

JUDICIAL REVIEW PARAMETERS

II. Judicial Review

A. Nature of Judicial Review

The power of the judicial department (or the judiciary) is "expanded" under the grant of judicial power because it allows the courts to resolve disputes and to nullify actions involving "grave abuse of discretion" committed by the two other great branches of government – the executive and the legislative. From the constitutional perspective, actions undertaken with "grave abuse of discretion" are actions outside of the actor's constitutionally or statutorily allowed limits, and, hence, are nullities that courts can so declare pursuant to constitutional command.[132] In other words, judicial review is simply the exercise of judicial power, the objective of which is to review the constitutionality of the act or acts of the other co-equal branches of government or the offices and agencies under them.

However, the courts, when they so act, do not thereby cross constitutional boundary lines and are not, in fact, rendered more powerful than the other two branches of government. Their authority merely confirms that in our governmental system, the Constitution is supreme and all three

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met with a greater response as hundreds of militants emerged from the shadows. They raised the black of ISIS and declared Marawi a new caliphate. Thus, the Marawi Siege began. This incident perfectly captures the insidious and clandestine nature of terrorism.

[130] *Giboney v. Empire Storage and Ice Co.*, 336 U.S. 490, 93 L. Ed. 834, 843-844 (1949).

[131] See *Defensor-Santiago v. Guingona, Jr.*, 359 Phil. 276, 284 (1998):

The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents this Court from prying into the internal workings of the Senate. Where no provision of the Constitution or the laws of even the Rules of the Senate is clearly shown to have been violated, disregarded or overlooked, grave abuse of discretion cannot be imputed to Senate officials for acts done within their competence and authority. This Court will be neither a tyrant nor a wimp; rather, it will remain steadfast and judicious in upholding the rule and majesty of the law.

[132] See *Araullo v. Aquino III*, supra note 34 at 531 and *Ifurung v. Carpio-Morales*, 831 Phil. 135, 151-152 (2018).

branches of government must keep within the limits of their respective powers.[133] Even the judicial branch must keep within the constitutional limits of its power to check grave abuse of discretion. Accordingly, the Constitution circumscribes judicial power in two ways: *first*, it imposes certain requisites and conditions before a court may activate its judicial power and assume jurisdiction to resolve a case; and *second*, it requires the courts to apply specific methods of judicial review, including the appropriate level of judicial scrutiny and tools of constitutional interpretation and/or statutory construction. As such, judicial power has been described as the "distinguished but delicate duty of determining and defining constitutional meaning, divining constitutional intent, and deciding constitutional disputes."[134] Nonetheless, unlike legislative and executive powers, judicial power is passive; meaning, it is initiated only in the filing of a petition in an appropriate proceeding.[135]

Corollary, in the traditional exercise of judicial power, the right on which a petition is based must be identified with particularity, together with allegations on how this right has been violated. This same rule applies with equal force to the "expanded" mode: the grave abuse of discretion committed by the governmental agency, office, or officer must likewise be properly alleged through *prima facie* showing of the abusive act and of the manner the abuse was committed. These allegations constitute the "case or controversy" requirement for the exercise of judicial power under Art. VIII, Sec. 1 of the Constitution. Without these allegations, the Court shall dismiss a petition for failure to show the required grave abuse of discretion.

After the Court's examination, It then decides whether the disputed law complies with or violates the terms of the Constitution. In the latter case, the Court ultimately decides whether the law, found to be flawed, must be struck down in its entirety, or saved through a limiting construction that does not rewrite but merely aligns the law with the Constitution, or partly saved through a separability interpretation.[136] In rare instances, the Court urges the executive and legislative branches to fine tune their implementing rules in order to forestall the excesses that would render the law's enforcement unconstitutional.[137]

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[133] See *Angara v. Electoral Tribunal*, 63 Phil. 139, 156 (1936).
[134] *Cf. Dueñas, Jr. v. House of Representatives Electoral Tribunal*, 610 Phil. 730, 742 (2009).
[135] *Cf. Lagman v. Medialdea*, 812 Phil. 179, 269 (2009); see also *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 640 (1940).
[136] *Lopez v. Court of Appeals*, 438 Phil. 351, 361 (2002).
[137] *Bayan v. Exec. Sec. Ermita*, 522 Phil. 201, 236-240 (2006).

B. Approaches to Judicial Review

i. Effect of Nature of Challenge Admitted on Choice of Judicial Scrutiny

"*Prior to enforcement*" means that a challenge could be launched even before the law is applied and before the petitioner or parties who are not before the Court suffer any actual or direct damage or injury (thus, even without showing the *locus standi or* actual case or controversy that the Constitution expressly requires).[138]

Without a clearly pleaded and defined actual controversy, a facial challenge is a very sensitive aspect of constitutional litigation as the court runs the risk of ruling on hypothetical situations unless it strictly adheres to the "facial" description of the challenge. To be "facial," the law must show, *based solely on its wording or its direct and immediate implication*, that a constitutional violation exists through vagueness or overbreadth.[139]

Assuming that the challenge is admitted, its nature—that is, whether it be an as-applied challenge, a facial challenge, or a case of transcendental importance—does not pre-determine the level of judicial scrutiny to be employed.

ii. Proposed Judicial Scrutiny

a. Gradations of Scrutiny

Judicial review proper proceeds by determining whether the law, as it operated on the petitioner, falls within constitutional parameters, using the appropriate lens of scrutiny and its necessary gradations. The levels of scrutiny are discussed at length below.

A critical analytical tool considered together with the mode of challenge in reviewing the constitutionality of a disputed law is the level of

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[138] The Court, in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 14 at 489-490, held as follows:
Distinguished from an as-applied challenge which considers only extant facts affecting real litigants, a facial invalidation is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.
x x x x
A strong criticism against employing a facial challenge in the case of penal statutes, if the same is allowed, would effectively go against the grain of the doctrinal requirement of an existing and concrete controversy before judicial power may be appropriately exercised. A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it. (citations omitted)

[139] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, id. at 489, citing *David v. Macapagal-Arroyo*, supra note 69 at 777 (2006) and *Spouses Romualdez v. COMELEC*, 576 Phil. 357, 390-394 (2008).

scrutiny that the Court shall apply in considering the case.[140] The level of scrutiny depends on the level of protection accorded by the Constitution to the fundamental right allegedly affected by the law;[141] the gravity of the governmental objective sought through the law; and the degree of the law's interference on the affected fundamental right.[142] Thus, the Court often makes a textual and jurisprudential re-examination of the scope of the right implicated. For example, the lowering of society's expectations of the right to privacy at airports,[143] as well as the legal context in the formulation of the law,[144] (such as when its adoption is in compliance with a binding treaty obligation)[145] affect the Court's level of scrutiny.

Jurisprudence has provided us three levels or gradations of scrutiny through the years.

The rational-basis scrutiny is appropriate where the law is merely regulatory rather than prohibitive, it is narrowly targeted and it does not impact protected rights.[146] In general, a rational-basis scrutiny ascertains whether the law is rationally related to a legitimate government purpose.[147] A soft rational-basis scrutiny accords a presumption of validity to a law of longstanding application, such as on vehicle registration.[148] A hard rational-basis scrutiny suspends any presumption of validity and weighs the public interest sought to be advanced by the law vis-à-vis any countervailing interest which is peculiar to a party, such as the right to private property.[149]

Both intermediate or means-end scrutiny and strict scrutiny are appropriate where the law implicates a right that is protected by the Constitution,[150] or a right that is enjoyed by persons who are protected by the Constitution, such as Overseas Filipino Workers.[151] However, intermediate scrutiny shall be employed if the law is content-neutral in that it is aimed merely at the time, place, or manner of exercise of a protected right.[152] In that event, the Court ascertains whether the law (1) serves an important government interest; (2) it is reasonably appropriate for the purpose of advancing said government interest; and (3) it narrowly tailors

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[140] *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 282 (2009); *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 537, 599 (2004).
[141] *Serrano v. Gallant*, id. at 285-286.
[142] *Chavez v. Gonzales*, 569 Phil. 155, 193 (2008).
[143] *People v. Suzuki*, 460 Phil. 146, 157 (2003).
[144] *Kabataan Party-List v. COMELEC*, 775 Phil. 523, 551-552 (2015).
[145] *Government of the United States of America v. Puraganan*, 438 Phil. 417, 450 (2002).
[146] Id. at 439.
[147] *Ynot v. Intermediate Appellate Court*, 232 Phil. 615, 626-628 (1987), citing *United States v. Toribio*, 15 Phil. 85, 91-92 (1910). In *Fernando v. St. Scholastica's College*, 706 Phil. 138, 160 (2013), the Court held that beautification is not a valid governmental purpose.
[148] *Bautista v. Juinio*, 212 Phil. 302, 317 (1984).
[149] *Quinto v. COMELEC*, supra note 113 at 261-263. The Court held that political candidacy is not protected speech. See also, *White Light Corp. v. City of Manila*, 596 Phil. 444, 451-454 (2009).
[150] *Samahan ng mga Progresibong Kabataan v. Quezon City*, supra note 59 at 1113-1114.
[151] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403 (2014).
[152] *Nicolas-Lewis v. COMELEC*, supra note 120.

the burden on protected rights only to the extent necessary to advance the government interest.[153]

Strict judicial scrutiny shall be employed where the core content of the protected right or the right of a protected person is burdened by the law,[154] or where a suspect classification based on race, sex, or religion is adopted.[155] However, intermediate review is sufficient where the core of a protected right to speech is merely unnecessarily burdened by a law through overbreadth.[156] When engaging in strict scrutiny, the Court suspends the presumption of regularity of official conduct and, by extension, the presumption of constitutionality of the law.[157] It inquires whether the government has established that (1) there is a distinctly compelling governmental interest; and (2) the law is narrowly designed to achieve said governmental interest.[158]

b. Proposed Level of Scrutiny

The aforementioned considerations, to my mind, cannot be applied in a plain and mechanistic way; application must be attended by the discretion appropriate to the subject under consideration. For example, when the importance of the government's interest weighs heavily (as the compelling interest that terrorism does), the third element of a narrow focus may appropriately be adjusted and widened to ensure that the government's interest is properly and thoroughly addressed. Failure to make this adjustment may spell the difference in the effectiveness of the law.

The fight against terrorism is indisputably a compelling government interest in light of the nature and background of this menace and its continuing threat to the country. Whether and to what extent the government measure should focus should depend on the nature and extent of the interest at stake and on the character of the measure the law prescribes, considered in relation with the constitutional right involved. A material question on this point is whether the abuse of constitutional right is patent or immediately threatened, or whether it is only considered possible. The element of pervasiveness of the violation should likewise not be forgotten.

After its scrutiny, the Court then decides whether the disputed law violates the Constitution and declares whether it must be struck down in its entirety, saved through a narrow construction that would align it with the Constitution, or partly save it through an existing separability clause or

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[153] *Mosqueda v. Pilipino Banana Growers*, 793 Phil. 17, 67 (2016).
[154] *Estrada v. Escritor*, 525 Phil. 110, 168-169 (2006).
[155] *Republic v. Manalo*, 831 Phil. 33 (2018).
[156] *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 719.
[157] *Chavez v. Gonzales*, supra note 142. See also, *The Diocese of Bacolod v. COMELEC*, 751 Phil. 301 (2015). While Senior Associate Justice Perlas-Bernabe concurred in the result, she found the regulation content-neutral thereby requiring intermediate scrutiny.
[158] *The Diocese of Bacolod v. COMELEC*, id.

through the narrow interpretation and application already suggested elsewhere in this Opinion.[159]

In rare instances, the Court may urge the executive and legislative branches to fine tune their implementing rules in order to forestall excesses in enforcement of a measure that has been found to be constitutional.[160] But in no case can the Court question the policies or measures that Congress adopts on the basis of their *wisdom*, nor can the Court delve into the adequacy under existing conditions of the enacted measures.[161]

In essence, the power of the Court to pass upon the constitutionality of laws, regulations or other acts of the legislature and the executive is awesome but is a reserved power that may be used only when and as may be appropriate; ***to our mind, the Court should only exercise the power when it must, not because it can.*** On the occasions when it must, the Court should still have the discretion to adjust the application of its conclusions based on its balancing approach, as discussed above.

By laying down the foregoing principles and mapping out the stages of constitutional judicial review, the Court provides a guide to the disposition of each disputed constitutional issue in the surviving petitions. Every stage and level of review and the resulting application shall be discussed in full in the course of their consideration.

C. Tests on the Constitutional Validity of Statutes

i. Approaches to Testing the Scope of Statutes

a. Void-for-Vagueness and Overbreadth Doctrines

As mentioned above, "vagueness" exists when the law is so unclearly or loosely framed that a person cannot reasonably know what the law exactly provides or commands; it prevents a person from reasonably knowing whether he acts within or outside the law.[162] Through vagueness

[159] *Lopez v. Court of Appeals,* supra note 136; see discussions of narrow interpretation and application at pages 12 to 14.

[160] *Bayan v. Exec. Sec. Ermita*, supra note 137.

[161] *Cf. Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, supra note 140.

[162] In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila,* supra note 18 at 325, the Court made the following pronouncement:

> From Connally v. General Construction Co. to Adderley v. Florida, the principle has been consistently upheld that what makes a statute susceptible to such a charge is an enactment either forbidding or requiring the doing of an act that men of common intelligence must necessarily guess at its meaning and differ as to its application. Is this the situation before us? A citation from Justice Holmes would prove illuminating: "We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in constructing laws as saying what they obviously mean." (citations omitted)

In *People v. Nazario,* supra note 86 at 195, the Court held that "[a]s a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the

the law transgresses the due process requirements of the Constitution by not giving a fair notice of what the law penalizes.[163] Vagueness also leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the government's muscle.[164]

An "overbreadth" exists when the means employed to achieve a governmental purpose are unnecessarily broad and, thus, invades constitutionally guaranteed rights.[165] In speech terms, facial challenge may be allowed if the disputed law prohibits not only speech that the legislature may regulate, but also speech protected under the Constitution,[166] in the U.S., if it prohibits a substantial amount of protected speech.[167]

Where conduct and not merely speech is involved, the statute's alleged overbreadth must be both real and substantial, judged in relation with the statute's plainly legitimate sweep.[168] The concept of "substantial overbreadth," however, cannot readily be reduced to an exact definition; the mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render the statute susceptible to an overbreadth challenge.[169]

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conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle." (citations omitted)
In *David v. Macapagal-Arroyo* supra note 69 at 777-778, the Court declared that "[r]elated to the 'overbreadth' doctrine is the 'void for vagueness doctrine' which holds that 'a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application.'" (citations omitted)

[163] A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. (*Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 14 at 488.

[164] *People v. Nazario,* supra note 86.

[165] In *Estrada v. Sandiganbayan,* supra note 85 at 353, the Court adopted Justice V.V. Mendoza's definition of overbreadth in his Separate Opinion:

Moreover, we agree with, hence we adopt, the observations of Mr. Justice Vicente V. Mendoza during the deliberations of the Court that the allegations that the Plunder Law is vague and overbroad do not justify a facial review of its validity —x x x The overbreadth doctrine, on the other hand, decrees that "a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." (citation omitted)

This definition was reiterated in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 14: "The overbreadth doctrine, meanwhile, decrees that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

The same definition was stated *in Disini, Jr. v. The Secretary of Justice* supra note 91 at 99: "Under the overbreadth doctrine, a proper governmental purpose, constitutionally subject to state regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms." (citation omitted)

[166] *Samahan ng mga Progresibong Kabataan v. Quezon City,* supra note 59.

[167] See *United States v. Williams,* 553 U.S. 285 (2008).

[168] *Broadrick, et al. v. Oklahoma,* supra note 111, citations omitted.

[169] See *Members of City Council of Los Angeles, et al. v. Taxpayers for Vincent,* 466 U.S. 789 (1984).

In sum, **"vagueness"** is concerned with the **clarity** of the law; while **"overbreadth"** is concerned with the **precision** of a law.[170]

b. Chilling Effect of Speech Restriction

The "chilling effect" reasoning applies with full force to freedom of speech and expression cases as the Court may, out of concern for this effect, decide in favor of a challenged law's invalidity and allow the law's targeted speech to go unregulated to avoid any deterrent effect on citizens who might otherwise lawfully speak.[171]

In balancing terms, this means that the Court is choosing to allow the existence of some unregulated speech so that citizens may enjoy the salutary effect of their full speech rights.[172] The Court thus accords preference, primacy, and full constitutional protection to citizens' right to speak.

In my view, this liberal approach outweighs the risk the community may run from the speech that remains unregulated. Note in this regard that certain types of speech such as those involving obscenity and defamation lie outside constitutional protection and are, thus, subject to statutory regulation without intruding into *the Constitution's freedom of speech guarantee.*[173]

A chilling effect, however, when recognized outside the factual circumstances of a case could raise a host of questions that ultimately boils down to one of fairness: the *who, what, when, where, why, how,* and *whether or not* a chill intervened are always hanging questions whose answers – in the absence of concrete facts – are largely assumed from the nature of the constitutional right involved.

Unfortunately, this assumption is at times made without considering the State's own interests.[174] In the context of terrorism, these interests are the constitutional duties of the State to maintain its own viability and survival; and its duties to protect and promote the interests of the governed, including

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[170] See Barron, J., & Dienes, C., *Constitutional Law in a Nutshell* (8th ed.), West Academic Publishing (2013), pp. 404-405.

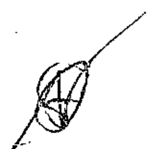
[171] In *Disini, Jr. v. The Secretary of Justice*, supra note 91 at 122, the Court held that:

A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute. The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence. (citation omitted)

[172] See *Estrada v. Sandiganbayan*, supra note 85; *Romualdez v. Sandiganbayan*, supra note 96; and *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 14.

[173] The exclusion of unprotected speech brings to the fore the question of whether terrorism-related speech is protected or unprotected speech. See *Madrilejos v. Gatdula*, G.R. No. 184389, September 24, 2019; *Soriano v. Laguardia*, 605 Phil. 43 (2009); and *Chavez v. Gonzales*, supra note 142.

[174] *See* Interpellation of Associate Justice Leonen on February 2, 2021, pp. 96 to 122.



the interests of potential victims among the governed who are not also before the court.

The chilling effect line of thought likewise glosses over the nature of the disputed law that, when penal by nature, is intended to send signals to the governed that the prohibited action should not be committed without running the risk of the law's penalty whose purpose is to deter behaviour against the interests of society. In other words, a chilling effect is built-in and is part and parcel of every penal legislation.

These concepts are not at all new in our jurisdiction as Associate Justice V.V. Mendoza, years ago, eloquently summed up the basic underlying principles in his Concurring Opinion in *Estrada v. Sandiganbayan:*[175]

> x x x x
>
> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

and dwelt as well on these challenges' characteristics and limits of use:

> This rationale does not apply to penal statutes. Criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.
>
> The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment." In Broadrick v. Oklahoma, the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to

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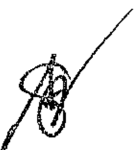
[175] Supra note 85, at 355-356.



protected conduct." For this reason, it has been held that "a facial challenge to a legislative Act is ... the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the Conduct of the others."

In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant." Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.

x x x x

Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected. It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts. But, as the U.S. Supreme Court pointed out in *Younger v. Harris*:

> [T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, ... ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.

For these reasons, "on its face" invalidation of statutes has been described as "manifestly strong medicine," to be employed "sparingly and only as a last resort," and is generally disfavored. In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged. (citations in the original omitted.)

The Associate Justice supplemented these thoughts in the Court's Resolution denying petitioner Estrada's Motion for Reconsideration when he added:[176]

> "Indeed, it has been pointed out that "procedures for testing the constitutionality of a statue 'on its face'. . . are ***fundamentally at odds with the function of courts in our constitutional plan.*** " When an accused is guilty of conduct that can constitutionally be prohibited and that the State has endeavored to prohibit, the State should be able to inflict its punishment. Such punishment violates no personal right of the accused. Accordingly, as the enforcement of the Anti-Plunder Law is not alleged to produce a chilling effect on freedom of speech or religion or some "fundamental rights" to be presently discussed, only such of its provisions can be challenged by petitioner as are sought to be applied to him. Petitioner cannot challenge the entire statute on its face. A contrary rule would permit litigation to turn on abstract hypothetical applications of a statute and disregard the wise limits placed on the judicial power by the Constitution. As Justice Laurel stressed in *Angara v. Electoral Commission*, "the power of judicial review is limited to actual cases and controversies . . . and limited further to the constitutional question raised or the very *lis mota* presented." (emphasis supplied)

Subsequent to its *Estrada* ruling, the Court ruled on the merits of *Southern Hemisphere v. Inc. v. Anti-Terrorism Council* on the issue of the validity of the country's first anti-terrorism legislation, the HSA.

The Court significantly declared the HSA valid, again drawing heavily on Associate Justice V.V. Mendoza's Separate Opinions in *Estrada*. It thus reinforced the strength of the Court's pronouncements, first made in *Estrada*, on facial challenge, and also established the ***unavailability of facial challenge in reviewing penal laws.***

Consistent with these positions, the Court has subsequently limited the application of a facial challenge to cases clearly involving the freedom of speech and other fundamental rights and showing that these rights had been at risk. Except for its ruling in *Disini*, mentioned below, it also limited the application of facial challenge to non-penal statutes that do not involve violations of fundamental rights.

Thus, aside from an *equal protection clause violation* (that the Court allowed in *Biraogo v. Philippine Truth Commission* based on the invalid classification made in the disputed law),[177] jurisprudence has allowed a facial challenge only for violation of the *freedom of speech and expression* under Art. III, Sec. 4 of the Constitution;[178] the *right to privacy of*

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[176] G.R. No. 148560, Resolution dated January 29, 2002.
[177] Supra note 118.
[178] *Disini, Jr. v. The Secretary of Justice*, supra note 91.

communication and correspondence under Sec. 3(1);[179] and the *right to form association* under Sec. 8.[180]

Justice V.V. Mendoza's 2001 Concurring Opinion in *Estrada v. Sandiganbayan,* cited above, was made a part of the main opinion in that case and likewise became part of the main opinions in *Romualdez v. Sandiganbayan* (2004); *Spouses Romualdez v. Commission on Elections* (2008); *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council* (2010); *Spouses Imbong v. Ochoa, Jr.* (2014); *Lagman v. Medialdea* (2017) and *Madrilejos v. Gatdula* (2019), among others.

The Court (and the U.S. Supreme Court whose "facial challenge" approach became this Court's initial model)[181] has allowed a facial challenge in the past to address the "chilling effect" that the challenged law could bring to third parties who are not before the Court *even prior to* the law's implementation,[182] thus, based solely on what the law provides "*on its face*"

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[179] *Cf Ople v. Torres*, 354 Phil. 948 (1998). It must be stated that *Ople v. Torres* did not expressly involve a facial challenge in the sense that there was no discussion in the decision concerning the applicability of a "facial challenge." However, the Court appeared to have taken into consideration "...the broadness, the vagueness, the overbreadth of A.O. No. 308 which if implemented will put our people's right to privacy in clear and present danger" in rendering its decision. It held that "[i]t is noteworthy that A.O. No. 308 does not state what specific biological characteristics and what particular biometrics technology shall be used to identify people who will seek its coverage. Considering the banquet of options available to the implementors of A.O. No. 308, the fear that it threatens the right to privacy of our people is not groundless."

[180] *Cf Quinto v. COMELEC*, supra note 110 at 277-278. Strictly speaking, *Quinto v. Commission on Elections* did not contain any specific discussions on the applicability of the "facial challenge" doctrine. Nonetheless, the Court held that "[t]he challenged provision also suffers from the infirmity of being overbroad" on the following grounds:

> First, the provision pertains to all civil servants holding appointive posts without distinction as to whether they occupy high positions in government or not. Certainly, a utility worker in the government will also be considered as ipso facto resigned once he files his CoC for the 2010 elections. This scenario is absurd for, indeed, it is unimaginable how he can use his position in the government to wield influence in the political world.
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> x x x x
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> Second, the provision is directed to the activity of seeking any and all public offices, whether they be partisan or nonpartisan in character, whether they be in the national, municipal or barangay level. Congress has not shown a compelling state interest to restrict the fundamental right involved on such a sweeping scale. (citations omitted)

[181] *Gooding v. Wilson*, 405 U.S. 518, 521, 31 L. Ed.2d 408, 413 (1972), cited in *Estrada v. Sandiganbayan,* supra note 85, at 353:

> The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity."

Broadrick v. Oklahoma, supra note 111, cited in *David v. Macapagal-Arroyo*, supra note 69 at 776:

> [F]acial invalidation of laws is considered as "manifestly strong medicine," to be used "sparingly and only as a last resort," and is "generally disfavored;" The reason for this is obvious. Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, *i.e.*, in other situations not before the Court. (emphasis omitted)

[182] In *Chavez v. Gonzales*, supra note 142 at 195-196, the Court held:

> Freedom of expression has gained recognition as a fundamental principle of every democratic government, and given a preferred right that stands on a higher level than substantive economic freedom or other liberties. The cognate rights codified by Article III, Section 4 of the Constitution, copied almost verbatim from the First Amendment of the U.S. Bill of Rights, were considered the necessary consequence

and without the benefit of factual context or concrete evidence of the actual circumstances of the alleged violation of rights.[183]

In this sense, facial challenge is an approach that the Court allows in an ***excess of caution*** to prevent situations where citizens are prevented from acting, in a manner otherwise protected under the Constitution, due to their uncertainty on the meaning and scope of the law and their fear that the law could cover and penalize them. This is the "chilling effect" that compelled the Court to immediately act, without waiting for the law's implementation, on overbroad or vague laws affecting fundamental rights.

In plainer terms, because of a statute's vagueness or overbreadth, a person might stay away from doing anything that could possibly fit the uncertain wording of the law, thereby limiting what he could otherwise legitimately do. Invalidity arises because the wording of the challenged law may cover both protected and unprotected speech, thus preventing people from speaking due to their fear or concern that they would overstep into unprotected territory and thereby violate the law.

c. Speech v. Criminal Conduct

Speech, as a fundamental right, is constitutionally protected.[184] Thus, the U.S. Supreme Court has only recognized limited categories of speech that the government may regulate because of their content and for as long as the regulation is even-handed.[185] Content-based restrictions on speech, *i.e.*, laws that "appl[y] to particular speech because of the topic discussed or the idea or message expressed," are thus presumptively unconstitutional and subject to strict scrutiny.[186]

Likewise, it has been held that an utterance or other mode of expression is said to be "unprotected" if it is "*of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.*"[187] The U.S. Court has recognized various categories of unprotected speech, albeit these

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of republican institutions and the complement of free speech. This preferred status of free speech has also been codified at the international level, its recognition now enshrined in international law as customary norm that binds all nations.

In the Philippines, the primacy and high esteem accorded freedom of expression is a fundamental postulate of our constitutional system. This right was elevated to constitutional status in the 1935, the 1973 and the 1987 Constitutions, reflecting our own lesson of history, both political and legal, that freedom of speech is an indispensable condition for nearly every other form of freedom. Moreover, our history shows that the struggle to protect the freedom of speech, expression and the press was, at bottom, the struggle for the indispensable preconditions for the exercise of other freedoms. For it is only when the people have unbridled access to information and the press that they will be capable of rendering enlightened judgments. In the oft-quoted words of Thomas Jefferson, we cannot both be free and ignorant. (citations omitted)

[183] See *Disini, Jr. v. The Secretary of Justice,* supra note 91.

[184] 1987 CONSTITUTION, Article III, Section 4; *Chavez v. Gonzales*, supra note 142 at 196.

[185] See *R.A.V. v. St. Paul*, 505 U.S. 377, 382-86 (1992).

[186] *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) at 2226-27.

[187] *United States v. Stevens*, 559 U.S. 460 (2010), citations omitted.

characterizations have remained live and open, largely depending on the character and context of the speech.[188] Under the unprotected category are: obscenity, defamation, fraud, incitement, speech integral to criminal conduct, and child pornography.[189]

In the Philippines, this Court has issued its own line of rulings on the protection of free speech pursuant to Sec. 4 of Art. III (our Bill of Rights). Our early decisions were largely guided by U.S. doctrines on the extent of speech protection, the kind of scrutiny to be applied, as well as on the categories of speech that fall outside constitutional protection. This Court adopted the clear and present danger rule as early as the case of *Cabansag v. Fernandez*[190] and explained the doctrine and its roots in *Soriano v. Laguardia.*[191] *Chavez v. Gonzales*[192] further instructs Us that the clear and present danger test is used when the governmental action that restricts freedom of speech or of the press is based on content.

Another criterion for permissible limitation on freedom of speech and of the press, which includes vehicles of the mass media such as radio, television, and the movies, is the "balancing-of-interests test." The principle "requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation." *Lagunzad v. Vda. de Gonzales* elaborated on the justification for this test in these words:

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[188] *United States v. Stevens*, id.:

"Maybe there are some categories of speech that have been historically unprotected, but have not yet been specifically identified or discussed as such in our case law. But if so, there is no evidence that "depictions of animal cruelty" is among them. We need not foreclose the future recognition of such additional categories to reject the Government's highly manipulable balancing test as a means of identifying them."

[189] The U.S. Supreme Court has long considered political and ideological speech to be at the core of the First Amendment guarantee, including speech concerning *"politics, nationalism, religion, or other matters of opinion."*

Political speech can take other forms beyond the written or spoken word, such as money (*Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*) or symbolic acts (Texas v. Johnson, 491 U.S. 397 (1989). A government regulation that implicates political or ideological speech generally receives strict scrutiny so that the government must show that the law is narrowly tailored to achieve a compelling government interest.

Commercial speech, on the other hand, (*i.e.*, speech that merely proposes a commercial transaction or relates solely to the speaker's and the audience's economic interests) has historically received less First Amendment protection than political speech. For many years, courts deferred to legislatures when it came to economic regulations that impinged upon speech. However, the Court's 1976 decision in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, launched a trend of increased judicial scrutiny over laws implicating commercial speech.

[190] 102 Phil. 152 (1957).

[191] Supra note 173.

[192] Supra note 142 at 206-207. The Court held in this case that:

With respect to **content-based** restrictions, the government must also show the type of harm the speech sought to be restrained would bring about — especially the gravity and the imminence of the threatened harm — otherwise the prior restraint will be invalid. Prior restraint on speech based on its content **cannot** be justified by hypothetical fears, "but only by showing a substantive and imminent evil that has taken the life of a reality already on ground." As formulated, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

> The right of freedom of expression, indeed, occupies a preferred position in the "hierarchy of civil liberties." It is not, however, without limitations. As held in Gonzales vs. Commission on Elections:
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> > From the language of the specific constitutional provision, it would appear that the right is not susceptible of any limitation. No law may be passed abridging the freedom of speech and of the press. The realities of life in a complex society preclude however, a literal interpretation. Freedom of expression is not an absolute. It would be too much to insist that at all times and under all circumstances it should remain unfettered and unrestrained. There are other societal values that press for recognition.[193]

In *SWS v. COMELEC,*[194] former Chief Justice Reynato Puno opined that "the dangerous tendency test [...] now commands little following" owing to the preferred status of freedom of speech and of the press. Justice Melo in *Iglesia Ni Cristo v. CA*[195] went to say that the dangerous tendency rule has long been abandoned and that "the sole justification for a given restraint or limitation [...] is the existence of a grave and present danger of a character both grave and imminent, of a serious evil to public safety, public morals, public health or any other legitimate public interest that the state has the right and duty to prevent."

We likewise began to develop our own line of rulings on unprotected speech, taking our cue from *Gitlow v. New York.*[196] In *Philippine Journalists, Inc. (People's Journal) v. Theonen,* this Court held that lewd, obscene, profane, libelous, and insulting or "fighting words" are unprotected speech:

> But not all speech is protected. "The right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the **lewd and obscene, the profane, the**

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[193] 181 Phil. 45, 57-58 (1979).
[194] 409 Phil. 571, 596 (2001).
[195] 328 Phil. 893, 939 (1996).
[196] 268 U.S. 652, June 8, 1925. The U.S. Supreme Court explained in this case:

It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.

x x x x

That a State in the exercise of its police power may punish those who abuse this freedom by **utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question.**

x x x x

And, for yet more imperative reasons, a State may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional State. Freedom of speech and press [...] does not protect disturbances to the public peace or the attempt to subvert the government. It does not protect publications or teachings which tend to subvert or imperil the government or to impede or hinder it in the performance of its governmental duties.

> **libelous, and the insulting or 'fighting' words** — those which by **their very utterance inflict injury or tend to incite an immediate breach of the peace.** It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."[197]

The U.S. Supreme Court has likewise recognized that "fighting words" (*i.e.*, words or speech "likely to provoke the average person to retaliation, and thereby cause a breach of the peace") are not protected speech. It drew the line, however, in *Chaplinsky v. New Hampshire* (315 U.S. 568, 574) when it stated that "speech cannot be restricted simply because it is upsetting or arouses contempt."[198] And although the Court continues to cite "fighting words" as an example of speech that the government may proscribe, it has not upheld a government action on the basis of that doctrine since *Chaplinsky.*

The U.S. Supreme Court has similarly ruled that the constitutional free speech guarantee does not bar the government from prohibiting some form of intimidation such as "true" threats.[199] True threats—as distinguished from "political hyperbole"— occur when the speaker "means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."[200]

Along these lines of speech and of particular interest and relevance under the ATA, given the objections made in the present consolidated petitions, is "speech integral to criminal conduct." The U.S. Supreme Court recognized that, in general, the free speech guarantee affords no protection to speech "used as an integral part of conduct in violation of a valid criminal statute," citing *Giboney v. Empire Storage & Ice Co.*[201]

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[197] 513 Phil. 607, 617 (2005).
[198] *Snyder v. Phelps*, 562 U.S. 443, 458 (2011).
[199] See *Watts v. United States*, 394 U.S. 705, 708 (1969).
[200] See *Virginia v. Black*, 538 U.S. 343, 359 (2003).
[201] Supra note 130 at 843-844. *Giboney v. Empire Storage and Ice Co.*, involved an injunction issued by a state court against officers and members of the Ice and Coal Drivers and Handlers Local Union No. 953, affiliated with the American Federation of Labor. It enjoined them from picketing at the place of business of Empire Storage and Ice Co. The objective of the peaceful picketing was to prevent Empire from selling ice to non-union peddlers. Under state law, in this case, the law of Missouri, this kind of agreement is a crime punishable by a fine of not more than $5,000 and by imprisonment for not more than five years.

The union challenged the injunction on a couple of grounds, one of them, that "*the injunction against picketing adjacent to Empire's place of business is an unconstitutional abridgment of free speech because the picketers were attempting peacefully to publicize truthful facts about a labor dispute.*"

The U.S. Supreme Court rejected this argument and held that the constitutional freedom of speech and press does not extend its immunity to speech integral for conduct in violation of a crime.201 The U.S. Supreme Court held:

"It is true that the agreements and course of conduct here were, as in most instances, brought about through speaking or writing. But it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. See e.g., Fox v. Washington, 236 U. S. 273, 236 U. S. 277; *Chaplinsky New Hampshire*, 315 U. S. 568. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws

The U.S. Court cited this case as one reason the government may prohibit, for example, conspiracy or solicitation to commit a crime, offers or requests to obtain illegal material, or impersonating a government officer and thereby recognized "speech integral to criminal conduct" as an exception to the First Amendment guarantee of free speech under the U.S. Constitution.

Giboney, decided in 1949, was not cited in U.S. Supreme Court rulings from 1991 to 2005.[202] However, since 2006, it has been cited six times.[203] It has also been observed that the *Giboney* ruling has later been extensively cited in the US.[204]

In the Philippines, *Giboney* has been cited twice. The first citation was in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,*[205] a *ponencia* of Justice Carpio-Morales; the second was in Senior Associate Justice Carpio's Concurring Opinion in *Spouses Imbong v. Ochoa, Jr.*[206]

The object of the ATA is to criminalize and penalize terrorism, which should include speech integral to this criminal conduct. This is evident from the provisions of the ATA that petitioners Justices Carpio-Morales and Carpio now assail through their own petition, *Antonio T. Carpio v. Anti-Terrorism Council* (G.R. No. 252736).

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against agreements in restraint of trade, as well as many other agreements and conspiracies deemed injurious to society." (emphasis supplied)

[202] Eugene Volokh, The Speech Integral to Criminal Conduct Exception, 101 Cornell L. Rev. 981 (2016) Available at: http://scholarship.law.cornell.edu/clr/vol101/iss4/3

[203] Id., citing in footnote 3 *United States v. Alvarez*, 132 S. Ct. 2537, 2544 (2012) (plurality opinion); see *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 2665 (2011); *Holder v. Humanitarian Law Project*, 561 U.S. 1, 27 n.5 (2010); *United States v. Stevens*, 559 U.S. 460, 468-69 (2010); *United States v. Williams*, 553 U.S. 285, 297 (2008); *Rumsfeld v. FAIR*, 547 U.S. 47, 62 (2006).

[204] "The Court has used this exception to justify prohibitions on distributing and possessing child pornography (*New York v. Ferber*, 458 U.S. 747, 761–62 (1982), on soliciting crime (*Williams*, 553 U.S. at 297), and on announcing discriminatory policies (*FAIR*, 547 U.S. at 62). Lower courts have used it to justify restrictions on speech that informs people how crimes can be committed (Rice v. Paladin Enters., Inc., 128 F.3d 233, 244 (4th Cir. 1997)); on doctor speech that recommends medical marijuana to their clients (Pearson v. McCaffrey, 139 F. Supp. 2d 113, 121 (D.D.C. 2001); Conant v. McCaffrey, 172 F.R.D. 681, 698 (N.D. Cal. 1997); see also Petition for a Writ of Certiorari at 20, Walters v. Conant, 540 U.S. 946 (2003) (No. 03-40) (arguing that the revocation of a physician's registration for recommending that patients use marijuana does not violate the First Amendment). But see Conant v. Walters, 309 F.3d 629, 637–38 (9th Cir. 2002) (holding such speech constitutionally protected); on union speech that "retaliates" against union members by publicly criticizing them for their complaints (*See, e.g.*, Dixon v. Int'l Bhd. of Police Officers, 504 F.3d 73, 83–84 (1st Cir. 2007)); on intentionally distressing speech about people (*See infra* Part III.B.1.) and more (See, e.g., Pickup v. Brown, 740 F.3d 1208, 1222 (9th Cir. 2013)). Government agencies have used the exception to justify restrictions on, among other things, the publication of bomb-making instructions (U.S. DEP'T OF JUSTICE, 1997 REPORT ON THE AVAILABILITY OF BOMB-MAKING INFORMATION, https://perma.cc/63JT-WMEG.), speech by tour guides (Brief for Appellee District of Columbia at 23, Edwards v. District of Columbia., 755 F.3d 996 (D.C. Cir. 2014) (Nos. 13-7063 & 13-7064)), and offensive speech by protesters near a highway (Brief for Defendants-Appellees at 29, Ovadal v. City of Madison, 416 F.3d 531 (7th Cir. 2005))" (Id., citations included inline)

[205] Supra note 14.

[206] Supra note 104.

After due consideration, I submit that there is wisdom and patent practicality in following the U.S. Supreme Court lead on unprotected speech. **Speech integral to criminal conduct** (along the lines of the *Giboney* ruling) should receive the attention of this Court as aspects of speech that Arts. 4 to 12 of the ATA and other terrorism-related acts proscribed by law can regulate without necessarily running against the protection guaranteed by Art. III, Sec. 4 of our Constitution.

D. Speech-Related Standards of Review

In the usual understanding, speech is oral or written communication of ideas from one person to another. Numerous activities that do not involve the use of words, however, have been held to be speech, while in some cases, the use of language, both written and oral, was not considered as speech. For example, the wearing of black armbands by high school students to protest the Vietnam War was characterized as akin to pure speech in *Tinker v. Des Moines*[207] while the burning of a U.S. flag was deemed communicative conduct warranting protection under the First Amendment in *Texas v. Johnson*.[208] Meanwhile, slander or libel, despite involving spoken or written words, are punishable.

i. Reviewing Restrictions as to Time of Speech

Speech or expression may be restrained as to *time* or *manner*. On the one hand, restrictions, or burdens on speech as to time are classified into two types: (1) prior restraint; and (2) subsequent punishment. Prior restraint refers to official government restrictions on the press or other forms of expression *in advance* of actual publication or dissemination.[209] Subsequent punishment, on the other hand, is the imposition of liability (penal, civil, or administrative) to the individual exercising his freedom. It may be in any form - penal, civil, or administrative.[210]

ii. Reviewing Restrictions as to Manner of Speech

Restrictions on speech based on the manner of regulation come in two categories: (1) content-based; and (2) content-neutral. Content-based regulations are those based on the subject-matter of the utterance or speech; while content-neutral regulations are merely concerned with the incidents of speech, or one that merely involves the time, place, manner, or means and circumstances of communication.[211]

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[207] 393 US 503 (1969).
[208] 491 U.S. 397 (1989).
[209] *Soriano v. Laguardia*, supra note 173 at 96.
[210] *See* Separate Opinion of Associate Justice Angelina Sandoval-Gutierrez in *Chavez v. Gonzales*, supra note 142 at 224.
[211] *Nicolas-Lewis v. COMELEC*, supra note 120.

Restraints on free speech **as to content** are generally evaluated on one of or a combination of three tests: (1) the dangerous tendency doctrine; (2) the balancing-of-interest test; and (3) the clear-and-present danger rule.[212] *First*, the "**dangerous tendency**" doctrine simply means that, "[i]f the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable."[213] *Second*, the "**balancing-of-interest**" test operates "[w]hen particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, [courts are duty-bound] to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented."[214] *Last*, the "**clear-and-present danger**" rule "is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."[215]

To date, Philippine courts adhere to the clear-and-present danger rule in testing the constitutionality of statutes that regulate speech. [216]

E. Proposed Judicial Review Approach to Anti-Terrorism Statutes

The appropriate level of judicial scrutiny in the instant case is the intermediate level of judicial scrutiny.

The Court enjoys a margin of discretion in the selection of the appropriate level of judicial scrutiny. Nonetheless, the Court must not cherry pick and rely solely on the petitioners' allegations of impairment of constitutional rights while completely ignoring the arguments of public respondents on other material factors justifying the scope and mode of criminalization of terrorism. In *The Nature of Constitutional Rights : The Invention and Logic of Strict Judicial Scrutiny*, Professor Richard Fallon examines the practice of US courts in jurisdictions and argues that levels of judicial scrutiny are inventions of judges designed to enable them to apply words that are fixed in time (the constitution) to realities that are constantly changing, including the very nature of rights.[217] It follows that the choice of level of scrutiny is determined not just by the nomenclature of the rights affected but also by the changing social perceptions about the values sought be protected by the exercise of such rights vis-à-vis the values sought to be promoted by a law that regulates or restricts the exercise of such rights.[218]

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[212] *Disini, Jr. v. The Secretary of Justice*, supra note 91 at 142.
[213] *Cabansag v. Fernandez*, supra note 190 at 163.
[214] *American Communications Association, et al. v. Douds*, 339 U.S. 382 (1950).
[215] *Bridges v. California*, 314 U.S. 252 (1941).
[216] See *ABS-CBN Broadcasting Corporation v. COMELEC*, 380 Phil. 780, 794 (2000).
[217] Richard Fallon, The Nature of Constitutional Rights: The Invention and Logic of Strict Judicial Scrutiny (Cambridge University Press, 2019), pp. 28-61. Prof. Fallon argues that strict scrutiny is an invention of the US Supreme Court in the 1960's and that the triggers have been constantly evolving.
[218] Id. at 68-90. *See also* Eric Posner and Adrian Vermeule, Terror in the Balance Security, Liberty, and The Courts (Oxford University Press, 2007). These authors argue that judges should not pretend to know

Terrorism is an evolving target. Accordingly, efforts to criminalize it have shifted towards the prevention of terrorism before acts of violence are committed. Prevention is carried out through the suppression of acts that, hitherto innocuous and innocent, enable the commission of violent acts of terrorism. The use of the internet for radicalization, recruitment and movement of warm bodies and logistical resources leading to the Marawi siege serve as concrete context for the necessity to adopt the preventative criminalization of terrorism in the Philippines.[219] The ATA is the government response to this need.

There are at present 19 universal/multilateral international legal instruments as well as several resolutions issued by the United Nations Security Council *(UNSC)* that make up an international legal regime on terrorism. Inter-state, bilateral and regional instruments on designation and proscription of terrorist persons and entities have been concluded.[220] This regime creates certain binding state obligations regarding the criminalization of terrorism.[221] The consequences for non-compliance with these binding obligations range from chokepoints in financial services, trade, and investment to designation as a state sponsor of terrorism.[222]

The foregoing history of the criminalization of terrorism and crystallization of an international legal regime governing counter-terrorism justify recourse to an intermediate level of judicial scrutiny.

Moreover, even assuming that freedom of expression is incidentally implicated by any provision of the ATA, whether by Sec. 4 or Sec. 10 or Sec. 25, these measures are merely regulatory of the manner rather than content of the expression. In fact, Sec. 4 insulates "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights" from criminalization, without qualifying that such expression must contain a particular perspective or ideology. Rather, Sec. 4 criminalizes the manner of exercising freedom of expression that amounts to acts intended to cause death or serious bodily injury. The established rule is that content-neutral regulations that implicate protected speech are more appropriate for an intermediate level rather than strict level of judicial scrutiny.[223]

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more when security experts and politicians are themselves floundering about how best to respond to terrorism. The prudent option is for the court to adopt a trade-off approach by situating the metrics of security and liberty in varying real world contexts (pp. 21-28).

[219] Note No. 000350 - 2020 of the Permanent Mission of the Republic of the Philippines to the United Nations avails itself of this opportunity to renew to the United Nations Office of Legal Affairs.

[220] *See*, for example, US-Israel Counter - Terrorism Cooperation Accord, 30 April 1996, 7 US Department of State Dispatch 19, 225-226.

[221] *See* Art. 3(j)(3), R.A. No. 10168 or The Terrorism Financing Prevention and Suppression Act of 2012 (Anti-Terrorism Financing Act or ATFA). It includes in the definition of terrorism act that violate 9 international agreements.

[222] For example, the US has designated Cuba, North Korea, Iran and Syria as state sponsors of terrorism for providing safe haven to terrorism. *See* Section 1754(c), US National Defense Authorization Act for Fiscal Year 2019.

[223] *Ejercito v. COMELEC*, 748 Phil. 205 (2014).

Thus, even if a penal law is subjected to a facial challenge, if said law affects only the time and manner but not the content of the exercise of free speech, such law shall be not be subjected to strict judicial scrutiny. A penal law proscribing unprotected speech is also not subject to strict judicial scrutiny.

There is nothing in the ATA, much less in the allegations of the petitions or the findings in the Decision, indicating that a provision thereof targets a particular ideology or belief. In particular, the *proviso* in Sec. 4 proscribes speech as an integral part of an overt act of terrorism. Hence, it regulates the manner of exercising freedom of speech, specifically that said right be not exercised as an integral part of terrorism. More importantly, the *proviso* regulates unprotected speech; that is, speech as an integral part of an overt act of terrorism. As mentioned already, the *proviso* would validly apply to an advocacy for the Islamic State or for cultural-religious cleansing as integral parts of a terrorist attack.

Thus, even assuming that the ATA regulates speech, it does so with respect to the manner of its exercise and covers unprotected speech as an integral part of a criminal act. Strict judicial scrutiny is not appropriate. Rather, intermediate judicial scrutiny is.

III. Allowance of Petitions

A. Presence of Grave Abuse of Discretion

A common feature present in the consolidated petitions before this Court is the remedy they seek – the nullification of the ATA, the official act of a separate co-equal body, pursuant to Sec. 1, paragraph 2 of Art. VIII when grave abuse of discretion exists, or under Sec. 5 of Art. VIII.

Recourse through a petition for *certiorari* or prohibition means that there must at least be the *prima facie* allegation of grave abuse of discretion,[224] not simply by claiming that grave abuse of discretion

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[224] In *Kilusang Mayo Uno v. Aquino III*, 788 Phil. 415, 428-429 (2016), the Court held that the petition was devoid of substantial basis despite a sweeping allegation of grave abuse of discretion under the petition's section on its Nature. This is similar to the case at hand. The pertinent excerpt from *Kilusang Mayo Uno v. Aquino III* is as follows:

"Even if the procedural issues are disregarded, the petitions still failed to show that PhilHealth gravely abused its discretion in issuing the assailed circulars. On the contrary, PhilHealth acted with reasonable prudence and sensitivity to the public's needs. It postponed the rate increase several times to relieve the public of the burden of simultaneous rate and price increases. It accommodated the stakeholders and heard them through consultation. In the end, it even retained a lower salary bracket ceiling (Php35,000.00 instead of Php50,000.00) and a lower rate (2.5% rather than the planned 3%).

The term "grave abuse of discretion" has a specific and well-defined meaning in established jurisprudence. It is not an amorphous concept that can be shaped or manipulated to suit a litigant's purpose. 48 Grave abuse of discretion is present when there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, 49 or where power is exercised arbitrarily or in a despotic manner by reason of passion, prejudice, or personal hostility amounting

intervened, but by briefly describing how it intervened. Short of these, the Court will dismiss the petition for failure to show the case or controversy that the exercise of judicial power requires.

Despite repeated warnings from this Court and many previous outright dismissals of petitions for failure to properly plead and allege grave abuse of discretion, some lawyers – it seems – have not learned the lesson that it is not sufficient to simply state that "grave abuse of discretion" had been committed, without more. **The abusive act must always be *alleged with particularity*, together with allegations on *why and how the act constituted grave abuse of discretion*.** This ground, too, yielded not a few dismissals among the consolidated petitions.[225]

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to an evasion of positive duty, or to a virtual refusal to perform a legal duty or act at all in contemplation of law.

Other than a sweeping allegation of grave abuse of discretion under its Nature of the Petition section, the petition is devoid of substantial basis." (citations omitted)

Meanwhile, in *Tribiana v. Tribiana*, 481 Phil. 539, 549 (2004), the Court noted that "[t]he petition for certiorari filed by Edwin questioning the RTC's denial of his motion to dismiss merely states a blanket allegation of "grave abuse of discretion. An order denying a motion to dismiss is interlocutory and is not a proper subject of a petition for certiorari. Even in the face of an error of judgment on the part of a judge denying the motion to dismiss, certiorari will not lie. Certiorari is not a remedy to correct errors of procedure. The proper remedy against an order denying a motion to dismiss is to file an answer and interpose as affirmative defenses the objections raised in the motion to dismiss. It is only in the presence of extraordinary circumstances evincing a patent disregard of justice and fair play where resort to a petition for certiorari is proper." (citations omitted)

The Court, in *Odango v. National Labor Relations Commission* (475 Phil. 596, 606-607 [2004]) held as follows:

"We agree with the Court of Appeals that nowhere in the petition is there any acceptable demonstration that the NLRC acted either with grave abuse of discretion or without or in excess of its jurisdiction. Petitioners merely stated generalizations and conclusions of law. Rather than discussing how the NLRC acted capriciously, petitioners resorted to a litany of generalizations.

Petitions that fail to comply with procedural requisites, or are unintelligible or clearly without legal basis, deserve scant consideration. Section 6, Rule 65 of the Rules of Court requires that every petition be sufficient in form and substance before a court may take further action. Lacking such sufficiency, the court may dismiss the petition outright."

[225] *Atty. Howard M. Calleja v. The Executive Secretary* (G.R. No. 252578); *Melencio S. Sta. Maria, et al. v. Executive Secretary, et al.* (G.R. No. 252580); *Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al.* (G.R. No. 252623); *Christian S. Monsod, et al. v. Executive Secretary, et al.* (G.R. No. 252624); *Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea* (G.R. No. 252741); *National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252747); *The Alternative Law Groups, Inc. v. Executive Secretary* (G.R. No. 252765); *HENDY ABENDAN of Center for Youth Participation and Development Initiatives, et al. v. Hon. Salvador C. Medialdea, et al.* (G.R. No. 252802); *Concerned Online Citizens, et al. v. Executive Secretary* (G.R. No. 252809); *Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252921); *Association of Major Religious Superiors, et al. v. Executive Secretary, et al.* (G.R. No. 252984); *Philippine Bar Association, Inc. v. Executive Secretary, et al.* (G.R. No. 253100); *Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253118); *Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al.* (G.R. No. 253252); *Rep. Edcel C. Lagman v. Executive Secretary, et al.* (G.R. No. 252579); *Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al.* (G.R. No. 252613); *SANLAKAS v. Rodrigo R. Duterte, et al.* (G.R. No. 252646); *Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al.* (G.R. No. 252702); *Jose J. Ferrer, Jr. v. Executive Secretary, et al.* (G.R. No. 252726); *Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252733); *Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252736); *Kabataang Tagapagtang-gol ng Karapatan, et al. v. Executive Secretary, et al.* (G.R. No. 252755); *Algamar A. Latiph, et al. v. Senate, et al.* (G.R. No. 252759); *Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R. Duterte, et al.* (G.R. No. 252903); *Beverly Longid, et al. v. Anti-Terrorism Council, et al.* (G.R. No.

To briefly recall the roots of this power of the Court, the Court was confronted with cases during the martial law days involving the martial law administration, which cases the Court dismissed for involving "political questions" that the judiciary could not entertain because they involved the actions of other co-equal branches of government. This Court position, based on the terms of the 1935 Constitution, was not at all without basis because of the separation of powers principle existing under the 1935 Constitution (and which still exists under our present Constitution).

In reframing a new Constitution after the martial law regime fell, no less than former Chief Justice Roberto Concepcion sponsored the present Art. VIII, Sec. 1 and its "expanded jurisdiction" provision in order to avoid the future recurrence of the country's (and the Court's) pre-martial law experiences;[226] thus, the history-dictated and unique wording of the current 2nd par. of Art. VIII, Sec. 1.

A significant decided case on the Court's expanded jurisdiction was *Araullo v. Aquino III*,[227] which pointed to *certiorari* and prohibition (under Rule 65 of the Rules of Court) as the appropriate remedies for the review of cases even against the branches or instrumentalities of government which do not exercise the judicial, quasi-judicial or ministerial functions that Rule 65 requires. The primary marker to recognize, according to this case, is the presence of "grave abuse of discretion," not strictly the nature of the function exercised.

Umali v. Judicial and Bar Council restated the *Araullo* ruling by zeroing in on the nature of the *certiorari* and prohibition that may be used under the Court's expanded jurisdiction:

> But, the remedies of certiorari and prohibition are necessarily broader in scope and reach before this Court as the writs may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. Thus, they are appropriate remedies to raise constitutional issues and to review and/or

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252904); *Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines* (G.R. No. 252905); *Main T. Mohammad, et al. v. Executive Secretary, et al.* (G.R. No. 252916); *University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253018); *Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al.* (G.R. No. 253124); *Pagkakaisa ng Kababaihan para sa Kalayaan (KAISA KA), et al. v. Anti-Terrorism Council, et al.* (G.R. No. 253254); *Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al.* (G.R. No. 253420); and *Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al.* (G.R. No. 254191 [Formerly UDK 16714]); and *Lawrence A. Yerbo v. Senate President, et al.* (UDK 16663).

[226] *Francisco, Jr. v. House of Representatives*, supra note 35 at 883; *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 137 (2016); *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019.

[227] Supra note 34 at 531.

prohibit or nullify the acts of legislative and executive officials.[228]

Kilusang Mayo Uno v. Aquino III[229] reiterated *Araullo* in a similar manner.

Hence, as matters now stand, the Court is now empowered by the combined application of the second paragraph of Sec. 1 of Art. VIII of the 1987 Constitution and Rule 65 of the Rules of Court to determine whether a branch of government or agency or its officials has committed any error of jurisdiction. This error of jurisdiction arises from a grave abuse of discretion.

Any claim of grave abuse of discretion in constitutional litigation has two (2) components, the procedural and the substantive. It is important not only to point in the petition to the "grave abuse of discretion" committed, and to briefly explain how grave abuse of discretion came to exist, but also equally important to prove and argue in detail in the petition why the grave abuse came to exist.

The term "grave abuse of discretion" carries a specific and technical meaning – an act done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction."[230] The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[231] Furthermore, a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void,"[232] or if the petitioner can manifestly show that such act was patent and gross.[233]

These are the parameters that the Court looks for and considers when resolving the issues raised under the grave abuse of discretion part of Art. VIII, Sec. 1 of the Constitution. To point out a subtle distinction, mere violation of the law or of the Constitution is not *per se* grave abuse of discretion. Without the element of action outside of jurisdiction, a plain error is not the appropriate subject of petition for *certiorari* but more properly of an appeal to this Court.

A charge of grave abuse of discretion necessarily implies that there is an act on the part of the respondent which exceeds or goes beyond the parameters outlined above. Whether an excess in fact exists constitutes the "actual case or controversy" that the Court resolves in the exercise of judicial power and its complementary remedy, judicial review.

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[228] 814 Phil. 253, 292 (2017).
[229] G.R. No. 210500, April 2, 2019.
[230] *Alafariz v. Nable*, 72 Phil. 278, 280 (1941).
[231] *People v. Marave*, 120 Phil. 602, 606 (1964).
[232] *J.L. Bernardo Construction v. Court of Appeals*, 381 Phil. 25, 36 (2000).
[233] *Yu v. Hon. Reyes-Carpio*, 667 Phil. 474, 482 (2011).

B. Application of Constitutional Litigation Standards

In the present case, Our examination of the petitions and the proceedings shows that while claims of *locus standi* have commonly been alleged, some of the parties failed to provide details on the personal injury they allegedly suffered or stand to suffer due to the ATA and its enforcement;[234] others failed to support their allegations through *prima facie* proof stated or attached to their petitions;[235] and still others even failed to claim that their interest or standing should be recognized or accorded "judicial notice" by this Court.[236]

In *Southern Hemisphere*, the Court outlined the judicial notice that the petitioners can avail of to effectively claim interests and injury to their interests. The Court said:

> Generally speaking, matters of judicial notice have three material requisites: **(1) the matter must be one of *common and general knowledge*; (2) it must be *well and authoritatively settled* and not doubtful or uncertain; and (3) it must be *known to be within the***

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[234] *Atty. Howard M. Calleja, et al. v. The Executive Secretary, et al.* (G.R. No. 252578); *Rep. Edcel C. Lagman v. Executive Secretary, et al.* (G.R. No. 252579); *Melencio S. Sta. Maria, et al. v. Executive Secretary, et al.* (G.R. No. 252580); *Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al.* (G.R. No. 252613); *Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al.* (G.R. No. 252623); *Christian S. Monsod, et al. v. Executive Secretary, et al.* (G.R. No. 252624); *SANLAKAS v. Rodrigo R. Duterte, et al.* (G.R. No. 252646); *Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al.* (G.R. No. 252702); *Jose J. Ferrer, Jr. v. Executive Secretary, et al.* (G.R. No. 252726); *Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea* (G.R. No. 252741); *Kabataang Tagapagtang-gol ng Karapatan, et al. v. Executive Secretary, et al.* (G.R. No. 252755); *Algamar A. Latiph, et al. v. Senate, et al.* (G.R. No. 252759); *The Alternative Law Groups, Inc. v. Executive Secretary* (G.R. No. 252765); *Lawrence A. Yerbo v. Senate President, et al.* (UDK 16663); *HENDY ABENDAN of Center for Youth Participation and Development Initiatives, et al. v. Hon. Salvador C. Medialdea, et al.* (G.R. No. 252802); *Concerned Online Citizens, et al. v. Executive Secretary* (G.R. No. 252809); *Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R. Duterte, et al.* (G.R. No. 252903); *Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines* (G.R. No. 252905); *Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252921); *Association of Major Religious Superiors, et al. v. Executive Secretary, et al.* (G.R. No. 252984); *Philippine Bar Association, Inc. v. Executive Secretary, et al.* (G.R. No. 253100); *Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253118); *Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al.* (G.R. No. 253124); *Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al.* (G.R. No. 253252); *Pagkakaisa ng Kababaihan para sa Kalayaan (KAISA KA), et al. v. Anti-Terrorism Council, et al.* (G.R. No. 253254); and *Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al.* (G.R. No. 254191 [Formerly UDK 16714]).

[235] Petitioner Ernesto B. Neri in *Christian S. Monsod, et al. v. Executive Secretary, et al.* (G.R. No. 252624); *Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252733); *Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252736); *National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252747); *University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253018); and *Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al.* (G.R. No. 253420).

[236] *Algamar A. Latiph, et al. v. Senate, et al.* (G.R. No. 252759); *Main T. Mohammad, et al. v. Executive Secretary, et al.* (G.R. No. 252916); and *Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252921).

> ***limits of the jurisdiction of the court.*** The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.
>
> Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries, or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the Court has no constructive knowledge.[237] (emphasis supplied)

Thus, jurisprudence is not lacking in guidelines and directions on what petitioners can do to claim the personal interests and the injury that *locus standi* requires to enable them to seek redress through the courts. They have only themselves to blame if and when they fail to heed these directions. Hopefully, this Opinion, read together with *Gios-Samar,* would lend enough certainty to guide future petitioners in preparing their petitions.

Among the petitions that failed the actual controversy / *locus standi* filters are those suing as taxpayers and citizens[238] and who, by their generalized statements as such taxpayers or citizens, failed to show the direct personal injury or prejudice they would suffer through the

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[237] Supra note 14 at 473-474.

[238] Some of the petitioners suing in *Rep. Edcel C. Lagman v. Executive Secretary* (G.R. No. 252579); *Melencio S. Sta. Maria v. Executive Secretary* (G.R. No. 252580); *Rudolf Philip B. Jurado v. Anti-Terrorism Council* (G.R. No. 252613); *Center for Trade Union and Human Rights (CTUHR) v. Hon. Rodrigo R. Duterte* (G.R. No. 252623); *Christian S. Monsod v. Executive Secretary* (G.R. No. 252624); *Federation of Free Workers (FFW-NAGKAISA) v. Office of the President* (G.R. No. 252702); *Jose J. Ferrer, Jr. v. Executive Secretary* (G.R. No. 252726); *Ma. Ceres P. Doyo v. Salvador C. Medialdea* (G.R. No. 252741); *Kabataang Tagapagtang-gol ng Karapatan v. Executive Secretary* (G.R. No. 252755); *Algamar A. Latiph v. Senate* (G.R. No. 252759); *The Alternative Law Groups, Inc. v. Executive Secretary* (G.R. No. 252765); *Lawrence A. Yerbo v. Senate President* (UDK 16663); *HENDY ABENDAN of Center for Youth Participation and Development Initiatives v. Hon. Salvador C. Medialdea* (G.R. No. 252802); *Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag v. President Rodrigo R. Duterte* (G.R. No. 252903); *Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines* (G.R. No. 252905); *Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB v. Rodrigo R. Duterte* (G.R. No. 252921); *University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo v. H.E. Rodrigo R. Duterte* (G.R. No. 253018); and *Pagkakaisa ng Kababaihan para sa Kalayaan (KAISA KA) v. Anti-Terrorism Council* (G.R. No. 253254).

enforcement of the ATA.[239] Specifically, they failed to show the tax collection and spending involved, and how and why they – as plain citizens – would be prosecuted under the ATA. Their claims, thus, never left the realm of speculation.

There, too, are those who claim that their professional interests, either as lawyers,[240] lawmakers,[241] or human rights advocates,[242] necessarily or inevitably lay them open to damage or injury, either to themselves personally or to their activities.[243] Their petitions, though, show claims that are generalized and, for this reason, fall short of the established jurisprudential standards necessary to rise to the required level of damage or injury.[244]

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[239] Id.

[240] *Melencio S. Sta. Maria, et al. v. Executive Secretary, et al.* (G.R. No. 252580); *Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al.* (G.R. No. 252613); *Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al.* (G.R. No. 252623); *Christian S. Monsod, et al. v. Executive Secretary, et al.* (G.R. No. 252624); *Algamar A. Latiph, et al. v. Senate, et al.* (G.R. No. 252759); *Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R. Duterte, et al.* (G.R. No. 252903); *Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines* (G.R. No. 252905); *Main T. Mohammad, et al. v. Executive Secretary, et al.* (G.R. No. 252916); *Philippine Bar Association, Inc. v. Executive Secretary, et al.* (G.R. No. 253100); *Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al.* (G.R. No. 253124); and *Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al.* (G.R. No. 254191 [Formerly UDK 16714]).

[241] *Rep. Edcel C. Lagman v. Executive Secretary, et al.* (G.R. No. 252579); *Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea* (G.R. No. 252741); and *Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al.* (G.R. No. 254191 [Formerly UDK 16714]).

[242] *Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al.* (G.R. No. 252623); *Christian S. Monsod, et al. v. Executive Secretary, et al.* (G.R. No. 252624); *SANLAKAS v. Rodrigo R. Duterte, et al.* (G.R. No. 252646); *Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al.* (G.R. No. 252702); *Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252733); *Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252736); *National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252747); *Kabataang Tagapagtang-gol ng Karapatan, et al. v. Executive Secretary, et al.* (G.R. No. 252755); *The Alternative Law Groups, Inc. v. Executive Secretary* (G.R. No. 252765); *Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines* (G.R. No. 252905); *Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253118); and *Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al.* (G.R. No. 253252).

[243] Some of the petitioners suing in *Rep. Edcel C. Lagman v. Executive Secretary, et al.* (G.R. No. 252579); *Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al.* (G.R. No. 252613); *Christian S. Monsod, et al. v. Executive Secretary, et al.* (G.R. No. 252624); *SANLAKAS v. Rodrigo R. Duterte, et al.* (G.R. No. 252646); *Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al.* (G.R. No. 252702); *Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252736); *Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea* (G.R. No. 252741); *Algamar A. Latiph, et al. v. Senate, et al.* (G.R. No. 252759); *Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R. Duterte, et al.* (G.R. No. 252903); *Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines* (G.R. No. 252905); *Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252921); *Philippine Bar Association, Inc. v. Executive Secretary, et al.* (G.R. No. 253100); *Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al.* (G.R. No. 253252); and *Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al.* (G.R. No. 254191 [Formerly UDK 16714]).

[244] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633-634 (2000); *Lacson v. Perez*, 410 Phil. 78, 93 (2001); *Lim v. Executive Secretary*, 430 Phil. 555, 570-571 (2002); and *Sanlakas v. Reyes*, 466 Phil. 482, 507-508 (2004).

Membership in the Bar, to be sure, makes one an officer of the Court in the administration of justice. But short of an actual appointment as a specially designated or deputized court officer or counsel actively appearing before the Court, a lawyer bears no specific responsibility for the constitutional interests of the citizenry in general that is specifically separate and distinct from that which he/she carries as a citizen.[245]

In *Galicto v. H.E. President Aquino III*,[246] the Court held that the injury is not something that everyone with some grievance or pain may assert. It has to be direct and substantial to make it worth the Court's time, as well as the effort of inquiry into the constitutionality of the acts of another department of government.[247]

Obviously lacking in evidence of imminent prosecution under the ATA are the petitioners who merely claim that they had been tagged as "terrorists" in the past or who are now under imminent threat of being so labelled.[248]

Tagging almost always requires governmental actions that leave documentary and other trails behind. These documentary evidence, to be considered by the Court, must be validly introduced into evidence pursuant to with the Rules of Court or must at least be attached in the petition as *prima facie* proof of the petitioner's claim. Without these trails or clear indicators of enforcement intents, the claim of imminent damage or injury

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[245] In *Integrated Bar of the Philippines v. Zamora*, id. at 633, the Court held that the IBP's mere invocation of its duty to preserve the rule of law is not sufficient to clothe it with standing in said case. Such interest is "too general an interest which is shared by other groups and the whole citizenry."

[246] 683 Phil. 141, 172 (2012).

[247] Id., arose out of the following facts. On September 8, 2010, then President Benigno Simeon C. Aquino III issued E.O. No. 7 entitled "Directing the Rationalization of the Compensation and Position Classification System in the [GOCCs] and [GFIs], and for Other Purposes." Among others, E.O. No. 7 "ordered (1) a moratorium on the increases in the salaries and other forms of compensation, except salary adjustments under EO 8011 and EO 900, of all GOCC and GFI employees for an indefinite period to be set by the President, 9 and (2) a suspension of all allowances, bonuses and incentives of members of the Board of Directors/Trustees until December 31, 2010." Petitioner is an employee of the Philippine Health Insurance Corporation (PhilHealth), with a position of Court Attorney IV at the PhilHealth Regional Office CARAGA. He brought suit on the ground that he stood to be prejudiced by E.O. No. 7. Ultimately, the Court found that petitioner failed to demonstrate "xxx that he has a personal stake or material interest in the outcome of the case because his interest, if any, is speculative and based on a mere expectancy. In this case, the curtailment of future increases in his salaries and other benefits cannot but be characterized as contingent events or expectancies. To be sure, he has no vested rights to salary increases and, therefore, the absence of such right deprives the petitioner of legal standing to assail EO 7."

[248] Some of the petitioners suing in *Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252733); *Christian S. Monsod, et al. v. Executive Secretary, et al.* (G.R. No. 252624); *Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252736); *National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252747); *Main T. Mohammad, et al. v. Executive Secretary, et al.* (G.R. No. 252916); *University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253018); *Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253118); and *Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al.* (G.R. No. 253420).

must likewise fail.[249]

Nor are lawmakers such as petitioners Lagman, Pangilinan, and De Lima, Belmonte, Sangcopan, and Hataman specially identified in our country as citizens carrying the specific responsibility of serving as guardians of the constitutional welfare of the citizenry outside of their functions as lawmakers.[250]

While indeed they carry out important public functions, any threat or the imminence of danger or threat related to the enforcement of a disputed legislation must specifically be related to their roles and functions as lawmakers. Without these distinctive circumstances, they speak as plain citizens subject to the direct personal injury test to show personal interest or stake in a constitutional litigation exercise.

From the grave abuse of discretion filtration end, of the thirty-seven (37) petitions before us, fifteen[251] (15) impleaded officials purely from the Executive branch, twenty-one[252] (21) impleaded a mixture of officials from

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[249] Petitioners in *Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252733); *Christian S. Monsod, et al. v. Executive Secretary, et al.* (G.R. No. 252624); *Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252736); *National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252747); *Main T. Mohammad, et al. v. Executive Secretary, et al.* (G.R. No. 252916); *University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253018); *Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253118); and *Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al.* (G.R. No. 253420).

[250] *Rep. Edcel C. Lagman v. Executive Secretary, et al.* (G.R. No. 252579); *Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea* (G.R. No. 252741); and *Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al.* (G.R. No. 254191 [Formerly UDK 16714]).

Pangilinan, De Lima, and Belmonte are petitioners in *Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea* (G.R. No. 252741) and have specifically alleged their standing as incumbent lawmakers. Meanwhile, Sangcopan and Hataman are petitioners in *Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al.* (G.R. No. 254191 [Formerly UDK 16714]) who also assert their standing as lawmakers.

While Bayan-Muna Party-List representative Zarate is a petitioner in G.R. No. 252585, scrutiny of said petition shows that he does not bring suit on the basis of his standing as a lawmaker. The petition alleges terrorist-tagging, standing as citizens, and facial challenge as grounds for locus standi.

[251] *Atty. Howard M. Calleja, et al. v. The Executive Secretary, et al.* (G.R. No. 252578); *Melencio S. Sta. Maria, et al. v. Executive Secretary, et al.* (G.R. No. 252580); *Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al.* (G.R. No. 252623); *Christian S. Monsod, et al. v. Executive Secretary, et al.* (G.R. No. 252624); *Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea* (G.R. No. 252741); *National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252747); *The Alternative Law Groups, Inc. v. Executive Secretary* (G.R. No. 252765); *HENDY ABENDAN of Center for Youth Participation and Development Initiatives, et al. v. Hon. Salvador C. Medialdea, et al.* (G.R. No. 252802); *Concerned Online Citizens, et al. v. Executive Secretary* (G.R. No. 252809); *Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252921); *Association of Major Religious Superiors, et al. v. Executive Secretary, et al.* (G.R. No. 252984); *Philippine Bar Association, Inc. v. Executive Secretary, et al.* (G.R. No. 253100); *Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253118); and *Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al.* (G.R. No. 253252).

[252] *Rep. Edcel C. Lagman v. Executive Secretary, et al.* (G.R. No. 252579); *Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al.* (G.R. No. 252613); *SANLAKAS v. Rodrigo R. Duterte, et al.* (G.R. No. 252646); *Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al.* (G.R. No. 252702);

the Executive and Legislative branches, and only one (1) petition impleaded only the Legislative branch of the government.[253] As already mentioned above, these petitions must necessarily allege the respondents' actions that constitute grave abuse of discretion and must briefly explain the reason/s for the allegation. Failing in these regards means failure to pass through one of the Court's constitutional filters.

Fourteen[254] (14) out of the fifteen (15) petitions which impleaded officials purely from the Executive branch failed to point to some actual act on the part of the Executive branch or its officials that constitutes grave abuse of discretion. This is obvious since no enforcement action has yet been taken against the petitioners in these 14 petitions. Meanwhile, eighteen[255]

Jose J. Ferrer, Jr. v. Executive Secretary, et al. (G.R. No. 252726); *Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252733); *Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252736); *Kabataang Tagapagtang-gol ng Karapatan, et al. v. Executive Secretary, et al.* (G.R. No. 252755); *Algamar A. Latiph, et al. v. Senate, et al.* (G.R. No. 252759); *Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R. Duterte, et al.* (G.R. No. 252903); *Beverly Longid, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252904); *Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines* (G.R. No. 252905); *Main T. Mohammad, et al. v. Executive Secretary, et al.* (G.R. No. 252916); *University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253018); *Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al.* (G.R. No. 253124); *Pagkakaisa ng Kababaihan para sa Kalayaan (KAISA KA), et al. v. Anti-Terrorism Council, et al.* (G.R. No. 253254); *Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al.* (G.R. No. 253420); and *Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al.* (G.R. No. 254191 [Formerly UDK 16714]).

[253] *Lawrence A. Yerbo v. Senate President, et al.* (UDK 16663).

[254] *Atty. Howard M. Calleja, et al. v. The Executive Secretary, et al.* (G.R. No. 252578); *Melencio S. Sta. Maria, et al. v. Executive Secretary, et al.* (G.R. No. 252580); *Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al.* (G.R. No. 252623); *Christian S. Monsod, et al. v. Executive Secretary, et al.* (G.R. No. 252624); *Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea* (G.R. No. 252741); *National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252747); *The Alternative Law Groups, Inc. v. Executive Secretary* (G.R. No. 252765); *HENDY ABENDAN of Center for Youth Participation and Development Initiatives, et al. v. Hon. Salvador C. Medialdea, et al.* (G.R. No. 252802); *Concerned Online Citizens, et al. v. Executive Secretary* (G.R. No. 252809); *Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252921); *Association of Major Religious Superiors, et al. v. Executive Secretary, et al.* (G.R. No. 252984); *Philippine Bar Association, Inc. v. Executive Secretary, et al.* (G.R. No. 253100); *Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253118); and *Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al.* (G.R. No. 253252).

[255] *Rep. Edcel C. Lagman v. Executive Secretary, et al.* (G.R. No. 252579); *Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al.* (G.R. No. 252613); *SANLAKAS v. Rodrigo R. Duterte, et al.* (G.R. No. 252646); *Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al.* (G.R. No. 252702); *Jose J. Ferrer, Jr. v. Executive Secretary, et al.* (G.R. No. 252726); *Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al.* (G.R. No. 252733); *Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252736); *Kabataang Tagapagtang-gol ng Karapatan, et al. v. Executive Secretary, et al.* (G.R. No. 252755); *Algamar A. Latiph, et al. v. Senate, et al.* (G.R. No. 252759); *Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R. Duterte, et al.* (G.R. No. 252903); *Beverly Longid, et al. v. Anti-Terrorism Council, et al.* (G.R. No. 252904); *Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines* (G.R. No. 252905); *Main T. Mohammad, et al. v. Executive Secretary, et al.* (G.R. No. 252916); *University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al.* (G.R. No. 253018); *Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al.* (G.R. No. 253124); *Pagkakaisa ng Kababaihan para sa Kalayaan (KAISA KA), et al. v. Anti-Terrorism Council, et al.* (G.R. No. 253254);

(18) out of the twenty-one (21) petitions, which impleaded a mixture of officials from the Executive and Legislative branches, also failed to point to actions by the Executive or the Legislative branches which constituted grave abuse of discretion or the reasons why their actions should be characterized as grave abuse of discretion. The latter reason is also true for the one[256] (1) petition that exclusively impleaded the Legislative branch.

Based on the foregoing, I submit that the following petitions – G.R. No. 252578, G.R. No. 252579, G.R. No. 252580, G.R. No. 252613, G.R. No. 252623, G.R. No. 252624, G.R. No. 252646, G.R. No. 252702, G.R. No. 252726, G.R. No. 252733, G.R. No. 252736, G.R. No. 252741, G.R. No. 252747, G.R. No. 252755, G.R. No. 252759, G.R. No. 252765, UDK 16663, G.R. No. 252802, G.R. No. 252809, G.R. No. 252903, G.R. No. 252904, G.R. No. 252905, G.R. No. 252916, G.R. No. 252921, G.R. No. 252984, G.R. No. 253018, G.R. No. 253100, G.R. No. 253118, G.R. No. 253124, G.R. No. 253252, G.R. No. 253254, G.R. No. 253420, and G.R. No. 254191 [Formerly UDK 16714] – be dismissed outright.

C. The Surviving Petitions

Left for the Court's consideration on the merits are the following petitions:

- Coordinating Council for People's Development and Governance, Inc., represented by Vice-President Rochelle M. Porras, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 253242;
- Bayan Muna Party-List Representatives Carlos Isagani T. Zarate, Ferdinand Gaite, and Eufemia Cullamat, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 252585;
- Bishop Broderick S. Pabillo, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 252767; and
- GABRIELA, Inc., et al. v. President Rodrigo R. Duterte, et al., G.R. No. 252768.

Before proceeding to discuss their substantive merits, however, We reflect for the record the reasons that justified the survival of these petitions for consideration on the merits.

Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al. (G.R. No. 253420); and *Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al.* (G.R. No. 254191 [Formerly UDK 16714]).

[256] *Lawrence A. Yerbo v. Senate President, et al.* (UDK 16663).

i. Coordinating Council for People's Development and Governance, Inc., represented by Vice-President Rochelle M. Porras, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 253242

The petitioners base their legal standing on the actual as well as the imminent impairment of their rights as a result of the ongoing and the foreseeable future application of the ATA against them.

In their sworn statements and reports,[257] the petitioners allege that the inter-agency body National Task Force to End Local Communist Armed Conflict (*NTF-ELCAC*) issued an official report containing their photographs; displaying the names and logos of their organizations; and referring to them as communist terrorists[258] or fronts, officials, and members of the Communist Party of the Philippines (*CPP*), New People's Army (*NPA*) and National Democratic Front (*NDF*).[259]

They further allege that, based on personal knowledge and third-person accounts at around the time of the adoption of the ATA, one of their leaders was summarily executed;[260] that their members and offices were subjected to surveillance and threats of raids; and that during a peaceful protest in August 2020, some of their members were arrested and their publications confiscated.[261]

As others would likely be arrested and prosecuted under the ATA, they have contacted their network of legal groups and coordinated with the Commission on Human Rights.

ii. Bayan Muna Party-List Representatives Carlos Isagani T. Zarate, Ferdinand Gaite, and Eufemia Cullamat, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 252585.

The petitioners claim legal standing as "victims of terrorist-tagging by State forces … [which puts them] immediately in danger of sustaining some direct injury as a result of the implementation of the assailed law," which threat of injury is both real and immediate, not merely conjectural or hypothetical."[262]

They attached the official report of NTF-ELCAC where Chapter 6, Annex "A" and Annex "B" contain photographs of the petitioners, their statements and activities, and the names and logos of their party-list

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[257] Petition, G.R. No. 253242, Annex "C" through Annex "P."
[258] Id., Annex "K," par. 5.
[259] Id. at 13-15.
[260] Id., Annex "P."
[261] Id., Annex "P," pars. 8 and 11. Affiant also alleged that their member was killed but this took place in May 2020 or two months before the ATA took effect.
[262] Petition, G.R. No. 252585, p. 8.

organizations, labelling these as communists-terrorists.[263]

The official report issued by the government using public funds establish that the petitioners face a real and immediate danger of prosecution under the ATA and a substantial prejudice as taxpaying citizens. They also aver that this kind of red-tagging is in direct violation of their rights and authority as a legitimate and duly elected party-list organizations, which the Commission on Elections (COMELEC) itself affirmed in Resolution No. 19-006 dated January 30, 2020.[264]

iii. Bishop Broderick S. Pabillo, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 252767

The petitioners allege that, on December 26, 2019, their bank accounts were placed under a freeze order per Anti-Money Laundering Council *(AMLC)* Resolution TF-18, issued pursuant to R.A. No. 10168, based on National Security Council *(NSC)* allegations that they are part of communist-terrorist groups and have been engaged in terrorist financing.[265]

The Court of Appeals extended the freeze order to include other accounts.[266] As their accounts have been frozen "for alleged financing of terrorism," they face a credible threat of prosecution under the ATA. Moreover, government officials have formally reported the petitioners to be terrorist organizations.

In particular, National Security Council *(NSC)* Deputy Director General Vicente Agdamag has filed a complaint, currently pending, with the Philippine Permanent Representative to the United Nations *(UN)* and with other international organizations in Geneva, Switzerland claiming that the petitioners are fronts of communist-terrorist organizations.[267]

As the NSC is part of the ATC, there is a real and imminent risk that petitioners shall be subjected to the designation and proscription powers of the ATC under the ATA.

These submissions – whether by attachments or allegations supported by arguments – taken together, are enough to give the petitioners the *locus standi* that the Constitution requires.

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[263] Id., 2019 NTC Annual Report pp. 178-246.
[264] Id., Annex "E".
[265] Petition, G.R. No. 252767, pp. 28-29.
[266] Id.
[267] Id. at 92.

iv. GABRIELA, Inc., et al. v. President Rodrigo R. Duterte, et al. (G.R. No. 252768)

Petitioner GABRIELA argues that it is the target of human rights violations and has been tagged as a communist front,[268] citing several instances where it or its members have been red-tagged. Petitioner De Jesus has been the target of red-tagging and red-baiting while petitioner Wilson was also terrorist-tagged.[269] It attached Annexes "D" to "Y" in support of this averment. Petitioner GABRIELA itself has been tagged as a communist-front by National Security Adviser *(NSA)* Hermogenes C. Esperon, Jr. in his PowerPoint presentation which they attached as their Annex "Z."[270]

Petitioner GABRIELA claims that NTF-ELCAC itself filed a verified petition for the cancellation of its registration before the Comelec. It attached a copy of the verified petition as Annex "AA."[271] Its finances, on the other hand, were investigated by the Anti-Money Laundering Council *(AMLC)*, as requested by the National Intelligence Coordinating Agency *(NICA)*.

It cited the following as supporting documents: (1) AMLC's Initial Financial Investigation Report on GABRIELA, Inc. (Annex "AA-1"); (2) March 7, 2019 letter from NICA requesting the AMLC "to conduct financial investigation on the subject foreign and domestic non-government organization *(NGOs)* reported to have been providing financial support to the CPP-NPA through its front organizations and/or NGO (Annex "AA-2"); (3) Letter from ASG Angelita Villanueva Miranda, Chairperson, Legal Cooperation Cluster of the NTF-ELCAC, requesting the AMLC to conduct financial investigation of the financial transactions of Gabriela, Inc./ Gabriela Women's Party List *(GABRIELA)* (Annex "AA-3"); and (4) May 3, 2019 letter from NICA regarding information received from the Kingdom of Belgium (Annex "AA-4").[272] It is notable that the AMLC's Initial Financial Investigation Report on GABRIELA, Inc. (Annex "AA-1") concluded that "there is likelihood that the funds in the bank accounts of GABRIELA/GAWR may have been used for, or related to terrorism and/or terrorism financing."[273]

Based on these submissions, petitioner GABRIELA sought to establish that it is within the radar of the NTF-ELCAC as an alleged communist-front. Its financial transactions were or are under investigation due to its supposed ties with the CPP. They, thus, face credible threat of prosecution under the ATA.

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[268] Petition in G.R. No. 252768, pp. 9-18.
[269] Id. at 12-16; 17-18.
[270] Id. at 19.
[271] Id. at 21
[272] Id. at 21-22.
[273] Id. at Annex "AA-1", p. 15.

RESPONSE TO THE MAJORITY VOTE ON PROCEDURAL ISSUES

I respectfully dissent from the majority vote that thirty-five (35) petitions are admissible for judicial review as facial challenges and cases of transcendental importance. I respectfully vote only to admit four (4) petitions - G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 – as as-applied challenges, not facial challenges, insofar as they are directed at Sec. 4, Secs. 5-14, Secs. 16-20, Secs. 22-24, Sec. 25, Secs, 26-28, Sec. 29, and Sec. 34 of the ATA.

My dissent is based on three grounds.

First, the constitutional principle of separation of powers, the constitutional procedural requirements for the exercise of judicial review, and well-established doctrine behoove the Court to dismiss all facial challenges and cases of transcendental importance against the ATA where there are four as-applied challenges against said law.

Second, being a penal law that regulates conduct rather than speech, the ATA is not susceptible to a facial challenge. Even if the Court were to consider the *proviso* of Sec. 4 of the ATA as a regulation on speech, such *proviso* would not make the ATA susceptible to a facial challenge, for the speech being regulated is an integral part of an overt act of terrorism and therefore unprotected.

Third, Disini, Jr. v. The Secretary of Justice is not applicable.

I. Admission of G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 as justiciable as-applied challenges is proper

The petitions docketed as G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 are justiciable and admissible as as-applied challenges.

The petitioners in G.R. No. 253242 cited the official report of NTF-ELCAC, in which their organization and members are clearly identified as part of the CPP-NPA-NDF. Proclamation No. 374 designated the CPP-NPA-NDF as a terrorist organization.[274] Similarly, petitioners in G.R. No. 252585 attached the NTF-ELCAC official report where their groups and members are identified as terrorists and lined up for arrest and prosecution. Some of their members who are identified in the official report as terrorists are elected party-list representatives whom the Comelec affirmed as legitimate.[275] Meanwhile, petitioners in G.R. No. 252767 alleged that their

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[274] Declaring the Communist Party of the Philippines *(CPP)*-New People's Army *(NPA)* as a Designated/Identified Terrorist Organization under Republic Act No. 10168, December 5, 2017.

[275] Petitioners attached COMELEC Resolution dated January 30, 2020 in SPP No. 19-006.

bank accounts were placed under a freeze order under AMLC Resolution TF-18. With respect to petitioners in G.R. No. 252768, their financial accounts are under AMLC formal investigtion for being alleged sources of terrorist financing.[276]

The foregoing four petitions constitute as-applied challenges to the ATA. They involve parties with legal standing and raise actual controvery. As such, they comply with the general requirements for the exercise by the Court of its power of judicial review.

The presence or absence of any of these requisites determines whether the judicial review petition filed with the Court shall proceed for consideration on its merits, or shall be dismissed outright for not being justiciable, *i.e.*, for being inappropriate for the Court's consideration on the merits. Compliance with these requisites is jurisdictional and mandatory. Even as the Constitution recognizes that the Court has jurisdiction over justiciable political questions, such jurisdiction shall be exercised only after the Court has satisfied itself that the party before it has legal standing and raise an actual controversy. In *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, We held:

> [w]hile the remedies of certiorari and prohibition are proper legal vehicles to assail the constitutionality of a law, the requirements for the exercise of the Court's judicial review even under its expanded jurisdiction must nevertheless first be satisfied.[277]

The Court has characterized these requisites as mandated by the Constitution itself. As held in *Board of Optometry v. Colet*:

> [T]he unbending rule in constitutional law [is] that courts will not assume jurisdiction over a constitutional question unless the following requisites are first satisfied: (1) there must be an actual case or controversy involving a conflict of rights susceptible of judicial determination; (2) the constitutional question must be raised by a proper party; (3) the constitutional question must be raised at the earliest opportunity; and (4) the resolution of the constitutional question must be necessary to the resolution of the case.[278]

The foregoing jurisdictional requirements are not dispensed with through mere consolidation or clustering of petitions. In *Republic v. Court of Appeals,* the Court declared that "[an] essential requisite of consolidation is that the court must have jurisdiction over all the cases consolidated before it."[279] Thus, notwithstanding the preliminary consolidation or clustering of the 37 petitions in this case, the admission of the four as-applied challenges

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[276] *See* G.R. No. 252768, Annex AA-1 to Annex AA-4.
[277] *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, supra note 68.
[278] 328 Phil. 1187, 1205 (1996). See also *Jumamil v. Cafe*, 507 Phil. 455, 465 (2005).
[279] *Republic v. Court of Appeals*, 451 Phil. 497, 508 (2003).

does not open the back door for the admission of all the other petitions. The Court must satisfy itself that each of the petitions complies with the requirements before it assumes jurisdiction over their challenges to the ATA.[280]

Therefore, I find that the petitions docketed as G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 satisfy all the requisites for the exercise of judicial review by this Court. I vote to admit these petitions for review on the merits.

However, based on the facts alleged and official documents presented in the petitions docketed as G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768, only their challenges to Sec. 4, Secs. 5-14, Secs. 16 to 20, Secs. 22-24, Sec. 25, Secs. 26 to 28, Sec. 29, and Sec. 34 are ripe for adjudication. As to these provisions, there is *prima facie* showing that petitioners have the legal standing to raise a constitutional challenge as they have been subjected to the actual enforcement of said provisions or face a direct exposure to such enforcement.

II. Admission of the other petitions as facial challenges and cases of transcendental importance is not proper

The majority, with due respect, incorrectly admitted the other petitions.

To illustrate, it admitted G.R. No. 252736 on the ground that the "ATA personally affects" petitioner former Senior Associate Justice Antonio T. Carpio, whose public criticisms of the inability of the President "to defend the rights of the Philippines over the West Philippine Sea x x x may expose him to prosecution x x x for inciting to commit terrorism through extensive interference with critical infrastructure intended to provoke or influence the government to take a particular action."[281] In a social media post of the son of the President, Justice Carpio is linked to a destabilization plot.[282] Petitioner former Associate Justice and Ombudsman Conchita Carpio-Morales also "is exposed to the risk of being prosecuted under Sec. 4(c) of the ATA after she initiated a complaint with the International Criminal Court *(ICC)* against People's Republic of China *(PROC)* President Xi Jinping."[283]

It also allowed the petition docketed as G.R. No. 252904[284] for petitioners Beverly Longid, Windel B. Bolinget, Joanna K. Cariño and the

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[280] *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, 791 Phil. 243, 258-259 (2016).
[281] Decision, pp. 48-49.
[282] Id. at 49.
[283] Id.
[284] The petition did not provide a statement of issues involved.

organizations they respectively work for were impleaded in a petition for proscription (*DOJ v. CCP and NPA Petition* dated February 21, 2018).[285]

Yet, in *Southern Hemisphere v. ATC*, the Court declared that parties lack legal standing when they merely peg their case against a "double contingency, where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized."[286] Fear of prosecution is insufficient to lend a petitioner legal standing when said fear is engendered merely by "remarks of certain government officials which were addressed to the general public."[287] The same can be said of the specter of prosecution alleged by the petitioners in the other petitions: it is too obscure and remote, unlike the documented actual enforcement or real exposure to enforcement faced by the petitioners in G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768.

These other petitions allege controversies that, in the words of the majority opinion, "are mere hypothetical/theoretical suppositions."[288] To illustrate, the social media post and contingent reprisal alleged in G.R. No. 252736 do not amount to concrete and direct or imminent but real enforcement of the ATA as would cloth the petitioners therein with legal standing and categorize the controversy they raise as actual. Moreover, petitioners' fear of prosecution is unfounded. The views expressed by my esteemed former colleague Justice Carpio are not wholly opposed to that of the President, who has officially and repeatedly declared before the United Nations General Assembly *(UNGA)* and the Association of Southeast Asian Nations *(ASEAN)* that the Philippines considers China bound by the Arbitral Award in the South China Sea arbitration.[289] The ICC complaint of Justice Carpio-Morales was dismissed as early as 2019.[290] The dismissal was for lack of jurisdiction, and such dismissal is not subject to appeal.[291] With respect to petitioners Beverly Longid, Windel B. Bolinget, and Joanna K. Cariño in G.R. No. 252904, the Court takes judicial notice of court records indicating that petitioners have been dropped as respondents in the amended petition for proscription.[292]

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[285] Supra note 281 at 49.
[286] Supra note 14 at 482.
[287] *Republic v. Roque,* supra note 62 at 305-306; *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas,* 809 Phil. 65, 82-83 (2017).
[288] Supra note 281 at 55.
[289] Message for the 76th United Nations General Assembly (Speech), September 22, 2021, at https://www.youtube.com/watch?v=VsxO7w6QaEg.
[290] International Criminal Court Office of the Prosecutor, Report on Preliminary Examination Activities 2019, pars. 44-51. Justice Carpio-Morales filed a communication under Article 15 of the Rome Statute. It was dismissed at Phase 1 on the ground that the act complained of took place within the exclusive economic zone, which is not a Philippine territory. The ICC prosecutor held: "In the present situation, the conduct alleged in the communication received did not occur in the territory of the Philippines, but rather in areas outside its territory, purportedly in its EEZ and continental shelf" (par. 51). The territorial status of the place of the commission of the acts of complained of was crucial for the international crimes under jurisdiction of the ICC are territorial (pars. 44-47).
[291] Article 15 complainants are not entitled to request a review of a dismissal based on lack of jurisdiction. There is no record that Justice Carpio-Morales filed an appeal with the ICC.
[292] OSG Supplemental Comment, p. 66.

In other words, there is no factual basis to hold that the foregoing petitioners, as well as the petitioners in the other petitions, are facing an actual or imminent enforcement of the ATA as would qualify them as parties with legal standing and that there exists an actual controversy.

Therefore, I respectfully dissent from the majority vote in its admission of these other petitions. I vote to dismiss these petitions outright.

It is respectfully submitted that the majority incorrectly adopted an alternative mode of admitting the other petitions as facial challenges and cases of transcendental importance.

It is basic doctrine that the presence before the Court of as-applied challenges precludes the admission of any facial challenge[293] or case of transcendental importance.[294]

In our jurisdiction, the general mode of constitutional challenge is through the "as-applied" mode, *i.e.*, by examining the statute through the prism of a concrete and discrete set of facts showing the substantial and direct impairment that the statute's enforcement has caused a petitioner's constitutional rights.[295] Under this mode, the petitioner may claim a violation of its constitutional rights such as abuse of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness, but only if petition asserts the violation of its own right; the latter cannot assert the right of a third party who is not before the Court.[296] In other words, the petitioner has legal standing and raises an actual controversy.

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[293] *Board of Optometry v. Colet*, supra note 278.

[294] *Pangilinan v. Cayetano*, G.R. No. 238875, March 16, 2021; *Central Realty and Development Corp. v. Solar Resources, Inc.*, G.R. No. 229408, November 9, 2020; *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019; *Ocampo v. Rear Admiral Enriquez*, 815 Phil. 1175 (2017); *Jumamil v. Cafe*, supra note 278; *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003).

[295] See *Spouses Imbong v. Ochoa, Jr.*, supra note 104 at 125-126.

In United States (US) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only protected speech, but also all other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.

In this jurisdiction, the application of doctrines originating from the [US] has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights. The underlying reason for this modification is simple. For unlike its counterpart in the [US], this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution.

[296] *Disini, Jr. v. The Secretary of Justice*, supra note 91 at 344-345. *See* the Separate Opinion of Justice Vicente V. Mendoza in *Estrada v. Sandiganbayan*, supra note 105, citing *Broaderick v. Oklahoma*, 413

A facial challenge, in contrast with *and as an exception to an as-applied challenge*, can be made even prior to the enforcement of a disputed law, based *solely* on alleged "*vagueness*" or "*overbreadth*" of what the law, *on its face*, provides. It can be made by a petitioner for himself or on behalf of third parties who are not before the court.[297] In other words, the constitutional infirmities appear in the text or "face" of the statute itself even without considering surrounding facts, *i.e.*, even before evidentiary facts of the enforcement of the law have been presented before the court. The petitioner need not establish legal standing or allege an actual controversy.

Being an exceptional mode of challenge, a facial challenge is not admissible if there is a petition before the Court that complies with all the procedural requirements, qualifies as an as-applied challenge and, more importantly, cite concrete facts upon which the constitutionality of the assailed law can be ascertained. Logic itself dictates that when the Court has occasion to apply the general rule, recourse to the exception would be arbitrary. Otherwise, the purpose of an as-applied challenge as the general rule, and a facial challenge as a rare exception, would be defeated.

In this case, there are four as-applied challenges alleging facts on the actual and concrete or imminent but real enforcement of the ATA. Moreover, these as-applied challenges raised the same issues that the other petitions raised, albeit situated in their respective factual settings. There is no danger, as the majority opinion imagined, that the dismissal of the other petitions would lead to the marginalization of the public interest.

The principle of separation of powers behooves the Court to decide these challenges on the basis of the facts alleged in the four as-applied challenges rather than on the abstract scenarios conjured in the facial challenges. In *Executive Secretary v. CA*,[298] the trial court's facial invalidation of a penal law was reversed, as the case before it and a number of other decided and pending cases elsewhere were all as-applied challenges. In *Board of Optometry v. Colet*,[299] the mere availability of an as-applied challenge would bar admission of a facial challenge. In that case, public respondent Judge Colet had issued a preliminary injunction restraining the implementation, in its entirety, of Republic Act No. 8050 (Revised

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U.S. 601, 612-613 (1973); *United States v. Salerno*, supra note 105 at 745; *People v. Dela Piedra*, supra note 87.

[297] It must be emphasized that while, in theory, a facial invalidation may result in the invalidity of the entire law, in practice where the Court allowed a facial challenge, the Court only declared certain provisions of the assailed law void.

Meanwhile, in *Spouses Imbong v. Ochoa, Jr.*, supra note 104 at 277-278, the Court allowed a facial challenge but only invalidated some provisions of Republic Act (R.A.) No. 10354, otherwise known as the Responsible Parenthood and Reproductive Health Act of 2012 (RH Law). It declared the RH Law as constitutional except for Section 7, Section 23(a)(1), Section 23(a)(2)(i), Section 23(a)(2)(ii), Section 23(a)(3), Section 23(b), Section 17, Section 3.01(a), and Section 3.01(j).

[298] 473 Phil. 27 (2004).

[299] Supra note 278.

Optometry Law) and its implementing rules, on the grounds that, among others, it is facially invalid for violating the public rights to health.[300]

Petitioner Board of Optometry filed with this a Court a special civil action for *certiorari* against public respondent Judge Colet for grave abuse of discretion. Among the grounds cited by the petitioner board were:

> I. Respondent judge gravely abused his discretion and/or acted without or in excess of jurisdiction in finding that private respondents have locus standi to file the petition *a quo*.
>
> II. Respondent judge gravely abused his discretion and/or acted in excess of jurisdiction in decreeing that *prima facie* evidence of unconstitutionality/invalidity of RA 8050 exists which warrant the enjoinment of its implementation.[301]

The Court granted the petition and annulled the preliminary injunction on the ground that the private respondents lacked legal standing to question the law. The Court added that the general rule is that a constitutional challenge must be as-applied in that there must be an existing controversy:

> Civil Case No. 95-74770 must fail for yet another reason. As a special civil action for declaratory relief, its requisites are: (1) the existence of a justiciable controversy; (2) the controversy is between persons whose interests are adverse; (3) that the party seeking the relief has a legal interest in the controversy; and (4) that the issue invoked is ripe for judicial determination. On this score, we find no difficulty holding that at least the first and fourth requisites are wanting.
>
> Then there is the unbending rule in constitutional law that courts will not assume jurisdiction over a constitutional question unless the following requisites are first satisfied: (1) there must be an actual case or controversy involving a conflict of rights susceptible of judicial determination; (2) the constitutional question must be raised by a proper party; (3) the constitutional question must be raised at the earliest opportunity; and (4) the resolution of the constitutional question must be necessary to the resolution of the case.
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> An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory.[302]

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[300] Id. at 1199. The order of the respondent judge reads:
On the basis of the main petition, which is for declaratory relief directed at the nullification of R.A. 8050 on constitutional grounds, and for a writ of prohibition, likewise premised on the nullity of said law due to constitutional infirmities, the Court finds that the whole or part of the relief which petitioners are seeking and to which *prima facie* they are entitled, consists in restraining the enforcement or implementation of the law.
The Court likewise concludes, on its finding that both public rights would be prejudiced by the operation of R.A. 8050, that its enforcement *pendente* would inflict substantial injustice to petitioners.
[301] Id. at 1200.
[302] Id. at 1205-1206.

Moreover, the Court noted that while the petitioners had alleged potential impairment of public rights, there was yet no impairment resulting from the actual enforcement of the law:

> It cannot be disputed that there is yet no actual case or controversy involving all or any of the private respondents on one hand, and all or any of the petitioners on the other, with respect to rights or obligations under R.A. No. 8050. This is plain because Civil Case No. 95-74770 is for declaratory relief.[303]

Similar to *Executive Secretary v. CA*, *Board of Optometry v. Colet* cautioned against the facial invalidation of statutes without awaiting the emergence of an actual controversy. The Court warned:

> The conclusion then is inevitable that the respondent Judge acted with grave abuse of discretion when he issued a writ of preliminary injunction restraining the implementation of R.A. No. 8050, as well as of the Code of Ethics promulgated thereunder, if one has been issued. Even if there was before him a case involving the law, prudence dictated that the respondent Judge **should not have issued the writ with undue haste,** bearing in mind our decision, penned by Mr. Justice Isagani A. Cruz, in *Drilon vs. Lim.*[304] (citation omitted, emphasis supplied)

In *Drilon v. Lim,*[305] the Court held that there must be an actual infraction of the Constitution in order to overcome the presumption of the constitutionality of a law.

Thus, *Executive Secretary v. CA* and *Board of Optometry v. Colet* are unassailable authorities in support of the view that where an as-applied challenge actually or potentially exists, no facial challenge may be entertained against the same law.

The nature of the ATA as a penal law has profound consequences on the applicable mode of constitutional challenge for the case at bar. It is proper to remind petitioners of this court's ruling in *Estrada v. Sandiganbayan,*[306] which still reflects the applicable doctrines in constitutional litigation cases. In that case, the Court mentioned that the rationale for facial challenges – which allows for the application of void-for-vagueness and overbreadth doctrines – does not apply to penal statutes, thus:

> The **void-for-vagueness doctrine** states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

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[303] Id. at 1206.
[304] Id.
[305] 305 Phil. 146 (1994).
[306] Supra note 85.

> The **overbreadth doctrine**, on the other hand, decrees that "a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."
>
> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.
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> **This rationale does not apply to penal statutes.** Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.[307] (emphases supplied.)

Accordingly, the ATA, as a penal statute, cannot simply be challenged in its entirety following an "on-its-face" approach by merely alleging that it is vague or overbroad. On the contrary, the general rule for constitutional challenges should govern in this case: only the provisions in the ATA that are sought to be applied to the petitioner may be challenged and not the entire statute. Justice Mendoza's opinion on the applicability of "as-applied" challenges as compared to facial challenges is on point:

> "Facial" challenges are the exceptions. **They are made whenever it is alleged that enforcement of a statute produces a chilling or inhibitory effect on the exercise of protected freedoms because of the vagueness or overbreadth of the provisions of such statute.** Put in another way, claims of facial overbreadth alone, when invoked against ordinary criminal laws like the Anti-Plunder law, are insufficient to move a court to examine the statute on its face. It can only be reviewed as applied to the challenger's conduct. The same rule applies to claims of vagueness. It is equally settled that "a plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."
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> In free speech or First Amendment cases, the rule is different because of the chilling effect which enforcement of the statute might have on the exercise of protected freedoms. This reason is totally absent in the case of ordinary penal laws, like the Anti-Plunder law, whose

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[307] Id. at 353-354.

> deterrent effect is precisely a reason for their enactment. Hence, we declared in this case that **"the doctrines of strict scrutiny, overbreadth and vagueness are analytical tools for testing 'on their faces' statutes in free speech cases or, as they are called in American law, First Amendment cases [and therefore] cannot be made to do service when what is involved is a criminal statute."**[308] (emphases supplied)

In deference to a co-equal branch of government, this Court does not favor a wholesale destruction of legislation when only specific provisions of law may be examined for its validity on an as-applied basis. Otherwise, public order can break down and the survival of the State will be endangered when laws can be invalidated on its face for every challenge in that regard. The same is true for legislating measures to combat terrorism. Our Congress has deemed it proper to penalize acts related to terrorism, and parties whose rights may be affected on as-applied basis may seek recourse from courts on actual cases or controversies. This Court is not tasked to resolve hypothetical cases, nor provide advisory opinions, if it is to uphold the essential mandate given to the judiciary under our present Constitution.

The presence before the Court of four petitions whose parties have legal standing and raise an actual controversy likewise prevents the 33 other petitions from gaining admission as cases of transcendental importance. From 2003 through 2021, this Court has imposed three minimum conditions in order for an invocation of the transcendental importance of the issue raised in a case to exempt the parties therein from establishing legal standing: (1) the public character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) there is no other party having a more direct and specific interest in the case.[309] In *Anak Mindanao Party-List Group v. Executive Secretary Ermita*,[310] the Court, through the *ponencia* of one of the petitioners in this case, former Associate Justice Conchita Carpio-Morales, declared these minimum conditions mandatory. As it were, the four surviving petitions involve parties with a direct and specific interest in the constitutionality of the ATA.

The majority relaxed the minimum conditions in order so as not to "clip the wings of the Court." The rationale for its libertarian approach is to enable the Court to "exercise x x x some discretion on significant issues that may not yet be anticipated now but may be brought to the Court in the future."

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[308] *Estrada v. Sandiganbayan*, supra note 85.

[309] See *Francisco, Jr. v. House of Representatives*, supra note 35 at 899; *Tecson v. COMELEC*, 468 Phil. 421, 670-671 (2004); *Central Realty and Development Corp. v. Solar Resources, Inc.*, supra note 294; *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 495 (2013); *Social Justice Society Officers v. Lim*, 748 Phil. 25 (2014); *In Re Supreme Court Judicial Independence v. Judiciary Development Fund*, 751 Phil. 30 (2015); *Rosales v. Energy Regulatory Commission*, 783 Phil. 774, 787 (2016); *Pangilinan v. Cayetano*, supra note 294.

[310] 558 Phil. 338 (2007).

I respectfully beg to differ from the majority.

To discard the minimum conditions is to transform an exception into a general rule. It should be borne in mind that the general rule of justiciability and admissibility is that a party must have legal standing. One exception is when a case raises an issue of transcendental importance, in which event the case may be admitted even if the party involved lacks legal standing. Being an exception to the general rule, the same must be delineated; that is, the conditions giving rise to such exception must be defined. Otherwise, there would be no point in adopting a general rule and carving out an exception.

An unrestrained use of the "transcendental importance" doctrine goes against the presumption of constitutionality as regards the acts of other branches and constitutional bodies of government. The Court would be arrogating unto itself the power of determining policies which rightly belong to the political branches of government. As eloquently pointed out in *Vera v. Avelino*:[311]

> Let us likewise disabuse our minds from the notion that the judiciary is the repository of remedies for all political and social ills. We should not forget that the Constitution [had] judiciously allocated the powers of government to three distinct and separate compartments; and that judicial interpretation has tended to the preservation of the independence of the three, and a zealous regard of the prerogatives of each, knowing full well that one is not the guardian of the others and that, for official [wrongdoing], each may be brought to account, either by impeachment, trial or by the ballot box.[312]

Adherence to the mandatory conditions is all the more imperative when the act being questioned is an exercise by the executive branch or legislative branch of their inherent powers or even their core constitutional powers. As the preceding discussion in the section entitled "Exceptions to the Requirement of Legal Standing" would show, the trajectory of Philippine jurisprudence indicates a narrowing avenue for cases of transcendental importance directed against penal statutes

I pointed out in my *ponencia* in *Joint Ship Manning Group, Inc. v. Social Security System*[313] that:

> x x x [T]he Court, through the years, has allowed litigants to seek from it direct relief upon allegation of "serious and important reasons." *Diocese of Bacolod v. Commission on Elections* summarized these circumstances in this wise:

[311] 77 Phil. 192 (1946).
[312] Id. at 205-206.
[313] Supra note 27.

> (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
>
> (2) when the issues involved are of transcendental importance;
>
> (3) cases of first impression;
>
> (4) the constitutional issues raised are better decided by the Court;
>
> (5) exigency in certain situations;
>
> (6) the filed petition reviews the act of a constitutional organ;
>
> (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]
>
> (8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."
>
> It must be clarified, however, that the presence of one or more of the so-called "serious and important reasons" is not the only decisive factor considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. Rather, it is the nature of the question raised by the parties in those "exceptions" that enables us to allow the direct action before the Court.

Notwithstanding that petitioners in said case did not allege enforcement of the law against them, their petitions were admitted because of the "existence of two of the exceptions, particularly: (1) that this case is of first impression; and (2) that the present issue involves public welfare and the advancement of public policy, or demanded by the broader interest of justice [for the] assailed law concerns the welfare of OFWs."

In the present case, the majority has foisted *Joint Ship Manning Group, Inc. v. Social Security System* as authority in support of the view that the mandatory conditions for the admission of cases of transcendental importance should be relaxed and that the 33 other petitions admitted as such.

It is respectfully submitted that the majority's reliance on *Joint Ship Manning Group, Inc. v. Social Security System* may be misplaced.

To begin with, the admission of four as-applied challenges precludes

the Court from entertaining mere facial challenges and cases of transcendental importance. A doctrine embedded in the principle of separation of powers is that the Court may not accept a mixed bag of as applied challenges, facial challenges and cases of transcendental importance. If the Court must resolve the constitutionality of an act of a co-equal branch of government, it should base its judgment on actual controversies affecting real parties and within the context of concrete facts.

Further, in the foregoing instances where there appears to be no clear parameters for the admission of cases of transcendental importance, the legislations involved were non-penal, *i.e.,* they did not provide penalties resulting in restrictions on liberty for their violation. In contrast, as the following cases involving penal legislations would demonstrate, the Court has tracked an increasingly defined trajectory towards a more stringent application of the rules of justiciability *vis-à-vis* claims to exceptions from said rules on the ground that the question being raised is of transcendental importance.

Unlike in *Joint Ship Manning Group, Inc. v. Social Security System*[314] where a labor legislation was involved, *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*[315] and *Republic v. Roque*[316] involved the HSA, a penal law. Direct recourse based on the transcendental importance of the issues failed for lack of showing that petitioners were facing any charges under the HSA. Mere possibility of abuse of the HSA was found to be too speculative and theoretical.

On the other hand, in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City,*[317] the Court allowed a challenge to curfew ordinances filed by the parents of the minors being subjected to the ordinance, as the same was already being enforced until restrained by the Court.[318]

In *Estipona v. Lobrigo,*[319] as the petitioner was facing charges under the impugned law (R.A. No. 9165), the technical defects in his petition did not obstruct the resolution of the transcendental issue raised. The Court also allowed direct recourse to it in *Fuertes v. Senate of the Philippines,*[320] as the petitioner had been charged under the impugned law.

Thus, while the transcendental importance of the litigated issue may do away or lessen a party's need to establish direct legal standing to sue, such importance does not completely remove the need to clearly show the

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[314] Supra note 27.
[315] Supra note 14.
[316] Supra note 62.
[317] Supra note 59.
[318] Supra note 59 at 1076-1077.
[319] 816 Phil. 789-820 (2017).
[320] G.R. No. 208162, January 7, 2020, pp. 9-10.

justiciability of a controversy through the existence of conflicting interests even if only remotely, as well as the ripeness of the issues raised for adjudication.[321] A separate class unto itself would be cases involving penal laws, for then the rule is that the transcendental importance of the question must be accompanied by a prima facie showing of *locus standi*. This requirement, which is peculiar to cases involving penal laws, reinforces the mandatory condition that there be no other party having a more direct interest in the issue. Together, they effectively bar the admission of the petitioners in the 33 other petitions, for it so happens that the petitioners in G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 have legal standing, clear and solid.

At this juncture, the undersigned respectfully points out that there appears to be a confusion of as-applied challenges with petitions that raise factual issues. The former is perfectly within the jurisdiction of the Court while the latter must be initiated before the lower court. In fact, an as-applied challenge, such as the four surviving petitions, is the general rule for it alleges and establishes *prima facie* that there has been an enforcement of the law being assailed. This does not involve the resolution of a factual issue, which would require the reception of evidence before the lower courts. There are public and official documents indicating that the petitioners have been subjected to an actual and concrete, if not an imminent but real, enforcement of the ATA. These public and official documents are within the judicial notice of the Court. Moreover, public respondents have not denied any of said documents.

Contrast this with G.R. No. 252904, where the petitioners alleged that some of them (Beverly Longid, Windel B. Bolinget, Joanna K. Cariño and the organizations they respectively work) have been impleaded in a petition for proscription (*DOJ v. CCP and NPA Petition* dated February 21, 2018). The public respondents countered in page 66 of their Supplemental Comment that these 3 petitioners have been dropped as respondents from the amended petition for proscription. For this reason, this petition has been dismissed outright.

It must be emphasized that the undersigned voted to dismiss outright those petitions which merely relied on affidavits concerning the enforcement of the ATA. This is due to the fact that such allegations would require the reception of evidence, which the Court is not equipped to handle.

Therefore, I respectfully dissent from the majority vote that the 33 other petitions are admissible as facial challenges and cases of transcendental importance. I vote to dismiss outright these 33 other petitions.

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[321] *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas*, 809 Phil. 65, 85 (2017).

III. The majority vote that the ATA is susceptible to a facial challenge is incorrect

The majority is of the view that the 33 other petitions properly subject the ATA to a facial challenge.

I respectfully disagree.

In *Southern Hemisphere v. ATC,* the Court emphasized the rationale for the general rule that a penal is not susceptible to a facial challenge:

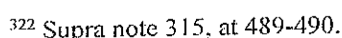
> The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech x x x [T]his rationale is inapplicable to plain penal statutes that generally bear an "*in terrorem* effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.
>
> x x x If a facial challenge to a penal statute is permitted, the prosecution of crimes may be hampered. No prosecution would be possible. x x x A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it.[322]

As previously mentioned, it is the view of the undersigned that no less weighty than an alleged violation of a fundamental right in a facial challenge is the consideration of the State's interest involved in a disputed legislation. The Constitution and its guaranteed rights will all be for naught if the State itself - that the Constitution supports - is extinguished.

Thus, it is imperative for the Court to maintain the general rule on the non-availability of facial challenge against a penal legislation like the ATA, whose aim is the defense of the State against those who threaten its very survival. This general rule is grounded on reasons stated earlier, particularly on the fact that the ATA penalizes conduct, not speech. Where speech is involved, such speech is unprotected because it is speech integral to criminal conduct.

Therefore, I respectfully dissent from the majority vote that the 33 other petitions can subject to a facial challenge a penal law like the ATA.

The majority further holds that the ATA is susceptible to a facial challenge for it regulates not just conduct but also speech, specifically through the *proviso* in Sec. 4. The majority included in the coverage of freedom of speech the exercise of cognate rights.



[322] Supra note 315, at 489-490.

On the contrary, this Court has consistently held that the source and scope of its authority to admit facial challenges are confined to Sec. 4 on freedom of speech and Sec. 5 on freedom of religion under Art. III of the Constitution. Only these provisions expressly and categorically permit a challenge to the mere enactment of a law impairing or threatening to impair the rights guaranteed therein. All other provisions of the Bill of Rights expressly recognize limitations or regulations by law of the exercise of rights protected therein.

The plain meaning of Sec. 4 of the ATA is that, as a general rule, terrorism is committed through well-defined overt acts which manifest the criminal intent and purpose, taking into account the nature and context. Terrorism is not committed through the exercise of the right to freedom of speech and expression. This general rule is qualified by the *proviso* that terrorism can be committed through, and criminal intent manifested in, specific overt acts enveloping forms of speech or expression. In both, criminalization is directed at specific conduct equivalent to overt act of and manifestation of intent to commit terrorism, not at speech or expression in and of itself. This may be seen in Sec. 4(a): that is, "engag[ing] in acts intended to cause death or serious bodily injury to any person, or endanger[ing] a person's life" for the purpose of, among others, "seriously undermin[ing] public safety." To illustrate, advocacy *per se* for the Islamic State would be protected speech but if enveloped within a terrorist attack similar to the Marawi attack, such advocacy would be unprotected speech. Advocacy for cultural-religious cleansing *per se* would be protected speech but if enveloped within a genocidal campaign similar to the Marawi attack, the same is unprotected speech. Hence, the last *proviso* of Sec. 4 is directed at the attacks rather than the advocacy *per se*.

Even assuming that the ATA regulates speech, such speech or advocacy is an integral part of an overt act of terrorism and therefore unprotected. It is axiomatic that unprotected speech is beyond the scope of Sec. 4 of Art. III of the 1987 Constitution.[323] Consequently, a law regulating unprotected speech is not subject to a facial challenge.

At this juncture, it must also be respectfully stated that the oft-quoted phrase "the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing on their faces statutes in free speech cases"[324] have led some members of the Court to erroneously conflate, on the one hand, the preliminary stage of ascertaining whether a law is susceptible to a facial challenge on the ground of overbreadth or vagueness with, on the other hand, the main stage of scrutinizing whether said law

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[323] *Chavez v. Gonzales*, supra note 142 at 208; *Soriano v. Laguardia*, supra note 173; and *Madrilejos v. Gatdula*, supra note 173.

[324] This phrase originated in the concurring opinion of Justice Mendoza in *Estrada v. Sandiganbayan*, supra note 105.

serves a public purpose and adopts measures that are reasonable in that they do not suffer from overbreadth or vagueness.[325]

An as-applied challenge does not foreclose a facial review of the entire ATA. There is no test of overbreadth or vagueness independent of or separate from the conduct of judicial scrutiny in an as-applied challenge. Rather, the overbreadth and vagueness tests are components of judicial scrutiny, and are employed to ascertain whether, as applied to the petitioners, the means adopted by the law are reasonable. Whether applying a strict level of judicial scrutiny or an intermediate level of judicial scrutiny of a law that imposes a prior restraint on a protected right, such as the content of or the time and place of an exercise of freedom of expression, reasonableness is measured according to whether the "restrictions imposed are neither overbroad nor vague."[326] Overbreadth and vagueness render the means employed by the law too sweeping and pervasive as to foreclose every avenue of expression, rather than be narrowly tailored to achieve the governmental purpose.

Thus, it is respectfully submitted that there is no inherent incongruity in the admission of the four surviving petitions as as-applied challenges and the facial review of the ATA.

Based on the foregoing, I respectfully dissent from the majority vote that the ATA is a penal law that regulates speech and that, as such, it is susceptible to the facial challenges raised by the 33 other petitions. I vote only to admit the four above-mentioned petitions as as-applied challenges.

IV. *Disini, Jr. v. The Secretary of Justice* is not applicable

The majority opines that *Disini, Jr. v. The Secretary of Justice* has paved the way for a facial challenge of a penal law that implicates speech, including unprotected speech.

A closer examination of *Disini, Jr. v. The Secretary of Justice* reveals the contrary.

The relevant provisions in *Disini, Jr. v. The Secretary of Justice* were Sec. 4(c)(2) on Child Pornography, Sec. 4(c)(3) on Unsolicited Commercial Communications, Sec. 4(c)(4) on Libel, and Sec. 5 on Aiding and Abetting of the Cybercrime Law. Undoubtedly, speech associated with child pornography and libel are unprotected speech. The question is whether the Court allowed a facial challenge against these provisions.

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[325] *Inmates of the New Bilibid Prison v. De Lima*, G.R. No. 212719, June 25, 2019.
[326] *Chavez v. Gonzales*, supra note 142 at 208; *Nicolas-Lewis v. COMELEC*, supra note 120.

The Court addressed the issues relating to Sec. 4(c)(2) and Sec. 4(c)(3) without stating that it was entertaining a facial challenge. Rather, it directly upheld the constitutionality of Sec. 4(c)(2) and Sec. 4(c)(4) with respect to the original author. The Court was silent on whether it was reviewing these provisions facially. In fact, the discussion of the Court on these provisions makes no reference to overbreadth or vagueness. Thus, by the time the Court attended to the facial challenge against Sec. 5, it had already upheld the constitutionality of Sec. 4(c)(2) and Sec. 4(c)(4) as regulations on unprotected speech.

Sec. 5 on aiding and abetting refers to several provisions including Sec. 4(c)(2) and Sec. 4(c)(4). However, Sec. 5 was aimed at the act of aiding and abetting certain forms of communications that have earlier been declared constitutional. Thus, when the Court facially invalidated Sec. 5 in relation to Sec. 4(c)(2) and Sec. 4(c)(4), the invalidation was confined to the speech-related acts of aiding and abetting. In fact, the Court also facially invalidated Sec. 5 in relation to Sec. 4(c)(3) on spam, which is clearly not unprotected speech.

In sum, the facial invalidation in *Disini, Jr. v. The Secretary of Justice* was of a provision (Sec. 5) of the Cybercrime Law regulating a speech-related act rather unprotected speech. Such facial invalidation has no relevance to the ATA, not even to the last *proviso* of Sec. 4 as the speech regulated therein, if at all, is an integral part of an overt act of terrorism and therefore unprotected. Rather than *Disini, Jr. v. The Secretary of Justice*, the general rule, that a facial challenge is not available against a penal law in general or a penal law that regulates unprotected, is the law of the present case.

Therefore, I respectfully dissent from the majority view that *Disini, Jr. v. The Secretary of Justice* paved the way for the facial challenge raised by the 33 other petitions against the ATA as a penal law.

ISSUES RAISED BY THE SURVIVING PETITIONS

The surviving petitions ask the Court to undertake a facial challenge of the ATA and to invalidate the entire law even before its enforcement, based on the allegations and positions summarized below.

I. G.R. No. 253242 – Coordinating Council for People's Development and Governance, Inc., represented by Vice-President Rochelle M. Porras, et al. v. President Rodrigo R. Duterte, et al.

A. Vagueness of Section 4 and Section 9

The petitioners argue that the ATA's Secs. 4 and 9 are facially invalid for vagueness since they fail to provide standards that ordinary persons can use to determine whether their speech and conduct violate ATA, or that law enforcers can use to determine if speech or conduct is legal or illegal.[327] On this basis, they conclude that they can challenge these provisions for themselves and for other persons whose rights are impaired.[328] They consider the following phrases too abstract to qualify as useful guides for law enforcers: "undermine public safety," "create a public emergency," "seriously destabilize or destroy," "fundamental political, economic or social structure of the country."[329]

Given the deficiency, the petitioners posit that the Anti-Terrorism Council *(ATC)* and law enforcers can characterize any act as terroristic by merely attributing to the person a terroristic intent, despite the absence of any outward manifestation of terroristic or criminal intent.[330] The deficiency, in their view, violates the fundamental criminal law precept that no crime exists in the absence of any criminal act or a criminal mind.[331] Specifically, these provisions violate the right to a presumption of innocence under Sec. 14 (2), Art. III of the Constitution.[332]

The petitioners further argue that Sec. 9 punishes as incitement to terrorism a person who does not participate in terrorism but whose speeches, writings, and other public expressions have content that incites another person to commit an act enumerated in Sec. 4. The provision disregards the need to establish criminal intent and, thus, similarly violates the principles of criminal law.[333] According to them, in view of the vagueness of Sec. 4 and Sec. 9, Secs. 5, 6, 7, and 8 can punish individuals based on the content of their speech, in violation of the express prohibition under Sec. 4, Art. III of the Constitution, which provides that no law shall be enacted impairing freedom of expression.[334]

They further argue that given the lack of clear standards, an ordinary law enforcer can conclude that a politically charged speech violates the

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[327] Petition in G.R. No. 252768, pp. 44-58.
[328] Id. at 59-61.
[329] Id. at 62.
[330] Id. at 64.
[331] Id. at 62-64.
[332] Id. at 64-65.
[333] Id. at 65.
[334] Id. at 65-68.

ATA.[335] They claim that these provisions, being overly broad, have the effect of forcing a person to muzzle himself lest he violates the ATA through his speech.[336]

B. Prohibition on development and humanitarian work and advocacy

The petitioners argue that Secs. 12 and 13 curtail humanitarian and advocacy work for no apparent legal reason.[337] They object to Sec. 13 which, to them, limits the organizations that can undertake humanitarian work to only the Red Cross and to those authorized by ATC. Since the NTF-ELCAC has declared the petitioners as communist-terrorist organizations,[338] petitioners argue that there is unreasonable curtailment not only of their freedom of association but also of the constitutional policy on the promotion of civic organizations.[339] It also endangers communities facing natural disasters and environmental threats.[340]

C. Proscription of legitimate socio-economic and cultural organizations

According to the petitioners, Secs. 25, 26, 27, 29, and 34 on proscription likewise suffer from lack of standards so that legitimate socio-economic and cultural organizations like theirs can be labelled as terrorists despite the Constitution's declaration that their formation and function serve an important public interest.[341] Under these disputed provisions, they argue that the ATC can subject any organizations to proscription without any clear basis. The ATC, the petitioners contend, is not a judicial or quasi-judicial body that is required to determine probable cause as basis for its actions.[342]

The petitioners also contend that while proscription can be issued within two days, the hearing for a proscribed organization to challenge the proscription can be delayed for up to six months.[343] They claim that, in the meantime, their organization, its members, and the communities they serve are deprived of their freedom of association and their right to represent their socio-economic and cultural identities.[344]

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[335] Id. at 67-68.
[336] Id. at 68-68.
[337] Id. at 69-70.
[338] Id. at 70-71.
[339] Id. at 72-73.
[340] Id. at 72-74.
[341] Id. at 74-76.
[342] Id. at 79-85.
[343] Id. at 77-79.
[344] Id. at 85-88.

D. Warrantless arrest and detention – Section 29

Finally, the petitioners argue that Sec. 29 is both an unreasonable and an unnecessary infringement of the right to due process and freedom from unreasonable search and seizure. Further, they object to the extension of the period of warrantless detention and the removal of the protection afforded by the HSA as they believe that these acts cannot be justified by any overwhelming government interest.[345]

Based on these grounds and arguments, the petitioners ask the Court to declare the ATA unconstitutional in its entirety.[346]

II. G.R. No. 252585 – Bayan Muna Party-List Representatives Carlos Isagani T. Zarate, Ferdinand Gaite, and Eufemia Cullamat v. President Rodrigo R. Duterte.

The petitioners are party-list representatives and officers of party-list organizations[347] who cite the following arguments to support their petition:

A. Vagueness and overbreadth of Section 4

The petitioners argue that Sec. 4, together with Secs. 5 to 12, are facially invalid. They claim that, through vagueness and overbreadth, the ATA infringes on the right to due process and smothers protected speech without any valid and compelling government interest.[348] They maintain that Sec. 4 is overly broad such that it can smother protected speech. According to them, Sec. 4 enumerates specific terroristic intents but does not identify the outcomes or outward indicators that would enable the ATC or a law enforcer to objectively attribute such terroristic intents to any specific act. The petitioners allege that Sec. 4 likewise declares that such terroristic intent can be attributed to any act regardless of the stage of execution. In effect, petitioners argue that a law enforcer can point to any act, including speech, and declare it as a terrorist act based on their subjective belief, rather than based on any objective criteria, that the act or speech is animated by one of the enumerated terroristic intents.[349] Even protected speech can be declared by a law enforcer to be a terroristic act if, in the enforcer's subjective assessment, a terroristic thought is behind the utterance.[350]

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[345] Id. at 88-92.
[346] Id. at 95.
[347] Bayan Muna Party-List Representatives Carlos Isagani T. Zarate, Ferdinand Gaite, and Eufemia Cullamat; Gabriela Women's Party Representative Arlene D. Brosas; Ac-Teachers Party-List Representative France L. Castro; Kabataan Partylist Representative Sarah Jane I. Elago; Bayan Muna Party-List President Saturnino Ocampo; Makabayan Cochairperson Liza Largoza Maza; Bayan Muna Party-List Chairperson Neri J. Colmenares; Act-Teachers Party-List President Antonio Tinio; AnakpawisParty-List Vice-president Ariel Casilao; Makabayan Secretary General Nathanael Santiago.
[348] Petition in G.R. No. 252585, pp. 20-21, 40.
[349] Id. at 24-26.
[350] Id. at 26.

The petitioners add that Sec. 4 is vague in many of its material aspects.

First, they argue that Sec. 4 refers to the "nature and context" of the act as basis for a law enforcer to deduce a terroristic intent. The relevant "nature and context" of the act, according to petitioners, would depend on the subjective assessment of the law enforcer who can then be influenced by the government's public labelling of persons and organizations (such as the petitioners) and their speeches and activities as terroristic.[351]

Second, they claim that Sec. 4 describes a terroristic intent according to the likelihood of "extensive damage," "extensive destruction," "extensive interference," or "debilitating impact," all of which would depend on the subjective assessment of the ordinary law enforcers who can hardly be expected to make a consistent assessment in the absence of any standard to determine what effects are considered extensive or debilitating.[352]

The petitioners further contend that the phrase "endanger a person's life" is equally vague and can be interpreted to include the violation of quarantine restrictions.[353] According to them, such vagueness is pervasive because other crimes defined in the ATA arise from an act of terrorism under Sec. 4, which can activate the ATC's wide range of powers.[354] Moreover, they claim that vagueness is pernicious because it can lead to abuses even against children and the elderly.[355] Similar to overbreadth, they argue that vagueness can lead to self-repression of thought and expression.[356]

Third, petitioners point out that while Sec. 4 ostensibly places the burden on the government to prove that an advocacy is terroristic, the ATA still enables the government to easily attribute to an act any of the abstract purposes enumerated as terroristic.

Thus, they conclude even the people's revolution in EDSA can be treated as terroristic given the likelihood and actual occurrence of some form of violence.[357] As further example, they claim that the lyrics of songs celebrating the revolution would also be terroristic.[358] They also allege that humanitarian work during this pandemic or any calamity would be terroristic if undertaken by organizations that have been merely labelled as terrorists by the government.[359]

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[351] Id. at 29-32.
[352] Id. at 26-28.
[353] Id. at 27.
[354] Id. at 28, 39-40.
[355] Id. at 28-29.
[356] Id. at 30-34.
[357] Id. at 34-36.
[358] Id. at 35-36.
[359] Id. at 38.

B. Violation of the right to privacy

The petitioners cite the *Ople v. Torres* ruling to contend that when a vague law places in a person or in a group of persons the possession of privileged information, the law poses a clear and present danger to the right to privacy and, by extension, to protected speech (both public and private) and to the freedom from unreasonable search and seizure.[360] They argue that Secs. 16, 17, 18, 19, 20, and 22 of ATA invade privacy without any compelling reason,[361] in violation of the affected person's right to due process since the latter has no means of opposing the intrusion.[362] According to them, in view of the vagueness of Sec. 4, the intrusions into privacy under Sec. 16, through Sec. 20 and Sec. 22, would have the effect of inhibiting legitimate dissent.[363]

C. Violation of due process

The petitioners argue that, under Sec. 25 of ATA,[364] in relation to Sec. 11 of R.A. No. 10168 (The Terrorism Financing Prevention and Suppression Act of 2012 or the Terrorism Financing Act),[365] private property and funds can be taken without due process of law.[366] They object to the fact that though not a judicial or quasi-judicial body, the ATC can initiate seizure without notice and hearing.[367] They also allege that no remedy is available against the ATC.[368]

D. Violation of presumption of innocence

The petitioners point out that under Secs. 25 and 27, a preliminary order of proscription *(POP)* can be obtained from the Court of Appeals *(CA)* even without probable cause as no act of terrorism has been or is being committed. They attribute this legal defect to the preventative rather than the punitive purpose of the POP. They claim that the CA, moreover, would have no other basis to decide except the DOJ's factual recitation in its application for proscription and POP.[369]

E. Violation of separation of powers

The petitioners argue that the authority of the ATC under Sec. 29 to order the warrantless arrest and detention of persons on mere suspicion of being terrorists amounts to a usurpation of judicial powers by the executive

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[360] Id. at 46-47.
[361] Id. at 48-51.
[362] Id. at 58-59.
[363] Id. at 55-56.
[364] On the designation of terrorist individuals and organizations.
[365] On the freezing of the properties and funds of a designated person or group of persons.
[366] Id. at 57-59.
[367] Id. at 60-63.
[368] Id. at 63-67.
[369] Id. at 67.

department, in violation of the express prohibition under the 1987 Constitution that "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce."[370]

Petitioners lament that detention, which can last up to 24 days, too, can transpire on mere suspicion and even without any crime being committed. According to them, no justification exists for such prolonged detention period.[371] In effect, petitioners claim that, without complying with the constitutional requirements on the suspension of the privilege of the writ of habeas corpus, the President, acting through the ATC, can effectively suspend the writ for longer than the three (3) days that the Constitution allows.[372]

F. Deprivation of the right to bail

The petitioners posit that if a person is charged under Secs. 5, 8, 9, or 10, the offense would be punishable by 12 years imprisonment. Notably, Sec. 13, Art. III of the Constitution grants a person so charged the right to bail.

Yet, petitioners point out that Sec. 34 of ATA provides that, even if a bail is granted as a matter of right, the court, upon the prosecutor's application, may - in the interest of national security - limit the right of the accused to travel within the municipality or city where he/she resides or where the case is pending.[373] In effect, they conclude that an accused out on bail will be denied provisional liberty.[374]

Based on these grounds and arguments, the petitioners ask the Court to declare the ATA null and void in its entirety.[375]

III. G.R. No. 252767 – Bishop Broderick S. Pabillo, et al. v. President Rodrigo R. Duterte, et al.

The petitioners are priests, religious and lay persons and organizations.[376] The arguments they raised to support their petition are outlined below.

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[370] Id. at 68-71.
[371] Id. at 71.
[372] Id. at 72-74.
[373] Id. at 75-77.
[374] Id. at 77-79.
[375] Id. at 81-82.
[376] Bishop Broderick S. Pabillo; Bishop Reuel Norman O. Marigza; Rt. Rev. Rex B. Reyes Jr.; Bishop Emergencio Padillo; Bishop Gerardo A. Alminaza; Dr. Aldrin M. Peñamora; Dr. Annelle G. Sabanal; Dr. Christopher D. Sabanal; Fr. Rolando F. De Leon; Sr. Ma. Liza H. Ruedas; Sr. Anabell "Theodora" G. Bilocura; Rev. Marie Sol S. Villalon; Dr. Ma. Julieta F. Wasan; Fr. Gilbert S. Billena; Jennifer F. Meneses;

A. Vagueness of Section 4

The petitioners argue that, except for Sec. 4(d), Sec. 4 is vague as it deprives a targeted person the right to due process; he is not given "fair notice of the conduct to avoid" whereas the law enforcer is given "unbridled discretion in carrying out its provisions."[377]

They point out that the phrase "endangering a person's life" is susceptible to a range of interpretation in terms of the degree of danger and the number of lives endangered, to the point that a protest action that erupts into some form of violence could be interpreted by law enforcers as terrorism.[378] According to the petitioners, the phrase "extensive interference" of a critical infrastructure, which includes a cyber infrastructure, is open to various interpretations and an ordinary law enforcer would not have the means to analyze the nuances of a particular interference.[379]

As the law does not draw the line between criminal and non-criminal act, they claim that the ATA can end up criminalizing even innocent acts.

B. Overbreadth of Section 6 and Section 9

The petitioners likewise argue that Sec. 6 is so general and abstract that it penalizes the "collecting or making of documents connected with the preparation of terrorism." The petitioners point out that this can cover the making of statements or posters in pursuit of an advocacy work that might be critical to the government and in support of certain legitimate sectors, such as the Lumads.[380] According to them, such protected speech can be implicated simply because the Lumads have been labelled as terrorists.[381]

The petitioners also object to Sec. 9 on speeches and writings whose content incite others to terrorism as it allegedly "intrudes into the area of protected speech and expression because it targets bare messages ... regardless of the actual role of the speaker in the commission of terrorism."[382] The requirement that the speech must "tend to the same end," petitioners claim, is puzzling considering that the person making the incitement is not supposed to take a direct part in the commission of terrorism.[383] They conclude that the expansive scope of Sec. 9 has the effect of stultifying the freedom of speech and conduct of individuals and organizations.[384]

Deaconess Rubylin G. Litao; Judge Cleto Villacorta; Rey Claro Casambre; Rural Missionaries of the Philippines Sisters' Association in Mindanao.

[377] Petition in G.R. No. 252767, pp. 36-37.

[378] Id. at 39-40.

[379] Id. at 40-41.

[380] Id. at 48-50.

[381] Id. at 49-50.

[382] Id. at 51-52.

[383] Id. at 56-57.

[384] Id.

C. Violation of the right of association

To the petitioners, Sec. 12 on providing support is so broad that it could criminalize legitimate advocacy work, which involves training local and indigenous communities in peace-building[385] and in providing sanctuary to internal refugees fleeing military operations or natural calamities.[386]

D. Impairment of freedom against unreasonable search and seizure, right to privacy and right to due process

The petitioners argue that Sec. 5, Rule 113 is the Court's authoritative interpretation of the scope of the freedom against unreasonable search and seizure under Sec. 2, Art. 3 of the Constitution.[387] The petitioners posit that it specifies the instances when warrantless search and seizure are legitimate.

Petitioners also object to Sec. 29 of the ATA as it allegedly violates Sec. 2, Art. 3 of the Constitution by authorizing warrantless search, arrest, and detention even on mere suspicion rather than on probable cause.[388]

They further claim that it violates the right to privacy under Sec. 3, Art. 3 of the Constitution as Sec. 29 allows a roving warrantless surveillance and does not require any specificity or even relevance to the crime for which the search is being conducted.[389]

The petitioners conclude that the ATA violates the right to due process and the right to question an unlawful detention since a person - even on mere suspicion - can be deprived of liberty for up to 24 days without any means to question the basis of his detention.[390]

E. Deprivation of presumption of innocence

The petitioners argue that Sec. 25 of the ATA on the power of the ATC to designate terrorist individuals and groups violate the right to be presumed innocent. For petitioners, the ATC can issue a designation based on mere suspicion.

They also allege that even assuming that the ATC could only issue designations based on probable cause, the ATC's impartiality is doubtful since it is composed of the NSC and other security and law enforcement agencies, all of which have been labelling petitioners and other organizations as communist-terrorists. In any case, petitioners claim that the designation

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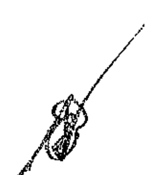
[385] Id. at 63.
[386] Id. at 64.
[387] Id. at 78.
[388] Id. at 76-85.
[389] Id.
[390] Id. at 81, 85-90.



by the ATC under Sec. 25 disregards the presumption of innocence and right to due process that individuals enjoy under the Constitution.[391]

IV. G.R. No. 252768 – GABRIELA, Inc., et al. v. President Rodrigo R. Duterte, et al.

The petitioners are comprised of the General Assembly of Women for Reforms, Integrity, Equality, Leadership, and Action *(GABRIELA)*, Inc., along with its officers and members.[392] The arguments they allege in support of their petition are listed below.

A. Impermissibly vague definition of terrorism violates due process

The petitioners contend that the definition of terrorism under Art. 4 of the ATA is impermissibly vague and lacks sufficient comprehensible standards for persons of common intelligence to know what conduct to avoid. Further, they claim that the ATA affords the implementor unbridled discretion in its implementation. Accordingly, petitioners claim that this impermissible vagueness violates the due process clause of the Constitution.[393]

They also assert that it is left to the discretion of the implementors of the law to determine what (1) acts may be considered as intended to cause death or serious bodily injury to any person, or danger to a person's life, (2) acts may be considered as intended to cause extensive damage or destruction to a government or public facility, public place or private property, and (3) acts may be considered as intended to cause extensive interference with, damage or destruction to critical infrastructure.[394] Further, once the acts have been determined by the implementors, the petitioners allege that it is also up to them to determine, by their sole discretion, the existence of listed purposes since there is no reasonable standards set for "nature and context."[395]

The petitioners further contend that the acts penalized do not need to even result to any of the prohibited conduct as it is enough that the acts penalized are intended to cause such end result. Hence, they conclude that the definition is overbroad as it can cover even legitimate activities and conduct.[396]

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[391] Id. at 91-93.
[392] General Assembly of Women for Reforms, Integrity, Equality, Leadership, and Action (GABRIELA), Inc., Gertrudes R. Libang, Joan May E. Salvador, Emerenciana A. De Jesus, Mary Joan A. Guan, Marivic V. Gerodias, Lovely V. Ramos, Leonara O. Calubaquib, Monica Anne "Monique" E. Wilson, and Silahis M. Tebia.
[393] Petition, G.R. No. 252728, p. 29.
[394] Id. at 31.
[395] Id. at 32.
[396] Id.

They also do not find comfort in the exclusion provided in Sec. 4 because it appears to be an apparent veiled warning due to the qualification of "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety." Further, they contend that the determination of whether the qualification is present is left to the sole discretion of the ATC.[397]

Correlatively, petitioners now claim that the other provisions in the ATA dependent on the definition of terrorism (Secs. 5, 6, 7, 8, 9, 10, and 14) are necessarily void for also being vague. The petitioners also call particular attention to Sec. 12 on material support, which covers any type of support – monetary or otherwise.[398]

Due to the alleged impermissibly vague definition of terrorism, the petitioners conclude that a facial challenge of the ATA is proper, and thus, the ATA must be struck down as unconstitutional.[399]

The petitioners also posit that the ATC is the law enforcer, the prosecutor, and the judge at the same time under the ATC. They point out that the ATC acts as a law enforcer because it gathers evidence against persons or associations it suspects of being terrorists under Sec. 16 of the ATA. The ATC is also the prosecutor because, according to petitioners, the ATC conducts investigations to determine probable cause under Sec. 25. Finally, petitioners argue that the ATC acts as a judge because it (a) designates terrorists at its own discretion, with finality and without judicial imprimatur under Sec. 25, (b) authorizes law enforcers to arrest and detain without judicial warrant and order the freezing of assets of any suspected person it designates as terrorist.[400] This, according to petitioners, is violative of the due process clause.

B. Violation of the principle of separation of powers

The petitioners argue that Sec. 29 empowers the ATC to authorize the law enforcement agents or the military to arrest a person without a judicial warrant of arrest through a written authority. This written authority, according to petitioners, takes the place of a warrant of arrest issued by a judge after judicial finding of probable cause. In this manner, they claim that the ATA allows the ATC to intrude into an exclusive judicial function, which is violative of the principle of separation of powers.[401]

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[397] Id. at 33.
[398] Id. at 33-34.
[399] Id. at 35-39.
[400] Id. at 39-51.
[401] Id. at 51-55.

C. Violation of the right against warrantless arrest, to liberty, to freedom of speech and expression, and to freedom of association

The petitioners contend that Sec. 29 authorizes law enforcement officers and military personnel to arrest on mere suspicion without judicial warrants and without personal knowledge. According to them, this is in violation of the constitutional protection against unreasonable searches and seizures.[402]

They also allege that Sec. 29 violates the right to liberty. They point out that the state has no power to detain a person for more than thirty-six (36) hours without delivering him/her to proper judicial authorities. The petitioners then conclude that Sec. 29 unduly extends the period of detention beyond 36 hours without the law enforcement or military personnel incurring any criminal liability. This is allegedly in violation of Art. 125 of the Revised Penal Code. The petitioners point out that even the waiver of the effects of Art. 125 does not give the government the right to detain a person indefinitely.[403]

The petitioners further assert that the vagueness of the ATA allows its implementors to target critics of the government. Hence, they argue that "it will quash legitimate dissent and quell the people's constitutionally-protected rights and freedom."[404]

Lastly, the petitioners allege that the vagueness of the ATA impedes the exercise of the right to freedom of association. They argue that any legitimate group of persons, organization, or association may be suspected of terrorism under the vague definition of the law. According to the petitioners, the ATA has a chilling effect on the people's right to form associations, "especially if the purpose of such association is to monitor government performance and advocate for improvements or to fight for the rights of the marginalized sectors in society."[405] The petitioners object to branding them as terrorists and communist front organizations or communist-terrorist groups as it violates their right to freely associate. The petitioners explain that their militant orientation and affinity to progressive groups are not contrary to law. Hence, they argue that the ATA must be struck down as void for being unconstitutional.[406]

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[402] Id. at 55-56.
[403] Id. at 56-59.
[404] Id. at 59-62.
[405] Id. at 63.
[406] Id. at 61-65.

COMMENTS OF PUBLIC RESPONDENTS

The public respondents responded through the arguments outlined below.

They first urged the Court to apply the preliminary rules on the worthiness of the petitions for judicial review,[407] and the application of the "as-applied" challenge rather than a facial challenge because the ATA is a penal law. [408]

According to the public respondents, since none of the petitioners has established that the ATA provisions had been directly applied to them or that they had suffered a concrete impairment of their rights, the Court must find that the petitioners lack legal standing and that the issues they raised are not proper for adjudication.[409] They claim that no petitioner has established any concrete evidence of impairment of their rights,[410] nor of any real threat to these rights.[411]

The public respondents also posit that the mantra of transcendental importance should not replace the fundamental rule, under the principle of separation of powers, that the Court must reserve its exercise of constitutional judicial review for only those acts of the legislative or executive branches of the government that directly and concretely impair the constitutional rights of individuals.[412]

The public respondents add that Rule 65 is not the proper remedial rule to challenge the ATA's constitutionality as its enactment was well within the jurisdiction of the legislative and executive branches of government; thus, no possible grave abuse of discretion or lack of jurisdiction can be attributed to them.[413]

The wisdom of enacting an expanded anti-terrorism law, according to the public respondents, is a political question.[414] The proper recourse is therefore to follow the hierarchy of courts by bringing an actual controversy to the trial court as the latter has the power to decide both the factual and the constitutional[415] questions the petitioners raised.[416] The public respondents argue that the petitions should be dismissed, especially as against the President who enjoys immunity from suit.[417]

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[407] Consolidated Comment, pp. 28-33.
[408] Id. at 39-40.
[409] Id. at 24-27.
[410] Supplemental Comment, pp. 40-42, 44-47.
[411] Id. at 65-67.
[412] Supra note 407 at 30-38.
[413] Id. at 41-50.
[414] Id. at 62-68.
[415] Supplemental Comment, pp. 48-54.
[416] Id. at 55-68.
[417] Id. at 68-70.

The public respondents likewise find the petitions wanting in substance. They posit that a rational basis scrutiny is appropriate for a police power measure like the ATA, whereas an intermediate scrutiny is fit only for economic regulations, and a strict scrutiny is reserved for measures that burden fundamental rights.[418]

Assuming that a strict scrutiny is applied, the public respondents claim that the ATA can withstand the challenge as it serves a compelling government interest, *i.e.,* to ensure the safety and security of the people from terrorism.[419] The ATA too, according to them, employs the least intrusive means and preserves existing safeguards, such as the prohibition against torture.[420]

While the public respondents admit that the ATA is not a perfect law, they nevertheless claim that the mere possibility of abuse or flawed application does not render it constitutionally infirm.[421] To them, the ATA specifically states that its definition of terrorism is based on the best international legislative practices in criminalizing terrorism.[422]

The public respondents likewise argue that the ATA does not suffer from overbreadth and should not be facially invalidated. The public respondents posit that, being a penal law, the ATA is necessarily broad in its application in the sense that it shall be given general territorial effect against socially harmful conduct,[423] except against speech or any other freedoms of expression, including academic freedom.[424] Thus, they argue that the ATA is not facially invalid for overbreadth.[425]

The public respondents cite *Disini, Jr. v. The Secretary of Justice* as involving a one-of-a-kind ruling as the provisions involved in that case apply particularly to a communication hub: cyberspace.[426] According to public respondents, *Disini* has no relevance to the ATA for this law expressly excludes advocacy and speech from its coverage.[427]

Even assuming that the ATA burdens protected speech, the public respondents claim that any attempt to facially invalidate it should fail for lack of any submitted allegation or evidence that no circumstance exists under which the ATA would have a valid application.[428]

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[418] Id. at 75-77.
[419] Id. at 78-81.
[420] Id. at 82-93.
[421] Id. at 94-99.
[422] Id. at 119-121.
[423] Id. at 100-108.
[424] Id. at 150-166, 214-217.
[425] Id. at 105-106.
[426] Id. at 101, 107-108.
[427] Id. at 108.
[428] Id. at 108-109.

The vagueness challenge should also fail according to the public respondents. Like the test of overbreadth, the public respondents point out that the test of vagueness "[applies] only to speech and not to conduct."[429] To them, the ATA punishes conduct, not speech.[430]

Moreover, the public respondents explain that the reason for the void-for-vagueness doctrine is the deprivation of fair notice of what constitutes criminal conduct; no crime is committed where there is no law punishing it.[431] Thus, no intrinsic vagueness exists if the law draws the line by which an ordinary person of common sense can distinguish between permissible and impermissible conduct.[432]

The public respondents likewise posit that the text of Sec. 4 is plain to anyone of common understanding. It describes four acts, the corresponding intent for each act, and the purpose common to all four intentional acts. According to the public respondents, taken together, the four intentional acts and their common purpose constitute acts of terrorism as distinguished from ordinary innocent acts, and as further distinguished from ordinary innocent acts.[433]

The respondents recall the petitioners' argument that the text defining the element of intent can be cherry-picked as one law enforcer can differ from another law enforcer on the degree of the damage, destruction, interference, and debilitating effect wrought by any of the four acts under Sec. 4.

The public respondents disagree with this position as the qualifying term "extensive" has an ordinary meaning of total if not nearly total, and clearly signals the terroristic intent.[434] Moreover, the public respondents point out that the purpose of intimidation can be revealed by the nature and context of the intentional acts.[435]

The public respondents acknowledge that the ATA shifted from an effects-based to a purpose-based approach in criminalizing terrorism.[436] They explain that the shift was dictated by the reality that to merely react to the effects of a terroristic act is no longer enough to guarantee people's safety and security. As the siege of Marawi demonstrated, terrorists could use seemingly innocent network building that, although long detected, could not be stopped for lack of proper legislation.[437]

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[429] Id. at 112.
[430] Id.
[431] Id.
[432] Id. at 112-116.
[433] Id. at 116-117.
[434] Id. at 117-118.
[435] Id. at 151.
[436] Id. at 119-120.
[437] Id. at 79-80.

The public respondents further explain that the shift was also driven by the issuance of United Nations Security Council decisions and the adoption of treaty instruments requiring states to adopt preventative criminalization of normally innocent acts that enable terrorism.[438] Nonetheless, they explain that the expansion from punishment to prevention does not result in penalizing a mere act without any criminal intent or a mere intent, such as a threat, without any criminal act.[439]

Since the definition of terrorism under Sec. 4 is allegedly clear, the public respondents argue that the section effectively illuminates the other acts constituting terrorism under Secs. 5, 6, 7, 8, 9, 10, 11 and 12, as well as the necessary factual basis by which the ATC can exercise its power to cause the designation and proscription of terrorist individuals and organizations under Secs. 25, 26, and 27.[440]

Moreover, the public respondents posit that the authorization and conduct of search and surveillance under Secs. 16 and 17 would necessarily be based on probable cause of the commission of the acts defined under Secs. 4 to 12.[441] Thus, the person subjected to search or surveillance may have the order quashed for lack of probable cause.[442]

Further, the public respondents claim that whatever intrusion into privacy that may occur in instances of secret wiretapping is justified by the highest exigency of public safety and reinforced by presumption that the public has only a reasonable expectation of privacy rather than an absolute right.[443] In addition, they argue that the law itself provides safeguards and remedies against abuse.[444]

To them, although Sec. 29 uses the term "suspected," probable cause would still be the basis for the detention of a suspected individual.[445] The public respondents explain that the term "suspected" simply refers to a person who has not been charged or subjected to a court process.[446] The public respondents submit that:

> "Taken in this light, simply because Section 29 uses the word "suspected" does not mean that the "probable cause" threshold has been supplanted and that arrest can now be undertaken under mere suspicion when the entirety of the Act is in fact geared toward protecting the same fundamental rights."[447]

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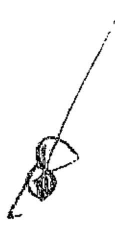
[438] Id. at 13-14, 119-122, 174-175.
[439] Id. at 122-123.
[440] Id. at 124-126.
[441] Id. at 127-131.
[442] Id. at 132-134.
[443] Id. at 134-142.
[444] Id. at 142-149.
[445] Id. at 128.
[446] Id. at 129.
[447] Id. at 128-129.



The public respondents point to the need for probable cause prior to the detention of a suspected person to reassure the public that the law carries sufficient safeguards and reiterate that:

> 455. Contrary to petitioners' interpretation, therefore, the use of "suspected" in Section 29 does not at all signify an abandonment of probable cause as threshold in warrantless arrest under Section 5(b), Rule 113 of the Revised Rules of Court. Neither does Section 29 seek to carve out a new exception to the rules governing valid warrantless arrests. Instead, consistent with the context of the entire law, the provision must be construed to contemplate warrantless arrest under the circumstances mentioned in Section 5(b), Rule 113 of the same Rules [as] in *Remegio v. People*."[448]

Notwithstanding the need for probable cause as basis for the order of the detention of suspected person under Sec. 29 or the designation of a terrorist person or organization under Sec. 25, the public respondents maintain that the ATC remains a purely executive body. Thus, no violation of separation of powers exists.[449]

Unlike proscription, which is a judicial process, the public respondents allege that the designation of a terrorist person or organization under Sec. 25 is a purely executive law enforcement function that "entails a determination of facts constituting an infraction," such that "[o]nce the factual background has been ascertained based on probable cause, the ATC can utilize the tools within its disposal to prevent the proliferation of terrorist acts."[450]

The public respondents clarify that the ATC does not issue a warrant of arrest to cause the detention of a person under Sec. 29. Rather, they explain that the detention is only for the purpose of giving "law enforcement agencies adequate time to obtain sufficient evidence that will hold against judicial scrutiny."[451] For this reason, they claim that the detention requires a mere ATC written order rather than a warrant of arrest.[452]

To them, upon arrest on the basis of a formal charge, a person may avail of provisional liberty on bail, although the extent of that liberty is restricted to the area where the person can travel and his access to mobile communications is likewise restricted. The public respondents believe that these are valid measures, however, to ensure public safety and security, according to the public respondents.[453]

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[448] Id. at 192.
[449] Id. at 167-193.
[450] Id. at 179.
[451] Id. at 196.
[452] Id. at 201-203.
[453] Id. at 209-213.

Relying on these positions and arguments, the public respondents seek the dismissal of the petitions and the affirmation of the constitutionality of the ATA.[454]

PRELIMINARY SUBSTANTIVE CONSIDERATIONS

I. Basic Premises

Disputes, in the usual course, arise from the application of the law on human conduct and interactions. The petitioners object to the law, the ATA, on constitutional grounds, among others.

To be clear in its rulings and to avoid any misunderstanding in reviewing the ATA based on the petitioners' allegations of unconstitutionality, it is prudent to first define the basic premises for its review based on the character of the ATA and the constitutional litigation concepts and principles discussed above.

A. First Basic Premise – ATA is an exercise of police power

I have, to some extent, recited above some of the notorious incidents of terrorism in the world and in the country.[455] The recital is by no means complete and covers only the more notorious examples. I mention these incidents merely as an introduction, to show the reader and the public at the outset the type of evil that confronts the government. These recitals are reiterated here for the same purpose – to gauge the extent of the government's interest in considering the constitutionality of the ATA as the government's response to terrorism.

Underlying the Constitution are three inherent powers of state – police power, eminent domain, and the power of taxation. They are underlying powers because they need not be expressly granted under the Constitution; they are inherent in the State and must necessarily be there to ensure the survival of the society that the Constitution governs and supports.[456] Rather

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[454] Id. at 223.

[455] *See* pages 3-5 of this Opinion.

[456] See *Ichong v. Hernandez*, 101 Phil. 1155 (1957). While the Court's disquisition in *Ichong v. Hernandez* involved only the police power of the state, the characterization of police power as being an inherent power of the state, which is not granted but, in fact, limited only by the Constitution applies in equal measure to eminent domain and taxation:

It has been said that police power is so far-reaching in scope, that it has become almost impossible to limit its sweep. As it derives its existence from the very existence of the State itself, it does not need to be expressed or defined in its scope; it is said to be co-extensive with self-protection and survival, and as such it is the most positive and active of all governmental processes, the most essential, insistent and illimitable. Especially is it so under a modern democratic framework where the demands of society and of nations have multiplied to almost unimaginable proportions; the field and scope of police power has become almost boundless, just as the fields of public interest and public welfare have become almost all- embracing and have transcended human foresight. Otherwise stated, as we cannot foresee the needs and demands of public interest and welfare in this constantly changing and progressive world, so we cannot delimit beforehand the extent or scope of police power by which and through which the State seeks to attain or achieve public interest or welfare. So it is that Constitutions do not define the scope or extent of the police power of the

than being granted, the Constitution provides limits to these powers for the protection of the governed.[457]

Eminent domain is the power to take private property for public use upon payment of just compensation.[458] This power does not need to concern us in the present case as no taking of private property, directly or indirectly, is involved. The power of taxation, on the other hand, is the power to assess and collect taxes pursuant to a public purpose and in accordance with due process requirements.[459] It is based on the principle that taxes are the lifeblood of the government and, without it, the government cannot provide for the general welfare of the people.[460] Again, this is not a power at issue in the present case.

What the consolidated petitions bring to the fore is the police power of state or the inherent power of a government to exercise reasonable control over persons and property within its jurisdiction in the interest of general security, health, safety, morals, and welfare. It is an awesome power limited only by the terms of the Constitution that the people established and approved.

The ATA, by its own express statement, was passed by Congress pursuant to its policy "*to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations.*"

Thus, the ATA, an exercise of the police power of state, is strictly a response that a State takes to defend itself. From this perspective, it is a power that expands or contracts depending on the nature, extent, and circumstances of the needs to be addressed or the aggression that it is repelling.[461] When the State's needs are serious, severe or pervasive, the power that it exercises through Congress may similarly be so.

An anti-terror law is effectively a State's self-defense response to terrorism, an unlawful aggression that attacks the very life of a State despite the lack of any sufficient provocation by the State; and which justifies the reasonable necessity for the State repel it, by law and other legal measures.

State; what they do is to set forth the limitations thereof. The most important of these are the due process clause and the equal protection clause. (Id. at 1163-64).

[457] Id.

[458] *National Transmission Corp. v. Oroville Development Corp.*, 815 Phil. 91, 103 (2017).

[459] *Pepsi-Cola Bottling Co. of the Philippines, Inc. v. Municipality of Tanauan, Leyte*, 161 Phil. 591, 601-602 (1976).

[460] *Gerochi v. Department of Energy*, 554 Phil. 563, 579 (2007).

[461] *Ichong v. Hernandez*, supra note 456.

Under these terms, a State does not only have the right but the duty and the justification to pass an anti-terror law like the ATA.[462]

Art. II, Sec. 4 of the Constitution provides that:

> 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.

In turn, to protect citizens and guard against excesses that may present themselves when the State so acts, the Constitution requires that its exercise must have an objective that is within the authority of Congress to address, and that the means that Congress takes must be reasonably proportionate to the harm sought to be avoided or prevented.[463]

Thus viewed, the balancing that the Court ought to consider should be between the chilling effect that citizens who are not before the Court would suffer, as against the paralyzing effect on the nation's capability to defend itself against the invasive menace of terrorism.

This is embodied in the concept of due process under Art. III, Sec. 1 of our Constitution, which provides – *"No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."*

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[462] Art. 11 of the Revised Penal Code provides:
Article 11. Justifying circumstances. - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;
   First. Unlawful aggression.
   Second. Reasonable necessity of the means employed to prevent or repel it.
   Third. Lack of sufficient provocation on the part of the person defending himself.
2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the revocation was given by the person attacked, that the one making defense had no part therein.
3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this Article are present and that the person defending be not induced by revenge, resentment, or other evil motive.
4. Any person who, in order to avoid an evil or injury, does not act which causes damage to another, provided that the following requisites are present;
   First. That the evil sought to be avoided actually exists;
   Second. That the injury feared be greater than that done to avoid it;
   Third. That there be no other practical and less harmful means of preventing it.
5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.
6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

[463] *Ichong v. Hernandez*, supra note 456. It must also be stated that *Ichong v. Hernandez* further provides that the equal protection clause, along with the due process clause, limits the police power of the state.

By established jurisprudence, due process requires the reasonableness of the objective that Congress seeks to address; it must be a concern that lies within the authority of Congress to address and there must be proportionality between the objective that Congress seeks to achieve and the means that Congress adopts to achieve its desired end.[464] Procedurally, due process requires notice and hearing by an impartial and competent tribunal before a citizen could be deprived of life, liberty or property.[465]

Terrorism, even in common understanding, is the unlawful use of force or violence, or threat of force or violence, against persons and property, to intimidate, coerce or secure objectives that the terrorists aim for.[466] This definition, incidentally, is not peculiar to the ATA but is a definition and a concept of terrorism widely shared the world over.[467]

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[464] *Secretary of Justice v. Lantion*, 379 Phil. 165 (2000); *White Light Corp. v. City of Manila*, supra note 149 (2009).

[465] *Secretary of Justice v. Lantion*, id.; *White Light Corp. v. City of Manila*, id.

[466] Merriam-Webster defines terrorism as "the systematic use of terror especially as a means of coercion." (*Merriam-Webster*. terrorism (undated) at https://www.merriam-webster.com/dictionary/terrorism)
Collins Dictionary defines terrorism as "the use of violence, especially murder and bombing, in order to achieve political aims or to force a government to do something." (*Collins Dictionary*. terrorism (undated) at https://www.collinsdictionary.com/dictionary/english/terrorism)
The Office of the United Nations High Commissioner for Human Rights defines terrorism as "acts of violence that target civilians in the pursuit of political or ideological aims." (*Office of the United Nations High Commissioner for Human Rights*. Fact Sheet No. 32 entitled "Human Rights, Terrorism and Counter-terrorism" (undated) at https://www.ohchr.org/documents/publications/factsheet32en.pdf)

[467] The international community has yet to adopt a uniform definition of terrorism. In Fact Sheet No. 32 entitled "Human Rights, Terrorism and Counter-terrorism," the Office of the United Nations High Commissioner for Human Rights stated that "[t]errorism is commonly understood to refer to acts of violence that target civilians in the pursuit of political or ideological aims." It underscored the manner in which terrorism has been defined in international declarations or resolutions, *to wit*:
In 1994, the General Assembly's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes" and **that such** acts "are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them."
Ten years later, the Security Council, in its resolution 1566 (2004), referred to "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act". Later that year, the Secretary-General's High-level Panel on Threats, Challenges and Change described terrorism as any action that is "intended to cause death or serious bodily harm to civilians or non- combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act" and identified a number of key elements, with further reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004).
The General Assembly is currently working towards the adoption of a comprehensive convention against terrorism, which would complement the existing sectoral anti-terrorism conventions. Its draft article 2 contains a definition of terrorism which includes "unlawfully and intentionally" causing, attempting or threatening to cause: "(a) death or serious bodily injury to any person; or (b) serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) damage to property, places, facilities, or systems..., resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act." (accessed through https://www.ohchr.org/documents/publications/factsheet32en.pdf)
The Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 defines the crime of terrorism in the following manner:
Article 3

Terrorist offences
1)Member States shall take the necessary measures to ensure that the following intentional acts, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation, are defined as terrorist offences where committed with one of the aims listed in paragraph 2:

(a) attacks upon a person's life which may cause death;
(b) attacks upon the physical integrity of a person;
(c) kidnapping or hostage-taking;
(d) causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
(e) seizure of aircraft, ships or other means of public or goods transport;
(f) manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons;
(g) release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;
(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
(i) illegal system interference, as referred to in Article 4 of Directive 2013/40/EU of the European Parliament and of the Council (19) in cases where Article 9(3) or point (b) or (c) of Article 9(4) of that Directive applies, and illegal data interference, as referred to in Article 5 of that Directive in cases where point (c) of Article 9(4) of that Directive applies;
(j) threatening to commit any of the acts listed in points (a) to (i).

2)The aims referred to in paragraph 1 are:

(a) seriously intimidating a population;
(b) unduly compelling a government or an international organisation to perform or abstain from performing any act;
(c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

Meanwhile, the Australian Criminal Code Act 1995, as amended, defines terrorism in the wise:

Part 5.3—Terrorism
Division 100—Preliminary
100.1 Definitions
(1) In this Part:
x x x x
terrorist act means an action or threat of action where:

(a) the action falls within subsection (2) and does not fall within subsection (3); and
(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
(c) the action is done or the threat is made with the intention of:
    (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
    (ii) intimidating the public or a section of the public.

x x x x
(2) Action falls within this subsection if it:

(a) causes serious harm that is physical harm to a person; or
(b) causes serious damage to property; or
(c) causes a person's death; or
(d) endangers a person's life, other than the life of the person taking the action; or
(e) creates a serious risk to the health or safety of the public or a section of the public; or
(f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
    (i) an information system; or
    (ii) a telecommunications system; or
    (iii) a financial system; or
    (iv) a system used for the delivery of essential government services; or
    (v) a system used for, or by, an essential public utility; or
    (vi) a system used for, or by, a transport system.

(3) Action falls within this subsection if it:

(a) is advocacy, protest, dissent or industrial action; and
(b) is not intended:
    (i) to cause serious harm that is physical harm to a person; or
    (ii) to cause a person's death; or

It is therefore a concern that the State, given its objective of securing peace, order, security, and harmony within its borders, can legitimately address. If it is to be effectively addressed, its measures should be as wide and as deep as the evil that it seeks to remedy. The background facts and evolution of terrorism will show these.

If the ATA will violate the people's right to due process at all, the violation could only be due to its coverage of matters outside of Congress' authority to act upon, or with respect to the means and measures that Congress has taken, which are subject to tests of reasonableness and proportionality that the Court can decide upon as constitutional issues.

Even the petitioners, in fact, do not contest that the State can combat terrorism.[468] This means that they do not dispute that the ATA is a police

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(iii) to endanger the life of a person, other than the person taking the action; or

(iv) to create a serious risk to the health or safety of the public or a section of the public.

[468] Transcript of Stenographic Notes (*TSN*) of the Oral Arguments – En Banc held on February 2, 2021 (p. 59):

ASSOCIATE JUSTICE CARANDANG:

Don't you think terrorism is a very, very grave crime against national security and even a crime against peoples' security and life that before they actually have to do any terroristic act, the state has the right to know the information beforehand through a surveillance ordered by the Court of Appeals?

CONGRESSMAN COLMENARES:

Well, Your Honor, yes, we recognized the fact that terrorism is a grave and serious concern, Your Honor. However, the Court has mentioned so many decisions that it's not the question of expediency that interest must be – compelling state interest even, must be narrowed down, tailored narrowly by the law, and any important compelling interest, if the respondents wishes to do that, must be in consonance with the Constitution, Your Honor. So even if they claim yes, it's very important, it cannot be said, Your Honor, that because it's important and of serious concern the fundamental rights of others can be violated because of the state interest at hand, Your Honor. The Court will surely strike down a law that just because using the concern or the gravity of the crime, will violate fundamental rights, Your Honors.

x x x x

Transcript of Stenographic Notes (*TSN*) of the Oral Arguments – En Banc held on February 16, 2021 (pp.43-44):

ASSOCIATE JUSTICE CAGUIOA:

These international obligations in effect acknowledge that terrorism is a global reality that transcends borders and requires the cooperation of all states, correct?

ATTY. URSUA:

That is correct, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

And the Philippines being a member of the UN must play its role in the overall effort to curb this problem, correct?

ATTY. URSUA:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

It's not merely a domestic issue but an international one, correct?

ATTY. URSUA:

That is correct, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

So we can agree that this objective or state policy is not only laudable but in fact, essential?

ATTY. URSUA:

That is correct, Your Honor.

x x x x

Transcript of Stenographic Notes (*TSN*) of the Oral Arguments – En Banc held on February 16, 2021 (pp. 117-118; 120):

ATTY. URSUA:

power measure. Dean Jose Manuel I. Diokno, the counsel of one of the petitioners, even admitted during the February 9, 2021 Oral Arguments that the ATA is a piece of legislation enacted pursuant to the State's exercise of police power:

Let me just say, Your Honor, that all of us petitioners believe that fighting terrorism is a noble cause. And we believe that we should fight against terrorism. Our problem, Your Honor, is, in the fight against terrorism, our government has chosen to pass a law that violates constitutional rights and also its international human rights obligations, that's our problem, Your Honor....

ASSOCIATE JUSTICE LAZARO-JAVIER:
Alright.

ATTY. URSUA:
...there are other ways of fighting against terrorism.

ASSOCIATE JUSTICE LAZARO-JAVIER:
Alright, but how to fight terrorism is a political question. It is not you, not me, not this Court, which will decide the means by which to fight terrorism. It belongs to Congress and to the President, who are duly elected representatives of the people. Subject of course to certain requirements.
Alright, so, do you have statistics so far on how many bombings have we had since 1971 to 2019?

ATTY. URSUA:
No, Your Honor.

ASSOCIATE JUSTICE LAZARO-JAVIER:
...do you have?

ATTY. URSUA:
No, Your Honor.

ASSOCIATE JUSTICE LAZARO-JAVIER:
Okay, I'll give it to you, it's seventy-eight (78). From 1971 to 1991, those that have been reported and are known, alright. And thousands of lost lives and thousands of injured. Okay, so where there is a clash between one's right to unrestrained liberty on one hand, and the right of the general public to safety and protection on the other, which one should be prioritized by the State?

ATTY. URSUA:
Your Honor, with due respect, Your Honor, we do not believe that this is a case of unrestrained liberty in conflict with the interest of the state.

ASSOCIATE JUSTICE LAZARO-JAVIER:
No, I am, I have not reached that point yet, my question is, there are no facts yet in my question...

ATTY. URSUA:
Yes, Your Honor, sorry, Your Honor...

ASSOCIATE JUSTICE LAZARO-JAVIER:
It's just a plain question between choosing, the state choosing between one's right to unrestrained liberty on one hand, and the right of the general public to safety and protection on the other. Which one should be prioritized by the state?

ATTY. URSUA:
Definitely, Your Honor, the right of the general public...

x x x x

ASSOCIATE JUSTICE LAZARO-JAVIER:
Alright, and so the quelling of terrorism and the punishment of terrorist are compelling and legitimate interest of the public in general, yes, Professor?

ATTY. URSUA:
Yes, Your Honor.

ASSOCIATE JUSTICE LAZARO-JAVIER:
Okay. To serve these ends, this end rather, the means employed should be reasonably necessary...

ATTY. URSUA:
Yes.

ASSOCIATE JUSTICE LAZARO-JAVIER:
...to attain the objective sought and not to be unduly offensive upon individuals.

ATTY. URSUA:
Yes, Your Honor.

ASSOCIATE JUSTICE GESMUNDO:
Thank you. Atty. Diokno, would you agree to the proposition that the Anti-Terrorism Law was enacted by the legislature in the exercise of police power?
ATTY. DIOKNO:
Yes, Your Honor.

They only claim that the State's methods violate the rights guaranteed to them by the Constitution.[469] From the due process perspective, the parties merely diverge in their views on the *reach or limits* of the measures that the ATA contains.

In this light and considering the nature of the power that Congress exercises in passing the ATA, this law should carry the strongest presumption of validity and regularity.[470] Relatedly, the Court had previously held that a statute enacted pursuant to a valid exercise of the police power enjoys the presumption of constitutionality.[471]

Likewise, the level of our scrutiny should, at most, be at the intermediate level, not the strict scrutiny that the petitioners demand.

This too is the position most consistent with the balancing exercise We have adopted all along in our review of the ATA. I find it significant that none of the surviving petitions has given lie to the reality that the State has a compelling interest to prevent and combat terrorism as an evil endangering the nation and its people.

I note too that the petitioners challenge the ATA for the vagueness and overbreadth they discern from its wording, brought on apparently by its comprehensive scope and its departure from the HSA approach. The respondents, on the other hand, defend a law whose measures are drawn from lessons from the country's past HSA, which Congress now seeks to improve on by supplementing the measures that the HSA started and which Congress found wanting.

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[469] Id.
[470] The Court stressed the rationale behind this in *Estrada v. Sandiganbayan*, supra note 85:
Preliminarily, the whole gamut of legal concepts pertaining to the validity of legislation is predicated on the basic principle that a legislative measure is presumed to be in harmony with the Constitution. Courts invariably train their sights on this fundamental rule whenever a legislative act is under a constitutional attack, for it is the postulate of constitutional adjudication. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch — the legislature.
If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance. Every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality.
[471] See *Ichong v. Hernandez*, supra note 456 at 1178.

These are important perspectives that cannot be left out or glossed over as yardsticks in ruling on the ATA measures' reasonableness in this case or in future challenges to ATA. With these as background, the question to ask in a case properly brought to the Court is - are the ATA measures reasonable or are they in excess of what the country needs to contain terrorism?

All these shall be covered in our discussions in this Opinion.

B. Second Basic Premise: The ATA is in compliance with the Philippines' international obligations

One of the basic premises of this Opinion is the recognition that Congress passed the ATA to comply with our country's international obligation on peace and security. In this regard, it is noted that our country 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.[472]

There is no doubt that the ATA is a police power measure that addresses a social problem and serves the public interest. However, unlike other police power measures, the ATA is not merely punitive or regulatory but also preventative, and the public interest it serves is not merely individual protection but collective self-preservation.

Terrorism has been in our statute books since 1970-1971. Yet, it was only in 2007 that its punishment as a distinct crime was adopted through the HSA. Recently, by the growing local and global threats of terrorism and the state obligations of the Philippines under international instruments, necessitated the prevention of terrorism through the regulation, if not restriction, of hitherto innocuous acts. This process is detailed in the discussion that follows.

Under Sec. 17, R.A. No. 6132 *(Constitutional Convention Act)* dated August 24, 1970 and Secs. 10 and 11, R.A. No. 6388 *(Election Code)* dated September 2, 1971, acts of terrorism that prevent the holding of a free and honest election are a ground for the Comelec to constrain the right of suffrage through postponement or declaration of failure of a constitutional convention or regular election.[473] Even as the Comelec measures against acts of terrorism resulted in a degree of curtailment of the right to vote,[474] these were sustained by the Court as a valid exercise of police powers to ensure

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[472] 1987 CONSTITUTION, Art. II, Sec. 2.
[473] *See* Sec. 6 and Sec.7, Presidential Decree No. 1296, February 7, 1978; Sec. 5 and Sec. 6, Batas Pambansa Blg. 881, December 3, 1985.
[474] *Sanchez v. COMELEC,* 199 Phil. 617 (1982); *Dibaratun v. COMELEC,* 625 Phil. 206 (2010).

orderly elections under the 1973 Constitution[475] and 1987 Constitution.[476] It is notable that R.A. No 6132 and R.A. No. 6388 were adopted upon the Court's previous suggestion for Congress to address the recurring problem of terrorist acts tainting the electoral process or causing disenfranchisement.[477]

R.A. No. 6132 and R.A. No. 6388 did not define terrorism as a distinct crime; rather, they punished specific acts that were purposely intended to engender fear but were already defined as criminal or electoral offenses under other existing laws.[478] In 1980, terrorism was identified in P.D. No. 1736, dated September 12, 1980, as one of the "illegal means" by which a subversive political party or organization would seek to overthrow the government. Those terroristic means were not identified or declared a crime, whereas the other "illegal means," such as arson or assassination, are already well-defined criminal acts.[479] P.D. No. 1835 cited P.D. No. 1736 as the basis for declaring the CPP as a subversive organization.[480] This Court held that P.D. No. 1835 is a valid restriction on freedom of association.[481]

Terrorism also has been invoked to justify increased airport security checks for firearms and explosive devices. In *People v. Johnson*, this Court sustained the legality of warrantless body and luggage checks, as such temporary suspension of "the protection of the search and seizure clause" is demanded by the exigencies of public safety against terrorist bombings.[482] At the time of the search, terrorism itself had not yet been defined as a crime, although possession of unlicensed firearms or explosives was already penalized.[483]

Thus, throughout the foregoing period, the mere specter of terrorism was sufficient to warrant police power measures that constrained the right to vote, right to privacy, freedom to associate and freedom to travel. There was

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[475] Id. at 625, citing 1973 CONSTITUTION, Art. XII (c), Sec. 2(1).
[476] *Dibaratun v. COMELEC*, supra note 474 at 213, citing 1987 CONSTITUTION, Art. IX (c), Sec. 2(1).
[477] See *Nacionalista Party v. Comelec*, 85 Phil. 158, 213 (1949); *Ututalum v. COMELEC*, 122 Phil. 880 (1965); *Janairo v. COMELEC*, 129 Phil. 418 (1967).
[478] *Jardiel v. COMELEC*, 209 Phil. 534, 545 (1983).
[479] Sec. 2 defines a subversive organization as any "association, organization, political party, or group of persons organized for the purpose of overthrowing the Government of the Republic of the Philippines or for the purpose of removing from the allegiance to said government or its laws, the territory of the Philippines or any part thereof, with the open or covert assistance or support of a foreign power or the open or covert support from a foreign source any association, group or person whether public or private, by force, violence, terrorism, arson, assassination, deceit or other illegal means shall be considered and is hereby declared a subversive organization."
[480] Presidential Decree No. 1835, Sec. 2.
[481] *In re Umil v. Ramos*, 279 Phil. 266 (1991).
[482] *People v. Johnson*, 401 Phil. 734, 743 (2000). According to Justice Mendoza, "there is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel."
[483] This view has been maintained all the way to *People v. O'Cochlain*, G.R. No. 229071, December 10, 2018. However, in his dissenting opinion, Justice Leonen pointed out that as public safety is the justification for airport security checks, there must be reasonable belief of the existence of the threat in order for such warrantless search to be considered reasonable. The presumption of reduced expectation of privacy at airports is not conclusive.

no urgent necessity to criminalize terrorism itself for existing penal laws provided the government with adequate means to punish specific acts of terror.

The necessity to criminalize terrorism was high-lighted in *David v. Macapagal-Arroyo*,[484] where the lack of legislation defining terrorism as a criminal act was raised as a ground to nullify General Order No. 5. This measure called upon the "Armed Forces of the Philippines *(AFP)* and the Philippine National Police *(PNP)*, to prevent and suppress acts of terrorism." The Court declared that as "Congress has yet to enact a law defining and punishing acts of terrorism," the phrase "acts of terrorism" in General Order No. 5 is vague and unconstitutional.[485]

As early as 1937, there was already an initiative to adopt a transnational definition of terrorism. Under the auspices of the League of Nations, twenty-four states signed the Convention for the Prevention and Punishment of Terrorism.[486] Art. 1 defined acts of terrorism as "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public." However, the convention did not come into force as only one state ratified it and the League of Nations was dissolved.

Sixty years later in 1996, another attempt at drafting an international convention on terrorism was started at the level of the UN General Assembly *(UNGA)*.[487] By 2002, the UNGA ad hoc committee had adopted a working definition of terrorism committed through predicate crimes,[488] and

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[484] Supra note 69. This was an as-applied challenge raised by David who were arrested pursuant to General Order No. 5.

[485] Id. at 741-742 and 796.

[486] Proceedings of the International Conference on the Repression of Terrorism, Geneva, November 1st to 16th, 1937, p. 186.

[487] UNDOC A/RES/51/210, 17 December 1996; UNDOC A/RES/ 71/151, 13 December 2016.

[488] UNDOC A/57/37, 28 January-1 February 2002. Annex II adopted the following definition:

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.

2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of this article.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of this article; or (c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

at various degrees of participation and stages of execution, except planning and preparation.[489] Thereafter, at the UNSC, Resolution No. 1566 (2004) defined terrorism as

> *[C]riminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism x x x*

It is notable that both UNGA and UNSC definitions do not include acts of planning, preparation, and recruitment.[490]

The 2007 HSA defined terrorism as the commission of predicate crimes under the Revised Penal Code[491] and special penal laws[492] but whose purpose is to sow a "condition of widespread and extraordinary fear and panic x x x among the populace to coerce the government to give in to an unlawful demand."[493] By referring to existing penal laws, the definition covers various stages and degrees of participation. However, it does not criminalize the planning, preparatory, and recruitment stages.

Meanwhile, as early as 1997, the UNGA urged members-states to ratify eleven international conventions and protocols to combat international terrorism,[494] and to "enact x x x domestic legislation necessary to implement the provisions."[495] This was followed in 2003 by UNSC Resolution No.

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[489] Id., Art. 2(2), (3) and (4).

[490] Id., par. 2.

[491] Namely, Art. 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters); Article 134 (Rebellion or Insurrection); Article 134-a (Coup d'Etat), including acts committed by private persons; Article 248 (Murder); Article 267 (Kidnapping and Serious Illegal Detention); Article 324 (Crimes Involving Destruction).

[492] Namely, Presidential Decree No. 1613 (The Law on Arson); Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990); Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968); Republic Act No. 6235 (Anti-Hijacking Law); Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and, Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives).

[493] Sec. 3. of the HSA.

[494] UN Doc. A/RES/51/210, 16 January 1997, par. 3 and UN Doc. S/RES/1456 (2003), 20 January 2003, par. 2-3.

The instruments are (1) Convention on Offences and Certain Other Acts Committed on Board Aircraft, 704 United Nations, Treaty Series (UNTS) 220 (1963); (2) Convention for the Suppression of Unlawful Seizure of Aircraft, 860 UNTS 105 (1970); (3) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 974 UNTS 174 (1971); (4) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1035 UNTS 167 (1977); (5) International Convention against the Taking of Hostages, 1316 UNTS 205 (1979); (6) Convention on the Physical Protection of Nuclear Material, 1456 UNTS 124 (1979); (7) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation 1589 UNTS 474 (1988); (8) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1678 UNTS 201 (1992); (9) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, SUA/CONF/16/Rev.2, Registration No. 29004, 14 October 2005; (10) Convention on the Marking of Plastic Explosives for the Purpose of Detection, 2212 UNTS 374 (1991).

[495] Id., par. 6.

1456 reiterating the call for member-states to ratify the conventions. However, neither UNGA nor UNSC imposed on member-states a binding obligation to incorporate the provisions of the conventions into the domestic legal system.

The Philippines had ratified seven of these conventions but did not adopt implementing legislations.[496] R.A. No. 9497 or Civil Aviation Authority Act of 2008 incorporates some of the provisions of the instruments on aviation safety but imposes only a penalty of six months to one year imprisonment for acts that jeopardize aircraft safety.[497] HSA itself provided for financial forfeiture as a penalty but did not punish terrorist financing as a distinct crime.[498] It did not punish incitement to or preparation for the commission of terrorism[499] or civil aviation and maritime-related offences as distinct crimes of terrorism.[500]

By 2012, the Philippines further expanded the definition of terrorism to include acts that violate international conventions. While the Terrorism Financing Prevention and Suppression Act of 2012"[501] (*TFPSA*) retained the definition of terrorism under Sec. 3 and Sec. 4 of HSA, it added two other categories of acts of terrorism. Under Sec. 3(j)(3), provides:

> Sec. 3. Definition of terms - As used in this Act:
>
> x x x x
>
> (j) Terrorist acts refer to the following:
>
> x x x x
>
> (3) Any act which constitutes an offense under this Act, that is within the scope of any of the following treaties of which the Republic of the Philippines is a State party:
>
> (a) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970;
>
> (b) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;

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[496] The Philippines is a part to the following instruments: Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, in force in the Philippines on 16 January 2004; International Convention for the Suppression of Terrorist Bombings, in force on 6 February 2004; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, in force on 5 April 2004; and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, in force on 5 April 2004. It is not clear whether the Philippines is part to the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

[497] Sec. 81 (b) [12] and [14].

[498] Sec. 39 and Sec. 41.

[499] It penalizes a conspirator as principal (Sec. 4), and accomplice (Sec. 5) and an accessory (Sec. 6).

[500] It punishes hi-jacking under Sec. 3(f)[4] and piracy under Sec. 3(f)[5].

[501] Republic Act No. 10168 (June 18, 2012).

(c) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;

(d) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;

(e) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;

(f) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988;

(g) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

(h) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988; or

(i) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

Under the TFPSA, the acts defined as terrorism under the foregoing international conventions are considered as acts of terrorism in the Philippines. This particular formulation of the definition of terrorism by reference to existing conventions is consistent with the International Convention for the Suppression of the Financing of Terrorism (*ICSFT*), to which the Philippines is a party.[502] The ICSFT obliged states to penalize the financing of any act of terrorism, such as "[a]n act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex."[503]

But then the TFPSA is of limited scope. As the title suggests, its subject matter is the criminalization of the financing aspects of terrorism. The HSA, as the only other existing domestic law at that time, punished terrorism committed through predicate crimes. Thus, the effect of TFPSA was the express incorporation of nine international conventions into the

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[502] 2178 UNTS 197; effective 10 April 2002, after ratification by 132 states.
[503] Id., Art. 2 (a). The annex lists the same treaties enumerated in R.A. No. 10168.

Philippine domestic system, without, however, penalizing their violation, except the financing aspect thereof.

In 2019, the International Court of Justice *(ICJ)* rendered a Judgment in *Ukraine v. Russia*[504] in which it declared the binding nature of state obligations under the ICSFT:

> [A]ll States parties to the ICSFT are under an obligation to take appropriate measures and to co-operate in the prevention and suppression of offences of financing acts of terrorism committed by whichever person. Should a State breach such an obligation, its responsibility under the Convention would arise.[505]

In the same judgment, the ICJ declared that, by reason of UNSC Resolution No. 1373, whereby the UNSC, "acting under Chapter VII of the Charter, decided that all States shall x x x [r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts," the financing by a State of acts of terrorism is not lawful under international law.

All this time, terrorism itself has been evolving in nature and scope. Back then, acts of terrorism were acts of violence for economic opportunism, specifically the taking of hostages for ransom[506] or the coercion of election officials to manufacture votes favoring a particular candidate.[507] Since then, terrorism has taken an increasingly horrific and ideological turn, such as the remote-control bombing in 2005 of a passenger transport in the middle of the financial district, allegedly to "show x x x anger towards the Christians."[508] In 2016, homegrown and foreign terrorists laid siege to Marawi City[509] in order to transform it into a satellite of the Islamic State.[510]

As early as 1999, the shifting form of terrorism was already apparent. As pointed out earlier, the ICSFT, through the UNGA, obliges states to penalize the financing of any act of terrorism. It is significant that under Art. 2.1 of the ICSFT, the term "act of terrorism" takes two forms:

> *Article 2*
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> *1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully,*

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[504] Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 558.

[505] Id., par. 61.

[506] *People v. Salcedo*, 667 Phil. 765 (2011).

[507] *Sanchez v. COMELEC*, supra note 474.

[508] *People v. Janjalani*, 654 Phil. 148, 166 (2011).

[509] Supra note 4 at 60-62, 280.

[510] Id.

> *provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:*
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> *(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or*
>
> *(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.*

The same definition found in the ICSFT was presented at the UNGA by the Secretary General,[511] to wit:

> *any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council Resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.*[512]

Under the foregoing definitions, terrorism is committed by any act which is in violation of a treaty instrument, whether or not penalized by a domestic law, or any act of violence, whether or not constituting a predicate crime, provided there is intent to cause death and serious bodily injury and the purpose, "by its nature or context," is to stoke fear and terror.

The foregoing new formulations were in response to "two new dynamics:" 1) the rise of "armed non-state networks with global reach and sophisticated capacity;" and 2) the pronounced aim of these networks to cause random mass casualties by any means.[513] The increasingly random nature of terrorism means that predicate crimes with predetermined targets are no longer the sole means of committing it.

Accordingly, R.A. No. 10168 further expanded the definition of terrorism by adopting the following third category of acts:

> *(2) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.*

The phrase "any act" is not qualified by the condition that it be in violation of an existing penal law. However, the provision does not state

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[511] UN Doc. A/59/565, 2 December 2004, par. 11.
[512] Id., Report of the High-level Panel on Threats, Challenges and Change, par. 164(d), p. 49.
[513] Id. at 45.

whether all stages of any of said act is being criminalized, including the stages of planning and preparation.

The constitutionality of the foregoing definition of terrorism under the TFPSA has not been questioned. It has not been repealed by the ATA. However, as pointed out earlier, the TFPSA is limited in scope to the punishment of the financing aspect of terrorism.[514]

While it repealed the HSA, the ATA, specifically Sec. 4, is broad enough to cover terrorism committed through predicate crimes. Moreover, as it did not repeal the TFPSA, the ATA covers in Sec. 4 the two categories of terrorist acts in the TFPSA which, as discussed earlier, are: first, acts in violation of the nine international conventions on terrorism; and second, any overt act, even if not constituting a predicate crime. However, while the ATA filled the gap in the TFPSA by imposing penalties on any overt acts of terrorism, the ATA did not prescribe penalties on acts in violation of international conventions. The penalties for these would have to be imposed by legislation incorporating the conventions, such as Republic Act No. 101697 on weapons of mass destruction.[515]

In addition, Sec. 5 to Sec. 12 of the ATA criminalize all stages of execution and degrees of participation, including mere planning, preparation, and recruitment.

Using its Chapter VII powers,[516] the UNSC issued resolutions requiring member-states to punish as terroristic acts the (1) planning, preparation and facilitation of acts of terrorism;[517] (2) incitement to or glorification of terrorism;[518] (3) attacks critical infrastructure;[519] and (4) entry or transit of foreign terrorist fighters (*FTF*).[520] These UNSC resolutions acknowledge that it is naïve to await the horrific outcome of terrorism before punishing the same; rather, it is imperative to suppress terrorism through preventative measures.[521]

To illustrate the extent to which measures to prevent terrorism have been adopted, the European Union issued Directive *(EU)* 2017/541 obliging members states to criminalize public expressions that provoke others to

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[514] *See* Sec. 4 to Section 10.
[515] R.A. No. 10697, An Act Preventing the Proliferation of Weapons of Mass Destruction by Managing the Trade in Strategic Goods, the Provision of Related Services, and for other Purposes|, 13 November 2015.
[516] Under Art. 25, Chapter V of the UN Charter, member-states bound themselves to "accept and carry out the decisions of the Security Council." Under Art. 39, Chapter VII, the Security Council has the power to makes decisions regarding threats to peace and the measures to be taken to maintain or restore peace. Under Art. 41, the Security Council may decide to adopt non-military measures and require member-states to implement them.
[517] UN Doc. S/RES/1373, 28 September 2001, par. 1(b).
[518] UN Doc. S/RES/1624, 14 September 2005, par. 1(a). Compliance with Resolution No. 1624 is monitored in UN Doc. S/2016/50, 28 January 2016.
[519] UN Doc. S/ S/RES/2341, 13 February 2017, par. 3.
[520] UN Doc. S/RES/2178, 24 September 2014, par. 8.
[521] *See* UN Doc. S/RES/1540, 28 April 2004, pars. 1-3; UN Doc. S/RES/1822, 30 June 2008, par. 1.

commit terrorism,[522] including the glorification of past and present acts of terrorism.[523] The need to criminalize glorification has been heightened by the use of the internet for radicalization and recruitment.[524]

For this purpose, the UNSC built a regime of binding sanctions through resolutions issued in exercise of its Chapter VII powers.[525] The most important are UNSC Resolution No. 1267 and UNSC Resolution No. 1373. The substance of these resolutions and their binding nature are discussed hereunder.

UNSC Resolution No. 1267 created a committee that designates the aircrafts and assets of the Taliban to be subjected to sanctions. It imposed the obligation on all states that beginning on 4 November 1997, no designated Taliban aircraft may land or take off from any territory and no designated Taliban person or entity may access financial resources or assets from or through another territory.[526] The resolution expressly states that these measures are adopted to enforce a decision of the UNSC in its exercise of its Chapter VII powers.[527]

According to UNSC Resolution No. 1373, the 9/11 attack has shown that terrorism is not merely a territorial but already an international crime.[528] Individual and collective self-defense require all states to punish as a serious crime acts of financing, planning, or preparation that enable the perpetration of terroristic acts.[529] Moreover, all states must apply sanctions on persons and entities designated as terrorists by the UNSC.[530] In this resolution, the UNSC reiterated its decision to declare terrorism as a "threat to international peace and security" and invoked its Chapter VII powers to enforce this decision through the foregoing preventative measures.

UNSC Resolutions No. 1267, No. 1373, and succeeding related resolutions impose binding obligations on states.

The UNSC may issue resolutions that are either binding or non-binding.[531] As a general rule, resolutions invoking Art. 25, Chapter V or Art.

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[522] Directive (EU) 2017/541, 15 March 2017, 10th Preambular Clause, Art. 5 and Art. 21.
[523] Id., Art. 5. Several European countries have criminalized glorification. See Council of Europe, Thematic Factsheet: Hate Speech, Apology Of Violence, Promoting, Negationism and Condoning Terrorism: The Limits to the Freedom of Expression, July 2018.
[524] United Nations Office on Drugs and Crime, The Use of the Internet for Terrorist Purposes (U.N., 2012), pp. 16, 128 and 135.
[525] UNSC Resolution No. 1267 (1999), No. 1333 (2000), No. 1373 (2002), No. 1390 (2002), No. 1455 (2003), No. 1526 (2004), No. 1566 (2004), No. 1617 (2005), and No. 1735 (2006).
[526] UNSC Resolution No. 1267, pars. 3 and 4. The committee is composed of all the UNSC members and supported by analytical and monitoring team.
[527] Id., pars. 1-2 and 4.
[528] UNSC Resolution No. 1373, p. 1.
[529] Id., par. 2.
[530] Id., par. 1.
[531] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, pars. 114-117.

39 and Art. 41, Chapter VII of the United Nations Charter (*UNC*) are considered decisions that are binding on all States and prevail over other international instruments.[532] Chapter V is about the powers and functions of the UNSC, and Art. 25 thereof states:

> *The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.*

Chapter VII is about the powers of the UNSC to address threats to or breaches of the peace and acts of aggression. Under Art. 39 thereof, the UNSC can declare the existence of such situation and "decide what measures shall be taken x x x to maintain or restore international peace and security." Under Art. 41, it "may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures." In the *Congo* case and *Occupied Palestine case*, the ICJ interpreted the use of the term "decide"[533] or an express proscription against a particular state behaviour[534] as a signal that the UNSC intended its resolution to be binding, even if the resolution itself did not invoke Chapter V or Chapter VII. *Ukraine v. Russia* is the nearest to a categorical declaration by the ICJ that an act in violation of a Chapter VII UNSC resolution is not lawful under international law.[535]

In the *Lockerbie* case, Libya filed with the ICJ a request for an advisory opinion that the bombing of the Pan Am aircraft is governed by the Montreal Convention on the Suppression of Unlawful Acts and that, under the convention, Libya does not have an obligation to surrender the two Libyan bombers to any foreign jurisdiction.[536] The U.S. objected to the jurisdiction of the ICJ on the ground that the dispute had been mooted by UNSC Resolution No. 748 (1992) and Resolution No. 883 (1998) prohibiting Libya from giving safe haven to the bombers and enforcing the prohibitions with sanctions.[537] The case was discontinued when Libya complied with the UNSC resolutions.[538]

The action taken by the UNSC and the ICJ against Libya demonstrates the effects of non-compliance with binding UNSC resolutions on terrorism. In 1992, UNSC issued Resolution No. 731 directing the

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[532] Id. *See* also Reparation for Injuries Suffered in the Service of the United Nations [1949] ICJ Rep 174, p. 178.
[533] Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962: I.C. J. Reports 1962, pp. 151, 175-176.
[534] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory [2004] ICJ, pars. 120 and 134.
[535] Supra note 504.
[536] Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, Libyan Arab Jamahiriya / United Kingdom, Preliminary Objections, Judgment, I. C.J. Reports 1998, p. 9, par. 22.
[537] Id., par. 36.
[538] UN Doc. S/RES/1506, 12 September 2003.

government of Libya to respond to questions regarding the terroristic bombing of Pan Am Flight 103 and Union de Transports Aériens Flight 772.[539] As Libya failed to comply, UNSC issued Resolution No. 748 obliging all States to prohibit flights to and from Libya; to impose an arms embargo; and to deny entry of Libyan nationals who have been expelled from other states for involvement in terrorism.[540] Moreover, it set up a Committee of the Security Council to monitor compliance by all states and "recommend appropriate measures" for non-compliance. As explained in the *Lockerbie case*, Libya eventually complied with the resolutions.

With respect to enforcement of UNSC Resolution No. 1267 and No. 1373, the ISIL *(Da'esh)* and Al-Qaida Sanctions Committee as well as the Counter-Terrorism Committee identify possible cases of non-compliance and recommend to the UNSC the appropriate course of action to be taken.[541] For non-compliance with counter-terrorism sanctions, the U.S. government has designated Syria, Iran, and Sudan as state sponsors of terrorism.[542] Such designation by the US comes with economic sanctions relating to funds, assets, trade, and investments.[543]

Since the 9/11 terrorist attack in 2001 to the present, the UNSC has issued fifty-one (51) Resolutions on terrorism.[544] In its state practice, the Philippine government has acknowledged the binding nature of UNSC resolutions.[545] This Court has held that the Philippines is bound by "enforcement measures decided by the Security Council for the maintenance of international peace and security under Chapter VII of the Charter."[546] It went so far as to declare that a "directive by the Security Council" can create a "non-derogable duty" on the part of the Philippines.[547] The Philippine

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[539] UN Doc. S/RES/731, 21 January 1992, par. 3.

[540] UN Doc. S/RES/748, 31 March 1992, pars. 4 and 5.

[541] UN Doc. S/RES/2368, 20 July 2017, pars. 47 and 97 and Annex I. The official name of the Counter-Terrorism Council is the "Security Council Committee established pursuant to resolution 1373 (2001)."

[542] *See* U.S. Department of Commerce. International Trade Administration. Interim Rule to 15 CFR Part 385. "Revision of Foreign Policy Controls on Exports to Syria, Iraq, Libya, and the People's Democratic Republic of Yemen." 45 F.R. 33955; May 21, 1980; U.S. Department of State. Secretarial Determination No. 84-3. "Determination Pursuant to Section 6(i) of the Export Administration Act of 1979—Iran." 49 F.R. 2836; January 23, 1984; Executive Order 13067 (November 3, 1997 (50 U.S.C. 1701 F.R. 59989); Executive Order 13400 (April 26, 2006; 71 F.R. 25483); and Executive Order 13412 (October 13, 2006; 71 F.R. 61369). Sudan's designation was rescinded in 2020. It is notable that the UNSC vetoed a US draft resolution extending the designation of Iran as a state sponsor of terrorism.

[543] *See*, for example, E.O. 13400 of Apr 26, 2006 which designated Sudan a state sponsor of terrorism and declared that "all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in."

[544] The list is compiled by the UNSC Counter-Terrorism Committee Executive Directorate *(CTED)* and can be found at https://www.un.org/securitycouncil/ctc/content/security-council-resolutions.

[545] *See* Sections 2 and 3, 2003 RP-US Non-Surrender Agreement, Exchange of Notes No. BFO-028-03 7 13 May 2003; Executive Order No. 162, Implementing and Giving Effect to UNSC Resolution 253 (1968), December 20, 1968.

[546] *Tañada v. Angara*, 338 Phil. 546, 593 (1997).

[547] *Vinuya v. Romulo*, 633 Phil 538, 581-582 (2010); *Almonte v. People*, G.R. No. 252117, July 28, 2020,

Congress has enacted laws implementing UNSC resolutions, especially on terrorism.[548]

The ATA itself declares under Sec. 3(b), (h), (m), Sec. 10, Sec. 25, and Sec. 36 that it is implementing UNSC Resolution No. 1373 and "any binding terrorism-related resolutions x x x pursuant to Art. 41 of the [UN] charter." Sec. 43(i) authorizes the ATC to take appropriate "action on relevant resolutions issued by the UN Security Council acting under Chapter VII of the UN Charter." These provisions adopt preventative measures against terrorism, consistent with the requirements of the UNSC. Sec. 27 on the preliminary order of proscription and Sec. 29 on detention are avowedly preventative in purpose. Sec. 16 to Sec. 20 prescribe rules on surveillance for the purpose of prevention.

The Senate deliberations on the ATA reveal that the turning point in counter-terrorism legislation in the Philippines was the 2017 Marawi siege.[549] The necessity to regulate, if not criminalize hitherto, innocuous acts in order to prevent violent acts of terrorism was highlighted by the Marawi siege where foreign terrorists beefed up the ranks of local terrorist and radicalized resident. Access to funding and equipment allowed them to hold off the government for several months.[550]

It should be borne in mind that, at this stage, these findings are limited to the binding effect of resolutions issued by the UNSC in exercise of its Chapter V and Chapter VII powers. These findings are not conclusive on the issue of whether the ATA, as a legislation giving effect to UNSC resolutions, violates the Constitution.

Based on these additional international law perspectives, I add to my earlier conclusions (on the presumptions of validity and regularity that the ATA enjoys, and the level of scrutiny it deserves) that this Court should adopt not only a balanced approach but a flexible one within the limits of the law, to allow the ATA to achieve its aims and objectives and thereby comply in good faith with its international obligations.

It is significant that none of the surviving petitions has denied that the State has a compelling interest to prevent and combat terrorism as an evil endangering the nation and its people. In terms of compliance with our international anti-terrorism obligations, I add as a last point on this topic the consequences should we be remiss in our compliance.

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[548] R.A. No. 10168, supra note 365; Republic Act No. 11521, An Act Further Strengthening the Anti-Money Laundering Law, Amending for the Purpose Republic Act No. 9160 29 January 2021; R.A. No. 10697, supra note 515.

[549] Memorandum Part I, pp. 68-71.

[550] Id. at 35-37.

Well-enshrined in public international law is the principle of *pacta sunt servanda* expressed as a treaty obligation under Sec. 26 of the Vienna Convention on the Law of Treaties, which was ratified by the Philippines on 15 November 1972. Accordingly, the Philippines must comply with its international obligations in good faith.[551] We have emphatically held in a long line of jurisprudence that treaties are binding on the Philippines further to Sec. 2, Art. II of the 1987 Constitution, which provides that the country "adopts the generally accepted principles of international law as part of the law of the land."[552] Sec. 21, Art. VI further provides a constitutional mandate on the validity of treaties or international agreements concurred in by at least two-thirds of all the Members of the Senate.

In *Bayan v. Zamora,*[553] the Court explained the import of compliance with international law obligations, thus:

> As a member of the family of nations, the Philippines agrees to be bound by generally accepted rules for the conduct of its international relations. While the international obligation devolves upon the state and not upon any particular branch, institution, or individual member of its government, the Philippines is nonetheless responsible for violations committed by any branch or subdivision of its government or any official thereof. As an integral part of the community of nations, we are responsible to assure that our government, Constitution and laws will carry out our international obligation. Hence, we cannot readily plead the Constitution as a convenient excuse for non-compliance with our obligations, duties and responsibilities under international law.
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> Beyond this, Article 13 of the Declaration of Rights and Duties of States adopted by the International Law Commission in 1949 provides: *"Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty."*[554] (emphasis in the original)

A state, by act or omission, which breaches an international obligation, also incurs state responsibility due to the existence of an internationally wrongful act. This much is provided under the Articles for the Responsibility of States for Internationally Wrongful Acts, which is a work of codification of international law by the International Law Commission under the auspices of the United Nations.[555]

As fully discussed above, the Philippines has an international obligation to accept and carry out the decisions of the Security Council,

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[551] Art. 26 of VCLOT in full provides: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

[552] *See e.g. Pangilinan v. Medialdea,* G.R. No. 240954, March 16, 2021.

[553] 396 Phil. 623 (2000).

[554] Id. at 661-662.

[555] International Law Commission, *Responsibility of States for Internationally Wrongful Acts,* United Nations General Assembly Reso. No. 56/83, 12 December 2001, available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

including taking all necessary steps to prevent the commission of terrorist acts and punishing acts related to terrorism such as financing; support, facilitation, participation, or attempt to participate in the financing, planning, preparation or actual commission of terrorism; incitement to or glorification of terrorism; and entry or transit of foreign terrorist fighters, among others. The provisions of the ATA show the country's good faith compliance to the UN Charter and related instruments as a member of the international community.

Terrorist organizations do not respect geographical boundaries and territorial limits, precisely why no less than a collective effort of the whole international community is needed to combat it. Declaring ATA as unconstitutional has transcendental consequences not just for the country, but on other states as well. Of equal import are the consequences, legal and socio-economic, of invalidating an act of Congress, which is essential to the country's compliance with its international obligations.

Further to the legal implications of a breach of international law obligation, this Court recognizes the devastating consequences of not taking all necessary steps in the fight against terrorism. Not only are we endangering the state's preservation, but we also become complicit in the furtherance of terrorist goals if we allow their ignoble goals to fester within our shores. This, in turn, affects international relations and our ability to contribute to international peace and security.

C. Third Basic Premise: the ATA is a Penal Law

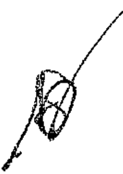
A third premise for us is the nature of the ATA as a penal law.

This Opinion has already detailed the development of the criminalization of terrorism in the Philippines in the preceding paragraphs, specifically in the section entitled "Second Basic Premise: The ATA is in compliance with the Philippines' international obligations." Nonetheless, to stress what terrorism is and how it is continuously evolving, We draw attention, too, to its development over the years, both in its nature and scope.

Before terrorism was highlighted nationally and internationally, acts of terrorism in the Philippines were confined to armed individuals coercing election officials to manufacture votes favoring particular candidates,[556] or taking hostages for ransom.[557]

By the turn of the current century, terrorism in the country had taken an increasingly horrific and ideological turn, such as the remote-controlled

[556] *Sanchez v. COMELEC*, supra note 474 at 625-632.
[557] *People v. Salcedo*, supra note 506.



bombing in 2005 of a passenger transport in the middle of the financial district, allegedly to "show x x x anger towards the Christians."[558]

Other notorious incidents are mentioned above and need not be repeated here. Suffice it to say that terrorism's notoriety in our country peaked in 2016 when homegrown and foreign terrorists laid siege to Marawi City in order to transform it into a satellite of the Islamic State.[559]

The recent fall of Afghanistan to the Taliban is of note – a Middle East development that could have ripple effects on our country, in the way that developments in that part of the world before had affected our terrorist situation.

As previously mentioned, *David v. Macapagal-Arroyo*[560] stressed the need to criminalize terrorism because, in said case, the lack of legislation defining terrorism as a criminal act was raised as a ground to nullify General Order No. 5, a police power measure. General Order No. 5 called upon the "Armed Forces of the Philippines *(AFP)* and the Philippine National Police *(PNP)* to prevent and suppress acts of terrorism." Responding to the objection raised, the Court declared that "Congress has yet to enact a law defining and punishing acts of terrorism," and, on this premise, declared the phrase "acts of terrorism" in General Order No. 5 to be vague and unconstitutional.[561]

Consequently, when the HSA[562] defined terrorism, it sought to avoid vagueness by referring to acts that were then defined criminal offences under the Revised Penal Code and under special penal laws, and added as an element that the purpose of these crimes is to sow a "condition of widespread and extraordinary fear and panic ... among the populace to coerce the government to give in to an unlawful demand."[563] In effect, the government still relied on existing penal laws as the principal means to punish acts of terror.

The penal character of the ATA appears as early as its subtitle which states that it "*prohibit(s)* and *penalize(s)* terrorism." This intent is made clear and express under its Sec. 2 which makes it a policy of the State "*to make terrorism a crime...*"

Clear and established legal implications arise from the ATA's penal character, the first of which is that the ATA is not subject to a facial challenge (as this challenge is described and discussed above). Thus, the

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[558] *People v. Janjalani*, 654 Phil. 148, 168 (2011).
[559] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2017 (Bureau of Counterterrorism), pp. 60-62, 80.
[560] Supra note 69.
[561] Id. at 741-742 and 796.
[562] Effective July 15, 2007.
[563] Sec. 3 of the HSA.

ATA - because it regulates acts and conduct - can only be examined through an as-applied challenge. Inasmuch as it applies to speech, such speech is integral to criminal conduct. Hence, it is not subject to a facial challenge but to an as-applied challenge.

II. The ATA – its objectives and approaches

The ATA - by intent and by what it provides - has been an effort to address the HSA's weaknesses and its deficiencies and is our country's direct response to our international obligation to address terrorism within our borders.

It defined "terrorism" in more concrete and far stronger terms. Its Declaration of Policy (Sec. 2) provides the lenses from which terrorism and the ATA's terms can be viewed and understood. It provides:

> SECTION 2. Declaration of Policy. — It is declared a policy of the State to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations.
>
> In the implementation of the policy stated above, the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution.
>
> The State recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military, and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. Such measures shall include conflict management and post-conflict peace building, addressing the roots of conflict by building state capacity and promoting equitable economic development.
>
> Nothing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government. It is to be understood, however, that the exercise of the constitutionally recognized powers of the executive department of the government shall not prejudice respect for human rights which shall be absolute and protected at all times.

This Declaration unequivocally lays down the purpose and the very spirit or *raison d'etre* behind the ATA as the congressional response to terrorism. This, in fact, is the government's response that the Executive branch must implement and the Judiciary must observe and respect in interpreting any ambiguity.[564]

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[564] As early as 1921, the Court had already declared in *Borromeo v. Mariano* (41 Phil. 322 [1921]) that "the cardinal rule of statutory construction requires the court to give effect to the general legislative intent if that can be discovered within the four corners of the Act."

The Court explained the rationale behind the use of a policy declaration as an interpretative tool in *Sarcos v. Castillo,*[565] where the Court said:

> It is fundamental that once the policy or purpose of the law has been ascertained, effect should be given to it by the judiciary. From *Ty Sue v. Hord*, decided in 1909, it has been our constant holding that the choice between conflicting theories falls on that which best accords with the letter of the law and with its purpose. The next year, in an equally leading decision, *United States v. Toribio*, there was a *caveat* against a construction that would tend "to defeat the purpose and object of the legislator." Then came the admonition in *Riera v. Palmaroli*, against the application so narrow "as to defeat the manifest purpose of the legislator." This was repeated in the latest case, *Commissioner of Customs v. Caltex*, in almost identical language.[566] (citations omitted)

In numerous cases,[567] the Court considered a statute's Declaration of Policy to determine the purpose of, or the legislative intent behind, the law. The declaration of policy reflects the essence of the law; it is the statement of its guiding principle, the purpose and necessity for its enactment.[568]

A close examination of the ATA's Declaration of Policy readily reveals the State's three-fold aims and its policy against terrorism:

1. To protect life, liberty, and property from terrorism;

2. To condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people; and

3. To make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations.

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[565] 136 Phil. 244 (1969).

[566] Id. at 252-253.

[567] In *Manalo v. Sistoza* (371 Phil. 165 [(1999]), the Court relied on the Declaration of Policy in R.A. No. 6975 (the Department of the Interior and Local Government Act of 1990) to bolster its finding that "the police force is different from and independent of the armed forces and the ranks in the military are not similar to those in the Philippine National Police."

In *Executive Secretary v. Southwing Heavy Industries, Inc.* (518 Phil. 103, 120 [2006]), the Court held that the purpose of R.A. No. 8800 or the Safeguard Measures Act is found in its declaration of policy. On this basis, the Court concluded that "[t]here are thus explicit constitutional and statutory permission authorizing the President to ban or regulate importation of articles and commodities into the country."

In *Garcia v. Judge Drilon* (712 Phil. 44, 90-91 [2013]), the Court referred to the Declaration of Policy of R.A. No. 9262 (the Anti-Violence Against Women and Their Children Act of 2004) to determine whether the distinction between men and women is germane to its purpose.

In *Bagumbayan-VNP Movement, Inc. v. COMELEC* (782 Phil. 1306, 1321 [2016]), the Court found that the Commission on Elections' act of rendering inoperative the Voter Verification Paper Audit Trail feature of the vote-counting machines ran contrary to the stated policy of Republic Act No. 8436, as amended by Republic Act No. 9369, since the law considered a policy of the state that the votes reflect the genuine will of the People.

[568] *Genuino v. De Lima*, 829 Phil. 691, 724 (2018).

Thus, disclosing the congressional intent to fight terrorism through a ***comprehensive approach*** that nevertheless must uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution. This comprehensive approach takes into account a wide range of activities in Philippine society – ***political, economic, diplomatic, military, and legal means*** – while decreeing in unmistakable terms that "***human rights x x x shall be absolute and protected at all times***,"[569] even in the exercise by the executive department of its constitutionally recognized powers.

Under these terms, the ATA is clear on –

(1) *what it means and what it covers*;

(2) the *aims it intends to achieve*;

(3) the *areas of its operations*; and

(4) the *limits it imposes in its implementation.*

It, thus, aims to protect life, liberty, and property by following and fighting terrorism to the extent it defined in the areas it listed. It further characterizes terrorism for what it is - inimical and dangerous to national security and to the welfare of the people; and identifies it as a crime not only against the Filipino people, but against humanity and the Laws of Nations.

As written, therefore, the ATA uses a comprehensive approach that covers practically all aspects and stages of terrorism – ***before it takes place*** (prevention, deterrence, planning, and preparation); ***the tools and measures to address terrorism*** (international linkages, regulation of foreign fighters, designation, proscription, surveillance, and investigation); ***the act of terrorism itself*** (that includes its definition, the liability of persons who may be involved in terms of conspiracy, proposals, inciting to terrorism, recruitment and membership, and all stages of its commission from attempt to consummation); as well as the ***post-terrorism stage*** (that includes investigation, arrest and detention, retribution, and rehabilitation).

The ATA, significantly, has incorporated **safeguards** against abuses that could be committed in the course of enforcement, and for the protection of constitutional rights. The ATA, therefore, while proceeding against terrorism, at the same time takes pains to ensure that its terms shall be properly used by those empowered to enforce it.

From these perspectives – as shown and confirmed by its own provisions – the ATA is a very comprehensive statute that covers terrorism

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[569] Sec. 2, ATA.

from its inception and preparatory stage, all the way to its punitive post-consummation stage.

Given the ATA's professed objective of covering all incidents of terrorism, this law should be ***read and understood in its totality*** rather than isolating its various parts and considering them as stand-alone provisions; every part should be related to the whole to fully understand the law's thrusts and objectives.

In particular, the ATA's definition of terrorism in its Sec. 4 should be read and understood in its totality, not in terms of specific terms or *provisos* dissociated from the whole. Its Implementing Rules and Regulations (*IRR*)[570] should be considered as executive directives to the executive branch, particularly to law enforcers, for the implementation of the ATA. They are there as well for the guidance of the public - as ATA companion reading materials to fully understand how the government seeks to combat terrorism.

This IRR, incidentally, is not being questioned before Us in the present petitions. The Court, therefore, does not need to pass upon the validity of any of its provisions. For now, it is simply evidence of how the government understands and interprets the ATA for purposes of implementation. Sufficient occasions and opportunities should exist in the future for this Court to pass upon this IRR in the future cases where concrete facts are before Us, to which the ATA and its IRR have been applied.

The ATA's wide coverage is a policy choice that Congress has made and is not for this Court to question for as long as it does not intrude into areas that are outside of the concerns of Congress in battling terrorism.

None of the petitioners appear to have any active concerns in this regard although there are some faint echoes of objections to the preventative measures made available even before an actual attack materializes.[571]

These echoes should not be heard for obvious reasons and in light of the lessons the country has learned so far from the HSA – when the bombs explode, the government might have already been remiss in its duties; terrorism has struck and people could already be dead or dying. Like the government, We choose to assume the risks that prior preparation entails and, accordingly, read the Constitution with these thoughts in mind.

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[570] Implementing Rules and Regulations of Republic Act No. 11479, otherwise known as "Anti-Terrorism Act of 2020", promulgated on October 14, 2020.

[571] For instance, petitioners in *Coordinating Council for People's Development and Governance, Inc., represented by Vice-President Rochelle M. Porras v. President Rodrigo R. Duterte* (G.R. No. 253242) argue that the preliminary order of proscription under Sections 26 and 27 of the ATA is unconstitutional because the probable cause determination is based on a future event, which may or may not happen, since it is issued in order to prevent the commission of terrorism. There is, as yet, no actual crime. Thus, such determination could never be based on facts or physical evidence. (*Petition*, G.R. No. 252585, pp. 56-67.)

On the whole, I do not see any intrusion into the ATA of extraneous matters not reasonably linked to terrorism and that the government has no reason to include within its terms. Thus, the objections I shall focus on – from the prism of police power and due process – relate only to the reasonableness of ATA's measures in battling terrorism.

What the Declaration of Policy and the terms of the ATA clearly disclose is that it is a penal law that addresses and penalizes terrorism. As discussed above, the ATA is therefore not subject to a facial challenge, only to an as-applied challenge based on actual violations of its provisions.

III. The ATA definition of terrorism

A. The origin of the ATA definition of terrorism

Terrorism, as the ATA presents it, is not a canned definition simply lifted from other terrorism laws.[572] Like obscenity that, in the words of one U.S. Supreme Court Justice is *hard to define but is obvious when seen*,[573] everyone knows and can recognize terrorism for what it is, but its definition has so far eluded universal unanimity. National interests, circumstances, and views vary among nations such that no one specific definition has been universally accepted.[574]

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[572] Transcript of the February 3, 2019 Senate Deliberations, pp. 10-26.
Transcript of the August 13, 2019 Senate Deliberations, pp. 47-48:
x x x x
THE CHAIRPERSON (SEN. LACSON): Thank you, Secretary Honasan.
Actually, our definition, at least in our version, is culled from several definitions from other jurisdictions, *pinagsama-sama*. We consolidated, and most of them are similar *naman* in most aspects. So we came up with our own definition of a terrorist act or terrorism based on what we gathered from the definitions of other jurisdictions like Australia, United States, France, Singapore, marami, even during international conventions, and most of these inputs also came from security officials so *pinaghalo-halo namin*.
Sponsorship Speech of Senator Panfilo Lacson during the October 2, 2019 Senate Deliberations, pp. 29-30.
[573] Used by U.S. Supreme Court Justice Potter Steward to describe his threshold test for obscenity in *Jacobellis v. Ohio*, 378 U.S. 184 (1964).
[574] Transcript of the January 21, 2020 Senate Deliberations, pp. 14-15:

Senator Drilon: x x x Now, in international law, there is yet no precise definition of terrorism, is that correct?
Senator Lacson: That is correct, Mr. President. As a matter of fact, there are at least 10 definitions.

Senator Drilon: I am sorry, Mr. President?
Senator Lacson: There are at least 10 definitions of terrorism, Mr. President.

Senator Drilon: From my readings, there are over a hundred definitions of what constitutes terrorism.
Senator Lacson: There are over 109 definitions. I stand corrected, Mr. President.
xxxx
In *Terrorism - The Definitional Problem* (36 Case W. Res. J. Int'l L. 375 (2004) Available at: https://scholarlycommons.law.case.edu/jil/vol36/iss2/8), Schmid, A. stated the "Controversial Issues regarding the Definition of Terrorism" as follows:

1. "Whether or not the term "terrorism" should apply to the actions of Governments/States in the same way that it applies to the actions of non-State groups.
2. Whether or not one should differentiate between terrorism and the rights of peoples to self-determination and to combat foreign occupation.
3. Whether or not to include activities of national armed forces in the exercise of their official duties and during armed conflicts if these are "governed" by or "in conformity with" international law.

The ATA (like other national laws on terrorism) gravitates around the UN Security Council issuances as this body has taken the lead in fighting terrorism at the international level and has cascaded its efforts to the different national jurisdictions.[575] *Prevention, control,* and *action* against terrorism and terrorists, however, are largely up to the various national jurisdictions to undertake through their own local laws, with significant assistance now from the international community.[576]

This is the reality that we and all other countries should recognize: although the international community provides assistance, the initiative, focus, and continued *maintenance of vigilance and efforts against terrorism are our own* as a sovereign nation.

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4. Whether or not to include the activities of national armed forces related to their potential use of nuclear weapons (since atomic weapons are almost by definition terrifying).
5. The issue of the relationship of the comprehensive convention to existing and future counter-terrorism treaties." (citation omitted)

He stated that "[t[hese are the principal contentious issues within the United Nations which stand in the way of arriving at a universal definition of terrorism. The two main issues that obstruct progress are, however, 'state terrorism' and the 'struggle for national liberation' - both of them related to the Palestinian question and to the question of Kashmir." (Alex Schmid, Terrorism - The Definitional Problem, 36 Case W. Res. J. Int'l L. 375 (2004) Available at: https://scholarlycommons.law.case.edu/jil/vol36/iss2/8)

[575] Sponsorship Speech of Senator Panfilo Lacson during the October 2, 2019 Senate Deliberations, pp. 27, 32:

Senator Lacson:

x x x x

As a responsible member of the international community, there is a clear need for us to amend the Human Security Act in order to more effectively implement relevant United Nations Security Council resolutions, meet international and regional standards on anti-terrorism laws; and fulfill state obligations as a United Nations member state. We need a legal framework for anti-terrorism that is clear, concise, balance[d], and rational which is the very backbone of this measure under consideration.

x x x x

At this point, Mr. President, allow me to discuss in detail the transnational nature of terrorism. As a responsible member of the community of nations, we are duty-bound to improve upon our laws towards ensuring that we are able to implement United Nations Security Council resolutions, meet international standards, and fulfill state obligations with the United Nations. x x x

[576] "A forward-looking, preventive and well-funded criminal justice strategy against terrorist violence requires a comprehensive system of substantive offences, investigative powers and techniques, evidentiary rules and international cooperation. The goal is to proactively integrate substantive and procedural mechanisms to reduce the incidence and severity of terrorist violence, and to do so within the strict constraints and protections of the criminal justice system and the rule of law. There can be significant accompanying challenges, however, especially for less well-resourced States, to implement all the recommended measures for law enforcement and criminal justice systems together with the requisite levels of technical capacity.

Criminal justice systems have approached these challenges differently, depending on their legal tradition, their level of development, their relative institutional sophistication and their own cultural circumstances. In some instances, a perceived urgent need to respond to a specific threat has led States to improvise new criminal justice approaches, which risk contravening recognized international human rights instruments and normative standards. Furthermore, there is scope for strengthening the capacity and effectiveness of national legal and criminal justice systems in many States to cooperate at the international level with a variety of rule of law-based counter-terrorism initiatives. This has resulted in additional stress being placed on the already limited capacity of many criminal justice systems and has perhaps weakened or compromised their ability to function within basic rule of law and human rights principles." ((*United Nations Office on Drugs and Crime.* E4J University Module Series: Counter-Terrorism, Module 4: Criminal Justice Responses to Terrorism (July 2018) at https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/criminal-justice-responses.html)

B. The Influence on the ATA of Past Experience

The ATA, though taking cues from the UN lead, is the result of our own past sad experiences that were partly due to the weakness of our initial effort – the HSA. Thus, the terms of the present ATA are driven by the need to remedy the HSA's defects and deficiencies that, as our law enforcers bitterly remember, only produced **only one conviction** and **one proscription in the 13 years** that it was in effect.[577]

C. Removal of Predicate Crime as Foundation

The first to go in re-formulating the approaches to terrorism under the ATA were the predicate crimes that the HSA recognized as the means to commit terrorism.[578]

Under the ATA, Congress saw no point and no need to go to the process of proving predicate crimes as basis to secure a terrorism conviction. It thus opted to directly define the acts that constitute terrorism without any reference to established predicate crimes. The change is conceptual one; the old thinking was initially focused on predicate crimes to which the element of fear and terror were added to constitute the crime of terrorism. This was the punitive approach that focused on identifying the act of terrorism and mainly penalizing the terrorists after they have done their worst, *i.e.*, after the attack had happened and deaths, injuries, and damages had been sown. The big conceptual leap under the ATA is to bypass these predicate crimes and to define terrorism directly by stating what it is and what Congress seeks to address and prohibit. Another significant step is to view terrorism preventively, *i.e.*, to give primacy to the prevention of terrorist attacks from happening and to grapple with terrorism even before an attack happens to every extent possible.

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[577] *See* Transcript of the November 27, 2018 Senate Deliberations, pp. 5-6; Transcript of the August 13, 2019 Senate Deliberations, pp. 31-33; and *People of the Philippines v. Nur A. Supian, et al.*, Criminal Case No. 1305, Regional Trial Court of Taguig City, Branch 70.

[578] In defining Terrorism, Sec. 3 of the HSA listed the following predicate crimes:

a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
b. Article 134 (Rebellion or Insurrection);
c. Article 134-a (Coup d'Etat), including acts committed by private persons;
d. Article 248 (Murder);
e. Article 267 (Kidnapping and Serious Illegal Detention);
f. Article 324 (Crimes Involving Destruction), or under
   (1) Presidential Decree No. 1613 (The Law on Arson);
   (2) Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
   (3) Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968);
   (4) Republic Act No. 6235 (Anti-Hijacking Law);
   (5) Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,
   (6) Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

D. Criminalizing all terrorism-related acts

The ATA, therefore, considers terrorism from all angles and from all its stages – from inception to post-consummation, from anywhere around the world, and by all terrorists whether Filipinos or foreigners. The ATA thus covers terrorism-related acts that happen way before an attack takes places; acts on or about the time an attack is happening; and acts after the attack happens.

Another way of putting it is that the ATA covers all activities that may contribute to, attend, facilitate, hasten, aggravate, or intensify a terrorist attack by *addressing them separately from the terrorist attack itself.* These are the reasons behind the present ATA Arts. 5 to 12 criminalizing preparatory, contemporaneous, and subsequent acts: they prevent future attacks from happening by nipping them in the bud, so to speak.

E. Terrorism in formula form: Terrorism = Act + Intent + Purpose (Nature & Context)

To define terrorism, the ATA did not depart from the common understanding of terrorism but refined its definition by clarifying that its core or starting component is an "act" (in strict legal terms, an "overt act" that metamorphoses into terrorism when attended to by *intents* and *purposes* specific to the nature of terrorism.)

In this manner, the definition of terrorism immediately leaves the generality of an innocuous "act" by defining it through its "*intent*" or *intended result* – to cause *death, injury, or destruction* to property and other specified results. Thus, the ***intent is a material defining component*** of terrorism and directly links it to the perpetrator as the intent is his.

The first question to ask, therefore, relates to the perpetrator's intent or intended result, based on his overt act itself if this act is strongly suggestive of and could be the basis of a presumed intent. This kind of approach, of course, may not often be fruitful and could be a big cause for objection against the ATA as between an overt act and the intent to kill, injure, or destroy could be a big wide gap.

To cite an example, the possession of a gun or a bomb is not, by itself, indicative of any terroristic intent and would require more indicators of intent before it could be labelled as terroristic in intent, their illegal possession being a crime in itself.

In contrast, the act of planting a time bomb at a subway flower garden is an altogether another story as the series of acts (the possession of the bomb + the act of planting it, properly primed and timed) could already be indicative of terroristic intent.

This example only goes to show that an act which is generally neutral requires more in terms of surrounding circumstances or other additional acts to be considered and examined in order to arrive at the perpetrator's intent to kill, to seriously injure, or to destroy.

This reality has given rise to the petitioners' objections based on lack of standards in the definition of terrorism – a very valid objection if the definition stopped at this point. But even at this point, the generality of an act is already delimited when the intent is considered as this intent is very specific – to kill, to injure, or to destroy.

Interestingly, the HSA could also be said to be suffering from a problem of the same nature even if it requires a predicate crime as its jump off point to arrive at the conclusion that terrorism is present. The HSA likewise requires that, aside from the predicate crime, the intent to sow fear or panic, among others, would have to be established separately from the intent specific to the predicate crime.

Thus, under the HSA, two kinds of intents must be considered – the intent to commit the predicate crime (a must in considering every criminal act) and, subsequently, the intent to sow fear or panic that presumably is deduced from the resulting predicate crime or from surrounding circumstances as indicated by extraneous evidence.

To remedy this HSA situation, the ATA introduced its present definition that further narrows down the punishable "act" by requiring that this be supported by an expressly provided **purpose,** as gleaned from the **nature** and the **context** of the act – to intimidate the general public or a segment thereof; to create an atmosphere or spread a message of fear; to provoke or influence by intimidation the government or any international organization; or seriously destabilize or destroy the fundamental political, economic, or social structures of the country; or create a public emergency or seriously undermine public safety.

This is a powerful limiting factor when added to the intent-defined overt act and is rendered operationally feasible by expressly particularizing that the purpose can be discerned from the nature of the act itself, or from its context or surrounding circumstances – *i.e.,* the circumstances that precede, surround, or takes place together with the act itself. Thus, the author of the act, the persons, or the public affected by the act, and the event itself can lend character to the act to define it for what it really is.

The questions to ask in considering an act under these limitations are the questions a newspaper reporter always asks in examining an event or piece of news to be reported – *what, when, where, how, why* and *to what extent?* If the answers carry neither relational links to the intent under the first question nor to the listed purposes, then a questioned act cannot be

terrorism (although it can constitute another illegality, as in the case of illegal possession of firearms pointed out above).

Viewed from these perspectives, the "act," even a seemingly innocuous one that a viewer starts out with, can change depending on the attendant intent and purpose (as determined by its nature and context).

Thus, to say that the ATA is overbroad or vague because it refers to any "act" may be correct, but only up to a certain point; the act does not become terrorism unless the elements of intent and purpose are thrown in.

Based on this understanding, the more accurate statement is that terrorism under the ATA is *intent- and purpose-based* – a big **conceptual change** from the *HSA's effects-based approach that looked back to the terrorist and his acts after the terror act had happened.*

F. Separate criminalization of preparatory and related acts

The criminalization of acts that, by their nature, are preparatory to defined crimes, is not a new approach in our system of laws. The crimes of Proposal to Commit Rebellion and Inciting to Rebellion are prime examples of crimes related to, but are separate from, the crimes of Rebellion and Sedition defined and penalized under the Revised Penal Code, Arts. 136 (as amended by R.A. No. 6968, known as Coup d'Etat Law, and R.A. No. 10951) and 138, respectively. So are the following crimes under the same Code: Conspiracy and Proposal to Commit Treason (Art. 115, as amended by R.A. No. 10951), Conspiracy to Commit Sedition (Art. 141, as amended by R.A. No. 10951) and Inciting to Sedition (Art. 142, as amended by R.A. No. 10951). These crimes cease to be preparatory acts in legal contemplation but become full crimes in themselves that are related to a main evil that the law seeks to guard against.

Arguably, an objector to this mode of examining an act may still go further and deeper by asking not only for nature and context of the act that point to the intent to kill, injure, or destroy, but by directly asking for fixed quantified standards, perhaps in numerical terms, as some of the petitions have done.

For example, a petition asks what an "extensive" damage is; how "serious" should destabilization or destruction be, or what constitutes "public emergency." Should the term "public" extend only people at the EDSA; in the whole of Manila; or in the whole country?

It is pointless to go into this kind of nitpicking that at times goes into the level of absurdity because the answers can be found or are obvious from the application of common sense or the general knowledge that Filipinos, in

this day and age, generally possess. They are obvious, too, from a reading of the ATA as a whole and not in isolated bits and pieces.

What appears certain is that all that the Constitution would require, for due process purposes, is that the elements that the law contain should be *fixed and determinable* in order not to offend due process. I stress in this regard the quality of being "*determinable*," not determinate as the petitioners appear to demand.

To be "determinable" means capable of being ascertained from a reading of the law itself and, without significantly departing from its specified elements, what the law means or requires.

Determination can be made using the wording of the law as standard and applying common knowledge of things, ordinary usage in the community, or the usual accepted understanding of how human activity operates, all applied using our "common sense" or the "sound and prudent judgment based on a simple perception of the situation or facts"[579] or the "the basic level of practical knowledge and judgment that we all need to help us live in a reasonable and safe way."[580]

A law intended for general application cannot be more specific than this standard as the law and its definition apply to people of differing circumstances who would all be expected to understand the coverage of the law because they are *patent, obvious or can at least be readily ascertained.*

In other words, a law that provides for a less determinable standard would suffer from vagueness as the law's terms would escape common understanding. On the other hand, if the law would be more specific, then the intent of Congress to legislate a general law would suffer; people, otherwise intended to be covered, could be excluded from the law's coverage.

To address this situation, a reasonable reading of the Constitution and usual experience require only the availability of a least common denominator among the different people to which the law is intended to apply. This least common denominator is the understanding of the law using people's common sense.

In the context of terrorism, common sense tells everyone what death, injury, or destruction means and these are the terms that would qualify an "act." The prohibition against killing is a rule that everyone of ordinary knowledge about life should know intuitively or by information.

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[579] *Merriam-Webster Dictionary.* common sense (undated) at https://www.merriam-webster.com/dictionary/common%20sense.

[580] *Cambridge Dictionary.* common sense (undated) at https://dictionary.cambridge.org/us/dictionary/english/common-sense

Crimes described under these terms are penalized by our established laws which have been accepted, without any detailed explanation in the law itself of what all the individual terms used in the law mean or connote. Acceptance comes because the terms are self-explanatory or are generally understood through established common usage or common sense.

To be sure, explanations, however detailed they might be, could be useless to those who do not conceptually want to accept the ATA for their individual or personal reasons; ***none can be so blind as those who do not want to see.***[581]

In defining rebellion and *coup d'etat*, for example, the Revised Penal Code simply provides:

> Art. 134. Rebellion or insurrection; How committed. — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives. (As amended by R.A. 6968).
>
> Article 134-A. *Coup d'etat*; How committed. — The crime of coup d'etat is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications network, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office of employment with or without civilian support or participation for the purpose of seizing or diminishing state power. (As amended by R.A. 6968).

without raising questions about the validity of the law because of the use of the terms "rising publicly," taking up arms," or "removing allegiance" and what they exactly mean, or what "power or prerogatives" include. In the same manner, there could be no question on what constitutes a camp or how big it should be or how many soldiers it should house to be considered a camp.

In any case, under the ATA, nature and context should be sufficiently precise for a person to know the prohibitions the law carries as these will define whether his act falls within the coverage of the law.

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[581] Jeremiah 5:21 (King James Version): "Hear now this, O foolish people, and without understanding, which have eyes, and see not, which have ears, and hear not."

Intent, of course, is another matter as it cannot refer to purely internal intent, particularly from the prism of enforcement. In law, intent – reckoned at the time of an "act" and without knowing its results – must be supported by material evidence or matters that can be perceived or deduced, either from the act itself, or from surrounding circumstances as shown by material evidence. Jurisprudence, of course, presumes that the result of an act, after its consummation, has all along been intended.

In the same manner, the adjective "extensive" used in relation with destruction is not difficult to understand as it denotes a substantial or great amount. Aside from its dictionary meaning, the term is understood using ordinary common sense and the context of use. Additionally, the intended meaning of the term "extensive" is obvious from the rest of Sec. 4 which speaks of death or serious injury in the same breath that it speaks of "extensive" damage. It is obvious that no quantified price or cost is necessary because exact amounts are not that relevant to terrorism; what assumes relevance is the destruction and its extent, both of which can readily be perceived.

Thus, while the adjective "extensive" does not expressly translate to any specific amount, the law is reasonably certain if the extent of destruction is determinable. This nitpicking could be one of the precise reasons, by the way, why an "as-applied" challenge is required, not a facial challenge in testing for the constitutional validity of an act penalizing terrorism.

Before a court and, as already mentioned above, in the event the issue is reduced to what "extensive" exactly means, the whole listing of the items enumerated would be considered by the court under the principle of *ejusdem generis*. Damage would be extensive if compared to the other listed items that can serve as measures of the damage that the law intends or considers. Among those listed are death, serious bodily injury, and weapons of mass destruction. Common sense, applied in its most ordinary meaning, would already suggest what "extensive" damage the law and the courts would require under the definition of terrorism.

From another perspective, the definition of terrorism, because of the way it is formulated, has opened up concerns that "terrorism," as defined by Congress might be vague and/or overbroad. Critics decry the broadness of the law as to its reaches as it apparently gives law enforcers the leeway to make an "interpretation" so as to include acts that may not be unlawful as acts of terrorism.

This is perhaps largely due to the phrase "regardless of the stage of execution" found in the epigraph of Sec. 4. Moreover, the use of the words "acts intended" in defining specific acts constitutive of terrorism give the appearance that the State's reach is overbroad and does not give potential suspects a "fair notice" of what acts to avoid.

Contrary to these seemingly grave concerns and observations, the phrase "regardless of the stage of execution" is no different from the offenses the Revised Penal Code *(RPC)* punishes. The only difference between the ATA and the RPC is that the latter provides for specific and differing penalties depending on the stage of execution while the former does not. Nonetheless, this is not a constitutionally objectionable feature of the ATA because it is the absolute prerogative of Congress to determine the proper subjects of the legislation it is enacting.

Besides, crimes in the RPC are predominantly defined by the evil *results* sought to be prevented *coupled with* the *intent* of the perpetrator to achieve such results. For example, Art. 248 of the RPC defining and penalizing the crime of murder states:

> Article 248. *Murder*. - Any person who, not falling within the provisions of Article 246 **shall kill another**, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
>
> 2. In consideration of a price, reward, or promise.
>
> 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
>
> 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
>
> 5. With evident premeditation.
>
> 6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (emphasis and underscoring supplied)

The phrase "shall kill another" coupled with "deliberate [criminal] intent" enunciated in Art. 3 of the RPC and with any of the aforementioned circumstances define what "murder" is. The law does not enumerate each and every act (*e.g.* shooting, stabbing, *etc.*) which may result to the death of another in defining the crime of murder.

To my mind, it would be absurd to require Congress to enumerate the ways in which a person may commit the crime of murder for the number of

these ways is limited only by one's imagination. Needless to say, Congress - being composed of natural persons subjected to human limitations - is not omniscient and cannot be expected to predict each and every future scenario on matters it wishes to govern.

Clearly, to the RPC, the fact that "murder" has been committed can be concluded based on an act's **result** and **intent** - the death of one person deliberately caused by another under the enumerated circumstances.

To apply the above statement, one's act of pushing another off the rooftop of a tall skyscraper cannot simply be to vex; it is, at the very least, an attempt to cause the letter's death or serious physical injuries - a situation where law enforcers are duty-bound to take action in order to prevent the obvious result of death or serious physical injuries and to hold the perpetrator criminally liable for his or her actions.

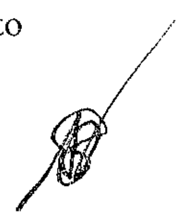
As to the imputation of being overbroad and vague, the crime of "terrorism" as defined in Sec. 4 of the ATA bears a similar method of legislative definition. Like murder, terrorism is defined by the act's result coupled with the perpetrator's intent. For instance, the first mode of committing terrorism under Sec. 4(a) of the ATA reads as follows: "[e]ngages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life."

The use of the phrase "intended to cause" (to spell out the requirement of criminal intent) along with the phrases "death," "serious bodily injury," and "endangers a person's life" (to point out the result sought by Congress to be prevented) effectively qualifies the phrase "engages in acts;" thereby, greatly reducing, if not completely eliminating, traces of vagueness or overbreadth from the first mode of terrorism.

Like the crime of murder, terrorism under its first mode of commission effectively covers all acts and instances that may lead to "death" or "serious bodily injury" without including those "protected" acts not intended to cause these results.

Corollary, the issue of vagueness or overbreadth in the crime of terrorism opens up the issue of whether courts and prosecutorial agencies are the only recognized government entities constitutionally-empowered to perform actions that temporarily or permanently deprive one of some right on the ground of probable cause—to the exclusion of all others.

To address this quandary, courts should recognize that most criminal statues possess an inherent but limited flexibility. This means that, in the performance of their duties, law enforcers are expected to exercise some degree of discretion to evaluate the attendant circumstances necessary to determine probable cause. The discretion should be sufficiently wide to



allow law enforcers to act in the discharge of their duty to protect the public from harm but should be no wider than reasonable necessity demands.

By jurisprudence, the Court has established that "[t]he existence of probable cause justifying the warrantless search is determined by the facts of each case,"[582] and thus expands or contracts based on what reason dictates to these facts. The incontrovertible minimum is that "[an] arresting officer must justify that there was a probable cause for an arrest without a warrant."[583]

To "justify" again implies the use of reason and its applicable to the attendant facts. Thus, the discretion, although not quantified in terms of specific metes and bounds, should be determinable based on the standard of reason.

These established jurisprudential tenets imply that law enforcers are, in a limited sense, permitted to assess for themselves the existence or non-existence of probable cause in the course of performing their duties. A contrary principle would render the State inutile in performing its duties under the social contract and would signify the pointless surrender of certain rights in exchange for protection.

In a pragmatic sense, law enforcement serves no purpose in the context of the governing social contract if they cannot even guarantee public safety or, at the very least, the equal enjoyment of public rights. Law enforcers would be less than fully effective in delivering the State's end under its social contract with the governed if they can perform their duties only after, not before, the consummation, of a crime.

To reiterate an oft-repeated principle in this Opinion, the timing of the State's approach to crimes – whether it should be before or after the commission of a crime – pertains, too, to the wisdom of the law which Congress—not this Court—is empowered to address.

G. Act of terrorism – What it is not

The ATA, bowing to constitutional demands and in a last attempt to narrow the definition of terrorism, resorts to legalism by stating what, in legal contemplation, the punishable act is not: terrorism does not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other *similar exercises of civil or political rights* that are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

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[582] *Congressman Aniag, Jr. v. COMELEC*, 307 Phil. 437, 448-449 (1994), citations omitted.
[583] *Pestilos v. Generoso*, 746 Phil. 301, 317 (2014), citations omitted.

For clarity and certainty, the ATA also provided that these rights do not include activities that are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

This formulation has led some of the petitions to mockingly deride the ATA for excluding the exercise of civil and political rights under its coverage, but at the same time providing the seeming twist that the exclusions do not include acts intended to cause death or serious physical harm or create a serious risk to public safety.

The provision, to be sure, is not perfect, but does not contain any insurmountable contradiction. The seeming twist ***only effectively declares that any act intended to achieve the ends of terrorism are excluded,*** omitting in this attempt at simplicity that an act with such intent cannot be an exercise of civil or political rights. Instead of rendering the law vague or confusing, the twist in fact renders the ATA internally consistent.

Understood in this sense, a demonstration that becomes a riot resulting in death or injury does not remove it from being a protected political right. It only ceases to be so once it is shown that the intent had always been to cause injury or death or destruction for the defined purposes of terrorism, in which case the terrorism would be deemed to have been committed.

Implicit in this explanation, of course, are narrow distinctions whose application may lead to abuse or that law enforcement authorities may not be in the position, or may not have the capability, to appreciate.

The possibility of abuse is always present in any law however perfect its formulation may be. Such possibility cannot and should not be a valid reason for objection or for the invalidity of the law.[584] No extended discussion, to my mind, is needed to support this statement and conclusion.

Neither should enforcers' capability to recognize distinctions be a ground for the law's invalidity if the distinctions in the law are obvious, patent, or determinable, as already explained above. Enforcers' competence is also another matter that does not go into the validity of a law that is sufficiently clear and certain in its terms.

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[584] "To be sure, this argument has long been in disuse for there can be no escape from the reality that all powers are susceptible of abuse. The mere possibility of abuse cannot, however, infirm per se the grant of power to an individual or entity. To deny power simply because it can be abused by the grantee is to render government powerless and no people need an impotent government. There is no democratic government that can operate on the basis of fear and distrust of its officials, especially those elected by the people themselves. On the contrary, all our laws assume that our officials, whether appointed or elected, will act in good faith and will regularly perform the duties of their office. Such a presumption follows the solemn oath that they took after assumption of office, to faithfully execute all our laws." (*Garcia v. COMELEC*, 297 Phil. 1034, 1057 [1993]).

MAIN SUBSTANTIVE CONSIDERATIONS

In view of the foregoing disposition of the preliminary and procedural issues (in particular, that no facial challenge is allowed against the ATA and the adoption of the intermediate level of judicial scrutiny as the appropriate approach), the outstanding substantive issues raised by the surviving petitions are consolidated and restated as follows:

I.

WHETHER OR NOT SECTIONS 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 AND 14 OF REPUBLIC ACT NO. 11479 VIOLATE SECTIONS 1, 4 AND 14, ARTICLE III, 1987 CONSTITUTION ON THE GROUND OF VAGUENESS.

II.

WHETHER OR NOT SECTIONS 16, 17, 18, 19, 20, 22, 23 AND 24 OF REPUBLIC ACT NO. 11479 VIOLATE SECTION 2 AND SECTION 3, ARTICLE III, 1987 CONSTITUTION ON THE GROUND OF UNREASONABLENESS.

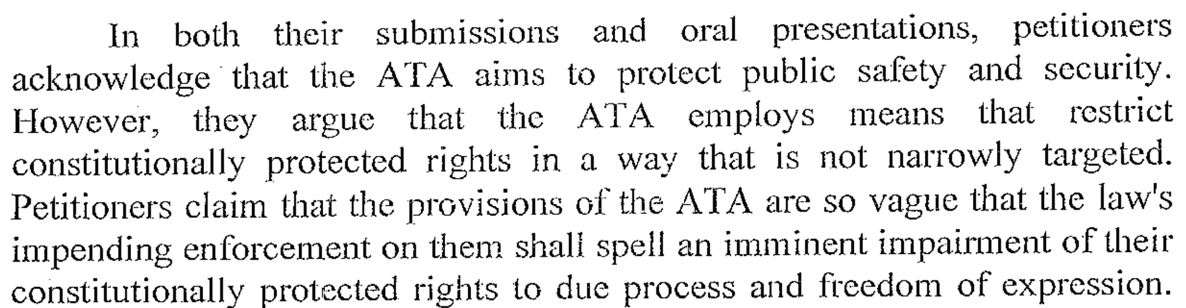
III.

WHETHER OR NOT SECTIONS 25, 26, 27, 28, 29 AND 34 OF REPUBLIC ACT NO. 11479 VIOLATE SECTIONS 6, 8, 12 AND 13, ARTICLE III, 1987 CONSTITUTION.

IV.

WHETHER OR NOT SECTION 29 OF REPUBLIC ACT NO. 11479 VIOLATE THE PRINCIPLE OF SEPARATION OF POWERS UNDER THE CONSTITUTION.

I. Whether or not Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Republic Act No. 11479 violate Sections 1, 4, and 14, Article III, 1987 Constitution, on the ground of vagueness


In both their submissions and oral presentations, petitioners acknowledge that the ATA aims to protect public safety and security. However, they argue that the ATA employs means that restrict constitutionally protected rights in a way that is not narrowly targeted. Petitioners claim that the provisions of the ATA are so vague that the law's impending enforcement on them shall spell an imminent impairment of their constitutionally protected rights to due process and freedom of expression.

The provisions also are an unwarranted intrusion into their right to be secure in their homes, effects and persons and the privacy of their communications.[585]

Petitioners seek the nullification of Sec. 4 of the ATA on the ground that it is overly broad and vague such that this provision violates their right to due process and freedom of expression. Sec. 4(a) penalizes mere intent for the *actus reus* is unclear, making its imminent application on petitioners violative of their right to due process.[586] Moreover, the term "endanger" is open to subjective interpretation with the effect that the imminent enforcement of the provision on petitioners can smother freedom of expression. [587]

According to petitioners, the vagueness of Secs. 5 to 14 generally stems from the vagueness of Sec. 4.[588] In Sec. 5, no standards are provided by which the existence of the threat can be ascertained.[589] The terms "planning, preparing, and facilitating" and "participation" in Sec. 6 refer to equivocal acts that could be interpreted in many ways.[590] Even "training" can cover a range of activities, while possession of objects, without naming said objects, can mean anything. [591] Conspiracy under Sec. 7 is ill-defined for no evidentiary standards are specified by which a law-enforcer would know that an agreement to commit terrorism exists.[592] Sec. 8 is inconsistent with Sec. 3(g) for the proposal in the former is to commit terrorism under Sec. 4 whereas the proposal in the latter is to commit any act of terrorism.[593] Sec. 9 on incitement to terrorism can cover speech for the definition of terrorism is not confined to predicate crimes.[594] Although the IRR clarified that incitement requires a reasonable probability of success, this amounts to an unauthorized amendment.[595] The IRR also attempted to correct the vagueness of Sec. 10 by adding the requirement that recruitment be intentional and knowing.[596] Sec. 11 does not clarify whether a person designated or proscribed by the ATC can be considered a foreign terrorist when travelling abroad.[597] Even support for terrorism under Sec. 12 does not account for the situation when there is lack of knowledge that terrorism is being committed by the recipient of support.[598] Moreover, support is penalized regardless of whether the giver shares the purpose of the

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585 Issue No. VI through No. X, Memorandum Cluster I and II, p. 4
586 Memorandum Cluster I and II, p. 22.
587 Id. at 23-24.
588 Id. at 31-32, 34-35, 37, 39.
589 Id. at 31-32.
590 Id. at 32-33.
591 Id.
592 Id. at 34
593 Id. at 35.
594 Id. at 35-36.
595 Id.
596 Id. at 37-38.
597 Id. at 38.
598 Id. at 39.

recipient.[599] Sec. 13, as an exception to Sec. 12, is also vague for the term "impartial" is subjective.[600] The definition of accessory under Sec. 14 does not seem to require criminal intent.[601]

Petitioners argue that the foregoing deficiencies cannot be remedied by the corrective interpretation in the IRR or the language of international law.[602]

Public respondents maintain that Sec. 4 is clear and constitutional. It is a complete and unified structure. Sub-paragraphs (a) through (e) identify five distinct *actus reus*. The clause beginning with the phrase "when the purpose ..." identifies the *mens rea*.[603] The last sentence excludes from the scope of *actus reus* acts of advocacy, protest, dissent, etc., provided they are "not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."[604]

In applying the intermediate level approach to address the foregoing issue, the questioned provisions shall be situated in the context of the two-fold purpose of the ATA, *viz.*: to comply with Philippine treaty obligations under the UNSC regime on terrorism, and to ensure flexibility in the legal response of the Philippines to the shifting modes of terrorism.

Restating the rule on vagueness in an as-applied challenge

Sec. 14, in relation to Sec. 1 of Art. III of the Constitution, defines criminal due process to mean notice prior to investigation, apprehension, prosecution, and conviction.[605] The mirror test of fair notice requires that any person of common sense understands the plain meaning of the text of the law taken in its entirety[606] and, based on that understanding, know the range of behaviours that is covered by the law and the specific behaviour that would violate it.[607] The person of common sense would not have to speculate on what behaviour is criminal.[608] However, it is not necessary for the law to specify how and why a violation is committed as these are evidentiary matters for the court to appreciate.[609]

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[599] Id. at 40.
[600] Id. at 41. *See* also Petition, G.R. No. 252585, p. 38.
[601] Id.
[602] Id.at 30-31.
[603] Memorandum for Public Respondents, Vol. 2, pp. 282-283.
[604] Id. at 284-287.
[605] *People v. Nazario*, supra note 86.
[606] *Spouses Imbong v. Ochoa, Jr.*, supra note 104 at 197-198.
[607] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. Hon. City Mayor of Manila*, supra note 18 at 324-325; *Celdran v. People*, supra note 90.
[608] *People v. Siton*, supra note 89.
[609] *Dans, Jr. v. People*, 349 Phil. 434, 462-463 (1998).

The mirror test further requires that any ordinary law enforcer, acting on the basis of the plain meaning of the law in its entirety, would know the reasonable parameters of the behaviours that are covered by the law and the basic criteria by which to identify the particular behaviour that violates it.[610] The law enforcer would not have to rely on personal bias and subjective opinion to enforce the law in any given situation.[611] It is sufficient for the law to provide a comprehensible standard; it is not necessary for it to detail the precise behaviour and exact scenario, as these evidentiary matters are for the court to appreciate.[612]

Moreover, in an as-applied challenge based on vagueness, the test of fair notice is satisfied even if the language of the law is imprecise, provided it can be salvaged through construction.[613]

A. Application of the tests to Section 4

Sec. 4 passes the tests of fair notice and comprehensible standards.

As public respondents correctly pointed out, Sec. 4 is a unified and complete definition composed of four inter-related segments. Its meaning may only be understood when these segments are read together and in relation to the entirety of the ATA. This is basic statutory construction.[614] The fragmented reading adopted by petitioners goes against reason and practice, for every statute is deliberated upon and enacted as a whole rather than as the sum of all of its parts.[615]

i. First three elements of terrorism under Section 4

The first segment identifies overt acts rather than mere thoughts or intentions. This is borne out by the plain meaning of the active verbs "engages in acts," "develops," "manufactures," "possesses," "acquires," "transports," "supplies," "uses," "release[s]," and "cause[s]." These acts have outward manifestations in a specific point in space and time, *i.e.*, in the here and now. They do not exist merely in the mind.

At the same time, the overt acts being engaged in must be accompanied by an intent to cause a particular harm, namely: "death," "serious bodily injuries," "endangerment to life," "extensive damage or destruction to a government facility, public place or private property." With

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[610] *People v. Dela Piedra*, supra note 87 at 47-55.
[611] *Gallego v. Sandiganbayan*, 201 Phil. 379, 382 (1982).
[612] *Representative Lagman v. Hon. Medialdea*, 812 Phil. 179, 283-288 (2017); *People v. Morato*, 295 Phil. 211, 218-219 (1993).
[613] *People v. Dela Piedra*, supra note 87 at 52-53. In *Romualdez v. Sandiganbayan*, supra note 96 at 280-286, the Court applied the same test in a facial challenge based on vagueness but which challenge was later held to be inappropriate.
[614] *Atty. Valera v. Office of the Ombudsman*, 570 Phil. 368, 390 (2008).
[615] *Judge Leynes v. Commission on Audit*, 463 Phil. 557, 573 (2003).

respect to the overt acts "develop," etc., the intent to cause harm is presumed from the nature of the object of the act, which are weapons and explosives. The overt act of releasing or causing are also deemed to have a harmful intent in view of their object, which are dangerous substances, fire, floods, or explosions.

The intent is unequivocal because the nature and extent of the harm intended are linked to the type of overt acts performed. Thus, if the particular harm is actually produced by the overt act, the specificity of the intent would not be difficult to discern. If the particular harm is not actually produced by the overt acts, the specificity of the intent can still be ascertained from the overt acts that have been performed. It should be borne in mind that, under Sec. 4, terrorism is committed without regard to the stages of execution and to the physical absence of the perpetrator in Philippine territory.

Together, the overt acts performed, the intent to cause harm, and the specific harm linked to each type of overt act make up the first segment of Sec. 4. The function of this segment is to delineate three elements of terrorisms: (1) the specific overt acts, whether or not already penalized as ordinary crimes; (2) the intent to cause harm, whether or not said harm has been produced; and (3) the link between the specific overt acts and the particular harm intended.

ii. Fourth element of terrorism under Section 4

Unofficial copies of the ATA that have been published, such as by CD Asia, incorporate the provision on terroristic purpose into Sec. 4(d), as though such purpose qualifies only the overt acts of "[r]elease of dangerous substances, or causing fire, floods or explosions."[616] In contrast, in the official copy of the ATA that was published by the Official Gazette, the provision on terroristic purpose is not indented but rather separated by a space from the preceding enumeration of overt acts.[617] Thus, the provision on terroristic purpose qualifies not just the overt acts under paragraph (d) but all the overt acts in the preceding paragraphs (a) through (d).

The second segment of Sec. 4 identifies the terroristic purpose of the overt acts, to wit: (1) intimidate the general public or a segment thereof; (2) create an atmosphere or spread a message of fear; (3) provoke or influence by intimidation the government or any international organization; (4) seriously destabilize or destroy the fundamental political, economic, or social structures of the country; (5) create a public emergency; or (6) seriously undermine public safety. The elements of overt act, intent to cause

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[616] This unofficial copy is available at https://cdasiaonline.com/laws/52260?s_params=TmPWyTYRbbGDw24Pr-v6.

[617] This official copy is available at https://www.officialgazette.gov.ph/downloads/2020/06jun/20200703-RA-11479-RRD.pdf.

a specific harm, and linkage between the act and the harm must be accompanied by one or more of the foregoing terroristic purposes. Terroristic purpose is the fourth element of the crime of terrorism and it is separate and distinct from the element of intent to cause harm.

iii. Fifth element of terrorism under Section 4

The third segment of Sec. 4 enumerate the standards by which a terroristic purpose is identified. The standards are "nature and context" of the overt acts performed and the harm intended. These standards refer to the overt acts for the phrase "nature and context" comes after the proximate antecedent "such act."[618] Thus, "nature and context" are concrete and specific standards for they are ascertainable from the overt acts performed. As such, they are sufficient standards for they enable ordinary individuals and law enforcers to know which acts are terrorism and which are not.

iv. Express exclusion of advocacy

The fourth segment is a carve-out clause. It declares the general rule that the definition of terrorism under Sec. 4 shall not include overt acts of "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights" which are "not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety." Thus, a protest that results in a riot but which protest was not intended to cause death, etc., would not qualify as an overt act of terrorism. Conversely, if such protest was intended specifically to cause death, etc., it would fall under paragraph (a) on overt acts.

Majority of the members of the Court isolated the words and phrase "*which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety*" from the rest of Sec. 4, referring to it as the "Not Intended Clause." Citing the statement of Assistant Solicitor General (*ASG*) Rigodon during the oral arguments as the "government's official understanding" of said provision, they maintain that the "Not Intended Clause" imposed on the individual the burden of proof that their speech or expression is not tainted with criminal intent. My esteemed colleagues concluded that the "Not Intended Clause" is a problematic means to attain the purpose of the law because "the *proviso's* scope of application is indeed very large and contemplates almost all forms of expression."[619] They further held:

> *More significantly, the "Not Intended Clause" causes serious ambiguity since there are no sufficient parameters that render it capable of judicial construction. To demonstrate this ambiguity, one may*

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[618] *Roldan v. Villaroman*, 69 Phil. 12, 19 (1939).
[619] Supra note 281 at 109 and 111.

> *dangerously suppose that "intent to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" may be inferred from strong public clamor attendant to protests, mass actions, or other similar exercises of civil and political rights.*[620]

The ATA must be interpreted in its entirety, its provisions in relation to each other, and its words and phrases in the broader context of the provisions to which they relate. More importantly, a concentric interpretation emanating from Sec. 4 is necessary for this provision provides the core definition of terrorism from which all other provisions defining acts of terrorism take their bearings.

The enumeration of overt acts of terrorism under Sec. 4(a), (b), (c), (d) and (e) does not include speech or expression. Rather, the categorical command in the phrase "shall not include" forestalls any confusion about whether speech or expression are excluded as overt act of terrorism. The qualification is that if speech or expression is coupled by any of the overt acts of terrorism under Sec. 4(a), (b), (c), (d) and (e) then terrorism is committed. However, this leaves no room for doubt that what is being criminalized is the accompanying or ensuing overt act of and manifestation of intent to commit terrorism. Sec. 4(a), (b), (c), (d) and (e) limit the scope of *"intent to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."* The ordinary man on the street is alerted that (1) speech which is not accompanied by any of these overt acts to and manifestation of intent to commit terrorism is not covered by the ATA, whereas (2) the commission of those overt acts during or immediately following such speech is covered by the ATA. At no point is speech *per se* terrorism.

The chief reason of the majority in declaring the *proviso* of Sec. 4 as unconstitutional is that it supposedly turns the exercise of civil and political rights into a defense, the burden of proof laying with the defendant. This view on the burden of proof is attributed by the majority to the government as well as Rule 4.4 of the IRR.

The majority then holds that while the burden of proof is borne by the defendant, the latter is not guided by sufficient parameters on whether a "strong public clamor attendant to protests, mass actions, or other similar exercises of civil and political rights x x x [which] x x x are intended to express disapproval against someone else's proposition or stance on a given issue" would constitute terrorism. The "people are not guided whether or not their impassioned and zealous propositions or the intense manner of government criticism or disapproval are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" and that "these types of speech essentially refer to

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[620] Id. at 110.

modes of communication by which matters of public interest may be discussed truthfully and brought to the attention of the public. They are vehicles by which the core of civil liberties in a democracy are exercised."[621]

In effect, the "Not Intended Clause" is void for being vague because "liberties are abridged if the speaker—before he can even speak—must ready himself with evidence that he has no terroristic intent" and that "[t]hey will have to contend whether the few hours they would spend on the streets to redress their grievances against the government is worth the prospect of being indefinitely incarcerated."[622]

I respectfully diverge from the interpretation of the majority.

While it is true that the exception provided in the "Not Intended Clause" must be invoked or raised as a defense by the defendant, the burden of proving that the exception does not apply (*i.e.*, that the exercise of civil and political rights was, in fact, intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety) clearly lies with the government.

This is by express provision of Rule 4.4 of the IRR:

> *RULE 4.4. Acts Not Considered Terrorism.* —
>
> *When not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety, the following activities shall not be considered acts of terrorism:*
>
> *a. advocacy;*
> *b. protest;*
> *c. dissent;*
> *d. stoppage of work;*
> *e. industrial or mass action;*
> *f. creative, artistic, and cultural expressions; or*
> *g. other similar exercises of civil and political rights.*
>
> *If any of the acts enumerated in paragraphs (a) to (g) of Rule 4.4, however, are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety, and any of the purposes enumerated in paragraph (b) under Rule 4.3 is proven in the engagement in the said act, the actor/s may be held liable for the crime of terrorism as defined and penalized under Section 4 of the Act. The burden of proving such intent lies with the prosecution arm of the government.*

It is not for the defendant to prove that the intent does not exist but for the government to prove that the intent, in fact, exists. With this, the

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[621] Id. at 110.
[622] Id. at 111.

rationale for the supposed unconstitutionality of the "Not Intended Clause" disappears.

The majority cited the statement of ASG Rigodon as the "government's official understanding" of the burden of proof under Sec. 4. In doing so, it is respectfully submitted that the majority inexplicably glossed over Rule 4.4 of the IRR, which clearly states that the government bears the burden of proving criminal intent. Even the statement of ASG Rigodon is predicated upon proof by the government that an overt act has been committed.

It is basic in criminal prosecutions that it is the State who is automatically burdened to properly allege and prove all the elements as well as all the aggravating circumstances of the crime so that the accused can properly prepare for his or her defense.[623] All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he or she is proved guilty.[624] The only exception is self-defense where the accused had admitted to the commission of acts constituting a crime but not to the guilt.[625]

An erroneous submission by the OSG cannot change this unbending principle already woven into our constitutional fabric. In other words, just because the State's statutory counsel, the OSG, happened to put forward a position contrary to established jurisprudence, does not and cannot mean that the accused has now the burden to justify that his or her expression was devoid of criminal intent. Evidentiary rules do not work in a way that they are dependent on what one of the parties to a litigation posits—they are dependent on the Constitution as well as the jurisprudence interpreting such fundamental law. Thus, notwithstanding the OSG's stand, there is no basis to the claim that the "Not Intended Clause" shifts the burden of evidence to the accused to prove that his or her expression had not been tainted with criminal intent.

To summarize, under Sec. 4, the elements of terrorism are clear and unmistakable. They notify any ordinary person, including petitioners, and guide any law enforcer about what constitutes an act of terrorism. Sec. 4 does not violate the rights of petitioners under Sec. 1 (due process), in relation to Sec. 14 (criminal due process), and Sec. 4 (freedom of expression) of the 1987 Constitution.

In conclusion, Sec. 4 is a reasonable means to attain the two-fold governmental purpose of the ATA. Hence, I vote to declare the "Not Intended Clause" as not unconstitutional.

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[623] See *People v. Solar*, G.R. No. 225595, August 6, 2019.
[624] *People v. Claro*, 808 Phil. 455, 464-465 (2017), citations omitted.
[625] See *People v. Macaraig*, 810 Phil. 931, 937 (2017), citations omitted.

B. Application of the tests to Section 5 to Section 14

In contrast to the abstracted and fragmented approach adopted by petitioners, each of these provisions shall be examined in their entirety and in relation to the other provisions of the ATA.

Even without the IRR providing an elaboration, the terms threaten (Sec. 5), conspiracy (Sec. 7), proposal (Sec. 8), incitement (9) and recruitment and membership (Sec. 10) have well established meanings in Philippine criminal jurisprudence.

A threat is considered real if the person making it has the capacity and means to carry it out.[626] In the light of Sec. 4, a threat to commit the acts defined therein would be credible depending on the entity making the threat and the latter's capacity to execute it. Conspiracy and proposal also have a standard meaning in our case law.[627] The role of an accessory also is well understood in our jurisprudence.[628] When placed in the context of Sec. 4 of the ATA, proposal, conspiracy, and modes of participation of an accessory acquire even more clarity. In our jurisprudence, incitement is clearly more than public theoretical discourse.[629] When Sec. 9 is read in relation to the fourth segment of Sec. 4, incitement does not include "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."

Finally, our existing jurisprudence on illegal labor recruitment and human trafficking for exploitation provides that knowledge and consent of the subject are immaterial.[630] However, this is not applicable to recruitment and membership under Sec. 10 of the ATA, as the provision clearly requires knowledge, intent, and consent in promotion, recruitment, travel facilitation, and membership. It also applies to recruitment to and membership in only designated or proscribed organizations. These are clear standards by which any person of common sense can tell which behaviour constitutes recruitment and membership violative of the ATA.

Broad terms such as planning, preparing, facilitating, participating, and training have broad dictionary meanings that refer to innocuous acts. However, when these acts are examined in the context of Sec. 4, they assume a meaning peculiar to terrorism. Moreover, Sec. 12 and Sec. 13 must be read together and with reference to Sec. 4. Based on the plain meaning of their text, these provisions apply the provision of material support with

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[626] *United States v. Paguirigan*, 14 Phil. 450, 451 (1909). See also *Ladaga v. Mapagu*, 698 Phil. 525 (2012) where the Court held that the threat must be actual rather than merely a supposition.
[627] See *People v. Viñas*, G.R. No. 234514, April 28, 2021.
[628] *Lejano v. People*, 652 Phil. 512, 737 (2010).
[629] *Salonga v. Hon. Paño*, 219 Phil. 402, 425-426 (1985).
[630] *People v. Mora*, G.R. No. 242682, July 1, 2019.

knowledge that the recipient is committing or planning to commit any of the overt acts of terrorism under Sec. 4. It is only reasonable that any exception provided under Sec. 13 should be restricted, otherwise, the purpose of Sec. 12 would be defeated. Sec. 13 is intended to align Sec. 12 with international humanitarian law, specifically the principle that during non-international armed conflict, such as the Marawi siege, the flow of "impartial" medical and humanitarian aid for non-combatant civilians should not be impeded.[631] Impartiality is expressly required under international humanitarian law itself.[632]

Some members of the Court isolated the phrase *"organized for the purpose of engaging in terrorism,"*[633] and declared it impermissibly vague and therefore an unreasonable means for attaining the purpose of the ATA. They held:

> *[T]he phrase "organized for the purpose of engaging in terrorism" ... is impermissibly vague. In the context of penalizing a person's alleged membership in a terrorist organization, association, or group, there is nothing in the law which provides rules or guidelines to determine and verify the nature of said organization, association, or group as one "organized for the purpose of engaging in terrorism".*

To the contrary, Sec. 4 circumscribes Sec. 10, including the act of "voluntarily and knowingly join[ing] any organization, association or group of persons knowing that such organization, association or group of persons is ... organized for the purpose of engaging in terrorism." There is no disagreement that overt acts of terrorism are clearly defined in Sec. 4.[634] Consequently, any ordinary man on the street, including petitioners, would know that Sec. 10 pinpoints to organizations whose purpose is to engage in any of the five types of overt acts defined under Sec. 4 as terrorism.

Moreover, it must be respectfully pointed out that there may be an inherent contradiction in some of my colleagues' disquisition concerning Sec. 10. They take exception to the phrase "organized for the purpose of engaging in terrorism" in the third paragraph of Sec. 10 for the reasons explained above and have, accordingly, voted to declare the same unconstitutional. However, the exact same phrase is found in the first paragraph of Sec. 10, yet this paragraph is spared from being included in their discussion of the phrase's unconstitutionality. Sec. 10 provides:

> *SECTION 10. Recruitment to and Membership in a Terrorist Organization. — Any person who shall recruit another to participate in, join, commit or support terrorism or a terrorist individual or any terrorist organization, association or group of persons proscribed under Section 26*

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[631] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977.
[632] Id. at Art. 5, Art. 9, Art. 22, Art. 60 and Art. 70.
[633] Supra note 281 at 139.
[634] *See* id. at 94-95.

of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

The same penalty shall be imposed on any person who organizes or facilitates the travel of individuals to a state other than their state of residence or nationality for the purpose of recruitment which may be committed through any of the following means:

(a) Recruiting another person to serve in any capacity in or with an armed force in a foreign state, whether the armed force forms part of the armed forces of the government of that foreign state or otherwise;

(b) Publishing an advertisement or propaganda for the purpose of recruiting persons to serve in any capacity in or with such an armed force;

(c) Publishing an advertisement or propaganda containing any information relating to the place at which or the manner in which persons may make applications to serve or obtain information relating to service in any capacity in or with such armed force or relating to the manner in which persons may travel to a foreign state for the purpose of serving in any capacity in or with such armed force; or

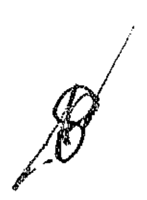
(d) Performing any other act with the intention of facilitating or promoting the recruitment of persons to serve in any capacity in or with such armed force.

Any person who shall voluntarily and knowingly join any organization, association or group of persons knowing that such organization, association or group of persons is proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of imprisonment of twelve (12) years. (emphasis supplied)

Despite the lack of discussion pertaining to the first paragraph, their respective votes appear to extend the declaration of unconstitutionality to all instances of the phrase in Sec. 10. This raises the question of whether the phrase in the first paragraph of Sec. 10 was also intended to be declared unconstitutional.

A law must not be read in truncated parts and its provisions must be read in relation to the whole law.[635] Every part of the statute must be interpreted with reference to the context (*i.e.* that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment).[636] Thus, in construing a statute,

[635] *Civil Service Commission v. Joson, Jr.*, 473 Phil. 844, 858 (2004).
[636] *Phil. International Trading Corp. v. COA*, 635 Phil. 447, 454 (2010). citations omitted.



courts have to take the thought conveyed by the statute as a whole: construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.[637]

In the case at hand, the "rules or guidelines" that some of my colleagues claim to be missing are explicitly provided in Sec. 4 of the ATA. Accordingly, the last paragraph of Sec. 10 should be read *in pari materia* with Sec. 4 in order to give effect to the Legislature's intent. A statute must be so construed so as to harmonize and give effect to all its provisions whenever possible.[638] This is consistent with the principle that every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[639] Therefore, the "standards" or "guidelines" for which the purpose (of an organization suspected of being formed in view of terrorism) is to be determined are provided in the very definition of terrorism itself which is found in Sec. 4 of the ATA.

I maintain that, when interpreted in its entirety and in relation to Sec. 4, Sec. 10 is a reasonable means to attain the purpose of the ATA. It does not violate the Constitution. Hence, I vote to declare the phrase "*organized for the purpose of engaging in terrorism*" in Sec. 10 as not unconstitutional.

In sum, Sec. 5 to Sec. 14, whether on their own and taken together with Sec. 4, provide sufficient notice to ordinary persons, including petitioners, and a clear guide to law enforcers of the behaviour that would constitute a violation of the ATA. The provisions do not violate the rights of the petitioners to due process and freedom of expression under Sec. 1, Sec. 4, and Sec. 14, Art. III of the Constitution. They are therefore a reasonable means for attaining the governmental purposes of the ATA.

II. Whether or not Section 16 to Section 20 and Section 22 to Section 24 of Republic Act No. 11479 violate Section 2 and Section 3, Article III, 1987 Constitution, on the ground of unreasonableness

As demonstrated above, given that official government reports have branded petitioners as terrorists and that their accounts have been frozen under the TFPSA, petitioners face a real and imminent threat of having their rights against unreasonable search and seizure under Sec. 2 and right to privacy under Sec. 3 of the 1987 Constitution subjected to the intrusive effects of Sec. 16 to Sec. 20 and Sec. 22 to Sec. 24 of the ATA.

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[637] *Commissioner of Internal Revenue v. Sec. of Justice*, 799 Phil. 13, 28 (2016), citations omitted.
[638] *National Tobacco Administration v. COA*, 370 Phil. 793, 808 (1999), citations omitted.
[639] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 200 (2012).

On the other hand, public respondents remind petitioners that these rights are not absolute for the Constitution itself allows reasonable restrictions; and that the restrictions imposed by the ATA under the assailed provisions are reasonable for they serve a government purpose and are restricted by substantive and procedural requirements.[640]

Sec. 16 to Sec. 20 and Sec. 22 to Sec. 24 are about surveillance and interception of private communications.

A. When a search and seizure is reasonable

As a general rule, under Sec. 2, Art. III of the Constitution, a search and seizure is reasonable if conducted on the basis of a judicial warrant issued according to Rule 126 of the Rules of Court. Any evidence obtained during the valid search would be admissible. The purpose of Sec. 2, Art. III of the Constitution is to ensure that the State shall respect the private security of the person and property and the sanctity of the home of an individual.[641]

Even without a judicial warrant, the search and seizure would be reasonable and the evidence obtained admissible under the following instances: search based on consent; search of a moving vehicle; seizure of evidence in plain view; search incidental to an inspection, supervision and regulation sanctioned by the State in the exercise of its police power; customs search; stop and frisk search; search under exigent and emergency circumstances; routine security check being conducted in air and sea ports and military checkpoints in public places; and search incidental to a lawful arrest, including a permissible warrantless arrests, such as arrests *in flagrante delicto*, arrests effected in hot pursuit, and arrests of escaped prisoners.[642]

For this Court, "to search means to look into or over carefully or thoroughly in an effort to find something."[643] While this definition was adopted to clarify the meaning of searching questions following a guilty plea, it is generic enough to be relevant also to apply to the term "search and seizure" in Sec. 2, Art. III of the Constitution. The term means to look for and obtain evidence as part of criminal detection and investigation.[644]

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[640] Memorandum for Public Respondents, Vol. 2, pp. 308-340.
[641] *People v. Damaso*, 287 Phil. 601, 610 (1992).
[642] See, generally, *Pilapil, Jr. v. Cu*, G.R. Nos. 228608 & 228589, August 27, 2020. See also *People v. O'Cochlain*, G.R. No. 229071, December 10, 2018; *People v. Chua Ho San*, 367 Phil. 703 (1999). In *Acosta v. Ochoa*, the Court held that consent to a warrantless search should not be in a pro forma Consent of Voluntary Presentation for Inspection form which does not indicate the scope, frequency, and execution of the inspection, as such gaps in the form means that those signing it are "incapable of intelligently waiving their right [against] the unreasonable search of their homes" (G.R. Nos. 211559, 211567, 212570 & 215634, October 15, 2019).
[643] *People v. Chua*, 418 Phil. 565, 575 (2001).
[644] *PLDT Company v. Alvarez*, 728 Phil. 391, 420 (2014).

In contrast, surveillance *per se*, whether physical or audio-visual, is the gathering of information as part of intelligence work.[645] The purpose is for law enforcers to establish personal knowledge of information that would support an application for a search warrant.[646] Thus, Sec. 2, Art. III does not apply to surveillance: that is to say, surveillance *per se* and as part of police work is reasonable with or without a judicial authorization.[647]

There are certain types of surveillance that are regulated. The use of closed-circuit television (*CCTV*) is expressly allowed under the Safe Space Act[648] but subject to regulations implementing the Data Privacy Act.[649] Moreover, the use of CCTV by a private individual on private property is subject to Art. 26(1) of the Civil Code.[650] These laws do not require prior judicial authorization of surveillance.

However, the Anti-Wiretapping Act (1965),[651] HSA,[652] and Cybercrime Prevention Act[653] require judicial authorization when surveillance is accompanied by or entails a wiretap and interception. Under the Anti-Wiretapping Act, a "tap" refers to either a physical interruption using a wire or cable or a deliberate installation of a device or arrangement in order to overhear, intercept, or record the spoken.[654] Under the Cybercrime Prevention Act, an "[i]nterception refers to listening to, recording, monitoring or surveillance of the content of communications, including procuring of the content of data, either directly, through access and use of a computer system or indirectly, through the use of electronic eavesdropping or tapping devices, at the same time that the communication is occurring."[655]

Authorization under the Anti-Wiretapping Act is in the form of an order by the Regional Trial Court based on a written application and testimony under oath that there is reasonable ground to believe that crimes such as treason, espionage, etc., has been committed or is being committed or about to be committed; that "there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any such crimes;" and "that there are no other means readily available for obtaining such evidence."[656] Unlike search and seizure under Sec. 2, Art. III of the Constitution which admits of

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645 Revised Philippine National Police Operational Procedures PNPM-DO-DS-3-2-13, p. 2.
646 *Santos v. Pryce Gases, Inc.*, 563 Phil. 781, 795 (2007).
647 In her dissenting opinion in *Lagman v. Medialdea*, Chief Justice Sereno equated surveillance to search.
648 Sec. 5, Republic Act No. 11313, April 17, 2019.
649 Republic Act No. 10173, August 15, 2012, as implemented by the Philippine National Privacy Commission (NPC) through Advisory No. 2020-04, November 16, 2020.
650 *Sps. Hing v. Choachuy, Sr.*, 712 Phil. 337, 348-349 (2013). The Court initially applied Section 3, Article III of the Constitution even when the party that installed the CCTV was not a state agent but rather a private person.
651 Sec. 1 and Sec. 3, Republic Act No. 4200, June 19, 1965.
652 Sec. 7.
653 Sec. 4 and Sec. 15, Republic Act No. 10175, September 12, 2012.
654 *Gaanan v. IAC*, 229 Phil. 139, 146 (1986).
655 Sec. 3(m).
656 Sec. 3.

exceptions to a warrant, wiretap under this law is not possible without judicial authorization. That is to say, there is no such thing as a warrantless wiretap.[657] A wiretap without judicial authorization is punishable under Sec. 2 of the law. This is in addition to the inadmissibility of any evidence obtained.[658]

In contrast, under the HSA, authorization is in the form of a written order issued by the CA based on an "*ex parte* written application x x x and upon examination under oath or affirmation of the applicant and the witnesses x x x: (a) that there is probable cause to believe based on personal knowledge of facts or circumstances that the said crime of terrorism or conspiracy to commit terrorism has been committed, or is being committed, or is about to be committed; (b) that there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained; and, (c) that there is no other effective means readily available for acquiring such evidence." The element of probable cause rather than mere reasonable belief brings the required authorization closer to a search and seizure warrant. However, unlike search and seizure under Sec. 2, Art. III of the Constitution, which can be warrantless yet reasonable under certain circumstances, interception and recording under the HSA must be with judicial authorization; otherwise, the person conducting the unauthorized interception and recording shall be criminally liable.[659] The evidence obtained shall also be inadmissible.[660]

Under the Cybercrime Prevention Act, a law enforcer may conduct interception, as defined earlier, provided there is a prior search and seizure warrant.[661] The Rule on Cybercrime Warrants[662] provides that the warrant shall issue based on probable cause, established through facts within the personal knowledge of the applicant or witness, that an offense has been committed, being committed, or about to be committed.[663] Unlike the Anti-Wiretapping Act and HSA, the Cybercrime Prevention Act does not penalize interception without a warrant; it merely declares the evidence obtained inadmissible.[664] Nonetheless, under the Rule on Cybercrime Warrants, a warrantless interception is not countenanced, for even in the event of a valid warrantless arrest, law enforcers must obtain a warrant before computers at the scene of the crime or arrest can be seized (and their data examined). [665]

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[657] *Atty. Capuchino v. Apolonio*, 672 Phil. 287, 298 (2011). An attempt on good faith to catch wrongdoing was considered not an excuse to wiretap.
[658] Sec. 4.
[659] Sec. 16.
[660] Sec. 15.
[661] Sec. 3(m) and Sec. 15.
[662] A.M. No. 17-11-03-SC, August 15, 2018.
[663] Sec. 5.4.
[664] Sec. 18.
[665] Sec. 6.9. Footnote 37 of the Rules states that one possible exception is the voluntary surrender of the unit.

To summarize, search and seizure are reasonable if authorized by a judicial warrant, unless the circumstance of the case are such that a warrantless search would nonetheless be reasonable. With respect to surveillance *per se*, no warrant is necessary. However, surveillance accompanied by interception, in whatever form, requires a judicial authorization similar to a search warrant in terms of the need to establish probable cause. Unlike the Cybercrime Prevention Act, the Anti-Wiretapping Act and HSA penalize interception without a warrant.

The foregoing standards shall be applied to test the ATA provisions.

B. When interference with privacy is reasonable

The right to privacy can be reasonably restricted by an order of the court or by law when "when public safety or order requires otherwise, as prescribed by law."[666] Although the Rule on the Writ of Habeas Data extends to cases beyond extra-judicial killing,[667] it does not make the right to privacy absolute.[668]

In *Disini, Jr. v. The Secretary of Justice*, Sec. 12 of the Cybercrime Prevention Act was declared unconstitutional. Said section provides that "[l]aw enforcement authorities, with due cause, shall be authorized to collect or record by technical or electronic means traffic data in real-time associated with specified communications transmitted by means of a computer system." The Court found that when pooled traffic data can be used to create the profile of a person under surveillance, that type of information is protected by Sec. 3, Art. III of the Constitution on the right to privacy, specifically informational privacy or a person's right to a reasonable expectation of control of information defining one's individuality, including the right to be let alone. The right to control such information can be restricted to serve a public purpose but the means employed must be within reason. The Court found no such reasonable limitations imposed by Sec. 12 on the intrusion to privacy. The standard of "due cause" is left to the discretion of the law enforcer, as due cause cannot be akin to probable cause of the commission of a crime, which only a court can ascertain for purposes of the issuance of an arrest warrant. Even the express prohibition against access to parts of the traffic data indicating identities and content was found insufficient as a restraint. Had it intended to provide for the circumstances of a valid warrantless surveillance and collection, Sec. 12 would have said so.[669]

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[666] *Zulueta v. Court of Appeals*, 324 Phil. 63, 68 (1996).
[667] *Vivares v. St. Theresa's College*, 744 Phil. 451, 463-464 (2014).
[668] *In the Matter of the Petition for Writ of Habeas Corpus/Data v. De Lima*, G.R. Nos. 215585 & 215768, September 8, 2020.
[669] *Disini, Jr. v. The Secretary of Justice*, supra note 91 at 129-137.

On the other hand, police power and regulatory measures restricting the right to privacy have been found reasonable when the intrusion seeks only basic identifying information;[670] it is confined within well-defined limits, as when a judicial determination of probable cause is required prior to authorizing interception;[671] it respects the dignity of the person whose privacy is affected;[672] and it seeks information that, in view of the public office held by the person affected, are not wholly private in that the public has a legitimate interest in them.[673]

The foregoing standards of reasonableness shall be applied to the present issue.

C. Application of the tests of reasonableness to Section 16 to Section 20 and Section 22 to Section 24 of the ATA

To reiterate, petitioners do not question that these provisions are designed to serve a compelling state interest, namely, the punishment and prevention of terrorism. Their objection has to do with the means employed in the provisions.

The objections of petitioners are unfounded. The provisions employ means that are necessary and reasonable. They are even more narrowly designed than those currently employed under the Anti-Wiretapping Act and Cybercrime Prevention Act. They clearly delineate the substantive and procedural limitations of surveillance and interception.

First, the targeted parties are identified, namely, "members of a judicially declared and outlawed terrorist organization;" members of a designated person; a "person charged with or suspected of committing" any of the crimes defined and penalized under the ATA; and any "person suspected of any of the crimes." Surveillance and interception of a mere suspect, including an unidentified suspect, is standard police detection and investigation method, especially in counter-terrorism.[674]

Second, the type and nature of the targeted communication are identified, namely, "private communications, conversation, discussion/s, data, information, messages in whatever form, kind or nature, spoken or written words;" customer information and identification records as well as call and text data records, content and other cellular or internet metadata;

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670 *Kilusang Mayo Uno v. Director-General, NEDA*, 521 Phil. 732, 758 (2006).
671 *Subido Pagente Certeza Mendoza and Binay Law Offices v. CA*, 802 Phil. 314, 360 (2016).
672 *Social Justice Society (SJS) v. Dangerous Drugs Board*, 591 Phil. 393, 415 (2008).
673 *Morfe v. Mutuc*, supra note 18 at 436-437.
674 See discussion of the practices of various states such as Canada, Australia, of United Nations Office on Drugs and Crime, Current Practices in Electronic Surveillance in the Investigation of Serious and Organized Crime, United Nations 2009, citing Title 18 Chap 119 § 2518(7) US Code; Surveillance Devices Act 2004 (Australia) s 28; Criminal Code (Canada) s 184.4.

and tapes, discs, other storage devices, recordings, notes, memoranda, summaries, excerpts, and all copies thereof.

Third, the types of communication that are insulated from surveillance and interception are identified, namely, communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence.

Fourth, the mandatory nature of the requirement of judicial authorization by the CA is guaranteed by not only rendering the evidence illegally obtained inadmissible but also imposing a steep penalty of 10 years imprisonment on any law enforcer or military personnel who engages in warrantless surveillance and interception.

Fifth, judicial authorization shall issue only upon probable cause based on the personal knowledge of the applicants and witnesses. This requirement applies even to cases where the private communications of a mere suspect is sought to be subjected to surveillance and interception. Probable cause, not mere suspicion, would justify a judicial authorization.

Given the clarity of Sec. 4 of the ATA, the courts are properly guided as to the relevant facts and circumstances that should be within the personal knowledge of and presented under oath by the *ex parte* applicants and witnesses. Sec. 17 adds that personal knowledge should be as to "facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained." This particular requirement is not found in the Anti-Wiretapping Act, Cybercrime Prevention Act, HSA, or Rule 126. It minimizes the risk of a fishing expedition, for the applicant must convince the CA that the evidence to be obtained exists and that it is essential either to the resolution of a pending case or to the solution of a crime or the prevention of one.

Sixth, the procedural and substantive requirements for the application, evaluation, implementation, and effectivity of the judicial authorization are detailed. Even the chain of custody is guaranteed under Sec. 21. Accountabilities for the safe-keeping and preservation of the intercepted communication are identified.

Sec. 18 to Sec. 24 provide that "individual identity of members" of the authorized surveillance team must be stated in the order and that, after expiration of the period of authorization, these identified applicants shall be accountable to the CA regarding the filing of a case based on the recorded communication. If no case is filed, the record is sealed, with said applicants being accountable for the preservation of the confidentiality and integrity of thereof. Throughout this period, the persons targeted for surveillance have

no participation. However, if an application to break the seal of the record is made, the targeted person(s) shall be notified.

In addition, the modes of carrying out the surveillance and interception are clearly spelled out. The participants are identified in the court order.

The foregoing substantive and procedural requirements provide layers of protection to the privacy of individuals, including petitioners. At the same time, they provide the necessary means in order for the ATA to attain the public purpose for which it was adopted. Thus, Sec. 16 to Sec. 20 and Sec. 22 to Sec. 24 of the ATA do not violate Sec. 2 and Sec. 3, Art. III of the Constitution. They are a reasonable and necessary means to attain the public purpose of the ATA.

To cover all the bases, the ATA's compliance with the Rule 126 of the Rules of Court was also tested. The objective of this comparison is to see the elements of the constitutional requirements for the validity of Rule 126 of the Rules of Court and find parallelisms with surveillance under the ATA for communication data.

After a close comparison, I found the following elements, present in the current Rules for the issuance of a search warrant for materials or things, to likewise be present under the ATA's surveillance for communications data:

a. A presence of a competent court with jurisdiction over the geographical area of the search or surveillance - under the ATA, this court is the Court of Appeals which has a nationwide jurisdiction;

b. Identified target of surveillance – identified or identifiable individuals listed in the ATA or whose identification can be made through the ATA's processes of designation or proscription, or as ATA suspected violators;

c. Identified subject matter of surveillance – communications data between the targets of the surveillance, in relation with the crimes defined and penalized under the ATA;

d. Filing of an *ex parte* written application for the conduct of a surveillance, duly authorized in writing by the Anti-Terrorism Council (*ATC*), based on the personal knowledge of the ATA applicant and the witnesses he may produce;

e. Personal examination under oath or affirmation of the applicant and the witnesses he may produce, by the issuing court, is also present in the ATA;

f. The requirement for the presence of probable cause to believe, based on the application and the personal examination that crimes defined and penalized under the ATA has been committed, is being committed, or is about to be committed;

g. The requirement for the presence of probable cause to believe, based on personal knowledge of facts or circumstances that the evidence to be obtained are essential to convict, to resolve pending questions, or to prevent ATA violations.

In light of this favorable point by point comparison and clear parallelism, I find that the essential elements of a valid search under Art. III, Sec. 2 of the Constitution, unquestioned under Rule 126 of the Rules of Court, are all present in Secs. 16 and 17 of the ATA.

Under these circumstances, there is no merit to the claim that surveillance under the ATA is an invalid and unconstitutional surveillance pursuant to the Constitution's search and seizure provision.

III. Whether or not Sections 25, 26, 27, 28, 29 and 34 of Republic Act No. 11479 violate Sections 6, 8, 12, 13 and Section 14, Article III of the 1987 Constitution

Sec. 25 to Sec. 29 and Sec. 34 of the ATA establish a system of designation and proscription as preventative measures whose principal purpose is the prevention and suppression of terrorism. For petitioners, the main objection to these measures is grounded on the disproportionality between prevention or precaution as the objective sought to be achieved and repression of certain fundamental rights as the principle means.

I find that the system of designation and proscription established under the ATA is necessary and reasonable. While it affects certain fundamental rights, especially those of petitioners, these rights are not absolute. Moreover, the intrusion is narrowly targeted and, at the same time, layers of protection are guaranteed.

A. Section 6 on the right to travel and Section 13 on the right to bail

Section 6, Art. III of the 1987 Constitution recognizes that the right to travel may be impaired in the interest of national security, public safety, and public health as expressly provided by law.[675] There are existing laws that expressly regulate the right to travel.[676]

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[675] *Genuino v. De Lima*, supra note 568 at 716.

[676] *Leave Division, OAS, OCA v. Heusdens*, 678 Phil. 328, 339-340 (2011), the Court identified the following: 1) HSA; 2) The Philippine Passport Act of 1996; 3) Anti-Trafficking in Persons Act of 2003; 4)

Any restriction on the right to travel as a condition to the grant of bail is a valid exercise by the courts of the criminal jurisdiction that has been conferred upon them by law, even when the reason for the restriction is that bail is a privilege of provisional liberty and the purpose is to enable the court to maintain jurisdiction over the person of the accused, rather than to serve the interest of national security, public safety, or public health.[677] Moreover, guidelines issued by the Department of Labor and Employment (*DOLE*) on the temporary suspension of the deployment of Filipino domestic helpers was sustained by the Court as a valid exercise of the authority granted by the Labor Code to DOLE "to afford protection to labor," especially in the light of reports on abuses committed against them.[678]

In contrast, in *Genuino v. De Lima*,[679] the Court nullified the Consolidated Rules and Regulations Governing Issuance and Implementation of Hold Departure Orders, Watchlist Orders and Allow Departure Orders issued by the Department of Justice (*DOJ*) to restrict the right to travel of former President Gloria Arroyo, et al. The reason for the restriction was "the pendency of the preliminary investigation of the Joint DOJ-COMELEC Preliminary Investigation Committee on the complaint for electoral sabotage against them." However, the Court found that the guidelines were issued beyond the authority conferred by law on the DOJ. The Court ruled on the validity of the purpose of the restriction.

In the interest of national security and public safety, the ATA imposes restrictions on the right to travel under Sec. 10, Sec. 11, and Sec. 34. Under Sec. 10 and Sec. 11, travel is an element of the crime of engaging in terrorist recruitment and membership or in foreign terrorist activities, respectively. Given the ability of terrorists to move in and out of porous national borders—as proven by the participation of FTFs during the Marawi Siege - the criminalization of certain activities that involve travel is both logical and necessary. Under these provisions, the act of travelling is, itself, an element of the crime.

i. Travel as an act of terrorism

Sec. 10 and Sec. 11 of the ATA are a legislative transformation of UNSC Resolution No. 1278[680] in order that its provisions shall become part of the Philippine domestic legal system. The UNSC issued Resolution No. 1278 in exercise of its Chapter VII powers. It declared that terrorism is a

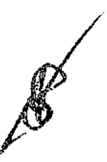
The Migrant Workers and Overseas Filipinos Act of 1995; 5) The Act on Violence against Women and Children; 6) Inter-Country Adoption Act of 1995.

[677] *Silverio v. Court of Appeals*, 273 Phil. 128, 132 (1991).

[678] *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 404-405 (1988).

[679] Supra note 568.

[680] UNDOC S/RES/2178 (2014), 24 September 2014.



threat to international peace and security, and decided under paragraph 5 that all member-states shall:

> *[P]revent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities x x x*[681]

More importantly, in paragraph 5, the UNSC "decide[d] that all States shall ensure that their domestic laws and regulations establish serious criminal offenses" in order to prosecute and penalize their nationals who travel or attempt to travel in order to become FTFs.[682]

Sec. 10 and Sec. 11 of the ATA signify the Philippines' compliance with its state obligations UNSC Resolution No. 1278. The measures adopted do not violate Sec. 6, Art. III of the Constitution for the right to travel can be validly impaired as may be provided by law and for national security.

ii. Restriction on travel through a hold departure order

The restrictions on the right to travel under Sec. 34 of the ATA are preventative and preservative measures. These are a precautionary hold departure order (*PHDO*) and hold departure order (*HDO*), both of which are intended to prevent the departure of a person suspected or accused of a crime from departing from the Philippines.[683]

The PHDO is issued by the Regional Trial Court on a person against whom an information for the crime of terrorism under the ATA is about to be filed. The substantive and procedural requirements for its issuance conform to the provisions of the Rule on Precautionary Hold Departure Order[684] that the Court has adopted, particularly the requirement that the investigating prosecutor shall apply for PHDO only upon a preliminary determination of probable cause. A PHDO is necessary in cases involving recruitment and membership as well as the mobility of FTFs, as penalized under Sec. 10 and Sec. 11 of the ATA. It is doubtlessly necessary towards ensuring that persons who have violated Sec. 6 to Sec. 9 and Sec. 12 to Sec. 14 of the ATA are brought to face trial in the Philippines.

Sec. 34 of the ATA goes on to authorize the prosecutor, after having filed the information, to obtain an HDO from the RTC. Again, this precautionary step is consistent with judicial practice, specifically under the Guidelines in the Issuance of Hold-Departure Orders,[685] for the issuance of

681 Id. at 4.
682 Id. at 4-5.
683 Sec. 1, Rule on Precautionary Hold Departure Order, A.M. No. 18-07-05-SC, September 16, 2018.
684 Id.
685 OCA Circular No. 39-97, June 19, 1997.

an HDO "is but an exercise of [the] court's inherent power to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused,"[686] even before arraignment.[687] The difference is that Sec. 34 leaves the RTC with no discretion but to issue an HDO where "the evidence of guilt is strong."

The period of effectivity of the PHDO and HDO is clearly defined in the last paragraph of Sec. 34.

Petitioners have not shown that the substantive and procedural requirements under Sec. 34 are an inadequate protection against excessive and unreasonable restrictions on the right to travel. On the contrary, the provisions are consistent with the Court's own rules on PHDO and HDO. Moreover, adoption by the Philippines of no-fly lists is in compliance with its state obligations under UNSC Resolution No. 2178, in relation to UNSC Resolution No. 1373, on the prevention and punishment of the movement of FTFs.[688]

iii. Restriction on local mobility and communication

In addition to HDO, Sec. 34 authorizes the RTC to further restrict the right to travel of the accused while on bail.

First, the court may limit the mobility of the accused "to within the municipality or city where he/she resides or where the case is pending". Travel outside said municipality or city without authorization from the court shall cause the cancellation of the bail.

Second, the court may place the accused on house arrest and out of communication except with other house residents. The provision does not expressly state that house arrest shall be a condition for bail and that its violation shall lead to its cancellation. However, the immediately preceding provision refers to the situation in which the evidence against the accused is not strong and bail has been granted.

The standard by which the court may decide to adopt the foregoing restrictions on local mobility and communication is "the interest of national security and public safety." Such standard has been upheld by this Court as valid.[689] It sufficiently narrows the limitations on mobility and

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[686] *Defensor-Santiago v. Vasquez*, 291 Phil. 664, 680 (1993).
[687] *Dimatulac v. Hon. Villon*, 358 Phil. 328, 361-362 (1998).
[688] UNSC Resolution 2178 reads: "The Security Council ... Acting under Chapter VII of the United Nations Charter ... 5. Decides that Member States shall, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of individuals who t ravel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities."
[689] *Hon. Binay v. Hon. Domingo*, 278 Phil. 515, 521 (1991).

communication, especially as the court may relax the restrictions as it sees fit.

In sum, Sec. 34 of the ATA does not violate Sec. 6 and Sec. 13, Art. III of the Constitution. Its preventative and preservative measures are a reasonable means to attain the ends of the law.

B. Section 8 on freedom of association

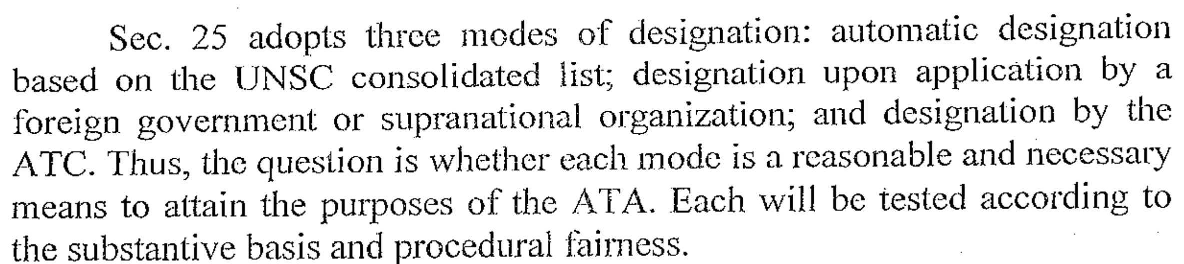
Petitioners have been officially red-tagged by government officials and agencies that are part of the ATC. Moreover, their funds have been placed under a freeze order. Their designation and proscription are therefore impending. The question is whether the application of Sec. 25 to Sec. 28 on petitioners would violate their freedom of association as guaranteed under Sec. 8, Art. III of the Constitution.

Freedom of association under Sec. 8 is self-limited for it is available only when the purposes of the association are not contrary to law. Sec. 25 to Sec. 28 of the ATA adopt a mechanism for the designation of persons and groups of persons and the proscription of groups of persons whose purposes have been found to be contrary to law, specifically the ATA, TFPSA, Cybercrime Prevention Act and other laws punishing terrorism. Moreover, designation and proscription are not punitive but preventative. They are a preliminary step to the issuance of a freeze order on monetary instruments and properties that might be used for terrorism. They notify the public of the illegitimate status of certain organizations to deter recruitment and membership in and support for said organizations.

The question is whether designation and proscription and the consequent issuance of a freeze order are reasonable means towards the ends of the ATA.

III. Section 25 on Designation and its Consequences

A. Designation by automatic adoption of the United Nations Security Council Consolidated List and upon the request of foreign or supranational jurisdiction (First and Second Modes of Designation)



Sec. 25 adopts three modes of designation: automatic designation based on the UNSC consolidated list; designation upon application by a foreign government or supranational organization; and designation by the ATC. Thus, the question is whether each mode is a reasonable and necessary means to attain the purposes of the ATA. Each will be tested according to the substantive basis and procedural fairness.

i. UNSC Consolidated List

The UNSC Consolidated List referred to in Sec. 25 of the ATA is culled from 14 sanctions regimes established under various UNSC resolutions. Under each regime, the UNSC declared that certain individuals, organizations, and activities are a threat to international peace and security and, to counter the threat, decided to impose upon these individual, organizations and activities specific sanctions short of the use of armed force.[690] UNSC Resolution No. 1373 broadened the scope of the existing sanctions regimes by declaring that other individuals and organizations supporting those identified terrorists individuals and organizations should also be designated as terrorists and subjected to the same sanctions.[691] Consequently, it imposed a positive obligation on member states to implement in their own territories the prescribed sanctions on individual, organizations, activities and undertakings that are covered by the UNSC Consolidated List.[692] It even established a committee to monitor compliance.[693]

The sanctions regime relevant to Sec. 25 of the ATA is that established under UNSC Resolution No. 1267 (1999). The UNSC declared the Islamic State in Iraq and the Levant (Da'esh), Al-Qaida, and associated individuals, groups, undertakings, and entities as threats to international peace and security, and adopted specific sanctions against them, such as asset freeze and aircraft grounding.[694] It established the ISIL (Da'esh) & Al-Qaida Sanctions Committee which implements the sanctions regime by administering the listing of individuals and organizations.[695] The updated listing criteria for this regime are set out in UNSC Resolution No. 2368 (2017), to wit:

> *1) Participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of; 2) Supplying, selling or transferring arms and related materiel to; 3) Recruiting for; or otherwise supporting acts or activities of, ISIL (Da'esh), Al-Qaida or any cell, affiliate, splinter group or derivative thereof.*

The procedure applied to the filing of requests to list, formulation of decisions on requests, adoption of the list, notification and delisting are also set out in UNSC Resolution No. 2368[696] as well as the ISIL (Da'esh) & Al-

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690 *See* Subsidiary Organs of the United Nations Security Council, United Nations, 2021, pp. 4-5.
691 Paragraphs 1 and 2.
692 *See* paragraphs 1-2.
693 Id., paragraphs 6-7. See UNDOC S/2019/998, 13 July 2020, Technical guide to the implementation of Security Council Resolution 1373 (2001) and other relevant resolutions.
694 See paragraph 4.
695 Guidelines of the Committee for the Conduct of its Work, last updated 5 September 2018, available at https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/guidelines_of_the_committee_for_the_conduct_of_its_work_0.pdf.
696 UNDOC S/RES/2368, 20 July 2017, paragraphs 1-8, 50-59 and 60-80.

Qaida Sanctions Committee Guidelines.[697] Delisting is decided by an Office of the Ombudsperson.[698]

The Abu Sayyaf Group (*ASG*) is included in the ISIL (Da'esh) & Al-Qaida Sanctions List.[699] The narrative summary on the ASG published by the UNSC states that the ASG was listed in 2001 on the basis of paragraph 8(c), UNSC Resolution No. 1333 (2000) and on the ground that it is affiliated with Al-Qaida, Usama bin Laden or the Taliban, as follows:

> *ASG has links to Al-Qaida (QDe.004) and Jemaah Islamiyah (JI) (QDe.092), and ASG members have been trained by both organizations in guerrilla warfare, military operations and bomb making. Usama bin Laden's (deceased) brother-in-law, Mohammad Jammal Khalifa, used an organization to channel funds to ASG to pay for training and arms.*
>
> *ASG has been involved in a number of terrorist attacks, including assassinations; bombing civilian and military establishments and domestic infrastructure, including airports and ferries; kidnapping local officials and foreign tourists; beheading local and foreign hostages; and extortion against local and foreign businesses.*[700]

The ASG is also included in the UNSC Consolidated List.[701]

The foregoing concrete case of the ASG demonstrates that stringent substantive and procedural standards are applied before individuals and organizations are included in the UNSC Consolidated List. The automatic designation, under Sec. 25 of the ATA, of said listed individuals and organizations can hardly be considered an unreasonable infringement of freedom of association.

Accordingly, I vote to declare the first mode of designation under Sec. 25 as not unconstitutional.

ii. Designation upon the request of a foreign or supranational jurisdiction

Sec. 25 of the ATA specifically provides that, upon written request by a foreign or supranational jurisdiction, the latter's designation of an individual or organization shall be adopted by the ATC only on the basis of its own assessment using the criteria of UNSC Resolution No. 1373, specifically under paragraphs 1 and 2. They would apply to those who: [702]

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697 Guidelines, supra note _. See Sections 4, 6, and 7.
698 UNDOC S/RES/2368, supra note, paragraphs 60-80.
699 Code No. QDe.001, available at https://scsanctions.un.org/9vpuucn-al-qaida.html,
700 See narrative summary at https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries/entity/abu-sayyaf-group.
701 Code No. QDe.001, available at https://scsanctions.un.org/vbj8hcn-all.html.
702 See Technical guide, id., paragraphs 56-67.

1. Finance terrorist acts;[703]

2. Provide or collect, by any means, directly or indirectly, of funds with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;[704]

3. Commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts;[705]

4. Make any funds, financial assets, or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts;[706]

5. Finance, plan, support, facilitate, or commit terrorist acts, or provide safe havens;[707] and

6. Cross borders as FTF or facilitate the movement of said FTFs.[708]

The foregoing substantive and procedural requirements make the second mode of designation reasonable. For this reason, I cannot join my esteemed colleagues in declaring this mode of designation as unconstitutional. Furthermore, the first and second modes of designation provide a mechanism for delisting. Under UNSC Resolution No. 1898 (2011) and Resolution No. 2368 (2017), an Office of the Ombudsperson is tasked created to receive and decide on requests for delisting from the ISIL (Da'esh) & Al-Qaida Sanctions List. With respect delisting from other sanctions list and the UNSC Consolidated List, UNSC Resolution No. 1730 (2006) established a focal point that receives and farms out requests for de-listing and letters questioning designations to the proper sanctions committee for decision.[709]

Foreign and supranational jurisdictions, such as the European Union, adopt their own delisting procedure, including a judicial process all the way to the Court of Justice of the European Union (Grand Chamber) and on substantive grounds.[710]

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[703] UNSC Resolution No. 1373, paragraph 1(a).
[704] Id., paragraph 1(b).
[705] Id., paragraph 1(c).
[706] Id., paragraph 1(d).
[707] Id., paragraph 2(e).
[708] Id., paragraph 2(f).
[709] UNDOC S/RES/1730, 19 December 2006, paragraphs 1-8.
[710] *See*, for example, Case C-79/15 P, *Council of the European Union v. Hamas*, 16 July 2017,

It is reiterated that this second mode of designation provides the mechanism for the implementation of any existing or future bilateral cooperation agreement on designation and proscription, such as the US-Israel Counter - Terrorism Cooperation Accord. [711] The necessity and urgency for this type of cross-border and inter-state cooperation arose from the reality that our borders are porous and that terrorists have no nations or nationalities. Without the second mode of designation, any future bilateral or regional agreement on reciprocity in the adoption of designations and proscriptions would have no teeth. As stated in previous portions of this Opinion, this second mode of designation is in compliance with the Philippines' international obligations.

Hence, I vote to declare the second mode of designation under Sec. 25 as not unconstitutional.

B. Designation by the Anti-Terrorism Council (Third Mode of Designation)

Interestingly, "designation" is defined in Sec. 3(b) of the ATA, as well as Sec. 3(e) of the TFPSA, by way of *describing* its *subjects* instead of providing details about the nature of the act itself. Both provisions are juxtaposed to give a clearer picture as follows:

TFPSA (Section 3)	**ATA (Section 3)**
(e) Designated persons refer to: (1) any person or entity **designated *and/or* identified** as a terrorist, one who finances terrorism, or a terrorist organization or group under the applicable United Nations Security Council Resolution or by another jurisdiction or supranational jurisdiction; (2) any organization, association, or group of persons **proscribed** pursuant to Section 17 of the Human Security Act of 2007; or (3) any person, organization, association, or group of persons **whose funds or property**, based on probable	(b) Designated Person shall refer to: Any individual, group of persons, organizations, or associations **designated *and/or* identified** by the United Nations Security Council, or another jurisdiction, or supranational jurisdiction as a terrorist, one who finances terrorism, or a terrorist organization or group; or Any person, organization, association, or group of persons **designated** under paragraph 3 of Section 25 of this Act. For purposes of this Act, the above definition shall be ***in addition* to the definition of designated persons** under Section 3 (e) of Republic Act No. 10168, otherwise known as the "Terrorism Financing Prevention and Suppression Act of 2012." (emphasis supplied)

711 *See*, for example, US-Israel Counter - Terrorism Cooperation Accord, 30 April 1996, 7 US Department of State Dispatch 19, 225-226.

cause are **subject to seizure and sequestration** under Section 39 of the Human Security Act of 2007. (emphasis supplied)	

Comparing both of the aforementioned provisions yields the following findings:

1. Semantically, the foregoing provisions do not distinguish between the terms "designated" and "identified" as it only enumerates those who may be subjected to designation. The use of the grammatical conjunction "and/or" without any provision as to both terms distinction also contributes to the indistinguishability of both terms. As such, the same indistinguishability implies that "designation" and "identification" may be used interchangeably as both appear to refer to the same official act.

2. The third paragraph in Sec. 3(b) of the ATA considers its own "definition" of "designation" as an "addition" to that provided under the TFPSA.

3. Sec. 3(e)(2) of the TFPSA also includes *proscribed* persons and entities as among those who are considered as "designated" for purposes of issuing freeze orders and subjecting targets to sequestration proceedings.

Despite the lack of a categorical statutory definition of what "designation" is, Rule 3.a.6 of the Implementing Rules (*IRR*) of the TFPSA promulgated by the Anti-Money Laundering Council (*AMLC*) undertook to define "designation" in this wise:

> RULE 3.a.6. "Designation" or "Listing". — refers to the **identification** of a person, organization, association or group of persons that is subject to targeted financial sanctions pursuant to the applicable United Nations Security Council Resolutions. (emphasis supplied)

The aforementioned rule equated "designation" with the "listing" and "identification" of individuals, organizations, associations, and groups suspected of engaging in acts relating to terrorism. However, the same definition lacks express statutory fiat as it is merely supplied by the AMLC – an administrative body.

To address the perceived statutory gap as to definition, the proper recourse to apply the rule on statutory construction of interpreting every part of the statute with reference to the context where every part must be

considered together with the other parts and kept subservient to the general intent of the whole enactment.[712] The law must not be read in truncated parts; meaning, a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.[713] Relatedly, it is also a recognized rule of statutory construction for harmonizing laws that different statutes that are in *pari materia* are to be taken together as if they were one law.[714] In this regard, statutes are in *pari materia* when they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter.[715]

Therefore, in order to define "designation" by determining its nature, it is necessary that the Court resorts to other parts of the ATA by identifying the ***effects*** of its issuance. This is provided for by Sec. 25 of the ATA, which reads as follows:

> SECTION 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. — Pursuant to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, groups of persons, organizations, or associations designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group.
>
> Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373.
>
> The **ATC may designate** an individual, group of persons, organization, or association, whether domestic or foreign, upon a finding of **probable cause** that the individual, group of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act.
>
> The assets of the **designated** individual, group of persons, organization or association above-mentioned **shall be subject** to the ***authority*** of the **Anti-Money Laundering Council (AMLC) to *freeze*** pursuant to Section 11 of Republic Act No. 10168.
>
> The designation shall be without prejudice to the proscription of terrorist organizations, associations, or groups of persons under Section 26 of this Act. (emphasis supplied)

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[712] *Phil. International Trading Corp. v. COA*, 635 Phil. 447, 454 (2010), citations omitted.
[713] *Mactan-Cebu International Airport Authority v. Urgello*, 549 Phil. 302, 322 (2007), citations omitted.
[714] *Phil. International Trading Corp. v. COA*, supra note 712, at 458, citations omitted.
[715] *The Office of the Solicitor General (OSG) v. Court of Appeals*, 735 Phil. 622, 628 (2014), citations omitted.

It can be clearly deduced from the foregoing provision that the ***effect*** of designation is **to subject** an individual, group, organization, or association to the AMLC's ***authority*** **to freeze** according to Sec. 11 of the TFPSA. In this regard, a comparison of both provisions of the ATA and the TFPSA pertaining to the authority to freeze is imperative to determine the ***scope*** of such authority:

TFPSA (Section 11)	**ATA (Section 36)**
SECTION 11. Authority to Freeze. — The **AMLC**, either upon its **own initiative** or at the **request of the ATC**, is hereby authorized to **issue** an ***ex parte*** **order to freeze** without delay: (a) property or funds that are in any way related to financing of terrorism or acts of terrorism; or (b) property or funds of any person, group of persons, terrorist organization, or association, in relation to whom there is probable cause to believe that they are committing or attempting or conspiring to commit, or participating in or facilitating the commission of financing of terrorism or acts of terrorism as defined herein. The **freeze order** shall be **effective** for a period **not exceeding twenty (20) days.** Upon a **petition** filed by the **AMLC** ***before the expiration*** of the period, the effectivity of the freeze order **may be extended** up to a period **not exceeding six (6) months** upon **order** of the **Court of Appeals**: Provided, That the **twenty-day period** shall be **tolled** upon filing of a **petition** to **extend** the effectivity of the freeze order. Notwithstanding the preceding paragraphs, the AMLC, consistent with the Philippines' international obligations, shall be authorized to **issue a freeze order** with respect to property or funds **of a designated** organization, association, group or any individual **to comply with binding terrorism-related Resolutions, including Resolution No. 1373, of the UN Security Council pursuant to Article 41 of the Charter of the UN.** Said freeze order shall be **effective** ***until*** the **basis** for the issuance thereof shall have been **lifted**. During the effectivity of the freeze order, **an**	SECTION 36. Authority to Freeze. — Upon the issuance by the court of a preliminary order of proscription or in case of **designation** under Section 25 of this Act, the **AMLC**, either upon its **own initiative** or **request of the ATC**, is hereby authorized to **issue** an ***ex parte*** **order to freeze** without delay: (a) any property or funds that are in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or any violation of Sections 4, 5, 6, 7, 8, 9, 10, 11 or 12 of this Act; and (b) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of the aforementioned sections of this Act. The **freeze order** shall be **effective** for a period **not exceeding twenty (20) days.** Upon a **petition** filed by the **AMLC** ***before the expiration*** of the period, the effectivity of the freeze order **may be extended** up to a period **not exceeding six (6) months** upon **order** of the **Court of Appeals**: Provided, That, the **twenty-day period** shall be **tolled** upon filing of a **petition** to **extend** the effectivity of the freeze order. Notwithstanding the preceding paragraphs, the AMLC, consistent with the Philippines' international obligations, shall be authorized to **issue a freeze order** with respect to property or funds **of a designated** organization, association, group or any individual **to comply with binding terrorism-related resolutions, including UNSCR No. 1373 pursuant to Article 41 of the**

aggrieved party may, ***within*** **twenty (20) days** from ***issuance***, **file** with the **Court of Appeals** a **petition** to **determine the basis** of the freeze order according to the **principle of effective judicial protection**. However, if the property or funds subject of the freeze order under the immediately preceding paragraph are found to be in any way related to financing of terrorism or acts of terrorism committed within the jurisdiction of the Philippines, said property or funds shall be the subject of civil forfeiture proceedings as hereinafter provided. (emphasis supplied)	**charter of the UN**. Said freeze order shall be **effective** ***until*** the **basis** for the issuance thereof shall have been **lifted**. During the effectivity of the freeze order, **an aggrieved party** may, ***within*** **twenty (20) days** from ***issuance***, **file** with the Court of Appeals a **petition to determine the basis** of the freeze order according to the **principle of effective judicial protection**: Provided, That the person whose property or funds have been frozen may withdraw such sums as the AMLC determines to be reasonably needed for monthly family needs and sustenance including the services of counsel and the family medical needs of such person. However, if the property or funds subject of the freeze order under the immediately preceding paragraph are found to be in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or any violation of Sections 4, 5, 6, 7, 8, 9, 10, 11 or 12 of this Act committed within the jurisdiction of the Philippines, said property or funds shall be the subject of civil forfeiture proceedings as provided under Republic Act No. 10168. (emphasis supplied)

Based on the aforementioned comparison, it can now be clearly deduced that:

1. The third paragraph in Sec. 25 of the ATA, as well as Sec. 3(e)(3) of the TFPSA, empowers the ATC to: (a) adopt the list of terrorists provided by the United Nations (UN) Security Council pursuant to its terrorism-related resolutions; and (b) designate as terrorists, *based on probable cause*, individuals, associations, organizations, and groups.

2. The AMLC may issue 20-day *ex parte* freeze orders; either: (a) *motu proprio*; (b) upon the ATA's request; or (c) in compliance with UN Security Council resolutions.

3. Pursuant to the "principle of effective judicial protection," parties aggrieved by the aforementioned *ex parte* freeze order may file a petition with the Court of Appeals (*CA*) to determine such order's basis.

4. The properties of designated individuals, organizations, associations, or groups may be the subject of forfeiture proceedings under the TFPSA.

The aforementioned enumeration appears to present due process concerns as the AMLC can preliminarily restrict a target person, entity, or group's use of owned or held assets with the end goal of averting the consummation of terrorism - without judicial authority. However, the succeeding discussions will elucidate the reasons why the ATA's official act of "designation" does not violate the constitutional guarantee of due process.

First, as to the issue of supposed absence of judicial protection, there is no controlling and precise definition of due process.[716] The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.[717] Due process of law guarantees "no particular form of procedure; it protects substantial rights."[718] Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.[719] Its flexibility is in its scope—once it has been determined that some process is due—is a recognition that not all situations calling for procedural safeguards also call for the same kind of procedure.[720] This is especially applicable in matters involving administrative due process where its essence was explained in *Cornejo v. Gabriel and Provincial Board of Rizal*[721] which reads:

> The fact should not be lost sight of that we are dealing with an administrative proceeding and not with a judicial proceeding. As Judge Cooley, the leading American writer on Constitutional Law, has well said, **due process of law is not necessarily judicial process; much of the process by means of which the Government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law, as is judicial process.** While a day in court is a matter of right in judicial proceedings, in administrative proceedings it is otherwise since they rest upon different principles. In certain proceedings, therefore, of an administrative character, it may be stated, without fear of contradictions that the right to a notice and hearing are not essential to due process of law. Examples of special or summary proceedings affecting the life, liberty or property of the individual without any hearing can easily be recalled. Among these are the arrest of an offender pending the filing of charges; the restraint of property in tax cases; the granting of preliminary injunctions *ex parte*; and the suspension

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[716] *Morfe v. Mutuc*, supra note 18 at 432-433, citations omitted.
[717] *Perez v. Phil. Telegraph and Telephone Co.*, 602 Phil. 522, 538 (2009), citations omitted; see also *Stanley v. Illinois*, 405 U.S. 645 (1972), citations omitted.
[718] *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974), citations omitted.
[719] *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886 (1961).
[720] See *Morrissey v. Brewer*, 408 U.S. 471 (1972).
[721] 41 Phil. 188, 193-194 (1971), citations omitted.

of officers or employees by the Governor General or a Chief of a Bureau pending an investigation. (emphasis supplied)

In the case of terrorism, an extraordinary situation where some valid governmental interest is at stake, **postponing the hearing until after deprivation is justified.**[722] Self-preservation is the first law of nature.[723] Moreover, parallel to individual liberty is the natural and illimitable right of the State to self-preservation.[724] On the part of the State, protecting public welfare by way of police power is an act of self-preservation.[725] This is justified by the realization that some individual liberties must give way to general welfare or public interest concerns.[726]

In other words, no right is absolute.[727] It must be borne in mind that the Constitution, aside from being an allocation of power is also a social contract whereby the people have surrendered their sovereign powers to the State for the common good.[728] It is also in recognition of the fundamental precept that police power has for its object the improvement of social and economic conditions affecting the community at large and collectively with a view to bring about "the greatest good of the greatest number."[729] Even liberty itself, the greatest of all rights, is not an unrestricted license to act according to one's own will—it is only freedom from restraint under conditions essential to the **equal enjoyment of the same right by others.**[730] However, it is also necessary to stress that: "Individual rights may be adversely affected by the exercise of police power to the extent only — and only to the extent — that may **fairly** be **required** by the **legitimate demands** of **public interest** or public **welfare.**"[731]

In essence, **public interest is basically an aggregate or collection of everyone's private rights**. This is also the essence of majority rule which is a necessary principle in this democratic governance.[732] Hence, in litigations between governmental and private parties, courts go much further both to give and withhold relief in furtherance of public interest than they are accustomed to go when only private interests are involved.[733] These rationalizations allow a summary but temporary deprivation of rights in the

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[722] See *Boddie v. Connecticut*, 401 U.S. 371 (1971), citations omitted.
[723] *Soplente v. People*, 503 Phil. 241, 242 (2005), citing Samuel Butler.
[724] *Estrada v. Sandiganbayan*, supra note 85 at 338.
[725] See Dissenting Opinion of Justice Antonio T. Carpio in *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, 809 Phil. 315, 388 (2017), citing *City Gov't. of Quezon City v. Hon. Judge Ericta*, 207 Phil. 648, 654 (1983).
[726] See *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 298 (2009), citations omitted.
[727] *Cf. Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service*, 726 Phil. 104, 122 (2014), citations omitted.
[728] *Marcos v. Sec. Manglapus*, 258 Phil. 479, 503-504 (1989).
[729] *Churchill and Tait v. Rafferty*, 32 Phil. 580, 604 (1915), citations omitted.
[730] *Case v. Board of Health*, 24 Phil. 250, 281 (1913), citing *Crowley v. Christensen*, 137 U.S. 86, 89 (1890).
[731] *Homeowners' Association of the Phils., Inc. v. The Municipal Board of the City of Manila*, 132 Phil. 903, 907 (1968).
[732] *Estrada v. Escritor*, 455 Phil. 411, 582 (2003), citations omitted.
[733] *Executive Secretary v. Court of Appeals*, 473 Phil. 27, 60-62 (2004), citations omitted.

form of *ex parte* freeze orders to prevent terrorists from achieving their objectives and, thereby, prevent massive casualties. To hold otherwise and afford the individual or group, whose bank account is to be frozen, an opportunity to be heard would be to grant the same individual or group an opportunity to divert the funds so that they may still be used to fund their terrorist efforts. Such absurd scenario would, in effect, greatly endanger public safety for the "long arm of the law" would be rendered inutile in brining criminals to justice. This also holds true especially in acts preparatory to terrorism where the freezing of funds requires its immediate implementation.

In the case of the AMLC's power to issue twenty (20)-day *ex parte* freeze orders, it is justified for being a precautionary and provisional measure intended to prevent a greater evil: infliction of massive casualties brought about by terrorism. Under the "principle of effective judicial protection," aggrieved parties are entitled to question the basis of the AMLC's *ex parte* freeze orders before the CA; provided that the same remedy is pursued within the 20-day period from **issuance** of such orders. Here, procedural due process is not violated when the deprivation of a right or legitimate claim of entitlement is just temporary or provisional. When adequate means or processes for recovery or restitution are available to a person deprived of a right or legitimate claim of entitlement are in place, everyone is assured that the State—even in the legitimate exercise of police power—cannot summarily confiscate these rights or entitlements without undergoing a process that is due to all. The only exception where the State can effect a summary but permanent deprivation of a right or entitlement is if the same endangers public safety or public health which is, as earlier pointed out, a nuisance *per se*. As long as deprivation is temporary and due process requirements are still available to the one deprived of a right, the Constitution's due process clause cannot be considered to have been violated.[734] In essence, freeze orders should only be a **preliminary step** towards justified final deprivations of rights which is civil forfeiture—a judicial process.

Even assuming that the aggrieved parties fail to question the basis of the AMLC's *ex parte* freeze orders before the CA within the 20-day period from issuance of such orders, remedies are still available for the recovery of the use of such frozen assets. To begin with, Sec. 18 of the TFPSA provides:

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[734] In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected (*Vivo v. Philippine Amusement and Gaming Corporation*, 721 Phil. 34, 43 [2013]).

SECTION 18. Civil Forfeiture. — The procedure for the civil forfeiture of property or funds found to be in any way related to financing of terrorism under Section 4 and other offenses punishable under Sections 5, 6, and 7 of this Act shall be made in accordance with the AMLA, as amended, its Revised Implementing Rules and Regulations and the **Rules of Procedure promulgated by the Supreme Court**. (emphasis supplied)

Connectedly, Secs. 8 and 9 of A.M. No. 05-11-04-SC[735] (Rules on Civil Forfeiture) provides for the following notice requirement:

SECTION 8. Notice and Manner of Service. —

(a) The **respondent** shall be **given notice** of the petition in the same manner as service of summons under Rule 14 of the Rules of Court and the following rules:

(1) The notice shall be **served** on respondent **personally**, or by any **other means** prescribed in Rule 14 of the Rules of Court;

(2) The notice shall contain: (i) the title of the case; (ii) the docket number; (iii) the cause of action; and (iv) the relief prayed for; and

(3) The notice shall likewise contain a *proviso* that, if no comment or opposition is filed within the reglementary period, the court shall hear the case *ex parte* and render such judgment as may be warranted by the facts alleged in the petition and its supporting evidence.

(b) Where the respondent is designated as an unknown owner or whenever his **whereabouts are unknown** and **cannot be ascertained by diligent inquiry**, service may, by leave of court, be **effected** upon him **by publication of the notice** of the petition in a **newspaper of general circulation** in such places and for such time as the court may order. In the event that the cost of publication exceeds the value or amount of the property to be forfeited by ten percent, publication shall not be required.

SECTION 9. **Comment** or **Opposition**. — The respondent shall file a verified comment or opposition, not a motion to dismiss the petition, within fifteen days from service of notice or within thirty days from the publication in case service of notice was by publication.

The comment or opposition shall (a) state whether respondent admits the allegations of the petition; (b) specify such inaccuracies or falsities in petitioner's statement of facts; and (c) state clearly and concisely the respondent's defense in law and the specific and pertinent provisions of the law and their applicability to respondent. (emphasis supplied)

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[735] Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds representing, involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as amended (November 15, 2005).

The aforecited rule affords parties aggrieved by the AMLC's *ex parte* freeze orders notice as well as opportunity to participate in the forfeiture proceedings. Moreover, the Rules on Civil Forfeiture also provides for a substituted service by way of publication if the whereabouts of aggrieved parties, who are respondents in civil forfeiture proceedings, cannot be "ascertained by diligent inquiry." As matter of course, public petitioners in forfeiture proceedings are required to at least present some evidence or factual basis as to the degree of such "diligent inquiry" to ascertain the respondents' whereabouts. This protects respondents from arbitrariness and abuse as regards the serving of notices. What this essentially means is that aggrieved parties may still have a chance to assail the basis of freeze orders and to discharge the properties from State custody in their favor. Since both notice and opportunity to be heard are ensured by the Rules on Civil Forfeiture, the due process rights of aggrieved parties are amply protected.

Second, the power to determine probable cause is not only limited to magistrates of regular courts. Even law enforcers may resort to the determination of probable cause to prevent the effects or direct results of crimes being committed *in flagrante delicto*. This is in consideration that a nuisance *per se* may be summarily abated under the undefined law of necessity for being a direct menace to public health or safety.[736] Allowing or requiring law enforcers to determine the presence of probable cause in conducting *in flagrante* arrests and other preventive measures even discourages and puts in check any arbitrariness or potential abuse on the part of State agents. The reason being is that the presence or absence of probable cause may be assailed by aggrieved parties during court proceedings. In this regard, law enforcers as well as statutorily authorized administrative agencies are inherently empowered to abate any nuisance *per se*. A contrary principle would render the very purpose of the Executive Branch as well as all offices under it inutile. More importantly, such contrary principle would violate the State's obligation under the social contract embodied in Secs. 4 and 5, Art. II of the Constitution to protect its citizens as well as those sojourning within its territory.

Last, as to an aggrieved party's ability to timely file a petition with the CA to question the basis of an *ex parte* freeze order, Sec. 15 of the TFPSA provides a mode of notice for aggrieved parties as follows:

> SECTION 15. **Publication of Designation**. — The Department of Foreign Affairs with respect to designation under Section 3 (e) (1) of this Act, and the ATC with respect to designation under Section 3 (e) (2) and (3) and Section 11 of this Act, shall **publish a list of the designated persons** to which this Act or the Human Security Act applies. The concerned agencies shall ensure that an **electronic version of the document** is **made available** to the **public** on their **respective website**.

[736] See *Monteverde v. Generoso*, 52 Phil. 123, 127 (1928); *Salao v. Santos*, 67 Phil. 547, 550 (1939).

> Each respective agency or authority shall **ensure** that **information on procedures** established in rules and regulations issued pursuant to this Act for **delisting**, **unfreezing** and **exemptions** for basic, necessary or extraordinary expenses shall likewise be **made available** in their **respective website**. (emphasis supplied)

The aforementioned provision on publication of the list of designated persons guarantees the due process rights of aggrieved parties to notice and opportunity to be heard. **Suspected terrorist individuals, organizations, associations, or groups cannot reasonably be expected to maintain a predictable mailing address as they usually conduct their operations clandestinely to avoid run-ins with law enforcers.** In this regard, an aggrieved party cannot reasonably complain of being denied due process in view of the statutorily mandated publication requirement.

Apart from the judicial remedies explained in the preceding discussions, parties aggrieved by the AMLC's *ex parte* freeze order may pursue the administrative remedy of delisting. This is provided under Sec. 22 of the TFPSA which reads:

> SECTION 22. Implementing Rules and Regulations. — Within thirty (30) days from the effectivity of this Act, the **AMLC**, in coordination with relevant government agencies, shall **promulgate rules and regulations** to **implement effectively** the provisions of this Act.
>
> The **rules and regulations** to be promulgated **may include**, but **not limited to**, designation, ***delisting***, notification of matters of interest of persons affected by the Act, ***exceptions*** for basic, necessary and extraordinary expenses, matters of evidence, definition of probable cause, inter-agency coordination, publication of relevant information, administrative offenses and penalties, procedures and forms, and other mechanisms for implementation of the Act. (emphasis supplied)

The aforecited statutory provision is even fleshed-out by no less than the salient portions of Rule 6 of the IRR to the ATA, as follows:

> RULE 6.9. **Request for Delisting.** —
>
> For designations made under Rule 6.2 and Rule 6.3, a designated party or its assigns or successors-in-interest **may file a verified request for delisting** before the ATC **within fifteen (15) days from publication of the designation.**
>
> A request for delisting may be filed as often as the grounds therefor exist. However, no request for delisting may be filed within six (6) months from the time of denial of a prior request for delisting.
>
> The request shall set forth the **grounds** for **delisting**, as follows:
>
> a. **mistaken identity**;

b. **relevant and significant change of facts or circumstance;**

c. **newly discovered evidence;**

d. **death of a designated person;**

e. **dissolution or liquidation of designated organizations, associations, or group of persons;** or

f. **any other circumstance which would show that the basis for designation no longer exists.**

For designations made under Rule 6.2, the request for delisting shall be accompanied by proof of delisting by the foreign jurisdiction or supranational jurisdiction.

For designations made under Rule 6.1, the ATC may *motu proprio* or upon request of a designated person **file a petition for delisting** with the **appropriate committee of the UNSC**. The petition for delisting may also be **filed directly by the designated person** pursuant to the rules established by the appropriate UNSC committee.

The ATC shall be responsible for posting of the updated UNSC procedures for delisting and access to frozen funds setting forth the web links and addresses of the relevant UNSC committee responsible for acting on delisting requests and access to frozen funds.

RULE 6.10. **Notice of Delisting.** —

Where persons, organizations, associations, or group of persons are delisted by the UNSC or its appropriate sanctions committee, the **ATC shall immediately issue a resolution** that the person, organization, association, or group of persons **has been delisted.**

All ATC **resolutions of delisting** shall be **published in/posted** on a **newspaper of general circulation**, the **online official gazette**, and the **official website of the ATC**. (emphasis supplied)

The aforementioned rules provide for a detailed administrative procedure as regards delisting and exemption in addition to judicial guarantees. It also ensures that parties aggrieved by the AMLC's *ex parte* freeze order can ventilate their grievances through an expedient administrative recourse such as delisting or exemption. In effect, such administrative procedure of delisting and exemption complements and strengthens an aggrieved party's due process rights already guaranteed by the "principle of effective judicial protection."

Based on the foregoing, I vote to declare the third mode of Sec. 25 as not unconstitutional.

(3) Proscription

Secs. 26 to 28 of the ATA adopt a system of proscription according to which a group of persons, organization or association is declared as a terrorist and outlawed by the CA. Unlike designation which can refer to individuals, proscription attaches only to groups. Proscription clearly applies to associations or groups whose purpose is unlawful under Secs. 4 to 14 of the ATA and other laws punishing terrorism. Consequently, the right to form or maintain such association can be validly restricted if not denied in order to prevent and suppress terrorism. Proscription is the means employed to that end.

Sec. 26 and Sec. 27 expressly provide that "it shall be the burden of the applicant to prove that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26," in that the respondent "commits any of the acts defined and penalized under Secs. 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, or organized for the purpose of engaging in terrorism."

For purposes of issuing a preliminary proscription order, the burden is discharged if there is probable cause established through a "verified application which is sufficient in form and substance." With respect to an order for proscription, the same shall issue only after the applicant has discharged its burden in an adversarial process, with due notice to respondent and opportunity to be heard. The same adversarial process shall take place if proscription is sought by a foreign or supranational jurisdiction through the ATC and Department of Justice (*DOJ*). This entails access by the CA and the suspected association and its suspected members to information on the substantive and procedural basis of the request for proscription. The extent of such access, particularly to intelligence information, would have to be delineated according to actual cases. Such transparency is unique in the ATA, for in other jurisdictions suspected members and even their counsels are denied full access to the factual basis of counter-terrorism measures, especially when the factual basis consists of military or security intelligence information, domestic or foreign.[737]

The law even requires continuous hearings and commands completion within 6 months from application.

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[737] *A and others v. Secretary of State for the Home Department* [2004] UKHL 56 (Belmarsh Cases); *Charkaoui v. Canada (Minister of Citizenship and Immigration)*, 2007 SCC 9; *Rasul v. Bush*, 542 U.S. 466 (2004), *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), *Boumediene v. Bush*, 553 U.S. 723 (2008), and *Adnan Farhan Abdul v. Obama, President of U.S., et al.*, Order Nr. 11-1027, Order List: 567 U.S., 11 June 2012, p. 7. In these cases, the detainee had limited access to evidence, information and documents relating to the charges against them. Right to confrontation of the witnesses against them was also limited to the point that mere intelligence report coming from a government source would suffice.

Based on their plain language, Secs. 26, 27, and 28 clearly delineate the basis and scope of proscription. They provide a reasonable means to attain the ends of the ATA.

In sum, designation and proscription are preventative measures that impose reasonable restriction on the right of association. Sec. 25 to Sec. 28 do not violate Sec. 8, Art. III of the Constitution.

Section 14 on presumption of innocence

Petitioners argue that Sec. 25 to Sec. 28 violate their right to presumption of innocence under Sec. 14, Art. III of the Constitution. According to them, their designation and proscription can preempt and prejudge the outcome of their prosecution and trial, for the designation and proscription will set off the process of freezing their funds and assets, subjecting them to surveillance, and exposing them to a charge of recruitment, membership, and support.

Petitioners are mistaken that a finding of probable cause amounts to a prejudgment and a denial of presumption of innocence. A finding of probable cause is not a determination of guilt or innocence.[738] While probable cause is sufficient to initiate a criminal case, it is not enough to obtain a conviction. It is not mere probability of the commission of criminal acts but rather evidence beyond reasonable doubt of the commission of the crime and the culpability of the accused person that can spell the difference between guilt and innocence.[739] Consequently, even a designated individual whose funds have been frozen would still be entitled to a presumption of innocence after being charged in court for the burden rest on the prosecution to present evidence that can overcome the presumption and prove the charge beyond reasonable doubt.

For the same reason, a finding of probable cause in a proceeding for the preliminary proscription of an association is without prejudice to the right of its individual members to be presumed innocent, for Sec. 10 on recruitment, membership, and support require evidence beyond reasonable doubt of knowledge, intent, and voluntariness.

With respect to the proscription of an association following an adversarial proceeding before the CA, the presumption of innocence of its members remains only as to the element of knowledge, consent, and voluntariness, which the prosecution must prove beyond reasonable doubt. As to the status of the association itself, the trial court would be bound through judicial notice and publication of any order of proscription previously issued by the CA.

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[738] *Hong v. Aragon*, G.R. No. 209797, September 8, 2020.
[739] *Cabrera v. Marcelo*, 487 Phil. 427, 440 (2004).

Accordingly, I vote to declare Sec. 25 (in its entirety) and Secs. 26 to 28 as not unconstitutional.

IV. Whether or not Section 29 violates the principle of separation of powers under the 1987 Constitution

Throughout its history, Philippine criminal law has seen several changes in the liability of public officers who, after the lapse of the permissible period, fail to deliver to judicial authorities a person who has been detained without a warrant of arrest. Art. 200 of The Penal Code of the Philippine Islands (1887)[740] does not punish as arbitrary detention a public official who, by reason of a crime, "arrests a person without authority of law or by virtue of some regulation of a general character in force in the Philippines."[741] However, Art. 202 punishes a public official who, not having authorization, "shall detain a person for a crime and shall not deliver him to judicial authority within the twenty-four hours after the detention took place."

The period was revised in 1930 to one hour[742] and in 1932 to six hours.[743] The period was again revised in 1954 under R.A. No. 1083, to wit:

> *Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: six hours, for crimes or offenses punishable by light penalties, or their equivalent; nine hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.*[744]

P.D. No. 1404 retained the 12-18-36 periods but, as deemed necessary by the President in specific crimes affecting national security, permitted a delay of up to 30 days or more in the delivery of detained persons to the proper judicial authorities:

> *... the President may, in the interest of national security and public order, authorize by Executive Order longer periods, which in no case shall exceed 30 days, or for as long as, in the determination of the President, the conspiracy to commit the crime against national security and public order continues or is being implemented, for the delivery of persons arrested for crimes or offenses against public order as defined in Title III, Book II of this Code, namely: Article 134, 136, 138, 139, 141, 142, 143,*

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[740] Translation of the Penal Code in force in the Philippines Royal Decree of September 4, 1884 (Washington, Government Printing Office, 1900).

[741] In *U.S. v. Figueroa*, 23 Phil. 19, 21 (1912), the accused had committed larceny and was detained without authorization for almost 24 hours. In contrast, in *U.S. v. Braganza*, 10 Phil. 79, 80 (1908), there was arbitrary detention because the accused detained a person not by reason of a crime.

[742] Art. 125, Revised Penal Code, Act No. 3815 [December 8, 1930].

[743] Art. 125 of Act No. 3815, as amended by, Act No. 3940 [November 29, 1932].

[744] Article 125 of Act No. 3815, as amended by R.A. No. 1083 [June 15, 1954].

> *144, 146, and 147, and for subversive acts in violation of Republic Act No. 1700, as amended by Presidential Decree No. 885, in whatever form such subversion may take; as well as for the attempt on, or conspiracy against, the life of the Chief Executive of the Republic of the Philippines, that of any member of his family, or against the life of any member of his Cabinet or that of any member of the latter's family; the kidnapping or detention, or, in any manner, the deprivation of the Chief Executive of the Republic of the Philippines, any member of his family, or any member of his Cabinet or members of the latter's family, of their liberty, or the attempt to do so; the crime of arson when committed by a syndicate or for offenses involving economic sabotage also when committed by a syndicate, taking into consideration the gravity of the offenses or acts committed, the number of persons arrested, the damage to the national economy or the degree of the threat to national security or to public safety and order, and/or the occurrence of a public calamity or other emergency situation preventing the early investigation of the cases and the filing of the corresponding information before the civil courts.*[745]

In re Morales, Jr. v. Enrile, charges were filed after a delay of 60 days following the warrantless arrest and detention of petitioners. Citing PD 1404, the Court denied petitioners' application for *habeas corpus*.[746]

Executive Order No. 272 (1987) reverted to the shorter periods of "twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent, and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent."[747] The HSA extended the period to three days for crimes of terrorism.[748]

The foregoing changes in the period of detention following a warrantless arrest demonstrate that there is no constitutional standard. The period is wholly within the wisdom of Congress. There is no constitutional proscription against the adoption of a period of 24 days. It should be pointed out that in foreign jurisdictions, the period of administrative/preventive/pre-charge detention varies: in the US, it is 7 days or an indefinite period with respect to aliens;[749] Singapore, indefinite;[750] UK, 28 days;[751] Australia, 14 days;[752] and Canada, 7 days.[753] The purpose can be as broad as the protection of national security or as concrete as the likelihood of preventing a terrorist attack.

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[745] Presidential Decree No. 1404, [June 9, 1978].
[746] 206 Phil. 466, 497-498 (1983).
[747] Sec. 1, Executive Order No. 272 [July 25, 1987].
[748] Sec. 18.
[749] Sec. 412, Patriot Act, 115 STAT. 272.
[750] Chapter II, Internal Security Act.
[751] Terrorism Act 2006 (Disapplication of Section 25) Order 2008. UK derogated from the liberty provision in European Convention on Human Rights when the European Court of Human Rights declared that a pre-charge detention of more than four days violates the convention. Under the 2001 law, the period of detention was indefinite.
[752] Terrorism (Preventative Detention) Act 2006 (WA).
[753] Anti-Terrorism Act 2015.

Moreover, notwithstanding the extension of the period of warrantless detention, Sec. 29 to Sec. 33 of the ATA provide for certain guarantees of the rights of the detained person and impose a positive obligation on law enforcers and military personnel to respect these rights under pain of penalty.

Delivery of a detained person to the proper judicial authorities means the filing of a complaint or information in court.[754] While Sec. 29 permits a delay in such filing, it requires that, immediately after the warrantless arrest and detention of the suspect, the law enforcer or military personnel must, within 48 hours, "notify in writing the judge of the court nearest the place of apprehension or arrest" and furnish copy of the notice to the ATC and the Commission on Human Rights (*CHR*). The notice must state the particulars of the warrantless arrest and detention as well as the condition of the detained suspect. More importantly, Sec. 29 penalizes non-compliance with this requirement of notice.

It also notable that Sec. 29 does not preclude the application of Rule 7, Rule 112 of the 2000 Rules of Criminal Procedure. The detained suspect may ask for a preliminary investigation. Although the periods under Art. 125 of the RPC would have to be waived, the suspect may already apply for bail and be assured that the preliminary investigation shall "be terminated within fifteen (15) days from its inception." Rule 9.7 of the ATA IRR acknowledges the availability of the options under Sec. 7, Rule 112.

Sec. 30 of the ATA expressly guarantees the right of the detained suspect to be "informed of the cause or causes of his/her detention in the presence of his legal counsel."[755] The law does not expressly restrict access to the factual basis of the detention, unlike in other jurisdictions where even the courts have only restricted access to secret information regarding a detained suspect.[756]

Hence, Sec. 29 does not violate Sec. 2, Art. III of the Constitution. It adopts reasonable measures to attain the purposes of the ATA.

Some members of the Court posit that, under Sec. 29 of the ATA, the ATC can authorize law enforcers and military personnel to arrest suspected terrorists. The impression is engendered by the following unfortunate phraseology:

> *The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military*

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[754] *Leviste v. Alameda*, 640 Phil. 620, 635 (2010).

[755] *See* also Rule 11.2(b), ATA IRR.

[756] *A. and Others v. the United Kingdom* (Application no. 3455/05), Judgment of 19 February 2009, European Court of Human Rights, pars. 203-204. In this case, the detainee was subjected to a "closed materials" system of hearing where only courts have access to the material while the detainee may only have access to materials that have been filtered by the court. In some instances, access by the court is through an in-camera session.

> *personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall x x x*

Consequently, they argue that Sec. 29 violates Sec. 2, Art. III of the Constitution, on the right to liberty and security of the person, in that it allows the ATC to usurp the exclusive authority of the courts to issue arrest warrants.

Public respondents expressly and repeatedly represented in their pleadings that Sec. 29 presupposes a valid warrantless arrest, and that the phrase "having been duly authorized in writing by the ATC" refers to those law enforcers and military personnel who may have validly effected warrantless arrests. Referring to Sec. 29, Rule 9 of the ATA IRR provides:

> *RULE 9.2. Detention of a Suspected Person without Warrant of Arrest. — A law enforcement officer or military personnel may, without a warrant, arrest:*
>
> *a. a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;*
>
> *b. a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which has just been committed; and*
>
> *c. a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another.*

Regrettably, the title of Sec. 29 alone - Detention Without Judicial Warrant of Arrest – coupled by the phrase "having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined under...of the ATA" might suggest to the cursory reader the validity of the objections raised.

A close reading of Sec. 29, however, will show that any alarm that Sec. 29's title and contents may raise or suggest *at first glance* are in fact misplaced.

A reasonable **reading and analysis** of the *whole provision and the verification of the referenced Art. 125 of the Revised Penal Code (RPC)* disclose that Sec. 29's thrust, in fact, is simply to extend the period originally provided under the RPC's Art. 125 for the delivery to judicial

authorities of an ATA suspect arrested without a formally-issued warrant. Delivery to judicial authorities means the formal filing of charges in court.[757]

A complete reading of Sec. 29 is necessary as its title is not a reliable indicator of what it provides; this title is no more than an abbreviated description that, on its face, speaks of "detention" and "without judicial warrant."

The combination of these terms purportedly give rise to confusion and questions. Neither does the phrase "having been duly authorized in writing by the ATC has taken custody of a person suspected of committing x x x (a violation of the ATA)" appear to be informative.

These imprecisions, however, are not sufficient to invalidate the provision as - carefully read and considered in its entirety, together with a reading of the RPC's Art. 125 – Sec. 29's true meaning and intent clearly emerge: to establish an exception to the time limits that Art. 125 originally provides.

That Sec. 29 does not contemplate the issuance of a warrant of arrest by any entity is clear from an examination of its text; no mention of any kind of the issuance of a warrant of arrest is ever made. The written authority that the ATC can issue relates to a person already in custody.

Thus, the exact situation that Sec. 29 refers to (without need for detailed specification because of its reference to Art. 125 of the RPC) is a warrantless arrest situation. It provides for a period of 14 days that the ATC, by written authorization, can extend by 10 days, or a total delivery period of 24 days before filing of formal charges becomes mandatory. Upon failure to deliver within the extended period, the arresting enforcement officer suffers the added liabilities that Sec. 29 likewise provides.

The reading that the ATA authorizes the ATC to issue a written authorization to arrest a terrorism suspect is totally unwarranted as, by law, a person can only be arrested based on a warrant of arrest or through a warrantless arrest made under specified conditions.

A warrant of arrest, as provided by no less than Sec. 3, Art. III of the Constitution, can only be issued *"upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing... the person...to be seized."* This constitutional provision is deemed read and is part and parcel of Sec. 29 and of the whole ATA.

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[757] See *Sayo v. Chief of Police*, 80 Phil. 859, 867 (1948).

The ATC, despite its statutory powers under the ATA, is not a judge or a judicial officer; it is an executive agency by express terms of the ATA's Sec. 45. It cannot, therefore, issue a warrant of arrest and there is no textual basis under Sec. 29 to conclude that what it contemplates is in fact the authority to issue a warrant of arrest.

To reiterate, what the text of Sec. 29 expressly supports is the grant of a written authority to an enforcement officer to deliver a person already under custody after a warrantless arrest, to judicial authorities within a period extended from the original periods provided by Art. 125 of the RPC. In other words, it is an exception to the delivery period that Art. 125 originally provides.

Sec. 29 could not have also been an authority to undertake a warrantless arrest as, again, nothing on this point is expressed in its text. Besides, warrantless arrest is governed by Rule 113 of the Rules of Court where the required probable cause is approximated by any of following attendant conditions:

1. When, in the presence of the policeman, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. This is the "*in flagrante delicto*" rule.

2. When an offense has just been committed, and he has probable cause to believe, based on personal knowledge of facts or circumstances, that the person to be arrested has committed it. This is the "hot pursuit" arrest rule.

3. When the person to be arrested is a prisoner who has escaped from a penal establishment.

These conditions are not touched at all by the terms of Sec. 29, which expressly deals with the extension of the delivery to the judicial authorities of an already arrested suspect.

Based on these considerations, it is clear that Congress, under ATA's Sec. 29, merely established an exception to Art. 125 of the Revised Penal Code (a substantive law that Congress can amend) with respect to the time limit for the delivery to judicial authorities of persons arrested without warrant for violation of the ATA: Sec. 29 simply extends the time limit upon written authority given by the ATC.

This view is confirmed and strengthened by the second paragraph of Sec. 29, which provides that:

> "Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or

> association proscribed under Sec. 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.
>
> The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities."

Thus, instead of the immediate filing of charges in court after a warrantless arrest, a notification shall immediately be made to the nearest court, the ATC, and to the CHR, but the filing of charges will not be until the periods that Sec. 29 provides.

This view is further confirmed by the terms of the ATA IRR – the directive of the DOJ to enforcement officers on how the ATA is to be implemented. Rule 9 of this IRR spells out the finer details of the handling of suspected persons arrested without warrant for violation of the ATA. Arrest without warrant, of course, can be made without need for the ATA as the conditions in effecting such arrest are spelled out under Rule 113 of the Rules of Court, as indicated above.

This conclusion brings us to the petitioners' next objection – that Sec. 29 violates the Constitution by providing for an extended detention period of 10 days and a maximum period of 24 days, without need of showing probable cause.

The extension that the ATC can issue does not need any showing of probable cause (or its equivalent in warrantless arrests) simply because it does not involve any arrest, only the continued detention without need of the immediate filing of charges against a suspected ATA violator who had been previously arrested under conditions approximating the existence of probable cause.

The granted authority is a purely administrative matter pursuant to the ATC's role and responsibilities under the ATA – as the executive agency tasked to oversee the effectiveness of the ATA by coordinating and supporting the ATA's enforcement and investigatory activities.

Contrary to the petitioners' claim, the ATC's authority to issue a written authorization is not unbridled; it can only be made if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or to complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another act of

terrorism; and (3) the investigation is being conducted properly and without delay.

To ensure that the ATA can achieve its avowed objectives through effective investigation and enforcement, Congress may – in its wisdom – provide for the period needed for the ATC's effective delivery of its tasks. In the absence of presented evidentiary facts showing grave abuse of discretion, this Court should not intervene by substituting its judgment on what the ATC needs to undertake to discharge its ATA responsibilities.

In its last point, the petitioners appear to confuse arrest without warrant and the required period for delivery to judicial authorities, with the *habeas corpus* provision of the Constitution.

With respect to the writ of *habeas corpus*, our basic Charter provides that –

> Art. VII, Section 18.
>
> x x x x
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The three-day limit for the delivery to judicial authorities is specifically mentioned in relation with the suspension of the writ of *habeas corpus*, not with the delivery to judicial authorities of those otherwise detained without warrant – a matter that Art. 125 of the Revised Penal Code governs and which has now been amended for exclusive ATA purposes. The constitutional deliberations, footnoted below, best confirm the correctness of this view.[758]

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[758] MR. SARMIENTO: I wish to propose an amendment to the amendment of the honorable Vice-President. He is for the charging of the accused within five days. My submission, Madam President, is that five days is too long. Our experience during martial law was that torture and other human rights violations happened immediately after the arrest, on the way to the safe houses or to Camp Aguinaldo, Fort Bonifacio or Camp Crame. I repeat, five days is too long, Madam President. As a matter of fact, under the Revised Penal Code, and, of course, the honorable Vice-President is an expert on criminal law, we have the 6-9-18 formula — 6 hours, 9 hours, 18 hours within which to charge and bring the accused to judicial authorities. Of course, during martial law, the 6-9-18 formula was increased under P.D. No. 1404. So I wish to suggest that we reduce the period of five days to THREE days as a compromise. That would be 72 hours, Madam President. Actually, it is still quite long.
Will the honorable Vice-President yield to my amendment?
THE PRESIDENT: What does Commissioner Padilla say?
MR. PADILLA: Madam President, I have no particular conviction on the number of days or number of hours. That was suggested by a few Commissioners in conference yesterday. **It is true that under Article 125 of the Revised Penal Code which penalizes the delaying of the transmittal or delivery of the person arrested to the judicial authorities, the period is based on the gravity of the offense and this is**

Besides, the fixing of detention periods in Sec. 29 is a matter of substantive law. Periods of preventive detention set by Congress cannot be reasonably interpreted as allowing the Executive Branch to summarily deprive an individual of liberty without due process ***if*** such detention itself is temporary. This is akin to those convicted of a judgment which has not yet attained finality but are detained for failing to post bail for provisional liberty. Here, detainees cannot be said to have been deprived of liberty without due process as such detention is temporary and subject to a final and executory verdict in their respective criminal cases. In other words, what is abhorred by the Constitution is the **absolute lack of due process** on the part of the detainee. Therefore, when a person is merely detained in the *interim* with all procedural due process safeguards available to him or her such as those found in Sec. 29, there can be no summary deprivation of liberty.

Most importantly, a plain reading of Rules on the Writ of *Amparo*, side by side with the terms of the ATA, shows the gross inaccuracy of the petitioners' position.

The Court, based on its constitutionally assigned role of actively protecting the exercise of constitutional rights through its rulemaking power, promulgated the Rules on the Writ of *Amparo* (A.M. No. 07-9-12-SC) on September 25, 2007. The Rules took effect on October 24, 2007, after its publication in three (3) newspapers of general circulation.

The Writ of *Amparo* is "a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity."[759]

The Court discussed its origins and coverage in *Secretary of National Defense v. Manalo,*[760] in these words:

> The adoption of the *Amparo* Rule surfaced as a recurring proposition in the recommendations that resulted from a two-day National Consultative Summit on Extrajudicial Killings and Enforced Disappearances sponsored by the Court on July 16-17, 2007. The Summit was "envisioned to provide a broad and fact-based perspective on the issue

punishable by the same penalties as those for arbitrary detention in Article 124 of the Code and the delay in the release under Article 126. But this provision is made to apply when there is a suspension by the President of the privilege of the writ of habeas corpus. So it covers a different situation from that contemplated in the Revised Penal Code. The Rules of Court, Rule 113, Section 6 thereof, also allows arrest without warrant under three situations. However, that is also subject to the period for delivery of the arrested person to the judicial authorities, which means to the courts through the fiscal.

With regard to the proposed amendment to our amendment which is to reduce the period of five working days to "THREE" working days, I have no particular objection, Madam President." (Records of the Constitutional Commission No. 044, July 31, 1986)

[759] Section 1, A.M. No. 07-9-12-SC, September 25, 2007.

[760] 589 Phil. 1 (2008).

> of extrajudicial killings and enforced disappearances," hence "representatives from all sides of the political and social spectrum, as well as all the stakeholders in the justice system" participated in mapping out ways to resolve the crisis.
>
> On October 24, 2007, the Court promulgated the *Amparo* Rule "in light of the prevalence of extralegal killing and enforced disappearances." It was an exercise for the first time of the Court's expanded power to promulgate rules to protect our people's constitutional rights, which made its maiden appearance in the 1987 Constitution in response to the Filipino experience of the martial law regime.[761]

This Rule covers three (3) incidents: extralegal killings, enforced disappearances, or threats of these incidents.

The Court defined the elements of an enforced disappearance as follows:

> (a) that there be an arrest, detention, abduction or any form of deprivation of liberty;
>
> (b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;
>
> (c) that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the amparo petition; and,
>
> (d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.[762]

A close examination of these elements and their comparison with the terms of the ATA readily shows that the situation contemplated in the ATA – a detention beyond the limits set by the ATA's Sec. 29 - can conceivably take place and can fall within the contemplation of the above portion of the *Amparo* Rules.

When faced with this situation, affected individuals have a choice of the remedies to avail of without being negated, denied, or foreclosed by the terms of the ATA. These remedies are for them and/or their counsels to decide upon. How they are availed and whether or not they interact with other remedies under other laws or rules and under the unique factual circumstances of their cases, involve facts that are outside the scope of this Court's consideration in the present petitions. This Court can only stress that, as a matter of law, that affected parties are not in any way limited in their choices by the terms of the ATA.

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[761] Id. at 36-37.

[762] *Navia v. Pardico*, 688 Phil. 266, 279 (2012).

Based on the foregoing, I vote to declare Sec. 29 as not unconstitutional.

SUMMARY OF THE OUTCOME OF THE SUBSTANTIVE STAGE

In the context of the factual allegations and legal arguments of the petitioners, after applying the intermediate level of judicial scrutiny, I find that:

1) Secs. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of Republic Act No. 11479 do not contravene Secs. 1, 4 and 14, Art. III, 1987 Constitution;

2) Secs. 16, 17, 18, 19, 20, 22, 23 and 24 of Republic Act No. 11479 do not contravene Sec. 2 and Sec. 3, Art. III, 1987 Constitution;

3) Secs. 25, 26, 27, 28, 29 and 34 of Republic Act No. 11479 do not contravene Secs. 6, 8, 12 and 13, Art. III, 1987 Constitution; and

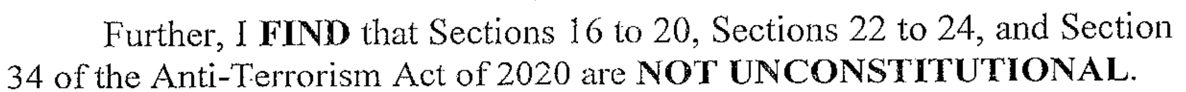
4) Sec. 29 of Republic Act No. 11479 does not contravene the constitutional principle of separation of powers.

Further, I conclude that, with respect to petitioners in G.R. Nos. 253242, 252585, 252767, and 252768, the foregoing provisions of the ATA are not unconstitutional.

WHEREFORE, in view of the foregoing reasons, I **VOTE** to **DISMISS OUTRIGHT** the following petitions – G.R. No. 252578, G.R. No. 252579, G.R. No. 252580, G.R. No. 252613, G.R. No. 252623, G.R. No. 252624, G.R. No. 252646, G.R. No. 252702, G.R. No. 252726, G.R. No. 252733, G.R. No. 252736, G.R. No. 252741, G.R. No. 252747, G.R. No. 252755, G.R. No. 252759, G.R. No. 252765, UDK 16663, G.R. No. 252802, G.R. No. 252809, G.R. No. 252903, G.R. No. 252904, G.R. No. 252905, G.R. No. 252916, G.R. No. 252921, G.R. No. 252984, G.R. No. 253018, G.R. No. 253100, G.R. No. 253118, G.R. No. 253124, G.R. No. 253252, G.R. No. 253254, G.R. No. 253420, and G.R. No. 254191 [Formerly UDK 16714] – for failure to satisfy the requirements of judicial review.

Further, I **VOTE** to **DECLARE** Section 4, Section 10, Section 25, Sections 26 to 28, and Section 29 of the Anti-Terrorism Act of 2020 as **NOT UNCONSTITUTIONAL**.

Further, I **FIND** that Sections 16 to 20, Sections 22 to 24, and Section 34 of the Anti-Terrorism Act of 2020 are **NOT UNCONSTITUTIONAL**.



Finally, I **VOTE** to **DISMISS** the following petitions – G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 – for lack of merit.

ALEXANDER G. GESMUNDO
Chief Justice