

EN BANC

G.R. No. 228234 – JOVENCIO H. EVANGELISTA, Petitioner, v. PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR); ANDREA D. DOMINGO; ALFREDO C. LIM; CARMEN N. PEDROSA; REYNALDO E. CONCORDIA; and GABRIEL S. CLAUDIO, in their capacity as members of the Board of Members of the PAGCOR, Respondents;

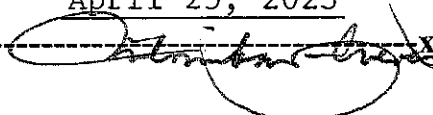
G.R. No. 228315 – MIGUEL DANIEL C. CRUZ, in his personal capacity and as representative of UNION FOR NATIONAL DEVELOPMENT AND GOOD GOVERNANCE-PHILIPPINES (UNILAD-Philippines), Petitioner, v. PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR) and ANDREA D. DOMINGO, in her capacity as the Chief Executive Officer (CEO) and Chairperson of the Board of Directors of the PAGCOR, Respondents;

G.R. No. 230080 – ANTI-TRAPO MOVEMENT OF THE PHILIPPINES, INC., represented by its Founding Chairperson, LEON ESTRELLA PERALTA, and LEON ESTRELLA PERALTA, Petitioner, v. PHILIPPINE AMUSEMENT AND GAMING CORPORATION, represented by ANDREA D. DOMINGO, Chairperson of the Board of Directors, PAGCOR, and JOHN and JANE DOES OF PAGCOR (Unnamed Public Officers of the PAGCOR), Respondents.

Promulgated:

April 25, 2023

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SEPARATE CONCURRING OPINION

LEONEN, J.:

These consolidated Petitions for Review all question the constitutionality of the Rules and Regulations for Philippine Offshore Gaming Operations (POGO) issued by the Philippine Amusement and Gaming Corporation (PAGCOR), via original petitions for *certiorari* and prohibition under Rule 65 of the Rules of Court, filed with this Court.

The *ponencia* finds that, first, the remedies of *certiorari* and prohibition are proper; second, direct resort to this Court is proper under the circumstances; third, the substantive issue presented warrants exception from the requirements of judicial review; and fourth, PAGCOR did not commit any



grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Rules and Regulations.

Peripherally, it must be noted that in my dissenting opinion in *Saint Wealth Ltd. v. Bureau of Internal Revenue*,<sup>1</sup> I joined Associate Justice Amy C. Lazaro-Javier in concluding that offshore-based POGO licensees are doing business in the Philippines and are subject to regulation by Philippine authorities. Nonetheless, the petitions here should be dismissed outright.

In support of the finding that the substantive issue presented by petitioners warrants exception from the requirement of an actual case or controversy, the *ponencia* states:

Here, there are two conflicting assertions presented before this Court: petitioners argue that the PAGCOR has no authority to regulate the operations of and issue licenses to off-shore gaming operators. On the other hand, respondents maintain that PAGCOR's regulatory powers extend to all types of games of chance, including online gambling. There is, therefore, a contrariety of claims which is susceptible of adjudication on the basis of existing law and jurisprudence.<sup>2</sup>

Respectfully, I disagree that the above demonstrates a contrariety of claims that rises to the existence of an actual case or controversy.

Drawn from the allegations of the parties to a case, an actual case or controversy is a conflict of legal rights susceptible of judicial resolution:

An actual case exists “when the act being challenged has had a direct adverse effect on the individual challenging it.” Thus, actual case means the presence of that concrete adverseness that can be drawn from the allegations raised by the parties in their pleadings:

Jurisprudence provides that an actual case or controversy is one which “involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.” In other words, “[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.” Related to the requirement of an actual case or controversy is the requirement of “ripeness,” meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. “A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to

<sup>1</sup> G.R. No. 252965, December 07, 2021 [Per J. Gaerlan, *En Banc*].

<sup>2</sup> Draft Decision, p. 15.

itself as a result of the challenged action.” “Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions.” (Emphasis supplied, citations omitted)

Laws are general in nature. The courts' constitutional duty is “to settle actual controversies involving rights which are legally demandable and enforceable[.]” Courts cannot and will not decide hypothetical issues, render advisory opinions, or engage academic questions. The parties must present concrete facts that demonstrate the problems *vis-à-vis* a legal provision. The parties represented must show the contradicting considerations as a result of the alleged facts. Absent such actual case anchored on concrete adverseness, no factual basis exists for giving a petition due course.<sup>3</sup>

Nonetheless, there are instances when actual facts resulting from an assailed law do not need to be present to initiate the exercise of judicial review. “A clear and convincing showing of a contrariety of legal rights may suffice.”<sup>4</sup> In *Universal Robina Corporation v. Department of Trade and Industry*:<sup>5</sup>

An actual case or controversy exists when there are actual facts to enable courts to intelligently adjudicate the issues.

There is also an actual case and controversy when there is a clear and convincing showing of a contrariety of legal rights. In *Belgica v. Ochoa*, this Court explained:

Jurisprudence provides that an actual case or controversy is one which “involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.” In other words, “[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.” (Citations omitted)

In *Calleja v. Executive Secretary*, this Court explained that a contrariety of legal rights is one:

. . . that can be interpreted and enforced on the basis of existing law and jurisprudence. Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. All these are in line with the well-settled rule that this Court does not issue advisory opinions, nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be. Instead, case law requires that there is ample showing of *prima facie*

<sup>3</sup> *Confederation for Unity, Recognition and Advancement of Government Employees v. Abad*, G.R. No. 200418, November 10, 2020 [Per J. Leonen, *En Banc*].

<sup>4</sup> *Universal Robina Corporation v. Department of Trade and Industry*, G.R. No. 203353, February 14, 2023 [Per J. Leonen, *En Banc*].

<sup>5</sup> G.R. No. 203353, February 14, 2023 [Per J. Leonen, *En Banc*].

grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts. (Citations omitted)

In *Belgica*, this Court also explained that the actual-case requirement is closely related to the ripeness requirement:

Related to the requirement of an actual case or controversy is the requirement of “ripeness,” meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. “A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.” “Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions.” (Citations omitted)

Thus, in *Belgica*, where the parties asserted opposing legal claims regarding the constitutionality of the pork barrel system, this Court deemed itself satisfied that a contrariety of legal rights existed.

This was reiterated in *Roy III v. Herbosa*:

Regarding the first requisite, the Court in *Belgica v. Ochoa* stressed anew that an actual case or controversy is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute since the courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions. Related to the requirement of an actual case or controversy is the requirement of “ripeness,” and a question is ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it. (Citation omitted)

Thus, for the exercise of judicial review, actual facts resulting from the assailed law, as applied, may not be absolutely necessary in all cases. A clear and convincing showing of a contrariety of legal rights may suffice.

In *Executive Secretary v. Pilipinas Shell Petroleum Corporation*,<sup>6</sup> this Court further explained “contrariety of legal rights” under the actual case or controversy requisite:

There is also an actual case or controversy when there is clear and convincing proof of contrariety of legal rights. *Calleja v. Executive Secretary* explained what a contrariety of legal rights is:

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<sup>6</sup> G.R. No. 209216, February 21, 2023 [Per J. Leonen, *En Banc*].


*An actual case or controversy exists when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. The issues presented must be definite and concrete, touching on the legal relations of parties having adverse interests. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. All these are in line with the well-settled rule that this Court does not issue advisory opinions, nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be. Instead, case law requires that there is ample showing of *prima facie* grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts. (Emphasis supplied, citations omitted)*

Jurisprudence has established that a mere contrariety of legal rights satisfies the requirement of justiciability. In *Tañada v. Angara*:

In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. “The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld.” Once a “controversy as to the application or interpretation of a constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide.” (Citation omitted)

In *Belgica v. Ochoa*, this Court determined that a real and justiciable controversy existed due to the conflicting legal rights between the parties’ antagonistic positions on the constitutionality of the pork barrel system:

Jurisprudence provides that an actual case or controversy is one which “involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.” In other words, “[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.” Related to the requirement of an actual case or controversy is the requirement of “ripeness,” meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. “A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must



allege the existence of an immediate or threatened injury to itself as a result of the challenged action.” Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions.” (Citations omitted)

In *Samahan ng mga Progresibong Kabataan v. Quezon City*, given the parties’ conflicting claims on the violation of constitutional rights by the curfew ordinances being assailed, this Court held that a justiciable controversy exists. Petitioners presented a *prima facie* case of grave abuse of discretion, compelling this Court to exercise its power of judicial review:

Basic in the exercise of judicial power — whether under the traditional or in the expanded setting — is the presence of an actual case or controversy.” “[A]n actual case or controversy is one which ‘involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.’ In other words, ‘there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.’” According to recent jurisprudence, in the Court’s exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified “by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act.”

“Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.” (Citations omitted)

Thus, in asserting a contrariety of legal rights, merely alleging an incongruence of rights between the parties is not enough. The party availing of the remedy must demonstrate that the law is so contrary to their rights that there is no interpretation other than that there is a breach of rights. No demonstrable contrariety of legal rights exists when there are possible ways to interpret the provision of a statute, regulation, or ordinance that will save its constitutionality. In other words, the party must show that the only possible way to interpret the provision is one that is unconstitutional. Moreover, the party must show that the case cannot be legally settled until the constitutional issue is resolved, that is, that it is the very *lis mota* of the case, and therefore, ripe for adjudication.<sup>7</sup>

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<sup>7</sup> *Id.*

This Court is not dutybound to answer all of life's questions.<sup>8</sup> To emphasize, parties must not only be proffering positions that are in opposition to each other but must have "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable."<sup>9</sup>

In this instance, petitioners have failed to put forward a compelling argument that respondent PAGCOR's act of issuing the assailed Rules and Regulations was so offensive to the Constitution that its mere enactment rendered the issue ripe for adjudication. The *ponencia* outlines the following arguments raised by petitioners:

On the merits, Evangelista argued that the RR-POGO is unconstitutional since the PAGCOR has no authority to operate and regulate online gambling under its charter. He maintained that P.D. No. 1869, issued on July 11, 1983, could not have envisioned online gaming and/or gambling since the internet was not yet existing at the time. Nevertheless, he pointed out that R.A. No. 9487, which amended Section 10 of P.D. No. 1869, and which was approved on June 20, 2007 when the internet was already widely used, still did not mention online gambling as within the authority and jurisdiction of the PAGCOR.

Evangelista further argued that Section 10 of P.D. No. 1869, as amended, excluded from the power and authority of PAGCOR those games of chance, games of cards, or games of numbers already licensed, regulated by, in, and under special laws, such as R.A. No. 7922. In this regard, Section 6 of R.A. No. 7922, Section 13 of R.A. No. 7227, and R.A. No. 7916 empowered the respective economic zones they created to directly or indirectly operate gambling and casinos within its jurisdiction. Thus, assuming that the PAGCOR may issue license to any entity who wants to operate an offshore gaming activity, it cannot do so in the areas covered by the economic zones.

On the other hand, Cruz added that the PAGCOR is not authorized under its legislative franchise to operate and regulate gambling on the internet catering to foreign-based players and gamblers that are physically outside the Philippines. He argued that for the PAGCOR to have authority and jurisdiction, three elements are required: (1) the game of chance must be done on either land or sea; (2) it must be within the territorial jurisdiction of the Philippines; and (3) it must not be regulated by other regulatory bodies or governed by special laws.

Finally, the Anti-Trapo Movement of the Philippines, Inc. argued that the PAGCOR is not allowed under its charter to relinquish or share its franchise, much less grant a veritable franchise to another entity. Moreover, there is no other authority under existing laws that is explicitly granted the mandate to issue online gaming licenses and regulate the same, other than the Aurora Pacific Economic Zone and Freeport Authority under Section 12 of R.A. No. 9490 as amended by Republic Act No. 10083.

<sup>8</sup> *Falcis v. Civil Registrar General*, 861 Phil. 388, 438 [Per J. Leonen, *En Banc*].

<sup>9</sup> *Bacolod-Murcia Planters' Association, Inc. v. Bacolod-Murcia Milling Company, Inc.*, 140 Phil. 457, 459 (1969) [Per J. Fernando, First Division].

Petitioners Evangelista, Cruz and Anti-Trapo Movement of the Philippines, Inc. (Evangelista et al.) prayed that the RR-POGO be declared null and void for being unconstitutional.<sup>10</sup>

These are not arguments that the enactment of the Rules and Regulations were in violation of some Constitutional provision. These arguments, as synthesized in the *ponencia*, all pertain to respondent PAGCOR allegedly regulating an activity or business that it is not permitted to by law. Further, the allegation that respondent PAGCOR exceeded its statutory authority in regulating games of chance outside the territorial jurisdiction of the Philippines is also not an argument founded on a Constitutional wrong. Again, it is, at most, an allegation that respondent PAGCOR has issued regulations when law does not permit it to do so. The assertion that a governmental body or instrumentality has exceeded the bounds of its charter, or has acted with grave abuse of discretion, does not by itself violate the Constitution, absent the identification of a specific Constitutional right violated, or Constitutionally ordained power usurped.


Moreover, while I agree with the *ponencia* that petitioners have no legal standing to question the Rules and Regulations, I am unconvinced that there is transcendental importance in their petitions that overrides this requirement of judicial review.

*In Falcis v. Civil Registrar General*:<sup>11</sup>

Legal standing is a party's "personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement." Interest in the case "means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest."

Much like the requirement of an actual case or controversy, legal standing ensures that a party is seeking a concrete outcome or relief that may be granted by courts:

Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question." To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged." The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."



<sup>10</sup> Draft Decision, pp. 7-8.

<sup>11</sup> 861 Phil. 388 (2019) [Per J. Leonen, *En Banc*].



The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:

A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.

Standing in private suits requires that actions be prosecuted or defended in the name of the real party-in-interest, interest being "material interest or an interest in issue to be affected by the decree or judgment of the case[,] [not just] mere curiosity about the question involved." Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Those who bring the suit must possess their own right to the relief sought. (Citations omitted)

Even for exceptional suits filed by taxpayers, legislators, or concerned citizens, this Court has noted that the party must claim some kind of injury-in-fact. For concerned citizens, it is an allegation that the continuing enforcement of a law or any government act has denied the party some right or privilege to which they are entitled, or that the party will be subjected to some burden or penalty because of the law or act being complained of. For taxpayers, they must show "sufficient interest in preventing the illegal expenditure of money raised by taxation[.]" Legislators, meanwhile, must show that some government act infringes on the prerogatives of their office. Third-party suits must likewise be brought by litigants who have "sufficiently concrete interest" in the outcome of the dispute.<sup>12</sup>

Standing is not merely a "procedural technicality."<sup>13</sup> The requirement of parties to have standing to bring a case before this Court is part and parcel of the conservation of this Court's time and effort in pursuit of efficient and effective administration of justice. This Court has likewise acknowledged that the threat of direct injury—the concrete consequence of a petitioner's personal and substantial interest in the issues presented—hones the arguments being raised and guides this Court in resolving difficult and complex legal questions.

This case stands in stark contrast to *Saint Wealth Ltd. v. Bureau of Internal Revenue*,<sup>14</sup> in which offshore-based POGO licensees questioned the

<sup>12</sup> *Id.* at 531–533.

<sup>13</sup> Draft Decision, p. 17.

<sup>14</sup> G.R. No. 252965, December 07, 2021 [Per J. Gaerlan, *En Banc*].

imposition of 5% franchise tax for income arising from their gaming operations. There, the direct injury to the petitioners that could be brought about by the questioned tax imposition was clear, and the petitioners would directly benefit from a favorable ruling, or alternatively, must shoulder a burden should this Court rule against them. This ensured that the decision made in that case was founded upon allegations, claims, or arguments of parties who understood the stakes of their litigation, and thus reflect the real and material conditions that guided this Court's adjudication.

I agree that the jurisprudence of this Court demonstrates this Court's painstaking and continuous delimitation of respondent PAGCOR's regulatory powers. Yet I am not persuaded that the petitioners here have presented claims and allegations of such a magnitude that their immediate resolution at this point overrides the stringent standards of this Court's exercise of the power of judicial review. Even a claim of transcendental importance must be founded on proper allegations, and not just mere invocation.<sup>15</sup>

**ACCORDINGLY**, I vote to **DISMISS** the consolidated Petitions in G.R. No. 228234, G.R. No. 228315, and G.R. No. 230080.



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice

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<sup>15</sup> *Anti-Trapo Movement of the Philippines v. Land Transportation Office*, G.R. No. 231540. June 27, 2022 [Per J. Leonen, Second Division].