

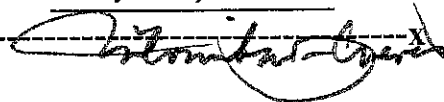
EN BANC

G.R. No. 254001 — BAYYO ASSOCIATION, INC. AND ANSELMO D. PERWEG, in his capacity as PRESIDENT OF THE ASSOCIATION, Petitioners, v. SEC. ARTHUR P. TUGADE, SEC. CARLOS S. DOMINGUEZ, SEC. WENDEL ELIOT AVISADO, AND ATTY. MARTIN B. DELGRA, Respondents.

Promulgated:

July 11, 2023

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CONCURRING OPINION

LEONEN, J.:

I concur. The Petition must be dismissed outright for lack of justiciability. This Court must exercise restraint on matters without actual justiciable controversy and await the proper pleading to rule on the merits of the case.

I

Article VIII, Section 5 (1) of the 1987 Constitution vests this Court “original jurisdiction over... petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.” Notwithstanding the propriety of the procedural vehicle employed, the presence of all justiciability requisites determines whether this Court must exercise its power of judicial review, even under its expanded jurisdiction:

Jurisdiction is a court’s competence “to hear, try and decide a case.” It is granted by law and requires courts to examine the remedies sought and issues raised by the parties, the subject matter of the controversy, and the processes employed by the parties in relation to laws granting competence. Once this Court determines that the procedural vehicle employed by the parties raises issues on matters within its legal competence, it may then decide whether to adjudicate the constitutional issues brought before it.

Jurisdiction alone will not require this Court to pass upon the constitutionality of a statute. As held in *Angara v. Electoral Commission*, the power of judicial review remains subject to this Court’s discretion in resolving actual controversies:

[W]hen the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred



obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an *actual controversy* the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed “judicial supremacy” which properly is the power of judicial review under the Constitution. *Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very lis mota presented.* Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation[.]

*Thus, as a rule, this Court only passes upon the constitutionality of a statute if it is “directly and necessarily involved in [a] justiciable controversy and is essential to the protection of the rights of the parties concerned.”*

....

This justiciability requirement is “intertwined with the principle of separation of powers.” It cautions the judiciary against unnecessary intrusion on matters committed to the other branches of the government.<sup>1</sup> (Emphasis supplied, citations omitted)

The following essential requisites of justiciability must be present for this Court to exercise its power of judicial review of a law or an executive act: “first, there must be an actual case or controversy; second, petitioners must possess *locus standi*; third, the question of constitutionality must be raised at the earliest opportunity; and fourth, the resolution of the question is unavoidably necessary to the decision of the case itself.”<sup>2</sup>

Of utmost importance among the justiciability requirements is the actual case or controversy requirement embodied in Article VIII, Section 1 of the 1987 Constitution, which provides that “[j]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable.”<sup>3</sup> The rationale for such requisite has been explained as early as the case of *Angara v. Electoral Commission*:<sup>4</sup>

Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon

<sup>1</sup> *Lagman v. Ochoa, Jr.*, 888 Phil. 434, 469–471 (2020) [Per J. Leonen, *En Banc*].

<sup>2</sup> *Id.* at 470–471. (Citations omitted)

<sup>3</sup> *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387, 679 (2008) [Per J. Carpio Morales, *En Banc*].

<sup>4</sup> 63 Phil. 139 (1936) [Per J. Laurel, *En Banc*].

questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.<sup>5</sup>

An actual case or controversy exists when: (a) there are actual facts to enable courts to intelligently adjudicate the issues; or (2) there is a clear and convincing showing of a contrariety of legal rights.<sup>6</sup>

There is an actual case or controversy when there is real conflict of rights or duties arising from actual facts, properly established in court through evidence or judicial notice, and not merely based on speculation or imagination:

Without the necessary findings of facts, this court is left to speculate leaving justices to grapple within the limitations of their own life experiences. This provides too much leeway for the imposition of political standpoints or personal predilections of the majority of this court. This is not what the Constitution contemplates. Rigor in determining whether controversies brought before us are justiciable avoids the counter majoritarian difficulties attributed to the judiciary.

Without the existence and proper proof of actual facts, any review of the statute or its implementing rules will be theoretical and abstract. Courts are not structured to predict facts, acts or events that will still happen. Unlike the legislature, we do not determine policy. We read law only when we are convinced that there is enough proof of the real acts or events that raise conflicts of legal rights or duties. Unlike the executive, our participation comes in after the law has been implemented. Verily, we also do not determine how laws are to be implemented.

The existence of a law or its implementing orders or a budget for its implementation is far from the requirement that there are acts or events where concrete rights or duties arise. The existence of rules do not substitute for real facts.<sup>7</sup>

In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,<sup>8</sup> this Court ruled that the existence of actual facts must be clearly demonstrated for the courts to determine whether there has been a breach of constitutional text.<sup>9</sup> In the same case, this Court found no actual controversy despite petitioners' allegation that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are

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<sup>5</sup> *Id.* at 158–159.

<sup>6</sup> *Universal Robina Corporation v. Department of Trade and Industry*, G.R. No. 203353, February 14, 2023 [Per J. Leonen, *En Banc*].

<sup>7</sup> J. Leonen, Dissenting Opinion in *Imbong v. Ochoa*, 732 Phil. 1, 562 (2014) [Per J. Mendoza, *En Banc*].

<sup>8</sup> 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].

<sup>9</sup> *Id.* at 280.

unconstitutional, because the allegations were founded on speculation and unsupported by actual facts.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,<sup>10</sup> this Court also did not rule on the constitutionality of Republic Act No. 9372, or the Human Security Act of 2007, since according to the Court, petitioners' allegations of abuse must be based on real events before courts may step in to settle actual controversies.<sup>11</sup>

Similarly, this Court, in *Republic v. Roque et al.*,<sup>12</sup> dismissed the constitutional challenge on the provisions of the Human Security Act of 2007 for failure of the parties to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury because of the enforcement of the assailed provisions of the said law.<sup>13</sup>

Nevertheless, despite absence of actual facts, an actual case or controversy can still exist when there is a clear and convincing showing of a contrariety of legal rights.<sup>14</sup> As explained in *Calleja v. Executive Secretary*:<sup>15</sup>

*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.<sup>16</sup> (Emphasis supplied, citations omitted)*

The party asserting a contrariety of legal rights must show that the only possible way to interpret the assailed provision will lead to a breach of right or declaration of the provision's unconstitutionality:

Thus, in asserting a contrariety of legal rights, merely alleging an incongruence of rights between the parties is not enough. *The party availing*

<sup>10</sup> 646 Phil. 452 (2010) [Per J. Carpio Morales, *En Banc*].

<sup>11</sup> *Id.* at 483.

<sup>12</sup> 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, *En Banc*].

<sup>13</sup> *Id.* at 305.

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

<sup>15</sup> G.R. Nos. 252578 et. al, December 7, 2021 [Per J. Carandang, *En Banc*].

<sup>16</sup> *Id.*

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 factual 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>17</sup> (Emphasis supplied, citations omitted)

In *Belgica v. Ochoa*,<sup>18</sup> this Court found the existence of a justiciable controversy due to the parties' apparent antagonistic positions on the constitutionality of the pork barrel system.<sup>19</sup>

In *Samahan ng mga Progresibong Kabataan v. Quezon City*,<sup>20</sup> the Court likewise found that there exists an actual justiciable controversy considering the evident opposing legal claims of the parties, specifically whether the curfew ordinances violate constitutional rights and the law.<sup>21</sup>

In *Universal Robina Corporation v. Department of Trade and Industry*,<sup>22</sup> the Court found a clear presence of contrariety of legal rights between respondent Department of Trade and Industry and petitioner, when the latter maintained that provision on profiteering is void for vagueness, and the former claimed otherwise.

Constitutional challenges based on either the existence of actual facts showing breach or a demonstrable contrariety of legal rights are considered as "as applied" challenges.<sup>23</sup> However, despite lack of these premises for an "as applied" challenge, a party may still challenge a provision's constitutionality through a facial challenge.

*Disini v. Secretary of Justice*<sup>24</sup> distinguished facial challenge from an "as applied" challenge, as follows:

In an "as applied" challenge, the petitioner who claims a violation of his constitutional right can raise any constitutional ground – absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness. Here, one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. It prohibits one from assailing the constitutionality of the statute based solely on the violation of the rights of third persons not before the court. This rule is also known as the prohibition

<sup>17</sup> *Executive Secretary v. Pilipinas Shell*, G.R. No. 209216, February 21, 2023 [Per J. Leonen, *En Banc*].

<sup>18</sup> 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, *En Banc*].

<sup>19</sup> *Id.* at 520.

<sup>20</sup> 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].

<sup>21</sup> *Id.* at 1091.

<sup>22</sup> G.R. No. 203353, February 14, 2023 [Per J. Leonen, *En Banc*].

<sup>23</sup> *Id.*

<sup>24</sup> 727 Phil. 28 (2014) [Per J. Abad, *En Banc*].

against third-party standing.

But this rule admits of exceptions. 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.<sup>25</sup> (Citations omitted)

An “as applied” challenge “considers only extant facts affecting real litigant”<sup>26</sup> while a facial challenge involves “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.”<sup>27</sup>

A facial challenge is considered as a narrow exception to the general rule that there must be an actual case or controversy before the court exercises judicial review:

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.<sup>28</sup> (Citation omitted)

Thus, *Executive Secretary v. Pilipinas Shell*<sup>29</sup> laid down the exceptional circumstances when a facial review of the law may be allowed, considering the looming threat of constitutional rights violation on these cases:

The first situation involves a statute that flagrantly violates the right to freedom of expression and its cognate rights. Freedom of expression is the cornerstone of a democratic government and occupies the highest rank in the hierarchy of civil liberties. Section 4 of the Constitution states, “No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.” Consequently, a facial challenge is permitted in cases involving freedom of expression and its concomitant rights to prevent prior restrictions on free speech or overly broad language that has a chilling effect on free speech.

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<sup>25</sup> *Id.* at 121–122.

<sup>26</sup> *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 489 (2010) [Per J. Carpio Morales, *En Banc*].

<sup>27</sup> *Id.*

<sup>28</sup> *Estrada v. Sandiganbayan*, 421 Phil. 290, 355 (2001) [Per J. Bellosillo, *En Banc*].

<sup>29</sup> G.R. No. 209216, February 21, 2023 [Per J. Leonen, *En Banc*].

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, this Court explained:

A facial invalidation of a statute is allowed only in free speech cases, wherein certain rules of constitutional litigation are rightly excepted.

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The allowance of a facial challenge in free speech cases is justified by the aim to avert the “chilling effect” on protected speech, the exercise of which should not at all times be abridged. As reflected earlier, this 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. (Citations omitted)

The second scenario permits judicial review in the absence of actual facts when a violation of fundamental rights is so grievous or imminent that judicial restraint would lead to serious violations of fundamental rights. In these instances, the violation of rights must be so egregious and pervasive that almost any citizen could raise the issue. In *Parcon-Song v. Parcon*, this Court held:

There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) *when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance.* The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it[.] (Emphasis supplied)

The third instance in which judicial review is appropriate despite the absence of actual facts is when a Constitutional provision invokes emergency or urgent measures. By its very nature, emergency or urgent measures are temporary thus allowing it to avoid judicial review even if its capable of repetition. This contemplates situations in which waiting for an actual dispute or injury to occur may result in irreversible damage or harm to an individual. However, with the risk that the relevant measure would be repealed or rendered obsolete, the filing of a lawsuit or seeking judicial recourse would be futile. In such a situation, this Court may determine the applicable doctrine regarding the provision. This may be applied, but is not limited to, challenges regarding the suspension of habeas corpus, the declaration of martial law, and the exercise of emergency powers.<sup>30</sup>

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<sup>30</sup> *Id.*

(Emphasis supplied, citations omitted)

Here, according to petitioner, issuing and implementing Department Order No. 2017-011 “deprived and continuously deprives thousands of drivers and operators of public utility jeepneys, including [its] members... of their right to due process and equal protection particularly the right to earn a living and to pursue lawful profession and calling.”<sup>31</sup> Petitioner claims that Department Order No. 2017-011 is “discriminatory and confiscatory to drivers and operators of traditional jeepneys”<sup>32</sup> and “exceeded on its purpose and objective of regulation, and hence, an invalid delegation of legislative power.” Petitioner supported their claims with statements from Senator Grace Poe and other transport groups, citing news articles.<sup>33</sup> It is well-settled that news articles are hearsay evidence and without any evidentiary value, “unless offered for a purpose other than proving the truth of the matter asserted.”<sup>34</sup> Thus, petitioner’s claims are bare allegations of violation of constitutional rights unsupported by actual facts of breach from which this Court may conclude that Department Order No. 2017-011 actually deprived petitioner’s members of their constitutional rights. To emphasize, there is no act yet committed by respondent showing any breach of legal right and there is not even an act of enforcement or sanction against it.

Petitioner anchors its claims on the statement of Transportation Assistant Secretary Mark Richmond de Leon in a news article<sup>35</sup> that refurbishment and rebuilding of PUJs will not be allowed, and that operators and drivers must replace their jeepneys with a new one, despite producing unnecessary debts.<sup>36</sup> However, as aptly pointed out by respondent, paragraph 5.2.3 of Department Order No. 2017-011 allows refurbishment and/or rebuilding of PUBs, as the prohibition expressly pertains to PUBs:

5.2.3 Refurbished and/or rebuilt vehicles shall pass the type approval system test and issued a Certificate of Compliance with Emission Standards (CCES) as a condition to initial registration by the LTO and to the roadworthiness test of the LTO-Motor Vehicle Inspection System for renewal of registration. *Refurbished and/or rebuilt PUBs, even with new engines or motors, shall not be allowed to substitute for phased-out units.*<sup>37</sup>  
(Emphasis supplied)

Petitioner plainly misread the provision being assailed and supported such interpretation of a news article, which is, as mentioned, without any probative value. Accordingly, petitioner failed to demonstrate that Department Order No. 2017-011 is so contrary to their rights that there is no

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<sup>31</sup> *Rollo*, p. 9.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Lagman v. Medialdea*, 812 Phil. 179, 312 (2017) [Per J. Del Castillo, *En Banc*].

<sup>35</sup> *Rollo*, p. 7.

<sup>36</sup> *Id.*

<sup>37</sup> *Ponencia*, p. 3



other interpretation than that there is a factual breach of their rights or that the provision is unconstitutional.

There being no facts of actual breach or demonstrable contrariety of legal rights from which this Court could conclude that Department Order No. 2017-011 is unconstitutional, this case presents no actual case or controversy.

Still, petitioner assails Department Order No. 2017-011 through a facial challenge because of its alleged “blatant disregard of jeepney drivers and operators’ constitutional right to due process and equal protection particularly the right to pursue lawful profession and calling and to earn a living, and for being discriminatory and confiscatory.”<sup>38</sup> However, besides alleging that a facial challenge is no longer confined to speech, petitioner did not elaborate more. Petitioner failed to allege and substantiate the exceptional circumstance, which will merit a facial review of Department Order No. 2017-011.

## II

Not only is the Petition not justiciable for failing to present an actual case or controversy, but also, petitioner does not possess the requisite legal standing to file it.

Legal standing or *locus standi* is defined as a “personal and substantial interest in the case such that [they have] sustained, or will sustain, direct injury as a result of its enforcement.”<sup>39</sup> Interest means “material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest”<sup>40</sup> and a present substantial interest, not a “mere expectancy or a future, contingent, subordinate, or consequential interest.”<sup>41</sup> Direct injury would mean that a party bringing the case has personal stake in its outcome, and thus, assures “that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.”<sup>42</sup> The rationale for legal standing or *locus standi* has been explained:

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

<sup>38</sup> *Rollo*, p. 12.

<sup>39</sup> *Falcis v. Civil Registrar General*, 861 Phil. 388, 531 (2019) [Per J. Leonen, *En Banc*].

<sup>40</sup> *Id.* at 531.

<sup>41</sup> *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 250 (2018) [Per J. Leonen, *En Banc*].

<sup>42</sup> *Falcis v. Civil Registrar General*, 861 Phil. 388, 532 (2019) [Per J. Leonen, *En Banc*].

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.<sup>43</sup> (Citations omitted)

As a rule, a party can raise constitutional challenge of a law or executive act, upon showing of: (1) personal suffering of some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury, which is fairly traceable to the challenged action; and (3) the injury, which is likely to be redressed by a favorable action.<sup>44</sup>

Despite lack of direct injury, the rule on legal standing has been relaxed for the “non-traditional suitors” such as concerned citizens, taxpayers, voters, or legislators, being a matter of procedure:

- 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
- 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
- 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
- 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.<sup>45</sup>

In *White Light Corp., et al. v. City of Manila*,<sup>46</sup> this Court allowed a party to file a case on behalf of another, or the third-party standing rule, upon satisfying the following criteria: “the litigant must have suffered an ‘injury-in-fact,’ thus giving [them] a “sufficiently concrete interest” in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party’s ability to protect [their] own interests.”<sup>47</sup>

In *White Light* where the third-party standing rule was first applied, this Court allowed petitioners hotel and motel operators to represent their clients in assailing the City of Manila’s Ordinance as violative of their clients’ right to privacy, freedom of movement, and equal protection of the laws. This Court considered that petitioners’ interests were injured by the Ordinance, their reliance on the “patronage of their customers for their continued viability” appeared to be threatened by the enforcement of the Ordinance, and

<sup>43</sup> *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 249–250 (2018) [Per J. Leonen, *En Banc*].

<sup>44</sup> *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, 842 Phil. 747, 784 (2018) [Per J. Tijam, *En Banc*].

<sup>45</sup> *Funa v. Commission on Audit*, 686 Phil. 571, 586 (2012) [Per J. Velasco, Jr., *En Banc*].

<sup>46</sup> 596 Phil. 444 (2009) [Per J. Tinga, *En Banc*].

<sup>47</sup> *Id.* at 456.

the relative silence of such special interest groups may be construed as hindrance for customers to bring suit.

Associations have likewise been able to file petitions on behalf of its members when “the results of the case will affect their vital interest.”<sup>48</sup> This Court has been liberal in granting standing to associations or corporations in behalf of their members, upon consideration of certain factors:

The associations in *Pharmaceutical and Health Care Association of the Philippines*, *Holy Spirit Homeowners Association, Inc.*, and *The Executive Secretary* were allowed to sue on behalf of their members because they sufficiently established who their members were, that their members authorized the associations to sue on their behalf, and that the members would be directly injured by the challenged governmental acts.

The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors.

In all these cases, there must be an actual controversy. Furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue.

Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit, allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong.

In some circumstances similar to those in *White Light*, the third parties represented by the petitioner would have special and legitimate reasons why they may not bring the action themselves. Understandably, the cost to patrons in the *White Light* case to bring the action themselves—*i.e.*, the amount they would pay for the lease of the motels—will be too small compared with the cost of the suit. But viewed in another way, whoever among the patrons files the case even for its transcendental interest endows benefits on a substantial number of interested parties without recovering their costs. This is the free rider problem in economics. It is a negative externality which operates as a disincentive to sue and assert a transcendental right.

In addition to an actual controversy, special reasons to represent, and disincentives for the injured party to bring the suit themselves, there must be a showing of the transcendent nature of the right involved.

Only constitutional rights shared by many and requiring a grounded level of urgency can be transcendent. For instance, in *The Association of*

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<sup>48</sup> *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, 842 Phil. 747, 798 (2018) [Per J. Tijam, *En Banc*].

Small Landowners in *the Philippines, Inc. v. Secretary of Agrarian Reform*, the association was allowed to file on behalf of its members considering the importance of the issue involved, *i.e.*, the constitutionality of agrarian reform measures, specifically, of then newly enacted Comprehensive Agrarian Reform Law.<sup>49</sup> (Citations omitted)

In *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*,<sup>50</sup> this Court considered petitioner a real party-in-interest who can prosecute the case in behalf of its members, since its Amended Articles of Incorporation authorize it to represent the entire industry:

[T]he association is formed “to represent directly or through approved representatives the pharmaceutical and health care industry before the Philippine Government and any of its agencies, the medical professions and the general public.” Thus, as an organization, petitioner definitely has an interest in fulfilling its avowed purpose of representing members who are part of the pharmaceutical and health care industry. Petitioner is duly authorized to take the appropriate course of action to bring to the attention of government agencies and the courts any grievance suffered by its members which are directly affected by the RIRR. Petitioner, which is mandated by its Amended Articles of Incorporation to represent the entire industry, would be remiss in its duties if it fails to act on governmental action that would affect any of its industry members, no matter how few or numerous they are. Hence, petitioner, whose legal identity is deemed fused with its members, should be considered as a real party-in-interest which stands to be benefited or injured by any judgment in the present action.<sup>51</sup>

In *Executive Secretary v. Court of Appeals*,<sup>52</sup> the Court found the Asian Recruitment Council Philippine Chapter, Inc. to have standing, on behalf of its member recruitment agencies, to file the petition assailing the constitutionality of the Migrant Workers and Overseas Filipinos Act of 1995 because it proved its authority to sue on behalf of its members through board resolutions of its individual members. The Court further held that an association “is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.”<sup>53</sup>

On the other hand, in *National Federation of Hog Farmers, Inc., et al. v. Board of Investments*,<sup>54</sup> this Court held that petitioners have no third-party standing to represent their members in the case, because petitioners organizations failed to show that they suffered or stood to suffer from private respondent's registration as a new producer and their members were hindered from personally asserting their own interests.

<sup>49</sup> *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 255–257 (2018) [Per J. Leonen, *En Banc*].

<sup>50</sup> 561 Phil. 386 (2007) [Per J. Austria-Martinez, *En Banc*].

<sup>51</sup> *Id.* at 396.

<sup>52</sup> 473 Phil. 27 (2004) [Per J. Callejo, Sr., Second Division].

<sup>53</sup> *Id.* at 51.

<sup>54</sup> 875 Phil. 172 (2020) [Per J. Leonen, *En Banc*].

In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,<sup>55</sup> this Court held that petitioner association failed to establish its authority to file the petition for its members, through either board resolutions or articles of incorporation:

As declared at the outset, petitioners in this case do not have standing to bring this suit. As associations, they failed to establish who their members are and if these members allowed them to sue on their behalf. While alleging that they are composed of public utility bus operators who will be directly injured by the implementation of Department Order No. 118-12 and Memorandum Circular No. 2012-001, petitioners did not present any proof, such as board resolutions of their alleged members or their own articles of incorporation authorizing them to act as their members' representatives in suits involving their members' individual rights.

Some of the petitioners here are not even persons or entities authorized by law or by the Rules allowed to file a suit in court. As intervenor MMDA sufficiently demonstrated, petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., and Inter City Bus Operators Association, Inc. had their certificates of incorporation revoked by the Securities and Exchange Commission for failure to submit the required general information sheets and financial statements for the years 1996 to 2003. With their certificates of incorporation revoked, petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., and Inter City Bus Operators Association, Inc. have no corporate existence. They have no capacity to exercise any corporate power, specifically, the power to sue in their respective corporate names.

Again, the reasons cited—the “far-reaching consequences” and “wide area of coverage and extent of effect” of Department Order No. 118-12 and Memorandum Circular No. 2012-001—are reasons not transcendent considering that most administrative issuances of the national government are of wide coverage. These reasons are not special reasons for this Court to brush aside the requirement of legal standing.<sup>56</sup> (Citations omitted)

In *IDEALS, Inc. v. Senate of the Philippines*,<sup>57</sup> the Court found that petitioners FairTrade and AIWA lacked legal standing to file the petition since they failed to show why none of their members could institute the action to protect their interests. The Court emphasized the need for association to show “special reasons why the truly injured parties may not be able to sue” before they may be allowed to sue on behalf of their members.<sup>58</sup>

Here, petitioner principally invokes its standing as a legitimate association of jeepney operators and drivers in the different parts of Metro

<sup>55</sup> 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].

<sup>56</sup> *Id.* at 257–258.

<sup>57</sup> G.R. Nos. 184635 & 185366, June 13, 2023 [Per J. Leonen, *En Banc*].

<sup>58</sup> *Id.*, citing *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 256 (2018) [Per J. Leonen, *En Banc*].

Manila. It asserts that Department Order No. 2017-011 violates the rights of its members to pursue a lawful profession and calling and to earn a living.

I find that petitioner does not have the required standing to file the Petition, since it was unable to sufficiently establish who their members are, its authority from its members to file this case through board resolutions or through its articles of incorporation, and that its members were hindered from personally asserting their own interests. Petitioner only submitted its Certification from the Securities and Exchange Commission<sup>59</sup> of its registration as an organization and its Secretary's Certificate stating that petitioner's Board of Directors authorized its president to file the present petition. Thus, there is lack of competent evidence to establish who petitioner's members are, whether they were indeed legitimate PUJ operators and drivers injured or may be injured by the Department Order No. 2017-011, and whether they authorize petitioner to file the petition, in their behalf.

Contrary to its claim, petitioner likewise failed to establish its standing to assail the provision as a citizen or taxpayer, considering that as mentioned, it did not establish that its members are PUJ operators or drivers, who may allegedly personally suffer any injury or threat attributable to the implementation of the assailed provision, or that there is illegal expenditure of public funds involved. As held in *Pangilinan v. Cayetano*,<sup>60</sup> a general invocation of citizen's or a taxpayer's rights is insufficient:

[P]ersons invoking their rights as citizens must satisfy the following requisites to file a suit: (1) they must have "personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of government"; (2) "the injury is fairly traceable to the challenged action"; and (3) "the injury is likely to be redressed by a favorable action."

In G.R. Nos. 239483 and 240954, what petitioners assail is an act of the President, in the exercise of his executive power. They failed to show the actual or imminent injury that they sustained as a result of the President's withdrawal from the Rome Statute. Again, "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.'"

Similarly, petitioners have no standing as taxpayers. In cases involving expenditure of public funds, also known as a taxpayer's suit, "there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional[.]"

Petitioners here failed to show any illegal expenditure of public funds. To allow these petitioners who suffer no injury to invoke this Court's discretion would be to allow everyone to come to courts on the flimsiest of grounds.

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<sup>59</sup> *Rollo*, p. 34.

<sup>60</sup> G.R. Nos. 238875, 239483, and 240954, March 16, 2021 [Per J. Leonen, *En Banc*].

Parties must possess their own right to the relief sought, and a general invocation of citizen's or a taxpayer's rights is insufficient. This Court must not indiscriminately open its doors to every person urging it to take cognizance of a case where they have no demonstrable injury. This may ultimately render this Court ineffective to dispense justice as cases clog its docket.<sup>61</sup> (Citations omitted)

To claim standing as a *taxpayer*, a party must allege illegal disbursement of public funds or that the tax measure is unconstitutional, and for *concerned citizens*, it must be shown that the issues raised are of transcendental importance which must be settled early.<sup>62</sup> A mere allegation that the issue is of transcendental importance is not enough, and the following factors determine whether its importance is established: "the character of funds or assets involved in the controversy, a clear disregard of constitutional or statutory prohibition, and the lack of any other party with a more direct and specific interest to bring the suit."<sup>63</sup> Here, none of these factors have been raised and substantiated. Petitioner merely alleges that the assailed provision presents issues with far-reaching implications to society.<sup>64</sup> However, "[t]ranscendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law."<sup>65</sup> More so, transcendental importance is not an excuse for non-compliance with the essential requisites of justiciability.

**ACCORDINGLY**, I vote to **DENY** the petition.



**MARVIC M.V.F. LEONEN**

Senior Associate Justice

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<sup>61</sup> *Id.*

<sup>62</sup> *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 251 (2018) [Per J. Leonen, *En Banc*].

<sup>63</sup> *Paguia v. Office of the President*, 635 Phil. 568, 572 (2010) [Per J. Carpio, *En Banc*].

<sup>64</sup> *Rollo*, p. 13.

<sup>65</sup> *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 257 (2018) [Per J. Leonen, *En Banc*].