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[G.R. No. 254001. July 11, 2023]

BAYYO ASSOCIATION, INC. and ANSELMO D. PERWEG, in his capacity as PRESIDENT OF THE ASSOCIATION, *Petitioners*, *v.* **SECRETARY ARTHUR P. TUGADE, SECRETARY CARLOS S. DOMINGUEZ, SECRETARY WENDEL ELIOT AVISADO, and ATTY. MARTIN B. DELGRA,** *Respondents*.

D E C I S I O N

SINGH, *J.*:

Before the Court is a Petition for *Certiorari* and Prohibition[1] under Rule 65 of the Rules of Court filed by Bayyo Association, Inc. **(Bayyo)** and Anselmo D. Perweg **(Perweg)**, in his capacity as President of Bayyo (collectively, the **petitioners**), which seeks to nullify paragraph 5.2 of Department Order **(DO)** No. 2017-011,[2] dated June 19, 2017, issued by the Department of Transportation **(DOTr)**, for being an invalid delegation of legislative power and for violating the due process and equal protection clauses of the Constitution.

The Facts

On June 19, 2017, the DOTr issued DO No. 2017-011, otherwise known as the "Public Utility Vehicle Modernization Program" **(PUVMP)**, pursuant to the national government policy to authorize and promote safe, reliable, efficient, and environment-friendly Public Utility Vehicles **(PUVs)**, as ordained in Executive

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1 *Rollo*, pp. 3-32.

2 Omnibus Guidelines on the Planning and Identification of Public Road Transportation Services and Franchise Issuance.

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Order **(EO)** No. 125,[3] as amended by EO No. 125-A,[4] and EO No. 202.[5]

DO No. 2017-011 sets out new vehicle specifications, franchise issue procedures, and practices for all PUVs, which include public utility buses **(PUBs)**, mini-buses, public utility jeepneys **(PUJs)**, utility vehicle **(UV)** express services, Filcab services, school services, taxi services, transportation network vehicle services **(TNVS)**, tourist transport services, and shuttle services.

At the core of the present controversy is paragraph 5.2 of DO No. 2017-011, which reads:

> 5.2 **Modernization of Public Transport Services**
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> To modernize existing transport services, brand new and environmentally-friendly units shall be promoted and be given priority in the allocation of CPCs and deployment, based on route categories.
>
> Relative thereto, the following requirements shall be adopted;
>
> 5.2.1 Environmentally-friendly units are vehicles that use an electric drive and/or a combustion engine that complies with Euro IV or better emission standards as prescribed by the DENR to reduce greenhouse gas emissions, toxic fumes, particulate matter, and other forms of air pollution;
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> 5.2.2 The LTFRB shall issue a Memorandum Circular to provide for modernization program for all PUVs, establishing the age limit of each classification based on the year of the oldest major component (*i.e.* chassis and engine/motor) of the vehicle and not the initial year of registration or the year of importation; and

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[3] Entitled "REORGANIZING THE MINISTRY OF TRANSPORTATION AND COMMUNICATIONS DEFINING ITS POWERS AND FUNCTIONS AND FOR OTHER PURPOSE," approved on January 30, 1987.

[4] Entitled "AMENDING EXECUTIVE ORDER NO. 125, ENTITLED "REORGANIZING THE MINISTRY OF TRANSPORTATION AND COMMUNICATIONS, DEFINING ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES," approved on April 13, 1987.

[5] Entitled "CREATING THE LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD," approved on June 19, 1987.

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> 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. (Emphasis in the original)

Bayyo, representing itself as an association consisting of 430 jeepney operators and drivers registered with the Securities and Exchange Commission **(SEC)** and operating in various routes in Metro Manila, now comes before the Court to have paragraph 5.2 of DO No. 2017-011 declared unconstitutional.

The Arguments of the Petitioners

Procedural Matters

The petitioners maintain that they have the requisite legal standing to file the Petition as citizens and taxpayers who will allegedly be denied their fundamental rights by reason of the implementation of DO No. 2017-011. Bayyo also asserts its standing as a legitimate association of jeepney operators and drivers operating in different parts of Metro Manila, whose members have suffered and continue to suffer the brunt of the said administrative issuance.[6]

Nonetheless, the petitioners invoke the relaxation of the rule on standing, as the issues at hand are of transcendental importance with far-reaching implications. They aver that DO No. 2017-011 has serious repercussions on the country's transport industry concerning the health, safety, and well-being of jeepney drivers and operators and the commuting public.[7]

The petitioners further insist on the justiciability of the issues in this case, claiming that DO No. 2017-011 palpably contravenes the Constitution. They reason that dismissing the case would diminish the Court into a reactive branch of the government,

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[6] *Rollo*, p. 11.

[7] Id. at 12-13.

contrary to the framers' vision of a proactive judiciary which is vigilant in its duty to maintain the supremacy of the Constitution.[8]

Substantive Issues

The petitioners argue that DO No. 2017-011 is an invalid delegation of legislative power. They claim that there is nothing under EO No. 125, as amended by EO No. 125-A, and EO No. 202 which serves as basis for empowering the DOTr to direct and compel PUJ drivers and operators to modernize their PUJs.[9]

Further, the petitioners contend that paragraph 5.2 of DO No. 2017-011 is unconstitutional for being violative of the due process and equal protection clauses of the Constitution.

According to the petitioners, the said provision entails the phaseout and replacement of old PUVs with brand new and environment-friendly units and, while sub-paragraph 5.2.3 of DO No. 2017-11 expressly allows refurbishment and/or rebuilding of PUVs, the same will allegedly not apply to PUJs. To support this claim, the petitioners rely on the news article published by the Business Mirror, wherein DOTr Assistant Secretary Mark Richmond de Leon **(ASEC de Leon)** was quoted as saying that the PUVMP envisions a "holistic rehabilitation" and not merely refurbishment and/or rebuilding of PUVs.[10]

Thus, the petitioners posit that the phaseout policy for the traditional PUJs is discriminatory, as it unnecessarily distinguishes between the traditional PUJs, on the one hand, and other PUVs, such as PUBs or UV Express, on the other. Among other things, they consider this policy as not germane to DO No. 2017-011's declared purpose of making all PUVs environment-friendly for the health, safety, and well-being of the commuting public.

It is also the petitioners' position that DO No. 2017-011 is confiscatory since paragraph 5.2 compels PUJ drivers and operators to replace their units with environment-friendly units

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[8] Id. at 11-12.

[9] Id. at 14-16.

[10] Id. at 20-21.

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with government subsidy of a mere ₱80,000.00 (increased to ₱130,000.00), but leaves them for seven years to pay the purchase price of the new unit valued at ₱2.1 million, inclusive of interest. They claim that this is tantamount to confiscation in as much as there is a glaring disproportion between the value of the phased out jeepney and the value of the equity advanced by the government, which is a pittance. Further, the arrangement will force the drivers and operators to perpetual indebtedness and servitude to make ends meet.[11]

In this regard, the petitioners further claim that paragraph 5.2 of DO No. 2017-011 is violative of their right to earn a living and to pursue a lawful calling and profession. Considering that the replacement of their jeepneys will unnecessarily expose them to the quagmire of indebtedness, the petitioners claim that drivers and operators of PUJs will be forced out of their chosen calling and profession and will be deprived of their source of livelihood.[12]

Finally, the petitioners claim that DO No. 2017-011 violates the "Filipino First" Policy since most, if not all, of the brand-new modern PUJs approved by the Land Transportation Franchising and Regulatory Board have been sourced from foreign manufacturers or suppliers. They allege that the respondents have failed or refused to tap local manufacturers or re-builders which can supply or refurbish compliant PUJs at a more affordable price.[13]

The Arguments of the Respondents

Procedural Matters

The respondents argue that the Petition should be dismissed for violation of the rule on hierarchy of courts and for failure to present a purely legal question before the Court. They point out that the petitioners' factual submissions are without evidentiary support, which could have been remedied had they adhered to the aforementioned rule.[14]

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[11] Id. at 21-22.

[12] Id. at 23-27.

[13] Id. at 27-29.

[14] Id. at 81-88, Comment.

While the respondents admit that the rule on hierarchy of courts is not inflexible and admits of some exceptions, none of these exists in this case. The respondents contend that the petitioners failed to substantiate their claim that the Petition involves a constitutional issue of "transcendental importance," which is prejudicial to the well-being of thousands of drivers and operators.[15]

The respondents likewise asseverate that the Petition failed to satisfy the requisites for judicial review. They allege that the Petition does not present actual facts from which the Court can conclude that paragraph 5.2 of DO No. 2017-011 is unconstitutional, and there is no showing that the petitioners are in actual or immediate danger of sustaining direct injury as a result of the issuance's enforcement. Thus, the petitioners are not entitled to the relief they are seeking.[16]

Substantive Issues

Regardless of the above procedural infirmities, the respondents maintain that the Petition should be dismissed for lack of merit.

Contrary to the petitioners' claim, the respondents aver that DO No. 2017-011 is not an invalid delegation of legislative power, as it was issued pursuant to EO No. 125 and EO No. 202. They maintain that the mandate and objectives of the DOTr under EO No. 125 meet the requirements for valid delegation, as they provide limitations in the DOTr's power to formulate and recommend national policies and guidelines.[17]

The respondents likewise assert that DO No. 2017-011 does not violate the equal protection clause of the constitution because it requires all covered PUVs, without any distinction, to meet the required standards in the PUVMP. They also emphasize that paragraph 5.2 of DO No. 2017-011 does not prohibit the refurbishment or rebuilding of PUJs, as there is nothing in the text of the provision that supports the contrary claim of the petitioners.[18]

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[15] Id.

[16] Id. at 88-98.

[17] Id. at 98-103.

[18] Id. at 103-118.

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Anent the petitioners' assertion that DO No. 2017-011 is confiscatory as it requires PUJ operators and drivers to give up their traditional PUJs and provides them with a measly subsidy, the respondents discredit the same and contend that the average scrap value of the traditional PUJs is less than the subsidy. They add that the rate of return of the brand new modern PUJs is relatively higher than that of the traditional PUJs.[19]

The respondents also dispute the petitioners' contention that DO No. 2017-011 violates their rights against involuntary servitude, to pursue a lawful profession and calling, and to earn a living. While they admit that PUJ operators and drivers have a right to earn a living, such right is not absolute considering that their source of livelihood is public transportation, which by its nature is subject to government regulation.[20]

Lastly, the respondents belie the petitioners' claim that DO No. 2017-011 violates the "Filipino First" Policy, claiming that the choice of manufacturers and assemblers is open to both local and foreign entities and involves an accreditation process to verify compliance with technical specifications. They attest that as of August 15, 2021, there are 42 accredited manufacturers and assemblers, of which 12 have manufacturing sites in the country and are employing local personnel.[21]

The Issues

Based on the foregoing disquisitions, the issues for the Court's resolution are summarized, as follows:

(1) Is the Petition procedurally infirm?
(2) Is paragraph 5.2 of DO No. 2017-011 unconstitutional?

The Ruling of the Court

The Petition is dismissed for being procedurally infirm.

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[19] Id. at 118-120.

[20] Id. at 120-123.

[21] Id. at 123-124.

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A petition for certiorari and prohibition is a proper remedy to raise constitutional questions

The petitioners seek to declare as unconstitutional paragraph 5.2 of DO No. 2017-011, and for this purpose, they availed of the remedies of *certiorari* and prohibition under Rule 65 of the Rules of Court.

The Court's power of judicial review is anchored on Section 1, Article VIII, of the Constitution:

> 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.

Thus, judicial power includes the duty of the courts of justice 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."[22]

It has long been settled that under the Court's expanded jurisdiction, the writs of *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, on the ground of grave abuse of discretion, any act of any branch or instrumentality of the government involving the exercise of discretion on the part of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[23]

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[22] *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, 841 Phil. 724, 784 (2018).

[23] *Agcaoili, Jr. v. Fariñas*, 835 Phil. 405, 435 (2018); *Villanueva v. Judicial and Bar Council*, 757 Phil. 534, 544 (2015); *Jardaleza v. Sereno*, 741 Phil. 460, 491 (2014), citing *Araullo v. Aquino*, 737 Phil. 457, 531 (2014).

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Simply put, courts may correct, undo, or enjoin an act of a governmental instrumentality through *certiorari* or prohibition upon showing of grave abuse of discretion amounting to lack or excess of jurisdiction and when delineations of authority were exceeded.[24]

In *Araullo v. Aquino III*,[25] the Court clarified that the special civil actions of *certiorari* and prohibition are appropriate remedies to assail the constitutionality of the Disbursement Acceleration Program (DAP) of the executive and all other issuances implementing the DAP. The Court ruled:

> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition 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. This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.
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> Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.
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> Necessarily, in discharging its duty under Section 1, *supra*, to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.[26]

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[24] *Anti-Trapo Movement of the Philippines v. Land Transportation Office*, G.R. No. 231540, June 27, 2022.

[25] Supra note 23.

[26] Id. at 531.

The foregoing pronouncement was echoed in *Inmates of the New Bilibid Prison v. De Lima*,[27] where the Court, *via* a petition for *certiorari* and prohibition, passed upon the constitutionality of the implementing rules issued by the DOJ to the statutory amendments on the computation of good conduct time allowance under Republic Act **(RA)** No. 10592.[28]

In *DENR Employees Union v. Abad*,[29] the Court likewise held that a petition for prohibition under Rule 65 of the Rules of Court is the proper remedy to determine whether the Secretary of the Department of Budget and Management committed grave abuse of discretion in issuing Budget Circular No. 2011-5. It stressed that its judicial power under Article VIII, Section 1 of the Constitution is broad enough to include the determination of 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 even in their exercise of legislative and quasi-legislative functions.

In *Bureau of Customs Employees Association v. Biazon*,[30] the Court declared that the expanded *certiorari* jurisdiction of the Court was properly invoked *via* a petition for *certiorari*, prohibition, and injunction under Rule 65 of the Rules of Court, to challenge the administrative issuances of the Department of Finance and the Bureau of Customs relating to policies on the payment of overtime work rendered by personnel of the Bureau of Customs.

Thus, it is settled that if any governmental branch or instrumentality is shown to have gravely abused its discretion amounting to lack or excess of jurisdiction, and has overstepped the delimitations of its powers, courts may "set right, undo, or restrain" such act by way of *certiorari* and prohibition.[31]

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[27] 854 Phil. 675 (2019).

[28] Entitled "AN ACT AMENDING ARTICLES 29, 94, 97, 98 AND 99 OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE," approved on May 29, 2013.

[29] G.R. No. 204152, January 19, 2021.

[30] G.R. No. 205836, July 12, 2022.

[31] *COURAGE v. Abad*, G.R. No. 200418, November 10, 2020.

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In line with the Court's consistent ruling, the petitioners correctly availed of the special civil action of *certiorari* and prohibition, under Rule 65 of the Rules of Court, in assailing the constitutionality of paragraph 5.2 of DO No. 2017-011.

The petitioners lack legal standing

Notwithstanding the propriety of the legal vehicle employed, the Court cannot exercise its power of judicial review, even under its expanded jurisdiction, when the requisites for the exercise thereof are not satisfied.[32] The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, *i.e.*, (*a*) there must be an actual case or controversy calling for the exercise of judicial power; (*b*) the person challenging the act must have the standing to question the validity of the subject act or issuance; (*c*) the question of constitutionality must be raised at the earliest opportunity; and (*d*) the issue of constitutionality must be the very *lis mota* of the case.[33]

The Court finds that the petitioners do not possess the requisite legal standing to file this suit.

The requirement of *locus standi* pertains to a party's personal and substantial interest in the case arising from the direct injury they sustained, or will sustain, as a result of the challenged governmental action.[34] "Interest" in this context means material interest, and not mere incidental interest.[35]

Concomitantly, the question in standing is whether the parties have alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens

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[32] *Private Hospitals Association v. Medialdea*, 842 Phil. 747, 781 (2018).

[33] *Province of Camarines Sur v. COA*, G.R. No. 227926, March 10, 2020, 935 SCRA 126, 146, citing *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, 815 Phil. 1067, 1089-1090 (2017).

[34] *KMP v. Aurora Pacific Economic Zone and Freeport Authority*, G.R. No. 198688, November 24, 2020.

[35] Id.

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the presentation of issues upon which the Court so largely depends for illumination of difficult constitutional questions.[36] Thus, as a general rule, a party is not permitted to raise a matter in which he or she has no personal interest.[37]

In this jurisdiction, the Court has recognized the third-party standing of an association to sue on behalf of its members. In *Executive Secretary v. Court of Appeals*,[38] the Court discussed:

> The modern view is that an association has standing to complain of injuries to its members. This view fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents.
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> x x x x
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> x x x We note that, under its Articles of Incorporation, the respondent was organized x x x to act as the representative of any individual, company, entity or association on matters related to the manpower recruitment industry, and to perform other acts and activities necessary to accomplish the purposes embodied therein. The respondent is, thus, the appropriate party to assert the rights of its members, because it and its members are in every practical sense identical x x x. The respondent [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.[39]

It bears emphasis, however, that while an association is endowed with standing to institute actions on behalf of its members, it must establish who their members are, and that it has been duly authorized by its members to represent them or sue on their behalf.[40]

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[36] *Agan, Jr. v. Phil. International Air Terminals Co., Inc.*, 450 Phil. 744, 802 (2003).

[37] *Calleja v. Executive Secretary*, G.R. No. 252578, December 7, 2021.

[38] 473 Phil. 27 (2004).

[39] Id. at 50-51.

[40] *The Provincial Bus Operators Assn of the Phils. v. DOLE*, 836 Phil. 205 (2018).

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In assailing paragraph 5 of DO No. 2017-011, Bayyo principally invokes its standing as a legitimate association of jeepney operators and drivers in the different parts of Metro Manila. It asserts that DO No. 2017-011 violates the rights of its members to pursue a lawful profession and calling and to earn a living.

At the outset, Bayyo did not submit any proof to support its claim that it is a legitimate association of PUJ operators and drivers. While it attached a Certificate of Registration issued by the SEC, the same merely proves its registration as an association, but does not establish that its members are indeed PUJ operators and drivers. Accordingly, due to the absence of Bayyo's Articles of Incorporation and By-Laws or any other competent proof, the Court cannot ascertain its legal standing as an association of PUJ operators and drivers.

Even if such were not the case, Bayyo still failed to establish who its members are and that it has been duly authorized by said members to institute the Petition.

In *The Provincial Bus Operators Assn. of the Phils. v. DOLE* (***Provincial Bus Operators***),[41] the Court clarified that it is insufficient to simply allege that the petitioners therein are associations that represent their members. The associations must establish who their members are and that their members authorized them to sue on their behalf:

> 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**.[42] (Emphasis supplied)

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[41] Id.

[42] Id. at 257.

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In *Private Hospitals Association v. Medialdea*,[43] the Court echoed the pronouncement in *Provincial Bus Operators*, and held that the association cannot benefit from third-party standing for failing to prove that it was authorized by the members to institute the case. It ruled that while the association successfully identified its members, being the sole national organization of purely privately owned clinics, hospitals, or other health facilities in the Philippines, it nonetheless failed to demonstrate that ample authority had been extended to it by its members to file the action.

Similarly, in *Alliance of Non-Life Insurance Workers of the Philippines v. Mendoza*,[44] the Court dismissed the case for failure of the petitioners therein to establish standing as associations suing on behalf of their members. The Court noted that while the petitioners presented their respective Certificates of Incorporation, there was no showing that they were authorized to represent their members in the protection of their insurance business. They likewise failed to present proof that their members will be directly injured by the enactment of the assailed administrative issuance.

Thus, it is evident from the foregoing pronouncements of the Court that to invoke third-party standing, an association must establish the identity of its members and present proof of its authority to bring the suit for and on their behalf.

While Bayyo submitted a Secretary's Certificate, the same only proves the authority of its President to file the Petition on behalf of the association, not its members. The same is insufficient to establish that Bayyo or its President, Perweg, were specifically authorized by the members to institute the present action.

As regards Perweg, he likewise cannot invoke standing as a citizen and taxpayer to file the Petition.

When suing as a concerned citizen, it must be established that one has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be

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[43] Supra note 32.

[44] G.R. No. 206159, August 26, 2020.

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redressed by a favorable action.[45] Further the person complaining must allege that he or she has been or is about to be denied some right or privilege to which he or she is lawfully entitled or that he or she is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[46]

Here, Perweg's invocation of standing as a citizen deserves no credence, as it was not established that he is either a PUJ operator or driver. Hence, he does not stand to suffer any real and apparent injury or threat attributable to the implementation of DO No. 2017-011 so as to demonstrate standing as a citizen.

As for taxpayers' suits, these are predicated on an allegation that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law.[47]

In *Mamba v. Lara*,[48] the Court discussed the requirements of a taxpayer's suit:

> A taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that the public money is being deflected to any improper purpose, or that there is wastage of public funds through the enforcement of an invalid or unconstitutional law. A person suing as a taxpayer, however, must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation. He must also prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation and that he will sustain a direct injury because of the enforcement of the questioned statute or contract. In other words, for a taxpayer's suit to prosper, two requisites must be met: **(1) public funds derived from taxation are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed and (2) the petitioner**

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[45] *Automotive Industry Workers Alliance v. Romulo*, 489 Phil. 710, 718 (2005).

[46] *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, supra note 22, at 787.

[47] Id. at 788.

[48] 623 Phil. 63 (2009).

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is directly affected by the alleged act.[49] (Emphasis supplied; citations omitted)

Thus, a taxpayer's suit is allowed only when the petitioner has demonstrated the direct correlation of the act complained of and the disbursement of public funds in contravention of law or the Constitution, or has shown that the case involves the exercise of the spending or taxing power of Congress.[50]

Here, the petitioners cannot invoke standing as taxpayers considering that paragraph 5.2 of DO No. 2017-011 does not involve the disbursement of public funds. More glaringly, a closer examination of the Petition reveals that there is no allegation of any illegal expenditure of public funds. Thus, the case cannot qualify as a taxpayer's suit.

The petitioners violated the principle of hierarchy of courts

The respondents correctly point out that the Petition was filed in violation of the doctrine of hierarchy of courts.

Under the doctrine of hierarchy of courts, "recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court." Thus, a petition must first be brought before the lowest court with jurisdiction and then appealed until it reaches this Court. This concurrent jurisdiction does not give the party discretion on where to file a petition, as non-compliance with this requirement is a ground for dismissal.[51] Nevertheless, the Court has recognized several exceptions to the rule on hierarchy of courts.

In *The Diocese of Bacolod v. COMELEC*,[52] the Court enumerated instances where direct resort to the Court is allowed:

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[49] Id. at 76-77.

[50] *Roy III v. Herbosa*, 800 Phil. 459 (2016), citing *Automotive Industry Workers Alliance v. Romulo*, supra note 45 at 719.

[51] *Yaphockun v. Professional Regulation Commission*, G.R. Nos. 213314 & 214432, March 23, 2021; *KMP v. Aurora Pacific Economic Zone and Freeport Authority*, supra note 34.

[52] 751 Phil. 301 (2015).

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(*a*) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (*b*) when the issues involved are of transcendental importance; (*c*) in cases of first impression; (*d*) the constitutional issues raised are better decided by the Supreme Court; (*e*) the time element or exigency in certain situations; (*f*) the filed petition reviews an act of a constitutional organ; (*g*) when there is no other plain, speedy, and adequate remedy in the ordinary course of law; (*h*) 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.

In this case, the petitioners assert that direct resort to the Court is justified, as the case involves constitutional issues of transcendental importance affecting the rights of jeepney drivers and operators to pursue a lawful calling and profession and the right to earn a living. They likewise allege that paragraph 5.2 of DO No. 2017-011 is confiscatory and discriminatory.

The foregoing assertions fail to impress.

The doctrine of hierarchy of courts dictates that direct recourse to the Court is allowed only to resolve questions of law, notwithstanding the invocation of paramount or transcendental importance of the action. This doctrine is not mere policy, rather, it is a constitutional filtering mechanism designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land.[53]

In *Gios-Samar v. DOTC*,[54] the Court clarified that allegation of "special and important reasons" as an exception to the doctrine of hierarchy of courts, applies only to cases with **purely legal issues**:

> Strict observance of the doctrine of hierarchy of courts should not be a matter of mere policy. It is a constitutional imperative given (1) the structure of our judicial system and (2) the requirements of due process.

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[53] *Gios-Samar v. DOTC*, 849 Phil. 120 (2019).

[54] Id. at 131-132.

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First. The doctrine of hierarchy of courts recognizes the various levels of courts in the country as they are established under the Constitution and by law, their ranking and effect of their rulings in relation with one another, and how these different levels of court interact with one another. It determines the venues of appeals and the appropriate forum for the Issuance of extraordinary writs.

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Second. Strict adherence to the doctrine of hierarchy of courts also proceeds from considerations of due process. While the term "due process of law" evades exact and concrete definition, this Court, in one of its earliest decisions, referred to it as a law which hears before it condemns which proceeds upon inquiry and renders judgment only after trial. It means that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Under the present Rules of Court, which governs our judicial proceedings, warring factual allegations of parties are settled through presentation of evidence. Evidence is the means of ascertaining, in a judicial proceeding, the truth respecting a matter of fact: As earlier demonstrated, the Court cannot accept evidence *in the first instance*. By directly filing a case before the Court, litigants necessarily deprive themselves of the opportunity to completely pursue or defend their causes of actions. Their right to due process is effectively undermined by their own doing.[55]

Thus, the decisive factor is not the invocation of special and important reasons, but the nature of the question raised in the petition. Notably, in a long line of cases where exceptions to the hierarchy of courts were allowed, there were clear factual parameters, enabling this Court to resolve the cases without needing further information and clarifying disputed facts.[56]

In *Kilusang Magbubukid ng Pilipinas v. Aurora Pacific Economic Zone and Freeport Authority*,[57] the Court emphasized that transcendental importance is not an exception to justiciability and the facts constituting the violation must first be complete,

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[55] Id. at 178-182.

[56] *KMP v. Aurora Pacific Economic Zone and Freeport Authority*, supra note 34.

[57] Id.

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undisputed and established before the trial courts, which are equipped to receive and assess evidence:

> This Court is not a trier of facts. Whether in its original or appellate jurisdiction, this Court is not equipped to receive and weigh evidence in the first instance. **When litigants bypass the hierarchy of courts, the facts they claim before this Court are incomplete and disputed**.
>
> **Bypassing the judicial hierarchy requires more than just raising issues of transcendental importance**. Without first resolving the factual disputes, it will remain unclear if there was a direct injury, or if there was factual concreteness and adversariness to enable this Court to determine the parties' rights and obligations. **Transcendental importance is no excuse for not meeting the demands of justiciability**.[58] (Emphasis supplied; citation omitted)

Similarly, in *Pangilinan v. Cayetano*,[59] the Court explained that a party invoking transcendental importance must clearly show why the Court must exercise its power of judicial review, including the facts constituting the actual case or controversy in question:

> Transcendental importance is often invoked in instances when the petitioners fail to establish standing in accordance with customary requirements. However, its general invocation cannot negate the requirement of *locus standi*. Facts must be undisputed, only legal issues must be present, and proper and sufficient justifications why this Court should not simply stay its hand must be clear.[60]

Thus, without clear and specific allegations of facts, the Court cannot rule on the rights and obligations of the parties. The invocation of an exception to the doctrine of hierarchy of courts does not do away with a petition's infirmities. This is more apparent in petitions which require resolution of factual issues that are indispensable for the cases' proper disposition,[61] such as in this case.

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[58] Id.

[59] G.R. No. 238875, March 16, 2021.

[60] Id.

[61] *KMP v. Aurora Pacific Economic Zone and Freeport Authority*, supra note 34.

Here, the petitioners argue that the assailed DO No. 2017-011 is confiscatory, discriminatory, and violative of the rights of jeepney drivers and operators, as it allegedly compels PUJ operators and drivers to modernize their PUJs by phasing out their old units, in exchange for brand new and environment friendly units, with prices ranging from ₱1.6 Million to ₱2.1 Million. As a result, the PUJ operators will be forced to incur unnecessary debts to acquire new units. This will allegedly exclude drivers and operators of public jeepneys from their chosen calling and profession and deprive them of their source of livelihood.

As can be readily seen from the foregoing averments, the issues raised by the petitioners are not purely legal.

The determination of whether DO No. 2017-011 is confiscatory, anti-poor, and deprives PUJ operators and drivers of their source of livelihood, as well as the purported financial impact of the modernization program on PUJ operators and drivers, including, among others, the cost of modernizing jeepneys, the loans and debts that will be obtained by PUJ operators and drivers to purchase the units, and the alleged losses in the daily income that will be sustained by the PUJ operators and drivers as a result of the implementation of DO No. 2017-011, are all factual questions which entail the reception and evaluation of evidence.

The Court cannot simply rely on the bare and unsubstantiated allegations of the petitioners as to the supposed adverse effects of the assailed DO No. 2017-011 on the livelihood of PUJ operators and drivers. These factual issues should have been first brought before the proper trial courts or the Court of Appeals, both of which are specially equipped to try and resolve factual questions.

As a matter of fact, in *Evangelista v. DOTr*,[62] the Court dismissed outright the petition for *certiorari* and prohibition filed by an association of PUJ drivers and operators also questioning the constitutionality of DO No. 2017-011, for violation of the doctrine of hierarchy of Courts. The Court pronounced therein that although the petitioners alleged, *inter alia*, that DO No. 2017-

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[62] G.R. No. 244614, December 9, 2020.

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011 is anti-poor, oppressive, untimely, and a restraint in trade, these asseverations do not automatically excuse the parties from the observance of the hierarchy of courts.

It is well to remember that the Court is not a trier of facts. Whether in its original or appellate jurisdiction, this Court is not equipped to receive and weigh evidence in the first instance. When litigants bypass the hierarchy of courts, the facts they claim before the Court are incomplete and disputed. Bypassing the judicial hierarchy requires more than just raising issues of transcendental importance. Without first resolving the factual disputes, it will remain unclear if there was a direct injury, or if there was factual concreteness and adversariness to enable this Court to determine the parties' rights and obligations. Transcendental importance is no excuse for not meeting the demands of justiciability.[63]

In view of the petitioners' lack of legal standing and their disregard of the doctrine of hierarchy of courts, the Court will not delve into the merits of the substantive arguments raised.

WHEREFORE, the Petition for *Certiorari* and Prohibition is **DISMISSED**.

SO ORDERED.

Gesmundo, C.J., Caguioa, Hernando, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, and *Kho, Jr.*, concur.

Leonen, J., see separate concurring opinion.

APPEARANCES OF COUNSEL

Jose Sonny G. Matula for petitioners.
The Solicitor General for respondents.

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[63] *KMP v. Aurora Pacific Economic Zone and Freeport Authority*, supra note 34.

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*

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> *judicial review is limited to actual cases and controversies to be exercised after f[u]ll 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."*
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> . . . .
>
> 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.[1] (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."[2]

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."[3] The rationale for such requisite has been explained as early as the case of *Angara v. Electoral Commission*:[4]

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

2 *Id.* at 470–471. (Citations omitted)

3 *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*].

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

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 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.[5]

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.[6]

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,

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[5] *Id.* at 158–159.

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

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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.[7]

In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,[8] 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.[9] 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 unconstitutional, because the allegations were founded on speculation and unsupported by actual facts.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[10] 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.[11]

Similarly, this Court, in *Republic v. Roque et al.*,[12] 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.[13]

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

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

[9] *Id.* at 280.

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

[11] *Id.* at 483.

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

[13] *Id.* at 305.

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.[14] As explained in *Calleja v. Executive Secretary*:[15]

> *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.[16] (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 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

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

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

[16] *Id.*

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is resolved, that is, that it is the very *lis mota* of the case, and therefore, ripe for adjudication.[17] (Emphasis supplied, citations omitted)

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

In *Samahan ng mga Progresibong Kabataan v. Quezon City*,[20] 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.[21]

In *Universal Robina Corporation v. Department of Trade and Industry*,[22] 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.[23] 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[24] 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

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

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

[19] *Id.* at 520.

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

[21] *Id.* at 1091.

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

[23] *Id.*

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

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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 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.[25] (Citations omitted)

An "as applied" challenge "considers only extant facts affecting real litigant"[26] 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."[27]

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.[28] (Citation omitted)

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[25] *Id.* at 121–122.

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

[27] *Id.*

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

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Thus, *Executive Secretary v. Pilipinas Shell*[29] 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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> In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, this Court explained:
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> > 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:

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

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> 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 it is 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.[30] (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."[31] Petitioner claims that Department Order No. 2017-011 is "discriminatory and confiscatory to drivers and operators of traditional jeepneys"[32] and "exceeded on its purpose and objective of regulation, and hence, an invalid delegation of legislative power." Petitioner supported

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[30] *Id.*

[31] *Rollo*, p. 9.

[32] *Id.*

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their claims with statements from Senator Grace Poe and other transport groups, citing news articles.[33] 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."[34] 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[35] 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.[36] However, as aptly pointed out by respondent, paragraph 5.2.3 of Department Order No. 2017-011 allows refurbishment and/or rebuilding of PUJs, 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*.[37] (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 other interpretation than

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[33] *Id.*

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

[35] *Rollo*, p. 7.

[36] *Id.*

[37] *Ponencia*, p. 3.

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."[38] 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."[39] 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"[40] and a present substantial interest, not a "mere expectancy or a future, contingent, subordinate, or consequential interest."[41] Direct injury would mean that a party bringing the case has personal stake in its outcome, and thus,

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[38] *Rollo*, p. 12.

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

[40] *Id.* at 531.

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

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assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[42] 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 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.[43] (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.[44]

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;

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

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

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

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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.[45]

In *White Light Corp., et al. v. City of Manila*,[46] 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."[47]

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 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."[48] This Court has been liberal in granting standing to associations or corporations in behalf of their members, upon consideration of certain factors:

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

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

[47] *Id.* at 456.

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

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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*

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of 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.[49] (Citations omitted)

In *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*,[50] 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.[51]

In *Executive Secretary v. Court of Appeals*,[52] 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

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

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

[51] *Id.* at 396.

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

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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."[53]

On the other hand, in *National Federation of Hog Farmers, Inc., et al. v. Board of Investments*,[54] 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.

In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,[55] 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

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[53] *Id.* at 51.

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

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

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.[56] (Citations omitted)

In *IDEALS, Inc. v. Senate of the Philippines*,[57] 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.[58]

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

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[56] *Id.* at 257–258.

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

[58] *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*].

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from the Securities and Exchange Commission[59] 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*,[60] 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."
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> 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

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[59] *Rollo*, p. 34.

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

discretion would be to allow everyone to come to courts on the flimsiest of grounds.

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.[61] (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.[62] 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."[63] 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.[64] However, "[t]ranscendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law."[65] More so, transcendental importance is not an excuse for non-compliance with the essential requisites of justiciability.

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

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[61] *Id.*

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

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

[64] *Rollo*, p. 13.

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