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October 9, 2003 and *COA Resolution No. 2005-010* dated February 24, 2005 are hereby *AFFIRMED* with the *CLARIFICATION* that the petitioners shall no longer be required to refund the rice subsidies for the period January to August 2001, which they had received from NEA but were later disallowed by the COA.

SO ORDERED.

Corona, C.J., Carpio, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.*, concur.

Velasco, Jr., J., on official leave.

EN BANC

[G.R. No. 181704. December 6, 2011]

BUREAU OF CUSTOMS EMPLOYEES ASSOCIATION (BOCEA), represented by its National President (BOCEA National Executive Council) Mr. Romulo A. Pagulayan, *petitioner, vs.* **HON. MARGARITO B. TEVES, in his capacity as Secretary of the Department of Finance, HON. NAPOLEON L. MORALES, in his capacity as Commissioner of the Bureau of Customs, HON. LILIAN B. HEFTI, in her capacity as Commissioner of the Bureau of Internal Revenue,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; LEGAL STANDING TO IMPUGN THE CONSTITUTIONALITY OF REPUBLIC ACT NO. 9335, ESTABLISHED IN THE CASE AT

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BAR.— BOCEA has *locus standi*. BOCEA impugns the constitutionality of R.A. No. 9335 and its IRR because its members, who are rank-and-file employees of the BOC, are actually covered by the law and its IRR. BOCEA's members have a personal and substantial interest in the case, such that they have sustained or will sustain, direct injury as a result of the enforcement of R.A. No. 9335 and its IRR.

2. ID.; ID.; LEGISLATIVE DEPARTMENT; PRINCIPLE OF NON-DELEGATION OF POWERS; DELEGATION OF LEGISLATIVE POWER TO VARIOUS SPECIALIZED ADMINISTRATIVE AGENCIES AS AN EXCEPTION; RATIONALE.— The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. Necessarily imbedded in this doctrine is the principle of non-delegation of powers, as expressed in the Latin maxim *potestas delegata non delegari potest*, which means "what has been delegated, cannot be delegated." This doctrine is based on the ethical principle that such delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another. However, this principle of non-delegation of powers admits of numerous exceptions, one of which is the delegation of legislative power to various specialized administrative agencies like the Board in this case. The rationale for the aforementioned exception was clearly explained in our ruling in *Gerochi v. Department of Energy*, to wit: In the face of the increasing complexity of modern life, delegation of legislative power to various specialized administrative agencies is allowed as an exception to this principle. Given the volume and variety of interactions in today's society, it is doubtful if the legislature can promulgate laws that will deal adequately with and respond promptly to the minutiae of everyday life. Hence, the need to delegate to administrative bodies — the principal agencies tasked to execute laws in their specialized fields — the authority to promulgate rules and regulations to implement a given statute and effectuate its policies. All that is required for the valid exercise of this power of subordinate legislation is that the regulation be germane to the objects and purposes of the law and that the regulation be not in contradiction to, but in conformity with, the standards

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prescribed by the law. These requirements are denominated as the completeness test and the sufficient standard test.

3. ID.; ID.; ID.; ID.; ID.; REPUBLIC ACT NO. 9335 FULLY SATISFIED THE COMPLETENESS AND SUFFICIENT STANDARDS TESTS; ELUCIDATED.— We could not but deduce that the completeness test and the sufficient standard test were fully satisfied by R.A. No. 9335, as evident from the aforementioned Sections 2, 4 and 7 thereof. Moreover, Section 5 of R.A. No. 9335 also provides for the incentives due to District Collection Offices. While it is apparent that the last paragraph of Section 5 provides that "*[t]he allocation, distribution and release of the district reward shall likewise be prescribed by the rules and regulations of the Revenue Performance and Evaluation Board*," Section 7 (a) of R.A. No. 9335 clearly mandates and sets the parameters for the Board by providing that such rules and guidelines for the allocation, distribution and release of the fund shall be in accordance with Sections 4 and 5 of R.A. No. 9335. In sum, the Court finds that R.A. No. 9335, read and appreciated in its entirety, is complete in all its essential terms and conditions, and that it contains sufficient standards as to negate BOCEA's supposition of undue delegation of legislative power to the Board.

4. ID.; ID.; ID.; ID.; ID.; REPUBLIC ACT NO. 9335 FULLY SATISFIED THE EQUAL PROTECTION CLAUSE; DISCUSSED.— Equal protection simply provides that all persons or things similarly situated should be treated in a similar manner, both as to rights conferred and responsibilities imposed. The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective. Thus, on the issue on equal protection of the laws, we held in *Abakada*: The equal protection clause recognizes a valid classification, that is, a classification that has a reasonable foundation or rational basis and not arbitrary. With respect to RA [No.] 9335, its expressed public policy is the optimization of the revenue-generation capability and

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collection of the BIR and the BOC. Since the subject of the law is the revenue-generation capability and collection of the BIR and the BOC, the incentives and/or sanctions provided in the law should logically pertain to the said agencies. Moreover, the law concerns only the BIR and the BOC because they have the common distinct primary function of generating revenues for the national government through the collection of taxes, customs duties, fees and charges. x x x Both the BIR and the BOC are bureaus under the DOF. They principally perform the special function of being the instrumentalities through which the State exercises one of its great inherent functions — taxation. Indubitably, such substantial distinction is germane and intimately related to the purpose of the law. Hence, the classification and treatment accorded to the BIR and the BOC under RA [No.] 9335 fully satisfy the demands of equal protection.

5. ID.; ID.; ID.; ID.; ID.; REPUBLIC ACT NO. 9335 GUARANTEES THE SECURITY OF TENURE AND ENTITLEMENT TO DUE PROCESS OF AFFECTED OFFICIALS AND EMPLOYEES IN THE CASE AT BAR; EXPLAINED.— As it was imperatively correlated to the issue on equal protection, the issues on the security of tenure of affected BIR and BOC officials and employees and their entitlement to due process were also settled in *Abakada*: Clearly, RA [No.] 9335 in no way violates the security of tenure of officials and employees of the BIR and the BOC. The guarantee of security of tenure only means that an employee cannot be dismissed from the service for causes other than those provided by law and only after due process is accorded the employee. In the case of RA [No.] 9335, it lays down a reasonable yardstick for removal (when the revenue collection falls short of the target by at least 7.5%) with due consideration of all relevant factors affecting the level of collection. This standard is analogous to inefficiency and incompetence in the performance of official duties, a ground for disciplinary action under civil service laws. The action for removal is also subject to civil service laws, rules and regulations and compliance with substantive and procedural due process. In addition, the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side. BOCEA's apprehension of deprivation of due process finds its answer

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in Section 7 (b) and (c) of R.A. No. 9335. The concerned BIR or BOC official or employee is not simply given a target revenue collection and capriciously left without any quarter. R.A. No. 9335 and its IRR clearly give due consideration to all relevant factors that may affect the level of collection. In the same manner, exemptions were set, contravening BOCEA's claim that its members may be removed for unattained target collection even due to causes which are beyond their control. Moreover, an employee's right to be heard is not at all prevented and his right to appeal is not deprived of him. In fine, a BIR or BOC official or employee in this case cannot be arbitrarily removed from the service without according him his constitutional right to due process. No less than R.A. No. 9335 in accordance with the 1987 Constitution guarantees this.

6. ID.; ID.; BILL OF RIGHTS; PROSCRIPTION AGAINST THE ENACTMENT OF A BILL OF ATTAINDER, NOT VIOLATED IN THE CASE AT BAR; REPUBLIC ACT NO. 9335 IS NOT A BILL OF ATTAINDER.— [W]e hold that R.A. No. 9335 is not a bill of attainder. A bill of attainder is a legislative act which inflicts punishment on individuals or members of a particular group without a judicial trial. Essential to a bill of attainder are a specification of certain individuals or a group of individuals, the imposition of a punishment, penal or otherwise, and the lack of judicial trial. x x x R.A. No. 9335 does not possess the elements of a bill of attainder. It does not seek to inflict punishment without a judicial trial. R.A. No. 9335 merely lays down the grounds for the termination of a BIR or BOC official or employee and provides for the consequences thereof. The democratic processes are still followed and the constitutional rights of the concerned employee are amply protected.

SERENO, *J., concurring opinion:*

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; CONDITIONAL OBLIGATIONS; ARTICLE 1186 OF THE CIVIL CODE; REQUIREMENT OF REASONABLENESS AS APPLIED TO THE CASE AT BAR; THE STATE WHO IS THE OBLIGEE IS DENIED BY LAW THE RIGHT TO EXACT COMPLIANCE WITH THE REVENUE TARGETS FROM THE CUSTOMS EMPLOYEES WHO ARE THE OBLIGORS BECAUSE THE STATE PREVENTED THE

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INCREASE IN CUSTOMS REVENUE COLLECTIONS BY LOWERING THE REVENUE BASE.— A fundamental requirement for the constitutionality of a statute is for it to pass the test of reasonableness. Applied to this Petition, the question being asked in effect by petitioner is this: Is Republic Act No. 9335 (R.A. 9335) constitutionally reasonable, considering that the Government has been embarking on low-tariff regimes embodied in various regional and bilateral trade agreements, as well as in unilateral tariff-reduction programs? The argument of reasonableness is not, strictly speaking of the means-versus-ends kind. Rather, it is akin to the requirement of reasonableness imposed by Article 1186 of the Civil Code, which reads: "The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment." This article accomplishes two things in civil cases: (1) it punishes the obligee by deeming the condition fulfilled despite non-compliance by the obligor because the obligee **voluntarily prevented** compliance with the condition; and (2) it lifts the burden from the shoulders of the obligor by not requiring the latter to fulfill a condition which, even though not inherently impossible, can no longer be fulfilled because of a voluntary act of the obligee. If we transpose these effects to this Petition, in the case of customs revenue collections, the State who is the obligee, is denied by law the right to exact compliance with the revenue targets from the customs employees who are the obligors, because the State prevented the increase in customs revenue collections, by lowering the revenue base which consists of the customs duties from which such collection increases could have been sourced.

2. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; CONSTITUTIONAL PROVISION ON DELEGATED PRESIDENTIAL TARIFF RATE SETTING POWERS MUST BE REVISITED BY CONGRESS.— Article VI, Section 28(2) of the Constitution provides: The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government. For the longest time, Congress has not made its voice heard on this matter and has simply allowed the President to determine tariff

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rates by one executive order after another. From the above language, it would seem that delegated presidential tariff rate setting powers has been designed to be exercised only as an exception, and not as the norm. Congress must revisit this constitutional provision and weigh the question of whether it has wrongly and excessively defaulted on the exercise of this constitutional duty to set tariffs in favor of the President.

APPEARANCES OF COUNSEL

Public Interest Law Center for petitioner.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition[1] for *certiorari* and prohibition with prayer for injunctive relief/s under Rule 65 of the 1997 Rules of Civil Procedure, as amended, to declare Republic Act (R.A.) No. 9335,[2] otherwise known as the Attrition Act of 2005, and its Implementing Rules and Regulations[3] (IRR) unconstitutional, and the implementation thereof be enjoined permanently.

The Facts

On January 25, 2005, former President Gloria Macapagal-Arroyo signed into law R.A. No. 9335 which took effect on February 11, 2005.

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[1] *Rollo*, pp. 3-58.

[2] Entitled "AN ACT TO IMPROVE THE REVENUE COLLECTION PERFORMANCE OF THE BUREAU OF INTERNAL REVENUE (BIR) AND THE BUREAU OF CUSTOMS (BOC) THROUGH THE CREATION OF A REWARDS AND INCENTIVES FUND AND OF A REVENUE PERFORMANCE EVALUATION BOARD AND FOR OTHER PURPOSES."

[3] Entitled "RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9335, OTHERWISE KNOWN AS THE 'ATTRITION ACT OF 2005.'"

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In *Abakada Guro Party List v. Purisima*[4] (*Abakada*), we said of R.A. No. 9335:

RA [No.] 9335 was enacted to optimize the revenue-generation capability and collection of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC). The law intends to encourage BIR and BOC officials and employees to exceed their revenue targets by providing a system of rewards and sanctions through the creation of a Rewards and Incentives Fund (Fund) and a Revenue Performance Evaluation Board (Board). It covers all officials and employees of the BIR and the BOC with at least six months of service, regardless of employment status.

The Fund is sourced from the collection of the BIR and the BOC in excess of their revenue targets for the year, as determined by the Development Budget and Coordinating Committee (DBCC). Any incentive or reward is taken from the fund and allocated to the BIR and the BOC in proportion to their contribution in the excess collection of the targeted amount of tax revenue.

The Boards in the BIR and the BOC are composed of the Secretary of the Department of Finance (DOF) or his/her Undersecretary, the Secretary of the Department of Budget and Management (DBM) or his/her Undersecretary, the Director General of the National Economic Development Authority (NEDA) or his/her Deputy Director General, the Commissioners of the BIR and the BOC or their Deputy Commissioners, two representatives from the rank-and-file employees and a representative from the officials nominated by their recognized organization.

Each Board has the duty to (1) prescribe the rules and guidelines for the allocation, distribution and release of the Fund; (2) set criteria and procedures for removing from the service officials and employees whose revenue collection falls short of the target; (3) terminate personnel in accordance with the criteria adopted by the Board; (4) prescribe a system for performance evaluation; (5) perform other functions, including the issuance of rules and regulations and (6) submit an annual report to Congress.

The DOF, DBM, NEDA, BIR, BOC and the Civil Service Commission (CSC) were tasked to promulgate and issue the implementing rules

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[4] G.R. No. 166715, August 14, 2008, 562 SCRA 251.

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and regulations of RA [No.] 9335, to be approved by a Joint Congressional Oversight Committee created for such purpose.[5]

The Joint Congressional Oversight Committee approved the assailed IRR on May 22, 2006. Subsequently, the IRR was published on May 30, 2006 in two newspapers of general circulation, the *Philippine Star* and the *Manila Standard,* and became effective fifteen (15) days later.[6]

Contending that the enactment and implementation of R.A. No. 9335 are tainted with constitutional infirmities in violation of the fundamental rights of its members, petitioner Bureau of Customs Employees Association (BOCEA), an association of rank-and-file employees of the Bureau of Customs (BOC), duly registered with the Department of Labor and Employment (DOLE) and the Civil Service Commission (CSC), and represented by its National President, Mr. Romulo A. Pagulayan (Pagulayan), directly filed the present petition before this Court against respondents Margarito B. Teves, in his capacity as Secretary of the Department of Finance (DOF), Commissioner Napoleon L. Morales (Commissioner Morales), in his capacity as BOC Commissioner, and Lilian B. Hefti, in her capacity as Commissioner of the Bureau of Internal Revenue (BIR). In its petition, BOCEA made the following averments:

Sometime in 2008, high-ranking officials of the BOC pursuant to the mandate of R.A. No. 9335 and its IRR, and in order to comply with the stringent deadlines thereof, started to disseminate Collection District Performance Contracts[7] (Performance Contracts) for the lower ranking officials and rank-and-file employees to sign. The Performance Contract pertinently provided:

x x x x x x x x x

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[5] *Id.* at 267-268, citing Sections 2, 3, 4, 6, 7, 11, and 12 of R.A. No. 9335.

[6] *Id.* at 281, 299.

[7] *Rollo*, pp. 90-93.

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WHEREAS, pursuant to the provisions of Sec. 25 (b) of the Implementing Rules and Regulations (IRR) of the Attrition Act of 2005, that provides for the setting of criteria and procedures for removing from the service Officials and Employees whose revenue collection fall short of the target in accordance with Section 7 of Republic Act 9335.

x x x x x x x x x

NOW, THEREFORE, for and in consideration of the foregoing premises, parties unto this Agreement hereby agree and so agreed to perform the following:

x x x x x x x x x

2. The **"Section 2, PA/PE"** hereby accepts the allocated Revenue Collection Target and further accepts/commits to meet the said target under the following conditions:

a.) That he/she will meet the allocated Revenue Collection Target and thereby undertakes and binds himself/herself that **in the event the revenue collection falls short of the target with due consideration of all relevant factors affecting the level of collection as provided in the rules and regulations promulgated under the Act and its IRR, he/she will voluntarily submit to the provisions of Sec. 25 (b) of the IRR and Sec. 7 of the Act**; and

b.) That he/she will cascade and/or allocate to respective Appraisers/ Examiners or Employees under his/her section the said Revenue Collection Target and require them to execute a Performance Contract, and direct them to accept their individual target. The Performance Contract executed by the respective Examiners/Appraisers/Employees shall be submitted to the Office of the Commissioner through the LAIC on or before March 31, 2008.

x x x x x x x x x[8]

BOCEA opined that the revenue target was impossible to meet due to the Government's own policies on reduced tariff rates and tax breaks to big businesses, the occurrence of natural calamities and because of other economic factors. BOCEA claimed that some BOC employees were coerced and forced to sign the Performance Contract. The majority

[8] *Id*. at 91-92. Emphasis supplied.

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of them, however, did not sign. In particular, officers of BOCEA were summoned and required to sign the Performance Contracts but they also refused. To ease the brewing tension, BOCEA claimed that its officers sent letters, and sought several dialogues with BOC officials but the latter refused to heed them.

In addition, BOCEA alleged that Commissioner Morales exerted heavy pressure on the District Collectors, Chiefs of Formal Entry Divisions, Principal Customs Appraisers and Principal Customs Examiners of the BOC during command conferences to make them sign their Performance Contracts. Likewise, BOC Deputy Commissioner Reynaldo Umali (Deputy Commissioner Umali) individually spoke to said personnel to convince them to sign said contracts. Said personnel were threatened that if they do not sign their respective Performance Contracts, they would face possible reassignment, reshuffling, or worse, be placed on floating status. Thus, all the District Collectors, except a certain Atty. Carlos So of the Collection District III of the Ninoy Aquino International Airport (NAIA), signed the Performance Contracts.

BOCEA further claimed that Pagulayan was constantly harassed and threatened with lawsuits. Pagulayan approached Deputy Commissioner Umali to ask the BOC officials to stop all forms of harassment, but the latter merely said that he would look into the matter. On February 5, 2008, BOCEA through counsel wrote the Revenue Performance Evaluation Board (Board) to desist from implementing R.A. No. 9335 and its IRR and from requiring rank-and-file employees of the BOC and BIR to sign Performance Contracts.[9] In his letter-reply[10] dated February 12, 2008, Deputy Commissioner Umali denied having coerced any BOC employee to sign a Performance Contract. He also defended the BOC, invoking its mandate of merely implementing the law. Finally, Pagulayan and BOCEA's counsel, on separate occasions, requested for a certified true

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[9] *Id*. at 97-102.

[10] *Id*. at 103-104.

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copy of the Performance Contract from Deputy Commissioner Umali but the latter failed to furnish them a copy.[11]

This petition was filed directly with this Court on March 3, 2008. BOCEA asserted that in view of the unconstitutionality of R.A. No. 9335 and its IRR, and their adverse effects on the constitutional rights of BOC officials and employees, direct resort to this Court is justified. BOCEA argued, among others, that its members and other BOC employees are in great danger of losing their jobs should they fail to meet the required quota provided under the law, in clear violation of their constitutional right to security of tenure, and at their and their respective families' prejudice.

In their Comment,[12] respondents, through the Office of the Solicitor General (OSG), countered that R.A. No. 9335 and its IRR do not violate the right to due process and right to security of tenure of BIR and BOC employees. The OSG stressed that the guarantee of security of tenure under the 1987 Constitution is not a guarantee of perpetual employment. R.A. No. 9335 and its IRR provided a reasonable and valid ground for the dismissal of an employee which is germane to the purpose of the law. Likewise, R.A. No. 9335 and its IRR provided that an employee may only be separated from the service upon compliance with substantive and procedural due process. The OSG added that R.A. No. 9335 and its IRR must enjoy the presumption of constitutionality.

In its Reply,[13] BOCEA claimed that R.A. No. 9335 employs means that are unreasonable to achieve its stated objectives; that the law is unduly oppressive of BIR and BOC employees as it shifts the extreme burden upon their shoulders when the Government itself has adopted measures that make collection difficult such as reduced tariff rates to almost zero percent and tax exemption of big businesses; and that the law is discriminatory of BIR and BOC employees. BOCEA manifested

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[11] *Id.* at 105 and 106.

[12] *Id.* at 139-160.

[13] *Id.* at 163-180.

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that only the high-ranking officials of the BOC benefited largely from the reward system under R.A. No. 9335 despite the fact that they were not the ones directly toiling to collect revenue. Moreover, despite the BOCEA's numerous requests,[14] BOC continually refused to provide BOCEA the Expenditure Plan on how such reward was distributed.

Since BOCEA was seeking similar reliefs as that of the petitioners in *Abakada Guro Party List v. Purisima*, BOCEA filed a Motion to Consolidate[15] the present case with *Abakada* on April 16, 2008. However, pending action on said motion, the Court rendered its decision in *Abakada* on August 14, 2008. Thus, the consolidation of this case with *Abakada* was rendered no longer possible.[16]

In *Abakada*, this Court, through then Associate Justice, now Chief Justice Renato C. Corona, declared Section 12[17] of R.A. No. 9335 creating a Joint Congressional Oversight Committee to approve the IRR as unconstitutional and violative of the principle of separation of powers. However, the constitutionality of the remaining provisions of R.A. No. 9335 was upheld pursuant to Section 13[18] of R.A. No. 9335. The Court also held that until

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[14] *Id*. at 182-185.

[15] *Id*. at 135-138.

[16] *Id*. at 197-198.

[17] Section 12 of R.A. No. 9335 provides:

SEC. 12. *Joint Congressional Oversight Committee*. — There is hereby created a Joint Congressional Oversight Committee composed of seven Members from the Senate and seven Members from the House of Representatives. The Members from the Senate shall be appointed by the Senate President, with at least two senators representing the minority. The Members from the House of Representatives shall be appointed by the Speaker with at least two members representing the minority. After the Oversight Committee will have approved the implementing rules and regulations (IRR) it shall thereafter become *functus officio* and therefore cease to exist.

[18] Section 13 of R.A. No. 9335 provides:

SEC. 13. *Separability Clause*. — If any provision of this Act is declared invalid by a competent court, the remainder of this Act or any provision not affected by such declaration of invalidity shall remain in force and effect.

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the contrary is shown, the IRR of R.A. No. 9335 is presumed valid and effective even without the approval of the Joint Congressional Oversight Committee.[19]

Notwithstanding our ruling in *Abakada*, both parties complied with our Resolution[20] dated February 10, 2009, requiring them to submit their respective Memoranda.

The Issues

BOCEA raises the following issues:

I.

WHETHER OR NOT THE ATTRITION LAW, REPUBLIC ACT [NO.] 9335, AND ITS IMPLEMENTING RULES AND REGULATIONS ARE UNCONSTITUTIONAL AS THESE VIOLATE THE RIGHT TO DUE PROCESS OF THE COVERED BIR AND BOC OFFICIALS AND EMPLOYEES[;]

II.

WHETHER OR NOT THE ATTRITION LAW, REPUBLIC ACT [NO.] 9335, AND ITS IMPLEMENTING RULES AND REGULATIONS ARE UNCONSTITUTIONAL AS THESE VIOLATE THE RIGHT OF BIR AND BOC OFFICIALS AND EMPLOYEES TO THE EQUAL PROTECTION OF THE LAWS[;]

III.

WHETHER OR NOT REPUBLIC ACT [NO.] 9335 AND ITS IMPLEMENTING RULES AND REGULATIONS VIOLATE THE RIGHT TO SECURITY OF TENURE OF BIR AND BOC OFFICIALS AND EMPLOYEES AS ENSHRINED UNDER SECTION 2 (3), ARTICLE IX (B) OF THE CONSTITUTION[;]

IV.

WHETHER OR NOT REPUBLIC ACT [NO.] 9335 AND ITS IMPLEMENTING RULES AND REGULATIONS ARE UNCONSTITUTIONAL AS THEY CONSTITUTE UNDUE DELEGATION OF LEGISLATIVE POWERS TO THE REVENUE PERFORMANCE EVALUATION BOARD IN VIOLATION OF THE

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[19] *Supra* note 4 at 294-299.

[20] *Rollo*, pp. 360-361.

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PRINCIPLE OF SEPARATION OF POWERS ENSHRINED IN THE CONSTITUTION[; AND]

V.

WHETHER OR NOT REPUBLIC ACT [NO.] 9335 IS A BILL OF ATTAINDER AND HENCE[,] UNCONSTITUTIONAL BECAUSE IT INFLICTS PUNISHMENT THROUGH LEGISLATIVE FIAT UPON A PARTICULAR GROUP OR CLASS OF OFFICIALS AND EMPLOYEES WITHOUT TRIAL.[21]

BOCEA manifested that while waiting for the Court to give due course to its petition, events unfolded showing the patent unconstitutionality of R.A. No. 9335. It narrated that during the first year of the implementation of R.A. No. 9335, BOC employees exerted commendable efforts to attain their revenue target of ₱196 billion which they surpassed by as much as ₱2 billion for that year alone. However, this was attained only because oil companies made advance tax payments to BOC. Moreover, BOC employees were given their "reward" for surpassing said target only in 2008, the distribution of which they described as unjust, unfair, dubious and fraudulent because only top officials of BOC got the huge sum of reward while the employees, who did the hard task of collecting, received a mere pittance of around ₱8,500.00. In the same manner, the Bonds Division of BOC-NAIA collected 400+% of its designated target but the higher management gave out to the employees a measly sum of ₱8,500.00 while the top level officials partook of millions of the excess collections. BOCEA relies on a piece of information revealed by a newspaper showing the list of BOC officials who apparently earned huge amounts of money by way of reward.[22] It claims that the recipients thereof included

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[21] *Id.* at 499-500.

[22] *Rollo*, pp. 432-436, 435. The CHIP-IN Bulletin in its July 2008 issue named the recipients of rewards, the top five of which were:

1. Napoleon L. Morales	Commissioner/OCOM	₱5,293,000.00;
2. Suansing, Jr., Horacio P.	District Collector	₱1,011,000.00;
3. Dir. Reynaldo V. Umali	Acting Director	₱ 908,000.00;
4. Bernardo V. Sales	Officer-in-Charge, IAG	₱ 908,000.00;
5. Atty. Reynaldo S. Nicolas	Deputy Commissioner/AOCG	₱ 908,000.00.

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lawyers, support personnel and other employees, including a dentist, who performed no collection functions at all. These alleged anomalous selection, distribution and allocation of rewards was due to the failure of R.A. No. 9335 to set out clear guidelines.[23]

In addition, BOCEA avers that the Board initiated the first few cases of attrition for the Fiscal Year 2007 by subjecting five BOC officials from the Port of Manila to attrition despite the fact that the Port of Manila substantially complied with the provisions of R.A. No. 9335. It is thus submitted that the selection of these officials for attrition without proper investigation was nothing less than arbitrary. Further, the legislative and executive departments' promulgation of issuances and the Government's accession to regional trade agreements have caused a significant diminution of the tariff rates, thus, decreasing over-all collection. These unrealistic settings of revenue targets seriously affect BIR and BOC employees tasked with the burden of collection, and worse, subjected them to attrition.[24]

BOCEA assails the constitutionality of R.A. No. 9335 and its IRR on the following grounds:

1. R.A. No. 9335 and its IRR violate the BIR and BOC employees' right to due process because the termination of employees who had not attained their revenue targets for the year is peremptory and done without any form of hearing to allow said employees to ventilate their side. Moreover, R.A. No. 9335 and its IRR do not comply with the requirements under CSC rules and regulations as the dismissal in this case is immediately executory. Such immediately executory nature of the Board's decision negates the remedies available to an employee as provided under the CSC rules.
2. R.A. No. 9335 and its IRR violate the BIR and BOC employees' right to equal protection of the law because

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[23] *Id*. at 491-495.

[24] *Id*. at 495-499.

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R.A. No. 9335 and its IRR unduly discriminates against BIR and BOC employees as compared to employees of other revenue generating government agencies like the Philippine Amusement and Gaming Corporation, Department of Transportation and Communication, the Air Transportation Office, the Land Transportation Office, and the Philippine Charity Sweepstakes Office, among others, which are not subject to attrition.

3. R.A. No. 9335 and its IRR violate the BIR and BOC employees' right to security of tenure because R.A. No. 9335 and its IRR effectively removed remedies provided in the ordinary course of administrative procedure afforded to government employees. The law likewise created another ground for dismissal, *i.e.*, non-attainment of revenue collection target, which is not provided under CSC rules and which is, by its nature, unpredictable and therefore arbitrary and unreasonable.

4. R.A. No. 9335 and its IRR violate the 1987 Constitution because Congress granted to the Revenue Performance Evaluation Board (Board) the unbridled discretion of formulating the criteria for termination, the manner of allocating targets, the distribution of rewards and the determination of relevant factors affecting the targets of collection, which is tantamount to undue delegation of legislative power.

5. R.A. No. 9335 is a bill of attainder because it inflicts punishment upon a particular group or class of officials and employees without trial. This is evident from the fact that the law confers upon the Board the power to impose the penalty of removal upon employees who do not meet their revenue targets; that the same is without the benefit of hearing; and that the removal from service is immediately executory. Lastly, it disregards the presumption of regularity in the performance of the official functions of a public officer.[25]

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[25] *Id*. at 505-543.

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On the other hand, respondents through the OSG stress that except for Section 12 of R.A. No. 9335, R.A. No. 9335 and its IRR are constitutional, as per our ruling in *Abakada*. Nevertheless, the OSG argues that the classification of BIR and BOC employees as public officers under R.A. No. 9335 is based on a valid and substantial distinction since the revenue generated by the BIR and BOC is essentially in the form of taxes, which is the lifeblood of the State, while the revenue produced by other agencies is merely incidental or secondary to their governmental functions; that in view of their mandate, and for purposes of tax collection, the BIR and BOC are *sui generis*; that R.A. No. 9335 complies with the "completeness" and "sufficient standard" tests for the permissive delegation of legislative power to the Board; that the Board exercises its delegated power consistent with the policy laid down in the law, that is, to optimize the revenue generation capability and collection of the BIR and the BOC; that parameters were set in order that the Board may identify the officials and employees subject to attrition, and the proper procedure for their removal in case they fail to meet the targets set in the Performance Contract were provided; and that the rights of BIR and BOC employees to due process of law and security of tenure are duly accorded by R.A. No. 9335. The OSG likewise maintains that there was no encroachment of judicial power in the enactment of R.A. No. 9335 amounting to a bill of attainder since R.A. No. 9335 and its IRR merely defined the offense and provided for the penalty that may be imposed. Finally, the OSG reiterates that the separation from the service of any BIR or BOC employee under R.A. No. 9335 and its IRR shall be done only upon due consideration of all relevant factors affecting the level of collection, subject to Civil Service laws, rules and regulations, and in compliance with substantive and procedural due process. The OSG opines that the Performance Contract, far from violating the BIR and BOC employees' right to due process, actually serves as a notice of the revenue target they have to meet and the possible consequences of failing to meet the same. More, there is nothing in the law

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which prevents the aggrieved party from appealing the unfavorable decision of dismissal.[26]

In essence, the issues for our resolution are:

1. Whether there is undue delegation of legislative power to the Board;
2. Whether R.A. No. 9335 and its IRR violate the rights of BOCEA's members to: (a) equal protection of laws, (b) security of tenure and (c) due process; and
3. Whether R.A. No. 9335 is a bill of attainder.

Our Ruling

Prefatorily, we note that it is clear, and in fact uncontroverted, that BOCEA has *locus standi*. BOCEA impugns the constitutionality of R.A. No. 9335 and its IRR because its members, who are rank-and-file employees of the BOC, are actually covered by the law and its IRR. BOCEA's members have a personal and substantial interest in the case, such that they have sustained or will sustain, direct injury as a result of the enforcement of R.A. No. 9335 and its IRR.[27]

However, we find no merit in the petition and perforce dismiss the same.

It must be noted that this is not the first time the constitutionality of R.A. No. 9335 and its IRR are being challenged. The Court already settled the majority of the same issues raised by BOCEA in our decision in *Abakada*, which attained finality on September 17, 2008. As such, our ruling therein is worthy of reiteration in this case.

We resolve the first issue in the negative.

The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally

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[26] *Id*. at 448-471.

[27] See *Funa v. Ermita*, G.R. No. 184740, February 11, 2010, 612 SCRA 308, 317.

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allocated sphere.[28] Necessarily imbedded in this doctrine is the principle of non-delegation of powers, as expressed in the Latin maxim *potestas delegata non delegari potest*, which means "what has been delegated, cannot be delegated." This doctrine is based on the ethical principle that such delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.[29] However, this principle of non-delegation of powers admits of numerous exceptions,[30] one of which is the delegation of legislative power to various specialized administrative agencies like the Board in this case.

The rationale for the aforementioned exception was clearly explained in our ruling in *Gerochi v. Department of Energy*,[31] to wit:

> In the face of the increasing complexity of modern life, delegation of legislative power to various specialized administrative agencies is allowed as an exception to this principle. Given the volume and variety of interactions in today's society, it is doubtful if the legislature can promulgate laws that will deal adequately with and respond promptly to the minutiae of everyday life. Hence, the need to delegate to administrative bodies — the principal agencies tasked to execute

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[28] See *Angara v. Electoral Commission*, 63 Phil. 139, 156 (1936).

[29] *Abakada Guro Party List v. Ermita*, G.R. Nos. 168056, 168207, 168461, 168463 & 168730, September 1, 2005, 469 SCRA 1, 115-116.

[30] The recognized exceptions to this principle are as follows:

(1) Delegation of tariff powers to the President under Section 28 (2) of Article VI of the Constitution;

(2) Delegation of emergency powers to the President under Section 23(2) of Article VI of the Constitution;

(3) Delegation to the people at large;

(4) Delegation to local governments; and

(5) Delegation to administrative bodies. *Abakada Guro Party List v. Ermita*, *id*. at 117; *Santiago v. Comelec*, 336 Phil. 848, 897-898 (1997), citing *People v. Vera*, 65 Phil. 56 (1937) and Isagani A. Cruz, *PHILIPPINE POLITICAL LAW 87* (1996).

[31] G.R. No. 159796, July 17, 2007, 527 SCRA 696.

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laws in their specialized fields — the authority to promulgate rules and regulations to implement a given statute and effectuate its policies. All that is required for the valid exercise of this power of subordinate legislation is that the regulation be germane to the objects and purposes of the law and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law. These requirements are denominated as the completeness test and the sufficient standard test.[32]

Thus, in *Abakada*, we held,

> Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate. It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented.
>
> RA [No.] 9335 adequately states the policy and standards to guide the President in fixing revenue targets and the implementing agencies in carrying out the provisions of the law. Section 2 spells out the policy of the law:
>
> > "SEC. 2. *Declaration of Policy*. — It is the policy of the State to optimize the revenue-generation capability and collection of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) by providing for a system of rewards and sanctions through the creation of a Rewards and Incentives Fund and a Revenue Performance Evaluation Board in the above agencies for the purpose of encouraging their officials and employees to exceed their revenue targets."
>
> Section 4 "canalized within banks that keep it from overflowing" the delegated power to the President to fix revenue targets:
>
> > "SEC. 4. *Rewards and Incentives Fund*. — A Rewards and Incentives Fund, hereinafter referred to as the Fund, is hereby created, to be sourced from the collection of the BIR and the BOC in excess of **their respective revenue targets of the year,**

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[32] *Id*. at 719-720.

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as determined by the Development Budget and Coordinating Committee (DBCC), in the following percentages:

Excess of Collection [Over] the Revenue Targets		Percent (%) of the Excess Collection to Accrue to the Fund
30% or below	—	15%
More than 30%	—	15% of the first 30% plus 20% of the remaining excess

The Fund shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released on the same fiscal year.

Revenue targets shall refer to the original estimated revenue collection expected of the BIR and the BOC for a given fiscal year as stated in the Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress. The BIR and the BOC shall submit to the DBCC the distribution of the agencies' revenue targets as allocated among its revenue districts in the case of the BIR, and the collection districts in the case of the BOC.

x x x x x x x x x"

Revenue targets are based on the original estimated revenue collection expected respectively of the BIR and the BOC for a given fiscal year as approved by the DBCC and stated in the BESF submitted by the President to Congress. Thus, the determination of revenue targets does not rest solely on the President as it also undergoes the scrutiny of the DBCC.

On the other hand, Section 7 specifies the limits of the Board's authority and identifies the conditions under which officials and employees whose revenue collection falls short of the target by at least 7.5% may be removed from the service:

"SEC. 7. *Powers and Functions of the Board.* — The Board in the agency shall have the following powers and functions:

x x x x x x x x x

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(b) To set the criteria and procedures for **removing from service officials and employees whose revenue collection falls short of the target by at least seven and a half percent (7.5%), with due consideration of all relevant factors affecting the level of collection** as provided in the rules and regulations promulgated under this Act, **subject to civil service laws, rules and regulations and compliance with substantive and procedural due process**: *Provided*, That the following exemptions shall apply:

1. Where the district or area of responsibility is newly-created, not exceeding two years in operation, and has no historical record of collection performance that can be used as basis for evaluation; and

2. Where the revenue or customs official or employee is a recent transferee in the middle of the period under consideration unless the transfer was due to nonperformance of revenue targets or potential nonperformance of revenue targets: *Provided, however*, That when the district or area of responsibility covered by revenue or customs officials or employees has suffered from economic difficulties brought about by natural calamities or *force majeure* or economic causes as may be determined by the Board, termination shall be considered only after careful and proper review by the Board.

(c) To terminate personnel in accordance with the criteria adopted in the preceding paragraph: *Provided*, That such decision shall be immediately executory: *Provided, further*, That **the application of the criteria for the separation of an official or employee from service under this Act shall be without prejudice to the application of other relevant laws on accountability of public officers and employees, such as the Code of Conduct and Ethical Standards of Public Officers and Employees and the Anti-Graft and Corrupt Practices Act;**

x x x x x x x x x"

At any rate, this Court has recognized the following as sufficient standards: "public interest," "justice and equity," "public convenience and welfare" and "simplicity, economy and welfare." In this case, the declared policy of optimization of the revenue-

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generation capability and collection of the BIR and the BOC is infused with public interest.[33]

We could not but deduce that the completeness test and the sufficient standard test were fully satisfied by R.A. No. 9335, as evident from the aforementioned Sections 2, 4 and 7 thereof. Moreover, Section 5[34] of R.A. No. 9335 also provides for the incentives due to District Collection Offices. While it is apparent that the last paragraph of Section 5 provides that "*[t]he allocation, distribution and release of the district reward shall likewise be prescribed by the rules and regulations of the Revenue Performance and Evaluation Board*," Section 7 (a)[35] of R.A. No. 9335 clearly mandates and sets the parameters

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[33] *Supra* note 4 at 277-281. Citations omitted and underscoring supplied; emphasis in the original.

[34] Section 5 of R.A. No. 9335 provides:

SEC. 5. *Incentives to District Collection Offices*. – In the event that the BIR or the BOC fails to meet its revenue target by less than ten percent (10%), the revenue districts, in the case of the BIR, or the collection districts, in the case of the BOC, which exceed their respective allocations of the revenue target (allocated target), shall be entitled to rewards and incentives (district incentive) amounting to ten percent (10%) of the excess over its allocated target: *Provided, however*, That any BIR revenue district or BOC collection office which deliberately foregoes any revenue collection in a given year as part of a scheme to avoid a higher allocated target for the subsequent year shall not be entitled to a district incentive in such subsequent year notwithstanding its having exceeded its allocated target: *Provided further*, That the allocated target of any such district shall have been reported to and validated by the DBCC as required in the immediately preceding section.

The district reward shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released in the same fiscal year.

The allocation, distribution and release of the district reward shall likewise be prescribed by the rules and regulations of the Revenue Performance Evaluation Board.

[35] Sec. 7 (a) of R.A. No. 9335 provides:

SEC. 7. *Powers and Functions of the Board*. — The Board in the agency shall have the following powers and functions:

(a) To prescribe the rules and guidelines for the allocation, distribution and release of the Fund due to the agency **as provided for in Sections 4**

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for the Board by providing that such rules and guidelines for the allocation, distribution and release of the fund shall be in accordance with Sections 4 and 5 of R.A. No. 9335. In sum, the Court finds that R.A. No. 9335, read and appreciated in its entirety, is complete in all its essential terms and conditions, and that it contains sufficient standards as to negate BOCEA's supposition of undue delegation of legislative power to the Board.

Similarly, we resolve the second issue in the negative.

Equal protection simply provides that all persons or things similarly situated should be treated in a similar manner, both as to rights conferred and responsibilities imposed. The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.[36]

Thus, on the issue on equal protection of the laws, we held in *Abakada*:

> The equal protection clause recognizes a valid classification, that is, a classification that has a reasonable foundation or rational basis and not arbitrary. With respect to RA [No.] 9335, its expressed public policy is the optimization of the revenue-generation capability and collection of the BIR and the BOC. Since the subject of the law is the revenue-generation capability and collection of the BIR and the BOC, the incentives and/or sanctions provided in the law should logically pertain to the said agencies. Moreover, the law concerns only the BIR and the BOC because they have the common distinct

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and 5 of this Act: *Provided*, That the rewards under this Act may also take the form of non-monetary benefits;

x x x (Emphasis supplied.)

[36] *Biraogo v. Philippine Truth Commission of 2010*, G.R. Nos. 192935 & 193036, December 7, 2010, 637 SCRA 78, 167.

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primary function of generating revenues for the national government through the collection of taxes, customs duties, fees and charges.

The BIR performs the following functions:

"Sec. 18. *The Bureau of Internal Revenue*. — The Bureau of Internal Revenue, which shall be headed by and subject to the supervision and control of the Commissioner of Internal Revenue, who shall be appointed by the President upon the recommendation of the Secretary [of the DOF], shall have the following functions:

(1) **Assess and collect all taxes, fees and charges and account for all revenues collected;**

(2) Exercise duly delegated police powers for the proper performance of its functions and duties;

(3) Prevent and prosecute tax evasions and all other illegal economic activities;

(4) Exercise supervision and control over its constituent and subordinate units; and

(5) Perform such other functions as may be provided by law.

x x x x x x x x x"

On the other hand, the BOC has the following functions:

"Sec. 23. *The Bureau of Customs*. — The Bureau of Customs which shall be headed and subject to the management and control of the Commissioner of Customs, who shall be appointed by the President upon the recommendation of the Secretary [of the DOF] and hereinafter referred to as Commissioner, shall have the following functions:

(1) **Collect custom duties, taxes and the corresponding fees, charges and penalties;**

(2) **Account for all customs revenues collected;**

(3) Exercise police authority for the enforcement of tariff and customs laws;

(4) Prevent and suppress smuggling, pilferage and all other economic frauds within all ports of entry;

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(5) Supervise and control exports, imports, foreign mails and the clearance of vessels and aircrafts in all ports of entry;

(6) Administer all legal requirements that are appropriate;

(7) Prevent and prosecute smuggling and other illegal activities in all ports under its jurisdiction;

(8) Exercise supervision and control over its constituent units;

(9) Perform such other functions as may be provided by law.

x x x x x x x x x"

Both the BIR and the BOC are bureaus under the DOF. They principally perform the special function of being the instrumentalities through which the State exercises one of its great inherent functions — taxation. Indubitably, such substantial distinction is germane and intimately related to the purpose of the law. Hence, the classification and treatment accorded to the BIR and the BOC under RA [No.] 9335 fully satisfy the demands of equal protection.[37]

As it was imperatively correlated to the issue on equal protection, the issues on the security of tenure of affected BIR and BOC officials and employees and their entitlement to due process were also settled in *Abakada*:

Clearly, RA [No.] 9335 in no way violates the security of tenure of officials and employees of the BIR and the BOC. The guarantee of security of tenure only means that an employee cannot be dismissed from the service for causes other than those provided by law and only after due process is accorded the employee. In the case of RA [No.] 9335, it lays down a reasonable yardstick for removal (when the revenue collection falls short of the target by at least 7.5%) with due consideration of all relevant factors affecting the level of collection. This standard is analogous to inefficiency and incompetence in the performance of official duties, a ground for disciplinary action under civil service laws. The action for removal is also subject to civil service laws, rules and

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[37] *Supra* note 4 at 275-277. Citations omitted and underscoring supplied; emphasis in the original.

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regulations and compliance with substantive and procedural due process.[38]

In addition, the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side.[39] BOCEA's apprehension of deprivation of due process finds its answer in Section 7 (b) and (c) of R.A. No. 9335.[40] The concerned BIR or BOC official or employee is not simply given a target revenue collection and capriciously left without any quarter. R.A. No. 9335 and its IRR clearly give due consideration to all relevant factors[41] that may affect the level of collection. In the same

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[38] *Id*. at 280-281. Citations omitted and underscoring supplied.

[39] *Association of International Shipping Lines, Inc. v. Philippine Ports Authority*, G.R. No. 158000, March 31, 2005, 454 SCRA 701, 717, citing *National Semiconductor (HK) Distribution, Ltd. v. National Labor Relations Commission (4th Division),* G.R. No. 123520, June 26, 1998, 291 SCRA 348, 354 and *NFD International Manning Agents v. NLRC*, G.R. No. 116629, January 16, 1998, 284 SCRA 239, 246.

[40] *Supra* note 33.

[41] Section 19 of the IRR provides:

SEC. 19. *Relevant Factors Affecting Collection.* – For purposes of Section 7(a) of the Act and Section 18 of this Rule, the Board shall consider the following, among others, as relevant factors affecting the level of collection: *Provided*, That these factors were not taken into account in setting BESF targets:

(a) Enactment of a law that repeals revenue measures, reduces tax and tariff rates, grants tax exemptions, or otherwise results in the diminution of the tax base or of taxable transactions and activities, including the entry into force of a treaty or an international agreement that the Philippines entered into resulting in preferential treatment for certain taxpayers or transactions: *Provided*, That the Board shall have the final authority to determine the affected District or Districts as well as the amount of revenues deemed foregone due to such enactment or entry into force;

(b) Reduction by the President of tariff rates under Section 401 of the Tariff and Customs Code of the Philippines; and

(c) Exercise by the President of the power to open or close any port of entry under Section 702 of the Tariff and Customs Code of the Philippines.

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manner, exemptions[42] were set, contravening BOCEA's claim that its members may be removed for unattained target collection even due to causes which are beyond their control. Moreover, an employee's right to be heard is not at all prevented and his right to appeal is not deprived of him.[43] In fine, a BIR or BOC official or employee in this case cannot be arbitrarily removed from the service without according him his constitutional right to due process. No less than R.A. No. 9335 in accordance with the 1987 Constitution guarantees this.

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[42] Section 7(b) of R.A. No. 9335 provides:

SEC. 7. *Powers and Functions of the Board.* — The Board in the agency shall have the following powers and functions:

x x x x x x x x x

(b) To set the criteria and procedures for removing from service officials and employees whose revenue collection falls short of the target by at least seven and a half percent (7.5%), with due consideration of all relevant factors affecting the level of collection as provided in the rules and regulations promulgated under this Act, subject to civil service laws, rules and regulations and compliance with substantive and procedural due process: *Provided*, **That the following exemptions shall apply**:

(1) Where the **district or area of responsibility is newly-created**, not exceeding two years in operation, and has no historical record of collection performance that can be used as basis for evaluation; and

(2) Where the revenue or customs **official or employee is a recent transferee** in the middle of the period under consideration unless the transfer was due to nonperformance of revenue targets or potential nonperformance of revenue targets: *Provided, however*, That when the district or area of responsibility covered by revenue or customs officials or employees has suffered from **economic difficulties brought about by natural calamities or *force majeure* or economic causes as may be determined by the Board, termination shall be considered only after careful and proper review by the Board**. (Emphasis supplied.)

[43] Section 9 of R.A. No. 9335 provides:

SEC. 9. *Right to Appeal.* — An official or employee whose employment is terminated by virtue of the decision of the Board may appeal to the Civil Service Commission (CSC) or the Office of the President (OP), whichever is applicable, in accordance with pertinent laws, rules and regulations.

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We have spoken, and these issues were finally laid to rest. Now, the Court proceeds to resolve the last, but new issue raised by BOCEA, that is, whether R.A. No. 9335 is a bill of attainder proscribed under Section 22,[44] Article III of the 1987 Constitution.

On this score, we hold that R.A. No. 9335 is not a bill of attainder. A bill of attainder is a legislative act which inflicts punishment on individuals or members of a particular group without a judicial trial. Essential to a bill of attainder are a specification of certain individuals or a group of individuals, the imposition of a punishment, penal or otherwise, and the lack of judicial trial.[45]

In his Concurring Opinion in *Tuason v. Register of Deeds, Caloocan City*,[46] Justice Florentino P. Feliciano traces the roots of a Bill of Attainder, to wit:

Bills of attainder are an ancient instrument of tyranny. In England a few centuries back, Parliament would at times enact bills or statutes which declared certain persons attainted and their blood corrupted

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Moreover, Section 20 of the IRR pertinently provides:

SEC. 20. *Right to Appeal*. An official or employee whose employment is terminated by virtue of the decision of the Board may appeal to the Civil Service Commission (CSC) or the Office of the President (OP), as the case may be, within fifteen (15) days from receipt of a copy of the decision of the Board.

For officials who are Presidential appointees, appeal may be filed with the Office of the President. All other officials and employees may appeal with the Civil Service Commission. Pending appeal, however, the decision of the Board shall be immediately executory.

Provided, however, that officials and employees affected by the decision may initially file a motion for reconsideration with the Board within [fifteen] (15) days from receipt of such decision.

Decisions of the Board shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no motion or appeal has been filed.

[44] Sec. 22. No *ex post facto* law or bill of attainder shall be enacted.

[45] *Misolas v. Panga*, G.R. No. 83341, January 30, 1990, 181 SCRA 648, 659.

[46] No. 70484, January 29, 1988, 157 SCRA 613.

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so that it lost all heritable quality (*Ex Parte Garland*, 4 Wall. 333, 18 L.Ed. 366 [1867]). In more modern terms, a bill of attainder is essentially a usurpation of judicial power by a legislative body. It envisages and effects the imposition of a penalty — the deprivation of life or liberty or property — not by the ordinary processes of judicial trial, but by legislative fiat. **While cast in the form of special legislation, a bill of attainder (or bill of pains and penalties, if it prescribed a penalty other than death) is in intent and effect a penal judgment visited upon an identified person or group of persons (and not upon the general community) without a prior charge or demand, without notice and hearing, without an opportunity to defend, without any of the civilized forms and safeguards of the judicial process as we know it** (*People v. Ferrer*, 48 SCRA 382 [1972]; *Cummings and Missouri*, 4 Wall. 277, 18 L. Ed. 356 [1867]; *U.S. v. Lovett*, 328, U.S. 303, 90 L.Ed. 1252 [1945]; *U.S. v. Brown*, 381 U.S. 437, 14 L.Ed. 2d. 484 [1965]. Such is the archetypal bill of attainder wielded as a means of legislative oppression. x x x[47]

R.A. No. 9335 does not possess the elements of a bill of attainder. It does not seek to inflict punishment without a judicial trial. R.A. No. 9335 merely lays down the grounds for the termination of a BIR or BOC official or employee and provides for the consequences thereof. The democratic processes are still followed and the constitutional rights of the concerned employee are amply protected.

A final note.

We find that BOCEA's petition is replete with allegations of defects and anomalies in allocation, distribution and receipt of rewards. While BOCEA intimates that it intends to curb graft and corruption in the BOC in particular and in the government in general which is nothing but noble, these intentions do not actually pertain to the constitutionality of R.A. No. 9335 and its IRR, but rather in the faithful implementation thereof. R.A. No. 9335 itself does not tolerate these pernicious acts of graft and corruption.[48] As the Court is not a trier of facts, the

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[47] *Id*. at 625. Emphasis supplied.

[48] Section 8 of R.A. No. 9335 provides:

SEC. 8. *Liability of Officials, Examiners and Employees of the BIR and the BOC.* — The officials, examiners, and employees of the Bureau of Internal

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investigation on the veracity of, and the proper action on these anomalies are in the hands of the Executive branch. Correlatively, the wisdom for the enactment of this law remains within the domain of the Legislative branch. We merely interpret the law as it is. The Court has no discretion to give statutes a meaning detached from the manifest intendment and language thereof.[49] Just like any other law, R.A. No. 9335 has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution and not one that is doubtful, speculative, or argumentative.[50] We have so declared in *Abakada*, and we now reiterate that R.A. No. 9335 and its IRR are constitutional.

WHEREFORE, the present petition for *certiorari* and prohibition with prayer for injunctive relief/s is *DISMISSED*.

No costs.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Sereno, J., see separate concurring opinion.

Velasco, Jr., J., on official leave.

Revenue and the Bureau of Customs who violate this Act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of their duties shall be held liable for any loss or injury suffered by any business establishment or taxpayer as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.

[49] *Ortega v. People*, G.R. No. 151085, August 20, 2008, 562 SCRA 450, 481.

[50] *Arceta v. Mangrobang*, G.R. Nos. 152895 & 153151, June 15, 2004, 432 SCRA 136, 142, citing *Lacson v. The Executive Secretary*, 361 Phil. 251, 263 (1999).

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CONCURRING OPINION

SERENO, *J.*:

While I concur with the rest of the Court in dismissing this Rule 65 Petition, I wish to highlight a very important species of argument that petitioner, could have, but was unable, to develop as a viable ground for granting this Petition. I refer to the contradiction that government has created — by fostering low-tariff regimes which in turn has created a low customs revenue base, while at the same time increasing customs revenue collection targets that has been rendered unattainable because of the low revenue base. I highlight this contradiction only because it shows how terribly askew certain government actions might have gone, and how the state of ship can possibly start to set aright.

A fundamental requirement for the constitutionality of a statute is for it to pass the test of reasonableness. Applied to this Petition, the question being asked in effect by petitioner is this: Is Republic Act No. 9335 (R.A. 9335) constitutionally reasonable, considering that the Government has been embarking on low-tariff regimes embodied in various regional and bilateral trade agreements, as well as in unilateral tariff-reduction programs?

The argument of reasonableness is not, strictly speaking of the means-versus-ends kind. Rather, it is akin to the requirement of reasonableness imposed by Article 1186 of the Civil Code, which reads: "The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment." This article accomplishes two things in civil cases: (1) it punishes the obligee by deeming the condition fulfilled despite non-compliance by the obligor because the obligee **voluntarily prevented** compliance with the condition; and (2) it lifts the burden from the shoulders of the obligor by not requiring the latter to fulfill a condition which, even though not inherently impossible, can no longer be fulfilled because of a voluntary act of the obligee. If we transpose these effects to this Petition, in the case of customs revenue collections, the State who is the obligee, is denied by law the right to exact compliance with the revenue

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targets from the customs employees who are the obligors, because the State prevented the increase in customs revenue collections, by lowering the revenue base which consists of the customs duties from which such collection increases could have been sourced.

There is one inherent difficulty in this argument, however. While attacks on constitutionality can be more easily launched against statutes that contain material internal inconsistencies, the inconsistency in this instance is between, on the one hand, certain sections of R.A. 9335[1] and the corresponding implementing

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[1] SECTION 7. Powers and Functions of the Board. – The Board in the agency shall have the following powers and functions:

x x x x x x x x x

(b) To set the criteria and procedures for removing from service officials and employees whose revenue collection falls short of the target by at least seven and a half percent (7.5%), with due consideration of all relevant factors affecting the level of collection as provided in the rules and regulations promulgated under this Act, subject to civil service laws, rules and regulations and compliances with substantive and procedural due process. Provided, That the following exemptions shall apply:

x x x x x x x x x

2. Where the revenue or customs official or employee is a recent transferee in the middle of the period under consideration unless the transfer was due to non-performance of revenue targets: Provided, however, That when the district or area of responsibility covered by revenue or customs officials or employees has suffered from economic difficulties brought about by natural calamities, *force majeure* or economic causes as may be determined by the Board, termination shall be considered only after careful and proper review by the Board.

(c) To terminate personnel in accordance with the criteria adopted in the preceding paragraph: Provided, That such decision shall be immediately executor: Provided, further, That the application of the criteria for the separation of an official or employee from service under this Act shall be without prejudice to the application of other relevant laws on accountability of public officers and employees, such as the Code of Conduct and Ethical Standards of Public Officers and Employees and the Anti-Graft and Corrupt Practices Act; x x x (R.A. 9335)

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rules and regulations[2] and, on the other, a series of executive orders lowering the tariffs on an array of imported goods. As it is, it would be quite difficult to satisfy the level of proof required to demonstrate how presidential actions have resulted in the lowering of customs duties as to materially affect the ability of petitioner to comply with collection targets and as to endanger its members' security of tenure.

Regardless of the difficulty of demonstrating the lowering of tariffs and its impact on customs revenue collections, it must ultimately be performed by the government for several important reasons.

First, although Petitioner was not able to adduce sufficient proof for the magnitude of the impact of lowered tariff rates on customs collections, it can be readily seen, nonetheless, how it would be intuitively wrong and unfair to petitioner for the Government to embark on a policy of lowering tariff duties while increasing customs collection targets, and then to penalize failure to meet those targets without first estimating the negative revenue impact of the lowered tariff duties.

Second, it must be done simply because the revenue and expenditures estimates of Government must, to the extent possible, be fact-based and scientifically done. Otherwise, the important constitutional goals of the economy under Article XII, Section

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[2] SECTION 25. Powers and Functions. — The Board in the agency shall have the following powers and functions:

(b) To set the criteria and procedures for removing from the service Officials and Employees whose revenue collection falls short of the target in accordance with Section 7 of the Act;

(c) To terminate personnel in accordance with the criteria adopted in the preceding paragraph;

x x x x x x x x x

(e) To perform such other functions as are necessary or incidental to its mandated functions, including the issuance of rules and regulations, circulars, memoranda, interpretations and rulings and coordinate with each other and provide support, whenever necessary, for the proper conducts of its functions; x x x (Implementing Rules and Regulations)

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1, cannot be satisfied. These economic goals largely depend on a supportive, not a destructive, revenue-raising program — part of which includes customs duties.

A final observation. Article VI, Section 28(2) of the Constitution provides:

> The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

For the longest time, Congress has not made its voice heard on this matter and has simply allowed the President to determine tariff rates by one executive order after another. From the above language, it would seem that delegated presidential tariff rate setting powers has been designed to be exercised only as an exception, and not as the norm. Congress must revisit this constitutional provision and weigh the question of whether it has wrongly and excessively defaulted on the exercise of this constitutional duty to set tariffs in favor of the President.[3]

I vote to deny the Petition. I would also suggest that the Clerk of Court furnish a copy of the Decision to the Senate President and the Speaker of the House of Representatives. Let a copy of this Concurring Opinion also be served to the said officials.

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[3] A profound discourse on the subject matter can be seen in the article of Former Senior Associate Justice Florentino P. Feliciano, "*Deconstruction of Constitutional Limitations and the Tariff Regime of the Philippines: The Strange Persistence of a Martial Law Syndrome*," 84 Phil. L.J. 311 (2009).