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[G.R. No. 148208. December 15, 2004]

CENTRAL BANK (now Bangko Sentral ng Pilipinas) EMPLOYEES ASSOCIATION, INC., *petitioner, vs.* **BANGKO SENTRAL NG PILIPINAS and the EXECUTIVE SECRETARY,** *respondents.*

SYNOPSIS

Almost eight years after the effectivity of R.A. No. 7653 or the New Central Bank Act, petitioner Central Bank Employees Association, Inc., filed a petition for prohibition against respondents Bangko Sentral ng Pilipinas (BSP) and the Executive Secretary of the Office of the President, to restrain them from further implementing the last *proviso* in Section 15(c), Article II of R.A. No. 7653, on the ground that it is unconstitutional because the classification of BSP employees provided by law is unreasonable, arbitrary, capricious, and violative of the equal protection clause of the Constitution. The thrust of petitioner's challenge is that the assailed *proviso* makes an unconstitutional cut between two classes of employees in the BSP, *viz*: (1) the BSP officers or those exempted from the coverage of R.A. No. 6758 or the Salary Standardization Law (SSL) (exempt class); and (2) the rank-and-file (Salary Grade [SG] 19 and below), or those not exempted from the coverage of the SSL (non-exempt class). Petitioner contended that the classification is "a classic case of class legislation," allegedly not based on substantial distinctions which make real differences, but solely on the SG of the BSP personnel's position. Petitioner further contended that the assailed *proviso* is also violative of the equal protection clause because after it was enacted, the charters of the Government Service Insurance System, Land Bank of the Philippines, Development Bank of the Philippines and Social Security System were also amended, and their respective personnel were all exempted from the coverage of the SSL. Thus, within the class of rank-and-file personnel of Government Financial Institutions (GFI), the BSP rank-and-file employees are also discriminated upon.

The Supreme Court struck down the assailed *proviso* and held that with the passage of the subsequent laws amending the charter of seven (7) other governmental financial institutions (GFIs), the continued operation of the last *proviso* of Section 15(c), Article

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II of Republic Act (R.A.) No. 7653, constitutes invidious discrimination on the 2,994 rank-and-file employees of the Bangko Sentral ng Pilipinas. The disparity of treatment between BSP rank-and-file and the rank-and-file of the other seven GFIs definitely bears the unmistakable badge of invidious discrimination. No one can, with candor and fairness, deny the discriminatory character of the subsequent blanket and total exemption of the seven other GFIs from the SSL when such was withheld from the BSP. Alikes are being treated as unalikes without any rational basis. The Court emphasized that the equal protection clause does not demand absolute equality but it requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion; whatever restrictions cast on some in the group is equally binding on the rest. With the lack of real and substantial distinctions that would justify the unequal treatment between the rank-and-file of BSP from the seven other GFIs, it is clear that the enactment of the seven subsequent charters has rendered the continued application of the challenged *proviso* anathema to the equal protection of the law, and the same should be declared as an outlaw.

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO EQUAL PROTECTION OF THE LAW; NOT INFRINGED BY LEGISLATION WHICH APPLIES ONLY TO THOSE PERSONS FALLING WITHIN A SPECIFIED CLASS IF THE GROUPINGS ARE CHARACTERIZED BY SUBSTANTIAL DISTINCTIONS THAT MAKE REAL DIFFERENCES, ONE CLASS MAY BE TREATED AND REGULATED DIFFERENTLY FROM ANOTHER; CLASSIFICATION MUST ALSO BE GERMANE TO THE PURPOSE OF THE LAW AND MUST APPLY TO ALL THOSE BELONGING TO THE SAME CLASS.**— It is settled in constitutional law that the "equal protection" clause does not prevent the Legislature from establishing classes of individuals or objects upon which different rules shall operate — so long as the classification is not unreasonable. As held in *Victoriano v. Elizalde Rope Workers' Union,* and reiterated in a long line of

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case. Congress is allowed a wide leeway in providing for a valid classification. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another. The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class. In the case at bar, it is clear in the legislative deliberations that the exemption of officers (SG 20 and above) from the SSL was intended to address the BSP's lack of competitiveness in terms of attracting competent officers and executives. It was not intended to discriminate against the rank-and-file. If the end-result did in fact lead to a disparity of treatment between the officers and the rank-and-file in terms of salaries and benefits, the discrimination or distinction has a rational basis and is not palpably, purely, and entirely arbitrary in the legislative sense. That the provision was a product of amendments introduced during the deliberation of the Senate Bill does not detract from its validity. As early as 1947 and reiterated in subsequent cases, this Court has subscribed to the conclusiveness of an enrolled bill to refuse invalidating a provision of law, on the ground that the bill from which it originated contained no such provision and was merely inserted by the bicameral conference committee of both Houses. Moreover, it is a fundamental and familiar teaching that all reasonable doubts should be resolved in favor of the constitutionality of a statute. An act of the legislature, approved by the executive, is presumed to be within constitutional limitations. To justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful and equivocal breach.

2. ID.; ID.; ID.; REPUBLIC ACT NO. 7653 STARTED AS A VALID MEASURE WELL WITHIN THE LEGISLATURE'S POWER; ENACTMENT OF SUBSEQUENT LAWS EXEMPTING ALL RANK-AND-FILE EMPLOYEES OF OTHER GOVERNMENT FINANCIAL INSTITUTIONS LEECHED ALL VALIDITY OUT OF THE CHALLENGED *PROVISO*.— While R.A. No. 7653 started as a valid measure well within the legislature's power, we hold that *the enactment of subsequent laws exempting all rank-and-file employees of other GFIs leeched all validity out of the challenged proviso. 1. The concept of relative constitutionality.* The constitutionality of a statute cannot, in every instance, be determined by a mere comparison of its provisions with

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applicable provisions of the Constitution, since the statute may be constitutionally valid as applied to one set of facts and invalid in its application to another. A statute valid at one time may become void at another time because of *altered circumstances*. Thus, if a statute in its practical operation becomes arbitrary or confiscatory, its validity, even though affirmed by a former adjudication, is open to inquiry and investigation in the light of *changed conditions*.

3. **ID.; ID.; ID.; SUBSEQUENT ENACTMENTS CONSTITUTE SIGNIFICANT CHANGES IN CIRCUMSTANCE THAT CONSIDERABLY ALTER THE REASONABILITY OF THE CONTINUED OPERATION OF THE LAST *PROVISO* OF SECTION 15(c), ARTICLE II OF REPUBLIC ACT NO. 7653, THEREBY EXPOSING THE *PROVISO* TO MORE SERIOUS SCRUTINY ON THE CONSTITUTIONALITY OF THE CLASSIFICATION.**— *Eleven years after the amendment of the BSP charter, the rank-and-file of seven other GFIs were granted the exemption that was specifically denied to the rank-and-file of the BSP.* And as if to add insult to petitioner's injury, even the Securities and Exchange Commission (SEC) was granted the same blanket exemption from the SSL in 2000! The prior view on the constitutionality of R.A. No. 7653 was *confined to an evaluation of its classification between the rank-and-file and the officers of the BSP*, found reasonable because there were substantial distinctions that made real differences between the two classes. *The above-mentioned subsequent enactments, however, constitute significant changes in circumstance that considerably alter the reasonability of the continued operation of the last proviso of Section 15(c), Article II of Republic Act No. 7653, thereby exposing the proviso to more serious scrutiny.* This time, the scrutiny relates to the constitutionality of the classification — albeit made indirectly as a consequence of the passage of eight other laws — *between the rank-and-file of the BSP and the seven other GFIs.* The classification must not only be reasonable, *but must also apply equally to all members of the class.* The *proviso* may be fair on its face and impartial in appearance but *it cannot be grossly discriminatory in its operation*, so as practically to make unjust distinctions between persons who are without differences.

4. **ID.; ID.; ID.; THE DISPARATE TREATMENT OF THE BANGKO SENTRAL NG PILIPINAS RANK-AND-FILE FROM THE OTHER GOVERNMENT FINANCIAL INSTITUTIONS CANNOT**

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STAND JUDICIAL SCRUTINY FOR AS REGARDS THE EXEMPTION FROM THE COVERAGE OF THE SALARY STANDARDIZATION LAW, THERE IS NO SUBSTANTIAL DISTINCTIONS SO AS TO DIFFERENTIATE FROM THE OTHER RANK-AND-FILE OF THE SEVEN GOVERNMENT FINANCIAL INSTITUTIONS.— The inequality of treatment cannot be justified on the mere assertion that each exemption (granted to the seven other GFIs) rests "on a policy determination by the legislature." *All legislative enactments necessarily rest on a policy determination* — even those that have been declared to contravene the Constitution. Verily, if this could serve as a magic wand to sustain the validity of a statute, then no due process and equal protection challenges would ever prosper. There is nothing inherently sacrosanct in a policy determination made by Congress or by the Executive; it cannot run riot and overrun the ramparts of protection of the Constitution. In *fine*, the "policy determination" argument may support the inequality of treatment between the rank-and-file and the officers of the BSP, but it cannot justify the inequality of treatment between BSP rank-and-file and other GFIs' who are similarly situated. It fails to appreciate that what is at issue in the *second level of scrutiny* is not the *declared* policy of each law *per se, but the oppressive results of Congress' inconsistent and unequal policy* towards the BSP rank-and-file and those of the seven other GFIs. At bottom, the second challenge to the constitutionality of Section 15(c), Article II of Republic Act No. 7653 is *premised precisely on the irrational discriminatory policy adopted by Congress in its treatment of persons similarly situated.* In the field of equal protection, the guarantee that "no person shall be . . . denied the equal protection of the laws" includes the prohibition against enacting laws that allow invidious discrimination, *directly or indirectly.* If a law has the effect of denying the equal protection of the law, or permits such denial, it is unconstitutional. It is against this standard that the disparate treatment of the BSP rank-and-file from the other GFIs cannot stand judicial scrutiny. For as regards the exemption from the coverage of the SSL, there exist no substantial distinctions so as to differentiate, the BSP rank-and-file from the other rank-and-file of the seven GFIs. On the contrary, *our legal history shows that GFIs have long been recognized as comprising one distinct class, separate from other governmental entities.*

5. ID.; ID.; ID.; THE ARGUMENT THAT THE RANK-AND-FILE EMPLOYEES OF THE SEVEN GOVERNMENT FINANCIAL

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INSTITUTIONS WERE EXEMPTED BECAUSE OF THE IMPORTANCE OF THEIR INSTITUTION'S MANDATE CANNOT STAND MORE THAN AN EMPTY SACK CAN STAND.— It has been proffered that legislative deliberations justify the grant or withdrawal of exemption from the SSL, based on the perceived need "*to fulfill the mandate of the institution concerned considering, among others, that: (1) the GOCC or GFI is essentially proprietary in character; (2) the GOCC or GFI is in direct competition with their [sic] counterparts in the private sector, not only in terms of the provisions of goods or services, but also in terms of hiring and retaining competent personnel; and (3) the GOCC or GFI are or were [sic] experiencing difficulties filling up plantilla positions with competent personnel and/or retaining these personnel. The need for the scope of exemption necessarily varies with the particular circumstances of each institution, and the corresponding variance in the benefits received by the employees is merely incidental.*" The fragility of this argument is manifest. First, the BSP is the *central monetary authority*, and the *banker of the government and all its political subdivisions*. It has the sole power and authority to issue currency; provide policy directions in the areas of money, banking, and credit; and supervise banks and regulate finance companies and non-bank financial institutions performing quasi-banking functions, *including the exempted GFIs*. Hence, the argument that the rank-and-file employees of the seven GFIs were exempted because of the importance of their institution's mandate cannot stand any more than an empty sack can stand.

6. **ID.; ID.; ID.; IT IS PATENT THAT THE CLASSIFICATION MADE BETWEEN THE BANGKO SENTRAL NG PILIPINAS RANK-AND-FILE AND THOSE OF THE OTHER SEVEN GOVERNMENT FINANCIAL INSTITUTIONS WAS INADVERTENT AND WAS NOT BASED ON ANY SUBSTANTIAL DISTINCTION *VIS-A`-VIS* THE PARTICULAR CIRCUMSTANCES OF EACH GOVERNMENT FINANCIAL INSTITUTION.**— It is certainly misleading to say that "*the need for the scope of exemption necessarily varies with the particular circumstances of each institution.*" Nowhere in the deliberations is there a cogent basis for the exclusion of the BSP rank-and-file from the exemption which was granted to the rank-and-file of the other GFIs and the SEC. As point in fact, the BSP and the seven GFIs are similarly situated in so far as Congress deemed it necessary for these institutions to be exempted from the SSL. True, the SSL-exemption of the

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BSP and the seven GFIs was granted in the amended charters of each GFI, enacted separately and over a period of time. But it bears emphasis that, while each GFI has a mandate different and distinct from that of another, the deliberations show that the *raison d'etre* of the SSL-exemption was *inextricably linked to and for the most part based* on factors common to the eight GFIs, *i.e.*, (1) the pivotal role they play in the economy; (2) the necessity of hiring and retaining qualified and effective personnel to carry out the GFI's mandate; and (3) the recognition that the compensation package of these GFIs is not competitive, and fall substantially below industry standards. Considering further that (a) the BSP was the first GFI granted SSL exemption; and (b) the subsequent exemptions of other GFIs did not distinguish between the officers and the rank-and-file; it is patent that *the classification made between the BSP rank-and-file and those of the other seven GFIs* was inadvertent, and NOT intended, *i.e.*, it was not based on any substantial distinction vis-a`-vis the particular circumstances of each GFI. Moreover, the exemption granted to two GFIs makes express reference to *allowance and fringe benefits similar to those extended to and currently enjoyed by the employees and personnel of other GFIs*, underscoring that GFIs are a particular class within the realm of government entities.

7. ID.; ID.; ID.; THERE ARE NO CHARACTERISTICS PECULIAR ONLY TO THE SEVEN GOVERNMENT FINANCIAL INSTITUTIONS OR THEIR RANK-AND-FILE SO AS TO JUSTIFY THE EXEMPTION WHICH THE BANGKO SENTRAL NG PILIPINAS RANK-AND-FILE EMPLOYEES WERE DENIED.— In the case at bar, it is precisely the fact that *as regards the exemption from the SSL, there are no characteristics peculiar only to the seven GFIs or their rank-and-file so as to justify the exemption which BSP rank-and-file employees were denied* (not to mention the anomaly of the SEC getting one). The distinction made by the law is not only superficial, but also arbitrary. It is not based on substantial distinctions that make real differences between the BSP rank-and-file and the seven other GFIs. Moreover, the issue in this case is not — as the dissenting opinion of Mme. Justice Carpio Morales would put it — whether "being an employee of a GOCC or GFI is reasonable and sufficient basis for exemption" from R.A. No. 6758. *It is Congress itself that distinguished the GFIs from other government agencies,* not once but eight times, through the enactment of R.A. Nos. 7653, 7907, 8282, 8289, 8291,

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8523, 8763, and 9302. These laws may have created a "preferred sub-class within government employees," but the present challenge is not directed at the wisdom of these laws. Rather, it is a legal conundrum involving the exercise of legislative power, the validity of which must be measured not only by looking at the specific exercise *in and by itself* (R.A. No. 7653), but also as to the *legal effects* brought about by seven separate exercises — albeit indirectly and without intent.

8. ID.; ID.; ID.; SUBSEQUENT GRANT OF EXEMPTION FROM THE SALARY STANDARDIZATION LAW TO THE RANK-AND-FILE OF THE OTHER SEVEN GOVERNMENT FINANCIAL INSTITUTIONS AND CONTINUED DENIAL TO THE BANGKO SENTRAL NG PILIPINAS RANK-AND-FILE EMPLOYEES BREACHED THE LATTER'S RIGHT TO EQUAL PROTECTION.— It bears stressing that the exemption from the SSL is a "*privilege*" fully within the legislative prerogative to give or deny. However, its subsequent grant to the rank-and-file of the seven other GFIs and continued denial to the BSP rank-and-file employees breached the latter's right to equal protection. In other words, while the granting of a privilege *per se* is a matter of policy exclusively within the domain and prerogative of Congress; *the validity or legality of the exercise* of this prerogative is subject to judicial review. So when the distinction made is superficial, and not based on substantial distinctions that make real differences between those included and excluded, it becomes a matter of arbitrariness that this Court has the duty and the power to correct. As held in the United Kingdom case of *Hooper v. Secretary of State for Work and Pensions,* once the State has chosen to confer benefits, "discrimination" contrary to law may occur where favorable treatment already afforded to one group is refused to another, even though the State is under no obligation to provide that favorable treatment.

9. ID.; ID.; ID.; THE EQUAL PROTECTION CLAUSE DOES NOT DEMAND ABSOLUTE EQUALITY BUT IT REQUIRES THAT ALL PERSONS BE TREATED ALIKE, UNDER LIKE CIRCUMSTANCES AND CONDITIONS BOTH AS TO PRIVILEGES CONFERRED AND LIABILITIES ENFORCED.— The disparity of treatment between BSP rank-and-file and the rank-and-file of the other seven GFIs definitely bears the unmistakable badge of invidious discrimination — no one can, with candor and fairness, deny the discriminatory character of the subsequent

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blanket and total exemption of the seven other GFIs from the SSL when such was withheld from the BSP. *Alikes are being treated as unalikes without any rational basis.* Again, it must be emphasized that the equal protection clause does not demand absolute equality *but it requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.* Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion; whatever restrictions cast on some in the group is equally binding on the rest. In light of the lack of real and substantial distinctions that would justify the unequal treatment between the rank-and-file of BSP from the seven other GFIs, it is clear that the enactment of the seven subsequent charters has rendered the continued application of the challenged *proviso* anathema to the equal protection of the law, and the same should be declared as an outlaw.

10. ID.; ID.; ID.; THE TWO-TIER ANALYSIS MADE IN CASE AT BAR OF THE CHALLENGED PROVISION AND ITS CONSTITUTIONALITY BY SUBSEQUENT OPERATION, ARE IN CADENCE AND IN CONSONANCE WITH THE SUBSEQUENT PROGRESSIVE TREND OF OTHER JURISDICTIONS AND IN INTERNATIONAL LAW.— Breaches of the right to equal protection occur directly or indirectly. A classification may be struck down if it has the *purpose or effect* of violating the right to equal protection. International law recognizes that *discrimination may occur indirectly*, as the Human Rights Committee took into account the definitions of discrimination adopted by CERD and CEDAW in declaring that: . . . "discrimination" as used in the [ICCPR] should be understood to imply any distinction, exclusion, restriction or preference which is *based on any ground such as* race, colour, sex, language, religion, political or other opinion, national or *social origin*, property, birth *or other status*, and which has the *purpose or effect of nullifying or impairing the recognition, enjoyment or exercise* by all persons, on an equal footing, of all rights and freedoms. *Thus, the two-tier analysis made in the case at bar of the challenged provision, and its conclusion of unconstitutionality by subsequent operation, are in cadence and in consonance with the*

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progressive trend of other jurisdictions and in international law. There should be no hesitation in using the equal protection clause as a major cutting edge to eliminate every conceivable irrational discrimination in our society. Indeed, the social justice imperatives in the Constitution, coupled with the special status and protection afforded to labor, compel this approach.

11. ID.; ID.; ID.; CONGRESS RETAINS ITS WIDE DISCRETION IN PROVIDING FOR A VALID CLASSIFICATION, AND ITS POLICIES SHOULD BE ACCORDED RECOGNITION AND RESPECT BY THE COURTS OF JUSTICE EXCEPT WHEN THEY RUN AFOUL OF THE CONSTITUTION.— Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution. *The deference stops where the classification violates a fundamental right, or prejudices persons accorded special protection by the Constitution.* When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, *and require a stricter and more exacting adherence to constitutional limitations.* Rational basis should not suffice.

12. ID.; ID.; ID.; IF THE CHALLENGE TO A STATUTE IS PREMISED ON THE DENIAL OF A FUNDAMENTAL RIGHT, OR THE PERPETUATION OF PREJUDICE AGAINST PERSONS FAVORED BY THE CONSTITUTION WITH SPECIAL PROTECTION, JUDICIAL SCRUTINY OUGHT TO BE MORE STRICT.— Concerns have been raised as to the propriety of a ruling voiding the challenged provision. It has been proffered that the remedy of petitioner is not with this Court, but with Congress, which alone has the power to erase any inequity perpetrated by R.A. No. 7653. Indeed, a bill proposing the exemption of the BSP rank-and-file from the SSL has supposedly been filed. Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment. *But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.* A weak and watered down view would call for the abdication of this Court's solemn

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duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.

13. ID.; ID.; ID.; THE CHALLENGED *PROVISO* OPERATES ON THE BASIS OF THE SALARY GRADE OR OFFICER-EMPLOYEE STATUS AND IT IS AKIN TO A DISTINCTION BASED ON ECONOMIC CLASS AND STATUS WITH THE HIGHER GRADES AS RECIPIENTS OF A BENEFIT SPECIFICALLY WITHHELD FROM THE LOWER GRADES.— In the case at bar, the challenged *proviso* operates on the basis of the salary grade or officer-employee status. *It is akin to a distinction based on economic class and status,* with the higher grades as recipients of a benefit specifically withheld from the lower grades. Officers of the BSP now receive higher compensation packages that are competitive with the industry, while the poorer, low-salaried employees are limited to the rates prescribed by the SSL. The implications are quite disturbing: BSP rank-and-file employees are paid the strictly regimented rates of the SSL while employees higher in rank — possessing higher and better education and opportunities for career advancement — are given higher compensation packages to entice them to stay. *Considering that majority, if not all, the rank-and-file employees consist of people whose status and rank in life are less and limited, especially in terms of job marketability, it is they — and not the officers — who have the real economic and financial need for the adjustment.* This is in accord with the policy of the Constitution "to free the people from poverty, provide adequate social services, extend to them a decent standard of living, and improve the quality of life for all." *Any act of Congress that runs counter to this constitutional desideratum deserves strict scrutiny by this Court before it can pass muster.*

14. ID.; ID.; ID.; THE BANGKO SENTRAL NG PILIPINAS RANK-AND-FILE EMPLOYEES REPRESENT THE POLITICALLY POWERLESS AND THEY SHOULD NOT BE COMPELLED TO SEEK POLITICAL SOLUTION TO THEIR UNEQUAL AND INIQUITOUS TREATMENT.— To be sure, *the BSP rank-and-file employees merit greater concern from this Court.* They represent the more impotent rank-and-file government employees who, unlike employees in the private sector, have no specific

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right to organize as a collective bargaining unit and negotiate for better terms and conditions of employment, nor the power to hold a strike to protest unfair labor practices. Not only are they impotent as a labor unit, but their efficacy to lobby in Congress is almost nil as R.A. No. 7653 effectively isolated them from the other GFI rank-and-file in compensation. *These BSP rank-and-file employees represent the politically powerless and they should not be compelled to seek a political solution to their unequal and iniquitous treatment.* Indeed, they have waited for many years for the legislature to act. They cannot be asked to wait some more for discrimination cannot be given any waiting time. Unless the equal protection clause of the Constitution is a mere platitude, it is the Court's duty to save them from reasonless discrimination.

CHICO-NAZARIO *J.*, *concurring*:

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO EQUAL PROTECTION; THE CUT-OFF POINT, THE GREAT DIVIDE, BETWEEN SALARY GRADE 19 AND 20 IS ENTIRELY ARBITRARY AS IT DOES NOT HAVE A REASONABLE OR RATIONAL FOUNDATION.**—Classification in law is the grouping of persons/objects because they agree with one another in certain particulars and differ from others in those same particulars. In the instant case, however, SG 20 and up do not differ from SG 19 and down in terms of technical and professional expertise needed as the entire range of positions all "require intense and thorough knowledge of a specialized field usually acquired from completion of a bachelor's degree or higher courses." Consequently, if BSP needs an exemption from Rep. Act No. 6758 for key positions in order that it may hire the best and brightest economists, accountants, lawyers and other technical and professional people, the exemption must not begin only in SG 20. Under the circumstances, *the cut-off point, the great divide, between SG 19 and 20 is entirely arbitrary* as it does not have a reasonable or rational foundation. This conclusion finds support in no less than the records of the congressional deliberations, the bicameral conference committee having pegged the cut-off period at SG 20 despite previous discussions in the Senate that the "executive group" is "probably" SG 23 and above.
2. **ID.; ID.; ID.; EVEN ASSUMING THAT THE CLASSIFICATION IS REASONABLE, ITS CONTINUED OPERATION WILL RESULT IN HOSTILE DISCRIMINATION AGAINST THOSE**

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OCCUPYING GRADES 19 AND BELOW.— Even assuming that the classification is reasonable, nonetheless, its continued operation will result in hostile discrimination against those occupying grades 19 and below. As pointed out by Mr. Justice Puno, some other government corporations, by law, now exempt all their employees from the coverage of Rep. Act No. 6758. BSP employees occupying SG 19 and below, however, shall remain under Rep. Act No. 6758 considering the rule that the subject classification, to be valid, must not be limited only to conditions existing as of the time the law was passed. Thus, while BSP employees from SG 19 down will continue to be covered under Rep. Act No. 6758, other government employees of the same class and occupying the same positions in government corporations will be exempt. I therefore concur with Justice Puno in that respect and, considering his thorough discussion, I have nothing more to add thereto.

PANGANIBAN *J.*, *dissenting*:

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO EQUAL PROTECTION OF THE LAW; THEORY OF RELATIVE CONSTITUTIONALITY; NOT APPLICABLE TO EXTRANEOUS CIRCUMSTANCES.— The *ponencia* advocates the application of the theory of *relative constitutionality* to the present case. The theory says that a statute valid at one time may become unconstitutional at another, because of *altered circumstances* or *changed conditions* that make the practical operation of such a statute arbitrary or confiscatory. Thus, the provisions of that statute, which may be valid *as applied to one set of facts* but *invalid as applied to another,* cannot be merely compared with those applicable under the Constitution. From the manner in which it has been utilized in American and Philippine jurisprudence, however, this novel theory finds relevance only *when the factual situation covered by an assailed law changes,* not when another law is passed pertaining to subjects not directly covered by the former. Thus, the theory applies only when circumstances that were specifically addressed upon the passage of the law change. It does not apply to changes or alterations extraneous to those specifically addressed. To prove my point, allow me then to tackle *seriatim* the cases relied upon in the *ponencia.*

2. ID.; ID.; ID.; ID.; NO ALTERED CIRCUMSTANCES OR CHANGED CONDITIONS IN THE APPLICATION OF THE ASSAILED PROVISION OF REPUBLIC ACT 7653.— In the present case,

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no "*altered circumstances*" or "*changed conditions*" in the application of the assailed provision can be found. It verily pertains to only one subject matter, not separable subject matters as earlier pointed out in both *Medill* and *Cook. Hence, its application remains and will remain consistent. Not inherently unconstitutional to begin with, it cannot now be declared unconstitutional.* Moreover, herein petitioner miserably fails to demonstrate — unlike in *Nashville, Atlantic, Louisville,* and *Vernon* — how those similarly situated have not been treated alike in the application of the assailed provision.

3. ID.; ID.; ID.; ID.; REFERENCE TO "CHANGED CONDITIONS" MISPLACED; A STATUTE THAT IS DECLARED INVALID BECAUSE OF A CHANGE IN THE CIRCUMSTANCES AFFECTING ITS VALIDITY BELONGS ONLY TO A CLASS OF EMERGENCY LAWS.— From *Nashville* to *Murphy,* it can be seen that all the contested statutes were passed in the exercise of police power — the inherent power of the State to regulate liberty and property for the promotion of the general welfare. The police measure may be struck down when an activity or property that ought to be regulated does not affect the public welfare; or when the means employed are not reasonably necessary for the accomplishment of the statute's purpose, and they become unduly oppressive upon individuals. As Justice Brandeis stresses in *Nashville, "it may not be exerted arbitrarily or unreasonably."* In the case before us today, the assailed provision can be considered a police measure that regulates the income of BSP employees. Indisputably, the regulation of such income affects the public welfare, because it concerns not only these employees, but also the public in general — from whose various credits the banks earn their income, the CB generates its revenues, and eventually these employees get their salaries and other emoluments. Additionally, with the passage of RAs 6758 and 7653, the means employed by the State to accomplish its objectives are not unduly oppressive. *They are in fact reasonably necessary, not only to attract the best and brightest bank regulatory personnel, but also to establish professionalism and excellence within the BSP in accordance with sound principles of management. Nothing, therefore, is arbitrary in the assailed provision; it cannot be stricken down.* With due respect, the *ponencia's* reference to "*changed conditions*" is totally misplaced. In the above-cited US cases, *this phrase never referred to subsequent laws or*

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executive pronouncements, but rather to the *facts and circumstances* that the law or ordinance specifically addressed upon its passage or adoption. A statute that is declared invalid because of a change in circumstances affecting its validity belongs only to a class of emergency laws. Being a manifestation of the State's exercise of its police power, it is valid at the time of its enactment. *In contrast thereto, RA 7653 cannot be regarded as an emergency measure that is merely temporary in operation. It is not even a statute limited to the exigency that brought it about. The facts and circumstances it specifically addressed upon its passage have not been shown to have changed at all. Hence, the assailed provision of such a declaratory statute cannot be invalidated.*

4. ID.; ID.; ID.; THE FACTUAL SITUATION UPON THE PASSAGE OF THE ASSAILED LAW HAS NOT CHANGED AS THE SAME SUBSTANTIVE RIGHTS TO A COMPETITIVE AND STRUCTURED HUMAN RESOURCE DEVELOPMENT PROGRAM EXISTING THEN STILL EXIST NOW.— Unlike congested traffic or motor-driven vehicles on public roads, the payment of salaries at differing scales in various GFIs *vis-a`-vis* in the BSP, is not such a change in conditions as would cause deprivation of property without due process of law. Petitioner's members have *not been deprived* of their right to income as mandated by law. They have *not received less* than what they were entitled to ever since RA 7653 was passed eleven years ago. *To repeat, the factual situation that the assailed provision specifically addressed upon passage of this law has not changed. The same substantive rights to a competitive and structured human resource development program existing then still exist now. Only the laws external to and not amendatory of this law did. Even if these new laws were to be considered as "changed conditions," those who have been affected in the BSP (as will be shown later) are not at all similarly situated as those in the GFIs to compel their like treatment in application.*

5. ID.; ID.; ID.; ID.; CITED CASE OF *RUTTER V. ESTEBAN* IS NOT APPLICABLE IN CASE AT BAR; CONTESTED CLAUSE IN THE *ESTEBAN* CASE IS A REMEDIAL MEASURE.— The contested clause in *Rutter* was definitely a remedial measure passed to accord prewar debtors who suffered the ravages of war an opportunity to rehabilitate themselves within a reasonable time and to pay their prewar debts thereafter, thus preventing them from being victimized in the interim by their prewar creditors. The purpose

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having been achieved during the eight-year period, there was therefore no more reason for the law. *Cessante ratione legis cessat et ipsa lex.* When the reason for the law ceases, the law itself *ceases. But it does not become unconstitutional.* The *altered circumstances* or *changed conditions* in *Rutter* were specifically the very circumstances that the law addressed at its passage; they were not at all extraneous circumstances like subsequent laws or executive pronouncements. The eight-year moratorium period having lapsed, the debtors' concerns had been adequately addressed. It was now the turn of the creditors to be protected for the pre-war loans they granted. In stark contrast, the contested *proviso* in the instant case is not a remedial measure. It is not subject to a period within which a right of action or a remedy is suspended. *Since the reason for the law still subsists, the law itself including the challenged proviso must continue in existence and operation.*

6. **ID.; ID.; ID.; ID.; RELATIVE CONSTITUTIONALITY NOT BASED ON POSITIVE LAW.**— Applying the concept of *relative constitutionality* strongly advocated in the *ponencia,* therefore, not only goes beyond the parameters of traditional constitutionalism, but also finds no express basis in positive law. While it has been asserted that "*a statute valid when enacted may become invalid by change in conditions to which it is applied,*" the present case has shown no such change in conditions that would warrant the invalidation of the *assailed provision* if applied under such conditions. Hence, no semblance of constitutional impuissance, other than its conjured possibility, can be seen. *In a constitutional order that commands respect for coequal branches of government, speculation by the judiciary becomes incendiary and deserves no respectable place in our judicial chronicles.*

7. **ID.; ID.; ID.; ID.; THE BANGKO SENTRAL NG PILIPINAS IS NOT A GOVERNMENT FINANCIAL/BANKING INSTITUTION.**—The dangerous consequences of the majority's Decision in the present case cannot and should not be ignored. Will there now be an automatic SSL exemption for employees of other GFIs and financial regulatory agencies? Will such exemption not infringe on Congress' prerogative? The *ponencia* overlooks the fact that the Bangko Sentral is not a GFI, but a regulatory body of GFIs and other financial/banking institutions. *Therefore, it should not be compared with them.* There is no parity. The Bangko Sentral is more akin

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to the Insurance Commission, the National Telecommunications Commission, and the Energy Regulatory Commission. Should not more appropriate comparisons be made with such regulatory bodies and their employees?

8. ID.; ID.; ID.; ID.; COURT MUST RESPECT CONGRESS AS A COEQUAL BRANCH.— The trust reposed in this Court is "*not to formulate policy but to determine its legality as tested by the Constitution.*" *"It does not extend to an unwarranted intrusion into that broad and legitimate sphere of discretion enjoyed by the political branches to determine the policies to be pursued. This Court should ever be on the alert lest, without design or intent, it oversteps the boundary of judicial competence.*" Judicial activism should not be allowed to become judicial exuberance. "*As was so well put by Justice Malcolm: 'Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act.'*" Since Congress itself did not commit any constitutional violation or gravely abusive conduct when it enacted RA 7653, it should not be summarily blamed for what the *ponencia* calls "altered circumstances." Congress should be given the opportunity to correct the problem, if any. I repeat, I am not against exemption from the SSL of Bangko Sentral employees with salary grades 19 and below. Neither am I against increases in their pay. However, it is Congress, not this Court, that should provide a solution to their predicament, at least in the first instance.

9. ID.; ID.; ID.; TO COMPEL THE COURT TO MAKE A MORE DECISIVE BUT UNNECESSARY ACTION IN ADVANCE OF WHAT CONGRESS WILL DO IS A DOWNRIGHT DEROGATION OF THE CONSTITUTION ITSELF, FOR IT CONVERTS THE JUDICIARY INTO A SUPER LEGISLATURE AND INVESTS IT WITH POWER THAT TO IT HAS NEVER BELONGED.— The remedy against any perceived legislative failure to enact corrective legislation is a resort, not to this Court, but to the bar of public opinion. The electorate can refuse to return to Congress members who, in their view, have been remiss in the discharge of their constitutional duties. Our Constitution presumes that, absent any inference of antipathy, improvident legislative decisions "*will eventually be rectified by the democratic processes*"; and that judicial intervention is unwarranted, no

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matter how unwisely a political branch may have acted. It is only the legislature, not the courts, that "*must be appealed to for the change.*" If, however, Congress decides to act, the choice of appropriate measure lies within its discretion. Once determined, the measure chosen cannot be attacked on the ground that it is not the best solution, or that it is unwise or inefficacious. A law that advances a legitimate governmental interest will be sustained, even if it "*works to the disadvantage of a particular group, or . . . the rationale for it seems tenuous.*" To compel this Court to make a more decisive but unnecessary action in advance of what Congress will do is a downright derogation of the Constitution itself, for it converts the judiciary into a super-legislature and invests it with a power that to it has never belonged.

10. **ID.; ID.; ID.; ID.; UNDER THE DOCTRINE OF SEPARATION OF POWERS AND CONCOMITTANT RESPECT FOR CO-EQUAL AND COORDINATE BRANCHES OF GOVERNMENT, THE EXERCISE OF PRUDENT RESTRAINT BY THE COURT WOULD STILL BE THE BEST UNDER THE PRESENT CIRCUMSTANCES.**— *We cannot second-guess the mind of the legislature as the repository of the sovereign will. For all we know, amidst the fiscal crisis and financial morass we are experiencing, Congress may altogether remove the blanket exemption, put a salary cap on the highest echelons, lower the salary grade scales subject to SSL exemption, adopt performance-based compensation structures, or even amend or repeal the SSL itself, but within the constitutional mandate that "at the earliest possible time, the Government shall increase the salary scales of . . . officials and employees of the National Government." Legislative reforms of whatever nature or scope may be taken one step at a time, addressing phases of problems that seem to the legislative mind most acute. Rightly so, our legislators must have "flexibility and freedom from judicial oversight in shaping and limiting their remedial efforts." Where there are plausible reasons for their action, the Court's "inquiry is at an end."* Under the doctrine of separation of powers and the concomitant respect for coequal and coordinate branches of government, the exercise of prudent restraint by this Court would still be best *under the present circumstances.*

11. **ID.; ID.; ID.; ID.; REPUBLIC ACT 7653 IS A VALID LEGISLATIVE MEASURE AND IS NOT GROSSLY DISCRIMINATORY.**— There is no question that Congress

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neither violated the Constitution nor gravely abused its discretion when it enacted "The New Central Bank Act" to establish and organize the BSP in 1993. Indeed, RA 7653 is a valid legislative measure. Even the majority concedes that in enacting that law, Congress was well within its legislative powers. However, the *ponencia* argues that the *subsequent* enactment of laws granting "*blanket exemption*" from the coverage of the SSL of *all* employees in seven GFIs has made the contested *proviso* "*grossly discriminatory in its operation*" and therefore unconstitutional. This conclusion, to my mind, is a *non sequitur*. The mere possible effect of related or unrelated laws on another law does not *ipso facto* make the latter unconstitutional. Besides, as already discussed, the theory of *relative constitutionality* is plainly inapplicable to the present facts. Moreover, the *ponencia* has assumed without proof that the BSP rank and file employees are factually and actually similarly situated as the rank and filers of Land Bank, SSS, GSIS, etc., and it is clear from the discussion in Mme. Justice Carpio Morales' Dissenting Opinion *that that is not really the case.* In fact, there exist some substantial differences in scope of work, job responsibilities and so forth that would negate the *ponencia's* assumption

12. **ID.; ID.; ID.; ID.; TO ASSERT, AS PETITIONER DOES, THAT THE STATUTORY CLASSIFICATION IS JUST AN ARTIFICE "BASED ON ARBITRARINESS," WITHOUT MORE, IS NOTHING MORE THAN THROWING A FEW JABS AT AN IMAGINARY FOE.**— While it is true that all employees of the BSP are appointed under the authority of the Monetary Board, observe the same set of office rules and regulations, and perform their work in practically the same offices, *it is equally true that the levels of difficulty and responsibility for BSP employees with salary grades 19 and below are different from those of other BSP employees with salary grades 20 and above.* All those classes of position belonging to the Professional Supervisory Category of the Position Classification System under RA 6758, for instance, are obviously not subjected to the same levels of difficulty, responsibility, and qualification requirements as those belonging to the Professional Non-Supervisory Category, although to both categories are assigned positions that include salary grades 19 and 20. To assert, as petitioner does, that the statutory classification is just an "*artifice based on arbitrariness*," *without more,* is nothing more than throwing a few jabs at an imaginary foe.

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13. ID.; ID.; ID.; EXTENT OF DAMAGE OR PREJUDICE INFLICTED UPON THE BANGKO SENTRAL NG PILIPINAS RANK AND FILE EMPLOYEES AS A RESULT OF THE *PROVISO* IS NOT SHOWN BY EVIDENCE ON RECORD.— The extent of damage or prejudice inflicted upon the BSP rank and file employees as a result of the *proviso* is not shown by any evidence on record. Indeed, neither the petitioner nor the *ponencia* demonstrate the injuries sustained. There is no indication whatsoever of the *precise nature and extent of damages caused* or to be caused to petitioner's members by the continued implementation of such provision. Surely, with no leg to stand on, the allegation of petitioner that there is great disparity in compensation, allowances or benefits, cannot be considered to be stigmatizing and wounding to the psyche of thousands of its members. *In fact, BSP employees, in general, also share the same tribulations of workers and employees in other regulatory government offices.* Not even petitioner's broad and bare claim of "*transcendental importance*" can *ipso facto* generate alacrity on the part of this Court.

14. ID.; ID.; ID.; THE ASSAILED PROVISION SHOULD BE LEFT UNTOUCHED AND ACCORD PROPER COURTESY TO OUR LEGISLATORS TO DETERMINE AT THE PROPER TIME AND IN THE MANNER THEY DEEM BEST THE APPROPRIATE CONTENT OF ANY MODIFICATIONS TO IT.— *Indeed, this Court is of the unanimous opinion that the assailed provision was at the outset constitutional; however, with recent amendments to related laws, the majority now feels that said provision could no longer pass constitutional muster.* To nail my colors to the mast, such proclivity to declare it immediately unconstitutional not only imprudently creeps into the legislative sphere, but also sorely clings to the strands of obscurantism. Future changes in both legislation and its executive implementation should certainly not be the benchmark for a preemptive declaration of unconstitutionality, especially when the said provision is not even constitutionally infirm to begin with. Moreover, the congressional enactment into law of pending bills on the compensation of BSP employees — or even those related thereto — will certainly affect the assailed provision. This Court should bide its time, for it has neither the authority nor the competence to contemplate laws, much less to create or amend them. Given the current status of these pending bills, the arguments raised by petitioner against the assailed provision become all the more tenuous and amorphous.

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I feel we should leave that provision untouched, and instead just accord proper courtesy to our legislators to determine at the proper time and in the manner they deem best the appropriate content of any modifications to it. Besides, there is an omnipresent presumption of constitutionality in every legislative enactment. No confutation of the *proviso* was ever shown before; none should be considered now.

15. **ID.; ID.; ID.; ID.; THE COURT SHOULD NOT PREEMPT CONGRESS ESPECIALLY WHEN THE LATTER HAS ALREADY SHOWN ITS WILLINGNESS AND ABILITY TO PERFORM ITS CONSTITUTIONAL DUTY.**— Far from being remiss in its duty, Congress is in fact presently deliberating upon HB 00123, which precisely seeks to amend RA 7653 by, *inter alia,* exempting from the SSL all positions in the BSP. *Accordingly, this Court should not preempt Congress, especially when the latter has already shown its willingness and ability to perform its constitutional duty.* After all, petitioner has not proven any extreme urgency for this Court to shove Congress aside in terms of providing the proper solution. Lawmaking is not a pool this Court should wade into.

CARPIO, *J.*, *dissenting*:

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO EQUAL PROTECTION OF THE LAW; THE MAJORITY OPINION WANTS TO PREEMPT CONGRESS BY DECLARING THROUGH A JUDICIAL DECISION THAT THE BANGKO SENTRAL NG PILIPINAS RANK-AND-FILE EMPLOYEES ARE NOW EXEMPT FROM THE SALARY STANDARDIZATION LAW.**— What the majority opinion wants is to preempt Congress by declaring through a judicial decision that BSP rank-and-file employees are now exempt from the SSL. The majority opinion seeks to legislate the exemption from SSL by declaring void the *proviso* in Section 15(c), Article II of RA 7653 ("*proviso*"). The majority opinion justifies its action by saying that *while the proviso was valid when first enacted, it is now invalid* because its continued operation is discriminatory against BSP rank-and-file employees. All officials and employees of other government financial institutions ("GFIs") like GSIS, LBP, DBP, SSS, SBGFC, HGC and PDIC are now exempt from the SSL. Congress granted the exemptions over the years, for LBP in 1995, SSS in 1997, GSIS in 1997, SBGFC in 1997, DBP in 1998, HGC in 2000, and PDIC in 2004.

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2. ID.; ID.; ID.; ID.; THE GRANT OF EXEMPTION TO PHILIPPINE DEPOSIT INSURANCE CORPORATION IS THE LEGISLATIVE ACT THAT IS QUESTIONABLE FOR BEING DISCRIMINATORY AGAINST ALL SELF SUSTAINING GOVERNMENT AGENCIES EXERCISING REGULATORY FUNCTIONS AND CREATES A CLASS OF EXEMPTION THAT HAS DUBIOUS BASIS.— Even if Congress does not act on BSP's exemption for more than one year, it does not follow that this Court should then exempt BSP rank-and-file employees from the SSL. As the law now stands, PDIC is the *only* regulatory GFI whose rank-and-file employees are exempt from SSL. All other GFIs exercising regulatory functions are not exempt from the SSL, including BSP whose rank-and-file employees are subject to the SSL. The grant of exemption to PDIC is the legislative act that is questionable for being discriminatory against all other self-sustaining government agencies exercising regulatory functions. Such grant to one regulatory agency, without a similar grant to other regulatory agencies whose incomes exceed their expenses, creates a class of exemption that has dubious basis. In short, the *singular exemption* of PDIC from the SSL discriminates against all other self-sustaining government agencies that exercise regulatory functions.

3. ID.; ID.; ID.; ID.; THE COURT CANNOT SIMPLY ORDAIN AN EXEMPTION FROM THE SALARY STANDARDIZATION LAW WITHOUT CONSIDERING SERIOUS RAMIFICATIONS ON FISCAL POLICIES OF THE GOVERNMENT.— The grant of SSL exemption to GFIs has ramifications on the deepening budget deficit of the government. Under Republic Act No. 7656, all GFIs are required to remit to the National Treasury at least *50%* of their annual net earnings. This remittance forms part of the government revenues that fund the annual appropriations act. If the remittances from GFIs decrease, the national revenues funding the annual appropriations act correspondingly decrease. *This results in widening even more the budget deficit.* A bigger budget deficit means there are no revenues to fund salary increases of *all government employees* who are paid out of the annual appropriations act. The exemption of GFIs from SSL may delay or even prevent a general increase in the salary of all government employees, including rank-and-file employees in the judiciary. This Court cannot simply ordain an exemption from SSL without considering serious ramifications on fiscal policies of the

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government. This is a matter better left to the Executive and Legislative Departments. This Court cannot intrude into fiscal policies that are the province of the Executive and Legislative Departments.

4. ID.; ID.; ID.; ID.; THE POWER TO EXEMPT A GOVERNMENT AGENCY FROM THE SALARY STANDARDIZATION LAW IS A LEGISLATIVE POWER, NOT A JUDICIAL POWER; BY ANNULLING A PRIOR VALID LAW, THE COURT IS EXERCISING A LEGISLATIVE POWER.— The power of judicial review of legislative acts presumes that Congress has enacted a law that may violate the Constitution. This Court cannot exercise its power of judicial review *before* Congress has enacted the questioned law. In this case, Congress is still considering the bill exempting BSP rank-and-file employees from the SSL. There is still no opportunity for this Court to exercise its review power because there is nothing to review. The majority opinion, however, claims that because of the failure of Congress to enact the bill exempting BSP rank-and-file employees from the SSL, this Court should now annul the *proviso* in Section 15(c) of RA 7653 to totally exempt BSP from the SSL. This is no longer an exercise of the power of judicial review but an exercise of the power of legislation — a power that this Court does not possess. The power to exempt a government agency from the SSL is a legislative power, not a judicial power. By annulling a prior valid law that has the effect of exempting BSP from the SSL, this Court is exercising a legislative power.

5. ID.; ID.; ID.; ID.; THE *RUTTER V. ESTEBAN* DOCTRINE IS NOT APPLICABLE IN CASE AT BAR; DISCONTINUANCE OF THE VALIDITY OF *PROVISO* BRINGS THE BANGKO SENTRAL NG PILIPINAS RANK-AND-FILE EMPLOYEES TO A NEW SITUATION THAT THEY ARE NOT ENTITLED WITHOUT THE ENACTMENT OF A NEW LAW.— The majority opinion cites *Rutter v. Esteban* as precedent for declaring the *proviso* in Section 15(c) of RA 7653 unconstitutional. *Rutter* is not applicable to the present case. In *Rutter, the creditors and debtors were restored to their original situation before the enactment of the Debt Moratorium Law. No debtor or creditor was placed in a new situation that required the enactment of a new law.* In the present case, declaring the *proviso* in Section 15(c) of RA 7653 no longer legally effective *does not restore the BSP rank-and-file employees to their original situation,* which subjected them to the SSL. Instead, the discontinuance of the validity of the *proviso* brings

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the BSP rank-and-file employees to a *new situation that they are not entitled without the enactment of a new law*. The effect of the majority decision is to legislate a new law that brings the BSP rank-and-file employees to a new situation. Clearly, the *Rutter* doctrine does not apply to the present case.

6. **ID.; ID.; ID.; ID.; THE BANGKO SENTRAL NG PILIPINAS IS ERRONEOUSLY CLASSIFIED AS A GOVERNMENT FINANCIAL INSTITUTION.**— The majority opinion classifies BSP as a GFI just like GSIS, LBP, DBP, SSS, SBGFC, HGC and PDIC. Here lies the basic error of the majority opinion. *GSIS, LBP, DBP, SSS, SBGFC and HGC are GFIs but are not regulatory agencies. BSP and PDIC are GFIs but are also regulatory agencies just like other governmental regulatory agencies.* The majority opinion is comparing apples with oranges. GFIs that do not exercise regulatory functions operate just like commercial financial institutions. However, GFIs that exercise regulatory functions, like BSP and PDIC, are unlike commercial financial institutions. BSP and PDIC exercise sovereign functions unlike the other non-regulatory GFIs. Non-regulatory GFIs derive their income *solely* from commercial transactions. They compete head on with private financial institutions. Their operating expenses, including employees' salaries, come from their own *self-generated income from commercial activities.* However, regulatory GFIs like BSP and PDIC derive their income from *fees, charges and other impositions that all banks are by law required to pay*. Regulatory GFIs have no competitors in the private sector. Obviously, BSP and PDIC do not belong to the same class of GFIs as LBP, SSS, GSIS, SBGFC, DBP and HGC.

7. **ID.; ID.; ID.; ID.; THE SUPREME COURT HAS NO POWER TO DECLARE A PENDING BILL IN CONGRESS AS DEEMED ENACTED INTO LAW.**— Under the Constitution, Congress is an independent department that is a co-equal of the Supreme Court. This Court has always accorded Congress the great respect that it deserves under the Constitution. The power to legislate belongs to Congress. The power to review enacted legislation belongs to the Supreme Court. The Supreme Court has no power to declare a pending bill in Congress as deemed enacted into law. That is not the power to review legislation but the power to usurp a legislative function. The majority opinion is leading this Court into usurping the primary jurisdiction of Congress to enact laws. The majority opinion brings this Court and Congress into a needless

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clash of powers — whether the power of judicial review of legislative acts includes the power to initiate legislative acts if this Court becomes impatient with the pace of legislative process. Clearly, this Court does not have the power to legislate. Congress has a right to guard zealously its primary power to enact laws as much as this Court has a right to guard zealously its power to review enacted legislations.

APPEARANCES OF COUNSEL

Edgardo D. Peña for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PUNO, *J.*:

Can a provision of law, initially valid, become *subsequently* unconstitutional, on the ground that its *continued operation* would violate the equal protection of the law? We hold that with the passage of the subsequent laws amending the charter of seven (7) other governmental financial institutions (GFIs), the continued operation of the last *proviso* of Section 15(c), Article II of Republic Act (R.A.) No. 7653, constitutes invidious discrimination on the *2,994 rank-and-file employees* of the *Bangko Sentral ng Pilipinas* (BSP).

I.

The Case

First the facts.

On July 3, 1993, R.A. No. 7653 (the New Central Bank Act) took effect. It abolished the old Central Bank of the Philippines, and created a new BSP.

On June 8, 2001, almost *eight years after* the effectivity of R.A. No. 7653, petitioner Central Bank (now BSP) Employees Association, Inc., filed a petition for prohibition against BSP and the Executive Secretary of the Office of the President, to restrain respondents from further implementing the last *proviso*

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in Section 15(c), Article II of R.A. No. 7653, on the ground that it is unconstitutional.

Article II, Section 15(c) of R.A. No. 7653 provides:

Section 15. *Exercise of Authority.* — In the exercise of its authority, the Monetary Board shall:

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(c) establish a human resource management system which shall govern the selection, hiring, appointment, transfer, promotion, or dismissal of all personnel. Such system shall aim to establish professionalism and excellence at all levels of the *Bangko Sentral* in accordance with sound principles of management.

A compensation structure, based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the *Bangko Sentral's* human resource development program: *Provided,* That the Monetary Board shall make its own system conform as closely as possible with the principles provided for under Republic Act No. 6758 [Salary Standardization Act]. ***Provided, however,*** *That compensation and wage structure of employees whose positions fall under salary grade 19 and below shall be in accordance with the rates prescribed under Republic Act No. 6758.* [italics supplied]

The *thrust of petitioner's challenge* is that the above *proviso* makes an *unconstitutional cut* between two classes of employees in the BSP, *viz*: (1) the BSP *officers* or those exempted from the coverage of the Salary Standardization Law (SSL) (exempt class); and (2) the *rank-and-file* (Salary Grade [SG] 19 and below), or those not exempted from the coverage of the SSL (non-exempt class). It is contended that this classification is "a classic case of class legislation," allegedly not based on substantial distinctions which make real differences, but solely on the SG of the BSP personnel's position. Petitioner also claims that it is not germane to the purposes of Section 15(c), Article II of R.A. No. 7653, the most important of which is to establish professionalism and excellence *at all levels* in the BSP.[1] Petitioner offers the following sub-set of arguments:

[1] *Rollo*, p. 7.

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a. the legislative history of R.A. No. 7653 shows that the questioned *proviso* does not appear in the original and amended versions of House Bill No. 7037, nor in the original version of Senate Bill No. 1235;[2]

b. subjecting the compensation of the BSP rank-and-file employees to the rate prescribed by the SSL actually defeats the purpose of the law[3] of establishing professionalism and excellence *at all levels* in the BSP;[4] (italics supplied)

c. the assailed *proviso* was the product of amendments introduced during the deliberation of Senate Bill No. 1235, without showing its relevance to the objectives of the law, and even admitted by one senator as discriminatory against low-salaried employees of the BSP;[5]

d. GSIS, LBP, DBP and SSS personnel are all exempted from the coverage of the SSL; thus within the class of rank-and-file personnel of government financial institutions (GFIs), the BSP rank-and-file are also discriminated upon;[6] and

e. the assailed *proviso* has caused the demoralization among the BSP rank-and-file and resulted in the gross disparity between their compensation and that of the BSP officers.'[7]

In sum, *petitioner posits* that the classification is not reasonable but arbitrary and capricious, and violates the equal protection clause of the Constitution.[8] Petitioner also stresses: (a) that R.A. No. 7653 has a separability clause, which will allow the declaration

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[2] *Id.*, p. 9.

[3] *i.e.*, (1) make the salary of the BSP personnel competitive to attract highly competent personnel; (2) establish professionalism and excellence at all levels in the BSP; and (3) ensure the administrative autonomy of the BSP as the central monetary authority.

[4] *Rollo*, pp. 8-10.

[5] *Id.*, pp. 10-12, *quoting* Former Senator Maceda, Record of the Senate, First Regular Session, March 15 to June 10, 1993, Vol. IV, No. 86, p. 1087.

[6] *Id.*, pp. 12-14.

[7] *Id.*, p. 14.

[8] *Id.*, pp. 2-5.

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of the unconstitutionality of the *proviso* in question without affecting the other provisions; and (b) the urgency and propriety of the petition, as some *2,994 BSP rank-and-file employees* have been *prejudiced since 1994* when the *proviso* was implemented. Petitioner concludes that: (1) since the inequitable *proviso* has no force and effect of law, respondents' implementation of such amounts to lack of jurisdiction; and (2) it has no appeal nor any other plain, speedy and adequate remedy in the ordinary course except through this petition for prohibition, which this Court should take cognizance of, considering the transcendental importance of the legal issue involved.[9]

Respondent *BSP*, in its comment,[10] contends that the provision does not violate the equal protection clause and can stand the constitutional test, provided it is construed in harmony with other provisions of the same law, such as "fiscal and administrative autonomy of BSP," and the mandate of the Monetary Board to "establish professionalism and excellence at all levels in accordance with sound principles of management."

The *Solicitor General,* on behalf of respondent Executive Secretary, also defends the validity of the provision. Quite simplistically, he argues that the classification is based on actual and real differentiation, even as it adheres to the enunciated policy of R.A. No. 7653 to establish professionalism and excellence within the BSP subject to prevailing laws and policies of the national government.[11]

II.

Issue

Thus, the *sole* — albeit significant — *issue* to be resolved in this case is whether the last paragraph of Section 15(c), Article II of R.A. No. 7653, runs afoul of the constitutional mandate that "No person shall be . . . denied the equal protection of the laws."[12]

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[9] *Id.*, pp. 14-15.

[10] *Id.*, pp. 62-75.

[11] *Id.*, pp. 76-90.

[12] 1987 Constitution, Art. III, § 1.

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III.

Ruling

A. UNDER THE PRESENT STANDARDS OF EQUAL PROTECTION, SECTION 15(c), ARTICLE II OF R.A. NO. 7653 IS VALID.

Jurisprudential standards for equal protection challenges indubitably show that the classification created by the questioned *proviso*, on its face and in its operation, bears no constitutional infirmities.

It is settled in constitutional law that the "equal protection" clause does not prevent the Legislature from establishing classes of individuals or objects upon which different rules shall operate — so long as the classification is not unreasonable. As held *in Victoriano v. Elizalde Rope Workers' Union*,[13] and reiterated in a long line of cases:[14]

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality,

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[13] No. L-25246, 59 SCRA 54, 77-78 (September 12, 1974).

[14] *Basa v. Federacion Obrera de la Industria Tabaquera y Otros Trabajadores de Filipinas (FOITAF)*, No. L-27113, 61 SCRA 93, 110-111 (November 19, 1974); *Anucension v. National Labor Union*, No. L-26097, 80 SCRA 350, 372-373 (November 29, 1977); *Villegas v. Hiu Chiong Tsai Pao Ho*, No. L-29646, 86 SCRA 270, 275 (November 10, 1978); *Dumlao v. Comelec*, No. L-52245, 95 SCRA 392, 404 (January 22, 1980); *Ceniza v. Comelec*, G.R. No. L-52304, 95 SCRA 763, 772-773 (January 28, 1980); *Himagan v. People*, G.R. No. 113811, 237 SCRA 538 (October 7, 1994); *The Conference of Maritime Manning Agencies, Inc. v. POEA*, G.R. No. 114714, 243 SCRA 666, 677 (April 21, 1995); *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, 260 SCRA 319, 331-332 (August 5, 1996); and *Tiu v. Court of Appeals*, G.R. No. 127410, 301 SCRA 278, 288-289 (January 20, 1999). *See* also *Ichong v. Hernandez*, No. L-7995, 101 Phil. 1155 (May 31, 1957); *Vera v. Cuevas*, Nos. L-33693-94, 90 SCRA 379, 388 (May 31, 1979); and *Tolentino v. Secretary of Finance*, G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873, and 115931, 235 SCRA 630, 684 (August 25, 1994).

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not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence, legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear. (*citations omitted*)

Congress is allowed a wide leeway in providing for a valid classification.[15] The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class.[16] If the groupings are characterized by substantial distinctions

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[15] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744, and 79777, 175 SCRA 343 (July 14, 1989). See *Tiu v. Court of Appeals*, G.R. No. 127410, 301 SCRA 278 (January 20, 1999).

[16] *Ichong, etc., et al. v. Hernandez, etc. and Sarmiento*, No. L-7995, 101 Phil. 1155 (May 31, 1957), citing 2 Cooley, *Constitutional Limitations*, pp. 824-825.

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that make real differences, one class may be treated and regulated differently from another.[17] The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class.[18]

In the case at bar, it is clear in the legislative deliberations that the exemption of officers (SG 20 and above) from the SSL was intended to address the BSP's lack of competitiveness in terms of attracting competent officers and executives. It was not intended to discriminate against the rank-and-file. If the end-result did in fact lead to a disparity of treatment between the officers and the rank-and-file in terms of salaries and benefits, the discrimination or distinction has a rational basis and is not palpably, purely, and entirely arbitrary in the legislative sense.[19]

That the provision was a product of amendments introduced during the deliberation of the Senate Bill does not detract from its

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[17] *Tiu v. Court of Appeals*, G.R. No. 127410, 301 SCRA 278 (January 20, 1999); *Dumlao v. Comelec*, No. L-52245, 95 SCRA 392, 404 (January 22, 1980); and *Himagan v. People*, G.R. No. 113811, 237 SCRA 538 (October 7, 1994). See also *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, 260 SCRA 319, 331-332 (August 5, 1996); *The Conference of Maritime Manning Agencies, Inc. v. POEA*, G.R. No. 114714, 243 SCRA 666, 677 (April 21, 1995); *Ceniza v. Comelec*, No. L-52304, 95 SCRA 763, 772 (January 28, 1980); *Vera v. Cuevas*, Nos. L-33693-94, 90 SCRA 379 (May 31, 1979); and *Tolentino v. Secretary of Finance*, G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873 and 115931, 235 SCRA 630 (August 25, 1994).

[18] *Dumlao v. Comelec*, No. L-52245, 95 SCRA 392, 405 (January 22, 1980), citing *Peralta v. Comelec*, No. L-47771, No. L-47803, No. L-47816, No. L-47767, No. L-47791 and No. L-47827, 82 SCRA 30 (March 11, 1978); *Rafael v. Embroidery and Apparel Control and Inspection Board*, No. L-19978, 21 SCRA 336 (September 29, 1967); and *Ichong, etc., et al. v. Hernandez, etc. and Sarmiento*, No. L-7995, 101 Phil. 1155 (May 31, 1957). See also *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, 260 SCRA 319 (August 5, 1996); *Philippine Judges Association v. Prado*, G.R. No. 105371, 227 SCRA 703 (November 11, 1993); and *Villegas v. Hiu Chiong Tsai Pao Ho*, No. L-29646, 86 SCRA 270, 275 (November 10, 1978).

[19] *People v. Carlos*, No. L-239, 78 Phil. 535 (June 30, 1947).

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validity. As early as 1947 and reiterated in subsequent cases,[20] this Court has subscribed to the conclusiveness of an enrolled bill to refuse invalidating a provision of law, on the ground that the bill from which it originated contained no such provision and was merely inserted by the bicameral conference committee of both Houses.

Moreover, it is a fundamental and familiar teaching that all reasonable doubts should be resolved in favor of the constitutionality of a statute.[21] An act of the legislature, approved by the executive, is presumed to be within constitutional limitations.[22] To justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful and equivocal breach.[23]

B. THE ENACTMENT, HOWEVER, OF SUBSEQUENT LAWS — EXEMPTING ALL OTHER RANK-AND-FILE EMPLOYEES OF GFIs FROM THE SSL — RENDERS THE CONTINUED APPLICATION OF THE CHALLENGED PROVISION A VIOLATION OF THE EQUAL PROTECTION CLAUSE.

While R.A. No. 7653 started as a valid measure well within the legislature's power, we hold that *the enactment of subsequent laws exempting all rank-and-file employees of other GFIs leeched all validity out of the challenged* ***proviso.***

1. The concept of relative constitutionality.

The constitutionality of a statute cannot, in every instance, be determined by a mere comparison of its provisions with

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[20] See *Mabanag v. Lopez Vito*, No. L-1123, 78 Phil. 1 (March 5, 1947); *Casco Philippine Chemical Co., Inc. v. Gimenez*, No. L-17931, 7 SCRA 347 (February 28, 1963); *Morales v. Subido*, No. L-29658, 27 SCRA 131 (February 27, 1969); and *Philippine Judges Association v. Prado*, G.R. No. 105371, 227 SCRA 703 (November 11, 1993).

[21] *People v. Vera*, No. 45685, 65 Phil. 56 (November 16, 1937).

[22] *Id.*, citing *U.S. v. Ten Yu*, 24 Phil. 1, 10 (December 28, 1912); *Case v. Board of Health*, 24 Phil. 250, 276 (February 4, 1913); and *U.S. v. Joson*, No. 7019, 26 Phil. 1 (October 29, 1913).

[23] *Dumlao v. COMELEC*, No. L-52245, 95 SCRA 392, 404 (January 22, 1980).

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applicable provisions of the Constitution, since the statute may be constitutionally valid as applied to one set of facts and invalid in its application to another.[24]

A statute valid at one time may become void at another time because of *altered circumstances*.[25] Thus, if a statute in its practical operation becomes arbitrary or confiscatory, its validity, even though affirmed by a former adjudication, is open to inquiry and investigation in the light of *changed conditions*.[26]

Demonstrative of this doctrine is *Vernon Park Realty v. City of Mount Vernon,*[27] where the Court of Appeals of New York declared as unreasonable and arbitrary a zoning ordinance which placed the plaintiff's property in a residential district, although it was located in the center of a business area. Later amendments to the ordinance then prohibited the use of the property except for parking and storage of automobiles, and service station within a parking area. The Court found the ordinance to constitute an invasion of property rights which was contrary to constitutional due process. It ruled:

While the common council has the unquestioned right to enact zoning laws respecting the use of property in accordance with a well-considered and comprehensive plan designed to promote public health, safety and general welfare, such power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably and this is so whenever the zoning ordinance precludes the use of the property for any purpose for which it is reasonably adapted. *By the same token, an ordinance valid when adopted will nevertheless be stricken down as invalid when, at a later time, its operation under changed conditions proves confiscatory* such, for instance, as when the greater part of its value is destroyed, for which the courts

[24] *Medill v. State*, 477 N.W.2d 703 (Minn. 1991) (followed with reservations by, *In re Cook*, 138 B.R. 943 [Bankr. D. Minn. 1992]).

[25] *Nashville, C. & St. L. Ry. v. Walters*, 294 U.S. 405, 55 S. Ct. 486, 79 L. Ed. 949 (1935); *Atlantic Coast Line R. Co. v. Ivey*, 148 Fla. 680, 5 So. 2d 244, 139 A.L.R. 973 (1941); *Louisville & N. R. Co. v. Faulkner*, 3 G.R. No. L-29646 07 S.W.2d 196 (Ky. 1957); and *Vernon Park Realty v. City of Mount Vernon*, 307 N.Y. 493, 121 N.E.2d 517 (1954).

[26] *Murphy v. Edmonds*, 325 Md. 342, 601 A.2d 102 (1992).

[27] 307 N.Y. 493, 121 N.E.2d 517 (1954).

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will afford relief in an appropriate case. [28] (*citations omitted, italics supplied*)

In the Philippine setting, this Court declared the continued enforcement of a valid law as unconstitutional as a consequence of *significant changes* in circumstances. *Rutter v. Esteban*[29] upheld the constitutionality of the moratorium law — its enactment and operation being a valid exercise by the State of its police power[30] — but also ruled that the *continued enforcement of the otherwise valid law would be unreasonable and oppressive.* It noted the *subsequent changes* in the country's business, industry and agriculture. Thus, the law was set aside because its continued operation would be grossly discriminatory and lead to the oppression of the creditors. The landmark ruling states:[31]

The question now to be determined. is, is the period of *eight (8) years* which Republic Act No. 342 grants to debtors of a monetary obligation contracted before the last global war and who is a war sufferer with a claim duly approved by the Philippine War Damage Commission reasonable under the present circumstances?

It should be noted that Republic Act No. 342 only extends relief to debtors of prewar obligations who suffered from the ravages of the last war

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[28] *Id.*

[29] No. L-3708-93 Phil. 68 (May 18, 1953).

[30] On the constitutionality of Republic Act No. 342, Section 2 provides that all debts and other monetary obligations contracted before December 8, 1941, any provision in the contract creating the same or in any subsequent agreement affecting such obligation to the contrary notwithstanding, shall not be due and demandable for a period of eight (8) years from and after settlement of the war damage claim of the debtor by the Philippine War Damage Commission; and Section 3 of said Act provides that should the provision of Section 2 be declared void and unenforceable, then as regards the obligation affected thereby, the provisions of Executive Order No. 25 dated November 18, 1944, as amended by Executive Order No. 32, dated March 10, 1945, relative to debt moratorium, shall continue to be in force and effect, any contract affecting the same to the contrary notwithstanding, until subsequently repealed or amended by a legislative enactment. It thus clearly appears in said Act that the nullification of its provisions will have the effect of reviving the previous moratorium orders issued by the President of the Philippines.

[31] *Rutter v. Esteban*, G.R. No. L-3708, 93 Phil. 68 (May 18, 1953).

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and who filed a claim for their losses with the Philippine War Damage Commission. It is therein provided that said obligation shall not be due and demandable for a period of eight (8) years from and after settlement of the claim filed by the debtor with said Commission. The purpose of the law is to afford to prewar debtors an opportunity to rehabilitate themselves by giving them a reasonable time within which to pay their prewar debts so as to prevent them from being victimized by their creditors. While it is admitted in said law that since liberation conditions have gradually returned to normal, this is not so with regard to those who have suffered the ravages of war and so it was therein declared as a policy that as to them the debt moratorium should be continued in force (Section 1).

But we should not lose sight of the fact that these obligations had been pending since 1945 as a result of the issuance of Executive Orders Nos. 25 and 32 and at present their enforcement is still inhibited because of the enactment of Republic Act No. 342 and would continue to be unenforceable during the eight-year period granted to prewar debtors to afford. them an opportunity to rehabilitate themselves, which in plain language means that the creditors would have to observe a vigil of at least twelve (12) years before they could effect a liquidation of their investment dating as far back as 1941. This period seems to us unreasonable, if not oppressive. While the purpose of Congress is plausible, and should be commended, the relief accorded works injustice to creditors who are practically left at the mercy of the debtors. Their hope to effect collection becomes extremely remote, more so if the credits are unsecured. And the injustice is more patent when, under the law, the debtor is not even required to pay interest during the operation of the relief, unlike similar statutes in the United States.

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In the face of the foregoing observations, and consistent with what we believe to be as the only course dictated by justice, fairness and righteousness, we feel that the only way open to us under *the present circumstances is to declare that the continued operation and enforcement of Republic Act No. 342 at the present time is unreasonable and oppressive, and should not be prolonged a minute longer, and, therefore, the same should be declared null and void and without effect.* (*italics supplied, citations omitted*)

2. *Applicability of the equal protection clause.*

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In the realm of equal protection, the U.S. case of *Atlantic Coast Line R. Co. v. Ivey*[32] is illuminating. The Supreme Court of Florida ruled against the continued application of statutes authorizing the recovery of double damages plus attorney's fees against railroad companies, for animals killed on unfenced railroad right of way without proof of negligence. Competitive motor carriers, though creating greater hazards, were not subjected to similar liability because they were *not yet in existence* when the statutes were enacted. The Court ruled that the statutes became invalid as denying "equal protection of the law," in view of *changed conditions since their enactment.*

In another U.S. case, *Louisville & N.R. Co. v. Faulkner,*[33] the Court of Appeals of Kentucky declared unconstitutional a provision of a statute which imposed a duty upon a railroad company of proving that it was free from negligence in the killing or injury of cattle by its engine or cars. *This, notwithstanding that the constitutionality of the statute, enacted in 1893, had been previously sustained.* Ruled the Court:

> The constitutionality of such legislation was sustained because it applied to all similar corporations and had for its object the safety of persons on a train and the protection of property.... Of course, there were no automobiles in those days. The *subsequent* inauguration and development of transportation by motor vehicles on the public highways by common carriers of freight and passengers created even greater risks to the safety of occupants of the vehicles and of danger of injury and death of domestic animals. Yet, under the law the operators of that mode of competitive transportation are not subject to the same extraordinary legal responsibility for killing such animals on the public roads as are railroad companies for killing them on their private rights of way.
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> The Supreme Court, speaking through Justice Brandeis in *Nashville, C. & St. L. Ry. Co. v. Walters,* 294 U.S. 405, 55 S.Ct. 486, 488, 79 L.Ed. 949, stated, "*A statute valid when enacted may become invalid by change in the conditions to which it is applied.* The police power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably." A number of prior opinions of that court are cited in support of the statement. The State of Florida for many years had a statute, F.S.A. § 356.01 *et seq.* imposing extraordinary and special duties upon railroad companies, among

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[32] 148 Fla. 680, 5 So. 2d 244. 139 A.L.R. 973 (1941).

[33] 307 S.W.2d 196 (Ky. 1957).

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which was that a railroad company was liable for double damages and an attorney's fee for killing livestock by a train without the owner having to prove any act of negligence on the part of the carrier in the operation of its train. In *Atlantic Coast Line Railroad Co. v. Ivey,* it was held that the changed conditions brought about by motor vehicle transportation rendered the statute unconstitutional since if a common carrier by motor vehicle had killed the same animal, the owner would have been required to prove negligence in the operation of its equipment. Said the court, "This certainly is not equal protection of the law."[34] (italicis supplied)

Echoes of these rulings resonate in our case law, viz:

[C]ourts are not confined to the language of the statute under challenge in determining whether that statute has any discriminatory effect. *A statute nondiscriminatory on its face may be grossly discriminatory in its operation.* Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.[35](*italics supplied, citations omitted*)

[W]e see *no difference between a law which denies equal protection and a law which permits of such denial.* A law may appear to be fair on its face and impartial in appearance, yet, if it permits of unjust and illegal discrimination, it is within the constitutional prohibition. . . . In other words, statutes may be adjudged unconstitutional because of their effect in operation. . . . If a law has the effect of denying the equal protection of the law it is unconstitutional. . . .[36] *(italics supplied, citations omitted)*

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[34] *Id.*

[35] *People v. Dela Piedra*, G.R. No. 121777, 350 SCRA 163 (January 24, 2001).

[36] *People v. Vera*, No. 45685, 65 Phil. 56 (November 16, 1937). Parenthetically, this doctrine was first enunciated in the 1886 case of *Yick Wo v. Hopkins* (118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220), wherein the U.S. Supreme Court, speaking through Justice Matthews, declared: ". . . Though the law itself be fair on its face and impartial in appearances, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

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3. Enactment of R.A. Nos. 7907 + 8282 + 8289 + 8291 + 8523 + 8763 + 9302 = consequential unconstitutionality of challenged ***proviso.***

According to petitioner, the last *proviso* of Section 15(c), Article II of R.A. No. 7653 is also violative of the equal protection clause because after it was enacted, the charters of the GSIS, LBP, DBP and SSS were also amended, but the personnel of the latter GFIs were all exempted from the coverage of the SSL.[37] Thus, within the class of rank-and-file personnel of GFIs, the BSP rank-and-file are also discriminated upon.

Indeed, we take judicial notice that after the new BSP charter was enacted in 1993, Congress also undertook the amendment of the charters of the GSIS, LBP, DBP and SSS, and three other GFIs, from 1995 to 2004, *viz*:

1. R.A. No. 7907 (1995) for Land Bank of the Philippines (LBP);
2. R.A. No. 8282 (1997) for Social Security System (SSS);
3. R.A. No. 8289 (1997) for Small Business Guarantee and Finance Corporation, (SBGFC);
4. R.A. No. 8291 (1997) for Government Service Insurance System (GSIS);
5. R.A. No. 8523 (1998) for Development Bank of the Philippines (DBP);
6. R.A. No. 8763 (2000) for Home Guaranty Corporation (HGC);[38] and
7. R.A. No. 9302 (2004) for Philippine Deposit Insurance Corporation (PDIC).

It is noteworthy, as petitioner points out, *that the subsequent charters of the seven other GFIs share this common* ***proviso***: a blanket exemption of *all their employees* from the coverage of the SSL, expressly or impliedly, as illustrated below:

1. LBP (R.A. No. 7907)

Section 10. Section 90 of [R.A. No. 3844] is hereby amended to read as follows:

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[37] *Rollo*, pp. 12-14.

[38] Formerly the Home Insurance and Guaranty Corporation (HIGC).

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Section 90. *Personnel.* —

x x x x x x x x x

All positions in the Bank shall be governed by a compensation, position classification system and qualification standards approved by the Bank's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. *The Bank shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards.* It shall however endeavor to make its system conform as closely as possible with the principles under Republic Act No. 6758. (*italics supplied*)

x x x x x x x x x

2. *SSS (R.A. No. 8282)*

Section 1. [Amending R.A. No. 1161, Section 3(c)]:

x x x x x x x x x

(c) The Commission, upon the recommendation of the SSS President, shall appoint an actuary and such other personnel as may [be] deemed necessary; fix their reasonable compensation, allowances and other benefits; prescribe their duties and establish such methods and procedures as may be necessary to insure the efficient, honest and economical administration of the provisions and purposes of this Act: *Provided, however*, That the personnel of the SSS below the rank of Vice President shall be appointed by the SSS President: *Provided, further*, That the personnel appointed by the SSS President, except those below the rank of assistant manager, shall be subject to the confirmation by the Commission; *Provided further,* That the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations: *Provided, finally, That the SSS shall be exempt from the provisions of Republic Act No. 6758 and Republic Act No. 7430. (italics supplied)*

3. *SBGFC (R.A. No. 8289)*

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Section 8. [Amending R.A. No. 6977, Section 11]:

x x x x x x x x x

The Small Business Guarantee and Finance Corporation shall:

x x x x x x x x x

(e) *notwithstanding the provisions of Republic Act No. 6758, and Compensation Circular No. 10, series of 1989* issued by the Department of Budget and Management, *the Board of Directors of SBGFC shall have the authority to extend to the employees and personnel thereof the allowance and fringe benefits similar to those extended to and currently enjoyed by the employees and personnel of other government financial institutions.* (*italics supplied*)

4. GSIS (R.A. No. 8291)

Section 1. [Amending Section 43(d)].

x x x x x x x x x

Sec. 43. *Powers and Functions of the Board of Trustees.* — The Board of Trustees shall have the following powers and functions:

x x x x x x x x x

(d) upon the recommendation of the President and General Manager, to approve the GSIS' organizational and administrative structures and staffing pattern, and to establish, fix, review, revise and adjust the appropriate compensation package for the officers and employees of the GSIS with reasonable allowances, incentives, bonuses, privileges and other benefits as may be necessary or proper for the effective management, operation and administration of the *GSIS, which shall be exempt from Republic Act No. 6758, otherwise known as the Salary Standardization Law and Republic Act No. 7430, otherwise known as the Attrition Law.* (*italics supplied*)

x x x x x x x x x

5. DBP (R.A. No. 8523)

Section 6. [Amending E.O. No. 81, Section 13]:

Section 13. *Other Officers and Employees.* — The Board of Directors shall provide for an organization and staff of officers

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and employees of the Bank and upon recommendation of the President of the Bank, fix their remunerations and other emoluments. All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. *The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standards. The Bank shall however, endeavor to make its system conform as closely as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).* (*italics supplied*)

6. HGC (R.A. No. 8763)

Section 9. *Powers, Functions and Duties of the Board of Directors.* — The Board shall have the following powers, functions and duties:

x x x x x x x x x

(e) To create offices or positions necessary for the efficient management, operation and administration of the Corporation: *Provided*, That all positions in the Home Guaranty Corporation (HGC) shall be governed by a compensation and position classification system and qualifications standards approved by the Corporation's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities: *Provided, further, That the compensation plan shall be comparable with the prevailing compensation plans in the private sector and which shall be exempt from Republic Act No. 6758, otherwise known as the Salary Standardization Law, and from other laws, rules and regulations on salaries and compensations;* and to establish a Provident Fund and determine the Corporation's and the employee's contributions to the Fund; (*italics supplied*)

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7. PDIC (R.A. No. 9302)

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Section 2. Section 2 of [Republic Act No. 3591, as amended] is hereby further amended to read:

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3.

x x x x x x x x x

A compensation structure, based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the Corporation's human resource development program: *Provided*, That all positions in the Corporation shall be governed by a compensation, position classification system and qualification standards approved by the Board based on a comprehensive job analysis and audit of actual duties and responsibilities. *The compensation plan shall be comparable with the prevailing compensation plans of other government financial institutions* and shall be subject to review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. *The Corporation shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards.* It shall however endeavor to make its system conform as closely as possible with the principles under Republic Act No. 6758, as amended. (*italics supplied*)

Thus, eleven years after the amendment of the BSP charter, the rank-and-file of seven other GFIs were granted the exemption that was specifically denied to the rank-and-file of the BSP. And as if to add insult to petitioner's injury, even the Securities and Exchange Commission (SEC) was granted the same blanket exemption from the SSL in 2000![39]

[39] R.A. No. 8799 (2000), Section 7.2 provides: All positions of the Commission shall be governed by a compensation and position classification systems and qualification standards approved by the Commission based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plan in the Bangko Sentral ng Pilipinas and other government financial institutions and shall be subject to periodic review by the Commission no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and efficiency. *The Commission shall, therefore, be exempt from laws, rules, and regulations*

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The prior view on. the constitutionality of R.A. No. 7653 was *confined to an evaluation of its classification between the rank-and-file and the officers of the BSP,* found reasonable because there were substantial distinctions that made real differences between the two classes.

The above-mentioned subsequent enactments, however, **constitute significant changes in circumstance** *that considerably alter the reasonability of the continued operation of the last* ***proviso*** *of Section 15(c), Article II of Republic Act No. 7653, thereby exposing the* ***proviso*** *to more serious scrutiny.* This time, the scrutiny relates to the constitutionality of the classification — albeit made indirectly as a consequence of the passage of eight other laws — *between the rank-and-file of the BSP and the seven other GFIs.* The classification must not only be reasonable, *but must also apply equally to all members of the class.* The *proviso* may be fair on its face and impartial in appearance but *it cannot be grossly discriminatory in its operation,* so as practically to make unjust distinctions between persons who are without differences.[40]

Stated differently, the second level of inquiry deals with the following questions: Given that Congress chose to exempt other GFIs (aside the BSP) from the coverage of the SSL, can the exclusion of the rank-and-file employees of the BSP stand constitutional scrutiny in the light of the fact that Congress did not exclude the rank-and-file employees of the other GFIs? Is Congress' power to classify so unbridled as to sanction unequal and discriminatory treatment, simply because the inequity manifested itself, not instantly through a single overt act, but gradually and progressively, through seven separate acts of Congress? Is the right to equal protection of the law bounded in time and space that: (a) the right can only be invoked against a classification made

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on compensation, position classification and qualification standards. The Commission shall, however, endeavor to make its system conform as closely as possible with the principles under the Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).

[40] *People v. Dela Piedra,* G.R. No. 121777; 350 SCRA 163 (January 24, 2001).

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directly and deliberately, as opposed to a discrimination that arises indirectly, or as a consequence of several other acts; and (b) is the legal analysis confined to determining the validity within the parameters of the statute or ordinance (where the inclusion or exclusion is articulated), thereby proscribing any evaluation *vis-a -vis* the grouping, or the lack thereof, among several similar enactments made over a period of time?

In this *second level of scrutiny,* the inequality of treatment cannot be justified on the mere assertion that each exemption (granted to the seven other GFIs) rests "on a policy determination by the legislature." *All legislative enactments necessarily rest on a policy determination* — even those that have been declared to contravene the Constitution. Verily, if this could serve as a magic wand to sustain the validity of a statute, then no due process and equal protection challenges would ever prosper. There is nothing inherently sacrosanct in a policy determination made by Congress or by the Executive; it cannot run riot and overrun the ramparts of protection of the Constitution.

In ***fine,*** the "policy determination" argument may support the inequality of treatment between the rank-and-file and the officers of the BSP, but it cannot justify the inequality of treatment between BSP rank-and-file and other GFIs' who are similarly situated. It fails to appreciate that what is at issue in the *second level of scrutiny* is not the *declared* policy of each law *per se, but the oppressive results of Congress' inconsistent and unequal policy* towards the BSP rank-and-file and those of the seven other GFIs. At bottom, the second challenge to the constitutionality of Section 15(c), Article II of Republic Act No. 7653 is *premised precisely on the irrational discriminatory policy adopted by Congress in its treatment of persons similarly situated.* In the field of equal protection, the guarantee that "no person shall be . . . denied the equal protection of the laws" includes the prohibition against enacting laws that allow invidious discrimination, *directly or indirectly.* If a law has the effect of denying the equal protection of the law, or permits such denial, it is unconstitutional.[41]

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[41] *People v. Vera*, No. 45685, 65 Phil. 56 (November 16, 1937).

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It is against this standard that the disparate treatment of the BSP rank-and-file from the other GFIs cannot stand judicial scrutiny. For as regards the exemption from the coverage of the SSL, there exist no substantial distinctions so as to differentiate, the BSP rank-and-file from the other rank-and-file of the seven GFIs. On the contrary, *our legal history shows that GFIs have long been recognized as comprising one distinct class, separate from other governmental entities.*

Before the SSL, Presidential Decree *(P.D.) No. 985 (1976)* declared it as a State policy (1) to provide equal pay for substantially equal work, and (2) to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. P.D. No. 985 was passed to address disparities in pay among similar or comparable positions which had given rise to dissension among government employees. *But even then, GFIs and government-owned and/or controlled corporations (GOCCs) were already identified as a distinct class among government employees.* Thus, Section 2 also provided, "[t]hat notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporation and financial institutions for their employees to be supported fully from their corporate funds and for such technical positions as may be approved by the President in critical government agencies."[42]

The same favored treatment is made for the GFIs and the GOCCs under the SSL. Section 3(b) provides that one of the principles governing the Compensation and Position Classification System of the Government is that: "[b]asic compensation for all personnel in the government and government-owned or controlled corporations and financial institutions shall generally be comparable with those in the private sector doing comparable work, and must be in accordance with prevailing laws on minimum wages."

Thus, the BSP and all other GFIs and GOCCs were under the unified Compensation and Position Classification System of the

[42] P.D. No. 985 (August 22, 1976).

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SSL,[43] but rates of pay under the SSL were determined on the basis of, among others, prevailing rates in the private sector for comparable work. Notably, the Compensation and Position Classification System was to be governed by the following principles: (a) just and equitable wages, with the ratio of compensation between pay distinctions maintained at equitable levels;[44] and (b) basic compensation generally comparable with the private sector, in accordance with prevailing laws on minimum wages.[45] Also, the Department of Budget and Management was directed to use, as guide for preparing the Index of Occupational Services, the Benchmark Position Schedule, and the following factors:[46]

(1) the education and experience required to perform the duties and responsibilities of the positions;

(2) the nature and complexity of the work to be performed;

(3) the kind of supervision received;

(4) mental and/or physical strain required in the completion of the work;

(5) nature and extent of internal and external relationships;

(6) kind of supervision exercised;

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[43] R.A. No. 6758, Section 2, the policy of which is to "provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."

[44] Section 3(a) provides that "All government personnel shall be paid just and equitable wages; and while pay distinctions must necessarily exist in keeping with work distinctions, the ratio of compensation for those occupying higher ranks to those at lower ranks should be maintained at equitable levels giving due consideration to higher percentages of increases to lower level positions and lower percentage increases to higher level positions."

[45] Section 3(b) states that "Basic compensation for all personnel in the government, and government-owned or controlled corporations (GOCCs) and financial institutions (GFIs) shall generally be comparable with those in the private sector doing comparable work, and must be in accordance with prevailing laws on minimum wages."

[46] *Id.*, Section 9.

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(7) decision-making responsibility;

(8) responsibility for accuracy of records and reports;

(9) accountability for funds, properties and equipment; and

(10) hardship, hazard and personal risk involved in the job.

The Benchmark Position Schedule enumerates the position titles that fall within Salary Grades 1 to 20.

Clearly, under R.A. No. 6758, the rank-and-file of all GFIs were similarly situated in all aspects pertaining to compensation and position classification, in consonance with Section 5, Article IX-B of the 1997 Constitution.[47]

Then came the enactment of the amended charter of the BSP, implicitly exempting the Monetary Board from the SSL by giving it express authority to determine and institute its own compensation and wage structure. However, employees whose positions fall under SG 19 and below were specifically limited to the rates prescribed under the SSL.

Subsequent amendments to the charters of other GFIs followed. Significantly, each government financial institution (GFI) was not only expressly authorized to determine and institute its own compensation and wage structure, *but also explicitly exempted — without distinction as to salary grade or position — all employees of the GFI from the SSL.*

It has been proffered that legislative deliberations justify the grant or withdrawal of exemption from the SSL, based on the perceived need "*to fulfill the mandate of the institution concerned considering, among others, that: (1) the GOCC or GFI is essentially proprietary in character; (2) the GOCC or GFI is in direct competition with their [sic] counterparts in the private*

[47] Section 5 of the 1987 Constitution provides: "The Congress shall provide for the standardization of compensation of government officials, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions."

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sector, not only in terms of the provisions of goods or services, but also in terms of hiring and retaining competent personnel; and (3) the GOCC or GFI are or were [sic] experiencing difficulties filling up plantilla positions with competent personnel and/or retaining these personnel. The need for the scope of exemption necessarily varies with the particular circumstances of each institution, and the corresponding variance in the benefits received by the employees is merely incidental."

The fragility of this argument is manifest. First, the BSP is the *central monetary authority,*[48] and the *banker of the government and all its political subdivisions.*[49] It has the sole power and authority to issue currency;[50] provide policy directions in the areas of money, banking, and credit; and supervise banks and regulate finance companies and non-bank financial institutions performing quasi-banking functions, *including the exempted GFIs.*[51] Hence, the argument that the rank-and-file employees of the seven GFIs were exempted because of the importance of their institution's mandate cannot stand any more than an empty sack can stand.

Second, it is certainly misleading to say that "*the need for the scope of exemption necessarily varies with the particular circumstances of each institution.*" Nowhere in the deliberations is there a cogent basis for the exclusion of the BSP rank-and-file from the exemption which was granted to the rank-and-file of the other GFIs and the SEC. As point in fact, the BSP and the seven GFIs are similarly situated in so far as Congress deemed it necessary for these institutions to be exempted from the SSL. True, the SSL-exemption of the BSP and the seven GFIs was granted in the amended charters of each GFI, enacted separately and over a period of time. But it bears emphasis that, while each GFI has a mandate different and distinct from that of another, the deliberations show that the *raison d'etre* of the SSL-exemption was inextricably

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[48] R.A. No. 7653, Sections 1 and 3.

[49] *Id.*, Sections 110 and 113.

[50] R.A. No. 7653, Section 50.

[51] *Id.* Sections 1 and 3.

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linked to and *for the most part based* on factors common to the eight GFIs, *i.e.*, (1) the pivotal role they play in the economy; (2) the necessity of hiring and retaining qualified and effective personnel to carry out the GFI's mandate; and (3) the recognition that the compensation package of these GFIs is not competitive, and fall substantially below industry standards. Considering further that (a) the BSP was the first GFI granted SSL exemption; and (b) the subsequent exemptions of other GFIs did not distinguish between the officers and the rank-and-file; it is patent that *the classification made between the BSP rank-and-file and those of the other seven GFIs* was inadvertent, and NOT intended, *i.e.*, it was not based on any substantial distinction *vis-a`-vis* the particular circumstances of each GFI. Moreover, the exemption granted to two GFIs makes express reference to *allowance and fringe benefits similar to those extended to and currently enjoyed by the employees and personnel of other GFIs*,[52] underscoring that GFIs are a particular class within the realm of government entities.

It is precisely this unpremeditated discrepancy in treatment of the rank-and-file of the BSP — made manifest and glaring with each and every consequential grant of blanket exemption from the SSL to the other GFIs — that cannot be rationalized or justified. Even more so, when the SEC — which is not a GFI — was given leave to have a compensation plan that "shall be comparable with the prevailing compensation plan in the [BSP] and other [GFIs],"[53] then granted a blanket exemption from the SSL, and its rank-and-file endowed a more preferred treatment than the rank-and-file of the BSP.

The violation to the equal protection clause becomes even more pronounced when we are faced with this undeniable truth: that if Congress had enacted a law for the sole purpose of exempting the eight GFIs from the coverage of the SSL, the exclusion of the BSP rank-and-file employees would have been devoid of any substantial or material basis. It bears no moment, therefore, that the unlawful discrimination was not a direct result arising from one law. "*Nemo potest facere per alium quod non potest facere per directum.*" No one is allowed to do indirectly what he is prohibited to do directly.

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[52] R.A. No. 8289 [SBGFC], Section 8; R.A. No. 9302 [PDIC], Section 2.

[53] R.A. No. 8799 (2000), Section 7.2.

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It has also been proffered that "similarities alone are not sufficient to support the conclusion that rank-and-file employees of the BSP may be lumped together with similar employees of the other GOCCs for purposes of compensation, position classification and qualification standards. The fact that certain persons have some attributes in common does not automatically make them members of the same class with respect to a legislative classification." Cited is the ruling in *Johnson v. Robinson:*[54] "this finding of similarity ignores that a common characteristic shared by beneficiaries and nonbeneficiaries alike, is not sufficient to invalidate a statute when other characteristics peculiar to only one group rationally explain the statute's different treatment of the two groups."

The reference to *Johnson* is *inapropos.* In *Johnson,* the US Court sustained the validity of the classification *as there were quantitative and qualitative distinctions, expressly recognized by Congress, which formed a rational basis for the classification* limiting educational benefits to military service veterans as a means of helping them readjust to civilian life. The Court listed the peculiar characteristics as follows:

> First, the disruption caused by military service is quantitatively greater than that caused by alternative civilian service. A conscientious objector performing alternative service is obligated to work for two years. Service in the Armed Forces, on the other hand, involves a six-year commitment. . .
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> Second, the disruptions suffered by military veterans and alternative service performers are qualitatively different. Military veterans suffer a far greater loss of personal freedom during their service careers. Uprooted from civilian life, the military veteran becomes part of the military establishment, subject to its discipline and potentially hazardous duty. Congress was acutely aware of the peculiar disabilities caused by military service, in consequence of which military servicemen have a special need for readjustment benefits. .[55] (*citations omitted*)

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[54] 415 U.S. 361 (1974).

[55] *Id.*

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In the case at bar, it is precisely the fact that *as regards the exemption from the SSL, there are no characteristics peculiar only to the seven GFIs or their rank-and-file so as to justify the exemption which BSP rank-and-file employees were denied* (not to mention the anomaly of the SEC getting one). The distinction made by the law is not only superficial,[56] but also arbitrary. It is not based on substantial distinctions that make real differences between the BSP rank-and-file and the seven other GFIs.

Moreover, the issue in this case is not — as the dissenting opinion of Mme. Justice Carpio Morales would put it — whether "being an employee of a GOCC or GFI is reasonable and sufficient basis for exemption" from R.A. No. 6758. *It is Congress itself that distinguished the GFIs from other government agencies,* not once but eight times, through the enactment of R.A. Nos. 7653, 7907, 8282, 8289, 8291, 8523, 8763, and 9302. These laws may have created a "preferred sub-class within government employees," but the present challenge is not directed at the wisdom of these laws. Rather, it is a legal conundrum involving the exercise of legislative power, the validity of which must be measured not only by looking at the specific exercise *in and by itself* (R.A. No. 7653), but also as to the *legal effects* brought about by seven separate exercises — albeit indirectly and without intent.

Thus, even if petitioner had not alleged "a comparable change in the factual milieu as regards the compensation, position classification and qualification standards of the employees of the BSP (whether of the executive level or of the rank-and-file) since the enactment of the new Central Bank Act" is of no moment. In *GSIS v. Montesclaros*,[57] this Court resolved the issue of constitutionality notwithstanding that claimant had manifested that she was no longer interested in pursuing the case, and even when the constitutionality of the said provision was not squarely raised as an issue, because the issue involved not only the claimant but also others similarly situated and whose claims GSIS would also deny based on the

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[56] *Philippine Judges Association v. Prado*, G.R. No. 105371, 227 SCRA 703 (November 11, 1993).

[57] G.R. No. 146494 (July 14, 2004).

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challenged *proviso*. The Court held that social justice and public interest demanded the resolution of the constitutionality of the *proviso*. And so it is with the challenged *proviso* in the case at bar.

It bears stressing that the exemption from the SSL is a "*privilege*" fully within the legislative prerogative to give or deny. However, its subsequent grant to the rank-and-file of the seven other GFIs and continued denial to the BSP rank-and-file employees breached the latter's right to equal protection. In other words, while the granting of a privilege *per se* is a matter of policy exclusively within the domain and prerogative of Congress, the *validity or legality of the exercise* of this prerogative is subject to judicial review.[58] So when the distinction made is superficial, and not based on substantial distinctions that make real differences between those included and excluded, it becomes a matter of arbitrariness that this Court has the duty and the power to correct.[59] As held in the United Kingdom case of *Hooper v. Secretary of State for Work and Pensions*,[60] once the State has chosen to confer benefits, "discrimination" contrary to law may occur where favorable treatment already afforded to one group is refused to another, even though the State is under no obligation to provide that favorable treatment.[61]

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[58] Constitution, Article VIII, Section 1.

[59] See *Philippine Judges Association v. Prado*, G.R. No. 105371, 227 SCRA 703, 713-715 (November 11, 1993).

[60] [2002] EWHC 191 (Admin).

[61] *Id.* The significance of international human rights instruments in the European context should not be underestimated. In *Hooper* for example, the case was brought on the alleged denial of a right guaranteed by the ECHR; given domestic effect in the U.K. through its Human Rights Act 1998 (HRA), and the ECHR, as one of the contracting parties. Also, in *Wilson v. United Kingdom*, (30668/96) (2002) 35 E.H.R.R. 20 (ECHR), the European Court of Human Rights took into account the requirements of ILO Conventions Nos. 87 and 98, and of the European Social Charter of 1961, in ruling that the United Kingdom had breached the applicants' freedom of association. See Aileen McColgan, *Principles of Equality and Protection from Discrimination*, 2 E.H.R.L.R. 157 (2003).

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The disparity of treatment between BSP rank-and-file and the rank-and-file of the other seven GFIs definitely bears the unmistakable badge of invidious discrimination — no one can, with candor and fairness, deny the discriminatory character of the subsequent blanket and total exemption of the seven other GFIs from the SSL when such was withheld from the BSP. *Alikes are being treated as unalikes without any rational basis.*

Again, it must be emphasized that the equal protection clause does not demand absolute equality *but it requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.* Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion; whatever restrictions cast on some in the group is equally binding on the rest.[62]

In light of the lack of real and substantial distinctions that would justify the unequal treatment between the rank-and-file of BSP from the seven other GFIs, it is clear that the enactment of the seven subsequent charters has rendered the continued application of the challenged *proviso* anathema to the equal protection of the law, and the same should be declared as an outlaw.

IV.

Equal Protection Under International Lens

In our jurisdiction, the standard and analysis of equal protection challenges in the main have followed the "*rational basis*" test, coupled with a deferential attitude to legislative classifications[63]

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[62] *J.M. Tuason and Co., Inc. v. Land Tenure Administration*, No. L-21064, 31 SCRA 413, 435 (February 18, 1970).

[63] See *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744, and 79777 (July 14, 1989).

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and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution.[64]

A. Equal Protection in the United States

In contrast, jurisprudence in the U.S. has gone beyond the static "rational basis" test. Professor Gunther highlights the development in equal protection jurisprudential analysis, to wit:[65]

Traditionally, equal protection supported only minimal judicial intervention in most contexts. Ordinarily, the command of equal protection was only that government must not impose differences in treatment "except upon some reasonable differentiation fairly related to the object of regulation." The *old variety* of equal protection scrutiny *focused solely* on the ***means*** used by the legislature: it insisted merely that the classification in the statute *reasonably relates to the legislative purpose.* Unlike substantive due process, equal protection scrutiny was not typically concerned with identifying "fundamental values" and restraining legislative *ends.* And usually the *rational classification* requirement was readily satisfied: the courts did not demand a tight fit between classification and purpose; perfect congruence between means and ends was not required.

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[From marginal intervention to major cutting edge: The Warren Court's "new equal protection" and the two-tier approach.]

From its traditional modest role, *equal protection burgeoned into a major intervention tool during the Warren era,* especially in the 1960s. The Warren Court did not abandon the deferential ingredients of the old equal protection: in most areas of economic and social legislation, the demands imposed by equal protection remained as minimal as ever . . . But the Court launched an equal protection revolution by finding large new areas for strict rather than deferential scrutiny. A sharply differentiated *two-tier*

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[64] *People v. Vera, supra,* citing *U.S. v. Ten Yu,* 24 Phil. 1, 10 (December 28, 1912); *Case v. Board of Health and Heiser, supra*; and *U.S. v. Joson, supra.* See *Peralta v. COMELEC,* No. L-47771, No. L-47803, No. L-47816, No. L-47767, No. L-47791 and No. L-47826, 82 SCRA 30 (March 11, 1978), citing *Cooper v. Telfair,* 4 Dall. 14; DODD, *CASES ON CONSTITUTIONAL LAW* 56 (3rd ed. 1942).

[65] GERALD GUNTHER, *CONSTITUTIONAL LAW* 586-589 (11TH ed. 1985).

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approach evolved by the late 1960s: in addition to the deferential "old" equal protection, a "new" equal protection, connoting *strict scrutiny,* arose. . . . The intensive review associated with the new equal protection imposed two demands — *a demand not only as to means but also one as to ends.* Legislation qualifying for strict scrutiny required a far closer fit between classification and statutory purpose than the rough and ready flexibility traditionally tolerated by the old equal protection: *means had to be shown "necessary" to achieve statutory ends, not merely "reasonably related"* ones. Moreover, equal protection became a source of ends scrutiny as well: legislation in the areas of the new equal protection had to be justified by "compelling" state interests, not merely the wide spectrum of "legitimate" state ends.

The *Warren Court* identified the *areas appropriate for strict scrutiny* by searching for *two characteristics:* the presence of a "suspect" classification; or an impact on "fundamental" rights or interests. In the category of "suspect classifications," the Warren Court's major contribution was to intensify the strict scrutiny in the traditionally interventionist area of racial classifications. But other cases also suggested that there might be more other suspect categories as well: illegitimacy and wealth for example. But it was the 'fundamental interests' ingredient of the new equal protection that proved particularly dynamic, open-ended, and amorphous . . . [Other fundamental interests included voting, criminal appeals, and the right of interstate travel . . .]

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The Burger Court and Equal Protection.

The Burger Court was *reluctant to expand the scope of the new equal protection, although its best established ingredient retains vitality.* There was also mounting discontent with the rigid two-tier formulations of the Warren Court's equal protection doctrine. It was prepared to use the clause as an interventionist tool without resorting to the strict language of the new equal protection. . . . [Among the fundamental. interests identified during this time were voting and access to the ballot, while "suspect" classifications included sex, alienage and illegitimacy.]

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Even while the two-tier scheme has often been adhered to in form, there has also been an increasingly noticeable resistance to the sharp difference between deferential "old" and interventionist "new" equal protection. A number of justices sought formulations that would blur the sharp

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distinctions of the two-tiered approach or that would narrow the gap between strict scrutiny and deferential review. The most elaborate attack came from Justice Marshall, whose frequently stated position was developed most elaborately in his dissent in the *Rodriguez case*:[66]

> The Court apparently seeks to establish [that] equal protection cases fall into one of two neat categories which dictate the appropriate standard of review — *strict scrutiny or mere rationality.* But this (*sic*) Court's [decisions] defy such easy categorization. A principled reading of what this Court has done reveals that it has applied a spectrum of standards in reviewing discrimination allegedly violative of the equal protection clause. This spectrum clearly comprehends variations in the degree of care with which Court will scrutinize particular classification, depending, I believe, on the constitutional and societal importance of the interests adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn.

Justice Marshall's *"sliding scale" approach* describes many of the modern decisions, although it is a formulation that the majority refused to embrace. *But the Burger Court's results indicate at least two significant changes in equal protection law: **First,*** invocation of the "old" equal protection formula no longer signals, as it did with the Warren Court, an extreme deference to legislative classifications and a virtually automatic validation of challenged statutes. Instead, several cases, even while voicing the minimal "rationality" "hands-off" standards of the old equal protection, proceed to find the statute unconstitutional. ***Second,*** in some areas the *modern Court* has put forth standards for equal protection review that, while clearly more intensive than the deference of the "old" equal protection, are less demanding than the strictness of the "new" equal protection. Sex discrimination is the best established example of an *"intermediate" level of review.* Thus, in one case, the Court said that "classifications by gender must serve ***important*** governmental objectives and must be ***substantially related*** to achievement of those objectives." That standard is "intermediate" with respect to both ends and means: where ends must be "compelling" to survive strict scrutiny and merely "legitimate" under the "old" mode, "important" objectives are required here; and where means must be "necessary" under the "new" equal protection, and merely "rationally related" under the "old" equal protection, they must be "substantially related" to survive the "intermediate" level of review. (*italics supplied, citations omitted*)

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[66] *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

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B. Equal Protection in Europe

The *United Kingdom and other members of the European Community* have also gone forward in discriminatory legislation and jurisprudence. Within the United Kingdom domestic law, the most extensive list of protected grounds can be found in *Article 14 of the European Convention on Human Rights* (ECHR). It prohibits discrimination on grounds such as "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." This list is illustrative and not exhaustive. *Discrimination on the basis of race, sex and religion is regarded as grounds that require strict scrutiny.* A further indication that certain forms of discrimination are regarded as *particularly suspect* under the Covenant can be gleaned from Article 4, which, while allowing states to derogate from certain Covenant articles in times of national emergency, prohibits derogation by measures that discriminate solely on the grounds of "race, colour, language, religion or social origin."[67]

Moreover, the *European Court of Human Rights* has developed a test of justification which varies with the ground of discrimination. In the *Belgian Linguistics* case[68] the European Court set the standard of justification at a low level: discrimination would contravene the Convention only if it had no legitimate aim, or there was no reasonable relationship of proportionality between the means employed and the aim sought to be realised.[69] *But over the years, the European Court has developed a hierarchy of grounds covered by Article 14 of the ECHR, a much higher level of justification being required in respect of those regarded as*

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[67] See Gay *Moon, Complying with Its International Human Rights Obligations: The United Kingdom and Article 26 of the International Covenant on Civil and Political Rights*, 3 E.H.R.L.R. 283-307 (2003).

[68] (No. 2) (A/6) 1 E.H.R.R. 252 (1979-80) (ECHR).

[69] The European Court has also taken an even more restricted approach to Article 14, asking only whether the treatment at issue had a justified aim in view or whether the authorities pursued "other and ill-intentioned designs." *National Union of Belgian Police v. Belgium*, 1 E.H.R.R. 578 (1979-80); and *Swedish Engine Drivers' Union v. Sweden* 1 E.H.R.R. 617 (1979-80).

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"suspect" (sex, race, nationality, illegitimacy, or sexual orientation) than of others. Thus, in *Abdulaziz,*[70] the European Court declared that:

> . . . [t]he advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention.

And in *Gaygusuz v. Austria,*[71] the *European Court* held that *"very weighty reasons* would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention."[72] The *European Court* will then permit States a *very much narrower margin of appreciation* in relation to discrimination on grounds of sex, race, *etc.*, in the application of the Convention rights than it will in relation to distinctions drawn by states between, for example, large and small land-owners.[73]

C. *Equality under International Law*

The principle of equality has long been recognized under international law. *Article 1 of the Universal Declaration of Human Rights* proclaims that *all human beings are born free and equal in dignity and rights.* Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes basic principles in the protection of human rights.[74]

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[70] *Abdulaziz v. United Kingdom,* (A/94) 7 E.H.R.R. 471 (1985) (ECHR).

[71] 23 E.H.R.R. 364 (1997).

[72] *Id.*

[73] Aileen McColgan, *Principles of Equality and Protection from Discrimination,* 2 E.H.R.L.R. 157 (2003).

[74] Aileen McColgan, *Principles of Equality and Protection from Discrimination,* 2 E.H.R.L.R. 157 (2003). *See* Tufyal Choudhury, *Interpreting the Right to Equality under Article 26 of the International Covenant on Civil and Political Rights,* 1 E.H.R.L.R. 24-52 (2003).

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Most, if not all, *international human rights instruments* include some prohibition on discrimination and/or provisions about equality.[75] The general international provisions pertinent to discrimination and/or equality are the International Covenant on Civil and Political Rights (ICCPR);[76] the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of all Forms of Racial Discrimination (CERD);[77] the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of the Child (CRC).

In the broader international context, *equality is also enshrined in regional instruments* such as the American Convention on Human Rights;[78] the African Charter on Human and People's Rights;[79] the European Convention on Human Rights;[80] the European Social Charter

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[75] Aileen McColgan, *Principles of Equality and Protection from Discrimination*, 2 E.H.R.L.R. 157 (2003).

[76] Article 26 of the ICCPR provides that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

[77] Article 5(b) of CERD requires States to protect individuals from (racially discriminatory) violence "whether inflicted by government officials or by any individual group or institution."

[78] Article 1 of the American Conventions on Human Rights provides that:

"The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition; . . ."

[79] Article 26 of the ICCPR is echoed in its broad proscription of discrimination by Article 3 of the African Charter which provides that:

"1. Every individual shall be equal before the law.

2. Every individual shall be entitled to equal protection of the law."

[80] Article 14 of the European Conventions on Human Rights provides that:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

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of 1961 and revised Social Charter of 1996; and the European Union Charter of Rights (of particular importance to European states). Even the Council of the League of Arab States has adopted the Arab Charter on Human Rights in 1994, although it has yet to be ratified by the Member States of the League.[81]

The equality provisions in these instruments do not merely function as traditional "first generation" rights, commonly viewed as concerned only with constraining rather than requiring State action. Article 26 of the ICCPR requires "guarantee[s]" of "equal and effective protection against discrimination" while Articles 1 and 14 of the American and European Conventions oblige States Parties "to ensure . . . the full and free exercise of [the rights guaranteed] . . . without any discrimination" and to "secure without discrimination" the enjoyment of the rights guaranteed. [82] These provisions impose a measure of *positive obligation* on States Parties to take steps to eradicate discrimination.

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[81] See Aileen McColgan, *Principles of Equality and Protection from Discrimination, 2 E.H.R.L.R. 157 (2003); and Tufyal Choudhury, Interpreting the Right to Equality under Article 26 of the International Covenant on Civil and Political Rights,* 1 E.H.R.L.R. 24-52 (2003).

[82] Also, Articles 2 and 3 of the ICCPR require that Contracting States agree to "respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and (Article 3) "to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present may not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." Other examples include: Article 2 of CEDAW, which require States Parties to the Convention not only to "embody the principle of the equality of men and women in their national constitutions or other appropriate legislation" but also "to ensure, through law and other appropriate means, the practical realization of this principle"; and Article 5(b) of CERD requires States to protect individuals from (racially discriminatory) violence "whether inflicted by government officials or by any individual group or institution." See also Articles 2 and 3 CSECR, and Article 2 of the African Charter, which is similar to Article 2 of the ICCPR. Aileen McColgan, *Principles of Equality and Protection from Discrimination*, 2 E.H.R.L.R. 157 (2003).

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In the *employment field*, basic detailed minimum standards ensuring equality and prevention of discrimination, are laid down in the ICESCR[83] and in a very large number of Conventions administered by the International Labour Organisation, a United Nations body.[84] Additionally, many of the other international and regional human rights instruments have specific provisions relating to employment.[85]

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[83] Article 7 of the ICESCR provides the right:

". . . to the enjoyment of just and favourable conditions of work . . . in particular . . . fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work [and] . . . equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence."

[84] See Convention Nos. 100 of 1951, 103 of 1952, 111 of 1958, 118 of 1962 and 156 of 1981 which deal respectively with equal pay for men and women; maternity rights; discrimination in employment and occupation; equality of treatment in social security; and workers with family responsibilities. Convention No. 100 has been ratified by no less than 159 countries and Convention No. 111 by 156 (these being two of the eight fundamental Conventions the ratification of which is all but compulsory). Conventions Nos. 103, 118 and 156 have been ratified by 40, 38 and 34 countries, respectively.

[85] For example, Articles 11, 12 and 13 of CEDAW require the taking of "all appropriate measures" to eliminate discrimination against women in the fields of employment, health care, and other areas of economic life including the right to benefits and financial services. Article 15 of the African Charter provides a right for "every individual" to "equal pay for equal work," which, like Article 7 of the ICESCR, applies whether an individual is employed by the state or by a private body. The Council of Europe's Revised Social Charter provides for the "right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex" and to the protection of workers with family responsibilities. The Social Charter of the Council of Europe also incorporates a commitment on the part of Contracting States to "recognise the right of men and women workers to equal pay for work of equal value" as well as that of children, young persons and women to protection in employment (the latter group in connection with pregnancy and childbirth), and rights for migrant workers. Article 5 CERD does not merely require Contracting States to eliminate race discrimination in their own practices but also obliges them to prohibit race discrimination "in all its forms and to guarantee the right of everyone, without distinction as to

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The *United Nations Human Rights Committee has also gone beyond the earlier tendency* to view the prohibition against discrimination (Article 26) as confined to the ICCPR rights.[86] In *Broeks*[87] and *Zwaan-de-Vries,*[88] the issue before the Committee was whether discriminatory provisions in the Dutch Unemployment Benefits Act (WWV) fell within the scope of Article 26. The Dutch government submitted that discrimination in social security benefit provision was not within the scope of Article 26, as the right was contained in the ICESCR and not the ICCPR. They accepted that Article 26 could go beyond the rights contained in the Covenant to other civil and political rights, such as discrimination in the field of taxation, but contended that Article 26 did not extend to the social, economic, and cultural rights contained in ICESCR. The Committee rejected this argument. In its view, Article 26 applied to rights beyond the Covenant including the rights in other international treaties such as the right to social security found in ICESCR:

> Although Article 26 requires that legislation should prohibit discrimination, it does not of itself contain any obligation with respect to the matters that may be provided for by legislation. Thus it does not, for example, require any state to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State's sovereign power, then such legislation must comply with Article 26 of the Covenant.[89]

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race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic, social and cultural rights," in particular, employment rights including rights to "just and favourable conditions of work," protection against unemployment, "just and favourable remuneration" and to form and join trade unions. See Aileen McColgan, *Principles of Equality and Protection from Discrimination*, 2 E.H.R.L.R. 157 (2003).

[86] Tufyal Choudhury, *Interpreting the Right to Equality under Article 26 of the International Covenant on Civil and Political* Rights, 1 E.H.R.L.R. 24-52 (2003).

[87] *SWM Broeks v. the Netherlands* (172/1984).

[88] *F.H. Zwaan-de Vries v. the Netherlands* (182/1984).

[89] *S.W.M. Broeks v. Netherlands* (172/1984), paragraph 12.4.

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Breaches of the right to equal protection occur directly or indirectly. A classification may be struck down if it has the *purpose or effect* of violating the right to equal protection. International law recognizes that *discrimination may occur indirectly,* as the Human Rights Committee[90] took into account the definitions of discrimination adopted by CERD and CEDAW in declaring that:

> . . . "discrimination" as used in the [ICCPR] should be understood to imply any distinction, exclusion, restriction or preference which is *based on any ground such as* race, colour, sex, language, religion, political or other opinion, national or *social origin*, property, birth ***or other status***, and which has the *purpose or effect of nullifying or impairing the recognition, enjoyment or exercise* by all persons, on an equal footing, of all rights and freedoms.[91] (*italics supplied*)

Thus, the two-tier analysis made in the case at bar of the challenged provision, and its conclusion of unconstitutionality by subsequent operation, are in cadence and in consonance with the progressive trend of other jurisdictions and in international law. There should be no hesitation in using the equal protection clause as a major cutting edge to eliminate every conceivable irrational discrimination in our society. Indeed, the social justice imperatives in the Constitution, coupled with the special status and protection afforded to labor, compel this approach.[92]

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[90] Human Rights Committee, General Comment No. 18 (1989).

[91] *Id.* In the *Belgian Linguistics case*, (No. 2) (A/6) (1979-80) 1 E.H.R.R. 252 (ECHR), the European Court of Human Rights referred to the "aims and effects" of the measure challenged under Article 14 of the European Convention, implying that indirect as well as direct discrimination could be contrary to the provision. And in *Thlimmenos v. Greece*, 31 E.H.R.R. 15 (2001), the European Court ruled that discrimination contrary to the

[92] The 1987 Constitutional provisions pertinent to social justice and the protection granted to Labor are:

> PREAMBLE:
>
> We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence

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Apropos the special protection afforded to labor under our Constitution and international law, we held in *International School*

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and democracy under the rule of law and a regime of truth, justice, freedom, love, equality and peace, do ordain and promulgate this Constitution.

ARTICLE II: DECLARATION OF PRINCIPLES AND STATE POLICIES: PRINCIPLES

SECTION 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

SECTION 10. The State shall promote social justice in all phases of national development.

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

SECTION 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

ARTICLE III: BILL OF RIGHTS

SECTION 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

ARTICLE IX: CONSTITUTIONAL COMMISSIONS

B. THE CIVIL SERVICE COMMISSION

SECTION 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions.

ARTICLE XII: NATIONAL ECONOMY AND PATRIMONY

SECTION 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

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Alliance of Educators v. Quisumbing:[93]

That public policy abhors inequality and discrimination is beyond contention. Our Constitution and laws reflect the policy against these evils. The Constitution in the Article on Social Justice and Human Rights exhorts Congress to "give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities." The very broad Article 19 of the Civil Code requires every person, "in the exercise of his rights and in the performance of his duties, [to] act with justice, give everyone his due, and observe honesty and good faith."

SECTION 22. Acts which circumvent or negate any of the provisions of this Article shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law.

ARTICLE XIII: SOCIAL JUSTICE AND HUMAN RIGHTS

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

LABOR

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[93] *International School Alliance of Educators v. Quisumbing*, G.R. No. 128845, 333 SCRA 13 (June 1, 2000).

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International law, which springs from general principles of law, likewise proscribes discrimination. General principles of law include principles of equity, *i.e.*, the general principles of fairness and justice, based on the test of what is reasonable. The Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Discrimination in Education, the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation — all embody the general principle against discrimination, the very antithesis of fairness and justice. The Philippines, through its Constitution, has incorporated this principle as part of its national laws.

In the workplace, where the relations between capital and labor are often skewed in favor of capital, inequality and discrimination by the employer are all the more reprehensible.

The Constitution specifically provides that labor is entitled to "humane conditions of work." These conditions are not restricted to the physical workplace — the factory, the office or the field — but include as well the manner by which employers treat their employees.

The Constitution also directs the State to promote "equality of employment opportunities for all." Similarly, the Labor Code provides that the State shall "ensure equal work opportunities regardless of sex, race or creed." It would be an affront to both the spirit and letter of these provisions if the State, in spite of its primordial obligation to promote and ensure equal employment opportunities, closes its eyes to unequal and discriminatory terms and conditions of employment.

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Notably, the International Covenant on Economic, Social, and Cultural Rights, in Article 7 thereof, provides:

> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and [favorable] conditions of work, which ensure, in particular:
>
> a. Remuneration which provides all workers, as a minimum, with:
>
> i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women

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> being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
>
> x x x x x x x x x
>
> The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of "equal pay for equal work." Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries. (citations omitted)

Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution.[94] *The deference stops where the classification violates a fundamental right, or prejudices persons accorded special protection by the Constitution.* When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, *and require a stricter and more exacting adherence to constitutional limitations.* Rational basis should not suffice.

Admittedly, the view that prejudice to persons accorded special protection by the Constitution requires a stricter judicial scrutiny finds no support in American or English jurisprudence. Nevertheless, these foreign decisions and authorities are not *per se* controlling in this jurisdiction. At best, they are persuasive and have been used to support many of our decisions.[95] We should not place undue and fawning reliance upon them and regard them as indispensable mental crutches without which we cannot come to our own decisions through the employment of our own endowments. We live in a different ambience and must decide our own problems in the light of our own interests and needs, and of our qualities and even idiosyncrasies as a people, and always with our own concept of law and justice.[96] Our laws must be construed in accordance with the intention of our own lawmakers and such intent may be deduced from the language of each law and the

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[94] See *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744, and 79777, 175 SCRA 343 (July 14, 1989).

[95] *Republic v. MERALCO*, G.R. Nos. 141314 and 141369, 401 SCRA 130 (April 9, 2003).

[96] *Sanders v. Veridiano II*, No. L-46930, 162 SCRA 88 (June 10, 1988).

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context of other local legislation related thereto. More importantly, they must be construed to serve our own public interest which is the be-all and the end-all of all our laws. And it need not be stressed that our public interest is distinct and different from others.[97]

In the 2003 case of *Francisco v. House of Representatives*, this Court has stated that: "[A]merican jurisprudence and authorities, much less the American Constitution, are of dubious application for these are no longer controlling within our jurisdiction and have only limited persuasive merit insofar as Philippine constitutional law is concerned. . . . [I]n resolving constitutional disputes, [this Court] should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs."[98] Indeed, although the Philippine Constitution can trace its origins to that of the United States, their paths of development have long since diverged.[99]

Further, the quest for a better and more "equal" world calls for the use of equal protection as a tool of effective judicial intervention.

> Equality is one ideal which cries out for bold attention and action in the Constitution. The Preamble proclaims "equality" as an ideal precisely in protest against crushing inequities in Philippine society. The command to promote social justice in Article II, Section 10, in "all phases of national development," further explicitated in Article XIII, are clear commands to the State to take affirmative action in the direction of greater equality. . . . [T]here is thus in the Philippine Constitution no lack of doctrinal support for a more vigorous state effort towards achieving a reasonable measure of equality.[100]

Our present Constitution has gone further in guaranteeing vital social and economic rights to marginalized groups of society, including

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[97] *Republic v. MERALCO*, G.R. Nos. 141314 and 141369, 401 SCRA 130 (April 9, 2003).

[98] *Francisco v. House of Representatives*, G.R. No. 160261, (November 10, 2003).

[99] *Id.*

[100] JOAQUIN G. BERNAS, S.J., *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES* 160 (2003).

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labor.[101] Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law.[102] And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality.[103] Social justice calls for the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.[104]

V.

A Final Word

Finally, concerns have been raised as to the propriety of a ruling voiding the challenged provision. It has been proffered that the remedy of petitioner is not with this Court, but with Congress, which alone has the power to erase any inequity perpetrated by R.A. No. 7653. Indeed, a bill proposing the exemption of the BSP rank-and-file from the SSL has supposedly been filed.

Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.[105]

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[101] *Globe-Mackay Cable and Radio Corp. v. NLRC*, G.R. No. 82511, 206 SCRA 701 (March 3, 1992).

[102] *Uy v. COA*, G.R. No. 130685, 328 SCRA 607 (March 21, 2000).

[103] *Ibid.*

[104] *Calalang vs. Williams*, No. 47800, 70 Phil. 726 (December 2, 1940).

[105] *See Dumlao v. COMELEC*, No. L-52245, 95 SCRA 392, 404 (January 22, 1980); *Peralta v. Comelec*, Nos. L-47771, L-47803, L-47816, L-47767, L-47791, and L-47827, 82 SCRA 30 (March 11, 1978); *Felwa v. Salas*, No. L-26511, 18 SCRA 606 (October 29, 1966); *Rafael v. Embroidery and Apparel Control and Inspection* Board, No. L-19978, 21 SCRA 336, (September 29, 1967); *People v. Carlos*, No. L-239, 78 Phil. 535 (June 30, 1947); and *Ichong, etc., et al. v. Hernandez, etc. and Sarmiento*, No. L-7995, 101 Phil. 1155 (May 31, 1957).

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But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict. A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.[106]

Accordingly, when the grant of power is qualified, conditional or subject to limitations, the issue on whether or not the prescribed qualifications or conditions have been met, or the limitations respected, is justiciable or non-political, the crux of the problem being one of legality or validity of the contested act, not its wisdom. Otherwise, said qualifications, conditions or limitations — particularly those prescribed or imposed by the Constitution — would be set at naught. What is more, the judicial inquiry into such issue and the settlement thereof are the main functions of courts of justice under the Presidential form of government adopted in our 1935 Constitution, and the system of checks and balances, one of its basic predicates. As a consequence, *We have neither the authority nor the discretion to decline passing upon said issue, but are under the ineluctable obligation — made particularly more exacting and peremptory by our oath, as members of the highest Court of the land, to support and defend the Constitution — to settle it.* This explains why, in *Miller v. Johnson*, it was held that courts have a "duty, rather than a power," to determine whether another branch of the government has "kept within constitutional limits." Not satisfied with this postulate, the court went farther and stressed that, if the Constitution provides how it may be amended — as it is in our 1935 Constitution — "then, unless the manner is followed, the judiciary as the interpreter of that constitution, will declare the amendment invalid." In fact, this very Court — speaking through Justice Laurel, an outstanding authority on Philippine Constitutional Law, as well as one of the highly respected and foremost leaders of the Convention that drafted the

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[106] *Belarmino v. Employees' Compensation Commission*, G.R. No. 90204, 185 SCRA 304 (May 11, 1990).

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1935 Constitution — declared, as early as July 15, 1936, that "(i)n times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments" of the government.[107] (*citations omitted; italics supplied*)

In the case at bar, the challenged *proviso* operates on the basis of the salary grade or officer-employee status. *It is akin to a distinction based on economic class and status,* with the higher grades as recipients of a benefit specifically withheld from the lower grades. Officers of the BSP now receive higher compensation packages that are competitive with the industry, while the poorer, low-salaried employees are limited to the rates prescribed by the SSL. The implications are quite disturbing: BSP rank-and-file employees are paid the strictly regimented rates of the SSL while employees higher in rank — possessing higher and better education and opportunities for career advancement — are given higher compensation packages to entice them to stay. *Considering that majority, if not all, the rank-and-file employees consist of people whose status and rank in life are less and limited, especially in terms of job marketability, it is they — and not the officers — who have the real economic and financial* ***need*** *for the adjustment.* This is in accord with the policy of the Constitution "to free the people from poverty, provide adequate social services, extend to them a decent standard of living, and improve the quality of life for all."[108] *Any act of Congress that runs counter to this constitutional* ***desideratum*** *deserves strict scrutiny by this Court before it can pass muster.*

To be sure, *the BSP rank-and-file employees merit greater concern from this Court.* They represent the more impotent rank-and-file government employees who, unlike employees in the private sector, have no specific right to organize as a collective bargaining unit and negotiate for better terms and conditions of employment,

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[107] *Javellana v. The Executive Secretary*, No. L-36142, L-36164, L-36165, L-36236 and L-36283, 50 SCRA 30 (March 31, 1973).

[108] 1987 Constitution, Article II, Section 9.

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nor the power to hold a strike to protest unfair labor practices. Not only are they impotent as a labor unit, but their efficacy to lobby in Congress is almost nil as R.A. No. 7653 effectively isolated them from the other GFI rank-and-file in compensation. *These BSP rank-and-file employees represent the politically powerless and they should not be compelled to seek a political solution to their unequal and iniquitous treatment.* Indeed, they have waited for many years for the legislature to act. They cannot be asked to wait some more for discrimination cannot be given any waiting time. Unless the equal protection clause of the Constitution is a mere platitude, it is the Court's duty to save them from reasonless discrimination.

IN VIEW WHEREOF, we hold that the continued operation and implementation of the last *proviso* of Section 15(c), Article II of Republic Act No. 7653 is unconstitutional.

Davide, Jr., C. J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Azcuna, Tinga, and *Chico-Nazario JJ.,* concur.

Panganiban, J., see dissenting opinion.

Carpio, J., see dissenting opinion.

Carpio Morales, J., please see my dissenting opinion.

Garcia, J., concur with dissenting opinion of *J.* Carpio.

Corona and *Callejo, Sr., JJ.,* are on leave.

CHICO-NAZARIO, *J., concurring opinion:*

Does Sec. 15(c), Article II, Republic Act No. 6753,[1] which allows the exemption of BSP employees occupying salary grade (SG) 20 and above from the coverage of Rep. Act No. 6758[2] result in a denial of petitioner's constitutional right to equal protection of the law?

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[1] New Central Bank Act.

[2] Salary Standardization Law.

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I submit that it does and said provision should therefore be declared unconstitutional on the ground that the division between BSP employees covered from SG 19 down and from SG 20 up is purely arbitrary. Even given the wide discretion vested in Congress to make classifications, it is nonetheless clear that the lawmaking body abused its discretion in making such classification.

It is not disputed that all that is required for a valid classification is that it must be reasonable, *i.e.,* that it must be based on substantial distinctions which make for real differences; it must be germane to the purpose of the law; it must not be limited to existing conditions and it must apply equally to each member of the class.[3]

In the instant case, the classification was justified on the need of the BSP to compete in the labor market for economists, accountants, lawyers, experts in security, printing, commercial and rural banking, financial intermediation fund management, and other highly technical and professional personnel,[4] which it could not do unless personnel occupying top positions are exempted from the coverage of Rep. Act No. 6758, the Salary Standardization Law.

Under Rep. Act No. 6758, however, professional supervisory positions are covered by SG 9 to SG 33 which includes:

(R)esponsible positions of a managerial character involving the exercise of management functions such as planning, organizing, directing, coordinating, controlling and overseeing within delegated authority the activities of an organization, a unit thereof or of a group, requiring some degree of professional, technical or scientific knowledge and experience, application of managerial or supervisory skills required to carry out their basic duties and responsibilities involving functional guidance and control, leadership, as well as line supervision. *These positions require intense and thorough knowledge of a specialized field usually acquired from completion of a bachelor's degree or higher degree courses.*

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[3] *People v. Vera*, 65 Phil. 56.

[4] V Records of the House of Representatives, 9th Congress, 1st Session 783 (31 March 1993) at 166.

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The positions in this category are assigned Salary Grade 9 to Salary Grade 33.[5] (Italics supplied)

SG 33 is assigned to the President of the Philippines; SG 32 is for the Vice-President, Senate President, Speaker of the House and Chief Justice of this Court. SG 31 is for senators, associate justices of this Court, chairpersons of the constitutional commissions, department secretaries and other positions of equivalent rank while SG 30 is assigned to the constitutional commissioners and other positions of equivalent rank.[6]

Economists, accountants, lawyers and other highly technical and professional personnel are covered under SG 9 to 29 as already adverted to.

Classification in law is the grouping of persons/objects because they agree with one another in certain particulars and differ from others in those same particulars. In the instant case, however, SG 20 and up do not differ from SG 19 and down in terms of technical and professional expertise needed as the entire range of positions all "require intense and thorough knowledge of a specialized field usually acquired from completion of a bachelor's degree or higher courses."

Consequently, if BSP needs an exemption from Rep. Act No. 6758 for key positions in order that it may hire the best and brightest economists, accountants, lawyers and other technical and professional people, the exemption must not begin only in SG 20.

Under the circumstances, *the cut-off point, the great divide, between SG 19 and 20 is entirely arbitrary* as it does not have a reasonable or rational foundation. This conclusion finds support in no less than the records of the congressional deliberations, the bicameral conference committee having pegged the cut-off period at SG 20 despite previous discussions in the Senate that the "executive group" is "probably" SG 23 and above.[7]

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[5] Section 5(a), Rep. Act No. 6758.

[6] Sections 7 and 8, *ibid.*

[7] IV Record of the Senate 9th Congress 1st Session 1086-87(05 June 1993).

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Moreover, even assuming that the classification is reasonable, nonetheless, its continued operation will result in hostile discrimination against those occupying grades 19 and below.

As pointed out by Mr. Justice Puno, some other government corporations, by law, now exempt *all* their employees from the coverage of Rep. Act No. 6758. BSP employees occupying SG 19 and below, however, shall remain under Rep. Act No. 6758 considering the rule that the subject classification, to be valid, must not be limited only to conditions existing as of the time the law was passed. Thus, while BSP employees from SG 19 down will continue to be covered under Rep. Act No. 6758, other government employees of the same class and occupying the same positions in government corporations will be exempt.

I therefore concur with Justice Puno in that respect and, considering his thorough discussion, I have nothing more to add thereto.

SEPARATE OPINIONS

PANGANIBAN., ***dissenting:***

With all due respect, I dissent. I believe that it would be *uncalled for, untimely and imprudent* for this Court to void the last *proviso* of the second paragraph of Section 15(c) of Chapter 1 of Article II of Republic Act (RA) 7653. In the *first place*, the assailed provision is not unconstitutional, either on its face or as applied, and the theory of *relative constitutionality* finds no application to the case at bar. In the *second place*, a becoming respect on the part of this Court for Congress as a coequal and coordinate branch of government dictates that Congress should be given ample opportunity to study the situation, weigh its options and exercise its constitutional prerogative to enact whatever legislation it may deem appropriate to address the alleged inequity pointed out by petitioner.

For the record, I am not against the exemption from the Salary Standardization Law of the *Bangko Sentral ng Pilipinas* (BSP) rank-and-file employees (with Salary Grade 19 and below). Neither

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am I against increases in their pay. I simply submit that (1) the factual milieu of this case does not show a denial of equal protection, (2) the theory of relative constitutionality does not come into play, and (3) petitioner should have addressed its plaint, not to this Court, but to Congress in the first instance. *I am confident that given sufficient opportunity, the legislature will perform its constitutional duty accordingly. Hence, there is no need or warrant for this Court to intervene in legislative work.*

Theory of Relative Constitutionality Not Applicable to Extraneous Circumstances

The *ponencia* advocates the application of the theory of *relative constitutionality* to the present case. The theory says that a statute valid at one time may become unconstitutional at another, because of *altered circumstances* or *changed conditions* that make the practical operation of such a statute arbitrary or confiscatory. Thus, the provisions of that statute, which may be valid *as applied to one set of facts* but *invalid as applied to another,* cannot be merely compared with those applicable under the Constitution.

From the manner in which it has been utilized in American and Philippine jurisprudence, however, this novel theory finds relevance only *when the factual situation covered by an assailed law changes;* not when another law is passed pertaining to subjects not directly covered by the former. Thus, the theory applies only when circumstances that were specifically addressed upon the passage of the law change. It does not apply to changes or alterations extraneous to those specifically addressed. To prove my point, allow me then to tackle *seriatim* the cases relied upon in the *ponencia.*[1]

Cited American Cases Not Applicable to and Not in Pari Materia with Present Facts

Medill.[2] The constitutionality issue in *Medill v. State* was raised by a bankruptcy trustee in regard to a statute exempting damages that were awarded to the claimants who suffered as a result of an

[1] See *ponencia* footnote nos. 24, 25, 26, 27 and 28.

[2] *Medill v. State*, 477 NW 2d 703, November 22, 1991.

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automobile accident.[3] Specifically, the contested provision exempted from "*attachment, garnishment, or sale on any final process issued from any court*" (1) general damages and (2) future special damages awarded in rights of action filed for injuries that were caused to the person of a debtor or of a relative.[4]

The Supreme Court of Minnesota said that the general damages portion of the right of action filed by claimants for personal injuries sustained in fact represented the monetary restoration of the physically and mentally damaged person; hence, claims for such damages could never constitute unreasonable amounts for exemption purposes.[5] Such claims were thus fully exempt. It added that the legislature had assigned the role of determining the amounts that were reasonable to the state's judicial process.[6]

While a statute may be constitutional and valid as applied to one set of facts and invalid in its application to another, the said Court *limited its discussion only to the set of facts as presented before it*[7] and held that the statute was "*not unconstitutional.*"[8] Distinguishing the facts of that case from those found in its earlier rulings,[9] it concluded that — by limiting the assets that were available for distribution to creditors[10] — the contested provision therein was a bankruptcy relief for protecting not only human capital,[11] but also the debtor's fundamental needs.

Cook.[12] The bankruptcy trustee in *In re Cook* also objected to the same statutory exemption, *inter alia*, asserted by the debtors in another personal injury claim.

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[3] *Id.*, p. 704.

[4] *Ibid.*

[5] *Id.*, pp. 706-707.

[6] *Id.*, pp. 705-708.

[7] *Id.*, p. 708.

[8] *Id.*, p. 709, per Yetka, *J.*

[9] These rulings were on fraternal benefit and homestead exemptions. *Id.*, p. 708.

[10] *Ibid.*

[11] *Ibid.*

[12] *In re Cook*, 138 BR 943, April 15, 1992.

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The US Bankruptcy Court, following *Medill*, held that such exemption was "*violative of x x x the Minnesota Constitution*,"[13] as applied to pre-petition special damages,[14] but not as applied to general damages.[15] The statute did not provide for any limitation on the amount of exemption as to the former type of damages.[16] Neither did it set any objective criteria by which the bankruptcy court may limit its size.[17]

Nashville.[18] The plaintiff in *Nashville v. Walters* questioned the constitutionality of a Tennessee statute imposing upon railroad companies one half of the total cost of grade separation in every instance that the state's Highway Commission issued an order for the elimination of a grade crossing. The plaintiff rested its contention not on the exercise of police power that promoted the safety of travel, but on the arbitrariness and unreasonableness of the imposition that deprived it of property without due process of law.[19]

Reversing the judgment that the Supreme Court of Tennessee had rendered against the plaintiff, the US Supreme Court however did not declare the statute unconstitutional.[20] Instead, it remanded the case, because the determination of facts showing arbitrariness

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[13] *Id.*, p. 946, per Kressel, *CJ.*

[14] These are damages accruing at the time a petition is filed and include existing medical costs; actual lost income; existing non-medical costs and expenses; and property lost, damaged or destroyed in the incident that caused the injury. *Id.*, p. 945.

[15] These damages include temporary or permanent physical and mental loss or impairment; pain or suffering; and future medical costs. *Id.*, pp. 945-946.

[16] As to general damages, however, reliance was made upon *Medill*. *Id.*, p. 946.

[17] In fact, in *Medill* it was held that because special damages reimbursed an individual for expenses that would ordinarily be discharged in a bankruptcy proceeding, their exemption would be a windfall to the debtor. *Medill v. State; supra*, p. 706.

[18] *Nashville, Chattanooga, & St. Louis Railway v. Walters*, 294 US 405, 415, 79 L.ed. 949, 955, March 4, 1935.

[19] *Id.*, p. 413.

[20] *Id.*, p. 434.

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and unreasonableness should have been made by the Tennessee Supreme Court in the first place.[21] It enumerated the revolutionary changes incident to transportation wrought in the 1930s by the widespread introduction of motor vehicles; the assumption by the federal government of the functions of a road builder; the resulting depletion of rail revenues; the change in the character, construction and use of highways; the change in the occasion for the elimination of grade crossings, and in the purpose and beneficiaries of such elimination; and the change in the relative responsibility of railroads and vehicles moving on the highways.[22] In addition, it held that the promotion of public convenience did not justify requiring a railroad company — any more than others — to spend money, unless it was shown that the duty to provide such convenience rested upon that company.[23] Providing an underpass at one's own expense for private convenience, and not primarily as a safety measure, was a denial of due process.[24]

Atlantic.[25] In *Atlantic v. Ivey*, the plaintiff filed an action for damages against the railroad company for the killing of a cow on an unfenced right of way of the railway. The defendant pointed out that the original Florida Act of 1889 and its later amendments in the 1940s had required railroad companies to fence their tracks for the protection and safety of the traveling public and their property against livestock roaming at large. Thus, the defendant averred that — without imposing a similar fencing requirement on the owners of automobiles, trucks and buses that carry passengers upon unfenced public highways of the state where such vehicles operated — the equal protection guarantees of the state and federal constitutions would be violated.[26]

Reversing the lower court's judgment for the plaintiff, the Supreme Court of Florida held that the application of the contested

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[21] *Id.*, p. 433.

[22] *Id.*, pp. 415-416.

[23] *Id.*, pp. 428-429.

[24] *Id.*, p. 429.

[25] *Atlantic Coast Line R. Co. v. Ivey*, 5 So.2d, 244, 247, January 8, 1942.

[26] *Id.*, pp. 245-246.

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statutes under then existing conditions was violative of the equal protection clause.[27] Citing *Nashville*, that Court took judicial notice of the fact that there were no motor carriers on public roads when the statutes were originally enacted. It also reasoned that the statutes were enacted in the exercise of the state's police power[28] and were intended for the protection of everyone against accidents involving public transportation. Although motor-driven vehicles and railroad carriers were under a similar obligation to protect everyone against accidents to life and property when conducting their respective businesses, the hazard of accidents by reason of cattle straying onto the line of traffic of motor-driven vehicles was greater than that which arose when cattle strayed onto the line of traffic of railroad carriers.[29] Yet the burden of expenses and penalties that were rendered in favor of individuals who were neither shippers nor passengers was imposed only on railroad carriers.[30]

In addition, the railroad carriers would be held liable for attorney's fees and double the value of the animals killed in their railways, without even requiring the plaintiffs who had sued them to prove the negligence of such carriers in operating their equipment.[31] Although it was argued that motor-driven vehicles had no authority to fence on state and county highways over which they operated, the legislature could nevertheless authorize and require them to provide similar protection; or, in default thereof, to suffer similar penalties that were incidental to using such public roads for generating profit and serving the public.[32]

Louisville.[33] The plaintiff in *Louisville v. Faulkner* also filed an action against defendant-railroad company to recover

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[27] *Id.*, p. 247.

[28] *Id.*, p. 246.

[29] *Ibid.*

[30] *Id.*, p. 247.

[31] *Ibid.*

[32] *Ibid.*

[33] *Louisville & Nashville Railroad Co. v. Faulkner*, 307 SW 2d. 196, November 15, 1957.

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the value of her mule that had strayed from her premises and got struck and killed by the company's train.[34] The judgment of the lower court for the plaintiff was based on the fact that the defendant did not offer any evidence to rebut the *prima facie* presumption of the latter's negligence under Kentucky statutes.[35]

The Court of Appeals of Kentucky held the contested provision unconstitutional and reversed the said judgment.[36] Citing both *Nashville* and *Atlantic*, the appellate court said that because such legislation applied to all similar corporations and was aimed at the safety of all persons on a train and the protection of their property, it was sustained from its inception in 1893; however, under changed conditions, it could no longer be so. The court recognized the fact that, in the 1950s, the inauguration and development of transportation by motor vehicles on public highways created even greater risks, not only to the occupants of such vehicles but also to domestic animals.[37] Yet, the operators of these vehicles were not subjected to the same extraordinary legal responsibility of proving that for the killing of those animals on public roads, they were free from negligence, unlike railroad companies that struck and killed such animals on private rights of way.[38]

Vernon.[39] The plaintiff in *Vernon v. City of Mount Vernon* sought to declare unconstitutional a city zoning ordinance which had limited the business use of its realty, locally known as the "*Plaza*," only to the parking of automobiles and its incidental services.[40]

The Court of Appeals of New York ruled that the ordinance was unconstitutional.[41] That ruling also affirmed the unanimous

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[34] *Id.*, pp. 196-197.

[35] *Id.*, p. 197.

[36] *Id.*, p. 198.

[37] *Id.*, pp. 197-198.

[38] *Id.*, p. 197.

[39] *Vernon Park Realty, Inc. v. City of Mount Vernon*, 121 N.E.2d 517, 307 NY 493, July 14, 1954.

[40] *Id.*, p. 518.

[41] *Id.*, pp. 520-521.

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judgment earlier rendered in favor of the plaintiff. Again citing *Nashville*, the New York court ruled in the main that, no matter how compelling and acute the community traffic problem might be as to reach a strangulation point, the solution did not lie in placing an undue and uncompensated burden on a landowner in the guise of a regulation issued for a public purpose.[42] Although for a long time the plaintiff's land had already been devoted to parking, the ordinance that prohibited any other use for it was not "*a reasonable exercise of the police power.*"[43]

While the city's common council had the right to pass ordinances respecting the use of property according to well-considered and comprehensive plans designed to promote public health, safety and general welfare, the exercise of such right was still subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably. Thus, the zoning ordinance could not preclude the use of property for any purpose for which it was reasonably adapted.[44] Although valid when adopted in 1927, the ordinance was stricken down, because its operation under changed conditions in the 1950s proved confiscatory, especially when the value of the greater part of the land — to be used, for instance, in the erection of a retail shopping center — was destroyed.[45]

Finally, *Murphy v. Edmonds*.[46] An automobile driver and her husband brought action against a tractor-trailer driver and his employer and sought damages for the severe injuries she had sustained in a collision. Raised in issue mainly was the constitutionality of the statutory cap on noneconomic damages in personal injury actions.[47]

Affirming the judgment of the Court of Special Appeals rejecting all challenges to the validity of the law, the Court of Appeals of Maryland held that there was no irrationality, arbitrariness, or violation

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[42] *Id.*, p. 519.

[43] *Ibid.*, per Dye, *J.*

[44] *Ibid.*

[45] *Id.*, pp. 518-519.

[46] *Murphy v. Edmonds*, 601 A.2d 102, 325 Md. 342, February 7, 1992.

[47] *Id.*, p. 104.

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of equal protection in the legislative classification drawn between (1) the less seriously injured tort claimants whose noneconomic damages were less than the statutory cap; and (2) the more seriously injured tort claimants whose noneconomic damages were greater than, and thus subject to, the statutory cap.[48] Although no express equal protection clause could be found in Maryland's Constitution, the due process clause therein nevertheless embodied equal protection to the same extent as that found in the Fourteenth Amendment[49] of the federal Constitution.[50]

Indeed, the right to recover full damages for a noneconomic injury was recognized by common law even before the adoption of the state's Constitution, but the said court declared that there was no vested interest in any rule ordained by common law.[51] Concluding that only the traditional "*rational basis test*" should be used, the appellate court also rejected the lower court's view of the right to press a claim for pain and suffering as an "*important right*" requiring a "*heightened scrutiny test*" of the legislative classification.[52] Under the "*rational basis test*," such legislative classification enjoyed a strong presumption of constitutionality and, not being clearly arbitrary, could not therefore be invalidated.[53]

Moreover, the law was an economic response to a legislatively perceived crisis concerning not only the availability, but also the cost of liability insurance in the state.[54] Putting a statutory cap on noneconomic damages was "*reasonably related to a legitimate legislative objective*,"[55] for it led to a greater ease

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[48] *Id.*, pp. 105-106, 116 & 119.

[49] This amendment to the U.S. Constitution provides that "[n]o State shall x x x deny to any person within its jurisdiction the equal protection of the laws."

[50] *Murphy v. Edmonds; supra*, p. 107.

[51] *Id.*, pp. 105 & 112.

[52] *Id.*, pp. 105-106.

[53] *Id.*, p. 108.

[54] *Id.*, pp. 111 & 114.

[55] *Id.*, p. 115, per Eldridge, *J.*

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in the calculation of insurance premiums, thus making the market more attractive to insurers. Also, it ultimately reduced the cost of such premiums and made insurance more affordable to individuals and organizations that perform needed medical services.[56]

From the foregoing discussion, it is immediately evident that not one of the above-cited cases is either applicable to or ***in pari materia*** *with the present case.*

Medill not only upheld the constitutionality of the contested provision therein, but also categorically stated that the peculiar facts of the case prompted such declaration. General damages were declared exempt; the law allowing their exemption was constitutional. *Cook* simply affirmed *Medill* when the same contested provision was applied to an issue similar to that which was raised in the latter case, but then declared that provision unconstitutional when applied to another issue. Thus, while general damages were also declared exempt, the claims for special damages filed prior to the filing of a petition for relief were not, and the law allowing the latter's exemption was unconstitutional.

The court's action was to be expected, because the issue on special damages in *Cook* was not at all raised in *Medill*, and there was no precedent on the matter in Minnesota, other than the *obiter dictum* — if it can be called one — in the latter case.[57] Had that issue been raised in *Medill*, a similar conclusion would inevitably have been reached. In fact, that case already stated that while the court "need not decide whether special damages incurred prior to judgment x x x [were] to be exempt in order to decide the question"[58] on general damages raised therein, it felt that exempting special damages appeared reasonable and likely to be applied, following an earlier ruling in another case.[59]

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[56] *Ibid.*

[57] In *re Cook*; *supra*, p. 945 (citing *Medill v. State; supra*, p. 708).

[58] *Medill v. State, supra*, p. 708.

[59] This refers to *In re Bailey* decided in 1988 in the state of Minnesota. *Id.*, pp. 705-706 and 708.

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Moreover, the facts of both *Medill* and *Cook* are not at all akin to so-called "*changed conditions*" prompting the declarations of constitutionality in the former and unconstitutionality in the latter. Such "*altered circumstances*" or "*changed conditions*" in these two cases refer to the non-exemption of special damages — a subject matter distinct and separable, although covered by the same assailed statute. In fact, precisely emphasized that "*where a statute is not inherently unconstitutional, it may be found constitutional as applied to some separable subject matters, and unconstitutional as applied to others.*"[60] In other words, it was the *application* of the contested provision therein to an entirely different and separable subject matter — not the contested provision itself — that was declared unconstitutional, but the statute itself was not inherently unconstitutional to begin with.

Equally important, *Nashville* skirted the issue on constitutionality. The "*changed conditions*" referred to in that case, as well as in *Atlantic* and *Louisville*, were the revolutionary changes in the mode of transportation that were specifically covered by the statutes respectively imposing additional costs upon railroad companies only, requiring the fencing of their tracks, or solely compelling them to present evidence to rebut the presumption of their negligence. In *Vernon*, these "*changed conditions*" were deemed to be the economic changes in the 1950s, through which the normal business use of the land was unduly limited by the zoning ordinance that was intended to address the acute traffic problem in the community.

Nashville simply took judicial notice of the change in conditions which, together with the continued imposition of statutory charges and fees, caused deprivation of property without due process of law. *Atlantic, Louisville* and *Vernon* all relied upon *Nashville*, but then went further by rendering their respective contested provisions unconstitutional, because — in the application of such provisions under "*changed conditions*" — those similarly situated were no longer treated alike.

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[60] *In re Cook; supra*, pp. 944-945.

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Finally, *Murphy* — obviously misplaced because it made no reference at all to the quoted sentence in the *ponencia* — even upheld the validity of its contested provision. There was no trace, either, of any "*changed conditions*." If at all, the legislative classification therein was declared constitutional, because it was in fact a valid economic response to a legislatively perceived crisis concerning the availability and cost of liability insurance.

In the present case, no "*altered circumstances*" or "*changed conditions*" in the application of the assailed provision can be found. It verily pertains to only one subject matter, not separable subject matters as earlier pointed out in both *Medill* and *Cook*. *Hence, its application remains and will remain consistent. Not inherently unconstitutional to begin with, it cannot now be declared unconstitutional.* Moreover, herein petitioner miserably fails to demonstrate — unlike in *Nashville*, *Atlantic*, *Louisville*, and *Vernon* — how those similarly situated have not been treated alike in the application of the assailed provision.

Ponencia's Reference to "Changed Conditions" Misplaced

From *Nashville* to *Murphy*, it can be seen that all the contested statutes were passed in the exercise of police power — the inherent power of the State to regulate liberty and property for the promotion of the general welfare.[61] The police measure may be struck down when an activity or property that ought to be regulated does not affect the public welfare; or when the means employed are not reasonably necessary for the accomplishment of the statute's purpose, and they become unduly oppressive upon individuals.[62] As Justice Brandeis stresses in *Nashville, "it may not be exerted arbitrarily or unreasonably."*[63]

In the case before us today, the assailed provision can be considered a police measure that regulates the income of BSP employees. Indisputably, the regulation of such income affects

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[61] Cruz, *Constitutional Law* (2003 ed.), p. 37.

[62] *Id.*, p. 49.

[63] *Nashville, Chattanooga, & St. Louis Railway v. Walters; supra*, p. 415.

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the public welfare, because it concerns not only these employees, but also the public in general — from whose various credits the banks earn their income, the CB generates its revenues, and eventually these employees get their salaries and other emoluments.

Additionally, with the passage of RAs 6758 and 7653, the means employed by the State to accomplish its objectives are not unduly oppressive. *They are in fact reasonably necessary, not only to attract the best and brightest bank regulatory personnel, but also to establish professionalism and excellence within the BSP in accordance with sound principles of management. Nothing, therefore, is arbitrary in the assailed provision; it cannot be stricken down.*

With due respect, the *ponencia's* reference to "*changed conditions*" is totally misplaced. In the above-cited US cases, this phrase never *referred to subsequent laws or executive pronouncements*, but rather to the *facts and circumstances* that the law or ordinance specifically addressed upon its passage or adoption. A statute that is declared invalid because of a change in circumstances affecting its validity belongs only to a class of emergency laws.[64] Being a manifestation of the State's exercise of its police power, it is valid at the time of its enactment.

In contrast thereto, RA 7653 cannot be regarded as an emergency measure that is merely temporary in operation. It is not even a statute limited to the exigency that brought it about. The facts and circumstances it specifically addressed upon its passage have not been shown to have changed at all. Hence, the assailed provision of such a declaratory statute cannot be invalidated.

Unlike congested traffic or motor-driven vehicles on public roads, the payment of salaries at differing scales in various GFIs *vis-a`-vis* in the BSP, is not such a change in conditions as would cause deprivation of property without due process of law. Petitioner's members have not *been deprived* of their right to income as mandated by law. They have *not received less* than what they were entitled to ever since RA 7653 was passed eleven years ago.

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[64] Agpalo, *Statutory Construction* (2nd ed., 1990), p. 27.

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To repeat, the factual situation that the assailed provision specifically addressed upon passage of this law has **not** *changed. The same substantive rights to a competitive and structured human resource development program existing then still exist now. Only the laws* **external to and not amendatory** *of this law did. Even if these new laws were to be considered as "**changed conditions**," those who have been affected in the BSP (as will be shown later) are not at all similarly situated as those in the GFIs to compel their like treatment in application.*

In addition, the rulings in all the above-cited American cases — although entitled to great weight[65] — are merely of persuasive effect in our jurisdiction[66] and cannot be *stare decisis*.[67] These are not direct rulings of our Supreme Court[68] that form part of the Philippine legal system.[69]

Granting *gratia argumenti* that the cited cases are to be considered binding precedents in our jurisdiction, *Nashville* — the only one federal in character — does not even make a categorical declaration on constitutionality. Furthermore, *Murphy* maintains that *"[s]imply because a legal principle is part of the common law . . . does not give it any greater degree of insulation from legislative change."*[70] Common law, after

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[65] *Id.*, p. 78.

[66] *"In interpreting and applying the bulk of the written laws of this jurisdiction, and in rendering its decisions in cases not covered by the letter of the written law, this court relies upon the theories and precedents of Anglo-American cases, subject to the limited exception of those instances where the remnants of the Spanish written law present well-defined civil law theories and of the few cases where such precedents are inconsistent with local customs and institutions."* In *re Shoop*, 41 Phil. 213, 254-255, November 29, 1920, per Malcolm, *J.*

[67] "*Stare decisis*" means one should follow past precedents and should not disturb what has been settled. See Agpalo, *supra*, p. 92.

[68] To be controlling, the ruling must be categorically rendered by our Supreme Court on an issue expressly raised by the parties. *Ibid.*

[69] Article 8 of the Civil Code.

[70] *Murphy v. Edmonds; supra*, p. 112, per Eldridge, *J.*

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all, is "*a growing and ever-changing system of legal principles and theories* x x x."[71]

Every statute is presumed constitutional.[72] This axiom reflects the respect that must be accorded to the wisdom, integrity and patriotism of the legislature that passed it and to the executive who approved it.[73] Understandably, therefore, the judiciary should be reluctant to invalidate laws.[74] *Medill* precisely emphasizes that the "*court's power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary.*"[75] Although that case continues by saying that unless it is inherently unconstitutional, a law "*must stand or fall x x x not upon assumptions*" the court may make, the *ponencia* is still dauntless in relying thereon to support its arguments.

Rutter *Does Not Even Apply*

Again with due respect, the *ponencia's* citation of a local case, *Rutter*,[76] is also inappropriate. In the said case, appellant instituted an action to recover the balance, and interest thereon, of a contract of sale entered into barely four months prior to the outbreak of the Second World War.[77] The lower court, however, rendered judgment[78] for appellee who set up as defense[79] the moratorium clause embodied in RA 342.[80] The lower court reasoned further that the obligation sought to be enforced was not yet demandable under that law.[81]

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[71] In *re Shoop; supra*, pp. 220-221, per Malcolm, *J.*

While it may be argued that we are not a common law country, our peculiar national legal system has blended both civil and common law principles. Gamboa, *An Introduction to Philippine Law*, 7th ed., 1969 p. 59.

[72] *Salas v. Jarencio*, 150-B Phil. 670, 690, August 30, 1972.

[73] Agpalo, *supra*, p. 20.

[74] In *re Cook; supra*, p. 944.

[75] *Medill v. State; supra*, p. 704.

[76] *Rutter v. Esteban*, 93 Phil. 68, May 18, 1953.

[77] *Rutter v. Esteban; supra*, p. 70.

[78] *Id.*, p. 71.

[79] *Id.*, p. 70.

[80] Approved by Congress on July 26, 1948.

[81] *Rutter v. Esteban; supra*, p. 71.

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Reversing the judgment, this Court invalidated[82] the moratorium clause,[83] not because the law was unconstitutional, but because both its continued operation and enforcement had become unreasonable and oppressive under postwar circumstances of observable reconstruction, rehabilitation and recovery of the country's general financial condition.[84] The forced vigil suffered by prewar creditors was not only unwittingly extended from eight to twelve years, but was also imposed without providing for the payment of the corresponding interest in the interim.[85]

Thus, the success of their collection efforts, especially when their credits were unsecured, was extremely remote.[86] Moreover, the settlement of claims filed with the United States-Philippine War Damage Commission was not only uncertain but was also practically futile, for it depended entirely on the appropriations to be made by the US Congress.

The contested clause in *Rutter* was definitely a remedial measure passed to accord prewar debtors who suffered the ravages of war an opportunity to rehabilitate themselves within a reasonable time and to pay their prewar debts thereafter, thus preventing them from being victimized in the interim by their prewar creditors. The purpose having been achieved during the eight-year period, there was therefore no more reason for the law. *Cessante ratione legis cessat et ipsa lex.* When the reason for the law ceases, the law itself *ceases. But it does not become unconstitutional.*

The *altered circumstances or changed conditions in Rutter* were specifically the very circumstances that the law addressed at its passage; they were not at all extraneous circumstances like subsequent laws or executive pronouncements. The eight-year

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[82] *Id.*, p. 83.

Moreover, Executive Order Nos. 25 and 32, issued on November 18, 1944 and March 10, 1945, were respectively voided. §1 of RA 342, 45 OG No. 4, p. 1680.

[83] §2 of RA 342, 45 OG No. 4, p. 1681.

[84] *Rutter v. Esteban; supra*, pp. 81-82.

[85] *Id.*, p. 77.

[86] *Ibid.*

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moratorium period having lapsed, the debtors' concerns had been adequately addressed. It was now the turn of the creditors to be protected for the pre-war loans they granted.

In stark contrast, the contested *proviso* in the instant case is not a remedial measure. It is not subject to a period within which a right of action or a remedy is suspended. *Since the reason for the law still subsists, the law itself including the challenged proviso must continue in existence and operation.*

Relative Constitutionality Not Based on Positive Law

Applying the concept of *relative constitutionality* strongly advocated in the *ponencia*, therefore, not only goes beyond the parameters of traditional constitutionalism, but also finds no express basis in positive law.[87] While it has been asserted that "*a statute valid when enacted may become invalid by change in conditions to which it is applied*,"[88] the present case has shown no such change in conditions that would warrant the invalidation of the *assailed provision* if applied under such conditions. Hence, no semblance of constitutional impuissance, other than its conjured possibility, can be seen. *In a constitutional order that commands respect for coequal branches of government, speculation by the judiciary becomes incendiary and deserves no respectable place in our judicial chronicles.*

The *ponencia* further contends that the principles of international law can operate to render a valid law unconstitutional. The generally accepted definition states that international law is a body of legal rules that apply between sovereign states and such other entities as have been granted international

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[87] "*Conventions and laws are x x x needed to join rights to duties and refer justice to its object. x x x In the state of society all rights are fixed by law x x x.*" Rousseau, *The Social Contract*, 1762, translated by G.D.H. Cole. http://www.constitution.org/jjr/socon.htm (Last visited September 16, 2004; 12:04:50 p.m. PST).

[88] *Atlantic Coast Line R. Co. v. Ivey; supra*, per Buford, *J.* (citing *Nashville, Chattanooga, & St. Louis Railway v. Walters; supra*, per Brandeis, *J.*)

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personality.[89] Government employees at the BSP with salary grades 19 and below are not such entities vested with international personality; any possible discrimination as to them, in the light of the principles and application of international law would be too far-fetched.

The dangerous consequences of the majority's Decision in the present case cannot and should not be ignored. Will there now be an automatic SSL exemption for employees of other GFIs and financial regulatory agencies? Will such exemption not infringe on Congress' prerogative? The *ponencia* overlooks the fact that the Bangko Sentral is not a GFI, but a regulatory body of GFIs and other financial/banking institutions. *Therefore, it should not be compared with them.* There is no parity. The Bangko Sentral is more akin to the Insurance Commission, the National Telecommunications Commission, and the Energy Regulatory Commission. Should not more appropriate comparisons be made with such regulatory bodies and their employees?

Respect for Coequal Branch

The trust reposed in this Court is "*not to formulate policy but to determine its legality as tested by the Constitution.*"[90] *"It*

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[89] Cruz, *International Law* (1990), p. 1; and Salonga and Yap, *Public International Law* (1992), p. 1.

International legal subjects — in the modern sense of international law as a process rather than as a set of rules — refer to states, international organizations, insurgents, peoples represented by liberation movements, and individuals by virtue of the doctrine of human rights and its implicit acceptance of their right to call upon states to account before international bodies. Defensor-Santiago, *International Law with Philippine Cases and Materials and ASEAN Instruments* (1999), pp. 15-24.

[90] *Peralta v. COMELEC*, 82 SCRA 30, 77, March 11, 1978, per concurring and dissenting opinion of Fernando, *J.* (later *CJ.*).

"Indeed, whether an enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired results, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature, and the serious conflict of opinions does not suffice to bring them within the range of judicial cognizance." Fariñas v. The Executive Secretary, GR No. 147387, December 10, 2003, per Callejo Sr., *J.*

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does not extend to an unwarranted intrusion into that broad and legitimate sphere of discretion enjoyed by the political branches to determine the policies to be pursued. This Court should ever be on the alert lest, without design or intent, it oversteps the boundary of judicial competence."[91] Judicial activism should not be allowed to become judicial exuberance. "*As was so well put by Justice Malcolm: 'Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act.'*"[92]

Since Congress itself did not commit any constitutional violation or gravely abusive conduct when it enacted RA 7653, it should not be summarily blamed for what the *ponencia* calls "altered circumstances."[93] Congress should be given the opportunity to correct the problem, if any. I repeat, I am not against exemption from the SSL of Bangko Sentral employees with salary grades 19 and below. Neither am I against increases in their pay. However, it is Congress, not this Court, that should provide a solution to their predicament, at least in the first instance.

The remedy against any perceived legislative failure to enact corrective legislation is a resort, not to this Court, but to the bar of public opinion. The electorate can refuse to return to Congress members who, in their view, have been remiss in the discharge of their constitutional duties.[94] Our Constitution presumes that, absent any inference of antipathy, improvident

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[91] *Id.*, p. 78, per concurring and dissenting opinion of Fernando, *J.* (later *CJ*; citing *Manila Electric Co. v. Pasay Transportation Co., Inc.*, 57 Phil. 600, 605, November 25, 1932, per Malcolm, *J.*).

[92] *Ibid.*, per concurring and dissenting opinion of Fernando, J. (later *CJ*; citing *ibid.*, per Malcolm, *J.*).

[93] See *ponencia.*

[94] Cruz, *Constitutional Law, supra*, pp. 46-47.

"*For protection against abuses by legislatures the people must resort to the polls, not to the courts.*" *Munn v. Illinois; supra*, 134, per Waite, *CJ.*

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legislative decisions "*will eventually be rectified by the democratic processes*";[95] and that judicial intervention is unwarranted, no matter how unwisely a political branch may have acted.[96]

It is only the legislature, not the courts, that "*must be appealed to for the change.*"[97] If, however, Congress decides to act, the choice of appropriate measure lies within its discretion. Once determined, the measure chosen cannot be attacked on the ground that it is not the best solution, or that it is unwise or inefficacious.[98] A law that advances a legitimate governmental interest will be sustained, even if it "*works to the disadvantage of a particular group, or x x x the rationale for it seems tenuous.*"[99] To compel this Court to make a more decisive but unnecessary action in advance of what Congress will do is a downright derogation of the Constitution itself, for it converts the judiciary into a super-legislature and invests it with a power that to it has never belonged.[100]

In the words of the great Sir William Blackstone, "*there is no court that has power to defeat the intent of the Legislature, when couched in such evident and express words, as leave no doubt whether it was the intent of the Legislature, or no[t].*"[101] As Rousseau further puts it, "*according to the fundamental compact, only the general will can bind the individuals, and there can be no assurance that a particular*

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[95] *City of Cleburne, Texas v. Cleburne Living Center*, 473 US 432, 440, 105 S.Ct. 3249, 3254, July 1, 1985, per White, *J.*

[96] *Federal Communications Commission v. Beach Communications, Inc.*, 508 US 307, 314, 113 S.Ct. 2096, 2101, June 1, 1993 (citing *Vance v. Bradley*, 440 US 93, 97, 99 S.Ct. 939, 942-943, February 22, 1979).

[97] *Peik v. Chicago and North-Western Railway Co.; supra*, p. 178, per Waite, *CJ.*

[98] Cruz, *Constitutional Law, supra*, p. 47.

[99] *Romer v. Evans*, 517 US 620, 632, 116 S.Ct. 1620, 1627, May 20, 1996, per Kennedy, *J.*

[100] Cruz, *Constitutional Law, supra*, p. 47.

[101] *Calder v. Bull; supra*, p. 399; p. 8, per *seriatim* opinion of Iredell, *J.* (citing 1 Bl. Com. 91).

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will is in conformity with the general will, until it has been put to the free vote of the people."[102] Thus, instead of this Court invalidating a sovereign act, Congress should be given the opportunity to enact the appropriate measure to address the so-called "*changed conditions.*"

We cannot second-guess the mind of the legislature as the repository of the sovereign will. For all we know, amidst the fiscal crisis and financial morass we are experiencing, Congress may altogether remove the blanket exemption, put a salary cap on the highest echelons,[103] *lower the salary grade scales subject to SSL exemption, adopt performance-based compensation structures, or even amend or repeal the SSL itself, but within the constitutional mandate that "**at the earliest possible time, the Government shall increase the salary scales of x x x officials and employees of the National Government.**"*[104] *Legislative reforms of whatever nature or scope may be taken one step at a time, addressing phases of problems that seem to the legislative mind most acute.*[105] *Rightly so, our legislators must have "**flexibility and freedom from judicial oversight in shaping and limiting their remedial efforts.**"*[106] *Where there are plausible reasons for their action, the Court's* ***"inquiry is at an end."***[107]

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[102] Rousseau, *supra*.

[103] In fact, under §1 of pending House Bill No. 2295, it is proposed that *"[a]ll officials and employees of government owned or controlled corporations and government financial institutions which, by virtue of their Charters, are exempted from the Compensation and Position Classification System [or the SSL] providing for the salary standardization of government employees shall receive compensation of no more than twice the salaries of equivalent ranks and positions in other government agencies."* This proves that Congress can, *inter alia*, put a statutory limit to the salaries currently being received by such officials and employees.

[104] §18 of Art. XVIII of the 1987 Constitution.

[105] *Federal Communications Commission v. Beach Communications, Inc.; supra*, p. 316; *supra*, p. 2102 (citing *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 US 483, 489, 75 S.Ct. 461, 465, March 28, 1955).

[106] *City of Cleburne, Texas v. Cleburne Living Center, supra*, p. 445; *supra*, p. 3257, per White, *J.*

[107] *Federal Communications Commission v. Beach Communications, Inc.; supra*, pp. 313-314; *supra*, p. 2101, per Thomas, *J.* (citing *United States Railroad Retirement Board v. Fritz*, 449 US 166, 179, 101 S.Ct. 453, 461, December 9, 1980, per Rehnquist, *J.*).

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Under the doctrine of separation of powers and the concomitant respect for coequal and coordinate branches of government, the exercise of prudent restraint by this Court would still be best *under the present circumstances.*

Not Grossly Discriminatory

There is no question that Congress neither violated the Constitution nor gravely abused its discretion when it enacted "The New Central Bank Act" to establish and organize the BSP in 1993.[108] Indeed, RA 7653 is a valid legislative measure. Even the majority concedes that in enacting that law, Congress was well within its legislative powers. However, the *ponencia* argues that the *subsequent* enactment of laws granting "*blanket exemption*" from the coverage of the SSL of *all* employees in seven GFIs[109] has made the contested *proviso* "*grossly discriminatory in its operation*"[110] and therefore unconstitutional.

This conclusion, to my mind, is a *non sequitur*. The mere possible effect of related or unrelated laws on another law does not *ipso facto* make the latter unconstitutional. Besides, as already discussed, the theory of *relative constitutionality* is plainly inapplicable to the present facts. Moreover, the *ponencia* has assumed without proof that the BSP rank-and-file employees are factually and actually similarly situated as the rank and filers of Land Bank, SSS, GSIS, *etc.*, and it is clear from the discussion in Mme. Justice Carpio Morales' Dissenting Opinion that *that is not really the case*. In fact, there exist some substantial differences in scope of work, job

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[108] This law was approved on June 14, 1993 and published on August 9, 1993. 89 OG 32, p. 4425. See also Villegas, *Global Finance Capital and the Philippine Financial System* (2000), p. 48.

[109] These GFIs are the LBP and DBP mentioned earlier, as well as the Social Security System (SSS); the Small Business Guarantee and Finance Corporation (SBGFC); the Government Service Insurance System (GSIS); the Home Guaranty Corporation (HGC, formerly the Home Insurance and Guaranty Corporation [HIGC]); and the Philippine Deposit Insurance Corporation (PDIC). See *ponencia.*

[110] See *ponencia.*

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responsibilities and so forth that would negate the *ponencia's* assumption.

No Indicium of Urgency

Other than its bare assertion that the continued implementation of the assailed provision[111] would cause "*irreparable damage and prejudice*"[112] to its members, petitioner also fails to show a minimum indicium of such extreme urgency as would impel this Court to second-guess Congress.

Briefly, petitioner contends that (1) the creation of two classes of employees within the BSP based on the salary grade corresponding to their positions[113] is unreasonable, arbitrary and capricious class legislation;[114] and (2) the law itself discriminates against rank-and-file employees of the BSP *vis-a`-vis* those of GFIs.[115]

These contentions are utterly unsubstantiated. They find no support in law for granting the relief prayed for.

While it is true that all employees of the BSP are appointed under the authority of the Monetary Board, observe the same set of office rules and regulations, and perform their work in practically the same offices,[116] *it is equally true that the levels of difficulty*

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[111] The last *proviso* of the 2nd paragraph of §15(c) of RA 7653, copied *verbatim* including italics, provides:

"*Provided, however*, That compensation and wage structure of *employees whose* positions fall under salary grade 19 and below shall be *in accordance with the* rates prescribed under Republic Act No. 6758."

[112] Petition, p. 13; *rollo*, p. 15.

[113] A "salary grade" under §3.s. of Pres. Decree No. (PD) 985 refers to "*the numerical place on the Salary x x x Schedule representing multiple steps or rates x xx assigned to a class,*" while a "position" *under §3.m.* means the "*set of duties and responsibilities, assigned or delegated by competent authority and performed by an individual either on full-time or part-time basis.*"

[114] Petition, p. 3; *rollo*, p. 5.

[115] *Id.*, pp. 10 & 12.

[116] *Id.*, pp. 4-5 & 6-7.

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and responsibility for BSP employees with salary grades 19 and below are different from those of other BSP employees with salary grades 20 and above. All those classes of position belonging to the Professional Supervisory Category[117] of the Position Classification System[118] under RA 6758, for instance, are obviously not subjected to the same levels of difficulty, responsibility, and qualification requirements as those belonging to the Professional Non-Supervisory Category,[119] although to both categories are assigned positions that include salary grades 19 and 20.[120] To assert, as petitioner does, that the statutory classification is just an "*artifice based on arbitrariness*,"[121] *without more*, is nothing more than throwing a few jabs at an imaginary foe.

In like manner, petitioner's denunciation of the *proviso* for allegedly discriminating against its members *vis-a`-vis* the rank-and-filers of other GFIs ignores the fact that the BSP and the GFIs cited in the *ponencia* do not belong to the *same category* of government institutions, although it may be said that both are, broadly speaking, "involved" in banking and finance.[122]

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[117] §5(a) of RA 6758.

[118] *Ibid.*

[119] §5(b) of RA 6758.

[120] A "class of position" is "*the basic unit of the Position Classification System*" under §3.c. of PD 985. *It "consists of all those positions in the system which are sufficiently similar as to (1) kind or subject matter of work, (2) level of difficulty and responsibility, and (3) the qualification requirements of the work, to warrant similar treatment in personnel and pay administration."*

A "grade," on the other hand, under §3.h. thereof, "*includes all classes of positions which, although different with respect to kind or subject matter of work, are sufficiently equivalent as to level of difficulty and responsibility and level of qualification requirements of the work to warrant the inclusion of such classes of positions within one range of basic compensation.*"

[121] Petition, p. 5; *rollo*, p. 7.

[122] The BSP, on the one hand, has authority and responsibility over the Philippine financial system. Aside from credit control, monopoly of currency issues, clearing functions, and custody and management of foreign exchange reserves, it also regulates and supervises the entire banking system. Workers Desk, IBON Databank and Research Center, IBON Foundation, Inc., *The Philippine Banking Sector* (2003), pp. 13-14.

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While the former performs *primarily governmental or regulatory* functions, the latter execute purely *proprietary* ones.

Moreover, the extent of damage or prejudice inflicted upon the BSP rank-and-file employees as a result of the *proviso* is not shown by any evidence on record. Indeed, neither the petitioner nor the *ponencia* demonstrate the injuries sustained.[123]

There is no indication whatsoever of the *precise nature and extent of damages caused or to be caused* to petitioner's members by the continued implementation of such provision. Surely, with no leg to stand on, the allegation of petitioner that there is great disparity in compensation, allowances or benefits, cannot be considered to be stigmatizing and wounding to the psyche of thousands of its members.[124] *In fact, BSP employees, in general, also share the same tribulations of workers and employees in other regulatory government offices.*[125] Not even petitioner's broad and bare claim of "*transcendental importance*"[126] can *ipso facto* generate alacrity on the part of this Court.

The cited GFIs, on the other, perform under special charters purely banking, finance, or related insurance functions that may include safekeeping, accepting deposits and drafts, issuing letters of credit, discounting and negotiating notes and other evidences of indebtedness, lending money against real or personal property, investing in equities of allied undertakings, insuring bank deposits of insolvent banks, and extending social security protection to workers or employees and their beneficiaries. Workers Desk, IBON Databank and Research Center, IBON Foundation, Inc., The *Philippine Banking Sector, supra*, pp. 16-17. See also *Villegas, Global Finance Capital and the Philippine Financial System; supra*, p. 27; §§2 and 4 of RA 8282, otherwise known as the "Social Security Law of 1997," which amended RA 1161; and RA 8291, otherwise known as "The Government Service Insurance System Act of 1997," which amended PD No. 1146.

[123] For a longer discourse on this point, see the Dissenting Opinion of Carpio Morales, *J.*

[124] Consolidated Reply, p. 10; *rollo*, p. 105.

[125] *See* Workers Desk, IBON Databank and Research Center, IBON Foundation, Inc., *The Philippine Banking Sector; supra*, p. 59.

[126] Petition, p. 13; *rollo*, p. 15.

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In the United States more than sixty years ago, Justice Brandeis delineated the famous canons of avoidance under which their Supreme Court had refrained from passing upon constitutional questions. One such canon is that the Court must "*not anticipate a question of constitutional law in advance of the necessity of deciding it x x x. It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.*"[127] In addition, the Court must not "*pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.*"[128]

Applying to this case the contours of constitutional avoidance Brandeis brilliantly summarized, this Court may choose to ignore the constitutional question presented by petitioner, since there is indeed some other ground upon which this case can be disposed of — *its clear lack of urgency, by reason of which Congress should be allowed to do its primary task of reviewing and possibly amending the law.*

Taking cognizance of this case and disposing of, or altogether ignoring, the constitutional question leads us to the same inevitable conclusion: the assailed provision should not be declared "*unconstitutional, unless it is clearly so.*"[129] Whichever path is chosen by this Court, I am of the firm belief that such provision cannot and should not be declared unconstitutional. Since the authority to declare a legal provision void is of a "*delicate and awful nature,*"[130] the Court should "*never resort to that authority, but in a clear and urgent case.*"[131] If ever there is doubt — and clearly there is, as manifested herein by a sharply divided Court — "*the expressed will of the legislature should be sustained.*"[132]

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[127] *Ashwander v. Tennessee Valley Authority*, 297 US 288, 346-347, 56 S.Ct. 466, 483, February 17, 1936, per Brandeis, *J.*

[128] *Id.*, p. 347; *ibid.*, per Brandeis, *J.*

[129] *Munn v. Illinois; supra*, per Waite, *CJ.*

[130] *Calder v. Bull; supra*, p. 399; p. 9, per *seriatim* opinion of Iredell, *J.*

[131] *Ibid.*

[132] *Munn v. Illinois; supra* p. 123.

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Indeed, this Court is of the unanimous opinion that the assailed provision was at the outset constitutional; however, with recent amendments to related laws,[133] *the majority now feels that said provision could no longer pass constitutional muster.* To nail my colors to the mast, such proclivity to declare it immediately unconstitutional not only imprudently creeps into the legislative sphere, but also sorely clings to the strands of obscurantism. Future changes in both legislation and its executive implementation should certainly not be the benchmark for a preemptive declaration of unconstitutionality, especially when the said provision is not even constitutionally infirm to begin with.

Moreover, the congressional enactment into law of pending bills[134] on the compensation of BSP employees — or even those related

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[133] These amendments pertain to the charters of the Land Bank of the Philippines (LBP) and the Development Bank of the Philippines (DBP).

[134] To date, there are two pending bills in the House of Representatives that may have an impact — direct or indirect — on the assailed provision. These are:

(1) HB 00123 which was filed on July 1, 2004 by Rep. Joey Sarte Salceda, entitled "An Act Amending Republic Act No. 7653, otherwise known as The New Central Bank Act," and pending with the Committee on Banks and Financial Intermediaries since July 27, 2004; and

(2) HB 02295 which was filed on August 10, 2004 by Rep. Monico O. Puentebella, entitled "An Act Providing for the Rationalization of Salaries, Allowances and Benefits of Officials and Employees of Government Owned or Controlled Corporations and Government Financial Institutions Exempted from the Compensation and Position Classification System," and pending first reading.

There are also other pending bills advocating for similar exemption from the Salary Standardization Law (SSL). These are:

(1) HB 01926 which was filed on July 29, 2004 by Rep. Robert Ace S. Barbers, entitled "An Act Granting Exemption to the Public School Teachers from the Coverage of Republic Act 6758, otherwise known as the Salary Standardization Law and Authorizing the Appropriation of Funds Therefor," and pending with the Committee on Appropriations since August 9, 2004;

(2) HB 01442 which was filed on July 14, 2004 by Rep. Hussin U. Amin, entitled "An Act Providing for a Separate Compensation Scheme for Lawyer Positions in the Office of the Secretary of Justice, Department of Justice, thereby Exempting The Said Positions from Republic Act No. 6758, otherwise known as the Salary Standardization Law," and pending with the Committee on Appropriations since August 3, 2004; and

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thereto — will certainly affect the assailed provision. This Court should bide its time, for it has neither the authority nor the competence to contemplate laws, much less to create or amend them.

Given the current status of these pending bills, the arguments raised by petitioner against the assailed provision become all the more tenuous and amorphous. *I feel we should leave that provision untouched, and instead just accord proper courtesy to our legislators to determine at the proper time and in the manner they deem best the appropriate content of any modifications to it.* Besides, there is an omnipresent presumption of constitutionality in every legislative enactment.[135] No confutation of the *proviso* was ever shown before; none should be considered now.

Congress Willing to Perform Duty

Far from being remiss in its duty, Congress is in fact presently deliberating upon HB 00123, which precisely seeks to amend RA 7653 by, *inter alia*, exempting from the SSL[136] all positions in the BSP.[137] *Accordingly, this Court should not preempt Congress,*

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(3) HB 00949 which was filed on July 1, 2004 by Rep. Judy J. Syjuco, entitled "An Act Providing for a Salary Standardization for Military and Police Personnel amending for the Purpose Republic Act No. 6758 otherwise known as the 'Compensation and Position Classification Act of 1989' and for other purposes," and also pending with the Committee on Appropriations since August 28, 2004.

[135] *Peralta v. COMELEC; supra*, p. 79, per concurring and dissenting opinion of Fernando, *J.* (later *CJ.*).

[136] RA 6758.

[137] §2 of HB 00123 provides:

"Section 2. Section 15, paragraph (c) of the same Act is hereby amended to read as follows:

x x x x x x x x x

"A compensation structure, based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the Bangko Sentral's human resource development program: x x x Provided, that all position (*sic*) in the Bangko Sentral ng Pilipinas shall be governed by a compensation, position classification system and qualification standards approved by the Monetary Board based on comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable

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especially when the latter has already shown its willingness and ability to perform its constitutional duty.[138] After all, petitioner has not proven any extreme urgency for this Court to shove Congress aside in terms of providing the proper solution. Lawmaking is not a pool this Court should wade into.

The Monetary Board has enough leeway to devise its own human resource management system, subject to the standards of professionalism and excellence that are in accordance with sound principles of management.[139] This system must also be in close conformity to the principles provided for, as well as with the rates prescribed, under RA 6758.

More specifically, there should be "*equal pay for substantially equal work*" and any differences in pay should be based "*upon substantive differences in duties and responsibilities, and qualification requirements of the positions.*"[140] In determining the basic compensation of all

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with the prevailing compensation plans of other government financial institutions and shall be subject to review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. The Bangko Sentral shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its system conform as closely as possible with the principles under Republic Act No. 6758, as amended."

[138] See *"Should The Supreme Court Presume that Congress Acts Constitutionally?: The Role of the Canon of Avoidance and Reliance on Early Legislative Practice in Constitutional Interpretation."* 116 Harv. L. Rev. 1798, April 2003.

[139] The 1st paragraph of §15(c) of RA 7653, copied *verbatim* including italics, provides:

> *"**Sec. 15. Exercise of Authority**. — In the exercise of its authority, the Monetary Board shall:*
>
> *x x x x x x x x x*
>
> *"(c) establish a human resource management system which shall govern the selection, hiring, appointment, transfer, promotion, or dismissal of all personnel. Such system shall aim to establish professionalism and excellence at all levels of the Bangko Sentral in accordance with sound principles of management.*
>
> *"x x x x x x x x x."*

[140] §2 of RA 6758.

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government personnel, due regard should be given by the said Board to the prevailing rates for comparable work in the private sector.[141] Furthermore, the reasonableness of such compensation should be in proportion to the national budget[142] and to the possible erosion in purchasing power as a result of inflation and other factors.[143] It should also abide by the Index of Occupational Services prepared by the Department of Budget and Management in accordance with the Benchmark Position Schedule and other factors prescribed thereunder.[144]

This Court has not been apprised as to how precisely the human resource management system of the BSP has been misused. In the absence of any evidence to the contrary, it is therefore presumed that the law has been obeyed,[145] and that official duty has been regularly performed[146] in implementing the said law. Where additional implementing rules would still be necessary to put the assailed provision into continued effect, any "*attack on their constitutionality would be premature.*"[147]

Surely, it would be wise "*not to anticipate the serious constitutional law problems that would arise under situations where only a tentative judgment is dictated by prudence.*"[148] Attempts "*at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.*"[149] A judicial determination is fallow when inspired by purely cerebral casuistry or emotional puffery, especially during rowelling times.

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[141] §§2 and 3(b) of RA 6758.

[142] §3(c) of RA 6758.

[143] §3(d) of RA 6758.

[144] §9 of RA 6758.

[145] §3(ff) of Rule 131 of the Rules of Court.

[146] §3(m) of Rule 131 of the Rules of Court.

[147] *Ople v. Torres*, 354 Phil. 948, 1011, July 23, 1998, per dissenting opinion of Mendoza, *J.* (citing *Garcia v. Executive Secretary*, 204 SCRA 516, 522, December 2, 1991).

[148] *Peralta v. COMELEC; supra*, p. 96, per concurring and dissenting opinion of Fernando, *J.* (later *CJ.*).

[149] *Id.*, p. 79, per concurring and dissenting opinion of Fernando, *J.* (later *CJ.*).

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No Denial of Equal Protection

Even if the matter of urgency is set aside for the nonce, and the Court exercises its power of judicial review[150] over acts of the legislature,[151] I respectfully submit that the Petition should still be dismissed because the assailed provision's continued operation will not result in a denial of equal protection.

Neither the passage of RA 7653 nor its implementation has been "*committed with grave abuse of discretion amounting to lack or excess of jurisdiction.*"[152] Every statute is intended by the legislature to operate "*no further than may be necessary to effectuate*"[153] its specific purpose. In the absence of a clear finding as to its arbitrary, whimsical or capricious application, the assailed provision cannot be struck down as violative of the fundamental law.

Moreover, *"[u]nder the 'enrolled bill doctrine,'*[154] *the signing of a bill by the Speaker of the House and the Senate President and the certification of the [s]ecretaries of both Houses of Congress that it was passed, are conclusive"*[155] *"not only of its provisions but also of its due enactment."*[156] It is therefore futile to welter in the thought that the original and amended versions of the corresponding bill have no reference

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[150] §1 of Article VIII of the 1987 Constitution. See also *Angara v. The Electoral Commission*, 63 Phil. 139, 158, July 15, 1936; and *Marbury v. Madison; supra*, p. 178, per Marshall, *CJ.*

[151] *Arceta v. Hon. Mangrobang*, GR No. 152895, p. 5, June 15, 2004, per Quisumbing, *J.*

[152] *Francisco, Jr. v. The House of Representatives, supra*, p. 222, per separate opinion of Vitug, *J.*

[153] *Fariñas v. The Executive Secretary; supra*, p. 14.

[154] This was pronounced as early as 1947 in *Mabanag v. Lopez Vito*, 78 Phil. 1, 3, 18-19, March 5, 1947. See *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321, 394, November 5, 1997, per dissenting opinion of Melo, *J.*

[155] *Fariñas v. The Executive Secretary; supra*, p. 26.

[156] *Tatad v. Secretary of the Department of Energy; supra*, p. 394, per dissenting opinion of Melo, *J.*

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to the *proviso* in question.[157] Floor deliberations are either expansive or restrictive. Bills filed cannot be expected to remain static; they transmute in form and substance. Whatever doubts there may be as to the validity of any provision therein must necessarily be resolved in its favor.

Brief Background of the Equal Protection Clause

Despite the egalitarian commitment in the Declaration of Independence that "*all men are created equal*," the framers of the original Constitution of the United States omitted any constitutional rule of equal protection. Not until 1868, when the Fourteenth Amendment thereto was ratified by the legislatures of the several states of the Union,[158] did the concept of equal protection have a constitutional basis;[159] and not until the modern era did the United States Supreme Court give it enduring constitutional significance.

From its inception, therefore, the equal protection clause in "*the broad and benign provisions of the Fourteenth Amendment*"[160]

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[157] Petition, p. 6; *rollo*, p. 8.

[158] Article XIV was proposed by Congress and ratified pursuant to the 5th Article of the 1787 U.S. Constitution.

[159] "*Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight.*" *Lawrence v. Texas*, 123 S.Ct. 2472, June 26, 2003, per Kennedy, *J.* http://web2.westlaw.com/result/default.wl?RS=WLW4.08&VR=2.0&SV=Split&FN=_top&MT=WestlawInternational&DB=SCT&Method=TNC&Query=%22EQUAL+PROTECTION%22&RLTDB=CLID_DB122318&Rlt=CLID_QRYRLT1522318&Cnt=DOC&DocSample=False&n=1&Cxt=RL&SCxt=WL&SS=CXT&Service=Search&FCL=True&EQ=search&CFID=1&blinkedCiteList=False&Dups=False&RP=%2fsearch%2fdefault.wl8CFID=1&blinkedCitelist=False&Days=Falsepp=%search%2Fdefault.Wll8CFID=l&blinkedcitelist-=False&Dups=False&RP2%2fsearch%fdeafaultw/&nStartListItem=1&TF=507&TC=6. (Last visited September 13, 2004, 8:01:18 a.m. PST).

[160] *Yick Wo v. Hopkins*, 118 US 356, 373, 6 S.Ct. 1064, 1073, 30 L.ed. 220, 227, May 10, 1886, per Matthews, *J.*

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already sought "to place all persons similarly situated upon a plane of equality and to render it impossible for any class to obtain preferred treatment."[161] Its original understanding was the proscription only of certain discriminatory acts based on *race*,[162] although its proper construction, when called to the attention of the US Supreme Court in the Slaughter-House Cases, first involved exclusive privileges.[163] Eventually, other disfavored bases of governmental action were identified. Labeled as morally irrelevant traits, *gender, illegitimacy* and *alienage* were included in this list.

Today, this clause is "*the single most important concept x x x for the protection of individual rights*."[164] It does not, however, create substantive rights.[165] Its guaranty is merely "*a pledge of the protection of equal laws*."[166] Its "*promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons*."[167]

As mirrored in our Constitution,[168] this clause enjoys the interpretation given by its American framers[169] and magistrates.

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[161] *Louisville & Nashville Railroad Co. v. Faulkner; supra*, p. 198, per Stanley, J.

[162] Defensor-Santiago, *The "New" Equal Protection*, 58 Phil. Law Journal 1, 3, March 1983.

[163] *Plessy v. Ferguson*, 163 US 537, 543, 16 S.Ct. 1138, 1140, May 18, 1896.

[164] Defensor-Santiago, *The "New" Equal Protection*, *supra*, p. 1.

[165] *Vacco v. Quill*, 521 US 793, 799, 117 S.Ct. 2293, 2297, June 26, 1997, per Rehnquist, *CJ.*

[166] *Romer v. Evans; supra*, pp. 633-634; *supra*, p. 1628, per Kennedy, *J.* (citing *Skinner v. Oklahoma ex rel. Williamson*, 316 US 535, 541, 62 S.Ct. 1110, 1113, June 1, 1942, per Douglas, *J.*, quoting *Yick Wo v. Hopkins; supra*, p. 369; *supra*, p. 1070; *supra*, p. 226, per Matthews, *J.*).

[167] *Romer v. Evans; supra*, p. 631; *supra,* p. 1627, per Kennedy, *J.*

[168] §1 of Article III of the 1987 Constitution provides: "No person shall be x x x denied the equal protection of the laws."

[169] Foremost of these were the proponents of *The Federalist Papers*, namely: Alexander Hamilton, James Madison, and John Jay.

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In fact, a century ago, this Court already enunciated that "*the mere act of cession of the Philippines to the United States did not extend the [US] Constitution here, except such parts as fall within the general principles of fundamental limitations in favor of personal rights formulated in the [US] Constitution and its amendments, and which exist rather by inference and the general spirit of the [US] Constitution, and except those express provisions of the [US] Constitution which prohibit Congress from passing laws in their contravention under any circumstances x x x.*"[170] Being one such limitation in favor of personal rights enshrined in the Fourteenth Amendment, equal protection is thus deemed extended to our jurisdiction.

Notably, Justice Malcolm himself said that the constitutional law of Spain, then in effect, was "*entirely abrogated by the change of sovereignty.*"[171] As a result, it was the constitutional law of the United States that was transposed to our fledgling political and legal system. To be precise, the principal organic acts of the Philippines included President McKinley's Instructions to the Second Philippine Commission of April 7, 1900, to which this Court recognized the United States Constitution as a limitation[172] upon the powers of the military governor then in charge of the Philippine Islands.[173]

In a catena of constitutional cases decided after the change in sovereignty, this Court consistently held that the equal protection clause requires all persons or things similarly situated to "*be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects x x x should not be treated differently, so as to give undue favor to some and unjustly discriminate against others.*"[174]

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[170] *U.S. v. Dorr,* 2 Phil. 269, 283-284, May 16, 1903, per Cooper, *J.*

[171] In *re Shooop; supra,* p. 223.

[172] *Duarte v. Dade,* 32 Phil. 36, 50, LOctober 20, 1915.

[173] *Mendoza v. FromMckinely's Instructions to the New Constitution: Documents on the Philippine Constitutional System* (1978). pp. 5-6.

[174] Cruz, *Constitutional Law, supra,* p.124 (citing *Lao H. Inchong v. Hernandez,*101 Phil. 1164,1175-1176, May 31, 1957, per Labrador, *J.*).

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Being a constitutional limitation first recognized[175] in *Rubi*[176] — citing *Yick Wo*[177] — as one "*derived from the Fourteenth Amendment to the United States Constitution*,"[178] this clause prescribes certain requirements for validity: the challenged statute must be applicable to all members of a class, reasonable, and enforced by the regular methods of procedure prescribed, rather than by purely arbitrary means.[179] Its reasonableness must meet the requirements enumerated in *Vera*[180] and later summarized in *Cayat*.[181]

Three Tests
Passed by Assailed Provision

I respectfully submit that the assailed provision passes the three-tiered standard of review for equal protection that has been developed by the courts through all these years.

The Rational Basis Test

Under the *first tier* or the *rational relationship or rational basis test*, courts will uphold a classification if it bears a rational relationship to an accepted governmental end.[182] In other words,

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[175] Actually, the equal protection clause was first raised on appeal in *US v. Mendezona*, 2 Phil. 353, July 25, 1903, but was not discussed by this Court thru Torres, *J.* It was in fact only briefly mentioned in the Court's denial of accused-appellee's Motion for Rehearing. Moreover, it referred to the clause as embodied not in our own Constitution but in that of the United States.

[176] *Rubi v. The Provincial Board of Mindoro*, 39 Phil. 660, March 7, 1919.

[177] *Yick Wo v. Hopkins; supra*, p. 373; *supra*, pp. 1072-1073; *supra*, p. 227, per Matthews, *J.*

[178] *Rubi v. The Provincial Board of Mindoro; supra*, p. 703, per Malcolm, *J.* (citing *Yick Wo v. Hopkins*; *supra*, p. 369; *supra*, p. 1070; *supra*, p. 226, per Matthews, *J.*)

[179] *Rubi v. The Provincial Board of Mindoro; supra*, pp. 707 and 718.

[180] *People v. Vera*, 65 Phil. 56, 126, November, 16, 1937.

[181] *People v. Cayat*, 68 Phil. 12, May 5, 1939.

[182] Defensor-Santiago, *The "New" Equal Protection, supra*, p. 7.

"*A century of Supreme Court adjudication under the Equal Protection Clause affirmatively supports the application of the traditional standard of review, which requires only that the State's system be shown to bear some*

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it must be "*rationally related to a legitimate state interest.*"[183] To be reasonable, such classification must be (1) based on substantial distinction that makes for real differences; (2) germane to the purposes of the law; (3) not limited to existing conditions only; and (4) equally applicable to all members of the same class.[184]

Murphy states that when a governmental classification is attacked on equal protection grounds, such classification is in most instances reviewed under the standard *rational basis test.* [185] Accordingly, courts will not overturn that classification, unless the varying treatments of different groups are so unrelated to the achievement of any legitimate purpose that the courts can only conclude that the governmental actions are irrational.[186] A classification must "*be reasonable, not arbitrary, and x x x rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.*"[187]

All these conditions are met in the present case. The retention of the best and the brightest *officials* in an independent central monetary authority[188] is a valid governmental objective that can be reasonably met by a corresponding exemption from a salary standardization scheme that is based on graduated salary levels. The legislature in fact enjoys a wide berth in continually

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rational relationship to legitimate state purposes." San Antonio School District v. Rodriguez, 411 US 1, 40, 36 L.Ed. 2d 16, 47, March 21, 1973, per Powell, J. http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=411&page=1. (Last visited September 13, 2004, 2:12:45 p.m. PST).

[183] *City of Cleburne, Texas v. Cleburne Living Center*; *supra*, p. 440; *supra*, p. 3254, per White, *J.*

[184] *People v. Vera; supra*, p. 126. *See People v. Cayat*; *supra*, p. 18.

[185] *Murphy v. Edmonds; supra*, p. 108.

[186] *Ibid.*

[187] *Johnson v. Robison*, 415 US 361, 374-375, 94 S.Ct. 1160, 1169, March 4, 1974, per Brennan, *J.* (citing *Reed v. Reed*, 404 US 71, 76, 92 S.Ct. 251, 254, November 22, 1971).

[188] §20 of Article XII of the 1987 Constitution.

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classifying whenever it enacts a law,[189] provided that no persons similarly situated within a given class are treated differently. To contend otherwise is to be presumptuous about the legislative intent or lack of it.

Whether it would have been a better policy to make a more comprehensive classification "*is not our province to decide.*"[190] The absence of legislative facts supporting a classification chosen has no significance in the *rational basis test.*[191] In fact, "*a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.*"[192] Requiring Congress to justify its efforts may even "*lead it to refrain from acting at all.*"[193] In addition, *Murphy* holds that the statutory classification "*enjoys a strong presumption of constitutionality, and a reasonable doubt as to its constitutionality is sufficient to sustain it.*"[194]

Respectfully, therefore, I again differ from the *ponencia's* contention that the amendments of the charters of the seven GFIs from 1995 to 2004[195] have already "unconstitutionalized" the continued implementation of the BSP *proviso*. Be it

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[189] Defensor-Santiago, *The "New" Equal Protection*, *supra*, p. 5.

[190] *International Harvester Co. of America v. Missouri*, 234 US 199, 210, 34 S.Ct. 859, 863, June 8, 1914, per McKenna, *J.*

[191] *Federal Communications Commission v. Beach Communications, Inc.; supra*, p. 315; *supra*, p. 2102 (citing *Nordlinger v. Hahn*, 505 US 1, 15, 112 S.Ct. 2326, 2334, June 18, 1992).

[192] *Ibid., ibid.*, per Thomas, *J.*

[193] *City of Cleburne, Texas v. Cleburne Living Center*, *supra*, p. 444; *supra*, p. 3257, per White, *J.*

[194] *Murphy v. Edmonds; supra*, p. 114.

[195] These amendments as enumerated in the *ponencia* are:

1. RA No. 7907 (1995) for Land Bank of the Philippines (LBP);
2. RA No. 8282 (1997) for Social Security System (SSS);
3. RA No. 8289 (1987) for Small Business Guarantee and Finance Corporation (SBGFC);
4. RA No. 8291 (1997) for Government Service Insurance System (GSIS);
5. RA No. 8523 (1998) for Development Bank of the Philippines (DBP);

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remembered that the first six GFIs mentioned by Mr. Justice Puno — namely the LBP, SSS, SBGFC, GSIS, DBP and HGC — do not stand in the same class and category as the BSP.[196]

While the BSP, as mentioned earlier, is a *regulatory* agency performing *governmental* functions, the six aforementioned GFIs perform *proprietary* functions that chiefly compete with private banks and other non-bank financial institutions. Thus, the so-called concept of *relative constitutionality* again finds no application. Under the *rational relationship test*, there can be no unequal protection of the law between employees of the BSP and those of the GFIs. Further, the equal protection clause "*guarantees equality, not identity of rights.*"[197] A law remains valid even if it is limited "*in the object to which it is directed.*"[198]

"*Defining the class of persons subject to a regulatory requirement x x x inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact that the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.*"[199] In fact, as long as "*the basic classification is rationally based, uneven*

6. RA No. 8763 (2000) for Home Guaranty Corporation (HGC); and
7. RA No. 9302 (2004) for Philippine Deposit Insurance Corporation (PDIC).

[196] In fact, as of April 1, 2002, the LBP and DBP already perform universal banking functions, thus allowing them to combine their resources with those of investment houses and to generate long-term investment capital. As expanded commercial banks today, these two institutions are certainly subject to the regulatory and supervisory powers of the BSP. Workers Desk, IBON Databank and Research Center, IBON Foundation, Inc., *The Philippine Banking Sector, supra*, pp. 17-18.

[197] *Victoriano v. Elizalde Rope Workers' Union*, 59 SCRA 54, 77, September 12, 1974, per Zaldivar, *J.*

[198] *Ibid.*

[199] *Federal Communications Commission v. Beach Communications, Inc.; supra*, pp. 315-316; *supra*, p. 2102, per Thomas, *J.* (citing *United States Railroad Retirement Board v. Fritz; supra*, p. 179; *supra*, p. 461, per Rehnquist, *J.* [later *CJ.*]).

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effects upon particular groups within a class are ordinarily of no constitutional concern."[200] *"It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws."*[201]

On the other hand, the Philippine Deposit Insurance Corporation (PDIC) is also a government regulatory agency almost on the same level of importance as the BSP. However, its charter was only amended very recently — to be more precise, on July 27, 2004.[202] Consequently, it would be most unfair to implicitly accuse Congress of inaction, discrimination and unequal treatment. *Comity with and courtesy to a coequal branch dictate that our lawmakers be given sufficient time and leeway to address the alleged problem of differing pay scales. "Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."*[203] Besides, it is a cardinal rule that courts first ascertain whether construction of a statute is fairly possible by which any constitutional question therein may be avoided.[204]

To explain further, while the possible changes contemplated by Congress in HB 00123 are similar, if not identical, to those found in the amended charters of the seven other GFIs already mentioned, the governmental objectives as explicitly stated in the explanatory note remain — to ascertain BSP's effectiveness and to strengthen its supervisory capability in promoting a more stable banking system. This fact merely confirms that the present classification and distinction

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[200] *Vacco v. Quill; supra*, p. 801; *supra*, p. 2298, per Rehnquist, *CJ.*

[201] *San Antonio School District v. Rodriguez; supra*, p. 33; *supra*, p. 43, per Powell, *J.*

[202] The effectivity date is August 12, 2004. http://www.pdic.gov.ph/ra9302.htm. (Last visited September 1, 2004; 9:06:01 a.m. PST).

[203] *Federal Communications Commission v. Beach Communications, Inc.; supra*, p. 315; *supra*, p. 2102, per Thomas, *J.* (citing *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 US 356, 365, 93 S.Ct. 1001, 1006, February 22, 1973, per Douglas, *J.*, quoting *Carmichael v. Southern Coal & Coke Co.*, 301 US 495, 510, 57 S.Ct. 868, 872, May 24, 1937, per Stone, *J.*).

[204] *Johnson v. Robison; supra*, pp. 366-367; *supra*, p. 1165.

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under the assailed provision still bear a rational relationship to the same legitimate governmental objectives and should, therefore, not be invalidated.

The validity of a law is to be determined not by its *effects on a particular case or by an incidental result arising therefrom,* but by the *purpose and efficacy of the law in accomplishing that effect or result.*[205] This point confirms my earlier position that the *enactment* of a law is not the same as its *operation.* Unlike *Vera in* which the Court invalidated the law on probation because of the unequal effect in the operation of such law,[206] *the assailed provision in the present case suffers from no such invidious discrimination. It very well achieves its purpose, and it applies equally to all government employees within the BSP. Furthermore, the application of this provision is not made subject to any discretion, uneven appropriation of funds, or time limitation. Consequently, such a law neither denies equal protection nor permits of such denial.*

The Strict Scrutiny Test

Under the *second tier* or the *strict scrutiny test,* the Court will require the government to show a compelling or overriding end to justify (1) the limitation on fundamental rights or (2) the implication of suspect classes.[207] Where a statutory classification impinges upon a fundamental right or burdens a suspect class, such classification is subjected to strict scrutiny.[208] It will be upheld only if it is shown to be "*suitably tailored to serve a compelling state interest.*"[209]

Therefore, all legal restrictions that curtail the civil rights of a suspect class, like a single racial or ethnic group, are immediately suspect. "*That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to*

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[205] *Victoriano v. Elizalde Rope Workers' Union; supra,* p. 82.

[206] *People v. Vera; supra,* p. 128.

[207] Defensor-Santiago, *The "New" Equal Protection, supra,* pp. 7 & 9.

[208] *Murphy v. Edmonds; supra,* p. 109.

[209] *Ibid.,* per Eldridge, *J.* See *City of Cleburne, Texas v. Cleburne Living Center, supra,* p. 440; *supra,* p. 3254, per White, *J.*

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the most rigid scrutiny."[210] Pressing public necessity, for instance, may justify the existence of those restrictions, but antagonism toward such suspect classes never can.

To date, no American case — federal or state — has yet been decided involving equal pay schemes as applied either to government employees vis-A`-vis private ones, or within the governmental ranks. Salary grade or class of position is not a fundamental right like marriage,[211] *procreation,*[212] *voting,*[213] *speech*[214] *and interstate travel.*[215] *American courts have in fact even refused to declare government employment a fundamental right.* [216]

As to suspect classes, non-exempt government employees (those with salary grades below 20) are not a group "*saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness, as to command extraordinary protection from the majoritarian political process.*"[217] They are a group so much

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[210] *Korematsu v. US*, 323 US 214, 216, 65 S.Ct. 193, 194, December 18, 1944, per Black, *J.*

[211] *Loving v. Commonwealth of Virginia*, 388 US 1, 12, 87 S.Ct. 1817, 1824, June 12, 1967.

[212] *Skinner v. Oklahoma ex rel. Williamson; supra*, p. 541; *supra*, p. 1113.

[213] *Kramer v. Union Free School District No. 15*, 395 US 621, 626, 89 S.Ct. 1886, 1889, June 16, 1969.

[214] Speech here refers to the right to engage in political expression. *Austin v. Michigan Chamber of Commerce*, 494 US 652, 666, 110 S.Ct. 1391, 1401, March 27, 1990.

[215] *Attorney General of New York v. Soto-Lopez*, 476 US 898, 903-904, 106 S.Ct. 2317, 2321-2322, June 17, 1986. See *Murphy v. Edmonds; supra*, p. 109.

[216] Defensor-Santiago, *The "New" Equal Protection, supra*, p. 11, March 1983.

[217] *Massachusetts Bd. of Retirement v. Murgia*, 96 S.Ct. 2562, US Mass., June 25, 1976, *per curiam* (citing *San Antonio Independent School District v. Rodriguez; supra*, p. 28; *supra*, p. 40, per Powell, *J.*). http://web2.westlaw.com/find/default.wl?Serial Num=1976142431&Find Type=Y&AP=&RS=WLW 4.08&R=2.0&FN=top&S=Split&MT=Westlaw International &RLT=CLID-FQRLT42229&n=1 (Last visited September 2, 2004; 09:36:35 a.m. PST).

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unlike race,[218] nationality,[219] alienage[220] or denominational preference[221] — factors that are "*seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy* x x x."[222]

Again, with due respect, the *ponencia's*[223] reference to *Yick Wo*,[224] therefore, is unbefitting. Indeed that case held that "*[t]hough the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the [C]onstitution.*"[225] The facts in *Yick Wo* clearly point out that the questioned ordinances therein — regulating the use of wooden buildings in the business of keeping and conducting laundries — operated in *hostility to the race and nationality* to which plaintiffs belonged, being aliens and subjects of the Emperor of China.[226] To a board of supervisors was given the arbitrary power to withhold permits to carry on a

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[218] For instance, it has long been declared by the US Supreme Court that "*racial discrimination in public education is unconstitutional.*" *Brown v. Board of Education of Topeka, Shawnee County, Kansas*, 349 US 294, 298, 75 S.Ct. 753, 755, May 31, 1955, per Warren, *CJ.*

[219] *Grutter v. Bollinger*, 539 US 306, 326, 123 S.Ct. 2325, 2337-2338, June 23, 2003.

[220] *In re Griffiths*, 413 US 717, 721-724, 93 S.Ct. 2851, 2854-2856, June 25, 1973.

[221] *Larson v. Valente*, 456 US 228, 246, 102 S.Ct. 1673, 1684, April 21, 1982.

[222] *City of Cleburne, Texas v. Cleburne Living Center*; *supra*, p. 440; *supra*, p. 3254, per White, *J.*

[223] *See ponencia.*

[224] *Yick Wo v. Hopkins; supra*, p. 220; *supra*, p. 1064; *supra*, p. 356.

[225] *Id.*, pp. 373-374; *id.*, p. 1073; *id.*, p. 227, per Matthews, *J.*

[226] *Id.*, pp. 366, 368 and 374; *id.*, pp. 1069, 1070, and 1073; *id.*, pp. 225-226, and 228.

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harmless and useful occupation on which the plaintiffs depended for livelihood.[227]

In contrast, no such arbitrariness is found in the case at bar. Neither is there any allegation of abuse of discretion in the implementation of a human resource development program. There is also no allegation of hostility shown toward employees receiving salaries below grade 20.

In fact, for purposes of equal protection analysis, *financial need* alone does not identify a suspect class.[228] And even if it were to consider *government pay* to be akin to *wealth*, it has already been held that "*where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.*"[229] After all, a law does not become invalid "*because of simple inequality,*"[230] financial or otherwise.

Since employment in the government is not a fundamental right and government employees below salary grade 20 are not a suspect class, the government is not required to present a compelling objective to justify a possible infringement under the strict scrutiny test. The assailed provision thus cannot be invalidated via the strict scrutiny gauntlet. "*In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.*"[231]

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[227] *Id.*, pp. 366 and 374; *id.*, pp. 1069 and 1073; *id.*, pp. 225 and 228.

[228] *Maher v. Roe*, 432 US 464, 470-471, 97 S.Ct. 2376, 2380-2381, June 20, 1977.

[229] *San Antonio Independent School District v. Rodriguez; supra*, p. 24; *supra*, p. 37, per Powell, *J.*

[230] *Victoriano v. Elizalde Rope Workers' Union; supra*, p. 77, per Zaldivar, *J.* (citing *International Harvester Co. v. Missouri; supra*, p. 210; *supra*, p. 862, per McKenna, *J.*).

[231] *Federal Communications Commission v. Beach Communications, Inc.; supra*, p. 313; *supra*, p. 2101, per Thomas, *J.*

In *City of Cleburne, Texas v. Cleburne Living Center; supra*, p. 442; *supra*, p. 3255, the Court implied that the *rational basis test* is the standard of judicial review normally accorded economic and social legislation.

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The Intensified Means Test

Under the *third tier* or the *intensified means test*, the Court should accept the legislative end, but should closely scrutinize its relationship to the classification made.[232] There exist classifications that are subjected to a higher or intermediate degree of scrutiny than the deferential or traditional *rational basis test*. These classifications, however, have not been deemed to involve suspect classes or fundamental rights; thus, they have not been subjected to the *strict scrutiny test*. In other words, such classifications must be "*substantially related to a sufficiently important governmental interest*."[233] Examples of these so-called "quasi-suspect" classifications are those based on gender,[234] legitimacy under certain circumstances,[235] legal residency with regard to availment of free public education, civil service employment preference for armed forces veterans who are state residents upon entry to military service, and the right to practice for compensation the profession for which certain persons have been qualified and licensed.[236]

Non-exempt government employees may be a *sensitive* but not a suspect class, and their employment status may be *important* although not fundamental. Yet, the enactment of the assailed provision is a reasonable means by which the State seeks to advance its interest.[237] Since such provision *sufficiently serves important governmental interests and is substantially related* to the achievement thereof, then, again it stands.

"*In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some*

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[232] Defensor-Santiago, *The "New" Equal Protection*, *supra*, pp. 7-8.

[233] *City of Cleburne, Texas v. Cleburne Living Center*; *supra*, p. 441; *supra*, p. 3255, per White, *J.*

[234] *Id.*, pp. 440-441; *id.*, pp. 3254-3255.

[235] *Id.*, p. 441; *id.*, p. 3255.

[236] *Murphy v. Edmonds; supra*, pp. 109-110.

[237] *San Antonio Independent School District v. Rodriguez; supra*, p. 98; *supra*, pp. 80-81, per dissenting opinion of Marshall, *J.*

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'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality. '"[238] *" The very idea of classification is that of inequality, so that x x x the fact of inequality in no manner determines the matter of constitutionality."*[239]

A statute, therefore, "*is not invalid under the Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it tends to produce.*"[240] Congress does not have to "*strike at all evils at the same time.*"[241] Quoting Justice Holmes, a law "*aimed at what is deemed an evil, and hitting it presumably where experience shows it to be most felt, is not to be upset by thinking up and enumerating other instances to which [the law] might have been applied equally well, so far as the court can see. That is for the legislature to judge[,] unless the case is very clear.*"[242] This Court is without power to disturb a legislative judgment, unless "*there is no fair reason for the law that would not require with equal force its*

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[238] *Dandridge v. Williams*, 90 S.Ct. 1153, US Md., April 6, 1970, per Stewart, *J.* (citing *Lindsley v. Natural Carbonic Gas Co.*, 220 US 61, 78,31 S.Ct. 337, 340, March 13, 1911, per Van Devanter, *J.*). http://web2.westlaw.com/find/default.wl?SerialNum.=19701342O&FindType=Y&AP=&RS=WLW4.08&VR=2.0&FN=top&SV=Split&MT=Westlaw International&RLT=CLID-FQRL T111229&n=1. (Last Visited September 3, 2004; 3:01:49 p.m. PST). See also *Murphy v. Edmonds, supra*, p. 114.

[239] *International Harvester Co. of America v. Missouri; supra*, p. 210; *supra*, p. 862, per McKenna, *J.* (citing *Atchison, T & S.F.R. Co. v. Matthews*, 174 US 96, 106, 19 S.Ct. 609, 613, April 17, 1899, per Brewer, *J.*).

[240] *Goesart v. Cleary*, 335 US 464, 467, 69 S.Ct. 198, 200, December 20, 1948, per Frankfurter, *J.* (citing *Roschen v. Ward*, 279 US 337, 339, 49 S.Ct. 336, April 22, 1929, per Holmes, *J.*).

[241] *Katzenbach v. Morgan*, 384 US 641, 657, 16 L.Ed. 2d 828, 839, June 13, 1966, per Brennan, *J.* (citing *Semler v. Oregon State Board of Dental Examiners*, 294 US 608, 610, 55 S.Ct. 570, 571, 79 L.Ed. 1086, 1089, April 1, 1935, per Hughes, *CJ.*).

[242] *Churchill v. Rafferty*, 32 Phil. 580, 611-612, December 21, 1915, per Trent, *J.* (quoting *Keokee Consolidated Coke Co. v. Taylor*, 234 US 224, 227, 34 S.Ct. 856, 857, June 8, 1914, per Holmes, *J.*).

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extension to others whom it leaves untouched."[243] To find fault with a legislative policy "*is not to establish the invalidity of the law based upon it.*"[244]

Epilogue

After that rather lengthy discourse, permit me to summarize. I respectfully submit that the assailed provision is not unconstitutional either on its face or as applied.

First, the theory of relative constitutionality is inapplicable to and not *in pari materia* with the present facts. It pertains only to the circumstances that an assailed law specifically addressed upon its passage, and not to extraneous circumstances.

The American cases cited in the *ponencia* prove my point. The laws therein that have been declared invalid because of "*altered circumstances*" or "*changed conditions*" are of the emergency type passed in the *exercise of the State's police power*, unlike the law involved in the present case. Moreover, our ruling in *Rutter* does not apply, because the assailed provision in the present case is not a remedial measure subject to a period within which a right of action or a remedy is suspended. Since the reason for the passage of the law still continues, the law itself must continue.

Second, this Court should respect Congress as a coequal branch of government. No urgency has been shown as to require the peremptory striking down of the assailed provision, and no injuries have been demonstrated to have been sustained as to require immediate action on the judiciary's part.

The legislative classification of BSP employees into exempt and non-exempt, based on the salary grade of their positions, and their further distinction (albeit perhaps not by design) from the employees of various GFIs are nevertheless valid and

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[243] *International Harvester Co. of America v. Missouri; supra*, p. 214; *supra*, p. 864, per McKenna, *J.* (citing *Missouri, Kansas, & Texas Railway Co. of Texas v. May*, 194 US 267, 269, 24 S.Ct. 638, 639, May 2, 1904, per Holmes, *J.*).

[244] *Id.*, p. 215; *id.*, p. 865, per McKenna, *J.*

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reasonable in achieving the standards of professionalism and excellence within the BSP — standards that are in accordance with sound principles of management and the other principles provided for under RA 6758. They are employees not subjected to the same levels of difficulty, responsibility, and qualification requirements. Besides, the BSP performs *primarily governmental or regulatory* functions; while the GFIs cited in the *ponencia* execute *purely proprietary* ones.

Congress is in fact presently deliberating upon possible amendments to the assailed provision. Since there is no question that it validly exercised its power and did not gravely abuse its discretion when it enacted the law, its will must be sustained. Under the doctrine of separation of powers with concomitant respect for coequal and coordinate branches of government, this Court has neither the authority nor the competence to create or amend laws.

Third, the assailed provision passes the three-tiered standard of review for equal protection. It is both a social and an economic measure rationally related to a governmental end that is not prohibited. Since salary grade, class of position, and government employment are not fundamental or constitutional rights, and non-exempt government employees or their financial need are not suspect classes, the government is not at all required to show a compelling state interest to justify the classification made. The provision is also substantially related to the achievement of sufficiently important governmental objectives. A law does not become invalid because of simple inequality, or because it did not strike at all evils at the same tine.

At bottom, whichever constitutional test is used, the assailed provision is not unconstitutional. Moreover, a thorough scrutiny of the Petition reveals that the issue of equal protection has been raised only in regard to the unconstitutionality of the proviso at its inception,[245] *and not by reason of the alleged "**changed conditions**" propounded by the **ponencia**. With greater reason then that the Petition should be denied.*

[245] Petition, p. 3; *rollo*, p. 5.

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In our jurisdiction, *relative constitutionality* is a rarely utilized theory having radical consequences; hence, I believe it should not be imposed by the Court unilaterally. Even in the US, it applies only when there is a change in *factual circumstances* covered by the law, *not when there is an enactment of another law pertaining to subjects not directly covered by the assailed law.* Whether factual conditions have so changed as to call for a partial or even a total abrogation of the law is a matter that rests primarily within the constitutional prerogative of Congress to determine.[246] To justify a judicial nullification, the constitutional breach of a legal provision must be very clear and unequivocal, not doubtful or argumentative.[247]

In short, this Court can go no further than to inquire whether Congress had the power to enact a law; it cannot delve into the wisdom of policies it adopts or into the adequacy under existing conditions of measures it enacts.[248] The equal protection clause is not a license for the courts "*to judge the wisdom, fairness, or logic of legislative choices.*"[249] Since relative constitutionality was not discussed by the parties in any of their pleadings, *fundamental fairness and evenhandedness still dictate that Congress be heard on this concept before the Court imposes it in a definitive ruling.*

Just a final observation at this juncture. It seems to me that when RA 7653 was enacted, the real focus of the second paragraph of Section 15(c) of Chapter 1 of Article II of the statute was to enable the *officers and executives of the BSP* to enjoy a *wider scope of exemption* from the Compensation Classification System than that stated in the last part of Section 9 of the Salary Standardization Law. As can be gleaned from the deliberations on the bill, the mention of BSP employees with salary grade 19 and below seems to have been purely incidental

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[246] *People v. Cayat; supra*, p. 21.

[247] *Peralta v. Comelec; supra*, p. 55.

[248] *People v. Cayat; supra*, p. 21.

[249] *Federal Communications Commission v. Beach Communications, Inc.; supra*, p. 313; *supra*, p. 2101, per Thomas, *J.*

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in the process of defining who were part of the executive and officer corps. It appears that the "classification" (if we can call it that) of the rank and filers with salary grade 19 and below, via the challenged *proviso*, came about not by design. And it was only after the later pieces of legislation were promulgated affecting the charters of the LBP, GSIS, SSS, DBP, *etc.* that the *proviso* came to be considered as "discriminatory."

In these trying times, I cannot but sympathize with the BSP rank-and-filers on account of the situation they have found themselves in, and I do not mean to begrudge them the opportunity to receive a higher compensation package than what they are receiving now. However, they are operating on the simplistic assumption that, being rank-and-file employees employed in a GFI, they are automatically entitled to the same benefits, privileges, increases and the like enjoyed by any other rank-and-file employee of a GFI, seeing as they are all working for one and the same government anyway.

It could also have something to do with the fact that Central Bank employees were quite well paid in the past. They may have overlooked the fact that the different GFIs are regulated by their respective charters, and are mandated to perform different functions (governmental or proprietary). Consequently, their requirements and priorities are likewise different, and differ in importance in the overall scheme of things, thus necessitating some degree of differentiation and calibration in respect of resource allocation, budgets and appropriations, and the like.

The long and short of it is that there can be no such thing as an automatic entitlement to increases in compensation, benefits and so forth, whether we consider the BSP rank and filers similarly situated along with other rank and filers of GFIs, or as being in a class by themselves. This is because the BSP is, strictly speaking, not a GFI but rather, the regulatory agency of GFIs.

The foregoing becomes even more starkly clear when mention is again made of the fiscal/budget deficit hobbling the national government, which has, not surprisingly, triggered waves of belt tightening measures throughout every part of the bureaucracy.

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This particular scenario puts Congress somewhat at odds with itself. On the one hand, it is studying HB 00123 with the end in view of precisely addressing the principal concern of the petitioner. On the other hand, it is also looking into how the various exemptions from the Salary Standardization Law can be rationalized or done away with, in the hope of ultimately reducing the gargantuan deficit.

Thankfully, the Court is not the one having to grapple with such a conundrum. It behooves us to give Congress, in the exercise of its constitutional mandate and prerogative, as much elbow room and breathing space as it needs in order to tackle and perhaps vanquish the many headed monster.

And while we all watch from the sidelines, we can all console ourselves and one another that after all, whether we find ourselves classified-out as BSP rank and filers, or officers and executives, or employees and members of the judiciary, we are — all of us — in the same boat, for we have all chosen to be in "public service," as the term is correctly understood. And what is public service if it does not entail a certain amount of personal sacrifice on the part of each one of us, all for the greater good of our society and country. We each make our respective sacrifices, sharing in the burden today, in the hope of a better tomorrow for our children and loved ones, and our society as a whole. It makes us strong. For this we can be thankful as well.

WHEREFORE, I vote to *DISMISS* the Petition. I maintain that the last *proviso* of the second paragraph of Section 15(c) of Chapter 1 of Article II of Republic Act No. 7653 is constitutional. Congress should be given adequate opportunity to enact the appropriate legislation that will address the issue raised by petitioner and clear the *proviso* of any *possible* or *perceived* infringement of the equal protection clause. *At the very least, Congress and herein respondents should be given notice and opportunity to respond to the possible application of the theory of relative constitutionality before it is, if at all, imposed by this Court.*

CARPIO, *J., dissenting:*

I dissent from the majority opinion.

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First, the majority opinion does not annul a law but enacts a pending bill in Congress into law. The majority opinion invades the legislative domain by enacting into law a bill that the 13th Congress is now considering for approval. The majority opinion does this in the guise of annulling a *proviso* in Section 15(c), Article II of Republic Act No. 7653 ("RA 7653").

Second, the majority opinion erroneously classifies the *Bangko Sentral ng Pilipinas* ("BSP"), a regulatory agency exercising sovereign functions, in the same category as non-regulatory corporations exercising purely commercial functions like Land Bank of the Philippines ("LBP"), Social Security System ("SSS"), Government Service Insurance System ("GSIS"), Development Bank of the Philippines ("DBP"), Small Borrowers Guarantee Fund Corporation ("SBGFC"), and Home Guarantee Corporation ("HGC").

Usurpation of Legislative Power

There is a bill now pending in Congress, House Bill. No. 123, seeking to exempt the rank-and-file employees of BSP from the Salary Standardization Law ("SSL"). A similar bill was filed in the 12th Congress together with the bill exempting from the SSL all officials and employees of Philippine Deposit Insurance Corporation ("PDIC"). The bill exempting PDIC employees from SSL was approved on 27 July 2004 in the dying days of the 12th Congress. However, due to lack of time, the bill exempting BSP rank-and-file employees did not reach third reading.

What the majority opinion wants is to preempt Congress by declaring through a judicial decision that BSP rank-and-file employees are now exempt from the SSL. The majority opinion seeks to legislate the exemption from SSL by declaring void the *proviso* in Section 15(c), Article II of RA 7653 ("*proviso*"), which states:

> A compensation structure, based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the *Bangko Sentral's* human resource development program: *Provided*, That the Monetary Board shall make its own system conform as closely as possible with the principles provided for under Republic Act No. 6758. ***Provided, however,*** *That compensation and*

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wage structure of employees whose positions fall under salary grade 19 and below shall be in accordance with the rates prescribed under Republic Act No. 6758. (Italics supplied)

The majority opinion justifies its action by saying that *while the proviso was valid when first enacted, it is now invalid* because its continued operation is discriminatory against BSP rank-and-file employees. All officials and employees of other government financial institutions ("GFIs") like GSIS, LBP, DBP, SSS, SBGFC, HGC and PDIC are now exempt from the SSL. Congress granted the exemptions over the years, for LBP in 1995, SSS in 1997, GSIS in 1997, SBGFC in 1997, DBP in 1998, HGC in 2000, and PDIC in 2004.

Among the GFIs granted exemption from SSL, only PDIC is a regulatory agency. *PDIC received its SSL exemption only this year — 2004. PDIC is the first regulatory GFI whose rank-and-file employees are exempt from the SSL.* Rank-and-file employees of BSP, a GFI exercising regulatory functions, cannot at this time claim any unreasonable or oppressive delay in securing legislative exemption from SSL, assuming Congress is disposed to grant an exemption.

At this time, this Court cannot say that the continued validity of the *proviso* in Section 15(c) of RA 7653 is unreasonable and oppressive on BSP rank-and-file employees. This Court cannot say that Congress gravely abused its jurisdiction in not exempting BSP rank-and-file employees from the SSL at the same time as PDIC. Congress is now considering BSP's exemption, and this Court cannot imperiously conclude that Congress had more than enough time to act on BSP's exemption.

Even if Congress does not act on BSP's exemption for more than one year, it does not follow that this Court should then exempt BSP rank-and-file employees from the SSL. As the law now stands, PDIC is the *only* regulatory GFI whose rank-and-file employees are exempt from SSL. All other GFIs exercising regulatory functions are not exempt from the SSL, including BSP whose rank-and file employees are subject to the SSL.

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The grant of exemption to PDIC is the legislative act that is questionable for being discriminatory against all other self-sustaining government agencies exercising regulatory functions. Such grant to one regulatory agency, without a similar grant to other regulatory agencies whose incomes exceed their expenses, creates a class of exemption that has dubious basis. In short, the *singular exemption* of PDIC from the SSL discriminates against all other self-sustaining government agencies that exercise regulatory functions.

The grant of SSL exemption to GFIs has ramifications on the deepening budget deficit of the government. Under Republic Act No. 7656,[1] all GFIs are required to remit to the National Treasury at least *50%* of their annual net earnings. This remittance forms part of the government revenues that fund the annual appropriations act. If the remittances from GFIs decrease, the national revenues funding the annual appropriations act correspondingly decrease. *This results in widening even more the budget deficit.*

A bigger budget deficit means there are no revenues to fund salary increases of *all government employees* who are paid out of the annual appropriations act. The exemption of GFIs from SSL may delay or even prevent a general increase in the salary of all government employees, including rank-and-file employees

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[1] Sections 2 and 3 of Republic Act No. 7656 provide:

Section 3. Dividends. — All government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof: Provided, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund.

Section 4. Exemptions. — The provisions of the preceding section notwithstanding, government-owned or -controlled corporations created or organized by law to administer real or personal properties or funds held in trust for the use and the benefit of its members, shall not be covered by this Act such as, but not limited to: the Government Service Insurance System, the Home Development Mutual Fund, the Employees Compensation Commission, the Overseas Workers Welfare Administration, and the Philippine Medical Care Commission.

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in the judiciary. This Court cannot simply ordain an exemption from SSL without considering serious ramifications on fiscal policies of the government. This is a matter better left to the Executive and Legislative Departments. This Court cannot intrude into fiscal policies that are the province of the Executive and Legislative Departments.

Indeed, Congress should pass a law rationalizing the exemptions of all government agencies from the SSL. The piecemeal grant of exemptions is creating distortions in the salary structure of government employees similarly situated. Such rationalization, however, is not the function of the Court. Even as a practical matter, this Court does not have the necessary data to rationalize the exemptions of all government agencies from the SSL.

The power of judicial review of legislative acts presumes that Congress has enacted a law that may violate the Constitution. This Court cannot exercise its power of judicial review *before* Congress has enacted the questioned law. In this case, Congress is still considering the bill exempting BSP rank-and-file employees from the SSL. There is still no opportunity for this Court to exercise its review power because there is nothing to review.

The majority opinion, however, claims that because of the failure of Congress to enact the bill exempting BSP rank-and-file employees from the SSL, this Court should now annul the *proviso* in Section 15(c) of RA 7653 to totally exempt BSP from the SSL. This is no longer an exercise of the power of judicial review but an exercise of the power of legislation — a power that this Court does not possess. The power to exempt a government agency from the SSL is a legislative power, not a judicial power. By annulling a prior valid law that has the effect of exempting BSP from the SSL, this Court is exercising a legislative power.

The power of judicial review is the power to strike down an unconstitutional act of a department or agency of government, not the power to initiate or perform an act that is lodged in another department or agency of government. If this Court strikes down the law exempting PDIC from the SSL because it is discriminatory against other government agencies similarly situated, this Court

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is exercising its judicial review power. The effect is to *revert PDIC to its previous situation* of being subject to the SSL, the same situation governing BSP and other agencies similarly situated.

However, by annulling the *proviso* in Section 15(c) of RA 7653, *BSP is not reverted to its previous situation but brought to a new situation that BSP cannot attain without a new legislation.* Other government agencies similarly situated as BSP remain in their old situation — still being subject to the SSL. This is not an annulment of a legislative act but an enactment of legislation exempting one agency from the SSL without exempting the remaining agencies similarly situated.

The majority opinion cites ***Rutter v. Esteban***[2] as precedent for declaring the *proviso* in Section 15(c) of RA 7653 unconstitutional. ***Rutter*** is not applicable to the present case. In ***Rutter***, the Court declared on 18 May 1953 that while the Debt Moratorium Law was valid when enacted on 26 July 1948, its "continued operation and enforcement x x x is unreasonable and oppressive, and should not be prolonged a minute longer." With the discontinuance of the effectivity of the Debt Moratorium Law, the debtors who benefited from the law were returned to their *original situation* prior to the enactment of the law. This meant that the creditors could resume collecting from the debtors the debts the payment of which was suspended by the Debt Moratorium Law. *The creditors and debtors were restored to their original situation before the enactment of the Debt Moratorium Law. No debtor or creditor was placed in a new situation that required the enactment of a new law.*

In the present case, declaring the *proviso* in Section 15(c) of RA 7653 no longer legally effective *does not restore the BSP rank-and-file employees to their original situation,* which subjected them to the SSL. Instead, the discontinuance of the validity of the *proviso* brings the BSP rank-and-file employees to a *new situation that they are not entitled without the enactment of a new law.* The effect of the majority decision is to legislate a new law that brings the BSP rank-and-file employees to a

[2] 93 Phil. 68 (1953).

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new situation. Clearly, the ***Rutter*** doctrine does not apply to the present case.

Erroneous Classification of BSP as GFI Similar to LBP, DBP and Others

The majority opinion classifies BSP as a GFI just like GSIS, LBP, DBP, SSS, SBGFC, HGC and PDIC. Here lies the *basic error* of the majority opinion. *GSIS, LBP, DBP, SSS, SBGFC and HGC are GFIs but are not regulatory agencies. BSP and PDIC are GFIs but are also regulatory agencies just like other governmental regulatory agencies.* The majority opinion is comparing apples with oranges. GFIs that do not exercise regulatory functions operate just like commercial financial institutions. However, GFIs that exercise regulatory functions, like BSP and PDIC, are unlike commercial financial institutions. BSP and PDIC exercise sovereign functions unlike the other non-regulatory GFIs.

Non-regulatory GFIs derive their income *solely* from commercial transactions. They compete head on with private financial institutions. Their operating expenses, including employees' salaries, come from their own *self-generated income from commercial activities.* However, regulatory GFIs like BSP and PDIC derive their income from *fees, charges and other impositions that all banks are by law required to pay.* Regulatory GFIs have no competitors in the private sector. Obviously, BSP and PDIC do not belong to the same class of GFIs as LBP, SSS, GSIS, SBGFC, DBP and HGC.

Exempting non-regulatory GFIs from the SSL is justified because these GFIs operate just like private commercial entities. Their revenues, from which they pay the salaries of their employees, come solely from commercial operations. *None of their revenues comes from mandatory government exactions.* This is not the case of GFIs like BSP and PDIC which impose regulatory fees and charges.

Conclusion

Under the Constitution, Congress is an independent department that is a co-equal of the Supreme Court. This Court has always

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accorded Congress the great respect that it deserves under the Constitution. The power to legislate belongs to Congress. The power to review enacted legislation belongs to the Supreme Court. The Supreme Court has no power to declare a pending bill in Congress as deemed enacted into law. That is not the power to review legislation but the power to usurp a legislative function.

The majority opinion is leading this Court into usurping the primary jurisdiction of Congress to enact laws. The majority opinion brings this Court and Congress into a needless clash of powers — whether the power of judicial review of legislative acts includes the power to initiate legislative acts if this Court becomes impatient with the pace of legislative process. Clearly, this Court does not have the power to legislate. Congress has a right to guard zealously its primary power to enact laws as much as this Court has a right to guard zealously its power to review enacted legislations.

Accordingly, I vote to dismiss the petition.

CARPIO MORALES, *J., dissenting*:

Is being an employee of a Government Owned or Controlled Corporation (GOCC) or a Government Financial Institution (GFI) a reasonable and sufficient basis for exemption from the compensation and position classification system for all government personnel provided in Republic Act No. 6758,[1] entitled Compensation and Position Classification Act of 1989, also known as the Salary Standardization Law?

The main opinion, by simultaneously applying two different standards for determining compliance with the constitutional requirement of equal protection — the "rational basis test" and the "strict scrutiny test" — under the rubric of "relative constitutionality," holds that it is.

Upon studied reflection, however, I find that such conclusion is contrary to the weight of the applicable legal authorities; involves

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[1] Entitled "AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES."

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an evaluation of the wisdom of the law and a pre-emption of the congressional power of appropriation, which are both beyond the scope of judicial review; and results in increased, rather than reduced, inequality within the government service — creating, as it does, a preferred sub-class of government employees, *i.e.* employees of GFIs, devoid of either a rational factual basis or a discernable public purpose for such classification.

Consequently, I am constrained to respectfully register my dissent.

The relevant antecedents of this case are as follows:

On August 21, 1989, R.A. No. 6758 (the Salary Standardization Law), amending Presidential Decree No. 985 (the Old Salary Standardization Law), was enacted[2] in response to the mandate to provide for a standardized compensation scale for all government employees, including those employed in GOCCs, under Section 5, Article IX-B, of the Constitution:

> Sec. 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions.

This provision was taken from the 1973 Constitution in order to address the wide disparity of compensation between government employees employed in proprietary corporations and those strictly performing governmental functions, the disparity, having been brought about by the increasing number of exemptions of proprietary corporations through special legislation from the

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[2] The Salary Standardization Law took effect on July 1, 1989 pursuant to Section 23 thereof:

> Sec. 23. Effectivity. — This Act shall take effect July 1, 1989. The DBM shall, within sixty (60) days after its approval, allocate all positions in their appropriate position titles and salary grades and prepare and issue the necessary guidelines to implement the same.

Vide Philippine Ports Authority v. Commission on Audit, 214 SCRA 653, 655 (1992).

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coverage of the then Integrated Reorganization Plan of 1972.[3] Part III, Chapter II, Article II of the latter stated:

Article II — *Reexamination of the WAPCO[4] Plans*

After thirteen years in operation, the WAPCO Plans have been undermined by the increasing number of exemptions from its coverage through special legislation. Moreover, through court decisions and the opinions of the Secretary of Justice, the so-called proprietary orporations are no longer subject to the Plans. Through collective bargaining, employees of government corporations have been able to secure not only higher salaries but liberal fringe benefits as well. As revealed by the 1970 Presidential Committee to Study Corporate Salary Scales, the average compensation in some of these corporations, using the average compensation of positions covered by the WAPCO Plans as base (100%), is as follows: DBP — 203%, CB — 196%, GSIS — 147%, SSS — 150%, and NWSA — 111%.[5]

Thus, the stated policy behind the Salary Standardization Law is to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions, while giving due regard to, among others, prevailing rates in the private sector for comparable work:

SECTION 2. Statement of Policy. — *It is hereby declared the policy of the State to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in the private sector for comparable work.* For this purpose, the Department of Budget and Managements (DBM) is hereby directed to establish and administer a unified Compensation and Position Classification System, hereinafter referred to as the System, as provided for in Presidential Decree No. 985, as amended,

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[3] J. BERNAS, S.J. *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 1029 (2003).

[4] Wage and Position Classification Office.

[5] *Id.* at 1029-1030.

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that shall be applied for all government entities, as mandated by the Constitution.

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The Salary Standardization Law applies to all positions, whether elective or appointive within the entire length and breadth of the Civil Service including those in the GOCCs and GFIs:

Sec. 4. Coverage. — *The Compensation and Position Classification System herein provided shall apply to all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government,* **including government-owned or controlled corporations and government financial institutions.**

The term "government" refers to the Executive, the Legislative and the Judicial Branches and the Constitutional Commissions and shall include all, but shall not be limited to, departments, bureaus, offices, boards, commissions, courts, tribunals, councils, authorities, administrations, centers, institutes, state colleges and universities, local government units, and the armed forces. The term "government-owned or controlled corporations and financial institutions" shall include all corporations and financial institutions owned or controlled by the National Government, whether such corporations and financial institutions perform governmental or proprietary functions. (Emphasis and italics supplied)

Nota bene, Section 21 of the Salary Standardization Law provides that "[a]ll provisions of Presidential Decree No. 985, as amended by Presidential Decree No. 1597, which are not inconsistent with this Act and are not expressly modified, revoked or repealed in this Act shall continue to be in full force and effect." Thus, the definition of terms found in Section 3 of P.D. No. 985 continues to be applicable to the Salary Standardization Law, including:

SECTION 3. Definition of Terms. — As used in this Decree, the following shall mean:

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c. Class (of position) — The basic unit of the Position Classification System. A class consists of all those positions in the system which are sufficiently similar as to (1) kind or subject matter

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of work, (2) level of difficulty and responsibility, and (3) the qualification requirements of the work, to warrant similar treatment in personnel and pay administration.

d. Class Specification or Standards — A written description of a class of position(s). It distinguishes the duties, responsibilities and qualification requirements of positions in a given class from those of other classes in the Position Classification System.

e. Classification — The act of arranging positions according to broad occupational groupings and determining differences of classes within each group.

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g. Compensation or Pay System — A system for determining rates of pay for positions and employees based on equitable principles to be applied uniformly to similar cases. It consists, among others, of the Salary and Wage Schedules for all positions, and the rules and regulations for its administration.

h. Grade — Includes all classes of positions which, although different with respect to kind or subject matter of work, are sufficiently equivalent as to level of difficulty and responsibility and level of qualification requirements of the work to warrant the inclusion of such classes of positions within one range of basic compensation.

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m. Position — A set of duties and responsibilities, assigned or delegated by competent authority and performed by an individual either on full-time or part-time basis. A position may be filled or vacant.

n. Position Classification — The grouping of positions into classes on the basis of similarity of kind and level of work, and the determination of the relative worth of those classes of positions.

o. Position Classification System — A system for classifying positions by occupational groups, series and classes, according to similarities or differences in duties and responsibilities, and qualification requirements. It consists of (1) classes and class specifications and (2) the rules and regulations for its installation and maintenance and for the interpretation, amendment and alternation of the classes and class specifications to keep pace with the changes in the service and the positions therein.

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q. Reclassification or Reallocation — A change in the classification of a position either as a result of a change in its duties and responsibilities sufficient to warrant placing the position in a different class, or as result of a reevaluation of a position without a significant change in duties and responsibilities.

r. Salary or Wage Adjustment — A salary or wage increase towards the minimum of the grade, or an increase from a non-prescribed rate to a prescribed rate within the grade.

s. Salary or Wage Grade — The numerical place on the salary or Wage Schedule representing multiple steps or rates which is assigned to a class.

t. Salary or Wage Schedule — A numerical structure in the Compensation System consisting of several grades, each grade with multiple steps with a percentage differential throughout the pay table. A classified position is assigned a corresponding grade in the Schedule.

u. Salary or Wage Step Increment — An increase in salary or wage from one step to another step within the grade from the minimum to maximum. Also known as within grade increase.

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At the same time, Section 16 of the Salary Standardization Law *expressly repealed* all laws, decrees, executive orders, corporate charters, and other issuances or parts thereof that exempted government agencies, including GOCCs and GFIs from the coverage of the new Compensation and Position Classification System:

Sec. 16. Repeal of Special Salary Laws and Regulations. — All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the *proviso* under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed.

Thus, all exemptions from the integrated Compensation Classification System granted prior to the effectivity of the

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Salary Standardization Law, including those under Sections 2[6] and 16[7] of Presidential Decree No. 985 (the Old Salary Standardization Law) as well as under the respective GOCC and GFI charters, were repealed,[8] subject to the non-diminution

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[6] Sec. 2. Declaration of Policy. — It is hereby declared to be the policy of the national government to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in private industry for comparable work. For this purpose, there is hereby established a system of compensation standardization and position classification in the national government for all departments, bureaus, agencies, and offices including government-owned or controlled corporations and financial institutions: *Provided, That notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporation and financial institutions for their employees to be supported fully from their corporate funds and for such technical positions as may be approved by the President in critical government agencies.* (Italics supplied)

[7] SECTION 16. Compensation Committees. — *Subject to the approval of the President, compensation committees may be created under the leadership of the Commissioner of the Budget whose purposes shall be to recommend on compensation standards, policies, rules and regulations that shall apply to critical government agencies, including those of government-owned or controlled corporations and financial institutions.* For purposes of compensation standardization, corporations may be grouped into financial institutions, industrial, commercial, service or development corporations. The OCPC shall provide secretariat assistance to the compensation committees, and shall be responsible for implementing and enforcing all compensation policies, rules and regulations adopted. Salary expenditures in all agencies of the national government, including those of the government-owned or controlled corporations and financial institutions shall conform to policies to be laid down by the Budget Commission in consultation with the heads of the agencies and corporations concerned and which policies, upon prior approval by the President, shall be monitored and implemented through its Office of Compensation and Position Classification. (Italics supplied)

[8] *Vide Philippine Ports Authority v. Commission on Audit, supra at 662; Philippine International Trading Corp. v. Commission on Audit,* 309 SCRA 177, 190-192 (1999); *Social Security System v. Commission on Audit,* 384 SCRA 548, 555-559 (2002).

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provision of Section 12.[9] As a result, the general rule is that all government employees, including employees of GOCCs and GFIs, are covered by the Compensation Classification System provided for by the Salary Standardization Law.

Nonetheless, Congress acknowledged the need of GOCCs and GFIs performing proprietary functions to maintain competitive salaries comparable to the private sector with respect to *key top-level positions* in order not to lose these personnel to the private sector. Thus, Section 9 of the Salary Standardization Law empowers the President, *in truly exceptional cases,* to approve higher compensation, exceeding Salary Grade 30, to the chairman, president, general manager, and the board of directors of government-owned or controlled corporations and financial institutions:

SECTION 9. Salary Grade Assignments for Other Positions. — For positions below the Officials mentioned under Section 8 hereof and their equivalent, whether in the National Government, local government units, government-owned or controlled corporations or financial institutions, the Department of Budget and Management is hereby directed to prepare the Index of Occupational Services to be guided by the Benchmark Position Schedule prescribed hereunder and the following factors: (1) the education and experience required to perform the duties and responsibilities of the positions; (2) the nature and complexity of the work to be performed; (3) the kind of supervision received; (4) mental and/or physical strain required in the completion of the work; (5) nature and extent of internal and external relationships; (6) kind of supervision exercised; (7) decision-making responsibility; (8) responsibility for accuracy of records and reports; (9)

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[9] SECTION 12. Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. *Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.*

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accountability for funds, properties and equipment; and (10) hardship, hazard and personal risk involved in the job.

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In no case shall the salary of the chairman, president, general manager or administrator, and the board of directors of government-owned or controlled corporations and financial institutions exceed Salary Grade 30: **Provided, That the President may, in truly exceptional cases, approve higher compensation for the aforesaid officials.** (Emphasis and italics supplied)

On July 3, 1993, Republic Act No. 7653, The New Central Bank Act, took effect. Section 15 (c) thereof authorizes the Monetary Board of the *Bangko Sentral ng Pilipinas* (BSP) to institute a compensation structure based on job evaluation studies and wage surveys as an integral component of the BSP's human resource development program, thereby implicitly providing for a wider scope of exemption from the Compensation Classification System than that found in the last paragraph of Section 9 of the Salary Standardization Law, to wit:

SEC. 15. *Exercise of Authority.* — In the exercise of its authority, the Monetary Board shall:

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(c) establish a human resource management system which shall govern the selection, hiring, appointment, transfer, promotion, or dismissal of all personnel. Such system shall aim to establish professionalism and excellence at all levels of the *Bangko Sentral* in accordance with sound principles of management.

A compensation structure, based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the ***Bangko Sentral's*** *human resource development program: Provided,* That the Monetary Board shall make its own system conform as closely as possible with the principles provided for under Republic Act No. 6758. ***Provided, however,*** *That compensation and wage structure of employees whose positions fall under salary grade 19 and below shall be in accordance with the rates prescribed under Republic Act No. 6758.* (Emphasis supplied; italics in the original)

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However, the last *proviso* of Section 15 (c) expressly provides that the compensation and wage structure of employees whose positions fall under Salary Grade (SG) 19 and below shall, like all other government employees, be in accordance with the rates prescribed under the Salary Standardization Law.

Thus, on account of the above-quoted provision, BSP rank and file employees with *(SG) 19 and below*, like their counterparts in the other branches of the civil service, are paid in accordance with the rates prescribed in the New Salary Scale under the Salary Standardization Law, while officers with *SG 20 and above* are exempt from the coverage of said law, they being paid pursuant to the New Salary Scale containing Salary Grades A to J[10] issued by the Monetary Board which took effect on January 1, 2000.

The Case for the Petitioner

The Central Bank (now *Bangko Sentral ng Pilipinas*) Employees Association, Inc., via the instant petition for prohibition filed on June 8, 2001, seeks to prohibit herein respondents BSP and the Executive Secretary of the Office of the President from further implementing the last *proviso* of Chapter I, Article II, Section 15 (c) of The New Central Bank Act, which it assails as unconstitutional for violating the equal protection clause,[11] hence, null and void.

It is petitioner's allegation that the application of the Compensation Classification System under the Salary Standardization Law to the rank and file employees, but not the BSP's officers, would violate the equal protection clause as the former are placed in a less favorable position compared to the latter.

Petitioner asserts that the classification of BSP employees into two classes based solely on the SG of their positions is not based

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[10] *Rollo* at 6.

[11] CONST., Art. III, Sec. 1, *viz*:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, *nor shall any person be denied the equal protection of the laws.* (Italics supplied)

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on substantial distinctions which make real differences. For, so petitioner contends, all BSP personnel are similarly situated since, regardless of the salary grade, they are appointed by the Monetary Board and required to possess civil service eligibilities, observe the same office rules and regulations, and work at the same national or regional offices, and, even if their individual duties differ, directly or indirectly their work would still pertain to the operation and functions of the BSP.[12] More specifically, it argues that there is "nothing between SGs 19 and 20 that should warrant the parting of the BSP 'Red Sea' of civil servants into two distinct camps of the privileged and the less privileged."[13]

Petitioner further submits that the personnel of the Government Service Insurance System (GSIS), Land Bank of the Philippines (LBP), Development Bank of the Philippines (DBP) and the Social Security System (SSS) are all exempted from the coverage of the Salary Standardization Law. Thus, within the class of rank and file personnel of government financial institutions, the BSP rank and file personnel are also discriminated upon.[14]

The Case for Respondent Executive Secretary

On the other hand, respondent Executive Secretary, through the Solicitor General, contends that the assailed *proviso* does not violate the equal protection clause. He submits that the classification of BSP employees relative to compensation, structure is based on actual and real differentiation between employees exercising managerial functions and the rank and file,[15] even as it strictly adheres to the enunciated policy in The New Central Bank Act to establish professionalism and excellence within the BSP subject to prevailing laws and policies of the national government.[16]

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[12] *Rollo* at 6-7.

[13] *Id.* at 7.

[14] *Id.* at 12-13.

[15] *Id.* at 83.

[16] *Id.* at 79-80.

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In addition, he notes that Article II, Section 15 (c) serves as an exemption to the Salary Standardization Law which, for all intents and purposes is a general law applicable to all government employees. As such, the provision exempting certain BSP employees from its coverage must be strictly construed.[17]

The Case for Respondent ***Bangko Sentral***

Likewise advancing the view that the assailed *proviso* is constitutional, respondent BSP argues that Congress, in passing the New Central Bank Act, has in fact determined that there are substantial reasons for classifying BSP employees into those covered by the Salary Standardization Law and those not covered by the Salary Standardization Law.[18]

However, BSP additionally claims that while the assailed proviso is constitutional, the manner by which it is implemented may give rise to the question of constitutional infirmity.[19] It thus proffers that the assailed provision should be interpreted together with the other provisions of The New Central Bank Act, such as that vesting it with "fiscal and administrative autonomy" and that directing the Monetary Board to "establish professionalism and excellence in all levels in accordance with sound principles of management."[20] *It concludes that the assailed provision does not adopt provisions of the Salary Standardization Law in their entirety, but refers only to the* ***basic pay*** *of the employees and does not cover other benefits which it (the BSP) may deem necessary to grant its employees.*[21]

Admittedly, the BSP Monetary Board has endeavored to grant additional allowances to the "rank and file" so that they may be given substantially similar benefits being enjoyed by the officers. The Commission on Audit (COA), however, disallowed these additional allowances on the ground that the grant of the same

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[17] *Id.* at 84.

[18] *Id.* at 65.

[19] *Id.* at 63.

[20] *Ibid.*

[21] *Id.* at 69.

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violates the provisions of the Salary Standardization Law and The New Central Bank Act.[22]

Issues for Resolution

In essence, petitioner asserts that its members are similarly situated to both the executive/officer corps of the BSP and the rank and file employees of the LBP, DBP, SSS and GSIS such that the operation of the equal protection guaranty in either case would entitle them to be placed under a compensation and position classification system outside of that mandated by the Salary Standardization Law.

Clearly, the resolution of the instant petition hinges on a determination of whether the right of petitioner's members to the equal protection of the laws has been violated by (a) the classification in The New Central Bank Act between the executive personnel (those with SG 20 and above), who are exempt from the Compensation Classification System mandated under the Salary Standardization Law, and the rank and file employees (those with SG 19 and below) who are covered by the latter; and/or (b) the disparity in treatment between the rank and file employees of the BSP and the rank and file employees of the LBP, DBP, SSS and GSIS, who were subsequently exempted from said Compensation Classification System by their amended charters.

Put differently, the instant Petition presents two principal issues for resolution: (1) whether the distinction between managerial and rank and file employees in The New Central Bank Act partakes of an invidious discrimination proscribed by the equal protection clause; and (2) whether, by operation of the equal protection clause, the rank and file employees of the BSP are entitled to exemption from the Compensation Classification System mandated under the Salary Standardization Law as a consequence of the exemption of the rank and file employees of the LBP, DBP, SSS and GSIS.

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[22] *Id.* at 69-70.

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Standards for Equal Protection Analysis

Before proceeding to resolve these issues, it may serve the ends of clarity to first review the basic framework by which the courts analyze challenges to the constitutionality of statutes as well as the standards by which compliance with the equal protection clause may be determined.

Presumption of Constitutionality

It is a basic axiom of constitutional law that all presumptions are indulged in favor of constitutionality and a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted. Thus, if any reasonable basis may be conceived which supports the statute, the same should be upheld. Consequently, the burden is squarely on the shoulders of the one alleging unconstitutionality to prove invalidity beyond a reasonable doubt by negating all possible bases for the constitutionality of a statute.[23] Verily, to doubt is to sustain.[24]

The rationale for this presumption in favor of constitutionality and the corresponding restraint on the part of the judicial branch was expounded upon by Justice Laurel in the case of *People v. Vera*,[25] *viz*:

> This court is not unmindful of the fundamental criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute. *An act of the legislature approved by the executive, is presumed to be within constitutional limitations.* The responsibility of upholding the Constitution rests not on the courts alone but on the legislature as well. "The question of the validity of every statute is first determined by the legislative department of the government itself." (*U.S. vs. Ten Yu* [1912], 24 Phil., 1, 10; *Case vs. Board of Health and Heiser* [1913], 24 Phil., 250, 276; *U.S. vs. Joson* [1913], 26 Phil., 1.) And a statute finally comes before the courts sustained by the sanction of the executive. *The members of the Legislature and the Chief Executive have taken an oath to support the Constitution and*

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[23] *Victoriano v. Elizalde Rope Workers' Union*, 59 SCRA 54, 66 (1974).

[24] *Philippine Judges Association v. Prado*, 227 SCRA 703, 706 (1993); *Basco v. Phil. Amusements and Gaming Corp.*, 197 SCRA 57, 68-69 (1991).

[25] 65 Phil. 56 (1937).

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it must be presumed that they have been true to this oath and that in enacting and sanctioning a particular law they did not intend to violate the Constitution. The courts cannot but cautiously exercise its power to overturn the solemn declarations of two of the three grand departments of the government. (6 R. C. L., p. 101.) Then, **there is that peculiar political philosophy which bids the judiciary to reflect the wisdom of the people as expressed through an elective Legislature and an elective Chief Executive. It follows, therefore, that the courts will not set aside a law as violative of the Constitution except in a clear case**. This is a proposition too plain to require a citation of authorities.[26] (Emphasis and italics supplied)

Indeed, it has been observed that classification is the essence of legislation.[27] On this point, the observation of the United States Supreme Court in the recent case of *Personnel Administrator of Massachusetts v. Feeney*[28] is illuminating:

> The equal protection guarantee of the Fourteenth Amendment does not take from the States all power of classification. *Most laws classify, and many affect certain groups unevenly, even though the law itself treats them no differently from all other members of the class described by the law.* When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern. *The calculus of effects, the manner in which a particular law reverberates in a society is a legislative and not a judicial responsibility.* In assessing an equal protection challenge, a court is called upon only to measure the basic validity of the legislative classification. *When some other independent right is not at stake and when there is no "reason to infer antipathy," it is presumed that "even improvident decisions will eventually be rectified by the democratic process. . . ."*[29] (Italics supplied; citations omitted)

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[26] *Id.* at 95; *vide Angara v. Electoral Commission*, 63 Phil. 139, 159 (1936).

[27] *Vide Sison v. Ancheta*, 130 SCRA 654, 662-663 (1984); *Tolentino v. Secretary of Finance*, 249 SCRA 628, 663-664 (1995).

[28] 442 U.S. 256 (1979).

[29] *Id.* at 271-272.

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Hence, in enacting laws, the legislature is accorded the widest scope of discretion within the bounds of the Constitution; and the courts, in exercising their power of judicial review, do not inquire into the wisdom of the law. On this point, this Court in *Ichong, etc., et al. v. Hernandez, etc., and Sarmiento*,[30] stated:

e. Legislative discretion not subject to judicial review. —

Now, in this matter of equitable balancing, what is the proper place and role of the courts? It must not be overlooked, in the first place, that *the legislature, which is the constitutional repository of police power and exercises the prerogative of determining the policy of the State, is by force of circumstances primarily the judge of necessity, adequacy or reasonableness and wisdom, of any law promulgated in the exercise of the police power, or of the measures adopted to implement the public policy or to achieve public interest. On the other hand, courts, although zealous guardians of individual liberty and right, have nevertheless evinced a reluctance to interfere with the exercise of the legislative prerogative. They have done so early where there has been a clear, patent or palpable arbitrary and unreasonable abuse of the legislative prerogative. Moreover, courts are not supposed to override legitimate policy, and courts never inquire into the wisdom of the law.*[31] (Italics supplied)

Only by faithful adherence to this principle of judicial review is it possible to preserve to the legislature its prerogatives under the Constitution and its ability to function.[32]

The presumption of constitutionality notwithstanding, the courts are nevertheless duty bound to strike down any statute which transcends the bounds of the Constitution including any classification which is proven to be unreasonable, arbitrary, capricious or oppressive.

The question that arises then is by what standard(s) should the reasonableness, and therefore the validity, of a legislative classification be measured?

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[30] 101 Phil. 1155 (1957).

[31] *Id.* at 1165-1166.

[32] *Vide Carmichael v. Southern Coal & Coke*, 301 U.S. 495, 510 (1937); *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 365 (1973).

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The Rational Basis Test

It may be observed that, in the Philippines, the traditional and oft-applied standard is the so-called "rational basis test," the requisites of which were first summarized by Justice (later Chief Justice) Moran in the case of *People v. Cayat*,[33] to wit:

> It is an established principle of constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the *classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class.*[34] (Italics supplied; citations omitted)

To the foregoing may be added the following observations of the Court in *Philippine Judges Association v. Prado*,[35] to wit:

> The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has nonetheless been embodied in a separate clause in Article III Sec. 1, of the Constitution to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.
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> According to a long line of decisions, *equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others.*
>
> *The equal protection clause does not require the universal application of the laws on all persons or things without distinction. This might in fact sometimes result in unequal protection,* as where, for example, a law prohibiting mature books to all persons, regardless

[33] 68 Phil. 12 (1939).

[34] *Id.* at 18.

[35] *Supra.*

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of age, would benefit the morals of the youth but violate the liberty of adults. *What the clause requires is equality among equals as determined according to a valid classification. By classification is meant the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars.*[36] (Italics supplied; footnotes omitted)

The Rational Basis Test has been described as adopting a "deferential" attitude towards legislative classifications. As previously discussed, this "deference" comes from the recognition that classification is often an unavoidable element of the task of legislation which, under the separation of powers embodied in our Constitution, is primarily the prerogative of Congress.

Indeed, in the United States, from where the equal protection provision of our Constitution has its roots, the Rational Basis Test remains a primary standard for evaluating the constitutionality of a statute.

Thus, in *Lying v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW*,[37] where a statute providing that no household may become eligible to participate in the food stamp program while any of its members are on strike, or receive an increase in the allotment of food stamps already being received because the income of the striking member has decreased, the U.S. Supreme Court held:

> *Because the statute challenged here has no substantial impact on any fundamental interest and does not "affect with particularity any protected class," we confine our consideration to whether the statutory classification is "rationally related to a legitimate governmental interest."* **We have stressed that this standard of review is typically quite deferential; legislative classifications are "presumed to be valid," largely for the reason that "the drawing of lines that create distinctions is peculiarly a legislative task and unavoidable one."**
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[36] *Id.* at 711-712.

[37] 485 U.S. 360 (1988).

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We have little trouble in concluding that §109 is rationally related to the legitimate governmental objective of avoiding undue favoritism to one side or the other in private labor disputes. The Senate Report declared: "Public policy demands an end to the food stamp subsidization of all strikers who become eligible for the program solely through the temporary loss of income during a strike. Union strike funds should be responsible for providing support and benefits to strikers during labor-management disputes." It was not part of the purposes of the Food Stamp Act to establish a program that would serve as a weapon in labor disputes; the Act was passed to alleviate hunger and malnutrition and to strengthen the agricultural economy. The Senate Report stated that "allowing strikers to be eligible for food stamps has damaged the program's public integrity" and thus endangers these other goals served by the program. Congress acted in response to these problems.

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It is true that in terms of the scope and extent of their ineligibility for food stamps, § 109 is harder on strikers than on "voluntary quitters." But the concern about neutrality in labor disputes does not arise with respect to those who, for one reason or another, simply quit their jobs. As we have stated in a related context, even if the statute "provides only 'rough justice,' its treatment . . . is far from irrational." *Congress need not draw a statutory classification to the satisfaction of the most sharp-eyed observers in order to meet the limitations that the Constitution imposes in this setting. And we are not authorized to ignore Congress' considered efforts to avoid favoritism in labor disputes, which are evidenced also by the two significant provisos contained in the statute.* The first *proviso* preserves eligibility for the program of any household that was eligible to receive stamps "immediately prior to such strike." The second *proviso* makes clear that the statutory ineligibility for food stamps does not apply "to any household that does not contain a member on strike, if any of its members refuses to accept employment at a plant or site because of a strike or lockout." In light of all this, the statute is rationally related to the stated objective of maintaining neutrality in private labor disputes.[38] (Emphasis and italics supplied; citations and footnotes omitted)

[38] *Id.* at 370-373.

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More recently, the American Court summarized the principles behind the application of the Rational Basis Test in its jurisdiction in Federal *Communications Commission v. Beach Communications, Inc.*,[39] as follows:

Whether embodied in the Fourteenth Amendment or inferred from the Fifth, *equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.* See Sullivan v. Stroop, *496 U.S. 478, 485, 110 S.Ct. 2499, 2504, 110 L.Ed.2d 438 (1990);* Bowen v. Gilliard, *483 U.S. 587, 600-603, 107 S.Ct. 3008, 3016-3018, 97 L.Ed.2d 485 (1987);* United States Railroad Retirement Bd. v. Fritz, *449 U.S. 166, 174-179, 101 S.Ct. 453, 459-462, 66 L.Ed.2d 368 (1980);* Dandridge v. Williams, *397 U.S. 471, 484-485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491 (1970). Where there are "plausible reasons" for Congress' action, "our inquiry is at an end."* United States Railroad Retirement Bd. v. Fritz, *supra,* 449 U.S., at 179, 101 S.Ct. at 461. **This standard of review is a paradigm of judicial restraint. "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted."** *Vance v. Bradley, 440 U.S. 93, 97, 99 S.Ct. 939, 942-943, 59 L.Ed.2d 171 (1979).*

On rational-basis review, *a classification in a statute such as the Cable Act comes to us bearing a strong presumption of validity,* see Lyng v. Automobile Workers, *485 U.S. 360, 370, 108 S.Ct. 1184, 1192, 99 L.Ed.2d 380 (1988), and those attacking the rationality of the legislative classification have the burden "to negative every conceivable basis which might support it."* Lehnhausen v. Lake Shore Auto Parts Co., *410 U.S. 356, 364, 93 S.Ct. 1001, 1006, 35 L.Ed.2d 351 (1973) (internal quotation marks omitted).* See also Hodel v. Indiana, *452 U.S. 314, 331-332, 101 S.Ct. 2376, 2387, 69 L.Ed.2d 40 (1981).* Moreover, because we never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. United

[39] 508 U.S. 307 (1993).

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States Railroad Retirement Bd. v. Fritz, supra, 449 U.S., at 179, 101 S.Ct., at 461. See *Flemming v. Nestor, 363 U.S. 603, 612, 80 S.Ct. 1367, 1373, 4 L.Ed.2d 1435 (1960).* Thus, the absence of "'legislative facts'" explaining the distinction "[o]n the record," *294 U.S.App.D.C., at 389, 959 F.2d at 987,* has no significance in rational-basis analysis. See *Nordlinger v. Hahn, 505 U.S. 1, 15, 112 S.Ct. 2326, 2334, 120 L.Ed.2d 1 (1992)* In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data. See *Vance v. Bradley, supra, 440 U.S., at 111, 99 S.Ct., at 949.* See also *Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464, 101 S.Ct. 715, 723, 66 L.Ed.2d 659 (1981). "'Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function.'" Lehnhausen, supra, 410 U.S., at 365, 93 S.Ct., at 1006 (*quoting *Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 510, 57 S.Ct. 868, 872, 81 L.Ed. 1245 (1937)).*

These restraints on judicial review have added force "where the legislature must necessarily engage in a process of line-drawing." *United States Railroad Retirement Bd. v. Fritz, 449 U.S., at 179, 101 S.Ct., at 461. Defining the class of persons subject to a regulatory requirement — much like classifying governmental beneficiaries — "inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and* **the fact [that] the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration."** *Ibid.* (internal quotation marks and citation omitted). The distinction at issue here represents such a line: By excluding from the definition of "cable system" those facilities that serve commonly owned or managed buildings without using public rights-of-way, §602(7)(B) delineates the bounds of the regulatory field. Such scope-of-coverage provisions are unavoidable components of most economic or social legislation. In establishing the franchise requirement, Congress had to draw the line somewhere; it had to choose which facilities to franchise. **This necessity renders the precise coordinates of the resulting legislative judgment virtually unreviewable, since the legislature must be allowed leeway to approach a perceived problem incrementally.** See, *e.g., Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955):*

> *"The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature*

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> *may select one phase of one field and apply a remedy there, neglecting the others. The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."*[40] (Emphasis and italics supplied; footnotes omitted)

Deferential or not, in the Philippines, the Rational Basis Test has proven to be an effective tool for curbing invidious discrimination.

Thus, in *People v. Vera*,[41] this Court held as unconstitutional Section 11 of Act No. 4221, which provided that the Probation Law "shall apply only in those provinces in which the respective provincial boards have provided for the salary of a probation officer at rates not lower than those now provided for provincial fiscals."[42] The Court held that the challenged provision was an undue delegation of legislative power since it left the operation or non-operation of the law entirely up to the absolute and unlimited (and therefore completely arbitrary) discretion of the provincial boards.[43] The Court went on to demonstrate that this unwarranted delegation of legislative power created "a situation in which discrimination and inequality [were] permitted or allowed"[44] since "a person otherwise coming within the purview of the law would be liable to enjoy the benefits of probation in one province while another person similarly situated in another province would be denied those same benefits,"[45] despite the absence of substantial differences germane to the purpose of the law. For this reason the questioned provision was also held unconstitutional and void for being repugnant to the equal protection clause.[46]

In *Viray v. City of Caloocan*,[47] the Court invalidated on equal protection grounds, among others, an Ordinance providing

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[40] *Id.* at 313-316.

[41] *Supra.*

[42] *Id.* at 115.

[43] *Id.* at 120.

[44] *Id.* at 127.

[45] *Id.* at 126.

[46] *Id.* at 129.

[47] 20 SCRA 791 (1967).

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for the collection of "entrance fees" for cadavers coming from outside Caloocan City for burial in private cemeteries within the city. The city government had sought to justify the fees as an exercise of police power claiming that policemen using the city's motorcycles or cars had to be assigned to escort funeral processions and reroute traffic to minimize public inconvenience.[48] This Court, through Justice J.B.L. Reyes held that:

> While undeniably the above-described activity of city officers is called for by every funeral procession, yet we are left without explanation why the Ordinance should collect the prescribed fees solely in the case of cadavers coming *from places outside* the territory of Caloocan City for burial in *private* cemeteries within the City. Surely, whether the corpse comes from without or within the City limits, and whether interment is to be made in private or public cemeteries, the City police must regulate traffic, and must use their City cars or motorcycles to maintain order; and the City streets must suffer some degree of erosion. Clearly, then, the ordinance in question does unjustifiably discriminate against private cemeteries, in violation of the equal protection clause of the Constitution, a defect adequate to invalidate the questioned portion of the measure.[49] (Italics in the original)

In *Philippine Judges Association v. Prado*,[50] this Court ruled that Section 35 of R.A. No. 7354,[51] withdrawing the franking privileges of the Judiciary[52] but retaining the same for the President,

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[48] *Id.* at 796.

[49] *Id.* at 796-797.

[50] *Supra.*

[51] "AN ACT CREATING THE PHILIPPINE POSTAL CORPORATION, DEFINING ITS POWER, FUNCTIONS AND RESPONSIBILITIES, PROVIDING FOR REGULATION OF THE INDUSTRY AND FOR OTHER PURPOSES CONNECTED THEREWITH."

[52] *Id.* at 711; the privilege was also withdrawn from the Office of Adult Education; the Institute of National Language; the Telecommunications Office; the Philippine Deposit Insurance Corporation; the National Historical Commission; the Armed Forces of the Philippines; the Armed Forces of the Philippines Ladies Steering Committee; the City and Provincial Prosecutors; the Tanodbayan (Office of Special Prosecutor); the Kabataang Barangay; the Commission on the Filipino Language; the Provincial and City Assessors; and the National Council for the Welfare of Disabled Persons.

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the Vice-President, Senators and Members of the House of Representatives, and others,[53] violated the equal protection clause. In analyzing the questioned legislative classification, the Court concluded that the only reasonable criteria for classification *vis-a`-vis* the grant of the franking privilege was "the perceived *need* of the grantee for the accommodation, which would justify a waiver of substantial revenue by the Corporation in the interest of providing for a smoother flow of communication between the government and the people."[54] The Court then went on to state that:

> Assuming that basis, we cannot understand why, of all the departments of the government, it is the Judiciary that has been denied the franking privilege. There is no question that if there is any major branch of the government that needs the privilege, it is the Judicial Department, as the respondents themselves point out. Curiously, the respondents would justify the distinction on the basis precisely of this need and, on this basis, deny the Judiciary the franking privilege while extending it to others less deserving.
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> In lumping the Judiciary with the other offices from which the franking privilege has been withdrawn, Section 35 has placed the courts of justice in a category to which it does not belong. If it recognizes the need of the President of the Philippines and the members of Congress for the franking privilege, there is no reason why it should not recognize a similar and in fact greater need on the part of the Judiciary for such privilege. While we may appreciate the withdrawal of the franking privilege from the Armed Forces of the Philippines Ladies Steering Committee, we fail to understand why the Supreme Court should be similarly treated as that Committee. And while we may concede the need of the National Census and Statistics Office for the franking privilege, we are intrigued that a similar if not greater need is not recognized in the courts of justice.
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[53] *Ibid.* The franking privilege was also retained for the Commission on Elections; former Presidents of the Philippines; widows of former Presidents of the Philippines; the National Census and Statistics Office; and the general public in the filing of complaints against public offices or officers violated the guaranty of equal protection.

[54] *Id.* at 713.

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We are unable to agree with the respondents that Section 35 of R.A. No. 7354 represents a valid exercise of discretion by the Legislature under the police power. On the contrary, we find its repealing clause to be a discriminatory provision that denies the Judiciary the equal protection of the laws guaranteed for all persons or things similarly situated. The distinction made by the law is superficial. It is not based on substantial distinctions that make real differences between the Judiciary and the grantees of the franking privilege.

This is not a question of wisdom or power into which the Judiciary may not intrude. It is a matter of arbitrariness that this Court has the duty and power to correct.[55]

More recently, in *Government Service Insurance System v. Montesclaros*,[56] this Court ruled that the *proviso* in Section 18 of P.D. No. 1146,[57] which prohibited a dependent spouse from receiving survivorship pension if such dependent spouse married the pensioner within three years before the pensioner qualified for the pension, was unconstitutional for, among others, violating the equal protection clause. Said the Court:

The surviving spouse of a government employee is entitled to receive survivor's benefits under a pension system. However, statutes sometimes require that the spouse should have married the employee for a certain period before the employee's death to prevent sham marriages contracted for monetary gain. One example is the Illinois Pension Code which restricts survivor's annuity benefits to a surviving spouse who was married to a state employee for at least one year before the employee's death. The Illinois pension system classifies spouses into those married less than one year before a member's death and those married one year or more. The classification seeks to prevent conscious adverse risk selection of deathbed marriages where a terminally ill member of the pension system marries another so that person becomes eligible for benefits. In *Sneddon v. The State Employee's Retirement System of Illinois*, the Appellate Court of Illinois held that such classification was based on difference in situation and circumstance, bore a rational relation to the purpose of the statute, and was therefore not in violation of constitutional guarantees of due process and equal protection.

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[55] *Id.* at 713-715.

[56] G.R. No. 146494, July 14, 2004.

[57] The Revised Government Service Insurance Act of 1977.

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A statute based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law. The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class. Thus, the law may treat and regulate one class differently from another class provided there are real and substantial differences to distinguish one class from another.

The *proviso* in question does not satisfy these requirements. The *proviso* discriminates against the dependent spouse who contracts marriage to the pensioner within three years before the pensioner qualified for the pension. Under the *proviso*, even if the dependent spouse married the pensioner more than three years before the pensioner's death, the dependent spouse would still not receive survivorship pension if the marriage took place within three years before the pensioner qualified for pension. The object of the prohibition is vague. There is no reasonable connection between the means employed and the purpose intended. The law itself does not provide any reason or purpose for such a prohibition. If the purpose of the *proviso* is to prevent "*deathbed marriages*," then we do not see why the *proviso* reckons the three-year prohibition from the date the pensioner qualified for pension and not from the date the pensioner died. The classification does not rest on substantial distinctions. Worse, the classification lumps all those marriages contracted within three years before the pensioner qualified for pension as having been contracted primarily for financial convenience to avail of pension benefits. (Footnotes omitted)

Even in the American context, the application of the "deferential" Rational Basis Test has not automatically resulted in the affirmation of the challenged legislation.

Thus, in *City of Cleburne Texas v. Cleburne Living Center*,[58] a city's zoning ordinance requiring a special permit for the operation of a group home for the mentally retarded was challenged on equal protection grounds. The American Court, ruling that the Rational Basis Test was applicable and limiting itself to the facts of the particular case, held that there was no rational basis for believing that the mentally retarded condition of those living in the

[58] 473 U.S. 432 (1985).

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affected group home posed any special threat to the city's legitimate interests any more than those living in boarding houses, nursing homes and hospitals, for which no special permit was required. Thus, it concluded, the permit requirement violated the respondent's right to equal protection.[59]

And, in *Romer v. Evans*,[60] the U.S. Supreme Court invalidated Amendment 2 of the Colorado State Constitution which precluded all legislative, executive, or judicial action at any level of state or local government designed to protect the status of persons based on their homosexual orientation, conduct, practices or relationships.[61]

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[59] The U.S. Supreme Court stated:

The constitutional issue is clearly posed. The city does not require a special use permit in an R-3 zone for apartment houses, multiple dwellings, boarding and lodging houses, fraternity or sorority houses, dormitories, apartment hotels, hospitals, sanitariums, nursing homes for convalescents or the aged (other than for the insane or feebleminded or alcoholics or drug addicts), private clubs or fraternal orders, and other specified uses. It does, however, insist on a special permit for the Featherston home, and it does so, as the District Court found, because it would be a facility for the mentally retarded. May the city require the permit for this facility when other care and multiple-dwelling facilities are freely permitted?

It is true, as already pointed out, that the mentally retarded as a group are indeed different from others not sharing their misfortune, and in this respect they may be different from those who would occupy other facilities that would be permitted in an R-3 zone without a special permit. But this difference is largely irrelevant unless the Featherston home and those who would occupy it would threaten legitimate interests of the city in a way that other permitted uses such as boarding houses and hospitals would not. Because in our view the record does not reveal any rational basis for believing that the Featherston home would pose any special threat to the city's legitimate interests, we affirm the judgment below insofar as it holds the ordinance invalid as applied in this case.

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The short of it is that requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded, including those who would occupy the Featherston facility and who would live under the closely supervised and highly regulated conditions expressly provided for by state and federal law. (At 447-450; citations omitted)

[60] 517 U.S. 620 (1996).

[61] The U.S. Supreme Court explained the reasons for its decision in this wise:

x x x Amendment 2, however, in making a general announcement that gays and lesbians shall not have any particular protections from the law, inflicts on them immediate, continuing, and real injuries that outrun and belie any legitimate

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Strict Scrutiny

While in the Philippines the Rational Basis Test has, so far, served as a sufficient standard for evaluating governmental actions against the Constitutional guaranty of equal protection, the American Federal Supreme Court, as pointed out in the main opinion, has developed a more demanding standard as a complement to the traditional deferential test, which it applies in certain well-defined circumstances. This more demanding standard is often referred to as Strict Scrutiny.

Briefly stated, Strict Scrutiny is applied when the challenged statute either (1) classifies on the basis of an inherently suspect characteristic or (2) infringes fundamental constitutional rights.[62] With respect to such classifications, the usual presumption of constitutionality is reversed, and it is incumbent upon the government to demonstrate that its classification has been

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justifications that may be claimed for it. We conclude that, in addition to the far-reaching deficiencies of Amendment 2 that we have noted, the principles it offends, in another sense, are conventional and venerable; a law must bear a rational relationship to a legitimate governmental purpose, and Amendment 2 does not.

The primary rationale the State offers for Amendment 2 is respect for other citizens' freedom of association, and in particular the liberties of landlords or employers who have personal or religious objections to homosexuality. Colorado also cites its interest in conserving resources to fight discrimination against other groups. The breadth of the amendment is so far removed from these particular justifications that we find it impossibleto credit them. We cannot say that Amendment 2 is directed to any identifiable legitimate purpose or discrete objective. It is a status-based enactment divorced from any factual context from which we could discern a relationship to legitimate state interests; it is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit. "[C]lass legislation . . . [is] obnoxious to the prohibitions of the Fourteenth Amendment. . . ."

We must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do. A State cannot so deem a class of persons a stranger to its laws. Amendment 2 violates the Equal Protection Clause, and the judgment of the Supreme Court of Colorado is affirmed. (At 631-636; citations omitted)

[62] *Plyler v. Doe*, 457 U.S. 202, 216-217 (1982); *Clements v. Fashing*, 457 U.S. 957, 963 (1982).

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narrowly tailored to further compelling governmental interests,[63] otherwise the law shall be declared unconstitutional for being violative of the Equal Protection Clause.

The central purpose of the Equal Protection Clause was to eliminate racial discrimination emanating from official sources in the States.[64] Like other rights guaranteed by the post-Civil War Amendments, the Equal Protection Clause (also known as the Fourteenth Amendment) was motivated in large part by a desire to protect the civil rights of African-Americans recently freed from slavery. Thus, initially, the U.S. Supreme Court attempted to limit the scope of the Equal Protection Clause to discrimination claims brought by African-Americans.[65] In *Strauder v. West Virginia*,[66] the American Supreme Court in striking down a West Virginia statute which prohibited a "colored man" from serving in a jury, traced the roots of the Equal Protection Clause:

> This is one of a series of constitutional provisions having a common purpose; namely, securing to a race recently emancipated, a race that through many generations had been held in slavery, all the civil rights that the superior race enjoy. The true spirit and meaning of the amendments, as we said in the *Slaughter-House Cases (16 Wall. 36)*, cannot be understood without keeping in view the history of the times when they were adopted, and the general objects they plainly sought to accomplish. At the time when they were incorporated into the Constitution, it required little knowledge of human nature to anticipate that those who had long been regarded as an inferior and subject race would, when suddenly raised to the rank of citizenship, be looked upon with jealousy and positive dislike, and that State laws might be enacted or enforced to perpetuate the distinctions that had before existed. x x x To quote the language used by us in the *Slaughter-House Cases*, "No one can fail to be impressed with the one pervading purpose found in all the amendments, lying at the foundation of each, and without which none

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[63] *McLaughlin v. State of Florida*, 379 U.S. 184, 196 (1964).

[64] *Loving v. Commonwealth of Virginia*, 388 U.S. 1, 10 (1967); *Shaw v. Reno*, 509 U.S. 630, 642 (1993); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 216 (1995); *Shaw v. Hunt*, 517 U.S. 899, 907 (1996).

[65] O. STEPHENS & J. SCHEB II, *AMERICAN CONSTITUTIONAL LAW* 737 (2nd Ed., 1999).

[66] 100 U.S. 303 (1879).

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of them would have been suggested, — we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over them." So again: "The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied, and by it [the Fourteenth Amendment] such laws were forbidden. If, however, the States did not conform their laws to its requirements, then, by the fifth section of the article of amendment, Congress was authorized to enforce it by suitable legislation." And it was added, "We doubt very much whether any action of a State, not directed by way of discrimination against the negroes, as a class, will ever be held to come within the purview of this provision."

x x x It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race, — the right to exemption from unfriendly legislation against them distinctively as colored, — exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race.

That the West Virginia statute respecting juries — the statute that controlled the selection of the grand and petit jury in the case of the plaintiff in error — is such a discrimination ought not to be doubted. Nor would it be if the persons excluded by it were white men. If in those States where the colored people constitute a majority of the entire population a law should be enacted excluding all white men from jury service, thus denying to them the privilege of participating equally with the blacks in the administration of justice, we apprehend no one would be heard to claim that it would not be a denial to white men of the equal protection of the laws. Nor if a law should be passed excluding all naturalized Celtic Irishmen, would there by any doubt of its inconsistency with the spirit of the amendment. The very fact that colored people are singled out and expressly denied by a statute all right to participate in the administration of the law, as jurors, because of their color,

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though they are citizens, and may be in other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others.[67]

Over the years however, the Equal Protection Clause has been applied against unreasonable governmental discrimination directed at any identifiable group.[68] In what Laurence H. Tribe and Michael C. Dorf call the most famous footnote in American constitutional law,[69] Justice Stone in *U.S. v. Carolene Products Co.*[70] maintained that state-sanctioned discriminatory practices against discrete and insular minorities are entitled to a diminished presumption of constitutionality:

> x x x the existence of facts supporting the legislative judgment is to be presumed, for regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators. [*FN4*] x x x
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> *FN4 There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments, which are deemed equally specific when held to be embraced within the Fourteenth.* See *Stromberg v. California, 283 U.S. 359, 369, 370, 51 S.Ct. 532, 535, 536, 75 L.Ed. 1117, 73 A.L.R. 1484; Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949* decided March 28, 1938.
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> It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth

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[67] *Id.* at 303, 306-310.

[68] *O. Stephens & J.* SCHEB II, *AMERICAN CONSTITUTIONAL LAW* 738 2ND Ed., 1999).

[69] L. TRIBE & M. DORF, *ON READING THE CONSTITUTION* 72 (1991).

[70] 304 U.S. 144 (1938).

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> Amendment than are most other types of legislation. On restrictions upon the right to vote, see *Nixon v. Herndon, 273 U.S. 536, 47 S.Ct. 446, 71 L.Ed. 759; Nixon v. Condon, 286 U.S. 73, 52 S.Ct. 484, 76 L.Ed. 984, 88 A.L.R. 458;* on restraints upon the dissemination of information, see *Near v. Minnesota,* 283 U.S. 697, 713-714, 718-720, 722, 51 S.Ct. 625, 630, 632, 633, 75 L.Ed. 1357; *Grosjean v. American Press Co., 297 U.S. 233, 56 S.Ct. 444 80 L.Ed. 660; Lovell v. Griffin, supra;* on interferences with political organizations, see *Stromberg v. California, supra, 283 U.S. 359, 369, 51 S.Ct. 532, 535, 75 L.Ed. 1117, 73 A.L.R. 1484: Fiske v. Kansas, 274 U.S. 380, 47 S.Ct. 655, 71 L.Ed. 1108; Whitney v. California, 274 U.S. 357, 373-378, 47 S.Ct. 641, 647, 649, 71 L.Ed. 1095; Herndon v. Lowry, 301 U.S. 242, 57 S.Ct. 732, 81 L.Ed. 1066;* and see Holmes, *J.,* in *Gitlow v. New York, 268 U.S. 652, 673, 45 S.Ct. 625, 69 L.Ed. 1138;* as to prohibition of peaceable assembly, see *De Jonge v. Oregon, 299 U.S. 353, 365, 57 S.Ct. 255, 260, 81 L.Ed. 278.*
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> Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious, *Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468, or national, Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1446; Bartels v. Iowa, 262 U.S. 404, 43 S.Ct. 628, 67 L.Ed. 1047; Farrington v. Tokushige, 273 U.S. 284, 47 S.Ct. 406, 71 L.Ed. 646,* or racial minorities. *Nixon v. Herndon, supra; Nixon v. Condon, supra;* **whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.** Compare *McCulloch v. Maryland, 4 Wheat. 316, 428, 4 L.Ed. 579, South Carolina State, Highway Department v. Barnwell Bros., 303 U.S. 177, 58 S.Ct. 510, 82 L.Ed. 734,* decided February 14, 1938, note 2, and cases cited.[71] (Emphasis and italics supplied)

The use of the term "suspect" originated in the case of *Korematsu v. U.S.*[72] In *Korematsu,*[73] the American Supreme Court upheld the constitutionality of Civilian Exclusion Order No. 34 of the

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[71] *Id.* at 153.

[72] J. NOWAK & R. ROTUNDA, *CONSTITUTIONAL LAW* 576 (4th Ed., 1991).

[73] 323 U.S. 214 (1944).

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Commanding General of the Western Command, U.S. Army, which directed that all persons of Japanese ancestry should be excluded from San Leandro California, a military area, beginning May 9, 1942. However, in reviewing the validity of laws which employ race as a means of classification, the Court held:

> It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a *single racial group are* **immediately suspect.** *That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the* **most rigid scrutiny.** Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.[74] (Emphasis and italics supplied)

Racial classifications are generally thought to be "suspect" because throughout the United States' history these have generally been used to discriminate officially against groups which and politically subordinate and subject to private prejudice and discrimination.[75] Thus, the U.S. Supreme Court has "consistently repudiated distinctions between citizens solely because of their ancestry as being odious to a free people whose institutions are founded upon the doctrine of equality."[76] The underlying rationale of the suspect classification theory is that where legislation affects discrete and insular minorities, the presumption of constitutionality fades because traditional political processes may have broken down.[77] Moreover, classifications based on race, alienage or national origin are so seldom relevant to the achievement of any legitimate state interest that laws grounded on such considerations are deemed to reflect prejudice and antipathy — a view that those in the burdened class are not as worthy or deserving as others.[78]

Almost three decades after *Korematsu*, in the landmark case of *San Antonio Independent School District v.*

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[74] *Id.* at 216.

[75] Developments in the Law — Equal Protection, 82 HARV. L. REV. 1065, 1107-1108 (1969).

[76] *Loving v. Commonwealth of Virginia*, 388 U.S. 1, 11 (1967); *Wygant v. Jackson Board of Education*, 476 U.S. 267, 273 (1986).

[77] *Jonson v. Robison*, 415 U.S. 361. 375 (1974).

[78] *City of Cleburne, Texas Cleburne Living Center* 473 U.S., 432, 440 (19985),

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Rodriguez,[79] the U.S. Supreme Court in identifying a "suspect class" as a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process,[80] articulated that suspect classifications were not limited to classifications based on race, alienage or national origin but could also be applied to other criteria such as religion.[81] Thus, the U.S. Supreme Court has ruled that suspect classifications deserving of Strict Scrutiny include those based on race or national origin,[82] lienage[83]

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[79] 411 U.S. 1 (1973).

[80] *Id.* at 28 (1973). The definition was reiterated in *Mathews v. Lucas* 427 U.S. 495, 506 (1976).

[81] In *City of New Orleans v. Dukes*, 427 U.S. 279, 303 (1976), the U.S. Supreme Court said:

When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative deteminations as to the desirability of particular statutory discreminations, See, *E.g.*, *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973). Unless a classsification trammels fundamental personal rights or is *drawn upon inherently suspect distinctions such as race*, or **religion,** or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. . . .(Emphasis and italics supplied).

[82] *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003).

We have held that all *racial classifications* imposed by government "must be analyzed by a reviewing court under *strict scrutiny*." *Ibid.* This means that such classifications are constitutional only if they are narrowly tailored to further compelling governmental interests. "Absent searching judicial inquiry into the justification for such race-based measures," we have no way to determine what "classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics." *Richmond v. J.A. Croson Co., 488 U.S. 469, 493, 109 S.Ct., 706, 102 L.Ed.2d 854 (1989)* (plurality opinion). We apply strict scrutiny to all racial classifications to 'smoke out' illegitimate uses of race by assuring that [government] is pursuing a goal important enough to warrant use of a highly suspect tool." *Ibid.* (Emphasis and italics supplied)

[83] *In re Griffiths*, 413 U.S. 717, 721-724 (1973).

The Court has consistently emphasized that a State which adopts a **suspect classification** *'bears a heavy burden of justification,' McLaughlin v. Florida, 379 U.S. 184, 196, 85 S.Ct. 283, 290, 13 L.Ed.2d 222 (1964),* a burden which, though variously formulated, requires the State to meet certain standards of proof. In order

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and religion[84] while classifications based on

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to justify the use of a suspect classification, a State must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary . . . to the accomplishment' of its purpose or the safeguarding of its interest.

Resident aliens, *like citizens, pay taxes, support the economy, serve in the Armed Forces, and contribute in myriad other ways to our society. It is appropriate that a* **State bear a heavy burden when it deprives them of employment opportunities.** (Emphasis and italics supplied)

[84] In *Larson v. Valente*, 456 U.S. 228, 246 (1982), the Supreme Court through Justice Brennan held that the Minnesota statute, in imposing certain registration and reporting requirements upon only those religious organizations that solicit more than 50% of their funds from nonmembers discriminates against such organizations in violation of the establishment clause of the First Amendment. In so doing, the Court said:

Since *Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947),* this Court has adhered to the principle, clearly manifested in the history and logic of the Establishment Clause, that no State can "pass laws which aid one religion" or that "prefer one religion over another." *Id., at 15, 67 S.Ct., at 511.* This principle of denominational neutrality has been restated on many occasions. In *Zorach v. Clauson, 343 U.S. 306, 72 S.Ct. 679, 96 L.Ed. 954 (1952),* we said that "[t]he government must be neutral when it comes to competition between sects." *Id., at 314, 72 S.Ct., at 684. In Epperson v. Arkansas, 393 U.S. 97, 89 S.Ct. 266,21 L.Ed.2d 228 (1968),* we stated unambiguously: "The First Amendment mandates governmental neutrality between religion and religion. . . . The State may not adopt programs or practices . . . which 'aid or oppose' any religion. . . . This prohibition is absolute." *Id., at 104, 106 89 S.Ct., at 270, 271, citing Abington School District v. Schempp, 374 U.S. 203, 225, 83 S.Ct. 1560, 1573, 10 L.Ed.2d 844 (1963).* And Justice Goldberg cogently articulated the relationship between the Establishment Clause and the Free Exercise Clause when he said that "[t]he fullest realization of true religious*83 S.Ct. 1560, 1573, 10 L.Ed.2d 844 (1963).* And Justice Goldberg cogently articulated the relationship between the Establishment Clause and the Free Exercise Clause when he said that "[t]he fullest realization of true religious liberty requires that government . . . effect no favoritism among sects . . . and that it work deterrence of no religious belief." *Abington School District, supra, at 305, 83 S.Ct., at 1615. In short, when we are presented with a* **state law granting a denominational preference,** *our precedents demand that* **we treat the law as suspect and that we apply strict scrutiny in adjudging its constitutionality.** (Emphasis and italics supplied)

While the Court viewed the case from perspective of the Non-Establishment Clause of the First Amendment, the principles on Equal Protection would also apply since the Non-Establishment Clause stripped to its bare essentials is in reality merely a more specific type of equal protection clause but with regards to religion.

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gender,[85] illegitimacy,[86] financial need,[87] conscientious objection[88] and age[89] have been held not to constitute suspect classifications.

As priorly mentioned, the application of Strict Scrutiny has not been limited to statutes which proceed along suspect lines but has been utilized on statutes infringing upon fundamental constitutionally protected rights. Most fundamental rights cases decided in the United States require equal protection analysis

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[85] See discussion on the Intermediate Scrutiny Test.

[86] *Ibid.*

[87] *Maher v. Roe*, 432 U.S. 464, 470-471 (1977).

This case involves no discrimination against a suspect class. An indigent woman desiring an abortion does not come within the limited category of disadvantaged classes so recognized by our cases. Nor does the fact that the impact of the regulation falls upon those who cannot pay lead to a different conclusion. In a sense, every denial of welfare to an indigent creates a wealth classification as compared to nonindigents who are able to pay for the desired goods or services. **But this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis.** See *Rodriguez, supra, 411 U.S. at 29, 93 S.Ct., at 1294; Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970).* (Emphasis and italics supplied).

[88] *Johnson v. Robison*, 415 U.S. 361, 375 (1974), footnote number 14, states:

Appellee argues that the statutory classification should be subject to strict scrutiny and upheld only if a compelling governmental justification is demonstrated because (1) the challenged classification interferes with the fundamental constitutional right to the free exercise of religion, and (2) I-O conscientious objectors are a suspect class deserving special judicial protection. We find no merit in either contention. Unquestionably, the free exercise of religion is a fundamental constitutional right. However, since we hold in Part III, *infra*, that the Act does not violate appellee's right of free exercise of religion, we have no occasion to apply to the challenged classification a standard of scrutiny stricter than the traditional rational-basis test. **With respect to appellee's second contention, we find the traditional indicia of suspectedness lacking in this case.** *The class does not possess an 'immutable characteristic determined solely by the accident of birth,' Frontiero v. Richardson, 411 U.S., at 686, 93 S.Ct., at 1770, nor is the class 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process,' San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 28, 93 S.Ct. 1278, 1298, 36 L.Ed.2d 16 (1973).* (Emphasis and italics supplied)

[89] *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 313-314 (1976).

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because these cases would involve a review of statutes which classify persons and impose differing restrictions on the ability of a certain class of persons to exercise a fundamental right.[90] Fundamental rights include only those basic liberties explicitly or implicitly guaranteed by the U.S. Constitution.[91] And precisely because these statutes affect fundamental liberties, any experiment involving basic freedoms which the legislature conducts must be critically examined under the lens of Strict Scrutiny.

Fundamental rights which give rise to Strict Scrutiny include the right of procreation,[92] the right to

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Nor does the class of uniformed state police officers over 50 constitute a suspect class for purposes of equal protection analysis. *Rodriguez, supra,* 411 U.S. at 28, 93 S.Ct. at 1294, observed that a suspect class is one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." While the treatment of the aged in this Nation has not been wholly free of discrimination, such persons, unlike, say, those who have been discriminated against on the basis of race or national origin, have not experienced a "history of purposeful unequal treatment" or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities. The class subject to the compulsory retirement feature of the Massachusetts statute consists of uniformed state police officers over the age of 50. It cannot be said to discriminate only against the elderly. Rather, it draws the line at a certain age in middle life. But even old age does not define a "discrete and insular" group, *United States v. Carolene Products Co.,* 304 U.S. 144, 152-153, n. 4, 58 S.Ct. 778, 783, 82 L.Ed. 1234 (1938), in need of "extraordinary protection from the majoritarian political process." Instead, it marks a stage that each of us will reach if we live out our normal span. Even if the statute could be said to impose a penalty upon a class defined as the aged, it would not impose a distinction sufficiently akin to those classifications that we have found suspect to call for strict judicial scrutiny. (Emphasis and italics supplied)

[90] J. NOWAK & R. ROTUNDA, *CONSTITUTIONAL LAW* 577 (*4th* Ed., 1991).

[91] *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, 17 (1973); *Plyler v. Doe,* 457 U.S. 202, 218 (1982).

[92] *Skinner v. State of Oklahoma ex rel. Williamson,* 316 U.S. 535, 541 (1942).

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marry,[93] the right to exercise Amendment freedoms such as free speech, political expression, press;

But the instant legislation runs afoul of the equal protection clause, though we give Oklahoma that large deference which the rule of the foregoing cases requires. We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race. The power to sterilize, if exercised, may have subtle, far reaching and devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear. There is no redemption for the individual whom the law touches. Any experiment which the State conducts is to his irreparable injury. He is forever deprived of a basic liberty. We mention these matters not to reexamine the scope of the police power of the States. *We advert to them merely in emphasis of our view that* **strict scrutiny of the classification which a State makes in a sterilization law is essential,** *lest unwittingly or otherwise invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws.* . . . (Emphasis and italics supplied)

[93] *Loving v. Commonwealth of Virginia*, 388 U.S. 1, 12 (1967).

Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. Skinner v. State of Oklahoma, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942). See also *Maynard v. Hill*, 125 U.S. 190, 8 S.Ct. 723, 31 L.Ed. 654 (1888). To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State. (Emphasis and italics supplied)

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assembly, and so forth,[94] the right to travel,[95]

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[94] *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 666 (1990).

Because the right to engage in political expression is fundamental to our constitutional system, statutory classifications impinging upon that right must be narrowly tailored to serve a compelling governmental interest. *Police Department of Chicago v. Mosley*, 408 U.S. 92, 101, 92 S.Ct. 2286, 2293, 33 L.Ed.2d 212 (1972). We find that, even under such strict scrutiny, the statute's classifications pass muster under the Equal Protection Clause. As we explained in the context of our discussions of whether the statute was overinclusive, *supra,* at 1397-1398, or underinclusive, *supra,* at 1400-1401, the State's decision to regulate only corporations is precisely tailored to serve the compelling state interest of eliminating from the political process the corrosive effect of political "war chests" amassed with the aid of the legal advantages given to corporations. (Emphasis and italics supplied)

[95] *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903-904 (1986).

A state law implicates the right to travel when it actually deters such travel, see, *e.g., Crandall v. Nevada, supra,* at 46; see also Shapiro, *supra 394 U.S., at 629, 89 S.Ct., at 1328,* when impeding travel is its primary objective, see Zobel, *supra 457 U.S., at 62, n. 9, 102 S.Ct., at 2314, n. 9;* Shapiro, *supra 394 U.S., at 628-631, 89 S.Ct., at 1328-1329,* or when it uses "'any classification which serves to penalize the exercise of that right.'" Dunn, *supra 405 U.S., at 340, 92 S.Ct., at 1002 (*quoting Shapiro, *supra 394 U.S., at 634, 89 S.Ct., at 1331).* Our right-to-migrate cases have principally involved the latter, indirect manner of burdening the right. More particularly, our recent cases have dealt with state laws that, by classifying residents according to the time they established residence, resulted in the unequal distribution of rights and benefits among otherwise qualified bona fide residents. *Hooper, supra;* Zobel v. Williams, *457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982);* Sosna v. Iowa, *419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975); Memorial Hospital, supra;* Dunn v. Blumstein, *405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972); Shapiro, supra.*

Because the creation of different classes of residents raises equal protection concerns, we have also relied upon the Equal Protection Clause in these cases. Whenever a state law infringes a constitutionally protected right, we undertake intensified equal protection scrutiny of that law. See, *e.g.,* Cleburne v. Cleburne Living Center, *Inc., 473 U.S. 432, 440, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985);* Martinez v. Bynum, *461 U.S. 321, 328, n. 7, 103 S.Ct. 1838, 1842, n. 7, 75 L.Ed.2d 879 (1983);* Plyler v. Doe, *457 U.S. 202, 216-217 and n. 15, 102 S.Ct. 2382, 2394-2395 and n. 15, 72 L.Ed.2d 786 (1982);* Memorial Hospital, *supra 415 U.S., at 258, 262, 94 S.Ct., at 1082, 1084;* San Antonio Independent School District v. Rodriguez, *411 U.S. 1, 16 and n. 39, 30-32, 40, 93 S.Ct. 1278, 1287 and n. 39, 1295-1296, 1300, 36 L.Ed.2d 16 (1973);* Police Dept. Chicago v. Mosley, *408 U.S. 92, 101, 92 S.Ct. 2286, 2293, 33 L.Ed.2d 212 (1972); Dunn, supra 405 U.S., at 335, 342, 92 S.Ct., at 999, 1003;* Shapiro, *supra 394 U.S., at 634, 89 S.Ct., at 1331. Thus, in several cases, we asked expressly whether the distinction*

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and the right to vote.[96]

Because Strict Scrutiny involves statutes which either classifies on the basis of an inherently suspect characteristic or infringes fundamental constitutional rights, the presumption of constitutionality is reversed; that is, such legislation is assumed to be unconstitutional until the government demonstrates otherwise. The government must show that the statute is supported by a compelling governmental interest and the means chosen to accomplish that interest are narrowly tailored.[97] Gerald Gunther explains as follows:

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drawn by the State between older and newer residents burdens the **right to migrate.** *Where we found such a burden, we required the State to come forward with a* **compelling justification.** See, *e.g., Shapiro, supra; Dunn, supra; Memorial Hospital v. Maricopa County,* 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). . . . (Emphasis and italics supplied)

[96] *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969).

'In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.' *Williams v. Rhodes,* 393 U.S. 23, 30, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968). *And, in this case, we must give the statute a close and exacting examination. '(S)ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights,* **any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.'** *Reynolds v. Sims, 377 U.S. 533, 562, 84 S.Ct. 1362, 1381, 12 L.Ed.2d 506 (1964).* See *Williams v. Rhodes, supra, 393 U.S. at 31, 89 S.Ct. at 10; Wesberry v. Sanders, 376 U.S. 1, 17, 84 S.Ct. 526, 535, 11 L.Ed.2d 481 (1964).* This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.

x x x Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives. Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest. See *Carrington v. Rash, supra, 380 U.S., at 96, 85 S.Ct., at 780.* (Emphasis and italics supplied)

[97] *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 235 (1995).

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. . . The intensive review associated with the new equal protection imposed two demands a demand not only as to means but also as to ends. Legislation qualifying for strict scrutiny required a far closer fit between classification and statutory purpose than the rough and ready flexibility traditionally tolerated by the old equal protection: means had to be shown "necessary" to achieve statutory ends, not merely "reasonably related." Moreover, equal protection became a source of ends scrutiny as well: legislation in the areas of the new equal protection had to be justified by "compelling" state interests, not merely the wide spectrum of "legitimate" state ends.[98]

Furthermore, the legislature must adopt the least burdensome or least drastic means available for achieving the governmental objective.[99]

While Strict Scrutiny has, as yet, not found widespread application in this jurisdiction, the tenet that legislative classifications involving fundamental rights require a more rigorous justification under more stringent standards of analysis has been acknowledged in a number of Philippine cases.[100] Since the United States' conception of the Equal Protection Clause was largely influenced by its history of systematically discriminating along racial lines, it is perhaps no surprise that the Philippines which does not have any comparable experience has not found a similar occasion to apply this particular American approach of Equal Protection.

Intermediate Scrutiny

The Rational Basis Test and Strict Scrutiny form what Gerald Gunther termed as the two-tier approach to equal protection analysis — the first tier consisting of the Rational Basis Test (also called by Gunther as the old equal protection) while the

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[98] http://www.marquette.edu/polisci/wolfe/gunther.htm quoting excerpts from Chapter 9 of G. GUNTHER, *CONSTITUTIONAL LAW* (12th Ed., 1991).

[99] Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection,* 86 HARV. L. REV. 1, 21 (1972).

[100] *Vide Bautista v. Juinio* 127 SCRA 329, 341 (1984).

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second tier consisting of Strict Scrutiny (also called by Gunther as the new equal protection).[101] Gunther however described the two-tier approach employed by the U.S. Supreme Court as being rigid, criticizing the aggressive new equal protection for being "strict in theory and fatal in fact"[102] and the deferential old equal protection as "minimal scrutiny in theory and virtually none in fact."[103]

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[101] *Vide* Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection,* 86 HARV. L. REV. 1 (1972).

[102] To this observation, the U.S. Supreme Court in *Adarand Constructors, Inc. v. Pena* (515 U.S. 200, 237 [1995]) said:

Finally, we wish to dispel the notion that strict scrutiny is "strict in theory, but fatal in fact." *Fullilove, supra*, at 519, 100 S.Ct., at 2795 (Marshall, *J.*, concurring in judgment). The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it. As recently as 1987, for example, every Justice of this Court agreed that the Alabama Department of Public Safety's "pervasive, systematic, and obstinate discriminatory conduct" justified a narrowly tailored race-based remedy. See *United States v. Paradise*, 480 U.S., at 167, 107 S.Ct., at 1064 (plurality opinion of Brennan, *J.*); *id.*, at 190, 107 S.Ct., at 1076 (STEVENS, *J.*, concurring in judgment); *id.*, at 196, 107 S.Ct., at 1079-1080 (O'CONNOR, *J.*, dissenting). When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the "narrow tailoring" test this Court has set out in previous cases.

And in *Grutter v. Bollinger* (539 U.S. 306, 326-327 [2003]), the same Court said:

Strict scrutiny is not "strict in theory, but fatal in fact." *Adarand Constructors, Inc. v. Peña, supra*, at 237, 115 S.Ct. 2097 (internal quotation marks and citation omitted). Although all governmental uses of race are subject to strict scrutiny, not all are invalidated by it. As we have explained, "whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection." 515 U.S., at 229-230, 115 S.Ct. 2097. But that observation "says nothing about the ultimate validity of any particular law; that determination is the job of the court applying strict scrutiny." *Id.*, at 230, 115 S.Ct. 2097. When race-based action is necessary to further a compelling governmental interest, such action does not violate the constitutional guarantee of equal protection so long as the narrow-tailoring requirement is also satisfied.

[103] Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972).

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Gunther's sentiments were also shared by certain members of the Burger Court, most notably Justice Marshall who advocated a Sliding Scale Approach which he elaborated on in his dissenting opinion in *San Antonio Independent School District v. Rodriguez*:[104]

To begin, I must once more voice my disagreement with the Court's rigidified approach to equal protection analysis. See *Dandridge v. Williams, 397 U.S. 471, 519-521, 90 S.Ct. 1153, 1178-1180, 25 L.Ed.2d 491 (1970)* (dissenting opinion); *Richardson v. Belcher, 404 U.S. 78, 90, 92 S.Ct. 254, 261, 30 L.Ed.2d 231 (1971)* (dissenting opinion). The Court apparently seeks to establish today that equal protection cases fall into one of two neat categories which dictate the appropriate standard of review — strict scrutiny or mere rationality. But this Court's decisions in the field of equal protection defy such easy categorization. A principled reading of what this Court has done reveals that it has applied a spectrum of standards in reviewing discrimination allegedly violative of the Equal Protection Clause. This spectrum clearly comprehends variations in the degree of care with which the Court will scrutinize particular classifications, depending, I believe, on the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn. I find in fact that many of the Court's recent decisions embody the very sort of reasoned approach to equal protection analysis for which I previously argued — that is, an approach in which 'concentration (is) placed upon the character of the classification in question, the relative importance to individuals in the class discriminated against of the governmental benefits that they do not receive, and the asserted state interests in support of the classification.' *Dandridge v. Williams, supra, 397 U.S., at 520-521, 90 S.Ct., at 1180* (dissenting opinion).[105]

Shortly before his retirement in 1991, Justice Marshall suggested to the Supreme Court that it adopt a Sliding Scale that would embrace a spectrum of standards of review.[106]

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[104] 411 U.S. 1 (1973).

[105] *Id.* at 98-99.

[106] O. STEPHENS & J. SCHEB II, *AMERICAN CONSTITUTIONAL LAW* 741 (2nd Ed., 1999).

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Other sources of discontent in the U.S. Supreme Court are Justice Stevens who argues for a return to the Rational Basis Test which he believes to be adequate to invalidate all invidious forms of discrimination and Chief Justice Rehnquist who is disgruntled with the Court's special solicitude for the claims of discrete and insular minorities.[107]

Yet, despite numerous criticisms from American legal luminaries, the U.S. Supreme Court has not done away with the Rational Basis Test and Strict Scrutiny as they continue to remain viable approaches in equal protection analysis. On the contrary, the American Court has developed yet a third tier of equal protection review, falling between the Rational Basis Test and Strict Scrutiny — Intermediate Scrutiny (also known as Heightened Scrutiny).

The U.S. Supreme Court has generally applied Intermediate or Heightened Scrutiny when the challenged statute's classification is based on either (1) gender or (2) illegitimacy.[108]

Gender-based classifications are presumed unconstitutional as such classifications generally provide no sensible ground for differential treatment. In *City of Cleburne, Texas v. Cleburne Living Center,*[109] the United States Supreme Court said:

"[W]hat differentiates sex from such nonsuspect statuses as intelligence or physical disability . . . is that the sex characteristic frequently bears no relation to ability to perform or contribute to society." *Frontiero v. Richardson, 411 U.S. 677, 686, 93 S.Ct. 1764, 1770, 36 L.Ed.2d 583 (1973)* (plurality opinion). Rather than resting on meaningful considerations, statutes distributing benefits and burdens between the sexes in different ways very likely reflect outmoded notions of the relative capabilities of men and women.[110]

In the same manner, classifications based on illegitimacy are also presumed unconstitutional as illegitimacy is beyond the individual's control and bears no relation to the individual's

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[107] *Ibid.*

[108] *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

[109] 473 U.S. 432 (1985).

[110] *Id.* at 440-441.

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ability to participate in and contribute to society.[111] Similar to Strict Scrutiny, the burden of justification for the classification rests entirely on the government.[112] Thus, the government must show at least that the statute serves an important purpose and that the discriminatory means employed is substantially related to the achievement of those objectives.[113]

Summary of the American Supreme Court Approach to Equal Protection

In fine, the three standards currently employed by the U.S: Federal Supreme Court for determining the constitutional validity of a statutory classification in the light of the equal protection clause may be summarized[114] as follows:

	Equal Protection Standards		
	Rational Basis	*Strict Scrutiny*	*Intermediate Scrutiny*
Applicable To	*Legislative classifications in general,* such as those pertaining to economic or social legislation, which do not affect fundamental rights or suspect classes; or is not based on gender or illegitimacy.	Legislative classifications *affecting fundamental rights or suspect classes.*	Legislative classifications *based on gender or illegitimacy.*

[111] *Id.* at 441.

[112] *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982).

[113] *U.S. v. Virginia*, 518 U.S. 515, 533 (1996).

[114] *Vide City of Cleburne Texas v. Cleburne Living Center, supra* at 441; *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

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Legislative Purpose	Must be *legitimate.*	Must be *compelling.*	Must be *important.*
Relationship of Classification to Purpose	Classification must be *rationally related* to the legislative purpose.	Classification must be *necessary and narrowly tailored* to achieve the legislative purpose.	Classification must be *substantially related* to the legislative purpose.

Appropriate Standard for Evaluating the Present Case

Which of the foregoing three standards should be applied in arriving at a resolution of the instant petition?

Impropriety of a double standard for evaluating compliance with the equal protection guaranty

As noted earlier, the main opinion, in arriving at its conclusion, *simultaneously* makes use of *both* the Rational Basis Test and the Strict Scrutiny Test. Thus, in assessing the validity of the classification between executive and rank and file employees in Section 15 (c) of The New Central Bank Act, the Rational Basis Test was applied. In evaluating the distinction between the rank and file employees of the BSP and the rank and file employees of the LBP, DBP, SSS and GSIS, the Strict Scrutiny Test was employed.

Despite my best efforts, I fail to see the justification for the use of this "double standard" in determining the constitutionality of the questioned *proviso*. Why a "deferential test" for one comparison (between the executives and rank and file of the BSP) and a "strict test" for the other (between the rank-and-file of the BSP and the rank-and-file of the other GOCCs/GFIs)?

As the preceding review of the standards developed by the U.S. Federal Supreme Court shows, the choice of the appropriate test for evaluating a legislative classification is dependent on

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the nature of the rights affected (*i.e.* whether "fundamental" or not) and the character of the persons allegedly discriminated against (*i.e.* whether belonging to a "suspect class" or not). As determined by these two parameters, the scope of application of each standard is distinct and exclusive of the others. Indeed, to my knowledge, the American Court has never applied more than one standard to a given set of facts, and where one standard was found to be appropriate, the U.S. Supreme Court has deliberately eschewed any discussion of another.[115]

Assuming that the equal protection standards evolved by the U.S. Supreme Court may be adopted in this jurisdiction, there is no reason why the exclusive manner of their application should not be adopted also.

In the present case, *the persons allegedly discriminated against* (*i.e.* the rank and file employees of the BSP) *and the rights they are asserting* (to be exempted from the Compensation Classification System prescribed by the Salary Standardization Law) *remain the same,* whether the classification under review is between them and the executive officers of the BSP or the rank and file employees of the LBP, DBP, SSS and GSIS.

It therefore stands to reason that the test or standard — whether Rational Basis, Strict Scrutiny or Intermediate Scrutiny — against which petitioner's claims should be measured should likewise be the same, regardless of whether the evaluation pertains to the constitutionality of (1) the classification expressly made in Section 15 (c) of The New Central Bank Act or (2) the classification resulting from the amendments of the charters of the other GOCCs/GFIs.

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[115] Vide *Lying v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, supra* at 370:

> Because the statute challenged here has no substantial impact on any fundamental interest and does not "affect with particularity any protected class," *we confine our consideration to whether the statutory classification is "rationally related to a legitimate government interest."* x x x (Italics supplied)

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To illustrate further, if petitioner's constitutional challenge is premised on the denial of a "fundamental right" or the perpetuation of prejudice against a "suspect class," as suggested (but not fully explicated) in the closing pages of the main opinion; then, following the trend in American jurisprudence, the Strict Scrutiny Test would be applicable, whether the classification being reviewed is that between the officers and rank and file of the BSP or between the rank and file of the BSP and the rank and file of the other GOCCs/GFIs.

But certainly, the *same group* of BSP rank and file personnel cannot be considered a "non-suspect class" when compared to the BSP executive corps, but members of a "suspect class" when compared to the rank and file employees of the other GOCCs/GFIs. Neither could the rights they assert be simultaneously "fundamental" and "less than fundamental." Consequently, it would be improper to apply the Rational Basis Test as the standard for one comparison and the Strict Scrutiny Test for the other. To do so would be to apply the law unevenly and, accordingly, deny the persons concerned "the equal protection of the laws."

"Relative Constitutionality" Not A Justification for the Double Standard

It would appear that the employment of a "double standard" in the present case is sought to be justified somehow by the concept of relative constitutionality invoked by the main opinion. Thus, the main opinion holds that the "subsequent enactments, however, constitute significant changes in circumstance that considerably alter the reasonability of the continued operation of the last *proviso* of Section 15 (c), Article II of Republic Act No. 7653, and exposes the *proviso to more serious scrutiny.*"

The *ponencia* likewise invites this Court to reflect on the following questions: "Given that Congress chose to exempt other GFIs (aside the BSP) from the coverage of the SSL, can the exclusion of the rank-and-file employees of the BSP stand constitutional scrutiny in the light of the fact that Congress did

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not exclude the rank-and-file employees of the other GFIs? Is Congress' power to classify unbridled as to sanction unequal and discriminatory treatment, simply because the inequity manifested not instantly through a single overt act, but gradually through seven separate acts? Is the right to equal protection bounded in time and space that: (a) the right can be invoked only against classification made directly and deliberately, as opposed to discrimination that arises indirectly as a consequence of several other acts? and (b) is the legal analysis confined to determining the validity within the parameters of the statute x x x thereby proscribing any evaluation *vis-a`-vis* the groupings or the lack thereof among several similar enactments made over a period of time?"[116]

To clarify, it was never suggested that judicial review should be confined or limited to the questioned statute itself without considering other related laws. It is well within the powers of this Court to resolve the issue of whether the subsequent amendments of the charters of other GOCCs and other GFIs altered the constitutionality of Section 15 (c) of the New Central Bank Act.

It is, however, what to me is the improper resort by the main opinion to relative constitutionality, and as to be subsequently demonstrated, the use of an inappropriate standard for equal protection analysis, that constrained me to register my dissent.

As illustrated in the main opinion, "relative constitutionality" refers to the principle that a statute may be constitutionally valid as applied to *one set of facts* and invalid in its application to *another set of facts.* Thus, a statute valid *at one time* may become void *at another time* because of *altered factual circumstances.*

This principle is really a corollary to the requirements that a valid classification (a) must be based on real and substantial (not merely superficial) distinctions and (b) must not be limited to existing conditions only.

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[116] Main Opinion at 24-25.

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"Substantial distinctions" must necessarily be derived from the objective factual circumstances of the classes or groups that a statute seeks to differentiate. The classification must be real and factual and not wholly abstract, artificial, or contrived. Thus, in *Victoriano v. Elizalde Rope Workers' Union*,[117] this Court stated:

> We believe that Republic Act No. 3350 satisfies the aforementioned requirements. The Act classifies employees and workers, as to the effect and coverage of union shop security agreements, into those who by reason of their religious beliefs and convictions cannot sign up with a labor union, and those whose religion does not prohibit membership in labor unions. *The classification rests on real or substantial, not merely imaginary or whimsical, distinctions.* There is such real distinction in the beliefs, feelings and sentiments of employees. Employees do not believe in the same religious faith and different religions differ in their dogmas and cannons. Religious beliefs, manifestations and practices, though they are found in all places, and in all times, take so many varied forms as to be almost beyond imagination. There are many views that comprise the broad spectrum of religious beliefs among the people. There are diverse manners in which beliefs, equally paramount in the lives of their possessors, may be articulated. Today the country is far more heterogenous in religion than before, differences in religion do exist, and these differences are important and should not be ignored.[118] (Italics supplied)

In the words of Justice Jackson of the U.S. Supreme Court in *Walters v. City of St. Louis, Missouri*:[119]

> x x x Equal protection does not require identity of treatment. **It only requires that classification rest on real and not feigned differences,** *that the distinctions have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary. x x x*[120] (Emphasis and italics supplied)

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[117] *Supra.*

[118] *Id.* at 78-79.

[119] 347 U.S. 231 (1954).

[120] *Id.* at 237.

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For this reason, in reviewing legislation challenged on equal protection grounds — particularly when a statute otherwise valid on its face is alleged to be discriminatory in its application — a court must often look beyond the four corners of the statute and carefully examine the factual circumstances of the case before it.

Thus, in *Ermita-Malate Hotel and Motel Operations Associations, Inc. v. Hon. City Mayor of Manila*,[121] this Court, in reversing a trial court decision invalidating an ordinance regulating the operation of motels and hotels in Manila, held:

> Primarily what calls for a reversal of such a decision is the absence of any evidence to offset the presumption of validity that attaches to a challenged statute or ordinance. As was expressed categorically by Justice Malcolm: "The presumption is all in favor of validity . . . The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well being of the people . . . The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation."
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> *It admits of no doubt therefore that there being a presumption of validity, the necessity for evidence to rebut it is unavoidable, unless the statute or ordinance is void on its face,* which is not the case here. The principle has been nowhere better expressed than in the leading case of *O'Gorman & Young v. Hartford Fire Insurance Co.*, where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus: "The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. *As* **underlying questions of fact may condition the constitutionality of legislation of this character,** *the presumption of constitutionality must prevail in the absence of* **some factual foundation** *of record for overthrowing the statute.*" No such factual foundation being laid in the present case, the lower court deciding the matter

[121] 127 Phil. 306 (1967).

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on the pleadings and the stipulation of facts, the presumption of validity must prevail and the judgment against the ordinance set aside.[122] (Emphasis and italics supplied)

And in *Peralta v. Commission on Elections*,[123] this Court stated:

The equal protection clause does not forbid all legal classifications. What [it] proscribes is a classification which is arbitrary and unreasonable. It is not violated by a reasonable classification based upon substantial distinctions, where the classification is germane to the purpose of the law and applies equally to all those belonging to the same class. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within the class and those who do not. *There is, of course, no concise or easy answer as to what an arbitrary classification is. No definite rule has been or can be laid down on the basis of which such question may be resolved.* **The determination must be made in accordance with the facts presented by the particular case.** *The general rule, which is well-settled by the authorities, is that a classification, to be valid, must* **rest upon material differences** *between the persons, activities or things included and those excluded.' There must, in other words, be a basis for distinction.* Furthermore, such classification must be germane and pertinent to the purpose of the law. And, finally, the basis of classification must, in general, be so drawn that those who stand in substantially the same position with respect to the law are treated alike. x x x[124] (Emphasis and italics supplied)

A similar thought was expressed in *Medill v. State of Minnesota*,[125] cited in the main opinion,[126] where the State Supreme

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[122] *Id.* at 314-315; Motion for Reconsideration denied in *Ermita-Malate Hotel and Motel Operations Associations, Inc. v. Hon. City Mayor of Manila, 128 Phil. 473 (1967); vide Peralta v. Commission on Elections, supra.*, at 55.

[123] 82 SCRA 30 (1978).

[124] *Id.* at 54.

[125] 477 N.W. 2d 703 (1991).

[126] The case of *In re: Cook*, 138 B.R. 943 (1992) decided by the U.S. Bankruptcy Court and cited in the main opinion as following *Medill* with reservations does not appear to be in point. The former cites *Medill* with respect to the matter of punitive damages, to wit:

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Court of Minnesota[127] reversed a decision of the U.S. Bankruptcy Court and held that a statute exempting "[r]ights of action for injuries to the person of the debtor or of a relative" from "attachment, garnishment, or sale on any final process, issued from any court," did not contravene the provisions of the Minnesota Constitution limiting exemptions to a "reasonable amount" to be determined by law. The Minnesota Court held:

> x x x we must determine here whether there is an objective measure which limits the amount or extent of the personal injury right of action exemption since there is no dollar limit or "to the extent reasonably necessary" limiting language on the face of the provision. The trustee argues that the case is "incredibly simple" because there is no language on the face of the statute purporting to limit the exemption. The state and debtors argue that the judicial determination of general damages in a personal injury action is based on objective criteria; therefore, the amount of the exemption is reasonable and "determined by law" under Article 1, Section 12. We think that the latter interpretation is reasonable and that the trustee has failed to meet his burden of proving beyond a reasonable doubt that the provision is unconstitutional.
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> x x x x x x x x x

Last, the *Medill* court found that "punitive damages are not in the nature of compensatory damages and thus are not exempt from creditors." While the *Medill* opinion gave a clear answer, I am still confused. The opinion lacks any reasons for the conclusion. I don't know if the court's decision was based on the Minnesota Constitution, the exemption statute or both. *i.e.*, Is the court saying that punitive damages are not within the scope of § 550.37, subd. 22 or is it saying that the statute is unconstitutional as applied to punitive damages. Once again, it does not really matter. The result is clear. A claim for punitive damages is not exempt. (At 946)

[127] Citing the earlier State case of *Grobe v. Oak Center Creamery Co.*, 113 N.W. 2d 458, where the Minnesota Supreme Court stated:

> We cannot agree with the relators that a review of the facts bearing upon the application of the statute is not necessary to determine the constitutional issue. *The constitutionality of a statute cannot in every instance be determined by a mere comparison of its provisions with the applicable provisions of the constitution. A statute may be constitutional and valid as applied to one set of facts and invalid in its application to another.* This is particularly true of statutes granting the right of eminent domain. *We have in recent years considered a number of cases involving the constitutionality of such statutes and have considered that question against the factual background of each case.* The records in each of these cases, including the Dairyland case which was reviewed on *certiorari*, came to us with a settled case.

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Here, the resolution of the *Medills'* personal injury action involved a judicial determination of an amount that reasonably compensated them for their injuries. The *Medills'* recovery was reasonably limited by a jury's determination of damages, which was then approved by a court. Contrary to the trustee's argument, we believe that the limits on out-of-court settlements are similarly reasonable. *First, unless a statute is inherently unconstitutional, "its validity must stand or fall upon the record before the court and not upon assumptions this court might [otherwise] make x x x." Grobe v. Oak Center Creamery Co., 262 Minn. 60, 63, 113 N.W.2d 458, 460 (1962).* Moreover, even in the case of an out-of-court settlement, the "inherent" limitation on the right of action still exists; the amount of a settlement is limited to or by the extent of injury, and no party will agree to an "unreasonable" settlement.

The trustee vigorously argues that the court must go considerably beyond the plain language of the statute and rules of statutory construction to impose the required constitutional limit on the exemption provision at issue here. *However, the constitutionality of a statute cannot in every instance be determined by a mere comparison of its provisions with the applicable provisions of the constitution. A statute may be constitutional and valid as applied to one set of facts and invalid in its application to another. Grobe, 262 Minn. at 62, 113 N.W.2d at 460. Thus, unless we find the exemption unconstitutional on its face, it must be unconstitutional as applied to the facts of the instant case in order to be stricken.*[128] (Italics supplied)

This does not mean that the factual differences must be prominent for the distinction between two classes to be substantial. Nor are fine distinctions between two classes, otherwise sharing several common attributes, prohibited. Thus, the Court in *Peralta,* went on to state:

The legislation comes to this court with a presumption in favor of its constitutionality. *Where, as here, we cannot say the statute is inherently unconstitutional, its validity must stand or fall upon the record before the lower court and not upon assumptions this court might make in the absence of proof incorporated in a settled case. This is not a case where the constitutional facts are adequately ascertainable by judicial notice or even judicial assumption. Because of the absence of a settled case or a certificate of the trial judge as to the accuracy and completeness of the record, we decline to pass upon the constitutionality of the act.* (At 460; *italics supplied; citation omitted*)

[128] *Supra* at 706-708.

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x x x It is, however, conceded that it is almost impossible in some matters to foresee and provide for every imaginable and exceptional case. *Exactness in division is impossible and never looked for in applying the legal test. All that is required is that there must be, in general, some reasonable basis on general lines for the division. Classification which has some reasonable basis does not offend the equal protection clause merely because it is not made with mathematical nicety.* (Italics supplied; citations omitted)

The pronouncement in *Victoriano v. Elizalde Rope Workers' Union*,[129] is also instructive:

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. *It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence legislative classification may in many cases properly rest on narrow distinctions,* for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.[130] (Italics supplied; citations omitted)

To be sure, this Court has adjudged as valid statutes providing for differences in treatment between: inter-urban buses and provincial buses;[131] taxpayers receiving compensation income and other taxpayers;[132] male overseas workers and female overseas workers;[133] electric cooperatives and other cooperatives;[134] businesses inside the secured area of the Subic Special Economic Zone and those outside the secured area; [135] public officers with pending criminal cases which have not yet gone to trial and those with cases wherein trial has already commenced;[136] and City and Municipal

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[129] *Supra.*

[130] *Id.* at 78.

[131] *Luque v. Villegas*, 30 SCRA 408 (1969).

[132] *Sison v. Ancheta, supra.*

[133] *Philippine Association of Service Exporters, Inc. v. Drilon*, 163 SCRA 386 (1988).

[134] *Tolentino v. Secretary of Finance, supra.*

[135] *Tiu v. Court of Appeals*, G.R. No. 12741, January 20, 1999.

[136] *Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999.

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Election Officers of the Commission On Elections (COMELEC) and other COMELEC officials.[137]

Nevertheless, to be substantial, these distinctions, no matter how finely drawn, must still be rooted on some *objective factual foundation;* and cannot be left to the arbitrary, whimsical or capricious imagination of the law maker.

Thus, relative constitutionality, as I understand it, merely acknowledges that the *factual circumstances* which form the bases for the substantial and real distinctions between two classes *may change over time*. Thus, it is entirely possible that a legislative classification held to be valid at one time *upon a particular state of facts* may be subsequently invalidated *if the factual basis for the substantial distinctions that existed between the two classes has ceased to exist. Cessante ratione legis, cessat ipsa lex.*[138]

Just such a possibility was acknowledged by the U.S. Supreme Court in *Chastleton Corporation v. Sinclair*,[139] where the Court, speaking through Justice Holmes, declared:

> The original Act of October 22, 1919, c. 80, tit. 2, 41 Stat. 297, considered in *Block v. Hirsh*, was limited to expire in two years. Section 122. The Act of August 24, 1921, c. 91, 42 Stat. 200, purported to continue it in force, with some amendments, until May 22, 1922. On that day a new act declared that the emergency described in the original title 2 still existed, reenacted with further amendments the amended Act of 1919, and provided that it was continued until May 22, 1924. Act of May 22, 1922, c. 197, 42 Stat. 543.
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> We repeat what was stated in *Block v. Hirsh*, as to the respect due to a declaration of this kind by the Legislature so far as it relates to present facts. But even as to them a Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared. And still more obviously so far as this declaration looks to the future it can be no more than prophecy and is liable to be controlled by events. *A law depending*

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[137] *De Guzman v. Commission on Elections*, 336 SCRA 188 (2000).

[138] When the reason of the law ceases, the law itself ceases.

[139] 265 U.S. 543 (1924).

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upon the existence of an emergency or other **certain state of facts** *to uphold it may cease to operate if the emergency ceases* **or the facts change** *even though valid when passed. x x x*[140] (Italics supplied; citations omitted)

Indeed, this appears to be the thrust of the cases cited[141] by the main opinion to illustrate relative constitutionality:

The case of *Vernon Park Realty v. City of Mount Vernon*[142] concerned a parcel of land adjacent to a railroad station and located in the middle of a highly developed business district had continually been used as a car park. In 1927 it was placed in a Residence 'B' district under a zoning ordinance under which its use as a car park remained a valid nonconforming use. In 1951, the area was sold to Vernon Park Realty which applied for, but did not obtain, a permit to build a retail shopping center (prohibited under the 1927 ordinance). In 1952, after Vernon Park had brought suit to declare the 1927 ordinance

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[140] *Id.* at 547-548.

[141] *Murphy v. Edmonds*, 601 A. 2d 102 (1992), decided by the Maryland Supreme Court, is cited in the main opinion in support of the proposition that "a statute valid at one time may become void at another time because of altered circumstances." However, the text of the decision does not appear to touch on relative constitutionality. In *Murphy*, appellants challenged the constitutionality of a statute providing for a US$350,000 statutory cap on non-economic damages in personal injury actions. The Maryland Supreme Court held:

> We reject the plaintiffs' contention that the classification created by § 11-108 of the Courts and Judicial Proceedings Article is subject to any level of scrutiny higher than the traditional, deferential rational basis test. Moreover, we disagree with the holdings in the above-cited cases applying heightened scrutiny to legislative caps upon recoverable damages. Whatever may be the appropriate mode of equal protection analysis for some other statutory classifications, in our view a legislative cap of $350,000 upon the amount of noneconomic damages which can be awarded to a tort plaintiff does not implicate such an important "right" as to trigger any enhanced scrutiny. Instead, the statute represents the type of economic regulation which has regularly been reviewed under the traditional rational basis test by this Court and by the Supreme Court.
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> x x x x x x x x x

[142] 307 N.Y. 493 (1954).

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unconstitutional, the city's common council amended the zoning ordinance to prohibit the use of the property for any purpose except the parking and storage of automobiles and the continuance of prior nonconforming uses. The Court of Appeals of New York found the 1927 zoning ordinance and the 1952 amendment illegal and void, ruling that:

> While the common council has the unquestioned right to enact zoning laws respecting the use of property in accordance with a well-considered and comprehensive plan designed to promote public health, safety and general welfare, such power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably and this is so whenever the zoning ordinance precludes the use of the property for any purpose for which it is reasonably adapted. *By the same token, an ordinance valid when adopted will nevertheless be stricken down as invalid when, at a later time, its operation under changed conditions proves confiscatory such, for instance, as when the greater part of its value is destroyed* for which the courts will afford relief in an appropriate case.[143] (Italics supplied; citations omitted)

In *Nashville, Chatanooga & St. Louise Railways v. Walters*,[144] the petitioners questioned the constitutionality of a

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[143] *Id.* at 498-499.

[144] 294 U.S. 405 (1935).

The General Assembly's objective in enacting the cap was to assure the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public. This is obviously a legitimate legislative objective. A cap on noneconomic damages may lead to greater ease in calculating premiums, thus making the market more attractive to insurers, and ultimately may lead to reduced premiums, making insurance more affordable for individuals and organizations performing needed services. The cap, therefore, is reasonably related to a legitimate legislative objective.

Since, the General Assembly had before it several studies which concluded that $250,000 would cover most noneconomic damage claims, the Legislature did not act arbitrarily in enacting the cap at $350,000. It is also significant that the cap applies to all personal injury claimants equally rather than singling out one category of claimants. Therefore, we hold that the legislative classification drawn by § 11-108 between tort claimants whose noneconomic damages are less that $350,000 and tort claimants whose noneconomic damages are greater than $350,000, and who are thus subject to the cap, is not irrational or arbitrary. It does not violate the equal protection component of Article 24 of the Declaration of Rights. (At 115-116; citations omitted).

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provision of the Tennessee Public Acts of 1921, which authorized the state highway commissioner to require the separation of grades whenever a state highway crosses a railroad if in its discretion "the elimination of such grade crossing is necessary for the protection of persons traveling on any such highway or any such railroad" and requiring the railroad company to pay in every case, one-half of the total cost of the separation of grades. In remanding the case to the Supreme Court of Tennessee, the U.S. Federal Supreme Court declared:

The Supreme Court [of Tennessee] declined to consider the Special facts relied upon as showing that the order, and the statute as applied, were arbitrary and unreasonable; and did not pass upon the question whether the evidence sustained those findings. It held that the statute was, upon its face, constitutional; that when it was passed the state had, in the exercise of its police power, authority to impose upon railroads one-half of the cost of eliminating existing or future grade crossings; and that the court could not "any more" consider "whether the provisions of the act in question have been rendered burdensome or unreasonable by changed economic and transportation conditions," than it "could consider changed mental attitudes to determine the constitutionality or enforceability of a statute." A rule to the contrary is settled by the decisions of this Court. **A statute valid as to one set of facts may be invalid as to another. A statute valid when enacted may become invalid by change in the conditions to which it is applied.** The police power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably. To this limitation, attention was specifically called in cases which have applied most broadly the power to impose upon railroads the cost of separation of grades.

First. Unless the evidence and the special facts relied upon were of such a nature that they could not conceivably establish that the action of the state in imposing upon the railway one-half of the cost of the underpass was arbitrary and unreasonable, the Supreme Court [of Tennessee] obviously erred in refusing to consider them. *The charge of arbitrariness is based primarily upon the revolutionary changes incident to transportation wrought in recent years by the widespread introduction of motor vehicles; the assumption by the federal government of the functions of road builder; the resulting depletion of rail revenues; the change in the character, the construction, and the use of highways; the change in the occasion for elimination of grade crossings, in the purpose of such elimination,*

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and in the chief beneficiaries thereof; and the change in the relative responsibility of the railroads and vehicles moving on the highways as elements of danger and causes of accidents. x x x

x x x x x x x x x

Second. x x x The promotion of public convenience will not justify requiring of a railroad, any more than of others, the expenditure of money, unless it can be shown that a duty to provide the particular convenience rests upon it.[145] (Italics supplied; citations omitted)

In *Atlantic Coast Line Railroad Co. v. Ivey*,[146] an action for damages was filed against the Atlantic Coast Line Railroad Company for the killing of a cow on an unfenced right of way under certain Florida statutes authorizing the recovery of double damages plus attorney's fees for animals killed on unfenced railroad right of way, without proof of negligence. The railroad company alleged that several changes in economic, transportation and safety conditions had occurred since these statutes were passed in 1899[147] and that, in view of these changes, it was

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[145] *Id.* at 414-429.

[146] 5 So. 2d 244 (1941).

[147] Atlantic Coast Line Railroad Co. alleged:

"In the year 1899 when said statutes were passed, there were no paved highways in the State of Florida, no automobiles, no motor busses, no motor trucks, and substantially all the freight and passenger traffic into, in and out of the State of Florida was transported by railroads; today there are many thousands of paved highways in Florida, thousands of automobiles, and hundreds of motor busses and motor trucks carrying and transporting daily, besides their operators, property of great value and thousands of passengers at rates of speed fairly comparable to, and in many instances exceeding, the rate of speed at which the Defendant operates its trains; much of said freight and passenger transportation is for hire and is in competition with the transportation of passengers and freight by the defendant and other railroad companies in the State, and at some seasons of the year more passengers in number are carried by said automobile, bus and truck transportation upon the paved highways of the State than by all the railroads operating within said State; whatever hazard, jeopardy or danger there now may be to property or to passengers on railroad trains from the failure to fence the railroad tracks, exists to an equal, and in many instances, to a greater degree in respect to the property and passengers carried in such automobiles, trucks and busses; since the year 1889, the numbers of domestic livestock roaming at large in Florida have continuously

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unfair, unjust and inequitable to require railroad companies to fence their tracks to protect against livestock roaming at large without making a similar requirement for the owners of automobiles, trucks and buses carrying passengers on the unfenced public highways. In ruling that the questioned statutes violated the equal protection guaranty, the Supreme Court of Florida reasoned:

It stands adjudicated that the purpose of the statutes, *supra,* is the protection against accidents to life and property in conducting public transportation and that such statutes are in the exercise of the police power. It cannot be questioned that those transportation companies engaged as common carriers on the public roads and those so engaged on their privately owned roads such as railroad companies, owe like duties to the public and are under like obligations for the protection against accidents to life and property in conducting such business.

It is well settled that a statute valid when enacted may become invalid by change in conditions to which it is applied. The allegations of the pleas are sufficient to show, and the demurrer admits, that compliance with the statute places a burden of expense on the railroad company to provide for the safety of life and property of those whom it assumes to serve which is not required to be borne by competitive motor carriers which subject the lives and property of those whom they assume to serve to greater hazards of the identical character which the railroad is required to so guard against and it is also shown that under the statutes penalties are imposed on the railway carrier in favor of individuals who are neither shippers nor passengers.

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decreased so that at all times mentioned in the Declaration herein approximately 70% of the domestic livestock in Florida does not and did not roam at large, whereas in 1889 practically all domestic live stock in Florida did roam at large, and by consequence of such changed conditions the burden placed by said statutes upon this Defendant as a railroad company has become and is greatly disproportionate to the public good or benefit, and an unreasonable expense on this Defendant; it has been many years since any property being carried by a railroad train in Florida has been damaged, injured or destroyed, or any persons being so carried killed or injured, as a result of a collision between a railroad train and domestic live stock; but injury to and death of persons being carried in automobiles and trucks upon the public highways of the State resulting in collisions between motor driven vehicles and domestic live stock are a matter of almost daily occurrence, and in each of the years 1937, 1938 and 1939, from 20 to 25 persons were so killed; x x x (at 245-246).

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Under the statutes, as shown by the record here, the railway common carrier is not only required to carry the burden of fencing its traffic line for the protection of the persons and property it transports, while other common carriers are not required to provide the like protection, but in addition to this, there is another gross inequality imposed by the statute, *viz*: *Under the statutes the plaintiff to whom the carrier, as such, was under no obligations, was allowed to recover double the value of the animal killed, plus $50 as attorney's fees, and was not required to prove any act of negligence on the part of the carrier in the operation of its equipment, while if a common carrier bus or truck had by the operation of its equipment killed the same animal in the same locality, the plaintiff would have been required to prove negligence in the operation of the equipment and the common carrier would have been liable only for the value of the animal. This certainly is not equal protection of the law.*[148] (Emphasis and italics supplied; citations omitted)

Similarly, the case of *Louisville & Nashville Railroad Co. v. Faulkner*[149] concerned an action to recover the value of a mule killed by the railroad company's train under a Kentucky statute which made the killing or injury of cattle by railroad engines or cars *prima facie* evidence of negligence on the part of the railroad's agents or servants. The Kentucky Supreme Court, following the rulings in *Nashville and Atlantic Coast*, adjudged the questioned statute to be unconstitutional, *viz*:

The present statute which places the duty upon a railroad company to prove it was free from negligence in killing an animal upon its track is an act of 1893. The genesis of the legislation, however, goes back to the beginning of railroad transportation in the state. *The constitutionality of such legislation was sustained because it applied to all similar corporations and had for its object the safety of persons on a train and the protection of property.* **Louisville & N. R. Co. v. Belcher, 89 Ky. 193, 12 S.W. 195, 11 Ky.Law Rep. 393,** *a decision rendered in 1889.*

Of course, there were no automobiles in those days. The subsequent inauguration and development of transportation by motor vehicles on the public highways by common carriers of freight and passengers created even greater risks to the safety of occupants of the vehicles

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[148] *Supra*. at 246-247.

[149] 307 S.W. 2d 196 (1957).

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and of danger of injury and death of domestic animals. Yet, under the law the operators of that mode of competitive transportation are not subject to the same extraordinary legal responsibility for killing such animals on the public roads as are railroad companies for killing them on their private rights of way.

The Supreme Court, speaking through Justice Brandeis in *Nashville, C. & St. L. Ry. Co. v. Walters, 294 U.S., 405, 55 S.Ct. 486, 488, 79 L.Ed. 949,* stated, *'A statute valid when enacted may become invalid by change in the conditions to which it is applied.* The police power is subject to the limitation that it may not be exerted arbitrarily or unreasonably.' A number of prior opinions of that court are cited in support of the statement. See 11 Am. Jur., Constitutional Law, § 102.

The State of Florida for many years had a statute, *F.S.A. § 356.01 et seq.* imposing extraordinary and special duties upon railroad companies, among which was that a railroad company was liable for double damages and an attorney's fee for killing livestock by a train without the owner having to prove any act of negligence on the part of the carrier in the operation of his train. In *Atlantic Coast Line Railroad Co. v. Ivey, 148 Fla. 680, 5 So.2d 244, 247, 139 A.L.R. 973,* it was held that *the changed conditions brought about by motor vehicle transportation rendered the statute unconstitutional since if a common carrier by motor vehicle had killed the same animal, the owner would have been required to prove negligence in the operation of its equipment. Said the court, 'This certainly is not equal protection of the law.'*

As stated in *Markendorf v. Friedman, 280 Ky. 484, 133 S.W.2d 516, 127 A.L.R., 416,* appeal dismissed *Friedman v. Markendorf, 309 U.S. 627, 60 S.Ct. 610, 84 L.Ed. 987, the purpose of the provisions of* **§§** *3 and* **59 of the Kentucky Constitution** *and of the Fourteenth Amendment to the Federal Constitution is to place all persons similarly situated upon a plane of equality and to render it impossible for any class to obtain preferred treatment.* Applying this proscription of inequality and unreasonable discrimination, we held invalid an amendment to a statute regulating motor transportation for hire which exempted from the operation of the statute such vehicles engaged in transporting farm products. *Priest v. State Tax Commission, 258 Ky. 391, 80 S.W.2d 43.*

We, therefore, hold that the part of KRS *277.330* which imposes a duty upon a railroad company of proving that it was free from negligence in the killing or injury of cattle by its engine or cars is

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invalid and unconstitutional.[150] (Emphasis supplied; italic in the original)

Finally, in *Rutter v. Esteban*,[151] this Court invalidated Section 2 of R.A. No. 342 providing for an eight-year moratorium period within which a creditor could not demand payment of a monetary obligation contracted before December 8, 1941 (counted from the settlement of the war damage claim of the debtor) after taking judicial notice of the *significant change in the nation's economic circumstances* in 1953, thus it held:

x x x We do not need to go far to appreciate this situation. We can see it and feel it as we gaze around to observe the wave of reconstruction and rehabilitation that has swept the country since liberation thanks to the aid of America and the innate progressive spirit of our people. This aid and this spirit have worked wonders in so short a time that it can now be safely stated that in the main the financial condition of our country and our people, individually and collectively, has practically returned to normal notwithstanding occasional reverses caused by local dissidence and the sporadic disturbance of peace and order in our midst. Business, industry and agriculture have picked up and developed at such stride that we can say that we are now well on the road to recovery and progress. This is so not only as far as our observation and knowledge are capable to take note and comprehend but also because of the official pronouncements made by our Chief Executive in public addresses and in several messages he submitted to Congress on the general state of the nation. x x x

x x x x x x x x x

In the face of the foregoing observations, and consistent with what we believe to be as the only course dictated by justice, fairness and righteousness, *we feel that the only way open to us under the present circumstances is to declare that the continued operation and enforcement of Republic Act No. 342 at the present time is unreasonable and oppressive,* and should not be prolonged a minute longer, and, therefore, the same should be declared null and void and without effect. x x x[152] (Italics supplied)

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

[151] 93 Phil. 68 (1953).

[152] *Id.* at 81-82.

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As the financial ruin and economic devastation which provided the rationale for the enactment of R.A. No. 342 was no longer present, this Court did not hesitate to rule that the continued enforcement of the statute was "unreasonable and oppressive, and should not be prolonged a minute longer."

In the case at bar, however, *petitioner does not allege a comparable change in the factual milieu* as regards the compensation, position classification and qualifications standards of the employees of the BSP (whether of the executive level or of the rank and file) since the enactment of The New Central Bank Act. Neither does the main opinion identify the relevant *factual changes* which may have occurred *vis-a`-vis* the BSP personnel that may justify the application of the principle of relative constitutionality as above-discussed. Nor, to my knowledge, are there any relevant *factual changes* of which this Court may take judicial knowledge. Hence, it is difficult to see how relative constitutionality may be applied to the instant petition.

Moreover, even if such factual changes were alleged and proved or judicially discoverable, still there is *absolutely nothing* in any of the cases above-cited which would justify the *simultaneous application* of both the Rational Basis Test and the Strict Scrutiny Test. In fact, in the case of *Louisville & Nashville Railroad Co.*,[153] wherein a statute previously held to have complied with the requirements of the equal protection clause in 1889 was subsequently ruled to have violated the equal protection guaranty in 1957 due to changed factual conditions, the *only test* applied in *both* instances was the Rational Basis Test.[154]

It is true that petitioner alleges that its members' claim to exemption from the Compensation Classification System under the Salary Standardization Law was bolstered by the amendments to the charters of the LBP, DBP, SSS and GSIS, which exempted

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[153] *Supra.*

[154] Notably, the application of "rigid scrutiny" in equal protection analysis was espoused as early as 1944 in the case of *Korematsu v. U.S., supra.*

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all the employees of these GOCCs/GFIs from said Compensation Classification System. However, these subsequent amendments *do not* constitute *factual* changes in the context of relative constitutionality. Rather, they involve *subsequent legislative classifications* which should be evaluated in accordance with the appropriate standard.

To assess the validity of the questioned proviso in the light of subsequent legislation, all that need be applied is the familiar rule that statutes that are in *pari materia*[155] should be read together. As this Court declared in *City of Naga v. Agna*,[156] *viz*:

x x x *Every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation* . . . It will also be noted that Section 2309 of the Revised Administrative Code and Section 2 of Republic Act No. 2264 (Local Autonomy Act) refer to the same subject matter — enactment and effectivity of a tax ordinance. In this respect they can be considered in *pari materia*. **Statutes are said to be in *pari materia* when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object.** *When statutes are in* ***pari materia,*** *the rule of statutory construction dictates that they should be construed together. This is because* **enactments of the same legislature on the same subject matter are supposed to form part of one uniform system**; *that later statutes are supplementary or complimentary to the earlier enactments and in the passage of its acts the legislature is supposed to have in mind the existing legislation on the same subject and to have enacted its new act with reference thereto. Having thus in mind the previous statutes relating to the same subject matter, whenever the legislature enacts a new law, it is deemed to have enacted the new provision in accordance with the legislative policy embodied in those prior statutes unless there is an express repeal of the old and they all should be construed together.*[157] (Emphasis and italics supplied; citations omitted)

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[155] *I.e.* relating to the same matter.

[156] 71 SCRA 176 (1976).

[157] *Id.* at 183-184; *vide C & C Commercial Corporation v. National Waterworks and Sewerage Authority*, G.R. L-27275, November 18, 1967; *Maceda v. Macaraig*, 223 SCRA 217 (1993); *Natividad v. Felix*, 229 SCRA 680 (1994); *Manila Jockey Club, Inc. v. Court of Appeals*, 300 SCRA 181 (1998); *Vda. De Urbano v. Government Service Insurance System*, 367 SCRA 672 (2001).

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Here, it can be said that the Salary Standardization Law, the New Central Bank Act, and the amended charters of the other GOCCs and GFIs are in *pari materia* insofar as they pertain to *compensation and position classification system*(s) covering *government employees*. Consequently, the provisions of these statutes concerning compensation and position classification, including the legislative classifications made therein, should all be read and evaluated together in the light of the equal protection clause. Consequently, the relevant question is whether these statutes, taken together as one uniform system of compensation for government employees, comply with the requisites of the equal protection guaranty.

Rational Basis Test Appropriate to the Case at Bar

Turning then to the determination of the standard appropriate to the issues presented by the instant petition, it is immediately apparent that Intermediate Scrutiny, inasmuch as its application has been limited only to classifications based on gender and illegitimacy, finds no application to the case at bar.

The choice of the appropriate standard is thus narrowed between Strict Scrutiny and the Rational Basis Test. As has been observed, Strict Scrutiny has been applied in the American context when a legislative classification intrudes upon a fundamental right or classifies on the basis of an inherently suspect characteristic.

Strict Scrutiny cannot be applied in the case at bar since nowhere in the petition does petitioner allege that Article II, Section 15 (c) of the New Central Bank Act burdens a fundamental right of its members. The petition merely states that "the *proviso* in question *violates* ***the right to equal protection of the laws*** *of the BSP rank and file employees* who are members of the petitioner."[158] While it is true that the Equal Protection Clause is found in the Bill of Rights of both the American and Philippine Constitutions, for strict scrutiny

[158] *Rollo* at 5.

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to apply there must be a violation of a Constitutional right other than the right to equal protection of the laws. To hold otherwise would be absurd as any invocation of a violation of the equal protection clause would automatically result in the application of Strict Scrutiny.

In *Vacco v. Quill*,[159] several physicians challenged a New York statute which prohibits assistance to suicide. They argued that although it was consistent with the standards of their medical practice to prescribe lethal medication for mentally competent, terminally ill patients who are suffering great pain and desire a doctor's help in taking their own lives, they are deterred from doing so by New York's ban on assisting suicide.[160] They contend that because New York permits a competent person to refuse life-sustaining medical treatment and because the refusal of such treatment is "essentially the same thing" as physician-assisted suicide, the ban violates the Equal Protection Clause.[161] A unanimous U.S. Supreme Court applied the Rational Basis Test as the statute did not infringe fundamental rights. Moreover, the Court held that the guarantee of equal protection is not a source of substantive rights or liberties.

> The Equal Protection Clause commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws." **This provision creates no substantive rights.** *San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 33, 93 S.Ct. 1278, 1296-1297, 36 L.Ed.2d 16 (1973); id., at 59, 93 S.Ct., at 1310* (Stewart, *J.*, concurring). Instead, it embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly. *Plyler v. Doe, 457 U.S. 202, 216, 102 S.Ct. 2382, 2394, 72 L.Ed.2d 786 (1982)* ("'[T]he Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same'") (quoting *Tigner v. Texas, 310 U.S. 141, 147, 60 S.Ct. 879, 882, 84 L.Ed. 1124 (1940))*. If a legislative classification or distinction "neither burdens a fundamental right nor targets a suspect class, we will uphold [it] so long as it bears a rational relation to

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[159] 521 U.S. 793 (1997).

[160] *Id.* at 797.

[161] *Id.* at 798.

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some legitimate end." *Romer v. Evans, 517 U.S. 620, 631, 116 S.Ct. 1620, 1627, 134 L.Ed.2d 855 (1996).*

New York's statutes outlawing assisting suicide affect and address matters of profound significance to all New Yorkers alike. **They neither infringe fundamental rights nor involve suspect classifications.** *Washington v. Glucksberg, at 719-728, 117 S.Ct., at 2267-2271;* see *80 F.3d, at 726; San Antonio School Dist., 411 U.S., at 28, 93 S.Ct., at 1294* ("The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness"); *id., at 33-35, 93 S.Ct., at 1296-1298* (courts must look to the Constitution, not the "importance" of the asserted right, when deciding whether an asserted right is "fundamental"). These laws are therefore entitled to a "strong presumption of validity." *Heller v. Doe, 509 U.S. 312, 319, 113 S.Ct. 2637, 2642, 125 L.Ed.2d 257 (1993).*[162] (Emphasis and italics supplied)

Neither does the main opinion identify what fundamental right the challenged *proviso* of the New Central Bank Act infringes upon. Instead the *ponencia* cites the following Constitutional provisions:

PREAMBLE:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

ARTICLE II: Declaration of Principles and State Policies

SECTION 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social service, promote full employment, a rising standard of living, and an improved quality of life for all.

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[162] *Id.* at 799-800.

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SECTION 10. The State shall promote social justice in all phases of national development.

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

SECTION 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

ARTICLE III: Bill of Rights

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

ARTICLE IX: Constitutional Commissions

B. The Civil Service Commission

SECTION 5. The Congress shall provide for the standardization of compensation of government officials, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions.

ARTICLE XII: National Economy and Patrimony

SECTION 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

SECTION 22. Acts which circumvent or negate any of the provisions of this Article shall be considered inimical to the national

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interest and subject to criminal and civil sanctions, as may be provided by law.

ARTICLE XIII: Social Justice and Human Rights

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Labor

SECTION 3. The State shall afford full protection to labor, local and oversea, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organizations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

With the exception of Section 1, Article III and Section 3, Article XIII, the foregoing Constitutional provisions do not embody any particular right but espouse principles and policies.[163] As

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[163] It should be noted however that not all rights enumerated in the Constitution are found in the Bill of Rights. Though the right to a balanced and healthful ecology is found under the Declaration of Principles and States Policies and not under the Bill of Rights, this Court in *Oposa v. Factoran,*

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previously discussed, mere reliance on the Equal Protection Clause which is in the Bill of Rights is not sufficient to justify the application of Strict Scrutiny. While Section 3 of Article XIII enumerates the seven basic rights of workers — the right to organize, the right to conduct collective bargaining or negotiation with management, the right to engage in peaceful concerted activities including the right to strike in accordance with law, the right to enjoy security of tenure, the right to work under humane conditions, the right to receive a living wage, and the right to participate in policy and decision-processes affecting their rights and benefits as may be provided by law — I fail to see how Article II, Section 15 (c) of the New Central Bank Act can impinge on any of these seven rights.

Another reason why Strict Scrutiny is inappropriate is the absence of a classification which is based on an inherently suspect characteristic. There is no suspect class involved in the case at bar. By no stretch of the imagination can the rank and file employees of the BSP be considered a suspect class — a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. As examined earlier, in applying this definition of suspect class, the U.S. Supreme Court has labeled very few classifications as suspect. In particular, the Court has limited the term suspect class to classifications based on race or national origin, alienage and religion. It is at once apparent that Article II, Section 15 (c) of the New Central Bank Act, in exempting the BSP officers from the coverage of the Salary Standardization Law and not exempting the rank and file employees of the BSP, does not classify based on race, national origin, alienage or religion.

The main opinion however seeks to justify the application of Strict Scrutiny on the theory that the rank and file employees of the BSP constitute a suspect class "considering that majority

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Jr. (224 SCRA 792, 804-805 [1993]) held that the said right was legally enforceable without need for further legislation — a self-executing provision.

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(if not all) of the rank and file employees consist of people whose status and rank in life are less and limited, especially in terms of job marketability, it is they — and not the officers — who have the real economic and financial need for the adjustment." The *ponencia* concludes that since the challenged *proviso* operates on the basis of the salary grade or office-employee status a distinction based on economic class and status is created.

With all due respect, the main opinion fails to show that financial need is an inherently suspect trait. The claim that the rank and file employees of the BSP are an economically disadvantaged group is unsupported by the facts on record. Moreover, as priorly discussed, classifications based on financial need have been characterized by the U.S. Supreme Court as not suspect. Instead, the American Court has resorted to the Rational Basis Test.

The case of *San Antonio Independent School District v. Rodriguez*[164] is instructive. In the said case, the financing of public elementary and secondary schools in Texas is a product of state and local participation. Almost half of the revenues are derived from a largely state-funded program designed to provide a basic minimum educational offering in every school. Each district supplements state aid through an *ad valorem* tax on property within its jurisdiction. A class action suit was brought on behalf of school children said to be members of poor families who reside in school districts having a low property tax base. They argue that the Texas system's reliance on local property taxation favors the more affluent and violates the equal protection clause because of substantial inter-district disparities in per pupil expenditures resulting primarily from differences in the value of assessable property among the districts. The Court held that wealth discrimination alone does not provide adequate basis for invoking strict scrutiny.[165]

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[164] *Id.* at 29.

[165] 411 U.S. 1, 29 (1973).

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The wealth discrimination discovered by the District Court in this case, and by several other courts that have recently struck down school-financing laws in other States, is quite unlike any of the forms of wealth discrimination heretofore reviewed by this Court. Rather than focusing on the unique features of the alleged discrimination, the courts in these cases have virtually assumed their findings of a suspect classification through a **simplistic process of analysis: since, under the traditional systems of financing public schools, some poorer people receive less expensive educations than other more affluent people, these systems discriminate on the basis of wealth.** *This approach largely ignores the hard threshold questions, including whether it makes a difference for purposes of consideration under the Constitution that the class of disadvantaged 'poor' cannot be identified or defined in customary equal protection terms, and whether the relative — rather than absolute — nature of the asserted deprivation is of significant consequence.* Before a State's laws and the justifications for the classifications they create are subjected to strict judicial scrutiny, we think these threshold considerations must be analyzed more closely than they were in the court below.

The case comes to us with no definitive description of the classifying facts or delineation of the disfavored class. Examination of the District Court's opinion and of appellees' complaint, briefs, and contentions at oral argument suggests, however, at least three ways in which the discrimination claimed here might be described. *The Texas system of school financing might be regarded as discriminating (1) against 'poor' persons whose incomes fall below some identifiable level of poverty or who might be characterized as functionally 'indigent, or (2) against those who are relatively poorer than others, or (3) against all those who, irrespective of their personal incomes, happen to reside in relatively poorer school districts.* Our task must be to ascertain whether, in fact, the Texas system has been shown to discriminate on any of these possible bases and, if so, whether the resulting classification may be regarded as suspect.

The precedents of this Court provide the proper starting point. *The individuals, or groups of individuals, who constituted the class discriminated against in our prior cases shared two distinguishing characteristics:* **because of their impecunity they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit.** In *Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956),* and its progeny the Court invalidated state laws that prevented an indigent

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criminal defendant from acquiring a transcript, or an adequate substitute for a transcript, for use at several stages of the trial and appeal process: The payment requirements in each case were found to *occasion de facto* discrimination against those who, because of their indigency, were totally unable to pay for transcripts. And the Court in each case emphasized that no constitutional violation would have been shown if the State had provided some 'adequate substitute' for a full stenographic transcript.

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Only appellees' first possible basis for describing the class disadvantaged by the Texas school-financing system — discrimination against a class of defineably 'poor' persons — might arguably meet the criteria established in these prior cases. Even a cursory examination, however, demonstrates that neither of the two distinguishing characteristics of wealth classifications can be found here. **First, in support of their charge that the system discriminates against the 'poor,' appellees have made no effort to demonstrate that it operates to the peculiar disadvantage of any class fairly definable as indigent, or as composed of persons whose incomes are beneath any designated poverty level.** Indeed, there is reason to believe that the poorest families are not necessarily clustered in the poorest property districts. x x x

Second, neither appellees nor the District Court addressed the fact that, unlike each of the foregoing cases, lack of personal resources has not occasioned an absolute deprivation of the desired benefit. The argument here is not that the children in districts having relatively low assessable property values are receiving no public education; rather, it is that they are receiving a poorer quality education than that available to children in districts having more assessable wealth. Apart from the unsettled and disputed question whether the quality of education may be determined by the amount of money expended for it, a sufficient answer to appellees' argument is that, **at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.** Nor indeed, in view of the infinite variables affecting the educational process, can any system assure equal quality of education except in the most relative sense. Texas asserts that the Minimum Foundation Program provides an 'adequate' education for all children in the State. By providing 12 years of free public-school education, and by assuring teachers, books, transportation, and operating funds, the Texas Legislature has endeavored to 'guarantee, for the welfare of the state as a whole, that all people shall have at least an adequate program of education. x x x

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For these two reasons — **the absence of any evidence that the financing system discriminates against any definable category of 'poor' people or that it results in the absolute deprivation of education — the disadvantaged class is not susceptible of identification in traditional terms.**

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This brings us, then, to the third way in which the classification scheme might be defined — district wealth discrimination. Since the only correlation indicated by the evidence is between district property wealth and expenditures, it may be argued that discrimination might be found without regard to the individual income characteristics of district residents. Assuming a perfect correlation between district property wealth and expenditures from top to bottom, the disadvantaged class might be viewed as encompassing every child in every district except the district that has the most assessable wealth and spends the most on education. Alternatively, as suggested in Mr. Justice MARSHALL's dissenting opinion the class might be defined more restrictively to include children in districts with assessable property which falls below the statewide average, or median, or below some other artificially defined level.

However described, it is clear that appellees' suit asks this Court to extend its most exacting scrutiny to review a system that allegedly discriminates against a large, diverse, and amorphous class, **unified only by the common factor of residence in districts that happen to have less taxable wealth than other districts. The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.**

We thus conclude that the Texas system does not operate to the peculiar disadvantage of any suspect class. But in recognition of the fact that **this Court has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny**, appellees have not relied solely on this contention. x x x[166] (Emphasis and italics supplied; citations and footnotes omitted)

To further bolster the theory that a classification based on financial need is inherently suspect, the main opinion cites a number of

[166] *Id.* at 18-29.

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international conventions as well as foreign and international jurisprudence, but to no avail.

The reliance by the main opinion on these international conventions is misplaced. The *ponencia* cites the American Convention on Human Rights, the African Charter of Human and Peoples' Rights, the European Convention on Human Rights, the European Social Charter of 1996 and the Arab Charter on Human Rights of 1994. It should be noted that the Philippines is not a signatory to any of these conventions.

The main opinion also cites the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of the Child. While it is true that these instruments which the Philippines is a party to include provisions prohibiting discrimination, none of them explicitly prohibits discrimination on the basis of financial need.

While certain conventions mention that distinctions based on "other status" is prohibited, the scope of this term is undefined. Even Gay Moon, on whom the main opinion relies, explains thus:

> The [UN Human Rights] Committee provides little guidance on how it decides whether a difference in treatment comes within the rubric of "other status." Its approach to this issue lacks consistency and transparency.[167]

Furthermore, the U.K. cases cited in the main opinion are not in point since these cases do not support the thesis that classification based on financial need is inherently suspect. In *Hooper v. Secretary of State for Work and Pension*[168] the discrimination in question

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[167] Gay Moon, *Complying with its International Human Rights Obligations: The United Kingdom and Article 26 of the International Covenant on Civil and Political Rights*, E.H.R.L.R. 2003, 3, 283-307.

[168] (2002) U.K.H.R.R. 785; (2002) EWHC 191).

[169] (1985) 7 E.H.R.R. 471.

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was based on gender, that is, whether the widowers are entitled to the pension granted by the State to widows. In *Abdulaziz, Cabales and Balkandali v. United Kingdom*[169] the discrimination was based on sex and race; In *Wilson and Others v. United Kingdom*[170] the questioned law allows employers to discriminate against their employees who were trade union members.

Notably, the main opinion, after discussing lengthily the developments in equal protection analysis in the United States and Europe, and finding no support thereto, incongruously concluded that "in resolving constitutional disputes, this Court should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs."[171] After an excessive dependence by the main opinion to American jurisprudence it contradicted itself when it stated that "American jurisprudence and authorities, much less the American Constitution, are of dubious application for these are no longer controlling within our jurisdiction and have only limited persuasive merit."[172]

Intrinsic Constitutionality of Section 15(c) of the New Central Bank Act

Is the classification between the officers and rank and file employees in Section 15 (c) of the New Central Bank Act in violation of the equal protection clause?

Petitioner, contending that there are no substantial distinctions between these two groups of BSP employees, argues that it is.

On the other hand, the main opinion, applying the Rational Basis Test, finds the classification between the executive level and the rank and file of the BSP to be based on substantial and real differences which are germane to the purpose of the law. Thus, it concludes:

In the case at bar, it is clear in the legislative deliberations that the exemption of officers (SG 20 and above) from the SSL was intended

[170] (2002) 35 E.H.R.R. 20).

[171] Main Opinion at 56.

[172] *Id.* at 56.

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to address the BSP's lack of competitiveness in terms of attracting competent officers and executives. It was not intended to discriminate against the rank-and-file. If the end-result did in fact lead to a disparity of treatment between the officers and the rank-and-file in terms of salaries and benefits, the discrimination or distinction has a rational basis and is not palpably, purely, and entirely arbitrary in the legislative sense.

and declines to grant the petition on this ground.

For her part, Justice Chico-Nazario, in her separate concurring opinion, sides with petitioner believing that the difference in treatment is "purely arbitrary" and thus violates the Constitutional guaranty of equal protection of the laws.

On this point, I am in accord with the main opinion.

For ease of reference, Section 15 (c) is reproduced hereunder:

SEC. 15. *Exercise of Authority.* — In the exercise of its authority, the Monetary Board shall:

x x x x x x x x x

(c) establish a human resource management system which shall govern the selection, hiring, appointment, transfer, promotion, or dismissal of all personnel. Such system shall aim to establish professionalism and excellence at all levels of the *Bangko Sentral* in accordance with sound principles of management.

A compensation structure, based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the ***Bangko Sentral****'s human resource development program: Provided,* That the Monetary Board shall make its own system conform as closely as possible with the principles provided for under Republic Act No. 6758. ***Provided, however,*** *That compensation and wage structure of employees whose positions fall under salary grade 19 and below shall be in accordance with the rates prescribed under Republic Act No. 6758.* (Italics supplied)

It is readily apparent that Section 15 (c), by implicitly exempting the executive corps of the BSP (those with SG 20 and above) from the Compensation Classification System under the Salary Standardization Law, makes a classification between the officers and the rank and file of the BSP and, who, like all other government

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employees, are squarely within the ambit of the Compensation Classification System by the Salary Standardization Law.

To be valid, therefore, the difference in treatment as to compensation between the executive level and the rank and file of the BSP must be based on real differences between the two groups. Moreover, this classification must also have a rational relationship to the purpose of the New Central Bank Act.

An examination of the legislative history of the New Central Bank Act may thus prove useful.

Legislative History of the New Central Bank Act

An examination of the legislative deliberations of both the House of Representatives and the Senate shows that it was never the intention of both houses to provide all BSP personnel with a blanket exemption from the coverage of the Salary Standardization Law.

Thus, while House Bill No. 7037 (the House of Representatives version of the New Central Bank Act) did not expressly mention that the Salary Standardization Law was to apply to a particular category of BSP employees, the deliberations in the lower house show that the position and compensation plans which the BSP was authorized to adopt were to be in accordance with the provisions of applicable laws, including the Salary Standardization Law:

MR. JAVIER (E.). No, Mr. Speaker, we have that phrase in Section 14 (c). The power to organize, the power to classify positions, the power to adopt compensation plans are subject to the provisions of applicable laws. The bill is clear, so I do not think we should have a quarrel on whether the Monetary Board has absolute power over the organization and compensation plans of the Bangko Sentral ng Pilipinas. *Of course, this power is subject to applicable laws, and one of these laws is the Salary Standardization* Law, Mr. Speaker.

MR. ARROYO. To cut the argument short, Mr. Speaker, in effect, he is now saying that the proposed bill will authorize the Bangko Sentral to fix its own salary scale for its employees?

MR. JAVIER (E.). That is correct, Mr. Speaker, but in accordance with the provisions of applicable laws.

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MR. ARROYO. I am only asking if it will be able to fix its own salary scale.

MR. JAVIER (E.). Yes, in accordance with the provisions of applicable laws.

MR. ARROYO. *May I know Mr. Speaker, what is the applicable law that will curtail this?*

MR. JAVIER (E.). *The Salary Standardization Law.*

MR. ARROYO. *So, the Gentleman is now suggesting that the Standardization Law will apply to this?*

MR. JAVIER (E.). *Yes, Mr. Speaker.*[173] (Italics supplied)

In fact, the deliberations show that, in keeping with the recognition in Section 9[174] of the Salary Standardization Law that compensation higher than SG 30 might be necessary in certain exceptional cases to attract and retain competent top-level personnel, the initial intention of the drafters of the House

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[173] V Records of the House of Representatives, 9th Congress, 1st Session 182 (March 2, 1993).

[174] For ease of reference, Section 9 of the Salary Standardization Law is reproduced hereunder:

SECTION 9. Salary Grade Assignments for Other Positions. — For positions below the Officials mentioned under Section 8 hereof and their equivalent, whether in the National Government, local government units, government-owned or controlled corporations or financial institutions, the Department of Budget and Management is hereby directed to prepare the Index of Occupational Services to be guided by the Benchmark Position Schedule prescribed hereunder and the following factors: (1) the education and experience required to perform the duties and responsibilities of the positions; (2) the nature and complexity of the work to be performed; (3) the kind of supervision received; (4) mental and/or physical strain required in the completion of the work; (5) nature and extent of internal and external relationships; (6) kind of supervision exercised; (7) decision-making responsibility; (8) responsibility for accuracy of records and reports; (9) accountability for funds, properties and equipment; and (10) hardship, hazard and personal risk involved in the job.

x x x x x x x x x

In no case shall the salary of the chairman, president, general manager or administrator, and the board of directors of government-owned or controlled corporations and financial institutions exceed Salary Grade 30: **Provided, That the President may, in truly exceptional cases, approve higher compensation for the aforesaid officials.** (Emphasis and italics supplied)

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Bill was to exempt only the Governor and the Monetary Board from the coverage of the Compensation Classification System:

MR. LACSON. *Mr. Speaker, Section 12 mentions only the remuneration of the governor and the members of the monetary board.*

MR. CHAVES. *So, it will not cover any other employees of the Central Bank because the limitation set forth under the Salary Standardization Law will apply to them. I just want to make that sure because if it is not clear in the law, then we can refer to the debates on the floor.*

MR. LACSON. *Mr. Speaker, Section 12 mentions only the governor and the members of the monetary board.* **All the rest in the lower echelons are covered by law.**

MR. CHAVES. In other words, I just want to make it clear whether or not they are covered by the Salary Standardization Law because later on if there is any conflict on the remuneration of employees lower than the governor and members of the Monetary Board, we have limits set under the Salary Standardization Law.

MR. LACSON. Under the Salary Standardization Law.[175] (Emphasis and italics supplied)

The application of the Salary Standardization Law to all other personnel of the BSP raised some concerns, however, on the part of some legislators. They felt the need to reconcile the demand for competent people to help in the management of the economy with the provisions of the Salary Standardization Law. [176] The Senate thus sought to address these concerns by allowing the BSP to determine a separate salary scale for the executive level.

The purpose behind the exemption of officers with SG 20 and above from the Salary Standardization Law was to increase the BSP's competitiveness in the industry's labor market such that by offering attractive salary packages, *top executives and*

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[175] *Id.* at 787 (March 31, 1993).

[176] VI Records of the House of Representatives, 9th Congress, 1st Session 353 (May 18, 1993).

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officials would be enticed and competent officers would be deterred from leaving.

Senator Maceda. x x x

We have a salary grade range, if I am not mistaken, Mr. President, up to Grade 32. *Those executive types are probably between Grade 23 to Grade 32. If we really want to make sure that the vice-president types of the banks will come in, it should be cut off at around Grade 23 level and that the Standardization Act should still refer to those around Grade 22 and below.* But if we cut it off at Grade 9 and below, we are just hitting only the drivers, the janitors, the filing clerks, the messengers.

The Gentleman will only be cutting off a part of my heart again if he does that. My heart bleeds for this people, Mr. President.

Senator Osmeña. If that is an amendment, Mr. President, I move that we reconsider the prior approval of my amendment which was accepted by the Sponsor, and I will accept the amendment of Senator Maceda that the grade level should not be Grade 9 but Grade 22 instead.

Senator Maceda. After consulting the principal Author of the Standardization Law, the distinguished Majority Leader, he confirms that the executive group is really Grade 23 and above. I think that is where the Gentleman really wants to have some leeway to get some people in at the executive level. So I propose the amendment to the amendment to Grade 22 and below.[177] (Italics supplied; emphasis in the original)

Ultimately, the Bicameral Conference Committee on Banks, in consultation with the BSP, determined that the BSP's executive level began at SG 20 and resolved to exempt those at that level and above from the Compensation Classification System under the Salary Standardization Law, leaving the rank-and-file employees, or those personnel with a SG of 19 and below, under the coverage of the said compensation system. This is clear from the deliberations as reproduced by the petitioner itself:

CHAIRMAN ROCO. x x x

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[177] IV Record of the Senate, 9th Congress, 1st Session 1086-1987 (June 5, 1993).

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Number 4, on compensation of personnel. We have checked. The exemption from the Salary Standardization Law shall apply only from Salary Grade 21 and above. The division chief is salary grade 22.

CHAIRMAN ZAMORA. **I understood, Mr. Chairman, from the Central Bank itself that their range for rank-and-file starts from range 19 and downward.** *So what we should propose is that we subject all personnel to salary standardization starting from range 19 going down, and exempt them from range 20 and going up.*

CHAIRMAN ROCO. That will cover also assistant division chiefs?

CHAIRMAN ZAMORA. That includes assistant division chiefs, division chiefs, and obviously higher personnel.

CHAIRMAN ROCO. Yes, because in terms of x x x We are being more generous than original. So assistant division chiefs shall be exempted already from the salary standardization.[178] (Emphasis and italics supplied)

The Classification is Based on Real Differences between the Officers and the Rank and File of the BSP, and is Germane to the Purpose of the Law

As pointed out by the Office of the Solicitor General,[179] the foregoing classification of BSP personnel into managerial and rank-and-file is based on real differences as to the scope of work and degree of responsibility between these two classes of employees. At the same time, the exemption of the BSP managerial personnel from the Salary Standardization Law bears a rational relationship to the purpose of the New Central Bank Act.[180] In the words of the Solicitor General:

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[178] Transcript of Stenographic Notes (TSN), Bicameral Conference Committee on Banks (CMA), June 9, 1993, 1:20 p.m. at 39.

[179] *Rollo* at 82-83.

[180] Section 1. *Declaration of Policy.* — The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a government-owned and corporation, shall enjoy fiscal and administrative autonomy.

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x x x *Article II, Section 15 (c) of RA 7653 was* **purposely adopted to attract highly competent personnel, to ensure professionalism and excellence at the BSP** *as well as to* **ensure its independence** *through fiscal and administrative autonomy in the conduct of monetary policy. This purpose is undoubtedly being assured by exempting the executive/management level from the Salary Standardization Law so that the best and the brightest may be induced to join the BSP.* After all, the managers/executives are the ones responsible for running the BSP and for implementing its monetary policies.[181] (Emphasis and italics supplied)

In the light of the foregoing, Justice Chico-Nazario's conclusion that the distinction is "purely arbitrary" does not appear to hold water.

In support of her view, Justice Chico-Nazario cites Section 5 (a) of the Salary Standardization Law, which provides that positions in the Professional Supervisory Category are assigned SG 9 to SG 33. Thus, she argues:

x x x SG 20 and up do not differ from SG 19 and down in terms of technical and professional expertise needed as the entire range of positions all 'require intense and thorough knowledge of a specialized field usually acquired from completion of a bachelor's degree or higher courses.

Consequently, if BSP needs an exemption from R.A. No. 6758 for key positions in order that it may hire the best and brightest economists, accountants, lawyers and other technical and professional people, the exemption must not begin only in SG 20.

However, it is clear that while it is possible to group *classes of positions* according to the *four main categories* as provided under Section 5 of the Salary Standardization Law, *viz*:

SECTION 5. *Position Classification System. — The* **Position Classification System** *shall consist of classes of positions grouped into* **four main categories,** *namely: professional supervisory, professional non-supervisory, sub-professional supervisory, and sub-professional non-supervisory, and the rules and regulations for its implementation.*

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[181] *Rollo* at 83-84.

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Categorization of these classes of positions shall be guided by the following considerations:

(a) *Professional Supervisory Category.* — This category includes responsible positions of a managerial character involving the exercise of management functions such as planning, organizing, directing, coordinating, controlling and overseeing within delegated authority the activities of an organization, a unit thereof or of a group, requiring some degree of professional, technical or scientific knowledge and experience, application of managerial or supervisory skills required to carry out their basic duties and responsibilities involving functional guidance and control, leadership, as well as line supervision. These positions require intensive and thorough knowledge of a specialized field usually acquired from completion of a bachelor's degree or higher degree courses.

The positions in this category are assigned Salary Grade 9 to Salary Grade 33.

(b) *Professional Non-Supervisory Category.* — This category includes positions performing task which usually require the exercise of a particular profession or application of knowledge acquired through formal training in a particular field or just the exercise of a natural, creative and artistic ability or talent in literature, drama, music and other branches of arts and letters. Also included are positions involved in research and application of professional knowledge and methods to a variety of technological, economic, social, industrial and governmental functions; the performance of technical tasks auxiliary to scientific research and development; and in the performance of religious, educational, legal, artistic or literary functions.

These positions require thorough knowledge in the field of arts and sciences or learning acquired through completion of at least four (4) years of college studies.

The positions in this category are assigned Salary Grade 8 to Salary Grade 30.

(c) *Sub-Professional Supervisory Category.* — This category includes positions performing supervisory functions over a group of employees engaged in responsible work along technical, manual or clerical lines of work which are short of professional work, requiring training and moderate experience or lower training but considerable experience and knowledge of a limited subject matter or skills in arts, crafts or trades. These positions require knowledge acquired from

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secondary or vocational education or completion of up to two (2) years of college education.

The positions in this category are assigned Salary Grade 4 to Salary Grade 18.

(d) *Sub-Professional Non-Supervisory Category.* — This category includes positions involves in structured work in support of office or fiscal operations or those engaged in crafts, trades or manual work. These positions usually require skills acquired through training and experience of completion of elementary education, secondary or vocational education or completion of up to two (2) years of college education.

The positions in this category are assigned Salary Grade 1 to Salary Grade 10. (Italics supplied)

the same *does not preclude* classifying *classes of positions,* although different with respect to kind or subject matter of work, according to *level of difficulty and responsibility and level of qualification* requirements — that is, according to grade.[182]

It should be borne in mind that the concept of "grade" from the Old Salary Standardization Law is maintained in the present one. Thus Sections 8 and 9 of the present Salary Standardization Law provide for the general assignment of the various salary grades to certain positions in the civil service according to the degree of responsibility and level of qualifications required:

SECTION 8. *Salaries of Constitutional Officials and their Equivalent.* — Pursuant to Section 17, Article XVIII of the Constitution, the salary of the following officials shall be in accordance with the Salary Grades indicated hereunder:

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[182] *Vide*: Section 3 (h), P.D. 995, *viz*:

SECTION 3. Definition of Terms. — As used in this Decree, the following shall mean:

x x x x x x x x x

h. *Grade* — Includes all classes of positions which, although different with respect to kind or subject matter of work, are sufficiently equivalent as to level of difficulty and responsibility and level of qualification requirements of the work to warrant the inclusion of such classes of positions within one range of basic compensation.

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	Salary Grades
President of the Philippines	33
Vice-President of the Philippines	32
President of the Senate	32
Speaker of the House of Representatives	32
Chief Justice of the Supreme Court	32
Senator	31
Member of the House of Representatives	31
Associate Justices of the Supreme Court	31
Chairman of a Constitutional Commission under Article IX, 1987 Constitution	31
Member of a Constitutional Commission under Article IX, 1987 Constitution	30

The Department of Budget and Management is hereby authorized to determine the officials who are of equivalent rank to the foregoing Officials, where applicable, and may be assigned the same Salary Grades based on the following guidelines:

GRADE 33 — This Grade is assigned to the President of the Republic of the Philippines as the highest position in the government. No other position in the government service is considered to be of equivalent rank.

GRADE 32 — This Grade is limited to the Vice-President of the Republic of the Philippines and those positions which head the Legislative and Judicial Branches of the government, namely: the Senate President, Speaker of the House of Representatives and Chief Justice of the Supreme Court. No other positions in the government service are considered to be of equivalent rank.

GRADE 31 — This Grade is assigned to Senators and Members of the House of Representatives and those with equivalent rank as follows: the Executive Secretary, Department Secretary, Presidential Spokesman, Ombudsman, Press Secretary, Presidential Assistant with Cabinet Rank, Presidential Adviser, National Economic and Development Authority Director General, Court of Appeals Presiding Justice, Sandiganbayan Presiding

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Justice, Secretary of the Senate, Secretary of the House of Representatives, and President of the University of the Philippines.

An entity with a broad functional scope of operations and wide area of coverage ranging from top level policy formulation to the provision of technical and administrative support to the units under it, with functions comparable to the aforesaid positions in the preceding paragraph, can be considered organizationally equivalent to a Department, and its head to that of a Department Secretary.

GRADE 30 — Positions included are those of Department Undersecretary, Cabinet Undersecretary, Presidential Assistant, Solicitor General, Government Corporate Counsel, Court Administrator of the Supreme Court, Chief of Staff of the Office of the Vice-President, National Economic and Development Authority Deputy Director General, Presidential Management Staff Executive Director, Deputy Ombudsman, Associate Justices of the Court of Appeals, Associate Justices of the Sandiganbayan, Special Prosecutor, University of the Philippines Executive Vice-President, Mindanao State University President, Polytechnic University of the Philippines President of and President of other state universities and colleges of the same class.

Heads of councils, commissions, boards and similar entities whose operations cut across offices or departments or are serving a sizeable portion of the general public and whose coverage is nationwide or whose functions are comparable to the aforecited positions in the preceding paragraph, may be placed at this level.

The equivalent rank of positions not mentioned herein or those that may be created hereafter shall be determined based on these guidelines.

The Provisions of this Act as far as they upgrade the compensation of Constitutional Officials and their equivalent under this section shall, however, take effect only in accordance with the Constitution: Provided, That with respect to the President and Vice-President of the Republic of the Philippines, the President of the Senate, the Speaker of the House of Representatives, the Senators, and the Members of the House of Representatives, no increase in salary shall take effect even beyond 1992, until this Act is amended: Provided, further, That the implementation of this Act with respect to Assistant Secretaries and Undersecretaries shall be deferred for one (1) year from the

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effectivity of this Act and for Secretaries, until July 1, 1992: Provided, finally, That in the case of Assistant Secretaries, Undersecretaries and Secretaries, the salary rates authorized herein shall be used in the computation of the retirement benefits for those who retire under the existing retirement laws within the aforesaid period.

SECTION 9. *Salary Grade Assignments for Other Positions.* — For positions below the Officials mentioned under Section 8 hereof and their equivalent, whether in the National Government, local government units, government-owned or controlled corporations or financial institutions, the Department of Budget and Management is hereby directed to prepare the Index of Occupational Services to be guided by the Benchmark Position Schedule prescribed hereunder and the following factors: (1) the education and experience required to perform the duties and responsibilities of the positions; (2) the nature and complexity of the work to be performed; (3) the kind of supervision received; (4) mental and/or physical strain required in the completion of the work; (5) nature and extent of internal and external relationships; (6) kind of supervision exercised; (7) decision-making responsibility; (8) responsibility for accuracy of records and reports; (9) accountability for funds, properties and equipment; and (10) hardship, hazard and personal risk involved in the job.

Benchmark Position Schedule

Position Title	Salary Grade
Laborer I	1
Messenger	2
Clerk I	3
Driver I	3
Stenographer I	4
Mechanic I	4
Carpenter II	5
Electrician II	6
Secretary I	7

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Bookkeeper	8
Administrative Assistant	8
Education Research Assistant I	9
Cashier I	10
Nurse I	10
Teacher I	10
Agrarian Reform Program Technologist	10
Budget Officer I	11
Chemist I	11
Agriculturist I	11
Social Welfare Officer I	11
Engineer I	12
Veterinarian I	13
Legal Officer I	14
Administrative Officer II	15
Dentist II	16
Postmaster IV	17
Forester III	18
Associate Professor I	19
Rural Health Physician	20

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In no case shall the salary of the chairman, president, general manager or administrator, and the board of directors of government-owned or controlled corporations and financial institutions exceed Salary Grade 30: Provided, That the President may, in truly exceptional cases, approve higher compensation for the aforesaid officials. (Italics supplied)

Thus, while the positions of Agriculturist I with SG 11 and the President of the Philippines with SG 33 may both belong to the Professional Supervisory Category because of the nature of their duties and responsibilities as well as the knowledge and experience required to discharge them, nevertheless, there can be no doubt that the level of difficulty and responsibility of the latter is significantly greater than that of the former.

It may be that the legislature might have chosen the four categories of the position classification system as the basis for the classification in Section 15 (c), as suggested by Justice Chico-Nazario, or even that no distinction might have been made at all. But these are matters pertaining to the wisdom of the legislative classification and not to its constitutional validity as measured against the requirements of the equal protection clause. As this Court stated in *Ichong v. Hernandez*:[183]

x x x **Some may disagree with the wisdom of the legislature's classification. To this we answer, that this is the prerogative of the law-making power.** *Since the Court finds that the classification is actual, real and reasonable, and all persons of one class are treated alike, and as it cannot be said that the classification is patently unreasonable and unfounded,* it is on duty bound to declare that the legislature acted within its legitimate prerogative and it cannot declare that the act transcends the limit of equal protection established by the Constitution.[184] (Emphasis and italics supplied)

At this juncture, it is curious to note that while the main opinion initially states that the classification contained in Section 15 (c) of the New Central Bank Act "has a rational basis and is not palpably, purely, and entirely arbitrary in the legislative

[183] *Supra.*

[184] *Id.* at 1176.

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sense," and is thus valid on its face; the same opinion subsequently opines that:

> In the case at bar, *the challenged* ***proviso*** *operates on the basis of salary grade or officer-employee status.* **It is a distinction based on economic class and status,** with the higher grades as recipients of a benefit specifically withheld from the lower grades. (Emphasis and italics supplied)

Significantly, petitioner never advanced this argument anywhere in its pleadings. Moreover, there is absolutely nothing in the pleadings or records of this petition to suggest that: (1) petitioner's members belong to a separate economic class than those with SG 20 and above; and (2) that the distinction between the officers and the rank and file in Section 15(c) is based on such economic status.

What is more, the foregoing statement flies in the face of a basis of classification well-established in our law and jurisprudence.

Indeed, the distinction between "officers" and "employees" in the government service was clearly established as early as 1917 with the enactment of the Old Revised Administrative Code and later incorporated into the language of the Constitution:

> In terms of personnel, the system includes both "officers and employees." The distinction between these two types of government personnel is expressed by Section 2 of the Old Revised Administrative Code (1917) thus:
>
> > *Employee*, when generally used in reference to persons in the public service, includes any person in the service of the Government or any branch thereof of whatever grade or class. ***Officer,*** *as distinguished from* ***clerk*** *or employee, refers to those officials whose duties, not being of a clerical or manual nature, may be considered to involve the exercise of discretion in the performance of the functions of government, whether such duties are precisely defined by law or not.*
> >
> > *Officer*, when used with reference to a person having authority to do a particular act or perform a particular function in the exercise of governmental power, shall include any Government employee,

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agent, or body having authority to do the act or exercise of the function in question.

It is in these senses that the terms "officers and employees" are used in the Constitution and it is this sense which should also be applied, ***mutatis mutandis,*** *to officers and employees of government-owned and or controlled corporations with original charter.*[185] (Emphasis supplied; italics in the original)

Clearly, classification on the basis of salary grade or between officers and rank and file employees within the civil service are intended to be rationally and objectively based on merit, fitness and degree of responsibility, and not on economic status. As this Court summarized in *Rodrigo v. Sandiganbayan*:[186]

Section 5, Article IX-C of the Constitution provides that:

> The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions.

This provision is not unique to the 1987 Constitution. The 1973 Constitution, in Section 6, Article XII thereof, contains a very similar provision pursuant to which then President Marcos, in the exercise of his legislative powers, issued Presidential Decree No. 985.

However, with the advent of the new Constitution, and in compliance therewith, Congress enacted R.A. No. 6758. Section 2 thereof declares it the policy of the State "to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."

To give life to this policy, as well as the constitutional prescription to "(take) into account the nature of the responsibilities pertaining to, and the qualifications required" for the positions of government officials and employees, Congress adopted the scheme employed in P.D. No. 985 for classifying positions with comparable responsibilities and

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[185] J.S. BERNAS, S.J. *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY* at 910-911 (2003 Ed.).

[186] 303 SCRA 309 (1999).

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qualifications for the purpose of according such positions similar salaries. This scheme is known as the "Grade," defined in P.D. No. 985 as:

> Includ[ing] all classes of positions which, although different with respect to kind or subject matter of work, are sufficiently equivalent as to level of difficulty and responsibilities and level of qualification requirements of the work to warrant the inclusion of such classes of positions within one range of basic compensation.

The Grade is therefore a means of grouping positions "sufficiently equivalent as to level of difficulty and responsibilities and level of qualification requirements of the work" so that they may be lumped together in "*one range* of basic compensation."

Thus, Congress, under Section 8 of R.A. No. 6758, fixed the Salary Grades of officials holding constitutional positions, as follows x x x

x x x x x x x x x

x x x Congress delegated the rest of this tedious task (of fixing Salary Grades) to the DBM, subject to the standards contained in R.A. No. 6758, by authorizing the DBM to "determine the officials who are of equivalent rank to the foregoing officials, where applicable," and to assign them the same Salary Grades subject to a set of guidelines found in said section.

For positions below those mentioned under Section 8, Section 9 directs the DBM to prepare the "Index of Occupational Services" guided by (a) the Benchmark Position prescribed in Section 9, and (b) the following factors:

(1) the education and experience required to perform the duties and responsibilities of the position;

(2) nature and complexity of the work to be performed;

(3) the kind of supervision received;

(4) mental and/or physical strain required in the completion of the work;

(5) nature and extent of internal and external relationships;

(6) kind of supervision exercised;

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(7) decision-making responsibility;

(8) responsibility for accuracy of records and reports;

(9) accountability for funds, properties and equipment; and

(10) hardship, hazard and personal risk involved in the job.

Pursuant to such authority, the DBM drafted the 1989 Index of Occupational Services, Position Titles and Salary Grades, later revised in 1997. x x x[187] (Italics supplied)

In view of the foregoing, the statement in the latter portion of the main opinion to the effect that the classification between the officers and the rank and file of the BSP is founded on economic status, and not on the level of difficulty and responsibility as well as the qualification requirements of the work to be performed, must be considered extremely suspect — a conclusion without legal or factual tether bordering on sophistry.

En passant, it may be observed that the distinction between the managerial personnel and the rank and file of the BSP in the New Central Bank Act is similar to the distinction between Justices, Judges and those of equivalent judicial rank on the one hand and other court personnel on the other hand in R.A. No. 9227.[188] In furtherance of the declared policy "to guarantee the independence of the Judiciary x x x ensure impartial administration of justice, as well as an effective and efficient system worthy of public trust and confidence,"[189] Section 2 of R.A. No. 9227 provides:

Sec. 2. *Grant of Special Allowances.* — All justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws shall be granted special allowances equivalent to one hundred percent (100%) of the basic monthly salary

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[187] *Id.* at 329-333.

[188] AN ACT GRANTING ADDITIONAL COMPENSATION IN THE FORM OF SPECIAL ALLOWANCES FOR JUSTICES, JUDGES AND ALL OTHER PERSONS IN THE JUDICIARY WITH THE EQUIVALENT RANK OF JUSTICES OF THE COURT OF APPEALS AND JUDGES OF THE REGIONAL TRIAL COURT AND FOR OTHER PURPOSES.

[189] R.A. No. 9227, Sec. 1.

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specified for their respective salary grades under Republic Act No. 6758, as amended, otherwise known as the Salary Standardization Law, to be implemented for a period of four (4) years.

The grant of special allowances shall be implemented uniformly in such sums or amounts equivalent to twenty-five percent (25%) of the basic salaries of the positions covered hereof. Subsequent implementation shall be in such sums and amounts and up to the extent only that can be supported by the funding source specified in Section 3 hereof.

Under the foregoing, personnel with judicial rank[190] are entitled to the grant of certain special allowances while the other personnel of the judiciary are not. The reason for the difference in treatment may be gleaned from the legislative deliberations[191] wherein the legislature, while acknowledging the need to augment the salaries and emoluments of members of the judiciary in order to attract and retain competent personnel and insulate them from possible outside influence, nevertheless had to take into consideration the limited resources of the government as well as the primary aim of the law, and consequently prioritized those holding judicial offices or with judicial rank over other court personnel.

The Subsequent Amendment of the Charters of the other GOCCs and GFIs Did Not Alter the Constitutionality of Section 15 (c)

By operation of the equal protection clause, are the rank and file employees of the BSP entitled to exemption from the Compensation Classification System provided for under the Salary

[190] Interestingly, R.A. No. 9227 is the subject of a pending Administrative Matter captioned *Re: Grant of Distortion Allowance to Positions in the Judiciary with Rank of Judges of Metropolitan Trial Court*, A.M. No. 03-10-05-SC and A.M. 03-11-25-SC, wherein certain personnel of the judicial branch not holding judicial office, but with judicial rank below that of a judge of the Regional Trial Court are questioning their non-inclusion in Sec. 2 on equal protection grounds.

[191] Transcript of Stenographic Notes (TSN) of the Bicameral Conference Committee On The Disagreeing Provisions on S. No. 2018 and H. No. 5178 (Compensation Benefits & Privileges of Members of the Judiciary) (Committee on Justice & Human Rights), September 3, 2003.

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Standardization Law as a consequence of the exemption of the rank and file employees of certain other GOCCs and GFIs?

Petitioner argues in the affirmative maintaining that:

This Honorable Court may take judicial notice of the fact that *the rank-and-file employees of the other government financial institutions,* such as the Government Service Insurance System (GSIS), Land Bank of the Philippines (LBP), Development Bank of the Philippines (DBP), and the Social Security System (SSS), together with the officers of such institutions, *are exempted from the coverage of the SSL under their respective charters x x x Thus, within the class of rank-and-file employees of the government financial institutions, the rank-and-file employees of the BSP are also discriminated upon.*[192] (Italics supplied)

The charters of the GOCCs/GFIs adverted to by petitioner, together with their relevant provisions are as follows:

(1) R.A. No. 7907, which took effect on February 23, 1995 and amended Section 90 of R.A. 3844, the Agrarian Land Reform Code, giving the Board of Directors of the LBP authority to approve the bank's own compensation, position classification system and qualification standards:

SECTION 10. Section 90 of the same Act is hereby amended to read as follows:

"Sec. 90. Personnel. — The Board of Directors shall provide for an organization and staff of officers and employees of the Bank and upon recommendation of the President of the Bank, appoint and fix their remunerations and other emoluments, and remove such officers and employees: Provided, That the Board shall have exclusive and final authority to promote, transfer, assign or reassign personnel of the Bank, any provisions of existing law to the contrary notwithstanding.

All positions in the Bank shall be governed by a compensation, position classification system and qualification standards approved by the Bank's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The

[192] *Rollo* at 13.

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compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. *The Bank shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its system conform as closely as possible with the principles under Republic Act No. 6758.*

The Bank officers and employees, including all members of the Board, shall not engage directly or indirectly in partisan activities or take part in any election except to vote.

No officer or employee of the Bank subject to the Civil Service Law and Regulations shall be removed or suspended except for cause as provided by law." (Italics supplied)

(2) R.A. No. 8282, the Social Security System Act of 1997, approved on May 1, 1997, Section 3 (c) of which exempts all SSS employees from the provisions of the Salary Standardization Law:

Section 3. x x x

(c) The Commission, upon the recommendation of the SSS President, shall appoint an actuary and such other personnel as may be deemed necessary; fix their reasonable compensation, allowances and other benefits, prescribe their duties and establish such methods and procedures as may be necessary to insure the efficient, honest and economical administration of the provisions and purposes of this Act: Provided, however, That the personnel of the SSS below the rank of Vice-President shall be appointed by the SSS President: Provided, further, That the personnel appointed by the SSS President, except those below the rank of assistant manager, shall be subject to the confirmation by the Commission: Provided, further, That the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations: Provided, finally, *That the SSS shall be exempt from the provisions of Republic Act No. 6758 and Republic Act No. 7430.* (Italics supplied)

(3) R.A. No. 8291, the Government Service Insurance System Act of 1997, approved on May 31, 1997, which empowers its Board of Trustees of the GSIS to approve a compensation

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and position classification system and qualifications standards for its employees:

SECTION 43. Powers and Functions of the Board of Trustees. — The Board of Trustees shall have the following powers and functions:

x x x x x x x x x

(d) upon the recommendation of the President and General Manager, to approve the GSIS' organizational and administrative structures and staffing pattern, and to establish, fix, review, revise and adjust the appropriate compensation package for the officers and the employees of the GSIS with reasonable allowances, incentives, bonuses, privileges and other benefits as may be necessary or proper for the effective management, operation and administration of the GSIS, *which shall be exempt from Republic Act No. 6758, otherwise known as the Salary Standardization Law* and Republic Act No. 7430, otherwise known as the Attrition Law;

x x x x x x x x x x x x (Italics supplied)

(4) R.A. No. 8523, which amended the Charter of the DBP on May 31, 1997 and exempted the bank from the coverage of the existing Salary Standardization Law:

SECTION 6. Section 13 of the same Charter is hereby amended to read as follows:

"SEC. 13. Other Officers and Employees. — The Board of Directors shall provide for an organization and staff of officers and employees of the Bank and upon recommendation of the President of the Bank, fix their remunerations and other emoluments. All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. *The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standard. The Bank shall however, endeavor to make its system conform as possible with the*

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principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).

No officer or employee of the Bank subject to Civil Service Law shall be dismissed except for cause as provided by law." (Italics supplied)

Following this second line of argument, it appears that petitioner bases its claim to exemption from the Compensation Classification System of the Salary Standardization Law not only on (1) a direct challenge to the constitutionality of the *proviso* in Section 15(c) of The New Central Bank Act, which expressly places the rank and file employees of the BSP under the coverage of the former; but also on (2) an indirect assertion that the rank and file employees of the BSP are entitled to benefit from the subsequent exemptions of the rank and file personnel of certain GOCCs/GFIs from the coverage of the Salary Standardization Law.

This second argument, that the rank and file employees of the BSP may benefit from subsequent classifications in *other statutes pertaining to other GFI employees,* on the theory that the former and the latter are identically or analogously situated (*i.e.* members of the same class), is not entirely new and is apparently founded on the fourth requisite of the Rational Basis Test — that is, that *a reasonable classification must apply equally to all members of the same class.*

Thus, in *Rubio v. People's Homesite & Housing Corporation,*[193] the Court applied Section 76 of B.P. Blg. 337, the old Local Government Code, to benefit employees of the People's Homesite & Housing Corporation who had been illegally dismissed some 23 years earlier, even though the latter were not local government employees. The Court, speaking through Justice (later Chief Justice) Andres Narvasa held:

Batas Pambansa Bilang 337, otherwise known as the Local Government Code, was passed by the legislature and became effective on February 10, 1983. Section 76 thereof (under Title Four: Personnel Administration) provides as follows:

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[193] 185 SCRA 656 (1990).

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> SEC. 76. Abolition of Position. — When the position of an official or employee under the civil service is abolished by law or ordinance the official or employee so affected shall be reinstated in another vacant position without diminution of salary. Should such position not be available, the official or employee affected shall be granted a separation pay equivalent to one month salary for every year of service over and above the monetary privileges granted to officials and employees under existing law.

To be sure, the provision on its face is apparently intended for the benefit only of officers and employees in the local political subdivisions. The Court however sees no reason why it should not be applied as well to other personnel of the government, including those in the People's Homesite and Housing Corporation, which was then considered part of the Civil Service. A contrary conclusion would make the provision questionable under the equal protection clause of the Constitution as there appears to be no substantial distinction between civil servants in the local government and those in other branches of government to justify their disparate treatment. Since the petitioners are "employees under the civil service," the matter of their reinstatement to their former positions at this time should logically and justly be governed by the above cited statute although enacted many years after the abolition of their positions. And since, too, it may reasonably be assumed that reinstatement to their former positions is no longer possible, or feasible, or even desired or desirable, the petitioners or their heirs must be deemed entitled to receive the separation pay provided by said BP Blg. 337.[194] (Italics supplied)

Some Basic Principles of Legislative Classification

Considering that the thrust of petitioner's second argument is that its members belong to the *same class* as other GFI employees (such that they are also entitled to exemption from the Compensation Classification System of the Salary Standardization Law), a brief discussion on legislative classification is in order.

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[194] *Id.* at 663-664.

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As adverted to earlier, classification has been defined as "the grouping of persons or things similar to each other in certain particulars and different from all other in these same particulars."[195] To this may be added the following observations of Joseph Tussman and Jacobus tenBroek in their influential article[196] on The Equal Protection of the Laws,[197] *viz*:

We begin with an elementary proposition: *To define a class is simply to designate a quality or characteristic or trait or relation, or any combination of these, the possession of which, by an individual, determines his membership in or inclusion within the class.* A legislature defines a class, or "classifies," when it enacts a law applying to "all aliens ineligible for citizenship," or "all persons convicted of three felonies," or "all citizens between the ages of 19 and 25" or "foreign corporations doing business within the state."

This sense of "classify" (*i.e.*, "to define a class") must be distinguished from the sense in which "to classify" refers to the act of determining whether an individual is a member of a particular class, that is, whether the individual possesses the traits which define the class. x x x

It is also elementary that membership in a class is determined by the possession of the traits which define that class. Individual *X* is a member of class A if, and only if, *X* possesses the traits which define class *A*. Whatever the defining characteristics of a class may be, every member of that class will possess those characteristics.

Turning now to the reasonableness of legislative classifications, the cue is to be taken from our earlier reference to the requirement that those similarly situated be similarly treated. *A reasonable classification is one which includes all who are similarly situated and none who are not. The question is, however, what does that ambiguous and crucial phrase "similarly situated" mean? And in*

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[195] *Vide Philippine Judges Association v. Prado, supra.*

[196] Cited in G. Gunther *In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARVARD LAW REVIEW 1 (1972); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977); *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978); *Vance v. Bradley*, 440 U.S. 93 (1979).

[197] 37 CALIFORNIA LAW REVIEW 341 (1949).

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answering this question we must first dispose of two errors into which the Court has sometimes fallen.

First, "similarly situated" cannot mean simply "similar in the possession of the classifying trait." All members of any class are similarly situated in this respect and consequently, any classification whatsoever would be reasonable by this test. x x x

x x x x x x x x x

The second error in the interpretation of the meaning of similarly situated arises out of the notion that some classes are unnatural or artificial. That is, a classification is sometimes held to be unreasonable if it includes individuals who do not belong to the same "natural" class. We call this an error without pausing to fight the ancient controversy about the natural status of classes. All legislative classifications are artificial in the sense that they are artifacts, no matter what the defining traits may be. And they are all real enough for the purposes of law, whether they be the class of American citizens of Japanese ancestry, or the class of makers of margarine, or the class of stockyards receiving more than one hundred head of cattle per day, or the class of feeble-minded confined to institutions.

The issue is not whether, in defining a class, the legislature has carved the universe at a natural joint. If we want to know if such classifications are reasonable, it is fruitless to consider whether or not they correspond to some "natural" grouping or separate those who naturally belong together.

But if we avoid these two errors, where are we to look for the test of similarity of situation which determines the reasonableness of a classification? **The inescapable answer is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law.**[198] (Emphasis and italics supplied; italics in the original)

Moreover, Tussman and tenBroek go on to describe the task of the courts in evaluating the reasonableness of a legislative classification:

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[198] *Id.* at 344-346.

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Since it is impossible to judge the reasonableness of a classification without relating it to the purpose of the law, the first phase of the judicial task is the identification of the law's purpose. x x x

x x x x x x x x x

It is thus evident that the attempt to identify the purpose of a law — an attempt made mandatory by the equal protection requirement — involves the Court in the thornier aspects of judicial review. At best, the Court must uncritically and often unrealistically accept a legislative avowal at its face value. At worst, it must challenge legislative integrity and push beyond the express statement into unconfined realms of inference. Having accepted or discovered the elusive "purpose" the Court must then, under the discriminatory legislation doctrine, make a judgment as to the purity of legislative motive and, under substantive equal protection, determine the legitimacy of the end. Only after the purpose of the law has thus been discovered and subjected to this scrutiny can the Court proceed with the classification problem.

x x x Except when the class in the law is itself defined by the mischief [to be eliminated], *the assertion that any particular relation holds between the [classifying trait and the purpose] is an empirical statement.* The mere assertion that a particular relation exists does not establish the truth of the assertion. A legislature may assert that all "three-time felons" are "hereditary criminals" and that all "hereditary criminals" are "three-time felons." But whether this is the case is *a question of fact, not fiat.*

Consequently, the Court, in determining the actual relation between the classes [*i.e.* the classifying trait and the purpose of the law] *is engaged in fact-finding or in criticism of legislative fact finding.* Thus the Court is confronted with a number of alternative formulations of the question: 1) what is the legislative belief about the relation between the classes? and, 2) is this belief reasonable? or simply, 3) what relation exists between the two classes?[199]

With the foregoing in mind, the relevant question then (as regards petitioner's second line of argument) is whether in fact petitioner's members and the other GFI employees are so similarly situated as to members of a single class for purposes of compensation and position classification.

[199] *Id.* at 366.

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There is no Basis for the Classification of GFI Employees as a Discrete Class, entitled to "Special Treatment" with respect to Compensation Classification

Without identifying the legislative purpose for exemption from the coverage of the Compensation Classification System mandated by the Salary Standardization Law, the main opinion concludes that the *classifying trait* among those exempted from the coverage is *their status as GFI employees.* On this basis, it would grant the instant petition upon the assumption that "there exist no substantial distinctions so as to differentiate the BSP rank and file from the other rank and file of the [other] GFIs."

The foregoing tacitly rests on the assumptions that, *with respect to their compensation, position classification and qualifications standards,* (1) the rank-and-file employees of the BSP together with the rank-and-file employees of the LBP, SSS, GSIS and DBP belong to a single class; and (2) there are no reasonable distinctions between the rank-and-file employees of the BSP and the exempted employees of the other GOCCs/GFIs.

However, these assumptions are unfounded, and the assertion that "GFIs have long been recognized as one distinct class, separate from other governmental entities" is demonstrably false.

As previously discussed, Section 2 of P.D. 985[200] cited in support of the foregoing proposition has been expressly repealed by Section 16 of Salary Standardization Law.

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[200] SECTION 2. Declaration of Policy. — It is hereby declared to be the policy of the national government to provide equal pay for substantiallyequal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in private industry for comparable work. For this purpose, there is hereby established a system of compensation standardization and position classification in the national government for all departments, bureaus, agencies, and offices including government-owned or controlled corporations and financial institutions: *Provided, That notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporation and financial institutions for their employees to be supported fully from their corporate funds and for such technical positions as may be approved by the President in critical government agencies.* (Italics supplied)

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Sec. 16. Repeal of Special Salary Laws and Regulations. — *All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System,* or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, *including the proviso under Section 2,* and Section 16 *of Presidential Decree No. 985 are hereby repealed.* (Italics supplied)

Moreover, neither the text nor the legislative record of the Salary Standardization Law manifests the intent to provide "favored treatment" for GOCCs and GFIs. Thus, Section 3 (b), erroneously cited by the main opinion, provides for the general principle that compensation *for all government personnel, whether employed in a GOCC/GFI or not,* should generally be comparable with that in the private sector, to wit:

SECTION 3. General Provisions. — The following principles shall govern the Compensation and Position Classification System of the Government:

(a) All government personnel shall be paid just and equitable wages; and while pay distinctions must necessarily exist in keeping with work distinctions, the ratio of compensation for those occupying higher ranks to those at lower ranks should be maintained at equitable levels, giving due consideration to higher percentage of increases to lower level positions and lower percentage increases to higher level positions;

(b) *Basic compensation for* **all personnel in the government and government-owned or controlled corporations and financial institutions** *shall generally be comparable with those in the private sector doing comparable work, and must be in accordance with prevailing laws on minimum wages;*

(c) The total compensation provided for government personnel must be maintained at a reasonable level in proportion to the national budget;

(d) A review of government compensation rates, taking into account possible erosion in purchasing power due to inflation and other factors, shall be conducted periodically. (Emphasis and italics supplied)

Indeed, Section 4 of the Salary Standardization Law expressly provides the general rule that GFIs, like other GOCCs and all other members of the civil service, are within the coverage of the law:

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SECTION 4. Coverage. — *The Compensation and Position Classification System herein provided shall apply to all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government,* **including government-owned or controlled corporations and government financial institutions.**

The term "government" refers to the Executive, the Legislative and the Judicial Branches and the Constitutional Commissions and shall include all, but shall not be limited to, departments, bureaus, offices, boards, commissions, courts, tribunals, councils, authorities, administrations, centers, institutes, state colleges and universities, local government units, and the armed forces. *The term "government-owned or controlled corporations and financial institutions" shall include all corporations and financial institutions owned or controlled by the National Government, whether such corporations and financial institutions perform governmental or proprietary functions.* (Emphasis and italics supplied)

Furthermore, a reading of the deliberations on what eventually became the Salary Standardization Law leaves no doubt that one of its goals was to provide for a common compensation system for all so that the stark disparities in pay between employees of the GOCCs and GFIs and other government employees would be minimized if not eliminated, as the following excerpt plainly shows:

Senator Guingona. Mrs. President, the PNB and DBP transferred nonperforming assets and liabilities to the National Government in the sum of over ₱120 billion in 1986. They are reportedly having profits of, I think over ₱1 billion. They have not declared dividends so that the National Government is the one that absorbed the indebtedness. The financial institutions are enjoying clean books and increased profits. Yet, employees of these institutions are receiving far more, whereas, the employees of the National Government which absorbed the nonperforming assets are receiving less. And the Central Bank is dumping into the National Government liabilities of more than ₱5 billion. . . .

Senator Romulo. Eventually ₱34 billion.

Senator Guingona. And, yet, the janitor in the Central Bank is receiving a higher rate of salary than the clerk or even the minor executives in some National Government agencies and bureaus. This

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does not seem just and violates the equal pay for equal work principle which the distinguished Sponsor has nobly established in the policy statement.[201]

Thus, during the Bicameral Conference Committee deliberations, the sentiment was that exemptions from the general Compensation Classification System applicable to all government employees would be limited only to *key positions* in order not to lose these personnel to the private sector. A provision was moreover inserted empowering the President to, *in truly exceptional cases,* approve higher compensation, exceeding Salary Grade 30, to the chairman, president, general manger, and the board of directors of government-owned or controlled corporations and financial institutions:[202]

SEC. CARAGUE. Actually, we are requesting that government corporations that are performing proprietary functions and therefore competing with the private sector should evolve a salary structure **in respect to key positions.** There are some positions in banking, for example, that are not present in the ordinary government offices.

I can understand for example, if the government corporation, like NIA, it is performing a governmental function. I believe it is not strictly a proprietary function — NIA and NAWASA. But there are government corporations that are engaged in very obviously proprietary type of function. For example, transportation companies of the government; banking institution; insurance functions. *I feel that they have to be competitive with the private sector, not with respect to all positions. Like, for example, janitor or messenger, because there is no danger of losing this out to the private sector; you can always get this. But there are certain key position — even the key men of the government corporations performing proprietary functions, sometimes they got — the market analyst, commodities analyst and so on — they have certain functions that are not normal in government, and it is very difficult to get this specialists.*

So, I was wondering if we could provide a provision that government corporations engaged in proprietary activities, that positions that are peculiar to them should be allowed a different compensation structure.

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[201] IV Records of the Senate 1526 (June 8, 1989).

[202] Republic Act No. 6758, Section 9.

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THE CHAIRMAN (Rep. Andaya). But that can be solved, when implemented, you just assign him a higher rate. [203] (Italics supplied)

x x x *x x x* *x x x*

THE CHAIRMAN (Sen. Rasul). Mr. Chairman, I am just wondering if perhaps we should also include "financial institutions," not just "government-owned or controlled corporation."

SEC. CARAGUE. I think it is broad enough, Madam Senator.

THE CHAIRMAN (Sen. Rasul). Broad enough?

SEC. CARAGUE. Yes.

THE CHAIRMAN (Rep. Andaya). It covers everybody. Everybody is covered that way.

REP. LAGUDA. Mr. Chairman, if we go back to the amendment of Senator Rasul, I think what she has put there is that it is the President's discretion, because in the House version, it is an across-the-board-thing. There is no mention of the President's discretion here. So maybe we should accept the amendment of Senator Rasul that "it is the President who shall decide." In other words, when she said "the President may," it is the discretion of the President rather than automatic.

SEC. CARAGUE. Yes. Like for example, there are, I think, quite a number of Vice Presidents that really are also important because it is very difficult if the President will have a salary that is so way, way above the Vice Presidents. And usually the Vice Presidents are the ones that support, that provided teamwork for the President.

Sometimes there are certain **key people**, like money market specialists that are difficult to keep because they easily transfer to another company.

x x x *x x x* *x x x*

SEC. CARAGUE. In the end, Your Honor, it may be more expensive to limit the salaries of these kind of people because if you don't get good people, the viability of the corporation, the profitability goes down. So you actually, in the end, lose more. You don't see it because it is just loss of revenue, in lack of profitability, but actually it costs you more. And that is the problem of this kind of. . . .[204] (Emphasis and italics supplied)

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[203] Bicameral Conference Committee Deliberations 55-56 (August 4, 1989).

[204] *Id.* at 60-61.

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What is more, the exemption of the personnel of the Securities and Exchange Commission (SEC) from the coverage of the Compensation Classification System, as pointed out in the main opinion,[205] only underscores the error in maintaining employment in a GFI as the defining trait of employees exempted from said System.

In actual fact, the employees of a number of *GFIs* remain *within* the coverage of the Compensation Classification System,[206] while employees of several other *GOCCs*[207] and *government agencies*[208] have been *exempted* from the same. Hence, GFI employment, as advocated by the main opinion, cannot be reasonably considered to be the basis for exemption for the Compensation Classification System of the Salary Standardization Law.

Curiously, how could the exemption of the SEC personnel "add insult to petitioner's injury" when, going by what the main opinion holds to be the defining characteristic of the class to which petitioner's members belong — that is, employment in a *GFI*, the two groups of employees would obviously not be comparable?

Mere Employment in a GOCC or GFI is not Determinative of Exemption from the Salary Standardization Law

More importantly, an examination of the legislative proceedings leading up to the amendment of the charters of the GOCCs

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[205] Together with the exemptions of the employees of the Small Business Guarantee and Finance Corporation (SBGFC), the Home Guaranty Corporation (HGC) and the Philippine Deposit Insurance Corporation (PDIC).

[206] Among them the employees of the National Development Company (NDC), National Home Mortgage Finance Corporation (NHMFC), Philippine Crop Insurance Corporation (PCIC), Philippine Health Insurance Corporation (PHILHEALTH), and the Quedan Rural Credit and Guarantee Corporation (QUEDANCOR).

[207] Including the National Power Corporation (NAPOCOR), National Transmission Corporation (TRANSCO), Philippine Postal Corporation (PHILPOST), and the Power Sector Assets and Liabilities Management Corporation (PSALM).

[208] Such as the Energy Regulatory Commission (ERC).

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and GFIs exempted from the coverage of the Compensation Classification System discloses that *mere employment in a GFI* was *not* the decisive characteristic which prompted the legislature to provide for such exemption.

Thus, Republic Act No. 3844 (R.A. No. 3844) otherwise known as the "Agrarian Reform Code" created the Land Bank which is mandated to be the financing arm of the Agrarian Reform Program of the government. More specifically, the Land Bank is tasked to be the primary government agency in the mobilization and the provision of credit to the small farmers and fisher folk sector in their various economic activities such as production, processing, storage, transport and the marketing of farm produce. Since its inception, the Land Bank has transformed into a universal bank, seeking to continually fortify the agricultural sector by delivering countryside credit and support services.

In order to continue performing its mandate of providing non-traditional banking services and developmental assistance to farmers and fishermen, Congress saw the need to strengthen the bank by introducing amendments to R.A. No. 3844. Republic Act No. 7907 (R.A. No. 7907) amended R.A. No. 3844 by strengthening the Land Bank not only for the purpose of implementing agrarian reform, but also to make it more competitive with foreign banks.[209]

One of the salient points of R.A. No. 7907 is the exemption of all of the Land Bank's personnel from the Salary Standardization Law, authorizing at the same time its board of directors to provide compensation, position classification system and qualification standards.

The discussion of the House of Representatives' Committee on Banks and Financial Intermediaries reveals the surrounding circumstances then prevailing, which prompted Congress to exempt the Land Bank from the Salary Standardization Law. The Committee likewise recognized the role of the rank and

[209] III Records of the Senate, 9th Congress, 806 (January 16, 1995).

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file employees in fulfilling its unique task of providing credit to support the agricultural sector.

MR. GOLEZ. Madam Speaker, the points of the distinguished sponsor are very well taken. But what I would like to emphasize is that the Land Bank as already stated, is not just almost unique, it is unique. It cannot be likened to a conventional commercial bank even in the case of the Philippine National Bank where its employees can very easily move from one bank to another. An employee, an average employee in the Philippine National Bank can easily transfer to a private commercial bank and *vice-versa. So in fact we are witnessing almost on a daily basis these periodic transfers, piracy of executives, employees from one commercial bank to another. However, in the case of the Land Bank precisely because of its very unique operations, the very life of the viability of the Land Bank of the Philippines depends decisively and critically on its core group, which in this particular case would be the rank and file, the technical employee below the level of managers. They are not substitutable at all. They are very critical.* And as such, the position of this Representation, Madam Speaker, Your Honor, is that that critical role gives them the importance as well as the inherent right to be represented in the highest policy making body of the bank.[210] (Italics supplied)

x x x x x x x x x

MR. APOSTOL. Now, may I know why the employees of Land Bank should be exempted from the compensation and position classification?

MR. FUENTEBELLA. Are we now in Section 87, your Honor?

MR. APOSTOL. Yes.

MR. FUENTEBELLA. The present compensation package of the employees of the bank are no longer competitive with the banking industry. In fact, the turnover of bank personnel is concerned, I think they had a turnover of more than 127 rank and file and more than 43 or 50 officer level. For the reason that the present compensation through bank officers and personnel are no longer competitive with the other banks despite the fact that there is a provision in our Constitution and this is sanctioned by existing

[210] Deliberations of the House of Representatives (March 2, 1994).

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provisions of the Civil Service, that we may enact laws to make the position classification of certain sectors in the government comparable with the same industry. That is the reason why. x x x

MR. APOSTOL. Is it not that the compensation of officials and employees of the Land Bank must be similar or comparable to the salaries and compensation of government banks or financial institutions?

MR. FUENTEBELLA. Yes. In fact, the Philippine National Bank has a better financial compensation package compared to the Land Bank.

MR. APOSTOL. Yes, it should and it must because PNB is already privatized, Land Bank is not yet.

MR. FUENTEBELLA. Not yet, your Honor.

MR. APOSTOL. If the compensation package of the employees of Land Bank should be similar to PNB, then why not privatize so that Land Bank will be exempted from this. . . .

MR. FUENTEBELLA. Well, as I said, your Honor, in due time, we can go into that aspect of privatization. We are not closing our eyes to that possibility. But for the moment that the bank is still tasked with numerous problems, particularly on agrarian reform, and for as long as the bank has not been able to perform its major task in helping the government provide the necessary mechanisms to solve and address the problems of agrarian reform, then we cannot talk about privatization yet. Because the function of the bank is not purely for profit orientation, your Honor. Whatever profits are generated under the commercial banking transactions are channeled to the agrarian sector, which is a losing proposition actually.[211] (Italics supplied)

Like the Land Bank, the Development Bank of the Philippines (DBP), the country's premier development bank, was also exempt from the Salary Standardization Law. Republic Act No. 8523 (RA 8523) amended Executive Order No. 81 otherwise known as the "1986 Revised Charter of the Development Bank of the Philippines" to enable DBP to effectively contribute to the nation's attainment of its socio-economic objectives and

[211] Deliberations of the House of Representatives (March 16, 1994).

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fill the gaps left by the private sector which might be unwilling or unprepared to take on critical projects and programs.

The bottom line of this bill which seeks to amend the existing charter of the Development Bank of the Philippines is to enable the DBP as the country's premier development bank to effectively contribute to the nation's attainment of its socio-economic objectives, such as the alleviation of poverty, creation of employment opportunities, and provision of basic needs such as food, shelter, health and education.

Given the present state of financial intermediation and capital markets in the Philippines, economic activities and projects still remain which private financial institutions may not be willing to finance because of the risks involves. And even if some of these private institutions are willing to do so, they may not have the capability to assist such projects and activities. Development lending is much more than simply providing medium to long-term funds to economically viable projects.

The proposed DBP charter amendment will help remodel DBP in the financial community as a predominantly development bank that works closely with individuals, institutions and associations which can provide resources and other types of assistance to projects with clearly-defined development impact.[212]

In order to achieve DBP's vision as the country's premier development bank in a rapidly growing economic environment, the legislature sought to (1) increase the authorized capital of DBP from ₱5 billion to ₱10 billion; and (2) restructure DBP's organization into one which is market-responsive, product focused, horizontally aligned, and with a lean, highly motivated work force by removing the DBP from the coverage of the Salary Standardization Law. The DBP's exemption from the Salary Standardization Law was justified by the fact that it is an institution engaged in development activities which should be given the same opportunities as the private sector to compete.[213]

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[212] Deliberations of the House of Representatives (January 20, 1998).

[213] III Records of the Senate, 10th Congress, 627 (December 16, 1997).

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The exemption from the Salary Standardization Law does not only involve banks but government entities that manage pension funds such as the SSS and the GSIS.

Republic Act No. 1161 (R.A. No. 1161) established the SSS pursuant to a state policy of providing meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies, resulting in loss of income or financial burden. Republic Act No. 8282 amended R.A. No. 1161 by providing for better benefit packages, expansion of coverage, flexibility in investments, stiffer penalties for violators of the law, condonation of penalties of delinquent employers and the establishment of a voluntary provident fund for members.

The fund that the SSS administers comes from the compulsory remittances of the employer on behalf of his employees. The House of Representatives noted that the fund in 1996 amounted 5.5 billion dollars, the sheer enormity of which necessitated that it be exempt from the Salary Standardization Law in order for it to attract quality personnel to ensure that the funds will not be mismanaged, abused or dissipated due to the negligence of its personnel. Moreover, the SSS, like the Land Bank and the DBP, was facing a massive exodus of its personnel who were migrating to greener pastures.

MR. VALENCIA. x x x Now, the other law refers to the law on salary standardization. *Again, we are in a situation where we are competing for personnel with the private sector, especially the financial institutions. We compete with banks, we compete with insurance companies for people. So what happens invariably is we lost our people after we have trained them, after they have proven themselves with a track record, with the very low pay that is being given to our people. We believe that with the magnitude of the accountability that we have, (We are accountable for 5.5 billion dollars, some 132 million pesos) ah, we think that we deserve the quality of people to ensure that these funds . . . and the pay out by the billions of pesos in terms of benefits and we collect by the billions of pesos, we believe that the magnitude of money and accountability we have is even higher than that of the local financial institutions.* And the pay, for example, of the Administrator is similar to a small

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branch in a bank. So, I don't think our pay will be very competitive but certainly it's too low considering the accountability that is on the shoulder of the employees. If we end up with poor quality of personnel, what would happen is these funds could be mismanaged, abused or just out of pure negligence could be dissipated.

HON. PADILLA. Mr. Chairman.

THE CHAIRMAN. Congressman Padilla.

HON. PADILLA. With the Standardization Law, how can we resolve that problem just mentioned by the Administrator?

MR. VALENCIA. What will happen, Sir, is that we will ask outside assistance to work out a salary structure that would be modest but at the same time at least make it more difficult (*sic*) that will attract new people, new blood to the System — quality personnel, and will also help make it a bit more difficult for private sector to pirate from the institution.[214] (Italics supplied)

As the SSS exercises the same functions as the GSIS — the handling of sensitive and important funds — the GSIS' exemption from the Salary Standardization Law was easily justifiable, *viz*:

HON. TUAZON. x x x Now, the GSIS and the SSS, they are more or less performing the same functions. So I am asking whether in the proposed amendments on the charter of the GSIS they also have similar proposal, because if I still recall, there was a time when the GSIS employees were the envy — not the SSS because the SSS has never been the envy of government employees because they really never have been paid very good salaries. — There was a time when the GSIS was the envy of other government employees because they had fat bonuses, they had quarterly bonus, they had mid-year bonus, they had 3 months bonus, Christmas bonus and their salaries were very much higher than their counterparts in the government and they are saying, "By golly, the GSIS, they are only using the funds of the government employees and yet they are receiving fat salaries from the contributions of the government employees. That was one of the complaints I was hearing at that time — I was still First Year College —, so the next time I realized, all these fat salaries of the

[214] Deliberations of the House of Representatives (August 7, 1996).

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Central Bank . . . Central Bank was also the envy of the other government employees, PNB, but SSS has never been noted to be paying fat salaries that will be sufficient to attract well qualified employees from the other sectors. *So, the reason for my question is that, if we grant SSS, we have also to grant GSIS on the rationale that they are both performing the same functions.*[215] (Italics supplied

In sum, the basis for the exemption of certain employees of GOCCs or GFIs from the coverage of the Salary Standardization Law rests not on the mere fact that they are employees of GOCCs or GFIs, but on a *policy determination by the legislature* that such exemption is *needed* to fulfill the mandate of the institution concerned considering, among others, that: (1) the GOCC or GFI is essentially proprietary in character; (2) the GOCC or GFI is in direct competition with their counterparts in the private sector, not only in terms of the provision of goods or services, but also in terms of hiring and retaining competent personnel; and (3) the GOCC or GFI are or were experiencing difficulties filling up plantilla positions with competent personnel and/or retaining these personnel. The need for and the scope of exemption necessarily varies with the particular circumstances of each institution, and the corresponding variance in the benefits received by the employees is merely incidental.

There are real differences between the Rank & File of the BSP and the Exempted Rank & File Employees of the other GOCCs/GFIs

There can be no doubt that the employees of the BSP share a common attribute with the employees of the LBP, SSS, GSIS and DBP in that all are employees of GOCCs performing fiduciary functions. It may also be reasonable to assume that BSP employees with SG 19 and below perform functions analogous to those carried out by employees of the other GOCCs with the corresponding salary grades.

Nonetheless, these similarities alone are not sufficient to support the conclusion that rank-and-file employees of the BSP

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[215] Deliberations of the House of Representatives (August 7, 1996).

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may be lumped together with similar employees of the other GOCCs for purposes of compensation, position classification and qualifications standards. The fact that certain persons have some attributes in common does not automatically make them members of the same class with respect to a legislative classification. Thus, in *Johnson, et al. v. Robison, et al.*,[216] involving the alleged violation of a conscientious objector's right to equal protection, the U.S. Supreme Court had occasion to observe:

> Of course, merely labeling the class of beneficiaries under the Act as those having served on active duty in the Armed Services cannot rationalize a statutory discrimination against conscientious objectors who have performed alternative civilian service, if, in fact, the lives of the latter were equally disrupted and equally in need of readjustment. The District Court found that military veterans and alternative service performers share the characteristic during their respective service careers of "inability to pursue the educational and economic objectives that persons not subject to the draft law could pursue." But this finding of similarity ignores that *a common characteristic shared by beneficiaries and nonbeneficiaries alike, is not sufficient to invalidate a statute* **when other characteristics peculiar to only one group rationally explain the statute's different treatment of the two groups.** Congress expressly recognized that significant differences exist between military service veterans and alternative service performers, particularly in respect of the Act's purpose to provide benefits to assist in readjusting to civilian life. These differences "afford the basis for a different treatment within a constitutional framework."[217] (Italics and italics supplied; citations omitted)

Indeed, from the foregoing examination of the legislative records of the amended charters of the exempt GOCCs and GFIs, the following real and material differences are readily manifest:

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[216] 415 U.S. 361 (1974).

[217] *Id.* at 378-379.

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First, unlike the LBP, DBP, SSS and GSIS, the BSP, in particular the Central Monetary Authority,[218] performs a primarily government function, not a proprietary or business function. In this respect it is more similar to the other government agencies involved in the management of the economy, such as the National Economic Development Authority (NEDA), than a commercial bank.

Second, while the importance of its functions is undoubted, the BSP, unlike the LBP, DBP, SSS and GSIS, is not subject to cut throat competition or the pressures of either the financial or job markets.

Third, there is no indication in the record that the BSP, unlike the LBP, DBP, SSS and GSIS, is experiencing difficulty in filling up or maintaining competent personnel in the positions with SG 19 and below.

The Questioned Proviso Cannot be Considered Oppressive or Discriminatory in Its Implementation

Given the factual basis for the classification between exempt and non-exempt employees (*i.e.* real distinctions as to the proprietary or governmental character of the GOCC/GFI, competition with the private sector, and difficulty in attracting and maintaining competent personnel) and the reasonable relationship of this classification to the attainment of the objectives of the laws involved, the questioned *proviso* cannot be considered oppressive or discriminatory in its implementation.

Significantly, neither the petitioner nor the main opinion demonstrates what injuries petitioner's members have sustained

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[218] Section 1 of the New Central Bank Act provides:

Sec. 1. The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a government-owned corporation, shall enjoy fiscal and administrative autonomy.

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as a result of the *proviso* in Section 15 (c) of The New Central Bank Act, whether or not the same is read together with subsequent legislative enactments. This is unsurprising for how could a provision which places the BSP rank and file at par with all other government employees in terms of compensation and position classification be considered oppressive or discriminatory?

Moreover, Congressional records show that House Bill 123 has been filed with the present Thirteenth Congress[219] seeking to amend The New Central Bank Act by, among other things, exempting all positions in the BSP from the Salary Standardization Law. Thus, it cannot be said that Congress has closed its mind to all possibility of amending the New Central Bank Act to provide for the exemption of the BSP rank and file from the Compensation Classification System of the Salary Standardization Law.

In fine, judged under the Rational Basis Test, the classification in Section 15 (c) of the New Central Bank Act complies with the requirements of the equal protection clause, even taken together with the subsequent amendments of the charters of the other GOCCs and GFIs.

Petitioner's Members' Remedy is with Congress and Not With The Courts

While the main opinion acknowledges the propriety of judicial restraint "under most circumstances" when deciding questions of constitutionality, in recognition of the "broad discretion given to Congress in exercising its legislative power," it nevertheless advocates active intervention with respect to the exemption of the BSP rank and file employees from the Compensation Classification System of the Salary Standardization Law.

Considering, however, that the record fails to show (1) that the statutory provision in question affects either a fundamental right

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[219] House Bill No. 1833 containing similar provisions was filed with the Twelfth Congress; House Bill No. 9427 containing similar provisions was filed with the Eleventh Congress.

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or a suspect class, and, more importantly, (2) that the classification contained therein was completely bereft of any possible rational and real basis, it would appear that judicial restraint is not merely preferred but is in fact mandatory, lest this Court stray from its function of adjudication and trespass into the realm of legislation.

To be sure, inasmuch as exemption from the Salary Standardization Law requires a factually grounded policy determination by the legislature that such exemption is necessary and desirable for a government agency or GOCC to accomplish its purpose, the appropriate remedy of petitioner is with Congress and not with the courts. As the branch of government entrusted with the plenary power to make and amend laws,[220] it is well within the powers of Congress to grant exceptions to, or to amend where necessary, the Salary Standardization Law, where the public good so requires. At the same time, in line with its duty to determine the proper allocation of powers between the several departments,[221] this Court is naturally hesitant to intrude too readily into the domain of another co-equal branch of government where the absence of reason and the vice of arbitrariness are not clearly and unmistakably established.

The contention in the main opinion that herein petitioner represents the "politically powerless," and therefore should not be compelled to seek a political solution, rings hollow.

First, as pointed out by the *U.S. Supreme Court in City of Cleburne Texas v. Cleburne Living Center*,[222] "[a]ny minority can be said to be powerless to assert direct control over the legislature, but if that were a criterion for higher level scrutiny by the courts, much economic and social legislation would now be suspect."[223]

Second, there is nothing of record which would explain why the rank and file employees of the BSP in particular should be considered more "powerless" than the rank and file employees of

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[220] CONST., Art. VI, Sec. 1.

[221] *Angara v. Electoral Commission*, 63 Phil. 139, 157 (1936).

[222] *Supra*.

[223] *Id.* at 444.

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the other GOCCs and GFIs, particularly those to whom Congress has granted exemption.

Third, as already mentioned, House Bill 123, providing for, among others, the exemption of all BSP employees from the coverage of the Compensation Classification System of the Salary Standardization Law is already pending in Congress. Thus, it would seem that the petitioner and its members are not without any support from within that legislative body.

Moreover, in view of the tight fiscal and budgetary situation confronting the national government, both the executive and legislative branches of the government are actively reassessing the statutes which have exempted certain GOCCs and GFIs from the Salary Standardization Law, as reported in a number of newspapers of general circulation.[224]

Thus, in line with the austerity program set under Administrative Order 130 issued by the President on August 31, 2004, the Department of Budget and Management is reviewing the pay packages of 1,126 GOCCs and their subsidiaries,[225] particularly

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[224] *Vide: "Pay Cuts for Gov't Fat Cats: GSIS, SSS heads vow to back austerity plan," Philippine Daily Inquirer* at A1, September 17, 2004; *"Gov't Fat Cats Under Fire, Boncodin: Perks, pay of execs not illegal," Philippine Daily Inquirer* at A1, September 16, 2004; *"GOCC Execs Get ₱5M to ₱9M in pay, Boncodin tells Senators," Philippine Daily Inquirer at* A1, September 15, 2004; *"Senate 'WMD' to hit GOCCs," The Philippines Star,* September 17, 2004; *"Gov't Execs Get Top, P9.85M a year for ex-PCSO chief," The Manila Times,* September 15, 2004; *"Gov't Execs Told To Cut Salaries, GOCCs & GFIs ordered to help in austerity campaign," The Manila Bulletin, http://www.mb.com.ph/MAIN20040911118212.html; "Clamor for GOCC pay cuts spreads to the House," The Manila Times,* September 9, 2004; *"GOCCs Carry bulk of R5.4-T National Debt; The Manila Bulletin, http://www.mb.com.ph/MTNN20040908179 55.html; "State Firms Fuel Crisis, Senators blame GOCC officials," The Manila Times,* September 8, 2004.

[225] *"GMA: GOCCs wipped into line, Retain your fat paychecks and get fired, GOCC execs warned,"* Manila Bulletin at 1, 6, September 17, 2004.

[226] *"Poor provinces protest decrease in pork barrel, GOCC pay cut plan" Manila Bulletin at A1, A4,* September 16, 2004.

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those which have been exempted from the Compensation Classification System of the Salary Standardization Law,[226] to bring their salaries at par with national agencies.[227] Additionally, the Department of Budget has moved for the removal of all the exemptions of the GOCCs from the Salary Standardization law and the slashing of salaries of some GOCC officials to help ease the government's financial problems.[228]

There have also been suggestions to shift to a performance-based compensation structure,[229] or to amend the charters of the GOCCs exempted from the Salary Standardization Law to allow the President to set limits on the compensation[230] received by their personnel. Budget Secretary Emilia Boncodin has also disclosed that the President had mandated "a cut in pay of members of the board and officers of GOCCs that are not competing with the private sector," adding that those who "d[o] not compete with the private sector would have to observe the Salary Standardization Law."[231]

Together with these developments, House Majority Leader Prospero Nograles has called on Congress to step in and institute amendments to existing charters of GFI's and GOCCs[232] which have been exempted from the Compensation Classification System of the Salary Standardization Law; and, thereafter, pass

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[227] *"GOCC execs agree to pay cut,"* Manila Times, September 17, 2004 (http://manilatimes.net/national/2004/sept/17/yehey/top_stories/20040927top3.html).

[228] *"Budget dept eyes cut in pay of GOCC officials,"* September 11, 2004(http://money.inq7.net/topstories/viewtopstories.php?yyy=2004&mon=09&dd=11&file=3).

[229] *"GOCC execs agree to pay cut,"* Manila Times, September 17, 2004 (*http://manilatimes*.net/national/2004/Sept/17/yehey/top_stories/20040927top3.html).

[230] *"Gov't fat cats under fire," Philippine Daily Inquirer* at A1. September 16, 2004.

[231] *"Pay cuts for gov't fat cats, GSIS, SEC heads vow to back austerity plan," Philippine Daily Inquirer* at A1, September 17, 2004.

[232] *"GMA: GOCC wiped into line, Retain your fat paychecks and get fired, GOCC execs warned," Manila Bulletin* at 1, 6, September 17, 2004.

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a law standardizing the salaries of GOCC and GFI employees and executives.[233] Other members of the House of Representatives, particularly the party-list lawmakers, have suggested a cut on the salary schemes of GOCC executives, with the funds saved to be channeled to a "special fund" for giving lowly paid government employees a salary increase.[234]

Whether any of the foregoing measures will actually be implemented by the Congress still remains to be seen. However, what is important is that Congress is actively reviewing the policies concerning GOCCs and GFIs with respect to the Salary Standardization Law.

Hence, for this Court to intervene now, when no intervention is called for, would be to prematurely curtail the public debate on the issue of compensation of the employees of the GOCCs and GFIs, and effectively substitute this Court's policy judgments for those of the legislature, with whom the "power of the purse" is constitutionally lodged. Such would not only constitute an improper exercise of the Court's power of judicial review, but may also effectively stunt the growth and maturity of the nation as a political body as well.

In this regard, it may be worthwhile to reflect upon the words of Mr. Chief Justice Berger of the American Court in his dissenting opinion in *Plyler v. Doe*,[235] to wit:

The Court makes no attempt to disguise that it is acting to make up for Congress' lack of "effective leadership" in dealing with the serious national problems caused by the influx of uncountable millions of illegal aliens across our borders. The failure of enforcement of the immigration laws over more than a decade and the inherent difficulty and expense of sealing our vast borders have combined to create a grave socioeconomic dilemma. It is a dilemma that has

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[233] *"GOCC execs agree to pay cut," Manila Times*, September 17, 2004 (*http://manilatimes*.net/national/2004/Sept/17/yehey/top_stories/20040917top3.html).

[234] *Gov't fat cats under fire, Boncodin: Perks, pay of execs not illegal," Philippine Daily Inquirer* at A1, September 16, 2004.

[235] *Supra*.

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not yet been fully assessed, let alone addressed. *However, it is not the function of the Judiciary to provide "effective leadership" simply because the political branches of government fail to do so.*

The Court's holding today manifests the justly criticized judicial tendency to attempt speedy and wholesale formulation of "remedies" for the failures — or simply the laggard pace — of the political processes of our system of government. **The Court employs, and in my view abuses, the Fourteenth Amendment in an effort to become an omnipotent and omniscient problem solver.** *That the motives for doing so are noble and compassionate does not alter the fact that the Court distorts our constitutional function to make amends for the defaults of others.*

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The Constitution does not provide a cure for every social ill, nor does it vest judges with a mandate to try to remedy every social problem. **Moreover, when this Court rushes to remedy what it perceives to be the failing of the political processes, it deprives those processes of an opportunity to function.** *When the political institutions are not forced to exercise constitutionally allocated powers and responsibilities, those powers, like muscles not used, tend to atrophy. Today's cases, I regret to say, present yet another example of unwarranted judicial action which in the long run tends to contribute to the weakening of our political processes.*[236] (Italics supplied; citations and footnotes omitted)

The Social Justice Provisions of the Constitution do not Justify the Grant of the Instant Petition

May this Court depart from established rules in equal protection analysis to grant a group of government employees, the Bangko Sentral ng Pilipinas' rank and file, adjustments in their salaries and wages? Can the exemption from a law mandating the salary standardization of all government employees be justified based on the economic and financial needs of the employees, and on the assertion that those who have less in life should have more in law? Can the social justice provisions in the Constitution override the strong presumption of constitutionality of the law

[236] *Id.* at 242-253.

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and place the burden, under the test of "strict scrutiny," upon the government to demonstrate that its classification has been narrowly tailored to further compelling governmental interests?

Notwithstanding the lack of support from both local and foreign jurisprudence to justify the grant of the instant petition, the main opinion maintains that the policy of social justice and the special protection afforded to labor[237] require the use of equal protection as a tool of effective intervention, and the adoption of a less deferential attitude by this Court to legislative classification.[238]

The citation of the social justice provisions of the Constitution are *non sequitur*. As previously discussed, neither the petitioner nor the main opinion has clearly explained how a provision placing the rank and file of the BSP on equal footing with all other government employees in terms of compensation and position classification can be considered oppressive or discriminatory.

In this regard, the citation of *International School Alliance of Educators v. Quisumbing*[239] is doubly ironic. For to demonstrate the institutionalization of the principle of "equal pay for equal work" in our legal system, footnote 22 of the decision refers specifically to the Salary Standardization Law as embodying said principle:

> Indeed, the government employs this rule "equal pay for equal work" in fixing the compensation of government employees. Thus, Republic Act No. 6758 (An Act Prescribing a Revised Compensation and Position Classification System in Government and for Other Purposes) declares it "the policy of the State to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. See also the Preamble of Presidential Decree No. 985 (A Decree Revising the Position Classification and Compensation Systems in the National Government, and Integrating the same)[240]

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[237] Main Opinion at 57.

[238] *Id.* at 55.

[239] *Supra.*

[240] *Ibid.*

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At the same time, the General Provisions of the Salary Standardization Law clearly incorporate the spirit and intent of the social justice provisions cited in the main opinion, to wit:

SECTION 3. General Provisions. — The following principles shall govern the Compensation and Position Classification System of the Government:

(a) All government personnel shall be paid just and equitable wages; and while pay distinctions must necessarily exist in keeping with work distinctions, the ratio of compensation for those occupying higher ranks to those at lower ranks should be maintained at equitable levels, giving due consideration to higher percentage of increases to lower level positions and lower percentage increases to higher level positions;

(b) Basic compensation for all personnel in the government and government-owned or controlled corporations and financial institutions shall generally be comparable with those in the private sector doing comparable work, and must be in accordance with prevailing laws on minimum wages;

(c) The total compensation provided for government personnel must be maintained at a reasonable level in proportion to the national budget;

(d) A review of government compensation rates, taking into account possible erosion in purchasing power due to inflation and other factors, shall be conducted periodically.

How then are the aims of social justice served by removing the BSP rank and file personnel from the ambit of the Salary Standardization Law? In the alternative, what other public purpose would be served by ordering such an exemption? Surely to grant the rank and file of the BSP exemption solely for the reason that other GOCC or GFI employees have been exempted, without regard for the reasons which impelled the legislature to provide for those exemptions, would be to crystallize into our law what Justice Holmes sardonically described as "merely idealizing envy."[241]

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[241] Quoted in F.A. *HAYEK, THE CONSTITUTION OF LIBERTY* 85 (1960 Ed.).

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Similarly, the justification that petitioner and its members represent "the more impotent rank and file government employees who, unlike employees in the private sector, have no specific rights to organize as a collective bargaining unit and negotiate for better terms and conditions for employment, nor the power to hold a strike to protest unfair labor practices" is unconvincing. This Court's discussion of the differences between employment in the GOCCs/GFIs and the private sector, to my mind, is more insightful:

> The general rule in the past and up to the present is that "the terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law" (Section 11, the Industrial Peace Act, R.A. No. 875, as amended and Article 277, the Labor Code, P.D. No. 442, as amended). *Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers.* **The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law.** *Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining.* **In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements.**
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> *Personnel of government-owned or controlled corporations are now part of the civil service. It would not be fair to allow them to engage in concerted activities to wring higher salaries or fringe benefits from Government even as other civil service personnel such as the hundreds of thousands of public school teachers, soldiers, policemen, health personnel, and other government workers are denied the right to engage in similar activities.*

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To say that the words "all employers" in P.D. No. 851 includes the Government and all its agencies, instrumentalities, and government-owned or controlled corporations would also result in nightmarish budgetary problems.

For instance, the Supreme Court is trying its best to alleviate the financial difficulties of courts, judges, and court personnel in the entire country but it can do so only within the limits of budgetary appropriations. Public school teachers have been resorting to what was formerly unthinkable, to mass leaves and demonstrations, to get not a 13th-month pay but promised increases in basic salaries and small allowances for school uniforms. The budget of the Ministry of Education, Culture and Sports has to be supplemented every now and then for this purpose. The point is, salaries and fringe benefits of those embraced by the civil service are fixed by law. Any increases must come from law, from appropriations or savings under the law, and not from concerted activity.

The Government Corporate Counsel, Justice Manuel Lazaro, in his consolidated comment for respondents GSIS, MWSS, and PVTA gives the background of the amendment which includes every government-owned or controlled corporation in the embrace of the civil service:

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> "'Moreover, determination of employment conditions as well as supervision of the management of the public service is in the hands of legislative bodies. It is further emphasized that government agencies in the performance of their duties have a right to demand undivided allegiance from their workers and must always maintain a pronounced *esprit de corps* or firm discipline among their staff members. It would be highly incompatible with these requirements of the public service, if personnel took orders from union leaders or put solidarity with members of the working class above solidarity with the Government. This would be inimical to the public interest.
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> "Similarly, Delegate Leandro P. Garcia, expressing support for the inclusion of government-owned or controlled corporations in the Civil Service, argued:

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> *"'It is meretricious to contend that because Government-owned or controlled corporations yield profits, their employees are entitled to better wages and fringe benefits than employees of Government other than Government-owned and controlled corporations which are not making profits. There is no gainsaying the fact that the capital they use is the people's money.'* (see: Records of the 1971 Constitutional Convention).
>
> "Summarizing the deliberations of the 1971 Constitutional Convention on the inclusion of Government-owned or controlled corporations, Dean Joaquin G. Bernas, SJ., of the Ateneo de Manila University Professional School of Law, stated that *government-owned corporations came under attack as milking cows of a privileged few enjoying salaries far higher than their counterparts in the various branches of government, while the capital of these corporations belongs to the Government and government money is pumped into them whenever on the brink of disaster, and they should therefore come under the stric[t] surveillance of the Civil Service System.* (Bernas, *The 1973 Philippine Constitution, Notes and Cases,* 1974 ed., p. 524)."

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Section 6, Article XII-B of the Constitution gives added reasons why the government employees represented by the petitioners cannot expect treatment in matters of salaries different from that extended to all others government personnel. The provision states:

> "SEC. 6. The National Assembly shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations, taking into account the nature of the responsibilities pertaining to, and the qualifications required for the positions concerned."

It is the legislature or, in proper cases, the administrative heads of government and not the collective bargaining process nor the concessions wrung by labor unions from management that determine how much the workers in government-owned or controlled corporations may receive in terms of salaries, 13th month pay, and other conditions or terms of employment. There are government institutions which can afford to pay two weeks, three weeks, or even 13th-month salaries

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to their personnel from their budgetary appropriations. However, these payments must be pursuant to law or regulation.[242] (Italics supplied)

Certainly, social justice is more than picking and choosing lines from Philippine and foreign instruments, statutes and jurisprudence, like ripe cherries, in an effort to justify preferential treatment of a favored group. In the immortal words of Justice Laurel in *Calalang v. Williams*:[243]

> The petitioner finally avers that the rules and regulations complained of infringe upon the constitutional precept regarding the promotion of social justice to insure the well-being and economic security of all the people. **The promotion of social justice, however, is to be achieved not through a mistaken sympathy towards any given group.** *Social justice is "neither communism, nor despotism, nor atomism, nor anarchy," but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.* Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.[244] (Emphasis and italics supplied)

Postscript

I agree wholeheartedly with the main opinion's statement that "[t]here should be no hesitation in using the equal protection clause as a major cutting edge to eliminate every conceivable irrational discrimination in our society."

However, because I find that the classification contained in the questioned *proviso* is based on real differences between

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[242] *Alliance of Government Workers v. Minister of Labor and Employment*, 124 SCRA 1, 13-20 (1983).

[243] 70 Phil. 726 (1940).

[244] *Id.* at 734-735.

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the executive level and the rank and file of the BSP; is rationally related to the attainment of the objectives of the new Central Bank Act; and, further, that the subsequent amendments to the charters of certain other GOCCs and GFIs did not materially affect the rational basis for this classification, I do not believe that the classification in the case at bar is impressed with the vice of irrationality.

The mere fact that petitioner's members are employees of the *Bangko Sentral ng Pilipinas*, admittedly perhaps the biggest among the GFIs, does not, to my mind, automatically justify their exemption from the Compensation Classification System provided for by the Salary Standardization Law. In my humble view, the equal protection clause ought not to be used as a means of "reserving greener pastures to sacred cows" in contravention of the Constitutional mandate to "provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions."

WHEREFORE, I vote to deny the instant petition.