

EN BANC

G.R. No. 206486 — REPUBLIC OF THE PHILIPPINES, represented by the LAND TRANSPORTATION OFFICE AND THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, *Petitioner*, v. MARIA BASA EXPRESS JEEPNEY OPERATORS AND DRIVERS ASSOCIATION, INC., RIBO D. WAYOS, and TIMOTEO B. SAROL, *Respondents*;

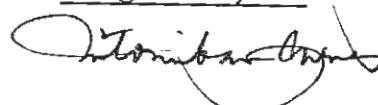
G.R. No. 212604 — ANGAT TSUPER SAMAHAN NG MGA TSUPER AT OPERATOR NG PILIPINAS – GENUINE ORGANIZATION, INC. with its local affiliates, QUIAPO PASIG AUV DRIVERS AND OPERATORS ASSOCIATION INC., CONCERNED OPERATORS METRO EAST TRANSPORT INC., BAYAMBANG-BAUTISTACARMEN, LRT MALL JODA, MUSTAI, VACATI, PMAQ TRANSPORT, VMMJODA, GOOD SAMARITAN, BAPPSODA, MMJODAI, MSMCUDOA, SAN JOAQUIN FX OPERATORS AND DRIVERS ASSOCIATION, JARDAN TRANSPORT COOPERATIVE, NHODAI, CUKRLAJODA, GRSDOA, SQBJODA, TAGUIG EXPRESS TRANSPORT OPERATORS AND DRIVERS ASSOCIATION, DAU-MALOLOS VIA NLEX DRIVERS AND OPERATORS ASSOCIATION, SAMAHAN NG MGA DRIVER AT OPERATOR NG BARANGAY GREATER LAGRO (LSDOA ASSN.), all represented by its President, PASCUAL “JUN” A. MAGNO, JR., *Petitioners*, v. HON. JOSEPH EMILIO A. ABAYA, in his capacity as Secretary of the DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), and WINSTON M. GINEZ, in his capacity as Chairman of the LAND TRANSPORTATION AND FRANCHISING REGULATORY BOARD, *Respondents*;

G.R. No. 212682 — XIMEX DELIVERY EXPRESS, INC., *Petitioner*, v. DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), herein represented by HON. JOSEPH EMILIO A. ABAYA, LAND TRANSPORTATION OFFICE, herein represented by Assistant Secretary ALFONSO V. TAN, JR., and LAND TRANSPORTATION OFFICE and LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD, represented by ATTY. WINSTON M. GINEZ, *Respondents*;

G.R. No. 212800 — ERNESTO C. CRUZ, for himself and as president of the NATIONAL CONFEDERATION OF TRANSPORTWORKERS, INC. (NCTU) *Petitioner*, v. DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, LAND TRANSPORTATION OFFICE and LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD, *Respondents*.

Promulgated:

August 16, 2022



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**SEPARATE OPINION****LEONEN, J.:**

The parties, in this case, argue against the constitutionality of Joint Administrative Order No. 2014-01 and Department Order No. 2008-39, which impose penalties and fines for violations of land transportation laws by motor vehicles.

I agree with the *ponencia's* resolution of the issues in this case. Nonetheless, I take this opportunity to raise a few points on the requirement of an actual case or controversy for judicial review, transcendental interest, and delegation of legislative power.

**I**

The *ponencia* held that this Court may validly exercise its power of judicial review.<sup>1</sup> It found that in G.R. No. 206486, there are pending charges against respondent Maria Basa's member drivers for violations of Department Order No. 2008-39.<sup>2</sup> Since Joint Administrative Order No. 2014-01 is an updated version of Department Order No. 2008-39, these charges remove G.R. Nos. 212604, 212682, and 212800 from any "sterile abstract context having no factual concreteness."<sup>3</sup> Thus, there exists an actual case or controversy.<sup>4</sup>

The *ponencia* found that the case is ripe for adjudication, considering the petitioners in G.R. Nos. 212604, 212682, and 212800 are similarly situated as the drivers in G.R. No. 206486, such that an immediate and threatened injury actually exists.<sup>5</sup> That petitioners will go through the same experience as the Maria Basa drivers is certain and imminent.<sup>6</sup> It is not a hypothetical scenario because drivers have already been charged under the previous issuance.<sup>7</sup> Joint Administrative Order No. 2014-01 was already in effect and was being implemented when the petitions were filed.<sup>8</sup>

The *ponencia* also found that petitioners have legal standing. They have shown that they have a substantial interest in the outcome of the case as

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<sup>1</sup> *Ponencia*, p. 23.  
<sup>2</sup> *Id.*  
<sup>3</sup> *Id.*  
<sup>4</sup> *Id.* at 24.  
<sup>5</sup> *Id.* at 23.  
<sup>6</sup> *Id.*  
<sup>7</sup> *Id.*  
<sup>8</sup> *Id.* at 24.

drivers of public utility vehicles are most vulnerable to being penalized by Joint Administrative Order No. 2014-01.<sup>9</sup> The possible direct injury and personal stake in the resolution of the case is especially clear for the parties in G.R. No. 206486, who are drivers charged with violating Department Order No. 2008-39.<sup>10</sup>

The *ponencia* noted the transcendental importance of the issues in this case which involve public welfare and the advancement of public policy.<sup>11</sup> The case is one of first impression affecting millions of Filipinos who depend on the country's land transportation services.<sup>12</sup> This, along with the other judicial review requirements, is enough for this Court to rule on the case.

I agree that the requisites for judicial review are present in this case. However, I wish to clarify some additional points on the requirement of an actual case or controversy.

To determine the constitutionality of a government act, the requisites for judicial review must be present:

(1) there must be an actual case or controversy calling for the exercise of judicial power;

(2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3) the question of constitutionality must be raised at the earliest opportunity; and

(4) the issue of constitutionality must be the very *lis mota* of the case.<sup>13</sup> (Citations omitted)

Most important of these requisites is the necessity for an actual case or controversy, which is embodied in Article VIII, Section 1 of the Constitution:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to *settle actual controversies involving rights which are legally demandable and enforceable*, and to determine whether or not there has been a grave abuse

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<sup>9</sup> Id. at 25.

<sup>10</sup> Id.

<sup>11</sup> Id. at 26.

<sup>12</sup> Id.

<sup>13</sup> *In re: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement v. Abotion of Judiciary Development Fund*, 751 Phil. 30 (2015) [Per J. Leonen, *En Banc*].

of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The presence of an actual case or controversy means there is a “conflict of legal right, an opposite legal claim susceptible of judicial resolution.”<sup>14</sup>

...[A] petitioner bringing a case before this Court must establish that there is a legally demandable and enforceable right under the Constitution. There must be a real and substantial controversy, with definite and concrete issues involving the legal relations of the parties, and admitting of specific relief that courts can grant.<sup>15</sup>

In *Kilusang Mayo Uno v. Aquino III*,<sup>16</sup> this Court discussed the guidelines to determine whether there is an actual case or controversy:

Jurisprudence lays down guidelines in determining an actual case or controversy. In *Information Technology Foundation of the Philippines v. Commission on Elections*, this Court required that “the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue.” Further, there must be “an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.”

Courts, thus, cannot decide on theoretical circumstances. They are neither advisory bodies, nor are they tasked with taking measures to prevent *imagined possibilities* of abuse.

Hence, in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, this Court ruled:

Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by “double contingency,” where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.

*The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. . . . Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.* (Emphasis supplied, citations omitted)

<sup>14</sup> *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208>> [Per J. Leonen, *En Banc*].

<sup>15</sup> *Id.*

<sup>16</sup> G.R. No. 210500, April 2, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208>> [Per J. Leonen, *En Banc*].

In *Republic v. Roque*,<sup>17</sup> this Court further qualified the meaning of a justiciable controversy. In dismissing the Petition for declaratory relief before the Regional Trial Court, which assailed several provisions of the Human Security Act, we explained that justiciable controversy or ripening seeds refer to:

... an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. *Corollary thereto, by "ripening seeds" it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead.* The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.<sup>17</sup> (Emphasis supplied and citations omitted)

The necessity of an actual case or controversy arises from the principle of separation of powers of the three branches of government:

This requirement [of an actual case or controversy] goes into the nature of the judiciary as a co-equal branch of government. It is bound by the doctrine of separation of powers, and will not rule on any matter or cause the invalidation of any act, law, or regulation, if there is no actual or sufficiently imminent breach of or injury to a right. The courts interpret laws, but the ambiguities may only be clarified in the existence of an actual situation.<sup>18</sup>

It is also meant to ensure that this Court avoids issuing advisory opinions. In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,<sup>19</sup>

An actual case or controversy is "one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution." A case is justiciable if the issues presented are "definite and concrete, touching on the legal relations of parties having adverse legal interests." The conflict must be ripe for judicial determination, not conjectural or anticipatory; otherwise, this Court's decision will amount to an advisory opinion concerning legislative or executive action. In the classic words of *Angara v. Electoral Commission*:

[T]his power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411>> [Per J. Leonen, *En Banc*].

actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the governments.

Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, *there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.*<sup>20</sup>

Thus, simply alleging that a legal or administrative issuance is unconstitutional without showing any legal right affected by their implementation is not enough to vest this Court with jurisdiction to hear the case. I thus take exception to any position that an actual and justiciable controversy exists on the sole basis that a question of law susceptible to judicial resolution is raised as an issue in a case. The issue of whether a relevant government agency validly issued an issuance does not make an actual case or controversy, especially in the absence of an actual or imminent violation of a right.

Nonetheless, I agree with the *ponencia*'s finding that this case presents an actual controversy considering that the respondents in G.R. No. 206486 represent parties who were already apprehended under the assailed Department Order No. 2008-39. While the petitioners in G.R. Nos. 212604, 212682, and 212800 have not been apprehended under Joint Administrative Order No. 2014-01. The latter is a revised version of Department Order No. 2008-39. Considering it is currently being implemented, there is ripening adjudication—a threat and an imminence to an actual injury to be sustained. Litigation is inevitable if the issue is not settled judicially.

## II

I also wish to emphasize that raising the transcendental importance of a matter as an issue is not an exception to the requirement of an actual case or

<sup>20</sup> Id.

controversy. It is not sufficient to dispense with the requirements of justiciability.

In *Gios-Samar, Inc. v. Department of Transportation and Communications*, this Court outlined how “transcendental importance” evolved from being originally cited as an exception to the rules on legal standing to also being an exception to the doctrine of hierarchy of courts. However, *Gios-Samar* maintained that the transcendental importance argument could only be accepted in cases with purely legal issues. It is not sufficient to cite only “special and important reasons.” The issues raised should not put forth questions of fact:

... [W]hen a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.<sup>21</sup>

In my separate opinion in *Gios-Samar*, I further discussed that this Court should be wary not to always accept the transcendental importance argument at the expense of the requisites of justiciability:

Thus, I propose that we further tame the concept that a case’s “transcendental importance” creates exceptions to justiciability. The elements supported by the facts of an actual case, and the imperatives of our role as the Supreme Court within a specific cultural or historic context, must be made clear. They should be properly pleaded by the petitioner so that whether there is any transcendental importance to a case is made an issue. That a case has transcendental importance, as applied, may have been too ambiguous and subjective that it undermines the structural relationship that this Court has with the sovereign people and other departments under the Constitution. Our rules on jurisdiction and our interpretation of what is justiciable, refined with relevant cases, may be enough.

However, consistent with this opinion, we cannot wholly abandon the doctrinal application of cases with transcendental importance. That approach just does not apply in this case. Here, we have just established that cases calling for questions of fact generally cannot be cases from which we establish transcendental importance. Generally, we follow the doctrine of respect for hierarchy of courts for matters within our concurrent original jurisdiction.<sup>22</sup> (Citations omitted)

<sup>21</sup> *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970>> [Per J. Jardeleza, *En Banc*].

<sup>22</sup> J. Leonen, Separate Opinion in *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970>> [Per J. Jardeleza, *En Banc*].

This Court further elaborated on this in *Pangilinan v. Cayetano*.<sup>23</sup> A party cannot simply rely on the argument of transcendental importance for this Court to hear their case. The party invoking it must clearly show why this Court must exercise its power of judicial review, including the facts constituting the actual case or controversy in question.<sup>24</sup>

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

*Falcis* explained:

*Diocese of Bacolod* recognized transcendental importance as an exception to the doctrine of hierarchy of courts. In cases of transcendental importance, imminent and clear threats to constitutional rights warrant a direct resort to this Court[.]

....

Still, it does not follow that this Court should proceed to exercise its power of judicial review just because a case is attended with purely legal issues. Jurisdiction ought to be distinguished from justiciability. Jurisdiction pertains to competence “to hear, try[,] and decide a case.” On the other hand,

[d]etermining whether the case, or any of the issues raised, is justiciable is an exercise of the power granted to a court with jurisdiction over a case that involves constitutional adjudication. Thus, even if this Court has jurisdiction, the canons of constitutional adjudication in our jurisdiction allow us to disregard the questions raised at our discretion.

Appraising justiciability is typified by constitutional avoidance. This remains a matter of enabling this Court to act in keeping with its capabilities. Matters of policy are properly left to government organs that are better equipped at framing them. Justiciability demands that issues and judicial pronouncements be properly framed in relation to established facts:

*Angara v. Electoral Commission* imbues these rules with its libertarian character. Principally, *Angara* emphasized the liberal deference to another constitutional

<sup>23</sup> G.R. Nos. 238875, 239483 & 240954, March 16, 2021  
<<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67374>> [Per J. Leonen, *En Banc*].

<sup>24</sup> *Id.*



department or organ given the majoritarian and representative character of the political deliberations in their forums. It is not merely a judicial stance dictated by courtesy, but is rooted on the very nature of this Court. Unless congealed in constitutional or statutory text and imperatively called for by the actual and non-controversial facts of the case, this Court does not express policy. This Court should channel democratic deliberation where it should take place.

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Judicial restraint is also founded on a policy of conscious and deliberate caution. This Court should refrain from speculating on the facts of a case and should allow parties to shape their case instead. Likewise, this Court should avoid projecting hypothetical situations where none of the parties can fully argue simply because they have not established the facts or are not interested in the issues raised by the hypothetical situations. In a way, courts are mandated to adopt an attitude of judicial skepticism. What we think may be happening may not at all be the case. Therefore, this Court should always await the proper case to be properly pleaded and proved.


Thus, concerning the extent to which transcendental importance carves exceptions to the requirements of justiciability, “[t]he elements supported by the facts of an actual case, and the imperatives of our role as the Supreme Court within a specific cultural or historic context, must be made clear”:

.....

*Otherwise, this Court would cede unfettered prerogative on parties. It would enable the parties to impose their own determination of what issues are of paramount, national significance, warranting immediate attention by the highest court of the land.* (Emphasis supplied, citations omitted)

*Chamber of Real Estate and Builders' Associations, Inc. v. Energy Regulatory Commission* lists the following considerations to determine whether an issue is of transcendental importance:

(1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised. (Citation omitted)



.....

This Court is competent to decide legal principles only in properly justiciable cases. That a party must have standing in court is not a mere technical rule that may easily be waived. Courts should be scrupulous in protecting the principles of justiciability, or else their legitimacy may be undermined. Transcendental importance of issues excusing requisite standing should not be so recklessly invoked, and is justified only in extraordinary circumstances.

The alleged transcendental importance of the issues raised here will be better served when there are actual cases with the proper parties suffering an actual or imminent injury [.]<sup>25</sup> (Emphasis supplied and citations omitted)

I thus maintain that alleging the transcendental importance of the issues in a case is not sufficient to warrant the exercise of this Court's power of judicial review—especially if it lacks the requisite of an actual case or controversy.

### III

I thus discuss what constitutes exceptions to the requirement of an actual case or controversy.

The constitutional issues raised in justiciable cases may be classified into four types: (i) violations of constitutional rights or fundamental liberties; (ii) constitutional issues involving allocation of powers between other branches of the government; (iii) violations of constitutional requirements; and (iv) constitutional amendments and provisions.

As discussed, an actual case or controversy is required in all these constitutional cases. However, exceptions to this rule may be raised in a case of the first classification, i.e., there is a violation of constitutional rights or fundamental liberties, more particularly: (i) when the case involves free speech and other rights cognate to free expression; and (ii) when the case involves an egregious or imminent violation of fundamental rights. In *Parcon-Song v. Parcon*:<sup>26</sup>

Article VIII, Section 1 of the Constitution, which specifies that courts may act on any grave abuse of discretion by any government branch or instrumentality, does not license this Court to issue advisory opinions. Apart from an actual case or controversy, this Court must be

<sup>25</sup> Id.

<sup>26</sup> *Parcon-Song v. Parcon*, G.R. No. 199582, July 7, 2020  
<<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66525>> [Per J. Leonen, En Banc].

There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it.<sup>27</sup>

In the first exception, i.e., freedom of expression cases, a facial review is allowed, and the requirement of an actual case or controversy may be waived if the questioned law or issuance is so overbroad that it will have a chilling effect on free speech and expression. In my opinion in *Calleja v. Executive Secretary*,<sup>28</sup> I discussed that the rationale for allowing a facial review of such cases is because of the primacy of free speech in the hierarchy of rights:

A facial challenge involves “an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.” Facial challenge or an “on its face” invalidation of a law is a recognized exception to the requirement of actual case or controversy[.]

....

Though lacking an actual case, a facial challenge is allowed to prevent the possibility of the law from harming persons that did not come to court. It is distinguished from an “as-applied” challenge, which only considers “extant facts affecting real litigants.”

Nonetheless, precisely due to its lack of an actual case, and it being a “manifestly strong medicine,” a facial challenge is only used as a last resort, and only applicable to free speech cases.

Freedom of expression is one of the fundamental principles of a democratic government. It is an indispensable condition of nearly every other form of freedom, thus standing on a higher level than substantive economic freedom and other liberties[.]

....

<sup>27</sup> Id.

<sup>28</sup> J. Leonen, Concurring and Dissenting Opinion in *Calleja v. Executive Secretary*, G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, December 7, 2021 < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67914> > [Per J. Carandang, *En Banc*].

Free expression means more than the right to manifest approval of existing political beliefs and economic arrangements. It includes the freedom to discuss “the thought we hate, no less than the thought we agree with.” It is a precondition for one to enjoy other rights, such as the right to vote, freedom to peaceably assemble, and freedom of association. Free expression is essential to ensure press freedom. It protects minorities against majoritarian abuses perpetrated through the framework of democratic governance while simultaneously benefiting the majority that refuses to listen. It would best serve its high purpose when it “induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”

Owing to the cherished status that free speech enjoys in the hierarchy of rights, any form of regulation deserves even more than a long, hard look.

One of the analytical tools to test whether a statute that regulates free speech can be invalidated is the overbreadth doctrine. Under the overbreadth doctrine, a law is void when it unnecessarily sweeps broadly and invades on the area of protected freedoms to further a governmental purpose. The law casts too wide a net in its looseness and imprecision such that it is susceptible to many interpretations, including sanctions on the legitimate exercise of one’s fundamental rights.

The overbreadth doctrine posits that any “possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.” In *Estrada*:

A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible “chilling effect” upon protected speech. The theory is that “[w]hen statutes regulate or prescribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity.” (Citations omitted)

It is easy to see why overbroad laws should be struck down: They give off a “chilling effect” on free speech and expression. These fundamental rights sit at the core of our democracy, so delicate and protected, that the “threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.”<sup>29</sup> (Citations omitted)

As to any issue raised relating to vagueness, I maintain my stance in my dissenting opinion in *Spouses Imbong v. Ochoa, Jr.*:<sup>30</sup>

<sup>29</sup> Id.

<sup>30</sup> J. Leonen, Dissenting Opinion in *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1 (2014) [Per J. Mendoza, *En Banc*].

The prevailing doctrine today is that:

a facial challenge only applies to cases where the free speech and its cognates are asserted before the court. While as a general rule penal statutes cannot be subjected to facial attacks, a provision in a statute can be struck down as unconstitutional when there is a clear showing that there is an imminent possibility that its broad language will allow ordinary law enforcement to cause prior restraints of speech and the value of that speech is such that its absence will be socially irreparable.

Broken down into its elements, a facial review should only be allowed when:

First, the ground for the challenge of the provision in the statute is that it violates freedom of expression or any of its cognates;

Second, the language in the statute is impermissibly vague;

Third, the vagueness in the text of the statute in question allows for an interpretation that will allow prior restraints;

Fourth, the "chilling effect" is not simply because the provision is found in a penal statute but because there can be a clear showing that there are special circumstances which show the imminence that the provision will be invoked by law enforcers;

Fifth, the application of the provision in question will entail prior restraints; and

Sixth, the value of the speech that will be restrained is such that its absence will be socially irreparable. This will necessarily mean balancing between the state interests protected by the regulation and the value of the speech excluded from society.

*Facial challenges can only be raised on the basis of overbreadth and not on vagueness. Southern Hemisphere demonstrated how vagueness relates to violations of due process rights, whereas facial challenges are raised on the basis of overbreadth and limited to the realm of freedom of expression.*<sup>31</sup>

In this case, there is no showing that the questioned issuances affect any right to free speech or freedom of expression. Thus, this exception does not apply.

<sup>31</sup> Id. at 583-284.

fundamental rights and the facts constituting this violation are complete, undisputed, and established in a lower court. In *Kilusang Magbubukid ng Pilipinas v. Aurora Pacific Economic Zone and Freeport Authority*,<sup>32</sup>

There are narrow instances when this Court may review a statute on its face despite the lack of an actual case. *A facial review is allowed in cases of patently imminent violation of fundamental rights. The violation must be so demonstrably blatant that it overrides the policy of constitutional deference. However, the facts constituting the violation must be complete, undisputed, and established in a lower court.*

Petitioners should have first gone to our trial courts, which are equipped to receive and assess evidence, and may later appeal before the appellate court, so that facts would be synthesized and conflicting claims resolved. By filing their Petitions immediately before this Court, petitioners missed the opportunity to have complete and clear factual submissions.

Without first resolving the factual disputes, it is not clear whether there was a direct, material, and substantial injury to petitioners. There is no factual concreteness and adversariness to enable this Court to determine the parties' rights and obligations.

An exception to the rule on hierarchy of courts is not warranted here. Strict adherence to the rule is our standing judicial policy. Bypassing it requires more than just raising issues of transcendental importance. To allow exceptions, there must first be justiciability.<sup>33</sup> (Emphasis supplied and citations omitted)

As earlier discussed, this exception need not also be invoked because an actual case or controversy exists in G.R. No. 206486: the parties were apprehended under the assailed Department Order No. 2008-39. Necessarily, this actual case or controversy is attached to Department Order No. 2008-39's updated version, Joint Administrative Order No. 2014-01, which is the subject of G.R. Nos. 212604, 212682, and 212800, and the currently implemented issuance. The assailed issuances present a ripening adjudication—a continued threat and imminence to an actual injury to be sustained.

#### IV

I also take this opportunity to discuss my position that it is time this Court promulgate rules and regulations for raising constitutional issues, especially those calling for the exercise of its expanded jurisdiction under Article 8, Section 1 of the 1987 Constitution.

<sup>32</sup> G.R. Nos. 198688 & 208282, November 24, 2020  
<<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67550>> [Per J. Leonen, *En Banc*].

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

Currently, parties use Rule 65 of the Rules of Court as their judicial remedy to raise constitutional issues. However, the clear language used in Rule 65 shows it is meant to be the remedy in case of grave abuse of discretion of government instrumentalities exercising judicial or quasi-judicial powers. It does not explicitly mention that it may be filed in case of grave abuse of discretion of any branch or instrumentality of government:

### RULE 65

#### *Certiorari, Prohibition and Mandamus*

SECTION 1. *Petition for Certiorari.* — When any tribunal, board or officer *exercising judicial or quasi-judicial functions* has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46.

I maintain that Rule 65 is only used as a de facto modality because there are no specific rules for raising constitutional issues. This was first observed by former Associate Justice Arturo Brion in *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,<sup>34</sup>

The use of petitions for *certiorari* and prohibition under Rule 65 is a remedy that judiciaries have used long before our Rules of Court existed. As footnoted below, these writs — now recognized and regulated as remedies under Rule 65 of our Rules of Court — have been characterized as “supervisory writs” used by superior courts to keep lower courts within the confines of their granted jurisdictions, thereby ensuring orderliness in lower courts’ rulings.

We confirmed this characterization in *Madrigal Transport v. Lapanday Holdings Corporation*, when we held that a writ is founded on the supervisory jurisdiction of appellate courts over inferior courts, and is issued to keep the latter within the bounds of their jurisdiction. Thus, the writ corrects only errors of jurisdiction of judicial and quasi-judicial bodies, and cannot be used to correct errors of law or fact. For these mistakes of judgment, the appropriate remedy is an appeal.

This situation changed after 1987 when the new Constitution “expanded” the scope of judicial power by providing that —

<sup>34</sup> 802 Phil. 116 (2016) [Per J. Brion, *En Banc*].

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine *whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.* (italics supplied)

In *Francisco v. The House of Representatives*, we recognized that this expanded jurisdiction was meant “to ensure the potency of the power of judicial review to curb grave abuse of discretion by ‘any branch or instrumentalities of government.’” Thus, the second paragraph of Article VIII, Section 1 engraves, for the first time in its history, into black letter law the “expanded *certiorari* jurisdiction” of this Court, whose nature and purpose had been provided in the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion:


....

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question. (italics in the original; emphasis and underscoring supplied)

Meanwhile that no specific procedural rule has been promulgated to enforce this “expanded” constitutional definition of judicial power and because of the commonality of “grave abuse of discretion” as a ground for review under Rule 65 and the courts’ expanded jurisdiction, the Supreme Court — *based on its power to relax its rules* — allowed Rule 65 to be used as the medium for petitions invoking the courts’ expanded jurisdiction based on its power to relax its Rules. This is however an *ad hoc* approach that does not fully consider the accompanying implications, among them, that Rule 65 is an essentially distinct remedy that cannot simply be bodily lifted for application under the judicial power’s expanded mode. The terms of Rule 65, too, are not fully aligned with what the Court’s expanded jurisdiction signifies and requires.

On the basis of almost thirty years’ experience with the courts’ expanded jurisdiction, the Court should now fully recognize the attendant distinctions and should be aware that the continued use of Rule 65 on an *ad hoc* basis as the operational remedy in implementing its expanded jurisdiction may, in the longer term, result in problems of uneven, misguided, or even incorrect application of the courts’ expanded mandate.





The present case is a prime example of the misguided reading that may take place in constitutional litigation: the procedural issues raised apparently spring from the lack of proper understanding of what a petition for *certiorari* assails under the traditional and expanded modes, and the impact of these distinctions in complying with the procedural requirements for a valid petition.<sup>35</sup> (Emphasis supplied and citations omitted)

I thus reassert this position that there is no existing procedural vehicle to raise cases of grave abuse of discretion of the other branches or instrumentalities of government. There is a vacuum, and I maintain that it is high time this Court address it by promulgating specific rules and regulations for cases calling for the exercise of this Court's expanded jurisdiction under Article 8, Section 1 of the Constitution.

## V

I agree with the *ponencia*'s disposition that the delegation of legislative power to the Department of Transportation and Communications is valid.

The *ponencia* held there is no undue delegation of legislative power to warrant the invalidation of the assailed issuances.<sup>36</sup> It found that the Department of Transportation and Communications was vested with powers to promulgate the questioned issuances.<sup>37</sup>

Executive Order No. 125 vested the Department of Transportation and Communications with the power to establish rules and regulations to enforce land transportation laws and to impose penalties for its violations.<sup>38</sup> Executive Order No. 297 also gave it rule-making powers, and jurisprudence has also recognized its delegated power.<sup>39</sup> The *ponencia* found that the delegating laws are complete in all their essential terms and conditions and contain sufficient standards that are not vague or general.<sup>40</sup>

As to the Land Transportation Franchising and Regulatory Board, the *ponencia* noted that under Executive Order No. 202, the Land Transportation Franchising and Regulatory Board has the power to determine, approve, review, and adjust fares, rates, and other charges on the operation of public land transportation services. It also has the power to formulate rules, implement them on land transportation utilities, and issue, revise, suspend or cancel Certificates of Public Convenience to motorized vehicles.<sup>41</sup>

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<sup>35</sup> Id. at 136-140.

<sup>36</sup> *Ponencia*, p. 30.

<sup>37</sup> Id. at 31-33.

<sup>38</sup> Id. at 31.

<sup>39</sup> Id. at 32-33.

<sup>40</sup> Id. at 31 and 33.

<sup>41</sup> Id. at 33-34.

For the Land Transportation Office, the *ponencia* discussed that Executive Order No. 206 provides two service units under the Land Transportation Office's Office of the Assistant Secretary for Land Transportation in the Department of Transportation and Communications: (i) Law Enforcement Service and (ii) Traffic Adjudication Service. The latter has the power to promulgate rules and regulations governing proceedings before it.<sup>42</sup>

The *ponencia* acknowledged that the power of the Land Transportation Franchising and Regulatory Board and Land Transportation Office to issue rules and regulations is limited.<sup>43</sup> Nonetheless, the Department of Transportation and Communications, as the primary agency, still approved the question issuances. It approved Department Order No. 2008-39.<sup>44</sup> Similarly, Joint Administrative Order No. 2014-01, while signed by the Land Transportation Franchising and Regulatory Board and Land Transportation Office, was still eventually approved by the Department of Transportation and Communications Secretary, and the Department of Transportation and Communications was tasked with implementing it.<sup>45</sup>

The *ponencia* discussed that statutes conferring power to administrative agencies should be liberally construed to enable them to discharge their assigned duties.<sup>46</sup>

However, I wish to assert that the tests to determine the validity of the delegation of legislative power should be strictly applied in these and in all future cases.

The delegation of legislative power is recognized because of the growing complexity of government tasks and the need for technical or specialized expertise in several areas of public service. In *Eastern Shipping Lines v. Philippine Overseas Employment Administration*.<sup>47</sup>

The principle of non-delegation of powers is applicable to all the three major powers of the Government but is especially important in the case of the legislative power because of the many instances when its delegation is permitted. The occasions are rare when executive or judicial powers have to be delegated by the authorities to which they legally pertain. In the case of the legislative power, however, such occasions have become more and more frequent, if not necessary. This has led to the observation that the delegation of legislative power has become the rule and its non-delegation the exception.

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<sup>42</sup> Id. at 35.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id. at 36.

<sup>47</sup> 248 Phil. 762 (1988) [Per J. Cruz, First Division].

activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them.

The reasons given above for the delegation of legislative powers in general are particularly applicable to administrative bodies. With the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called the “power of subordinate legislation.”

With this power, administrative bodies may implement the broad policies laid down in a statute by “filling in” the details which the Congress may not have the opportunity or competence to provide. This is effected by their promulgation of what are known as supplementary regulations, such as the implementing rules issued by the Department of Labor on the new Labor Code. These regulations have the force and effect of law.<sup>48</sup>

However, as it is still an exception to the rule, the delegation of legislative power is subject to restrictions, which this Court has narrowed to two tests: the completeness and sufficient standard tests. In *Pantaleon v. Metro Manila Development Authority*,<sup>49</sup>

As a rule, legislative power is generally non-delegable. A recognized exception, however, is the grant of rule-making power to administrative agencies. “Delegated rule-making has become a practical necessity in modern governance due to the increasing complexity and variety of public functions[.]”

....

Thus, Congress may delegate the authority to promulgate rules to implement a law and effectuate its policies. To be permissible, however, the delegation must satisfy the *completeness* and *sufficient standard* tests.

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

<sup>48</sup> Id. at 772–773.

<sup>49</sup> *Pantaleon v. Metro Manila Development Authority*, G.R. No. 194335, November 17, 2020 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67017>> [Per J. Leonen, *En Banc*].

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

The delegation of legislative power is valid only if:

. . . the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard — the limits of which are sufficiently determinate and determinable — to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.<sup>50</sup> (Emphasis supplied and citations omitted)

Thus, a law delegating legislative power must be: “complete in itself, setting forth...the policy to be executed, carried out, or implemented by the delegate; and fixes a standard—the limits of which are sufficiently determinate and determinable—to which the delegate must conform in the performance of his functions.”<sup>51</sup>

As stated by the *ponencia*, the law is deemed complete if it sets forth the policy to be executed, carried out, or implemented. Likewise, its standards are deemed sufficient if “it specifies the limits of the delegate’s authority, announces the legislative policy, and identifies the conditions under which it is to be implemented.”<sup>52</sup>

Both requisites must be present and cannot be deemed satisfied by vague statements lacking clear and delineated parameters and measurable standards. Failure to comply with these two tests renders the delegation of legislative power invalid.

I thus maintain that although it was recognized by this Court in the past, simply stating the standards of “public interest,” “justice and equity,” “public convenience and welfare,” and “simplicity, economy and welfare” are not sufficient to comply with the requirement.<sup>53</sup> I find that these standards,

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<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> *Ponencia*, p. 30.

<sup>53</sup> Id. at 36.

standing alone, are vague and do not pass the sufficient standard test. They do not limit the authority delegated or identify the conditions for implementation. Thus, these may dilute the import of the measurable standards needed to pass the tests for a valid delegation of legislative power.

Applying these requirements to this case, I agree with the *ponencia* that the delegation of power to the Department of Transportation and Communication is valid. The governing policies are found in Executive Order No. 125:<sup>54</sup>

RECALLING that the reorganization of the government is mandated expressly in Article II, Section 1 (a), and Article III of the Freedom Constitution;

HAVING IN MIND that pursuant to Executive Order No. 5 (1986), it is directed that necessary and proper changes in the organizational and functional structures of the government, its agencies and instrumentalities, be effected in order to *promote efficiency and effectiveness in the delivery of public services*;

CONSIDERING that *viable and dependable transportation and communications networks are necessary tools for economic recovery*;

CONSIDERING FURTHER that *rapid technological advances in communication facilities require a distinct response to the peculiar problems of this field*;

REALIZING that the growing complexity of the transportation sector has necessitated its division into various sub-sectors to *facilitate the regulation and promotion of the sector as a whole*; and

REALIZING FURTHER that the State needs to *regulate these networks and promote their continuous upgrading in order to preserve their viability and enhance their dependability*;

...

SECTION 3. *Declaration of Policy.* — The State is committed to the *maintenance and expansion of viable, efficient and dependable transportation and communications systems* as effective instruments for national recovery and economic progress. It shall not compete as a matter of policy with private enterprise and shall operate transportation and communications facilities only in those areas where private initiatives are inadequate or non-existent.

The Department of Transportation and Communication's powers and functions are found in Executive Order No. 125-A:<sup>55</sup>

SECTION 5. *Powers and Functions.* — To accomplish its mandate, the Department shall have the following powers and functions:

<sup>54</sup> Executive Order No. 125 (1987).

<sup>55</sup> Executive Order No. 125-A, (1987).

(a) Formulate and recommend national policies and guidelines for the preparation and implementation of integrated and comprehensive transportation and communications systems at the national, regional and local levels;

(b) Establish and administer comprehensive and integrated programs for transportation and communications, and for this purpose, may call on any agency, corporation, or organization, whether public or private, whose development programs include transportation and communications as an integral part thereof, to participate and assist in the preparation and implementation of such program;

(c) Assess, review and provide direction to transportation and communications research and development programs of the government in coordination with other institutions concerned;

(d) Administer and enforce all laws, rules and regulations in the field of transportation and communications;

(e) Coordinate with the Department of Public Works and Highways in the design, location, development, rehabilitation, improvement, construction, maintenance and repair of all infrastructure projects and facilities of the Department. However, government corporate entities attached to the Department shall be authorized to undertake specialized telecommunications, ports, airports and railways projects and facilities as directed by the President of the Philippines or as provided by law;

(f) Establish, operate and maintain a nationwide postal system that shall include mail processing, delivery services, and money order services and promote the art of philately;

(g) Issue certificates of public convenience for the operation of public land and rail transportation utilities and services;

(h) Accredite foreign aircraft manufacturers and/or international organizations for aircraft certification in accordance with established procedures and standards;


(i) Establish and prescribe rules and regulations for identification of routes, zones and/or areas of operations of particular operators of public land services;

(j) Establish and prescribe rules and regulations for the establishment, operation and maintenance of such telecommunications facilities in areas not adequately served by the private sector in order to render such domestic and overseas services that are necessary with due consideration for advances in technology;

- (k) Establish and prescribe rules and regulations for the operation and maintenance of a nationwide postal system that shall include mail processing, delivery services, money order services and promotion of philately;
- (l) Establish and prescribe rules and regulations for issuance of certificates of public convenience for public land transportation utilities, such as motor vehicles, trimobiles and railways;
- (m) Establish and prescribe rules and regulations for the inspection and registration of air and land transportation facilities, such as motor vehicles, trimobiles, railways and aircrafts;
- (n) Establish and prescribe rules and regulations for the issuance of licenses to qualified motor vehicle drivers, conductors, and airmen;
- (o) Establish and prescribe the corresponding rules and regulations for the enforcement of laws governing land transportation, air transportation and postal services, including the penalties for violations thereof, and for the deputation of appropriate law enforcement agencies in pursuance thereof;
- (p) Determine, fix and/or prescribe charges and/or rates pertinent to the operation of public air and land transportation utility facilities and services, except such rates and/or charges as may be prescribed by the Civil Aeronautics Board under its charter, and, in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies or associations recognized by the Philippine government as the proper arbiter of such charges or rates;
- (q) Establish and prescribe the rules, regulations, procedures and standards for the accreditation of driving schools;
- (r) Administer and operate the Civil Aviation Training Center (CATC) and the National Telecommunications Training Institute (NTTI); and
- (s) Perform such other powers and functions as may be prescribed by law, or as may be necessary, incidental, or proper to its mandate or as may be assigned from time to time by the President of the Republic of the Philippines.”

It is complete and contains sufficient standards to be considered a valid delegation of legislative power.

However, the same cannot be said for the Land Transportation Franchising and Regulatory Board and the Land Transportation Office.



For the Land Transportation Franchising and Regulatory Board, while its powers and functions are found in Executive Order No. 202,<sup>56</sup> the policies governing its creation are noticeably absent:

WHEREAS, the Department of Transportation and Communications is vested with, among others, quasi-judicial powers and functions pursuant to Executive Order No. 125, as amended;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby order:

SECTION 1. *Creation of the Land Transportation Franchising and Regulatory Board.* — There is hereby created in the Department of Transportation and Communications, the Land Transportation Franchising and Regulatory Board, hereinafter referred to as the "Board".

SECTION 2. *Composition of the Board.* — The Board shall be composed of a Chairman and two (2) members with the same rank, salary and privileges of an Assistant Secretary, all of whom shall be appointed by the President of the Philippines upon recommendation of the Secretary of Transportation and Communications. One (1) member of the Board shall be a member of the Bar and shall have engaged in the practice of law in the Philippines for at least five (5) years, another a holder of a degree in civil engineering, and the other a holder of a degree in economics, finance or management both with the same number of years of experience and practice.

SECTION 3. *Executive Director and Support Staff of the Board.* — The Board shall have an Executive Director who shall also be appointed by the President of the Philippines upon the recommendation of the Secretary of Transportation and Communications. He shall have the rank, salary and privileges of a Department Service Chief. He shall assist the Board in the performance of its powers and functions.

The Board shall be supported by the Technical Evaluation Division, Legal Division, Management Information Division, Administrative Division and Finance Division.

SECTION 4. *Supervision and Control Over the Board.* — The Secretary of Transportation and Communications, through his duly designated Undersecretary, shall exercise administrative supervision and control over the Land Transportation Franchising and Regulatory Board.

SECTION 5. *Powers and Functions of the Land Transportation Franchising and Regulatory Board.* — The Board shall have the following powers and functions:

- a. To prescribe and regulate routes of service, economically viable capacities and zones or areas of operation of public land transportation services provided by motorized vehicles in accordance with the public land transportation development plans

<sup>56</sup> Executive Order No. 202 (1987).



and programs approved by the Department of Transportation and Communications;

b. To issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public land transportation services provided by motorized vehicles, and to prescribe the appropriate terms and conditions therefor;

c. To determine, prescribe and approve and periodically review and adjust, reasonable fares, rates and other related charges, relative to the operation of public land transportation services provided by motorized vehicles;

d. To issue preliminary or permanent injunction, whether prohibitory or mandatory, in all cases in which it has jurisdiction, and in which cases the pertinent provisions of the Rules of Court shall apply;

e. To punish for contempt of the Board, both direct and indirect, in accordance with the pertinent provisions of, and the penalties prescribed by, the Rules of Court;

f. To issue *subpoena* and *subpoena duces tecum* and summon witnesses to appear in any proceedings of the Board, to administer oaths and affirmations;

g. To conduct investigations and hearings of complaints for violation of the public service laws on land transportation and of the Board's rules and regulations, orders, decisions and/or rulings and to impose fines and/or penalties for such violations;

h. To review *motu proprio* the decisions/actions of the Regional Franchising and Regulatory Office herein created;

i. To promulgate rules and regulations governing proceedings before the Board and the Regional Franchising and Regulatory Office: *Provided*, That except with respect to paragraphs d, e, f and g hereof, the rules of procedure and evidence prevailing in the courts of law should not be controlling and it is the spirit and intention of said rules that the Board and the Regional Franchising and Regulatory Offices shall use every and all reasonable means to ascertain facts in its case speedily and objectively and without regard to technicalities of law and procedures, all in the interest of due process;

j. To fix, impose and collect, and periodically review and adjust, reasonable fees and other related charges for services rendered;

k. To formulate, promulgate, administer, implement and enforce rules and regulations on land transportation public utilities, standards of measurements and/or design, and rules and regulations requiring operators of any public land transportation service to equip, install and provide in their utilities and in their stations such devices, equipment, facilities and operating procedures and techniques as may promote safety, protection, comfort and

convenience to persons and property in their charges as well as the safety of persons and property within their areas of operations;

l. To coordinate and cooperate with other government agencies and entities concerned with any aspect involving public land transportation services with the end in view of effecting continuing improvement of such services; and

m. To perform such other functions and duties as may be provided by law, or as may be necessary, or proper or incidental to the purposes and objectives of this Executive Order.

As to the Land Transportation Office, under Executive Order No. 266,<sup>57</sup> the powers and functions of the Traffic Adjudication Service in the Office of the Assistant Secretary for Land Transportation in the Department of Transportation and Communications are quasi-judicial in nature. It is not empowered to promulgate rules or impose penalties on violations of land transportation laws. Its powers are limited to promulgating rules and regulations governing the proceedings before it:

WHEREAS, there is a need to upgrade the Law Enforcement Division in the Office of the Assistant Secretary for Land Transportation into a service unit in order to make more effective the enforcement of traffic laws, rules and regulations;

WHEREAS, for a more meaningful law enforcement, it is likewise imperative to create within the Office of the Assistant Secretary for Land Transportation a service unit that shall specifically discharge the quasi-judicial powers and functions of the Department of Transportation and Communications insofar as violations of traffic laws, rules and regulations are concerned;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby order:

SECTION 1. There shall be two service units in the Office of the Assistant Secretary for Land Transportation in the Department of Transportation and Communications, namely:

- 1) Law Enforcement Service, and
- 2) Traffic Adjudication Service.

Each of the aforesaid service units shall be headed by a Service Chief to be appointed by the President upon recommendation of the Secretary of Transportation and Communications.

SECTION 2. The existing Law Enforcement Division in the Office of the Assistant Secretary for Land Transportation is hereby upgraded into a service unit which shall henceforth be known as the Law Enforcement Service and shall have the same functions and powers as those that the existing division now exercises.

<sup>57</sup> Executive Order No. 266 (1987).

SECTION 3. The Traffic Adjudication Service shall have the following powers and functions:

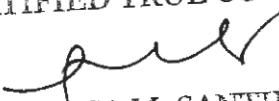
- a) To hear and decide cases involving violations of laws, rules and regulations governing land transportation and to impose fines and/or penalties therefor; provided that violations resulting in damage to property and/or physical injuries or violations constituting offenses punishable under the Revised Penal Code or other penal laws shall be under the jurisdiction of the regular courts;
- b) To order the impounding of motor vehicles and confiscation of plates or the arrest of violators of laws, rules and regulations governing land transportation;
- c) To issue *subpoena* and *subpoena duces tecum* and to summon witnesses to appear in any proceeding thereof, and to administer oaths and affirmations;
- d) To promulgate rules and regulations governing the proceedings before it; provided that except with respect to paragraph c, the rules of procedures and evidence prevailing in the courts of law shall not be controlling and all reasonable means to ascertain the facts in each case shall be used without regard to technicalities of law and procedures but all in the interest of due process; and
- e) To perform such other functions and duties as may be provided by law, or as may be necessary, or proper or incidental to its powers and functions.

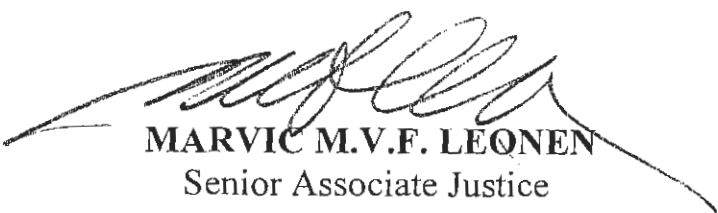
I thus maintain that there is no valid delegation of legislative power to the Land Transportation Office and the Land Transportation Franchising and Regulatory Board. These administrative bodies are not authorized to issue rules and regulations to enforce transportation laws or to impose penalties or fines for violations.

Nonetheless, since the Department of Transportation and Communications signed Department Order No. 2008-39 and issued the final approval for Joint Administrative Order No. 2014-01, I agree with the *ponencia* that these questioned issuances are validly promulgated.

**ACCORDINGLY, I CONCUR** in the result. I vote to **GRANT** the Petition in G.R. No. 206486, and to **DENY** the petitions in G.R. Nos. 212604, 212682, and 212800.

CERTIFIED TRUE COPY

  
MARIA LUISA M. SANTILLA  
Deputy Clerk of Court and  
Executive Officer  
2000-1a Banc, Supreme Court

  
MARVIC M.V.F. LEONEN  
Senior Associate Justice