EN BANC

G.R. No. 203353 — UNIVERSAL ROBINA CORPORATION, *petitioner*, *versus* **DEPARTMENT OF TRADE AND INDUSTRY ("DTI"), THE DTI SECRETARY, ZENAIDA C. MAGLAYA, in her capacity as DTI UNDERSECRETARY, AND VICTORIO MARIO A. DIMAGIBA, in his capacity as DIRECTOR FOR DTI'S BUREAU OF TRADE REGULATIONS AND CONSUMER PROTECTION,** *respondents*.

Promulgated:

February 14, 2023

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CONCURRING AND DISSENTING OPINION

CAGUIOA, *J*.:

Before the Court is a Petition for Review on *Certiorari*, which challenges the validity of the following: (1) "profiteering" as defined in Section 5(2) of the Price Act,[1] for being vague; (2) Executive Order (E.O.) No. 913, s. of 1983;[2] and Section 5, Rule IX of Administrative Order No. 07-06[3] of the Department of Trade and Industry (DTI) for being an invalid exercise of quasi-legislative power; and (3) all issuances, acts, or proceedings based on these issuances.

The *ponencia* denies the petition for review — the basis for which primarily rests on the finding that the offense of "profiteering," as defined in the Price Act, is not vague.

Furthermore, after much deliberation, the *ponencia* significantly settles the purported confusion on a couple of procedural matters: *first*, that a petition for declaratory relief is generally the appropriate remedy to raise the constitutionality of a treaty, statute, or ordinance;[4] and *second*, a justiciable controversy exists when there is a showing of a contrariety of legal rights susceptible of judicial resolution, even if there is no ***actual*** injury or harm to the party seeking relief.

While I disagree that the challenged provision penalizing profiteering under the Price Act is not vague, I concur with the pronouncements that deliberately veer away from the narrow interpretation of the actual case or

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1 Republic Act No. 7581, dated May 27, 1992.

2 Titled "STRENGTHENING THE RULE-MAKING AND ADJUDICATORY POWERS OF THE MINISTER OF TRADE AND INDUSTRY IN ORDER TO PROTECT CONSUMERS," dated October 7, 1983.

3 Titled "INSTITUTING THE SIMPLIFIED AND UNIFORM RULES OF PROCEDURE FOR ADMINISTRATIVE CASES FILED WITH THE DTI FOR VIOLATIONS OF THE CONSUMER ACT OF THE PHILIPPINES AND OTHER TRADE AND INDUSTRY LAWS," dated July 14, 2006.

4 *Ponencia*, p. 9.

controversy requirement. A clear demonstration of harm or injury on the party initiating the petition is not necessary in order for the Court to consider the controversy justiciable. To be sure, the courts' duty to only settle "actual controversies"[5] does not mean it can only resolve those with actual harm or injury.

In summary, I submit this Concurring and Dissenting Opinion to expound on the following points:

(1) The Constitution explicitly requires an actual case or controversy ripe for adjudication, as this assures that the Judiciary does not intrude into the areas committed to its co-equal branches. As such, there can be no exception, to the requirement of a justiciable controversy, which are grounded on the doctrine of transcendental public interest.

What the "transcendental importance of the issue" can justify to be relaxed are the technical rules on standing and hierarchy of courts.

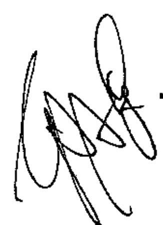
As well, the paramount public interest involved may also justify the Court's adjudication of a case that has ceased to present an actual case or controversy — *i.e.*, an issue that has been rendered moot and academic by virtue of a supervening event.

It must be emphasized, however, that the "transcendental importance of the issue" and "paramount public interest" do not, as they cannot, serve as basis for the exercise of judicial power when there is no actual or live controversy at the onset. Exercising judicial power in the absence of an actual case automatically renders the decision an advisory opinion. Thus, the Court cannot adopt exceptions to the requirement of justiciable controversy and effectively expand the bounds of its constitutional authority.

(2) There is no argument that, before the Court may exercise its power of judicial review, there should be an actual case or controversy that is ripe for adjudication. The crux therefore lies in the proper understanding of "actual case or controversy that is ripe for adjudication."

The attribution of a literal meaning to an actual case or controversy by requiring *actual* harm or injury to the party seeking relief — initially proposed by the *ponente* during the deliberations of this case — would require a wholesale

[5] CONSTITUTION, Art. VII, Sec. 1.



upending of settled rules and entrenched jurisprudence. Needless to state, this interpretation is palpably inconsistent with the long line of cases[6] where the Court has consistently and repeatedly held that an actual case or controversy exists where there is a "contrariety of legal rights susceptible of judicial resolution."[7]

(3) Neither is the corollary requirement of "ripeness" tantamount to an actual harm or injury to petitioner Universal Robina Corporation (URC). A case is not any less ripe if URC has not yet been apprehended pursuant to the challenged action, or has not sufficiently sustained some adverse consequence as a result of the implementation thereof.

If the Court were to apply the standard of actual harm, the Court will never be able to take cognizance of petitions that clearly establish a patent violation of the Constitution or a statute, or a *prima facie* showing of grave abuse of discretion. Even if the questions raised are purely one of law and the Court is not asked to speculate or rule on a hypothetical set of facts, these are, by these restrictive standards, premature because URC did not sustain any actual harm or injury. This departs not only from the well-established principle that an actual case or controversy must demonstrate a contrariety of legal rights, but also from the Court's duty to uphold the Constitution, especially when there is an alleged infringement thereof by the Legislative or Executive department.

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6 *Republic v. Maria Basa*, G.R. Nos. 206486, 212604, 212682, and 212800, August 16, 2022, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68571>, [Per Lopez, J. *J.* (*En Banc*), Gesmundo, C.J., Hernando, Inting, Zalameda, Gaerlan, Rosario, Dimaampao, Marquez, *JJ.*, concurred. Leonen, *J.*, filed his separate concurring and dissenting opinion. Caguioa *J.*, filed his concurring opinion. Lazaro-Javier, *J.*, filed her concurring opinion. Lopez, M., Singh, *JJ.* were on leave. Kho, *J.*, no part]; *Belgica v. Executive Secretary*, G.R. No. 210503, October 8, 2019. 922 SCRA 23 [*Per Curiam* (*En Banc*), Bersamin, *C.J.*, Reyes, A. B. Jr., Gesmundo, Reyes, J.C., Jr., Hernando, Carandang, Lazaro-Javier and Zalameda, *JJ.*, concurred. Carpio, Perlas-Bernabe, Leonen and Caguioa, *JJ.*, see separate opinion. Peralta, *J.* joins J. Carpio's opinion. Inting, *J.*, was on official business.]; *Inmates of the New Bilibid Prison v. De Lima*, G.R. Nos. 212719 & 214637, June 25, 2019, 905 SCRA 599 [Per Peralta, *J.* (*En Banc*), Bersamin, *C.J.*, Carpio, Del Castillo, Perlas-Bernabe, Caguioa, Reyes, A. B. Jr., Gesmundo, Reyes, J.C., Jr., Hernando, Carandang, Lazaro-Javier and Inting, *JJ.*, concurred. Leonen, *J.*, filed Separate Concurring Opinion Jardeleza, *J.*, was on wellness leave]; *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, 815 Phil. 1060 (2017) [Per Perlas-Bernabe, *J.* (*En Banc*), Sereno, *C.J.*, Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Mendoza, Jardeleza, Caguioa, Martires, Tijam and Reyes, Jr., *JJ.*, concurred. Leonen, *J.*, see separate opinion]; *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, 589 Phil. 387 (2008) [Per Carpio Morales, *J.* (*En Banc*), Quisumbing, *J.*, concurred. Puno, *C.J.*, please see separate concurring opinion. Ynares-Santiago, *J.*, see separate concurring opinion; I concur with separate opinion of C.J. Puno. Carpio, *J.*, see concurring opinion. Austria-Martinez, *J.*, also concurred with C.J's separate opinion. Corona, *J.*, shared the dissent of Mr. Justice Tinga. Azcuna, *J.*, concurred in a separate opinion. Tinga, *J.*, dissents from the result. See separate opinion. Chico-Nazario, Velasco, Jr., Nachura and Brion, *JJ.*, please see dissenting opinion. Reyes, *J.*, certified that J. Reyes filed a Separate Opinion concurring with the majority. — Puno, *C.J.* (RSP). Leonardo-de Castro, *J.*, please see concurring and dissenting opinion].

7 *Republic v. Maria Basa, id.*; *Belgica v. Executive Secretary, id.* at 53; *Inmates of the New Bilibid Prison v. De Lima, id.* at 619; *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, id.* at 1090; *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain, id.* at 481.

(4) Verily, the framework for determining the presence of an actual case cannot be confined to whether URC has actually sustained an injury as a result of the action being challenged.

Whether there is a contrariety of legal rights, and in turn, a justiciable controversy, are determinable according to the context of each case before the Court. In addition to the factual background of the petition, the Court should examine the issues raised and the relief sought. If the Court may grant the relief, or resolve the question of law without having to speculate or create abstract and hypothetical scenarios, it is an exercise in futility to await URC's apprehension or actual damage before the Court may intervene. The Court has, time and again, held that if the petitioner is able to demonstrate that the purported threat or incidence of injury is not merely hypothetical, or either of the Executive and Legislative branches has performed or accomplished an act, it is beyond cavil that the controversy is real, not speculative.[8] The existence of an immediate or threatened injury as a result of the act complained of also suffices to satisfy the requirement of ripeness.[9]

(5) The essence of an action for declaratory relief is the filing of the petition before a breach or violation of the act being challenged.

Furthermore, Rule 63 of the Rules of Court explicitly provides that a party may resort to this remedy to determine any question of validity or construction arising from a statute or governmental regulation. For this purpose, the Rules of Court requires the participation of the Solicitor General.

That being said, declaratory relief does not serve as a back door to challenge the constitutionality of statutes or regulations on its face. While an action for declaratory relief must be filed before a breach or violation of the act being challenged, an actual case or controversy or the "ripening seeds" thereof is still mandatory. In this regard, URC was justified in initiating the action for declaratory relief, there being a ripening seed of controversy by virtue of the DTI's continued inquiry on the prices for its ex-mill flour.

(6) Finally, I disagree that there are sufficient standards in the Price Act on what constitutes "profiteering," or the "sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth." The "true worth"

[8] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, supra note 6, at 1091.
[9] *Id.* at 1090–1091.

> of a basic necessity or a prime commodity, and the determination that the price is "grossly in excess" of such true worth, are subject to the personal predilections or varying criteria of the regulating agency. As such, "profiteering," punishable under Section 5(2) of the Price Act, is vague for failing to give proper notice on what conduct to avoid.[10]

To clarify, the Court may deny petitions that fail to present an actual case or controversy. The present framework for judicial inquiry does not also preclude the Court from denying petitions that raise factual issues, seek advisory opinions, ask resolutions for moot or academic questions, and violate the hierarchy of courts. As well, the Court may reject the application of any principle invoked as an exception to these rules, such as transcendental importance.

To be clear, this Concurring and Dissenting Opinion does not suggest any further exception to these rules. Rather, it respectfully submits that the Court must not confine the framework for assessing the justiciability of the controversy to an actual harm or injury, or to an arbitrary set of "concrete facts." The facts that may arise when issues of constitutionality or validity are raised vary from case to case, and more often, these facts are not the subject of inquiry before the Court. The Court should not pin down the standard on a moving target as this would result in a more elusive concept of a justiciable controversy that only confuses rather than clarifies.

I.

At the onset, it must be emphasized that the Court may exercise its power of judicial review only when there is an actual case or controversy. The requirement of having an actual case or controversy is not a self-imposed boundary; it is, rather, a constitutional mandate. Courts are the repositories of judicial power. Judicial power, in turn, "includes the duty of the courts of justice to settle <u>actual controversies</u> involving rights which are legally demandable and enforceable and to determine whether or not there has been grave abuse of discretion."[11]

This requirement of having an "actual case" is "a manifestation of the commitment to the adversarial system. Hence, the Court has no authority to pass upon issues of constitutionality through advisory opinions and it has no authority to resolve hypothetical or feigned constitutional problems or friendly suits collusively arranged between parties without real adverse interests."[12] In other words, "[t]he 'case-or-controversy' requirement bans this court from deciding 'abstract, hypothetical or contingent questions,' lest the

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[10] Republic Act No. 7581, Sec. 5(2).

[11] CONSTITUTION, Art. VIII, Sec. 1. Underscoring supplied.

[12] Concurring and Dissenting Opinion of Associate Justice Arturo D. Brion in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, supra note 6, at 680, citing Joaquin Bernas, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (1996 Ed.).

court give opinions in the nature of advice concerning legislative or executive action."[13]

To be sure, there are no exceptions to the requirement of an actual case or controversy. Even the doctrine of transcendental importance, which is often invoked to excuse non-compliance, may only justify the relaxation of the doctrine of hierarchy of courts, or the requirement of standing. This case presents the appropriate platform to clarify that transcendental importance does not apply as an exception to the justiciability of the controversy, except when the case has been rendered moot and academic by virtue of a supervening event.

A. The doctrine of transcendental importance is not an exception to the justiciability of a controversy

In *Gios-Samar, Inc. v. Department of Transportation and Communications*[14] (*Gios-Samar*), the Court provided an exhaustive discourse on the application of the doctrine of transcendental importance. Historically, the doctrine was used to justify the relaxation of rules on standing but it eventually evolved to make allowances for disregarding the proscription against direct recourse to the Court.[15] *Gios-Samar* clarifies, however, that transcendental importance may excuse the violation of the hierarchy of courts only when the resolution of factual issues is not necessary to the resolution of the constitutional issues.[16] Concurring with this position, the herein *ponente* even went so far as to caution against the use of this doctrine as an exception to 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.**
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> 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

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13 *Lozano v. Nograles*, 607 Phil. 334, 340 (2009).

14 849 Phil. 120 [Per Jardeleza, *J.* (*En Banc*), Bersamin, *C.J.*, Peralta, Del Castillo, Perlas-Bernabe, Caguioa, Reyes, A. B. Jr., Gesmundo, Reyes, J. C. Jr., Hernando, Carandang and Lazaro-Javier, *JJ.*, concurred; Carpio, *J.*, joined the Concurring Opinion of Leonen, *J.*, with note "We do not abandon here the doctrine of transcendental importance.;" Leonen, *J.*, filed his Separate Concurring Opinion].

15 *Id.* at 161.

16 *Id.* at 175.

establish transcendental importance. Generally, we follow the doctrine of respect for hierarchy of courts for matters within our concurrent original jurisdiction.[17] (Emphasis supplied)

Reiterating this position, the herein *ponente* further opined in his Separate Opinion in *Republic v. Maria Basa Express Jeepney Operators and Driver's Association, Inc.*[18] (*Maria Basa*) that "raising transcendental importance x x x is not an exception to the requirement of an actual case or controversy."[19] Clearly, therefore, the transcendental importance of the issue can only justify non-compliance with other procedural requirements, like *locus standi* or hierarchy of courts. It does not authorize the Court to adjudicate cases that fail to present a justiciable controversy.

In some instances, the paramount importance of the issue may be invoked as an exception to a case that has been rendered moot and academic. That said, the Court assumes jurisdiction over controversies that would have been otherwise considered moot and academic only under clear delimited circumstances, as when: (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the constitutional issue raised required the formulation of controlling principles to guide the Bench, the Bar, and the public; and (4) the case was capable of repetition yet evading review.[20]

To emphasize, the constitutional mandate of all courts in the Philippines, including this Court, is to "settle actual controversies involving rights which are legally demandable and enforceable."[21] The requirement of actual case or controversy is not a mere procedural hurdle established by jurisprudence; rather, it stems from the nature of judicial power as drawn up by the Constitution. Certainly, the Court cannot create exceptions that explicitly run counter to the constitutional grant of judicial power.

In this regard, the herein *ponente*'s words in *Gios-Samar* and *Maria Basa* should still ring true. The Court cannot simply dispense with the requisite actual controversy at the first instance. The requirement of an actual case or controversy applies to all cases, except in the rare instances when the Court recognizes the exceptions to the moot and academic principle. Thus, if the Court is minded to rely on the long line of cases involving the lack of actual case or controversy, then it has no choice but to dismiss the petition on that ground, nothing more. Ruling on the merits of a petition that the Court already categorizes as not having a justiciable controversy is the very

[17] Separate Concurring Opinion of Associate Justice Marvic M.V.F. Leonen in *Gios-Samar, Inc. v. Department of Transportation and Communications*, *id.* at 194–195.

[18] Supra note 6.

[19] Separate Opinion of Associate Justice Marvic M.V. F. Leonen in *Republic v. Maria Basa*, *id.* See also *Kilusang Magbubukid ng Pilipinas v. Aurora Pacific Economic Zone and Freeport Authority*, G.R. Nos. 198688 & 208282, November 24, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67550>. [Per Leonen, *J.* (*En Banc*), Peralta, *C.J.*, Perlas-Bernabe, Gesmundo, Hernando, Carandang, Inting, Zalameda, Lopez, Gaerlan and Rosario, *JJ.*, concur. Caguioa, Lazaro-Javier, and Delos Santos, *JJ.*, were on official leave.]

[20] *David v. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006).

[21] CONSTITUTION, Art. VIII, Sec. 1. Underscoring supplied.

definition of an advisory opinion. If the Court would rather rule on the merits, then it has no choice but to rule that there is a justiciable controversy so as not to be violative of the Constitution.

To reiterate, "transcendental public interest" as an exception applies to cases where the issue has been rendered moot, or was filed by one who has no *locus standi*, or was filed in violation of the hierarchy of courts. In all of these cases, a real justiciable controversy exists, or at least had existed — there was merely some supervening event that caused certain procedural defects or missteps.

At this juncture, it should be pointed out that the Court has often frowned upon litigants who expect to cure the procedural infirmities of their petitions by bare invocations of the doctrine of transcendental public interest, or the interest of substantial justice.[22] Inasmuch as the Court does not sanction the suspension of procedural rules because of an undemonstrated claim of paramount public interest, neither should it inattentively apply this doctrine to rule on a case it has already deemed as non-justiciable. Ruling otherwise is antithetical to the nature of the Court's judicial power, as the application of this doctrine requires the Court to make value judgments on which policies warrant the relaxation of procedural rules.[23] The case of *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*[24] is instructive on this matter: "[t]he 'transcendental importance' standard, in particular, is vague, open-ended and value-laden, and should be limited in its use to exemptions from the application of the hierarchy of courts principle. It should not carry any ripple effect on the constitutional requirement for the presence of an actual case or controversy."[25]

B. The exceptional circumstances proposed in the ponencia should not be construed as exceptions to the requirement of a justiciable controversy

While I do not disagree with the *ponencia*'s enumeration of exceptions to the requirement of actual facts, I respectfully submit that these are not actual exceptions to the requisite actual case or controversy.[26] Rather, these are only restatements of the current rules on the Court's exercise of its power of judicial review.

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[22] See *Falcis v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, 917 SCRA 197, 362. See also *Chamber of Real Estate and Builders' Association, Inc. v. Energy Regulatory Commission*, 638 Phil. 542 (2010).

[23] *See* Separate Opinion of Associate Justice Arturo D. Brion in *Cawad v. Abad*, 764 Phil. 705, 743 (2015).

[24] 802 Phil. 116 (2016) [Per Brion, *J.* (*En Banc*), Sereno, *C.J.*, Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Perez, Mendoza, Reyes and Perlas-Bernabe, *JJ.*, concurred; Leonen, *J.*, concurred in the result, and filed Separate Opinion; Jardeleza, *J.*, took no part, prior OSG action; Caguioa, *J.*, was on leave]. Emphasis supplied.

[25] *Id.* at 159.

[26] See *ponencia*, pp. 12–13.

I expound.

In my Separate Concurring and Dissenting Opinion in *Calleja v. Executive Secretary*[27] (*Calleja*), I opined that the justiciability of a controversy is not determined solely by the nature of the challenge raised before the Court, or on the nature of the statute or regulation being assailed. The presence of an actual case or controversy is independently determinable from the grounds invoked by the parties to question the constitutionality of the statute or ordinance. The fact that a facial challenge is mounted against a statute, regardless of whether it regulates speech or not, does not automatically mean that there is an absence of a justiciable controversy.

While the Court in *Calleja* adopted a limited facial analysis framework, *i.e.* finding that constitutional questions on the vagueness of penal statutes should be limited to free speech cases, it was recently recognized in *Maria Basa* that "the doctrine of vagueness x x x has evolved and is at present, not merely limited to free speech cases anymore."[28] Thus, while therein petitioners facially challenged a traffic regulation, an issuance that evidently does not regulate speech, the Court did not rule that the petition was premature or did not present an actual case or controversy. To the contrary, the Court proceeded to pass upon the question of the assailed regulation's supposed ambiguity. In this regard, there should be no dispute that a facial challenge on the ground of vagueness is susceptible of judicial resolution even without "actual harm" or "further facts," as the very nature of a vagueness challenge requires the Court to examine the language of the law itself or the relevant regulations in connection thereto.

Accordingly, the ripeness of the controversy for judicial resolution is not negated by the fact that petitioner mounted a facial challenge on a law or regulation that does not regulate speech. Neither is the converse true — a facial challenge of a law involving freedom of expression and its cognate

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[27] 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, accessed <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67914>.

[28] *Republic v. Maria Basa*, supra note 6, the pertinent portion reads in full:

> **With regard to the doctrine of vagueness, it may be well to point out that it has evolved and is at present, not merely limited to free speech cases anymore. Thus, this Court shall not stay its hand from assessing the constitutionality of [a] statute or regulation by the mere theory that the same is void for being vague.** To emphasize, in [*SPARK*], the Court was asked to assess the vagueness of various curfew ordinances for minors in Quezon City, Manila, and Navotas. The challenge was anchored on its supposed absence of parameters in identifying suspected curfew violators. The Court, notwithstanding the obvious fact that such ordinances did not involve the exercise of speech and expression, markedly passed upon the vagueness challenge, finding that the arguments of petitioners were unconvincing. Succinctly, the Court ruled that while the curfew ordinances did not venture to state any parameters law enforcement agents were still bound to follow the prescribed measures found under Republic Act No. 9344 in apprehending curfew violators.
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> Most importantly, the vagueness doctrine "is premised on due process considerations." As Justice Caguioa submits, this Court has often subjected laws or regulations that do not involve speech to the vagueness challenge. (Emphasis supplied)

rights does not lack an actual case or controversy. Whether the statute or regulation infringes on the freedom of speech, as in the *ponencia*'s first exceptional circumstance, or egregiously violates fundamental rights, as the *ponencia* proposes in the second exceptional circumstance, there already is an actual case or controversy ripe for judicial determination by virtue of the mere enactment or effectivity of the measure being assailed. Simply put, the performance of an act that violates the Constitution or contravenes a statute is sufficient to constitute a justiciable controversy. [29]

Similarly, in the *ponencia*'s third exceptional circumstance, there is an actual case or controversy that already exists because of the emergency or urgent measure being invoked. That judicial review can possibly render the case moot does not necessarily negate the presence of a justiciable controversy. Until such time that the supervening event occurs, there is reasonable basis for the Court to adjudicate the matter at hand. And, in the event that the case has become moot, the Court may find that the exceptions to mootness may apply.

From the foregoing, I respectfully submit that the "exceptions" itemized by the *ponencia* are not new, but only echo the current guidelines for the exercise of judicial review.

II.

The ponencia settles, once and for all, any confusion as to what constitutes a justiciable controversy

The *ponencia* further rules that "for the exercise of judicial review, actual facts resulting from the assailed law, as applied, may not be absolutely necessary in all cases."[30]

I concur. This ruling should therefore finally put to rest any confusion as to what constitutes a justiciable controversy

Jurisprudence has established that there may be an actual case or controversy even if the injury is merely threatened or imminent. Stated differently, the issue does not become hypothetical or abstract solely by virtue of the nature of the injury on the party seeking relief.

On this point, the Court has consistently held that an actual case or controversy exists when there is a "conflict [or contrariety] of legal rights"[31]

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[29] *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun,* 520 Phil. 457, 470 (2006) [Per Chico-Nazario, *J.* (First Division), Panganiban, *C.J.*, Ynares-Santiago, Austria-Martinez and Callejo, Sr., *JJ.*, concurred], citing *Pimentel, Jr. v. Aguirre*, 391 Phil. 84 (2000).

[30] *Ponencia*, pp. 11–12.

[31] *Republic v. Maria Basa*, supra note 6; *Belgica v. Executive Secretary*, supra note 6; *Inmates of the New Bilibid Prison v. De Lima*, supra note 6; *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, supra note 6; *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, supra note 6.

or an "evident clash of the parties' legal claims."[32] This is distinguished from theoretical questions that compel the courts to speculate on a hypothetical set of facts in order to arrive at a conclusion.[33] The antagonistic assertion of rights or the opposing legal claims of either party must be susceptible of judicial resolution, or must admit of specific reliefs that courts can grant.[34]

In order to be justiciable, the issue must also be ripe for adjudication. A case is considered ripe when "something had then been accomplished or performed by either [the Executive or Legislative] branch x x x and the petitioner [alleges] the existence of an immediate or threatened injury to itself as a result of the challenged action."[35] The Court in *Belgica v. Executive Secretary*[36] (*Belgica*) explained as follows:

> Jurisprudence defines an actual case or controversy as "one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.'" Subsumed in the requirement of an actual case or controversy is the requirement of ripeness, and "[f]or a case to be considered ripe for adjudication, **it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action.**" To be sure, the Court may not wield its power of judicial review to address a hypothetical problem. "Without any **completed action or a concrete threat of injury** to the petitioning party, the act is not yet ripe for adjudication."[37] (Emphasis supplied)

Clearly, if the petitioner is able to demonstrate a "threat of injury," or that he or she is "immediately in danger of sustaining some direct injury as a result of the act complained of,"[38] the case is considered ripe. This is not negated by the absence of so-called "actual facts" — especially when the alleged act or omission on the part of the respondents exceed the Constitution or violate their mandate under the law. This holds especially true for cases that invoke the Court's expanded power of judicial review, as "a *prima facie showing of grave abuse of discretion in the assailed governmental act*"[39] essentially constitutes the actual case or controversy.

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32 *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, supra note 6, at 1091.

33 *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 123 (2014) [Per Mendoza, *J.* (*En Banc*), Velasco, Jr., Peralta, Bersamin, Villarama, Jr. and Perez, *JJ.*, concurred. Sereno, *C.J.*, Del Castillo, Reyes and Perlas-Bernabe, *JJ.*, filed their separate concurring and dissenting opinions. Carpio; Abad, Leonardo-de Castro, Brion *JJ.*, filed their concurring opinions. Leonen, *J.*, filed his separate dissenting opinion].

34 *Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, April 2, 2019, 899 SCRA 412, 520. [Per Leonen, *J.* (*En Banc*), Bersamin, *C.J.*, Carpio, Peralta, Del Castillo, Perlas-Bernabe, Caguioa, Reyes. A. B., Jr., Gesmundo, Carandang and Lazaro-Javier, *JJ.*, concur. Jardeleza, *J.*, no part and on official business. Reyes, J. C., Jr., *J.*, on official leave. Hernando, *J.*, on leave.]

35 *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, supra note 6, at 481.

36 Supra note 6.

36 *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, supra note 6, at 1091.

37 *Id.* at 53–54.

38 *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, supra note 6, at 1091.

39 *Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 & 240954, March 16, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67374>. [Per Leonen, *J.* (*En Banc*), Peralta, *C.J.*, Perlas-Bernabe, Caguioa, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, M.V. Lopez, Delos Santos, Gaerlan, Rosario and J.Y. Lopez, *JJ.*, concur.]

In *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*[40] (*Province of North Cotabato*), the Court rejected the argument that the petition challenging the constitutionality of the Memorandum of Agreement on the Ancestral Domain (MOA-AD) is premature. Simply put, it was immaterial that the MOA-AD was not yet executory at the time of the filing of the petition because the petition established that therein respondents departed from their mandate and committed acts in violation of the Constitution. The Court therefore found that there was a justiciable controversy it was duty-bound to resolve:

> The present petitions pray for *Certiorari*, Prohibition, and *Mandamus*. *Certiorari* and Prohibition are remedies granted by law when any tribunal, board or officer has acted, in the case of *certiorari*, or is proceeding, in the case of prohibition, without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. *Mandamus* is a remedy granted by law when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use or enjoyment of a right or office to which such other is entitled. *Certiorari, Mandamus* and Prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials.
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> ....
>
> As the petitions allege acts or omissions on the part of respondent that **exceed their authority**, by violating their duties under E.O. No. 3 and the provisions of the Constitution and statutes, the petitions make a *prima facie* case for *Certiorari*, Prohibition, and *Mandamus*, and an actual case or controversy ripe for adjudication exists. **When an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute.**[41] (Emphasis and underscoring in the original)

When the judiciary's expanded power of judicial review is invoked in a petition for *certiorari*, prohibition, or *mandamus*, it is sufficient that the questioned law has been enacted, or that the challenged action was approved. No further overt acts are necessary to render the controversy ripe.[42] Petitioners

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40 Supra note 6.

41 *Id.* at 484–486.

42 *Inmates of the New Bilibid Prison v. De Lima*, supra note 6, at 650; See also *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, supra note 6, at 1091:

> Applying these precepts, this Court finds that there exists an actual justiciable controversy in this case given the evident clash of the parties' legal claims, particularly on whether the Curfew Ordinances impair the minors' and parents' constitutional rights, and whether the Manila Ordinance goes against the provisions of RA 9344. Based on their asseverations, petitioners have — as will be gleaned from the substantive discussions below — conveyed a *prima facie* case of grave abuse of discretion, which perforce impels this Court to exercise its expanded jurisdiction. The case is likewise ripe for adjudication, considering that the Curfew Ordinances were being implemented until the Court issued the TRO enjoining their enforcement. The purported threat or incidence of injury is, therefore, not merely speculative or hypothetical but rather, real and apparent.

need not await the "implementing evil to befall on them,"[43] or for them to actually suffer the injury or harm before challenging these acts as illegal or unconstitutional.[44]

These doctrinal rulings were recently reiterated in *Maria Basa*, where the *certiorari* jurisdiction of the Court was invoked to assail the issuances on traffic violations, the various provisions of which were alleged to violate the Constitution. Only two of the numerous petitioners were actually apprehended pursuant to the challenged regulations, but the Court found the case ripe for adjudication, even with respect to those who were not found liable under the assailed traffic issuances. No further facts were required from these other petitioners, as the Court found that they were able to establish an immediate and imminent threat of apprehension for violation of the challenged regulations, therein petitioners being drivers and operators of public utility vehicles. Furthermore, "the petitions alleged acts or omissions on the part of public respondents that exceed their authority"[45] that demonstrate an evident clash of the parties' legal claims. Accordingly, the Court proceeded to rule on the substantive merits of this case.

The foregoing clearly demonstrates that the mere enactment of the law or regulation that is repugnant to the Constitution is sufficient to render the controversy justiciable. Ruling otherwise would require the Court to revamp years of precedents to reconcile the new meaning ascribed to justiciability.[46]

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[43] *Pimentel, Jr. v. Aguirre*, 391 Phil. 84, 107 (2000) [Per Panganiban, *J.* (*En Banc*), Davide, Jr., *C.J.*, Bellosillo, Melo, Puno, Vitug, Mendoza, Quisumbing, Pardo, Buena, Gonzaga-Reyes and De Leon, Jr., *JJ.*, concurred. Kapunan, *J.*, see dissenting opinion. Purisima and Ynares-Santiago, *JJ.*, join J. Kapunan in his dissenting opinion]:

> This is a rather novel theory — that people should await the implementing evil to befall on them before they can question acts that are illegal or unconstitutional. **Be it remembered that the real issue here is whether the Constitution and the law are contravened by Section 4 of AO 372, not whether they are violated by the acts implementing it.** In the unanimous *en banc* case *Tañada v. Angara*, this Court held that when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. (Emphasis and underscoring supplied)

[44] *Spouses Imbong v. Ochoa, Jr.*, supra note 33, where the Court stated:

> An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. The rule is that courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. **The controversy must be justiciable — definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, 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, tangible and not merely a theoretical question or issue.** There ought to 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. (Emphasis supplied)

[45] *Republic v. Maria Basa*, supra note 6.

[46] *N.B.* For instance, a petition for prohibition is a preventive remedy to restrain the doing of some act which is about to be done [*Agustin v. De la Fuente*, 84 Phil. 515, 517 (1949)]. It cannot restrain acts that are already accomplished [See *Montes v. Court of Appeals*, 523 Phil. 98, 109-110 (2006)]. Similarly, an action for injunction, which has for its purpose the enjoinment of a defendant from the commission or continuance of a specific act, would be dismissed if the act sought to be restrained has been accomplished

III.

An action for declaratory relief is an appropriate remedy to challenge the constitutionality of a statute

An action for declaratory relief originated from Act No. 3736,[47] passed as far back as 1930, empowering courts to make declaratory judgments on questions of construction or validity arising from a statute. This was adopted in Rule 66 of the 1940 Rules of Court, and eventually carried over to the subsequent revisions to the Rules — *i.e.*, Rule 64 of the 1964 Rules of Court, Rule 63 of the 1997 Rules of Civil Procedure, and Rule 63 of the 2019 Amendments to the 1997 Rules of Civil Procedure. In all of its iterations, declaratory relief must be initiated "before breach or violation" of the written instrument, statute, ordinance, or governmental regulation. Thus, by its very nature, an action for declaratory relief will not prosper if a breach or violation of the plaintiff's right already occurred.[48]

In his annotations to the Rules of Court, Former Chief Justice Manuel V. Moran emphasized that declaratory relief, as a remedy, is rooted on the principle that "courts should be allowed to act not only when harm is actually done and rights jeopardized by physical wrongs or physical attack upon legal relations, but also when challenge, refusal, dispute or denial thereof is made amounting to a live controversy x x x. Courts thus become an instrument of both curative and preventive justice."[49]

On this point, the *ponencia* states that declaratory relief is a proper procedural remedy to question the constitutionality of a statute.[50] Again, I concur. This position is supported not only by the Court's pronouncements on declaratory relief, but also by referring to the Rules of Court.

Section 1, Rule 63 of the Rules of Court on declaratory relief[51] provides that:

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or fully executed [See *Manila Banking Corp. v. Court of Appeals*, 265 Phil. 142, 151 (1990)]. Under these circumstances, the breach or the injury is merely imminent, and it would be incongruous for the Court to require further overt acts before ruling on the petition as by that time, the act sought to be enjoined is fait accompli.

47 Titled "AN ACT EMPOWERING THE COURTS TO MAKE DECLARATORY JUDGMENTS, AND FOR OTHER PURPOSES," dated November 22, 1930.

48 *Ollada v. Central Bank*, 115 Phil. 284, 291 (1962) cited in the Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Department of Health v. Philipine Tobacco Institute, Inc.*, G.R. No. 200431, July 31, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68029>.

49 Manuel V. Moran, COMMENTS ON THE RULES OF COURTS, Vol. II (1957 ed.), pp. 141–142.

50 *Ponencia*, p. 1.

51 *N.B.* Courts of First Instance were granted the authority to "make declaratory judgments" in Act No. 3736, Sec. 1 of which mirrors the language of Section 1, Rule 63 of the Rules of Court. This was later incorporated in the 1940 Rules of Court, where petitions for declaratory relief were subsumed under Rule 66, and later in Rule 64 under the 1964 Rules of Court. Notably, in *Macasiano v. National Housing Authority*, 296 Phil. 56, 64–65 (1993), the Court recognized that the original jurisdiction over an action for declaratory relief is with the Regional Trial Court.

> x x x [a]ny person interested under a deed, will, contract or other written instrument, **whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation** may, **before breach or violation thereof**, bring an action in the appropriate RTC to determine **any question of construction or validity** arising, and for a declaration of his [or her] rights or duties thereunder. (Emphasis and underscoring supplied)

The Rules of Court further provide that notice should be given to the Solicitor General "[i]n any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation,"[52] or if an "ordinance is alleged to be unconstitutional."[53] By the text of the Rules of Court alone, therefore, declaratory relief is the proper procedural vehicle to assail the constitutionality of a statute.

As early as the 1957 case of *Araneta v. Gatmaitan*,[54] the Court already ruled that the constitutionality of an executive order can be ventilated in a declaratory relief proceeding.[55] Subsequently, in *Republic v. Roque*,[56] a petition for declaratory relief was filed in the Regional Trial Court (RTC) to question the constitutionality of Republic Act No. (RA) 9372, or the Human Security Act of 2007. When it reached the Court, the Court meticulously discussed the propriety of dismissing the petition for declaratory relief, not because it was an improper procedural tool, but rather because the requisites for a petition for declaratory relief to prosper were not all present. The Court *En Banc* said:

> Case law states that the following are the requisites for an action for declaratory relief: first, the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; second, the terms of said documents and the validity thereof are doubtful and require judicial construction; third, there must have been no breach of the documents in question; fourth, **there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse**; fifth, the issue must be ripe for judicial detemination; and sixth, adequate relief is not available through other means or other forms of action or proceeding.

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52 RULES OF COURT, Rule 63, Sec. 3.

53 RULES OF COURT, Rule 63, Sec. 4.

54 101 Phil. 328 (1957) [Per Felix, *J.* (Second Division), Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L. and Endencia, *JJ.*, concurred]; See also *Imbong v. Ferrer*, 146 Phil. 30 (1970). [Per Makasiar, *J.* (Second Division), Reyes, J.B.L., and Castro, *JJ.*, concurred. Concepcion, *C.J.*, concurred with Mr. Justice Fernando as certified by Mr. Justice J.B.L. Reyes. Dizon, *J.*, voted in favor of the opinion of Mr. Justice Makasiar as certified by Mr. Justice J.B.L. Reyes. Makalintal, *J.*, concurred in the result. Zaldivar, *J.*, concurred with the separate opinion of Mr. Justice Fernando in so far as it relates to Sec. 8(a), par. 1 of Republic Act No. 6132 and reserved his vote in so far as other questions raised in the two cases were concerned. Fernando, *J.*, concurred and dissented in a separate opinion. Barredo, *J.*, dissented in a separate opinion. Villamor, *J.*, concurred with the separate opinion of Mr. Justice Fernando. Teehankee, *J.*, was on official leave], where the Court gave due course to an action for declaratory relief, which assailed the constitutionality of the 1970 Constitutional Convention Act.

55 *Id.* at 337–338.

56 718 Phil. 294 (2013) [Per Perlas-Bernabe, *J.* (*En Banc*), Sereno, *C.J.*, Carpio, Velasco, Jr., Leonardo-de Castro, Del Castillo, Abad, Perez, Reyes and Leonen, *JJ.*, concurred. Brion and Villarama, Jr., *JJ.*, were on leave. Peralta, Bersamin and Mendoza, *JJ.*, were on official leave].

> Based on a judicious review of the records, the Court observes that while the first, second, and third requirements appear to exist in this case, the fourth, fifth, and sixth requirements, however, remain wanting.[57] (Emphasis supplied)

Then, in *Film Development Council of the Phils. v. Colon Heritage Realty Corp.* [58] (*FDCP*), the Court *En Banc* declared Sections 13 and 14 of RA No. 9167 unconstitutional in a case involving a petition for declaratory relief initially filed before an RTC. The *FDCP* case involved a national law that had the effect of confiscating the income of certain local government units arising from amusement taxes that the latter may opt to impose, thereby undermining the local autonomy provisions of the Constitution. Cebu City filed a petition for declaratory relief in the RTC to question the constitutionality of Sections 13 and 14 of RA No. 9167 which was eventually granted. When the case reached the Court, it upheld the RTC's declaration of unconstitutionality of the said provisions.

Likewise, in *Commission on Elections v. Cruz*,[59] the Court *En Banc* decided on the constitutionality of a *proviso* in Section 2 of RA No. 9164,[60] which was assailed *via* a petition for declaratory relief filed with the RTC. After the RTC declared the assailed *proviso* unconstitutional, therein petitioner Commission on Elections (COMELEC) filed a Rule 45 petition before the Court on a pure question of law. The Court proceeded to rule on the issue and passed upon the merits of the substantive arguments of the parties — notably without any debate as to the propriety of the remedy availed of.

In *Concepcion, Jr. v. COMELEC*,[61] the Court likewise emphasized that among the available remedies to question the constitutionality of a statute or a quasi-legislative act of an administrative agency is a petition for declaratory relief:

> What is significant in appreciating this defect in the petition is the legal reality that the petitioner was not without any viable remedy to directly challenge Resolution 7798. **A stand-alone challenge to the regulation could have been made through appropriate mediums, particularly through a petition for declaratory relief with the appropriate Regional Trial Court under the terms of Rule 63 of the Rules of Court, or**

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[57] *Id.* at 304-305.

[58] 760 Phil. 519 (2015) [Per Velasco, Jr., *J.* (*En Banc*), Sereno, *C.J.*, Carpio, Leonardo-de Castro, Brion, Bersamin, Del Castillo, Villarama, Jr.,Perez, Mendoza, Reyes and Perlas-Bernabe, *JJ.*, concurred; Leonen, *J.* on leave but filed Concurring Opinion; Peralta, *J.* on leave; Jardeleza, *J.* took no part]

[59] 620 Phil. 175 (2009) [Per Brion, *J.*, (*En Banc*), Puno, *C.J.*, Carpio, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Bersamin, Del Castillo, Abad and Villarama, Jr., *JJ.*, concurred; Corona, Velasco, Jr. and Peralta, *JJ.*, were on official leave.]

[60] Titled "AN ACT PROVIDING FOR SYNCHRONIZED BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING REPUBLIC ACT NO. 7160, AS AMENDED, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991," AND FOR OTHER PURPOSES, or the Synchronized Barangay and SK Elections," approved on March 19, 2002.

[61] 609 Phil. 201 (2009) [Per Brion, *J.* (*En Banc*), Puno, *C.J.*, Quisumbing, Ynares-Santiago, Carpio, Corona, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Peralta and Bersamin, *JJ.*, concurred; Carpio Morales, *J.*, was on leave.]

> **through a petition for prohibition under Rule 65 to prevent the implementation of the regulation, as the petitioner might have found appropriate to his situation.** As already mentioned, a challenge can likewise be made in the course of validly contesting an adjudicatory order of the COMELEC. Such challenge, however, cannot be made in an original petition for *certiorari* under Rule 65 dissociated from any COMELEC action made in the exercise of its quasi-judicial functions.[62] (Emphasis supplied)

Parenthetically, the Court deems petitions that challenge the constitutionality of a statute or regulation as one for declaratory relief, even if those petitions are captioned as other actions. Thus, in *Clark Investors and Locators Association, Inc. v. Secretary of Finance*,[63] the Court found that the petition for *certiorari*, which sought to annul a Revenue Regulation imposing excise and value added tax on the importation of petroleum products, was actually an action for declaratory relief. Since the *certiorari* petition sought, in essence, the declaration of the unconstitutionality or illegality of the challenged rule, the Court deemed that it was one for declaratory relief over which it may only exercise its appellate jurisdiction.[64]

In *Zomer Development Co., Inc. v. Special Twentieth Division of the Court of Appeals*,[65] the Court, through the herein *ponente*, ruled in the same manner. Before reaching the Court, the complaint filed in the trial court was captioned as one for "Declaration of Nullity of Notice of Sale, Certificate of Sale & TCTs and Declaration as Unconstitutional Sec. 47, RA No. 8791," which the herein *ponente* deemed as a petition for declaratory relief.[66]

It cannot, therefore, be said that the Court does not consider declaratory relief as a proper procedural vehicle to assail the constitutionality of a law. With due respect, the Court should not effectively rewrite the Rules of Court by making these pronouncements that are inconsistent not only with jurisprudence, but with the explicit text of Rule 63.

IV.

An action for declaratory relief, even if filed before breach or violation of the challenged act, requires an actual case or controversy — ***and one exists here***

Having established that declaratory relief is proper to assail the constitutionality of a statute, it must be emphasized that declaratory relief,

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[62] *Id.* at 216–217.

[63] 763 Phil. 79 (2015) [Per Villarama, Jr., *J.*, (Third Division), Peralta, Bersamin, Perez, and Perlas-Bernabe, *JJ.*, concurred.]

[64] *Id.* at 92.

[65] G.R. No. 194461, January 7, 2020, 928 SCRA, 110 [Per Leonen, *J.* (*En Banc*), Peralta, *C.J.*, Caguioa, Gesmundo, Reyes, J.C. Jr., Hernando, Carandang, Lazaro-Javier, Inting and Zalameda, *JJ.*, concurred; Perlas-Bernabe, *J.*, was on official leave; Reyes, A.B. Jr., *J.*, was on official business; Lopez, *J.*, was on wellness leave; Delos Santos, *J.*, took no part.]

[66] *Id.* at 124.

much like all other cases, still requires the presence of a justiciable controversy.

To be sure, an action for declaratory relief does not serve as a back door for constitutional issues, there being no exception carved out for the actual case or controversy requirement. The essential requisites for an action for declaratory relief include an actual justiciable controversy or "the 'ripening seeds' of one between persons whose interests are adverse."[67] The Court expounds on this further in *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*[68] (*Viron*):

> The following are the essential requisites for a declaratory relief petition: (a) there must be a **justiciable controversy**; (b) the controversy must be between persons whose interests are adverse; (c) the party seeking declaratory relief must have a legal interest in the controversy; and (d) the issue invoked must be **ripe for judicial determination.**
>
> The requirement of the presence of a justiciable controversy is satisfied when an actual controversy or the ripening seeds thereof exist between the parties, all of whom are *sui juris* and before the court, and the declaration sought will help in ending the controversy. **A question becomes justiciable when it is translated into a claim of right which is actually contested.**[69] (Emphasis supplied)

The "ripening seeds" of a controversy was recognized as a standard to determine the justiciability of an action for declaratory relief as early as the 1940 Rules of Court, which adopted declaratory judgments as a remedy in Rule 66.[70] It refers to a dispute that has "accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead."[71] While there is yet no breach of the plaintiff's rights, sufficient facts should accrue in order to "[transcend] the boundaries of what is merely conjectural or anticipatory."[72] The challenge must therefore be anchored on a definite refusal, denial, or omission that raises an uncertainty or insecurity injurious to the plaintiff's rights — not a mere fear or doubt.[73]

Thus, in *Viron*, the Court ruled that the requirement of a justiciable controversy was not lacking when therein respondents, bus operators with terminals in Metro Manila, filed petitions for declaratory relief to challenge the constitutionality of the Executive Order directing the elimination of bus terminals along major thoroughfares in Metro Manila, even when there was no actual closure of their bus terminals yet. Aside from the immediate effectivity of said Executive Order, the Court found that there were

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[67] *Republic v. Roque*, supra note 56, at 304.

[68] 557 Phil. 121 (2007) [Per Carpio Morales, *J.* (*En Banc*), Puno, *C.J*, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura and Reyes, *JJ.*, concurred].

[69] *Id.* at 134.

[70] See *Tolentino v. Board of Accountancy*, 90 Phil. 83, 88 (1951); *See also* Manual V. Moran, COMMENTS ON THE RULES OF COURT (Volume II), supra note 49.

[71] *Republic v. Roque*, supra note 56, at 305.

[72] *MMDA v. Viron*, supra note 73, at 135. Emphasis supplied.

[73] *See* Manuel V. Moran, COMMENTS ON THE RULES OF COURTS (Volume II), supra note 49, at 143–147.

circumstances evincing the intention of the government to proceed with this project, which was apparent from the ongoing planning and construction of a centralized station.

In this case, while the complaint for profiteering before the DTI was dismissed at the time URC filed the petition for declaratory relief with Pasig City RTC Br. 161, it does not mean that a justiciable controversy had ceased to exist. It must be emphasized that URC received another letter from the DTI inviting it to discuss its prices, and submit an explanation to the finding of the Bureau of Trade Regulation and Consumer Protection that its ex-mill prices were higher than expected — even after the complaint for profiteering was dismissed.[74] Thus, to paraphrase *Viron*, these are circumstances evincing the intention of the government to proceed with a complaint for profiteering, which is apparent from the sending of the so-called invitation to URC "to discuss its prices."

It is also important to point out that the complaint against URC was dismissed based only on a technicality: for failing to attach a certification against non-forum shopping. It is clear, therefore, that despite the dismissal of the profiteering complaint, URC may still be held liable for profiteering under the provisions of the law it assails. In other words, there exists a real threat of criminal prosecution under the challenged provision of the Price Act.

To be sure, it is well to point out that the factual scenario in this case is precisely the right opportunity for a petition for declaratory relief to be filed. As in *Viron*, if URC had waited further before it filed a petition for declaratory relief, it would simply be dismissed for the reason that petitions for declaratory relief need to be filed "before breach or violation"[75] of the statute or instrument assailed. In other words, the *ponencia* aptly holds that there is a contrariety of legal rights in this case even if URC was not charged with profiteering at the time it filed the petition for declaratory relief.[76] If URC had waited, then there would already be a breach that would cause the dismissal of a petition for declaratory relief. Such a ruling would imply that there is virtually no proper time to avail one's self of declaratory relief as a remedy, for there is no real room between its prematurity and the expiration of its availability.

V.

The present case is an appeal raising pure questions of law from the trial court's decision in an action for declaratory relief

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[74] *Rollo*, pp. 81–82.
[75] RULES OF COURT, Rule 63, Sec. 1.
[76] *Ponencia*, p. 13.

As well, it should be emphasized that the present petition is an appeal by *certiorari* under Rule 45 of the Rules of Court. The case originated from an action for declaratory relief from Pasig City RTC Br. 161, and as such, it was filed directly with the Court on a pure question of law — whether the Price Act's definition of profiteering is void for being vague. In this regard, it is incongruous to await the apprehension or imprisonment of URC's officers before the Court resolves the issue.

The Court has concurrent original jurisdiction with the Court of Appeals and the RTC over petitions for *certiorari*, prohibition, and *mandamus* against lower courts and bodies.[77] Despite having concurrent jurisdiction, the Court is still the court of last resort. "[L]itigants do not have unfettered discretion to invoke the Court's original jurisdiction."[78]

For this purpose, the doctrine of hierarchy of courts dictates that direct recourse to the Court is allowed only to resolve questions of law. Thus, in *Gios-Samar*, the Court held that the decisive factor for allowing the direct resort to the Court *via* the issuance of extraordinary writs is the nature of the questions raised by the parties. Even when the parties allege "serious and important reasons"[79] such as transcendental importance, direct resort to the Court *via* the issuance of extraordinary writs should be allowed only when the resolution of factual issues is not necessary to the resolution of the constitutional issues. Failure to comply is sufficient cause for the dismissal of the petition.

On the other hand, Section 1, Rule 63 of the Rules of Court explicitly states that an action for declaratory relief should be brought in the appropriate RTC. Considering that actions for declaratory relief must originate from the RTC, those which involve challenges to the constitutionality or validity of laws or governmental regulation would only be elevated to the Court *via* an appeal under Rule 45 of the Rules of Court. Hence, unless there is a question of fact included in the issues raised to the Court, there should be no dispute as to the Court's exercise of its appellate jurisdiction.

To emphasize anew, this case stemmed from URC's petition for declaratory relief before Pasig City RTC Br. 161. Said RTC held that URC's anticipation of a lawsuit is not sufficient to constitute a justiciable controversy and, therefore, dismissed the petition for being premature. Aggrieved, URC filed the present petition for review under Rule 45 of the Rules of Court and

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[77] CONSTITUTION, Art. VIII, Sec. 5. Batas Pambansa, Blg. 129, Sec. 21(1).

[78] *Gios-Samar Inc. v. Department of Transportation and Communications*, supra note 14, at 131.

[79] *Id.* at 172–173, citing *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015). The "serious and important reasons" are as follows. (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) when the issues involved are of transcendental importance; (3) cases of first impression; (4) the constitutional issues raised are better decided by the Court; (5) exigency in certain situations; (6) the filed petition reviews the act of a constitutional organ; (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

elevated the constitutional challenge to several provisions of the Price Act to this Court.

The issues URC raised are pure questions of law, which do not involve an examination of the probative value of the evidence presented by the litigants. The constitutionality of the challenged provisions of the Price Act may certainly be resolved without necessarily making a finding as to whether URC's ex-mill flour prices were excessive.

This would certainly not be the case had URC invoked the expanded power of judicial review by filing a petition for *certiorari* or prohibition directly with the Court. In such instance, the Court may belabor the procedural issue of justiciability, and dismiss the petition for failing to observe the doctrine of hierarchy of courts. Needless to state, however, there being no question of fact raised in the petition, the Court may take cognizance of the petition.

VI.

Profiteering, as defined in the Price Act, suffers from the vice of vagueness

In line with my position that declaratory relief is proper, the case presents a justiciable controversy that the Court can, and should, resolve, in order that due process is served. Accordingly, I am in accord with the Court properly addressing and resolving this case on the merits.

With respect to the merits of the petition, URC mainly argues that "*profiteering*," which is penalized under Section 5(2) of the Price Act, fails to provide a sufficiently definite warning as to the proscribed conduct. In particular, URC points out that the phrase "*price grossly in excess of its true worth*" in the definition of profiteering lacks sufficient standards, as the Price Act does not provide any criteria on what constitutes a reasonable price. Since the essence of the violation is hinged on the determination of such reasonable price, URC asserts that the DTI is vested with unbridled discretion to decide when there is a violation of Section 5(2) of the Price Act.[80]

The *ponencia* disagrees and holds that the definition of profiteering under the Price Act does not suffer from the vice of vagueness because the "*true worth*" of a basic necessity or prime commodity is capable of determination:

> Although the Price Act does not define the terms "true worth" or "price grossly in excess" of true worth, our laws recognize that a reasonable price is a question of fact that can be determined based on the circumstances. Moreover the Price Act enumerates instances when there can be a *prima facie* evidence of profiteering, namely where the product:

[80] *Rollo*, pp. 30–33.

....

> Thus, the law specifies that the 10% increase will be the basis for a *prima facie* determination of profiteering. This provides some anchor for assessing whether profiteering has occurred, though that determination is inconclusive. The increase may, at the implementing agency's discretion, be used to determine further whether the *prima facie* presumption will hold.
>
> The purpose of the [Price Act] is "to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate business a fair return on investment." This goal entails the determination of the "true worth" of a product: availability, reasonable prices, and nondenial of a fair return for legitimate businesses to their investment.[81]

With respect, I disagree with the finding that profiteering, as defined under Section 5(2) of the Price Act, does not suffer from the vice of vagueness. By overlooking the vagueness in the statutory proscription against profiteering, and reading into the law what is not apparent from its text, the Court illegitimately ventures into the territory reserved for the legislative.

Section 5(2) of the Price Act penalizes the act of profiteering, which is defined as follows:

> (2) Profiteering, which is the sale or offering for sale of any basic necessity or prime commodity **at a price grossly in excess of its true worth**. There shall be *prima facie* evidence of profiteering whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month: *Provided*, That, in the case of agricultural crops, fresh fish, fresh marine products, and other seasonal products covered by this Act and as determined by the implementing agency, the *prima facie* provisions shall not apply. (Emphasis supplied)

It may be gleaned from this provision that the gravamen of profiteering is to sell the product "*at a price grossly in excess of its true worth.*" Accordingly, it is important to determine a product's "*true worth*" and what constitutes a grossly excessive price *vis-à-vis* said true worth.

An examination of the Price Act or the Rules and Regulations Implementing the Price Act[82] (IRR) reveals that there are no criteria for a basic necessity or a prime commodity's true worth. But while this phrase may be construed in its ordinary acceptation, that is — the actual value or the total cost of the product,[83] the law further lacks objective standards on when the

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[81] *Ponencia*, p. 15.

[82] DTI-DA-DOH-DENR Joint Administrative Order No. 1-93, RULES AND REGULATIONS IMPLEMENTING R.A. NO. 7581, dated February 15, 1993.

[83] In its Memorandum, DTI cites Webster's Third New International Dictionary to argue that:

> Hence, the words constituting the phrase "grossly in excess of its true worth" should be understood in their ordinary meaning and in light of their usage in Section 5(2) of R.A.

price is set grossly in excess thereof, or merely in excess of the cost of production that should give the manufacturer, seller, or producer of such goods a reasonable return on their investment.

Even if the Price Act provides for *prima facie* evidence on the presence of profiteering, these still fail to adequately notify affected persons of the conduct proscribed by the Price Act. In particular, Section 5(2) states that there is *prima facie* evidence of profiteering when a person raises the price of the product "by more than 10% of its price in the immediately preceding month." However, the basic necessity or the prime commodity's price in the past month is not the sole baseline to compute the product's true worth. While it may serve as a consideration in any succeeding price change, the current price of the product is one factor among the numerous variables that determine a product's cost. In other words, the actual cost or true worth of a product is not directly equivalent to its previous market price.

But more than violating the due process rights of persons who may be held liable for profiteering, I respectfully submit that its vagueness is chiefly offensive to the principle of separation of powers.

As mentioned, a vague statute not only fails to give fair notice of the proscribed conduct, but also "leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle."[84] This is an implicit recognition of the need to constrain law enforcement to the implementation of the statute, leaving no room for different interpretations that could result in different applications of the law. Thus, a vague penal law, even if it does not involve speech, may also be facially challenged for violating the principle of separation of powers as Congress has the sole power to define and penalize offenses.[85] The Court's ruling in *SPARK v. Quezon City* (*SPARK*) further explains how the principle of separation of powers is corollary to the void-for-vagueness doctrine:

> Essentially, petitioners only bewail the lack of enforcement parameters to guide the local authorities in the proper apprehension of suspected curfew offenders. They do not assert any confusion as to what conduct the subject ordinances prohibit or not prohibit but only point to the ordinances' lack of enforcement guidelines. The mechanisms related to the implementation of the Curfew Ordinances are, however, matters of policy that are best left for the political branches of government to resolve. Verily, the objective of curbing unbridled enforcement is not the sole consideration in a void for vagueness analysis; rather, petitioners must show that this perceived danger of unbridled enforcement stems from an ambiguous provision in the law that allows enforcement authorities to second-guess if a particular conduct is prohibited or not prohibited. In this regard, that ambiguous provision of law contravenes due process because agents of the

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7581. "Gross" means "glaringly noticeable, flagrant." "In excess" means "a state of surpassing or going beyond limits; the fact of being in a measure beyond sufficiency, necessity or duty." "True" means "conformable to fact; in accordance with the actual state of affairs; not false or erroneous; not inaccurate' while 'worth' means 'having the value of; equal in value to; monetary value." (*rollo*, pp. 224-225)

[84] *Imbong v. Ochoa, Jr.*, supra note 33, at 197.

[85] See *People v. Siton*, 616 Phil. 449 (2009).

government cannot reasonably decipher what conduct the law permits and/or forbids. In *Bykofsky v. Borough of Middletown*, it was ratiocinated that:

> **A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on [*ad hoc*] and subjective basis**, and vague standards result in erratic and arbitrary application based on individual impressions and personal predilections.[86] (Emphasis supplied; citation omitted)

Since there is nothing in the Price Act or its IRR that objectively sets standards on when a price is "*grossly in excess of [the product's] true worth*," the implementing authority has unfettered and unbridled authority to unilaterally impose its own guidelines, or revise its standards without having to notify the persons who may be held liable for Section 5(2). Thus, even if it may be argued that a basic necessity or prime commodity's "*true worth*" may be objectively determined "based on the circumstances,"[87] there remains a subjective element in the proscription against profiteering.

In effect, those who may be subject of profiteering complaints bear the burden of justifying the price they fixed for the sale of their product, depending on the guideposts of the implementing agency at the time they were notified of a possible violation. Worse, even if the price was fixed in good faith consideration of the profit sought to be generated, producers, manufacturers, and sellers of basic necessities and prime commodities may nonetheless be held liable for profiteering if the implementing agency deems that the price was grossly excessive following the standards it itself fixed. This is what has apparently happened here in the DTI's complaint for profiteering against URC, in which it cited various reasons for its liability, such as: the reduction in wheat prices and freight cost, the imposition of zero tariff, and the appreciation of the Philippine Peso.[88] For its part, URC explained that its prices reflect the three-year price movement of wheat in the world market and its other operational costs, which include labor, utilities, demurrage, and barging and trucking costs.[89]

In all, I do not have any objections to the State's mechanism for price control, especially during periods of calamity, emergency, widespread illegal price manipulation, and other similar situations. These statutory regulations are, as aptly recognized by the *ponencia*, for the general welfare of the consuming public. But while the implementing agencies of the Price Act, such as the DTI in this case, may monitor and impose price controls for basic necessities and prime commodities, this authority does not include full unfettered discretion to determine the true worth of these goods, or more importantly, when producers, manufacturers, or sellers have set their prices grossly in excess of such true worth.

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86 *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, supra note 6, at 1095-1096.

87 *Ponencia*, p. 15.

88 *Rollo*, p. 62.

89 *Id.* at 69.

To be sure, this should not be taken to mean that mathematical exactitude is required in defining the offense of profiteering. However, the standards are not apparent from the subject law or its IRR, or from a reasonable interpretation thereof. The Court should not sanction the prosecution of persons under a penal provision that completely fails to provide sufficient warning of the proscribed conduct — especially when such offense is punishable with imprisonment for a period of five (5) to fifteen (15) years, and a fine of not less than ₱5,000.00 but not more than ₱2,000,000.00.[90]

VII.

To reiterate, there is a justiciable controversy if "there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."[91] Such contrariety of legal rights may be determined from the issues raised by the parties, the factual circumstances surrounding said issue, and within the context of the relief ultimately sought from the Court. Surely, if the issue raised is purely one of law — as in this case — waiting for URC to suffer an injury or for respondents to commit further overt acts would not make any material difference on the issue presented for the resolution of the Court. In such instances, the Court is called upon to exercise its duty. As the Court held in *Tañada v. Angara*[92] —

> x x x the judiciary is the final arbiter on the question of 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. **This is not only a judicial power but a duty to pass judgment on matters of this nature.**
>
> x x x **it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution** x x x.[93] (Emphasis supplied)

Thus, I concur with the *ponencia* in settling any confusion as to what constitutes a justiciable controversy. When the issue raised before the Court is whether the challenged act is unconstitutional or invalid, the only overt act indispensable to render the controversy ripe is the performance thereof. In other words, the questioned act — whether it be a statute, regulation, or some other administrative issuance on the part of the Court's co-equal branches — remains to be the subject of the inquiry. In this particular case where the vagueness of the Price Act is raised, the Court may, as the *ponencia* does, ultimately resolve the issue of vagueness by examining the very text of the law itself. The factual circumstances of URC, as the petitioner, were not even marginally significant in the *ponencia*'s consideration of the allegation of vagueness.

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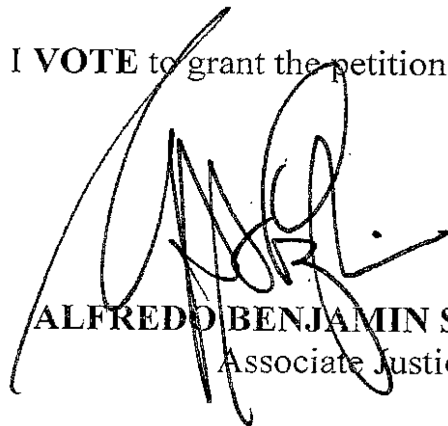
[90] RA No. 7581, Sec 15.
[91] *Inmates of the New Bilibid Prison v. De Lima*, supra note 6, at 619.
[92] 338 Phil. 546 (1997).
[93] *Id.* at 575.

While concrete or tangible facts may, in some instances, provide a complete background that may assist the Court in the resolution of the issue, this is not necessarily always the case. As demonstrated by *Province of North Cotabato*, *SPARK*, *Belgica*, and *Maria Basa*, among others, the requirement of ripeness may be satisfied if the petitioner can establish an imminent or immediate injury that would result from the challenged action.

All told, the justiciability of a controversy should not be equated to the existence of an actual injury or harm. As well, I respectfully submit that the prerequisites to the exercise of the power of judicial review, as they are currently worded, do not open the door wide open for parties to directly file non-justiciable cases before the Court. Established precedents empower the Court to exercise its discretion to dismiss actions that fail to comply with the requirements of justiciability, or those which violate the hierarchy of courts.

Based on these premises, I **VOTE** to grant the petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice