EN BANC

G.R. No. 236118 — ACT TEACHERS REP. ANTONIO TINIO, BAYAN MUNA REP. PARTY-LIST REP. CARLOS ISAGANI ZARATE, and ANAKPAWIS REP. PARTY-LIST ARIEL "KA AYIK" CASILAO, *petitioners, versus* **PRESIDENT RODRIGO ROA DUTERTE, HOUSE OF REPRESENTATIVES SPEAKER PANTALEON ALVAREZ, DEPUTY SPEAKER RANEO ABU, MAJORITY LEADER RODOLFO FARIÑAS, and DEPUTY MAJORITY LEADER REP. ARTHUR DEFENSOR, JR.,** *respondents*.

G.R. No. 236295 — LABAN KONSYUMER, INC. and ATTY. VICTORIO MARIO A. DIMAGIBA, *petitioners, versus* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF FINANCE SECRETARY CARLOS G. DOMINGUEZ III, BUREAU OF INTERNAL REVENUE COMMISSIONER CAESAR R. DULAY, HOUSE SPEAKER PANTALEON D. ALVAREZ IN REPRESENTATION OF THE HOUSE OF REPRESENTATIVES, and SENATE PRESIDENT AQUILINO D. PIMENTEL III IN REPRESENTATION OF THE SENATE,** *respondents*.

Promulgated:

January 24, 2023

x----------x

DISSENTING OPINION

CAGUIOA, *J.*:

I dissent.

It is wrong, as the *ponencia* rules that the presence of a quorum during the ratification of the Tax Reform for Acceleration and Inclusion[1] (TRAIN) Bicameral Conference Committee (BCC) Report is an internal matter that should exclusively be determined by the internal rules of Congress. The issue in this case is *not* whether the internal rules of a chamber of Congress were followed; ***rather***, the issue is whether a constitutional mandate was complied with.

I.

On the procedural aspect, petitioners argue that the present consolidated Petitions involve an actual case or controversy as the TRAIN BCC Report was passed despite the glaring lack of quorum. They also aver that the confiscatory and oppressive nature of the tax violates the rights of the people. That the

---

[1] Republic Act No. 10963, December 19, 2017.

TRAIN Act is already in effect means that the whole nation, including petitioners, is already being injured by the additional impositions on coal, kerosene, and liquified petroleum gas.[2]

In contrast, respondents allege that the instant Petitions failed to show an actual case or controversy warranting the exercise of the Court's judicial power because petitioners failed to present concrete, definite, and actual instances demonstrating that they were adversely affected by the implementation of the TRAIN Act. Moreover, respondents state that what petitioners ultimately raise are political questions beyond the authority of the Court to resolve.[3]

I agree with the *ponencia* that there is indeed an actual case or controversy when the instant consolidated Petitions were filed assailing the constitutionality of the TRAIN Act.

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 x x x."[4] It bears noting that the Court has already settled in the case of *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al.*[5] that "[w]hen 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."[6] In other words, it is sufficient that the questioned law has been enacted or that the challenged action was approved for an actual case or controversy to exist. Petitioners need not await the "implementing evil to befall on them"[7] or for them to actually suffer the injury or harm before challenging these acts as illegal or unconstitutional.[8]

---

2 *Rollo* (G.R. No. 236295), pp. 337-338.

3 Id. at 147-149.

4 CONSTITUTION, Art. VIII, Sec. 1.

5 589 Phil. 387 (2008).

6 Id. at 486; emphasis and citation omitted.

7 *Pimentel, Jr. v. Aguirre*, 391 Phil. 84, 107 (2000).

"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. x x x" Id., citation omitted.

8 *Sps. Imbong, et al. v. Hon. Ochoa, Jr., et al.*, 732 Phil. 1 (2014). 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

That mere contrariety of legal rights is already sufficient to satisfy the requirement of justiciability was further confirmed in *Samahan ng mga Progresibong Kabataan, et al. v. Quezon City, et al.*,[9] where the Court proceeded to rule on the constitutionality of the curfew ordinances in several cities in Metro Manila, even if there was no allegation that petitioners therein already violated said ordinances or that they already suffered actual harm or injury. The Court notably found that case therein already justiciable due to the "evident clash of the parties' legal claims."[10]

As well, in *Inmates of the New Bilibid Prison, Muntinlupa City v. De Lima*,[11] it was ruled that a judicial controversy already exists if "there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."[12] Indeed, as succinctly stated by the majority in the very recent *En Banc* case of *Republic v. Maria Basa Express Jeepney Operators and Drivers Association, Inc.*,[13] "the existence of an actual case or controversy does not call for concrete acts, as an actual case may exist even in the absence of 'tangible instances['.]"[14]

In light of the foregoing, I agree with the *ponencia* that the instant case is justiciable. As aptly espoused by petitioners herein, and following the prior pronouncements of the Court, the mere enactment of the TRAIN Act and the serious allegations against its constitutionality already give rise to contrariety of legal rights and, consequently, an actual case or controversy. **In particular, the question of whether the TRAIN Act is invalid because the TRAIN BCC Report was passed without the requisite quorum, and the opposing assertion of respondents, already present conflicting legal claims that are undoubtedly capable of judicial resolution.**

To be sure, the issue of when the required quorum should be met by either house of Congress is an issue that the Court may resolve even without waiting for "concrete facts" on the part of petitioners. On this score, at the risk of being repetitive, I point out anew that justiciability and absence of overt acts constituting breach of the law or causing actual harm to petitioners should not be treated as mutually exclusive.

To follow respondents' premise will unduly narrow the scope of judicial review and effectively stymie the courts into inaction. In addition, it would require the Court to revamp years of established precedent and render nugatory other remedies provided in the Rules of Court that contemplate a preventive, rather than a corrective or remedial relief, such as a petition for prohibition, an action for injunction, and an action for declaratory relief.

---

distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Id. at 123; citations omitted.

9 815 Phil. 1067 (2017).

10 Id. at 1091.

11 G.R. Nos. 212719 & 214637, June 25, 2019, 905 SCRA 599.

12 Id. at 619.

13 G.R. Nos. 206486, 212604, 212682 and 212800, August 16, 2022.

14 Id. at 22.

II.

Proceeding to the substantive issue in this case, petitioners argue that the TRAIN BCC Report was ratified despite a complete lack of quorum on the night of December 13, 2017, rendering the TRAIN Act null and void. Meanwhile, respondents argue that the TRAIN BCC Report was ratified in accordance with the 1987 Constitution and the Rules of the House of Representatives (HoR) (HoR Rules).[15] For respondents, the entries in HoR Journal Nos. 48 and 49 dated December 13, 2017 and January 15, 2018, respectively, as well as the enrolled bill doctrine, refute petitioners' allegations.[16]

The *ponencia*, pressed with the question of the existence of quorum, frames the issue as follows: "Did or did not the House [of Representatives] "lose" its quorum during the 13 December 2017 [session]?"[17] The *ponencia* resolves this issue in favor of respondents, concluding that the TRAIN Act was validly enacted into law, thus:

> It is uncontroverted that the 13 December 2017 session of the House commenced with the declaration of a quorum, consistent with Sections 72 and 74 of its Internal Rules of Procedure. When the roll was called at 4:00 p.m., 232 out of the 295 members responded. Plain as day, no question was raised in this regard. Journal No. 48 released by the House Journal Service (Plenary Affairs Bureau) on that day provides a clear and explicit account of the presence of quorum during such session, the pertinent portions thereof divulge—
>
> x x x x
>
> Journal No. 48 further stipulates that the session was suspended at 7:44 p.m., and then resumed at 10:02 p.m. Upon resumption, the matters on the Suspension of Consideration of House Concurrent Resolution No. 9 and the Authority to Conduct Committee Meetings and Hearings During the Recess were taken up, with the BCC Report having been ratified shortly thereafter, upon motion, and without objection. Prior to ratification, not a single objection was raised with respect to the presence of a quorum, and it was only when the BCC Report was considered for ratification that objections were heard. The session was then adjourned at 10:05 p.m.[18] (Citations omitted)

The *ponencia* also stresses the following:

> It bears emphasis that while the Constitution demands the presence of a majority in order to establish a quorum that would allow Congress to conduct business including, *inter alia*, the ratification of conference committee reports, it does not, however, mandate the method by which the same is counted or sustained, or how the majority is ascertained, whether at the start or in the middle of official proceedings. Contrarily, what the Constitution sanctions under Section 16(3) of Article VI is that both Houses

---

15 *Rollo* (G.R. No. 236295), p. 153.
16 Id.
17 *Ponencia*, p. 21; emphasis omitted.
18 Id. at 19-20.

> of Congress may establish their own rules in the conduct of their proceedings. Ineluctably, rather than imposing definite procedural rules, the Constitution grants a wide latitude of discretion upon both Houses of Congress to conduct their own affairs. In effect, it is within the competency of the House to prescribe any method to ascertain the presence of a majority as a condition to transact business.
>
> x x x x
>
> **To recapitulate, once a quorum was established at the beginning of a House session, assailing the same is an internal matter best left to the judgment of the congressional body.** Whichever method the House employs to count the majority of its members for purposes of determining the existence of a quorum is within its powers to constitute, with the qualification that such method "reasonably certain to ascertain the presence of a majority such that the chamber is, constitutionally speaking, in a position to do business." In the cases at bench, it cannot be stressed enough that among the succession of matters taken up into a vote, quorum was challenged only when the ratification of the TRAIN BCC Report was motioned upon.[19] (Emphasis supplied, citation omitted)

I strongly disagree with the statement that assailing the existence of a quorum is an internal matter for each House, and that what is only relevant is that a quorum is established at the start of a House session.

The textual hook for resolving the issue on quorum is found in Section 16(2), Article VI of the 1987 Constitution, which states, *viz.*:

> Section 16. x x x
>
> x x x x
>
> (2) **A majority of each House shall constitute a quorum to do business,** but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner, and under such penalties, as such House may provide. (Emphasis supplied)

The above provision clearly states that each House must have a quorum ***to act*** as a legislative body, which is a majority of its membership. As a result of this constitutional mandate, a majority is required to validly "do business."

As well, the HoR Rules for the approval **of a Conference Committee Report** requires the presence of a quorum. Section 63, Rule X of the HoR Rules provides:

> Section 63. *Conference Committee Reports.* – x x x
>
> x x x x
>
> A conference committee report shall be ratified by a majority vote of the Members of the House present, there being a quorum.

---

[19] Id. at 24-25.

The HoR Rules echoes Section 16(2), Article VI of the 1987 Constitution on quorum as follows:

> Section 75. *Quorum.* – A majority of all the Members of the House shall constitute a quorum. The House shall not transact business without a quorum. A Member who questions the existence of a quorum shall not leave the Session Hall until the question is resolved or acted upon, otherwise, the question shall be deemed abandoned.
>
> Section 76. *Absence of Quorum.* – In the absence of a quorum after the roll call, the Members present may compel the attendance of absent Members.
>
> In all calls of the House, the doors shall be closed. Except those who are excused from attendance in accordance with Section 71 hereof, the absentees, by order of a majority of those present, shall be sent for and arrested wherever they may be found and conducted to the Session Hall in custody in order to secure their attendance at the session. The order shall be executed by the Sergeant-at-Arms and by such officers as the Speaker may designate. After the presence of the Members arrested is secured at the Session Hall, the Speaker shall determine the conditions for their discharge. Members who voluntarily appear shall be admitted immediately to the Session Hall and shall report to the Secretary General to have their presence recorded.

Corollary thereto, Section 16(3),[20] Article VI of the 1987 Constitution vests in the HoR the sole authority to, *inter alia*, "determine the rules of its proceedings." Thus, in *Arroyo v. De Venecia*,[21] the Court, citing *United States v. Ballin*[22] (*Ballin*) held that "[t]he Constitution empowers each house to determine its rules of proceedings. **It may not by its rules ignore constitutional restraints** or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained."[23] As held in *Ballin*:

> The Constitution provides that "a majority of each [house] shall constitute a quorum to do business." In other words, when a majority are present[,] the house [is] in a position to do business. Its capacity to transact business is then established, created by the mere presence of a majority, and does not depend upon the disposition or assent or action of any single member or fraction of the majority present. All that the Constitution requires is the presence of a majority, and when that majority are present, the power of the house arises.

---

[20] Section 16(3), Article VI of the 1987 Constitution reads:
Section 16. x x x
x x x x
(3) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days.

[21] 343 Phil. 42 (1997).

[22] 144 U.S. 1 (1892).

[23] *Arroyo v. De Venecia*, supra note 21, at 61-62; emphasis supplied.

> But how shall the presence of a majority be determined? The Constitution has prescribed no method of making this determination, and it is therefore within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact. It may prescribe answer to roll-call as the only method of determination; or require the passage of members between tellers, and their count, as the sole test; or the count of the Speaker or the clerk, and an announcement from the desk of the names of those who are present. Any one of these methods, it must be conceded, is reasonably certain of ascertaining the fact, and as there is no constitutional method prescribed, and no constitutional inhibition of any of those, and no violation of fundamental rights in any, it follows that the House may adopt either or all, or it may provide for a combination of any two of the methods. That was done by the rule in question, and all that that rule attempts to do is to prescribe a method for ascertaining the presence of a majority, and thus establishing the fact that the House is in a condition to transact business.[24]

Similar to *Ballin*, there is no standard set by Section 16(2), Article VI of the 1987 Constitution as to the method of determining the presence of a majority. ***However***, while such is an internal matter for each House, quorum or the presence of a majority should exist all throughout the proceedings where the House acts as a legislative body. In other words, while the chambers of Congress have the discretion to determine *the manner* by which the presence of the quorum is determined, the existence of the quorum — the presence of the majority — must itself invariably exist throughout the proceedings. **Consequently, losing a quorum in the middle of a House session means the constitutional quorum requirement is not met.** To reiterate, this rule proceeds from no less than the 1987 Constitution, which expressly provides that "[a] majority of each House shall constitute a quorum ***to do business*** x x x."

In this case, the consolidated Petitions plainly reveal that what is alleged to have been violated in the enactment of the TRAIN Act is the constitutional quorum requirement, ***and not merely a violation of or non-compliance with the internal rules of proceedings of the HoR***.

As may be gleaned from HoR Journal No. 48, petitioners challenged the presence of the required quorum during the last three (3) minutes of December 13, 2017, 10:05 p.m.:

> CONSIDERATION OF CONF. CTTEE. RPT.
> ON H.B. NO. 5636 AND S.B. NO. 1592
>
> REP. DEFENSOR. Mr. Speaker we are in receipt of the Bicameral Conference Committee Report on the disagreeing provisions of House Bill No. 5636 and Senate Bill No. 1592, on the Tax Reform for Acceleration and Inclusion or "TRAIN."
>
> REP. DEFENSOR. In accordance with our Rules, I move that we ratify the said Bicameral Conference Committee Report.

---

[24] *United States v. Ballin*, supra note 22, at 5-6.

REP. TINIO. **Objection, Mr. Speaker.**

THE DEPUTY SPEAKER (Rep. Abu). The Secretary General is hereby directed to read the transmitted report. With the permission of the Body, and since copies of the Conference Committee Report have been previously distributed, the Secretary General read only the titles of the measures without prejudice to inserting the text of the report in the Congressional Record.

REP. TINIO. **Mr. Spcaker.**

x x x x

REP. TINIO. **Mr. Speaker, I question the quorum.**

THE DEPUTY SPEAKER (Rep. Abu). The Majority Leader is recognized.

REP. TINIO. **There is no quorum, Mr. Speaker.**

REP. DEFENSOR. In accordance with our Rules, I move that we ratify the said Bicameral Conference Committee Report.

THE DEPUTY SPEAKER (Rep. Abu). Is there any objection?

REP. TINIO. **Objection.**

RATIFICATION OF CONF. CTTEE. RPT
ON H.B. NO. 5636 AND S.B. NO. 1592

THE DEPUTY SPEAKER (Rep. Abu). The chair hears none; the motion is approved.

REP. TINIO. **Objection, Mr. Speaker.**

THE DEPUTY SPEAKER (Rep. Abu). The Majority Leader is recognized.

REP. TINIO. **Mr. Speaker, objection.**

ADJOURNMENT OF SESSION

REP. DEFENSOR. Mr. Speaker, I move to adjourn…

REP. TINIO. **Objection, Mr. Speaker.**

REP. DEFENSOR. … until January 15, 2018, at four o'clock in the afternoon.

THE DEPUTY SPEAKER (Rep. Abu). The session is adjourned until January 15, 2018. The session is adjourned.

REP. TINIO. **There is no quorum.**

THE DEPUTY SPEAKER (Rep. Abu). The session is adjourned.

It was 10:05 p.m.[25] (Emphasis and italics in the original, citations omitted)

On this point, the *ponencia* resolves the issue in the following manner:

> The records ineluctably evince the presence of a quorum of the House when the session began, and neither Tinio, *et al.* nor anyone else among the Members raised the point of no quorum up to the time the BCC Report was moved to be considered. In the absence of strong proof to the contrary, the quorum established at the beginning of the session, as it so appears in the relevant Journal, is presumed to subsist. Thus, formally, the presence of a quorum had not been disproven; the presumption that it existed remains.[26] (Citation omitted)

With due respect, the foregoing ratiocination is simply nonsensical, as such presumption is refuted and belied by the foregoing minutes.

To be sure, what is involved here does not simply concern an internal matter of a coequal branch of government, but a possible violation of a constitutional mandate — a case which squarely falls within the Court's jurisdiction.

It would be a dangerous precedent for the Court to say that once a quorum has been established at the beginning of a session, any question as to its continued existence is purely an internal matter outside the Court's jurisdiction. To stress, while the procedures on how a quorum is determined is left at the sound discretion of the chamber concerned, the Constitution requires that the quorum should be a majority and such majority should continually exist throughout the proceedings for the chamber ***to do business***.

By and large, the situation now in the Court is this — in order to resolve whether the HoR had lost its quorum, a review of certain pieces of evidence adduced by petitioners may be necessary, such as the video recording of the December 13, 2017 session of the HoR, the photograph of the nearly empty Session Hall, and HoR Journal No. 48. Given the doubt or controversy as to the truth or falsity of the allegations in this case, which is a question of fact, petitioners' direct recourse to this Court cannot be countenanced **under the principle of hierarchy of courts**. In *Paradero v. Hon. Abragan*,[27] the Court said:

> Moreover, even assuming that petitioner's recourse to *certiorari* is correct, the same is still dismissible for disregarding the hierarchy of courts. While we have concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals to issue writs of *certiorari*, this concurrence is not to be taken as an unrestrained freedom of choice as to which court the application for the writ will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A direct invocation of the Supreme Court's

---

25 *Rollo* (G.R. No. 236295), pp. 404-406.

26 *Ponencia*, p. 31.

27 468 Phil. 277 (2004).

> original jurisdiction to issue these extraordinary writs is allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. Petitioner failed to show that such special and important reasons obtain in this case.[28] (Citation omitted)

Thus, I submit that the Court apply the case *of Gios-Samar, Inc. v. Department of Transportation and Communications, et al.*[29] (*Gios-Samar*), which explained the importance of the doctrine of hierarchy of courts as a filtering mechanism, to wit:

> The doctrine of hierarchy of courts operates to: (1) prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction; (2) prevent further over-crowding of the Court's docket; and (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.
>
> Strict adherence to the doctrine of hierarchy of courts is an effective mechanism to filter the cases which reach the Court. As of December 31, 2016, 6,526 new cases were filed to the Court. Together with the reinstated/revived/reopened cases, the Court has a total of 14,491 cases in its docket. Of the new cases, 300 are raffled to the Court *En Banc* and 6,226 to the three Divisions of the Court. The Court *En Banc* disposed of 105 cases by decision or signed resolution, while the Divisions of the Court disposed of a total of 923 by decision or signed resolution.
>
> These, clearly, are staggering numbers. The Constitution provides that the Court has original jurisdiction over five extraordinary writs and by our rule-making power, [We] created four more writs which can be filed directly before [Us]. There is also the matter of appeals brought to [Us] from the decisions of lower courts. Considering the immense backlog facing the [C]ourt, this begs the question: *What is really the Court's work? What sort of cases deserves the Court's attention and time?*[30] (Italics in the original, citations omitted)

Verily, I reiterate the pronouncement in *Gios-Samar*, which I find on point to this case, that "when 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 [Court of Appeals], both of which are specially equipped to try and resolve factual questions.**"[31]

---

28 Id. at 288.

29 849 Phil. 120 (2019).

30 Id. at 182-184.

31 Id. at 187; underscoring supplied.

Accordingly, I vote that the instant consolidated Petitions must be referred to the proper court for appropriate action, including the reception of evidence, to determine and resolve the factual issues raised herein.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice