Republic of the Philippines
Supreme Court
Manila

EN BANC

THE PROVINCIAL BUS OPERATORS ASSOCIATION OF THE PHILIPPINES (PBOAP), THE SOUTHERN LUZON BUS OPERATORS ASSOCIATION, INC. (SO-LUBOA), THE INTER CITY BUS OPERATORS ASSOCIATION (INTERBOA), and THE CITY OF SAN JOSE DEL MONTE BUS OPERATORS ASSOCIATION (CSJDMBOA), Petitioners, -versus- **DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) and LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB),** Respondents.	**G.R. No. 202275** Present: CARPIO, *Acting C.J.* VELASCO, JR., LEONARDO-DE CASTRO, PERALTA, BERSAMIN, DEL CASTILLO, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA, MARTIRES, TIJAM, REYES, JR., and GESMUNDO, *JJ.* **Promulgated:** July 17, 2018

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DECISION

LEONEN, *J.*:

Government created policy based on the finding that the boundary payment scheme that has since determined the take-home pay of bus drivers and conductors has been proven inadequate in providing our public utility bus drivers and conductors a decent and living wage. It decided that this was the best approach to ensure that they get the economic and social

welfare benefits that they deserve. This Court will not stand in its way. Policy questions are not what this Court decides.

This resolves an original action for certiorari and prohibition, assailing the constitutionality of the following:

First, the Department of Labor and Employment (DOLE) Department Order No. 118-12, otherwise known as the Rules and Regulations Governing the Employment and Working Conditions of Drivers and Conductors in the Public Utility Bus Transport Industry;

Second, all the implementing guidelines issued pursuant to Department Order No. 118-12, including the National Wages and Productivity Commission's Guidelines No. 1, series of 2012, otherwise known as the Operational Guidelines on Department Order No. 118-12; and

Finally, the Land Transportation Franchising and Regulatory Board (LTFRB) Memorandum Circular No. 2012-001, the subject of which is the Labor Standards Compliance Certificate.

Petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., Inter City Bus Operators Association, and City of San Jose Del Monte Bus Operators Association (collectively, petitioners) argue that Department Order No. 118-12 and Memorandum Circular No. 2012-001 violate the constitutional rights of public utility bus operators to due process of law, equal protection of the laws, and non-impairment of obligation of contracts.

The facts of the case are as follows:

To ensure road safety and address the risk-taking behavior of bus drivers as its declared objective, the LTFRB issued Memorandum Circular No. 2012-001[1] on January 4, 2012, requiring "all Public Utility Bus (PUB) operators . . . to secure Labor Standards Compliance Certificates" under pain of revocation of their existing certificates of public convenience or denial of an application for a new certificate. Memorandum Circular No. 2012-001 more particularly provides:

MEMORANDUM CIRCULAR
NUMBER 2012-001

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[1] *Rollo*, pp. 36–38.

SUBJECT: LABOR STANDARDS COMPLIANCE CERTIFICATE

This Memorandum Circular covers all Public Utility Bus (PUB) Operators and is being issued to ensure road safety through linking of labor standards compliance with franchise regulation.

It is based on a DOLE rapid survey of bus drivers/conductors and operators on the working conditions and compensation schemes in the bus transport sector. The survey results, as validated in a series of focus group discussions with bus operators, drivers, government regulating agencies and experts from the academe in the fields of engineering and traffic psychology, indicate that the risk[-]taking behavior of drivers is associated with the lack of proper training on motor skills, safety and on traffic rules and regulations; poor health due to long work hours and exposure to health hazards and; lack of income security under a purely commission-based compensation scheme. The industry players also cited problems with the enforcement of traffic rules and regulations as well as the franchising and licensing systems.

To strictly enforce this Memorandum Circular, the Board, thru the [Department of Transportation and Communication], shall strengthen cooperation and coordination with the Department of Labor and Employment.

Labor Standards Compliance Certificate

To ensure compliance with the established standards for employment and the Board's policies on the promotion of road safety, all Public Utility Bus (PUB) operators are required to secure Labor Standards Compliance Certificates from the Department of Labor and Employment (DOLE).

The Certificate shall indicate compliance by the PUB operators with all relevant legislations on wages, labor standards, terms and conditions of employment, and such mandatory benefits as may now or in the future be provided under Philippine Labor Laws; **Provided that –**

Compensation Scheme

The compensation scheme set or approved by the DOLE shall cover the PUB drivers and conductors and shall adopt a part-fixed-part-performance[-]based compensation system. The fixed component shall at no time be lower than the applicable minimum wage in the region. The performance[-]based component shall be based on the net income of the operator or bus company and on employee safety records such as that in regard to involvement in road accidents, commission of traffic violations, and observance of the elementary courtesies of the road.

All PUB drivers and conductors shall be entitled to other mandatory compensation such as but not limited to overtime, night shift differential, rest day, holiday, birthday, and service incentive leave pays.

Hours of Work

The number of working hours and rest periods of the drivers and conductors shall be determined taking into consideration the existing conditions, peculiarities and requirements of the transport industry.

Benefits

All PUB drivers and conductors shall likewise be entitled to retirement benefits and to all mandatory social security benefits such as membership in the SSS, Philhealth and Pag-Ibig as specified by law.

Right to Self Organization

The right of the drivers and conductors to organize themselves to advance their interests and welfare shall be encouraged. It shall not in any way be abridged or diminished by way of any agreement or contract entered into in complying with this issuance or in obtaining the Labor Standards Compliance Certificate.

Nothing herein shall be interpreted to mean as precluding the PUB operators and the drivers or conductors from entering into collective bargaining agreements granting them more rights, privileges and benefits.

Company policies and practices, and collective bargaining agreements existing on effectivity of this issuance which grant more rights, privileges, and benefits to the drivers and conductors than herein provided shall continue to be in effect and shall not be diminished by virtue hereof or any subsequent policies or agreements.

The exercise of the right to self-organization shall in no way adversely affect public safety and convenience.

Effectivity

Failure on the part of the PUB operators to secure and submit to the Board by July 30, 2012 the required Labor Standards Certificates shall be a ground for the immediate cancellation or revocation of their franchises/[Certificates of Public Convenience].

No application for new [Certificates of Public Convenience] or renewal of existing [Certificates of Public Convenience] shall thereafter be granted by the Board without the required Certificates.

This Memorandum Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation. Let three (3) copies hereof be filed with the UP [L]aw Center pursuant to Presidential Memorandum Circular No. 11, dated 9 October 1992.

SO ORDERED.

Five (5) days later or on January 9, 2012, the DOLE issued Department Order No. 118-12, elaborating on the part-fixed-part-performance-based compensation system referred to in the LTFRB Memorandum Circular No. 2012-001.[2] Department Order No. 118-12, among others, provides for the rule for computing the fixed and the performance-based component of a public utility bus driver's or conductor's wage. Relevant portions of Department Order No. 118-12 provide:

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[2] Id. at 31.

DEPARTMENT ORDER NO. 118-12
Series of 2012

RULES AND REGULATIONS GOVERNING THE EMPLOYMENT AND WORKING CONDITIONS OF DRIVERS AND CONDUCTORS IN THE PUBLIC UTILITY BUS TRANSPORT INDUSTRY

Pursuant to the provision of Article 5 of the Labor Code of the Philippines, as amended, the following rules and regulations are hereby issued to ensure the protection and welfare of drivers and conductors employed in the public utility bus transport industry:

. . . .

RULE II
TERMS AND CONDITIONS OF EMPLOYMENT

SECTION 1. ***Employment Agreement for Drivers and Conductors.*** — There shall be an agreement in writing between the public utility bus owner/operator and the public utility bus driver and/or conductor, which shall include the following terms:

a) Driver['s] or conductor's full name, date of birth or age, address, civil status, and SSS ID no.;

b) Public Utility Bus owner's/operator's name and address;

c) Place where and date when the employment agreement is entered into;

d) Amount of the driver's or conductor's fixed wage and formula used for calculating the performance[-]based compensation in accordance with Rule III (Compensation), as provided hereunder;

e) Hours of work;

f) Wages and wage-related benefits such as overtime pay, holiday pay, premium pay, 13th month pay and leaves;

g) Social security and welfare benefits;

h) Separation and retirement benefits; and

i) Other benefits under existing laws.

The public utility bus owner/operator shall provide the public utility bus driver/conductor the signed and notarized original copy of the agreement.

SECTION 2. ***Minimum Benefits.*** — The public utility bus drivers and conductors are entitled to the following benefits:

a) Wages for all actual work during the normal work hours and days shall not be lower than the applicable

minimum wage rates. Wages shall be paid at least once every two weeks or twice a month at intervals not exceeding 16 days;

b) Twelve (12) Regular Holidays with pay pursuant to *Republic Act 9849 (An Act Declaring The Tenth Day of Zhul Hijja, The Twelfth Month of The Islamic Calendar, A National Holiday For The Observance of Eidul Adha, Further Amending For The Purpose Section 26, Chapter 7, Book I of Executive Order No. 292, Otherwise Known As The Administrative Code of 1987, As Amended).* The driver/conductor shall be paid holiday pay of 100% of the minimum wage even if he/she does not report for work, provided he/she is present or is on leave of absence with pay on the workday immediately preceding the holiday. If the driver/conductor is required to work on said holiday, he/she shall be paid 200% of the minimum wage;

c) Rest day of twenty-four (24) consecutive hours for every six (6) consecutive working days. If the driver/conductor is required to work on a rest day, he/she shall be paid an additional premium pay of 30% of the basic wage. If the driver/conductor is required to work on special days under Republic Act No. 9849, he/she shall also be paid an additional premium pay of 30% of the basic wage. Whenever work is performed on a rest day, which happens to be also a special day, he/she is entitled to an additional 50% of the basic wage;

d) Overtime pay equivalent to at least 25% of the basic wage on ordinary days and 30% on regular holidays, special days and rest days for work beyond eight (8) hours per day;

e) Night shift pay of an additional 10% of the basic wage for work between 10:00 pm and 6:00 am of the following day;

f) Paid service incentive leave of five (5) days for every year of service;

g) 13th month pay pursuant to Presidential Decree No. 851, as amended, which entitles the employee to receive an amount equivalent to 1/12 of the total basic salary earned within the calendar year, not later than 24 December of each year;

h) Paid maternity leave of sixty (60) days for normal delivery or seventy[-]eight (78) days for caesarian section delivery, pursuant to Republic Act No. 8282, otherwise known as the Social Security Act of 1997;

i) Paid paternity leave of seven (7) days, pursuant to Republic Act No. 8187, otherwise known as the Paternity Leave Act of 1996;

j) Paid parental leave of seven (7) days for solo parents pursuant to Republic Act No. 8972, otherwise known as the Solo Parents' Welfare Act of 2000;

k) Paid leave of ten (10) days for victims of violence against women and their children, pursuant to Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004;

l) Paid special leave for women who underwent surgery caused by gynecological disorders, pursuant to Republic Act No. 9710, otherwise known as the Magna Carta for Women; and

m) Retirement pay upon reaching the age of sixty (60) or more, pursuant to Republic Act No. 7641.

SECTION 3. ***Hours of Work and Hours of Rest.*** — The normal hours of work of a driver and conductor shall not exceed eight (8) hours a day.

If the driver/conductor is required to work overtime, the maximum hours of work shall not exceed twelve (12) hours in any 24-hour period, subject to the overriding safety and operational conditions of the public utility bus.

Drivers and conductors shall be entitled to rest periods of at least one (1) hour, exclusive of meal breaks, within a 12-hour shift.

SECTION 4. ***Right to Security of Tenure.*** — Drivers and conductors shall enjoy security of tenure in their employment as provided by law. Their employment can only be terminated for just or authorized causes pursuant to the provisions of the Labor Code, as amended.

. . . .

RULE III
COMPENSATION

SECTION 1. ***Fixed and Performance[-]Based Compensation Scheme.*** — Bus owners and/or operators shall adopt a mutually-agreed upon "part-fixed, part-performance" based compensation scheme for their bus drivers and conductors.

SECTION 2. ***Method of Determining Compensation.*** — Bus owners and/or operators, in consultation with their drivers and conductors shall determine the following:

[a]) The fixed component shall be based on an amount mutually agreed upon by the owner/operator and the driver/conductor, which shall in no case be lower than the applicable minimum wage for work during normal hours/days.

They shall also be entitled to wage[-]related benefits such as overtime pay, premium pay and holiday pay, among others.

[b]) The performance-based component shall be based on safety performance, business performance and other related parameters.

SECTION 3. ***Operational Guidelines.*** The [National Wages and Productivity Commission] shall develop operational guidelines to implement the part-fixed, part[-]performance-based compensation scheme including the formula that should be used by public utility bus companies within fifteen (15) days after publication of th[ese] Rules.

SECTION 4. ***Submission of Proposed Compensation Scheme.*** — All public utility bus owners and/or operators shall submit a proposed compensation scheme, mutually agreed upon with their drivers/conductors, to the appropriate [Regional Tripartite Wages and Productivity Board] for information and reference purposes based on Rule III, Section 2 of th[ese] Rules, within sixty (60) days after the effectivity of this Order.

. . . .

RULE V
SOCIAL PROTECTION

SECTION 1. ***Social Welfare Benefits.*** — Without prejudice to established company policy, collective bargaining agreement or other applicable employment agreement, all bus drivers and conductors shall be entitled to coverage for social welfare benefits such as Pagibig Fund (Republic Act No. 7742), PhilHealth (Republic Act No. 7875, as amended by Republic Act No. 9241), Employees' Compensation Law (Presidential Decree No. 626), Social Security Law (Republic Act No. 1161 as amended by Republic Act No. 8282) and other applicable laws.

The cost of health services for the illnesses and injuries suffered by the driver and conductor shall be covered by mandatory social welfare programs under existing laws.

RULE VI
TRAINING AND DEVELOPMENT

SECTION 1. ***Assessment and Certification.*** — The [Technical Education and Skills Development Authority], in coordination with the [Occupational Safety and Health Center], the [Land Transportation Office], the LTFRB and the [Metropolitan Manila Development Authority] shall implement an assessment and certification program for professional drivers. The assessment will focus on knowledge, attitude and skills.

SECTION 2. ***Driver Proficiency Standards.*** — The [Technical Education and Skills Development Authority] shall work closely with LTFRB in the implementation of its Department Order No. 2011-25 "Inclusion of Driver Proficiency Standard as Additional Requirement in the Exercise of the Regulatory Powers of LTFRB to Issue Certificates of Public Convenience (CPC)". Applicants for CPCs shall present sufficient proof and submit a list of its drivers who are duly certified by the TESDA.

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RULE VIII
COMPLIANCE AND ENFORCEMENT

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SECTION 4. ***Failure to Comply/Restitute.*** — In case of violations committed by bus owners/operators and failure to comply or correct such violations, the DOLE shall coordinate with the LTFRB on the matter of appropriate action, including possible cancellation of franchise after due process.

. . . .

RULE IX
MISCELLANEOUS PROVISIONS

SECTION 1. ***Transitory Provisions.*** — Th[ese] Rules shall initially cover the public utility bus transport companies exclusively serving or plying Metro Manila routes and shall apply to other public utility bus companies by July 2012.

In the first six months but not later than one year from the effectivity of th[ese] Rules, the provisions herein stated shall be liberally construed to enable compliance by the public utility bus companies.

SECTION 2. ***Operational Guidelines.*** Operational guidelines to implement th[ese] Rules shall be issued by concerned DOLE agencies (i.e., [Bureau of Working Conditions], [Occupational Safety and Health Center], [National Conciliation and Mediation Board], and [Technical Education and Skills Development Authority]) within fifteen (15) days after its publication.

SECTION 3. ***Technical Assistance to Public Utility Bus Transport Companies.*** — Public utility bus operators may request for technical assistance from concerned DOLE agencies in the implementation of th[ese] Rules.

SECTION 4. ***Non-diminution of Benefits.*** – Nothing herein shall be construed to authorize diminution of benefits being enjoyed by the bus drivers and conductors at the time of the issuance hereof.

SECTION 5. ***Effect on Existing Company Policy, Contracts or CBAs.*** — The minimum benefits provided in th[ese] Rules shall be without prejudice to any company policy, contract, or Collective Bargaining Agreement (CBA) providing better terms and conditions of employment.

On January 28, 2012, Atty. Emmanuel A. Mahipus, on behalf of the Provincial Bus Operators Association of the Philippines, Integrated Metro Manila Bus Operators Association, Inter City Bus Operators Association, the City of San Jose Del Monte Bus Operators Association, and Pro-Bus, wrote to then Secretary of Labor and Employment Rosalinda Dimapilis-Baldoz,

requesting to defer the implementation of Department Order No. 118-12.[3] The request, however, was not acted upon.

Meanwhile, on February 27, 2012 and in compliance with Rule III, Section 3 of Department Order No. 118-12, the National Wages and Productivity Commission issued NWPC Guidelines No. 1 to serve as Operational Guidelines on Department Order No. 118-12. NWPC Guidelines No. 1 suggested formulae for computing the fixed-based and the performance-based components of a bus driver's or conductor's wage. Relevant portions of the NWPC Guidelines, including its Annex "A" on a sample computation implementing the part-fixed-part-performance-based compensation scheme, are reproduced below:

NWPC GUIDELINES NO. 1
(series 2012)

OPERATIONAL GUIDELINES ON DEPARTMENT ORDER NO. 118-12 "RULES AND REGULATIONS GOVERNING THE EMPLOYMENT AND WORKING CONDITIONS OF DRIVERS AND CONDUCTORS IN THE PUBLIC UTILITY BUS TRANSPORT INDUSTRY"

Pursuant to Section 3 of Rule III of Department Order No. 118-12 "Rules and Regulations Governing the Employment and Working Conditions of Drivers and Conductors in the Public Utility Bus Transport Industry,["] the following operational guidelines on the adoption of a part-fixed, part-performance[-]based compensation scheme is hereby issued:

RULE I
COVERAGE AND DEFINITION OF TERMS

SECTION 1. ***Coverage.*** — Th[ese] Guidelines shall apply to all public utility bus owners and/or operators employing drivers and conductors. Owners/operators of coaches, school, tourist and similar buses who are holders of Certificates of Public Convenience (CPC) issued by the Land Transportation Franchising and Regulatory Board (LTFRB), however, are not covered by the provisions of th[ese] Guidelines.

. . . .

RULE II
COMPENSATION

SECTION 1. ***Part-Fixed, Part-Performance[-]Based Compensation Scheme.***

a) Bus owners and/or operators shall adopt a mutually-agreed upon "part-fixed, part-performance" based compensation scheme for bus drivers and conductors. It shall take into consideration revenue, ridership, safety, specific conditions of routes and other relevant parameters. *(Annex A – Sample Computation)*

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[3] Id. at 39–41.

SECTION 2. ***Fixed Wage Component.***

a) The fixed wage component shall be an amount mutually agreed upon by the owner/operator and the driver/conductor and shall be paid in legal tender. It shall in no case be lower than the applicable minimum wage (basic wage + COLA) for work performed during normal hours/days. It shall include wage[-]related benefits such as overtime pay, nightshift differential, service incentive leave and premium pay among others. The payment of 13th month pay, holiday and service incentive leave may be integrated into the daily wage of drivers and conductors, upon agreement of both owners/operators and drivers and conductors.

b) The fixed wage may be based on a time unit of work (e.g. hourly, daily or monthly). It may also be based on a per trip or per kilometer basis where the drivers/conductors and operators may consider the minimum number of trips or kilometres/distance travelled within an 8-hour period, as basis for determining regular/normal workload for an 8-hour period. The fixed wage may be computed as follows:

Fixed Wage (Time Rate) = (Basic Wage + Wage-Related Benefits)
OR
Fixed Wage (Trip Basis) = Rate per Trip x No. of Trips per Day

SECTION 3. ***Performance-Based Wage Component.***

a) The performance-based wage component shall be based on business performance, safety performance and other relevant parameters. Business performance shall consider revenue/ridership. Safety performance shall consider safety records such as the incidence of road accident and traffic violation. The performance-based wage may be computed as follows:

Reference Amount of Performance Incentive = (Current Average Daily Earnings – Fixed Wage) x Y%

Where:

i. Current average daily earnings shall be estimated based on average daily earnings for 2011 and/or prior years, as may be agreed upon.
ii. Y – range of values (in percent) that correspond to various levels of safety performance, such that:
    - The lower the incidence of traffic violations and road accidents, the higher will be the value of Y and the performance incentive
    - The higher the incidence of traffic violations and road accidents, the lower will be the value of Y and the performance incentive

b) Bus operators/owners and drivers/conductors may modify or use other formula for their compensation scheme provided it is in accordance with the part-fixed[-]part-performance[-]based compensation scheme as provided herein.

. . . .

> **SECTION 7.** ***Submission of Proposed Compensation Scheme.*** — All public utility bus owners and/or operators shall submit their proposed compensation scheme, mutually agreed upon with their drivers/conductors, to the [Regional Tripartite Wage and Productivity Board] having jurisdiction over the principal place of business of the public utility bus operator, within sixty (60) days after the effectivity of the Guidelines using the attached Proposed Compensation Form (*Annex B*). This form shall be accomplished in duplicate (2) and shall be accompanied by a duly signed employment agreement between the bus owner/operator and bus driver and between the bus owner/operator and bus conductor.
>
> Upon submission, the concerned [Regional Tripartite Wage and Productivity Board] shall review the compensation scheme for conformity with Rule II of the Guidelines. If found not in conformance with the Guidelines, the [Regional Tripartite Wage and Productivity Board] shall provide technical assistance to the concerned bus owner/operator to correct the non-conformance. The [Regional Tripartite Wage and Productivity Board] shall thereafter furnish the DOLE-[Regional Office] a copy of the compensation scheme and the agreements.
>
> **RULE III**
> **MISCELLANEOUS PROVISIONS**
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> . . . .
>
> **SECTION 2.** ***Non-diminution of Benefits.*** — Nothing herein shall be construed to authorize diminution or reduction of existing wages and benefits being enjoyed by the bus drivers and conductors.

On July 4, 2012, petitioners filed before this Court a Petition with Urgent Request for Immediate Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction,[4] impleading the DOLE and the LTFRB as respondents. They pray that this Court enjoin the implementation of Department Order No. 118-12 and Memorandum Circular No. 2012-001 for being violative of their right to due process, equal protection, and non-impairment of obligation of contracts.

In its July 11, 2012 Resolution,[5] this Court deferred the issuance of a *status quo ante* order and, instead, required the DOLE and the LTFRB to comment on the Petition.

On July 13, 2012, petitioners filed the Urgent Manifestation with Motion for Clarification,[6] alleging that Atty. Ma. Victoria Gleoresty Guerra announced in a press conference that this Court agreed to issue a *status quo ante* order in the case. They prayed that this Court clarify whether a *status quo ante* order was indeed issued.

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4 Id. at 3–26.
5 Id. at 47–48.
6 Id. at 55–59.

In its July 13, 2012 Resolution,[7] this Court noted without action the Urgent Manifestation with Motion for Clarification.

A Very Urgent Motion for Reconsideration[8] of the July 13, 2012 Resolution was filed by petitioners on which respondents filed a Comment.[9]

On July 27, 2012, the Metropolitan Manila Development Authority (MMDA) filed a Motion for Leave to Intervene,[10] alleging "direct and material interest in upholding the constitutionality of [Department Order No. 118-12 and Memorandum Circular No. 2012-001]."[11] This Court granted the MMDA's Motion in its August 10, 2012 Resolution.[12]

On August 22, 2012, the DOLE and the LTFRB filed their Comment[13] via registered mail after which petitioners filed their Reply.[14] For intervenor MMDA, it filed its Comment-in-Intervention[15] on January 8, 2013.

In its September 3, 2013 Resolution,[16] this Court directed the parties to file their respective memoranda. In compliance, petitioners filed their Memorandum[17] on October 10, 2013, while the DOLE, the LTFRB, and the MMDA filed a Consolidated Memorandum[18] on November 6, 2013.

As earlier stated, petitioners assail the constitutionality of Department Order No. 118-12 and Memorandum Circular No. 2012-001, arguing that these issuances violate petitioners' rights to non-impairment of obligation of contracts, due process of law, and equal protection of the laws. Particularly with respect to Department Order No. 118-12, its provisions on the payment of part-fixed-part-performance-based wage allegedly impair petitioners' obligations under their existing collective bargaining agreements where they agreed with their bus drivers and conductors on a commission or boundary basis. They contend that Memorandum Circular No. 2012-001 further requires compliance with Department Order No. 118-12 under threat of revocation of their franchises, which allegedly deprive petitioners of the capital they invested in their businesses in violation of their right to due process of law.

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7 Id. at 60.
8 Id. at 84–88.
9 Id. at 384–390.
10 Id. at 67–78.
11 Id. at 73.
12 Id. at 89.
13 Id. at 232–269.
14 Id. at 391–411.
15 Id. at 414–437.
16 Id. at 465.
17 Id. at 472–517.
18 Id. at 527–570.

Petitioners add that the initial implementation of Department Order No. 118-12 within Metro Manila allegedly creates an arbitrary distinction between bus operators operating in Metro Manila and those operating outside of Metro Manila, in violation of petitioners' right to equal protection of the laws.

Respondents counter that petitioners have no legal standing to file the present Petition considering that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are directed against bus operators, not against associations of bus operators such as petitioners. They add that petitioners violated the doctrine of hierarchy courts in directly filing their Petition before this Court. For these reasons, respondents pray for the dismissal of the Petition.

On the constitutional issues raised by petitioners, respondents contend that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are valid issuances promulgated by the DOLE and the LTFRB in the exercise of their quasi-legislative powers.

Further, they argue that Department Order No. 118-12 and Memorandum Circular No. 2012-001 do not violate public utility bus operators' rights to non-impairment of obligation of contracts, due process of law, and equal protection of the laws for the following reasons:

First, Department Order No. 118-12 and Memorandum Circular No. 2012-001 were issued "[to promote and protect] the welfare of the public utility bus drivers and conductors"[19] and "[to ensure] road safety"[20] by imposing a wage system where public utility bus drivers do not have to compete with one another and drive recklessly for additional income.[21] Department Order No. 118-12 and Memorandum Circular No. 2012-001 are social legislations and police power measures to which petitioners' right against impairment of obligation of contracts must yield[22];

Second, certificates of public convenience are not property and are always subject to amendment, alteration, or repeal. Therefore, public utility bus operators cannot argue that they were deprived of their property without due process of law when the LTFRB required further compliance with Memorandum Circular No. 2012-001 for bus operators to retain their franchises[23]; and

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19 Id. at 548.
20 Id.
21 Id. at 549–550.
22 Id. at 551–552.
23 Id. at 560–561.

Finally, Department Order No. 118-12 does not violate Metro Manila public utility bus operators' right to equal protection of the laws since it applies to all public utility bus operators in the country.[24]

Based on the pleadings, the issues for this Court's resolution are the following:

First, whether or not petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., Inter City Bus Operators Association, and City of San Jose Del Monte Bus Operators Association have legal standing to sue;

Second, whether or not this case falls under any of the exceptions to the doctrine of hierarchy of courts;

Third, whether or not the DOLE Department Order No. 118-12 and the LTFRB Memorandum Circular No. 2012-001 deprive public utility bus operators of their right to due process of law;

Fourth, whether or not the DOLE Department Order No. 118-12 and the LTFRB Memorandum Circular No. 2012-001 impair public utility bus operators' right to non-impairment of obligation of contracts; and

Finally, whether or not the DOLE Department Order No. 118-12 and the LTFRB Memorandum Circular No. 2012-001 deny public utility bus operators of their right to equal protection of the laws.

This Court dismisses the Petition. Petitioners fail to respect the doctrine of hierarchy of courts by directly invoking this Court's jurisdiction without any special reason. They fail to present an actual controversy ripe for adjudication and do not even have the requisite standing to file this case. Even if this Court proceeds on the merits, petitioners fail to show the unconstitutionality of the DOLE Department Order No. 118-12 and the LTFRB Memorandum Circular No. 2012-001.

I

The Constitution vests in this Court and such lower courts as may be established by law the power to "declare executive and legislative acts void

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[24] Id. at 561–562.

if violative of the Constitution."[25] This Court's power of judicial review is anchored on Article VIII, Section 1 of the Constitution:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Our governmental structure rests on the principle of separation of powers. Under our constitutional order, the legislative branch enacts law, the executive branch implements the law, and the judiciary construes the law. In reality, however, the powers are not as strictly confined or delineated to each branch. "[T]he growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws"[26] require the delegation of powers traditionally belonging to the legislative to administrative agencies. The legislature may likewise apportion competencies or jurisdictions to administrative agencies over certain conflicts involving special technical expertise.

Administrative actions reviewable by this Court, therefore, may either be quasi-legislative or quasi-judicial. As the name implies, quasi-legislative or rule-making power is the power of an administrative agency to make rules and regulations that have the force and effect of law so long as they are issued "within the confines of the granting statute."[27] The enabling law must be complete, with sufficient standards to guide the administrative agency in exercising its rule-making power.[28] As an exception to the rule on non-delegation of legislative power, administrative rules and regulations must be "germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law."[29] In *Pangasinan Transportation Co., Inc. v. The Public Service Commission*,[30] this Court recognized the constitutional permissibility of the grant of quasi-legislative powers to administrative agencies, thus:

> One thing, however, is apparent in the development of the principle of separation of powers and that is that the maxim of *delegatus non potest*

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25 *Angara v. Electoral Commission*, 63 Phil. 139, 157 (1936) [Per J. Laurel, En Banc].

26 *Pangasinan Transportation v. Public Service Commission*, 70 Phil. 221, 229 (1940) [Per J. Laurel, First Division].

27 *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003) [Per J. Ynares-Santiago, First Division].

28 Id.

29 Id.

30 70 Phil. 221 (1940) [Per J. Laurel, First Division].

> *delegari* or *delegata potestas non potest delegari*, attributed to Bracton (De Legibus et Consuetedinious Angliae, edited by G.E. Woodbine, Yale University Press, 1922, vol. 2, p. 167) but which is also recognized in principle in the Roman Law (D. 17.18.3), has been made to adapt itself to the complexities of modern governments, giving rise to the adoption, within certain limits, of the principle of "subordinate legislation," not only in the United States and England but in practically all modern governments. (People *vs.* Rosenthal and Osmeña, G. R. Nos. 46076 and 46077, promulgated June 12, 1939.) Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater powers by the legislature, and toward the approval of the practice by the courts. (Dillon Catfish Drainage Dist. *v.* Bank of Dillon, 141 S. E. 274, 275, 143 S. Ct. 178; State *v.* Knox County, 54 S. W. 2d. 973, 976, 165 Tenn. 319.) In harmony with such growing tendency, this Court, since the decision in the case of Compañía General de Tabacos de Filipinas *vs.* Board of Public Utility Commissioners (34 Phil., 136), relied upon by the petitioner, has, in instances, extended its seal of approval to the "delegation of greater powers by the legislature." (Inchausti Steamship Co. *vs.* Public Utility Commissioner, 44 Phil., 366; Alegre *vs.* Collector of Customs, 53 Phil., 394; Cebu Autobus Co. *vs.* De Jesus, 56 Phil., 446; People *vs.* Fernandez & Trinidad, G. R. No. 45655, promulgated June 15, 1938; People *vs.* Rosenthal & Osmeña, G. R. Nos. 46076, 46077, promulgated June 12, 1939; and Robb and Hilscher *vs.* People, G.R. No. 45866, promulgated June 12, 1939.)[31]

On the other hand, quasi-judicial or administrative adjudicatory power is "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."[32] The constitutional permissibility of the grant of quasi-judicial powers to administrative agencies has been likewise recognized by this Court. In the 1931 case of *The Municipal Council of Lemery, Batangas v. The Provincial Board of Batangas*,[33] this Court declared that the power of the Municipal Board of Lemery to approve or disapprove a municipal resolution or ordinance is quasi-judicial in nature and, consequently, may be the subject of a certiorari proceeding.

Determining whether the act under review is quasi-legislative or quasi-judicial is necessary in determining *when* judicial remedies may properly be availed of. Rules issued in the exercise of an administrative agency's quasi-legislative power may be taken cognizance of by courts *on the first instance* as part of their judicial power, thus:

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31 Id. at 229.

32 *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003) [Per J. Ynares-Santiago, First Division].

33 56 Phil. 260 (1931) [Per J. Villa-Real, En Banc].

> [W]here what is assailed is the validity or constitutionality of a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[34] (Citations omitted)

However, in cases involving quasi-judicial acts, Congress may require certain quasi-judicial agencies to first take cognizance of the case before resort to judicial remedies may be allowed. This is to take advantage of the special technical expertise possessed by administrative agencies. *Pambujan Sur United Mine Workers v. Samar Mining Company, Inc.*[35] explained the doctrine of primary administrative jurisdiction, thus:

> That the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.[36]

Usually contrasted with the doctrine of primary jurisdiction is the doctrine of exhaustion of administrative remedies. Though both concepts aim to maximize the special technical knowledge of administrative agencies, the doctrine of primary administrative jurisdiction requires courts to not resolve or "determine a controversy involving a question which is within the jurisdiction of an administrative tribunal."[37] The issue is jurisdictional and the court, when confronted with a case under the jurisdiction of an administrative agency, has no option but to dismiss it.[38]

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[34] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 158–159 (2003) [Per J. Ynares-Santiago, First Division].

[35] 94 Phil. 932 (1954) [Per J. Bengzon, En Banc].

[36] Id. at 941 *citing* 42 Am. Jur., 698.

[37] *Javier v. Court of Appeals*, 289 Phil. 179, 183 (1992) [Per J. Nocon, Second Division].

[38] *Katon v. Palanca, Jr.*, 481 Phil. 168, 183 (2004) [Per J. Panganiban, Third Division].

In contrast, exhaustion of administrative remedies requires parties to exhaust all the remedies in the administrative machinery before resorting to judicial remedies. The doctrine of exhaustion presupposes that the court and the administrative agency have concurrent jurisdiction to take cognizance of a matter. However, in deference to the special and technical expertise of the administrative agency, courts must yield to the administrative agency by suspending the proceedings. As such, parties must exhaust all the remedies within the administrative machinery before resort to courts is allowed.

Discussion of the doctrines of primary jurisdiction and exhaustion of administrative remedies aside, the present case does not require the application of either doctrine. Department Order No. 118-12 and Memorandum Circular No. 2012-001 were issued in the exercise of the DOLE's[39] and the LTFRB's[40] quasi-legislative powers and, as discussed, the doctrines of primary jurisdiction and exhaustion of administrative remedies may only be invoked in matters involving the exercise of quasi-judicial power. Specifically, Department Order No. 118-12 enforces the application of labor standards provisions, i.e., payment of minimum wage and grant of social welfare benefits in the public bus transportation industry. For its part, Memorandum Circular No. 2012-001 was issued by the LTFRB in the exercise of its power to prescribe the terms and conditions for the issuance of a certificate of public convenience and its power to promulgate and enforce rules and regulations on land transportation public utilities.

II

While resort to courts may directly be availed of in questioning the constitutionality of an administrative rule, parties may not proceed directly before *this* Court, regardless of its original jurisdiction over certain matters. This Court's original jurisdiction over petitions for certiorari and

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[39] LABOR CODE, art. 5 provides:

Article 5. *Rules and Regulations.* — The Department of Labor and other government agencies charged with the administration and enforcement of this Code or any of its parts shall promulgate the necessary implementing rules and regulations. Such rules and regulations shall become effective fifteen (15) days after announcement of their adoption in newspapers of general circulation.

[40] ADMINISTRATIVE CODE, Book IV, Title XV, Chapter 5, sec. 19 partly provides:

Section 19. *Powers and Functions of the Land Transportation Franchising and Regulatory Board.* — The Board shall:

. . . .

(2) Issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public land transportation services provided by motorized vehicles, and prescribe the appropriate terms and conditions therefor;

. . . .

(11) Formulate, promulgate, administer, implement and enforce rules and regulations on land transportation public utilities, standards of measurements or design, and rules and regulations requiring operators of any public land transportation service to equip, install and provide in their utilities and in their stations such devices, equipment, facilities and operating procedures and techniques as may promote safety, protection, comfort and convenience to persons and property in their charges as well as the safety of persons and property within their areas of operation[.]

prohibition[41] may only be invoked for special reasons under the doctrine of hierarchy of courts.

The doctrine of hierarchy of courts requires that recourse must first be obtained from lower courts sharing concurrent jurisdiction with a higher court.[42] This is to ensure that this Court remains *a court of last resort* so as to "satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition."[43]

The doctrine was first enunciated in *People v. Cuaresma*[44] where a petition for certiorari assailing a trial court order granting a motion to quash was directly filed before this Court. Noting that there was no special reason for invoking this Court's original jurisdiction, this Court dismissed the petition and required the "strict observance" of the policy of hierarchy of courts, thus:

> This Court's original jurisdiction to issue writs of certiorari (as well as prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly, Intermediate Appellate Court), although prior to the effectivity of *Batas Pambansa Bilang* 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor 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

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41 CONST., art. viii, sec. 5 provides in part:
Section 5. The Supreme Court shall have the following powers:
(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.
(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
(c) All cases in which the jurisdiction of any lower court is in issue.
(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.
(e) All cases in which only an error or question of law is involved.

42 *See Kulayan v. Tan*, 690 Phil. 72 (2012) [Per J. Sereno, En Banc]; *United Claimants Association of NEA (UNICAN) v. National Electrification Administration (NEA)*, 680 Phil. 506 (2012) [Per J. Velasco, Jr., En Banc]; *Review Center Association of the Philippines v. Ermita*, 602 Phil. 342, 360 (2009) [Per J. Carpio, En Banc]; *Bagabuyo v. Commission on Elections*, 593 Phil. 678, 689 (2008) [Per J. Brion, En Banc]; *Freedom from Debt Coalition v. Metropolitan Waterworks and Sewerage System*, 564 Phil. 566, 578–579 (2007) [Per J. Sandoval-Gutierrez, En Banc].

43 *Bañez, Jr. v. Concepcion*, 693 Phil. 399 (2012) [Per J. Bersamin, First Division] *citing Vergara, Sr. v. Suelto*, G.R. No. L-74766, December 21, 1987, 156 SCRA 753, 766.

44 254 Phil. 418 (1989) [Per J. Narvasa, First Division].

> determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. Indeed, the removal of the restriction on the jurisdiction of the Court of Appeals in this regard, *supra* — resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction" — was evidently intended precisely to relieve this Court *pro tanto* of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the Appellate Court['s] corresponding jurisdiction, would have had to be filed with it.
>
> The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometime even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land. The proceeding at bar is a case in point. The application for the writ of *certiorari* sought against a City Court was brought directly to this Court although there is discernible special and important reason for not presenting it to the Regional Trial Court.
>
> The Court therefore closes this decision with the declaration, for the information and guidance of all concerned, that it will not only continue to enforce the policy, but will require a more strict observance thereof.[45] (Citations omitted)

More recently, this Court in *The Diocese of Bacolod v. Commission on Elections*[46] explained the purpose of the doctrine: to "ensure that every level of the judiciary performs its designated roles in an effective and efficient manner."[47] This Court said:

> Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes

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45 Id. at 426–428.
46 751 Phil. 301 (2015) [Per J. Leonen, En Banc].
47 Id. at 329.

> ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
>
> The Court of Appeals is primarily designated as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
>
> This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[48] (Citation omitted)

For this Court to take cognizance of original actions, parties must clearly and specifically allege in their petitions the special and important reasons for such direct invocation.[49] One such special reason is that the case requires "the proper legal interpretation of constitutional and statutory provisions."[50] Cases of national interest and of serious implications,[51] and those of transcendental importance[52] and of first impression[53] have likewise been resolved by this Court on the first instance.

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48 Id. at 329–330.

49 *See De Castro v. Carlos,* 709 Phil. 389 (2013) [Per C.J. Sereno, En Banc]; *Kulayan v. Tan,* 690 Phil. 72 (2012) [Per J. Sereno, En Banc]; *Review Center Association of the Philippines v. Ermita,* 602 Phil. 342, 360 (2009) [Per J. Carpio, En Banc]; *Bagabuyo v. Commission on Elections,* 593 Phil. 678, 689(2008) [Per J. Brion, En Banc]; *Civil Service Commission v. Department of Budget and Management,* 502 Phil. 372, 384 (2005) [Per J. Carpio-Morales, En Banc].

50 *The Province of Batangas v. Romulo,* 473 Phil. 806, 827 (2004) [Per J. Callejo, Sr., En Banc].

51 Considered as cases of national interest, the following were resolved by this Court on the first instance: *Ocampo v. Abando,* 726 Phil. 441 (2014) [Per C.J. Sereno, En Banc], which involved the issue of whether leaders of the Communist Party of the Philippines-National Democratic Front may be prosecuted for murder allegedly committed in furtherance of rebellion apart from the separate charge of rebellion; *Chavez v. Romulo,* G.R. No. 157036, June 9, 2004, 431 SCRA 534, 548 [Per J. Sandoval-Gutierrez, En Banc], which involved citizens' right to bear arms; *Commission on Elections v. Judge Quijano-Padilla,* 438 Phil. 72, 88–89 (2002) [Per J. Sandoval-Gutierrez, En Banc], which involved the Commission on Elections' Voter's Registration and Identification System Project.

52 The issues in the following cases were considered to be of transcendental importance: *The Province of Batangas v. Hon. Romulo,* 473 Phil. 806, 827 (2004) [Per J. Callejo, Sr., En Banc], where this Court resolved the issue of whether Congress may impose conditions for the release of internal revenue allotment of local government units; *Senator Jaworski v. Philippine Amusement and Gaming Corporation,* 464 Phil. 375, 385 (2004) [Per J. Ynares-Santiago, En Banc], which involved the grant of authority to a private corporation to operate internet gambling facilities; *Agan, Jr. v. Phil. International Air Terminals Co., Inc.,* 450 Phil. 744, 805 (2003) [Per J. Puno, En Banc], which involved the construction and operation of the Ninoy Aquino International Airport Terminal III.

53 *Agan, Jr. v. Phil. International Air Terminals Co., Inc.,* 450 Phil. 744, 805 (2003) [Per J. Puno, En Banc], which involved the construction and operation of the Ninoy Aquino International Airport Terminal III; *Government of the United States of America v. Hon. Purganan,* 438 Phil. 417, 439 (2002) [Per J. Panganiban, En Banc], where this Court resolved for the first time the issue of whether bail may be availed of in a proceeding for extradition.

In exceptional cases, this Court has also overlooked the rule to decide cases that have been pending for a sufficient period of time.[54] This Court has resolved original actions which could have been resolved by the lower courts in the interest of speedy justice[55] and avoidance of delay.[56]

Generally, the rule on hierarchy of courts may be relaxed when "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."[57] For all other cases, the parties must have exhausted the remedies available before the lower courts. A petition filed in violation of the doctrine shall be dismissed.[58]

Based on the allegations in the present Petition, this Court finds no special reason for petitioners to invoke this Court's original jurisdiction.

The alleged "far-reaching consequences"[59] and wide "area of coverage"[60] of Department Order No. 118-12 and Memorandum Circular No. 2012-001 are not special reasons. With these justifications, petitioners could have very well filed their Petition before the Court of Appeals whose writs, as discussed, are likewise nationwide in scope. The issues raised are not even of first impression.

Petitioners, therefore, failed to respect the hierarchy of courts.

III

Furthermore, the issues raised in this Petition are not justiciable. The Petition presents no actual case or controversy.

No less than the Constitution in Article VIII, Section 1 requires an actual controversy for the exercise of judicial power:

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54 *The Heirs of the Late Faustina Borres v. Judge Abela,* 554 Phil. 502 (2007) [Per J. Ynares-Santiago, Third Division].

55 *Philippine Rural Electric Cooperative Association, Inc. v. DILG Secretary,* 451 Phil. 683, 689 (2003) [Per J. Puno, En Banc].

56 *See Elma v. Jacobi,* 689 Phil. 307 (2012) [Per J. Brion, Second Division]; *The Heirs of the Late Faustina Borres v. Judge Abela,* 554 Phil. 502 (2007) [Per J. Ynares-Santiago, Third Division]. *Commission on Elections v. Judge Quijano-Padilla,* 438 Phil. 72 (2002) [Per J. Sandoval-Gutierrez, En Banc].

57 *See Banco de Oro v. Republic,* 750 Phil. 349, 386 [Per J. Leonen, En Banc], *citing Congressman Chong, et al. v. Hon. Dela Cruz, et al.,* 610 Phil. 725, 728 (2009) [Per J. Nachura, Third Division].

58 *See Rayos v. The City of Manila,* 678 Phil. 952 (2011) [Per J. Carpio, Second Division].

59 *Rollo,* p. 506, Memorandum for Petitioners.

60 Id.

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Underscoring supplied)

As a rule, "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned."[61] A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.[62]

An actual case or controversy is "one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution."[63] A case is justiciable if the issues presented are "definite and concrete, touching on the legal relations of parties having adverse legal interests."[64] The conflict must be ripe for judicial determination, not conjectural or anticipatory; otherwise, this Court's decision will amount to an advisory opinion concerning legislative or executive action.[65] In the classic words of *Angara v. Electoral Commission*:[66]

> [T]his power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual

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61 *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806, 809 (1955) [Per J. Bengzon, En Banc].

62 *Levy Macasiano v. National Housing* Authority, 296 Phil. 56, 63–64 (1993) [Per C.J. Davide, Jr.,En Banc].

63 *See Information Technology Foundation of the Philippines v. COMELEC*, 499 Phil. 281, 304 (2005) [Per C.J. Panganiban, En Banc].

64 Id. at 304–305.

65 *See Southern Hemisphere Engagement Network v. Anti-Terrorism Council*, 646 Phil. 452, 479 (2010) [Per J. Carpio-Morales, En Banc], *citing Republic Telecommunications Holding, Inc. v. Santiago,* 556 Phil. 83, 91 (2007) [Per J. Tinga, Second Division].

66 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

> cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the governments.[67]

Even the expanded jurisdiction of this Court under Article VIII, Section 1[68] does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, *there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.*

The absence of actual facts caused the dismissal of the petitions in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council.*[69] In that case, the petitioners challenged the constitutionality of Republic Act No. 9372 or the Human Security Act of 2007 that defines and punishes the crime of terrorism. They contended that since the enactment of the statute, they had been subjected to "close security surveillance by state security forces" and branded as "enemies of the State."[70]

In dismissing the petitions, this Court said that there were no "sufficient facts to enable the Court to intelligently adjudicate the issues."[71] Petitioners' allegations of "sporadic 'surveillance' and . . . being tagged as 'communist fronts'" were not enough to substantiate their claim of grave abuse of discretion on the part of public respondents. Absent actual facts, this Court said that the *Southern Hemisphere* petitions operated in the "realm of the surreal and merely imagined."[72] "Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable."[73]

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67 Id. at 158.

68 CONST., art. viii, sec. 5 provides:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Underscoring supplied).

69 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

70 Id. at 473.

71 Id. at 481.

72 Id. at 482.

73 Id. at 483.

The petitioners in *Republic of the Philippines v. Herminio Harry Roque, et al.*[74] likewise challenged provisions of the Human Security Act, this time, via a petition for declaratory relief filed before the Regional Trial Court of Quezon City. During the pendency of the case, this Court decided *Southern Hemisphere*, where, as just discussed, the challenge against the constitutionality of the Human Security Act was dismissed. Thus, the Republic filed a motion to dismiss before the Regional Trial Court, arguing that the declaratory relief case may no longer proceed.

The Regional Trial Court denied the motion to dismiss on the ground that this Court in *Southern Hemisphere* did not pass upon the constitutionality issue. However, this Court, on certiorari, set aside the Regional Trial Court's order and dismissed the declaratory relief petitions because they did not properly allege a "state of facts indicating imminent and inevitable litigation."[75] This Court said:

> Pertinently, a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. Corollary thereto, by "ripening seeds" it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead. *The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.*
>
> A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the *Southern Hemisphere* cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, *private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA 9372 against them.* In other words, there was no particular, real or imminent threat to any of them.[76] (Citations omitted, emphasis supplied)

Similar to the petitions in *Southern Hemisphere* and *Roque*, the present Petition alleges no actual facts for this Court to infer the supposed unconstitutionality of Department Order No. 118-12 and Memorandum Circular No. 2012-001.

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[74] 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, En Banc].
[75] Id. at 305.
[76] Id. at 305–306.

According to petitioners, implementing Department Order No. 118-12 and Memorandum Circular No. 2012-001 "may [result] in [the] diminution of the income of . . . bus drivers and conductors."[77] The allegation is obviously based on speculation with the use of the word "may." There was even no showing of how granting bus drivers' and conductors' minimum wage and social welfare benefits would result in lower income for them.

Petitioners likewise claim that the part-fixed-part-performance-based payment scheme is "unfit to the nature of operation of public transport system or business."[78] This bare allegation, again, is not supported by facts from which this Court may conclude that the payment scheme under Department Order No. 118-12 are unfit to the nature of the businesses of public bus operators. The "time-immemorial" implementation of the boundary system does not mean that it is the only payment scheme appropriate for the public transport industry.

There being no actual facts from which this Court could conclude that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are unconstitutional, this case presents no actual controversy.

IV

Not only is this Petition not justiciable for failing to present an actual controversy. Petitioners do not possess the requisite legal standing to file this suit.

Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question."[79] To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged."[80] The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[81]

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77 *Rollo*, p. 488, Memorandum for Petitioners.

78 Id.

79 *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 493 (2013) [Per J. Reyes, En Banc].

80 *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 893 (2003) [Per J. Carpio Morales, En Banc].

81 *Association of Flood Victims v. Commission on Elections*, 740 Phil. 472, 481 (2014) [Per Acting C.J. Carpio, En Banc] *citing Integrated Bar of the Philippines v. Hon. Zamora*, 392 Phil. 618, 632–633 (2000).

The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government."[82] In addition, economic reasons justify the rule. Thus:

> A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.[83]

Standing in private suits requires that actions be prosecuted or defended in the name of the real party-in-interest,[84] interest being "material interest or an interest in issue to be affected by the decree or judgment of the case[,] [not just] mere curiosity about the question involved."[85] Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest."[86] Those who bring the suit must possess their own right to the relief sought.

Like any rule, the rule on legal standing has exceptions. This Court has taken cognizance of petitions filed by those who have no personal or substantial interest in the challenged governmental act but whose petitions nevertheless raise "constitutional issue[s] of critical significance."[87] This Court summarized the requirements for granting legal standing to "non-traditional suitors"[88] in *Funa v. Villar*,[89] thus:

> 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
>
> 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
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> 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

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82 *White Light Corp., et al. v. City of Manila,* 596 Phil. 444, 455 (2009) [Per J. Tinga, En Banc].
83 *Lozano v. Nograles*, 607 Phil. 334, 343–344 (2009) [Per C.J. Puno, En Banc].
84 RULES OF COURT, Rule 3, sec. 2.
85 *Goco v. Court of Appeals*, 631 Phil. 394, 403 (2010) [Per J. Brion, Second Division].
86 *Galicto v. Aquino III*, 683 Phil. 141, 171 (2012) [Per J. Brion, En Banc].
87 *Funa v. Villar,* 686 Phil. 571, 585 (2012) [Per J. Velasco, Jr., En Banc].
88 Id. at 586.
89 686 Phil. 571 (2012) [Per J. Velasco, Jr., En Banc].

> 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.[90] (Emphasis in the original)

Another exception is the concept of third-party standing. Under this concept, actions may be brought on behalf of third parties provided the following criteria are met: first, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute";[91] second, "the party must have a close relation to the third party";[92] and third, "there must exist some hindrance to the third party's ability to protect his or her own interests."[93]

The concept was first introduced in our jurisdiction in *White Light Corp. et al. v. City of Manila*,[94] which involved the City of Manila's Ordinance No. 7774 that prohibited "short-time admission" in hotels, motels, inns, and other similar establishments located in the City. The Ordinance defined short-time admission as the "admittance and charging of room rate for less than twelve (12) hours at any given time or the renting out of rooms more than twice a day or any other term that may be concocted by owners or managers of [hotels and motels]."[95] The declared purpose of the Ordinance was to protect "the morality of its constituents in general and the youth in particular."[96]

Hotel and motel operators White Light Corporation, Titanium Corporation, and Sta. Mesa Tourist and Development Corporation filed a complaint to prevent the implementation of the Ordinance. The hotel and motel operators argued, among others, that the Ordinance violated *their clients'* rights to privacy,[97] freedom of movement,[98] and equal protection of the laws.[99]

Based on third-party standing, this Court allowed the hotel and motel operators to sue on behalf of their clients. According to this Court, hotel and motel operators have a close relation to their customers as they "rely on the patronage of their customers for their continued viability."[100] Preventing customers from availing of short-time rates would clearly injure the business interests of hotel and motel operators.[101] As for the requirement of

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90 Id. at 586.
91 *White Light Corp., et al. v. City of Manila,* 596 Phil. 444, 456 (2009) [Per J. Tinga, En Banc].
92 Id.
93 Id.
94 596 Phil. 444 (2009) [Per J. Tinga, En Banc].
95 Id. at 451.
96 Id.
97 Id. at 454.
98 Id.
99 Id. at 455.
100 Id. at 456.
101 Id.

hindrance, this Court said that "the relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit."[102]

Associations were likewise allowed to sue on behalf of their members.

In *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*,[103] the Pharmaceutical and Health Care Association of the Philippines, "representing its members that are manufacturers of breastmilk substitutes,"[104] filed a petition for certiorari to question the constitutionality of the rules implementing the Milk Code. The association argued that the provisions of the implementing rules prejudiced the rights of manufacturers of breastmilk substitutes to advertise their product.

This Court allowed the Pharmaceutical and Health Care Association of the Philippines to sue on behalf of its members. "[A]n association," this Court said, "has the legal personality to represent its members because the results of the case will affect their vital interests."[105] In granting the Pharmaceutical and Health Care Association legal standing, this Court considered the amended articles of incorporation of the association and found that it was formed "to represent directly or through approved representatives the pharmaceutical and health care industry before the Philippine Government and any of its agencies, the medical professions and the general public."[106] Citing *Executive Secretary v. Court of Appeals*,[107] this Court declared that "the modern view is that an association has standing to complain of injuries to its members."[108] This Court continued:

> [This modern] view fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents.
> . . . .
>
> . . . We note that, under its Articles of Incorporation, the respondent was organized . . . to act as the representative of any individual, company, entity or association on matters related to the manpower recruitment industry, and to perform other acts and activities necessary to accomplish the purposes embodied therein. The respondent is, thus, the appropriate party to assert the rights of its members, because it

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102 Id. at 456-457.
103 561 Phil. 386 (2007) [Per J. Austria-Martinez, En Banc].
104 Id. at 394.
105 Id. at 396.
106 Id.
107 473 Phil. 27 (2004) [Per J. Callejo, Sr., Second Division].
108 *The Pharmaceutical and Health Care Association of the Philippines v Duque III*, 561 Phil. 386, 395 (2007) [Per J. Austria-Martinez, En Banc].

> and its members are in every practical sense identical . . . The respondent [association] is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.[109]

In *Holy Spirit Homeowners Association, Inc. v. Defensor,*[110] the Holy Spirit Homeowners Association, Inc. filed a petition for prohibition, praying that this Court enjoin the National Government Center Administration Committee from enforcing the rules implementing Republic Act No. 9207. The statute declared the land occupied by the National Government Center in Constitution Hills, Quezon City distributable to bona fide beneficiaries. The association argued that the implementing rules went beyond the provisions of Republic Act No. 9207, unduly limiting the area disposable to the beneficiaries.

The National Government Center Administration Committee questioned the legal standing of the Holy Spirit Homeowners Association, Inc., contending that the association "is not the duly recognized people's organization in the [National Government Center]."[111]

Rejecting the National Government Center Administration Committee's argument, this Court declared that the Holy Spirit Homeowners Association, Inc. "ha[d] the legal standing to institute the [petition for prohibition] whether or not it is the duly recognized association of homeowners in the [National Government Center]."[112] This Court noted that the individual members of the association were residents of the National Government Center. Therefore, "they are covered and stand to be either benefited or injured by the enforcement of the [implementing rules], particularly as regards the selection process of beneficiaries and lot allocation to qualified beneficiaries."[113]

In *The Executive Secretary v. The Hon. Court of Appeals*,[114] cited in the earlier discussed *Pharmaceutical and Health Care Association of the Philippines*, the Asian Recruitment Council Philippine Chapter, Inc. filed a petition for declaratory relief for this Court to declare certain provisions of Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 unconstitutional. The association sued on behalf of its members who were recruitment agencies.

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109 Id. at 395–396.
110 529 Phil. 573 (2006) [Per J. Tinga, En Banc].
111 Id. at 583.
112 Id. at 584.
113 Id.
114 473 Phil. 27 (2004) [Per J. Callejo, Sr., Second Division].

This Court took cognizance of the associations' petition and said that an association "is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances."[115] It noted that the board resolutions of the individual members of the Asian Recruitment Council Philippine Chapter, Inc. were attached to the petition, thus, proving that the individual members authorized the association to sue on their behalf.

The associations in *Pharmaceutical and Health Care Association of the Philippines*, *Holy Spirit Homeowners Association, Inc.*, and *The Executive Secretary* were allowed to sue on behalf of their members because they sufficiently established who their members were, that their members authorized the associations to sue on their behalf, and that the members would be directly injured by the challenged governmental acts.

The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors.

In all these cases, there must be an actual controversy. Furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue.

Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit,[116] allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong.

In some circumstances similar to those in *White Light*, the third parties represented by the petitioner would have special and legitimate reasons why they may not bring the action themselves. Understandably, the cost to patrons in the *White Light* case to bring the action themselves—i.e., the amount they would pay for the lease of the motels—will be too small compared with the cost of the suit. But viewed in another way, whoever among the patrons files the case even for its transcendental interest endows benefits on a substantial number of interested parties without recovering

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[115] Id. at 51.
[116] RULES OF COURT, Rule 3, sec. 12.

their costs. This is the free rider problem in economics. It is a negative externality which operates as a disincentive to sue and assert a transcendental right.

In addition to an actual controversy, special reasons to represent, and disincentives for the injured party to bring the suit themselves, there must be a showing of the transcendent nature of the right involved.

Only constitutional rights shared by many and requiring a grounded level of urgency can be transcendent. For instance, in *The Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[117] the association was allowed to file on behalf of its members considering the importance of the issue involved, i.e., the constitutionality of agrarian reform measures, specifically, of then newly enacted Comprehensive Agrarian Reform Law.

This Court is not a forum to appeal political and policy choices made by the Executive, Legislative, and other constitutional agencies and organs. This Court dilutes its role in a democracy if it is asked to substitute its political wisdom for the wisdom of accountable and representative bodies where there is no unmistakable democratic deficit. It cannot lose this place in the constitutional order. Petitioners' invocation of our jurisdiction and the justiciability of their claims must be presented with rigor. Transcendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law.

As declared at the outset, petitioners in this case do not have standing to bring this suit. As associations, they failed to establish who their members are and if these members allowed them to sue on their behalf. While alleging that they are composed of public utility bus operators who will be directly injured by the implementation of Department Order No. 118-12 and Memorandum Circular No. 2012-001, petitioners did not present any proof, such as board resolutions of their alleged members or their own articles of incorporation authorizing them to act as their members' representatives in suits involving their members' individual rights.

Some of the petitioners here are not even persons or entities authorized by law or by the Rules allowed to file a suit in court. As intervenor MMDA sufficiently demonstrated, petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., and Inter City Bus Operators Association, Inc. had their certificates of incorporation revoked by the Securities and Exchange Commission for failure to submit the required general information sheets

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[117] 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

and financial statements for the years 1996 to 2003.[118] With their certificates of incorporation revoked, petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., and Inter City Bus Operators Association, Inc. have no corporate existence.[119] They have no capacity to exercise any corporate power, specifically, the power to sue in their respective corporate names.

Again, the reasons cited—the "far-reaching consequences" and "wide area of coverage and extent of effect"[120] of Department Order No. 118-12 and Memorandum Circular No. 2012-001—are reasons not transcendent considering that most administrative issuances of the national government are of wide coverage. These reasons are not special reasons for this Court to brush aside the requirement of legal standing.

Thus far, petitioners have not satisfied any of the following requirements for this Court to exercise its judicial power. They have not sufficiently demonstrated why this Court should exercise its original jurisdiction. The issues they raised are not justiciable. Finally, as will be shown, they failed to demonstrate any breach of constitutional text.

V

The protection of private property is the primary function of a constitution. This can be gleaned in our earliest fundamental law where members of the Malolos Congress declared their purpose in decreeing the Malolos Constitution: "to secure for [the Filipino people] the blessings of liberty." It is understood that the rights to enjoy and to dispose of property are among these blessings considering that several provisions on property are found in the Constitution. Article 32 of the Malolos Constitution provided that "no Filipino shall establish . . . institutions restrictive of property rights." Likewise, Article 17 provided that "no one shall be

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[118] *Rollo*, pp. 453–455.

[119] CORP. CODE, secs. 19 and 135 provide:

Section 19. *Commencement of Corporate Existence.* — A private corporation formed or organized under this Code commences to have corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal; and thereupon the incorporators, stockholders/members and their successors shall constitute a body politic and corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law.

. . . .

Section 135. *Issuance of Certificate of Revocation.* — Upon the revocation of any such license to transact business in the Philippines, the Securities and Exchange Commission shall issue a corresponding certificate of revocation, furnishing a copy thereof to the appropriate government agency in the proper cases.

The Securities and Exchange Commission shall also mail to the corporation at its registered office in the Philippines a notice of such revocation accompanied by a copy of the certificate of revocation.

[120] *Rollo*, p. 506.

deprived of his property by expropriation except on grounds of public necessity and benefit."

At present, the due process clause, the equal protection clause, and the takings clause of the Constitution serve as protections from the government's taking of property. The non-impairment clause may likewise be invoked if the property taken is in the nature of a contract. In any case, all these constitutional limits are subject to the fundamental powers of the State, specifically, police power. As such, the burden of proving that the taking is unlawful rests on the party invoking the constitutional right.

Unfortunately for petitioners, they miserably failed to prove why Department Order No. 118-12 and Memorandum Circular No. 2012-001 are unconstitutional.

VI

Article III, Section 1 of the Constitution provides:

> ARTICLE III
> *Bill of Rights*
>
> Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The values congealed in the fundamental principle prohibiting the deprivation of life, liberty, and property "without due process of law" may be those derived within our own cultures even though the current text is but an incarnation from foreign jurisdictions.

For instance, the phrase "due process of law" does not appear in the Malolos Constitution of 1899. Still, it had similar provisions in Article 32 stating that "no Filipino shall establish . . . institutions restrictive of property rights." Specific to deprivation of property was Article 17, which stated that "no one shall be deprived of his property by expropriation except on grounds of public necessity and benefit, previously declared."

Among the "inviolable rules" found in McKinley's Instructions to the Philippine Commission was "that no person shall be deprived of life, liberty, or property without due process of law."[121]

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[121] *See* G.N. Magliocca, The Heart of the Constitution: How the Bill of Rights Became the Bill of Rights, 78 (2018).

As it is now worded, the due process clause has appeared in the Philippine Bill of 1902, the Jones Law, the 1935 and 1973 Constitutions and, finally, in the 1987 Constitution.

The right to due process was first conceptualized in England, appearing in an English statute of 1354,[122] with some early scholars claiming that the right to due process is fundamentally procedural.[123] The statute in which the phrase "due process of law" first appeared was reportedly enacted to prevent the outlawing of individuals "without their being summoned to answer for the charges brought against them."[124] The statute, enacted during Edward the Third's reign, thus provided:

> That no man of what Estate or Condition that he be, shall be put out of land or Tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law.[125]

Still, other early scholars asserted that the right to due process originally has a substantive dimension, requiring that any taking of life, liberty, or property be according to "the law of the land."[126] This is the view of Sir Edward Coke in interpreting chapter 39 of the Magna Carta on which the due process clause of the United States Constitution is based.[127] Chapter 39 of the Magna Carta provides:

> No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by lawful judgment of his peers and by the law of the land.

Currently, this Court reads the due process clause as requiring both procedural and substantive elements. In the landmark case of *Ermita-Malate Hotel and Motel Operators Association, Inc. v. The Honorable City Mayor of Manila*,[128] this Court clarified:

> There is no controlling and precise definition of due process. It furnishes though a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. What then is the standard of due process which must exist both as a

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[122] J. Scalia's Concurring Opinion in *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991) *cited* in Agpalo, Philippine Constitutional Law 158 (2006).

[123] *See* Keith Jurow, *Untimely Thoughts: A Reconsideration of the Origins of Due Process of Law,* 19 AM. J. LEGAL HIST. 265 (1975).

[124] Id. at 267.

[125] Id. at 266.

[126] *See* James W. Ely, Jr., *The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process,* 16 CONST. COMMENT. 315 (1999).

[127] James W. Ely, Jr., *The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process,* 16 CONST. COMMENT. 315, 321 (1999).

[128] 127 Phil. 306 (1967) [Per J. Fernando, En Banc].

> procedural and as substantive requisite to free the challenged ordinance, or any government action for that matter, from the imputation of legal infirmity; sufficient to spell its doom? It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty "to those strivings for justice" and judges the act of officialdom of whatever branch "in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought." It is not a narrow or "technical conception with fixed content unrelated to time, place and circumstances," decisions based on such a clause requiring a "close and perceptive inquiry into fundamental principles of our society." Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases.[129] (Citations omitted)

Despite the debate on the historical meaning of "due process of law," compliance with both procedural and substantive due process is required in this jurisdiction.

The first aspect of due process—procedural due process—"concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere."[130] It requires notice and hearing, and, as further clarified in *Medenilla v. Civil Service Commission*:[131]

> [I]mplies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, and property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of the right in the matter involved.[132]

It is said that due process means "a law which hears before it condemns."[133] The "law" in the due process clause includes not only statute but also rules issued in the valid exercise of an administrative agency's quasi-legislative power.

What procedural due process requires depends on the nature of the action. For instance, judicial proceedings generally require that:

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[129] Id. at 318–319.
[130] *White Light Corporation v. City of Manila,* 596 Phil. 444, 461 (2009) [Per J. Tinga, En Banc].
[131] 272 Phil. 107 (1991) [Per J. Gutierrez, Jr., En Banc].
[132] Id. at 115.
[133] J. Carson's Dissent in *United States v. Chauncey McGovern*, 6 Phil. 621, 629 (1906) [Per C.J. Arellano, Second Division].

> [First,] [t]here must be a court or tribunal clothed with judicial power to hear and determine the matter before it; [second,] jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; [third,] the defendant must be given an opportunity to be heard; and [fourth,] judgment must be rendered upon lawful hearing.[134]

For "trials and investigations of an administrative character,"[135] *Ang Tibay v. Court of Industrial Relations*[136] lay down the seven (7) cardinal primary rights, thus:

> (1) The first of these rights is the right to a hearing which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Justice Hughes, in Morgan v. U.S., . . ., "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play."
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> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. . . . In the language of this court in Edwards vs. McCoy, . . ., "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."
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> (3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached." (Edwards vs. McCoy, *supra.*) This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.
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> (4) Not only must there be some evidence to support a finding or conclusion . . ., but the evidence must be "substantial." . . . "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." . . . The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. . . . But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. . . .

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[134] *Rabino v. Cruz*, 294 Phil. 480, 488 (1993) [Per J. Melo, Third Division].
[135] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642 (1940) [Per J. Laurel, En Banc].
[136] 69 Phil. 635 (1940) [Per J. Laurel, En Banc].

> (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected . . . Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. . . .
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> (6) [The tribunal or officer], therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. . . .
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> (7) [The tribunal or officer] should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.[137] (Underscoring supplied; citations omitted)

However, notice and hearing are not required when an administrative agency exercises its quasi-legislative power. The reason is that in the exercise of quasi-legislative power, the administrative agency makes no "determination of past events or facts."[138]

The other aspect of due process—substantive due process—requires that laws be grounded on reason[139] and be free from arbitrariness. The government must have "sufficient justification for depriving a person of life, liberty, or property."[140] In the words of Justice Felix Frankfurter, due process is "the embodiment of the sporting idea of fair play."[141]

Essentially, substantive due process is satisfied if the deprivation is done in the exercise of the police power of the State. Called "the most essential, insistent and illimitable"[142] of the powers of the State, police power is the "authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."[143] In the negative, it is the "inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety, and welfare of

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137 Id. at 642–644.

138 *Dagan v. Philippine Racing Commission*, 598 Phil. 406, 421 (2009) [Per J. Tinga, En Banc].

139 *See Legaspi v. Cebu City*, 723 Phil. 90 (2013) [Per J. Bersamin, En Banc]; *White Light Corporation v. City of Manila*, 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

140 *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009) [Per J. Tinga, En Banc].

141 *Ermita-Malate Hotel and Motel Operators Association, Inc. v. The Honorable City Mayor of Manila*, 127 Phil. 306, 319 (1967) [Per J. Fernando, En Banc] *citing* Frankfurter, Mr. Justice Holmes and the Supreme Court 32–33 (1938).

142 *Ichong v. Hernandez*, 101 Phil. 1155, 1163 (1957) [Per J. Labrador, En Banc].

143 *Philippine Association of Service Exporters, Inc. v. Drilon*, 246 Phil. 393, 398 (1988) [Per J. Sarmiento, En Banc].

society."[144] "The reservation of essential attributes of sovereign power is . . . read into contracts as a postulate of the legal order."[145]

"[P]olice power is lodged primarily in the National Legislature."[146] However, it "may delegate this power to the President and administrative boards as well as the lawmaking bodies of municipal corporations or local government units."[147] "Once delegated, the agents can exercise only such legislative powers as are conferred on them by the [National Legislature]."[148]

Laws requiring the payment of minimum wage, security of tenure, and traffic safety[149] have been declared not violative of due process for being valid police power legislations. In these cases, the test or standard is whether the law is reasonable. The interests of the State to promote the general welfare, on the one hand, and the right to property, on the other, must be balanced. As expounded in *Ichong v. Hernandez*:[150]

> The conflict, therefore, between police power and the guarantees of due process and equal protection of the laws is more apparent than real. Properly related, the power and the guarantees are supposed to coexist. The balancing is the essence or, shall it be said, the indispensable means for the attainment of legitimate aspirations of any democratic society. There can be no absolute power, whoever exercise it, for that would be tyranny. Yet there can neither be absolute liberty, for that would mean license and anarchy. So the State can deprive persons of life, liberty and property, provided there is due process of law; and persons may be classified into classes and groups, provided everyone is given the equal protection of the law. The test or standard, as always, is reason. The police power legislation must be firmly grounded on public interest and welfare, and a reasonable relation must exist between purposes and means. And if distinction and classification ha[ve] been made, there must be a reasonable basis for said distinction.[151]

Given the foregoing, this Court finds that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are not violative of due process, either procedural or substantive.

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144 *Acebedo Optical Company, Inc. v. The Honorable Court of Appeals,* 385 Phil. 956, 986 (2000) [Per J. Purisima, En Banc].

145 *The Philippine American Life Insurance Company v. The Auditor General*, 130 Phil. 134, 148 (1968) [Per J. Sanchez, En Banc].

146 *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*, 385 Phil. 586, 601 (2000) [Per J. Puno, First Division].

147 Id.

148 Id. at 601-602.

149 *See Edu v. Ericta*, 146 Phil. 469 (1970) [Per J. Fernando, First Division].

150 101 Phil. 1155 (1957) [Per J. Labrador, En Banc].

151 Id. at 1165.

Department Order No. 118-12 and Memorandum Circular No. 2012-001 were issued in the exercise of quasi-legislative powers of the DOLE and the LTFRB, respectively. As such, notice and hearing are not required for their validity.

In any case, it is undisputed that the DOLE created a Technical Working Group that conducted several meetings and consultations with interested sectors before promulgating Department Order No. 118-12. Among those invited were bus drivers, conductors, and operators with whom officials of the DOLE conducted focused group discussions.[152] The conduct of these discussions more than complied with the requirements of procedural due process.

Neither are Department Order No. 118-12 and Memorandum Circular No. 2012-001 offensive of substantive due process.

Department Order No. 118-12 and Memorandum Circular No. 2012-001 are reasonable and are valid police power issuances. The pressing need for Department Order No. 118-12 is obvious considering petitioners' admission that the payment schemes prior to the Order's promulgation consisted of the "payment by results," the "commission basis," or the boundary system. These payment schemes do not guarantee the payment of minimum wages to bus drivers and conductors. There is also no mention of payment of social welfare benefits to bus drivers and conductors under these payment schemes which have allegedly been in effect since "time immemorial."

There can be no meaningful implementation of Department Order No. 118-12 if violating it has no consequence. As such, the LTFRB was not unreasonable when it required bus operators to comply with the part-fixed-part-performance-based payment scheme under pain of revocation of their certificates of public convenience. The LTFRB has required applicants or current holders of franchises to comply with labor standards as regards their employees, and bus operators must be reminded that certificates of public convenience are not property. Certificates of public convenience are franchises always subject to amendment, repeal, or cancellation. Additional requirements may be added for their issuance, and there can be no violation of due process when a franchise is cancelled for non-compliance with the new requirement.

An equally important reason for the issuance of Department Order No. 118-12 and Memorandum Circular No. 2012-001 is to ensure "road safety" by eliminating the "risk-taking behaviors" of bus drivers and

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[152] *Rollo*, pp. 530–531.

conductors. This Court in *Hernandez v. Dolor*[153] observed that the boundary system "place[s] the riding public at the mercy of reckless and irresponsible drivers—reckless because the measure of their earnings depends largely upon the number of trips they make and, hence, the speed at which they drive."[154]

Behavioral economics explains this phenomenon. The boundary system puts drivers in a "scarcity mindset" that creates a tunnel vision where bus drivers are nothing but focused on meeting the boundary required and will do so by any means possible and regardless of risks.[155] They stop for passengers even outside of the designated bus stops, impeding traffic flow. They compete with other bus drivers for more income without regard to speed limits and bus lanes. Some drivers even take in performance-enhancing drugs and, reportedly, even illegal drugs such as *shabu*, just to get additional trips. This scarcity mindset is eliminated by providing drivers with a fixed income plus variable income based on performance. The fixed income equalizes the playing field, so to speak, so that competition and racing among bus drivers are prevented. The variable pay provided in Department Order No. 118-12 is based on safety parameters, incentivizing prudent driving.

In sum, Department Order No. 118-12 and Memorandum Circular No. 2012-001 are in the nature of social legislations to enhance the economic status of bus drivers and conductors, and to promote the general welfare of the riding public. They are reasonable and are not violative of due process.

VII

Related to due process is the non-impairment clause. The Constitution's Article III, Section 10 provides:

> ARTICLE III
> *Bill of Rights*
>
> . . . .
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> Section 10. No law impairing the obligation of contracts shall be passed.

The non-impairment clause was first incorporated into the United States Constitution after the American Revolution, an unstable time when worthless money was routinely issued and the States enacted moratorium laws to extend periods to pay contractual obligations that further contributed

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[153] 479 Phil. 593 (2004) [Per J. Ynares-Santiago, First Division].
[154] Id. at 603.
[155] *See* S. Mullainhathan and E. Shafir, *Scarcity* 27-29 (2013).

to the lack of confidence to the monetary system during that time.[156] These practices were prohibited under the clause to limit State interference with free markets and debtor-creditor relationships.[157]

The clause was first adopted in our jurisdiction through the Philippine Bill of 1902 and, similar to the due process clause, has consistently appeared in subsequent Constitutions.

Since the non-impairment clause was adopted here, this Court has said that its purpose is to protect purely private agreements from State interference.[158] This is to "encourage trade and credit by promoting confidence in the stability of contractual relations."[159]

There are views, however, that the non-impairment clause is obsolete and redundant because contracts are considered property, and thus, are protected by the due process clause. On the other hand, studies show why the non-impairment clause should be maintained. Aside from its traditional purpose of prohibiting State interference in purely private transactions, the non-impairment clause serves as a guarantee of the separation of powers between the judicial and legislative branches of the government.[160] The non-impairment clause serves as a check on the legislature "to act only through generally applicable laws prescribing rules of conduct that operate prospectively."[161]

This approach, called the institutional regularity approach, was applied in *United States v. Diaz Conde and R. Conde.*[162] The accused in the case lent ₱300.00 to two (2) debtors with 5% interest per month, payable within the first 10 days of each and every month. The Usury Law was subsequently passed in 1916, outlawing the lending of money with usurious interests.

In 1921, the accused were charged for violating the Usury Law for money lending done in 1915. The accused were initially convicted but they were subsequently acquitted. This Court held that the loan contract was valid when it was entered into; thus, to render a previously valid contract

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156 *Pryce Corporation v. China Banking Corporation*, 727 Phil. 1, 23 (2014) [Per J. Leonen, En Banc]. John G. Harvey, *The Impairment of Obligation of Contracts*, 195 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 87 (1938).

157 *Pryce Corporation v. China Banking Corporation*, 727 Phil. 1, 23 (2014) [Per J. Leonen, En Banc].

158 *National Development Company v. Philippine Veterans Bank*, 270 Phil. 349, 359 (1990) [Per J. Cruz, En Banc].

159 *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398 (1934) *cited* in Agpalo, Philippine Constitutional Law, 502 (2006).

160 *Rediscovering the Contract Clause*, 97 HARVARD LAW REVIEW 6, 1414, 1426 (1984).

161 Id. at 1427.

162 42 Phil. 766 (1922) [Per J. Johnson, En Banc].

illegal for violating a subsequent law is against the non-impairment clause. This Court explained:

> A law imposing a new penalty, or a new liability or disability, or giving a new right of action, must not be construed as having a retroactive effect. It is an elementary rule of contract that the laws in force at the time the contract was made must govern its interpretation and application. Laws must be construed prospectively and not retrospectively. If a contract is legal at its inception, it cannot be rendered illegal by any subsequent legislation. If that were permitted then the obligations of a contract might be impaired, which is prohibited by the organic law of the Philippine Islands.[163]

It is claimed that the institutional regularity approach "offers the soundest theoretical basis for reviving the [non-impairment clause] as a meaningful constitutional constraint."[164] It is consistent with the government's right to regulate itself, but prevents "majoritarian abuse."[165] With the non-impairment clause, legislature cannot enact "retroactive laws, selective laws, and laws not supported by a public purpose."[166]

At any rate, so long as the non-impairment clause appears in the Constitution, it may be invoked to question the constitutionality of State actions.

There is an impairment when, either by statute or any administrative rule issued in the exercise of the agency's quasi-legislative power, the terms of the contracts are changed either in the time or mode of the performance of the obligation.[167] There is likewise impairment when new conditions are imposed or existing conditions are dispensed with.[168]

Not all contracts, however, are protected under the non-impairment clause. Contracts whose subject matters are so related to the public welfare are subject to the police power of the State and, therefore, some of its terms may be changed or the whole contract even set aside without offending the Constitution;[169] otherwise, "important and valuable reforms may be precluded by the simple device of entering into contracts for the purpose of doing that which otherwise may be prohibited."[170]

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[163] Id. at 769–770 *citing U.S. vs. Constantino Tan Quingco Chua*, 39 Phil. 552 (1919) [Per J. Malcolm, En Banc] and *Aguilar vs. Rubiato and Gonzales Vila*, 40 Phil. 570 (1919) [Per J. Malcolm, First Division].

[164] *Rediscovering the Contract Clause*, 97 HARVARD LAW REVIEW 6, 1414, 1429 (1984).

[165] Id. at 1430.

[166] Id.

[167] *Siska Development Corporation v. Office of the President*, 301 Phil. 678, 684 (1994) [Per J. Quiason, En Banc] *citing Clemons v. Nolting*, 42 Phil. 702 (1922) [Per J. Johnson, En Banc].

[168] Id.

[169] *See National Development Company v. Philippine Veterans Bank*, 270 Phil. 349, 358–359 (1990) [Per J. Cruz, En Banc].

[170] *See Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 78 (1974) [Per J. Zaldivar, En Banc].

Likewise, contracts which relate to rights not considered property, such as a franchise or permit, are also not protected by the non-impairment clause. The reason is that the public right or franchise is always subject to amendment or repeal by the State,[171] the grant being a mere privilege. In other words, there can be no vested right in the continued grant of a franchise. Additional conditions for the grant of the franchise may be made and the grantee cannot claim impairment.

Similar to the right to due process, the right to non-impairment yields to the police power of the State.

In *Anucension v. National Labor Union*,[172] Hacienda Luisita and the exclusive bargaining agent of its agricultural workers, National Labor Union, entered into a collective bargaining agreement. The agreement had a union security clause that required membership in the union as a condition for employment. Republic Act No. 3350 was then subsequently enacted in 1961, exempting workers who were members of religious sects which prohibit affiliation of their members with any labor organization from the operation of union security clauses.

On the claim that Republic Act No. 3350 violated the obligation of contract, specifically, of the union security clause found in the collective bargaining agreement, this Court conceded that "there was indeed an impairment of [the] union security clause."[173] Nevertheless, this Court noted that the "prohibition to impair the obligation of contracts is not absolute and unqualified"[174] and that "the policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile — a government which retains adequate authority to secure the peace and good order of society."[175] A statute passed to protect labor is a "legitimate exercise of police power, although it incidentally destroys existing contract rights."[176] "[C]ontracts regulating relations between capital and labor . . . are not merely contractual,

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[171] CONST., art. xii, sec. 11 provides:

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[172] 170 Phil. 373 (1977) [Per J. Makasiar, First Division].

[173] Id. at 386.

[174] Id.

[175] Id. at 387.

[176] Id.

and said labor contracts . . . [are] impressed with public interest, [and] must yield to the common good."[177]

This Court found the purpose behind Republic Act No. 3350 legitimate. Republic Act No. 3350 protected labor by "preventing discrimination against those members of religious sects which prohibit their members from joining labor unions, confirming thereby their natural, statutory and constitutional right to work, the fruits of which work are usually the only means whereby they can maintain their own life and the life of their dependents."[178] This Court, therefore, upheld the constitutionality of Republic Act No. 3350.

Laws regulating public utilities are likewise police power legislations. In *Pangasinan Transportation Co., Inc. v. The Public Service Commission*,[179] Pangasinan Transportation Co., Inc. (Pangasinan Transportation) filed an application with the Public Service Commission to operate 10 additional buses for transporting passengers in Pangasinan and Tarlac. The Public Service Commission granted the application on the condition that the authority shall only be for 25 years.

When the Public Service Commission denied Pangasinan Transportation's motion for reconsideration with respect to the imposition of the 25-year validity period, the bus company filed a petition for certiorari before this Court. It claimed that it acquired its certificates of public convenience to operate public utility buses when the Public Service Act did not provide for a definite period of validity of a certificate of public convenience. Thus, Pangasinan Transportation claimed that it "must be deemed to have the right [to hold its certificates of public convenience] in perpetuity."[180]

Rejecting Pangasinan Transportation's argument, this Court declared that certificates of public convenience are granted subject to amendment, alteration, or repeal by Congress. Statutes enacted for the regulation of public utilities, such as the Public Service Act, are police power legislations "applicable not only to those public utilities coming into existence after [their] passage, but likewise to those already established and in operation."[181]

Here, petitioners claim that Department Order No. 118-12 and Memorandum Circular No. 2012-001 violate bus operators' right to non-

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177 Id.
178 Id. at 387–388.
179 70 Phil. 221 (1940) [Per J. Laurel, En Banc].
180 Id. at 231.
181 Id. at 232.

impairment of obligation of contracts because these issuances force them to abandon their "time-honored"[182] employment contracts or arrangements with their drivers and conductors. Further, these issuances violate the terms of the franchise of bus operators by imposing additional requirements after the franchise has been validly issued.

Petitioners' arguments deserve scant consideration. For one, the relations between capital and labor are not merely contractual as provided in Article 1700 of the Civil Code.[183] By statutory declaration, labor contracts are impressed with public interest and, therefore, must yield to the common good. Labor contracts are subject to special laws on wages, working conditions, hours of labor, and similar subjects. In other words, labor contracts are subject to the police power of the State.

As previously discussed on the part on due process, Department Order No. 118-12 was issued to grant bus drivers and conductors minimum wages and social welfare benefits. Further, petitioners repeatedly admitted that in paying their bus drivers and conductors, they employ the boundary system or commission basis, payment schemes which cause drivers to drive recklessly. Not only does Department Order No. 118-12 aim to uplift the economic status of bus drivers and conductors; it also promotes road and traffic safety.

Further, certificates of public convenience granted to bus operators are subject to amendment. When certificates of public convenience were granted in 2012, Memorandum Circular No. 2011-004 on the "Revised Terms and Conditions of [Certificates of Public Convenience] and Providing Penalties for Violations Thereof" was already in place. This Memorandum Circular, issued before Memorandum Circular No. 2012-001, already required public utility vehicle operators to comply with labor and social legislations. Franchise holders cannot object to the reiteration made in Memorandum Circular No. 2012-001.

All told, there is no violation of the non-impairment clause.

VIII

The equal protection clause was first incorporated in the United States Constitution through the Fourteenth Amendment, mainly to protect the

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[182] *Rollo*, p. 488, Memorandum for petitioners.

[183] CIVIL CODE, art. 1700 provides:

Article 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

slaves liberated after the Civil War from racially discriminatory state laws.[184] This was in 1868. When the Philippines was ceded by Spain to the United States in 1898, provisions of the United States Constitution were held not to have been automatically applicable here, except those "parts [falling] within the general principles of fundamental limitations in favor of personal rights formulated in the Constitution and its amendments."[185] It is said that the equal protection clause, "[b]eing one such limitation in favor of personal rights enshrined in the Fourteenth Amendment," was deemed extended in this jurisdiction upon our cession to the United States.[186] The text of the equal protection clause first appeared in the Philippine Bill of 1902 and has since appeared in our subsequent Constitutions.

"Equal protection of the laws" requires that "all persons . . . be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced."[187] "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities."[188]

However, the clause does not prevent the legislature from enacting laws making valid classifications. Classification is "the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars."[189] To be valid, the classification must be: first, based on "substantial distinctions which make real differences";[190] second, it must be "germane to the purposes of the law";[191] third, it must "not be limited to existing conditions only";[192] and fourth, it must apply to each member of the class.[193]

In *Ichong v. Hernandez,*[194] the constitutionality of Republic Act No. 1180 was assailed for alleged violation of the equal protection clause. The law prohibited aliens from engaging in retail business in the Philippines. This Court sustained the classification by citizenship created by Republic Act No. 1180. This Court observed how our economy primarily relied on

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184 J. Carpio Morales' Dissenting Opinion in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 689 (2004) [Per J. Puno, En Banc].

185 *United States v. Dorr*, 2 Phil. 269, 283–284 (1903) [Per J. Cooper, En Banc].

186 J. Panganiban's Dissenting Opinion in *Central Bank Employees Association, Inc. v Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [Per J. Puno, En Banc].

187 *Ichong v. Hernandez,* 101 Phil. 1155, 1164 (1957) [Per J. Labrador, En Banc].

188 *Bureau of Customs Employees Association v. Teves,* G.R. No. 181704, December 6, 2011, 661 SCRA 589, 609 [Per J. Villarama, Jr., En Banc].

189 *The Philippine Judges Association v. Prado*, 298 Phil. 502, 513 (1993) [Per J. Cruz, En Banc].

190 *Ormoc Sugar Company, Inc. v. The Treasurer of Ormoc City,* 130 Phil. 595, 598 (1968) [Per J. J.P. Bengzon, En Banc].

191 *People v. Cayat,* 68 Phil. 12, 18 (1939) [Per J. Moran, First Division].

192 Id.

193 Id.

194 101 Phil. 1155 (1957) [Per J. Labrador, En Banc].

retailers to distribute goods to consumers; thus, the legislature saw it fit to limit the conduct of retail business to Filipinos to protect the country's economic freedom. This Court said:

> Broadly speaking, the power of the legislature to make distinctions and classifications among persons is not curtailed or denied by the equal protection of the laws clause. The legislative power admits of a wide scope of discretion, and a law can be violative of the constitutional limitation only when the classification is without reasonable basis. In addition to the authorities we have earlier cited, we can also refer to the case of Lindsley *vs.* Natural Carbonic Gas Co. (1911), 55 L. ed., 369, which clearly and succinctly defined the application of equal protection clause to a law sought to be voided as contrary thereto:
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> > ". . . '1. The equal protection clause of the Fourteenth Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of the wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.'"[195]

The petitioners in *Basco v. Philippine Amusement and Gaming Corporation*[196] claimed that Presidential Decree No. 1869, the charter of the Philippine Amusement and Gaming Corporation, was violative of the equal protection guarantee because it only allowed gambling activities conducted by the Philippine Amusement and Gaming Corporation but outlawed the other forms. This Court upheld the constitutionality of Presidential Decree No. 1869 mainly because "[t]he [equal protection] clause does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is not unreasonable or arbitrary."[197]

In the recent case of *Garcia v. Drilon*,[198] this Court rejected the argument that Republic Act No. 9262 or the Anti-Violence Against Women and Children violated the equal protection guarantee. According to this Court, the "unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the

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[195] Id. at 1177.
[196] 274 Phil. 323 (1991) [Per J. Paras, En Banc].
[197] Id. at 342, *citing Ichong v. Hernandez*, 101 Phil. 1155 (1957) [Per J. Labrador, En Banc].
[198] 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

widespread gender bias and prejudice against women"[199] justify the enactment of a law that specifically punishes violence against women.

In the present case, petitioners' sole claim on their equal protection argument is that the initial implementation of Department Order No. 118-12 in Metro Manila "is not only discriminatory but is also prejudicial to petitioners."[200] However, petitioners did not even bother explaining how exactly Department Order No. 118-12 infringed on their right to equal protection.

At any rate, the initial implementation of Department Order No. 118-12 is not violative of the equal protection clause. In *Taxicab Operators of Metro Manila, Inc. v. The Board of Transportation*,[201] this Court upheld the initial implementation of the phase-out of old taxicab units in Metro Manila because of the "heavier traffic pressure and more constant use" of the roads. The difference in the traffic conditions in Metro Manila and in other parts of the country presented a substantial distinction.

The same substantial distinction can be inferred here. Department Order No. 118-12 has also been implemented in other parts of the country. Petitioners' weak argument is now not only moot. It also deserves no merit.

IX

In constitutional litigation, this Court presumes that official acts of the other branches of government are constitutional. This Court proceeds on the theory that "before the act was done or the law was enacted, earnest studies were made by Congress or the President, or both, to insure that the Constitution would not be breached."[202] Absent a clear showing of breach of constitutional text, the validity of the law or action shall be sustained.

WHEREFORE, the Petition is **DISMISSED.**

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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199 Id. at 91.
200 *Rollo*, p. 490, Memorandum for Petitioners.
201 202 Phil. 925 (1982) [Per J. Melencio-Herrera, En Banc].
202 *Association of Small Landowners in the Philippines, Inc. v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 798 (1989) [Per J. Cruz, En Banc].

WE CONCUR:

ANTONIO T. CARPIO
Acting Chief Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(No part)
DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

(On Official Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

(No part)
FRANCIS H. JARDELEZA
Associate Justice

(On leave)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

ANTONIO T. CARPIO
Acting Chief Justice