Republic of the Philippines
SUPREME COURT
Manila

EN BANC

DEPARTMENT OF TRANSPORTATION (DOTR), MARITIME INDUSTRY AUTHORITY (MARINA), and PHILIPPINE COAST GUARD (PCG), Petitioners,	**G.R. No. 230107**
	Present:
	CARPIO, *Senior Associate Justice*, VELASCO, JR., LEONARDO-DE CASTRO, PERALTA, BERSAMIN, DEL CASTILLO, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA, MARTIRES, TIJAM, REYES, JR., and GESMUNDO, *JJ.*
- versus -	
PHILIPPINE PETROLEUM SEA TRANSPORT ASSOCIATION, HERMA SHIPPING & TRANSPORT CORPORATION, ISLAS TANKERS SEATRANSPORT CORPORATION, MIS MARITIME CORPORATION, PETROLIFT, INC., GOLDEN ALBATROSS SHIPPING CORPORATION, VIA MARINE CORPORATION, and CARGOMARINE CORPORATION, Respondents.	Promulgated: July 24, 2018

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DECISION

VELASCO, JR., *J.*:

The Case

This case concerns the constitutionality of establishing the "Oil Pollution Management Fund," under Section 22(a) of Republic Act No. (RA) 9483 and Section 1, Rule X of its Implementing Rules and Regulations (IRR), by imposing "ten centavos (10c) per liter for every delivery or transshipment of oil made by tanker barges and tanker haulers."

Antecedents

The value of the Philippine marine ecosystem cannot be overemphasized. The country is part of an important marine biosphere known as the "coral triangle" that includes Malaysia, Indonesia and Papua New Guinea. Marine scientists working in the area have referred to this ocean corridor as the *marine equivalent of the Amazon*.[1] At the center of it all is the Philippines "with the richest concentration of marine life on the entire planet."[2] Characterized by extensive coral reefs, sea-grass beds, and dense mangrove forests, Philippine waters indeed contain some of the world's most diverse ecosystems.[3]

In a report, it was explained that "[t]he full extent of the Philippines' marine biodiversity is not known, but the best information available reveals an astounding variety of marine life: 5,000 species of clams, snails and mollusks; 488 species of corals; 981 species of bottom-living algae, and thousands of other organisms. Five of the seven sea turtle species known to exist in the world today occur in Philippine waters."[4]

Repeated oils spills, however, have threatened this national treasure.

In December 2005, a power barge ran aground off the coast of Antique, dumping 364,000 liters of bunker oil. This oil spill severely polluted 40 kilometers of Antique's coastline and decimated more than 230 hectares of pristine mangrove forest. Rehabilitation costs have been estimated at USD 2 million.[5]

A few months after the Antique incident, or on August 11, 2006, a Petron-chartered single hull vessel carrying 2.1 million liters of oil sank in the Guimaras Strait, causing the Philippines' worst oil spill.[6] Dubbed an "ecological time bomb," the sunken vessel leaked an estimated 100 to 200 liters of oil per hour, while roughly 320 kilometres of coastline was covered in thick sludge. Miles of coral reef and mangrove forests were laid to waste and more than 1,100 hectares of marine sanctuaries and reserves were badly

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[1] See <http://www.pbs.org/frontlineworld/rough/2007/08/philippines_parlinks.html> Last Accessed: May 18, 2018.

[2] See *The Philippine Marine Biodiversity: A Unique World Treasure*. Available at <http://www.oneocean.org/flash/philippine_biodiversity.html> Last Accessed: May 18, 2018.

[3] See *Philippines Coastal & Marine Resources: An Introduction*, <http://siteresources.worldbank.org/INTPHILIPPINES/Resources/PEM05-ch1.pdf> Last Accessed: May 18, 2018.

[4] See *The Philippine Marine Biodiversity: A Unique World Treasure*<http://www.oneocean.org/flash/philippine_biodiversity.html> Last Accessed: May 18, 2018; citations omitted.

[5] See <http://wwf.panda.org/?78300/Large-oil-spill-in-the-Philippines-threatens-marine-ecosystem>. Last accessed: May 18, 2018.

[6] See <https://www.greenpeace.org/archive-international/en/news/features/philippines-seen-and-heard/>Last accessed: May 18, 2018.

damaged. And with all fishing activities put to a halt, around 40,000 people were affected.

The aftereffects of the Guimaras disaster were felt a few days later on August 22, 2006, when sludge washed up on Panay, threatening rich fishing grounds.

The sunken ship was too deep for divers to reach and the Philippines, lacking heavy salvage equipment, appealed for international help to prevent the disaster from getting worse.[7] Help came from experts from the United States and Japan who helped assess the cleanup operations and suggested measures on how to stop the slick from spreading further to vast mangrove areas and fishing grounds.[8]

On August 23, 2006, the oil spill claimed its first human victim. Health officials said the man inhaled the fumes of the thick, tar-like substance outside his home on Guimaras island. Villagers reported that skin and breathing problems became commonplace. The government hired locals for the clean-up, paying them less than $4 a day to scoop up the sludge on the shores, with no protective gear and using their bare hands.[9]

Recognizing the gravity and extent of the Guimaras oil spill, the lack of proper response strategy, the absence of the necessary equipment for containing, cleaning up, and removing spilled oil, and the difficulty in pinning the liability on oil companies, Congress was prompted to pass a law implementing the *International Convention on Civil Liability for Oil Pollution Damage* (1969 Civil Liability Convention) and the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (1992 Fund Convention).[10] The 1969 Civil Liability Convention was later amended by the 1992 Protocol (1992 Civil Liability Convention).[11]

The legislative measure began as Senate Bill No. (SB) 2600 sponsored by then Senator Pia S. Cayetano. With sixteen (16) senators voting in favor, SB 2600 was sent to the House of Representatives where it was adopted as an amendment to House Bill No. 4363. With the concurrence of both houses, the enrolled copy of the consolidated bill was sent to the Office of the President for signature.

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[7] See <https://earth.esa.int/web/earth-watching/natural-disasters/oil-slicks/content/-/asset_publisher/71yyBC1MdfOT/content/philippines-august-2006>Last accessed: May 18, 2018.

[8] Id.

[9] Id.

[10] *See* Page 1537, Journal Session No. 65, February 8, 2007, Thirteenth Congress – Third Regular Session, Senate of the Philippines.

[11] These conventions were ratified by the Philippine Senate in 1997.

On June 2, 2007, RA 9483, entitled "*An Act Providing For The Implementation of the Provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Providing Penalties for Violations thereof, and for Other Purposes*" or simply the "Oil Pollution Compensation Act of 2007," was signed into law. The provision relevant to this case, Section 22 of RA 9483, provides for the establishment of an "Oil Pollution Management Fund" (OPMF) and states as follows:

> **SEC. 22. *Oil Pollution Management Fund.*** - An Oil Pollution Management Fund (OPMF) to be administered by the MARINA is hereby established. Said Fund shall be constituted from:
>
> (a) Contributions of Owners and operators of tankers and barges hauling Oil and for petroleum products in Philippine waterways and coast wise shipping routes. During its first year of existence, the Fund shall be constituted by an impost of ten centavos (10c) per liter for every delivery or transshipment of Oil made by tanker barges and tanker haulers. For the succeeding fiscal years, the amount of contribution shall be jointly determined by Marina, other concerned government agencies, and representatives from the Owners of tankers barges, tankers haulers, and Ship hauling Oil and/or petroleum products. In determining the amount of contribution, the purposes for which the fund was set up shall always be considered; and
>
> (b) Fines imposed pursuant to this Act, grants, donations, endowment from various sources, domestic or foreign, and amounts specifically appropriated for OPMF under the annual General Appropriations Act.
>
> **The Fund shall be used to finance the following activities:**
>
> **(a) Immediate containment, removal and clean-up operations of the PCG in all Oil pollution cases, whether covered by this Act or not; and**
>
> **(b) Research, enforcement and monitoring activities of relevant agencies such as the PCG, MARINA and PPA, and other ports authority of the DOTC, Environmental Management Bureau of the DENR, and the DOE: *Provided*, That ninety percent (90%) of the Fund shall be maintained annually for the activities set forth under item (a) of this paragraph: *Provided, further*, That any amounts specifically appropriated for said Fund under the General Appropriations Act shall be used exclusively for the activities set forth under item (a) of this paragraph.**
>
> **In no case, however, shall the Fund be used for personal services expenditures except for the compensation of those involved in clean-up operations.**
>
> *Provided*, That amounts advanced to a responding entity or claimant shall be considered as advances in case of final

adjudication/award by the RTC under Section 18 and shall be reimbursed to the Fund. (emphasis ours)

Nine years later, or on April 12, 2016, the IRR of RA 9483 was promulgated, with Section 1, Rule X thereof implementing the questioned Section 22 of RA 9483. It states:

RULE X
FINAL PROVISIONS

Section 1. ***Oil Pollution Management Fund (OPMF)***– Administration of the OPMF shall be [the] responsibility of the Maritime Industry Authority.

1.1. Establishment of the OPMF – The Maritime Industry Authority (MARINA) is hereby authorized to establish and open a trust fund account with any government depository bank for OPMF – the OPMF shall be available for disbursement/payment of expenses immediately after any occurrence of any oil pollution case or incident.

1.2. Source/Composition of OPMF – OPMF shall be composed mainly from the following sources[:]

1.2.1. Contribution of Owners and Operators of Tankers and barges hauling oil and/or petroleum products in Philippines (sic) waterways and coastwise shipping routes;

1.2.1.1. During its first year of existence from the date of implementation of the Act(,) [t]he OPMF shall be constituted through an impost of levy of ten centavos (0.10) per liter for every delivery of transshipment of oil received by tanker barges or tanker hauler from an oil depot, refinery, or other storage facility for carriage to its point of destination regardless of any intervening or intermediate point for consolidation, de consolidation or change of means of transportation of such oil.

1.2.1.2. An OPMF Committee shall be constituted to determine the amount of contribution for the succeeding years.

1.2.2. Fines and Penalties under Section 1, Rule IX of this IRR and other fines and penalties that may be determined by the OPMF Committee;

1.2.3. Grants, donations and endowment from various domestic and foreign sources; and

1.2.4. Amounts appropriated under the Annual General Appropriations Act pursuant to Section 2, Rule X of this IRR.

1.3. The OPMF Committee shall be constituted as follows:

Chairman – Administrator, MARINA
Vice Chairman – Commandant, PCG
Members: representative from the following:

DOTC
PPA
DOE
DENR-EMB
Tanker Association
(to be designated/appointed by the association members)

Secretariat – MARINA staff designated by the Administrator

1.4. The OPMF Committee shall perform the following Duties and Functions:

1.4.1. Determine the contribution for the year based on the utilization of the OPMF;
1.4.2. Conduct/undertake an annual review and evaluation to determine the need to increase/decrease the amount of contribution for the following year/period;
1.4.3. Issue circulars to prescribe the rate/amount of contributions of Owners and Operators of Tankers and barges hauling oil and/or petroleum products in Philippines (sic) waterways and coastwise shipping routes for any particular period;
1.4.4. Issue, in addition to the violations provided under Section 1, Rule X of this IRR, a Circular prescribing fines and penalties for additional violations of (sic) relative to the implementation of this Act;
1.4.5. Determine/approve amount for the initial and succeeding transfer of funds to the PCG, in accordance with National Oil Spill Contingency Plan;
1.4.6. Determine/approve the conduct of research activities pursuant to Para. (sic) 1.4.1.2, of this Rule; and
1.4.7. Approve the proposed annual budget for the enforcement and monitoring activities of concerned agencies/offices.

1.5. Utilization of the OPMF

1.5.1. Transfer or funds/disbursement from OPMF shall be with prior approval of the OPMF Committee which will cover expenditures relative to the following:
1.5.1.1. For the immediate containment, removal and clean-up operations of the PCG in all Oil Pollution cases the amount shall be in accordance with the Claims Manual.
1.5.1.2. Research, enforcement and monitoring activities as approved by the OPMF Committee.
1.5.2. Reimbursement of expenses incurred for immediate containment, removal and clean-up operations undertaken following an incident shall require approval from the OPMF Committee;
1.5.3. Total expenses for immediate containment, removal and clean-up operations undertaken following an incident shall not exceed 90% of the funds available in the OPMF on the date of the incident,

1.5.4. Amounts appropriated under the General Appropriations Act for the immediate containment, removal and clean-up operations undertaken following an incident.

1.5.5. The fund shall not be used for payment of personal services expenditures, except for the compensation of those involved in clean-up operations undertaken following [an] incident.

1.5.6. Total expenses for research, enforcement and monitoring activities as approved by the OPMF Committee shall not exceed 10% of the total funds available in the OPMF for any given calendar year.

1.6. Procedures for the Collection and Deposit/Remittance of the OPMF:

1.6.1. Owners and Operators of Tankers and barges hauling oil and/or petroleum products in the Philippines (sic) waterways and coastwise shipping routes shall pay their monthly contributions to the MARINA Central Office or to any of its Maritime Regional Offices (MROs) within the first 5 days of the succeeding month;

1.6.2. In the case of economic zone authorizes (sic) with special charters, MARINA shall put up a collection desk in its premises, monthly contributions shall be paid to the MARINA collecting officer.

1.6.3. Contribution shall be computed based on the rate prescribed by the OPMF Committee and the number of liters of oil delivered/transported as reflected/reported in the Monthly Voyage Report (MVR). The MVR shall be supported with copies of the bill of lading issued for the month;

1.6.4. MARINA Collection/Accountable Officers shall deposit all collection received for the OPMF intact the following day to the OPMF Fund Account;

1.6.5. MARINA Collecting Officers in the MROs and (sic) shall submit to the Central Office a Monthly Report of Collection and Deposits.

1.7. Transfer/Disbursement of Funds

1.7.1. Immediately after receipt of report from PCG of any incident of oil spill/pollution, the MARINA shall transfer to the latter the amount covering the initial requirements for the containment and removal of the spill;

1.7.2. The amount transfer (sic) shall be considered as a Revolving fund by the PCG;

1.7.3. The PCG shall request MARINA for the replenishment of the Revolving Fund when disbursement has reached at least 75% of the total amount;

1.7.4. Disbursement or payment of expenses relative to the containment, removal and clean-up operations undertaken by other government agencies/offices or private companies shall be made by the PCG;

1.7.5. Any unexpended portion of the cash advance shall be refunded to the OPMF.

1.8. Disbursement Procedures (10%):

1.8.1. MARINA, PCG, PPA, and other government agencies/offices concerned shall submit annual plans and budget estimates covering enforcement/monitoring and research activities, pursuant to Section 1.4.1.2 to 1.4.1.4 of this Rule.

1.8.2. Annual Plans and Budget estimates for research, enforcement and monitoring activities shall be submitted to the OPMF for deliberation and approval.

1.8.3. Any new research proposal, in addition to the annual plan may be submitted to the OPMF Committee for deliberation/approval.

1.8.4. Transfer of funds for research activities shall be as approved by the OPMF Committee.

1.9. Reimbursement to the OPMF:

1.9.1. MARINA shall be provided copy of any decision/order issued by the RTC on the settlement of claims for compensation for pollution damages.

1.10. Audit of the OPMF

1.10.1. The OPMF shall be subjected to the usual audit procedures by the Commission on Audit (COA).

1.11. Reporting

1.11.1. The MARINA, as administrator of the OPMF, shall prepare the following quarterly reports and submit the same to the Secretary of the DOTC, the members of the OPMF Committee and other concerned government offices;

1.11.1.1. Collection and Deposit
1.11.1.2. Disbursement
1.11.1.3. Status of Funds

1.11.2. An audited report of disbursement shall be prepared and submitted by PCF to the MARINA within 90 days after the termination of the clean-up operations.

1.11.3. MARINA shall submit financial reports as required by COA, Bureau of Treasury and Department of Budget (DBM) and Congress.

Respondents lost no time in assailing the law and the IRR. A month after the promulgation of the IRR, they filed a Petition for Declaratory Relief (with Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction) under Rule 63, contesting Section 22 (a) of RA 9483, as well as Section 1, Rule X of its IRR. The petition was raffled off and heard by the Regional Trial Court, Branch 216, Quezon City (RTC).

There, they argued that the obligation to contribute to the OPMF solely imposed upon the owners and operators of oil/petroleum tankers and

barges violates their right to equal protection of the law; that the ten-centavo (10c) impost is confiscatory and, thus, violates their right to due process; Section 22 (a) is a prohibited rider; and, finally, the provision provides an undue delegation of legislative power.[12]

In an Order[13] dated July 25, 2016, the RTC granted the prayer for issuance of a writ of preliminary injunction and enjoined the implementation of the assailed provision and IRR.[14]

RTC Decision

On February 22, 2017, the RTC rendered the questioned Decision granting the petition for declaratory relief and ruling in favor of respondents.

The trial court held that there is no clear and valid reason as to why the oil/petroleum tankers and barges are being treated differently from other vessels. For the trial court, there is no substantial distinction between tankers and barges and these other vessels in terms of their potential to cause oil pollution or effect damage as a consequence thereof. The RTC agreed with respondents that to be valid, all potential marine pollutants should be required to contribute to the OPMF.[15]

With respect to the 10-centavo per liter imposition, the RTC agreed with respondents that the amount is confiscatory and that said amount will cripple, if not bankrupt, the respondents' businesses.[16]

As regards the allegation that Section 22 is a rider, the trial court agreed. It held that based on the title, it is clear that RA 9483 was enacted merely to implement the provisions of the 1992 Civil Liability and the 1992 Fund Conventions.[17] The trial court noted that these Conventions do not order the creation of an OPMF.[18]

Lastly, the RTC ruled that the law does not set specific parameters to guide the implementing agencies on how to determine the amount of

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[12] *Rollo*, pp. 77-78.
[13] Id. at 169-176.
[14] Petitioners questioned said July 25, 2016 Order before the Court of Appeals (CA), docketed as C.A. G.R. SP No. 147709 and entitled "*Department of Transportation (DOTR), et al. v. Hon. Alfonso C. Ruiz II, et al.*"
[15] *Rollo*, p. 84.
[16] Id. at 85.
[17] Id. at 80.
[18] Id. at 87.

contribution for the succeeding years after the first year of existence where the 10-centavo amount applies.[19]

We quote the decretal portion of the assailed Decision:

> WHEREFORE, the Petition is hereby granted. The court renders judgment as follows:
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> 1) The Injunction enjoining the respondents from implementing Assailed Provision (Section 22, paragraph (a) of Republic Act No. 9483), and Assailed IRR (Section 1, Rule X of the Implementing Rules and Regulations of Republic Act No. 9438) is made permanent; and
> 2) Section 22, paragraph (a) of Republic Act No. 9483, and Section 1, Rule X of the Implementing Rules and Regulations of Republic Act No. 9483 are declared unconstitutional.
>
> SO ORDERED.[20]

Aggrieved, petitioners are now with this Court *via* the present petition for review on *certiorari* assailing the February 22, 2017 Decision of the RTC. Petitioners argue that the RTC erred in declaring Section 22(a) of RA 9483 and its implementing rule unconstitutional, given that respondents' petition for declaratory relief questioned the wisdom behind them and was, thus, beyond the lower court's jurisdiction. Petitioners further add that the classification in Section 22 of RA 9483 and its IRR is reasonable and just, and does not violate the equal protection clause. Likewise, petitioners maintain that public interest in protecting the marine wealth of the country warrants the imposition of the 10-centavo impost. Finally, the petitioners insist that the creation of the OPMF is relevant to the subject matter of RA 9483.[21]

In its July 3, 2017 Resolution, the Court required the respondents to file their Comment within a non-extendible period of ten days[22] from receipt of the resolution. On September 2, 2017, respondents filed their Comment on the Petition,[23] mainly reiterating their contentions before the trial court.[24]

The Issue

The core issue to be resolved in this case is whether Section 22 (a) of RA 9483 and Section 1, Rule X of its IRR are unconstitutional.

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[19] Id. at 87-88.
[20] Id. at 88.
[21] Id. at 36-37.
[22] Id. at 301.
[23] Id. at 310.
[24] Id. at 322.

The Court's Ruling

The petition is impressed with merit.

The Creation of the OPMF can be the subject of judicial inquiry

We agree with respondents that the issue presented is a justiciable question which allows the exercise by this Court of its judicial power, and does not involve a political question. In *Tañada and Macapagal v. Cuenco, et al.*,[25] the Court summarized the concept of political questions in this manner:

> x x x it refers to "those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the Legislature or executive branch of the Government." It is concerned with issues dependent upon the *wisdom,* not legality, of a particular measure.

In the case at bar, however, while it may appear that contesting the creation of the OPMF amounts to questioning the wisdom behind the measure, such is not the case. As correctly argued by respondents, the Court may take judicial action on said question since it is not contesting the creation of the OPMF *per se,* but rather its inclusion in RA 9483, and the specific parameters incorporated by the legislature in the implementation of the contested provision. More importantly, violations of the due process and the equal protection clauses of the 1987 Constitution alleged by the respondents are well-recognized grounds for a judicial inquiry into a legislative measure.

The Petition for Declaratory Relief is not the proper remedy

One of the requisites for an action for declaratory relief is that it must be filed before any breach or violation of an obligation. Section 1, Rule 63 of the Rules of Court states, thus:

> **Section 1.** *Who may file petition.* – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, **before breach or violation** thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

[25] 103 Phil. 1051 (1957).

Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.

It is elementary that before this Court can rule on a constitutional issue, there must first be a justiciable controversy. 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.[26] As We emphasized in *Angara v. Electoral Commission,*[27] any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.

To question the constitutionality of the subject issuances, respondents should have invoked the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution. The adverted section defines judicial power as the power not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "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."

There is a grave abuse of discretion when there is a patent violation of the Constitution, the law, or existing jurisprudence. On this score, it has been ruled that "the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but **also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions*.**"[28] Thus, petitions for *certiorari* and prohibition are the proper remedies where an action of the legislative branch is seriously alleged to have infringed the Constitution.[29]

In any case, even if the petition for declaratory relief is not the proper remedy, the need to finally resolve the issues involved in this case far outweighs the rigid application of the rules. The Court, thus, treats the petition filed by the respondents before the court a *quo* as a petition for *certiorari* and prohibition.

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[26] *Board of Optometry v. Colet*, G.R. No. 122241, July 30, 1996, 260 SCRA 88, cited in *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004.

[27] 63 Phil. 139, 158 (1936).

[28] See *Ifurung v. Carpio-Morales*, G.R. No. 232131, April 24, 2018, citing *Samahan ng mga Progresibong Kabataan v. Quezon City*, G.R. No. 225442, August 8, 2014.

[29] Id.

Section 22(a)of RA 9483 creating the Oil Pollution Management Fund is not a proscribed rider

Respondents argue that since RA 9483 was passed to implement the 1992 Civil Liability and the 1992 Fund Conventions, the creation of the OPMF must be found in said Conventions for it to be validly included in RA 9483. Otherwise, according to respondents, its inclusion in said law is constitutionally infirm for being a proscribed rider.

At first glance, one might easily agree with respondent's proposition. The title of RA 9483 is phrased in this manner:

> AN ACT PROVIDING FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE 1992 INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE AND THE 1992 INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES

On the basis thereof, respondents draw this Court's attention to the two mentioned Conventions and bid us to examine both documents to see that the OPMF cannot be found therein.

Concisely, the respective subject matters of the two Conventions are as follows:

> The 1992 Civil Liability Convention governs the liability of shipowners for oil pollution damage. The Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. The shipowner is normally entitled to limit its liability to an amount which is linked to the tonnage of its ship.
>
> The 1992 Fund Convention, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate. The International Oil Pollution Compensation Fund 1992, generally referred to as the 1992 Fund, was set up under the 1992 Fund Convention. The 1992 Fund is a worldwide intergovernmental organization established for the purpose of administering the regime of compensation created by the 1992 Fund Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1992 Fund. The IOPC Funds headquarters is based in London.[30]

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[30] Explanatory Note, International Oil Pollution Compensation Funds, March 2018 <https://www.iopcfunds.org/fileadmin/IOPC_Upload/Downloads/English/explanatory_note.pdf> Last Accessed May 17, 2018.

Indeed, as argued by respondents, the thrust of the 1992 Civil Liability and the 1992 Fund Conventions is to impose upon covered ship-owners strict liability for pollution damage arising from oil spills and to provide compensation for the victims thereof. On the other hand, the questioned OPMF governs the immediate containment, removal, and clean-up operations in oil pollution cases and provides for the conduct of research, enforcement, and monitoring activities of relevant agencies.

On the basis thereof, it would appear that the Conventions and the OPMF cover two different subject matters—that is, providing compensation versus pollution containment and clean-up—as asserted by respondents. Thus, *prima facie,* one would easily agree with respondents' contention.

Such a simplistic, if not myopic, view is <u>not</u> the proper measure to determine whether a provision of law should be declared as unconstitutional. To determine whether there has been compliance with the constitutional requirement that the subject of an act shall be expressed in its title, the Court has repeatedly laid down the rule that —

> **Constitutional provisions relating to the subject matter and titles of statutes should not be so narrowly construed as to cripple or impede the power of legislation**. The requirement that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. **It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object**. Mere details need not be set forth. The title need not be an abstract or index of the act.[31]

Also, in *Sumulong v. Comelec*,[32] the Court held that all that can reasonably be required is that the title shall not be made to cover legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection, *viz*:

> As stated by the Supreme Court of the United States: "We must give the constitutional provision a reasonable construction and effect. The constitution requires no law to embrace more than one subject, which shall be expressed in its title. Now the object may be very comprehensive and still be without objection, and the one before us is of that character. **But it is by no means essential that every end and means necessary or convenient for the accomplishment of the general object should be either referred to or necessarily indicated by the title. All that can reasonably be required is that the title shall not be made to cover**

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[31] *Giron v. Commission on Elections*, 702 Phil. 30 (2013). See also *Cordero v. Cabatuando*, 116 Phil. 736 (1962); *Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service*, 726 Phil. 104 (2014); *Government of the Philippine Islands v. Hongkong & Shanghai Banking Corp.*, 66 Phil. 483 (1938); *Fariñas v. Executive Secretary*, 463 Phil. 179 (2003); *Commission on Elections v. Cruz*, 620 Phil. 175 (2009).

[32] 73 Phil. 288 (1941), citing 26 S. Ct. 427, 201 U. S. 400, 50 L. ed. 801.

> **legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection."**[33] (emphasis ours)

Thus, following these jurisprudential guides, it would undoubtedly be improper for this Court to make a superficial reading of the texts of the conventions in order to determine whether the inclusion of Section 22 in RA 9483, which was enacted to implement these Conventions, is infirm. A more in-depth analysis of the conventions is necessary.

A review of the Conventions reveals that they do not only cover damage claims by affected individuals but also all amounts encompassed by the term "pollution damage" which is defined therein as:

> (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of **reasonable measures of reinstatement actually undertaken or to be undertaken**;
>
> (b) **the costs of preventive measures**[34] and further loss or damage caused by preventive measures.[35]

In its 2011 Annual Report, the International Oil Pollution Compensation Fund (IOPCF) enumerated the types of claims that are admissible, thus:

> An oil pollution incident can generally give rise to claims for five types of pollution damage:
>
> - Property damage
> - **Costs of clean-up operations at sea and on shore**
> - Economic losses by fisher folk or those engaged in mariculture
> - Economic losses in the tourism sector
> - **Costs for reinstatement of the environment**.[36]

The Conventions, therefore, also cover **damage to property, containment, clean-up, and rehabilitation**. Thus, the policy underpinning the establishment of the OPMF in Section 22(a) of RA 9483 and its IRR is wholly consistent with the objectives of the conventions. Section 2 of RA 9483 states:

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[33] Citing *Blair v. Chicago*, 26 S. Ct. 427, 201 U. S. 400, 50 L. ed. 801.

[34] "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

[35] INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS, Texts of the Conventions, p. 5. <https://www.iopcfunds.org/uploads/tx_iopcpublications/Text_of_Conventions_e.pdf>Last Accessed, May 18, 2018. Emphasis supplied.

[36] International Oil Pollution Compensation Funds, 2011 Annual Report, p. 12. Available at <https://www.iopcfunds.org/uploads/tx_iopcpublications/FINAL_IOPC_Funds_Annual_Review_2016_ENGLISH.pdf>Last Accessed, May 23, 2018.

> **SEC. 2.** ***Declaration of Policy.*** – The State, in the protection of its marine wealth in its archipelagic waters, territorial sea and exclusive economic zone, adopts internationally accepted measures which and ensure prompt and adequate compensation for persons who suffer such damage. This Act adopts and implements the provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

Indeed, by employing preventive and/or immediate containment measures or response techniques, the State is but affording protection to persons or all stakeholders who stand to suffer from oil pollution incidents—the main thrust of the conventions that is now effectively translated and implemented in Section 22 (a) of RA 9483 and its IRR. In other words, by creating the OPMF, Congress sought to ensure that our enforcement agencies are capable of protecting our marine wealth and preventing harm from being caused to the people and their livelihood by reason of these unfortunate events.

Time is of the essence when it comes to oil spill response. Whether this will be taken in the context of damage to the environment and its inhabitants or from a monetary perspective, the conclusion will be the same. We cannot simply submit to respondents' proposition that compensation for damages and oil spill response are two unrelated subjects that cannot be tackled in a single piece of legislation. To Our mind, **oil spill response and containment is directly connected to compensation for damages brought about by the incident**. In fact, the two concepts are inversely proportional to each other in that a more effective and efficient oil spill response and clean up results in lesser pollution damage; and, ultimately, smaller pollution damage means reduced financial liability on the part of the shipowner.

With these, We find that Section 22 is not a rider but is an essential provision to attain the purpose of RA 9483.

The classification in Section 22 of RA 9483 and its IRR does not violate the equal protection clause

We likewise cannot sustain the RTC's finding that the assailed provisions violate the equal protection guarantee when it singled out "owners and operators of oil or petroleum tankers and barges."

The equal protection guaranty under the Constitution means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in

like circumstances."[37] However, this clause does not preclude classification as long as the classification is reasonable and not arbitrary.[38] In *Abakada Guro Party List v. Purisima*,[39] the Court elucidated, thus:

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

In the instant case, We agree with petitioners that separating "tankers and barges hauling oil and for petroleum products in Philippine waterways and coast wise shipping routes" from other sea-borne vessels does not violate the equal protection clause.

For one, bear in mind that the purpose of the subject legislation is the implementation of the 1992 Civil Liability Convention and the 1992 Fund Convention. Both Conventions only expressly cover "sea-going vessel and seaborne craft of any type whatsoever constructed or adapted **for the carriage of oil in bulk as cargo** x x x."[40] This alone already forecloses any argument against the validity of the alleged classification since the implementation by RA 9483 of the subject Conventions necessarily carries with it the adoption of the coverage and limitations employed in said texts.

Furthermore, We cannot subscribe to respondents' proposition that since all vessels plying Philippine waters are susceptible to accidents which

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[37] *Philippine Rural Electric Cooperatives Association, Inc. vs. Department of Interior and Local Governmentt*, G.R. No. 143076, June 10, 2003, 403 SCRA 558, 565. Cited in *Abakada Guro Party List v. Ermita*, G.R. No. 168056, September 1, 2005, 469 SCRA 14, 139.

[38] *Villareña v. Commission on Audit*, G.R. Nos. 145383-84, August 6, 2003,408 SCRA 455, 462.

[39] G.R. No. 166715, August 14, 2008.

[40] Article I, Item 1, 1992 Civil Liability Convention provides:

For the purposes of this Convention:

"Ship" means any 1. sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

Article I, Item 2 of the 1992 Fund Convention states:

2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", and "Organization" have the same meaning as in Article I of the 1992 Liability Convention.

may cause oil spills, all should be made to contribute to the OPMF. While all vessels, channels, and storage facilities that carry or store oil are capable of causing oil pollution, this does not make them "similarly situated" within the context of the equal protection clause.

Aside from the difference in the purposes behind their existence and navigation, it is internationally well-recognized that oil tankers pose a greater risk to the environment and to people. As a matter of fact, these types of vessels have long been considered as a separate class and are being given a different treatment by various organizations.

The International Maritime Organization (IMO), expounding on the International Convention for the Safety of Life at Sea (SOLAS), 1974, highlighted that the SOLAS includes *special requirements for tankers.*[41] Citing an example, the IMO stated that "[f]ire safety provisions x x x are much more stringent for tankers than ordinary dry cargo ships, since the danger of fire on board ships carrying oil and refined products is much greater."[42] The IMO likewise mentioned some of the measures specifically required of oil tankers, such as making it mandatory for tankers to have double hulls, as opposed to single hulls, the phasing-out of single-hull tankers, and designating protective locations of segregated ballast tanks, among others, in order to ensure their safety.[43] In fact, Annex I of the revised Marpol 73/78[44] sets forth the numerous technical and safety requirements for oil tankers.[45] This list is not exhaustive as there are numerous regulations and requirements applicable only to the subject vessels. What these show, however, is that **a vessel that carries oil in bulk has been recognized and is treated as a separate class of vessel**. This sufficiently justifies the segregation done by Congress.

It bears to stress that "[i]n the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion."[46] Concomitantly, neither should the Court adopt such a restrictive—if not counterproductive approach—in interpreting and applying the equal protection guarantee under the Constitution. To do otherwise would be to unduly restrict the power of Congress in enacting laws by unjustifiably imposing erroneously stringent requirements and excessively high standards in the crafting of each and every piece of legislation, depriving our

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[41] <http://www.imo.org/en/OurWork/Safety/Regulations/Pages/OilTankers.aspx>. Last Accessed, May 23, 2018.

[42] Id.

[43] Id.

[44] International Convention for the Prevention of Pollution from Ships.

[45] MARPOL - International Convention for the Prevention of Pollution from Ships, pp. 66-238. Available at <http://www.mar.ist.utl.pt/mventura/Projecto-Navios-I/IMO-Conventions%20%28copies%29/MARPOL.pdf> Last Accessed: May 23, 2018.

[46] *AbakadaGuro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 275, citing *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60 (1974).

lawmakers of the much needed elbowroom in the discharge of their functions.

As regards respondents' contention that since RA 9483 came about because of the spate of oil spillage at the time of its enactment, this violates the requirement that the classification must not be limited to existing conditions only, the argument does not hold water.

A statute or provision thereof is said to be limited to existing conditions only if it cannot be applied to future conditions as well.[47] Here, We cannot, by any stretch of imagination, agree with respondents' proposition. Suffice it to state that enacting a piece of legislation as a response to a problem, incident, or occurrence does not make it "limited to existing conditions only." Assessing whether a statute or provision meets said requirement necessitates a review of the provision or statute itself and not the cause or trigger for its enactment. To require otherwise would be to improperly tie the hands of our legislature in enacting laws designed to address the various matters, incidents, and occurrences that may arise in a highly-dynamic and unpredictable society.

Viewed within the purview of RA 9483, it can easily be seen that the statute also applies to future conditions as it covers any and all oil spills that may occur within Philippine waters.

The conferment on the OPMF Committee of the authority to determine the rate of imposition for the second year of its implementation onwards is not an undue delegation of legislative power

Arguing that the assailed provision is also an undue delegation of legislative power, respondents allege that giving the OPMF Committee the authority to jointly determine the amount of contribution after the one-year imposition of the 10-centavo contribution is an undue delegation since no fixed parameters were given therefor.[48]

We disagree.

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[47] See *Ormoc Sugar Co., Inc. v. Treasurer of Ormoc City*, No. L-23794, February 17, 1968, 22 SCRA 603, 606.

[48] *Rollo*, p. 377.

For a valid delegation of power, it is essential that the law delegating the power must be (1) complete in itself, that it must set forth the policy to be executed by the delegate and (2) it must fix a standard — limits of which are sufficiently determinate or determinable — to which the delegate must conform.[49] On the second requirement, *Osmeña v. Orbos*[50] explained that a sufficient standard need not be spelled out and could be implied from the policy of the law:

> **The standard**, as the Court has already stated, **may even be implied**. In that light, there can be no ground upon which to sustain the petition, inasmuch as the challenged law **sets forth a determinable standard which guides the exercise of the power granted** to the ERB. By the same token, the proper exercise of the delegated power may be tested with ease. It seems obvious that what the law intended was to permit the additional imposts for as long as there exists a need to protect the general public and the petroleum industry from the adverse consequences of pump rate fluctuations. "**Where the standards set up for the guidance of an administrative officer and the action taken are in fact recorded in the orders of such officer, so that Congress, the courts and the public are assured that the orders in the judgment of such officer conform to the legislative standard, there is no failure in the performance of the legislative functions.**"
>
> This Court thus finds no serious impediment to sustaining the validity of the legislation; **the express purpose for which the imposts are permitted and the general objectives and purposes of the fund are readily discernible, and they constitute a sufficient standard upon which the delegation of power may be justified.** (Citations omitted; emphasis ours)

Further, in *Tatad v. Secretary of the Department of Energy*, We stated that courts bend as far back as possible to sustain the constitutionality of laws which are assailed as unduly delegating legislative powers:

> The validity of delegating legislative power is now a quiet area in our constitutional landscape. As sagely observed, delegation of legislative power has become an inevitability in light of the increasing complexity of the task of government. **Thus, courts bend as far back as possible to sustain the constitutionality of laws which are assailed as unduly delegating legislative powers.** Citing *Hirabayashi v. United States* as authority, Mr. Justice Isagani A. Cruz states "**that even if the law does not expressly pinpoint the standard, the courts will bend over backward to locate the same elsewhere in order to spare the statute, if it can, from constitutional infirmity**."[51] (emphasis ours)

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[49] *Osmeña v. Orbos*, G.R. No. 99886, March 31, 1993, 220 SCRA 703, 712.

[50] Id.

[51] G.R. No. 124360, November 5, 1997, 281 SCRA 330, 352, citing Philippine Political Law, 1995 ed., p. 99.

Thus, this Court has previously instructed that a standard as general as the phrases "as far as practicable," "decline of crude oil prices in the world market," and "stability of the peso exchange rate to the US dollar" are neither unclear nor inconcrete in meaning, but are in fact determinable by the simple expedient of referring to their dictionary meanings.[52] The Court even stated that "[t]he fear of petitioners that these words will result in the exercise of executive discretion that will run riot is thus groundless. **To be sure, the Court has sustained the validity of similar, if not more general standards in other cases**."[53] Indeed, the Court has, in numerous instances, accepted as sufficient standards policies as general as:

> x x x "public interest" in People v. Rosenthal, "justice and equity" in Antamok Gold Fields v. CIR, "public convenience and welfare" in Calalang v. Williams, and "simplicity, economy and efficiency" in Cervantes v. Auditor General, to mention only a few cases. In the United States, the "sense and experience of men" was accepted in Mutual Film Corp. v. Industrial Commission, and "national security" in Hirabayashi v. United States.[54] (citations omitted)

Thus, applying this commitment to sift each and every part of the assailed law or provision thereof in order to locate any and all standards possible provided therein, We are duty bound to analyze the statute in question to determine once and for all whether indeed the legislature failed to incorporate therein a standard of such character as will pass this test of constitutionality. We shall first tackle the standards expressly embodied in Section 22. To recall, the assailed provision containing the questioned delegation reads:

> **SEC. 22. *Oil Pollution Management Fund.*** - An Oil Pollution Management Fund (OPMF) to be administered by the MARINA is hereby established. Said Fund shall be constituted from:
>
> > (a) Contributions of Owners and operators of tankers and barges hauling Oil and for petroleum products in Philippine waterways and coast wise shipping routes. During its first year of existence, the Fund shall be constituted by an impost of ten centavos (10c) per liter for every delivery or transshipment of Oil made by tanker barges and tanker haulers. **For the succeeding fiscal years, the amount of contribution shall be jointly determined by Marina, other concerned government agencies, and representatives from the Owners of tankers barges, tankers haulers, and Ship hauling Oil and/or petroleum products. In determining the amount of contribution, the purposes for which the fund was set up shall always be considered;** and

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[52] Id. at 350-352.

[53] Id. at 352-353.

[54] See *Eastern Shipping Lines, Inc. v. POEA*, No. L-76633, October 18, 1988, 166 SCRA 533, 545.

> (b) Fines imposed pursuant to this Act, grants, donations, endowment from various sources, domestic or foreign, and amounts specifically appropriated for OPMF under the annual General Appropriations Act.
>
> **The Fund shall be used to finance the following activities:**
>
> **(a) Immediate containment, removal and clean-up operations of the PCG in all Oil pollution cases, whether covered by this Act or not; and**
>
> **(b) Research, enforcement and monitoring activities of relevant agencies such as the PCG, MARINA and PPA, and other ports authority of the DOTC, Environmental Management Bureau of the DENR, and the DOE: *Provided*, That ninety percent (90%) of the Fund shall be maintained annually for the activities set forth under item (a) of this paragraph: *Provided, further*, That any amounts specifically appropriated for said Fund under the General Appropriations Act shall be used exclusively for the activities set forth under item (a) of this paragraph.**
>
> **In no case, however, shall the Fund be used for personal services expenditures except for the compensation of those involved in clean-up operations.**
>
> *Provided*, That amounts advanced to a responding entity or claimant shall be considered as advances in case of final adjudication/award by the RTC under Section 18 and shall be reimbursed to the Fund. (emphasis ours)

A review of the contested provision reveals that contrary to respondents' assertion that the law only provides a vague standard for the exercise of the delegated authority, there are in fact a number of set parameters included therein within which the authority to fix the amount of the impost shall be exercised. These are:

1. the purposes for which the fund was set up;

2. the Fund shall be used to finance the following activities:
   a. Immediate containment, removal and clean-up operations of the PCG in all Oil pollution cases, whether covered by this Act or not; and
   b. Research, enforcement and monitoring activities of relevant agencies such as the PCG, MARINA and PPA, and other ports authority of the DOTC, Environmental Management Bureau of the DENR, and the DOE;

3. Ninety percent (90%) of the Fund shall be maintained annually for the activities set forth under item (a) of this paragraph;

4. Any amounts specifically appropriated for said Fund under the General Appropriations Act shall be used exclusively for the activities set forth under item (a) of this paragraph;

5. In no case shall the Fund be used for personal services expenditures except for the compensation of those involved in clean-up operations.

Put otherwise, in authorizing the OPMF Committee in determining the rate of impost for the succeeding years, Congress in fact directed them to ensure that 90% of the funds that will be accumulated will be enough to finance the following: (1) emergency response measures for oil pollution cases; (2) clean-up operations for oil spill incidents; (3) research; (4) enforcement; and (5) monitoring activities of the stated agencies in connection with oil pollution.

These parameters—the specified inclusions and exclusions, and the share that the itemized activities shall have in the OPMF—to Us, adequately meet the required standards that make a delegation of legislative power valid. By being statutorily mandated to work within this identified scope and these limitations, the OPMF Committee does not actually have free reign in the exercise of its functions under Section 22. **It has to ensure that the amount of impost that it will set, in addition to any sum that they may receive from the GAA and from other sources such as fines, penalties, grants, donations, and endowments, is sufficient to meet the above stated needs and activities necessary for the promotion of the thrust of RA 9483, which is the protection of the environment and the people from oil pollution damage**.

These scopes and limitations contained in the entirety of Section 22, without a doubt, substantially exceed the general policies that have been recognized and upheld in the past as sufficient standards. Viewed with the multifariousness of oil spill response and clean-up in mind, We find that the parameters set forth in the assailed provision successfully overcome this test of constitutionality, despite the absence of numerical gauges.

Another ground that favors the validity of the assailed provision is that what **Section 22 vested in them is merely the authority to fix the rate of the impost, taking into consideration the parameters therein clearly stated**. In other words, **this authority is actually limited by the sufficiency of the Fund to meet the identified items**. They were not given any discretion to add to these parameters or to disregard them. In other words, the delegates are expected to faithfully follow these standards set by the law,

lest their actions will be struck down as illegal for having exceeded the terms of the agency.[55]

As aptly stated in *People v. Vera*,[56] the true distinction "is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." In other words, the policy must be determined by the legislature and the executive's authority is limited only to the furtherance of this identified policy. The executive cannot add, modify, or delete such.

With respect to measuring the adequacy of the country's capability to protect our waters, shores, and the stakeholders from the effects of oil spills as mandated under the law, Sections 4 and 6 of RA 9483, which reflect certain policies under the Conventions, provide the gauge therefor. Said provisions read:

> **SEC. 4.** ***Incorporation of the 1992 Civil Liability Convention and 1992 Fund Convention.*** - Subject to the provisions of this Act, the 1992 Civil Liability Convention and 1992 Fund Convention and their subsequent amendments shall form part of the law of the Republic of the Philippines.
>
> x x x x
>
> **SEC. 6.** ***Liability on Pollution Damage.*** - The Owner of the Ship at the time of an Incident, or where the Incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any Pollution Damage caused by the Ship as a result of the Incident. Such damages shall include, but not limited to:
>
> (a) Reasonable expenses actually incurred in clean-up operations at sea or on shore;
>
> (b) Reasonable expenses of Preventive Measures and further loss or damage caused by preventive measures;
>
> (c) Consequential loss or loss of earnings suffered by Owners or users of property contaminated or damaged as a direct result of an Incident;
>
> (d) Pure economic loss or loss of earnings sustained by persons although the property contaminated or damaged as a direct result of an Incident does not belong to them;
>
> (e) Damage to human health or loss of life as a direct result of the Incident, including expenses for rehabilitation and

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[55] See *Tatad v. Secretary of the Department of Energy*, G.R. No. 124360, November 5, 1997, 281 SCRA 330, 353-354.

[56] 65 Phil. 56 (1937), cited in *AbakadaGuro Party List v. Ermita*, G.R. No. 168056, September 1, 2005, 469 SCRA 14, 118.

> recuperation: *Provided*, That costs of studies or diagnoses to determine the long-term damage shall also be included; and
>
> (f) Environmental damages and other reasonable measures of environmental restoration.

As for the Conventions which the subject statute expressly adopts and incorporates therein, making the Conventions form part of the law of the country, it bears to stress that the respective thrusts thereof are to provide "adequate compensation available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships"[57] and "compensation for victims who do not obtain full compensation under the 1992 Civil Liability Convention."[58]

And again, the term "pollution damage" under RA 9483 covers the following:

> (a) Reasonable expenses actually incurred in clean-up operations at sea or on shore;
> (b) Reasonable expenses of Preventive Measures and further loss or damage caused by preventive measures;
> (c) Consequential loss or loss of earnings suffered by Owners or users of property contaminated or damaged as a direct result of an Incident;
> (d) Pure economic loss or loss of earnings sustained by persons although the property contaminated or damaged as a direct result of an Incident does not belong to them;
> (e) Damage to human health or loss of life as a direct result of the Incident, including expenses for rehabilitation and recuperation: *Provided*, That costs of studies or diagnoses to determine the long-term damage shall also be included; and
> (f) Environmental damages and other reasonable measures of environmental restoration.

The rate of impost should, thus, be enough to accumulate an amount that, when combined with the funds that will be derived from the appropriations under the GAA, grants, donations, and endowment from various sources, domestic or foreign, can sufficiently enable our agencies to fulfill their duty of protecting the country's marine wealth and the stakeholders by ensuring that any damage caused by oil spills is minimal and the resulting cost can be fully or adequately covered by the Conventions. Put differently, **the rate of the impost for the succeeding years must not be so low as to be insufficient to meet the budgetary needs of the agencies for the items identified under Section 22. This is so since the mandate of the law will not be fulfilled if the agencies' capacity for oil spill response is inadequate, ineffective, or less than what is necessary for the declared purpose. Conversely, it must also not be so high that the totality of the amount accumulated from the various sources gravely exceeds the**

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[57] Liability and Compensation for Oil Pollution Damage, Text of the Conventions, IOPCF, p. 6.
[58] Id. at 5.

financial requirements for said items. Simply put, the sum of the amounts to be collected or received from the various sources must not exceed the administrative costs and expenses of implementing the activities.

With these, We find that the evils that the sufficient standards test seeks to prevent are amply addressed by the questioned Section 22, as well as the abovementioned provisions which provide the guidelines therefor. By setting forth the identified parameters and the policy that the funds to be accumulated by virtue of the impost are for the purpose of protecting the country's marine wealth and ensuring full or adequate compensation to the victims of oil spills, the metes and bounds of the exercise of the delegated authority have been sufficiently laid out. **Consequently, the manner by which the delegates are to exercise the conferred authority can be measured against these parameters and checked for any evidence of arbitrariness or excessiveness**.

It is also important to note that **Congress included the representatives from the owners of tankers barges, tankers haulers, and ship hauling oil and/or petroleum products as part of the group tasked to determine the rates for the following years. In so doing, Congress not only valued their inputs but also gave them an avenue to protect their businesses by ensuring that the effect of the imposition on the private sector would be factored in and not seen as mere recommendations**. As a matter of fact, the legislature placed them in a position that is more than consultative. By making them part of the group authorized to determine the amount of impost, they were given not just the opportunity to be heard but the capability to directly influence the rate of the impost. This certainly goes beyond mere consultation or advice.

What further convinces Us that any additional specification of limitations—which Congress opted away from—may actually do more harm than good is the fact that numerous factors affect the extent and severity of oil pollution caused by spills. As summarized by the International Tanker Owners Pollution Federation Limited (ITOPF):

> The effects of an oil spill will depend on a variety of factors including, the **quantity and type of oil spilled**, and **how it interacts with the marine environment**. **Prevailing weather conditions** will also influence the oil's physical characteristics and its behaviour. Other key factors include the **biological and ecological attributes of the area**; the **ecological significance of key species** and **their sensitivity to oil pollution** as well as the **time of year**. It is important to remember that the

> **clean-up techniques selected** will also have a bearing on the environmental effects of a spill.[59] (emphasis ours)

This highly multifaceted character of oil spill incidents, coupled with the fact that the Philippine archipelago is comprised of thousands of islands with varying sizes and ecology and has one of the longest coastlines in the world—estimated at 36,289 kilometers, reflects a certain complexity in its state of affairs that undoubtedly makes the setting of rigid and exhaustive parameters difficult, if not impossible.

Apropos, in *Osmeña*,[60] this Court, tackling the question whether there was an undue delegation of legislative power when the Energy Regulatory Board was conferred the authority to impose additional amounts on petroleum products, held that **the dynamic character of the circumstances within which the authority is to be exercised must be considered in determining whether the assailed provision provides a sufficient standard**.

The Court's pronouncement in the cited case could not be more fitting. Indeed, oil spill response and clean-up, and rehabilitation of affected areas, among others, are affected by a great number of factors, most of which are outside the control of man. Philippine waters are so vast, diverse, and rich that we cannot possibly require Congress to comprehensively set forth any and all factors that must be considered in the determination of the metes and bounds for the setting of the questioned impost, more so numerical restrictions. Furthermore, with the unpredictability and uncontrollability of the accumulation of costs of pollution damage in oil spills, an exhaustive list of parameters may not work to our country's advantage.

The imposition of the 10-centavo impost does not violate the due process clause

Section 1, Article III, of the Constitution guarantees that no person shall be deprived of property without due process of law. While there is no controlling and precise definition of due process, it furnishes a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid.[61]

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[59] Environmental Effects of Oil Spills, Available at <http://www.itopf.com/knowledge-resources/documents-guides/environmental-effects/> Last Accessed: May 24, 2018.

[60] G.R. No. 99886, March 31, 1993, 220 SCRA 703.

[61] See *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308, 329.

Relevant to the instant case is the doctrine's application to businesses and trade where this basic pledge ensures that insofar as the property of private corporations and partnerships is concerned, these entities enjoy the promise of protection against arbitrary regulation.[62] Thus, the Court, in *JMM Promotion and Management, Inc. v. Court of Appeals*, held that:

> **A profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights**, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong.[63]

Nonetheless, equally well-settled is the rule that "where the due process and equal protection clauses are invoked, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail."[64] Thus, in asserting that the 10-centavo per liter impost is unconstitutional, **respondents have the burden of proof to convince this Court that indeed said imposition is arbitrary, oppressive, excessive, and confiscatory, thereby violating the constitutional proscription against deprivation of property without due process of law**.

Respondents, however, by providing nothing more than hypothetical computations of their losses, failed to discharge this burden. Indeed, persuading this Court that their businesses would suffer to a large extent if they will be made to shoulder the 10-centavo/liter impost cannot be satisfactorily discharged, as to overcome a strong presumption of constitutionality, by the mere expedient of presenting a sample scenario, the truthfulness or accuracy of which has not even been proven.

It would be improper to declare an imposition as unlawful or unconstitutional on the basis of purely hypothetical and unsubstantiated computations. In refusing to declare a provision of law as unconstitutional based on theoretical assumptions, this Court, in *Abakada Guro Party List v. Ermita*, emphatically stated that "[t]he Court will not engage in a legal joust where premises are what ifs, arguments, theoretical and facts, uncertain. Any disquisition by the Court on this point will only be, as Shakespeare describes life in *Macbeth*, 'full of sound and fury, signifying nothing.'"[65]

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[62] See *Smith, Bell & Co. v. Natividad*, 40 Phil. 136, 145 (1919), cited in *City of Manila v. Laguio, Jr.*, id. at 330.

[63] G.R. No. 120095, August 5, 1996, 260 SCRA 319, 330.

[64] *Abakada Guro Party List v. Ermita*, G.R. No. 168056, September 1, 2005, 469 SCRA 14, 130-131.

[65] Id. at 139. (citation omitted)

The hypothetical computations provided by the respondents do not equate to a material and actual impact that the questioned impost will have on their businesses. In other words, these are mere mock-up situations which discount several factors, including any adjustments that a business may undertake to secure profits despite the impost. As a matter of fact, respondents themselves state that they have the option of passing the expense to the consumers.[66] We are not here saying that respondents should adopt said course of action, but what is obvious is that they have sufficient leeway in the conduct of their business that would allow them to realize profits notwithstanding the enforcement of Section 22.

What further prevents Us from relying on said computations is that it would be imprudent for this Court to take these computations without a grain of salt. While it is possible that these income statements are truthful, it is also possible that they are not. The Court is allowed some degree of skepticism and is not expected to take these "evidence" hook, line and sinker especially when what is in question is the constitutionality and validity of a legislative enactment. Echoing this necessary skepticism is the Court's pronouncement in the case of *Churchill v. Concepcion*, thus:

> Surely, before the courts are called upon to adjudge an act of the legislature fixing the maximum passenger rates for railroad companies to be unconstitutional, on the ground that its enforcement would prevent the stockholders from receiving any dividends on their investments, or the bondholders any interest on their loans, they should be fully advised as to what is done with the receipts and earnings of the company; for if so advised, it might clearly appear that a prudent and honest management would, within the rates prescribed, secure to the bondholders their interest, and to the stockholders reasonable dividends. While the protection of vested rights of property is a supreme duty of the courts, it has not come to this, that the legislative power rests subservient to the discretion of any railroad corporation which may, by exorbitant and unreasonable salaries, or in some other improper way, transfer its earnings into what it is pleased to call 'operating expenses.'[67]

Additionally, the error in said computations lies in the fact that it failed to consider the operation of Section 22 which dictates that the impost shall be 10 centavos per liter only on the first year. This allows for a retention, increase, or reduction in the succeeding years, whichever is determined to be necessary. This scenario was obviously not taken into account when respondents made said computations.

But respondents, adamant in having the impost invalidated, draw Our attention to their computation of the amount that would be collected if said imposition would be enforced. Respondents contend that the imposition of

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[66] *Rollo*, p. 43.

[67] 34 Phil. 969, 973 (1916), citing *Chicago and Grand Trunk Railway Co. v. Wellman*, 143 U. S. 339.

the 10-centavo charge for the years 2007-2012 would have yielded approximately Two Billion Pesos (Php2,000,000,000.00) annually.[68] They then compare this with the cost of the clean-up for the Guimaras Oil Spill, by far the worst oil spill in Philippine history. According to them, it only amounted to Php775,594,885.00, which amount is significantly lower than the amount that the imposition would yield.[69]

The arguments fail to persuade.

The determination of whether a measure or charge is confiscatory or not, within the purview of the due process clause, will not solely depend on the amount that will be accumulated therefrom. Such a gauge is downright erroneous. Other factors must likewise be considered such as the purposes for which the fund will be used and the costs which said purposes entail, among others. Viewed from the context of oil spills and the current incapacity of our enforcement agencies to timely and adequately respond to oil spill incidents, plus the aforementioned characteristics of our natural resources and the environment, We cannot safely conclude that any amount, even millions or billions, is actually exorbitant or excessive in the furtherance of RA 9483's objectives.

And these computations fail to take into account the fact that, guilty of reiteration, the impost is not perpetually fixed at 10 centavos per liter. Thus, if the laudable purposes of RA 9483 can be sufficiently met and financed by a lesser impost, then there is nothing to prevent the proper reduction of the rate.

Another flaw in the arguments is that they are incomplete in the sense that without any data as to the costs of the necessary tools, equipment, inventories, trainings, research, among others, needed for the furtherance of RA 9483, there is no way to determine whether the initial amount that will be collected from the 10-centavo impost during the first year of operation of Section 22 is already unjustifiably massive, making the 10-centavo rate exorbitant and confiscatory.

We cannot simply rely on the cost of the Guimaras oil spill clean-up because as repeatedly intimated, oil spills are unpredictable and their extent is almost entirely uncontrollable. One incident cannot serve as the basis for estimating the costs needed for oil spill response, among others. Furthermore, the OPMF does not only cover the conduct of the clean-up itself. The OPMF, as previously explained, was primarily created for capacity-building, that is, to give our local agencies the capability to render emergency response measures and not rely heavily, if not entirely, on

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[68] *Rollo*, p. 369.
[69] Id. at 370.

foreign assistance. Thus, to use the cost of the cleanup in the Guimaras incident as the benchmark for determining whether the impost is reasonable or not will definitely lead to misguided conclusions.

Most importantly, it must be borne in mind that the impost provided in Section 22 is not a revenue-raising tax intended to supplement the government's treasury. What Section 22 does is to regulate the conduct of the business of owners and operators of oil tankers and barges by imposing upon them the duty to contribute to the protection of Philippine waters which they directly use in the conduct of their trade, and which they expose to a risk of possibly irreparable destruction brought about by the spillage or leakage of the product that they carry and profit from.

In other words, the 10 centavos is an administrative charge or fee which, in the case at hand, was imposed on covered entities to protect a resource and territory that those in the industry directly use in the conduct of their business, that is, the country's maritime domain. Such administrative charge is a valid charge. On this matter, We refer to the pronouncements of the United States Supreme Court in *Edye v. Robertson.*[70] Thus:

> If it were necessary to prove that the imposition of this contribution on owners of ships is made for the general welfare of the United States, it would not be difficult to show that it is so, and particularly that it is among the means which congress may deem necessary and proper for that purpose, and beyond this we are not permitted to inquire. But the true answer to all these objections is that the power exercised in this instance is not the taxing power. **The burden imposed on the ship-owner by this statute is the mere incident of the regulation of commerce**-of that branch of foreign commerce which is involved in immigration. x x x
>
> It is true, not much is said about protecting the ship-owner. But he is the man who reaps the profit from the transaction, who has the means to protect himself, and knows well how to do it, and whose obligations in the premises need the aid of the statute for their enforcement. **The sum demanded of him is not, therefore, strictly speaking, a tax or duty within the meaning of the constitution. The money thus raised, though paid into the treasury, is appropriated in advance to the uses of the statute, and does not go to the general support of the government.**[71] x x x

The same situation obtains in the present case. The 10-centavo impost is collected from the covered owners and operators, taking into consideration their use of the country's waters and the exposure of this natural resource to a risk of grave and irreparable damage brought about by said use. Moreover, the amounts collected are to be used solely for the identified items in the assailed law and only for the furtherance of the declared purposes of the

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[70] 112 U.S. 580 (1884).
[71] Emphasis supplied.

statute. As stated by the Supreme Court of Washington, *En Banc* in *Teter v. Clark County*:[72]

> x x x In Craig v. Macon, 543 S.W.2d 772 (Mo. 1976), the court held valid the charges imposed by the city for solid waste disposal, even though appellants did not have their garbage removed by the city and thus obtained no "service". The Missouri Supreme Court held that the statute under which the city acted was a public health regulation, intended to protect the entire population. **As a police power measure, the statute enabled the city to take whatever measures were reasonably required to meet the public health needs. The charges were only incidental to the regulatory scheme: the payments went only toward the costs of that program; none of the money went into general revenue**. Thus, because the money was **collected for a specific purpose** (to pay the cost of a public health program) the charge was deemed valid. x x x In Hobbs, the city enacted a garbage collection ordinance and charged property owners for collection; appellant property owners did not use the city's service. There the court held that **a due process violation did not exist because the ordinance is a health measure and the charges are not merely for the specific act of garbage removal, but to defray the expenses of the entire program.** Further, appellants received a general benefit from the removal of others' garbage the control of insects, etc.[73]

The collection of administrative charges and fees on vessels is not new. To name a few, reference may be made to RA 1371[74] which imposes upon owners and operators of vessels various charges and fees for the use of Philippine ports, among others.[75]

Through the imposition in Section 22 of RA 9483, Congress did not just direct the protection of the country's marine resource, it also promoted the constitutionally-protected right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature[76] and the basic

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[72] 104 Wn.2d 227 (1985), 704 P.2d 1171.

[73] Emphasis supplied.

[74] AN ACT TO DEFINE, CLASSIFY, FIX AND REGULATE THE AMOUNT OF ALL CHARGES AND FEES IN PHILIPPINE PORTS, OTHER THAN CUSTOMS DUTIES, INTERNAL REVENUE TAXES AND TONNAGE DUES.

[75] RA 1371,**Section 1.** Definitions. As used in this Act:

(a) Harbor fee is the amount which the owner, agent, operator or master of a vessel has to pay for each entrance into or departure from a port of entry in the Philippines.

(b) Wharfage charge is the amount assessed against the cargo of a vessel engaged in the foreign trade, based on the quantity, weight or measure received and/or discharged by such vessel. The owner, consignee, or agent of either, of the merchandise is the person liable for such charge.

(c) Berthing charge is the amount assessed against a vessel for mooring or berthing at a pier, wharf, bulkhead wharf, river or channel marginal wharf at any port in the Philippines; or for mooring or making fast to a vessel so berthed; or for coming or mooring within any slip, channel, basin, river or canal under the jurisdiction of any port of the Philippines. The owner, agent, operator or master of the vessel is liable for this charge.

(d) Storage charge is the amount assessed on merchandise for storage in customs premises, cargo sheds and warehouses of the government. The owner, consignee, or agent of either, of the merchandise is liable for this charge.

(e) Arrastre charge is the amount which the owner, consignee, or agent of either, of merchandise or baggage has to pay for the handling, receiving and custody of the imported or exported merchandise or the baggage of the passengers.

[76] Section 16, Article II [State Policies], 1987 Constitution.

and constitutional right to health.[77] On the basis thereof, it can be said that the questioned imposition is an exercise of police power by the State.

Police power is the plenary power vested in the legislature to make, ordain, and establish wholesome and reasonable laws, statutes and ordinances, not repugnant to the Constitution, for the good and welfare of the people.[78] This power to prescribe regulations to promote the health, morals, education, good order or safety, and general welfare of the people flows from the recognition that *salus populi est suprema lex*—the welfare of the people is the supreme law.[79]

The creation of the OPMF is, thus, not a burdensome cross that the respondents have to bear. Rather, it is an opportunity for them to have an important role in the protection of the environment which they navigate and directly utilize in the conduct of their business. It is but proper and timely to remind respondents that the conduct of a business is a mere privilege which is subject to the regulatory authority of the State. Property rights may be interfered with, especially if it is for the furtherance of the common good. A few business adjustments and sacrifices, weighed against the prevention of the possibly irreparable destruction of the country's natural resources, must necessarily take a back seat. We have the duty to protect our environment for the future generations, and all must share in this responsibility, including legal entities.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The February 22, 2017 Decision of the Regional Trial Court, Branch 216, Quezon City is hereby **REVERSED** and **SET ASIDE**.

The constitutionality and validity of sub-paragraph a, Section 22 of Republic Act No. 9483, as well as Section 1, Rule X of the Implementing Rules and Regulations of said law are hereby **UPHELD**.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

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[77] Section 15, Article II [State Policies], 1987 Constitution.

[78] *Binay v. Domingo*, G.R. No. 92389, September 11, 1991, 201 SCRA 508, 514, cited in *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, G.R. No. 170656, August 15, 2007, 530 SCRA 341, 362.

[79] *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, G.R. No. 170656, August 15, 2007, 530 SCRA 341, 362.

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
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FRANCIS H. JARDELEZA
Associate Justice

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

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified 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
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court