

**PHILIPPINE FEDERATION OF ELECTRIC COOPERATIVES (PHILFECO)
REPRESENTED BY ITS CHAIRMAN, ENGR. NARCISO S. SALUNAT,
ISABELA II ELECTRIC COOPERATIVE (ISELCO II), NUEVA VIZCAYA
ELECT...**

G.R. No. 207894 & 209380, November 11, 2025

Ponente: SINGH, J.

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SINGH, J.:

Before this Court are consolidated Petitions[1] with Prayers for the issuance of a Writ of Preliminary Prohibitory Injunction and/or Temporary Restraining Order, and an Application for Status Quo Ante Order filed by electric cooperatives and members of their various governing boards assailing the constitutionality of Republic Act No. 10531 or the National Electrification Administration (NEA) Reform Act of 2013[2] and its Implementing Rules and Regulations (IRR).[3]

The Facts

On May 7, 2013, President Benigno Simeon Aquino III approved Republic Act No. 10531 and signed it into law. The law, whose chief purpose is to establish a framework for introducing structural reforms in the NEA and the electric cooperatives, took effect on May 22, 2013.[4] The law's IRR was subsequently issued by the Department of Energy (DOE) on July 26, 2013, and became effective on August 10, 2013.[5]

Amending Presidential Decree No. 269, or the National Electrification Administration Decree,[6] Republic Act No. 10531 provides the following policy statements under its Section 2:

Section 2. Section 2 of Presidential Decree No. 269, as amended, is hereby further amended to read as follows: SEC. 2. Declaration of National Policy. – It is hereby declared the policy of the State to:

- (a) promote the sustainable development in the rural areas through rural electrification;
- (b) empower and strengthen the National Electrification Administration (NEA) to pursue the electrification program and bring electricity, through the electric cooperatives as its implementing arm, to the countryside even in missionary or economically unviable areas;
- (c) empower and enable electric cooperatives to cope with the changes brought about by the restructuring of the electric power industry pursuant to Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001." (Emphasis supplied)

To effect the purposes of the law, the powers of the NBA have also been strengthened by Republic Act No. 10531 under its Section 5:

Section 5. Section 4 of Presidential Decree No. 269, as amended, is hereby further amended to read as follows: SEC. 4. Powers, Functions and Privileges of the National Electrification Administration. – To strengthen the electric cooperatives, help them become economically viable and prepare them for the implementation of retail competition and open access pursuant to Section 31 of the EPIRA, the NEA is

authorized and empowered to:

- (a) have a continuous succession under its corporate name until otherwise provided by law;
- (b) adopt and use a seal and alter it at its pleasure;
- (c) sue and be sued in any court: Provided, That the NEA shall, unless it consents otherwise, be immune to suits for acts ex delicti;
- (d) make contracts of every name and nature and execute all instruments necessary or convenient for the carrying on of its business;
- (e) supervise the management and operations of all electric cooperatives;
- (f) exercise step-in rights as herein defined;
- (g) provide institutional, financial and technical assistance to electric cooperatives upon request of the electric cooperatives;
- (h) pursue the total electrification of the country through the electric cooperatives by way of enhancing distribution development and, in case of missionary areas, shall be done in coordination with the National Power Corporation – Small Power Utilities Group (NPC-SPUG) which shall be responsible for the generation and transmission requirements, as necessary;
- (i) devote all returns from its capital investments to attain the objectives of this Act;
- (j) ensure the economic and financial viability and operation of all electric cooperatives;
- (k) restructure ailing electric cooperatives with the end in view of making them economically and financially viable;
- (l) develop, set and enforce institutional and governance standards for the efficient operation of electric cooperatives such as, but not limited to, the observance of appropriate procurement procedure, including transparent and competitive bidding. Such standards shall be enforced through a mechanism of incentives and disincentives to complying and non-complying electric cooperatives, respectively;
- (m) formulate and impose administrative sanctions and penalties and when warranted, file criminal cases against those who are found in violation of any of the provisions of this Act and its implementing rules and regulations (IRR);
- (n) serve as guarantor to qualified electric cooperatives in their transactions with various parties such as, but not limited to, co-signing in power supply contracts;
- (o) grant loans to electric cooperatives, for the construction or acquisition, operation and maintenance of subtransmission and distribution facilities and all related properties, equipment, machinery, fixtures, and materials for the purpose of supplying area coverage service, and thereafter to grant loans for the restoration, improvement or enlargement of such facilities or for such other purposes as may be deemed necessary;
- (p) subject to the prior approval and/or opinion of the Monetary Board, borrow funds from any source, private or government, foreign or domestic, and secure the lenders thereof by pledging, sharing or subordinating one or more of the NEA's own loan securities;
- (q) exercise primary and exclusive jurisdiction in the adjudication of complaints against electric cooperative officers, election disputes and all matters relating to the effective implementation of the provisions of this Act;
- (r) as a quasi-judicial agency, deputize local law enforcement agencies to enforce or implement its orders or

decisions, with the power to cite for contempt any party or witness to any case before it for contumacious conduct; and

(s) exercise such powers and do such things as may be necessary to carry out the business and purposes for which the NEA was established, or which from time to time may be declared by the Board of Administrators as necessary, useful, incidental or auxiliary to accomplish such purposes.

For this purpose, the authorized capital stock of the NEA is hereby increased to [PHP 25,000,000,000.00] divided into [250,000,000.00] shares with a par value of [PHP 100.00]. (Emphasis supplied)

Among the powers emphasized in Republic Act No. 10531 is the NEA's supervisory powers over the electric cooperatives. To further define these supervisory powers, a new section was added by Republic Act No. 10531, thus:

Section 6. A new section, to be designated as Section 4-A, is hereby inserted under Presidential Decree No. 269, as amended to read as follows: SEC. 4-A. Supervisory Powers of the NEA Over Electric Cooperatives. – In the exercise of its power of supervision over electric cooperatives, the NEA shall have the following powers:

(a) issue orders, rules and regulations, motu proprio or upon petition of third parties, to conduct investigations, referenda and other similar actions on all matters affecting the electric cooperatives;

(b) issue preventive or disciplinary measures including, but not limited to, suspension or removal and replacement of any or all of the members of the board of directors and officers of the electric cooperative, as the NEA may deem fit and necessary and to take any other remedial measures as the law or any agreement or arrangement with NEA may provide, to attain the objectives of this Act; and

(c) appoint independent board of directors in the electric cooperative.

The NEA shall, in the exercise of its supervisory and disciplinary powers under this Act, strictly observe due process of law. (Emphasis supplied)

A new section to define and establish the step-in rights of the NEA is also provided by Republic Act No. 10531 under its Section 7:

Section 7. A new section, to be designated as Section 4-B, is hereby inserted under Presidential Decree No. 269, as amended, to read as follows: SEC. 4-B. Step-in Rights in Cases of Ailing Cooperatives. – The NEA shall immediately step-in and take over from its Board the operations of any ailing electric cooperative. Within a reasonable period after take-over, the NEA may convert the ailing cooperative to either a stock cooperative registered with the CDA or a stock corporation registered with the Securities and Exchange Commission (SEC).

The NEA shall in determining the propriety of the conversion, be guided by the ability of the member-consumers of said electric cooperative to pay for their shares in the stock cooperative or stock corporation.

The NEA may appoint or assign third persons to the Board of the electric cooperative until the NEA decides that the election of a new board of directors to manage the electric cooperative is necessary. The NEA may create a management team for the purpose.

The NEA shall, in the exercise of its step-in rights under this Act, strictly observe due process of law. The step-in rights may only be exercised by the NEA in case of failure of the electric cooperative to meet operational and financial standards set by the NEA or in other analogous instances set forth in the IRR of this Act. (Emphasis supplied)

Republic Act No. 10531 also introduces a specific section that establishes safeguards to ensure the independence of the governing boards of electric cooperative from local politics. Section 10 of the law provides:

Section 10. A new section, to be designated as Section 26-A of Presidential Decree No. 269, as amended, is hereby inserted to read as follows: SEC. 26-A. Independence of the Board of Directors and Officers of Electric Cooperatives. – To ensure the long-term business and economic viability of electric cooperatives, the management, operations and strategic planning of electric cooperatives shall, as much as practicable, be insulated from local politics.

Towards this end, no person shall be elected or appointed as an officer or be eligible to run as a board member of an electric cooperative if:

- (a) such person or his or her spouse holds any public office;
- (b) such person or his or her spouse has been a candidate in the last preceding local or national elections;
- (c) such person has been convicted by final judgment of a crime involving moral turpitude;
- (d) such person has been terminated for cause from public office or private employment;
- (e) such person is related to any member of the electric cooperative board of directors, general manager and department managers within the fourth civil degree of consanguinity or affinity;
- (f) such person is a representative of a juridical person; and
- (g) such person is employed by or financially interested in a competing enterprise or a business selling electric energy or electrical hardware to the cooperative or doing business with the cooperative, including the use or rental of poles. (Emphasis supplied)

Additionally, the list of minimum qualifications are provided under a section by Republic Act No. 10531 which refers to the Fit and Proper Rule:

Section 11. A new section, to be designated as Section 26-B, is hereby inserted under Presidential Decree No. 269, as amended to read as follows: SEC. 26-B. Fit and Proper Rule. – To ensure that the management and operations of electric cooperatives are carried out with due regard to its economic viability, the NEA shall prescribe, pass upon and review the qualifications and disqualifications of individuals appointed or elected to electric cooperatives and disqualify those found unfit.

A candidate's integrity, experience, education, competence and probity shall be considered in determining whether he or she shall be fit and proper to become a director or officer of the electric cooperative.

For this purpose, the minimum qualifications of a director or officer of the electric cooperative shall be as follows:

- (a) He or she is a Filipino citizen;
- (b) He or she is a graduate of a [four]-year course;
- (c) He or she is between [21] and [70] years old, on the date of election;
- (d) He or she is of good moral character;
- (e) He or she is a member of the electric cooperative in good standing for the last five years immediately preceding the election or appointment;
- (f) He or she is an actual resident and consumer in the district that he or she seeks to represent for at least two years immediately preceding the election; and

(g) He or she has attended at least two Annual General Membership Assemblies (AGMA) for the last five years immediately preceding the election or appointment.

The NEA may, after due notice to the board of directors and officers of the electric cooperative, disqualify, suspend or remove any director or officer, who commits any act which renders him unfit for the position. (Emphasis supplied)

Republic Act No. 10531 also provides for guidelines on the coverage of the law as to electric cooperatives regardless of the nature of their registration. Section 12 of the law provides:

Section 12. Section 32 of Presidential Decree No. 269, as amended, is hereby further amended to read as follows: SEC. 32. Registration of All Electric Cooperatives. – All electric cooperatives may choose to remain as a non-stock, non-profit cooperative or convert into and register as: (a) a stock cooperative under the CDA; or (b) a stock corporation under the SEC, in accordance with the guidelines to be included in the IRR of this Act.

Such choice shall carry with it the attendant requirements of compliance with the laws and regulatory guidelines governing the respective government agencies having jurisdiction over their registration.

Regardless of the choice made, the NEA shall have the authority over electric cooperatives, whether stock or non-stock, to require the submission of reportorial requirements as may be necessary relative to their operations as electric distribution utilities including, but not limited to:

- (a) monthly Financial and Statistical Report (MFSR);
- (b) monthly separate MFSR. Monthly Engineering Report (MER) and barangay and sitio electrification report for electric cooperatives on grid with isolated areas served by NPC-SPUG;
- (c) monthly status of barangay and sitio energization and house connections;
- (d) monthly Institutional Services Department (ISD) report;
- (e) monthly Performance Standard Monitoring Report (PSMR);
- (f) monthly summary of complaints received and acted upon;
- (g) monthly report on compliance with the Grid and Distribution Code;
- (h) Monthly Engineering Report (MER);
- (i) quarterly report on power supply contracts;
- (j) annual work plan;
- (k) annual Distribution Development Plan (DDP);
- (l) five (5)-year investment plan submitted annually;
- (m) annual Cash Operating Budget (COB);
- (n) audited financial statements;
- (o) annual Collective Bargaining Agreement (CBA) or Collective Negotiation Agreement (CNA); and
- (p) copy of Capital Expenditure (CAPEX) and Operating Expenditure (OPEX) plans.

Likewise, the supervisory and oversight functions of the NEA, as may be detailed in this Act and its IRR, shall be applicable to both stock and non-stock cooperatives.

Electric cooperatives which register with the CDA shall continue to enjoy the benefits under this Act.

Existing electric cooperatives may likewise opt to register as stock corporations with the SEC; Provided, however, That electric cooperatives registered with the SEC shall no longer enjoy the incentives provided for in this Act.

Despite the registration of the electric cooperatives under the CDA or the SEC, the NEA shall retain its supervisory and disciplinary power over them in the conduct of its operation as electric distribution utilities." (Emphasis supplied)

Finally, a new section outlining penalties applicable for violations of the law is provided by Republic Act No. 10531:

Section 14. A new section, to be designated as Section 64-A, of Presidential Decree No. 269, as amended, is hereby inserted to read as follows: SEC. 64-A. Penalties. – Any person who willfully violates any rule or regulation promulgated pursuant to the authority granted in this Act shall, upon conviction, be punished by a fine of not less than [PHP 50,000.00] but not more than [PHP 500,000.00] or by imprisonment of not less than six months but not more than one[]year, or both, at the discretion of the court: Provided, That if the violation is committed by a juridical person, the penalty herein prescribed shall be imposed upon the official and/or employee thereof responsible for the violation: Provided, further, That if the violation is committed by a government official or employee, including those in government-owned or -controlled corporations, such person shall, in addition to the penalty provided herein, be subjected to administrative disciplinary action.

Two Petitions for Certiorari and Prohibition assailing provisions of Republic Act No. 10531 and its IRR were later filed which were docketed as G.R. Nos. 207894[7] and 209380.[8]

Petitioners

In G.R. No. 207894, the petitioners consist of an umbrella organization of electric cooperatives and eight member cooperatives. Co-petitioner Philippine Federation of Electric Cooperatives (PHILFECO) is a duly registered umbrella organization of electric cooperatives registered with the Cooperative Development Authority (CDA).[9] Joining PHILFECO in the petition are Isabela II Electric Cooperative (ISELCO II), based in Ilagan, Isabela;[10] Nueva Vizcaya Electric Cooperative (NUVELCO), based in Dupax del Sur, Nueva Vizcaya;[11] San Jose Electric Cooperative (SAJELCO), based in San Jose City;[12] Pangasinan III Electric Cooperative (PANELCO III), based in Urdaneta City, Pangasinan;[13] Sorsogon II Electric Cooperative (SORECO II), based in Sorsogon City;[14] Palawan Electric Cooperative (PALECO), based in Puerto Princesa City;[15] Negros Oriental II Electric Cooperative (NORECO II), based in Dumaguete City;[16] and Negros Occidental Electric Cooperative (NOCECO), based in Kabankalan City, Negros Occidental.[17]

Petitioner organizations are suing as taxpayers and questioning the disbursement of public funds for the implementation of Republic Act No. 10531. In their Petition, petitioner organizations are also assailing the constitutionality of Republic Act No. 10531 on behalf of their member consumers, who, as citizens, stand to be directly injured in as much as the assailed law allegedly infringes on their rights to due process, equal protection of law, non-impairment of contracts, freedom of association, freedom of expression and the rights of cooperatives guaranteed by the 1987 Constitution.[18]

In G.R. No. 209380, petitioners are suing in their individual capacity as citizens, and taxpayers, and their representative capacities as members of the governing boards of electric cooperatives.

Co-petitioners Dioscoro P. Boco, Romeo J. Gumadlas, Samuel P. Carampatana, Jose P. Rosales, Alberto D. Parajes, Gilberto A. Enriquez, Leoncia T. Hernandez, Maurita M. Comandante, Eleno M. Angay, Conrado L. Buque Jr., Mariano C. Corvera Jr., Dioscoro C. Basnig, Rico A. Rono, Florante O. Perez, and George S. Pacot are

members of the Board of Directors (BOD) of Agusan del Norte Electric Cooperative, Inc. (ANECO), based in Butuan City.[19]

Co-petitioners Felix G. Vergara, Jr., Wilfredo D. Bajao, Catalino D. Villaflores, Raul L. Alkuino, and Romeo Y. Pacanan are members of the BOD of First Bukidnon Electric Cooperative, Inc. (FIBECO), based in Maramag, Bukidnon.[20]

Co-petitioners Eligio C. David, Jr., Charlie C. Castillanes, Edwin B. Galicia, Francis E. Boniao, Gloria D. Ranile, and Tarcisio L. Barros are members of the BOD of Bukidnon II Electric Cooperative, Inc. (BUSECO), based in Manolo Fortich, Bukidnon.[21]

Co-petitioners Reinario B. Bihag, Teddy A. Bernales, Benjamin R. Cabatic, Karim U. Macarompan, Nassrollah D. Montud, Joseph M. Sanguila, Jr., Henry A. Latumbo, Donato Y. Calica, Claire Grebern U. Elumir, Edgar A. Demavivas, and Linog D. Samsoden are members of the BOD of Lanao del Norte Electric Cooperative, Inc. (LANECO), based in Tubod, Lanao del Norte.[22]

Co-petitioners Henry T. Udag, Alfredo J. Dela Rosa, Jr., Benjamin C. De La Plaza, Jr., Mario L. Sacal, and Flordelvinda C. Madarieta are members of the BOD of Camiguin Electric Cooperative, Inc. (CAMELCO), based in Mambajao, Camiguin.[23]

Co-petitioners Hurlito L. Paderanga, Charlito A. Potutan, Joel B. D'lonsod, Rodolito Y. Yap, Rey Roger B. Villanueva, Felipe O. Casing, and Franklin J. Bolotaolo are members of the BOD of Misamis Occidental I Electric Cooperative, Inc. (MOELCI-I), based in Oroquieta City, Misamis Occidental.[24]

Co-petitioners Paulo N. De Los Reyes, Napoleon T. Lapar, Edgar E. Ongco, Priscilla C. Villanueva, Eddie L. Caluna, Mario Genis B. Sarigumba, Fe Luzse D. Abata, and Francis Manuel L. Paylaga are members of the BOD of the Misamis Occidental II Electric Cooperative, Inc. (MOELCI-II), based in Ozamis City, Misamis Occidental.[25]

Co-petitioner Melvyn D. Eballe, meanwhile, is a member of the BOD of Misamis Oriental-1 Electric Service Cooperative, Inc. (MORESCO-I), based in Laguindingan, Misamis Oriental.[26]

Finally, co-petitioners Antonio P. Reyes, Nicanor V. Enterina, Esmerna U. Gabutina, Eduardo O. Bacasnot, Mark R. Valdevilla, Greg A. Ocot, Eugene M. Unabia, Edmundo S. Moreno, and Crisanto P. Calingin are members of the BOD of Misamis Oriental II Electric Service Cooperative, Inc. (MORESCO-II), based in Medina, Misamis Oriental.[27]

Petitioner BOD Members of various electric cooperatives assail the constitutionality of Republic Act No. 10531 and its IRR submitting that the law violates Article II, Section 2 and Article III, Sections 1, 9 and 10 of the 1987 constitution, as well as constituting undue delegation of legislative power.[28]

These two Petitions were later consolidated by the Court.[29]

Arguments of Petitioners

In G.R. No. 207894, the petitioners argue that they will sustain or are immediately in danger of sustaining some direct injury because of the implementation of the assailed law. Claiming that they have the requisite legal standing, they explain that as electric cooperatives, they have personal and substantial interest in the vindication of the public order and securing relief as citizens or taxpayers, and are doing so for the benefit of their members who are also citizens.[30]

Moreover, procedurally, the petitioners argue that the case involves a controversy which is ripe for adjudication as the law has already been promulgated and published.[31] In any case, the petitioners argue that should their

Petition fail on procedural grounds, technicalities on locus standi may be waived because this case involves issues of transcendental importance.[32] Petitioners submit that electric cooperatives are engaged in activities imbued with public interest as electricity plays an important role in the economic activity of the country, and a disruption in the activities of the petitioner electric cooperatives will ultimately affect the critical services they provide.[33]

As to the hierarchy of courts, petitioners also argue that recourse to this Court is warranted because an action for declaratory relief before the Regional Trial Courts will only result in confusing or contradictory decisions among its different branches, thus necessitating direct action before the Supreme Court.[34]

Regarding the substantial issues, the petitioners forward the following theories:

- The 1987 Constitution, under Article XII, created a bundle of constitutional rights for cooperatives, namely: (a) to broaden the base of their ownership; (b) to own, establish and operate economic enterprise; and (c) be under a government agency that promotes the viability and growth of cooperatives as instruments for social justice and economic development.[35]
- The disciplinary powers of the NEA and the power to appoint independent board of directors under Section 5 in relation to Section 6 of Republic Act No. 10531 violate the constitutional rights of cooperatives under Article XII, Sections 1, 6 and 15 of the 1987 Constitution.[36]
- The step-in rights provided in Section 5 in relation to Section 6 of Republic Act No. 10531 violate the constitutional rights of cooperatives under Sections 17 of Article XII of the 1987 Constitution.[37]
- Republic Act No. 10531 violates the Equal Protection Clause of the Constitution by treating electric cooperatives registered under the CDA the same as electric cooperatives registered under the NEA and treating private electricity distribution companies differently.[38]
- Republic Act No. 10531 is an invalid exercise of police power because its provisions under Section 10 and 11 of the law, which provide for qualifications and disqualifications of officers and board members of electric cooperatives, are discriminatory.[39]

Th G.R. No. 207894, the petitioners argue that as electric cooperative members and duly elected Members of their respective BOD, they enjoy locus standi in this case because they are directly affected by the assailed provisions of the Republic Act No. 10531 and its IRR.[40]

Similarly, the petitioners in G.R. No. 207894 also challenge the constitutionality of Sections 6 and 7 of Republic Act No. 10531 which provide for the supervisory powers of the NEA over electric cooperatives, and the step-in rights in cases of ailing cooperatives. Petitioners argue that these provisions are unconstitutional as they are an undue delegation of legislative power because Congress failed to provide sufficient limits and parameters in the law.[41]

Petitioners also question the constitutionality of Section 5, paragraph (n) of the law which authorizes the NEA to serve as guarantor to qualified electric cooperatives in their transactions with various parties such as, but not limited to, co-signing in power supply contracts. According to them, this provision violates Article II, Section 20 of the Constitution which provides for the State policy recognizing the indispensable role of the private sector, and the principle of autonomy of contracts, as well as usurps the regulatory function of the Energy Regulatory Commission.[42]

Finally, the petitioners argue that Sections 10 and 11 of Republic Act No. 10531 and the corresponding provisions of the IRR, which provide for the qualification and disqualifications of members of the BOD and officers of the electric cooperatives, are unconstitutional because these provisions are discriminatory and constitute deprivation of property rights without due process of law. These provisions, the petitioners contend, are tantamount to

violations of the right to suffrage of their members.[43]

Arguments of Respondents

In their Consolidated Memorandum,[44] the respondents argue that the case should be dismissed for the following reasons:

- Petitioners' recourse to a special civil action for certiorari and prohibition under Rule 65 is not the appropriate and proper remedy to assail the constitutionality of Republic Act No. 10531.[45] Respondents submit that the proper remedy to question the constitutionality of the assailed law is through a petition for declaratory relief under Rule 63.[46]
- There is no meritorious ground or transcendental issue in this case to set aside the doctrine of hierarchy of courts and other technical rules. Respondents argue that neither is there a justiciable controversy involving definite and concrete dispute, as the Petition is based only on hypothetical fears.[47]
- Petitioners also failed to overcome the presumption of constitutionality of Republic Act No. 10531.[48]

The Issue

Are Republic Act No. 10531 and its IRR constitutional?

The Ruling of the Court

The Petitions fail.

A petition for certiorari and prohibition is a proper remedy to raise constitutional questions

Firstly, there is a need to resolve the question on whether the petitioners have taken the correct recourse by filing Petitions for certiorari and Prohibition to declare the unconstitutionality of provisions of Republic Act No. 10531 and its IRR.

It has long been settled that under the Court's expanded jurisdiction, the writs of certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, on the ground of grave abuse of discretion, any act of any branch or instrumentality of the government involving the exercise of discretion on the part of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[49]

In a long line of cases, the Court has laid down that if any governmental branch or instrumentality is shown to have gravely abused its discretion amounting to lack or excess of jurisdiction, and has overstepped the delimitations of its power, courts may set right, undo, or restrain such act by way of certiorari and prohibition.[50]

The foregoing principle provides practical recourse to seek the Court's power of judicial review, which is anchored on Article VIII, Section 1 of the Constitution. The Court emphasized this in *Bayyo Association v. Tugade*: [51]

The Court's power of judicial review is anchored on Section 1, Article VIII, 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.

Thus, judicial power includes the duty of the courts of justice 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." [52]

That a legislative act is the subject of the petition for certiorari and prohibition is also allowed. [53] In *Pimentel v. Legal Education Board*, [54] the Court cited precedence and affirmed the power of judicial review over congressional action:

That it is a legislative act which is being assailed is likewise not a ground to deny the present petitions.

For one, the 1987 Constitution enumerates under Section 5 (2) (a), Article VIII, the Court's irreducible powers which expressly include the power of judicial review, or the power to pass upon the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation.

For another, the Court's expanded jurisdiction, when invoked, permits a review of acts not only by a tribunal, board, or officer exercising judicial, quasi-judicial or ministerial functions, but also by any branch or instrumentality of the Government. "Any branch or instrumentality of the Government" necessarily includes the Legislative and the Executive, even if they are not exercising judicial, quasi-judicial or ministerial functions. As such, the Court may review and/or prohibit or nullify, when proper, acts of legislative and executive officials, there being no plain, speedy, or adequate remedy in the ordinary course of law. [55] (Citations omitted)

In this case, the Court finds that the petitioners availed of the correct remedy of the special civil action for certiorari and prohibition, under Rule 65 of the Rules of Court, to question the constitutionality of the assailed provisions of Republic Act No. 10531 and its IRR.

Determining the existence of an actual controversy

In *Lagman v. Ochoa, Jr.*, [56] the Court explained the requisites for judicial review involving the constitutionality of statutes:

Courts decide the constitutionality of a law or executive act only when the following essential requisites are present: first, there must be an actual case or controversy; second, petitioners must possess locus standi; third, the question of constitutionality must be raised at the earliest opportunity; and fourth, the resolution of the question is unavoidably necessary to the decision of the case itself. These requisites all relate to the justiciability of the issues raised by the parties. If no justiciable controversy is found, this Court may deny the petition as a matter of discretion.

This justiciability requirement is "intertwined with the principle of separation of powers." It cautions the judiciary against unnecessary intrusion on matters committed to the other branches of the government.

Furthermore, the presumption that the legislature and the executive have passed laws and executive acts within the bounds of the Constitution imposes a restraint on the judiciary in rashly resolving questions of constitutionality. In *People v. Vera*: This court is not unmindful of the fundamental criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute. An act of the legislature approved by the executive, is presumed to be within constitutional limitations. The responsibility of upholding the Constitution rests not on the courts alone but on the legislature as well. "The question of the validity of every statute is first determined by the legislative department of the government itself." And a

statute finally comes before the courts sustained by the sanction of the executive. The members of the Legislature and the Chief Executive have taken an oath to support the Constitution and it must be presumed that they have been true to this oath and that in enacting and sanctioning a particular law they did not intend to violate the Constitution. The courts cannot but cautiously exercise its power to overturn the solemn declarations of two of the three grand departments of the government. Then, there is that peculiar political philosophy which bids the judiciary to reflect the wisdom of the people as expressed through an elective Legislature and an elective Chief Executive. It follows, therefore, that the courts will not set aside a law as violative of the Constitution except in a clear case. This is a proposition too plain to require a citation of authorities.[57] (Emphasis supplied, citations omitted)

Lagman emphasizes the four prerequisites for the Court to consider judicial review: (1) existence of an actual case or controversy; (2) locus standi of those who assail the law; (3) the question of constitutionality must be raised at the earliest opportunity; (4) the resolution of the question is the very *lis mota*, or is unavoidably necessary to the decision of the case itself. Yet, as case law instructs, among these four, the most important is the requirement of actual justiciable controversy.

In *Octaviano v. Board of Architecture*,^[58] the Court emphasized the elements in determining whether an actual controversy exists, and how this relates to the requirement of ripeness to allow a valid adjudication under its expanded jurisdiction. The Court explained:

Of utmost importance among the justiciability requirements is the actual justiciable controversy requirement, which exists when: (1) there are actual facts to enable courts to intelligently adjudicate the issues; or (2) there is a clear and convincing showing of a contrariety of legal rights: By constitutional fiat, judicial power operates only when there is an actual case or controversy. This is embodied in Section 1, Article VIII of the 1987 Constitution which pertinently states that "[j]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable. . . ." Jurisprudence provides that an actual case or controversy is one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute." In other words, "[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence." . . . Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions.

Closely related to the requirement of an actual case or controversy is the requirement of ripeness:

A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[59] (Citations omitted)

The ponente, in the case of *Bayyo*, outlined how constitutional litigation can, therefore, be based on actual breach of legal rights, as in "as applied" challenges, or through a threat of direct injury, such a "facial" challenge may be allowed. Thus:

Constitutional challenges based on either the existence of actual facts showing breach or a demonstrable contrariety of legal rights are considered as "as applied" challenges. However, despite lack of these premises for an "as applied" challenge, a party may still challenge a provision's constitutionality through a facial challenge.

Disini v. Secretary of Justice distinguished facial challenge from an "as applied" challenge, as follows: In an "as applied" challenge, the petitioner who claims a violation of his constitutional right can raise any constitutional

ground — absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness. Here, one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. It prohibits one from assailing the constitutionality of the statute based solely on the violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.

But this rule admits of exceptions. A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute. The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence.

An "as applied" challenge "considers only extant facts affecting real litigant" while a facial challenge involves "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."

A facial challenge is considered as a narrow exception to the general rule that there must be an actual case or controversy before the court exercises judicial review:

Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected. It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts.

Thus, *Executive Secretary v. Pilipinas Shell* laid down the exceptional circumstances when a facial review of the law may be allowed, considering the looming threat of constitutional rights violation on these cases:

The first situation involves a statute that flagrantly violates the right to freedom of expression and its cognate rights. Freedom of expression is the cornerstone of a democratic government and occupies the highest rank in the hierarchy of civil liberties. Section 4 of the Constitution states, "No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances." Consequently, a facial challenge is permitted in cases involving freedom of expression and its concomitant rights to prevent prior restrictions on free speech or overly broad language that has a chilling effect on free speech.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, this Court explained:

A facial invalidation of a statute is allowed only in free speech cases, wherein certain rules of constitutional litigation are rightly excepted.

. . . .

The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged. As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an "in terrorem effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.

The second scenario permits judicial review in the absence of actual facts when a violation of fundamental rights is so grievous or imminent that judicial restraint would lead to serious violations of fundamental rights. In these instances, the violation of rights must be so egregious and pervasive that almost any citizen could raise the issue.

In *Parcon-Song v. Parcon*, this Court held:

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

The third instance in which judicial review is appropriate despite the absence of actual facts is when a Constitutional provision invokes emergency or urgent measures. By its very nature, emergency or urgent measures are temporary thus allowing it to avoid judicial review even if its capable of repetition. This contemplates situations in which waiting for an actual dispute or injury to occur may result in irreversible damage or harm to an individual. However, with the risk that the relevant measure would be repealed or rendered obsolete, the filing of a lawsuit or seeking judicial recourse would be futile. In such a situation, this Court may determine the applicable doctrine regarding the provision. This may be applied, but is not limited to, challenges regarding the suspension of habeas corpus, the declaration of martial law, and the exercise of emergency powers.[60] (Emphases supplied, citations omitted)

While exceptions to the rule on justiciability are provided under case law, the general rule remains that ripeness requires the existence of extant facts affecting real litigants. Otherwise, absent an actual controversy where facts have been established, only an academic discussion is to be had. In *Osmeña v. Commission on Elections*,[61] the Court emphasized the necessity of actual facts or empirical data that would prove the undesirable effects that an assailed law is alleged to have had. While eventually the Court in *Osmeña* discussed the case on the merits to guide jurisprudence on such precious rights as right to suffrage and freedom of speech, the practical principles governing justiciability were found to remain true.[62] In *Osmeña*, the Court held that:

NPC v. COMELEC upheld the validity of [Section] 11(b) of [Republic Act] No. 6646 against claims that it abridged freedom of speech and of the press. In urging a reexamination of that ruling, petitioners claim that experience in the last five years since the decision in that case has shown the "undesirable effects" of the law because "the ban on political advertising has not only failed to level the playing field, [but] actually worked to the grave disadvantage of the poor candidate[s]" by depriving them of a medium which they can afford to pay for while their more affluent rivals can always resort to other means of reaching voters like airplanes, boats, rallies, parades, and handbills.

No empirical data have been presented by petitioners to back up their claim, however. Argumentation is made at the theoretical and not the practical level. Unable to show the "experience" and "subsequent events" which they claim invalidate the major premise of our prior decision, petitioners now say "there is no need for 'empirical data' to determine whether the political ad ban offends the Constitution or not." Instead they make arguments from which it is clear that their disagreement is with the opinion of the Court on the constitutionality of [Section] 11(b) of [Republic Act] No. 6646 and that what they seek is a reargument on the same issue already decided in that case. What is more, some of the arguments were already considered and rejected in the *NPC* case.

Indeed, petitioners do not complain of any harm suffered as a result of the operation of the law. They do not complain that they have in any way been disadvantaged as a result of the ban on media advertising. Their contention that, contrary to the holding in *NPC*, [Section] 11(b) works to the disadvantage of candidates who do not have enough resources to wage a campaign outside of mass media can hardly apply to them. . .

What petitioners seek is not the adjudication of a case but simply the holding of an academic exercise. And since a majority of the present Court is unpersuaded that its decision in NPC is founded in error, it will suffice for present purposes simply to reaffirm the ruling in that case. *Stare decisis et non quieta movere*. This is what makes the present case different from the overruling decisions invoked by petitioners.

Nevertheless, we have undertaken to revisit the decision in NPC v. COMELEC in order to clarify our own understanding of its reach and set forth a theory of freedom of speech.[63] (Emphases supplied; citations omitted)

The importance of judicial restraint in dealing with legal questions that lack ripeness and a justiciable controversy supported by empirical data was reiterated by the Court in *Falcis III v. Civil Registrar General*.^[64] In dismissing that case, the Court stated that:

No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable."

This Court does not issue advisory opinions. We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests. If this Court were to do otherwise and jump headlong into ruling on every matter brought before us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing: Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.

As this Court makes "final and binding construction[s] of law[,]" our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system, bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.^[65] (Emphasis supplied, citations omitted)

Here, in both Petitions, the actual government act complained of by the petitioners is the mere passage of Republic Act No. 10531 by Congress and the issuance of its IRR by the DOE. The petitioners allege that the provisions of the law, on their face, are offensive to the Constitution as these threaten the enjoyment of what they claim are constitutionally enshrined rights of cooperatives, as well as the right to due process, and equal protection of their officers and governing board members.

Notably, none of the petitioners have offered actual experience of these supposed harms or any allegation as to how the government has enforced the law to their detriment. The petitioners have had ample opportunity to do so. While the case was originally filed in 2013, the petitioners submitted a Memorandum,^[66] in 2023, in compliance with a Court Resolution requiring such submissions.^[67] The petitioners still failed to cite specific instances in their Memorandum, one full decade after the law was passed and their Petitions were filed. Instead, in their Memorandum, the petitioners merely reiterated the threat of injury to their rights because of the passage of Republic Act No. 10531 and its IRR, not sustained or actual, but only still perceived to be imminent.

In an as-applied challenge, only in concrete terms can the Court successfully adjudicate how the law may be

unconstitutional. A successful constitutional litigation, therefore, requires persons who are assailing a statute to show how the law has violated the rights they claim to have been affected. Otherwise, the absence of an actual fact-rooted controversy emboldens the Court to do policy making on matters well within the police and plenary powers of Congress to determine, and that of the Executive Department, as may be validly delegated.

As held by the Court in *Falcis*:^[68]

It is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned. The judiciary interprets and applies the law. "It does not formulate public policy, which is the province of the legislative and executive branches of government." Thus, it does not — by the mere existence of a law or regulation — embark on an exercise that may render laws or regulations inefficacious.

Lest the exercise of its power amount to a ruling on the wisdom of the policy imposed by Congress on the subject matter of the law, the judiciary does not arrogate unto itself the rule-making prerogative by a swift determination that a rule ought not exist. There must be an actual case, "a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence." (Emphasis supplied)

Be that as it may the Court must now consider whether a facial challenge is warranted here, i.e., to determine whether, on its face, the provisions of Republic Act No. 10531 passes constitutional muster.

A facial challenge is unavailable in this case

The constitutionality of Republic Act No. 10531 has not yet been passed upon by the Court. Relatedly, jurisprudence has not yet provided for the appropriate approach specific to the investigation of the alleged breach or threatened breach of constitutional rights in this case. However, the Court has already laid down the basic parameters to guide constitutional litigation.

In the case of *Calleja v. Executive Secretary*,^[69] the Court extensively laid down the framework for constitutional litigation in this jurisdiction. *Calleja* provided the modes of challenging the constitutionality of statutes, and the nature, approaches (or levels of scrutiny), and tests for the constitutional validity of statutes.^[70] Using the parameters outlined in *Calleja*, which weighed the constitutionality of Republic Act No. 11479 or the Anti-Terrorism Act of 2020,^[71] the Court may also determine the appropriate frame to rule on this petition.

In *Calleja*, the Court stated the following defining characterizations of the modes of challenging the constitutionality of statutes, and when facial challenges may be invoked as an exception to the general doctrine on the justiciability of cases in constitutional litigation:

E. Types of Constitutional Challenges

i. Modes of Challenging the Constitutionality of Statutes

The judicial review of statutes, treaties (as well as other forms of international agreements), and quasi-legislative administrative issuances is wielded in cases where: (1) a statute assailed in view of underlying facts that are either substantiated before trial courts or presented to and admitted by the reviewing court at first instance; or (2) the face of an assailed statute contains provisions that patently contravene protected speech and separation of powers. The first is called an "as-applied" challenge; the second is referred to as a "facial" challenge.

a. As-Applied Challenge

An as-applied challenge calls for the determination of how the law measures up to the established

constitutional limits when these limits are applied to the petitioner's conduct under the disputed law. The court declares the offending part of the law, if severable, to be unconstitutional without affecting the totality of the law. In this kind of challenge, the language of the statute itself does not show an apparent hint of any fundamental flaw; the flaw, if one exists, only emerges when the statute is tested through the crucible of real-world circumstances.

....

b. Facial Challenge

The general mode of challenge of constitutionally-challenged statutes in our jurisdiction is through the as-applied mode, i.e., by examining the statute through the prism of a concrete and discrete set of facts showing the substantial and direct impairment that the statute's enforcement has caused a petitioner's constitutional rights. Under this mode, the petitioner can claim a violation of his constitutional rights such as abuse or due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness, but can only do so only if he asserts the violation of his own right; he cannot assert the right of a third party who is not before the Court.

For the most part, disputes that give rise to situations calling for an ad-applied analysis of statutes often involve a complex interplay and occasional conflict between "legitimate and compelling" governmental interest in preventing crime and individual civil liberties guaranteed by the Bill of Rights; the text of the law is always scrutinized in relation to actual facts experienced and presented as evidence by the parties to the dispute.

A facial challenge, in contrast with and as an exception to an as-applied challenge, can be made — as jurisprudence has established — even prior to the enforcement of a disputed law, based solely on alleged "vagueness" or "overbreadth" of what the law, on its face, provides. It can be made by a petitioner for himself or on behalf of third parties not before the court. Pursuant to the same line of jurisprudence, the challenge — if successful — can result in the invalidity of the entire law.

In other words, the constitutional infirmities appear in the text or "face" of the statute itself even without considering surrounding facts, i.e., even before evidentiary facts have been presented before the court for consideration. The burden is for the challenger to show that no set of circumstances exists under which the assailed legislation could be valid. In this kind of situation, the reviewing court must be careful not to go beyond the statute's face and speculate about "hypothetical" or "imaginary" scenarios.[72] (Emphasis supplied, citations omitted)

While acknowledging that jurisprudence in this jurisdiction has consistently adhered to the scope of facial challenges relative only to free speech cases, the Court, in *Calleja*, clarified that laws curtailing other cognate fundamental rights may also be subject to a facial challenge.[73] The Court thus allowed a facial challenge against the Anti-Terrorism Act of 2020, a penal statute, put only as to its provisions which involve and raise chilling effects on freedom of expression and its cognate rights.[74] The Court explained that:

In sum, the prevailing Philippine jurisprudence is that facial challenges on legislative acts are permissible only if they curtail the freedom of speech and its cognate rights based on overbreadth and the void-for-vagueness doctrine. Facial challenges have not been recognized as applicable to other provisions of the Constitution or the separation of powers. On this point, it is worth repeating that Philippine jurisprudence on facial challenges developed in a different trajectory from the American experience since *Salerno*. And the Court, at this time, finds it improper to expand the scope of facial challenges to all other constitutional rights, as it is not even material, much more necessary for the just disposition of this already complex case. Moreover, it appears that if such position is adopted at this time, the judiciary will be put in a precarious position where it may be inundated with numerous petitions to invalidate statutes as soon as they come into effect.

Furthermore, as a rule, facial challenges are disfavored. As explained by the U.S. Supreme Court in

Washington State Grange v. Washington State Republic Party: Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of "premature interpretation of statutes on the basis of factually barebones records." Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither "anticipate a question of constitutional law in advance of the necessity of deciding it" nor "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that "[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people."

Thus, the Court remains cognizant of the dangers of favoring facial challenges that Washington State Grange identified. A contrary judicial policy may affect the balance which the separation of powers seeks to keep and may effectively turn the Court into a "third chamber of Congress."

Considering the above discussion, the Court grants due course to these consolidated petitions as permissible facial challenges only in relation to the provisions of the [Anti-Terrorism Act] which involve and raise chilling effects on freedom of expression and its cognate rights in the context of actual and not mere hypothetical facts.[75] (Emphasis supplied, citations omitted)

It is thus necessary that a violation of or a threat against the right to free speech and its cognate rights must be alleged for a facial challenge to even be considered.

Here, none of the grounds raised in these Consolidated Petitions refer to these freedoms. Instead, violations of the constitutional provisions on due process, equal protection and on the State policy towards cooperatives are alleged to have been infringed. The Consolidated Petitions can thus neither be admitted as a facial challenge against Republic Act No. 10531.

The petitioners failed to show how preferred constitutional rights have been breached or are threatened to be violated

Notable, nevertheless, in the Consolidated Petitions is the theory of the petitioners that the 1987 Constitution, under Article XII, created a bundle of constitutional rights for cooperatives, namely: (a) to broaden the base of their ownership; (b) to own, establish and operate economic enterprise; and (c) to be under a government agency that promotes the viability and growth of cooperatives as instruments for social justice and economic development.[76]

The relevant provisions of the Constitution, cited as bases by the petitioners, are the following:

ARTICLE XII

National Economy and Patrimony

SECTION 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises

against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

....

SECTION 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

....

SECTION 15. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development. (Emphasis supplied)

The petitioners believe that the foregoing provisions under Article XII of the Constitution should be considered as having institutionalized and enshrined their claimed rights, and their alleged violation may therefore be sufficient basis to invoke a valid constitutional challenge. Without delving into the merits of this argument, jurisprudence should circumscribe the approach by the Court in taking up this novel proposition by the petitioners.

The Court, therefore, will take a look into the history of case law to determine what constitutional rights have been considered as occupying a preferential position in "the hierarchy of rights."

One of the earlier references by the Court to a "hierarchy of human rights" was in 1980 in the case of *Biscarra v. Republic*,^[77] when the Court pronounced that the right to life ranks second to none in the hierarchy of human rights. This was reiterated in *Basa v. Workmen's Compensation Commission*.^[78]

It was also clarified by case law that the Bill of Rights took precedence over the right of the State to prosecute, as was established in *Allado v. Diokno*^[79] in 1994, then in *Sales v. Sandiganbayan*,^[80] *Uy v. Ombudsman*,^[81] *Lejano v. People*,^[82] *De Lima v. Guerrero*,^[83] *Genuino v. De Lima*,^[84] and *People v. Pagal*.^[85]

The primacy of the Bill of Rights was further strengthened in *OCA v. Guico*,^[86] which provided that Article III of the Constitution, occupies a position of primacy in the fundamental law much higher than the articles on government power.

Guico also emphasized that the right against unreasonable search and seizure is at the top of the hierarchy of rights, next only to, if not on the same plane as, the right to life, liberty and property. This case was founded on earlier doctrine espoused in *Quidet v. People*,^[87] and reiterated in *People v. Jesalva*,^[88] *Rimando v. People*,^[89] *People v. Gimpaya*,^[90] *Inmates of the New Bilibid Prison vs. De Lima*,^[91] *People v. Domingo*,^[92] and *Robles v. People*.^[93]

Nevertheless, the Court provided some nuance in the case of *Miranda v. Tuliao*,^[94] where it provided that human rights enjoy a higher preference in the hierarchy of rights when compared to the regime of property rights.

The freedom of religion also features prominently in jurisprudence as an exalted right. In the 1996 case of *Iglesia ni Cristo v. Court of Appeals*,^[95] the Court recognized that freedom of religion has been accorded a preferred status by the framers of our fundamental laws, past and present. This is reiterated in *Estrada v. Escritor*,^[96] which states that although not unlimited, religious freedom enjoys a preferred position in the hierarchy of values. The Court further clarified in *Spouses Imbong v. Ochoa*,^[97] and in *Re: Valenciano*,^[98] that not any interest of the State would suffice to prevail over the right to religious freedom as this is a fundamental right that enjoys a

preferred position in the hierarchy of rights, the most inalienable and sacred of all human rights.

Similarly important is the right to suffrage, which the Court in *Akbayan v. Commission on Elections*[99] and *PDP-Lakas v. COMELEC*,[100] recognized as being accorded a prime niche, owing to our nature as a representative democracy, in the hierarchy of rights embodied in the fundamental law.

Finally, freedom of expression and its cognate rights have been consistently considered by case law as a right with a preferred status, which at times may be one of the highest. In the case of *Chavez v. Gonzales*,[101] the Court explained that the freedom of expression has gained recognition as a fundamental principle of every democratic government, and given a preferred right that stands on a higher level than substantive economic freedom or other liberties. In *Lopez v. People*,[102] and the case of *Diocese of Bacolod v. COMELEC*,[103] the Court reiterated that freedom of expression enjoys an exalted place in the hierarchy of constitutional rights, while in *Spouses Imbong v. Ochoa*,[104] it was further established by the Court that intellectual liberty occupies a place inferior to none in the hierarchy of human values.

Furthermore, in *The Diocese of Bacolod*,[105] the freedom of assembly was mentioned by the Court as a cognate right where in the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position. In *1-United Transport Koalisyon v. COMELEC*,[106] and in *Re: Lorraine Badoy*,[107] the Court also recognized the preferred status of the freedom of the press in conjunction with the freedom of speech as being now deeply embedded in our jurisprudence. As further explained in the case of *ABS-CBN v. Ampatuan*,[108] "the freedoms of speech, of expression, and of the press are distinct but complementary freedoms occupying preferred status in the hierarchy of rights. They are exercised to mobilize people based on truth or an understanding of what the circumstances are. Following these fundamental freedoms are the right to petition the government for redress of grievances and its cognate rights to freedom of assembly and association."

The calibration of where certain constitutional rights are situated in our hierarchy of values and rights is related to the Court's duty to balance the powers and interest of the State against the rights and liberties of the sovereign people, as well as, when necessary, determine the order of precedence between constitutional rights.

As stated in *Calleja*:

In other words, judicial review is simply the exercise of judicial power, the objective of which is to review the constitutionality of the act or acts of the other co-equal branches of government or the offices and agencies under them.

However, the courts, when they so act, do not thereby cross constitutional boundary lines and are not, in fact, rendered more powerful than the other two branches of government. Their authority merely confirms that in our governmental system, the Constitution is supreme and all three branches of government must keep within the limits of their respective powers. Even the judicial branch must keep within the constitutional limits of its power to check grave abuse of discretion. Accordingly, the Constitution circumscribes judicial power in two ways: first, it imposes certain requisites and conditions before a court may activate its judicial power and assume jurisdiction to resolve a case; and second, it requires the courts to apply specific methods of judicial review, including the appropriate level of judicial scrutiny and tools of constitutional interpretation and/or statutory construction. As such, judicial power has been described as the "distinguished but delicate duty of determining and defining constitutional meaning, divining constitutional intent, and deciding constitutional disputes." [109] (Emphases supplied; citations omitted)

In particular, the level of scrutiny the Court utilizes depends on the level of protection accorded by the Constitution to the fundamental right allegedly affected by the law; the gravity of the governmental objective sought through the law; and the degree of the law's interference on the affected fundamental right.[110]

Jurisprudence has provided us three levels or gradations of scrutiny through the years: the rational basis scrutiny, the intermediate or means-end scrutiny, and the strict scrutiny. The Court characterized the parameters for the employment of these approaches in this way:

The rational-basis scrutiny is appropriate where the law is merely regulatory rather than prohibitive, it is narrowly targeted and it does not impact protected rights. In general, a rational-basis scrutiny ascertains whether the law is rationally related to a legitimate government purpose. A soft rational-basis scrutiny accords a presumption of validity to a law of longstanding application, such as on vehicle registration. A hard rational-basis scrutiny suspends any presumption of validity and weighs the public interest sought to be advanced by the law vis-à-vis any countervailing interest which is peculiar to a party, such as the right to private property.

Both intermediate or means-end scrutiny and strict scrutiny are appropriate where the law implicates a right that is protected by the Constitution, or a right that is enjoyed by persons who are protected by the Constitution, such as Overseas Filipino Workers. However, intermediate scrutiny shall be employed if the law is content-neutral in that it is aimed merely at the time, place, or manner of exercise of a protected right. In that event, the Court ascertains whether the law (1) serves an important government interest; (2) it is reasonably appropriate for the purpose of advancing said government interest; and (3) it narrowly tailors the burden on protected rights only to the extent necessary to advance the government interest.

Strict judicial scrutiny shall be employed where the core content of the protected right or the right of a protected person is burdened by the law, or where a suspect classification based on race, sex, or religion is adopted. However, intermediate review is sufficient where the core of a protected right to speech is merely unnecessarily burdened by a law through overbreadth. When engaging in strict scrutiny, the Court suspends the presumption of regularity of official conduct and, by extension, the presumption of constitutionality of the law. It inquires whether the government has established that (1) there is a distinctly compelling governmental interest; and (2) the law is narrowly designed to achieve said governmental interest. (Citations omitted).[111]

In the foregoing examination of case law, there is scant evidence to suggest that a protected constitutional right is threatened by Republic Act No. 10531. It must be noted that the petitioners offer no legal justification or case law to support their theory of constitutional cooperative rights.

Serious allegations of undue delegation of legislative powers and Constitutional violations provide bases for the Court's exercise of judicial review

It does not escape the Court's attention, nonetheless, that the petitioners strongly contend that the enactment of Republic Act No. 10531 constitutes a grave violation of the Constitution by unduly delegating legislative power, and breaching the equal protection and due process clauses.

On this platform of contentions, the Court agrees with the petitioners that there is a justiciable controversy that warrants the power of judicial review. This is consistent with the Court's duty – lest it shirk away from its mandate to declare executive and legislative acts void when violative of the Constitution.[112]

Thus, in *Pimentel*, the Court explained how the enactment and subsequent implementation of an assailed law creates an actual justiciable controversy:

Concededly, the Court had exercised the power of judicial review by the mere enactment of a law or approval of a challenged action when such is seriously alleged to have infringed the Constitution. In *Pimentel, Jr. v. Aguirre*: First, on prematurity. According to the Dissent, when "the conduct has not yet occurred and the challenged construction has not yet been adopted by the agency charged with administering the administrative

order, the determination of the scope and constitutionality of the executive action in advance of its immediate adverse effect involves too remote and abstract an inquiry for the proper exercise of judicial function."

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

In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld. Once a controversy as to the application or interpretation of a constitutional provision is raised before this Court[. . .] it becomes a legal issue which the Court is bound by constitutional mandate to decide.

[. . .]

As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government.

In the same vein, the Court also held in *Tatad v. Secretary of the Department of Energy*:

[. . .] Judicial power includes not only the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, but also the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. The courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. Where the statute violates the Constitution, it is not only the right but the duty of the judiciary to declare such act unconstitutional and void.

By the same token, when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws, as in the present case, settling the dispute becomes the duty and the responsibility of the courts.[113] (Emphasis in the original; citations omitted)

Similarly, as pointed out by Senior Associate Justice Marvic M.V.F. Leonen,[114] with regard to an allegation of undue delegation of legislative power, such an issue cuts directly to "the very system of constitutional checks and balances ensured by the separation among the three co-equal branches of government."

In *BOCEA v. Secretary Teves*,[115] quoting *Abakada v. Guro Partylist v. Ermita*,[116] the Court explained the underlying doctrine of separation of powers:

The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. Necessarily imbedded in this doctrine is the principle of non-delegation of powers, as expressed in the Latin maxim *potestas delegata non delegari potest*, which means "what has been delegated, cannot be delegated." This doctrine is based on the ethical principle that such delegated power constitutes not only a right but a duty

to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.[117] (Citation omitted)

Considering the foregoing, a justiciable controversy exists, and the Court shall now determine the constitutionality of Republic Act No. 10531 and its IRR.

The petitioners failed to overcome the presumption of constitutionality of Republic Act No. 10531 and its IRR

Fundamental to our legal system is the principle that a law is presumed valid and constitutional absent proof of clear and unequivocal breach of the Constitution.[118] This presumption of constitutionality informs the Court's approach to petitions seeking the invalidation of statutes. In *Basco v. PAGCOR*,[119] the Court explains:

As We enter upon the task of passing on the validity of an act of a co-equal and coordinate branch of the government We need not be reminded of the time-honored principle, deeply ingrained in our jurisprudence, that a statute is presumed to be valid. Every presumption must be indulged in favor of its constitutionality. This is not to say that We approach Our task with diffidence or timidity. Where it is clear that the legislature or the executive for that matter, has over-stepped the limits of its authority under the constitution, We should not hesitate to wield the axe and let it fall heavily, as fall it must, on the offending statute.

In *Victoriano v. Elizalde Rope Workers' Union, et al*, the Court thru Mr. Justice Zaldivar underscored the —". . . thoroughly established principle which must be followed in all cases where questions of constitutionality as obtain in the instant cases are involved. All presumptions are indulged in favor of constitutionality; one who attacks a statute alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld and the challenger must negate all possible basis; that the courts are not concerned with the wisdom, justice, policy or expediency of a statute and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted." [120] (Citations omitted)

This well-entrenched doctrine that every law is presumed to be valid still holds sway[121] and dictates the way the Court will decide this case. In *Sinsuat v. Ebrahim*,[122] the Court reiterated that the presumption of constitutionality limits the power of judicial review, thus:

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. Even then, this 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 of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[123] (Emphasis supplied)

Furthermore, in the case of *LAMP v. Secretary of Budget and Management*,[124] the Court held that:

In determining whether or not a statute is unconstitutional, the Court does not lose sight of the presumption of validity accorded to statutory acts of Congress. In *Fariñas v. The Executive Secretary*, the Court held that:

Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. Every presumption should be indulged in favor of the constitutionality and the burden of proof is on the party alleging that there is a clear and unequivocal breach of the Constitution.

To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on . . . baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.[125] (Emphasis in the original, citations omitted)

The Court, therefore, must weigh whether the assertions of the petitioners overcome the presumption of constitutionality that the assailed law enjoys. Here, the Court determines that Republic Act No. 10531 and its IRR are a valid exercise by the State of its police power.

Police power has been described as the power of the State, primarily vested in the legislature, to promote public welfare by restraining and regulating the use of liberty and property—although it virtually extends to "all public needs" as it is not capable of an exact definition for being comprehensive in order to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus, assuring the greatest benefits. Stated differently, it may be said to be "that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society." [126] While purposefully veiled in general terms to underscore its all-comprehensive embrace, police power is considered to be consisting of (1) an imposition of restraint upon liberty or property, that is for the purpose of (2) fostering the common good.[127]

In *Lozano v. Martinez*, [128] the Court explained that:

The police power of the state has been described as "the most essential, insistent and illimitable of powers" which enables it to prohibit all things hurtful to the comfort, safety and welfare of society. It is a power not emanating from or conferred by the constitution, but inherent in the State, plenary, suitably vague and far from [from] precisely defined, rooted in the conception that man in organizing the State and imposing upon the government limitations to safeguard constitutional rights did not intend thereby to enable individual citizens or groups of citizens to obstruct unreasonably the enactment of such salutary measures to ensure communal peace, safety, good order and welfare.[129]

The scope of police power, ever-expanding to meet the exigencies of the times, even to anticipate the future where it could be done,[130] is also designed to address the needs and demands of society and of nations, whose interests have multiplied to unimaginable proportions.[131]

Furthermore, police power finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter. Along with the taxing power and the power of eminent domain, it is inborn in the very fact of statehood and sovereignty. It is a fundamental attribute of government that has enabled it to perform the most vital functions of governance.[132]

Jurisprudence has invariably held that police power extends over holders of legislative franchises.

In *Manila Jockey Club, Inc. v. Court of Appeals*,^[133] the Court described the nature of a franchise and its susceptibility to the State's exercise of police power in this wise:

Franchise laws are privileges conferred by the government on corporations to do that "which does not belong to the citizens of the country generally by common right". As a rule, a franchise springs from contracts between the sovereign power and the private corporation for purposes of individual advantage as well as public benefit. Thus, a franchise partakes of a double nature and character. In so far as it affects or concerns the public, it is public juris and subject to governmental control. The legislature may prescribe the conditions and terms upon which it may be held, and the duty of grantee to the public exercising it.^[134] (Emphasis supplied, citations omitted).

Similarly, in *New Vision Satellite Network v. Provincial Government of Cagayan*,^[135] the Court further held that:

In *Associated Communications & Wireless Services v. NTC*, citing the earlier case of *Radio Communication of the Phils., Inc. v. National Telecommunications Commission*, We defined a franchise as a grant or privilege from the sovereign power. We stated: A franchise started out as a "royal privilege or (a) branch of the King's prerogative, subsisting in the hands of a subject." This definition was given by Finch, adopted by Blackstone, and accepted by every authority since (*State v. Twin Village Water Co.*, 98 Me 214, 56 A 763 [1903]). Today, a franchise, being merely a privilege emanating from the sovereign power of the state and owing its existence to a grant, is subject to regulation by the state itself by virtue of its police power through its administrative agencies.^[136] (Emphasis supplied; citations omitted)

While the case of *Manila International Ports v. PPA*^[137] clarified that franchises involve property rights protected by the due process requirement of the Constitution, the Court nevertheless emphasized that a franchise is still characterized as a special privilege in the sense that its grant is not a demandable right, and that when granted, is subject to the amendment, alteration or repeal by Congress.

In these cases here, the petitioners involved are holders of legislative franchises. Considering that the petitioners operate under legislative franchises, their enterprises fall squarely under the regulation of the State.

Moreover, it cannot be emphasized enough that the very nature of the business of electric cooperatives, being imbued with public interest, entails the necessity for the State to guard closely against abuse and inefficiency. The law treats electricity not just like any property, and electric cooperative not just like any property owner.^[138] As held by the Court in *Manila Electric Co. v. Yu*:^[139]

Electricity is a basic necessity the generation and distribution of which is imbued with public interest, and its provider is a public utility subject to strict regulation by the State in the exercise of police power. Failure to comply with these regulations will give rise to the presumption of bad faith or abuse of right.^[140] (Emphasis supplied, citation omitted)

Clearly, the State enjoys the exercise of police power over electric cooperatives. The remaining question is whether the State, in enacting Republic Act No. 10531 and its IRR, validly exercised this police power.

In the *Provincial Bus Operators Association of the Philippines v. DOLE*,^[141] citing the landmark case of *Ichong v. Hernandez*,^[142] the Court reiterated how 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.

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 has been made, there must be a reasonable basis for said distinction.[143] (Emphasis supplied)

As laid out in *Ichong*, the standard test for a valid exercise of the State's police power vis-à-vis the requirement of due process and equal protection of law is whether the law is reasonable.

In *Republic v. Maria Basa Express Jeepney Operators*,^[144] the Court reiterated this standard, thus:

[T]he State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations.^[145] (Emphasis supplied)

In *White Light Corp. v. City of Manila*,^[146] referring to the reasonable exercise of police power, the Court further explained that it must also be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work. More importantly, a reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded.

Against this jurisprudential standard of reasonable necessity, the Court finds a reasonable relation and necessity between the purposes of the law and the means employed for their accomplishment in this case.

Section 2 of Republic Act No. 10531, which declares the relevant national policies of the law and its avowed purposes, emphasizes the need to promote the sustainable development of rural areas through electrification, to reform and strengthen the NEA and the ecosystem for electric cooperatives in pursuit of a national electrification program, and to prepare and empower electric cooperatives to sustainability operate with the changes brought about by the Electric Power Industry Reform Act of 2001. These purposes strongly manifest the public nature of the statute. Considering that electricity is a basic necessity the generation and distribution of which is imbued with public interest,^[147] indubitably, Republic Act No. 10531 is firmly grounded on public interest and welfare.

A close reading of the powers of the NEA, provided under the law's Sections 5, 6, and 7, and the safeguards to the integrity and professionalism of electric cooperative officers under Sections 8, 10, 11 and 12, also reveal the intention of the legislature to invest the NEA with sufficient authority and power to closely supervise and monitor the operations of all electric cooperatives, whether registered with the NEA, CDA, or SEC.

The legislative grant of vast powers to the NEA is perfectly understandable considering that the NEA is mandated, under Section 2 of Republic Act No. 10531, to perform the daunting tasks of bringing electricity, through electric cooperatives, to the countryside even in missionary or economically unviable areas.

Describing the foregoing mandate for national and rural electrification as a massive task is an understatement. In order to perform such mandate, it is reasonably necessary that the NEA exercise a certain degree of supervision and control over the operations of all electric cooperatives. The law precisely envisions a proactive government that pushes electric cooperatives to their highest possible operational fitness. Otherwise, the lofty aim of Republic

Act No. 10531 to bring electricity to all corners of the country may remain unrealized.

The undeniable necessity for electrification to achieve national progress^[148] and ubiquitousness of electricity in daily life demand a measured viewpoint. Clearly, the NEA's powers under Republic Act No. 10531 and its IRR are necessary to address the problems that plague electric cooperatives, including but not limited to, financial woes, mismanagement,^[149] lack of competent officers, and delayed intervention by the government.^[150] The Court finds that these powers are not arbitrary, and are reflective of the government's expertise in dealing with various concerns involving electric cooperatives.

In contrast, the Court views the arguments forwarded by the petitioners assailing Republic Act No. 10531 to be unwarranted. Verily, the law will affect the operations of the electric cooperatives and the lives of their officers. Through the reforms that will be undertaken by the NEA, some parties may find consequent circumstances unfavorable to them. Nevertheless, the Court reminds that a claim of contrariety of legal rights alone cannot surmount the validity of a law. In *IBP v. Purisima*,^[151] the Court emphasized that:

Thus, in asserting contrariety of rights, it is not enough to merely allege an incongruence of rights between the parties. The party availing of the remedy must demonstrate that the statute is so contrary to his or her rights that there is no other interpretation other than that there is a factual breach of rights. There can be no clearly demonstrable contrariety of rights when there are possible ways to interpret the statutory provision, ordinance or a regulation that will save its constitutionality. In other words, the party must clearly demonstrate contrariety of rights by showing that the only possible way to interpret the provision is unconstitutional, that it is the very *lis mota* of the case, and therefore, ripe for adjudication.

Thus, against the presumption of constitutionality that a validly enacted law enjoys, the Court must exercise judicial restraint and not sustain the petitioners' claims for their abject failure to show the need to do so.

All told, the Court finds that the amendments introduced by Republic Act No. 10531 show a reasonable relation between their purpose and the means employed for their accomplishment. Republic Act No. 10531 is a valid exercise by the State of its police power.

Relatedly, the prayers for the issuance of a Writ of Preliminary Prohibitory Injunction and/or Temporary Restraining Order, and Status Quo Ante Order are denied.

ACCORDINGLY, the Consolidated Petitions are DISMISSED.

SO ORDERED.

Gesmundo, C.J., Inting, Zalameda, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, Kho, Jr., and Villanueva, JJ., concur.

Leonen, SAJ., see separate concurring opinion.

Caguioa, J., see concurring and dissenting opinion.

Hernando,^[*] J., on official business.

Lazaro-Javier,^[**] J., on official business but left a concurring vote.

[*] On official business.

[**] On official business but left a concurring vote.

[1] Rollo (G.R. No. 207894), pp. 3-78; Rollo (G.R. No. 209380), pp. 3-60.

[2] Approved on May 7, 2013.

[3] Department of Energy Department Circular No. DC 2013-07-0015, entitled Prescribing the Implementing Rules and Regulations of Republic Act No. 10531, otherwise known as the "National Electrification Administration Reform Act of 2013", approved on July 26, 2013.

[4] Rollo (G.R. No. 209380), p. 9.

[5] Id.

[6] Presidential Decree No. 269 (1973), as amended by Presidential Decree No. 1645 (1979).

[7] Rollo (G.R. No. 207894), pp. 3-78.

[8] Rollo (G.R. No. 209380), pp 3-60.

[9] Id. at 5.

[10] Id.

[11] Id. at 6.

[12] Id.

[13] Id.

[14] Id. at 7.

[15] Id.

[16] Id. at 8.

[17] Id.

[18] Id. at 146-151.

[19] Id.

[20] Id.

[21] Id.

[22] Id.

[23] Id.

[24] Id.

[25] Id.

[26] Id.

[27] Id.

[28] Id.

[29] Id. at 741-B.

[30] Id. at 15-16.

[31] Id. at 13-14.

[32] Id. at 16.

[33] Id. at 17-18.

[34] Id.

[35] Id. at 28-29.

[36] Id. at 30-31.

[37] Id. at 31-32.

[38] Id. at 35-45.

[39] Id. at 53-56.

[40] Id. at 8.

[41] Id. at 16-19.

[42] Id. at 19-21

[43] Id. at 21-29.

[44] Id. at 581-701.

[45] Id. at 595-603.

[46] Id. at 603-605.

[47] Id. at 605-617.

[48] Id. at 618-620.

[49] Bayyo Association, Inc. v. Tugade, 944 Phil. 316, 323 (2023) [Per J. Singh, En Banc].

[50] COURAGE v. Abad, 889 Phil. 699, 728 (2020) [Per J. Leonen, En Banc].

[51] 944 Phil. 316 (2023) [Per J. Singh, En Banc].

[52] Id. at 323.

[53] See Pimentel v. Legal Education Board, 862 Phil. 120 (2019) [Per J. J.C. Reyes, Jr., En Banc].

[54] Id.

[55] Id. at 177.

[56] Lagman v. Ochoa, Jr., 888 Phil. 434 (2020) [Per J. Leonen, En Banc].

[57] Id. at 470-472.

[58] 946 Phil. 181 (2023) [Per J. Leonen, En Banc].

[59] Id. at 192-193.

[60] Bayyo Association, Inc. v. Tugade, 944 Phil. 316, 342-345 (2023) [Per J. Singh, En Banc].

[61] 351 Phil. 692 (1998) [Per J. Mendoza, En Banc].

- [62] Id. at 704-705.
- [63] Id. at 703-705.
- [64] 861 Phil. 388 (2019) [Per J. Leonen, En Banc].
- [65] Id. at 438-439.
- [66] Rollo (G.R. No. 209380), pp. 550-578.
- [67] Id. at 508-509.
- [68] *Falcis III v. Civil Registrar General*, 861 Phil. 388 (2019) [Per J. Leonen, En Banc].
- [69] *Calleja v. Executive Secretary*, 918-B Phil. 1 (2021) [Per. J. Carandang, En Banc].
- [70] Id. at 315-321.
- [71] Id. at 331.
- [72] Id. at 319-321.
- [73] See Id.
- [74] See Id.
- [75] Id. at 80-81.
- [76] Rollo (G.R. No. 207894), pp 28-29.
- [77] 180 Phil. 209 (1980) [Per J. Makasiar, En Banc].
- [78] 191 Phil. 127 (1981) [Per J. Makasiar, First Division].
- [79] 302 Phil. 213 (1994) [Per J. Bellosillo, First Division].
- [80] 421 Phil. 176 (2001) [Per J. Ynares-Santiago, First Division].
- [81] 578 Phil. 635 (2008) [Per J. Brion, En Banc].
- [82] 652 Phil. 512 (2010) [Per J. Abad, En Banc].
- [83] 819 Phil. 616 (2017) [Per J. Velasco, Jr., En Banc].
- [84] 829 Phil. 691 (2018) [Per J. Reyes, Jr., En Banc].
- [85] 886 Phil. 570 (2020) [Per J. Gesmundo, En Banc].
- [86] 906 Phil. 20 (2021) [Per J. Lopez, J., En Banc].
- [87] 632 Phil. 1 (2010) [Per J. Del Castillo, Second Division].
- [88] 811 Phil. 299 (2017) [Per J. Jardaleza, Third Division].
- [89] 821 Phil. 1086 (2017) [Per J. Velasco, Jr., Third Division].
- [90] 823 Phil. 485 (2018) [Per J. Caguioa, Second Division].
- [91] 854 Phil. 675 (2019) [Per J. Peralta, En Banc].

- [92] 905 Phil. 378 (2021) [Per J. Delos Santos, Third Division].
- [93] 945 Phil. 68 (2023) [Per J. Caguioa, Third Division].
- [94] 520 Phil. 907 (2006) [Per J. Chico-Nazario, First Division].
- [95] 328 Phil. 893 (1996) [Per J. Puno, En Banc].
- [96] 455 Phil. 411 (2003) [Per J. Puno, En Banc].
- [97] 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].
- [98] 806 Phil. 822 (2017) [Per J. Mendoza, En Banc].
- [99] 407 Phil. 618 (2001) [Per J. Buena, En Banc].
- [100] 912 Phil. 110 (2021) [Per J. Lopez, M., En Banc].
- [101] 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].
- [102] 658 Phil. 20 (2011) [Per J. Del Castillo, First Division].
- [103] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].
- [104] 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].
- [105] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].
- [106] 758 Phil. 67 (2015) [Per J. Reyes, En Banc].
- [107] 946 Phil. 1 (2023) [Per SAJ. Leonen, En Banc].
- [108] 941 Phil. 182 (2023) [Per SAJ. Leonen, En Banc].
- [109] 918-B Phil. 1, 331-332 (2021) [Per J. Carandang, En Banc].
- [110] Id. at 334.
- [111] Id. at 334-335.
- [112] Quezon for Environment v. Medialdea, 960 Phil. 253, 266 (2024) [Per J. Singh, En Banc].
- [113] Pimentel v. Legal Education Board, 862 Phil. 120, 185-186 (2019) [Per J. Reyes, Jr., En Banc].
- [114] SAJ Leonen, Concurring Opinion at 8.
- [115] 677 Phil. 636 (2011) [Per J. Villarama, Jr., En Banc].
- [116] 506 Phil. 1 (2005) [Per J. Austria-Martinez, En Banc].
- [117] Id. at 107-108.
- [118] Aguilar v. BSP, G.R. No. 254333, January 14, 2025 [Per J. Leonen, Second Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.
- [119] 274 Phil. 323 (1991) [Per J. Paras, En Banc].
- [120] Id. at 334-335.
- [121] Sanota v. Bureau of Customs, 952 Phil. 106 (2024) [Per J. J. Lopez, En Banc] citing Angara v. The

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

[122] 958 Phil. 676 (2024) [Per J. Zalameda, En Banc].

[123] Id. at 692-693.

[124] 686 Phil. 357 (2012) [Per J. Mendoza, En Banc].

[125] Id. at 372-373.

[126] Board of Commissioners v. Wenle, 937 Phil. 148 (2023) [Per C.J. Gesmundo, En Banc].

[127] PASEI v. Drilon, 246 Phil. 393 (1988) [Per J. Sarmiento, En Banc].

[128] 230 Phil. 406 (1986) [Per J. Yap, En Banc].

[129] Id. at 422.

[130] Edu v. Ericta, 146 Phil. 469 (1970) [Per J. Fernando, En Banc].

[131] Republic v. Maria Basa Express Jeepney Operators and Drivers Association, 928 Phil. 182 (2022) [Per J. J. Lopez, En Banc].

[132] PASEI v. Drilon, 246 Phil. 393 (1988) [Per J. Sarmiento, En Banc].

[133] 360 Phil. 367 (1998) [Per J. Quisumbing, First Division].

[134] Id. at 380.

[135] 906 Phil. 698 (2024) [Per J. J. Lopez, Third Division].

[136] Id. at 708-709.

[137] 918-A Phil. 144 (2021) [Per J. Hernando, En Banc].

[138] Samar II Electric Cooperative Inc. v. Estrella, 550 Phil. 523 (2007) [Per J. Austria-Martinez, Third Division].

[139] 942 Phil. 722 (2023) [Per J. Kho, Jr., Second Division].

[140] Id. at 729.

[141] 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

[142] 101 Phil. 1155 (1957) [Per J. Labrador, En Banc].

[143] Id.

[144] 928 Phil. 182 (2022) [Per J. J. Lopez, En Banc].

[145] Id. at 259.

[146] 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

[147] Manila Electric Co. v. Yu, 942 Phil. 722 (2023) [Per J. Kho, Jr., Second Division].

[148] See Kris Francisco and Michael Ahrigo, Electricity Supply Interruptions and Its Impact on Local Economies, Philippine Institute for Development Studies, December 2023.

[149] See Epictetus Patalinghug, Professor Emeritus, University of the Philippines Virata School of Business, An

Analysis of the Philippine Electric Power Industry, delivered at the International Conference on the "Challenges to Development: Innovation and Change in Regulation and Competition." October 13-15, 2003, available at <https://www.ombudsman.gov.ph/UNDP4/challenges-to-development-innovation-and-change-in-regulation-and-competition/index.html> (last accessed October 27, 2025).

[150] Rollo (G.R. No. 209380), p. 655.

[151] 940 Phil. 589 (2023) [Per J. Leonen, En Banc].

SEPARATE CONCURRING OPINION

LEONEN, SAJ.:

I concur with the ponencia's dismissal of the consolidated Petitions questioning the constitutionality of several provisions within Republic Act No. 10531[1] and its Implementing Rules and Regulations. The ponencia astutely discussed the prevailing standards for determining the existence of an actual case or controversy. I offer this separate opinion to support the ponencia's discussions and to further clarify this Court's processes for resolving constitutional issues and challenges.

The consolidated Petitions for Certiorari, filed under Rule 65 of the Rules of Court, were brought by several electric cooperatives represented by their members and officers. Their Petitions assail several provisions of Republic Act No. 10531, pertaining to the supervisory powers and functions of the National Electrification Administration (the Administration).[2]

According to petitioners, electric cooperatives enjoy a "bundle of constitutional rights for cooperatives,"[3] which are contained in Article XII of the Constitution. These rights allegedly empower electric cooperatives to broaden their ownership bases, own and operate their respective enterprises, and be regulated in a manner that enhances "the viability and growth of cooperatives as instruments for social justice and economic development." [4] Petitioners further argue that Republic Act No. 10531 delegates disciplinary powers to the Administration in excess of constitutional boundaries.[5]

Specifically, petitioners question the constitutionality of the following provisions in Republic Act No. 10531: (1) Section 6, which outlines the Administration's supervisory powers over board members and officers of electric cooperatives;[6] (2) Section 7, which provides the Administration's step-in and take-over powers;[7] (3) Section 11, which imposes minimum qualifications for board members and officers under the "fit and proper rule;"[8] (4) Section 10, which lists additional qualifications for board members and officers to ensure their insulation from local politics;[9] (5) Section 12, which discusses the registration requirements for electric cooperatives; and (6) Section 14, detailing the penalties for violations of Republic Act No. 10531's provisions.[10]

According to petitioners, the assailed provisions of Republic Act No. 10531 infringe upon their right to establish and foster an electricity industry that serves the ends of social justice, to pursue optimum economic development, and to foster the growth of cooperatives.[11]

In response, respondents argue that petitioners availed of the wrong procedural recourse and that the Petitions failed to establish the grounds for reviewing the constitutionality of Republic Act No. 10531.[12]

Thus, the sole issue before this Court is whether the assailed provisions of Republic Act No. 10531 are constitutional. In determining whether this Court may examine the constitutionality of the assailed law, the ponencia correctly discussed the prevailing processes for determining whether this Court may exercise its power

of judicial review.

I

Questions of constitutionality invoke this Court's power of judicial review, provided for by the 1987 Constitution:[13]

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.[14]

The second paragraph of the cited provision expands the courts' power of judicial review in response to abuses of the political question doctrine during former President Ferdinand Marcos, Sr.'s dictatorship through martial law.[15] Following the Judiciary's empowerment under the 1987 Constitution, our jurisprudence has shown how parties have raised issues of constitutionality through four general modes: (1) violations of fundamental constitutional rights, such as the right to due process,[16] to equal protection of the law,[17] and to freedom of speech and expression, and its cognate rights;[18] (2) the constitutional separation of powers among the co-equal branches of government;[19] (3) the violation of constitutional processes, requirements, or policies;[20] and (4) the processes involved in amending and revising the Constitution.[21]

The expansion of the power of judicial review has broadened the Court's avenues to delineate constitutional boundaries in line with its mandate "to determine the nature, scope and extent" of government powers.[22] However, the continued development of the standards for exercising this power reveals how it remains bounded by respect for the separation of government powers.[23] These standards are now manifested in the Court's interpretations of the requirements for judicial review, as aptly discussed by the ponencia: (1) the existence of an actual case or controversy; (2) the invoking party's locus standi; (3) that the constitutional question be raised at the earliest opportunity; and (4) that the resolution of the question of constitutionality is the *lis mota* of the case.[24]

II

The parties place distinct importance upon the actual case or controversy requirement. I agree with the ponencia's emphasis of its discussion on this requirement. As held in *Executive Secretary v. Pilipinas Shell Petroleum Corp.*: [25]

In the list of requisites, the most significant is the presence of an actual case or controversy. For it to exist, there must be a conflict of legal rights susceptible of judicial resolution. Moreover, there must be actual facts from which the courts can determine whether a constitutional text has been violated.[26] (Citations omitted; Emphasis supplied)

Guingona, Jr. v. Executive Secretary [27] defined "an actual case or controversy" as "a conflict of legal rights or an assertion of opposite legal claims, which can be resolved on the basis of existing jurisprudence." [28]

This Court has repeatedly emphasized the importance of the "actual case or controversy" requirement because it ensures judicial respect for the separation of powers and obviates the possibility of this Court rendering advisory opinions. As discussed in a separate opinion in *Private Hospitals Association, Inc. v. Medialdea* [29]:

The requirement of an actual case or controversy is rooted on the respect for the separation of powers of the three branches of government. Courts cannot supplant the discretionary acts of the legislative or the executive branch on the premise that they know of a wiser, more just, or expedient policy or course of action. They may only act in case the other branches acted outside the bounds of their powers or with grave abuse of discretion

amounting to lack or excess of jurisdiction.

The other reason for requiring an actual case or controversy is to maintain the significance of this Court's role in making "final and binding construction[s] of law." Courts do not render mere advisory opinions. Judicial decisions are part of the legal system, and thus, have binding effects on actual persons, places, and things. Ruling on hypothetical situations with no bearing on any matter will weaken the import of this Court's issuances[.][30] (Emphasis supplied, citations omitted)

Here, the ponencia cited *Bayyo Association Inc. v. Tugade*, which distinguished between claims "based on [an] actual breach of legal rights," and those based only on "a threat of direct injury." [31] As discussed in the ponencia, different standards for assessing the constitutionality of the assailed acts would apply depending on whether there are "extant facts affecting real litigants" that would merit a finding of unconstitutionality. [32] Specifically, the ponencia applied the standards discussed in *Calleja v. Executive Secretary* [33] for a constitutional challenge of a statutes "as applied," as opposed to a challenge "on its face."

An as-applied challenge calls for the determination of how the law measures up to the established constitutional limits when these limits are applied to the petitioner's conduct under the disputed law. The court declares the offending part of the law, if severable, to be unconstitutional without affecting the totality of the law. In this kind of challenge, the language of the statute itself does not show an apparent hint of any fundamental flaw; the flaw, if one exists, only emerges when the statute is tested through the crucible of real-world circumstances.

....

A facial challenge, in contrast with and as an exception to an as-applied challenge, can be made – as jurisprudence has established – even prior to the enforcement of a disputed law, based solely on alleged "vagueness" or "overbreadth" of what the law, on its face, provides. It can be made by a petitioner for himself or on behalf of third parties not before the court. Pursuant to the same line of jurisprudence, the challenge – if successful – can result in the invalidity of the entire law. [34]

I agree with the ponencia that despite ample opportunity, petitioners failed to establish "actual experience" of the alleged harm or threat of harm that they stood to suffer under the implementation of Republic Act No. 10531. [35] In further support of this position, current jurisprudence recognizes that the existence of an actual case or controversy may be based not only on extant facts or circumstances unique to the petitioner that would render a statute unconstitutional "as applied" to them, but also upon a "clear and convincing showing of a contrariety of legal rights." [36]

In *Calleja*, this Court provided the following standard for recognizing an actual case or controversy arising from a "contrariety of legal rights":

An actual case or controversy exists when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. The issues presented must be definite and concrete, touching on the legal relations of parties having adverse interests. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. [37]

Thus, this Court recognized the existence of an actual case or controversy between the contrary rights asserted by the petitioners and the provisions of the Anti-Terrorism Act of 2020, despite the absence of actual circumstances that would have called the assailed provisions into action.

Citing the same discussion in *Calleja* this Court reviewed the assailed provisions of Republic Act No. 7581 in

Universal Robina Corporation v. Department of Trade and Industry,[38] even though the actions seeking to impose the law's provisions were dismissed on technical grounds.

Here, there is a clear and convincing showing that a contrariety of legal rights exists between respondent, the Department of Trade and Industry, which maintains its authority to determine when profiteering has occurred, and petitioner, which maintains that the provision on profiteering is void for vagueness.

Petitioner may not be currently charged with profiteering, but it was again invited to discuss its prices and to explain its ex-mill prices to the Bureau of Trade Regulation and Consumer Protection. This invitation shows respondent's intent to hold petitioner liable for profiteering under the Price Act. Thus, notwithstanding the initial dismissal of the Complaint filed against petitioner, an actual case still exists.[39]

Later, Executive Secretary v. Pilipinas Shell[40] clarified the guidelines for determining the existence of an actual case or controversy based on a contrariety of rights:

Thus, in asserting a contrariety of legal rights, merely alleging an incongruence of rights between the parties is not enough. The party availing of the remedy must demonstrate that the law is so contrary to their rights that there is no interpretation other than that there is a factual breach of rights. No demonstrable contrariety of legal rights exists when there are possible ways to interpret the provision of a statute, regulation, or ordinance that will save its constitutionality. In other words, the party must show that the only possible way to interpret the provision is one that is unconstitutional. Moreover, the party must show that the case cannot be legally settled until the constitutional issue is resolved, that is, that it is the very *lis mota* of the case, and therefore, ripe for adjudication.[41]

Finally, IDEALS, Inc. v. Senate of the Philippines[42] clarified that a contrariety of legal rights may be established by showing a conflict between a legislative or an executive act, and constitutional guarantees, such as those contained in the policy provisions under Article II of the Constitution. Likewise, conflicts between State actions and constitutional delimitations upon the exercise of the powers wielded by the Legislative and the Executive may also show a clear contrariety of legal rights:

Here, petitioners' allegations clearly and convincingly demonstrate a contrariety of legal rights such that there can be no other interpretation of the assailed agreement other than it is unconstitutional.

Petitioners argue that the Philippine government failed to make proper reservations in the JPEPA. They assert that the Philippines' schedule of reservations fails to completely list the constitutional exemptions and exclusions on investments in certain economic sectors. They claim that Japanese citizens and corporations may now "own land, utilize, exploit[,] add enjoy natural and marine resources, operate public utilities, practice all professions, [and] own and manage mass media and advertising industries in the Philippines." They likewise insist that the JPEPA's implementation "would inevitably harm [them] because of the contravention of constitutional principles that protect Filipino citizens, including the [reservation] of land ownership [to] Filipino citizens and the constitutional limitations on the power of the president to enter into international agreements, among others." [43] (Citations omitted)

I commend the ponencia's incorporation of the preceding considerations in its discussions and I agree with its finding that the petitions have failed to meet the standards to mount a constitutional challenge against the assailed law, either as applied or its face.

I further commend ponencia for recognizing that the petitioners' allegations of undue delegation of legislative powers may establish an actual case or controversy, through a clear and convincing contrariety of legal rights.[44] The matter of delegating legislative power pertains to the very system of constitutional checks and balances ensured by the separation of powers among the three co-equal branches of government. As discussed in *Abakada Guro Partylist v. Ermita*: [45]

The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. A logical corollary to the doctrine of separation of powers is the principle of non-delegation of powers, as expressed in the Latin maxim: *potestas delegata non delegari potest* which means "what has been delegated, cannot be delegated." This doctrine is based on the ethical principle that such as delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.[46] (Citations omitted)

Abakada Guro further explained that nondelegation is the general rule, which may be subject to exceptions, provided that recourse to these exceptions complies with the requirements of completeness and the sufficiency of standards for the delegated power's exercise.

In every case of permissible delegation, there must be a showing that the delegation itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard — the limits of which are sufficiently determinate and determinable — to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected. Both tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative.[47] (Citations omitted)

As held in *Angara*, the Judiciary is constitutionally mandated to delineate the boundaries between the co-equal branches of government.

The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our Constitution.

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. Even then, this 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 of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[48] (Emphasis supplied, citations omitted)

The validity of the delegation and the subsequent execution of such delegated powers, therefore, falls within the scope of judicial authority. Accordingly, a constitutional challenge based on a violation of the guarantees ensuring the separation of government powers may be subject to this Court's power of judicial review.

III

On the issue of constitutionality, I agree with the ponencia that the assailed provisions of Republic Act No. 10531 amount to a valid exercise of police power over an industry that is impressed with significant state and public interest.[49] *Philippine Association of Service Exporters, Inc. v. Drilon*[50] discussed the nature and scope of the state's police power, as follows:

The concept of police power is well-established in this jurisdiction. It has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." As defined, it consists of (1) an imposition of restraint upon liberty or property, (2) in order to foster the common good. It is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensive embrace.

....

Notwithstanding its extensive sweep, police power is not without its own limitations. For all its awesome consequences, it may not be exercised arbitrarily or unreasonably. Otherwise, and in that event, it defeats the purpose for which it is exercised, that is, to advance the public good. Thus, when the power is used to further private interests at the expense of the citizenry, there is a clear misuse of the power.[51] (Citations omitted; Emphasis supplied)

The ponencia,[52] citing *Ichong v. Hernandez*,[53] noted that an exercise of the state's police power is valid when it is exercised reasonably and in consonance with a valid state interest:

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 what 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 has been made, there must be reasonable basis for said distinction.[54] (Emphasis supplied)

This valid state interest and basis for regulation is found in Article XII, Section 6, which petitioners similarly assert as the source of their right to be regulated reasonably as an electricity cooperative.

Article XII

National Economy and Patrimony

....

Section 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

In a separate opinion, I emphasized the importance of grounding the regulations imposed upon electricity cooperatives in consideration for the general welfare of all our peoples:

It is true that property rights protected by the non-impairment clause yields to the police power of the State. However, there is only a valid impairment if the police power is exercised to promote the general welfare.[55] (Citations omitted)

Thus, regulations imposed upon an electric cooperative must consider the circumstances unique to the industry and with a view toward ensuring the use of private property and the pursuit of industry, not only to maximize profits, but for the common good. The public importance inherent in the electric industry and the indispensable role played by electric cooperatives in ensuring the efficient, effective, and accessible provision of electricity across the country merits regulation by the appointed state agencies in Republic Act No. 10531.

ACCORDINGLY, I vote to DENY the consolidated Petitions for Certiorari.

[1] The National Electrification Administration Reform Act of 2013, approved May 7, 2013.

[2] Ponencia, p. 3, 7-8.

[3] Id. at 14.

[4] Id.

[5] Id.

[6] Id. at 6.

[7] Id. at 6-7.

[8] Id. at 8-9.

[9] Id. at 14.

[10] Id. at 10-11.

[11] Id. at 14.

[12] Id. at 16.

[13] *Falcis III v. Civil Registrar General*, 861 Phil. 388, 435 (2019) [Per J. Leonen, En Banc].

[14] CONST., art. VIII, sec. 1.

[15] *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1182 (2019) [Per J. Leonen, En Banc].

[16] *Provincial Bus Operators Association v. Department of Labor and Employment*, 836 Phil. 205, 260-261 (2018) [Per J. Leonen, En Banc].

[17] *Garcia v. Drilon*, 712 Phil. 44, 90-91 (2013) [Per J. Perlas-Bernabe, En Banc].

[18] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 352 (2015) [Per J. Leonen, En Banc].

[19] *Abines v. Duque III*, 929 Phil. 828, 851 (2022) [Per ACJ. Leonen, En Banc].

[20] See *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403, 434 (2014) [Per J. Leonen, En Banc]; *Tan-Andal v. Andal*, 902 Phil. 558, 593 (2021) [Per J. Leonen, En Banc]; and *Dela Cruz v. Manila Electric Co.*, 889 Phil. 659, 688 (2020) [Per J. Leonen, En Banc].

[21] *Lambino v. COMELEC*, 536 Phil. 1, 93 (2006) [Per J. Carpio, En Banc].

- [22] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936) [Per J. Laurel, En Banc].
- [23] *Lagman v. Ochoa*, 888 Phil. 434, 471 (2020) [Per J. Leonen, En Banc].
- [24] Ponencia, p. 19.
- [25] 936 Phil. 538 (2023) [Per J. Leonen, En Banc].
- [26] *Id.* at 561.
- [27] 354 Phil. 415 (1998) [Per J. Panganiban, First Division].
- [28] *Id.* at 426.
- [29] 842 Phil. 747, 793 (2018) [Per J. Tijam, En Banc].
- [30] J. Leonen, Separate Opinion in *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, 842 Phil. 747, 793 (2018) [Per J. Tijam, En Banc].
- [31] Ponencia, p. 20-22.
- [32] *Id.* at 22-24.
- [33] 918-B Phil. 1 (2021) [Per J. Carandang, En Banc].
- [34] *Id.* at 315-316, 321.
- [35] Ponencia, p. 25.
- [36] *Universal Robina Corporation v. Department of Trade and Industry*, 936 Phil. 17, 30 (2023) [Per SAJ. Leonen, En Banc].
- [37] *Calleja v. Executive Secretary*, 918-B Phil. 1, 55-56 (2021) [Per J. Carandang, En Banc].
- [38] 936 Phil. 17 (2023) [Per SAJ. Leonen, En Banc].
- [39] *Id.* at 32-33.
- [40] *Executive Secretary v. Pilipinas Shell Petroleum Corporation*, G.R. No. 209216, February 21, 2023 [Per SAJ. Leonen, En Banc].
- [41] *Id.*
- [42] 942 Phil. 1 (2023) [Per ACJ. Leonen, En Banc].
- [43] *Id.* at 33.
- [44] Ponencia, at 34-36.
- [45] 506 Phil. 1 (2001) [Per J. Austria-Martinez, En Banc].
- [46] *Id.* at 107-108.
- [47] *Id.* at 109.
- [48] *Angara v. Electoral Commission*, 63 Phil. 139, 157-159 (1936) [Per J. Laurel, En Banc].
- [49] Ponencia, at 40-43.

[50] 246 Phil. 393 (1988) [Per J. Sarmiento, En Banc].

[51] Id. at 398-399.

[52] Ponencia, p. 41.

[53] 101 Phil. 1155 (1957) [Per J. Labrador, En Banc].

[54] Id. at 1165.

[55] J. Leonen Dissenting Opinion in Iloilo I Electric Cooperative, Inc. v. Bersamin, 956 Phil. 908, 951 (2024) [Per J. Zalameda, En Banc].

CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I concur with the ponencia that the consolidated Petitions should be dismissed for lack of merit. However, while the ponencia rules that no actual case or controversy exists in this case, it is my considered view that the contrary is true.

The core issue in these two consolidated Petitions involves the constitutionality of Republic Act No. 10531 or the National Electrification Administration (NEA) Reform Act of 2013 and its Implementing Rules and Regulations (IRR).

The petitioners, their standing, and respective issues submitted for review are summarized below:

Table 1 – Summary

Case Number

G.R. No. 207894

G.R. No. 209380

Petitioners

Various electric cooperatives[1] and their umbrella federation, PHILFECO

Various individuals[2]

Locus Standi

Taxpayers and on behalf of their member consumers[3]

Individual capacity, taxpayers, and their representative capacity as members of the governing boards of electric cooperatives.[4]

Governmental act assailed

Disbursement of public funds for the implementation of Republic Act No. 10531[5]

Enactment of Republic Act No. 10531 and its IRR for violation of Article II, Section 2 and Article III, Sections 1, 9, and 10 of the 1987 Constitution, as well as constituting an undue delegation of legislative power.[6]

Summary of Arguments

Substantive

- The disciplinary powers of NEA and the power to appoint an independent board of directors under Section 5, in relation to Section 6, of Republic Act No. 10531 violate the constitutional rights of cooperatives[7] under Article XII of the 1987 Constitution.[8]

- Sections 6 and 7 of Republic Act No. 10531 providing NEA with supervisory powers are unconstitutional as an undue delegation of legislative power. Congress failed to provide sufficient limits and parameters.[9]

- The "step-in" rights provided in Section 5, in relation to Section 6, of Republic Act No. 10531 violate the constitutional rights of cooperatives under Section 17,[10] Article XII of the 1987 Constitution.[11]

-

Republic Act No. 10531 violates the Equal Protection Clause by distinguishing between private electric distribution companies and electric cooperatives registered under the Cooperative Development Authority and NEA.[12]

- Section 5 of Republic Act No. 10531 authorizing NEA to serve as guarantor to qualified electric cooperatives violates Section 20, Article II of the 1987 Constitution and the autonomy of contracts, and usurps the regulatory function of the Energy Regulatory Commission.[13]

- Republic Act No. 10531 is an invalid exercise of police power because Sections 10 and 11 of the law providing for the qualifications and disqualifications of officers and board members of electric cooperatives are discriminatory.[14]

- Sections 10 and 11 providing for qualifications and disqualifications of members of the Board of Directors and officers are unconstitutional for being discriminatory and a deprivation of property rights without due process of law. They further violate the right to suffrage of their members.[15]

As stated earlier, petitioners have sufficiently demonstrated that an actual case and controversy exists to invoke the Court's power of judicial review.

I.

Existence of an actual case or controversy

The ponencia holds that the requisites[16] for judicial review are not present because there is no actual case or controversy.[17] The ponencia adds that "none of the petitioners have offered actual experience of these supposed harms or any allegation as to how the government has enforced the law to their detriment." [18] Further, the ponencia rules that the Petitions are not "as-applied" challenges, thus:

Here, in both Petitions, the actual government act complained of by the petitioners is the mere passage of Republic Act No. 10531 by Congress and the issuance of its IRR by the DOE. The petitioners allege that the provisions of the law, on their face, are offensive to the Constitution as these threaten the enjoyment of what

they claim are constitutionally enshrined rights of cooperatives, as well as the right to due process, and equal protection of their officers and governing board members.

Notably, none of the petitioners have offered actual experience of these supposed harms or any allegation as to how the government has enforced the law to their detriment. The petitioners have had ample opportunity to do so. While the case was originally filed in 2013, the petitioners submitted a Memorandum, in 2023, in compliance with a Court Resolution requiring such submissions. The petitioners still failed to cite specific instances in their Memorandum, one full decade after the law was passed and their Petitions were filed. Instead, in their Memorandum, petitioners merely reiterated the threat of injury to their rights because of the passage of Republic Act No. 10531 and its IRR, not sustained or actual, but only still perceived to be imminent.[19] (*Italics in the original, citations omitted*)

The ponencia recognizes that petitioners' basis for their alleged "cooperative rights" is Article XII of the 1987 Constitution, particularly Sections 1, 6, and 15, which read in relevant part:

ARTICLE XII

National Economy and Patrimony

SECTION 1. . . .

. . . .

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

. . . .

SECTION 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

. . . .

SECTION 15. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.[20] (*Italics in the original*)

After a thorough and comprehensive analysis,[21] the ponencia concludes that "there is scant evidence to suggest that a protected constitutional right is threatened by Republic Act No. 10531"[22] and "that the petitioners offer no legal justification or case law to support their theory of constitutional cooperative rights." [23]

Ultimately, the ponencia finds that petitioners did not prove the existence of a demandable right to be protected to constitute a justiciable controversy.

I disagree. In my view, the ponencia's analysis of whether an alleged constitutional right exists and should be protected presupposes the existence of a justiciable controversy regardless of whether, after an inquiry by the Court, it is determined that no such right actually exists as in this case.

In *Universal Robina Corp. v. Department of Trade and Industry*,[24] the Court declared that an actual case or controversy exists "when there are actual facts to enable courts to intelligently adjudicate the issues"[25] or "when there is a clear and convincing showing of a contrariety of legal rights." [26] Citing *Belgica, et al. v. Ochoa, et al.*, [27] the Court explained that the concept of a "contrariety of legal rights" refers to an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or

dispute.[28]

Thus, there is an actual case or controversy here considering the alleged violations of the Constitution. When an act of a branch of government is said to be in violation of the Constitution, there exists an actual case or controversy. As the Court held in *Pimentel, Jr. v. Hon. Aguirre*,[29] "when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act." [30]

Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. In the recent case of *Republic v. Maria Basa Express Jeepney Operators and Drivers Association, Inc.*,[31] the Court, citing *Province of North Cotabato, et al. v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al.*,[32] emphasized that "[w]hen an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but[,] in fact[,] the duty of the [J]udiciary to settle the dispute." [33]

The petitioners in the instant case stand in the same footing. Here, aside from the petitioners' theory of "constitutional cooperative rights," they assert other grounds that make the case ripe for adjudication, such as an undue delegation of legislative power[34] and violations of constitutional protections of "equal protection of law, non-impairment of contracts, freedom of association, and freedom of expression." [35] To my mind, these allegations constitute, at least *prima facie*, an actual case or controversy that justifies the exercise of judicial power as provided under Article VIII, Section 1 of the 1987 Constitution.

II.

Ruling that an actual case and controversy exists makes the ponencia's substantive rulings constitutional and imbues it with doctrinal value.

A determination that an actual case or controversy exists does not foreclose the possibility of denying the Petitions on substantive grounds. The Court may eventually find—as the ponencia does in this case—that there is no violation of the Constitution, but this finding does not mean that no actual case existed before the Court.

Stated differently, the Court's resolution of the Petitions on substantive grounds necessarily implies the existence of an actual case or controversy. Consequently, when the ponencia holds that no actual case and controversy exists, it follows that the Petitions have already been resolved, and their dismissal was justified. However, the ponencia is having it both ways. Even while ruling that no actual case or controversy exists, the ponencia proceeds to discuss the merits[36] of the Petitions and their failure to overcome the presumption of constitutionality of Republic Act No. 10531.

To my mind, and even while I agree in the result, the discussion on the merits, as currently written, may be considered as an unconstitutional advisory opinion.

To recall, the requirement of actual case or controversy is a constitutional one, for judicial power under the Philippine constitutional framework is limited to settling "actual controversies involving rights which are legally demandable and enforceable." As settled in jurisprudence, "[t]he existence of an actual case or controversy is a condition precedent for the court's exercise of its power of adjudication." [37]

This requirement in the Constitution is the reason why the Court has repeatedly emphasized that it does not have

jurisdiction to issue advisory opinions or decide hypothetical or abstract disputes.[38] It is, therefore, inconsistent to declare, as the ponencia does, that the Petitions do not present an actual case or controversy and, in the same breath, rule on the merits. This is an unconstitutional advisory opinion.

III.

The ponencia correctly dismisses the Petitions on the merits.

That said, I agree with the ponencia in dismissing the Petitions for lack of merit. Precisely, petitioners failed to: (1) show how preferred constitutional rights have been breached or are threatened to be violated; and (2) overcome the presumption of constitutionality of Republic Act No. 10531.

First, petitioners' reliance on Sections 1, 6, and 15 of Article XII of the 1987 Constitution as the basis for their novel concept of "cooperative rights" is misplaced. Notably, petitioners' theory bears a striking resemblance to *Manila Prince Hotel v. Government Service Insurance System*[39] (*Manila Prince Hotel*). In that case, Manila Prince Hotel attempted to acquire 51% of the shares of Manila Hotel Corporation, which owns the Manila Hotel, asserting that Manila Hotel was part of the national patrimony based on paragraph 2, Section 10, Article XII of the 1987 Constitution.[40] Manila Prince Hotel further asserted that paragraph 2, Section 10, Article XII of the 1987 Constitution is a self-executing provision. In this case, petitioners likewise assert that Sections 1, 6, and 15 are essentially a self-executing bundle of "constitutional rights for cooperatives." [41]

Here, I join the ponencia in declaring that "petitioners offer no legal justification or case law to support their theory of constitutional cooperative rights." [42] Moreover, in citing Sections 1, 6, and 15 as the bases for their supposed "constitutional cooperative rights," petitioners mistakenly assume that said provisions are self-executing.

The test of whether a constitutional provision was self-executing was established in *Manila Prince Hotel* as follows:

A provision which lays down a general principle, such as those found in Art. II of the 1987 Constitution, is usually not self-executing. But a provision which is complete in itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies sufficient rule by means of which the right it grants may be enjoyed or protected, is self-executing. Thus a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.[43] (Underscoring supplied, citation omitted)

As shown in Part I, Sections 1, 6, and 15 clearly do not pass muster as alleged self-executing provisions. Sections 1 and 6 only lay down general principles. Hence, they are not self-executing. With respect to Section 15, the plain text of the provision (i.e., "The Congress shall create an agency. . .") leaves the same to Congress for action. Again, under the test in *Manila Prince Hotel*, if "there is no language indicating that the subject is referred to the legislature for action," then the provision is self-executing. Section 15 failed this test.

Lastly, the ponencia rightly declares that petitioners failed to overcome the presumption of constitutionality of Republic Act No. 10531. The ponencia pointedly highlights that "petitioners . . . are holders of legislative franchises" [44] and, as such, "fall squarely under the regulation of the State." [45] Further, by "the very nature of the business of electric cooperatives, being imbued with public interest, . . . [there is a] necessity for the State to guard closely against abuse and inefficiency." [46]

Petitioners' substantive arguments, which were summarized in Table 1, all relate to means of the State in further regulating the management and operations of electric cooperatives under Republic Act No. 10531. Accordingly, I fully concur with the ponencia in ruling that the means provided under Republic Act No. 10531 are reasonably necessary to attain the State's policy objectives under Section 2 of the same law, to wit:

(a)

promote the sustainable development in the rural areas through rural electrification;

(b)

empower and strengthen the National Electrification Administration (NEA) to pursue the electrification program and bring electricity, through the electric cooperatives as its implementing arm, to the countryside even in missionary or economically unviable areas;

(c)

empower and enable electric cooperatives to cope with the changes brought about by the restructuring of the electric power industry pursuant to Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001".

ACCORDINGLY, I vote to DISMISS the consolidated Petitions for Certiorari.

[1] Ponencia, p. 12. Isabela II Electric Cooperative (ISELCO II), Nueva Vizcaya Electric Cooperative (NUVELCO), San Jose Electric Cooperative (SAJELCO), Pangasinan III Electric Cooperative (PANELCO III), Sorsogon II Electric Cooperative (SORECO II); Palawan Electric Cooperative (PALECO), Negros Oriental II Electric Cooperative (NORECO II), and Negros Occidental Electric Cooperative (NOCECO).

[2] Id. at 13.

[3] Id. at 12.

[4] Id. at 13.

[5] Id. at 12.

[6] Id. at 14.

[7] The ponencia summarizes these rights as follows: (a) to broaden the base of their ownership; (b) to own, establish and operate economic enterprise; and (c) be under a government agency that promotes the viability and growth of cooperatives as instruments for social justice and economic development. Id. at 15.

[8] Id.

[9] Id. at 14.

[10] Article XII, Section 17 of the 1987 Constitution provides:

Section 17. In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.

[11] Ponencia, p. 15.

[12] Id.

[13] Id. at 16.

[14] Id.

[15] Id. at 16.

[16] Id. at 20. The ponencia provides:

(1) [E]xistence or an actual case or controversy; (2) locus standi of those who assail the law; (3) the question of constitutionality must be raised at the earliest opportunity; (4) the resolution of the question is the very *lis mota*, or is unavoidably necessary to the decision of the case itself. Yet, as case law instructs, among these four, the most important is the requirement of actual justiciable controversy.

[17] Id. at 26.

[18] Id.

[19] Id. at 25-26.

[20] Id. at 30-31.

[21] Id. at 30-35.

[22] Id. at 35.

[23] Id.

[24] 936 Phil. 17 (2023) [Per J. Leonen, En Banc].

[25] Id. at 28. (Citation omitted)

[26] Id. at 29. (Citation omitted)

[27] 721 Phil. 416 (2013) [Per J. Leonen, En Banc].

[28] Id. at 519.

[29] 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].

[30] Id. at 1107.

[31] 928 Phil. 182 (2022) [Per J. J.Y. Lopez, En Banc].

[32] 589 Phil. 387 (2008) [Per J. Carpio-Morales, En Banc].

[33] Id. at 486. (Emphasis and citation omitted)

[34] Ponencia, p. 16.

[35] See id. at 12.

[36] See id. at 26 and 29.

[37] Reyes, et al. v. The Insular Life Assurance Co., Ltd., 731 Phil. 155, 160 (2014) [Per J. Brion, Second Division].

[38] Falcis v. Civil Registrar General, 861 Phil. 388, 438-439 (2019) [Per J. Leonen, En Banc].

[39] 335 Phil. 82 (1997) [Per J. Bellosillo, En Banc].

[40] Article XII, Section 10, paragraph 2 of the 1987 Constitution provides:

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

[41] Ponencia, p. 30.

[42] *Id.* at 35.

[43] *Manila Prince Hotel v. Government Service Insurance System*, *supra* note 39, at 102.

[44] Ponencia, p. 41.

[45] *Id.*

[46] *Id.*

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