

EN BANC

**G.R. No. 215746 – ANG NARS PARTY-LIST**, represented by Congresswoman **LEAH PRIMITIVA G. SAMACO-PAQUIZ** and **PUBLIC SERVICES LABOR INDEPENDENT CONFEDERATION (PSLINK)**, represented by its Secretary General **ANNIE E. GERON** *Petitioners*, v. **THE EXECUTIVE SECRETARY, THE SECRETARY OF BUDGET and MANAGEMENT, and THE SECRETARY OF HEALTH**, *Respondents*.

**Promulgated:**

October 8, 2019

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**SEPARATE CONCURRING AND DISSENTING OPINION**

**LEONEN, J.:**

I concur in the result that the Petition should be dismissed. However, I disagree with the majority that petitioner Ang Nars Party-List Representative Leah Primitiva G. Samaco-Paquiz (Representative Samaco-Paquiz) has legal standing to file the case.

In this Petition for Certiorari and Mandamus under Rule 65 of the Rules of Court, petitioners Ang Nars Party-List (Ang Nars), represented by Representative Samaco-Paquiz, and Public Services Labor Independent Confederation (PSLINK), represented by its Secretary General Annie E. Geron (Geron), assail the validity of Section 6 of Executive Order No. 811.<sup>1</sup> They also pray that this Court compel respondents Executive Secretary, Budget and Management Secretary, and Health Secretary to implement Section 32 of Republic Act No. 9173,<sup>2</sup> or the Philippine Nursing Act of 2002.<sup>3</sup>

Section 6<sup>4</sup> of Executive Order No. 811 states that government employees holding the position of Nurse I shall receive compensation equivalent to Salary Grade 11 as provided by the law.

<sup>1</sup> Adopting the First Tranche of the Modified Salary Schedule of Civilian Personnel and Base Pay Schedule of Military and Uniformed Personnel in the Government, as well as the Modified Position Classification System Pursuant to Senate and House of Representatives Joint Resolution No. 4, s. 2009.

<sup>2</sup> An Act Providing for a More Responsive Nursing Profession, Repealing for the Purpose Republic Act No. 7164, Otherwise known as "The Philippine Nursing Act of 1991" and for Other Purposes.

<sup>3</sup> Ponencia, pp. 1-2.

<sup>4</sup> Executive Order No. 811 (2009), sec. 6 provides.

SECTION 6. *Changes in Position Titles and Salary Grade Assignments of Certain Positions.* —

On the other hand, Section 32<sup>5</sup> of Republic Act No. 9173 provides that the minimum base pay of nurses working in public health institutions shall not be lower than Salary Grade 15, as prescribed under Republic Act No. 6758, or the Compensation and Classification Act of 1989.

President Gloria Macapagal-Arroyo issued Executive Order No. 811 in view of Joint Resolution No. 4, which was approved by both the House of Representatives and the Senate authorizing the President “to Modify the Compensation and Position Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and For Other Purposes.”<sup>6</sup>

In their Petition, petitioners argue that while Joint Resolution No. 4 authorized the President to modify the compensation of civilian personnel in the government, it did not include the authority to adjust the minimum base for government nurses provided under Section 32 of Republic Act No. 9173. They contend that Joint Resolution No. 4 did not empower the President to amend Section 32 of Republic Act No. 9173 and lower the entry level of nurses from Salary Grade 15 to Salary Grade 11.<sup>7</sup>

Additionally, petitioners aver that the minimum base for government nurses provided under Executive Order No. 811 has the effect of violating the principle of non-diminution of salaries under Section 6<sup>8</sup> of Joint

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The position titles and salary grade assignments of the entry levels of the following positions are hereby modified:

Position Title	Salary Grade	
	From	To
Teacher I	10	11
Nurse I	10	11
Medical Officer I	14	16
Accountant I	11	12
[Legal Officer I] Attorney I	[14]	16

The DBM, in coordination with the Civil Service Commission (CSC), shall review the other levels of the above-listed positions and other classes of positions to determine their appropriate levels, and to allocate them to their proper salary grades.

Accordingly, the DBM, in coordination with the CSC, shall update the Index of Occupational Services, Occupational Groups, Classes, and Salary Grades, in accordance with organizational, technological, professional and other developments.

<sup>5</sup> Republic Act No. 9173 (2002), sec. 32 provides:

SECTION 32. *Salary.* — In order to enhance the general welfare, commitment to service and professionalism of nurses, the minimum base pay of nurses working in the public health institutions shall not be lower than salary grade 15 prescribed under Republic Act No. 6758, otherwise known as the “Compensation and Classification Act of 1989”: Provided, That for nurses working in local government units, adjustments to their salaries shall be in accordance with Section 10 of the said law.

<sup>6</sup> Ponencia, p. 2.

<sup>7</sup> Id. at 6–7.

<sup>8</sup> Joint Resolution No. 4 (2009), sec. 6 provides:

(6) Magna Carta Benefits — Within ninety (90) days from the effectivity of this Joint Resolution, the DBM is hereby authorized to issue the necessary guidelines, rules and regulations on the grant of Magna Carta benefits authorized for specific officials and employees in the government to determine those that may be categorized in the Total Compensation Framework.

*Nothing in this Joint Resolution shall be interpreted to reduce, diminish or, in any way, alter the*

Resolution No. 4.<sup>9</sup> They claim that Executive Order No. 811 “repealed Section 32 of [Republic Act] No. 9173, a repeal that is beyond the authority given to the President under Joint Resolution No. 4.”<sup>10</sup>

In its Comment, the Office of the Solicitor General, representing respondents, attacks the legal personality of petitioners to file the Petition. It maintains that they neither have a personal interest in the outcome of the controversy, nor are they directly affected in the implementation of Executive Order No. 811. It stresses that petitioners are not nurses employed in the government who will be affected in the non-implementation of Section 32 of Republic Act No. 9173.<sup>11</sup>

The Office of the Solicitor General further contends that a petition for certiorari and mandamus is not the proper remedy to question the validity of Executive Order No. 811, claiming that a petition for declaratory relief should have been filed instead.<sup>12</sup>

Lastly, the Office of the Solicitor General alleges that it is not Executive Order No. 811, but Joint Resolution No. 4, that amended Republic Act No. 9173.<sup>13</sup>

## I

Declaratory relief, contrary to the Office of the Solicitor General’s claim, is an improper remedy in questioning the constitutionality of an executive order.<sup>14</sup>

Under Rule 63, Section 1 of the Rules of Court, any person whose rights are affected by an executive order may bring an action in the appropriate regional trial court to determine its validity. However, for the action to prosper, it must be filed before any breach or violation of an obligation has been made. It is essential that no actual case or controversy has yet been involved.<sup>15</sup> Rule 63, Section 1 states:

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*benefits provided for in existing laws on Magna Carta benefits for specific officials and employees in government, regardless of whether said benefits have been already received or have yet to be implemented.* (Emphasis supplied)

<sup>9</sup> Ponencia, p. 7.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> *Department of Transportation v. Philippine Petroleum Sea Transport Association*, G.R. No. 230107, July 24, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64509>> [Per J. Velasco, Jr., En Banc].

<sup>15</sup> Id.

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

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule.<sup>16</sup>

Here, petitioners assail the validity of Executive Order No. 811. In doing so, they invoke this Court's power of judicial review provided under Article VIII, Section 1<sup>17</sup> of the 1987 Constitution.

Case law provides that before this Court's power of judicial review may be invoked, the following requisites must be present:

(1) there must be an *actual case or controversy* calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.<sup>18</sup> (Emphasis supplied)

An actual case or controversy has been defined as one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute."<sup>19</sup>

To reiterate, it is essential that no actual case or controversy exists in order for a petition for declaratory relief to prosper. On the other hand, when this Court's power of judicial review is invoked, it is indispensable that there is an actual case or controversy. For this reason, a petition for declaratory relief is an inappropriate remedy for imploring this Court's

<sup>16</sup> RULES OF COURT, Rule 63, sec. 1.

<sup>17</sup> CONST., art. VIII, sec. 1.

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.

<sup>18</sup> See J. Brion, Dissenting Opinion in *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 418-419 (2015) [Per J. Leonen, En Banc].

<sup>19</sup> *Belgica v. Ochoa*, 721 Phil. 416, 519 (2013) [Per J. Perlas-Bernabe, En Banc].

power of judicial review to declare a statute or executive order unconstitutional.<sup>20</sup>

## II

I concur with the majority that petitioner PSLINK has no legal standing to file this Petition. However, I cannot join the majority in ruling that petitioner Representative Samaco-Paquiz has legal standing to file it.

Legal standing has been defined as “a right of appearance in a court of justice on a given question.”<sup>21</sup> A party is considered to have legal standing when he or she has “a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.”<sup>22</sup>

The reason for this requirement is “to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary’s overruling the determination of a coordinate, democratically elected organ of government.”<sup>23</sup>

Moreover, as explained in *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*:<sup>24</sup>

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

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

<sup>20</sup> *Department of Transportation v. Philippine Petroleum Sea Transport Association*, G.R. No. 230107, July 24, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64509>> [Per J. Velasco, Jr., En Banc].

<sup>21</sup> *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 493 (2013) [Per J. Reyes, En Banc].

<sup>22</sup> *Joya v. Presidential Commission on Good Government*, 296-A Phil. 595, 603 (1993) [Per J. Bellosillo, En Banc].

<sup>23</sup> See J. Puno, Dissenting Opinion in *Kilosbayan, Inc. v. Guingona, Jr.*, 302 Phil. 107, 190 (1994) [Per J. Davide, Jr., En Banc].

<sup>24</sup> G.R. No. 202275, July 17, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411>> [Per J. Leonen, En Banc].

confronts our judiciary today.<sup>25</sup> (Citations omitted)

However, it must be clarified that in cases involving issues with constitutional implication, the plaintiff's legal standing is a requisite different from or in addition to the procedural requirement that he or she must be a real party-in-interest.<sup>26</sup>

Legal standing has for its basis the 1987 Constitution. On the other hand, the rule on real party-in-interest is a concept of civil procedure.<sup>27</sup> In *Kilosbayan, Inc. v. Morato*,<sup>28</sup> this Court explained:

The difference between the rule on standing and real party-in-interest has been noted by authorities thus: "It is important to note . . . that standing because of its constitutional and public policy underpinnings, is very different from questions relating to whether a particular plaintiff is the real party-in-interest or has capacity to sue. Although all three requirements are directed towards ensuring that only certain parties can maintain an action, standing restrictions require a partial consideration of the merits, as well as broader policy concerns relating to the proper role of the judiciary in certain areas[.]"

Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of a law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. Hence *the question in standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."*

....

On the other hand, the question as to "real party-in-interest" is whether he is "*the party who would be benefited or injured by the judgment, or the party entitled to the avails of the suit.*"<sup>29</sup> (Emphasis supplied, citations omitted)

The rule on legal standing in private suits is different from that in public suits.

In private suits, standing is governed by the rule on real party-in-interest provided under Rule 3, Section 2<sup>30</sup> of the 1997 Rules of Civil

<sup>25</sup> Id.

<sup>26</sup> *Kilosbayan, Inc. v. Morato*, 316 Phil. 652 (1995) [Per J. Mendoza, En Banc].

<sup>27</sup> *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003) [Per J. Carpio-Morales, En Banc].

<sup>28</sup> 316 Phil. 652 (1995) [Per J. Mendoza, En Banc].

<sup>29</sup> Id. at 695-697.

<sup>30</sup> RULES OF COURT, Rule 3, sec. 2 provides:

SECTION 2. *Parties in Interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise

Procedure, as amended.<sup>31</sup> This rule mandates that every action must be prosecuted or defended in the name of the real party-in-interest, or “the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit.”<sup>32</sup>

Conversely, in public suits, the plaintiff asserts a “public right” and does so as a representative of the general public. “He [or she] may be a person who is affected no differently from any other person. He [or she] could be suing as a ‘stranger,’ or in the category of a ‘citizen,’ or ‘taxpayer.’ In either case, he [or she] has to adequately show that he [or she] is entitled to seek judicial protection.”<sup>33</sup>

But, in either case, the rule is the same. “Whether a suit is public or private, the parties must have ‘a present substantial interest,’ not a ‘mere expectancy or a future, contingent, subordinate, or consequential interest.’ Those who bring the suit must possess their own right to the relief sought.”<sup>34</sup>

Nevertheless, in several cases, this Court has adopted a liberal approach on the rule on legal standing. It has taken cognizance of petitions raising constitutional issues of critical significance even if they were filed by those who have no personal or substantial interest in the challenged governmental act.<sup>35</sup> In *David v. Macapagal-Arroyo*,<sup>36</sup> this Court laid down the requirements before “non-traditional plaintiffs”<sup>37</sup> may be given legal standing to sue:

- (1) the cases involve constitutional issues;
- (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
- (3) for voters, there must be a showing of obvious interest in the validity of the election law in question;
- (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
- (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.<sup>38</sup>

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authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

<sup>31</sup> *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

<sup>32</sup> *Id.* at 756.

<sup>33</sup> *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil. 374 (2010) [Per J. Mendoza, En Banc].

<sup>34</sup> *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411>> [Per J. Leonen, En Banc] (Citations omitted).

<sup>35</sup> *Id.*

<sup>36</sup> 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

<sup>37</sup> *Funa v. Villar*, 686 Phil. 571, 585 (2012) [Per J. Velasco, Jr., En Banc].

<sup>38</sup> *David v. Macapagal-Arroyo*, 522 Phil. 705, 760 (2006) [Per J. Sandoval-Gutierrez, En Banc].

This Court has, in a number of cases, recognized the standing of members of Congress to file petitions questioning the constitutionality of any official function.

In *Philippine Constitution Association v. Enriquez*,<sup>39</sup> this Court recognized the legal standing of petitioners as members of Congress to question the validity of the President's exercise of his veto power and the conditions for the implementation of some items in the General Appropriations Act of 1994.

In *Biraogo v. Philippine Truth Commission of 2010*,<sup>40</sup> this Court similarly recognized the standing of petitioners as incumbent members of the House of Representatives to question the constitutionality of Executive Order No. 1 creating the Philippine Truth Commission of 2010.

In *Del Mar v. Philippine Amusement and Gaming Corporation*,<sup>41</sup> this Court recognized the standing of petitioners as members of Congress to question the corporation's operation of jai-alai, which allegedly infringed on the legislature's exclusive power to grant franchise.

"Indeed, a member of the House of Representatives has standing to maintain inviolate the prerogatives, powers[,] and privileges vested by the Constitution in his office."<sup>42</sup>

However, it must be emphasized that their standing to institute these petitions is only to the extent that the challenged official act "impinges on their right to participate in the exercise of the powers of the institution of which they are members."<sup>43</sup> "To the extent the powers of Congress are impaired, so is the power of each member thereof[.]"<sup>44</sup>

While it is true that in some cases, this Court has granted Congress members standing on matters where their rights as members have been violated, that standing is not automatic and without any conditions. Minority members of the legislature should not have standing to challenge an act of their house unless it can be shown that they have shown credible attempts to persuade their legislative colleagues to consider and to reverse the course of action chosen by the majority.

<sup>39</sup> 305 Phil. 546 (1994) [Per J. Quiason, En Banc].

<sup>40</sup> 651 Phil. 374 (2010) [Per J. Mendoza, En Banc].

<sup>41</sup> 400 Phil. 307 (2000) [Per J. Puno, En Banc].

<sup>42</sup> *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 897 [Per J. Carpio-Morales, En Banc].

<sup>43</sup> *Saguisag v. Ochoa, Jr.*, 777 Phil. 280, 357 (2016) [Per C.J. Sereno, En Banc].

<sup>44</sup> *Del Mar v. PAGCOR*, 400 Phil. 307, 328 (2000) [Per J. Puno, En Banc].



As a matter of courtesy, and in line with the constitutional requirement of this Court's deference to the political organs prior to exercising its powers of judicial review, accepting the invocation of grave abuse of discretion must not also be done arbitrarily. Congress also has the capability of reading the Constitution and attempting its own interpretations. Only in very defined cases and in a deliberate manner should this Court weigh in with its power of judicial review.

Here, petitioner Representative Samaco-Paquiz failed to show that her right as a legislator has been violated by the challenged act. She failed to prove that Joint Resolution No. 4 violates her constitutional prerogatives as a lawmaker. Furthermore, other than her assertion that she is a party-list representative of both private and government nurses, she failed to specify in an unmistakable manner the direct injury suffered by the institution of which she is a part. She cannot invoke a "generic grievance in common with the people in general"<sup>45</sup> and expect this Court to grant her legal standing.

Moreover, even if petitioner Representative Samaco-Paquiz's standing to file the Petition were recognized on the ground of the issue's transcendental importance, such liberality will serve no useful purpose. This Court is not a third legislative chamber. We do not have the power to compel Congress to appropriate funds for the implementation of Section 32 of Republic Act No. 9173. Indeed, the power of the purse lies in Congress, and Congress alone.<sup>46</sup>

### III

I concur with the majority that only bills can become laws. A joint resolution, even if it undergoes the same process prescribed for the passage of a bill, cannot become a law.

The majority stresses the vast difference between a bill and a joint resolution. The procedure for the enactment of a bill into law is prescribed by no less than the Constitution itself. The procedure is permanently fixed unless the Constitution is amended or revised.<sup>47</sup>

On the other hand, the passage of a joint resolution rests solely on the rules promulgated by the Senate and the House of Representatives. These rules may be amended anytime, depending on the discretion of Congress.<sup>48</sup>

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<sup>45</sup> See J. Puno, Dissenting Opinion in *Kilosbayan, Inc. v. Guingona, Jr.*, 302 Phil. 107, 197 (1994) [Per J. Davide, Jr., En Banc].

<sup>46</sup> *Confederation of Coconut Farmers Organizations of the Philippines, Inc. v. Aquino III*, 815 Phil. 1036, 1052 (2017) [Per J. Mendoza, En Banc] (Citation omitted).

<sup>47</sup> Ponencia, p. 26.

<sup>48</sup> Id.

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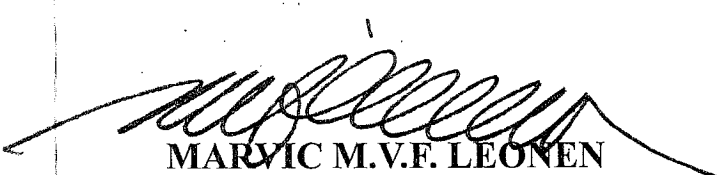
When Republic Act No. 9173 was enacted in 2002, it amended the compensation rates provided under Republic Act No. 6758. Section 32 of Republic Act No. 9173 provides that “the minimum base pay of nurses working in the public health institutions shall not be lower than salary grade 15 prescribed under Republic Act No. 6758[.]” It increased the minimum base pay of nurses from Salary Grade 10 to Salary Grade 15.

Such amendment remained valid regardless of the President approving Joint Resolution No. 4 in 2009, which would have put government nurses’ minimum base pay at Salary Grade 11. To stress, Joint Resolution No. 4 is not a law. Republic Act No. 9173 can be amended only by a subsequent valid law.

I reiterate my view in my concurring and dissenting opinion in *Cawad v. Secretary Abad*.<sup>49</sup>

Joint resolutions are not sufficient to notify the public that a statute is being passed or amended. As in this case, the amendment to a significant empowering provision in Republic Act No. 7305 was done through a joint resolution. The general public will be misled when it attempts to understand the state of the law since it will also have to comb through joint resolutions in order to ensure that published Republic Acts have not been amended.<sup>50</sup>

**ACCORDINGLY**, I concur in the result and vote that the Petition for Certiorari and Mandamus be **DISMISSED**.




MARVIC M.V.F. LEONEN  
Associate Justice

<sup>49</sup> 764 Phil. 705 (2015) [Per J. Peralta, En Banc].

<sup>50</sup> Id. at 759.

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Clerk of Court En Banc  
Supreme Court