EN BANC

G.R. No. 203353 – UNIVERSAL ROBINA CORPORATION, *Petitioner*, ***versus*** **DEPARTMENT OF TRADE AND INDUSTRY (DTI), THE DTI SECRETARY, ZENAIDA C. MAGLAYA, in her capacity as DTI UNDERSECRETARY, and VICTORIO MARIO A. DIMAGIBA, in his capacity as Director for DTI's Bureau of Trade Regulations and Consumer Protection**, *Respondents*.

Promulgated:

February 14, 2023

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CONCURRING AND DISSENTING OPINION

INTING, *J.*:

I concur with the majority that petitioner Universal Robina Corporation (Universal Robina) was able to show a contrariety of legal rights and therefore correctly availed of the remedy of a Petition for Declaratory Relief under Rule 63 of the Rules of Court to challenge the constitutionality or validity of Republic Act No. (RA No.) 7581 (Price Act), Executive Order No. 913 (EO 913), and Department of Trade and Industry (DTI) Administrative Order (AO) No. 7.[1]

However, I disagree with the majority in holding that Section 5(2) of the Price Act is not void on the ground of vagueness.[2] To my mind, the crime of "profiteering" under the Price Act is void for being vague and violative of due process.

I.A. A petition for declaratory relief is a correct remedy to challenge the constitutionality or validity of a law, regulation, or ordinance before there has been a breach thereof.

Section 1, Rule 63 of the Rules of Court provides that "a party, whose rights are affected by a statute, executive order or 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". Evidently, the rules itself allow the filing of a petition for declaratory relief to assail the constitutionality or validity of laws.

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1 Decision, p. 13.
2 Id. at 15-16.

The purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract, for their guidance in its enforcement or compliance and *not* to settle issues arising from its alleged breach.[3] It gives a practical remedy for ending controversies that have not reached a state where another relief is immediately available, and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.[4]

Thus, the Court has repeatedly ruled on the requisites for a petition for declaratory relief to prosper, even when there has been no breach of the challenged law, *viz*: (1) *there must be a justiciable controversy* between persons whose interests are adverse; (2) the party seeking the relief has a legal interest in the controversy; and (3) the issue is ripe for judicial determination. Moreover, (4) there must be no breach of the document in question.[5]

In *Republic v. Roque*[6] (*Roque*), the Court clarified when there is a justiciable controversy or the "ripening of seeds" of one between persons whose interests are adverse:

> As to the fourth requisite, there is serious doubt that an actual justiciable controversy or the 'ripening seeds' of one exists in this case.
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> Pertinently, a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. Corollary thereto, by 'ripening seeds' it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full-blown battle that looms ahead. The concept describes *a state of facts indicating imminent and inevitable litigation* provided that the issue is not settled and stabilized by tranquilizing declaration.[7] (Italics supplied)

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a mere hypothetical or abstract difference or dispute.

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3 *Hon. Quisumbing v. Gov. Garcia*, 593 Phil. 655, 674 (2008), citing *Martelino v. National Home Mortgage Finance Corporation*, 579 Phil. 45 (2008). See also *Tambunting, Jr. v. Sps. Sumabat*, 507 SCRA 94 (2005).

4 *Manila Electric Company v. Phil. Consumers Foundation, Inc.*, 425 Phil. 65, 82 (2002); *Malana v. Tappa*, 616 Phil. 177, 188-189 (2009).

5 *Province of Camarines Sur v. Court of Appeals*, 616 Phil. 541, 556-557 (2009); *Jumamil v. Cafe*, 507 Phil. 455 (2005); *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004.

6 718 Phil. 294 (2013).

7 Id. at 305.

There must be a contrariety of legal rights that can be interpreted and enforced based on existing law and jurisprudence.[8]

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*[9] (*Southern Hemisphere*) the Court held that a reasonable certainty of the occurrence of a *perceived threat* to any constitutional interest suffices to provide a basis for mounting a constitutional challenge, qualified by the requirement that there must be sufficient facts to enable the courts to intelligently adjudicate the issues.

The foregoing definition of "justiciable controversy" or "ripening of seeds" is consistent with the Court's prior rulings allowing petitions for declaratory relief to challenge the constitutionality of a law, executive order, or regulation, *before* there has been a breach or violation thereof. In *Commissioner of Customs v. Hypermix Feeds Corporation*,[10] *Province of Camarines Sur v. Court of Appeals*,[11] and *Government Services Insurance System v. Daymiel*,[12] the petitions for declaratory relief therein were allowed to assail the constitutionality or validity of laws and regulations because the challenging parties were able to present facts establishing that *litigation was inevitable*. Likewise, in *Didipio Earth-Savers' Multi-Purpose Association v. Gozun*[13] (*Dipidio*), the Court found proper the petition for declaratory relief assailing a regulation even without any overt act against therein petitioners as the latter were under *imminent threat* and imperiled of being displaced from their homes by reason of the regulation involving mining rights.

Similarly, in *Inmates of the New Bilibid Prison v. de Lima*[14] (*Inmates of the New Bilibid Prison*), the petition for declaratory relief was allowed against a regulation on the prospective application of a law covering the time credits of inmates, even though therein petitioners-inmates had not yet applied for time credits and there was no prior refusal on the part of the Government to give them time credits. The Court found that therein petitioners were "languishing in jail" and with their continued incarceration, "any delay in resolving the case would cause them great prejudice." Further, any application for time credits would have been an exercise in futility because therein respondents were insisting on the prospective application of the law which would necessarily exclude therein petitioners from time credits.

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8 *Corales v. Republic*, 716 Phil. 432, 451 (2013); *Sps. Arevalo v. Planters Development Bank*, 686 Phil. 236 (2012).
9 646 Phil. 452 (2010).
10 680 Phil. 681 (2012).
11 Supra note 5.
12 848 Phil. 782 (2019).
13 520 Phil. 457 (2006).
14 854 Phil. 675 (2019).

1.B. Decisions holding that a petition for declaratory relief is an improper remedy as it is filed before there has been a breach or violation of the assailed law, regulation, or executive order have to be abandoned.

I am aware of several decisions[15] of the Court holding that a petition for declaratory relief is not a proper vehicle to invoke judicial review powers to declare a statute unconstitutional, which is based on the finding that such petition does not raise an actual case, being filed before there has been a breach or violation of the challenged statute. These decisions find their genesis in *DOTR v. Philippine Petroleum Sea Transport Association*[16] (*PPSTA*), which held:

> Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.[17]

It appears, however, that the propriety of a Rule 63 petition for declaratory relief to challenge the constitutionality of a statute was not even raised as an issue in *PPSTA*. Instead, therein petitioner merely argued that "respondents' petition for declaratory relief questioned the wisdom behind them and was, thus, beyond the lower court's jurisdiction."[18] The argument thus delves on the issue of political question, not the existence of an actual case or controversy.

Moreover, *PPSTA* is more in line with *Pimentel v. Aguirre*[19] where the Court exercised its judicial powers because there were serious allegations of violations of the Constitution, particularly the prohibition against rider clauses and undue delegation of legislative powers, among others.

With the foregoing, I agree with the majority in recognizing a Rule 63 petition for declaratory relief as a viable remedy to assail the constitutionality or validity of a law or regulation, so long as the petitioner shows a justiciable controversy or a contrariety of legal rights that can be interpreted and enforced based on existing law and jurisprudence. The Court's prior rulings holding otherwise must be abandoned.

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15 *Association of International Shipping Lines, Inc. v. Secretary of Finance*, G.R. No. 222239, January 15, 2020; *In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012*, G.R. No. 215801, January 15, 2020.

16 837 Phil. 144 (2018).

17 Id. at 164.

18 Id. at 162.

19 391 Phil. 84 (2000).

I.C. A petition for declaratory relief against a statute with a penal clause may prosper when prosecution has been threatened by the government even though there are no pending charges for its supposed violation.

As regards the existence of an actual controversy in petitions for declaratory relief against statutes with a penal clause, the Court in *Southern Hemisphere*,[20] citing the United States (US) Supreme Court decision in *Holder v. Humanitarian Law Project*,[21] recognized a *pre-enforcement review* of a criminal statute, challenged on vagueness grounds, since the plaintiffs faced "*a credible threat of prosecution*" and "*should not be required to await and undergo a criminal prosecution as the sole means of seeking relief*". To determine the existence of an actual controversy, the Court further relied on prevailing American Jurisprudence, which allows an adjudication on the merits where an anticipatory petition clearly shows that the challenged prohibition forbids the conduct or activity that a petitioner seeks to do.[22]

Indeed, American Jurisprudence recognizes that in actions for declaratory relief against statutes with a penal clause, the existence of an actual controversy is required.[23] The mere existence of a penal statute would constitute insufficient grounds to support a court's adjudication of its constitutionality in proceedings brought against the State's prosecuting officials if *real threat of enforcement* is wanting.[24]

However, a pending criminal complaint nor a prior arrest of the plaintiff is not required; actions for declaratory relief may be allowed when a prosecution based upon an assertedly unconstitutional statute has been threatened but is not pending.[25]

Thus, an action for declaratory relief is dismissible if a plaintiff merely avers a general statement that the State's prosecuting officials "stood ready to perform their duties under their oath of office should they acquire knowledge of violations", but without any actual threats to prosecute the plaintiff in connection with any specific provision of the challenged statute.[26] When the complaint fails to mention any specific threat by any officer or official of the government to arrest or prosecute

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20 646 Phil. 452 (2010).
21 561 U.S. [unpaginated] (2010).
22 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 9, at 482, citing *Doe v. Bolton*, 410 U.S. 179, 188-189 (1973).
23 *Evers v. Dwyer*, 358 U.S. 202, 203-204 (1958).
24 *Poe v. Ullman*, 367 U.S. 497, 507-508 (1961).
25 *Evers v. Dwyer*, supra; *Steffel v. Thompson*, 415 U.S. 452, 457-458, 460-473 (1974).
26 *Watsons v. Buck*, 313 U.S. 387, 400-401 (1941).

the plaintiff under the challenged statute, the action for declaratory relief should be dismissed for failure to present a justiciable controversy.[27]

1.D. Universal Robina was able to establish that there is a case or controversy, warranting the Court's exercise of judicial power.

I agree with the majority's finding[28] that Universal Robina was able to show sufficient facts establishing the existence of an actual case or controversy that would warrant judicial action.[29]

Universal Robina has established that the DTI and its Bureau of Trade Regulation and Consumer Protection (BTRCP), through its Director and herein respondent Victorio Mario A. Dimagiba (Dimagiba), has threatened the enforcement of Section 5(2) of the Price Act on Profiteering. As averred by Universal Robina, it received from Dimagiba a letter dated May 25, 2010 regarding Universal Robina's flour prices covering the period of January to May 2007 and January to May 2010, asking why the ex-mill flour prices of Universal Robina had not been reduced despite the decrease of certain cost factors, followed by Universal Robina's response thereto. Thereafter, Dimagiba wrote a reply-letter refuting Universal Robina's comments and instructing the latter to reduce its prices. Subsequently, Dimagiba prepared the formal charge for profiteering and filed the same with the DTI, which, in turn, issued a Preliminary Order. The formal charge, however, was dismissed for lack of a certification against forum-shopping, while the Preliminary Order was lifted after Universal Robina and other flour millers complied with the same.

A few months later, Universal Robina received another letter, this time from the DTI, likewise asking about its ex-mill prices, which appeared to be higher than expected. Notably, the DTI's letter expressly refers to the price evaluation of the BTCRP and directed Universal Robina to comment on such evaluation, warranting the conclusion that a similar finding of Profiteering by the DTI against Universal Robina was highly likely.

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27 *Boyle v. Landry*, 401 U.S. 77, 80-81 (1971).

28 Supra note 1.

29 See in contrast, *Corales v. Republic*, supra note 8. In the case, the petition for declaratory relief was dismissed for lack of justiciable controversy because the petitioner therein was seeking to enjoin the Commission on Audit (COA) from disallowing certain expenditures, even though the COA has not yet issued a Notice of Disallowance. Instead, the COA has issued only an Audit Observation Memorandum, which was merely initiatory and may still be subject to the comments from therein petitioner. The Court held that there was no justiciable controversy, as the COA could very well consider petitioner's comments and resolve not to disallow the questioned expenditures. At such initial step of the process, it was purely conjectural for petitioner to state that the COA was going to disallow such expenditures.

The foregoing factual circumstances sufficiently show that the DTI has threatened the enforcement of Section 5(2) of the Price Act against Universal Robina. A formal charge for Profiteering has, in fact, been filed against Universal Robina. Further, the sale of Universal Robina's products at the prices it set is precisely the conduct being prohibited by Section 5(2) of the Price Act.

Thus, Universal Robina's Petition for Declaratory Relief presents an actual controversy, as it demonstrates a contrariety of rights and the facts presented are sufficient for the Court to intelligently adjudicate the conflicting claims of the parties. On one hand, Universal Robina asserts its right to sell its products at the prices it deems fit. Relevantly, in *Balacuit v. Court of First Instance of Agusan del Norte*,[30] we recognized that the right of the owner to fix a price at which his property shall be sold or used is an inherent attribute of the property itself and, as such, within the protection of the due process clause.

On the other, the BTRCP submits that the prices are "grossly in excess" of the products' "true worth", in violation of Section 5(2) of the Price Act. To this end, the Court has recognized price control laws regulating the realization of profits as a valid exercise of police power.[31] The Court explained that the Philippines has never been a *laissez faire* State,[32] a principle that has never been fully accepted as a controlling economic way of life and must even give way to the interest of the State to provide a decent living to its citizens.[33]

Evidently, similar to *Steffel v. Thompson*,[34] Universal Robina finds itself hapless between the Scylla of intentionally flouting state law and the Charybdis of foregoing what it believes to be constitutionally protected activity in order to avoid becoming enmeshed in a criminal proceeding.

The foregoing conflicting assertion of rights warrants judicial action, as correctly held by the majority.

2. Section 5(2) of the Price Act is vague.

Nevertheless, the majority holds that the provisions of the Price Act on the crime of profiteering is not vague.[35]

With due respect to my esteemed colleagues, I dissent.

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30 246 Phil. 189 (1988).
31 *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development*, 809 Phil. 315 (2017).
32 *Heirs of Ardona v. Reyes*, 210 Phil. 187 (1983).
33 *Philippine Association of Service Exporters, Inc. v. Drilon*, 246 Phil. 393 (1988).
34 415 U.S. 452 (1974).
35 Decision, pp. 15-16.

A statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application."[36] It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[37]

In *Southern Hemisphere*,[38] the Court clarified that in this jurisdiction, the void-for-vagueness doctrine is applied *under the due process clause* in examining the constitutionality of a criminal statute:

> *Since a penal statute may only be assailed for being vague as applied to petitioners, a limited vagueness analysis of the definition of 'terrorism' in RA 9372 is legally impermissible absent an actual or imminent charge against them*
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> While *Estrada* did not apply the overbreadth doctrine, it did not preclude the operation of the vagueness test on the Anti-Plunder Law *as applied* to the therein petitioner, finding, however, that there was no basis to review the law 'on its face and in its entirety.' It stressed that **'statutes found vague *as a matter of due process* typically are invalidated only 'as applied' to a particular defendant.'**
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> American jurisprudence instructs that 'vagueness challenges that do not involve the First Amendment must be examined in light of the **specific facts** of the case at hand and not with regard to the statute's facial validity.'
>
> For more than 125 years, the US Supreme Court has evaluated defendants' claims that **criminal statutes are unconstitutionally vague, developing a doctrine hailed as 'among the most important guarantees of liberty under law.'**
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> In this jurisdiction, the void-for-vagueness doctrine asserted under the due process clause has been utilized in examining the constitutionality of criminal statutes. In at least three cases, the Court brought the doctrine into play in analyzing an ordinance penalizing the non-payment of municipal tax on fishponds, the crime of illegal recruitment punishable under Article 132 (b) of the Labor Code, and the vagrancy provision under Article 202 (2) of the Revised Penal Code. Notably, the petitioners in these three cases, similar to those in the two *Romualdez* and *Estrada* cases, were actually charged with the therein assailed penal statute, unlike in the present case.[39] (Emphasis supplied; underscoring and citations omitted)

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36 *People v. Nazario*, 247-A Phil. 276, 286 (1988). See also *People v. Dela Piedra*, 403 Phil. 31 (2001); *Representative Lagman v. Hon. Medialdea*, 812 Phil. 179 (2017).

37 Id.

38 Supra note 9.

39 Id. at 492.

Thus, using the vagueness standard, the Court has struck down government issuances as null and void for being vague.

In *Primicias v. Municipality of Urdaneta, Pangasinan*[40] (*Primicias*), the Court upheld the trial court's finding that a municipal ordinance, which imposed speed limits for vehicular traffic along certain roads, is null and void as it was not clear and definite on its terms. Being a regulatory issuance that imposes criminal liabilities, the ordinance's clearness, definiteness, and certainty are even more important so that an average person should be able to, with due care, after reading it, understand and ascertain whether s/he will incur a penalty for particular acts or courses of conduct. In the case, the ordinance was found vague as it did not define "vehicular traffic":

> The main issue in this appeal is the validity of Ordinance No. 3, Series of 1964, enacted on March 13,1964 by the Municipal Council of Urdaneta, Pangasinan, which was declared null and void by the Court of First Instance of Lingayen, Pangasinan, in its decision dated June 29, 1966, the dispositive portion of which reads as follows:
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> The ordinance in question provides:
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> "SECTION 1 - That the following speed limits for vehicular traffic along the National Highway and the Provincial Roads within the territorial limits of Urdaneta shall be as follows:
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> a. Thru crowded streets approaching intersections at blind corners, passing school zones or thickly populated areas, duly marked with sign posts, the maximum speed limit allowable shall be 20 kph.
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> "SECTION 2 - That any person or persons caught driving any motor vehicle violating the provisions of this ordinance shall be fined P10.00 for the first offense; P20.00 for the second offense; and P30.00 for the third and succeeding offenses, the Municipal Judge shall recommend the cancellation of the license of the offender to the Motor Vehicle's Office (MVO); or failure to pay the fine imposed, he shall suffer a subsidiary imprisonment in accordance with law."
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> x x x x
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> Regarding the contention that the lower court erred in holding that said "*Ordinance is not clear and definite in its terms.*" *We agree with the Court a quo* that when the Municipal Council of Urdaneta used the phrase "vehicular traffic" (Section 1, Ordinance) it "did not distinguish between passenger cars and motor vehicles and motor

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40 182 Phil. 42 (1979).

> trucks and buses." This conclusion is bolstered by the fact that nowhere in the Ordinance is "vehicular traffic" defined. *Considering that this is a regulatory ordinance, its clearness, definiteness and certainty are all the more important so that "an average man should be able with due care, after reading it, to understand and ascertain whether he will incur a penalty for particular acts or courses of conduct.*" In comparison, Section 35(b), Republic Act No. 4136 on which Section 1 of the Ordinance must be based, stated that the rates of speed enumerated therein refer to motor vehicle, specifying the speed for each kind of vehicle. At the same time, to avoid vagueness, Art. 11, Section 3 defines what a motor vehicle is and passenger automobiles are.
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> x x x x
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> *The local statute or ordinance at bar being invalid*, the exception just cited obtains in this case. Hence, the lower court did not err in issuing the writ of injunction against defendants.[41] x x x (Emphasis supplied)

Similarly, in *Genuino v. De Lima*,[42] the Court declared invalid the Department of Justice (DOJ) Circular No. 41 on the issuance of Hold Departure Orders (HDO) by the DOJ. An apparent vagueness was found in the DOJ issuance as it failed to provide standards on when an HDO or Watchlist Order may be issued by the DOJ, which rendered it invalid, *viz.*:

> Apart from lack of legal basis, DOJ Circular No. 41 also suffers from other serious infirmities that render it invalid. The apparent vagueness of the circular as to the distinction between a HDO and WLO is violative of the due process clause. An act that is vague 'violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid and leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.' Here, the distinction is significant as it will inform the respondents of the grounds, effects and the measures they may take to contest the issuance against them. Verily, there must be a standard by which a HDO or WLO may be issued, particularly against those whose cases are still under preliminary investigation, since at that stage there is yet no criminal information against them which could have warranted the restraint.[43]

In determining whether a statute is vague, the Court has held that there is "nothing vague about a penal law that adequately answers the basic query '*What is the violation*?'"[44] The "context of the words that accompany" the assailed law is considered and the whereas clauses thereof are also referred to in order to resolve the issue of vagueness.[45]

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41 Id. at 43-50.
42 829 Phil. 691 (2018).
43 Id. at 734-735.
44 *Romualdez v. Hon. Sandiganbayan*, 479 Phil. 265, 286 (2008).
45 *Rep. Lagman v. Exec. Sec. Medialdea*, 822 Phil. 181 (2017).

In the present case, Universal Robina alleges that Section 5(2) of the Price Act on the crime of profiteering is vague. The said provision of law states:

> Sec. 5. Illegal Acts of Price Manipulation. - Without prejudice to the provisions of existing laws on goods not covered by this Act, it shall be unlawful for any person habitually engaged in the production, manufacture, importation, storage, transport, distribution, sale or other methods of disposition of goods to engage in the following acts of price manipulation of the price of any basic necessity or prime commodity:
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> x x x x
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> (2) Profiteering, which is the sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth. There shall be *prima facie* evidence of profiteering whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month: Provided, That, in the case of agricultural crops, fresh fish, fresh marine products, and other seasonal products covered by this Act and as determined by the implementing agency, the prima facie provisions shall not apply[.]

The majority found Universal Robina's contention to be unwarranted. Supposedly, Section 5(2) of the Price Act is not vague because the purpose behind the law is stated therein and it provides *prima facie* evidence on profiteering, including a 10% increase of prices from the immediately preceding month.[46] Supposedly, this "provides some anchor for assessing whether profiteering has occurred, though that determination is inconclusive."[47]

I respectfully disagree with the majority.

The DTI itself refuted the application of the 10% price increase threshold as an "anchor" to define profiteering. Particularly, in the Joint Administrative Order No. 03-06 dated on September 30, 2006 (Joint AO No. 03-06), then Secretary of the DTI, together with the secretaries of the Department of Agriculture, Department of Health, and Department of Environment and Natural Resources, stated that "*to anchor the definition of a 'price grossly in excess of its true worth' on ten percent (10%) benchmark is to circumvent the prohibitory provisions of RA No. 7581 on profiteering*". According to the DTI, "profiteering may be committed in circumstances where there are no price increases yet evidence may be proven that a commodity 'price is grossly in excess of its true worth.'"

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46 Decision, p. 16.

47 Id.

Evidently, the DTI is not using the 10% price increase threshold as basis to define when profiteering is committed because a product's price may still exceed its true worth despite the absence of price increase. In fact, the letter exchange between Universal Robina and the DTI reveals that the charges of profiteering against the flour millers were not due to any price increase at 10% or more of the preceding month. Instead, profiteering was determined by Dimagiba because the flour millers' prices exceeded international market prices. While the flour millers attempted to explain the price difference to costs of operation, Dimagiba disagreed, arguing that the operational costs cited by the flour millers make up only 5% of production cost. Despite his responses, the standards used by Dimagiba to determine that the flour millers' prices are "grossly in excess" of the products' "true worth" remain elusive.

In truth, the DTI's interpretation of the Price Act in Joint AO No. 03-06 is correct because the statute, as worded, merely identifies the 10% price increase as *prima facie* evidence of profiteering. It does not limit the crime to such situation. But the DTI's position begs the question: when is the price of a product grossly in excess of its true worth?

Contrary to the majority's opinion, I submit that the Price Act, even if read in consonance with the policy behind the law and its other provisions, does not define the crime of profiteering sufficiently. The Price Act leaves persons covered by it guessing as to what conduct is prohibited and what is not, and it grants the DTI unbridled discretion to carry out the prohibition against profiteering.

I am guided by the decision of the US Supreme Court in *U.S. v. L. Cohen Grocery Co.*[48] (*Cohen*), where a constitutional challenge was mounted against Section 4 of the Food Control Act, which attached a penalty of fine or imprisonment to the making by any person of "*any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries*." The law was construed as forbidding and penalizing the exaction of an *excessive price* upon the sale of a commodity. In *Cohen*, the US Supreme Court struck down the law for being vague and therefore violative of due process. It determined that the law "forbids no specific or definite act" and is devoid of elements of the criminal act. It leaves open the widest conceivable inquiry, the scope of which no one can foresee, and to attempt to enforce the law is equivalent to an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court:

> The sole remaining inquiry, therefore, is the certainty or uncertainty of the text in question -- that is, whether the words

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[48] 255 U.S. 81 (1921).

> "that it is hereby made unlawful for any person willfully . . . to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries"
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> constituted a fixing by Congress of an ascertainable standard of guilt, and are adequate to inform persons accused of violation thereof of the nature and cause of the accusation against them. That they are not, we are of opinion, so clearly results from their mere statement as to render elaboration on the subject wholly unnecessary. Observe that the section forbids no specific or definite act. It confines the subject matter of the investigation which it authorizes to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against. In fact, we see no reason to doubt the soundness of the observation of the court below in its opinion to the effect that to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury. And that this is not a mere abstraction finds abundant demonstration in the cases now before us, since, in the briefs in these cases, the conflicting results which have arisen from the painstaking attempts of enlightened judges in seeking to carry out the statute in cases brought before them are vividly portrayed. As illustrative of this situation, we append in the margin a statement from one of the briefs on the subject. And again, this condition would be additionally obvious if we stopped to recur to the persistent efforts which, the records disclose, were made by administrative officers, doubtless inspired by a zealous effort to discharge their duty, to establish a standard of their own to be used as a basis to render the section possible of execution.
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> That it results from the consideration which we have stated that the section before us was void for repugnancy to the Constitution is not open to question. x x x

American Jurisprudence has likewise struck down a statute with a penal clause which provides that "*not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics, prison guards, janitors in public institutions, or other persons so employed by or on behalf of the state*" because the terms "current rate" and "locality" were not defined. As amply explained by the US Supreme Court in *Connally v. General Construction Co.*[49] (*Connally*), the statute was so vague that the application of the law depends not upon a word of fixed meaning in itself, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction, but upon the probably varying impressions of juries:

> We are of opinion that this provision presents a double uncertainty, fatal to its validity as a criminal statute. In the first place,

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[49] 269 U.S. 385, 393-396 (1926).

the words "current rate of wages" do not denote a specific or definite sum, but minimum, maximum, and intermediate amounts, indeterminately, varying from time to time and dependent upon the class and kind of work done, the efficiency of the workmen, etc., as the bill alleges is the case in respect of the territory surrounding the bridges under construction. The statutory phrase reasonably cannot be confined to any of these amounts, since it imports each and all of them. The "current rate of wages" is not simple, but progressive -- from so much (the minimum) to so much (the maximum), including all between; and to direct the payment of an amount which shall not be less than one of several different amounts, without saying which, is to leave the question of what is meant incapable of any definite answer.

Nor can the question be solved by resort to the established canons of construction that enable a court to look through awkward or clumsy expression, or language wanting in precision, to the intent of the Legislature. For the vice of the statute here lies in the impossibility of ascertaining, by any reasonable test, that the legislature meant one thing, rather than another, and in the futility of an attempt to apply a requirement which assumes the existence of a rate of wages single in amount to a rate in fact composed of a multitude of gradations. *To construe the phrase "current rate of wages" as meaning either the lowest rate or the highest rate, or any intermediate rate, or, if it were possible to determine the various factors to be considered, an average of all rates, would be as likely to defeat the purpose of the legislature as to promote it.*

In the second place, additional obscurity is imparted to the statute by the use of the qualifying word "locality." Who can say with any degree of accuracy what areas constitute the locality where a given piece of work is being done? Two men, moving in any direction from the place of operations, would not be at all likely to agree upon the point where they had passed the boundary which separated the locality of that work from the next locality. It is said that this question is settled for us by the decision of the state Supreme Court on rehearing in *State v. Tibbetts*, 205 P. 776, 779. But all the court did there was to define the word "locality" as meaning "place,", "near the place," "vicinity," or "neighborhood." Accepting this as correct, as of course we do, the result is not to remove the obscurity, but rather to offer *a choice of uncertainties*. The word "neighborhood" is quite as susceptible of variation as the word "locality." *Both terms are elastic and, dependent upon circumstances*, may be equally satisfied by areas measured by rods or by miles. *See Schmidt v. Kansas City Distilling Co.*, 90 Mo. 284, 296; *Woods v. Cochrane and Smith*, 38 Iowa 484, 485; *State ex rel. Christie v. Meek*, 26 Wash. 405, 407-408; *Millville Imp. Co. v. Pitman, etc., Gas Co.*, 75 N.J.Law, 410, 412; *Thomas v. Marshfield*, 10 Pick. 364, 367. The case last cited held that a grant of common to the inhabitants of a certain neighborhood was void because the term "neighborhood" was not sufficiently certain to identify the grantees. In other connections or under other conditions, the term "locality" might be definite enough, but not so in a statute, such as that under review, imposing criminal penalties. Certainly, the expression "near the place" leaves much to be desired in the way of a delimitation of boundaries, for it at once provokes the inquiry, "how near?" And this element of uncertainty cannot here be put aside as of no consequence, for, as the

> rate of wages may vary -- as, in the present case, it is alleged it does vary -- among different employers and according to the relative efficiency of the workmen, so it may vary in different sections. *The result is that the application of the law depends not upon a word of fixed meaning in itself, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction, but upon the probably varying impressions of juries as to whether given areas are or are not to be included within particular localities.* The constitutional guaranty of due process cannot be allowed to rest upon a support so equivocal. (Citations omitted; emphasis supplied)

Connally cites another case[50] where a statute prohibiting the crowding of railway cars was deemed vague, because what may be regarded as "crowded" by one person may not be so considered by another. This important element of the crime cannot be left to conjecture or supplied by the court, for a crime and the elements constituting it must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue:

> The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another.

It is my position that the vague statutes in *Cohen* and *Connally* are similar to the assailed provision of the Price Act. Indeed, Section 5(2) of the Price Act does not define the terms "true worth" and "grossly in excess."

Admittedly, the "true worth" of a product may be determined in reference to the statute's declared policy,[51] *i.e.*, "to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate business *a fair return on investment.*"[52] Corollary thereto, the Court understood "return on investment" as one that relates basically to net profits.[53] Meanwhile, "profits" was defined as "the advance in the price of goods sold beyond the cost of purchase"; "the gain made by the sale of produce or manufactures, after deducting the value of the labor, materials, rents, and all expenses, together with the interest of

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50 Citing *United States v. Capital Traction Co.*, 34 App.D.C. 592.
51 *See Del Mar v. Philippine Amusement and Gaming Corporation*, 400 Phil. 307 (2000).
52 Price Act, Section 2.
53 *Sime Darby Pilipinas, Inc. v. Magsalin*, 259 Phil. 658 (1989).

the capital employed"; "excess of receipts over expenditures."[54] The "true worth" of a product may be determined based on these factors, *i.e.*, gross revenues less costs of goods sold, labor, materials, rents, and other expenses.

What may be a fair and reasonable price has also been related to the standards of just compensation under the taking clause of the Constitution.[55] Thus, a product's "true worth" may refer to the "sum equivalent of the market value of the property, broadly described as the price fixed in open market by the seller in the usual and ordinary course of legal action or competition, or the fair value of the property as between one who receives and who desires to sell it."[56]

To my mind, the vagueness of the Price Act is rooted in its failure to define when a price is deemed "grossly in excess" of a product's true worth.

I disagree with the majority that the meaning of "profiteering" may be gleaned from the context of the words and phrases that accompany the law, which provides circumstances when there could be *prima facie* evidence thereof., *i.e.*, whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month.

Verily, the foregoing merely provides circumstances when there may be *prima facie* evidence of profiteering. As is, they do not define or set parameters when a price may be considered "grossly in excess" of a product's "true worth". A seller may sell his product with a price increase of less than 10% from its prices in the preceding month, yet still be liable for profiteering. Further, as pointed out by the DTI in Joint AO No. 03-06, profiteering may be committed even when there has been no price increase.

Like in *Connally*, the Price Act does not provide a clear dividing line between the selling of products at a price that is lawful and a price that is unlawful. Verily, the term "grossly in excess" is not simple, but progressive -- from so much (at a minimum profit margin of 1% of the seller's costs) to so much (at a margin of more than 10% of the prices in the preceding month), including all between, yet all prices could conceivably fall under "profiteering." The law leaves the DTI with a roving commission to determine the exact threshold when the prices of a product are already "grossly in excess" of their true worth.

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[54] *United States Employees Association Employees Association v. United States Employees Association*, 194 Phil. 80 (1981).

[55] *Levy Leasing Co., Inc. v. Siegel*, 258 U.S. 242 (1922).

[56] *Rebadulla v. Republic*, 824 Phil. 982, 995 (2018).

Thus, as written, the persons covered by the Price Act must necessarily guess at which profit margin, at any given point in time, will be considered acceptable by the DTI. They may sell their products at a profit margin of 1% of their costs, or not even impose any price increase at all, yet in both situations, they may still be deemed to be engaged in profiteering by the DTI. In fact, as earlier pointed out, the DTI does not even use the 10% price increase threshold as the baseline to determine when a price is deemed "grossly in excess" of a product's "true worth". This is precisely the reason why a vague penal statute cannot stand the test of constitutionality – the Price Act violates the due process clause by leaving persons covered by it guessing as to what conduct is prohibited and what is allowed, and it grants the DTI unbridled discretion to prosecute its subjects for profiteering.

The purpose of the law may be noble, but when it criminalizes acts, the due process clause must still be observed. If the government seeks to ensure the availability of basic necessities and enforce price controls, Sections 7 and 8 of the Price Act provide a remedy: the imposition of price ceilings in certain situations provided by law.

In fine, the prosecution of acts under Section 5(2) of the Price Act depends entirely on the judgment of the DTI as to when a price is deemed "grossly in excess" of a product's "true worth". The law also deprives the persons covered by it of fair notice as to when its selling price for its products is already "grossly in excess" of their true worth. Certainly, similar to *Cohen*, an attempt to enforce Section 5(2) of the Price Act is equivalent to an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the DTI whenever it deems fit, in violation of the due process rights of the persons covered by it.

Perforce, Section 5(2) of Republic Act No. 7581 or the "Price Act" should be declared **UNCONSTITUTIONAL** for being vague and violative of the due process clause.

HENRI JEAN PAUL B. INTING
Associate Justice