

Republic of the Philippines
Supreme Court
Manila

EN BANC

NERI J. COLMENARES, BAYAN	G.R. No. 246422
MUNA	PARTYLIST
REPRESENTATIVE	CARLOS
ISAGANI T.	ZARATE,
ANAKPAWIS	PARTYLIST
REPRESENTATIVE	ARIEL B.
CASILAO,	GABRIELA
WOMEN'S	PARTYLIST
REPRESENTATIVE	
EMERANCIA DE JESUS,	
GABRIELA	WOMEN'S
PARTYLIST REPRESENTATIVE	
ARLENE D. BROSAS, ACT	
TEACHERS	PARTYLIST
REPRESENTATIVE	ANTONIO L.
TINIO, ACT	TEACHERS
PARTYLIST REPRESENTATIVE	
FRANCISCA L. CASTRO,	
KABATAAN	PARTYLIST
REPRESENTATIVE	SARAH
JANE I. ELAGO, BAGONG	
ALYANSANG	MAKABAYAN
(BAYAN)	SECRETARY
GENERAL RENATO REYES JR.,	
Petitioners,	

Present:

GESMUNDO, C. J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,*
ZALAMEDA,
LOPEZ, M.,*
GAERLAN,
ROSARIO,*
LOPEZ, J.,*
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH,* JJ.

-versus-

* On official business

**COMMISSION (ERC),
COMMISSION ON AUDIT,
MANILA ELECTRIC COMPANY
(MERALCO),**

Respondents.

Promulgated:

October 8, 2024

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DECISION

LEONEN, J.:

The imposition of bill deposits as security for payment of electricity bills is a valid exercise of Energy Regulatory Commission's (ERC) rate-fixing power to ensure the economic viability of distribution utilities.

The present Petition for *Certiorari* assails the legality of the provisions on bill deposits under the Magna Carta for Residential Electricity Consumers and its amendments, having no basis under the framework of the Electric Power Industry Reform Act (EPIRA) and the franchise¹ of Manila Electric Company (MERALCO). Neri Colmenares; Bayan Muna Partylist Representative, Carlos Isagani T. Zarate; Anakpawis Partylist Representative Ariel B. Casilao; GABRIELA Women's Partylist Representative, Emeranciana De Jesus; GABRIELA Women's Partylist Representative, Arlene D. Brosas; ACT Teachers Partylist Representative, Antonio L. Tinio; ACT Teachers Partylist Representative, Francisca L. Castro; Kabataan Partylist Representative, Sarah Jane I. Elago; Bagong Alyansang Makabayan (Bayan) Secretary General, Renato Reyes Jr.; (collectively, Colmenares et al.) prays for the refund of all bill deposits paid and the prohibition on all distribution utilities to collect the same. Alternatively, Colmenares et al. challenge the legality of MERALCO's commingling of bill deposits with its general funds and the rate of interest which MERALCO is required to pay consumers for their bill deposits.

The Energy Regulatory Board (ERB) issued Resolution No. 95-21² allowing distribution utilities to collect bill deposits.³ Consumers were required to guarantee the payment of their electric bills through a deposit equivalent to their estimated monthly billing. In exchange, their bill deposits shall earn ten 10% interest per annum, which may be refunded upon termination of service:

¹ Rep. Act. No. 9209, entitled "An Act Granting the Manila Electric Company a Franchise to Construct, Operate and Maintain a Distribution System for the Conveyance of Electric Power to the End-Users in the Cities/Municipalities of Metro Manila, Bulacan, Cavite and Rizal, and Certain Cities/Municipalities/Barangays in Batangas, Laguna, Quezon and Pampanga."

² Entitled "Standard Rules and Regulations Governing the Operation of Electrical Power Service."

³ *Rollo*, p. 10.

Section 22. *Deposits and Charges.* – A bill deposit from all residential and non-residential customers to guarantee payment of bills shall be required of new and/or additional service. The amount of the bill deposit shall be equivalent to the estimated monthly billing.

A meter deposit equivalent to one-half (1/2) of the current cost of the electric meter and other equipment appurtenant thereto shall be required.

The bill and meter deposits which shall be refunded within one month from termination of service shall bear interest at the rate of *ten percent (10%) per annum*, refundable on consumer's request upon termination of service provided that the metering facilities are returned in good condition, and all accounts in the name of customer shall have been paid. The amount of refund shall be based on the customer's copy of the receipts or the utility's record thereof.⁴ (Emphasis supplied)

In 2001, Republic Act No. 9136 (EPIRA) abolished ERB and created the ERC.⁵

In 2004, the ERC promulgated the Magna Carta for Residential Electricity Consumers (Magna Carta), requiring all residential consumers to pay bill deposits as guaranty for their electrical bills. The interest earnings of bill deposits were amended to be based on the Weighted Average Cost of Capital (WACC) or the prevailing interest rate for a savings deposit as approved by the Banko Sentral ng Pilipinas (BSP):

ARTICLE 28. *Obligation to Pay Bill Deposit* — A bill deposit from all residential customers to guarantee payment of bills shall be required of new and/or additional service.

The amount of the bill deposit shall be equivalent to the estimated billing for one month. Provided that after (1) year and every year thereafter, when the actual average monthly bills are more or less than the initial bill deposit, such deposit shall be correspondingly increased/decreased to approximate said billing.

Distribution utilities [DU] shall pay interest on bill deposits equivalent to the interest incorporated in the calculation of their Weighted Average Cost of Capital (WACC), otherwise the bill deposit shall earn an interest per annum in accordance with the prevailing interest rate for savings deposit as approved by the Bangko Sentral ng Pilipinas (BSP). The interests shall be credited yearly to the bills of the registered customer.

In cases where the customer has previously received the refund of his bill deposit pursuant to Article 7, and later defaults in the payment of his monthly bills, the customer shall be required to post another bill deposit with the distribution utility and lose his right to avail of the right to refund his bill deposit in the future until termination of service.

⁴ ERB Resolution No. 95-21.

⁵ Republic Act No. 9136 (2001), sec. 38.

Failure to pay the required bill deposit shall be a ground for disconnection of electric service.⁶ (Emphasis supplied)

As stated above, the interest earnings of bill deposits “shall be credited yearly to the bills of the registered customer.”⁷ In addition, bill deposits are also subject to the right of consumers to refund the same, subject to certain conditions:

ARTICLE 7. *Right to a Refund of Bill Deposits.* — The bill deposit provided for under Article 28 hereof shall be refunded within one month from the termination of service provided all bills have been paid.

A customer who has paid his electric bills on or before its due date for three (3) consecutive years may, however, demand for the full refund of the deposit even prior to the termination of his service. An application for this purpose shall be filed with the concerned distribution utility which must refund the deposit within one month from receipt of such application.⁸

The Magna Carta reduced the interest from 10% per annum to the calculated WACC of distribution utilities, and if not, an “interest per annum in accordance with the prevailing interest rate for savings deposit as approved by the [Bangko Sentral ng Pilipinas].”⁹

On October 27, 2004, the ERC issued the “Guidelines to Implement Articles 7, 8, 14 and 28 of the Magna Carta for Residential Electricity Consumers” (Guidelines). These Guidelines operationalized the collection and refund procedures of bill deposits:

Section 3. Procedure for Refund. – The following procedures shall govern in the refund of bill deposits:

1. After complying with the three (3) year consecutive payment (on or before its due date) of electric bills, a formal application must be filed by the registered customer, his successors-in-interest or duly authorized representative. The mode of refund shall likewise be indicated therein.

2. The mode of refund shall be in cash, check, or credit to future billings.

3. The application, must be accompanied by the following supporting documents:

4. The distribution utility shall process the aforementioned application and pay the refund not later than one month from filing of the said application.

5. After approval of the refund by the distribution utility, the latter shall notify the applicant in writing, that his application was granted, indicating therein, among others, the amount of refund and the date or period within which to claim the refund. In case of denial, the applicant shall

⁶ Magna Carta for Residential Electricity Consumers, June 17, 2004.

⁷ Magna Carta for Residential Electricity Consumers, chapter III, art. 28.

⁸ Magna Carta for Residential Electricity Consumers, chapter II, art. 7.

⁹ Magna Carta for Residential Electricity Consumers, chapter III, art. 28.

likewise be notified, in writing, stating therein the reasons for the denial of said application.

6. The mode of refund may be in the form of cash, cashier's or manager's checks, postal money order or a credit to the customer's future billings at the option of the customer.

7. If a customer was notified of the approval of his application for refund but fails to claim the same, the refund shall remain with the concerned distribution utility and continue to earn interest.

8. If a customer was notified of the approval of his application for refund but fails to claim the same, and eventually defaults in the payment of his regular monthly bill, the refund shall be applied to the payment of the reimposed bill deposit. Any excess amount of the refund shall be applied to his future billings.¹⁰

On January 18, 2006, the ERC promulgated the Distribution Services and Open Access Rules or ERC Case No. 2005-10RM (DSOAR), superseding ERB Resolution No. 95-21 in its entirety.¹¹ The DSOAR, adopted the interest rate on bill deposits as stated in the Magna Carta, which is the prevailing interest rate for savings deposit as approved by the BSP.¹²

On February 22, 2010, the ERC issued Resolution No. 2, series of 2010 amending the DSOAR:

3.4 Establishment and Reestablishment of Credit

3.4.1 Residential Electricity Customers

For the establishment of credit, residential electricity customers and the DU shall follow the deposit and deposit refund requirements found in the *Magna Carta*.

The amount of the bill deposit shall be equivalent to the estimated monthly billing. Provided that after one (1) year and every year thereafter, when the actual average monthly bill's increase/decrease is more than ten (10%) percent of the bill deposit, such deposit shall be correspondingly increased/decreased to approximate said billing. DUs are allowed to provide options other than cash deposits as a guarantee of customers' payment.

Distribution utilities shall pay interest on cash bill deposits equivalent to the Peso Savings Account Interest Rate of Land Bank of the Philippines on the first working day of the year, or other government banks

¹⁰ Guidelines to Implement Articles 7, 8, 14, and 28 of the Magna Carta for Residential Electricity Consumers, chapter II, sec. 3.

¹¹ Section 1.4, Article 1 of the DSOAR states that:

1.4. ENERGY REGULATORY BOARD RESOLUTION NO. 95-21 SUPERSEDED

The Energy Regulatory Board's (ERB's) Standard Rules and Regulations Governing the Operation of Electrical Power Services, Resolution No. 95-21, as amended by ERB Order, Case No. 95-368, dated April 10, 2000, are hereby superseded in their entirety by the DSOAR.

¹² 3.4.2 NON-RESIDENTIAL ELECTRICITY CUSTOMERS

....
DUs shall pay interest on bill deposits equivalent to the prevailing interest rate for savings deposit as approved by the Bangko Sentral ng Pilipinas (BSP). The interests shall be credited yearly to the bills of the customer on the anniversary of the commencement of service.

subject to the approval of the ERC. The interests shall be credited yearly to the bills of the registered customer using the abovementioned rate.

A residential customer who previously established credit under the *Magna Carta* by receiving a refund of deposit from the DU shall not be subject to a new deposit requirement if the customer discontinues one service location and establishes a new service location within the DU's franchise area. This applies solely to the original account holder and is non-transferable. This provision does not apply to additional service locations established by the residential customer. In the event a customer establishes a new service location in addition to existing service(s), a bill deposit shall be required on that new service.

A bill deposit previously refunded to the customer may be reimposed if the customer defaults in the payment of his monthly bill on the due date. Once the bill deposit is reimposed, he loses the right to refund the same prior to the termination of his electric service. This provision also holds for a residential customer who was not required to pay a deposit on a new service contract.

Non-payment of the re-imposed or adjusted bill deposit shall be a ground for disconnection.

3.4.2 Non-Residential Electricity Customers

For the establishment of credit, non-residential electricity customers shall submit a bill deposit to guarantee payment of bills. *The amount of the bill deposit shall be equivalent to the estimated monthly billing.* Provided that after one (1) year and every year thereafter, when the actual average monthly bill's increase/decrease is more than ten (10%) percent of the bill deposit, such deposit shall be correspondingly increased/decreased to approximate said billing. DUs are allowed to provide options other than cash deposits as a guarantee of customers' payment.

Distribution utilities shall pay interest on cash bill deposits equivalent to the Peso Savings Account Interest Rate of Land Bank of the Philippines on the first working day of the year, or other government banks subject to the approval of the ERC. The interests shall be credited yearly to the bills of the registered customer using the abovementioned rate.

The bill deposit shall be refunded within one month from the termination of service provided all bills have been paid and identification requirements have been complied with. A customer that has paid its electric bills on or before its due date for three (3) consecutive years may, however, demand for the full refund of the deposit prior to the termination of his service. An application for deposit refund shall be filed with the DU and the DU shall refund the deposit within one month from receipt of such application. A bill deposit previously refunded to the customer may be reimposed if the customer defaults in the payment of his monthly bill on the due date. Once the bill deposit is reimposed, he loses the right to refund the same prior to the termination of his electric service.

Non-payment of the re-imposed or adjusted bill deposit shall be a ground for disconnection.

All customers shall be exempt from the payment of meter deposits. In cases of loss and/or damage to the electric meter due to the fault of the customer, the customer shall bear the full replacement cost of the meter.

3.4.3 *Re-Establishment of Credit for All Captive Customers*

An applicant, who previously has been a customer of the DU and had lost satisfactory credit, must first pay any unpaid billed amounts from previous service plus the relevant deposit requirement to re-establish credit.

A customer who is subject to disconnection/termination and who requests continuation of service shall be required to first pay the re-imposed bill deposit and any unpaid billed amounts. The customer's bill deposit shall be re-imposed and/or adjusted in accordance with his average monthly bill for the preceding year.

Customers without bill deposits and are seeking reconnection must first pay any unpaid billed amounts from previous service plus the relevant deposit requirement to be reconnected.¹³ (Emphasis supplied)

In the ERC Resolution No. 2, series of 2010, the interest rate on bill deposits was further amended to the interest rate of a peso savings account of the Land Bank of the Philippines on the first working day of the year.¹⁴

On November 15, 2010, the ERC issued Resolution No. 28 Series of 2010 amending the Magna Carta to expand the scope of the bill deposits including disconnected consumers who were previously not required to pay bill deposits;¹⁵ adding non-payment of the re-imposed or adjusted bill deposit for the disconnection of electric service;¹⁶ and requiring payment of bill deposit before service reconnection when no bill deposit has been ever posted.¹⁷

In 2017, the National Association of Electricity Consumers for Reforms, Inc. (NASECORE) filed a Complaint against ERC Commissioners Alfredo Non, Gloria Victoria C. Yap-Taruc, Josefina Patricia M. Asirit, and

¹³ ERC Resolution No. 02-10, art. III, sec. 3.4

¹⁴ ERC Resolution No. 02-10, art. III, sec. 3.4

¹⁵ Article 2. *Definition of Terms.* — (a) Bill Deposit shall mean the deposit required from consumers by distribution utilities of new and/or additional service AND FROM DISCONNECTED CONSUMERS WHO WERE PREVIOUSLY NOT SUBJECT TO BILL DEPOSIT. THE DEPOSIT SHALL BE equivalent to the estimated billing for one month to guarantee payment of bills.

¹⁶ Article 28. *Obligation to Pay Bill Deposit.* — A bill deposit from all residential consumers to guarantee payment of bills shall may be required of new and/or additional service by the concerned DU.

...
NON-PAYMENT OF THE REIMPOSED OR ADJUSTED BILL DEPOSIT SHALL BE A GROUND FOR DISCONNECTION OF ELECTRIC SERVICE.

¹⁷ Article 28. *Obligation to Pay Bill Deposit.* — A bill deposit from all residential consumers to guarantee payment of bills shall be required of new and/or additional service by the concerned DU.

...
WHEN THE ELECTRIC SERVICE OF A CONSUMER IS DISCONNECTED AND NO BILL DEPOSIT WAS EVER POSTED FOR SUCH SERVICE ACCOUNT, THE CONSUMER MAY BE REQUIRED, IN ADDITION TO THE PAYMENT OF THE UNPAID BILLS, TO POST THE APPROPRIATE BILL DEPOSIT WITH THE CONCERNED DU, BEFORE ANY RECONNECTION OF ELECTRIC SERVICE CAN BE EFFECTED.

Geronimo D. Sta. Ana (collectively, ERC Commissioners) for grave misconduct before the Ombudsman.¹⁸

On May 18, 2018,¹⁹ the Ombudsman found the ERC Commissioners guilty of Simple Neglect of Duty and suspended them for three months without pay. It held that the ERC Commissioners neglected their duties in allowing MERALCO to comingle the bill deposits with its capital. This act was contrary to the purpose of bill deposits which is to guarantee payment of electricity bills.²⁰ The ERC failed to safeguard and protect the interests of the consumers by failing to regulate, monitor, or check the use of MERALCO of the bill deposits and allowing the imposition of interest rates which are disadvantageous to the public.²¹

A complaint for syndicated estafa²² was also filed against ERC Commissioners together with Manuel V. Pangilinan, Oscar S. Reyes, Manuel M. Lopez, Anabelle Lim Chua, Jose Ma. K. Lim, Ray C. Espinosa, James L. Go, Lance Y. Gokongwei, John L. Gokongwei, Jr., Artemio Panganiban and Pedro E. Roxas (collectively, MERALCO officers) but the same was dismissed.²³

On July 3, 2018, the ERC published in the draft “Rules to Govern the Monitoring and Reporting Process of Bill Deposits” and scheduled focus group discussions to obtain comments on the draft.²⁴

After the issuance of the Ombudsman Decision, several party list representatives filed the present Petition for *Certiorari* on April 30, 2019. Colmenares et al. prayed for the declaration of the collection of bill deposits as illegal and to permanently prohibit distribution utilities from collecting them from consumers. By way of alternative prayer, Colmenares et al. sought for the prohibition of comingling of bill deposits with other funds and its use for other purposes and to pay interest rate earned by the bill deposit.²⁵

In addition, Colmenares et al. asked the Court to direct the Commission on Audit (COA) to conduct an audit of all funds collected under the bill deposit scheme; the actual interest earned by MERALCO; and the amount refunded to consumers and those not yet refunded which should have been

¹⁸ Entitled *NASECORE v. Non*, docketed as OMB C-A-18-0003.

¹⁹ *Rollo*, pp. 152–165, the Decision dated May 18, 2018 in OMB C-A-18-0003 was penned by Graft Investigation & Prosecution Officer III Cherry T. Bautista-Bolo and approved by Overall Deputy Ombudsman Melchor Arthur H. Carandang.

²⁰ *Id.* at 161.

²¹ *Rollo*, pp. 161–162.

²² Entitled *NASECORE v. Non*, docketed as OMB C-C-18-0002.

²³ *Rollo*, pp. 418–437, the Resolution dated May 18, 2018 in OMB C-C-18-0002 was penned by Graft Investigation & Prosecution Officer III Cherry T. Bautista-Bolo and approved by Overall Deputy Ombudsman Melchor Arthur H. Carandang.

²⁴ Energy Regulatory Commission, *ERC States FGDs on the Draft Rules on Bill Deposits*, available at <https://erc.gov.ph/Press-Singular/41299> (last accessed on August 20, 2024)

²⁵ *Rollo*, pp. 34–35.

refunded; and to order the ERC to publish a report on the status of bill deposits collected nationwide with the total amount collected, actual interest earned, and amount of refunds, and balance of refunds if any; and to allow interested consumers access to these official reports.

On June 4, 2019, the Court required ERC, COA, and MERALCO to file their respective comments to the petition.²⁶

On August 14, 2019, the Court noted the entry of appearance of Angara Abello Concepcion Regala and Cruz Law Office for respondent MERALCO.²⁷

On October 28, 2019 the Office of the Solicitor General filed a Manifestation and Motion²⁸ to drop COA as a necessary party in the petition. The ERC has previously held that the bill deposit is not a component of the rate base, it is outside the scope of COA's jurisdiction.

On October 28, 2019, the ERC filed its Comment,²⁹ while MERALCO filed its Comment³⁰ on November 6, 2019.

The Court noted the OSG's manifestation and the respective comments of respondents ERC and MERALCO on November 26, 2019.³¹

On February 4, 2020, the Court required COA to file its Comment.³² On August 13, 2020, COA filed its Comment.³³ On September 8, 2020, the Court noted COA's comment and required Colmenares et al. to file their consolidated reply.³⁴ On November 10, 2020, Colmenares et al. filed their consolidated reply³⁵ which the Court noted on November 17, 2020.³⁶

Colmenares et al. assert their legal standing as captive consumers of MERALCO who paid the required bill deposits. They also raised their standing as legislators, alleging that the collection of bill deposits violated their legislative prerogative because it had no basis under the EPIRA and the MERALCO franchise.³⁷ Colmenares et al. justified their direct recourse to this Court pursuant to *Gios-Samar Inc. v. Department of Transportation and*

²⁶ *Id.* at 146–147.

²⁷ *Id.* at 200-A.

²⁸ *Id.* at 244–252.

²⁹ *Id.* at 253–300.

³⁰ *Id.* 301–367.

³¹ *Id.* at 369–370.

³² *Id.* at 371–372.

³³ *Id.* at 382–410.

³⁴ *Id.* at 442–443.

³⁵ *Id.* at 449–465.

³⁶ *Id.* at 471–472.

³⁷ *Id.* at 8–9.

Communications,³⁸ alleging that the petition involved purely questions of law. They also raised far-reaching implications of the petition, where collection of bill deposits from ordinary citizens supposedly benefits MERALCO through its commingling of bill deposits with its funds, which in turn allowed it to use the same in augmenting its capital funds, while enjoying preferential interest rates.³⁹

Colmenares et al. alleged that the imposition of bill deposits is illegal because it has no basis under the EPIRA. ERC acted *ultra vires* when it allowed its collection even if it did not fall under any of the charges that a distribution utility is authorized to collect.⁴⁰ A bill deposit is not an operating expense which can be charged to consumers since it is not related to the production of services nor do the consumers benefit from its collection.⁴¹

Supposedly, MERALCO's interest in return of investment is sufficiently protected by its huge captive market of 6.5 million people. Disconnection of the supply of electricity, an essential commodity, is an effective motivation for consumers to pay their bills on time. The existence of delinquent account also forms part of the risk of doing business in the country.⁴² Moreover, there are sufficient remedies to ensure payment of the electricity bill under the Magna Carta.⁴³

Colmenares et al. argued that the collection of bill deposits does not promote consumer interests in violation of Section 41 of the EPIRA.⁴⁴ It imposes an additional burden on the consumers without basis in law. It also violates MERALCO's obligation under its franchise to supply electricity with least cost.⁴⁵ There is also no sufficient protection under the Magna Carta because a consumer's right to earn interest on the bill deposit can be forfeited with just a single default in payment. Moreover, the 0.25% interest per annum of the bill deposit is disadvantageous as compared to the interest earnings of MERALCO of at least 14.97% under the Performance Based Regulation scheme in ERC Resolution No. 28 series of 2010.⁴⁶

Alternatively, Colmenares et al. prays that the commingling of funds of the bill deposit with MERALCO's funds be declared illegal and to order ERC and MERALCO to pay to the consumer the interests actually earned by their bill deposits.⁴⁷ This practice endangers the integrity of bill deposits and the consumers' right of refund.⁴⁸ It results in the lack of transparency as

³⁸ 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

³⁹ *Rollo*, pp. 9–10.

⁴⁰ *Id.* at 20.

⁴¹ *Id.* at 21–23.

⁴² *Id.* at 23–29.

⁴³ *Id.*

⁴⁴ *Id.* at 29–32.

⁴⁵ *Id.* at 31–32.

⁴⁶ *Id.* at 33–34.

⁴⁷ *Id.* at 35.

⁴⁸ *Id.* at 32–33.

regards the actual profit that MERALCO earns and the interest earnings that are due to the consumer.⁴⁹ At the very least, Colmenares et al. contends that the interest earnings of the bill deposits of consumers should be equal to the actual interest rates earned by MERALCO.⁵⁰

The ERC, through the OSG, filed its Comment⁵¹ on October 28, 2019. It contends that the petition should be dismissed outright for availing of the wrong remedy. A Rule 65 petition is improper to assail the ERC's exercise of its quasi-legislative powers. Colmenares et al. failed to establish an actual case or controversy and the questions raised were not ripe for adjudication. There was no enforceable and legally demandable right that the imposition of the bill deposits violated.⁵²

ERC asserts that Colmenares et al. failed to avail of Rule 21 of its Rules of Practice and Procedure which provides a mechanism for an interested party to initiate an amendment of existing rules. They did not actively participate in the public consultations on the draft rules on bill deposits. Complaints on the refund of bill deposits can also be filed with the distribution utility's consumer welfare desk, which Colmenares et al. also failed to do. Thus, Colmenares et al. failed to exhaust available administrative remedies and violated the principle of primary jurisdiction.⁵³ Colmenares et al. violated the principle of hierarchy of courts and their direct resort to this Court is improper since the petition involves mixed questions of law and facts.⁵⁴

ERC argued that it was not grave abuse of discretion to authorize the collection of bill deposits under its quasi-legislative powers.⁵⁵ It has given enough latitude to ensure the reliability, security, and affordability of electric power supply. Bill deposits ensure the viability of distribution utilities and electric cooperatives because it guarantees payment of electricity already consumed. When there is default, the bill deposit ceases to be a guaranty as it will be applied as the actual payment of the retail rate. The ERC contends that the collection of bill deposits allows distribution utilities to fully recover prudent and reasonable economic costs incurred. Otherwise, the consumer who defaults will be unjustly enriched at the expense of the distribution utility. This ultimately redounds to the benefit of the consumers.⁵⁶

ERC added that there was a reasonable justification for the collection of bill deposits, as it supposedly sustains the economic viability of public utilities as mandated under the Constitution. The continuity of power supply will be hampered if there is no adequate guarantee of collection of electricity

⁴⁹ *Id.* at 33.

⁵⁰ *Id.* at 33–34.

⁵¹ *Id.* at 253–300.

⁵² *Id.* at 265–268.

⁵³ *Id.* at 269–272.

⁵⁴ *Id.* at 273–275.

⁵⁵ *Id.* at 276–292.

⁵⁶ *Id.* at 276–290.

bills. Moreover, it also protects the smaller electric cooperatives who have low collection efficiency levels.⁵⁷

Finally, ERC contends that it is in the final stages of revising the rules on comingling of funds and interest rate in its draft Rules to Govern the Monitoring and Reporting Process of Bill Deposits. It opened the public consultations on the draft Rules as early as May 31, 2017, with various focus group discussions on different dates and venues. It also directed distribution utilities to submit monitor data on bill deposits. It again posted an invitation to comment on the draft Rules on October 25, 2018. Thus, there were genuine efforts on the part of ERC to ensure adequate protection of consumer interests. It also recognizes the need to hold distribution utilities accountable for the bill deposits they collected, which should be reflected in their respective financial statements.⁵⁸

On November 6, 2019, MERALCO filed its Comment and/or Opposition, praying for the dismissal of the petition for non-compliance with the requirements of judicial review.⁵⁹ It claims that there is no actual case or controversy because Colmenares et al. failed to justify how their constitutional rights were violated with the imposition of bill deposits since it is the refusal of their right to refund which causes damage to consumers.⁶⁰ The petition was also filed out of time and the issues were not raised at the earliest opportunity when the regulations were first issued.⁶¹ MERALCO contends that the petition is questioning the wisdom of the law, and not its constitutionality.⁶²

MERALCO assails the improper direct resort to the Court for being improper because the questions raised in the petition are not purely legal.⁶³ The petition is based on the May 18, 2018 Ombudsman Decision docketed as OMB-C-C-18-0002, and the findings therein are not binding facts and currently pending appeal.⁶⁴ They failed to exhaust administrative remedies available in the ERC, specifically its rule-making procedure where Colmenares et al. could have sought the amendment of policies relating to the collection of bill deposits. In fact, there is a pending petition docketed as ERC Case No. 2017-006-RM for the revision of the Rules Governing the Monitoring and Reporting Process of Bill Deposits.⁶⁵

MERALCO also contends that ERC did not gravely abuse its discretion in allowing the collection of bill deposits.⁶⁶ The issuances were issued pursuant to its exercise of delegated legislative power under the EPIRA. The

⁵⁷ *Id.* at 290–292.

⁵⁸ *Id.* at 292–294.

⁵⁹ *Id.* at 317–318.

⁶⁰ *Id.* at 318.

⁶¹ *Id.* at 322.

⁶² *Id.* at 322–323.

⁶³ *Id.* at 323–329.

⁶⁴ *Id.* at 324.

⁶⁵ *Id.* at 329–334.

⁶⁶ *Id.* at 335–339.

determination of the guidelines in the collection of bill deposits fall within the expertise of ERC and not with the Court.⁶⁷ The regulations underwent public consultations and hearings; thus, the regulations recognize the rights and obligations of the consumers, the captive market, and the distribution utilities.⁶⁸

The collection of bill deposits is a long-standing and well-settled industry practice.⁶⁹ It benefits other sectors involved in power generation because it secures the entire obligation of the consumer due to them. Prior to billing a consumer, respondent MERALCO pays for various electricity charges in advance and recovers them from the consumers' monthly payments. In the event that a large number of consumers fail to pay their electricity bill, respondent MERALCO shoulders these pass-through charges that may result in significant revenue losses.⁷⁰

MERALCO argues that Colmenares et al. misunderstand the nature of bill deposits. It is not a capital asset which earns 14.97% interest under the Performance Based Rate methodology. Bill deposits are not actually used in its distribution service and cannot be used for a long period of time because a consumer has a right to refund. Instead, bill deposits are in the nature of a simple loan which the ERC confirmed through its treatment of interest pegged on the prevailing interest rates in savings deposits. The individual bill deposits of consumers are relatively small and cannot be ordinarily invested in long-term financial instruments. However, they are assured that their bill deposits with MERALCO earns interest, regardless of the latter's business situation. Thus, the collection of bill deposits is actually beneficial to consumers.⁷¹

MERALCO claims that comingling of the bill deposits with the other funds of distribution utilities is not prohibited under the law. It is not akin to legal deposits under Article 1962 of the Civil Code where the obligation to safekeep and return the thing delivered is present. It explains that it has no obligation to keep the monies they received in escrow because its relationship with the consumer in relation to their bill deposit is that of a debtor under Articles 1933 and 1953 of the Civil Code. Its relationship with the consumers is a simple loan or *mutuum*. Ownership of the monies is transferred to MERALCO who in turn is obliged to pay interest, and refund the consumer, when proper. When a consumer defaults in the payment of their bill, it is allowed to offset the monthly charges to the bill deposit by way of legal compensation, where MERALCO and the consumer are mutual creditors and debtors of each other.⁷²



⁶⁷ *Id.* at 339–342.

⁶⁸ *Id.* at 340.

⁶⁹ *Id.* at 345.

⁷⁰ *Id.* at 344–345.

⁷¹ *Id.* at 347–350.

⁷² *Id.* at 350–357.

Commingling of bill deposits does not endanger a consumer's right of refund because MERALCO also maintains sufficient cash on hand and cash equivalents to pay for bill deposits. Owing to the fungible nature of money, there is no obligation to return the exact same monies given by the consumer.⁷³

The COA filed its Comment⁷⁴ on August 13, 2020. It similarly prays for the dismissal of the petition for being an improper remedy, failure to establish requirements for judicial review, and violation of the doctrine of hierarchy of courts.⁷⁵

It contends that it is beyond its authority to audit the bill deposits collected by MERALCO. The Administrative Code and the Government Auditing Code provide that COA's authority to examine accounts of public utilities is in connection with rate fixing of every nature. A bill deposit is not a component of the rate base that can be charged by a distribution utility but a guaranty for an unpaid electric bill. Thus, Colmenares et al. have no basis to compel the COA to conduct audit on the bill deposits collected by MERALCO.⁷⁶

In their Consolidated Reply,⁷⁷ Colmenares et al. contend that the requirement of an actual case or controversy is satisfied with the clashing legal claims of parties.⁷⁸ They admit that no constitutional challenge is involved in the petition. Nevertheless, the writ of *certiorari* expanded the power of judicial review to correct grave abuse of discretion, which is available even for non-constitutional challenges.⁷⁹

The Ombudsman decision finding the ERC Commissioners guilty of simple negligence in failing to protect consumer interests in relation to the bill deposits is *prima facie* evidence of grave abuse of discretion. While the regulations have been in existence for several years, the injury to consumers is real and apparent. Since the regulations are illegal and void, they will never ripen into validity even if they were not challenged at the earliest opportunity.⁸⁰

Colmenares et al. assert that the ERC gravely abused its delegated legislative powers because the EPIRA does not authorize the imposition of bill deposits. There being no provision which expressly provides for its collection, the regulations fail the completeness and sufficient standard test. Colmenares et al. argue that there is no reasonable basis for the imposition of

⁷³ *Id.* at 359–361.

⁷⁴ *Id.* at 382–410.

⁷⁵ *Id.* at 394–403.

⁷⁶ *Id.* at 404–406.

⁷⁷ *Id.* at 449–465.

⁷⁸ *Id.* at 450.

⁷⁹ *Id.* at 451–452.

⁸⁰ *Id.* at 451.

the bill deposits because the economic viability of distribution utilities is guaranteed by their franchise and their status as regulated monopolies.⁸¹

They point out that MERALCO's assertion that commingling is valid supposedly confirms their theory that the former is engaged in this practice, which is unjust enrichment and abuse of its status as a monopoly to the prejudice of the public. Commingling of funds is detrimental to consumer interests because it transforms the bill deposits as subsidy for the business of distribution utilities.⁸²

The issue for this Court's resolution is whether the ERC gravely abused its discretion in authorizing the collection of bill deposits. To resolve this, we must first determine whether the petition is justiciable and whether direct recourse to this Court is justified.

We deny the Petition for being non-justiciable and for violation of the doctrine of hierarchy of courts.

I

The Constitution defines judicial power as "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."⁸³

Before this Court can exercise our power of judicial review, the petition must satisfy certain requirements: (1) there must be an actual case or a justiciable controversy; (2) the issue/s must be ripe for adjudication; (3) the party bringing the case must have legal standing; and (4) when constitutional questions are raised, it must be raised at the earliest opportunity and must be the *lis mota* of the case.⁸⁴

Petitioners are seeking the issuance of a writ of *certiorari* and prohibition without raising any constitutional questions.⁸⁵ They assail ERC regulations which allowed the imposition of bill deposits on consumers

⁸¹ *Id.* at 457–458.

⁸² *Id.* at 459–460.

⁸³ CONST., art. 8, sec. 1.

⁸⁴ *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1187 (2019) [Per J. Leonen, *En Banc*] citing *Araullo v. Aquino III*, 731 Phil. 457, 525 (2014) [Per J. Bersamin, *En Banc*]. See also *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003) [Per J. Carpio Morales, *En Banc*]; *Garcia v. Executive Secretary*, 281 Phil. 572 (1991) [Per J. Cruz, *En Banc*] citing *Dumlao v. Commission on Elections*, 184 Phil. 369 (1980) [Per J. Melencio-Herrera, *En Banc*]; *Corales v. Republic*, 716 Phil. 432, 451 (2013) [Per J. Perez, *En Banc*].

⁸⁵ *Rollo*, p. 452.

without basis under the EPIRA and which were supposedly violative of the franchise of MERALCO.⁸⁶

A non-constitutional *certiorari* petition must still comply with the requisites of judicial review, save for the requirements specific to constitutional challenges.⁸⁷ Specifically, “there must be an actual case or controversy and the compliance with requirements of standing, as affected by the hierarchy of courts, exhaustion of remedies, ripeness, prematurity, and the moot and academic principles.”⁸⁸

Here, the petition is filed under Rule 65 of the Rules of Court. The writ of *certiorari* is available only when “there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.”⁸⁹ Rule 65, Section 1 provides that the petition must be filed by an aggrieved person, assailing a tribunal, board, or officer’s exercise of judicial or quasi-judicial discretion:

Section 1. Petition for *certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

In *Kilusang Mayo Uno v. Aquino III*,⁹⁰ the expanded judicial power under the writ of *certiorari* is available to set aside grave abuse of discretion of any branch of government regardless of the nature of the act involved. A writ of prohibition under Rule 65 is not proper to assail the exercise of a quasi-legislative function:

While these provisions pertain to a tribunal’s, board’s, or an officer’s exercise of discretion in judicial, quasi-judicial, or ministerial functions, Rule 65 still applies to invoke the expanded scope of judicial power. In *Araullo v. Aquino III*, this Court differentiated *certiorari* from prohibition, and clarified that Rule 65 is the remedy to “set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial[,] or ministerial functions.”

This Court further explained:

⁸⁶ *Id.* at 23–32.

⁸⁷ *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 151 (2016) [Per J. Brion, *En Banc*].

⁸⁸ *Id.*

⁸⁹ RULES OF COURT, rule 65, sec. 1.

⁹⁰ 850 Phil. 1168 (2019) [Per J. Leonen, *En Banc*].

The present Rules of Court uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for *certiorari* and prohibition, and both are governed by Rule 65. . . .

The ordinary nature and function of the writ of *certiorari* in our present system are aptly explained in *Delos Santos v. Metropolitan Bank and Trust Company*:

XXX XXX XXX

The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

Although similar to prohibition in that it will lie for want or excess of jurisdiction, *certiorari* is to be distinguished from prohibition by the fact that it is a corrective remedy used for the re-examination of some action of an inferior tribunal, and is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself. The Court expounded on the nature and function of the writ of prohibition in *Holy Spirit Homeowners Association, Inc. v. Defensor*:

A petition for prohibition is also not the proper remedy to assail an IRR issued in the exercise of a quasi-legislative function. Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Prohibition lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions. Generally, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. Prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior



court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained. Where the principal relief sought is to invalidate an IRR, petitioners' remedy is an ordinary action for its nullification, an action which properly falls under the jurisdiction of the Regional Trial Court. In any case, petitioners' allegation that "respondents are performing or threatening to perform functions without or in excess of their jurisdiction" may appropriately be enjoined by the trial court through a writ of injunction or a temporary restraining order.

With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1. . . .

Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.⁹¹ (Emphasis in the original, citations omitted)

Here, petitioners invoke their legal standing as consumers. They allege the continuing violation of their rights through the illegal collection of bill deposit which have no basis in law. They also invoke their standing as legislators, alleging that the collection of bill deposits violates their prerogatives as legislators because such practice is not provided for in the EPIRA or under MERALCO's franchise.⁹²

The requirement of legal standing, or "*locus standi*," is defined as a party's right or interest to appear in court to bring a particular issue. Such interest must be direct, personal, and material⁹³ and the petitioner "must be able, to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way."⁹⁴ *David v. Arroyo*⁹⁵ extensively discussed the exceptions to a personal interest in a suit, and the instances where the Court recognized legal standing:

⁹¹ *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1184–1186 (2019) [Per J. Leonen, *En Banc*].

⁹² *Rollo*, pp. 8–9.

⁹³ *Joya v. Presidential Commission on Good Government*, 296-A Phil. 595, 602–603 (1993) [Per J. Bellosillo, *En Banc*].

⁹⁴ *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, 450 Phil. 744, 802 (2003) [Per J. Puno, *En Banc*]. (Citations omitted)

⁹⁵ *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006) [Per. Sandoval-Gutierrez, *En Banc*].

The difficulty of determining *locus standi* arises in *public suits*. Here, the plaintiff who asserts a “public right” in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a “stranger,” or in the category of a “citizen,” or “taxpayer.” In either case, he has to adequately show that he is entitled to seek judicial protection. In other words, he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a “citizen” or “taxpayer.”

Case law in most jurisdictions now allows both “citizen” and “taxpayer” standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*, where it was held that the plaintiff in a taxpayer’s suit is in a different category from the plaintiff in a citizen’s suit. *In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern.* As held by the New York Supreme Court in *People ex rel Case v. Collins*: “*In matter of mere public right, however . . . the people are the real parties. . . It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied.*” With respect to taxpayer’s suits, *Terr v. Jordan* held that “*the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied.*”

However, to prevent just about any person from seeking judicial interference in any official policy or act with which he disagreed with, and thus hinders the activities of governmental agencies engaged in public service, the United States Supreme Court laid down the more stringent “*direct injury*” test in *Ex Parte Levitt*, later reaffirmed in *Tileston v. Ullman*. The same Court ruled that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, *he must show that he has sustained a direct injury as a result of that action, and it is not sufficient that he has a general interest common to all members of the public.*

This Court adopted the “*direct injury*” test in our jurisdiction. In *People v. Vera*, it held that the person who impugns the validity of a statute must have “*a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result.*” The *Vera* doctrine was upheld in a litany of cases, such as, *Custodio v. President of the Senate*, *Manila Race Horse Trainers’ Association v. De la Fuente*, *Pascual v. Secretary of Public Works* and *Anti-Chinese League of the Philippines v. Felix*.

However, being a mere procedural technicality, the requirement of *locus standi* may be waived by the Court in the exercise of its discretion. This was done in the 1949 *Emergency Powers Cases*, *Araneta v. Dinglasan*, where the “*transcendental importance*” of the cases prompted the Court to act liberally. Such liberality was neither a rarity nor accidental. In *Aquino v. Comelec*, this Court resolved to pass upon the issues raised due to the “*far-reaching implications*” of the petition notwithstanding its categorical statement that petitioner therein had no personality to file the suit. Indeed, there is a chain of cases where this liberal policy has been observed, allowing ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the



constitutionality or validity of laws, regulations and rulings.⁹⁶ (Emphasis in the original, citations omitted)

While we recognize petitioners' legal standing, we are constrained to dismiss the Petition for violation of the doctrine of hierarchy of courts, the absence of an actual case or controversy, and for being premature.

II

The doctrine of hierarchy of courts "is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts."⁹⁷ It is a "constitutional filtering mechanism" which allows the Court to dismiss petitions which can be litigated in lower courts with concurrent jurisdiction.⁹⁸ Dismissal of a petition for its failure to comply with the hierarchy of courts is an avoidance mechanism and a variant of the ripeness requirement.⁹⁹

In *Aala v. Uy*,¹⁰⁰ citing *Diocese of Bacolod v. COMELEC*,¹⁰¹ this Court enumerated the exceptions to the doctrine of hierarchy of courts:

- (1) when genuine issues of constitutionality are raised that must be addressed immediately;
- (2) when the case involves transcendental importance;
- (3) when the case is novel;
- (4) when the constitutional issues raised are better decided by this Court;
- (5) when time is of the essence;
- (6) when the subject of review involves acts of a constitutional organ;
- (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law;
- (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice;
- (9) when the order complained of was a patent nullity; and
- (10) when the appeal was considered as an inappropriate remedy.¹⁰²

*Gios-Samar*¹⁰³ is instructive that it is not the mere presence of these factors that is decisive in allowing an exception to the doctrine of the hierarchy of courts. Instead, the nature of the questions raised is controlling.¹⁰⁴ They

⁹⁶ *Id.* at 756–758.

⁹⁷ *Aala v. Uy*, 803 Phil. 36, 54 (2017) [Per J. Leonen, *En Banc*]. (Citation omitted)

⁹⁸ *Gios-Samar, Inc. v. Department of Transportation and Communications*, 849 Phil. 120, 150 (2019) [Per J. Jardeleza, *En Banc*].

⁹⁹ Concurring Opinion of J. Leonen in *Gios-Samar, Inc. v. Department of Transportation and Communications*, 849 Phil. 120, 193 (2019) [Per J. Jardeleza, *En Banc*].

¹⁰⁰ 803 Phil. 36, 57 (2017) Per J. Leonen, *En Banc* citing *Diocese of Bacolod v. COMELEC*, 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

¹⁰¹ 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

¹⁰² *Aala v. Uy*, 803 Phil. 36, 57 (2017) Per J. Leonen, *En Banc*

¹⁰³ 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

¹⁰⁴ *Id.* at 174–175.

must be purely legal and the facts necessary to resolve the issues should be well-established.¹⁰⁵

Here, the petition was directly filed with this Court, in violation of the doctrine of hierarchy of courts. Petitioners invoke *Gios-Samar* to excuse their non-compliance, alleging that the petition only involves questions of law, and the material facts are not contested. They raise the far-reaching implications of the petition as justification.¹⁰⁶

We do not agree.

The petition does not raise purely questions of law. It is replete with questions of facts specifically in alleging that the scheme of bill deposit only ensures profits for the distribution utilities at the expense of consumer interests.¹⁰⁷ They raise the findings of the Ombudsman that the bill deposits has been commingled by MERALCO with its general funds “and used to finance its capital and operation costs.”¹⁰⁸ Commingling makes it difficult to determine MERALCO’s profit from its interest earnings from bill deposits. Notwithstanding the difficulty, petitioners assert the disparity in interest earnings of consumers, which is limited to the rate of Landbank Peso Savings Account interest only.¹⁰⁹ Moreover, petitioners allege that it endangers the integrity of the bill deposits and the right to refund of consumers.¹¹⁰ They also raise that the bill deposits decrease the efficiency of MERALCO in prioritizing collection of payments.¹¹¹

These questions are factual because they require presentation of evidence before the Court may resolve them. In *Velayo-Fong v. Spouses Velayo*,¹¹² the Court distinguishes between questions of fact and questions of law:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. *For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.* The resolution of the issue must rest solely on what the law provides on the given set of circumstances. *Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.* Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in

¹⁰⁵ *Id.*

¹⁰⁶ *Rollo*, pp. 9–10.

¹⁰⁷ *Id.* at 30.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 30–34.

¹¹⁰ *Id.* at 32.

¹¹¹ *Id.* at 32.

¹¹² 539 Phil 377 (2006) [Per J. Austria-Martinez, First Division].

which case, it is a question of law; otherwise it is a question of fact.¹¹³
(Emphasis supplied, citations omitted)

For this Court to determine the foregoing issues raised in the petition, evidence is necessary to show that MERALCO had used the bill deposits to finance its general operations and to determine how much it benefited from its use of bill deposits. Evidence is also needed to show the disparity in the interest earnings of MERALCO from its supposed use of the bill deposits.

This Court is not a trier of facts,¹¹⁴ and ordinarily, it has no competence to resolve factual questions. In choosing to directly raise these issues before this Court, petitioners should have ensured that their petition does not raise any factual questions.¹¹⁵ Instead, they cite the Ombudsman Decision's findings of fact as substitute in claiming that the factual basis for its conclusions was well founded. However, this is improper because the Ombudsman Decision is not pending before us. Until its finality, the Ombudsman's findings cannot be considered as binding before this Court. There being questions of facts, petitioners direct resort to this Court is unjustified.

Furthermore, the Regional Trial Court and Court of Appeals have concurrent jurisdiction to act on petitions for *certiorari*. However, petitioners directly filed the same with this Court, alleging that their petition raised issues of far-reaching consequences. This alone does not justify petitioners' disregard of the doctrine of hierarchy of courts.¹¹⁶ Further, as will be discussed below, petitioners likewise fail to establish an actual case or controversy that is ripe for adjudication.

III

Petitioners anchor their challenge to the validity of the imposition of bill deposits through several ERC regulations, citing the Ombudsman Decision as *prima facie* evidence of grave abuse of discretion. Supposedly, the clash of the parties' legal claims, together with the *prima facie* grave abuse of discretion, sufficiently hurdle the actual case or controversy requirement.¹¹⁷

They are mistaken.

¹¹³ *Id.* at 386–387.

¹¹⁴ *Arriola v. People*, 871 Phil. 585, 596 (2020) [Per J. Hernando, Second Division]

¹¹⁵ *Gios-Samar, Inc. v. Department of Transportation and Communications*, 849 Phil. 120, 146 (2019) [Per J. Jardeleza, *En Banc*].

¹¹⁶ *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 243 (2018) [Per J. Leonen, *En Banc*].

¹¹⁷ *Rollo*, p. 450.

There is an actual case or controversy when there are conflicting legal rights or opposing legal claims susceptible of judicial resolution.¹¹⁸ Petitioner must allege a legally demandable and enforceable right that has been violated.¹¹⁹ The pleadings must show a convincing violation of rights and its impact which necessitates the court's exercise of judicial review:

Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: *Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.*¹²⁰ (Emphasis supplied)

In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,¹²¹ this Court emphasized the importance of actual facts in the exercise of judicial review:

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.*¹²² (Emphasis supplied, citations omitted)

¹¹⁸ *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1188 (2019) [Per J. Leonen, *En Banc*].

¹¹⁹ *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 140 (2016) [Per J. Brion, *En Banc*].

¹²⁰ Concurring Opinion of Justice Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 661 (2013) [Per J. Perlas-Bernabe, *En Banc*].

¹²¹ *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].

¹²² *Id.* at 245–246.

While the existence of actual facts is important for justiciability, it is not always necessary.

The requirement of actual case or controversy is satisfied when there is “a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.”¹²³ Contrariety of rights is established when there are clear antagonistic positions of parties on constitutional issues ripe for adjudication.¹²⁴

In *Executive Secretary v. Pilipinas Shell*,¹²⁵ we further clarified the standard of contrariety of legal rights in as-applied challenges:

The party availing of the remedy must demonstrate that the law is so contrary to their rights that there is no other interpretation other than that there is a 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.¹²⁶ (Citation omitted)

Here, petitioners attempt to completely do away with actual facts and substitute the facts established in the Ombudsman Decision. However, this Court’s expanded judicial review did not do away with the requirement of an actual case or controversy. It was only simplified to require a *prima facie* showing of grave abuse of discretion.¹²⁷ The Ombudsman Decision is not a substitute for the requirement of “real and substantial controversy, with definite and concrete issues involving the legal relations of the parties, and admitting of specific relief that courts can grant.”¹²⁸ The findings pertaining to the administrative liability of public officers is not sufficient basis for the Court to wield its expanded power of judicial review and annul the acts of a co-equal branch on the basis of grave abuse of discretion.

In this case, there must be actual facts independent of the factual findings of the Ombudsman Decision before judicial review of the legality of the imposition of bill deposit, its interest earnings, and commingling of funds can be acted upon. Stripped of the Ombudsman Decision, the petition presents hypothetical violations of consumer rights founded on mere speculation.

¹²³ *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1090 (2017) [Per J. Perlas-Bernabe, *En Banc*] citing *Belgica v. Ochoa*, 721 Phil. 416, 519 (2013) [Per J. Perlas-Bernabe, *En Banc*].

¹²⁴ *Belgica v. Ochoa*, 721 Phil. 416, 520 (2013) [Per J. Perlas-Bernabe, *En Banc*].

¹²⁵ G.R. No. 209216, February 21, 2023 [Per J. Leonen, *En Banc*].

¹²⁶ *Id.* at 21–22. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

¹²⁷ *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 149 (2016) [Per J. Brion, *En Banc*].

¹²⁸ *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1188 (2019) [Per J. Leonen, *En Banc*] citing *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

Actual facts on the basis of contrariety of rights is also not applicable in this case, given that there is no constitutional challenge raised in the petition. There are also no facts showing actual breach of petitioners' right that is legally demandable and enforceable.

IV

The petition must also be dismissed because it is not yet ripe for adjudication.

A case must be ripe for adjudication, meaning that "the challenged governmental act is a completed action such that there is a direct, concrete, and adverse effect on the petitioner"¹²⁹ before the courts intervene in the conduct of the other branches of government. *Lozano v. Nograles*¹³⁰ explains the various aspects of this requirement:

An aspect of the "case-or-controversy" requirement is the requisite of "ripeness." In the United States, courts are centrally *concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all*. Another approach is the evaluation of the *twofold aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration*. In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. *Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.*

In the present case, the fitness of petitioners' case for the exercise of judicial review is grossly lacking. In the first place, petitioners have not sufficiently proven any adverse injury or hardship from the act complained of. In the second place, House Resolution No. 1109 only resolved that the House of Representatives shall convene at a future time for the purpose of proposing amendments or revisions to the Constitution. No actual convention has yet transpired and no rules of procedure have yet been adopted. More importantly, no proposal has yet been made, and hence, no usurpation of power or gross abuse of discretion has yet taken place. In short, House Resolution No. 1109 involves a quintessential example of an uncertain contingent future event that may not occur as anticipated, or indeed may not occur at all. The House has not yet performed a positive act that would warrant an intervention from this Court.¹³¹ (Emphasis supplied, citations omitted)

¹²⁹ *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1191(2019) [Per J. Leonen, *En Banc*] citing *Abakada Guro Party List vs. Purisima*, 584 Phil. 246, 266 (2008) [Per J. Corona, *En Banc*].

¹³⁰ 607 Phil. 334 (2009) [C.J. Puno, *En Banc*].

¹³¹ *Id.* at 341.

The ripeness requirement proceeds from the doctrine of separation of powers. Courts must ensure that the legislative or executive act had been fully accomplished before such act may be reviewed:

Petitioner Gonzales in accordance with the controlling doctrine had the good sense to wait before filing his suit until after the enactment of the statute for the submission to the electorate of certain proposed amendments to the Constitution. It was only then that the matter was ripe for adjudication. Prior to that stage, the judiciary had to keep its hands off. The doctrine of separation of powers calls for the other departments being left alone to discharge their duties as they see fit. The judiciary as Justice Laurel emphatically asserted “will neither direct nor restrain executive [or legislative] action . . .” The legislative and executive branches are not bound to seek its advice as to what to do or not to do. Judicial inquiry has to be postponed in the meanwhile. It is a prerequisite that something had by then been accomplished or performed by either branch before a court may come into the picture. At such a time, it may pass on the validity of what was done but only “when . . . properly challenged in an appropriate legal proceeding.”¹³²

In relation to administrative agencies, a case is ripe for adjudication if the petitioner has complied with the doctrine of exhaustion of administrative remedies.¹³³ The doctrine is founded on the recognition of the administrative mandate of government agencies and their competence.¹³⁴ The doctrine of primary jurisdiction is related but a distinct requirement from the doctrine of exhaustion of administrative remedies as follows:

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

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

Usually contrasted with the doctrine of primary jurisdiction is the doctrine of exhaustion of administrative remedies. Though both concepts

¹³² *Tan v. Macapagal*, 150 Phil. 778, 784 (1972) [Per J. Fernando, First Division]. (Citations omitted)

¹³³ *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1192 (2019) [Per J. Leonen, *En Banc*].

¹³⁴ *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 146–147 [Per J. Brion, *En Banc*].

aim to maximize the special technical knowledge of administrative agencies, the doctrine of primary administrative jurisdiction requires courts to not resolve or “determine a controversy involving a question which is within the jurisdiction of an administrative tribunal.” The issue is jurisdictional and the court, when confronted with a case under the jurisdiction of an administrative agency, has no option but to dismiss it.

In contrast, exhaustion of administrative remedies requires parties to exhaust all the remedies in the administrative machinery before resorting to judicial remedies. The doctrine of exhaustion presupposes that the court and the administrative agency have concurrent jurisdiction to take cognizance of a matter. However, in deference to the special and technical expertise of the administrative agency, courts must yield to the administrative agency by suspending the proceedings. As such, parties must exhaust all the remedies within the administrative machinery before resort to courts is allowed.¹³⁵

Generally, parties are precluded from immediately seeking court intervention to assail the actions of administrative agencies when other remedies provided by law have not been availed of.¹³⁶ The rationale of the doctrine is to prevent prematurity of judicial intervention.¹³⁷

Nevertheless, non-compliance with this doctrine is not always fatal, such as where strong public interest is involved:

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. As opined in a case:

The doctrine of exhaustion of administrative remedies allows administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The doctrine entails lesser expenses and provides for the speedier resolution of controversies. Therefore, direct recourse to the trial court, when administrative remedies are available, is a ground for dismissal of the action.

The doctrine, however, is not without exceptions. Among the exceptions are: (1) where there is estoppel on the part of the party invoking the doctrine; (2) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (3) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (4) where the amount involved is relatively so small as to make the rule impractical and oppressive; (5) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (6) where judicial intervention is urgent; (7) where the application of the

¹³⁵ *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 235–236 (2018) [Per J. Leonen, *En Banc*].

¹³⁶ *Aala v. Uy*, 803 Phil. 36, 59 (2017) [Per J. Leonen, *En Banc*], citing *Lopez v. City of Manila*, 363 Phil. 68, 80 (1999) [Per J. Quisumbing, Second Division].

¹³⁷ *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1193 (2019) [Per J. Leonen, *En Banc*].

doctrine may cause great and irreparable damage; (8) where the controverted acts violate due process; (9) where the issue of non-exhaustion of administrative remedies had been rendered moot; (10) where there is no other plain, speedy and adequate remedy; (11) where strong public interest is involved; and (12) in *quo warranto* proceedings.”¹³⁸

Petitioners assail several aspects of the bill deposit particularly the lack of regulations in place which allows private respondent MERALCO to commingle the same with its operating funds.¹³⁹ They also assail the ERC’s determination of interest earnings of bill deposits as disadvantageous to costumers.¹⁴⁰

While we recognize the far-reaching implications of the petition, we cannot rule on these issues without issuing an advisory opinion. There is no practical value in ruling on these issues and no substantial relief can be accorded to petitioners.¹⁴¹ Judicial intervention on these issues is premature because the rules on bill deposits have yet to be finalized by the ERC.¹⁴²

Respondent ERC stated that on May 30, 2017, it issued the initial draft of the “Rules to Govern the Monitoring and Reporting Process of Bill Deposits.” The ERC opened public consultations for its initial draft. On October 2, 2017, it released a second draft and posted it on its website for comments. On July 26, 2018, the ERC directed distribution utilities to submit information on bill deposits collected, the total amounts of interest earnings of bill deposits of consumers, refunds to consumers, and balance of bill deposits inclusive of interest earned less amounts of refunds.¹⁴³ On several dates in 2018, public consultations and focus group discussions were conducted on the proposed rule. On October 25, 2018, ERC issued a notice directing distribution utilities and interested parties to submit their respective comments. Respondent ERC noted that Bayan Muna submitted its comment pursuant to the October 25, 2018 Notice.¹⁴⁴

It does not appear, however, that the draft Rules on Bill Deposits have been finalized, published, or already in effect. Since the rules on bill deposit are still incomplete, judicial intervention is premature.

We understand the motivations of petitioners in taking the cudgels for all the members of the captive market and in attempting to correct the disparity

¹³⁸ *Rosales v. Energy Regulatory Commission*, 783 Phil. 774, 795–796 (2016) [Per J. Peralta, *En Banc*] citing *United Overseas Bank of the Philippines, Inc v. The Board of Commissioners-HLURB*, 761 Phil. 606, 616–617 (2015) [Per J. Peralta, *En Banc*] and *Department of Finance v. Hon. Dela Cruz, Jr.*, 767 Phil. 611, 621 (2015) [Per J. Carpio, Second Division].

¹³⁹ *Rollo*, pp. 32–33.

¹⁴⁰ *Id.* at 33–34.

¹⁴¹ *Reyes v. Insular Life Assurance Co., Ltd.*, 731 Phil. 155, 160 (2014) [Per J. Brion, Second Division].

¹⁴² ERC Comment that the rules are still being drafted.

¹⁴³ *Rollo*, 260–261.

¹⁴⁴ *Id.* at 261.

in power and resources between a distribution utility and a regular consumer that the scheme of bill deposits seems to perpetrate. On its surface, requiring all members of the captive market to secure payment of their electricity bills earning an insignificant amount of interest from regulated monopolies, without the concomitant obligation to keep these funds separate from its general funds, appear to be anti-competitive and against consumer interests. However, given the glaring defects in the petition, and the prematurity of its filing, we cannot grant the reliefs prayed for. It is not our function to issue an advisory opinion on the questions of policy and regulations of administrative agencies.

It is premature for this Court to intervene in the delicate exercise of the ERC's rate-fixing functions since it has yet to finalize the rules on bill deposits and the more specific mechanisms for its implementation.

Nonstrategic petitions that are filed prematurely and haphazardly defeat public interest in forcing this Court to review policies without the basic requirements for the exercise of judicial power. These types of petitions attempt to distort the balance of power at the expense of this Court. They take away valuable time and resources given already congested dockets. They defeat public confidence in this Courts' capacity to correct an injustice when petitions raising the same are patently flawed.

In Falcis v. Civil Registrar General:¹⁴⁵

Diligence is even more important when the cause lawyers take upon themselves to defend involves assertions of fundamental rights. By voluntarily taking up this case, petitioner and his co-counsels gave their "unqualified commitment to advance and defend [it.]" The bare minimum of this commitment is to observe and comply with the deadlines set by a court.

Lawyers who wish to practice public interest litigation should be ever mindful that their acts and omissions before the courts do not only affect themselves. In truth, by thrusting themselves into the limelight to take up the cudgels on behalf of a minority class, they represent the hopes and aspirations of a greater mass of people, not always with the consent of all its members. Their errors and mistakes have a ripple effect even on persons who did not agree with or had no opportunity to consent to the stratagems and tactics they employed.

One who touts himself an advocate for the marginalized must know better than to hijack the cause of those whom he himself proclaims to be oppressed. Public interest lawyering demands more than the cursory invocation of legal doctrines, as though they were magical incantations swiftly disengaging obstacles at their mere utterance. Public interest advocacy is not about fabricating prestige. It is about the discomfort of taking the cudgels for the weak and the dangers of standing against the powerful. The test of how lawyers truly become worthy of esteem and

¹⁴⁵ 861 Phil. 388 (2019) [Per J. Leonen, *En Banc*].

approval is in how they are capable of buckling down in silence, anonymity, and utter modesty—doing the spartan work of research and study, of writing and self-correction. It is by their grit in these unassuming tasks, not by hollow, swift appeals to fame, that they are seasoned and, in due time, become luminaries, the standard by which all others are measured.¹⁴⁶ (Citations omitted)

Public interest lawyering requires the discipline and commitment to comply with the Rule of Law. This includes the basic requirements of judicial review before seeking the intervention of courts to resolve actual cases or controversies ripe for adjudication. These requirements exist to maintain the balance of power and the systems of checks and balances. Compliance with rules guards against tyranny, which the Judiciary may commit when it disregards its own rules. No less than our Constitution requires actual controversies before this Court can exercise its power to review and correct grave abuse of discretion in the Government. There being none, we are constrained to dismiss the Petition.

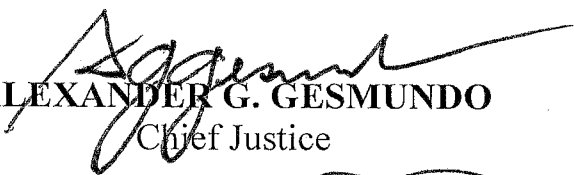
ACCORDINGLY, premises considered, the Petition is **DISMISSED**.

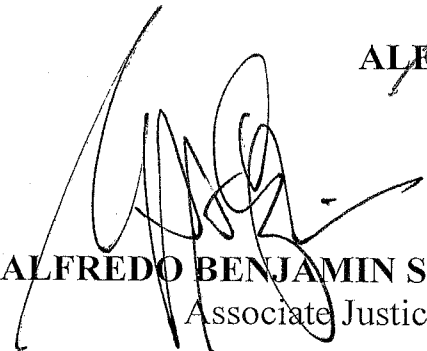
SO ORDERED.

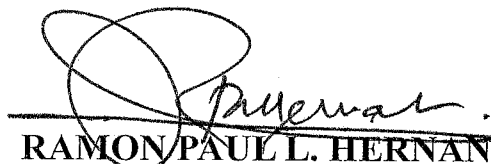

MARVIC M.V.F. LEONEN
Senior Associate Justice

¹⁴⁶ *Id.* at 561–562.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

On official business
HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

On official business
MARIO V. LOPEZ
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SAMUEL H. GAERLAN
Associate Justice

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RICARDO R. ROSARIO
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JHOSEP Y. LOPEZ
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JAPAR B. DIMAAMPAO
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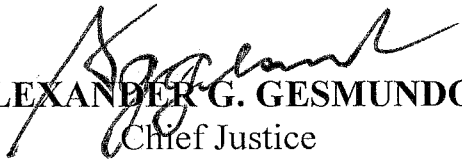

JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

On official business
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VII, Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ALEXANDER G. GESMUNDO
Chief Justice