



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Baguio City

EN BANC

**NAPOLEON SANOTA, BAMBI
MAGNO PURISIMA, ANTONIO
TABBAD, BONIFACIO COLES,
BENJIE REBUENO, ARNOLD
ATADERO, BOY SILVA, REY
ARQUIZA, BEN PAYPON,
ARTURO GALLEGO, JACK
PATEÑA, JULIO SISON,
FROILAN MORALLOS, BOY
MIRASOL, ED BAUSA, VICTOR
REYES, IBARRA SAMSON, JR.,
RICKY CARVAJAL, JR., TONY
WYCO, CUSTOMS MEDIA
ASSOCIATION, INC., and
CUSTOMS TRI-MEDIA
ASSOCIATION, INC.,**

Petitioners,

-versus-

**BUREAU OF CUSTOMS,
represented by COMMISSIONER
ROZZANO RUFINO B. BIAZON,**
Respondent.

x-----

G.R. No. 199479

Present:

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

Promulgated:

April 3, 2024

[Signature]

DECISION

LOPEZ, J., J.:

This Court resolves a Petition for Prohibition¹ with prayer for the issuance of temporary restraining order filed by petitioners Napoleon Sanota, Bambi Magno Purisima, Antonio Tabbad, Bonifacio Coles, Benjie Rebueno, Arnold Atadero, Boy Silva, Rey Arquiza, Ben Paypon, Arturo

¹ Rollo, pp. 3-23.

Gallego, Jack Pateña, Julio Sison, Froilan Morallos, Boy Mirasol, Ed Bausa, Victor Reyes, Ibarra Samson, Jr., Ricky Carvajal, Jr., Tony Wyco, Customs Media Association, Inc. and Customs Tri-Media Association, Inc. (collectively, Sanota et al.) seeking to enjoin the Bureau of Customs (BOC) from implementing Customs Memorandum Order No. 37-2011,² which provides the guidelines on the accreditation of media practitioners in the BOC.

The Antecedents

On November 8, 2011, the BOC issued Customs Memorandum Order No. 37-2011³ signed by then Commissioner Rozzano Rufino B. Biazon.

The scope of Customs Memorandum Order No. 37-2011 was to provide the guidelines and procedures in the accreditation of BOC media practitioners to ensure that only bona fide media professionals and bona fide media organizations were allowed entry into the BOC to cover its events.⁴

The accreditation procedure required all applicants to submit the accreditation requirements to the Office of the Public Information and Assistance Division (PIAD) of the BOC. Within five days from the submission of the requirements, the PIAD chief would issue a BOC Identification Card (ID) to the accredited media practitioners. Columnists were likewise granted visitation passes to enter the BOC premises and conduct media rounds whenever necessary, but they were required to provide clear documentation that they were on assignment from a specific news organization or publication.⁵

Under the operational provision of Customs Memorandum Order No. 37-2011, all applicants were required to submit the following documents for accreditation:

III. 1. Requirements for Accreditation

a. Publication

1. Complete Application Form;
2. For partnerships and corporations, Certified True Copy of Securities & Exchange Commission (SEC) Registration, Articles of Partnership/Incorporation, By-Laws and latest General Information Sheet;
3. For sole proprietorships, Certified True Copy of Department of Trade & Industry (DTI) Registration;

² *Id.* at 24-26.

³ *Id.*

⁴ *Id.* at 24.

⁵ *Id.* at 25.

4. Certified True Copy of Mayor's Permit;
 5. Certified True Copy of Bureau of Internal Revenue (BIR) Certificate of Registration;
 6. Publisher's Association of the Philippines, Inc. Certificate of Registration;
 7. Proof that the publication has been consistently in circulation for at least six (6) months;
 8. Proof that the publication has a weekly circulation of at least 3,000 copies;
- b. Reporters/Writers/Photographers
1. Completed Application Form;
 2. Letter of Assignment on Official Letterhead of a Media Organization/Publication signed by the Publisher or Editor-in-Chief Indicating the name and duration of assignment of the reporter/journalist/writer/photographer;
 3. Bureau of Internal Revenue (BIR) Identification Card;
 4. Print media representatives are required to submit two articles published within the past month and a copy of the publication;
 5. Radio and Television representatives are required to submit two recordings of two reports broadcast within the past month;
 6. Photographers are required to submit original photographs published within the past month and a copy of the publication.⁶

The terms and conditions of Customs Memorandum Order No. 37-2011 also provided, among others, that: (1) the editorial content of the publication must at all times be compliant with the Philippine Journalist's Code of Ethics; (2) the No I.D., No Entry shall be strictly enforced; and (3) media interview with the BOC officials and employees must be prearranged with the PIAD to avoid work disruption.⁷

Customs Memorandum Order No. 37-2011 further provided that the accreditation could be revoked or canceled upon a valid complaint and after due notice and hearing to be conducted by the Grievance Committee composed of the PIAD chief, representatives from the Legal Service, and Office of the Commissioner.⁸

Sanota et al., who claimed to be reporters from various newspapers, magazines, and broadcast entities, asserted that Customs Memorandum Order No. 37-2011 is equivalent to censorship or prior restraint, as it intended to regulate and limit their access to facts and information in the BOC, which are matters of public interest. They claimed that this violated the constitutionally protected freedom of expression, of speech, and of the press.⁹

⁶ *Id.* at 24-25.

⁷ *Id.* at 25-26.

⁸ *Id.* at 26.

⁹ *Id.*

Specifically, Sanota et al. contended that the requirements for accreditation, as imposed by Customs Memorandum Order No. 37-2011 with respect to publication and reporters, writers, and photographers, were akin to applying for a business permit, which should not be the case, since what they intend to do inside the BOC is only to obtain information for public consumption and not to engage in a private enterprise.¹⁰ They also posited that the exercise of press freedom was not a profession that could be regulated by the government, but a vocation.¹¹

Sanota et al. also assailed the requirement that media practitioners “must at all times be compliant with the Philippine Journalist’s Code of Ethics,”¹² claiming that this Philippine Journalist’s Code of Ethics was only a private undertaking agreed upon by journalists, which the BOC could not convert into law by adopting it in a memorandum order. They likewise submitted that in issuing Customs Memorandum Order No. 37-2011, the BOC had made itself as a censor, judge, and executioner of its decision meant to punish media for news reports not palatable to its officials, in the usurpation of legislative authority.¹³

More, Sanota et al. insinuated that requiring members of the press to prearrange the conduct of interviews and to obtain visitation passes before they could enter the BOC, as well as to prove that they were on official assignment from their respective news organizations, would enable the BOC to obtain advance information as to who will be interviewed, allowing its errant employees to avoid the discovery of illicit activities. Sanota et al. also claimed that Customs Memorandum Order No. 37-2011 was meant to avoid “bad press” when it required that the information obtained inside the BOC should be used only for bona fide news reporting.¹⁴

On the other hand, the BOC, through the Office of the Solicitor General (OSG), counters that Customs Memorandum Order No. 37-2011, as already revoked by Customs Memorandum Order No. 22-2015, was merely an internal policy intended to facilitate an orderly and responsible news and information gathering in the BOC and was not meant to arrogate legislative power upon itself. Its objective was to ensure that only bona fide media professionals and bona fide media organizations were allowed entry to cover the events in the BOC.¹⁵ It partook in the nature of content-neutral regulation in which only the manner and method of conducting an interview is regulated. It did not restrict the substance or information to be communicated by those who seek to conduct an interview. There was likewise no threat of punishment in the event that the product of the

¹⁰ *Id.* at 15–16.

¹¹ *Id.* at 17.

¹² *Id.* at 16.

¹³ *Id.* at 16–18.

¹⁴ *Id.* at 17.

¹⁵ *Id.* at 98.

7

interview was adverse to the BOC.¹⁶ Customs Memorandum Order No. 22-2015 also sought to regulate only the schedule of an interview to avoid a work disruption and to protect the safety and security of officials and employees of the BOC.¹⁷ Similarly, the requirement for media practitioners to comply with the Philippine Journalist's Code of Ethics did not impose additional burden or restraint on media practitioners as this was already required and expected of them for the exercise of their profession. In any case, the OSG submitted that while the freedom of the press and other allied constitutional guarantees inure as a matter of right, its unbridled exercise is never justified and compliance with the exacting duty and obligation appurtenant to that is always required.¹⁸

In a January 18, 2012 Resolution,¹⁹ this Court denied the prayer for the issuance of a temporary restraining order. Sanota et al. moved for reconsideration, but it was denied with finality for lack of merit on March 21, 2012.²⁰

Issue

The threshold issue is whether there is a necessity to enjoin the implementation of Customs Memorandum Order No. 37-2011 for being violative of the constitutional guarantees of the freedom of speech, expression, and of the press.

This Court's Ruling

We resolve to dismiss the Petition.

I.

Prefatorily, it must be noted that Customs Memorandum Order No. 37-2011, the assailed law in this present Petition, had already been repealed on January 2, 2014 by Customs Memorandum Order No. 01-2014²¹ or the "Revised Guidelines on the Accreditation of Media Practitioners covering the Bureau of Customs." The pertinent provisions of Customs Memorandum Order No. 01-2014 state:

I. SCOPE

This Order, which *revokes* Customs Memorandum Order (CMO) No. 37-2011, dated 08 November 2011, revises the guidelines and

¹⁶ *Id.* at 97.

¹⁷ *Id.* at 99.

¹⁸ *Id.* at 100.

¹⁹ *Id.* at 27. Notice.

²⁰ *Id.* at 39.

²¹ *Id.* at 102-106.

procedures in the accreditation of journalists and other media practitioners who cover the Bureau of Customs ([BOC]) on a regular basis to ensure that only bona fide media professionals and bona fide media organizations or entities are allowed entry to [BOC] premises nationwide and cover events therein.²² (Emphasis supplied).

....

V. REPEALING CLAUSE – All Memoranda, Orders and other Issuances inconsistent herewith are *hereby repealed/superseded and/or modified* accordingly[.]²³ (Emphasis supplied)

Subsequently, on July 10, 2015, Customs Memorandum Order No. 01-2014 was further repealed by Customs Memorandum Order No. 22-2015,²⁴ or the “Revised Guidelines on the Accreditation of the Bureau of Customs Press Corps.” In particular, Customs Memorandum Order No. 22-2015 explicitly provides:

I. SCOPE

This Order, which *revokes* Customs Memorandum Order (CMO) dated 01-2014 further revises the guidelines and procedures in the accreditation of the members of the Bureau of Customs Press Corps who cover the Bureau and use the BOC Press Office to ensure that only bona fide media professionals and entities are allowed entry to BOC premises in the Port of Manila.²⁵ (Emphasis Supplied).

....

VII. REPEALING CLAUSE

All Memoranda, Orders and other Issuances inconsistent herewith are *hereby repealed, superseded and/or modified accordingly*.²⁶ (Emphasis supplied).

It can be gleaned from the foregoing that both Customs Memorandum Order No. 01-2014 and Customs Memorandum Order No. 22-2015 use the terms “revokes,” “repealed,” “superseded,” and “modified.” Black’s Law Dictionary defines these terms in the following manner:

revocation, . . . n. (15c) 1. An annulment, cancellation, or reversal, usu. of an act of power[.]

repeal, n. (16c) Abrogation of an existing law by express legislative act; RESCIND (3). -- *repeal*, *vb*.

express repeal. (17c) Repeal by specific declaration in a new statute or main motion.

²² *Id.* at 102.

²³ *Id.* at 104.

²⁴ *Id.* at 107–110.

²⁵ *Id.* at 107.

²⁶ *Id.* at 110.

supersede, vb. (17c) 1. To annul, make void, or repeal by taking the place of <the 1996 statute supersedes the 1989 act>[.]

modification. (17c) 1. A change to something; an alteration or amendment <a contract modification>[.]

modify, vb. (14c) 1. To make somewhat different; to make small changes to (something) by way of improvement, suitability or effectiveness[.]²⁷

It also bears pointing out that the scopes of both Customs Memorandum Order No. 01-2014 and Customs Memorandum Order No. 22-2015 expressly state that they “revoke” Customs Memorandum Order No. 37-2011, and Customs Memorandum Order No. 01-2014, respectively. This strongly indicates that Customs Memorandum Order No. 01-2014 and Customs Memorandum Order No. 22-2015 specifically identify the memorandum order, which they intend to revoke. This revocation, in conjunction with the common terms used in both Customs Memorandum Order No. 01-2014 and Customs Memorandum Order No. 22-2015, undeniably reveals the intention of respondent to expressly repeal the previous memorandum order with the subsequent memorandum order.

Jurisprudence defines express repeal as one “wherein a statute declares, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed.” All other repeals are implied.²⁸ Case law further instructs that when a law has been repealed, it ceases to exist and becomes inoperative from the moment the repealing law becomes effective.²⁹

Accordingly, the enactment of Customs Memorandum Order No. 01-2014 constitutes an express repeal of Customs Memorandum Order No. 37-2011. In turn, the passage of Customs Memorandum Order No. 22-2015 amounts to an express repeal of Customs Memorandum Order No. 01-2014. In view of these express repeals, Customs Memorandum Order No. 37-2011 and Customs Memorandum Order No. 01-2014 no longer exist and have become inoperative. There is no need to refer to these memorandum orders because Customs Memorandum Order No. 22-2015 is deemed to contain all the guidelines and procedures in the accreditation of media practitioners in respondent.

Notably, it has not been shown that petitioners have amended their Petition to question the constitutionality of Customs Memorandum Order No. 22-2015, which expressly repealed Customs Memorandum Order No. 37-2011 and Customs Memorandum Order No. 01-2014. Thus, the issue that

²⁷ BLACK’S LAW DICTIONARY 1579, 1553, 1739, 1203 (Revised 11th ed., 2019).

²⁸ *Javier v. Commission on Elections*, 777 Phil. 700, 725 (2016) [Per J. Brion, *En Banc*]. (Citation omitted)

²⁹ *Id.* at 727.

comes to the fore is whether an actual case or controversy exists for this Court to exercise its judicial power of review.

Under Article VIII, Section 1 of the Constitution, the exercise of this Court's power of judicial review requires the presence of an actual case or controversy:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The foregoing provision articulates the court's traditional and expanded powers of judicial review. Prior to the 1987 Constitution, judicial review is confined to the traditional concept of settling actual controversies involving legally demandable and enforceable rights. However, under the present Constitution, the expanded power of judicial review includes the "power to enforce rights conferred by law and determine grave abuse of discretion by any government branch or instrumentality."³⁰ Its scope was deliberately enlarged to "prevent courts from seeking refuge behind the political question doctrine and turning a blind eye to abuses committed by the other branches of government."³¹

Nevertheless, whether this Court's power of review is invoked under the traditional or expanded concept, the presence of an actual case or controversy remains a requisite before judicial power is exercised. However, "when the Court's expanded jurisdiction is invoked, the requirement of an actual case or controversy is satisfied upon *prima facie* showing of grave abuse of discretion in the assailed governmental act."³²

In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,³³ this Court held:

Basic in the exercise of judicial power—whether under the traditional or in the expanded setting – is the presence of an actual case or controversy. For a dispute to be justiciable, a legally demandable and

³⁰ *GSIS Family Bank Employees Union v. Villamueva*, 846 Phil. 30, 46 (2019) [Per J. Leonen, Third Division]. (Citation omitted)

³¹ *Id.* at 47.

³² *Private Hospitals Association of the Philippines, Inc. v. Exec. Sec. Medialdea*, 842 Phil. 747, 782 (2018) [Per J. Tijam, *En Banc*]. (Citation omitted)

³³ 802 Phil. 116 (2016) [Per J. Brion, *En Banc*].

enforceable right must exist as basis, and must be shown to have been violated.

....

The Court's expanded jurisdiction – itself an exercise of judicial power – does not do away with the actual case or controversy requirement in presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act.³⁴ (Citations omitted)

The requirement of actual case or controversy is founded on the doctrine of separation of powers,³⁵ which precludes the courts from encroaching upon the policy making powers of the executive and legislative branches of the government. It is presumed that the laws or acts enacted by these co-equal branches of the government have been passed within constitutional limits. Hence, unless there is an actual or sufficiently imminent breach of or injury to a right,³⁶ this Court generally exercises judicial restraint and will not delve into the wisdom, justice, or expediency of these acts or cause its nullity or invalidation. As explained in *Angara v. Electoral Commission*:³⁷

[T]his power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.³⁸

Correlatively, the requisite of actual case or controversy is present “when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.”³⁹ It must involve issues that are definite and concrete and affect legal relations of parties with adverse interests.⁴⁰ The actual case or controversy requirement is satisfied when it is shown that

³⁴ *Id.* at 140–141.

³⁵ *See Kilusang Mayo Uno v. Hon. Aquino III*, 850 Phil. 1168, 1188 (2019) [Per J. Leonen, *En Banc*].

³⁶ *Id.*

³⁷ 63 Phil. 139 (1936) [Per J. Laurel, *En Banc*].

³⁸ *Id.* at 158–159.

³⁹ *Santos v. Atty. Gabaen*, G.R. No. 195638, March 22, 2022 [Per J. J. Lopez, *En Banc*] at 15. This pinpoint citation refers to a copy of this Decision uploaded to the Supreme Court website.

⁴⁰ *Express Telecommunications, Co., Inc. v. AZ Communications, Inc.*, 877 Phil. 44, 54–55 (2020) [Per J. Leonen, Third Division].

there is “a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.”⁴¹

Further, “the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice.”⁴² “A case becomes moot and academic when the conflicting issue that may be resolved by the court ceases to exist as a result of supervening events.”⁴³ When the case has become moot or academic, there is no justiciable controversy,⁴⁴ and an adjudication would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.⁴⁵

In this case, this Court finds that the enactment of Customs Memorandum Order No. 22-2015 is a supervening event that has mooted the main issue of this present Petition—the constitutionality of Customs Memorandum Order No. 37-2011. As adverted earlier, Customs Memorandum Order No. 37-2011 no longer exists, and its validity had become inoperative by virtue of the express repeals. In view of this, it is evident that this Court need not pass upon the constitutionality of Customs Memorandum Order No. 37-2011 as the same had become a non-issue. The purpose of petitioners in filing the Petition is to nullify the validity of Customs Memorandum Order No. 37-2011 for being unconstitutional and enjoin its implementation. The same was already achieved when Customs Memorandum Order No. 37-2011 was expressly repealed.

Relatedly, Chief Justice Alexander G. Gesmundo astutely pointed out that with the express repeal of Customs Memorandum Order No. 37-2011, there is nothing left for this Court to declare unconstitutional. This is because the express repeal of a statute and the declaration of unconstitutionality produce a similar effect on the subject enactment. The enactment ceases to exist and produces no legal effect.

Parenthetically, it would be redundant and a futile exercise to adjudicate on the constitutionality of Customs Memorandum Order No. 37-2011, when in the first place, its express repeal has already rendered the same nonexistent and inoperative. Put differently, a declaration on the issue would not serve the parties any substantial relief or any practical legal effect, precisely, because Customs Memorandum Order No. 37-2011, which petitioners sought to annul for being unconstitutional, no longer exists.

⁴¹ *Universal Robina Corporation v. Department of Trade and Industry*, G.R. No. 203353, February 14, 2023 [Per SAJ. Leonen, *En Banc*] at 10. This pinpoint citation refers to a copy of this Decision uploaded to the Supreme Court website.

⁴² *Congressman Garcia v. Executive Secretary*, 602 Phil. 64, 74 (2009) [Per J. Brion, *En Banc*].

⁴³ *Oclarino v. Navarro*, 863 Phil. 949, 955 (2019) [Per J. Reyes, Jr., Second Division]. (Citation omitted)

⁴⁴ *See Philippine Savings Bank v. Senate Impeachment Court*, 699 Phil. 34, 36 (2012) [Per J. Perlas-Bernabe, *En Banc*].

⁴⁵ *Spouses Imbong v. Hon. Ochoa, Jr.*, 732 Phil. 1, 123 (2014) [Per J. Mendoza, *En Banc*].

Here, “[c]ourts are called upon to resolve actual cases and controversies, not to render advisory opinions.”⁴⁶ Judicial decisions are part of the legal system. Thus, “[r]uling on hypothetical situations with no bearing on any matter will weaken the import of this Court’s issuances.”⁴⁷ In *Belgica, et al. v. Ochoa*:⁴⁸

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.⁴⁹

Consistent with the foregoing, this Court has refrained from resolving the constitutional issue of a statute for lack of an actual case or controversy.

In *Falcis v. Civil Registrar General*,⁵⁰ this Court declined to entertain the petition challenging the constitutionality of certain provisions of the Family Code for lack of an actual case, among others:

This Court’s constitutional mandate does not include the duty to answer all of life’s questions. No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an “actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable.”

This Court does not issue advisory opinions. We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests. If this Court were to do otherwise and jump headlong into ruling on every matter brought before

⁴⁶ *Tizon v. Video Post Manila, Inc.*, 389 Phil. 20 (2000) [Per J. Panganiban, Third Division].

⁴⁷ *Private Hospitals Association of the Philippines, Inc. v. Exec. Sec. Medialdea*, 842 Phil. 747, 794 (2018) [Per J. Tijam, *En Banc*] (*See separate and concurring opinion of SAJ Leonen*). (Citation omitted)

⁴⁸ *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*, 721 Phil. 416, 561 (2013) [Per J. Perlas-Bernabe, *En Banc*].

⁴⁹ *Id.* at 661.

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

us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing:

Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.

As this Court makes “final and binding construction[s] of law[.]” our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system, bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.⁵¹ (Citations omitted)

Similarly, in *Atty. Lozano v. Speaker Nograles*,⁵² this Court dismissed the petitions assailing the validity of House Resolution No. 1109 for lack of an actual case:

The determination of the nature, scope[,] and extent of the powers of government is the exclusive province of the judiciary, such that any mediation on the part of the latter for the allocation of constitutional boundaries would amount, not to its supremacy, but to its mere fulfillment of its “solemn and sacred obligation” under the Constitution. This Court’s power of review may be awesome, but it is limited to actual cases and controversies dealing with parties having adversely legal claims, to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. The “case-or-controversy” requirement bans this court from deciding “abstract, hypothetical or contingent questions,” lest the court give opinions in the nature of advice concerning legislative or executive action.⁵³ (Citations omitted)

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,⁵⁴ this Court refused to take cognizance of the petition challenging the constitutionality of Republic Act No. 9372 or the Human Security Act of 2007 for lack of an actual case. This Court held that it is not enough that

⁵¹ *Id.* at 438–439.

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

⁵³ *Id.* at 340.

⁵⁴ 646 Phil. 452 (2010) [Per J. Carpio Morales, *En banc*].

there is a possibility of abuse of the questioned enactment. There must first be an actual act of abuse:

Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by “double contingency,” where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.

*The possibility of abuse in the implementation of [Republic Act No.] 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. . . . Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.*⁵⁵ (Emphasis supplied, citations omitted)

Again, in *Republic of the Philippines v. Roque*,⁵⁶ this Court refused to adjudicate on the constitutional issue concerning certain provisions of Republic Act No. 9372, or the Human Security Act of 2007 for lack of an actual justiciable controversy:

A perusal of private respondents’ petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of [Republic Act No.] 9372. Not far removed from the factual milieu in the Southern Hemisphere cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, private respondents’ fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of [Republic Act No.] 9372 against them. In other words, there was no particular, real[,] or imminent threat to any of them.⁵⁷ (Citation omitted)

In all these cases, this Court has emphasized the limited application of its power of judicial review to actual cases or controversies. “Courts cannot and will not decide hypothetical issues, render advisory opinions, or engage academic questions.”⁵⁸ “The rule holds true even when there had previously been a legal conflict or claim, but it has become moot because a supervening event has rendered the legal issue inexistent.”⁵⁹ The requirement of actual case or controversy applies to all cases except only in the rare instances

⁵⁵ *Id.* at 482–485.

⁵⁶ 718 Phil. 294 (2013) [Per J. Perlas-Bernabe. *En Banc*].

⁵⁷ *Id.* at 305–306.

⁵⁸ *Confederation for Unity, Recognition and Advancement of Government Employees v. Abad*, 889 Phil. 699, 730 (2020) [Per J. Leonen, *En Banc*]. (Citation omitted)

⁵⁹ *Express Telecommunications, Co., Inc. v. AZ Communications, Inc.*, 877 Phil. 44, 56 (2020) [Per J. Leonen, Third Division].

when this Court recognizes the exceptions⁶⁰ to the moot and academic principles. The present Petition, however, is not one of them. To stress anew, no benefit whether rational or practical would be derived to pass upon the constitutionality of a lifeless and inoperative memorandum order. With the express repeal of Customs Memorandum Order No. 37-2011, there is nothing for the court to resolve as the matter in dispute had already been resolved by a subsequent event. Ruling on the merits of the Petition that this Court has already categorized as moot and thus, without justiciable controversy is the very definition of an advisory opinion.

In sum, the Petition has failed to present an actual justiciable controversy calling for the exercise of this Court's power of judicial review. The express repeals that have taken place during the pendency of the case have rendered the Petition moot and academic, such that an adjudication of the case or declaration on the issue would not serve any actual substantial relief to the parties and which would be negated by the dismissal of the Petition. Without an actual case or controversy, there is simply no justification for this Court to exercise its judicial power of review. Where legal relief is no longer needed nor called for, as in this case, this Court is left with no recourse but to dismiss the Petition.

As a final note, it cannot be overemphasized that in a democratic society such as ours, the freedom of speech, expression, and of the press are at the core of civil liberties. Through the exercise of these fundamental rights, a healthy public sphere is created where people can exchange ideas, acquire knowledge and information, confront public issues, or discuss matters of public interest, without fear of reprisals. Thus, no less than our Constitution mandates full protection to freedom of speech, of expression, and of the press.⁶¹

In recognition of all these, this Court has not wavered in its duty to uphold these cherished freedoms by striking down laws or regulations, which while guise as promoting a legitimate government interest, are in reality nothing but naked means to suppress the exercise of free speech, expression and of the press.⁶²

Here, while the constitutionality of Customs Memorandum Order No. 37-2011 was not adjudicated upon due to the limitations stated, this Court

⁶⁰ (1) There is a grave violation of the Constitution;
(2) The exceptional character of the situation and the paramount public interest is involved;
(3) The constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and
(4) The case is capable of repetition yet evading review.
See Bayan Muna Party-List Representatives Juan C. Ocampo and Teodoro A. Casiño v. President Gloria-Macapagal Arroyo, G.R. No. 122754, January 10, 2023 [Per J. Gaerlan] at 12. This pinpoint citation refers to a copy of this Decision uploaded on the Supreme Court website. (Citation omitted)

⁶¹ *See Soriano v. Laguardia*, 605 Phil. 43, 96 (2012) [Per J. Velasco, Jr., *En Banc*].

⁶² *Chavez v. Gonzales*, 569 Phil. 155, 187 (2008) [Per C.J. Puno, *En Banc*].

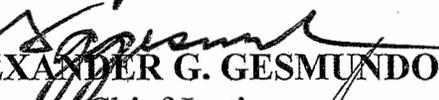
stresses that the guidelines and procedures for the accreditation of media representatives in respondent should not be used to transgress the constitutional rights to freedom of speech, expression, and of the press. Any limitation on the exercise of free speech “must be justified on legitimate grounds that are clear and indubitable and with means that are narrowly tailored and only specifically calibrated to achieve those purposes.”⁶³ Thus, no matter how laudable the objective of respondent in weeding out illegitimate media personalities, the means used to achieve such an objective must not unnecessarily sweep on the rights of legitimate media personalities. The furtherance of a substantial governmental interest must not amount to an infringement of the freedom of expression. Otherwise, any rule or regulation that encroaches on this area of protected speech will be stricken down.

WHEREFORE, the Petition for Prohibition with prayer for the issuance of temporary restraining order is **DISMISSED**.

SO ORDERED.

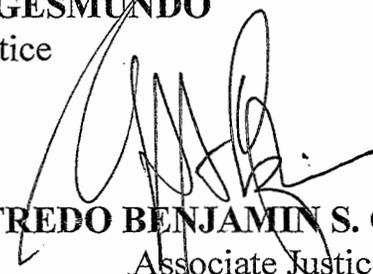

JHOSEPH V. LOPEZ
 Associate Justice

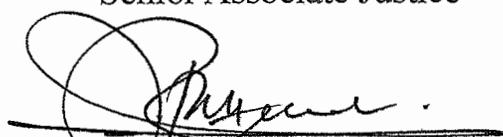
WE CONCUR:

see concurring opinion

ALEXANDER G. GESMUNDO
 Chief Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
 Senior Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice


RAMON PAUL L. HERNANDO
 Associate Justice

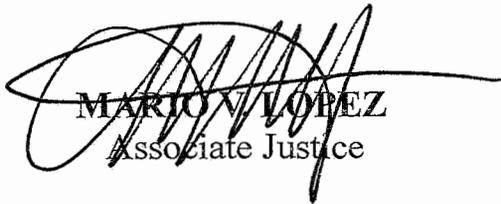

AMY C. LAZARO-JAVIER
 Associate Justice


HENRI JEAN PAUL B. INTING
 Associate Justice


RODIL V. ZALAMEDA
 Associate Justice

⁶³ *Nicolas-Lewis v. Commission on Elections*, 859 Phil. 560, 607 (2019) [Per J. J. Reyes, Jr., *En Banc*].





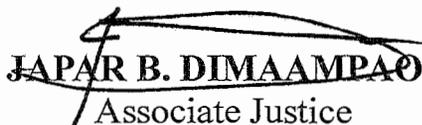
MARIO V. LOPEZ
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice



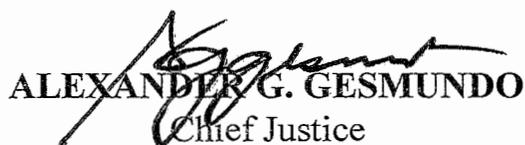
ANTONIO T. KHO, JR.
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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