EN BANC

G.R. No. 199479 – 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, **v. BUREAU OF CUSTOMS, represented by COMMISSIONER ROZZANO RUFINO B. BIAZON**, Respondent.

Promulgated:

April 3, 2024

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CONCURRING OPINION

GESMUNDO, *C.J.*:

I concur in the *ponencia* that it is improper to declare as unconstitutional a repealed issuance as, in such scenario, there is no actual case or controversy that would allow the Court to exercise its judicial power.

Summary of the case and the ponencia's ruling

This is a Petition for Prohibition with prayer for the issuance of a temporary restraining order (TRO) filed by 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. (Sanota et al.) against the Bureau of Customs (BOC). They seek to enjoin the BOC from implementing *Customs Memorandum Order (CMO) No. 37-2011*, which provides guidelines and procedures in the accreditation of BOC media practitioners to

ensure that only bona fide media professionals and bona fide media organizations are allowed entry to the BOC premises to cover events therein.[1]

In its January 18, 2012 Resolution, the Court denied the prayer for the issuance of a TRO. Sanota et al. moved for reconsideration, but the Court denied the same with finality for lack of merit on March 21, 2012.[2]

The *ponencia* dismissed the Petition. It stated that *CMO No. 37-2011 was repealed on January 2, 2014 by CMO No. 01-2014* or the "Revised Guidelines on the Accreditation of Media Practitioners covering the Bureau of Customs." Subsequently, on July 10, 2015, *CMO No. 01-2014 was further repealed by CMO No. 22-2015* or the "Revised Guidelines on the Accreditation of the Bureau of Customs Press Corps." It noted that both CMO No. 01-2014 and CMO No. 22-2015 use the terms "revokes," "repealed," "superseded," and "modified." Further, it observed that the scopes of both CMO No. 01-2014 and CMO No. 22-2015 expressly state that they "revoke" CMO No. 37-2011 and CMO No. 01-2014, respectively. This revocation, in conjunction with the common terms used in both CMO No. 01-2014 and CMO No. 22-2015, indubitably reveals the intention of the BOC to expressly repeal the previous memorandum order with the subsequent memorandum order. Thus, in view of these express repeals, the *ponencia* held that CMO No. 37-2011 and CMO No. 01-2014 no longer exist and have become inoperative. There is no need to refer to these memorandum orders because CMO No. 22-2015 is deemed to contain all the guidelines and procedures in the accreditation of media practitioners to the BOC.[3]

The *ponencia* also observed that Sanota et al. have not amended their Petition to question the constitutionality of CMO No. 22-2015. Thus, the *ponencia* determined that the issue to be resolved is whether an actual case or controversy exists for the Court to exercise its judicial power of review. It found that the enactment of CMO No. 22-2015 has mooted the main issue of this present Petition – the constitutionality of CMO No. 37-2011. The *ponencia* agreed that with the express repeal of CMO No. 37-2011, there is nothing left for the 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. In sum, it found that the Petition has failed to present an actual justiciable controversy calling for the exercise of this Court's power of judicial review.[4]

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1 *Ponencia*, pp. 1–2.
2 *Id.* at 5.
3 *Id.* at 5–7.
4 *Id.* at 7–14.

As a final note, the *ponencia* stated that "while the constitutionality of [CMO] No. 37-2011 was not adjudicated upon due to the limitations stated, this Court stresses that the guidelines and procedures for the accreditation of media representatives [to the BOC] should not be used to transgress the constitutional rights to freedom of speech, expression, and of the press."[5]

I concur in the observations of the *ponencia* and write to share my views on the same.

CMO No. 37-2011 has been revoked by CMO No. 01-2014. Meanwhile, CMO No. 01-2014 has been revoked by CMO No. 22-2015

The instant Petition for Prohibition assails the validity of CMO No. 37-2011.[6] Unfortunately, CMO No. 37-2011 has been revoked by CMO No. 01-2014. For this purpose, CMO No. 01-2014 provides as follows:

> I. SCOPE
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> This Order, which *revokes Customs Memorandum Order (CMO) No. 37-2011, dated [November 8, 2011]*, revises the guidelines and 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.
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> . . . .
>
> V. REPEALING CLAUSE – All Memoranda, Orders[,] and other Issuances inconsistent herewith are hereby *repealed/superseded* and/or modified accordingly. (Emphasis supplied)

Further, CMO No. 01-2014 itself has been revoked by CMO No. 22-2015, to wit:

> I. SCOPE
>
> This Order, which *revokes Customs Memorandum Order (CMO) [No.] 01-2014*[,] further revises the guidelines and procedures in the accreditation of the members of the Bureau of Customs Press Corps who

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5 *Id.* at 14–15.

6 *Id.* at 3–4.

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

Both CMO No. 01-2014 and CMO No. 22-2015 use the terms "revokes," "repealed," and "superseded."

Black's Law Dictionary defines these terms in the following manner:

> *Repeal*. The abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoked and abrogated (which is called "express" repeal), or which contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force (called "implied" repeal). To revoke, abolish, annul, to rescind or abrogate by authority. *Golconda Lead Mines v. Neill*, 82 Idaho 96, 350 P.2d 221, 223. *See also* Abrogation; Express repeal.
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> *Amendment distinguished.* "Repeal" of a law means its complete abrogation by the enactment of a subsequent statute, whereas the "amendment" of a statute means an alteration in the law already existing, leaving some part of the original still standing.
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> . . . .
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> *Express repeal*. Abrogation or annulment of previously existing law by enactment of subsequent statute declaring that former law shall be revoked or abrogated.
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> . . . .
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> *Revocation* /revəkéyshən/. The withdrawal or recall of some power, authority, or thing granted, or a destroying or making void of some will, deed, or offer that had been valid until revoked. In contract law, the withdrawal by the offeree of an offer that had been valid until withdrawn. It may be either *general*, all acts and things done before; or *special*, revoking a particular thing.
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> Revocation by act of the party is an intentional or voluntary revocation. The principal instances occur in the case of authorities and powers of attorney and wills.

> In contract law, the withdrawal of an offer by an offeror; unless the offer is irrevocable, it can be revoked at any time prior to acceptance without liability.
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> In criminal law, may refer to termination of a probation or parole order because of either a rule violation or a new offense, and forcing the offender to begin or continue serving his or her sentence.
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> A revocation in law, or constructive revocation, is produced by a rule of law, irrespectively of the intention of the parties. Thus, a power of attorney is in general revoked by the death of the principal.
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> *See also* Abrogation; Cancel; Cancellation; Rescind.
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> . . . .
>
> *Supersede* /s(y)ùwpərsíyd/. Obliterate, set aside, annul, replace, make void, inefficacious or useless, repeal. To set aside, render unnecessary, suspend, or stay.[7]

Both CMO No. 01-2014 and CMO No. 22-2015 expressly stated in their scopes that they revoke CMO No. 37-2011 and CMO No. 01-2014, respectively. From the definitions reproduced from Black's Law Dictionary, it is evident that this revocation constitutes an express repeal. The subsequent memorandum order replaces the previous one, such that nothing of the original is left standing. This is supported by the fact that *both CMO No. 01-2014 and CMO No. 22-2015 are integrally whole*; there is no need to refer to the previously revoked memorandum because the subsequent memorandum contains the whole of the governing provisions pertaining to the accreditation of the BOC Press Corps.

While the repealing clause of both CMO No. 01-2014 and CMO No. 22-2015 use the word "modified," such use was plainly intended as a catch-all. The express revocation found in the scope of both CMOs cannot be interpreted in any other manner except as an express repeal of the previous memorandum order, especially because the subsequent CMOs are integrally whole.

Hence, CMO No. 01-2014 replaced CMO No. 37-2011. Meanwhile, CMO No. 22-2015 replaced CMO No. 01-2014. *CMO No. 37-2011 and CMO No. 01-2014, by virtue of their express repeals, are no longer extant. Only CMO No. 22-2015 remains.*

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7 BLACK'S LAW DICTIONARY 1299, 581, 1321, 1437 (Revised 6th Ed., 1991).

There is no actual case or controversy to warrant an exercise of the Court's judicial power

Sanota et al. assail the constitutionality and enforcement of *CMO No. 37-2011*.[8] There is no showing that Sanota et al. have amended their Petition to question the subsequent CMO No. 22-2015, which has revoked and superseded CMO No. 37-2011 and CMO No. 01-2014.

As previously discussed, CMO No. 37-2011 has been repealed. It no longer exists. Considering this, to my mind, it is improper to declare CMO No. 37-2011 as unconstitutional. In such instance, there is no actual case or controversy that would allow the Court to exercise its judicial power and rule upon the constitutionality of CMO No. 37-2011.

Article VIII, Section 1 of the 1987 Constitution provides for the Court's judicial power:

> 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. (Emphasis supplied)

The essential requisites for judicial review are well-established:

(1) There must be an actual case or controversy calling for the exercise of judicial power;

(2) The person challenging the act must have legal standing;

(3) The question of constitutionality must be raised at the earliest possible opportunity; and

(4) The issue of constitutionality must be the very *lis mota* of the case.[9]

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8 *Ponencia*, pp. 3–4.

9 *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 892 (2003) [Per J. Carpio Morales, *En Banc*].

The Court has elucidated on the requirement of an actual case or controversy, viz.:

> An actual case or controversy exists when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. The issues presented must be definite and concrete, touching on the legal relations of parties having adverse interests. *There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.* Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. All these are in line with the well-settled rule that this Court does not issue advisory opinions, nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be. Instead, case law requires that there is ample showing of prima facie grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts.[10] (Emphasis supplied, citations omitted)

An actual case or controversy, for purposes of the Court's exercise of its judicial power, requires the existence of a contrariety of legal rights capable of interpretation and enforcement on the basis of existing law and jurisprudence.

It is respectfully submitted that the express repeal of CMO No. 37-2011 has rendered the instant case not susceptible to the exercise of the Court's judicial power due to the absence of an actual case or controversy.

With the repeal of the assailed enactment, there is nothing for the Court to declare unconstitutional. This is because an express repeal and a declaration of unconstitutionality produce a similar effect on the subject enactment. As discussed, an express repeal results in the abrogation or annulment of the law. The enactment ceases to exist and to have any legal effect.

A declaration of unconstitutionality has a similar effect:

> Instructive is the brief treatise made by Mr. Justice Isagani A. Cruz, whose words we quote —
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> > There are two views on the effects of a declaration of the unconstitutionality of a statute.

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[10] *Atty. Calleja v. Executive Secretary Medialdea*, 918-B Phil. 1, 55–56 (2021) [Per J. Carandang, *En Banc*].

> The first is the *orthodox view*. Under this rule, as announced in Norton v. Shelby, *an unconstitutional act is not a law; it confers no right; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, inoperative, as if it had not been passed. It is therefore stricken from the statute books and considered never to have existed at all.* Not only the parties but all persons are bound by the declaration of unconstitutionality, which means that no one may thereafter invoke it nor may the courts be permitted to apply it in subsequent cases. It is, in other words, a total nullity.
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> The second or modern view is less stringent. Under this view, the court in passing upon the question of constitutionality does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognize it and determines the rights of the parties just as if such statute had no existence. The court may give its reasons for ignoring or disregarding the law, but the decision affects the parties only and there is no judgment against the statute. The opinion or reasons of the court may operate as a precedent for the determination of other similar cases, but it does not strike the statute from the statute books; it does not repeal, supersede, revoke, or annul the statute. The parties to the suit are concluded by the judgment, but not one else is bound.
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> *The orthodox view is expressed in Article 7 of the Civil Code*, providing that "when the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern[.][11] (Emphasis supplied)

Thus, a declaration of the unconstitutionality of a repealed law results in no effect as the repealed law has already ceased to exist by virtue of the repeal. In such scenario, to declare unconstitutional a repealed law results in nothing more than an advisory opinion, which the Court is barred from rendering.[12]

ACCORDINGLY, I vote to **DISMISS** the Petition.

ALEXANDER G. GESMUNDO
Chief Justice

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11 *Republic v. Court of Appeals*, 298 Phil. 291, 294–295 (1993) [Per J. Vitug, Third Division].
12 *Atty. Calleja v. Executive Secretary Medialdea*, 918-B Phil. 1, 56 (2021) [Per J. Carandang, *En Banc*].