Republic of the Philippines
Supreme Court
Manila

EN BANC

EXECUTIVE SECRETARY LEANDRO MENDOZA, DEPARTMENT OF ENERGY-DEPARTMENT OF JUSTICE JOINT TASK FORCE, and DEPARTMENT OF ENERGY SECRETARY ANGELO T.* REYES,	**G.R. No. 209216**
Petitioners,	Present:
	GESMUNDO, *Chief Justice,*
	LEONEN,
	CAGUIOA,
	HERNANDO,
	LAZARO-JAVIER,
	INTING,**
	ZALAMEDA,
	LOPEZ, M.,**
	GAERLAN,
	ROSARIO,
-versus-	LOPEZ, J.,
	DIMAAMPAO,
	MARQUEZ,
	KHO, JR., and
	SINGH, *JJ.*
PILIPINAS SHELL PETROLEUM CORPORATION,	**Promulgated:**
Respondent.	February 21, 2023

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DECISION

LEONEN, *J.*:

The Constitution requires a stamp of legislative imprimatur for a valid takeover of operations of public utilities or businesses affected with public interest. Legislation, in turn, must be drafted within the parameters of Article

* Mistakenly written as I. in some parts of the *rollo*.

** No part.

VI, Section 23 and Article XII, Section 17 of the Constitution; otherwise, it will be struck down for being unconstitutional.

At the center of this controversy is Section 14(e) of Republic Act No. 8479, or the Downstream Oil Industry Deregulation Act of 1998. The law authorizes the Department of Energy to take over operations of private entities in the oil industry given certain conditions. This Court is called upon to determine whether an executive agency, other than the president, may properly exercise such power.

We resolve the Petition for Review on *Certiorari*[1] filed by former Executive Secretary Leandro Mendoza (Executive Secretary Mendoza), the Department of Energy-Department of Justice Joint Task Force, and Energy Secretary Angelo T. Reyes (Energy Secretary Reyes). They assail the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed the Regional Trial Court Decision declaring Section 14(e) of Republic Act No. 8479 unconstitutional.

In September and October 2009, typhoons Ondoy and Pepeng successively ravaged Luzon, severely affecting over 9 million people and leaving almost 1,000 casualties, 700 injured, and 84 missing.[4]

On October 2, 2009, then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) declared a state of calamity through Proclamation No. 1898.[5] Shortly after, she issued Executive Order No. 839, directing oil industry players to maintain the oil prices of their petroleum products during the emergency.[6]

Executive Order No. 839 found basis in Section 14(e) of Republic Act No. 8479, which provides:

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1 *Rollo*, pp. 9–39. Filed under Rule 45 of the Rules of Court.

2 *Id.* at 44–54. The June 25, 2013 Decision in CA-G.R. CV No. 96326 was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. (now a retired member of this Court) and Mario V. Lopez (now a member of this Court) of the Ninth Division, Court of Appeals, Manila.

3 *Id.* at 56–57. The September 19, 2013 Resolution in CA-G.R. CV No. 96326 was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. (now a retired member of this Court) and Mario V. Lopez (now a member of this Court) of the Ninth Division, Court of Appeals, Manila.

4 *Philippines – 2009 – Typhoons Ondoy and Pepeng affected 9.3 million*, GLOBAL FACILITY FOR DISASTER REDUCTION AND RECOVERY, *available at* https://www.gfdrr.org/en/philippines-2009-typhoons-ondoy-and-pepeng-affected-93-million-people (last accessed on March 2, 2022).

5 *Rollo*, p. 45.

6 Executive Order No. 839 (2009), sec. 1 states:
SECTION 1. Directive to Oil Industry Players. — Pursuant to Section 14(e) of RA No. 8479, and for the duration of the state of emergency in the entire Luzon, oil industry players are hereby directed to retain the level of the retail price of petroleum products prevailing on October 15, 2009, which was one (1) week after the last landfall of typhoon "Pepeng" (Parma).

> (e) In times of national emergency, when the public interest so requires, the DOE may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any person or entity engaged in the Industry.

Finding this prejudicial to oil companies, Pilipinas Shell Petroleum Corporation (Pilipinas Shell) filed before the Regional Trial Court a Petition for Prohibition, *Mandamus*, and Injunction (with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)[7] against then Executive Secretary Eduardo R. Ermita (Executive Secretary Ermita), the joint task force, and then Energy Secretary Reyes. It assailed the validity of Executive Order No. 839 and Section 14(e) of Republic No. 8479,[8] asserting that these formed an unreasonable, oppressive, and invalid delegation of emergency powers to the Executive.[9]

On November 6, 2009, the Regional Trial Court issued a Summons requiring Executive Secretary Ermita and the others to file an answer.[10]

Meanwhile, the hearing for Pilipinas Shell's temporary restraining order application proceeded.[11] On November 13, 2009, Executive Secretary Ermita and the others opposed the application and formally offered their documentary evidence.[12] They filed a Memorandum and a Supplemental Manifestation on the same day, stating that President Macapagal-Arroyo lifted Executive Order No. 839 on November 16, 2009.[13]

The Regional Trial Court granted the temporary restraining order application. In its November 13, 2009 Order,[14] it held:

> WHEREFORE, premises considered, let a Temporary Restraining Order be ISSUED restraining/enjoining respondents Executive Secretary Eduardo Ermita, Department of Energy-Department of Justice Joint Task Force and Department of Energy Secretary Angelo Reyes, their agents, representatives, successors-in-interest, and any other persons assisting them or acting for and on their behalf or interest or under their direction, and all other officials, from implementing Executive Order No. 839. Let the hearing for the issuance of a Writ of Preliminary Injunction be set on 23 November, 2009 at 9:00 in the morning.
>
> SO ORDERED.[15]

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7 *Rollo*, pp. 84–158.
8 *Id.* at 45.
9 *Id.* at 46.
10 *Id.* at 413.
11 *Id.* at 175.
12 *Id.* at 176.
13 *Id.* at 415.
14 *Id.* at 173–177.
15 *Id.* at 177.

Two days later, however, Executive Order No. 845 was issued, lifting Executive Order No. 839 and discontinuing the oil price freeze.[16]

On December 1, 2009, Executive Secretary Ermita and the others moved to have the November 13, 2009 Order reconsidered. Pilipinas Shell filed a Comment, praying that they be declared in default for failing to file a responsive pleading to its Petition, in line with Rule 9, Section 3 of the Rules of Court.[17] On December 9, 2009, they filed an Opposition with Motion to Admit Comment, with a Comment attached.[18]

Before even resolving the Opposition with Motion to Admit Comment, the Regional Trial Court on January 5, 2010 dismissed[19] Pilipinas Shell's Petition for being moot since Executive Order No. 839 has been lifted:

> The Court takes judicial notice of President Gloria Macapagal Arroyo's issuance of EO 845 on November 13, 2009 which lifted the assailed EO 839 and which was made to take effect on November 16, 2009, thereby rendering moot and academic the determination of the propriety of whether or not to grant the Writ of Preliminary Injunction.
>
> In view of the lifting of EO 839 the instant petition is hereby DISMISSED. Consequently, said dismissal of the instant petition puts aside all the issues raised in all other incidents pending before us, as they have likewise become moot and academic.
>
> SO ORDERED.[20]

Pilipinas Shell moved for reconsideration of the Regional Trial Court's January 5, 2010 Order,[21] stating the following grounds:

> (a) The original Petition is not rendered moot and academic by the expedient means of issuing E.O. 845, which merely lifted the price control on petroleum products imposed by E.O. 839, while leaving the issue on the constitutionality of Section 14(e) of RA No. 8479 still pending;
>
> (b) At any rate, even assuming without admitting that the original Petition has become moot and academic, the trial court has the duty to take cognizance of the same since the original Petition falls within the clear exceptions to the moot and academic principle; and
>
> (c) Most importantly, the original Petition prayed that section 14(e) of RA No. 8479 be declared void and unconstitutional, and as such, the original Petition cannot be said to be moot and academic as long as the

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16 *Id.* at 178.
17 *Id.* at 46.
18 *Id.* at 416.
19 *Id.* at 182–183.
20 *Id.* at 183.
21 *Id.* at 184–200.

> constitutionality of section 14(e) of RA No. 8479 has not yet been resolved.[22]

Executive Secretary Ermita and the others commented on Pilipinas Shell's Motion for Reconsideration, to which Pilipinas Shell replied.[23]

On April 23, 2010, while its Motion for Reconsideration was pending, Pilipinas Shell filed a Manifestation and an Amended Petition for Declaratory Relief, seeking to declare Section 14(e) of Republic Act No. 8479 null.[24] Parenthetically, the Amended Petition dropped Executive Secretary Ermita and impleaded Executive Secretary Mendoza; and dropped the name of Energy Secretary Reyes, but kept impleading the secretary of energy.[25]

On May 11, 2010, Executive Secretary Mendoza et al. objected to the exercise of Pilipinas Shell's right to amend the original Petition.[26] Yet, by then, the Regional Trial Court had already issued a May 7, 2010 Order[27] granting Pilipinas Shell's Motion for Reconsideration and reversing the dismissal of the original Petition.

The Order's dispositive portion reads:

> WHEREFORE, premises considered, the Motion for Reconsideration filed by Shell is GRANTED and the Court's previous Order dated 05 January 2010 is VACATED. Shell's Amended Petition for Declaratory [R]elief is hereby NOTED and thus, public respondents are given a period of fifteen (15) days from receipt of this Order to file their responsive pleading to the Petition as amended.
>
> SO ORDERED.[28]

Executive Secretary Mendoza et al. filed a Motion for Reconsideration[29] and an Answer *Ad Cautelam*[30] to the Amended Petition. They then moved that the case be set for hearing.[31] However, the Regional Trial Court denied[32] their Motion for Reconsideration and heard the case on their affirmative and special defenses.

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22 *Id.* at 417.
23 *Id.* at 46.
24 *Id.* at 46, 216–291.
25 The lower courts and the present Petition before this Court retained Energy Secretary Reyes's name despite it being dropped from the Amended Petition for Declaratory Relief.
26 *Id.* at 292–296.
27 *Id.* at 297–298.
28 *Id.* at 298.
29 *Id.* at 299–311.
30 *Id.* at 315–330.
31 *Id.* at 419.
32 *Id.* at 312–314.

On August 23, 2010, the Regional Trial Court issued a Decision[33] granting Pilipinas Shell's Amended Petition, declaring Section 14(e) of Republic Act No. 8479 void. It held:

> Finally, a search in R.A. No. 8479 for a national policy declared by Congress to be pursued under Section 14[e] of R.A. 8479 proved empty. No other mention or reference of the exercise of emergency powers and government temporarily taking over the petroleum industry is made in the entire R.A. No. 8479, except for Section 14[e]. Ironically, the law is entirely devoted to justifying and implementing a policy of non-interference by the government in the business of petroleum.
>
> Since the requirements of law delegating to the President is constitutionally set forth in Paragraph 2, Section 23, Article VI of the Constitution, and since Section 14[e] of R.A. No. 8479 does not comply with any of these constitutional requirements[,] this Court is constrained to declare Section 14[e] of R.A. No. 8479 unconstitutional.
>
> In view of the foregoing, the compulsory counterclaim of public respondents for exemplary damages is denied.
>
> WHEREFORE, premises considered, Shell's Amended Petition is GRANTED. And Section 14[e] of R.A. No. 8479 is declared VOID and UNCONSTITUTIONAL.
>
> SO ORDERED.[34]

Executive Secretary Mendoza et al. appealed,[35] asserting the validity of Section 14(e) of Republic Act No. 8479.[36] They contended that the provision was a valid delegation of emergency powers to the president.[37] They said that the Regional Trial Court erred in admitting Pilipinas Shell's Amended Petition without first giving them the opportunity to comment, and that it should have been dismissed for being moot.[38] They added that the requisites for a petition of declaratory relief were not met.[39]

On June 25, 2013, the Court of Appeals issued a Decision[40] denying the appeal. Its dispositive portion reads:

> WHEREFORE, the appeal is DENIED. Section 14(e) of Republic Act No. 8479 is declared unconstitutional and therefore NULL and VOID. Accordingly, the Decision dated August 23, 2010 of the Regional Trial Court of Makati City (Branch 59) is hereby AFFIRMED.

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33 *Id.* at 332–339.
34 *Id.* at 339.
35 *Id.* at 340–341.
36 *Id.* at 343–374.
37 *Id.* at 352.
38 *Id.* at 361.
39 *Id.* at 371.
40 *Id.* at 44–54.

SO ORDERED.[41]

The Court of Appeals held that the appeal should have been dismissed outright since Executive Secretary Mendoza et al. used the wrong mode of appeal. It found that since they raised pure questions of law, they should have already filed a petition for review on *certiorari* before this Court.[42]

Still proceeding to discuss the substantive aspect, the Court of Appeals declared Section 14(e) of Republic Act No. 8479 unconstitutional for unduly delegating the takeover power to the Department of Energy.[43] It held that the provision was incomplete as it neither set forth the policy to be carried out by the Executive nor set standards to which the delegate must conform.[44]

Executive Secretary Mendoza et al. moved for reconsideration, but the Court of Appeals denied their Motion in a September 19, 2013 Resolution.[45] Hence, they filed the Petition for Review on *Certiorari*[46] before this Court.

Respondent Pilipinas Shell filed its Comment,[47] to which petitioners filed a Reply.[48]

Petitioners claim that the Court of Appeals erred when it declared Section 14(e) of Republic Act No. 8479 unconstitutional. They argue that the power to determine the existence of a national emergency lies with the president,[49] and the provision is a proper delegation of emergency powers to the Department of Energy.[50] They add that Section 14(e) restricts the exercise of the emergency power, as it puts a duration within which the power can be used. They further aver that it is based on national policy and abides by jurisprudential standards.[51]

Petitioners add that the Court of Appeals erred when it did not rule on the following questions of law: (a) whether petitioners were denied the opportunity to file an opposition to respondent's Manifestation and Amended Petition; (b) whether Executive Order No. 839 was rendered moot by Executive Order No. 845; and (c) whether *res judicata* barred another challenge to the oil deregulation law.[52]

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41 *Id.* at 54.
42 *Id.* at 48.
43 *Id.* at 51–52.
44 *Id.* at 53.
45 *Id.* at 56–57.
46 *Id.* at 9–39.
47 *Id.* at 411–473.
48 *Id.* at 1082.
49 *Id.* at 19.
50 *Id.* at 23.
51 *Id.* at 19.
52 *Id.*

In its Comment, respondent claims that since petitioners failed to question the Court of Appeals' dismissal of their Petition for being the improper mode of appeal, they are bound by this ruling.[53]

Respondent adds that the lifting of Executive Order No. 839 does not render the issue moot since what is being assailed is the constitutionality of Section 14(e) of Republic Act No. 8479. It insists that the provision is unconstitutional for invalidly delegating emergency powers to the Department of Energy[54] and failing to set a standard by which the delegate must abide.[55]

Respondent further asserts that it was within its right to amend the Petition it filed before the trial court since petitioners failed to file a responsive pleading.[56] Lastly, it counters that the principle of *res judicata* does not apply here since the parties, subject matter, and causes of action of previous cases are not identical to those in this case.[57]

In its Reply, petitioners repeat their previous statements, adding that the issues they raised in the Court of Appeals involved questions of fact, making their mode of appeal proper.[58] They also claim that their Opposition with Motion to Admit Comment should be deemed as a responsive pleading, and thus, the amendment of respondent's original Petition before the trial court was "improper and irregular."[59]

The following are the issues for this Court's resolution:

first, whether the Court of Appeals erred when it dismissed the appeal of petitioners for being the improper mode of appeal;

second, whether the principle of *res judicata* will apply;

third, whether the issue at hand is moot;

fourth, whether the Petition for Declaratory Relief was the proper remedy to assail the constitutionality of Section 14(e) of Republic Act No. 8479; and

finally, whether Section 14(e) of Republic Act No. 8479 is unconstitutional.

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53 *Id.* at 427.
54 *Id.* at 432.
55 *Id.* at 440.
56 *Id.* at 457.
57 *Id.* at 469.
58 *Id.* at 1083.
59 *Id.* at 1083–1084.

I

We first rule on the procedural matters raised.

Petitioners filed an appeal, which the Court of Appeals dismissed outright for having been filed as the wrong remedy. It held that since the issues they raised are pure questions of law, the appeal should have been elevated to this Court under Rule 45 of the Rules of Civil Procedure.

Now, petitioners aver that the Court of Appeals erred in failing to consider the other issues they raised. They allege that they correctly elevated the case through an ordinary appeal under Rule 41, Section 2(a)[60] when they raised the following assignment of errors before the Court of Appeals:

> THE TRIAL COURT ERRED IN HOLDING THAT SECTION 14(e) OF REPUBLIC ACT NO. 8479 IS UNCONSTITUTIONAL FOR BEING AN INVALID DELEGATION OF EMERGENCY POWER TO THE PRESIDENT;
>
> THE PETITION IS MOOT AND ACADEMIC;
>
> THE TRIAL COURT ERRED IN ADMITTING THE AMENDED PETITION WITHOUT AFFORDING THE RESPONDENTS THE OPPORTUNITY TO FILE ITS OPPOSITION THERETO CONSIDERING THAT THE ISSUES IN THE ORIGINAL PETITION HAD ALREADY BEEN JOINED[;]
>
> *RES JUDICATA* BARS ANOTHER CHALLENGE TO THE OIL DEREGULATION LAW; and
>
> THE REQUISITES FOR A PETITION FOR DECLARATORY RELIEF HAVE NOT BEEN MET.[61]

It is first necessary to distinguish a question of law from a question of fact. A question of law is one that centers on how a legal precept or law is to be applied given a set of facts. A question of fact entails a review of evidence to ascertain the truth or falsity of the alleged facts.[62] In *Allied Banking Corporation v. Sia*:[63]

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60 RULES OF COURT, Rule 41, sec. 2(a) states:
SECTION 2. Modes of appeal. — (a) Ordinary appeal. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

61 *Rollo*, pp. 47–48.

62 *Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172, 178 (2017) [Per J. Peralta, Second Division].

63 860 Phil. 435 (2019) [Per J. J. Reyes, Jr., Second Division].

> 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. The issue involves a pure question of law when it could be resolved without the examination of the probative value of the evidence presented or the truth or falsehood of the facts being admitted, as oppose to a question of fact where the doubt or controversy arises as to the truth or falsity of the alleged facts. In other words, the resolution of an issue involving a purely legal question rests only on what the law provides on the given set of circumstances. If it is clear that the issue invites a review of the evidence presented, as when the facts are disputed, the question posed is one of fact.[64] (Citations omitted)

One is a question of law when the court need not delve into the evidence presented to arrive at an answer; otherwise, it is a question of fact.

The main issue in the appeal before the Court of Appeals was whether Section 14(e) of Republic Act No. 8479 was unconstitutional. Similarly, the questions of mootness and *res judicata* entailed their application given the facts of this case. Petitioners also asked the Court of Appeals to determine whether the Amended Petition was correctly admitted as a matter of right under Rule 10, Section 2 of the Rules of Civil Procedure. For the last issue, petitioners asked the Court of Appeals to examine if all the requirements for a petition for declaratory relief were present in the Amended Petition.

These are all questions of law, the resolution of which does not require an examination of the probative value of the evidence. The issues presented, then, should have been filed before this Court via a petition for review on *certiorari* under Rule 45.

Sevilleno v. Carilo[65] is illustrative. There, this Court held that the Court of Appeals was correct in dismissing the petition outright for having been filed via the wrong mode of appeal. It found that since the issue raised involved the regional trial court's jurisdiction, it was a question of law, which should have been raised directly before this Court:

> It is not disputed that the issue brought by petitioners to the Court of Appeals involves the jurisdiction of the RTC over the subject matter of the case. We have a long standing [sic] rule that a court's jurisdiction over the subject matter of an action is conferred only by the Constitution or by statute. Otherwise put, jurisdiction of a court over the subject matter of the action is a matter of law. Consequently, issues which deal with the jurisdiction of a court over the subject matter of a case are pure questions of law. As petitioners' appeal solely involves a question of law, they should have directly taken their appeal to this Court by filing a petition for review on *certiorari* under Rule 45, not an ordinary appeal with the Court of Appeals under Rule 41. Clearly, the appellate court did not err in holding that petitioners pursued the wrong mode of appeal.

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64 *Id.* at 444.

65 559 Phil. 789 (2007) [Per J. Sandoval-Gutierrez, First Division].

> Indeed, the Court of Appeals did not err in dismissing petitioners' appeal. Section 2, Rule 50 of the same Rules provides that an appeal from the RTC to the Court of Appeals raising only questions of law shall be dismissed; and that an appeal erroneously taken to the Court of Appeals shall be dismissed outright, thus:
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> > Sec. 2. *Dismissal of improper appeal to the Court of Appeals.* – An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues of pure law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.
> >
> > An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.[66] (Citations omitted)

Thus, the Court of Appeals correctly dismissed petitioners' appeal outright for being the wrong remedy.

Petitioners also contend that they were denied the opportunity to oppose respondent's Amended Petition before the Regional Trial Court. They claim that the Court of Appeals and the Regional Trial Court erred when they allowed the amendment without leave of court or comment from them. On the other hand, respondent states that the Amended Petition was properly admitted as a matter of right since petitioners failed to file a responsive pleading to the original Petition.[67]

Rule 10, Sections 2 and 3 of the 1997 Rules of Civil Procedure state:

> SECTION 2. Amendments as a Matter of Right. — *A party may amend his pleading once as a matter of right at any time before a responsive pleading is served* or, in the case of a reply, at any time within ten (10) days after it is served.
>
> SECTION 3. Amendments by Leave of Court. — Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard. (Emphasis supplied)

Thus, a party may amend their pleading as a matter of right if no responsive pleading has been filed or a hearing calendared. Otherwise, amendments may only be made upon leave of court.

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66 *Id.* at 792–793.

67 *Rollo*, p. 457.

We review the timeline of this case before the Regional Trial Court by retelling the Court of Appeals' finding of facts:

> Claiming that it is gravely prejudiced by the aforesaid law and issuances, Shell filed with the trial court a Petition for Prohibition, *Mandamus* and Injunction (With Prayer for the Issuance of a Temporary Restraining Order And/Or Writ of Preliminary Injunction), assailing the validity of EO 839 and ultimately praying, among others, that Section 14(e) of R.A. No. 8479 be declared void and unconstitutional for being oppressive, unreasonable and constitutes an invalid delegation to the Executive Department of the exercise of emergency powers, in direct contravention of Par. 2, Section 23 of Article VI of the Constitution.
>
> After hearing Shell's application for TRO, the trial court issued an Order dated November 13, 2009 granting the TRO. . . .
>
> On December 1, 2009, public respondents-appellants Executive Secretary Leandro Mendoza, Dept. of Energy-Dept. of Justice Joint Task Force & Dept. of Energy Secretary Angelo I. Reyes, represented by the Office of the Solicitor General, (The Government, for brevity), moved for the reconsideration of the Order granting the TRO. Shell filed its Comment to the motion for reconsideration and at the same time moved that the public respondents be declared in default in accordance with Section 3, Rule 9 of the Rules of Court.
>
> On January 5, 2010, the trial court dismissed Shell's petition for being moot and academic considering that E.O. 839 has already been lifted by E.O. 845.
>
> On January 20, 2010, Shell moved for the reconsideration of the Order dismissing its petition to which the Government filed a Comment and in turn Shell countered with a Reply. On April 23, 2010, while the motion for reconsideration was pending, Shell filed a Manifestation and an Amended Petition for Declaratory Relief likewise seeking for the declaration of nullity and unconstitutionality of Section 14(e) of RA 8479.[68] (Citations omitted)

The facts reveal that the lower courts recognized no responsive pleading to the original Petition. After respondent had filed the original Petition before the trial court, petitioners participated in the hearing for the application of a temporary restraining order,[69] and when this application was granted, they moved for reconsideration. To this, respondent moved that petitioners be declared in default for failing to file a responsive pleading within the reglementary period. In response, petitioners filed an Opposition with Motion to Admit Comment.

Now, petitioners claim that their Opposition with Motion to Admit Comment should be deemed as the responsive pleading, since the Regional

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68 *Id.* at 45–46.

69 *Id.* at 414.

Trial Court acknowledged its receipt in its December 18, 2009 Order.[70] On the strength of this pleading, they insist that the Amended Petition was erroneously admitted, to their detriment and prejudice.

Petitioners are mistaken. Their Opposition with Motion to Admit Comment, albeit with a Comment attached, is not tantamount to the Regional Trial Court admitting the Comment into the case records or granting the Motion. Just because the Regional Trial Court stated that "an Opposition with Motion to Admit Comment has already been filed"[71] by petitioners does not translate to it being admitted as a responsive pleading. Generally, a motion that has not been acted upon in due time is deemed denied.[72] In this case, the Regional Trial Court has ruled on the original Petition after petitioners had filed the Opposition with Motion to Admit Comment, which only means that their Comment has not been admitted.

Petitioners are wrong to assume that merely filing their Motion to Admit Comment cured their failure to file a comment within the reglementary period. Given that it is a Motion, the trial court must admit it for the Comment to be recognized as part of the case records. Without the Comment being admitted, therefore, there is no responsive pleading.

Additionally, other than the hearing on the temporary restraining order, no other hearing was calendared for the reception of the original Petition.

Contrary to what petitioners insist, a comment or opposition from the other party on the Amended Petition was unnecessary.[73] Their argument that the trial court prematurely admitted the Amended Petition as it had not given them the opportunity to file an opposition[74] has long been debunked in *Remington Industrial Sales Corporation v. Court of Appeals*:[75]

> Section 2, Rule 10 of the Revised Rules of Court explicitly states that a pleading may be amended as a matter of right before a responsive pleading is served. This only means that prior to the filing of an answer, the plaintiff has the absolute right to amend the complaint whether a new cause of action or change in theory is introduced. The reason for this rule is implied in the subsequent Section 3 of Rule 10. Under this provision, substantial amendment of the complaint is not allowed without leave of court after an answer has been served, because any material change in the allegations contained in the complaint could prejudice the rights of the defendant who has already set up his defense in the answer.

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70 *Id.* at 1083–1084.

71 *Id.* at 1083, *citing* RTC's December 18, 2009 Order.

72 *Orosa v. Court of Appeals*, 330 Phil. 67, 72 (1996) [Per J. Bellosillo, First Division]; *Spouses Salise v. Salcedo, Jr.*, 787 Phil. 586 (2016) [Per J. Brion, Second Division].

73 *Guntalilib v. Dela Cruz*, 789 Phil. 287 (2016) [Per J. Del Castillo, Second Division].

74 *Rollo*, p. 28.

75 432 Phil. 255 (2002) [Per J. Ynares-Santiago, First Division].

> Conversely, it cannot be said that the defendant's rights have been violated by changes made in the complaint if he has yet to file an answer thereto. In such an event, the defendant has not presented any defense that can be altered or affected by the amendment of the complaint in accordance with Section 2 of Rule 10. The defendant still retains the unqualified opportunity to address the allegations against him by properly setting up his defense in the answer. Considerable leeway is thus given to the plaintiff to amend his complaint once, as a matter of right, prior to the filing of an answer by the defendant.
>
> The right granted to the plaintiff under procedural law to amend the complaint before an answer has been served is not precluded by the filing of a motion to dismiss or any other proceeding contesting its sufficiency. Were we to conclude otherwise, the right to amend a pleading under Section 2, Rule 10 will be rendered nugatory and ineffectual, since all that a defendant has to do to foreclose this remedial right is to challenge the adequacy of the complaint before he files an answer.
>
> Moreover, amendment of pleadings is favored and should be liberally allowed in the furtherance of justice in order to determine every case as far as possible on its merits without regard to technicalities. This principle is generally recognized to speed up trial and save party litigants from incurring unnecessary expense, so that a full hearing on the merits of every case may be had and multiplicity of suits avoided.[76] (Citations omitted)

Respondent need not move that the Amended Petition be admitted. The Regional Trial Court's admission of the Amended Petition as a matter of right, without petitioners' Comment, was in accordance with Rule 10, Section 2 of the Rules of Civil Procedure.

Ultimately, the Court of Appeals correctly held that petitioners' assignment of errors on appeal was properly addressed by the trial court and no longer needed further resolution.[77]

II

Petitioners likewise claim that *res judicata* bars the review of this case given that this Court has ruled on the constitutionality of Republic Act No. 8479 in *Garcia v. Corona*,[78] where this Court said:

> For this Court to declare unconstitutional the key provision around which the law's anti-trust measures are clustered would mean a constitutionally interdicted distrust of the wisdom of Congress and of the determined exercise of executive power.

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76 *Id.* at 261–262.

77 *Rollo*, p. 54.

78 378 Phil. 848 (1999) [Per J. Ynares-Santiago, *En Banc*].

> Having decided that deregulation is the policy to follow, Congress and the President have the duty to set up the proper and effective machinery to ensure that it works. This is something which cannot be adjudicated into existence. This Court is only an umpire of last resort whenever the Constitution or a law appears to have been violated. There is no showing of a constitutional violation in this case.
>
> WHEREFORE, the petition is DISMISSED.[79]

For there to be *res judicata*, four conditions must be present: "(1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter[,] and causes of action."[80]

Not all the requisites exist here. While the first three are present—the decision had attained finality; this Court had jurisdiction over the subject matter and the parties involved in the previous case; and its judgment was on the merits of the case—the parties, subject matter, and causes of action between *Garcia* and this case are not identical.

Garcia was filed by former House Representative Enrique Garcia against former Executive Secretary Renato Corona, former Energy Secretary Francisco Viray, Caltex Philippines, Inc., Petron Corporation, and Pilipinas Shell, the respondent in this case. On the other hand, this case involves former Executive Secretary Mendoza, the Department of Energy-Department of Justice Joint Task Force, and Energy Secretary Angelo I. Reyes versus Pilipinas Shell.

More important, the subject matter in *Garcia* was Section 19 of Republic Act No. 8479. The petitioner then contended that Section 19, "which prescribes the period for the removal of price control on gasoline and other finished products and for the full deregulation of the local downstream oil industry, is patently contrary to public interest and therefore unconstitutional[.]"[81] The assailed provision states in part:

> SECTION 19. *Start of Full Deregulation.* — Full deregulation of the Industry shall start five (5) months following the effectivity of this Act: *Provided, however*, That when the public interest so requires, the President may accelerate the start of full deregulation upon the recommendation of the DOE and Department of Finance (DOF) when the prices of crude oil and petroleum products in the world market are declining and the value of the peso in relation to the US dollar is stable, taking into account relevant trends and prospects: *Provided, further*, That the foregoing provision notwithstanding, the five (5)-month Transition Phase shall continue to apply

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79 *Id.* at 869.

80 *Aledro-Ruña v. Lead Export and Agro-Development Corporation*, 836 Phil. 946, 959 (2018) [Per J. Gesmundo, Third Division].

81 378 Phil. 848, 858 (1999) [Per J. Ynares-Santiago, *En Banc*].

> to LPG, regular gasoline and kerosene as socially-sensitive petroleum products and said petroleum products shall be covered by the automatic pricing mechanism during the said period.

While under the same statute, the provision assailed here is different. Section 14(e) is being assailed for unduly delegating emergency powers to the Department of Energy.

As the last requisite of *res judicata* is not present, petitioners' argument will not prosper. Though both cases challenge the same statute, it does not automatically mean *res judicata*.

III

A case is moot when "it ceases to present a justiciable controversy because of supervening events so that a declaration thereon would be of no practical use or value."[82] Generally, this Court refuses to exercise jurisdiction over it, or dismisses it for being moot.[83]

Here, there is no dispute that the question of Executive Order No. 839 has been rendered moot after Executive Order No. 857 had revoked it. In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*:[84]

> A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.
>
> In this case, the supervening issuance of Sugar Order No. 5, s. 2013-2014 which revoked the effectivity of the Assailed Sugar Orders has mooted the main issue in the case *a quo* — that is the validity of the Assailed Sugar Orders. Thus, in view of this circumstance, resolving the procedural issue on forum-shopping as herein raised would not afford the parties any substantial relief or have any practical legal effect on the case.[85] (Citations omitted

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82 *COCOFED-Philippine Coconut Producers Federation, Inc. v. Commission on Elections*, 716 Phil. 19, 28 (2013) [Per J. Brion, *En Banc*].

83 *Republic v. Moldex Realty, Inc.*, 780 Phil. 553, 560 (2016) [Per J. Leonen, Second Division], *citing David v. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

84 728 Phil. 535 (2014) [Per J. Perlas-Bernabe, Second Division].

85 *Id.* at 540–541.

Nonetheless, this case is not moot. The primary issue here is not the constitutionality of Executive Order No. 839, but that of Section 14(e) of Republic Act No. 8479, which respondent raised as early as its original Petition lodged before the Regional Trial Court. It prayed:

> WHEREFORE. premises considered. petitioner PILIPINAS SHELL PETROLEUM CORPORATION respectfully prays:
>
> . . . .
>
> 4. After proper proceedings. Executive Order No. 839 and Section 14(e) of the Downstream Oil Industry Deregulation Act of 1998 be declared void and unconstitutional.[86]

Respondent's Amended Petition, which the trial court admitted, likewise sought judgment on the validity of Section 14(e).

In *Ilusorio v. Baguio Country Club Corporation*,[87] this Court discussed that while one issue in the case became moot, the case should not be automatically dismissed if there are other issues raised that need resolving:

> There is no dispute that the action for *mandamus* and injunction filed by Erlinda has been mooted by the removal of the cottage from the premises of BCCC. The staleness of the claims becomes more manifest considering the reliefs sought by Erlinda, *i.e.*, to provide access and to supply water and electricity to the property in dispute, are hinged on the existence of the cottage. Co[r]ol[l]arily, the eventual removal of the cottage rendered the resolution of issues relating to the prayers for *mandamus* and injunction of no practical or legal effect. A perusal of the complaint, however, reveals that Erlinda did not only pray that BCCC be enjoined from denying her access to the cottage and be directed to provide water and electricity thereon, but she also sought to be indemnified in actual, moral and exemplary damages because her proprietary right was violated by the respondents when they denied her of beneficial use of the property. In such a case, the court should not have dismissed the complaint and should have proceeded to trial in order to determine the propriety of the remaining claims. Instructive on this point is the Court's ruling in *Garayblas v. Atienza, Jr.*:
>
> > The Court has ruled that an issue becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. In such cases, there is no actual substantial relief to which the plaintiff would be entitled to and which would be negated by the dismissal of the complaint. However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial. When a case is dismissed without the other substantive

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86 *Rollo*, p. 462.

87 738 Phil. 135 (2014) [Per J. Perez, Second Division].

> issues in the case having been resolved would be tantamount to a denial of the right of the plaintiff to due process.[88] (Citations omitted)

Thus, while Executive Order No. 857 lifted the regulation on oil prices, it did not make the issue moot. This Court is still left with a question to resolve: whether Section 14(e) is unconstitutional.

Even if the constitutionality of Section 14 (e) were not raised, this Court would not be precluded from assuming jurisdiction over the case. This Court may take cognizance of a moot issue when: (1) "there is a grave violation of the Constitution"; (2) the case involves a situation of "exceptional character" and was of "paramount public interest"; (3) the issues raised require the "formulation of controlling principles to guide the bench, the bar[,] and the public"; and (4) "the case is capable of repetition yet evading review."[89]

Here, even if Executive Order No. 839 was lifted, a similar executive order may just as easily be issued under Section 14(e) of Republic Act No. 8479. The question of its constitutionality involves the allocation of power to a government official other than the president—an allocation that does not find support in the Constitution, law, and jurisprudence. Consequently, this Court may set forth controlling doctrine as to the delegation of emergency powers to the president on the matter for the guidance of the bench, the bar, and the public.

IV

In questioning the constitutionality of Section 14(e) of Republic Act No. 8479, respondents filed a Petition for Declaratory Relief.

Declaratory relief under Rule 63, Section 1 of the Rules of Civil Procedure serves as a vehicle for persons "whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation."[90] Using this recourse, one may challenge the legality or interpretation of an executive order or statute before the regional trial courts.[91] However, as with any court action, relief sought from the remedy chosen is not guaranteed. The standard rules of justiciability continue to exist.

No less than the Constitution mandates the existence of an actual case or controversy for the exercise of judicial power. Article VIII, Section 1 of the Constitution provides:

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88 *Id.* at 140–142.
89 *Kilusang Mayo Uno v. Aquino*, 850 Phil. 1168, 1202 (2019) [Per J. Leonen, *En Banc*].
90 RULES OF COURT, Rule 63, sec. 1.
91 RULES OF COURT, Rule 63, sec. 1.

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

In exercising its power of judicial review, a court is limited to: (1) settling actual controversies and enforce rights conferred by law; and (2) determining grave abuse of discretion by any government branch or instrumentality. These have been referred to as the traditional and expended powers of judicial review, respectively.[92]

The traditional power is triggered when the following requisites concur:

> first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.[93] (Citations omitted)

In *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas*,[94] this Court held that the same elements of justiciability must be established in availing of a declaratory relief. It stated:

> For a petition for declaratory relief to prosper, it must be shown that (a) there is a justiciable controversy, (b) the controversy is between persons whose interests are adverse, (c) the party seeking the relief has a legal interest in the controversy, and (d) the issue invoked is ripe for judicial determination.[95] (Citations omitted)

IV (A)

In the list of requisites, the most significant is the presence of an actual case or controversy. For it to exist, there must be a conflict of legal rights susceptible of judicial resolution.[96] Moreover, there must be actual facts from

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92 *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 137–139 (2016) [Per J. Brion, *En Banc*].

93 *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 244 (2018) [Per J. Leonen, *En Banc*].

94 809 Phil. 65 (2017) [Per J. Jardeleza, Third Division].

95 *Id.* at 81.

96 *Information Technology Foundation of the Philippines v. Commission on Elections*, 499 Phil. 281, 304–305 (2005) [Per J. Panganiban, *En Banc*].

which the courts can determine whether a constitutional text has been violated.[97]

There is also an actual case or controversy when there is clear and convincing proof of contrariety of legal rights. *Calleja v. Executive Secretary*[98] explained what a contrariety of legal rights is:

> *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.[99] (Emphasis supplied, citations omitted)

Jurisprudence has established that a mere contrariety of legal rights satisfies the requirement of justiciability.[100] In *Tañada v. Angara*:[101]

> In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. "The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld." Once a "controversy as to the application or interpretation of a constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide."[102] (Citation omitted)

In *Belgica v. Ochoa*,[103] this Court determined that a real and justiciable controversy existed due to the conflicting legal rights between the parties' antagonistic positions on the constitutionality of the pork barrel system:

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97 *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 246 (2018) [Per J. Leonen, *En Banc*].

98 G.R. Nos. 252578 et al., December 7, 2021 [Per J. Carandang, *En Banc*].

99 *Id.*

100 J. Caguioa, Dissenting Opinion in *Calleja v. Executive Secretary*, G.R. Nos. 252578 et al., December 7, 2021 [Per J. Carandang, *En Banc*].

101 338 Phil. 546 (1997) [Per J. Panganiban, *En Banc*].

102 *Id.*

103 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, *En Banc*].

> Jurisprudence provides that an actual case or controversy is one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute." In other words, "[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence." Related to the requirement of an actual case or controversy is the requirement of "ripeness," meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. "A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action." Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions."[104] (Citations omitted)

In *Samahan ng mga Progresibong Kabataan v. Quezon City*,[105] given the parties' conflicting claims on the violation of constitutional rights by the curfew ordinances being assailed, this Court held that a justiciable controversy exists.[106] Petitioners presented a *prima facie* case of grave abuse of discretion, compelling this Court to exercise its power of judicial review:

> 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." "[A]n actual case or controversy is one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.' In other words, 'there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.'" According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified "by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act."
>
> "Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of."[107] (Citations omitted)

Thus, in asserting a contrariety of legal rights, merely alleging an incongruence of rights between the parties is not enough. The party availing of the remedy must demonstrate that the law is so contrary to their rights that

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[104] *Id.* at 519–520.
[105] 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].
[106] *Id.* at 1091.
[107] *Id.* at 1090–1091.

there is no 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,[108] and therefore, ripe for adjudication.

Constitutional challenges are called "as-applied" challenges when they are based on: (a) the existence of facts showing actual breach; or (b) a demonstrable contrariety of legal rights.[109]

Similarly, petitions for declaratory relief, which generally question the validity of a law, may prosper only if an actual case or controversy is presented. The petitioner must establish a legally demandable and enforceable right under the Constitution,[110] and that resolving the issue of constitutionality is essential to protect that right.[111] Nonetheless, actual facts resulting from the challenged law's application may not always be required for the exercise of judicial review on an as-applied challenge. A demonstrable contrariety of legal rights may suffice.

Here, petitioners assert that the Court of Appeals erred in declaring Section 14(e) of Republic Act No. 8479 unconstitutional when it is a valid delegation of power to the president. Respondent, by contrast, argues that Section 14(e) improperly delegates legislative authority to an entity other than the president. It further raises that the provision poses an imminent threat to its industry since the energy secretary could exercise the president's takeover authority at any time and has done so while Executive Order No. 839 was in force.

Given the demonstrable contrariety between the statutory provision and the pertinent constitutional provisions, this case is ripe for adjudication. This clash of rights is sufficient to allow a constitutional challenge to Section 14(e).

However, while this Court has deemed it appropriate to take cognizance of this case, we retain the discretion to grant or deny the relief prayed for. Although the constitutionality issue is indeed justiciable given the demonstrable contrariety of legal rights in the allegations, the parties must still establish the existence of such contrariety.

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[108] *Parcon-Song v. Parcon*, 876 Phil. 364, 400 (2020) [Per J. Leonen, *En Banc*].

[109] *Universal Robina Corporation v. Department of Trade and Industry*, G.R. No. 203353, February 14, 2023 [Per J. Leonen, *En Banc*].

[110] *Kilusang Mayo Uno v. Aquino*, 850 Phil. 1168, 1191 (2019) [Per J. Leonen, *En Banc*].

[111] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 244 (2018) [Per J. Leonen, *En Banc*].

IV (B)

In the absence of an as-applied challenge to a statute's constitutionality, a petitioner may still contest it through a facial challenge. A facial challenge entails "an examination of the entire law, pinpointing its flaws and defects, not only based on its actual operation to the parties, but also on the assumption that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."[112] In *Estrada v. Sandiganbayan*:[113]

> Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected. It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts.[114] (Citations omitted)

A facial review, as opposed to an as-applied challenge, may be initiated upon the mere passage of a law due to the looming threat of violations it poses on constitutional rights.[115] It opens an entire statute to review, even though it may not meet the requirements of an as-applied challenge, because of the impending breach of a fundamental right it may bring. Thus, a facial review may be had in certain exceptional scenarios.

The first involves a statute that flagrantly violates freedom of expression and its cognate rights.

Article III, Section 4 of the Constitution states:

> SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Freedom of expression occupies a privileged position in the hierarchy of civil freedoms, as it is indispensable to a democratic government.[116] It enables citizens to participate meaningfully in public affairs by conveying their thoughts and opinions. *Philippine Blooming Mills Employees v. Philippine Blooming Mills Co., Inc.*[117] explained the primacy that this constitutional right occupies:

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[112] *Falcis III v. Civil Registrar General*, 861 Phil. 388, 445 (2019) [Per J. Leonen, *En Banc*]. (Citation omitted)

[113] 421 Phil. 290 (2001) [Per J. Bellosillo, *En Banc*].

[114] *Id.* at 355.

[115] *Diocese of Bacolod v. Commission on Elections*, 789 Phil. 197, 217 (2016) [Per J. Leonen, *En Banc*].

[116] *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, 151-A Phil. 656, 676 (1973) [Per J. Makasiar, *En Banc*].

[117] 151-A Phil. 656 (1973) [Per J. Makasiar, *En Banc*].

> Property and property rights can be lost thru prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and powerful, and of oligarchs - political, economic or otherwise.
>
> In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority "gives these liberties the sanctity and the sanction not permitting dubious intrusions."
>
> The superiority of these freedoms over property rights is underscored by the fact that a mere reasonable or rational relation between the means employed by the law and its object or purpose — that the law is neither arbitrary nor discriminatory nor oppressive — would suffice to validate a law which restricts or impairs property rights. On the other hand, a constitutional or valid infringement of human rights requires a more stringent criterion, namely existence of a grave and immediate danger of a substantive evil which the State has the right to prevent.[118] (Citations omitted)

Consequently, a facial challenge is permitted in cases involving freedom of expression and its cognate rights to prevent prior restraint on free speech or overbroad language that has a chilling effect on free speech. In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[119] this Court explained:

> A facial invalidation of a statute is allowed only in free speech cases, wherein certain rules of constitutional litigation are rightly excepted.
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> . . . .
>
> The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged. As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an "*in terrorem* effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.[120] (Citations omitted)

This is not to say that the inapplicability of facial challenges to penal statutes are absolute. Generally, a penal statute cannot be challenged on its face. However, it may be facially challenged if it violates free speech or amounts to prior restraint.

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[118] *Id* at 676.
[119] 646 Phil. 452 (2010) [Per J. Carpio Morales, *En Banc*].
[120] *Id.* at 489.

The second scenario permits judicial review when a violation of fundamental rights is so egregious or so imminent that judicial restraint would lead to serious violations of fundamental rights. To be deemed egregious, the violation must be so pervasive that virtually any citizen could raise the issue.[121] In *Parcon-Song v. Parcon*,[122] this Court held:

> There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) *when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance*. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it.[123] (Emphasis supplied)

The third scenario is when a constitutional provision invokes emergency or urgent measures. These measures, by their nature, are temporary, allowing them to avoid judicial review even if the issue is capable of repetition. Waiting for an actual dispute or injury to occur may only result in irreversible damage or harm to an individual; yet, with the risk that the measure would be repealed or rendered obsolete, filing a lawsuit or seeking judicial recourse would be futile. As such, this Court may, despite no actual facts, proceed to determine the applicable doctrine on the assailed provision. This includes challenges on the suspension of the privilege of the writ of *habeas corpus*, the declaration of martial law, and the exercise of emergency powers.

These scenarios allowing for a facial challenge must be separated from the concept of contrariety of legal rights applicable in as-applied challenges, which consists in a regulation, ordinance, statute, or legal provision so apparently inconsistent with a constitutional provision that no other interpretation is possible other than that it is unconstitutional. A facial challenge, meanwhile, requires a looming and inevitable possibility that fundamental rights are violated.

As discussed earlier, this case is appropriate for judicial review due to the contrariety of legal rights presented by the parties. However, even if there were no contrariety of legal rights, the third scenario allowing for a facial challenge may still apply. Section 14(e) of Republic Act No. 8479 touches on

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[121] *Universal Robina Corporation v. Department of Trade and Industry*, G.R. No. 203353, February 14, 2023 [Per J. Leonen, *En Banc*].

[122] 876 Phil. 364 (2020) [Per J. Leonen, *En Banc*].

[123] *Id* at 402.

the delegation of the president's takeover power during an emergency. Its implementation, though temporary, may have far-reaching effects. Moreover, with Executive Order No. 839, respondent clearly demonstrated that its apprehension was not illusory. While the executive order has been revoked, a similar order may be issued nonetheless. This Court, therefore, finds that it may properly exercise judicial review here.

V

We now discuss the substantive aspect of this case.

Section 14[124] of Republic Act No. 8479 provides the monitoring powers and functions of the Department of Energy as to the deregulation of the oil industry. Section 14(e) states:

> (e) In times of national emergency, when the public interest so requires, the DOE may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any person or entity engaged in the Industry.

In asserting that the Court of Appeals erred in declaring Section 14(e) void for being unconstitutional, petitioners claim that "the power to determine the existence of war or other national emergency lies in the hands of the

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[124] Republic Act No. 8479 (1998), sec. 14 states:
SECTION 14. Monitoring. — a) The DOE shall monitor and publish daily international crude oil prices, as well as follow the movements of domestic oil prices. It shall likewise monitor the quality of petroleum products and stop the operation of businesses involved in the sale of petroleum products with the national standards of quality that are aligned with the international standards/protocols of quality. The Bureau of Product Standards (BPS) of the DTI, together with the Department of Environment and Natural Resources (DENR), the DOE, the Department of Science and Technology (DOST), representatives of the fuel and automotive industries and the consumers, shall set the specifications for all types of fuel and fuel-related products to improve fuel composition for increased efficiency and reduced emissions. The BPS shall also specify the allowable content of additives in all types of fuels and fuel-related products.
b) The DOE shall monitor the refining and manufacturing processes of local petroleum products to ensure that clean and safe (environment and worker-benign) technologies are applied. This shall also apply to the process of marketing local and imported petroleum products.
c) The DOE shall maintain a periodic schedule of present and future total industry inventory of petroleum products for the purpose of determining the level of supply. To implement this, the importers, refiners, and marketers are hereby required to submit monthly to the DOE their actual and projected importations, local purchases, sales and/or consumption, and inventory on a per crude/product basis.
d) Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon. For this purpose, the creation of DOE-DOJ Task Force is hereby mandated to determine within thirty (30) days the merits of the report and initiate the necessary actions warranted under the circumstances: Provided, That nothing herein shall prevent the said task force from investigating and/or filing the necessary complaint with the proper court or agency *moto prop[r]io*.
Upon the effectivity of this Act, the Secretaries of Energy and Justice shall jointly appoint the members of a committee who shall be tasked with the drafting of rules and guidelines to be adopted by the Task Force in the performance of its duty. These guidelines shall ensure efficiency, promptness, and effectiveness in the handling of its cases. The Task Force shall be organized and its members appointed within one (1) month from the effectivity of this Act.
e) In times of national emergency, when the public interest so requires, the DOE may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any person or entity engaged in the Industry.

president,"[125] and that the delegation to the Department of Energy was proper.[126] They further argue that Section 14(e) provides the specific duration of and restrictions in wielding the takeover power. They add that there is a national policy on which Section 14(e) is based.[127]

Petitioners' arguments have merit.

Article XII, Section 17 of the Constitution provides for the takeover of operations of privately owned public utilities or businesses affected with public interest:

> SECTION 17. In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.

Related to this, Article VI, Section 23 of the Constitution provides limitations on the takeover power:

> SECTION 23. (1) The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.
>
> (2) In times of war or other national emergency, the Congress may, by law, authorize the *President*, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof. (Emphasis supplied)

Thus, in times of national emergency, the Constitution gives the Legislature the authority to grant the president temporary emergency powers to address a threat the country is facing. To be a valid delegation, the legislative enactment must "authorize the [p]resident, for a limited period and subject to such restrictions as it may prescribe[.]"[128]

The landmark case of *David v. Macapagal-Arroyo*[129] exhaustively explains how these two provisions intersect:

> Courts have often said that constitutional provisions *in pari materia* are to be construed together. Otherwise stated, different clauses, sections, and provisions of a constitution which relate to the same subject matter will

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125 *Rollo*, pp. 18–19.
126 *Id.* at 23.
127 *Id.* at 19.
128 CONST., art. VI, sec. 23(2).
129 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

be construed together and considered in the light of each other. Considering that Section 17 of Article XII and Section 23 of Article VI, previously quoted, relate to national emergencies, they must be read together to determine the limitation of the exercise of emergency powers.

Generally, Congress is the repository of emergency powers. This is evident in the tenor of Section 23 (2), Article VI authorizing it to delegate such powers to the President. *Certainly, a body cannot delegate a power not reposed upon it.* However, knowing that during grave emergencies, it may not be possible or practicable for Congress to meet and exercise its powers, the Framers of our Constitution deemed it wise to allow Congress to grant emergency powers to the President, subject to certain conditions, thus:

(1) There must be a *war* or *other emergency.*
(2) The delegation must be for a *limited period only.*
(3) The delegation must be *subject to such restrictions as the Congress may prescribe.*
(4) The emergency powers must be exercised to *carry out a national policy* declared by Congress.

Section 17, Article XII must be understood as an aspect of the emergency powers clause. The taking over of private business affected with public interest is just another facet of the emergency powers generally reposed upon Congress. Thus, when Section 17 states that the "*the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest,*" it refers to Congress, not the President. Now, whether or not the President may exercise such power is dependent on whether Congress may delegate it to him pursuant to a law prescribing the reasonable terms thereof.[130] (Emphasis in the original, citation omitted)

The incidents in *David* involved President Macapagal-Arroyo issuing Proclamation No. 1017, which declared a state of national emergency and called on the Philippine Air Force to prevent and suppress acts of terrorism and lawless violence. On the same day, she issued General Order No. 5, implementing the proclamation. During the period of Proclamation No. 1017, permits to hold rallies were revoked, rallyists were dispersed, and arrests were executed without warrants. Moreover, facilities, including media, were taken over. A week later, the president issued Proclamation No. 1021, lifting Proclamation No. 1017 and declaring that the national emergency ceased.[131]

When the constitutionality of Proclamation No. 1017 was questioned, this Court upheld it for being in accordance with Article VII, Section 18 of the Constitution—save for its takeover clause. To this Court, the takeover of privately owned public utilities and privately owned businesses affected with public interest could not be done without legislative imprimatur. It held:

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[130] *Id.* at 788–789.
[131] *Id.* at 746.

> The Court finds and so holds that PP 1017 is constitutional insofar as it constitutes a call by the President for the AFP to prevent or suppress lawless violence. The proclamation is sustained by Section 18, Article VII of the Constitution and the relevant jurisprudence discussed earlier. However, P.P. 1017's extraneous provisions giving the President express or implied power (1) to issue decrees; (2) to direct the AFP to enforce obedience to all laws even those not related to lawless violence as well as decrees promulgated by the President; and (3) to impose standards on media or any form of prior restraint on the press, are *ultra vires* and unconstitutional. The Court also rules that under Section 17, Article XII of the Constitution, the President, in the absence of a legislation, cannot take over privately-owned public utility and private business affected with public interest.[132]

Unlike in *David*, this case involves the invocation of takeover power with congressional authority. By enacting Republic Act No. 8479, Congress authorized the Department of Energy to temporarily take over or direct the operations of a person or entity in the petroleum industry in times of national emergency or when public interest requires.

However, the contention lies in the legislative grant of the takeover power to the Department of Energy instead of the president.

Article XII, Section 17 of the Constitution gives the president the power to take over public utilities or businesses impressed with public interest only with congressional authority. It expressly provides that Congress may authorize the president, without mention of any other official in the alternative. Accordingly, the Legislature's delegation of authority to any entity other than the president seemingly contravenes the constitutional provision. Nonetheless, this is not without consideration.

Article VII, Section 17 of the Constitution states:

> SECTION 17. The president shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

In line with this constitutional provision is the well-established doctrine of qualified political agency. The doctrine recognizes the multifarious responsibilities a president faces, which calls for the delegation of certain responsibilities to the cabinet members.[133] It posits that the heads of the various executive departments stand as the president's alter egos permitted to act on behalf of the president.[134]

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[132] *Id.* at 809.

[133] *Philippine Institute for Development Studies v. Commission on Audit*, 860Phil. 303, 307 (2019) [Per J. Leonen, *En Banc*].

[134] *Manalang-Demigillo v. Trade and Investment Development Corp. of the Phils*, 705 Phil. 331, 347 (2013) [Per J. Bersamin, *En Banc*].

In *Philippine Institute for Development Studies v. Commission on Audit*,[135] this Court explained:

> The doctrine was first discussed in the 1939 case of *Villena v. The Secretary of the Interior*. There, petitioner Jose Villena (Villena), then mayor of Makati, questioned the authority of the Interior Secretary's authority to, among others, decree Villena's suspension pending the investigation on the numerous charges brought against him. The Interior Secretary argued that the decree of suspension was verbally approved or acquiesced by the president, who has the authority to remove or suspend a municipal official.
>
> Before this Court, Villena posited the issue of whether the president's mere verbal approval or acquiescence renders the decree of suspension valid. Speaking through then Associate Justice Jose P. Laurel, this Court held:
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> > [A]ll executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.
>
> However, some of the Members of this Court expressed fear on the consequences of the doctrine of qualified political agency. They worry that the president may just assume responsibility "for acts of any member of his [or her] cabinet, however illegal, irregular or improper may be these acts."
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> The majority nonetheless maintained:
>
> > With reference to the Executive Department of the government, there is one purpose . . . , and that is, the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, . . . Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President.

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[135] 860 Phil. 303 (2019) [Per J. Leonen, *En Banc*].

> The majority also noted that "each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority." Since the president is the head of the executive branch, this Court ruled that "he [or she] controls and directs his [or her] acts; he [or she] appoints him [or her] and can remove him [or her] at pleasure; he [or she] is the executive, not any of his secretaries." It is thus proper that the president "should be answerable for the acts of administration of the entire executive Department before his [or her] own conscience[.]"[136] (Citations omitted)

In other words, the president may carry out their functions through the heads of the executive departments.[137] The secretaries of each department function as the president's alter egos; however, they are not given complete discretion over how to exercise the delegated authority. The doctrine dictates that the president retains control, having the authority to "confirm, modify[,] or reverse the action taken by his *department secretaries*."[138]

Nevertheless, the doctrine of qualified political agency cannot apply to situations that call for the president's personal performance. This Court has established that some presidential powers may be delegated, while others cannot. In *Villena v. Secretary of the Interior*:[139]

> After serious reflection, we have decided to sustain the contention of the government in this case on the broad proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, *except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally*, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.[140] (Emphasis supplied, citations omitted)

Villena provides two instances when the doctrine cannot apply: (1) when the Constitution or law specifically requires the president to act in person; and (2) when the exigencies of the situation demand it. In *Constantino v. Cuisia*,[141] this Court clarified:

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136 *Id.* at 326-328.
137 J. Caguioa, Separate Opinion, pp. 6–7; J. Lazaro-Javier, Separate Opinion, pp. 2–3.
138 *Lacson-Magallanes Company, Inc. v. Pano*, 129 Phil. 123, 127 (1967) [Per J. Sanchez, *En Banc*].
139 67 Phil. 451 (1939) [Per J. Laurel, *En Banc*].
140 *Id.* at 463.
141 509 Phil. 486 (2005) [Per J. Tinga, *En Banc*].

> [T]here are powers vested in the President by the Constitution which may not be delegated to or exercised by an agent or alter ego of the President. Justice Laurel, in his ponencia in *Villena*, makes this clear:
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> > Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, in his power to suspend the writ of *habeas corpus* and proclaim martial law (PAR. 3, SEC. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, sec. 11, *idem*).
>
> These distinctions hold true to this day. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar gravitas and exceptional import.[142] (Citation omitted)

Thus, while some powers require, for practicality's sake, delegation to the alter egos, a number of constitutional provisions specifically require a positive action from the president themself. As stated in *Villena*, these include the president's power to pardon, declare martial law, and suspend the privilege of the writ of *habeas corpus*. These are exceptional presidential powers that, if exercised, would require the suspension of fundamental liberties. Moreover, these instances require the chief executive to act personally because the exigencies of the situation demand it.[143] Thus, for a power to be placed in this special category, it must be shown to hold the same weight or exceptional significance as those enumerated above.

Notably, and as observed by Justice Caguioa, the temporary takeover power does not belong to the "special class of constitutionally[ ]vested powers" exclusive to the president.[144] Certainly, the temporary control over oil industry entities does not involve the suspension of constitutionally protected liberties, but the regulation of the operation of a public utility or a private enterprise that affects public interest. This does not entail that the president personally handle the takeover. As specified by the law, the takeover authority will be employed during national emergencies; it would be

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142 *Id.* at 518.
143 *Carpio v. Executive Secretary*, 283 Phil. 196, 204–205 (1992) [Per J. Paras, *En Banc*].
144 J. Caguioa, Separate Opinion, p. 8.

unreasonable to expect the president to exercise all of the control powers simultaneously and in person during such times. Consequently, the president would require the assistance of their alter egos in addressing the numerous issues at hand.

Incidentally, Justice Caguioa cites *Constantino*, where this Court declared that the president exercises only certain constitutional powers exclusively, but Congress may delegate the borrowing power under Article VII, Section 20 and the authority to impose tariff rates and imposts under Article VI, Section 28(2) directly to the finance secretary and the trade and industry secretary, respectively. Justice Caguioa adds that in *Southern Cross Cement Corporation v. The Philippine Cement Manufacturers Corporation*,[145] this Court tacitly acknowledged that Congress could designate the trade and industry secretary, as alter ego of the president, to exercise the authority under Article VI, Section 28(2).[146]

In *Constantino*, the relevant constitutional provision was Article VII, Section 20 of the Constitution, which states:

> SECTION 20. *The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law.* The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law. (Emphasis supplied)

This provision states that in matters of foreign loans, the president must act: (1) with the Monetary Board's concurrence; and (2) subject to such limitation provided by law. As a result, Republic Act No. 245 as amended by Presidential Decree No. 142, Section 1973 was enacted, allowing the finance secretary to acquire foreign loans in the president's stead, if done in consultation with the Monetary Board and with prior presidential approval. Unlike it, the wording of Section 14(e) of Republic Act No. 8479 seemingly gives the energy secretary the sole authority to exercise the takeover power. Thus, *Constantino* is not analogous to this case.

Neither can the provision in *Southern Cross Cement* be likened to this case. Involved in that case was Republic Act No. 8800, or the Safeguard Measures Act, vis-à-vis Article VI, Section 28(2) of the Constitution. Under Article VI, Section 28(2), Congress may delegate its constitutional prerogative to impose tariffs and taxes to the president, subject to limitations and restrictions it may impose:

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[145] 478 Phil. 85 (2004) [Per J. Tinga, Second Division].
[146] J. Caguioa, Separate Opinion, pp. 8–9.

> SECTION 28. . . .
>
> (2) The Congress may, by law, authorize the President to fix, within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

This Court acknowledged that the trade and industry secretary was given authority as the president's alter ego to impose regulations upon a finding that a product is being imported into the country in increased quantities and may cause serious injury or threat to the domestic industry. Similar to *Constantino*, the power delegated to the trade secretary in the Safeguard Measures Act does not require immediate implementation. It involves the imposition of economic measures, including taxes and tariffs, for the regulation of a certain product which must first undergo a series of hearings and consultations before they are implemented. This again clashes with the language of Section 14(e) of Republic Act No. 8479, which purports to grant the energy secretary unilateral authority over the takeover power.

Thus, both *Constantino* and *Southern Cross Cement* are not on all fours with the case at hand. Nonetheless, given that the takeover authority is not one of the special classes of constitutional powers reserved for the president, the doctrine of qualified political agency will apply.

While the language of Section 14(e) appears to allow an interpretation that permits the energy secretary to act independently or without instructions from the president, the doctrine of qualified political agency entails that a cabinet secretary may only exercise the authority acting as the president's alter ego. As such, their actions related to their official duties and responsibilities are presumed to be the president's. These acts are valid and binding unless the president disapproves or repudiates them.[147] In addition, their acts are subject to the subsequent ratification or rejection of the president; any exercise contrary to the president's intent or instructions shall be deemed *ultra vires* and an unconstitutional usurpation of executive power.[148]

Thus, Section 14(e), as it currently stands, is constitutional. Nonetheless, if, in the exercise of its delegated authority, the energy secretary acts in contrast with the president's intent or instructions, the act will be deemed *ultra vires* and an unconstitutional usurpation of executive power.

Moreover, it must first be demonstrated that the president withheld approval or repudiated the delegation or the actions of the delegated

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[147] *Constantino v. Cuisia,* 509 Phil. 486, 519. (2005) [Per J. Tinga, *En Banc*].
[148] *Id.* at 518.

authority.[149] Here, if there is no clear showing that the energy secretary acted without the imprimatur of the president, the presumption of constitutionality must prevail.

The presumption emanates from the principle that the Judiciary accords great respect to the Legislature. In *Estrada v. Sandiganbayan*:[150]

> Preliminarily, the whole gamut of legal concepts pertaining to the validity of legislation is predicated on the basic principle that a legislative measure is presumed to be in harmony with the Constitution. Courts invariably train their sights on this fundamental rule whenever a legislative act is under a constitutional attack, for it is the postulate of constitutional adjudication. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch - the legislature.
>
> If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance.[151]

In *Tano v. Socrates*:[152]

> It is of course settled that laws (including ordinances enacted by local government units) enjoy the presumption of constitutionality. To overthrow this presumption, there must be a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative contradiction. In short, the conflict with the Constitution must be shown beyond reasonable doubt. Where doubt exists, even if well-founded, there can be no finding of unconstitutionality. To doubt is to sustain.[153]

Thus, the presumption of constitutionality may only be challenged when there is a clear showing of the grounds for invalidating a law.[154]

All told, Section 14(e) of Republic Act No. 8479 is a proper delegation of takeover power to the Department of Energy. Absent any actual proof from respondents that the exercise of this provision has caused it harm or injury, we hold that the challenge claiming the provision unconstitutional must fail.

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149 *Id.* at 519.
150 421 Phil. 290 (2001) [Per J. Bellosillo, *En Banc*].
151 *Id.* at 342.
152 343 Phil. 670 (1997) [Per J. Davide, Jr., *En Banc*].
153 *Id.* at 700.
154 *Smart Communications v. Municipality of Malvar*, 727 Phil. 430, 447 (2014) [Per J. Carpio, *En Banc*].

The Court of Appeals, therefore, incorrectly declared Section 14(e) of Republic Act No. 8479 unconstitutional.

ACCORDINGLY, the Petition is **GRANTED**. The June 25, 2013 Decision and September 19, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 96326 are **REVERSED and SET ASIDE**. Section 14(e) of Republic Act No. 8479 is constitutional.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

See separate Concurring

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

No Part
HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

No Part
MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
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