

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

BAYAN MUNA CHAIRMAN NERI
COLMENARES, FORMER BAYAN MUNA
REPRESENTATIVE CARLOS ISAGANI
ZARATE, ACT TEACHERS PARTYLIST
REPRESENTATIVE FRANCISCA "FRANCE"
CASTRO, GABRIELA WOMENS' PARTY
REPRESENTATIVE ARLENE BROSAS AND
KABATAAN PARTYLIST REPRESENTATIVE
RAOUL DANNIEL MANUEL,

Petitioners,

-versus-

G.R. No.

PRESIDENT FERDINAND ROMUALDEZ
MARCOS, EXECUTIVE SECRETARY LUCAS L.
BERSAMIN, and THE HOUSE OF
REPRESENTATIVES,

Respondents.

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PETITION
FOR CERTIORARI AND PROHIBITION

PETITIONERS, through the undersigned counsel, unto the
Honorable Court, most respectfully state that:

PREFATORY

**The Constitutional Limits of Curtailing the Legislative Processes of
Congress**

There is a history of abuse, going back several administrations,
of the presidential prerogative to certify a proposed legislation as

urgent despite absence of any “public emergency or calamity”. This has got to stop.

The rule under our Constitution is that a bill can only become a law if it passes through three separate readings on three separate days. The exception is, when the president certifies as to necessity of is **immediate enactment** to meet a public emergency or calamity. Since this power is an exception to a rule imposed by the Constitution, it must be strictly construed in favor of the rule—that bills should pass three readings in three separate days as required by Article VI Section 26 (2) of the 1987 Constitution. Presidential certification of urgency must only be exercised in a clearly exceptional situation of public emergency or calamity that is of such nature that the “immediate enactment” of a law is required to address said emergency or calamity.

We do not insist that the President shall be rendered helpless to contend with a public emergency or calamity. We simply ask, that the exercise of a power that will infringe on constitutionally mandated congressional duties and processes be exercised only when there is clearly an emergency or calamity that necessitates the curtailment of such legislative processes.

When a President certifies a bill urgent only in one House of Congress, without finding it necessary to issue the same certification in the other House, that is a distortion and a grave abuse of discretion in the exercise of a presidential power under Art. VI Sec. 26 (2). Since the President did not certify a bill urgent in one House, the President is merely short-circuiting the legislative process in the other House.

This is the case of the certification of the *Maharlika* Investment Fund Bill, whose immediate enactment was certified urgent “*to establish a sustainable national investment fund as a **strategic mechanism for strengthening investment activities xxx to pump prime economic growth and social development.***”

We assert that said certification was a grave abuse of discretion since there was no similar certification in the Senate. This particularly belies the presidential claim that there is a need for the “immediate enactment” of the *Maharlika* bill. This is a fatal admission that there is no public emergency or calamity in the nature that triggers the activation of the exception under Article VI, Sec. 26 (2) of the Constitution.

In fact, the word “public emergency” or “calamity” was never mentioned in the certification nor was their existence explained by the leadership of the House to the Members during the deliberations.

The certification of urgency was only entered into the records upon the order of the presiding officer in order to immediately tackle the Maharlika Investment Fund bill on Third Reading, even if Members of the House just approved it on Second Reading and more importantly, do not have a copy of the final version of the bill they were voting on.

At least 22 Sections of the *Maharlika* Bill were amended during the period of individual amendments on Second Reading. The sponsors of the bill also inserted at least 9 sections including Article X, and deleted a penalty clause in one section (House Journal of December 15, 2022). The passage of the *Maharlika* Bill on Third Reading, just barely three hours after it was **heavily amended** and approved on Second Reading, means that **Members of the House voted without a copy of the final form of the bill they were voting on as required in the Constitution.**

This rushed voting deprived them of the opportunity to scrutinize the bill and ensure that it contains all the provisions amended and agreed upon in the Second Reading. The Members were deprived of the opportunity to perform the constitutionally required process in the approval of a measure for no appropriate and apparent reason except that the bill was merely certified urgent by the President. While this short cut may be considered in cases of “public emergency or calamity”, **a final copy of the bill being voted on is still required by the Constitution.** Only the three-day period was excused when a bill was certified as urgent.

This is further compounded by the fact that the measure the Members of the House rushed for approval will not result in the immediate enactment of a law considering that the same was not even found worthy of a certification in the Senate. It must be stressed that concern for loss of public funds and the need of safeguard provisions in the *Maharlika* Bill are among the main concern of Members of the House and the Senate, as well as the public.

While the *Maharlika* Bill was approved on December 15, 2022, it is noteworthy that the Senate is only starting to tackle the Maharlika bill in the committee level as of February 2023. In a news article which was published at the CNN website last December 16, 2022, Senate President Juan Miguel Zubiri vowed that *“they will study the proposal next year amid concerns of it being certified urgent.”*¹

Petitioners agree with the Senate that the *Maharlika* Bill certainly needs careful study just like many other laws for “economic and social development” which were not even certified urgent.² A bill

¹ <https://www.cnnphilippines.com/news/2022/12/16/senate-maharlika-investment-fund-bill-thorough-study.html> last accessed on 11 February 2023.

² Bills or laws such as RA 9337 (Expanded Value Added Tax Law), RA 9492 (Holiday Economics),

that will centralize public funds in the Maharlika Investment Corporation, certainly deserves the serious study, scrutiny, and consideration of all the members of both Houses of Congress.

These last-minute amendments after the approval of the bill is further proof not only of the dearth of scrutiny and study of the rushed bill, but also, of the absence of a “public emergency or calamity” that necessitates the shortcuts. The voiding of the certification of urgency and the return of the *Maharlika* Bill to the House of Representatives will at least allow the authors to amend the subject bill, but in a manner that is not abominable to the Constitution.

Herein Petition, therefore, merely asks the Honorable Court to ensure that the Constitution, including provisions that grant president powers over its co-equal branch, like Congress, be exercised with sound discretion rather than upon non-urgent reasons like, for example, a request for certification from authors of a bill, or to preempt objections from oppositors, or avoid questions from the public or any other reason that is not within the ambit of an exception to the constitutional rule.

We ask the Honorable Court to void the presidential certification of the *Maharlika* Bill, as well as its approval on Third Reading, without a printed copy of the bill’s final form distributed to the Members at least three days before it is voted upon. Surely, a three-day extension of the passage of the *Maharlika* Bill will not disable it from responding to the supposed emergency it seeks to address.

Hopefully, the Court’s decision will provide some guidance or standards that could provide future administrations of some parameters within which to act in the exercise of a power affecting a co-equal branch.³

While we recognize that baseless certification of urgency have been issued by previous administrations, this is not a justification to continue this constitutionally abominable practice. There must be a better reason than tradition. And Petitioners ask succor from the Honorable Court to correct a long-standing tradition of short-circuiting a constitutionally required process through the expediency

Tax Incentives Act (TIMTA) and RA 11765 (Financial Products and Services Act) were not certified urgent.

³ Such as for example, that a certification of urgency could not be issued in only one Houses of Congress (unless the Constitution exclusively allocates a specific power to one House such as concurrence in the ratification of a treaty), or a certification can only be issued if there are bills filed in both Houses, or the nature of the emergency or calamity being addressed must at least be explained in the certification to inform members of Congress of the urgent necessity for the immediate enactment of a measure and other possible similar guidance.

of a baseless certification of urgency.

NATURE OF THE PETITION

1. This is an original action for CERTIORARI and PROHIBITION under Rule 65 of the 1997 Rules of Civil Procedure. Petitioners seek the **NULLIFICATION** of the Certification of Urgency issued by President Marcos (“Presidential Certification” hereafter) on House Bill No. 6608 (“HB 6608”), also known as the “*Maharlika* Bill”, and the **NULLIFICATION** of the approval of HB 6608 on Third Reading on the basis of such Presidential Certification.

2. Petitioners also seek the **ISSUANCE** of this Honorable Court of guiding principles or guidance in the issuance of presidential certification of urgency so that the exercise of this presidential power is practiced according to the intent and spirit of the 1987 Constitution.

3. Under the circumstances obtaining in this case, herein Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law which will promptly and immediately relieve them and the people from the injurious effects of the unconstitutional acts of the Respondents in the issuance and implementation of the assailed certification as the said certified bill has been transmitted to the Senate.

TIMELINESS

4. On 14 December 2022, President Marcos Jr. certified as urgent the *Maharlika* Bill or HB 6008, which was read into the House of Representative Journal on 15 December 2023 as a message from the President.

5. Thereafter, HB 6008 was approved by the House of Representatives on Third Reading on 15 December 2022. The same was transmitted to the Senate on 19 December 2022.

6. Rule 65 of the Rules of Court provides for a period of sixty (60) days from notice of the assailed “judgment, order or resolution.” As such, Petitioners have until 13 February 2023 within which to assail the validity and constitutionality of the Presidential Certification of the *Maharlika* Bill.

7. Hence, the timeliness of this Petition.

PARTIES

THE PETITIONERS

8. **NERI JAVIER COLMENARES**, Filipino, of legal age, was a former legislator in the 14th to 16th Congress, and the incumbent Bayan Muna Party-list Chairperson. He holds office at the Bayan Muna National Headquarters, Block 25 Lot 34, Gabriela Silang St., New Capitol Estates I, Batasan Hills, Quezon City.

9. **CARLOS ISAGANI T. ZARATE**, Filipino, of legal age, and a former legislator in the 16th to 18th Congress. He is the Executive Vice-President of the Bayan Muna Party-list with office address at Bayan Muna National Headquarters, Block 25 Lot 34, Gabriela Silang St., New Capitol Estates I, Batasan Hills, Quezon City.

10. **GABRIELA WOMEN'S PARTY REPRESENTATIVE ARLENE D. BROSAS**, Filipino, of legal age, and the incumbent GABRIELA WOMEN'S PARTY Representative with address at Room 426 South-wing Annex Building, House of Representatives, Batasan Hills Quezon City.

11. **ACT TEACHERS PARTYLIST REPRESENTATIVE FRANCISCA L. CASTRO**, Filipino, of legal age, and the incumbent ACT TEACHERS PARTYLIST Representative with office address at Room 511 South Building, House of Representatives, Quezon City.

12. **KABATAAN PARTYLIST REPRESENTATIVE RAOUL DANNIEL MANUEL**, Filipino, of legal age, and the incumbent KABATAAN PARTYLIST Representative with office address at Room 513 South Building, House of Representatives, Quezon City.

THE RESPONDENTS

13. **HON. FERDINAND R. MARCOS JR.** is the 17th President of the Republic of the Philippines. He holds office at the Malacañang Palace, Mendiola, Manila, where he may be served notices, orders, resolutions, judgment and other court processes.

14. **HON. LUCAS L. BERSAMIN** is the Executive Secretary to the President, with address at Malacañang Palace, Mendiola, Manila, where he may be served notices, orders, resolutions, judgment and other court processes.

15. **HOUSE OF REPRESENTATIVES** is the government instrumentality vested with legislative power. It is represented by its Speaker, **Representative Ferdinand Martin G. Romualdez**, whose

office address is at the House of Representatives, Batasan Hills, Quezon City, where he may be served notices, orders, resolutions, judgment and other court processes.

JURISDICTION

A. CERTIORARI AND PROHIBITION ARE THE CORRECT REMEDIES TO CHALLENGE THE CONSTITUTIONALITY OF THE PRESIDENTIAL CERTIFICATION ON THE MAHARLIKA BILL, AND THE CORRESPONDING APPROVAL OF THE BILL ON THIRD READING BY THE HOUSE OF REPRESENTATIVES.

16. Article VIII Section 1 of the 1987 Constitution vests judicial power to the Supreme Court:

“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.”

17. Supreme Court decisions affirmed that certiorari and prohibition are the correct remedies in assailing constitutionality of the acts of the Executive and Legislative branches. Thus in *Araullo vs. Aquino*,⁴ the Court said:

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

⁴ G.R. No. 209287, July 1, 2014.

judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.

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

B. DIRECT RESORT TO THE SUPREME COURT

18. **This Petition only raises pure questions of law**, as such direct invocation of this Honorable Court's exercise of original jurisdiction over the issuance of the extraordinary writs of certiorari and prohibition, is proper. The Petition therefore hurdles the standard laid down in *GLOS Samar Inc. vs DOTC*.⁵

19. Further, **the constitutional issues raised in this Petition are both serious and important**, that justifies direct recourse to the Supreme Court. The following circumstances, as enumerated in *The Diocese of Bacolod v. Commission on Elections*⁶ (also cited in the *GLOS Samar Inc.* case), are likewise present in this case: (i) there are genuine issues of constitutionality that must be addressed at the most immediate time; (ii) the issues involved are of transcendental importance; (iii) the constitutional issues raised are better decided by the Court; (iv) the filed petition reviews the act of a constitutional organ; and (v) Petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law.

20. Simply, the constitutional issues presented herein are of transcendental importance that is an allowed deviation from the principle of hierarchy of courts.

21. The factual allegations herein are not necessary for the resolution of the constitutional issues. Rather, these facts would serve to show that there exist exceptionally compelling reasons for the direct resort to the Supreme Court.

C. REQUIREMENTS FOR JUDICIAL REVIEW

22. The *GLOS Samar Inc.* case reiterated the parallel guidelines adopted by the Supreme Court in the exercise of judicial review:

⁵ G.R. No. 217158, March 12, 2019.

⁶ G.R. No. 205728, January 21, 2015.

- i. actual case or controversy calling for the exercise of judicial power;
- ii. the person challenging the act must have “standing” to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
- iii. the question of constitutionality must be raised at the earliest possible opportunity;
- iv. the issue of constitutionality must be the very *lis mota* of the case.

23. **STANDING OF PETITIONERS.** The urgent certification and the approval on Third Reading of the *Maharlika* Bill infringed on the rights and responsibilities of the Petitioner-Legislators Brosas, Castro and Manuel as Members of the House of Representatives. They fulfill their duties as direct representatives of the people, particularly of the poor and marginalized sectors, by participating throughout the entire legislative process, among others.

24. Thus, lawmakers are allowed to question the validity of any official action which, to their mind, infringes on their prerogatives as legislators.⁷ Indeed, legislators have a legal standing to see to it that the prerogatives, powers and privileges vested by the Constitution in their office remain inviolate. It has been recognized that a member of the Legislature has the requisite personality to bring a suit where a constitutional issue is raised.⁸

25. Likewise, considering that the *Maharlika* Bill ultimately pertains to the use of public funds, Petitioners Colmenares and Zarate have standing as both taxpayer and citizen.

26. Petitioners further bring this suit as concerned Filipino citizens. The issues herein presented are of transcendental and have far-reaching importance, that suing as concerned citizens is sufficient to clothe Petitioners with standing. “As such, the determination of such important issues call for the Court’s exercise of its broad and wise discretion ‘to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised.’”⁹

27. **ACTUAL CASE OR CONTROVERSY.** In *Samahan ng mga Progresibong Kabataan (SPARK) vs. Quezon City*,¹⁰ the Supreme

⁷ *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35; and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003), citing *Pimentel Jr., v. Executive Secretary*, G.R. No. 158088, July 6, 2005, 462 SCRA 623, 631-632.

⁸ See for instance, *Gonzales v. Macaraig*, G.R. No. 87636, November 19, 1990, citing *Tolentino v. COMELEC*, G.R. No. L-34150, 16 October 1961, 41 SCRA 702.

⁹ *Araullo* (2014), citing *Agan, Jr. v. Philippine International Air Terminals Co., Inc.* (G.R. No. 155001, May 5, 2003)

¹⁰ G.R. No. 225442, August 08, 2017.

Court stated:

[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.**” (Emphasis supplied. Citations omitted)

28. This case is considered ripe for adjudication since something has already been accomplished or an act has been performed by the President and by the House of Representatives – the certification of the *Maharlika* Bill as urgent, and the approval of the *Maharlika* Bill on Third Reading. These incidents already constitute “acts” of both the Executive and the Legislature, reviewable by the courts within the purview of Rule 65 of the Rules of Court.

29. **RAISED AT THE EARLIEST OPPORTUNITY.** The instant petition is filed within the period allowed under Rule 65, counting from the date of approval on Third Reading by the House of Representatives. Thus, the issue of the constitutionality of the actions of the Executive and the Legislature has been raised at the earliest possible opportunity.

30. **LIS MOTA OF THE CASE.** The only issue in this case is the constitutionality of the actions of the President and the House of

Representatives. As such, the requirement is satisfied by the petition.

STATEMENT OF MATERIAL AND ANTECEDENT FACTS

31. On 28 November 2022, House Bill 6398 also known as the *Maharlika Investment Fund Act*¹¹ was filed. A printout of HB 6398 is attached hereto as **Annex “A,”** for easy reference.

32. On same date, the bill was read on First Reading and referred to the Committee on Banks Financial Intermediaries.

33. On 12 December 2022, or barely fourteen (14) days after filing, the said bill was approved at the committee level (by the Committee on Banks and Financial Intermediaries, Committee on Ways and Means and Committee on Appropriations) and was consolidated as **House Bill 6608**. Petitioner Castro manifested her withdrawal as a co-author when she was inadvertently admitted as one of the co-authors.

34. On **15 December 2022**, around 2:30 P.M., as reflected in the Journal of the House of Representatives, Journal No. 41 (“House Journal” hereafter), the House of Representatives resumed consideration on Second Reading the HB 6608.¹² Several individual amendments to HB 6008 were proposed by Rep. Mark Go, Rep. Stella Quimbo, Rep. Margarita Nograles, and Rep. Mikaela Suansing, and all of which were admitted by the sponsors of the bill.

A printed copy of the House Journal is attached hereto as **Annex “B.”**

35. Strangely, the House Journal does not show what amendments of HB 6008, or the phrases that were actually deleted, inserted or amended except to state the sections amended, specifically:

- i) Amending Sections 18 and 25, and later Section 34 As proposed by Rep. Go;
- ii) Amending Sections 14 and 11 as proposed by Rep. Quimbo;

¹¹ Available at the Congress website at <https://www.congress.gov.ph/legisdocs/?v=billsresults#19> and at https://hrep-website.s3.ap-southeast-1.amazonaws.com/legisdocs/basic_19/HB06398.pdf; last accessed February 8, 2023.

¹² See page 12, House Journal dated 15 December 2023, published at the Congress website at <https://www.congress.gov.ph/legisdocs/?v=journals> and at https://hrep-website.s3.ap-southeast-1.amazonaws.com/legisdocs/journals_19/J41-1RS-20221215.pdf; last accessed on February 9, 2023.

- iii) Deleting the penalty clause on Section 16, inserting NEW Section 44, Section 45, Section 46, Section 47, Section 48, Section 49, Section 50 and Section 51 as proposed by Rep. Nograles;
 - iv) Renumbering the succeeding sections accordingly as proposed by Rep. Nograles;
 - v) Deletion of the names of certain co-authors as manifested by Rep. Suansing;
 - vi) Amending Sections 2, 3, 4, 5, 6, 7, 11, 12, 19, 27, 31, 33, 34, 35, 38 and 42 as proposed by Rep. Suansing;
- Inserting a new Section under Article X as proposed by Rep. Suansing;

36. The proposed amendments of Rep. France Castro during the Second Reading were all denied by the Sponsors except for the amendment to Section 34 and the insertion of a new section entitled “The Right to Freedom of Information of the Public” on page “15 after line 43”.

37. Subsequently, Rep. Quimbo proposed amendments to amend Section 11 and Section 19, insertion of a new Section 44 and the renumbering of the succeeding sections accordingly. All these proposed amendments and insertions were admitted and approved by the sponsors.

38. After the termination of the period of amendments, on motion, the HB 6608, as amended, was approved on Second Reading.¹³

39. Subsequently, on same date, the House read the messages from the President Marcos Jr., including the message of the President certifying as urgent the *Maharlika* Investment Fund Act. The letter, dated 14 December 2022, addressed to the Speaker of the House of Representatives, states as follows:

“Mr. Speaker:

Pursuant to the provisions of Article VI, Section 26 (2) of the 1987 Constitution, I hereby certify to the necessity of the immediate enactment of **House Bill No. 6608**, entitled:

“AN ACT ESTABLISHING THE MAHARLIKA

¹³ See page 17, *ibid*.

**INVESTMENT FUND, PROVIDING FOR THE
MANAGEMENT, INVESTMENT, AND USE OF
THE PROCEEDS OF THE FUND, AND
APPROPRIATING FUNDS THEREFOR.”**

In order to establish a sustainable national investment fund as a strategic mechanism for strengthening the investment activities of top performing government financial institutions, and thus pump-prime economic growth and social development.”¹⁴

40. On same date, upon resumption of the session at 6:51 P.M., upon motion, HB 6608 was approved on Third Reading. The entry in the House Journal reads as follows:

“APPROVAL ON THIRD READING OF HOUSE BILL NO. 6608

Whereupon, on motion of Majority Leader Dalipe, there being no objection, the Body proceeded to the approval on Third Reading of House Bill No. 6608, a certified urgent Bill, pursuant to Section 26(2), Article VI of the Constitution.

Upon direction of the Chair, the Secretary General read the title of the Bill, to wit:

“AN ACT ESTABLISHING THE MAHARLIKA INVESTMENT FUND, PROVIDING FOR THE MANAGEMENT, INVESTMENT, AND USE OF THE PROCEEDS OF THE FUND, AND APPROPRIATING FUNDS THEREFOR”

41. The result of the voting on Third Reading of House Bill 6608 bill was 279 Affirmative votes, six negative votes and zero abstentions.¹⁵

42. The approved HB 6608 was transmitted to the Senate on 19 December 2022.

43. Hence, this Petition.

ISSUES

I. WHETHER OR NOT THE PRESIDENT COMMITTED GRAVE

¹⁴ See page18, *ibid*.

Petitioner Castro on February 9, 2023 requested from the Secretary General of the House of Representatives a certified true copy of the letter from the President certifying as urgent the *Maharlika* Bill. Print outs of the email request, letter request, and acknowledgment of the request, as Annexes “C”, “C”-1” and “C-2”.

¹⁵ Third Reading Copy of HB 6608 is attached as Annex “D”.

ABUSE OF DISCRETION WHEN HE CERTIFIED THE *MAHARLIKA* BILL AS URGENT UNDER ARTICLE VI SECTION 26 (2) OF THE 1987 CONSTITUTION WHEN THERE IS ABSENCE OF ANY “PUBLIC CALAMITY OR EMERGENCY”.

- II. WHETHER OR NOT THE HOUSE OF REPRESENTATIVES COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT APPROVED THE *MAHARLIKA* BILL ON THIRD READING WITHOUT COMPLYING WITH THE CONSTITUTIONAL REQUIREMENTS UNDER ART. VI SECTION 26 (2).

ARGUMENTS/DISCUSSION

44. Under Art. VI Sec. 26 (2) of the 1987 Constitution states that:

“No bill passed by either House shall become a law unless it has passed **three readings on separate days**, and **printed copies thereof in its final form have been distributed to its Members three days before its passage**, except when the President certifies to the **necessity of its immediate enactment to meet a public calamity or emergency**. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal.” (Emphasis supplied)

45. The Presidential Certification of the *Maharlika* Bill is not in compliance with Art. VI, Sec. 26 (2) because there is no “public calamity or emergency” involved.

- a. The “public calamity or emergency” requirement is not expressly stated in the Presidential Certification.
- b. The “public calamity or emergency” requirement is not mentioned nor discussed by the proponents when the HB 6608 was certified as urgent and voted on Third Reading.
- c. Absence of a “public calamity or emergency” is evidenced by the fact that the certification is issued only to the House of Representatives, and did not include the Senate.

46. Under Art. VI, Sec. 26 (2), the requirements of “three

readings on separate days” and “printed copies thereof in its final form have been distributed to its Members three days before its passage” are excused upon the presidential certification that the bill must be urgently enacted “to meet a public calamity or emergency.”

47. When the presidential certification is exercised, a President must have a good faith belief that compliance with the normal procedure prescribed under the first *proviso* of Art. VI, Sec. 26 (2) will only delay an urgent legislative action necessary to “meet a public calamity or emergency.”

48. When a President certifies as urgent the enactment of a bill, s/he is informing Congress that three (3) days (presumably the period given so that members of Congress can actually study the bill or the printed form of the final bill, including the amendments) is far too long for government to respond to a “public calamity or emergency.”

49. Thus being an exception, the “public calamity or emergency” must *first* be actually in existence, and *second*, must be of such nature that requires the process to be shortened in order to urgently meet this public calamity or emergency.

50. A reading of the Explanatory Note of HB 6398 (the original bill prior to the consolidation to HB 6608) shows the absence of any “public calamity or emergency” or even mention of the term “public calamity or emergency”. Instead, the HB 6398 intends to implement the objectives of the Medium-Term Fiscal Framework and 8-Point Socioeconomic Agenda of President Marcos Jr. In essence, it seeks to address an economic objective of the government, rather than address any “public calamity or emergency.”

51. A reading of the assailed Presidential Certification shows the absence of mention of any “public calamity or emergency” sought to be addressed by the certification of urgency. Instead, the presidential certification on the *Maharlika* Bill is intended to “pump-prime economic growth and social development”, and not to answer to any public calamity or emergency.

52. Another indicia of absence of any “public calamity or emergency” is the fact that after the House of Representatives was informed of this presidential certification during the plenary on 15 December 2022, there was no discussion or mention of any “public calamity or emergency” by the proponents that could support the basis for the presidential certification.

53. Another evidence of absence of any “public calamity or emergency” is the fact that the presidential certification was only filed in the House of Representatives and not in the Senate. The presidential certification pertains only to HB 6608. There is no

certification with respect the Senate version of the *Maharlika* Bill which means that the law required to meet said emergency cannot be passed with the same urgency undertaken by the House of Representatives.

54. On February 2, 2023, Senator Koko Pimentel III was quoted in the news, requesting the President not to certify the Senate version of the *Maharlika* Bill as urgent, because he believes that there is no urgency:

“Asked if he is instead calling on Marcos to not certify as urgent Senate Bill No. 1670, the upper chamber’s version of the Maharlika Investment Fund bill, Pimentel affirmed.

“Yes that would be the practical effect of my request. Not to certify the senate bill as urgent because it is not urgent,” he told INQUIRER.net in a text message.

The minority leader pointed out that Marcos did not mention the Maharlika fund during his campaign, State of the Nation Address, medium-term fiscal framework, nor in the legislative-executive priorities.

“So, question is: saan galing ito and all of a sudden certified pa?” he asked.”¹⁶

55. Again, the failure to certify as urgent the counterpart bill in the Senate at the same time that the House version is certified, that is, on 14 December 2022, is a fatal admission that there is no “public calamity or emergency” sought to be addressed. Even if a certified bill is approved in an urgent manner in the House of Representatives, ultimately, no law will be urgently passed, considering the bicameral nature of Congress, the Senate has to equally act urgently. In this case, Senate did not act urgently as there is no counterpart urgent certification on its part.

56. Further evidence as to the lack of any “public calamity or emergency” is the fact that it was reported that some House Members will “revamp” or “rewrite” the *Maharlika* Bill even when the same has already been approved by the House on Third Reading.¹⁷ This incident only strengthens the assertion that there was no “public calamity or emergency” involved in the presidential certification and approval on Third Reading of the *Maharlika* Bill.

¹⁶ “Pimentel appeals to Marcos: Don’t certify Senate’s Maharlika fund bill as urgent”, by Daniza Fernandez, published in Inquirer.net, February 2, 2023. Available at <https://newsinfo.inquirer.net/1724535/fwd-pimentel-appeals-to-marcos-jr-to-withdraw-certification-of-maharlika-fund-bill-as-urgent>, last accessed February 8, 2023.

¹⁷ “After swiftly passing House, Maharlika fund gets quietly revamped.” By Xave Gregorio, published in Philstar.com, on January 20, 2023. Available at <https://www.philstar.com/business/2023/01/20/2239003/after-swiftly-passing-house-maharlika-fund-gets-quietly-revamped>; last accessed on February 8, 2023.

57. By its nature, a presidential certification of urgency short-circuits the normal processes in Congress in terms of law-making. As such, the presidential power must only be used when there is an actual “public calamity or emergency.”

58. As it is, the presidential certification on the *Maharlika* Bill is a baseless certification of urgency that only results in cutting off deliberations in one House of Congress alone and circumventing constitutional requirements.

59. The same impacts on the rights of the Members of the House. It affects the quality of how the bill is deliberated and voted upon by the Members.

60. The printed copy requirement is there to apprise the Members of what exactly is the version of the bill they are going to vote on. Short cutting this portion of the process, without due basis, violates the Constitution.

61. In her Explanation of Vote, Petitioner Castro stated in full:

*“Explanation of NO Vote on House Bill 6608
Rep. France Castro
December 2022*

Mariin na nirerehistro ng kinatawan na ito ang botong NO sa House Bill 6608 o ang Marharlika Investment Fund Bill.

Maraming red flags ang ipinapasang panukalang batas. Mabilis na niratsada ang pagpapasa ng Maharlika Investment Fund Bill.

Sa katunayan, inaprubahan na sa Committee on Banks and Financial Intermediaries ang Maharlika Wealth Fund Bill bago pa man magsagawa ng “briefing” with the stakeholders. Take note, briefing lang at hindi consultation.

Kung hindi pa nagkaroon ng malakas na pagtutol ang taong-bayan laban sa panukalang batas ay hindi pa ibubukas ang pagdinig ng panukalang batas sa publiko.

Dahil sa inani nitong backlash mula sa publiko, lalu na ng mga manggagawa at pensioners, sinubukang pabanguhin ang panukalang batas. Nagkaroon ng anim bersyon ng Substitute Bill ang panukalang batas – December 1, December 3, December 5, December 11, December 12 at ang pinakahuli: December 13, 2022 as of 2:08 PM. Kahit nga kaming mga kongresista ay nagtatanungan na nga kung ano na bang bersyon ang

tinatalakay ng mga komite.

Ngunit kahit sa kabila ng napakaraming mga bersyon at ng ilang mga ginawang amyenda sa Maharlika Investment Fund Bill, nananatiling punong-puno ito ng mga kontrobersyal na mga probisyon.

Una. Sa capitalization ng Maharlika Investment Fund, nilalaanan ito ng at least P105 billion. Kukunin ang pondo mula sa pondo ng Landbank of the Philippines (P50 billion), Development Bank of the Philippines (P25 billion) at dividends ng Bangko Sentral ng Pilipinas (P30-35 billion).

Hindi lang nito inilalagay sa peligro ang mga dibidendo ng BSP na para sana maitaas ang kapital nito mula sa P50 billion patungong P200 billion, as mandated ng Republic Act 11211, magbubunga pa ito ng conflict of interest.

Supposedly ang BSP ang magreregularisa sa mga bangko at financial intermediaries. Pero ang GFIs tulad ng Landbank at Development Bank ay kabilang sa Board members ng MIFC. Dagdag pa rito, ang mismong dibidendo ng BSP ay at stake sa MIFC kung sakaling malugi ito. Paano masasabing walang conflict of interest sa sitwasyong ito.

Dagdag pa rito, ang mandato ng Landbank at Development Bank ay para tulungan ang mga magsasaka at mga MSME hindi ang mga malalaking at dayuhang mga kompanya.

Hindi rin totoo na tinanggal ang SSS at GSIS sa mga maaaring mag-invest sa seed fund ng Maharlika Investment Fund.

Nakalagay sa panukalang batas, "Other GFIs and GOCCs may be authorized to contribute to the MIF." Narinig na natin sa Boards ng SSS at GSIS na willing silang isugal ang P125 billion at P50 billion na pera ng mga manggagawa nang hindi man lang kinukunsulta ang contributors at pensioners. Hindi malayong gawin pa rin nila ito matapos maipasa ang panukalang batas na ito. Dagdag pa rito, pwedeng maging at risk din ang hinuhulog na kontribusyon ng mga manggagawa sa PhilHealth at PAGIBIG.

Sa kasalukyang bersyon, tinawag na ngang "investment fund" ang Maharlika Wealth Fund dahil wala tayong

“wealth” in the first place. Wala tayong surplus. Sa katunayan ay may probisyon pa nga sa panukalang batas na pwedeng gamitin ang royalties, kita sa pagbebenta ng government assets at public borrowings.

Sabi ng GSIS at SSS na dapat turuan ng financial literacy ang mga Pilipino. Hindi raw dapat iasa sa GSIS at SSS lang ang retirement ng mga manggagawa. Pero ito tayo ngayon, pinapayagan ang isang bansang lubog sa utang na mangutang para ipangsugal ang inutang.

Pangalawa. Walang independent sa Board of Directors. Ang sinasabing apat na “independent directors” ay pipiliin ng Advisory Body. Sino ba ang bumubuo sa Advisory Body? DBM Secretary, NEDA Director General at Treasurer of the Philippines, na pawang appointees din ng Pangulo.

Pangatlo. Napakaraming exemptions ng MIFC. Exempted ito sa Salary Standardization Law National and local taxes Government Procurement Reform Act Existing laws and regulations on the disposal of government assets GOCC Governance Act of 2011.

Paano mapapanatag ang taong-bayan kung in-exempt ang MIFC sa mga batas para sa good governance. Dagdag pa rito, buti pa ang Maharlika Investment Fund Corporation exempted sa buwis pero ang mahihirap pasan-pasan ang nagsisilakihang mga buwis.

Ang sigaw ng taong-bayan, sahod itaas, presyo ibaba. Hindi Maharlika Investment Fund.

Muli, nirerehistro ng kinatawan ng ACT Teachers Party-List ang mariing NO sa HB 6608 o ang Maharlika Investment Fund Bill.” (Emphasis supplied)

62. Therefore, considering that the presidential certification impacts on the constitutional requirement in the normal passage of a bill, as well as infringes on the rights and functions of the Members of Congress, **the exercise of the power must be strongly anchored on the necessity of a government response to an actual “public calamity or emergency”.**

63. The *Maharlika* Bill’s approval serves as an example of the lack of transparency in the voting process, which only stresses the fact that a presidential certification of urgency must be exercised with caution and only during urgent conditions of “public emergency

or calamity.”

64. At least 22 Sections of the *Maharlika* Bill were amended during the period of individual amendments on Second Reading. The sponsors of the bill also inserted at least 9 sections including Article X, and deleted a penalty clause in one section.

65. Despite going through interpellations and amendments, the bill was voted on without providing Members of Congress with a printed copy of the final version beforehand.

66. The passage of the *Maharlika* Bill on Third Reading, just barely three hours after it was heavily amended and approved on Second Reading, means that **Members of the House voted without a copy of the final form of the bill they were voting on as required in the Constitution.**

67. This left the legislators, including the herein Petitioners, unaware if the final bill being voted on truly reflected the decisions made during the amendment period.

68. Worse, this also leaves the bill open to the insertion of additional provisions or riders that were not approved by the House. This is the reason why presidential discretion to issue such certification of urgency cannot be abused as it short cuts constitutionally required processes to ensure that laws were carefully studied by both houses of Congress

69. Proponents of the *Maharlika* Bill may assert that the passage of the same will help in addressing our economic problems through a creation of an investment fund. Even presuming that this was true, this is no different from many other bills passed into law without presidential certification of urgency, that aims to improve the investment climate.

70. The *Maharlika* Bill is touted as a long-term economic program that seeks to address its perceived problem of dearth of foreign investment in the country. Many, though, will also argue that the *Maharlika* Bill will not solve the aforementioned problem but in fact increase our national debt, take away much needed funds from important mandates, projects and services, and, worsen favoritism of crony corporations and corruption. **These matters, however, are not in issue in this petition.**

71. What is in issue here is the violation of a constitutional requirement and the rights and prerogatives of Members of Congress as well as their constituencies through the practice of the “shot gun” presidential certification for “all seasons” which allow for the issuance of presidential certification of urgency upon the mere request of the legislative author or merely to short-circuit the

questions, objections, and other processes of one House despite knowledge that the subject bill will not pass into law with the same urgency in the other House.

72. The practice of requesting for and issuing a presidential certification on urgency for “public emergency or calamity” must be tempered as it distorts the requirements and processes imposed by the 1987 Constitution and its Framers for the passage of a law. It is hoped that the Honorable Court, through herein Petition, will issue some guidelines necessary to ensure that the same will not be abused in the future and by future administration.

PRAYER

WHEREFORE, premises considered, Petitioners most respectfully pray of the Honorable Court the following that:

1. This Petition be given **DUE COURSE**;
2. That after notice and hearing, a final order is issued:
 - (a) **DECLARING** the Presidential Certification of the *Maharlika* Bill as unconstitutional and void; and
 - (b) **DECLARING** the Approval of the House of Representatives of the *Maharlika* Bill on Third Reading as unconstitutional and void.
3. That Guidelines or guiding parameters or standards on the exercise of Presidential Certification under Art. VI Sec. 26 (2) be **ISSUED** so that the exercise of this presidential power is practiced according to the intent and spirit of the 1987 Constitution.

Petitioners likewise pray for such other reliefs as are just and equitable under the circumstances.

RESPECTFULLY SUBMITTED. Quezon City for Manila, February 13, 2023.

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**EXPLANATION FOR SERVICE OF PETITION
THROUGH REGISTERED MAIL**

The service of copies of the instant Petition is made through registered mail. Pursuant to Rule 13, Section 11 of the Rules of Court, the service of copies of the instant Petition cannot be made personally due to distance and lack of available personnel.

MARIA CRISTINA YAMBOT