STILTED STANDARDS OF STANDING, THE TRANSCENDENTAL IMPORTANCE DOCTRINE, AND THE NON-PRECLUSION POLICY THEY PROP*

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> *The confused nature of the standing doctrine results in part from the habit of treating standing as a series of technical, rather than tactical, exercises.*
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> —Louis Fisher[1]

> *In similar cases we must act similarly, unless there is a proper reason for distinguishing the cases. This rule does not bar departure from existing precedent, but it does ensure that departure from precedent is proper; that it reflects reason and not fiat; and that it is done for proper reasons of legal policy*
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> —Aharon Barak[2]

I. INTRODUCTION

Our Supreme Court seldom admits it when it reverses recent doctrine.[3] But in 1995, in *Kilosbayan, Inc. v. Morato*,[4] it was forced to do so.

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I thank the following people: Justice Vicente V. Mendoza, who was my professor in Judicial Review—where legal standing was extensively discussed; Prof. Rudyard Avila, who piqued my interest in legal writing; Oscar Franklin Tan, who was my first mentor on the intricacies of Constitutional Theory; Dean Raul Pangalangan, who advised me on how to better articulate these intricacies; and Prof. Solomon Lumba, who helped me in the conceptualization of and research for this paper.

All mistakes in this legal monograph are attributable solely to the Author.

[1] AMERICAN CONSTITUTIONAL LAW 124 (1990).

[2] *Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy*, 116 HARV. L. REV. 16, 31 (2002).

[3] Our Constitution allows the Supreme Court when sitting *En Banc* to modify or reverse any doctrine or principle of law it has previously laid down; CONST. art.VIII, §4(3).

The Court's about-face was on whether the petitioners there were the proper parties, *i.e.*, had legal standing, to contest the validity of a government contract.

Just over a year before *Morato* was decided, the Supreme Court in *Kilosbayan, Inc. v. Guingona, Jr.*[5] recognized the standing of the same petitioners to question the validity of a similar contract between the same parties on the same ground. Naturally, the petitioners in *Morato* asked the Court to apply its ruling in *Guingona* and again recognize their standing. The Court refused, and, while conceding that the doctrine of "stare decisis is usually the wise policy,"[6] instead ruled that the petitioners were not the proper parties who could bring the action. It justified its reversal of the earlier decision by saying that "concern for stability in decisional law [did] not call for adherence to what [had] recently been laid down as the rule"[7] because the rule on standing that *Guingona* "recently...laid down"[8] was itself "a departure from settled rulings."[9]

Today, seventeen years after *Morato*, and more than a hundred years after it was first articulated by our Supreme Court,[10] our rules on legal standing are still the subject of much judicial flip-flopping.

The divergent rulings on the legal standing of the selfsame petitioners in *Guingona* and *Morato* (collectively, the "Lotto Decisions") ostensibly hinged on the number of sitting Justices which adhered to either of two opposing schools of thought. The *Morato* majority represents what the author calls the Jurisdictionalist School, which posits that the requirement of legal standing "is not a plain procedural rule but a constitutional requirement,"[11] and thus setting it aside "would in effect amount to the Court acting in cases where it has no subject matter jurisdiction."[12] The *Guingona* majority, on the other hand, represents what the author calls the Proceduralist School, which posits that "a party's

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[4] G.R. No. 118910, 246 SCRA 540, Jul. 17, 1995 (hereinafter the "2nd Lotto Decision").

[5] G.R. No. 113375, 232 SCRA 110, May 5, 1994 (hereinafter the "1st Lotto Decision").

[6] 2nd Lotto Decision, 246 SCRA at 558.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *See* Abendan v. Llorente, 10 Phil. 216 (1908); *See also* Severino v. The Governor General of the Philippine Islands, 16 Phil. 366 (1910).

[11] 1st Lotto Decision, 232 SCRA at 177 (Puno, *J.*, *dissenting*).

[12] Gascon v. Arroyo, G.R. No. 78389, 178 SCRA 582, 588, Oct. 16, 1989 (Feliciano, *J.*, *Concurring*).

standing...is a procedural technicality" which the Supreme Court may "set aside in view of the importance of the issues raised."[13]

The positions taken by these two opposing schools of thought are irreconcilable:[14] the Supreme Court either has the power to set aside the standing requirement, or it has not. And the stubborn insistence of our Justices for the adoption of either one or the other school of thought keeps whirlabout our doctrine of standing—a doctrine which local commentators have labeled "mischievous,"[15] "too arbitrary,"[16] and one of "the most amorphous...in the entire domain of public law."[17]

Legal standing is "intimately linked to,"[18] and resolved largely "on the basis of,"[19] related judicial policies. These policies are supposed to be crystallized in the different standards of standing which apply depending on the questions raised and the reliefs prayed for. The problem with these standards is that they have been repeatedly "disregarded, to allow action, or harnessed, to bar it, depending upon the whims and caprice of the court."[20] As a result, these standards have become stilted, *i.e.*, stiffly or artificially formal, and the policy considerations that had birthed them have been obscured.

This paper attempts to remedy this by identifying a dominant, underlying judicial policy and its corollary rules which have helped spur the adoption of not only the different standards of standing articulated by the Jurisdictionalists, but also the doctrine of transcendental importance embraced by the Proceduralists. The policy is one of non-preclusion, which allows standing when withholding it would preclude any legal or political resolution to the question raised. Corollary to this is the rule that

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[13] 1st Lotto Decision, 232 SCRA at 134.

[14] The Supreme Court of Israel has adopted the view that when the claim alleges a major violation of the rule of law, every person in Israel has legal standing to sue. Similarly, the Constitution of the Republic of South Africa expressly grants legal standing to enforce its Bill of Rights to anyone acting in the public interest. (Barak, *supra* note 2, at 108) Both Proceduralists and Jurisdictionalists may be able to agree on these solutions. Nevertheless, as they have been thus far formulated, the opposing positions of the two schools remain irreconcilable.

[15] Rogelio Subong, *Locus Standi: A Mischievous Concept in Law?* 507 SCRA 181 (2006).

[16] Solomon Lumba, *The Problem of Standing in Philippine Law*, 83 PHIL. L.J. 718, 718 (2009).

[17] Jose Mari Eulalio Lozada, *Standing in Constitutional Litigation,* 120 SCRA 347, 348 (1983), *citing* Flast v. Cohen, 392 U.S. 83 (1968).

[18] *Id.* at 349.

[19] *Id.* at 354.

[20] Subong, *supra* note 15, at 183.

standing will be refused when there is either a more proper party who would likely raise the questions brought before the Court, or a more appropriate forum—not necessarily judicial—where the issue raised may be brought.

II. LEGAL STANDING

Legal Standing, or *locus standi*, is the "right of appearance in a court of justice on a given question."[21] It satisfies an important requirement before a question involving the constitutionality or legality of a law or other government act may be heard and decided by a court: that it must be raised by the proper party.[22] Stated otherwise, a court will exercise its power of judicial review—which is the power of courts to determine the constitutionality or legality of contested executive and legislative acts[23]—"only if the case is brought before it by a party who has the legal standing to raise the constitutional or legal question."[24]

The traditional rule is that "only *real parties in interest* or *those with standing*, as the case may be, may invoke the judicial power."[25] Real parties in interest are the proper parties in cases that do not also invoke the power of judicial review. In cases that invoke the power of judicial review, the proper parties are those with standing. In *Morato*, even though the power of judicial review was invoked, the Court ruled that because no constitutional question was actually involved, the issue was not whether petitioners had legal standing but whether they were the real parties in interest.[26] On this premise the Court declared that the petitioners were not the proper parties because "[i]n actions for the annulment of contracts...the real parties are those who are parties to the agreement or are bound either principally or subsidiarily or are prejudiced in their rights with respect to one of the contracting parties and can show the detriment

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[21] De Castro v. Judicial and Bar Council, G.R. No. 191002, Mar. 17, 2010; David v. Arroyo, G.R. No. 171396, May 3, 2006; *See also* Lumba, *supra* note 16, at 725 (where legal standing is defined as the "right of action of private persons to bring public actions"). *See also* LAURENCE TRIBE, CONSTITUTIONAL CHOICES 99 (1985) (where standing is defined as "that aspect of the law of justiciability that is concerned with identifying which parties may raise legal arguments or claims.").

[22] Joya v. Presidential Commission on Good Government, G.R. No. 96541, 225 SCRA 568, 575, Aug. 24, 1993.

[23] 1st Lotto Decision, 232 SCRA at 153 (Feliciano, J., *concurring*).

[24] Joya, 225 SCRA at 576; *See* Jumamil v. Café, G.R. No. 144570, 470 SCRA 475, 486, Sep. 21, 2005; Philippine Constituion Association v. Enriquez, G.R. No. 113105, 235 SCRA 506, 518, Aug. 19, 1994.

[25] 2nd Lotto Decision, 246 SCRA at 139.

[26] *Id.* at 562.

which would positively result to them from the contract...or who claim a right to take part in a public bidding but have been illegally excluded from it."[27] This ruling in *Morato*, however, is sandwiched between prior and subsequent Supreme Court decisions which directly contradict it.[28] In fact, the argument that actions for annulment of government contracts may be instituted only by those bound by it was rejected as early as1972 in *City Council of Cebu City v. Cuizon*,[29] in which legal standing was granted to city councilors who assailed a government contract even though no constitutional question was involved. Fairly recently in 2005, *Cuizon* wascited in *Jumamil v. Café*,[30] also a case where no constitutional question was involved, in ruling that "[a] taxpayer need not be a party to the contract to challenge its validity."[31] Also, citizen's standing (which was asserted in *Morato*) is granted in public suits because in those cases "the people are regarded as the real party in interest."[32] Thus, even if no constitutional question is involved, any person with legal standing—although not a real party in interest—may invoke the power of judicial review.

III. THE LOTTO DECISIONS

[27] *Id.*at 564. *See also* CIVIL CODE, art. 1397 (which provides that "the action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily").

[28] Agan, Jr. v. Phil. International Air Terminals Co., Inc. (PIATCO), G.R. No. 155001, 402 SCRA 612, May 5, 2003; Subido v. Ozaeta, G.R. No. 1631, 80 Phil. 383, Feb. 27, 1948; Gonzales v. Hechanova, G.R. No. 21897, 9 SCRA 230, Oct. 22, 1963; Bugnay Construction and Development Co. v. Laron, G.R. No. 79983, 176 SCRA 240, Aug. 10, 1989. *See also* Miguel v. Zulueta, G.R. No. 19869, Apr. 30, 1966; Maceda v. Macaraig, Jr., G.R. No. 88291, Jun. 8. 1993; *Compare with* House International Bldg. Tenants Association, Inc. v. Intermediate Appellate Court, G.R. No. 75287, 151 SCRA 703, Jun. 30, 1987 (where the the Court applied Article 1397 of the Civil Code in ruling that the petitioner was not the real party in interest; the ground for annulment in the case however was that entering into the assailed contract was *ultra vires* on the part of the purchasing private party, and not the selling government agency; *Compare also with* The Anti Graft League of the Phils., Inc. v. San Juan, G.R. No. 97787, 260 SCRA 250, Aug. 1, 1996 (where the Court still discussed the issue of standing despite the fact that it already held, citing *Morato*, held that "petitoner's standing should not even be made an issue...since...no constitutional question is actually involved." (*Id.* at 254) and explaining that the assailed contract would not involve a disbursement of public funds, thus "the first requirement...which would make this petition a taxpayer's suit is absent," (*Id.*) and holding that petitioner had "absolutely no cause of action, and consequently no locus standi." (*Id.* at 254 55).

[29] G.R. No. 28972, 47 SCRA 325, Oct. 31, 1972.

[30] G.R. No. 144570, 470 SCRA 475, Sep. 21, 2005.

[31] *Id.* at 488.

[32] Benitez v. Paredes, G.R. No. 29865, 52 Phil. 1, 13, Aug. 18, 1928.

A. The First Lotto Decision: Kilosbayan, Inc. v. Guingona

Guingona was a special civil action for prohibition and injunction which sought to restrain the implementation of a contract between the government agency Philippine Charity Sweepstakes Office (PCSO) and the privately owned Philippine Gaming Management Corporation (PGMC) for the operation of a nationwide on-line lottery system (the "Guingona lotto contract"). The petitioners were Kilosbayan, Inc.; members of its board of trustees who sued in their capacities as such members and as taxpayers and concerned citizens; and two senators and a congressman, who sued in their capacities as members of Congress and as taxpayers and concerned citizens. Their main argument was that the Guingona lotto contract violated the provision in the PCSO Charter which prohibits PCSO from holding and conducting lotteries through a collaboration, association, or joint venture.[33] The Supreme Court agreed with this argument and declared the Guingona lotto contract invalid.

PCSO and PGMC argued that the petitioners lacked legal standing and were not real parties in interest. Seven Justices voted to sustain the petitioners' legal standing; six voted otherwise.[34] Curiously, the decision didn't bother to discuss if and why the petitioners had standing; it disposed of the issue merely by asserting that "[a] party's standing before th[e] Court is a procedural technicality which it may, in the exercise of its discretion, set aside in view of the importance of the issues raised."[35] The Court supported this assertion by citing previous cases which disposed of the issue of standing in the same way when the issues raised are "of transcendental importance to the public," and even went further by saying that the issues raised in the case were not only "of paramount public interest," but also "of a category even higher than those involved in many of the aforecited cases."[36]

B. The Second Lotto Decision: Kilosbayan, Inc. v. Morato

As stated at the outset, *Morato* was filed by the same petitioners in *Guingona* to question the validity of a similar contract between the same parties on the same ground. After *Guingona*, PGMC and PCSO executed another agreement which they believed was "consistent with the latter's charter...and conformable to [the] aforesaid Decision."[37] *Morato*, very much

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[33] Rep. Act No. 1169, §1 (1954).

[34] The Chief Justice took no part because one of the directors of the PCSO was his brother-in-law.

[35] 1st Lotto Decision, 232 SCRA at 134.

[36] *Id.* at 139.

[37] 2nd Lotto Decision, 246 SCRA at 556.

like *Guingona,* was a special civil action for prohibition and injunction which sought to restrain the implementation of a contract between PCSO and PGMC for the operation of a nationwide on-line lottery system (the "Morato lotto contract"). The petitioners in *Morato* were the same as those in *Guingona*: Kilosbayan, Inc.; members of its board of trustees who sued in their individual and collective capacities as taxpayers and concerned citizens; and the same two senators and congressman who again sued in their capacities as members of Congress and as taxpayers and concerned citizens. Their main argument was that the Morato lotto contract was "basically or substantially the same as or similar to" the Guingona lotto contract,[38] and thus also violated the provision in the PCSO Charter which prohibits PCSO from holding and conducting lotteries through a collaboration, association, or joint venture. Unlike in *Guingona*, however, the Supreme Court this time disagreed with this argument and declared the Morato lotto contract valid.

PCSO and PGMC again questioned the petitioners' legal standing. While in *Guingona,* seven Justices voted to sustain the petitioners' legal standing and six voted otherwise, in *Morato,* the numbers switched: seven Justices voted to deny petitioners' standing and six voted otherwise.[39] The Supreme Court explained how this happened:

> the five members of the Court who dissented in the first case (Melo, Quiason, Puno, Vitug and Francisco, *JJ.*) and the two new members (Mendoza and Francisco, *JJ.*) thought the previous ruling to be erroneous *and* its reexamination not to be barred by stare decisis, res judicata or conclusiveness of judgment, or law of the case...
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> The decision in the first case was a split decision: 7-6. With the retirement of one of the original majority (Cruz, *J.*) and one of the dissenters (Bidin, *J.*), it was not surprising that the first decision in the first case was later reversed.[40]

IV. STANDARDS OF STANDING

When only private rights are involved, the proper parties who may bring the case to court are those who stand to be benefited or injured by the judgment in the suit, or those entitled to the avails of the suit.[41] In

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[38] *Id.* at 556.

[39] Chief Justice Narvasa again took no part because he was "related to the party directly interested in case." 2nd Lotto Decision, 246 SCRA at 580.

[40] Kilosbayan, Inc. v. Morato (hereinafter "2nd Lotto Decision Motion for Reconsideration"), G.R. No. 118910, 250 SCRA 130, 134, Nov. 16 1995.

[41] RULES OF COURT, Rule 3, §2.

cases like *Guingona* and *Morato*, however, "suits are not brought by parties who have been personally injured by the operation of a law or any other government act but by concerned citizens, taxpayers or voters who actually sue in the public interest."[42] The concept of legal standing arose from the need in these public or constitutional litigations "to regulate the invocation of the intervention of the Court to correct any official action or policy in order to avoid obstructing the efficient functioning of public officials and offices involved in public service."[43]

Different standards of standing apply depending on the question raised and the reliefs prayed for. The direct injury standard, which requires that the party bringing the action "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,"[44] is the general rule. The other standards of

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[42] Agan, Jr. 402 SCRA at 645; 2nd Lotto Decision, 246 SCRA at 562.

[43] Biraogo v. The Philippine Truth Commission of 2010, G.R. No. 192935, Dec. 7, 2010 (Bersamin, *J., separate opinion*).

[44] People v. Vera, G.R. No. 45685, 65 Phil. 56, 89 (1937).

Parties whose standing have been recognized under this direct injury standard include (1) workers who would lose their employment (Agan, Jr., 402 SCRA 612); (2) contractors whose concession agreements or service contracts would be terminated (*Id.*); (3) a rice planter who assailed an executive issuance authorizing government importation of rice despite a statutory policy that "basic foods" should be purchased "directly from those tenants, farmers, growers, producers and landowners in the Philippines" (Gonzales v. Hechanova, G.R. No. 21897, 9 SCRA 230, 235, Oct. 22, 1963); and (4) a car owner who questioned a Letter of Instruction that required all motor vehicles to carry a pair of early warning devices (Agustin v. Edu, G.R. No. 49112, 88 SCRA 195, Feb. 2, 1979).

Parties whose standing were refused under the direct injury standard include (1) retired Commission on Audit (CoA) chairmen and commissioners as well as incumbent CoA officers and employees who assailed a CoA organizational restructuring plan which they claimed unlawfully demoted them and deprived them of their monthly representation and transportation allowances (There was no demotion, said the Court, because demotion involved the issuance of an appointment and no new appointments were issued to the petitioners. Further, the change in their allowances from monthly to reimbursable was not because of the restructuring plan) (Domingo v. Carague, G.R. No. 161065, Apr. 15, 2005, 456 SCRA 450); and (2) a political party which questioned a presidential declaration of a state of rebellion and the warrantless arrests allegedly effected pursuant to it, in which the Court held that the petitioner was "a juridical person not subject to arrest. Thus, it cannot claim to be threatened by a warrantless arrest. Nor [was] it alleged that its leaders, members, and supporters are being threatened with warrantless arrest and detention for the crime of rebellion." (Laban ng Demokratikong Pilipino v. Department of Justice, G.R. No. 147810, 357 SCRA 756, 766, May 10, 2001 *and reiterated in* Sanlakas v. Executive Secretary, G.R. No. 159085, 421 SCRA 656, Feb. 3, 2004).

standing are exceptions to this general rule.[45]Some of these other standards were applied by the Court in *Morato* to resolve the standing issue.

A. Citizen's Standing

Every Filipino citizen has legal standing to institute a mandamus action to enforce a public right, because "[w]hen a Mandamus proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and therefore, part of the general 'public' which possesses the right."[46] One such public right is the right of the people to information on matters of public concern under Article III, section 7 of the Constitution,[47] which is a self-executing provision.[48] In *Morato*, the Court explained that the petitioners did not have citizen's standing because the Constitutional provisions they invoked "are not...self executing provisions, the disregard of which can give rise to a

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[45] Joya v. Presidential Commission on Good Government (PCGG), 225 SCRA 568, 576 (1993); *See however*, Lumba, *supra* note 16, at 732 (which posits that taxpayer's standing is a subset of, and not an exception to, the direct injury standard: "Despite the difference in rulings, both Courts appear to have applied a common criterion to determine taxpayer's standing – injury-in-fact. This is because a taxpayer suffers economic damage when money paid by him to the government to be used for lawful purposes is used in an unlawful way. To recall, injury-in-fact requires that the injury be personal, substantial and direct...Accordingly, a taxpayer's suit can be said to be a subset of those public actions that require a showing of injury-in-fact for standing purposes.") (*However*, it is my humble submission that the two views can be reconciled by thinking of the direct injury standard as that which would meet also the real-party-in-interest standard in private suits. In both citizen's and taxpayer's suits, the Court sometimes argues in terms of the real-party-in-interest standard, explaining that in such suits it is the people who are the real parties in interest, and any citizen or taxpayer may bring the suit as a representative of his or her class.

[46] Legaspi v. Civil Service Commission, G.R. No. 72119, 150 SCRA 530, 536, May 29, 1987.

[47] CONST. art III, §7 (which provides that "the right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law").

[48] Legaspi, 150 SCRA 530. Under this constitutional right to information, citizens have been granted standing in suits to compel (1) the Civil Service Commission to furnish information on the civil service eligibilities of some government employees (*Id.*); (2) the Presidential Commission on Good Government (PCGG) to "make public any and all negotiations and agreements pertaining to PCGG's task of recovering the Marcoses' ill-gotten wealth" (Chavez v. PCGG, G.R. No. 130716, 299 SCRA 744, 750, Dec. 9, 1998); and (3) the publication "in the Official Gazette of various presidential decrees, letters of instructions, general orders, proclamations, executive orders, letters of implementation and administrative orders." *See* Tañada v. Tuvera, G.R. No. 63915, 136 SCRA 27, 34, Apr. 24, 1985.

cause of action in the courts,"[49] and "do not embody judicially enforceable constitutional rights but guidelines for legislation."[50]

B. Taxpayer's Standing

Taxpayer standing was first[51] recognized by the Supreme Court on 29 December 1960 in the seminal *Pascual v. Secretary of Public Works and Communications*,[52] where the Court adopted the American "rule recognizing the right of taxpayers to assail the constitutionality of a legislation appropriating local or state public funds."[53] Since then, the rule is that "a taxpayer has personality to restrain unlawful expenditure of public funds,"[54] whether the expenditure is pursuant to a statute,[55] a presidential decree,[56] an executive issuance,[57] a presidential authorization,[58] or an executive order.[59] In *Morato*, the Court ruled that petitioners did not have taxpayer standing because there was "no allegation that public funds [were] being misspent so as to make [the] action a public one."[60]

C. Legislator's Standing

Legislators have been accorded standing to sue when they "claim that the official action complained of infringes upon their prerogatives as

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[49] 2nd Lotto Decision, 246 SCRA at 564.

[50] *Id.*

[51] *Compare with* Province of Tayabas v. Perez, G.R. No. 35364, 56 Phil 257, Oct. 29, 1931 (which *Pascual v. Secretary of Works and Communications*, G.R. No. 10405, Dec. 29, 1960, cites as authority for recognizing taxpayer standing, explaining that it was a case "involving the expropriation of land by the Province of Tayabas, two (2) taxpayers thereof were allowed to intervene for the purpose of contesting the price being paid to the owner thereof, as unduly exhorbitant." (110 Phil. 331, 345) It is important to note that the Court in that case was confronted only with the question of the timeliness of the intervention: the sufficiency of the intervenors' interest to intervene was not in issue, and the Court even grouped the intervenors "together with any other person who may have a legal interest in the matter in litigation").

[52] G.R. No. 10405, 110 Phil. 331, Dec. 29, 1960.

[53] *Id.* at 345.

[54] Guingona, Jr. v. Carague, G.R. No. 94571, 196 SCRA 221, 224, Apr. 22, 1991.

[55] Philippine Constitution Association (hereinafter "PHILCONSA") v. Gimenez, G.R. No. 23326, 15 SCRA 479, Dec. 18, 1965; PHILCONSA v. Mathay, G.R. No. 25554, 18 SCRA 300, Oct. 4, 1966.

[56] Sanidad v. Comelec, G.R. No. 44640, 73 SCRA 333, Oct. 12, 1976.

[57] Gonzales v. Hechanova, G.R. No. 21897, 9 SCRA 230, Oct. 22, 1963.

[58] Iloilo Palay and Corn Planters Association, Inc. v. Feliciano, G.R. No. 24022, 121 Phil. 358, Mar. 3, 1965.

[59] Pelaez v. Auditor General, G.R. No. 23825, 15 SCRA 569, Dec. 24, 1965.

[60] 2nd Lotto Decision, 246 SCRA at 563.

legislators."[61] This is because an act "which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress,"[62] whether the act was done by an administrative agency,[63] the President,[64] a Constitutional Convention,[65] or any other instrumentality of the government. In *Morato*, the Supreme Court observed that "the complaint [was] not grounded on the impairment of the powers of Congress,"[66] and, accordingly, indicated that the two senators and congressman did not have standing.

D. Other Standards

There are other standards of standing which were not applicable in *Morato*. One such standard is that which accords voter's standing upon the rationale that "a voter whose right of suffrage is allegedly impaired...is entitled to judicial redress."[67] Another such standard is that which confers "personality to sue in behalf of the succeeding generations...based on the concept of intergenerational responsibility insofar as the right to a balanced

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[61] David v. Arroyo, G.R. No. 171396, 522 Phil. 705, 760, May 3, 2006.

[62] Roco v. Executive Secretary, G.R. No. 113174, 235 SCRA 506, 520, Aug. 19, 1994 (where a presidential line-item veto of a provision in an appropriation bill was questioned).

[63] *See, e.g.,* Agan, Jr. 402 SCRA 612 (where the legality of government concession agreements granting to a private party the franchise to operate and maintain an international airport was questioned and legislator standing was granted because the "contracts create obligations on the part of the government...to disburse public funds without prior congressional appropriations," thus "Petitioners...are prejudiced qua legislators, since the contractual provisions requiring the government to incur expenditures without appropriations also operate as limitations upon the exclusive power and prerogative of Congress over the public purse.") (*Id.,* at 684 (Panganiban, *J., Separate Opinion*)).

[64] *See, e.g.* Suplico v. President Gloria Macapagal-Arroyo, G.R. No. 159185, 421 SCRA 656, Feb. 3, 2004 (where the Court recognized the standing of the representatives who questioned the constitutionality of presidential issuances declaring a state or rebellion and calling out the Armed Forces to suppress it).

[65] Tolentino v. Comelec, G.R. No. 34150, 41 SCRA 702, Oct. 16, 1971 (which was a prohibition petition filed by a Senator to restrain the Comelec from holding a plebiscite, called by a Constitutional Convention, where a constitutional amendment would be proposed for ratification).

[66] *Id.* at 558.

[67] Peralta v. Comelec, G.R. No. 47771, 82 SCRA 30, 83, Mar. 11, 1978 (Fernando, *J., concurring on the whole but dissenting in part*); *compare with* Lozada v. Comelec, G.R. No. 59068, 120 SCRA 337, Jan. 27, 1983 (where the Court held that "As voters, neither have petitioners the requisite interest or personality to qualify them to maintain and prosecute the present petition....Petitioners' standing to sue may not be predicated upon an interest of the kind alleged here, which is held in common by all members of the public because of the necessarily abstract nature of the injury supposedly shared by all citizens.") (*Id.* at 341-42).

and healthful ecology is concerned."[68] Some of these standards, *e.g.*, government standing and *jus tertii* standing, are discussed in Part VII of this work.

E. The Doctrine of Transcendental Importance

Noticeably omitted in the *ponencia*'s discussion in *Morato* was the one justification of the *Guingona* majority for resolving the issue of standing in the petitioners' favor: that a "party's standing...is a procedural technicality" which may be "set aside in view of the importance of the issues raised."[69] This doctrine of transcendental importance, which cuts through all standards of standing, is discussed more fully in Parts V and VI of this work.

V. STILTED STANDARDS

> *My Basic principle is that the rule of law avoids creating areas of discretionary powers, and the fact that it is the Supreme Court that exercises the discretion does not make it tolerable in any degree, for such an eventuality can be worse because no other authority can check Us.*
>
> —Justice Antonio Barredo[70]

The problem with legal standing's different standards is their pliability. Consequently, despite the presence of these standards, "standing decisions can come out either way, which is to say that they are too arbitrary. Thus, one's standing primarily depends on who is sitting."[71]

For example, in *Pasay Law and Conscience Union, Inc. (PLACU) v. Cuneta*,[72] in which two issuances of the city mayor were challenged, the Supreme Court recognized the legal standing of PLACU, explaining that "PLACU...is not disqualified to appear as petitioner in this case, because as a non-profit, civic and non-partisan organization...it is merely interested

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[68] Oposa v. Factoran, Jr., G.R. No. 101083, 224 SCRA 792, 802-03, Jul. 30, 1993.

[69] 1st Lotto Decision, 232 SCRA at 134.

[70] Gonzales v. Commission on Elections, G.R. No. 27833, 27 SCRA 835, 915-16, Apr. 18, 1969 (Barredo, J., *concurring and dissenting*).

[71] Lumba, *supra* note 16, at 718-19.

[72] G.R. No. 34532, 101 SCRA 662, Dec. 19, 1980.

in upholding the rule of law."[73] This ruling is at odds with *IBP v. Zamora*,[74] where even though IBP's "fundamental purpose...under Section 2, Rule 139-A of the Rules of Court, is to elevate the standards of the law profession and to improve the administration of justice,"[75] the Supreme Court still held that "[t]he mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry."[76]

Another example is the conflicting rulings on citizen's suits laid down in *Almario v. The City Mayor*,[77] *Miguel v. Zulueta*,[78] and *Tañada v. Tuvera*.[79] In *Zulueta*, the Supreme Court held that because the observance of the law is a public duty, any citizen may apply for mandamus to compel public officials to enforce a statute.[80] This ruling completely reversed the ruling in *Almario*, which was promulgated just three months before *Zulueta*. In *Almario*, a citizen's suit for a mandamus to compel public officials to enforce a statute was denied on the ground that the petitioner was not a real party in interest.[81] To determine legal standing in *Almario*, the Court

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[73] *Id.* at 670.

[74] G.R. No. 141284, 338 SCRA 81, Aug. 15, 2000.

[75] *Id.* at 100.

[76] 338 SCRA at 100.

[77] G.R. No. 21565, 16 SCRA 151, Jan. 31, 1966.

[78] G.R. No. 19869, 16 SCRA 860, Apr. 30, 1966.

[79] G.R. No. 63915, 136 SCRA 27, Apr. 24, 1985.

[80] *Id.* at 863-64. "As respondents, specifically, the Provincial Governor, are in duty bound not only to observe, but even to enforce the law, they may be properly compelled by mandamus to remove or rectify an unlawful act if to do so is within their official competence, at the instance of a taxpayer...where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty which, in this case, is the observance of the law, the relator need not show that he has any legal or special interest in the result of the proceeding. It is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced, even though he may have no exclusive right or interest to be protected."

[81] The application for mandamus to compel the respondent public officials to eject foreigners from their public-market stalls was denied because there was "no pretense that [the petitioner was] an applicant for any stall or booth in the particular market...nor [was] he the representative of any such applicant, or any association of persons who are deprived of their right to occupy stall in said market." (*Id.* at 152-53); This ruling was reiterated in Francisco, Jr. v. Fernando (G.R. No. 166501, 507 SCRA 173, Nov. 16, 2006), where the Court explained that a "citizen can raise a constitutional question only when (1) he can show that he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) a favorable action will likely redress the injury." (*Id.* at 177); *see also* Justice Mendoza's separate opinion in Integrated Bar of the Phils. v. Zamora, G.R. No. 141284, 338 SCRA 81, 138, Aug. 15, 2000 (hereinafter "IBP").

used the standard of the "person aggrieved"[82] as it is used in the Rules of Court.[83] This standard was again argued for, but this time rejected, in *Tañada v. Tuvera*, which upheld the people's right to be informed on matters of public concern. Prayed for in *Tañada* was a writ of mandamus to compel publication of various executive issuances. Outright dismissal of the case was sought on the ground that petitioners were "without the requisite legal personality to institute this mandamus proceeding, they not being 'aggrieved parties' within the meaning of...the Rules of Court."[84] The Supreme Court, in recognizing the petitioners' legal standing, impliedly rejected the standard of the "person aggrieved" which was used in *Almario*.

Taxpayer standing is just as pliable. Because "a taxpayer's suit refers to a case where the act complained of directly involves the illegal disbursement of public funds derived from taxation,"[85] our Supreme Court has ruled that "[i]t is only when an act complained of...involves the illegal expenditure of public money that the so-called taxpayer suit may be allowed."[86] And even if public money will be disbursed, a petitioner will still not have "satisfied the elemental requisite for a taxpayer's suit"[87] if "the funds...came from donations [and] contributions [and not] by taxation."[88] Notwithstanding these pronouncements, the Court has recognized taxpayer standing even when no illegal expenditures of public moneys are involved: (1) in *Demetria v. Alba*,[89] where the constitutionality of

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[82] Almario v. The City Mayor, G.R. No. 29565, Jan. 31, 1966.

[83] *See* RULES OF COURT, Rule 65, §3 (which provides that "Petition for mandamus. When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent").

[84] Tañada, 136 SCRA at 35.

[85] Bagong Alyansang Makabayan (hereinafter "BAYAN") v. Zamora, G.R. No. 138570, 342 SCRA 449, 478-79, Aug. 15, 2000.

[86] Lozada v. Comelec, G.R. No. 59068, 120 SCRA 337, 341, Jan. 27, 1983; *See also* Social Justice Society Officers/Members v. Executive Secretary, G.R. No. 159103, 421 SCRA 656, Feb. 3, 2004; Bugnay Construction and Development Co. v. Laron, G.R. No. 79983, 176 SCRA 240, Aug. 10, 1989; The Anti-Graft League of the Phils., Inc. v. San Juan, G.R. No. 97787, 260 SCRA 250, Aug. 1, 1996.

[87] Gonzales v. Marcos, G.R. No. 31685, 65 SCRA 624, 630, Jul. 31, 1975.

[88] *Id.* at 629.

[89] G.R. No. 71977, 148 SCRA 208, Feb. 27, 1987

a statutory grant to the President of the power to reallocate funds appropriated for the executive branch was questioned; (2) in *Maceda v. Macaraig, Jr.*,[90] where what was assailed was the legality of a tax refund by way of tax credit certificates and the use of these tax credits to pay for tax and duty liabilities; and (3) in *Chavez v. Public Estates Authority (PEA)*,[91] where an alleged unconstitutional alienation of hundreds of hectares of alienable lands of the public domain was sought to be prevented.

The pliability of legislator's standing may even be worse. In *Bayan (Bagong Alyansang Makabayan) v. Zamora*,[92] the Court held that three congressmen did not have legislator's standing "in the absence of a clear showing of any direct injury to their person or to the institution to which they belong,"[93] and because "the allegation of impairment of legislative power...are more apparent than real."[94] This ruling is in direct contrast with the case of *Gonzales v. Macaraig, Jr.*,[95] where the "legal standing of the Senate, as an institution, was recognized"[96] on the reasoning that "a member of the Senate has the requisite personality to bring a suit where a constitutional issue is raised."[97]

Our Supreme Court has also given itself the discretion over the applicability of the different standards of standing. In *Costas v. Aldanese*,[98] the Court held that in citizen's suits, though the standing of the petitioner is clear, "the granting or refusing of the writ [of mandamus]"[99] was still "discretionary with the court."[100] Similarly, the Court has also given itself the discretion whether or not to entertain taxpayer's suits.[101]

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[90] G.R. No. 88291, 197 SCRA 771, May 31, 1991.

[91] G.R. No. 133250, 384 SCRA 152, Jul. 9, 2002.

[92] G.R. No. 138570, 342 SCRA 449, Oct. 10, 2000.

[93] *Id.* at 479.

[94] *Id.*

[95] G.R. No. 87636, 191 SCRA 452, Nov. 19, 1990.

[96] PHILCONSA, 235 SCRA at 519, *citing* Gonzales v. Macaraig, G.R. No. 87636, 191 SCRA 452, Nov. 19, 1990.

[97] Gonzales, 191 SCRA at 463, *citing* Tolentino v. Comelec, G.R. No. 34150, 41 SCRA 702, Oct. 16, 1971 (which was again reiterated in Guingona, Jr. v. Carague, G.R. No. 94571, 196 SCRA 221, Apr. 22, 1991, where legislator standing was allowed on the reasoning that "Senators of the Republic of the Philippines may bring this suit where a constitutional issue is raised"). (*Id.* at 224)

[98] G.R. No. 21042, 45 Phil. 345, Oct. 25, 1923.

[99] *Id.* at 347.

[100] *Id.*

[101] Tan v. Macapagal, G.R. No. 34161, 43 SCRA 677, Feb. 29, 1972; *See also* Gonzales, 191 SCRA at 462-63; Sanidad v. Comelec, G.R. No. 44640, 73 SCRA 333, Oct. 12, 1976; Gonzales v. Marcos, G.R. No. 31685, 65 SCRA 624, Jul. 31 1975; Demetria v. Alba, G.R. No. 71977, 148 SCRA 208, Feb. 27, 1987.

What stilts standing's different standards almost to their breaking point, however, is a doctrine that is not exclusive to legal standing: the transcendental importance doctrine. The problem with this doctrine (which is more fully discussed in the next part of this work) was in full display in the Lotto Decisions. The *ponencia* in the 2nd lotto decision eschewed a discussion of why the standing requirement was waived in the 1st lotto decision, but not in the second. Justice Feliciano, however, was quick to point out the elephant in the room. Concurring in the 1st lotto decision, Justice Feliciano identified the "considerations of principle"[102] which called for the application of the transcendental importance doctrine: first, "the character of the funds or other assets involved in the case is of major importance"[103]; second, "the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government"[104]; third, "the lack of any other party with a more direct and specific interest in raising the questions"[105]; and fourth,the "wide range of impact"[106] of the government act assailed. In the 2nd lotto decision, Justice Feliciano's dissenting opinion began by pointing out that "[a]ll the factors which, to my mind, pressed for recognition of *locus standi* on the part of petitioners in the first *Kilosbayan* case, still exist and demand, with equal weight and insistence, such recognition in the present or second *Kilosbayan* case."[107] As already pointed out, the Lotto Decisions were brought by the same petitioners to question the validity of a similar contract between the same parties on the same ground. In the 1st Lotto Decision, our Supreme Court invoked the transcendental importance doctrine in order to waive the standing requirement. In the 2nd Lotto Decision, the Court did not opt to waive the requirement, and ruled that the petitioners this time did not have standing. The voting in the 1st Lotto Decision was 7-6 in favor of the petitioners; in the 2nd, it was 7-6 against them.

VI. TWO OPPOSING SCHOOLS OF THOUGHT

A. The Proceduralist School

Strictly speaking, *Guingona* did not lay down any rule on standing; the Supreme Court in that case simply exercised its asserted discretion to

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[102] 1st Lotto Decision, 232 SCRA at 155 (Feliciano, J., *concurring*).

[103] *Id.*

[104] *Id.* at 156.

[105] *Id.*

[106] *Id.* at 157.

[107] 2nd Lotto Decision, 246 SCRA at 583 (Feliciano, *J.*, *dissenting*).

brush aside the requirement of legal standing—which the Proceduralist School argues is a mere "procedural technicality"[108]—whenever it deems that the resolution of the issue before it is "of transcendental importance to the public"[109] or of "paramount public interest,"[110] or if the case raises "serious constitutional questions"[111] that must be immediately resolved. Under this doctrine of transcendental importance, our Supreme Court has assumed jurisdiction over cases even after finding that the petitioners were not the proper parties who could file the suit.[112] Sometimes, like in *Guingona,* the Court doesn't even bother to discuss or apply any rule or standard of legal standing and simply states that it is brushing aside the standing requirement and would rule on the issues raised.[113]

Our Supreme Court, in *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan,*[114] grounded on the Constitution's Grave Abuse of Discretion Clause[115] its treatment of the standing requirement as a mere procedural technicality:

> Objections to taxpayers' suit for lack of sufficient personality, standing, or interest are, however, in the main procedural matters, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, the Court has brushed aside

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[108] 1st Lotto Decision, 232 SCRA at 134; David, 489 SCRA at 757 (2006); De Castro v. Judicial and Bar Council, G.R. No. 191002, Mar. 17, 2010, Official Supreme Court Booklet, at 21.

[109] *Id.* at 139.

[110] Dumlao v. Commission on Elections, G.R. No. 52245, 95 SCRA 392, 404, Jan. 22, 1980.

[111] Agan, Jr., 402 SCRA at 645.

[112] *See, e.g.,* Benigno Aquino, Jr. v. Commission on Elections, G.R. No. 40004, 62 SCRA 275, Jan. 31, 1975; Dumlao v. Commission on Elections, G.R. No. 52245, Jan. 22, 1980; De Guia v. Commission on Elections, G.R. No. 104712, 208 SCRA 420, May 6, 1992; IBP, 338 SCRA 81, Aug. 15, 2000; BAYAN, 342 SCRA 449.

[113] *See, e.g.,* Basco v. PAGCOR, G.R. No. 91649, 197 SCRA 52, May 14, 1991; Osmeña v. Commission on Elections, G.R. No. 100318, 199 SCRA 750, Jul. 30, 1991.

[114] G.R. No. 81311, 163 SCRA 370, Jun. 30, 1988; *See* Lumba, *supra,* note 16, at 732 (which states that: "Essentially, the Court interpreted the Grave Abuse of Discretion clause as an exception to the Case and Controversy clause. This means that courts have the duty to decide an action to determine if the government committed a grave abuse of discretion even though the plaintiff has no standing.").

[115] CONST. art. VIII, §1 (which provides that "Judicial power includes the duty of the courts of justice...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.").

> technicalities of procedure and has taken cognizance of these petitions.[116]

The transcendental importance doctrine, however, is at least sixty-two years older than the Grave Abuse of Discretion Clause, which is a novel provision of the 1987 Constitution. The germ of the doctrine of transcendental importance can be found in the 1925 decision *Yu Cong Eng v. Trinidad*,[117] where because "the property and personal rights of nearly twelve thousand merchants [were] affected,"[118] and the assailed statute was "a new law not yet interpreted by the courts,"[119]there was "an extraordinary situation which call[ed] for a relaxation of the general rule."[120] This extraordinary situation prompted the Supreme Court "in the interest of the public welfare and for the advancement of public policy... to overrule the defense of want of jurisdiction in order that [It] may decide the main issue."[121] And for at least eighty-seven years, our Supreme Court, in view of the importance of the issues raised, has overruled not only the defenses of lack of legal standing or "want of jurisdiction,"[122] but also those of "purely political question,"[123] "advisory opinion,"[124] "mootness,"[125] and others also rooted in traditional case and controversy requirements.

B. The Jurisdictionalist School

The Jurisdictionalists take a position directly opposed to that taken by the Proceduralists: they argue that the requirement of *locus standi* "is not merely procedural or technical but goes into the essence of jurisdiction and the competence of courts to take cognizance of justiciable disputes."[126]Justice Florentino Feliciano, in a concurring opinion, explains that "disregard of the requirement of legal standing, where such

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[116] Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc v. Tan, G.R. No. 81311, 163 SCRA 371, 378, Jun. 30, 1988.

[117] G.R. No. 20479, 47 Phil. 385, Feb. 6, 1925.

[118] *Id.* at 390.

[119] *Id.*

[120] *Id*

[121] *Id.*

[122] *Id.*

[123] Avelino v. Cuenco, G.R. No. 2821, 83 Phil. 17, 35, Mar. 4, 1949.

[124] Dumlao, 95 SCRA at 401.

[125] Gonzales v. Chavez, G.R. No. 97351, 205 SCRA 816, 830, Feb. 4, 1992.

[126] 1st Lotto Decision, 232 SCRA at 183 (Vitug, *J., Separate Opinion*).

requirement is applicable, would in effect amount to the Court acting in cases where it has no subject matter jurisdiction"[127] because

> [a] decision on the merits rendered in a case where the petitioners do not have the necessary legal standing, would in essence be a decision not rendered in a proper, justiciable controversy or case. Such a decision appears to me to be very close to a decision rendered in a petition for declaratory relief or for an advisory opinion. The Court, of course, has no jurisdiction *ratione materiae* over declaratory relief cases or petitions for advisory opinion.[128]

Justice Reynato Puno goes even further by accusing the Proceduralists of "amending the Constitution by judicial *fiat*":[129]

> the rule on *locus standi*...is not a plain procedural rule but a constitutional requirement derived from section 1, Article VIII of the Constitution which mandates courts of justice to settle *only* "actual controversies involving rights which are legally demandable and enforceable." The phrase has been construed since time immemorial to mean that a party in a constitutional litigation must demonstrate a standing to sue. By downgrading the requirement of *locus standi* as a procedural rule which can be discarded in the name of public interest, we are in effect amending the Constitution by judicial *fiat*.[130]

Perhaps the staunchest defender of the Jurisdictionalist School is Justice Vicente V. Mendoza, who, in his separate opinion in *IBP v. Zamora,* directly confronts the Proceduralists by arguing that in cases of transcendental importance to the public, a stricter adherence to standing requirements is even more prudent:

> "Standing is not 'an ingenious academic exercise in the conceivable'...but requires...a factual showing of perceptible harm."
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[127] Gascon v. Arroyo, G.R. No. 78389, 178 SCRA 582, 588, Oct. 16, 1989 (Feliciano, *J.*, *concurring*).

[128] *Id.*; Justice Feliciano would later on backtrack and join the Proceduralist Guingona majority, and assert that "the possession of locus standi is not, in each and every case, a rigid and absolute requirement for access to the courts." (1st Lotto Decision, 232 SCRA at 154 (Feliciano, J., *Concurring*)) Nevertheless, his initial position represents an early articulation of the position of the Jurisdictionalist school of thought on the standing requirement.

[129] 1st Lotto Decision, 232 SCRA at 177 (Puno, *J.*, *Dissenting*).

[130] *Id.*

> We are likely to err in dismissing the suit brought in this case on the ground that the calling out of the military does not violate the Constitution, just as we are likely to do so if we grant the petition and invalidate the executive issuance in question. For indeed, the lack of a real, earnest and vital controversy can only impoverish the judicial process...
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> . . .
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> We are told, however, that the issues raised in this case are of "paramount interest" to the nation. It is precisely because the issues raised are of paramount importance that we should all the more forego ruling on the constitutional issues raised by petitioner and limit the dismissal of this petition on the ground of lack of standing of petitioner. A Fabian policy of leaving well enough alone is a counsel of prudence.[131]

VII. COMMON GROUNDS

The position taken by the Jurisdictionalists is irreconcilable with that taken by the Proceduralists:[132] the Supreme Court either has the power to set aside the standing requirement, or it has not. Fortunately, these two opposing schools of thought agree on a common undergrowth of weighty considerations that appear to be more determinative of the question of standing than even the different standards of standing themselves. In fact, this underlying judicial policy and its corollary rules played heavily in the adoption of not only the different standards of standing articulated by the Jurisdictionalists, but also the Doctrine of Transcendental Importance embraced by the Proceduralists. The policy is one of non-preclusion, which allows standing when withholding it would preclude any legal or political resolution to the question raised. Corollary to this is the rule that standing will be refused when there is either a more proper party who would likely raise the questions brought before the Court, or a more appropriate forum—not necessarily judicial—where the issue may be resolved.

A. The Policy of Non-Preclusion

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[131] Tañada, 136 SCRA at 140 (Mendoza, *J.*, *concurring and dissenting*).

[132] The Supreme Court of Israel has adopted the view that when the claim alleges a major violation of the rule of law, every person in Israel has legal standing to sue. Similarly, the Constitution of the Republic of South Africa expressly grants legal standing to enforce its Bill of Rights to anyone acting in the public interest. (Barak, *supra* note 2, at 108) Both Proceduralists and Jurisdictionalists may be able to agree on these solutions. Nevertheless, as they have been thus far formulated, the opposing positions of the two schools remain irreconcilable.

The policy of non-preclusion accords a petitioner standing when withholding it would preclude any legal or political resolution to the question raised. It is similar to the United States Federal Supreme Court's "presumption in favor of judicial enforceability of constitutional rights"[133] laid down in *Davis v. Passman*:[134]

> At least in the absence of a textually demonstrable constitutional commitment of an issue to a coordinate political department, we presume that justiciable constitutional rights are to be enforced through the courts. And, unless such rights are to become merely precatory, the class of those litigants who allege that their own constitutional rights have been violated, and who at the same time have no effective means other than the judiciary to enforce these rights, must be able to invoke the existing jurisdiction of the courts for the protection of their justiciable constitutional rights.[135]

Non-preclusion was an important policy consideration in the first case where the "transcendental importance" doctrine[136] was applied to grant legal standing:[137] *The Emergency Powers Cases*.[138] These were consolidated cases questioning the validity of four executive orders. One of these cases involved an executive order which appropriated funds for the operation of the Philippine Government from July 1949 to June 1950; the petitioner,"as a tax-payer, an elector, and president of the Nacionalista Party,"[139] applied for "a writ of prohibition to restrain the Treasurer of the Philippines from disbursing money under this Executive Order."[140] Another case involved an executive order which appropriated funds for the 1949 national elections; the petitioner, "as a citizen, tax-payer and voter,"[141] asked the Court to prohibit any disbursement or expenditure of the appropriated amount. There was an objection to the standing of the petitioners in these two cases, but the Court ruled that "the transcendental importance to the public of these cases demands that they be settled

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[133] TRIBE, *supra* note 21, at 111.

[134] 442 U.S. 228 (1979).

[135] *Id.* at 242.

[136] David, 489 SCRA at 763.

[137] Earlier cases applying the doctrine to overrule other traditional case and controversy objections include Yu Cong Eng, 47 Phil. at 390; People v. Vera, 65 Phil. 56 (1937); and Avelino, 83 Phil. at 35.

[138] Araneta v. Dinglasan, G.R. No. 2044, 84 Phil. 368, Aug. 26, 1949.

[139] *Id.* at 374.

[140] *Id.*

[141] *Id.*

promptly and definitely, brushing aside, if we must, technicalities of procedure."[142]

The standing requirement in the *Emergency Powers Cases* needed to be brushed aside because the rule at the time it was decided was that laid down in the 1945 case *Custodio v. The President of the Senate*.[143] *Custodio* was a petition for prohibition questioning the constitutionality of an appropriation that would fund back-salaries of congressmen. The petitioner alleged, "as his only interest or grievance in instituting this action, that he is a citizen and taxpayer of the Philippines, and also an employee of the Philippine Government, entitled to all rights and privileges including back pays."[144] The Court dismissed the petition, explaining that "the constitutionality of a legislative act is open to attack only by a person whose rights are affected thereby, that one who invokes the power of the court to declare an Act of Congress to be unconstitutional must be able to show not only that the statute is invalid but that he has sustained, or is in immediate danger of sustaining, some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."[145]The problem with the *Custodio* ruling was succinctly put by Justice Felicisimo Feria in his concurrence in the *Emergency Powers Cases*: "if a tax-payer can not attack the validity of the executive orders in question or a law requiring the expenditure of public moneys, no one under our laws could question the validity of such laws or executive orders."[146]

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[142] *Id.* at 373.

[143] G.R. No. 117, 42 O.G. 1243, Nov. 7, 1945.

[144] *Id.* at 1244.

[145] *Id.* at 1244-45.

[146] Araneta, 84 Phil. at 439 (Feria, J., *concurring*). Still, as late as May 1960, our Supreme Court in two cases decided one week apart, refused to recognize taxpayer standing. The first case, Subido v. Sarmiento, 108 Phil. 150 (1960), was a mandamus action questioning the legality of the assignment of Detective Captain Paralejas to Precinct Commander, and asked the Court "to restrain the City Treasurer from paying the salary of Paralejas, as Precinct Commander, out of city funds; to declare his appointment illegal, to compel, the City Mayor and the Chief of Police to refund the salaries received by Paralejas during the latter's alleged illegal incumbency; and to effect Paralejas return to the Detective Bureau." (*Id.* at 155) The Court held that "Subido, as a taxpayer and private citizen, [had] no right to institute" (*Id.* at 156) the action, and explained that "actions must be prosecuted for and against the real party in interest. And to be considered a real party in interest, it must be shown that such party would be benefited or injured by the judgment, or that he is entitled to the avails of the suit. In the case at bar, appellant does not pretend to have any right to the position occupied by Paralejas, nor is he claiming to be directly and particularly affected by the payment to said appellee of the salary corresponding to the position of precinct commander...Similarly, there is no showing that the payment to Paralejas of his salary created and imposed an additional and unreasonable burden upon the taxpayers of the

Non-preclusion was also a weighty consideration in the case where citizen's standing was first granted: *Severino v. Governor-General*.[147] This was a petition for a writ of mandamus to compel the Philippine Governor-General to call a special election for municipal president. In 1909, it was declared that no one was legally elected municipal president of Silay, Province of Occidental Negros. Instead of calling a special election as required by law, the Governor-General directed the provincial board to fill the vacancy by appointment and to submit to him, for his approval, the name of the person to be appointed. The petitioner, Lope Severino, sued as "a resident, a duly qualified elector, and local chief of the *Nacionalista* party in the town of Silay."[148] On the question "whether or not...Lope Severino is a proper complainant,"[149] the Court explained that

> It is true...that the right which he seeks to enforce is not greater or different from that of any other qualified elector in the municipality of Silay. It is also true that the injury which he would suffer in case he fails to obtain the relief sought would not be greater or different from that of the other electors; but he is seeking to enforce a public right as distinguished from a private right. The real party in interest is the public, or the qualified electors of the town of Silay.[150]

Severino justified its relaxation of the standard on the non-preclusion policy: "if the relator is not a proper party to these proceedings no other person could be, as...it is not the duty of the law officer of the Government to appear and represent the people in cases of this character."[151] The same policy informed the grant of citizen's standing in

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City of Manila." (*Id.*) The second case, Subido v. City of Manila, 108 Phil. 462 (1960) was a petition for prohibition contesting the validity of an appropriation ordinance. The Supreme Court held that "the Rules of Court requires that actions must be prosecuted for or against the real party in interest...In the present case, it has not been sufficiently shown that the passage of the ordinance under question would be prejudicial to the interests of the petitioner-appellant who is just one among the general tax-paying public...has no special standing different from the public at large to entitle him to bring the action." (*Id.* at 466) The Court then cited one of the authorities also relied on in the first Subido case: "Where nothing had been done or is proposed to be done which will create any burden on the taxpayers of the community, the mere fact that the defendant municipal officials have done, or proposed to do, an unauthorized or illegal act confers on him (taxpayer) no right to maintain a proceeding." (*Id.* at 467; Subido 108 Phil. at 156).

[147] G.R. No. 6250, 16 Phil. 366, Aug. 3, 1910.

[148] *Id.* at 369.

[149] *Id.* at 370.

[150] *Id.* at 374-75.

[151] *Id.* at 378.

Tañada v. Tuvera,[152] where the Court recognized that "[i]f petitioners were not allowed to institute this proceeding, it would indeed be difficult to conceive of any other person to initiate the same, considering that the Solicitor General, the government officer generally empowered to represent the people, has entered his appearance for respondents in this case"[153]; and in *Miguel v. Zulueta*,[154] where the Court realized that "to dismiss the action [on the ground of lack of standing] would effectively mean that no private person will ever have the right to go to courts to challenge said unlawful government act and others of a similar character."[155]

The Lotto Decisions were also argued in terms of non-preclusion. Among the Proceduralist majority in *Guingona* were Justices Isagani Cruz and Florentino Feliciano. Justice Cruz declared that he "cannot agree that out of the sixty million Filipinos affected by the proposed lottery, not a single solitary citizen can question the agreement."[156] In the same vein, Justice Feliciano enumerated "the lack of any other party with a more direct and specific interest in raising the questions"[157] as one of the "considerations of principle which...require an affirmative answer to the question of whether or not petitioners [had standing]."[158] In *Morato*, the *ponencia*, representing the Jurisdictionalist majority, explained that denying standing to the petitioners "will not leave without remedy any perceived illegality in the execution of government contracts."[159] Dissenting Justice Florenz Regalado, a Proceduralist, disagreed: "if the majority would have its way in this case, there would be no available judicial remedy against irregularities or excesses in government contracts for lack of a party with legal standing or capacity to sue."[160] Another Proceduralist, Justice Hilario Davide, elaborated on Justice Regalado's concern:

> Only a very limited few may qualify, under the real-party-in-interest rule, to bring actions to question acts or contracts tainted with such vice. Where, because of fear of reprisal, undue pressure, or even connivance with the parties benefited by the contracts or transactions, the so-called real party in interest chooses not to sue, the patently unconstitutional and illegal contracts or transactions will be placed beyond the

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[152] 136 SCRA at 27.
[153] *Id.* at 37.
[154] G.R. No. 19869, 16 SCRA 860, Apr. 30, 1966.
[155] Lumba, *supra* note 16, at 724.
[156] 1st Lotto Decision, 232 SCRA at 152 (Cruz, *J.*, *concurring*).
[157] *Id.* at 156 (Feliciano, *J.*, *concurring*).
[158] *Id.* at 155 (Feliciano, *J.*, *concurring*).
[159] 2nd Lotto Decision, 246 SCRA at 565.
[160] *Id.* at 601 (Regalado, *J.*, *dissenting*).

> scrutiny of this Court, to the irreparable damage of the Government, and prejudice to public interest and the general welfare.
>
> By way of illustration, the [Guingona] lotto contract would not have reached this Court if only the so-called real party in interest could bring an action to nullify it. Neither would the [Morato lotto contract], since for reasons only known to them, none of those who had lost in the bidding for the first lotto contract showed interest to challenge it.[161]

B. The More Proper Party Rule

Justice Reynato Puno, who was part of the *Guingona* Jurisdictionalist minority, acknowledged that "[t]he majority granted *locus standi* to petitioners because of lack of any other party with more direct and specific interest."[162] Justice Feliciano clarifies that what was truly determinative is not the lack of "any other party with more direct and specific interest,"[163] but the lack of "any other party with more direct and specific interest *in raising the questions* here being raised"[164]:

> Though a public bidding was held, no losing or dissatisfied bidder has come before the Court. The Office of the Ombudsman has not, to the knowledge of the Court, raised questions about the legality or constitutionality of the [Guingona lotto contract]. The National Government itself, through the Office of the Solicitor General, is defending the [Guingona lotto contract].[165]

The distinction Justice Feliciano makes is important: the standing requirement was relaxed not because if the Court had not done so there would have been no other party who *could* have raised the issue, but because if the Court had not done so, no other party *would*.

In *Guazon v. De Villa*,[166] a petition "to prohibit the military and police officers...from conducting 'Areal Targeting Zonings' or 'Saturation Drives'"[167] which allegedly "follow a common pattern of human rights abuses,"[168] "[n]ot one of the several thousand persons treated in the illegal

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[161] *Id.* at 619 (Davide, J., *dissenting*).
[162] *Id.* at 178 (Puno, J., *dissenting*).
[163] 1st Lotto Decision, 232 SCRA at 156 (Feliciano, J., *concurring*).
[164] *Id.*
[165] *Id.* at 156 (Feliciano, J., *concurring*).
[166] G.R. No. 80508, 181 SCRA 623, Jan. 30, 1990.
[167] *Id.* at 628.
[168] *Id.* at 629.

and inhuman manner described by the petitioners appear[ed] as a petitioner or ha[d] come before a trial court...Moreover, there must have been tens of thousands of nearby residents who were inconvenienced in addition to the several thousand allegedly arrested. None of those arrested ha[d] apparently been charged and none of those affected ha[d] apparently complained."[169] Nevertheless, despite noting that "those directly affected by human rights violations should be the ones to institute court actions,"[170] the Court ruled that "[i]t is the duty of the court to take remedial action even in cases...where the petitioners do not complain that they were victims of the police actions, where no names of any of the thousands of alleged victims are given...as long as the Court is convinced that the event actually happened,"[171] and proceeded to grant the relief of enjoining "*the acts violative of human rights alleged* by the petitioners as committed during the police actions...until such time as permanent rules to govern such actions are promulgated."[172] Justice Isagani Cruz offered an explanation why no one directly affected had complained:

> The reason for the silence is fear. These raids are conducted not in the enclaves of the rich but in deprived communities, where the residents have no power or influence. The parties directly aggrieved are afraid. They are the little people. They cannot protest lest they provoke retaliation for their temerity.[173]

This rule that standing will be refused when there is a more proper party who would likely raise the questions brought before the Court is eloquently stated in Justice de Castro's concurrence in *Judge De la Llana v. Alba*:[174]

> A taxpayer may bring an action to raise the question of constitutionality of a statute only when no one else can more appropriately bring the suit to defend a right exclusively belonging to him, and, therefore, would localize the actual injury to his person, and to no other...With the incumbent judges undoubtedly being the ones under petitioners' theory, who would suffer direct and actual injury, they should exclude mere taxpayers who cannot be said to suffer as "direct" and "actual" an injury as the judges and justices by the enforcement of the assailed statute, from the right to bring the suit.[175]

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[169] *Id.*
[170] *Id.* at 636.
[171] *Id.* at 637.
[172] *Id.* at 639.
[173] *Id.* at 640 (Cruz, *J.*, *dissenting*).
[174] G.R. No. 57883, 112 SCRA 294, Mar. 12, 1982.
[175] *Id.* at 371 (de Castro, *J.*, *concurring*).

An important case where the More Proper Party Rule weighed heavily was *Francisco, Jr. v. The House of Representatives*,[176] where the question before the Court was whether the filing of a second impeachment complaint against then Chief Justice Hilario Davide, Jr. fell within the one-year bar provided in the Constitution.[177] *Amicus curiae* Dean Raul Pangalangan advocated that "when the real party in interest is unable to vindicate his rights by seeking the same remedies, as in the case of the Chief Justice who, for ethical reasons, cannot himself invoke the jurisdiction of this Court, the courts will grant petitioners standing."[178] Justice Sandoval-Gutierrez, in a separate opinion, agreed with this, stating that"[i]t would be an unseemly act for the Chief Justice to file a petition with this Court where he is *primus inter pares*. '*Delicadeza*' and the Rules require him not only to inhibit himself from participating in the deliberations but also from filing his own petition."[179] The rule also seemed to sway the ruling in *Tolentino v. The Board of Accountancy*,[180] where standing was refused to an accountant who sought relief "not for his own personal benefit, or because his rights or prerogatives...[were] adversely affected, but rather for the benefit of persons belonging to other professions or callings who [were] not parties to [the] case."[181] Obviously it was unlikely that no member of those other professions, *e.g.*, a lawyer, could and would have filed a case if the statute assailed had unconstitutionally prejudiced his or her interests.

A possible exception to the more proper party rule is standing *jus tertii*, which would allow a person to assert the rights of a more proper party "if it can be shown that the party suing has some substantial relation to the third party, or that the third party cannot assert his constitutional right, or that the right of the third party will be diluted unless the party in court is allowed to espouse the third party's constitutional claim."[182] The justification behind standing *jus tertii* is "society's right in the protection of certain preferred rights in the Constitution even when the rightholders are

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[176] G.R. No. 160261, 415 SCRA 44, Nov. 10, 2003.

[177] *Id.*

[178] *Id.* at 32.

[179] Francisco, Jr., 415 SCRA (Sandoval-Gutierrez, *J.*, *Separate and Concurring Opinion*).

[180] G.R. No. 3062, 90 Phil. 83, Sep. 28, 1951.

[181] *Id.* at 87.

[182] Telecommunications and Broadcast Attorneys of the Phils., Inc. v. Comelec, G.R. No. 132922, 289 SCRA 337, 344, Apr. 21, 1998 (which provides that "Standing *jus tertii* will be recognized only if it can be shown that the party suing has some substantial relation to the third party, or that the third party cannot assert his constitutional right, or that the right of the third party will be diluted unless the party in court is allowed to espouse the third party's constitutional claim.").

not before the court. The theory is that their dilution has a substantial fall out detriment to the rights of others, hence the latter can vindicate them."[183] In his dissent in *Guingona*, however, Justice Reynato Puno may have emasculated the *just tertii* standard by asserting as one of its requirements "an injury in fact to himself"[184] who brings the action and positing—in familiar Jurisdictionalist language—that the "requirement of injury in fact cannot be abandoned for it is an essential element for the exercise of judicial power."[185]

In certain cases, the more proper party is identified by statute. For example, in *Albendan v. Florente*[186]—the first Philippine Supreme Court decision which discussed legal standing—the petitioner, suing as a qualified elector, was refused standing partly because the election law then in force allowed only candidates, and not voters, to contest the legality of an election. Similarly, in *Lara v. Lopez Vito*,[187] the petitioner who sought to have his name registered under the tickets of three different political parties was refused standing because, under the relevant statute, the right to have the name of a candidate included in a party ticket belonged not to the candidate, but to the party concerned. The Court thus held that "the real party in interest in the matter of the inclusion of a candidate in a party ticket is the political party concerned," and explained that this view was "in harmony with the modern trend of simplifying the rules of practice and procedure in the courts, because it will avoid multiplicity of suits. If it be held that the individual candidate is the real party in interest, the result would be that in a case where ten candidates, for instance, are excluded by the Commission on Elections from the ticket of a political party, then separate suits would have to be brought to test the legality of the action of the Commission. Such a result should be avoided."[188]

Another example of a case where the Court recognized a statutorily identified more proper party is *People v. Vera*.[189] In this case, the Court allowed the Solicitor General and the City Fiscal, who were the statutorily designated representatives of the People of the Philippines in criminal actions, to assail the constitutionality of the Probation Act. Compare this with *Severino v. Governor-General*,[190] where citizen's standing was granted because "[n]o express provision is found making it the duty of

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[183] 1st Lotto Decision, 232 SCRA at 174 (Puno, *J., dissenting*).
[184] *Id.* at 172.
[185] *Id.*
[186] G.R. No. 4512, 10 Phil. 216, Feb. 25, 1908.
[187] G.R. No. 48662, 73 Phil. 390, Nov. 6, 1941.
[188] *Id.* at 395.
[189] G.R. No. 45685, 65 Phil. 56, Nov. 16, 1937.
[190] G.R. No. 6250, 16 Phil. 366, Aug. 3, 1910.

any official of the Government to bring these proceedings. So, if the relator is precluded from maintaining these proceedings for the purpose of having his rights passed upon by this court, these questions could not be raised."[191]

The Rules of Court may also identify the more proper party to be accorded *locus standi*. This is best illustrated by *Lumontad v. Cuenco*,[192] a *quo warranto* petition[193] which sought to oust six senators from their positions in the Senate. After noting that under the Rules of Court, an action for usurpation of office may be brought by either the Solicitor General or a fiscal and in the name of the State, or by and in the name of a person claiming to be entitled to the usurped public office,the Supreme Court dismissed the petition on the ground that the petitioner—who brought the action not by claim of entitlement "to hold any of the positions of respondent Senators,"[194] but as a "citizen, a qualified elector, a tax payer and a qualified candidate for senator"[195]—was "not among the persons specifically authorized to commence an action of quo warranto, and, under the maxim of 'inclusio unius est exclusion alterius'," had "no legal personality to file the petition."[196] Similarly, in *Benigno S. Aquino, Jr. v. Commission on Elections*,[197] the Supreme Court noted that the petition collaterally attacked the title of Philippine President held by then President Ferdinand E. Marcos, and was therefore in the nature of a *quo warranto* proceeding. Explaining that "[o]nly the Solicitor General or the person who asserts title to the same office can legally file such a *quo warranto* petition,"[198] and observing that "[t]he petitioners do not claim such right to the office and not one of them is the incumbent Solicitor General,"[199] the Supreme Court found that the petitioners had "no personality to file the suit."[200] Compare these rulings with that in *Municipality of Malabang v. Benito*,[201] where the Court, in granting standing, explained that "generally, an inquiry into the legal existence of a municipality is reserved to the State

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[191] *Id.* at 376.

[192] 41 O.G. 894 (1945).

[193] "A quo warranto proceeding is, among others, one to determine the right of a public officer in the exercise of his office and to oust him from its enjoyment if his claim is not well-founded."

Tolentino v. Comelec, G.R. No. 148334, 420 SCRA 438, 450, Jan. 21, 2004.

[194] *Id.* at 897.

[195] *Id.*

[196] *Id.*

[197] G.R. No. 40004, 62 SCRA 275, Jan. 31, 1975.

[198] *Id.*

[199] *Id.*

[200] *Id.*; Nevertheless, "because of the far-reaching implications of the herein petition, the Court resolved to pass upon the issues raised."(*Id.* at 295).

[201] G.R. No. 28113, 27 SCRA 533, Mar. 28, 1969.

in a proceeding for *quo warranto* or other direct proceeding, and that only in a few exceptions may a private person exercise this function of government. But the rule disallowing collateral attacks applies only where the municipal corporation is at least a *de facto* corporation. For where it is neither a corporation *de jure* nor *de facto*, but a nullity, the rule is that its existence may be questioned collaterally or directly in any action or proceeding by anyone whose rights or interests are affected thereby, including the citizens of the territory incorporated."[202]

The case of *Anti-Chinese League of the Phils. v. Felix*[203] justifies limiting the grant of *locus standi* to legally designated more proper parties in terms of "the regular and orderly conduct of court proceeding":[204]

> It is true that a court proceeding for naturalization of an alien is of public interest or may affect the Filipino people, because a foreigner would thereby be adopted and clothed with the privileges of citizenship; but in all such proceedings the right to represent and protect the interest of the people is vested by law in some public officer or the Solicitor General, and private citizens cannot, unless they have special legal interest, be allowed to take part therein for the regular and orderly conduct of court proceeding. Criminal actions for violation of public offenses and special civil action of *quo warranto* against a person that illegally holds or usurps a public office are of more transcendental effect, because disturbance of public order by the commission of a crime and the exercise of governmental powers by a usurper affect more vitally the well-being of the citizens or inhabitants of a country; and yet the law does not confer the right to institute such actions upon any private individual. If a public-spirited citizen believes that a petitioner for naturalization is unworthy or does not have all the requirements of the law to become a citizen, the proper step for him to take is to so inform the Solicitor General or the provincial fiscal, and furnish them with such information and evidence as he may have against the petitioner, in order to enable said officers to perform their duties...
>
> [I]n naturalization proceeding only the Solicitor General and the provincial fiscals, and not everybody, are allowed to intervene on behalf of the government or the people. To allow any private individual or citizen to appear and side with or oppose a petitioner for naturalization would or might render a naturalization proceeding chaotic and long if not interminable; because if any private individual or citizen may appear and

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[202] *Id.* at 536-37.

[203] G.R No. 998, 77 Phil. 1012, Feb. 20, 1947.

[204] *Id.* at 1015.

> oppose a petition for naturalization, he may also, for one reason or another, move for the cancellation of the naturalization certificate at any time thereafter.[205]

The *ponencia* in *Morato* justified the Court's refusal to accord standing partly in terms of the More Proper Party Rule, pointing out that

> [T]he Constitution requires that the Ombudsman and his deputies, "as protectors of the people shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof *including government-owned or controlled corporations*." In addition, the Solicitor General is authorized to bring an action for *quo warranto* if it should be thought that a government corporation, like the PCSO, has offended against its corporate charter or misused its franchise.[206]

Justice Regalado, in his dissent, viewed the *ponencia*'s ruling as unrealistic:

> should this Court now sustain the assailed contract, of what avail would be the suggested recourse to the Ombudsman? Finally, it is a perplexing suggestion that petitioners ask the Solicitor General to bring a *quo warranto* suit, either *in propria personal* or *ex relatione*, not only because one has to contend with that official's own views or personal interests but because he is himself the counsel for respondents in this case.[207]

Justice Regalado added that "Any proposed remedy must take into account not only the legalities in the case but also the realities of life."[208]

In *Tatad v. Garcia*,[209] a Proceduralist majority followed the *Guingona*ruling on *locus standi* and allowed a taxpayer's suit questioning the validity of a government contract. Justice Mendoza, taking exception to the majority's ruling on the standing issue, lamented that the "result is to convert the Court into an office of ombudsman for the ventilation of generalized grievances."[210] He may have been alluding to the Ombudsman's power to direct any government official, "in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or

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[205] *Id.* at 1015-1016.

[206] *Id.* at 565 *citing* CONST. art. XI, §12 and RULES OF COURT, Rule 66, §2[a] [d].

[207] 2nd Lotto Decision, 246 SCRA at 601 (Regalado, *J.*, *dissenting*).

[208] *Id.*

[209] G.R. No. 114222, 243 SCRA 436, Apr. 6, 1995.

[210] *Id.* at 476 (Mendoza, *J.*, *concurring*).

transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action."[211] This interpretation would make the Ombudsman the more proper party to bring challenges to government contracts before the Commission on Audit, which has "exclusive authority" to enforce "accounting and auditing rules and regulations...for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties."[212] As Justice Davide warns us in *Morato*, however, "it is fraught with unimaginable danger to public interest if neither the Commission on Audit (COA), nor the Ombudsman, or the Office of the Solicitor General, would take any action on the matter."[213]

C. The More Appropriate Forum Rule

Justice Davide's reference to the COA addresses another corollary rule of the non-preclusion policy, which is that standing will be refused when there is a more appropriate forum—not necessarily judicial—where the issue may be resolved. The *ponencia* in *Morato* posited that "[q]uestions as to the nature or validity of public contracts or the necessity for a public bidding before they may be made can be raised in an appropriate case before the Commission on Audit."[214] In the resolution to the motion for reconsideration, the *Morato* majority expounded that "petitioners might try the Commission on Audit, the Ombudsman or the Solicitor General"[215] because "[t]he rules on standing do not obtain in these agencies; petitioners can file their complaints there *ex relatione*."[216] Justice Regalado, however, also viewed this as unrealistic, observing that it was "highly improbable that the Commission on Audit would deign deal with those whom the majority says are strangers to the contract."[217]

Justice Padilla grounded the *ponencia*'s suggestion (to first resort to the Commission on Audit) on the doctrine of primary jurisdiction:

> On the allegation of lack of public bidding on the [Morato lotto Contract], the Commission on Audit (COA) has yet to resolve a case where the issue of the validity of the [Morato lotto Contract] due to lack of public bidding has been squarely raised...the Court should not pre-empt the

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[211] CONST. art. XI, §13.

[212] CONST. art. IX-D, §2(1)-(2).

[213] 2nd Lotto Decision, at 619 (Davide, Jr., *J.*, *dissenting*).

[214] 2nd Lotto Decision, 246 SCRA at 565.

[215] 2nd Lotto Decision Motion for Reconsideration, 250 SCRA at 139 n.2.

[216] *Id.* 140 n.2.

[217] 2nd Lotto Decision, 246 SCRA at 601 (Regalado, *J.*, *dissenting*).

> determination and judgment of the COA on matters which are within its primary jurisdiction under the Constitution.[218]

This is similar to Justice Vitug's suggestion in the first lotto decision that the Court should not pre-empt the Securities and Exchange Commission, who had primary jurisdiction over some of the issues raised:

> A further set-back in entertaining the petition is that it unfortunately likewise strikes at factual issues. The allegations...require the submission of evidence. This Court is not a trier of facts, and it cannot, at this time, resolve the above issues. Just recently, the Court has noted petitioners' manifestation of its petition with the Securities and Exchange Commission "for the nullification of the General Information Sheets of PGMC" in respect particularly to the nationality holdings in the corporation. The doctrine of primary jurisdiction would not justify a disregard of the jurisdiction of, nor would it permit us to now preempt, said Commission on the matter.[219]

Denying standing on the consideration that the agency with primary jurisdiction would be the more proper forum where the issue should be brought is as old as the 1923 case *Costas v. Aldanese*,[220] which qualified the *Severino* doctrine. *Costas* was a citizen's suit alleging that a motorboat operating on Philippine waters did not carry the statutorily required complement of engineers and praying that the "Insular Collector be ordered to require the owner, outfitter, consignee and captain of said boat to employ thereon the requisite number of qualified engineers."[221] There was no showing that the same request was first filed with the Insular Collector, thus the Court denied standing because it was "better to leave the responsibility for securing the fulfillment of duties like that now under consideration to the administrative and executive superiors of respondent. The petitioner sues in the right of the public, but we see no public good to be attained by judicial interference."[222] Later, in *Almario v. The City Mayor*,[223] the Court, in refusing standing, echoed this pronouncement in *Costas* by pointing out that the petitioner had not yet exhausted all administrative remedies available to him.

The doctrines of primary jurisdiction and exhaustion of administrative remedies work to restrict access to courts of citizens and

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[218] *Id.* at 583 (Padilla, *J.*, *concurring*).

[219] 1st Lotto Decision, 232 SCRA at 184-85 (Vitug, *J.*, *separate opinion*).

[220] G.R. No. 21042, 45 Phil. 345, Oct. 25, 1923.

[221] *Id.* at 346.

[222] *Id.* at 348.

[223] G.R. No. 21565, 16 SCRA 151, Jan. 31, 1966.

taxpayers who otherwise would have been accorded standing because the right of action to petitions for *certiorari*, prohibition, or *mandamus* –the main vehicles for citizen's and taxpayer's suits –require that there is no other "plain, speedy and adequate remedy in the ordinary course of law."[224] The case of *Guazon v. De Villa*[225] demonstrates the prudence in this. Although (as discussed above) the relief sought in the petition was to "to prohibit the military and police officers…from conducting 'Areal Targeting Zonings' or 'Saturation Drives'," [226] the Court instead merely remanded the petition to the trial courts; forwarded copies of the decision "to the Commission on Human Rights, the Secretary of Justice, the Secretary of National Defense, and the Commanding General PC-INP for the drawing up and enforcement of clear guidelines to govern police actions intended to abate riots, civil disturbances, flush out criminal elements, and subdue terrorist activities"[227]; and temporarily restrained the alleged human rights violations committed during the saturation drives until the guidelines had been promulgated. Remember that in *De Villa,* not one of the alleged victims joined as petitioner, and thus, only mere allegations reached the Court. Because of this, the Supreme Court ruled that

> The remedy is not an original action for prohibition brought through a taxpayers' suit. Where not one victim complains and not one violator is properly charged, *the problem is not initially for the Supreme Court. It is basically one for the executive departments and for trial courts.* Well meaning citizens with only second hand knowledge of the events cannot keep on indiscriminately tossing problems of the executive, the military, and the police to the Supreme Court as if we are the repository of all remedies for all evils…
>
> The problem is appropriate for the Commission on Human Rights. A high level conference should bring together the heads of the Department of Justice, Department of National Defense and the operating heads of affected agencies and institutions to devise procedures for the prevention of abuses.[228]

The reason why not only the executive departments with primary jurisdiction, but also the trial courts are more appropriate fora for the *De Villa* petition is explained by Justice Padilla in his separate opinion:

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[224] RULES OF COURT, Rule 65, §§1-3.
[225] G.R. No. 80508, 181 SCRA 623, Jan. 30, 1990.
[226] *Id.* at 628.
[227] *Id.* at 639.
[228] *Id.* at 638.

> since this Court is not a trier of facts—and this case involves certainty of facts alleged by petitioners and denied by respondents—this case should be referred to a proper trial court where the petitioners can present *evidence* to support and prove the allegations they make of such brutal and inhuman conduct on the part of military and police units.[229]

The same point was argued by Justice Tinga in his dissent in *David v. Arroyo*:

> the problem with directly adjudicating that the injuries inflicted on David, et al., as illegal, would be that such would have been done with undue haste, through an improper legal avenue, without the appropriate trial of facts, and without even impleading the particular officers who effected the arrests/searches/seizures. ...
>
> Indubitably, any person whose statutory or constitutional rights were violated...deserves redress in the appropriate civil or criminal proceeding...Yet a ruling from this Court, without the proper factual basis or prayer for remuneration for the injury sustained, would ultimately be merely symbolic...the Court...will be harmed by a ruling that unduly and inappropriately expands the very limited function of the Court as a trier of facts on first instance.[230]

The *Morato* majority also noted that "the legislative and executive branches of the government, rather than the courts"[231] are the "appropriate fora for the advocacy of petitioners' views,"[232] and suggested that "the provision on initiative and referendum as a means whereby the people may propose or enact laws or reject any of those passed by Congress."[233] The Jurisdictionalists had also made this suggestion in *Guingona*. Justice Puno, in particular, argued that "the proper forum for this debate, however cerebrally exciting it may be, is not this court but congress."[234] Justice Kapunan made the same point:

> [N]o issue brought before this court could possibly be so fundamental and paramount as to warrant a relaxation of the requisite rules for judicial review developed by settled jurisprudence in order to avoid entangling this court in

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[229] *Id.* at 643 (Padilla, *J.*, *separate opinion*).

[230] David, 522 Phil. at 760 (Tinga, *J.*, *dissenting*).

[231] 2nd Lotto Decision Motion for Reconsideration, 250 SCRA at 139.

[232] *Id.*

[233] *Id.* at 140.

[234] 1st Lotto Decision, 232 SCRA at 175 (Puno, *J.*, *dissenting*).

> controversies which properly belong to the legislative or executive branches of our government.[235]

VIII. BICKEL'S MEDIATING TECHNIQUES OF "NOT DOING"

The previous parts of this work discuss legal standing in a vacuum, as if it were a discrete issue unrelated to others.[236] It's not. Standing is just one of the many "mediating techniques of 'not doing'"[237] which in practice operate not as a set of rules, but as a box of tools. Like most tools, these mediating techniques are value-neutral; they may be used to build bridges connecting official actions to public suits, or to erect walls between them.

In the U.S., these tools have been used conservatively to "[cushion] the clash between the Court and any given legislative majority and [strengthen] the Court's hand in gaining acceptance for its principles."[238]Here in the Philippines, these tools—especially the doctrines of political question and standing—have been used liberally in order to expand judicial power "even beyond the framers of the 1987 Constitution's wildest dreams."[239]

The non-preclusion policy and its corollary rules of more proper party and more appropriate forum are heuristic concepts intended to explain why our Supreme Court has wielded one of these mediating techniques (standing) in the way that it has in previous cases, and to predict how the Court may use it in future ones. They are not meant to advocate a position in the broader debate between judicial activism and judicial restraint, where the doctrine of standing is a central issue.

IX. CONCLUSION

The question of legal standing "is but corollary to the bigger question of proper exercise of judicial power."[240] In fact, the law of legal

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[235] 1st Lotto Decision, 232 SCRA at 188 (Kapunan, *J.*, *dissenting*).

[236] I thank Oscar Franklin Tan for reminding me to include a discussion clarifying this crucial point which I would have otherwise omitted.

[237] ALEXANDER BICKEL, THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS 112 (1962).

[238] *Id.* at 116.

[239] Oscar Franklin Tan, *The New Philippine Separation of Powers: How the Rulemaking Power May Expand Judicial Review Into True Judicial Supremacy*, 83 PHIL. L.J. 868, 906 (2009).

[240] David, 522 Phil. at 763.

standing "raises acute questions"[241] not only about "the role of judicial review, or, more broadly, judicial control of public officers,"[242] but also "about People and how they want to participate in government."[243] Despite this, our Supreme Court resolves issues of legal standing either by using standards that narrowly focus on the directness of the injury or the generalized nature of the claim, or by summarily waiving the requirement altogether. The Court seldom, if at all, disposes of a standing issue in terms of the proper role of the judiciary in our system of separated governmental powers. This focus on stilted standards and asserted discretions rather than on the policy considerations that underlie the Court's reasoning affirms Justice Vicente V. Mendoza's concern that "no serious efforts have been really made to examine the nature and basis of the power of review of our courts, much less of the standards by which the exercise of that power must be guided. Like the air we breathe we simply assume that the power is there, and whether its results should be praised or condemned is often a matter of whose ox is gored."[244] This paper attempts to address Justice Mendoza's concern by identifying policy considerations which consistently sway our Supreme Court Justices—whether of Jurisdictionalist or Proceduralist persuasion—in deciding if a party should be allowed to invoke the courts' power of judicial review.

Identifying the non-preclusion policy and its corollary rules of more proper party and more appropriate forum, however, will not by itself straighten standing's different standards. The U.S. Supreme Court, for example, has already taken into account a similar policy,[245] but that has not

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[241] Louis Jaffe, *Standing to Secure Judicial Review: Public Actions*, 74 HARV. L. REV. 1265, 1265 (1961).

[242] *Id.*; Gene Nichol, Jr., *The Tactical Uses of Standing*, *in* LOUIS FISHER, AMERICAN CONSTITUTIONAL LAW 125 (1990).

[243] Lumba, *supra* note 16, at 719-20 (who explains that "When a private person files a case against the executive and legislative branches, what he is really trying to do is to participate in government through the medium of the courts instead of the normal political processes. On the other hand, the manner in which courts craft standing law represents their normative judgment as to what extent such participation should be allowed."

[244] Vicente V. Mendoza, *The Nature and Function of Judicial Review*, 31 JOURNAL OF THE INTEGRATED BAR OF THE PHILS. 6, 10 (2005). Of course, Justice Mendoza's assessment is a slight exaggeration; at the time he published the above article, there had already been a few serious efforts to examine the nature and basis of the power of review of our courts as well as the standards by which the exercise of that power must be guided. An excellent example of this is Oscar Franklin Tan's *The 2004 Canvass: It is Emphatically the Province and Duty of Congress to Say What Congress Is*, 79 PHIL. L.J. 39 (2004).

[245] *See* Davis v. Passman, 442 U.S. 228 (1979).

made their standards of standing any less stilted.[246] Also, there might be weightier policy considerations, not exclusive to standing, which are beyond the scope of this paper (an example of this would be the Court's perceived need "to formulate controlling principles to guide the bench, the bar, the public and, most especially, the government").[247] Finally, as discussed in Part VIII, the liberalization of our doctrine of standing is just a part of a larger trend of "relaxation of judicial review's traditional restraints."[248] It would take more than a legal monograph to ensure the stability of any legal doctrine, much less one as erratic as that of *locus standi.* But, by demonstrating the stiltedness of these standards and identifying enduring policy considerations which, having been pointed out, might now be more vigorously discussed, this paper hopes to add to the cement which might one day make concrete the foundations of our law on legal standing.

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[246] In his comments on the first draft of this paper, Professor Solomon Lumba noted that this might suggest a more dominant source for the stilting which the paper might not have addressed; *See* Tribe, *supra* note 21, at 118 (which provides that "Despite the clarity and growing simplicity of the standing doctrine, its basic structure remains impressionistic and highly discretionary.").

[247] The Province of North Cotabato v. The Gov't of the Republic of the Phils. Peace Panel on Ancestral Domain, G.R. No. 183591, 568 SCRA 402, 464, Oct. 14, 2008. (*On the other hand,* Oscar Franklin Tan posits that this assertion "arguably borders on judicial legislation, particularly if these principles are dicta enunciated outside the scope of judicial review."). *See* Oscar Franklin Tan, *The New Philippine Separation of Powers: How the Rulemaking Power May Expand Judicial Review Into True Judicial Supremacy*, 83 PHIL. L.J. 868, 890 (2009).

[248] Tan, *supra* note 247, at 880.