

## EN BANC

**[ G.R. No. 143855, September 21, 2010 ]**

**REPRESENTATIVES GERARDO S. ESPINA, ORLANDO FUA, JR., PROSPERO AMATONG, ROBERT ACE S. BARBERS, RAUL M. GONZALES, PROSPERO PICHAY, JUAN MIGUEL ZUBIRI AND FRANKLIN BAUTISTA, PETITIONERS, VS. HON. RONALDO ZAMORA, JR. (EXECUTIVE SECRETARY), HON. MAR ROXAS (SECRETARY OF TRADE AND INDUSTRY), HON. FELIPE MEDALLA (SECRETARY OF NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY), GOV. RAFAEL BUENAVENTURA (BANGKO SENTRAL NG PILIPINAS) AND HON. LILIA BAUTISTA (CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION), RESPONDENTS.**

### D E C I S I O N

**ABAD, J.:**

This case calls upon the Court to exercise its power of judicial review and determine the constitutionality of the Retail Trade Liberalization Act of 2000, which has been assailed as in breach of the constitutional mandate for the development of a self-reliant and independent national economy effectively controlled by Filipinos.

#### The Facts and the Case

On March 7, 2000 President Joseph E. Estrada signed into law Republic Act (R.A.) 8762, also known as the Retail Trade Liberalization Act of 2000. It expressly repealed R.A. 1180, which absolutely prohibited foreign nationals from engaging in the retail trade business. R.A. 8762 now allows them to do so under four categories:

Category A	Less than US\$2,500,000.00	Exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.
Category B	US\$2,500,000.00 up but less than US\$7,500,000.00	For the first two years of R.A. 8762's effectivity, foreign ownership is allowed up to 60%. After the two-year period, 100% foreign equity shall be allowed.
Category C	US\$7,500,000.00 or more	May be wholly owned by foreigners. Foreign investments for

		establishing a store in Categories B and C shall not be less than the equivalent in Philippine Pesos of US\$830,000.00.
Category D	US\$250,000.00 per store of foreign enterprises specializing in high-end or luxury products	May be wholly owned by foreigners.

R.A. 8762 also allows natural-born Filipino citizens, who had lost their citizenship and now reside in the Philippines, to engage in the retail trade business with the same rights as Filipino citizens.

On October 11, 2000 petitioners Magtanggol T. Gunigundo I,<sup>\*</sup> Michael T. Defensor,<sup>\*</sup> Gerardo S. Espina, Benjamin S. Lim,<sup>\*</sup> Orlando Fua, Jr., Prospero Amatong, Sergio Apostol,<sup>\*</sup> Robert Ace S. Barbers, Enrique Garcia, Jr.,<sup>\*</sup> Raul M. Gonzales, Jaime Jacob,<sup>\*</sup> Apolinario Lozada, Jr.,<sup>\*</sup> Leonardo Montemayor,<sup>\*</sup> Ma. Elena Palma-Gil,<sup>\*</sup> Prospero Pichay, Juan Miguel Zubiri and Franklin Bautista, all members of the House of Representatives, filed the present petition, assailing the constitutionality of R.A. 8762 on the following grounds:

*First*, the law runs afoul of Sections 9, 19, and 20 of Article II of the Constitution which enjoins the State to place the national economy under the control of Filipinos to achieve equal distribution of opportunities, promote industrialization and full employment, and protect Filipino enterprise against unfair competition and trade policies.

*Second*, the implementation of R.A. 8762 would lead to alien control of the retail trade, which taken together with alien dominance of other areas of business, would result in the loss of effective Filipino control of the economy.

*Third*, foreign retailers like Walmart and K-Mart would crush Filipino retailers and *sari-sari* store vendors, destroy self-employment, and bring about more unemployment.

*Fourth*, the World Bank-International Monetary Fund had improperly imposed the passage of R.A. 8762 on the government as a condition for the release of certain loans.

*Fifth*, there is a clear and present danger that the law would promote monopolies or combinations in restraint of trade.

Respondents Executive Secretary Ronaldo Zamora, Jr., Trade and Industry Secretary Mar Roxas, National Economic and Development Authority (NEDA) Secretary Felipe Medalla, Bangko Sentral ng Pilipinas Gov. Rafael Buenaventura, and Securities and Exchange Commission Chairman Lilia Bautista countered that:

*First*, petitioners have no legal standing to file the petition. They cannot invoke the fact that they are taxpayers since R.A. 8762 does not involve the disbursement of public funds. Nor can they invoke the fact that they are members of Congress since they made no claim that the law infringes on their right as legislators.

*Second*, the petition does not involve any justiciable controversy. Petitioners of course claim that, as members of Congress, they represent the small retail vendors in their respective districts but the petition does not allege that the subject law violates the rights of those vendors.

*Third*, petitioners have failed to overcome the presumption of constitutionality of R.A. 8762. Indeed, they could not specify how the new law violates the constitutional provisions they cite. Sections 9, 19, and 20 of Article II of the Constitution are not self-executing provisions that are judicially demandable.

*Fourth*, the Constitution mandates the regulation but not the prohibition of foreign investments. It directs Congress to reserve to Filipino citizens certain areas of investments upon the recommendation of the NEDA and when the national interest so dictates. But the Constitution leaves to the discretion of the Congress whether or not to make such reservation. It does not prohibit Congress from enacting laws allowing the entry of foreigners into certain industries not reserved by the Constitution to Filipino citizens.

### **The Issues Presented**

Simplified, the case presents two issues:

1. Whether or not petitioner lawmakers have the legal standing to challenge the constitutionality of R.A. 8762; and
2. Whether or not R.A. 8762 is unconstitutional.

### **The Court's Ruling**

**One.** The long settled rule is that he who challenges the validity of a law must have a standing to do so.<sup>[1]</sup> Legal standing or *locus standi* refers to the right of a party to come to a court of justice and make such a challenge. More particularly, standing refers to his personal and substantial interest in that he has suffered or will suffer direct injury as a result of the passage of that law.<sup>[2]</sup> To put it another way, he must show that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the law he complains of.<sup>[3]</sup>

Here, there is no clear showing that the implementation of the Retail Trade Liberalization Act prejudices petitioners or inflicts damages on them, either as taxpayers<sup>[4]</sup> or as legislators.<sup>[5]</sup> Still the Court will resolve the question they raise since the rule on standing can be relaxed for nontraditional plaintiffs like ordinary citizens, taxpayers, and legislators when as in this case the public interest so requires or the matter is of transcendental importance, of overarching significance