

G.R. No. 175356 – MANILA MEMORIAL PARK, INC. AND LA FUNERARIA PAZ-SUCAT, INC., Petitioners v. SECRETARY OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT and THE SECRETARY OF THE DEPARTMENT OF FINANCE, Respondents.

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Promulgated: December 03, 2013.

CONCURRING OPINION

BERSAMIN, J.:

At issue is the constitutionality of the treatment as a tax deduction by covered establishments of the 20% discount granted to senior citizens under Republic Act (RA) No. 9257 (*Expanded Senior Citizens Act of 2003*)¹ and the implementing rules and regulations issued by the Department of Social Welfare and Development (DSWD) and Department of Finance (DOF).

The assailed provision is Section 4 of the *Expanded Senior Citizens Act of 2003*, which provides –

SECTION 2. Republic Act. No. 7432 is hereby amended to read as follows:

x x x x

SEC. 4. *Privileges for the Senior Citizens.* – The senior citizens shall be entitled to the following:

- (a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: Provided That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

¹ Amended by RA No. 9994, February 15, 2010.

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The petitioners contend that Section 4, *supra*, violates Section 9, Article III of the Constitution, which mandates that “[p]rivate property shall not be taken for public use without just compensation.”

On the other hand, Justice del Castillo observes in his opinion ably written for the Majority that the validity of the 20% senior citizen discount must be upheld as an exercise by the State of its police power; and reminds that the issue has already been settled in *Carlos Superdrug Corporation v. Department of Social Welfare and Development*,² with the Court pronouncing therein that:

Theoretically, the treatment of the discount as a deduction reduces the net income of the private establishments concerned. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments, were it not for R.A. No. 9257.

The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit. This constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker’s gain but the owner’s loss. The word **just** is used to intensify the meaning of the word **compensation**, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.

Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.

The Court believes so.

The Senior Citizens Act was enacted primarily to maximize the contribution of senior citizens to nation-building, and to grant benefits and privileges to them for their improvement and well-being as the State considers them an integral part of our society.

The priority given to senior citizens finds its basis in the Constitution as set forth in the law itself. Thus, the Act provides:

SEC. 2. Republic Act No. 7432 is hereby amended to read as follows:

SECTION 1. *Declaration of Policies and Objectives.* – Pursuant to Article XV, Section 4 of the Constitution, it is the

² G.R. No. 166494, June 29, 2007, 526 SCRA 130.

duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: “The State shall provide social justice in all phases of national development.” Further, Article XIII, Section 11, provides: “The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children.” Consonant with these constitutional principles the following are the declared policies of this Act:

...

(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.

To implement the above policy, the law grants a twenty percent discount to senior citizens for medical and dental services, and diagnostic and laboratory fees; admission fees charged by theaters, concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement; fares for domestic land, air and sea travel; utilization of services in hotels and similar lodging establishments, restaurants and recreation centers; and purchases of medicines for the exclusive use or enjoyment of senior citizens. As a form of reimbursement, the law provides that business establishments extending the twenty percent discount to senior citizens may claim the discount as a tax deduction.

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as “the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs.” It is “[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.”

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its

nullification in view of the presumption of validity which every law has in its favor.³

The Majority hold that the 20% senior citizen discount is, by its nature and effects, “a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern.”⁴ As such, the discount may be properly viewed as a price regulatory measure that affects the profitability of establishments subjected thereto, only that: (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens.⁵ Nonetheless, the Majority posits that the discount has not been proved to be unreasonable, oppressive or confiscatory in the absence of evidence showing that its continued implementation causes an establishment to operate at a loss, or will be unconscionably detrimental to the business operations of covered establishments such as that of the petitioners.⁶

Submissions

I **JOIN** the Majority.

I **VOTE** for the dismissal of the petition in order to uphold the constitutionality of the tax deduction scheme as a valid exercise of the State’s police power.

I.

The 20% senior citizen discount under the *Expanded Senior Citizens Act* does not amount to compensable taking

The petitioners’ claim of unconstitutionality of the tax deduction scheme under the *Expanded Senior Citizens Act* rests on the premise that the 20% senior citizen discount was enacted by Congress in the exercise of its power of eminent domain.

Like the Majority, I cannot sustain the claim of the petitioners, because I find that the imposition of the discount does not emanate from the exercise of the power of eminent domain, but from the exercise of police power.

³ Id. at 141-144.

⁴ Decision, p. 19.

⁵ Id. at 20.

⁶ Id. at 21-22.

Let me explain.

Eminent domain is defined as –

[T]he power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon payment of just compensation." It is acknowledged as "an inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities of the whole community."⁷

The State's exercise of the power of eminent domain is not without limitations, but is constrained by Section 9, Article III of the Constitution, which requires that private property shall not be taken for public use without just compensation, as well as by the Due Process Clause found in Section 1,⁸ Article III of the Constitution. According to *Republic v. Vda. de Castellvi*,⁹ the requisites of taking in eminent domain are as follows: *first*, the expropriator must enter a private property; *second*, the entry into private property must be for more than a momentary period; *third*, the entry into the property should be under warrant or color of legal authority; *fourth*, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and, *fifth*, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.

The essential component of the proper exercise of the power of eminent domain is, therefore, the existence of *compensable taking*. There is *taking* when –

[T]he owner is actually deprived or dispossessed of his property; when there is a practical destruction or a material impairment of the value of his property or when he is deprived of the ordinary use thereof. There is a "taking" in this sense when the expropriator enters private property not only for a momentary period but for a more permanent duration, for the purpose of devoting the property to a public use in such a manner as to oust the owner and deprive him of all beneficial enjoyment thereof. For ownership, after all, "is nothing without the inherent rights of possession, control and enjoyment." Where the owner is deprived of the ordinary and beneficial use of his property or of its value by its being diverted to public use, there is taking within the Constitutional sense.¹⁰

As I see it, the nature and effects of the 20% senior citizen discount do not meet all the requisites of *taking* for purposes of exercising the power of

⁷ *Barangay Sindalan, San Fernando, Pampanga v. Court of Appeals*, G.R. No. 150640, March 22, 2007, 518 SCRA 649, 657-658.

⁸ Section 1. No person shall be deprived of his/her life, liberty, or property without due process of law.

⁹ No. L-20620, August 15, 1974, 58 SCRA 336, 350-352.

¹⁰ *Ansaldo v. Tantuico, Jr.*, G.R. No. 50147, August 3, 1990, 188 SCRA 300, 304.

eminent domain as delineated in *Republic v. Vda. de Castellvi*, considering that the second of the requisites, that the taking must be for more than a momentary period, is not met. I base this conclusion on the universal understanding of the term *momentary*, rendered in *Republic v. Vda. de Castellvi* thusly:

“Momentary” means, “lasting but a moment; of but a moment’s duration” (The Oxford English Dictionary, Volume VI, page 596); “lasting a very short time; transitory; having a very brief life; operative or recurring at every moment” (Webster’s Third International Dictionary, 1963 edition.) The word “momentary” when applied to possession or occupancy of (real) property should be construed to mean “a limited period” — not indefinite or permanent.¹¹

In concept, discount is an abatement or reduction made from the gross amount or value of anything; a reduction from a price made to a specific customer or class of customers.¹² Under the *Expanded Senior Citizens Act*, the 20% senior citizen discount is a special privilege granted only to senior citizens or the elderly, as defined by law,¹³ when a sale is made or a service is rendered by a covered establishment to a senior citizen or an elderly. The income or revenue corresponding to the amount of the discount granted to a senior citizen is thus unrealized only in the event that a sale is made or a service is rendered to a senior citizen. Verily, the discount is not availed of when there is no sale or service rendered to a senior citizen.

The amount of unrealized revenue or lost *potential* profits on the part of the covered establishment – should it be subsequently shown that the 20% senior citizen discount granted could have covered operating expenses – lacks the character of indefiniteness and permanence considering that the *taking* was conditioned upon the occurrence of a sale or service to a senior citizen. The tax deduction scheme is, therefore, not the compensation contemplated under Section 9, Article III of the Constitution.

Even assuming that the unrealized revenue or lost potential profits resulting from the grant of the 20% senior citizen discount qualifies as *taking* within the contemplation of the power of eminent domain, the tax deduction scheme suffices as a form of just compensation. For that purpose, just compensation is defined as –

[T]he full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker’s gain, but the owner’s loss. The word “just” is used to intensify the meaning of the word “compensation” and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be **real**, substantial, full, and

¹¹ Supra note 9, at 350.

¹² Webster’s Third New International Dictionary, p. 646.

¹³ “Senior citizen” or “elderly” shall mean any resident citizen of the Philippines at least sixty (60) years old. (Section 2(a), RA No. 9257).

ample. Indeed, the “just”-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property.¹⁴

The petitioners, relying on the ruling in *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,¹⁵ appear to espouse the view that the tax credit method, rather than the tax deduction scheme, meets the definition of just compensation. This, because “a *tax credit* reduces the tax due, including – whenever applicable – the *income tax* that is determined after applying the corresponding tax rates to *taxable income*” while a “*tax deduction*, on the other, reduces the income that is subject to tax in order to arrive at *taxable income*.”¹⁶

At the time when the supposed *taking* happens, *i.e.*, upon the sale of the goods or the rendition of a service to a senior citizen, the loss incurred by the covered establishment represents only the *gross amount of discount* granted to the senior citizen. At that point, the **real** equivalent of the property taken is the amount of unrealized income or revenue of the covered establishment, without the benefit of operating expenses and exemptions, if any. The tax deduction scheme substantially compensates such loss, therefore, because the loss corresponds to the real and actual value of the property at the time of taking.

II.

**The 20% senior citizen discount is
a *taking* in the form of regulation;
thus, just compensation is not required**

In *Didipio Earth Savers’ Multi-Purpose Association, Inc. v. Gozun*,¹⁷ the Court has distinguished the element of *taking* in eminent domain from the concept of *taking* in the exercise of police power, *viz*:

Property condemned under police power is usually noxious or intended for a noxious purpose; hence, no compensation shall be paid. Likewise, in the exercise of police power, property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state. Thus, an ordinance prohibiting theaters from selling tickets in excess of their seating capacity (which would result in the diminution of profits of the theater-owners) was upheld valid as this would promote the comfort, convenience and safety of the customers. In *U.S. v. Toribio*, the court upheld the provisions of Act No. 1147, a statute regulating the slaughter of carabao for the purpose of conserving an adequate supply of draft animals, as a valid exercise of police power, notwithstanding the property rights impairment that the

¹⁴ *National Power Corporation v. Diato-Bernal*, G.R. No. 180979, December 15, 2010, 638 SCRA 660, 669 (bold emphasis is supplied).

¹⁵ G.R. No. 159647, April 15, 2005, 456 SCRA 414.

¹⁶ *Id.* at 428-429.

¹⁷ G.R. No. 157882, March 30, 2006, 485 SCRA 586, 604-607.

ordinance imposed on cattle owners. A zoning ordinance prohibiting the operation of a lumber yard within certain areas was assailed as unconstitutional in that it was an invasion of the property rights of the lumber yard owners in *People v. De Guzman*. The Court nonetheless ruled that the regulation was a valid exercise of police power. A similar ruling was arrived at in *Seng Kee S Co. v. Earnshaw and Piatt* where an ordinance divided the City of Manila into industrial and residential areas.

A thorough scrutiny of the extant jurisprudence leads to a cogent deduction that where a property interest is merely restricted because the continued use thereof would be injurious to public welfare, or where property is destroyed because its continued existence would be injurious to public interest, there is no compensable taking. However, when a property interest is appropriated and applied to some public purpose, there is compensable taking.

According to noted constitutionalist, Fr. Joaquin Bernas, SJ, in the exercise of its police power regulation, the state restricts the use of private property, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. Use of the property by the owner was limited, but no aspect of the property is used by or for the public. The deprivation of use can in fact be total and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein.

If, however, in the regulation of the use of the property, somebody else acquires the use or interest thereof, such restriction constitutes compensable taking.

x x x x

While the power of eminent domain often results in the appropriation of title to or possession of property, it need not always be the case. Taking may include trespass without actual eviction of the owner, material impairment of the value of the property or prevention of the ordinary uses for which the property was intended such as the establishment of an easement

In order to determine whether a challenged legislation involves regulation or taking, the purpose of the law should be revisited, analyzed, and scrutinized.¹⁸ There is no more direct and better way to do so now than to look at the declared policies and objectives of the *Expanded Seniors Citizens Act*, to wit:

SECTION 1. *Declaration of Policies and Objectives.* – Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: ‘The State shall provide social justice in all phases of national development.’ Further, Article XIII, Section 11 provides: ‘The State shall adopt an integrated and comprehensive approach to health and other social services available to all the people at affordable cost. There shall be priority for the needs of the

¹⁸ Bernas, *The 1987 Constitution of the Republic of the Philippines A Commentary*, 2009 ed., p. 435.

underprivileged, sick, elderly, disabled, women and children.’ Consonant with these constitution principles the following are the declared policies of this Act:

(a) To motivate and encourage the senior citizens to contribute to nation building;

(b) To encourage their families and the communities they live with to reaffirm the valued Filipino tradition of caring for the senior citizens;

(c) To give full support to the improvement of the total well-being of the elderly and their full participation in society considering that senior citizens are integral part of Philippine society;

(d) To recognize the rights of senior citizens to take their proper place in society. This must be the concern of the family, community, and government;

(e) To provide a comprehensive health care and rehabilitation system for disabled senior citizens to foster their capacity to attain a more meaningful and productive ageing; and

(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.

In accordance with these policies, this Act aims to:

(1) establish mechanism whereby the contribution of the senior citizens are maximized;

(2) adopt measures whereby our senior citizens are assisted and appreciated by the community as a whole;

(3) establish a program beneficial to the senior citizens, their families and the rest of the community that they serve; and

(4) establish community-based health and rehabilitation programs in every political unit of society. (Bold emphasis supplied)

As the foregoing shows, the 20% senior citizen discount forbids a covered establishment from selling certain goods or rendering services to senior citizens in excess of 80% of the offered price, thereby causing a diminution in the revenue or profits of the covered establishment. The amount corresponding to the discount, instead of being converted to income of the covered establishments, is *retained* by the senior citizen to be used by him in order to promote his well-being, to recognize his important role in society, and to maximize his contribution to nation-building. Although a form of regulation of or limitation on property right is thereby manifest, what the law clearly and primarily intends is to grant benefits and special privileges to senior citizens.

A new question necessarily arises. Can a law, whose chief purpose is to give benefits to a special class of citizens, be justified as a valid exercise of the State's police power?

Police power, insofar as it is being exercised by the State, is depicted as a regulating, prohibiting, and punishing power. It is neither benevolent nor generous. Unlike traditional regulatory legislations, however, the *Expanded Senior Citizens Act* does not intend to prevent any evil or destroy anything obnoxious. Even so, the *Expanded Senior Citizens Act* remains a valid exercise of the State's police power. The ruling in *Binay v. Domingo*,¹⁹ which involves police power as exercised by a local government unit pursuant to the general welfare clause, proves instructive. Therein, the erstwhile Municipality of Makati had passed a resolution granting burial assistance of P500.00 to qualified beneficiaries, to be taken out of the unappropriated available existing funds from the Municipal Treasury.²⁰ The Commission on Audit disallowed on the ground that there was "no perceptible connection or relation between the objective sought to be attained under Resolution No. 60, s. 1988, *supra*, and the alleged public safety, general welfare, etc. of the inhabitants of Makati."²¹ In upholding the validity of the resolution, the Court ruled:

Municipal governments exercise this power under the general welfare clause: pursuant thereto they are clothed with authority to 'enact such ordinances and issue such regulations as may be necessary to carry out and discharge the responsibilities conferred upon it by law, and such as shall be necessary and proper to provide for the health, safety, comfort and convenience, maintain peace and order, improve public morals, promote the prosperity and general welfare of the municipality and the inhabitants thereof, and insure the protection of property therein.' (Sections 91, 149, 177 and 208, BP 337). And under Section 7 of BP 337, 'every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary and proper for governance such as to promote health and safety, enhance prosperity, improve morals, and maintain peace and order in the local government unit, and preserve the comfort and convenience of the inhabitants therein.'

Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people. It is the most essential, insistent, and illimitable of powers. In a sense it is the greatest and most powerful attribute of the government. It is elastic and must be responsive to various social conditions. (Sangalang, et al. vs. IAC, 176 SCRA 719). On it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property, and it has been said to be the very foundation on which our social system rests. (16 C.J.S., p. 896) **However, it is not confined within narrow circumstances of**

¹⁹ G.R. No. 92389, September 11, 1991, 201 SCRA 508.

²⁰ Id. at 511.

²¹ Id. at 512.

precedents resting on past conditions; it must follow the legal progress of a democratic way of life. (Sangalang, et al. vs. IAC, *supra*).

In the case at bar, COA is of the position that there is 'no perceptible connection or relation between the objective sought to be attained under Resolution No. 60, s. 1988, *supra*, and the alleged public safety, general welfare etc. of the inhabitants of Makati.' (Rollo, Annex "G", p. 51).

Apparently, COA tries to redefine the scope of police power by circumscribing its exercise to 'public safety, general welfare, etc. of the inhabitants of Makati.'

In the case of Sangalang vs. IAC, *supra*, We ruled that police power is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensiveness. Its scope, over-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuring the greatest benefits.

The police power of a municipal corporation is broad, and has been said to be commensurate with, but not to exceed, the duty to provide for the real needs of the people in their health, safety, comfort, and convenience as consistently as may be with private rights. It extends to all the great public needs, and, in a broad sense includes all legislation and almost every function of the municipal government. It covers a wide scope of subjects, and, while it is especially occupied with whatever affects the peace, security, health, morals, and general welfare of the community, it is not limited thereto, but is broadened to deal with conditions which exist so as to bring out of them the greatest welfare of the people by promoting public convenience or general prosperity, and to everything worthwhile for the preservation of comfort of the inhabitants of the corporation (62 C.J.S. Sec. 128). Thus, it is deemed inadvisable to attempt to frame any definition which shall absolutely indicate the limits of police power.

COA's additional objection is based on its contention that 'Resolution No. 60 is still subject to the limitation that the expenditure covered thereby should be for a public purpose, xxx should be for the benefit of the whole, if not the majority, of the inhabitants of the Municipality and not for the benefit of only a few individuals as in the present case.' (Rollo, Annex 'G', p. 51).

COA is not attuned to the changing of the times. Public purpose is not unconstitutional merely because it incidentally benefits a limited number of persons. As correctly pointed out by the Office of the Solicitor General, 'the drift is towards social welfare legislation geared towards state policies to provide adequate social services (Section 9, Art. II, Constitution), the promotion of the general welfare (Section 5, *ibid*) social justice (Section 10, *ibid*) as well as human dignity and respect for human rights (Section 11, *ibid*).' (Comment, p. 12)

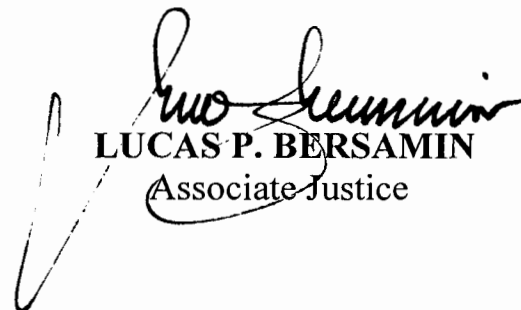
The care for the poor is generally recognized as a public duty. The support for the poor has long been an accepted exercise of police

power in the promotion of the common good.²² (Bold emphasis supplied.)

The *Expanded Senior Citizens Act* is similar to the municipal resolution in *Binay* because both accord benefits to a specific class of citizens, and both on their faces do not primarily intend to burden or regulate any person in giving such benefit. On the one hand, the *Expanded Senior Citizens Act* aims to achieve this by, among others, requiring select establishments to grant senior citizens the 20% discount for their goods or services, while, on the other, the municipal resolution in *Binay* appropriated money from the Municipal Treasury to achieve its goal of giving support to the poor.

If the Court sustained in *Binay* a municipality's exercise of police power to enact benevolent and beneficial resolutions, we have a greater reason to uphold the State's exercise of the same power through the enactment of a law of a similar nature. Indeed, it is but opportune for the Court to now make an unequivocal and definitive pronouncement on this new dimension of the State's police power.

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



LUCAS P. BERSAMIN
Associate Justice

²² Id. at 514-516.