Republic of the Philippines
Supreme Court
Manila

EN BANC

JESUS NICARDO M. FALCIS, III, Petitioner, -versus- **CIVIL REGISTRAR GENERAL,** Respondent. **LGBTS CHRISTIAN CHURCH, INC., REVEREND CRESENCIO "CEEJAY" AGBAYANI, JR., MARLON FELIPE, AND MARIA ARLYN "SUGAR" IBAÑEZ,** Petitioners-in-Intervention. **ATTY. FERNANDO P. PERITO, ATTY. RONALDO T. REYES, ATTY. JEREMY I. GATDULA, ATTY. CRISTINA A. MONTES, AND ATTY. RUFINO POLICARPIO III,** Intervenors-Oppositors.	**G.R. No. 217910** Present: BERSAMIN, *J., Chief Justice,* CARPIO, PERALTA, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA, REYES, A., JR., GESMUNDO, REYES, J., JR., HERNANDO, CARANDANG, LAZARO-JAVIER, INTING, and ZALAMEDA, *JJ.* **Promulgated:** September 3, 2019

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DECISION

LEONEN, *J.*:

Cultural hegemony often invites people to conform to its impositions on their identities. Yet, there are some who, despite pressures, courageously choose to be authentic to themselves. This case is about the assurance of genuine individual autonomy within our constitutional legal order. It is about the virtue of tolerance and the humane goal of non-discrimination. It is about diversity that encourages meaningful—often passionate—deliberation. Thus, it is about nothing less than the quality of our freedom.

This Court does not have a monopoly in assuring this freedom. With the most difficult political, moral, and cultural questions, the Constitution requires that we share with the political departments of government, especially with Congress, the quest for solutions which balance interests while maintaining fealty to fundamental freedoms.

Adjudication enables arguments between parties with respect to the existence and interpretation of fundamental freedoms. On the other hand, legislation ideally allows public democratic deliberation on the various ways to assure these fundamental rights. The process of legislation exposes the experiences of those who have been oppressed, ensuring that they are understood by those who stand with the majority. Often, public reason needs to be first shaped through the crucible of campaigns and advocacies within our political forums before it is sharpened for judicial fiat.

Judicial wisdom is, in large part, the art of discerning when courts choose not to exercise their perceived competencies.

In this case, this Court unanimously chooses the path of caution.

Those with sexual orientations other than the heteronormative, gender identities that are transgender or fluid, or gender expressions that are not the usual manifestations of the dominant and expected cultural binaries—the lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities (LGBTQI+) community—have suffered enough marginalization and discrimination within our society. We choose to be careful not to add to these burdens through the swift hand of judicial review.

Marriage, as conceived in our current laws, may hew to the dominant heteronormative model, but asserting by judicial fiat that it should—with all its privileges and burdens—apply to same-sex couples as well will require a

precision in adjudication, which the circumstances in this case do not present. To do so assumes a blind unproven judicial faith that the shape of marriage in our current laws will be benign for same-sex couples. Progressive passion asserted recklessly may unintentionally impose more burdens rather than less.

The pleadings assert a broad right of same-sex couples to official legal recognition of their intimate choices. They certainly deserve legal recognition in some way. However, whether such recognition should come by way of the exact same bundle of rights granted to heterosexual couples in our present laws is a proposition that should invite more public discussion in the halls of Congress.

Given the factual context of this case, this Court declines, for now, to grant the broad relief prayed for in the Petition.

Furthermore, the exercise of this Court's power of judicial review is among the most elementary matters imparted to aspiring lawyers. One who brandishes himself a lawyer is rightly presumed to be well-acquainted with the bare rudiments of court procedure and decorum. To forget these rules and practices—or worse, to purport to know them, but really, only to exploit them by way of propaganda—and then, to jump headlong into the taxing endeavor of constitutional litigation is a contemptuous betrayal of the high standards of the legal profession.

Lawyers, especially those engaged in public interest litigation, should always be mindful that their acts and omissions before the courts do not only affect themselves. By thrusting themselves into the limelight to take up the cudgels on behalf of a minority class, public interest lawyers represent the hopes and aspirations of a greater mass of people, not always with the consent of all the members of that class. Their errors and mistakes, their negligence and lethargy have a ripple effect even on persons who have no opportunity to consent to the stratagems and tactics employed by ill-prepared and sophomoric counsels.

On May 18, 2015, Jesus Nicardo M. Falcis III (Falcis) filed *pro se* before this Court a Petition for Certiorari and Prohibition under Rule 65 of the 1997 Rules of Civil Procedure.[1] His Petition sought to "declare Articles 1 and 2 of the Family Code as unconstitutional and, as a consequence, nullify Articles 46(4)[2] and 55(6)[3] of the Family Code."[4]

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1 *Rollo*, pp. 3–33.

2 FAMILY CODE, art. 46 states:

ARTICLE 46. Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

Falcis claims that a resort to Rule 65 was appropriate, citing[5] *Magallona v. Executive Secretary*,[6] *Araullo v. Executive Secretary*,[7] and the separate opinion[8] of now-retired Associate Justice Arturo D. Brion (Associate Justice Brion) in *Araullo*. Again citing Associate Justice Brion's separate opinion, he claims that this Court should follow a "'fresh' approach to this Court's judicial power"[9] and find that his Petition pertains to a constitutional case attended by grave abuse of discretion.[10] He also asserts that the mere passage of the Family Code, with its Articles 1 and 2, was a *prima facie* case of grave abuse of discretion,[11] and that the issues he raised were of such transcendental importance[12] as to warrant the setting aside of procedural niceties.

Falcis further argues that his Petition complied with the requisites of judicial review: (1) actual case or controversy; (2) standing; (3) was raised at the earliest opportunity; and (4) that the constitutional question is the very *lis mota* of the case.[13] As to standing, he claims that his standing consisted in his personal stake in the outcome of the case, as he "is an open and self-

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(1) Non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;

(2) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;

(3) Concealment of a sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or

(4) Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.

No other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.

3 FAMILY CODE, art. 55 states:

ARTICLE 55. A petition for legal separation may be filed on any of the following grounds:

(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

(2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;

(3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;

(4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;

(5) Drug addiction or habitual alcoholism of the respondent;

(6) Lesbianism or homosexuality of the respondent;

(7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;

(8) Sexual infidelity or perversion;

(9) Attempt by the respondent against the life of the petitioner; or

(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

For purposes of this Article, the term "child" shall include a child by nature or by adoption.

4 *Rollo*, p. 31.

5 Id. at 6–7.

6 671 Phil. 243 (2011) [Per J. Carpio, En Banc].

7 752 Phil. 716 (2014) [Per J. Bersamin, En Banc].

8 Id. at 797–841.

9 *Rollo*, p. 7.

10 Id. at 7–8.

11 Id. at 9.

12 Id. at 10–11.

13 Id. at 11–12.

identified homosexual"[14] who alleges that the Family Code has a "normative impact"[15] on the status of same-sex relationships in the country. He was also allegedly injured by the supposed "prohibition against the right to marry the same-sex[,]"[16] which prevents his plans to settle down in the Philippines.[17]

Falcis justifies the direct recourse to this Court by citing, in addition to the alleged transcendental importance of the issues he raised, the supposed lack of need for trial concerning any factual issues. He also insists that the constitutionality of Articles 1 and 2 of the Family Code were the very *lis mota* of his case.[18]

According to Falcis, a facial challenge on Articles 1 and 2 is permitted as these two (2) provisions regulate fundamental rights such as "the right to due process and equal protection, right to decisional and marital privacy, and the right to found a family in accordance with religious convictions."[19]

Falcis further claims that strict scrutiny should be the test used in appraising the constitutionality of Articles 1 and 2 of the Family Code, and that the compelling state interest involved is the protection of marriage pursuant to Article XV, Section 2 of the Constitution, not the protection of heterosexual relationships.[20] He argues that like opposite-sex couples, same-sex couples are equally capable of founding their own families and fulfilling essential marital obligations.[21] He claims that contrary to *Chi Ming Tsoi v. Court of Appeals*,[22] procreation is not an essential marital obligation. Because there is allegedly no necessity to limit marriage as only between a man and a woman, Articles 1 and 2 of the Family Code are supposedly unconstitutional for depriving Falcis of his right to liberty without substantive due process of law.[23]

To support his allegation that strict scrutiny is the appropriate test, Falcis extensively referenced and quoted—devoting more than five (5) pages of his 29-page Petition—the separate concurring opinion of retired Chief Justice Reynato Puno (retired Chief Justice Puno) in *Ang Ladlad Party-list v.*

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14 Id. at 12. Although petitioner refers to himself as a "homosexual" and repeatedly uses the terms "homosexual," "heterosexual," and "sexuality," this Court will not use these terms as "the term 'homosexuality' has been associated in the past with deviance, mental illness, and criminal behavior, and these negative stereotypes may be perpetuated by biased language." (American Psychological Association, "Avoiding Heterosexual Bias in Language," American Psychologist September 1991, Volume 46, Issue No. 9, 973–974.) Any use shall only be in the context of a faithful reference to the parties' pleadings and/or averments, legal provisions, and works by other authors.

15 Id.

16 Id.

17 Id.

18 Id. at 13.

19 Id. at 14.

20 Id. at 17–18.

21 Id. at 18.

22 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division].

23 *Rollo*, pp. 19–20.

Commission on Elections.[24] However, he claims that retired Chief Justice Puno incorrectly concluded that the appropriate test is intermediate or heightened review.[25] Nonetheless, he argues that even under the rational basis test, there is a violation of the equal protection clause since there is no substantial distinction between same-sex and opposite-sex couples.[26]

Finally, Falcis claims that Articles 1 and 2 of the Family Code deny the existence of "individuals belonging to religious denominations that believe in same-sex marriage"[27] and that they have a "right to found a family in accordance with their religious convictions."[28] He claims that the religious weddings conducted by these denominations have been denied civil recognition "unlike the religious convictions of Catholics and Muslims."[29]

On June 30, 2015, this Court ordered the Civil Registrar General to comment on the Petition.[30]

On June 22, 2015, Fernando P. Perito (Perito) filed *pro se* an Answer-in-Intervention[31] to the Petition. He claims that the Petition failed to comply with several requirements of Rule 65, including: (1) the annexing of a certified true copy of the judgment, order, or resolution subject of the case; (2) there being no act of any tribunal, board, or officer exercising judicial or quasi-judicial functions; and (3) that the Petition had to be filed within 60 days from notice of the assailed judgment, order, or resolution.[32] Perito also claims that Falcis did not present any statistics or evidence showing discrimination against the LGBTQI+ community[33] and that Falcis did not show any specific injury, such as the denial of a marriage license or refusal of a solemnizing officer to officiate a same-sex marriage.[34]

Perito further points out that Falcis is estopped from questioning the validity of the Family Code, it having been effective since 1987.[35] He also extensively cites the Christian Bible as authority for defending Articles 1 and 2's limitation of marriage as between a man and a woman.[36]

This Answer-in-Intervention was treated by this Court as a motion to

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24 Id. at 21–27 citing *Ang Ladlad Party-list v. Commission on Elections*, 632 Phil. 32 (2010) [Per J. Del Castillo, En Banc].
25 Id. at 26–27.
26 Id. at 28.
27 Id. at 29.
28 Id.
29 Id. at 30.
30 Id. at 34–35.
31 Id. at 36–52.
32 Id. at 39.
33 Id. at 41–43.
34 Id. at 43.
35 Id. at 44.
36 Id. at 45–51.

intervene with answer-in-intervention, which was granted in this Court's July 28, 2015 Resolution.[37] This Court, in the same Resolution, further required Falcis to reply to the Answer-in-Intervention.

Falcis filed his Reply[38] to the Answer-in-Intervention on September 21, 2015. He reiterates his claims concerning his compliance with procedural requirements. His Reply was noted in this Court's October 6, 2015 Resolution.[39]

The Civil Registrar General, through the Office of the Solicitor General, filed its Comment (Ad Cautelam)[40] on March 29, 2016. It prays that this Court deny due course to or dismiss the Petition. It notes that the Petition was not in the nature of a class suit, but was instead personal only to Falcis.[41] Because of this, it claims that Falcis failed to show injury-in-fact and an actual case or controversy, but was rather seeking an advisory opinion that this Court cannot issue.[42]

The Civil Registrar General also faults Falcis for not impleading Congress, as his Petition actually challenged the current legislative policy on same-sex marriage, and not any act committed by the Civil Registrar-General.[43] Finally, it claims that Falcis has not proven that the issues in this case are of such transcendental importance, there being no law or facts contained in his Petition to determine any principles concerning the constitutionality of same-sex marriage in the Philippines.[44]

On April 7, 2016, LGBTS Christian Church, Inc. (LGBTS Church), Reverend Crescencio "Ceejay" Agbayani, Jr. (Reverend Agbayani), Marlon Felipe (Felipe), and Maria Arlyn "Sugar" Ibañez (Ibañez)—collectively, petitioners-intervenors—whose counsel was Falcis himself, filed a Motion for Leave to Intervene and Admit Attached Petition-in-Intervention.[45] They ask this Court to allow them to intervene in the proceedings, claiming that: (1) they offer further procedural and substantive arguments; (2) their rights will not be protected in a separate proceeding; and (3) they have an interest in the outcome of this case. They adopt by reference the arguments raised by Falcis in his Petition.[46]

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37 Id. at 53–55.
38 Id. at 66–74.
39 Id. at 76–77.
40 Id. at 111–130.
41 Id. at 115.
42 Id. at 115–116.
43 Id. at 116.
44 Id. at 123–124.
45 Id. at 132–134.
46 Id. at 132–133.

Subsequently, they filed their Petition-in-Intervention,[47] which is a Petition for Certiorari under Rule 65 of the Rules of Court, seeking the same reliefs as those in Falcis' Petition, namely: (1) the declaration of unconstitutionality of Articles 1 and 2 of the Family Code; and (2) the invalidation of Articles 46(4) and 55(6) of the Family Code.[48]

Similar to Falcis, petitioners-intervenors claim that a petition for certiorari under Rule 65 is an appropriate remedy.[49] They aver that the requisites of judicial review are present. First, they have an actual case or controversy since petitioners-intervenors Reverend Agbayani, Felipe, and Ibañez were supposedly denied a marriage license on August 3, 2015.[50] Second, they have legal standing. LGBTS Church claims third-party standing, even as it also claims that its own right to religious freedom was directly, not just indirectly violated. Petitioners-intervenors Reverend Agbayani, Felipe, and Ibañez claim standing on the basis of their supposed attempts to secure marriage licenses. This was despite LGBTS Church claiming that it has third-party standing because its own members, which included petitioners-intervernors Reverend Agbayani, Felipe, and Ibañez, were "unlikely"[51] to file suit.[52]

Petitioners-intervenors restate Falcis' claims that the issues were raised at the earliest opportunity, that the constitutionality of Articles 1 and 2 of the Family Code is the *lis mota* of the case, and that a direct recourse to this Court was proper.[53]

Petitioners-intervenors use arguments from Christian theology to prove that there should be no civil restriction against same-sex marriage.[54] They also claim that the lack of civil recognition for their religious ceremonies, as contrasted with the recognition granted to "Filipino Catholics and Filipino Muslims[,]"[55] violate the equal protection clause.[56]

This Court noted the Motion to Intervene and Petition-in-Intervention in its June 7, 2016 Resolution.[57]

On August 10, 2016, Falcis filed a Motion to Set the Case for Oral

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47 Id. at 135–155.
48 Id. at 136.
49 Id. at 138.
50 Id. at 139.
51 Id. at 140.
52 Id. at 139–140.
53 Id. at 140–143.
54 Id. at 144–150.
55 Id. at 151.
56 Id. at 150–151.
57 Id. at 158–159.

Arguments.[58] He also filed a Reply[59] to the Comment (Ad Cautelam), again reiterating his procedural arguments.

In compliance with this Court's December 6, 2016 Resolution,[60] the Office of the Solicitor General manifested[61] that it was maintaining the arguments stated in its Comment (Ad Cautelam), but reserved its right to comment on the Petition-in-Intervention. Its Manifestation was noted in this Court's February 7, 2017 Resolution.[62]

On March 28, 2017, this Court granted the Motion for Leave to Intervene and Admit Petition-in-Intervention and required the Civil Registrar General and Perito to comment on the Petition-in-Intervention.[63]

The Civil Registrar General filed its Comment (Ad Cautelam) on the Petition-in-Intervention,[64] which this Court noted in its August 8, 2017 Resolution.[65] The Civil Registrar General claims that the issues raised in the Petition are political questions, saying that marriage's legal definition is a policy issue for Congress to determine,[66] and that any amendment to the definition in Articles 1 and 2 of the Family Code should be addressed to Congress.[67]

In a March 6, 2018 Resolution,[68] this Court set the case for oral arguments, with a scheduled preliminary conference on June 5, 2018.[69] Perito manifested that he would not be able to attend the preliminary conference.[70]

During the preliminary conference, Falcis, who appeared on his own behalf and on behalf of petitioners-intervenors, was ordered to show cause why he should not be cited in direct contempt:

> Considering that petitioner Jesus Nicardo M. Falcis III was attired with a casual jacket, cropped jeans and loafers without socks, Associate Justice Marvic M.V.F. Leonen directed him to show cause by June 6, 2018, why he should not be cited in direct contempt for his failure to observe the required decorum during the preliminary conference which is

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58 Id. at 160–161.
59 Id. at 162–177.
60 Id. at 182–183.
61 Id. at 185–190.
62 Id. at 191–192.
63 Id. at 193–194.
64 Id. at 210–233.
65 Id. at 234.
66 Id. at 214–220.
67 Id. at 222–225.
68 Id. at 235.
69 Id. at 238.
70 Id. at 255–256.

> a formal session of the Court. Petitioner was likewise advised to request a briefing from his former professors, or the law firm he is going to retain, on the proper protocols to be observed inside the Court, to facilitate an orderly and smooth proceeding during the oral argument.[71]

On June 6, 2018, Falcis filed his Compliance[72] with the show-cause order. In a July 3, 2018 Resolution,[73] this Court found Falcis guilty of direct contempt of court:

> Atty. Falcis acted in a contumacious manner during the June 5, 2018 preliminary conference.
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> Atty. Falcis is not an uninformed layperson. He has been a member of the Philippine Bar for a number of years. As an officer of the court, he is duty bound to maintain towards this Court a respectful attitude essential to the proper administration of justice. He is charged with knowledge of the proper manner by which lawyers are to conduct themselves during judicial proceedings. His Lawyer's Oath and the Code of Professional Responsibility exhort him to maintain the requisite decency and to afford dignity to this Court.
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> Lawyers must serve their clients with competence and diligence. Under Rule 18.02 of the Code of Professional Responsibility, "[a] lawyer shall not handle any legal matter without adequate preparation." Atty. Falcis' appearance and behavior during the preliminary conference reveal the inadequacy of his preparation. Considering that the Advisory for Oral Arguments was served on the parties three (3) months prior to the preliminary conference, it was inexcusably careless for any of them to appear before this Court so barely prepared.
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> The preliminary conference was not mere make-work. Rather, it was essential to the orderly conduct of proceedings and, ultimately, to the judicious disposition of this case. Appearance in it by counsels and parties should not be taken lightly.
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> Atty. Falcis jeopardized the cause of his clients. Without even uttering a word, he recklessly courted disfavor with this Court. His bearing and demeanor were a disservice to his clients and to the human rights advocacy he purports to represent.[74] (Citation omitted)

Falcis was admonished to properly conduct himself in court and to be more circumspect of the duties attendant to his being a lawyer. He was sternly warned that any further contemptuous acts shall be dealt with more severely.[75]

On June 8, 2018, Ronaldo T. Reyes, Jeremy I. Gatdula, Cristina A.

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71 Id. at 258.
72 Id. at 273–275.
73 Id. at 601–605.
74 Id.at 603–604.
75 Id. at 604.

Montes, and Rufino Policarpio III (intervenors-oppositors) filed a Motion for Leave to Intervene and to Admit the Opposition-in-Intervention.[76] They claim that they have a legal interest in this case since the grant of the Petition would run counter to their religious beliefs.[77]

In their Opposition-in-Intervention,[78] they claim that this Court has no jurisdiction to act upon the Petition, none of the requisites of justiciability having been met. They further assert that they have standing to intervene in these proceedings as the proposed definition of marriage in the Petition is contrary to their religious beliefs and religious freedom as guaranteed in Article III, Sections 4 and 5 of the Constitution. They claim to be concerned taxpayers who seek to uphold the Constitution.[79]

Intervenors-oppositors argue that granting the Petition would be tantamount to judicial legislation, thus violating the doctrine of separation of powers. They claim that the definition of marriage in the Family Code was a valid exercise of legislative prerogative which this Court must uphold.[80] Further, there is no grave abuse of discretion on the part of the Civil Registrar General, as there was no violation of the equal protection clause or of Falcis' right to liberty. They claim that there are substantial differences between opposite-sex and same-sex unions that account for state recognition only of the former, and that such limitation is for the common good.[81] For them, children's welfare is a compelling state interest justifying intrusion into certain liberties, including the non-recognition of same-sex marriage. They assert that there was no violation of the right to privacy since Falcis and petitioners-intervenors "are not prohibited from publicly identifying as homosexuals or from entering into same-sex relationships[.]"[82]

On June 13, 2018, Atty. Aldrich Fitz U. Dy (Atty. Dy), Atty. Keisha Trina M. Guangko (Atty. Guangko), Atty. Darwin P. Angeles (Atty. Angeles), and Atty. Alfredo B. Molo III (Atty. Molo) entered their appearance as co-counsels for Falcis and petitioners-intervenors .[83]

The Civil Registrar General filed its Supplemental Comment with Leave of Court[84] on June 14, 2018. Addressing the substantive issues of the Petition, it claims that since the Constitution only contemplates opposite-sex marriage in Article XV, Section 2 and other related provisions, Articles 1 and

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76 Id. at 276–280.
77 Id. at 277.
78 Id. at 281–289.
79 Id. at 283.
80 Id. at 284.
81 Id. at 284–285.
82 Id. at 286.
83 Id. at 290–293.
84 Id. at 294–341.

2 of the Family Code are constitutional.[85]

Oral arguments were conducted on June 19, 2018[86] and June 26, 2018.[87] On June 26, 2018, this Court ordered the parties to submit their respective memoranda within 30 days.[88]

On July 25, 2018, both the Civil Registrar General[89] and intervenors-oppositors[90] filed their respective Memoranda, which were noted in this Court's July 31, 2018 Resolution.[91]

On July 26, 2018, rather than file their memoranda, Falcis and petitioners-intervenors, through counsels Atty. Angeles, Atty. Guangko, and Atty. Christoper Ryan R. Maranan (Atty. Maranan) of Molo Sia Dy Tuazon Ty and Coloma Law Offices, filed a Motion for Extension of Time to File Memorandum.[92] Without this Court's prior favorable action on their Motion for Extension, they filed their Memorandum[93] on August 3, 2018.

In its August 7, 2018 Resolution,[94] this Court denied the Motion for Extension and dispensed with Falcis' and petitioners-intervenors' Memorandum. The Resolution read, in part:

> [W]ith the exception of Intervenor-Oppositor Atty. Fernando P. Perito, the other parties in this case have fully complied with this Court's Order within the imposed deadline. These show that even considering the complexity of issues to be resolved in this case, the parties are capable of submitting and filing their respective Memoranda.[95]

In the same Resolution, Falcis, Atty. Angeles, Atty. Guangko, and Atty. Maranan were all required[96] to show cause why they should not be cited in indirect contempt for failing to comply with this Court's June 26, 2018 Order.[97]

On August 9, 2018, Atty. Angeles, Atty. Guangko, and Atty. Maranan

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85 Id. at 303–336.
86 Id. at 596–600.
87 Id. at 600-A–600-C.
88 Id. at 600-C.
89 Id. at 606–671-A.
90 Id. at 672–703.
91 Id. at 703-A–703-B.
92 Id. at 704–710.
93 Id. at 715–843.
94 Id. at 711–714.
95 Id. at 712.
96 Id. at 713.
97 Id. at 600-A–600-C.

filed their Manifestation with Motion for Leave to Admit Memorandum.[98] They, along with Falcis, filed their Manifestation and Compliance with the August 7, 2018 Resolution on August 13, 2018.[99]

For this Court's resolution is the issue of whether or not the Petition and/or the Petition-in-Intervention are properly the subject of the exercise of our power of judicial review. Subsumed under this are the following procedural issues:

First, whether or not the mere passage of the Family Code creates an actual case or controversy reviewable by this Court;

Second, whether or not the self-identification of petitioner Jesus Nicardo M. Falcis III as a member of the LGBTQI+ community gives him standing to challenge the Family Code;

Third, whether or not the Petition-in-Intervention cures the procedural defects of the Petition; and

Fourth, whether or not the application of the doctrine of transcendental importance is warranted.

Should the Petition and/or Petition-in-Intervention show themselves to be appropriate subjects of judicial review, this Court may proceed to address the following substantive issues:

First, whether or not the right to marry and the right to choose whom to marry are cognates of the right to life and liberty;

Second, whether or not the limitation of civil marriage to opposite-sex couples is a valid exercise of police power;

Third, whether or not limiting civil marriages to opposite-sex couples violates the equal protection clause;

Fourth, whether or not denying same-sex couples the right to marry amounts to a denial of their right to life and/or liberty without due process of law;

Fifth, whether or not sex-based conceptions of marriage violate

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98 Id. at 924–928.
99 Id. at 1348–1353.

religious freedom;

Sixth, whether or not a determination that Articles 1 and 2 of the Family Code are unconstitutional must necessarily carry with it the conclusion that Articles 46(4) and 55(6) of the Family Code, on homosexuality and lesbianism as grounds for annulment and legal separation, are also unconstitutional; and

Finally, whether or not the parties are entitled to the reliefs prayed for.

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From its plain text, the Constitution does not define or restrict marriage on the basis of sex,[100] gender,[101] sexual orientation,[102] or gender identity or expression.[103]

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[100] *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AMERICAN PSYCHOLOGIST 832, 862 (2015), available at <https://www.apa.org/practice/guidelines/transgender.pdf> (last visited on September 2, 2019), provides:

> [S]ex is typically assigned at birth (or before during ultrasound) based on the appearance of external genitalia. When the external genitalia are ambiguous, other indicators (e.g., internal genitalia, chromosomal and hormonal sex) are considered to assign a sex, with the aim of assigning a sex that is most likely to be congruent with the child's gender identity. For most people, gender identity is congruent with sex assigned at birth ([known as] "cisgender"); for [transgender and gender non-conforming] individuals, gender identity differs in varying degrees from sex assigned at birth.

[101] Republic Act No. 11313 (2019), sec. 3(d) defines gender, as follows:

SECTION 3. *Definition of Terms.* — As used in this Act:

. . . .

(d) *Gender* refers to a set of socially ascribed characteristics, norms, roles, attitudes, values and expectations identifying the social behavior of men and women, and the relations between them[.]

Gender has also been defined in *Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients*, 67 AMERICAN PSYCHOLOGIST 10, 11 (2012), available at <https://www.apa.org/pubs/journals/features/amp-a0024659.pdf> (last visited on September 2, 2019), as follows:

Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural expectations is referred to as gender normative; behaviors that are viewed as incompatible with these expectations constitute gender nonconformity.

[102] *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AMERICAN PSYCHOLOGIST 832, 862 (2015), available at <https://www.apa.org/practice/guidelines/transgender.pdf> (last visited on September 2, 2019), provides:

> Sexual orientation: a component of identity that includes a person's sexual and emotional attraction to another person and the behavior and/or social affiliation that may result from this attraction. A person may be attracted to men, women, both, neither, or to people who are genderqueer, androgynous, or have other gender identities. Individuals may identify as lesbian, gay, heterosexual, bisexual, queer, pansexual, or asexual, among others.

[103] Republic Act No. 11313 (2019), sec. 3(f) defines gender identity and /or expression, as follows:

> SECTION 3. *Definition of Terms.* — As used in this Act:
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> . . . .
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> (f) *Gender identity and/or expression* refers to the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with physiological characteristics of the opposite sex, in which case this person is considered transgender[.]

Gender identity has also been defined in *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AMERICAN PSYCHOLOGIST 832, 862 (2015), available at

Article XV of the 1987 Constitution concerns the family and operates in conjunction with Article II, Section 12.[104] Article XV, Section 1 pertains to the family in general, identifying it "as the foundation of the nation[,]" and articulates the State's overarching commitment to "strengthen its solidarity and actively promote its total development."[105] Article XV, Section 2 concerns marriage, in particular, and articulates a broad commitment to protecting its inviolability as a social institution. It states:

> SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Lacking a manifestly restrictive textual definition of marriage, the Constitution is capable of accommodating a contemporaneous understanding of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). The plain text and meaning of our constitutional provisions do not prohibit SOGIESC. These constitutional provisions in particular, and the Constitution in general, should be read through the lens of "a holistic approach in legal interpretation"[106]:

> The more appropriate and more effective approach is, thus, holistic rather than parochial: to consider context and the interplay of the historical, the contemporary, and even the envisioned. Judicial interpretation entails the convergence of social realities and social ideals. The latter are meant to be effected by the legal apparatus, chief of which is

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<https://www.apa.org/practice/guidelines/transgender.pdf> (last visited on September 2, 2019), as follows:

Gender identity: a person's deeply felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or an alternative gender (e.g., genderqueer, gender nonconforming, gender neutral) that may or may not correspond to a person's sex assigned at birth or to a person's primary or secondary sex characteristics. Because gender identity is internal, a person's gender identity is not necessarily visible to others. "Affirmed gender identity" refers to a person's gender identity after coming out as [transgender and gender non-conforming] or undergoing a social and/or medical transition process.

Sexual Orientation, Gender Identity and Expression, and Sex Characteristics at the Universal Periodic Review, ARC INTERNATIONAL, THE INTERNATIONAL BAR ASSOCIATION AND THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION 14 (2016), available at <https://ilga.org/downloads/SOGIESC_at_UPR_report.pdf> (last visited on September 2, 2019), provides:

Gender expression: External manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine and feminine changes over time and varies by culture. Typically, transgender people seek to make their gender expression align with their gender identity, rather than the sex they were assigned at birth.

[104] CONST., art. II, sec. 12 provides:

SECTION 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

[105] CONST., art. XV, sec. 1 provides:

SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

[106] *David v. Senate Electoral Tribunal*, 795 Phil. 529, 573 (2016) [Per J. Leonen, En Banc].

> the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the vernacular that describes the Constitution — saligan — demonstrates this imperative of constitutional primacy.[107]

As a social institution, the family is shaped by economic forces and other social structural forces, such as ideologies and politics.[108] For instance, the discovery of agriculture has transformed the concept of family and marriage by elevating the ownership of property as a central consideration:

> *[T]he right to own land and pass it on to heirs meant that women's childbearing abilities and male domination became more important. Rather than kinship, marriage became the center of family life and was increasingly based on a formal contractual relationship between men, women, and their kinship groups.* The property and gender implications of marriage are evident in the exchange of gifts between spouses and families and clearly defined rules about the rights and responsibilities of each marital partner. During the Middle Ages, economic factors influenced marital choices more than affection, even among the poor, and women's sexuality was treated as a form of property (Coltrane and Adams 2008:54). Wealth and power inequalities meant that marriages among the elite and/or governing classes were based largely on creating political alliances and producing male children (Coontz 2005). *Ensuring paternity became important in the transfer of property to legitimate heirs, and the rights and sexuality of women were circumscribed.* Ideologies of male domination prevailed, and women, especially those who were married to powerful men, were typically treated like chattel and given very few rights.[109] (Emphasis supplied)

Consequently, this has placed great significance on procreation as a purpose or end of the family.

Then, in the 18th century, women and children were seen as capable of operating factory machinery and, thus, entered the factory labor system to meet the surge in the demand for workers.[110] This "potential for economic independence altered families by making children less reliant on families for their survival and women freer from male domination."[111]

Eventually, the economic transition that came with the spread of industrialization resulted in massive social, geographical, and familial changes:

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[107] *Social Weather Stations, Inc. v. Commission on Elections*, 757 Phil. 483, 521 (2015) [Per J. Leonen, En Banc]. See also *J. Leonen*, dissenting in *Chavez v. Judicial and Bar Council*, 709 Phil. 478 (2013) [Per J. Mendoza, En Banc].

[108] SHIRLEY A. HILL, FAMILIES: A SOCIAL CLASS PERSPECTIVE 2 (2011), available at <https://us.sagepub.com/sites/default/files/upm-binaries/41374_1.pdf> (last visited September 2, 2019).

[109] Id. at 7.

[110] Id. at 18–19.

[111] Id. at 19.

> Industrialization shifted populations from rural to urban areas in search of work; for example, in 1830 most Americans still lived in rural areas and were employed in farming, but by 1930, most lived in towns and cities and were engaged in non-farming occupations. Urbanization, immigration, and adjustment to the industrial labor market took a toll on the stability of families. Industrial production undermined the family-based economy, food production technologies reduced the need for farmers, and essentials once produced by families were now produced in massive quantities in factories. New professional institutions emerged (e.g., public schools, hospitals) and assumed responsibility for many of the functions once fulfilled by families, ultimately making people less dependent on the family and leading some social scientists to predict its demise.[112]

This reorganization of work in the industrial economy "disrupted the gender order of many families by pulling women into the paid labor force and spawning new visions of gender equality."[113] As a consequence, marriage based on free choice, romantic love, and companionship developed.[114]

Eventually, the modern family was seen primarily as:

> . . . a nuclear, marriage-based entity in which men provided economically for their families and women performed housework and took care of children. . . . Socially defined notions of masculinity and femininity reflected these gendered family roles; for example, men were characterized as being naturally aggressive and rational—traits valuable in the competitive area of work—and women as being essentially submissive, domestic, and nurturing.[115]

The evolution of the social concept of family reveals that heteronormativity in marriage is not a static anthropological fact. The perceived complementarity of the sexes is problematized by the changing roles undertaken by men and women, especially under the present economic conditions.

To continue to ground the family as a social institution on the concept of the complementarity of the sexes is to perpetuate the discrimination faced by couples, whether opposite-sex or same-sex, who do not fit into that mold. It renders invisible the lived realities of families headed by single parents, families formed by sterile couples, families formed by couples who preferred not to have children, among many other family organizations. Furthermore, it reinforces certain gender stereotypes within the family.

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[112] Id.
[113] Id. at 21.
[114] Id. at 21–22.
[115] Id. at 23–24.

II

In a proper case, a good opportunity may arise for this Court to review the scope of Congress' power to statutorily define the scope in which constitutional provisions are effected. This is not that case. The Petition before this Court does not present an actual case over which we may properly exercise our power of judicial review.

There must be narrowly-framed constitutional issues based on a justiciable controversy:

> Contemporaneous construction and aids that are external to the text may be resorted to when the text is capable of multiple, viable meanings. It is only then that one can go beyond the strict boundaries of the document. Nevertheless, even when meaning has already been ascertained from a reading of the plain text, contemporaneous construction may serve to verify or validate the meaning yielded by such reading.
>
> Limited resort to contemporaneous construction is justified by the realization that the business of understanding the Constitution is not exclusive to this Court. The basic democratic foundation of our constitutional order necessarily means that all organs of government, and even the People, read the fundamental law and are guided by it. When competing viable interpretations arise, a justiciable controversy may ensue requiring judicial intervention in order to arrive with finality at which interpretation shall be sustained. To remain true to its democratic moorings, however, judicial involvement must remain guided by a framework or deference and constitutional avoidance. This same principle underlies the basic doctrine that courts are to refrain from issuing advisory opinions. Specifically as regards this Court, only constitutional issues that are narrowly framed, sufficient to resolve an actual case, may be entertained.[116] (Citations omitted)

Founded on the principle of supremacy of law, judicial review is the courts' power to decide on the constitutionality of exercises of power by the other branches of government and to enforce constitutional rights.[117]

Judicial review is inherent in this Court's judicial power. Article VIII, Section 1 of the 1987 Constitution states:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and

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[116] *David v. Senate Electoral Tribunal*, 795 Phil. 529, 574–575 (2016) [Per J. Leonen, En Banc].

[117] *Gayacao v. Executive Secretary*, 121 Phil. 729, 732–733 (1965) [Per J. Reyes, J.B.L., En Banc]. *See also Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Article VIII, Section 1 expands the territory of justiciable questions and narrows the off-limits area of political questions. In *Estrada v. Desierto*:[118]

> To be sure, courts here and abroad, have tried to lift the shroud on political question but its exact latitude still splits the best of legal minds. Developed by the courts in the 20th century, the political question doctrine which rests on the principle of separation of powers and on prudential considerations, continue to be refined in the mills of constitutional law. In the United States, the most authoritative guidelines to determine whether a question is political were spelled out by Mr. Justice Brennan in the 1962 case of *Baker v. Carr*, viz:
>
> > ". . . Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department or a lack of judicially discoverable and manageable standards for resolving it, or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on question. Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for non justiciability on the ground of a political question's presence. The doctrine of which we treat is one of political questions', not of 'political cases'."
>
> In the Philippine setting, this Court has been continuously confronted with cases calling for a firmer delineation of the inner and outer perimeters of a political question. Our leading case is *Tañada v. Cuenco*, where this Court, through former Chief Justice Roberto Concepcion, held that political questions refer "to those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the legislative or executive branch of the government. It is concerned with issues dependent upon the *wisdom*, not *legality* of a particular measure." To a great degree, the 1987 Constitution has narrowed the reach of the political question doctrine when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable and enforceable *but also 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 government.* Heretofore, the judiciary

[118] 406 Phil. 1 (2001) [Per J. Puno, En Banc].

> has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. *Clearly, the new provision did not just grant the Court power of doing nothing.* In sync and symmetry with this intent are other provisions of the 1987 Constitution trimming the so called political thicket. Prominent of these provisions is section 18 of Article VII which empowers this Court in limpid language to ". . . review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ (of *habeas corpus*) or the extension thereof. . . ."[119] (Emphasis in the original, citations omitted)

Nonetheless, the expansion of this Court's judicial power is by no means an abandonment of the need to satisfy the basic requisites of justiciability.[120] In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*:[121]

> As a rule, "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.[122]

Fundamentally, for this Court to exercise the immense power that enables it to undo the actions of the other government branches, the following requisites must be satisfied: (1) there must be an actual case or controversy involving legal rights that are capable of judicial determination; (2) the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; (3) the constitutionality must be raised at the earliest possible opportunity, thus ripe for adjudication; and (4) the matter of constitutionality must be the very *lis mota* of the case, or that constitutionality must be essential to the disposition of the case.[123]

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[119] Id. at 41–43.

[120] *Ocampo v. Enriquez,* 798 Phil. 227, 288 (2016) [Per J. Peralta, En Banc] *citing Belgica v. Hon. Executive Secretary Ochoa, Jr.*, 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, En Banc].

[121] G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per J. Leonen, En Banc].

[122] Id.

[123] *Macasiano v. National Housing Authority*, 296 Phil. 56, 63–64 (1993) [Per C.J. Davide, Jr., En Banc]. *See also* J. Leonen, Concurring and Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28 (2014) [Per J. Abad, En Banc].

III

This Court's constitutional mandate does not include the duty to answer all of life's questions.[124] No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable."[125]

This Court does not issue advisory opinions.[126] We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests.[127] If this Court were to do otherwise and jump headlong into ruling on every matter brought before us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing:

> Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. *In other words, for there to be a real conflict between the parties, there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.*[128] (Emphasis in the original, citation omitted)

As this Court makes "final and binding construction[s] of law[,]"[129] our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system,[130] bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.[131]

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[124] *See* J. Leonen, Dissenting Opinion in *Imbong v. Ochoa*, 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

[125] *Bacolod-Murcia Planters' Association, Inc. v. Bacolod-Murcia Milling Company, Inc.*, 140 Phil. 457, 459 (1969) [Per J. Fernando, First Division].

[126] *Serrano v. Amores*, 159 Phil. 69, 71 (1975) [Per J. Fernando, Second Division].

[127] *Spouses Arevalo v. Planters Development Bank*, 686 Phil. 236, 248 (2012) [Per J. Sereno, Second Division].

[128] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per J. Leonen, En Banc].

[129] J. Leonen, Concurring Opinion in *Belgica v. Ochoa*, 721 Phil. 416, 661 (2013) [Per J. Perlas-Bernabe, En Banc].

[130] CIVIL CODE, art. 8 which states:

ARTICLE 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

[131] J. Leonen, Concurring Opinion in *Belgica v. Ochoa*, 721 Phil. 416, 661–662 (2013) [Per J. Perlas-

IV

It is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned. The judiciary interprets and applies the law. "It does not formulate public policy, which is the province of the legislative and executive branches of government."[132] Thus, it does not—by the mere existence of a law or regulation—embark on an exercise that may render laws or regulations inefficacious.

Lest the exercise of its power amount to a ruling on the wisdom of the policy imposed by Congress on the subject matter of the law, the judiciary does not arrogate unto itself the rule-making prerogative by a swift determination that a rule ought not exist. There must be an actual case, "a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."[133]

IV (A)

In *Philippine Press Institute, Inc. v. Commission on Elections*,[134] the petitioner did not assert a specific act committed against it by the Commission on Elections in enforcing or implementing the questioned law. This Court found that there was no actual case or controversy.

In *Garcia v. Executive Secretary*,[135] the core issue that the petitioner prayed for this Court to resolve was deemed to be delving into the policy or wisdom underlying the law. This Court noted that the full discretionary authority to formulate policy was vested in Congress.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[136] the possibility of abuse in the execution of law was deemed insufficient to trigger judicial review. This Court emphasized that there must first be an actual act of abuse.

In *Republic of the Philippines v. Roque*,[137] no actual case or controversy existed as the respondents could not point to an instance when the assailed law was said to have been implemented against them.

Bernabe, En Banc].

132 *Pagpalain Haulers, Inc. v. Trajano*, 369 Phil. 617, 627 (1999) [Per J. Romero, Third Division].

133 *Philippine Constitution Association v. Philippine Government,* 801 Phil. 472, 486 (2016) [Per J. Carpio, En Banc].

134 314 Phil. 131 (1995) [Per J. Feliciano, En Banc].

135 602 Phil. 64 (2009) [Per J. Brion, En Banc].

136 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

137 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, En Banc].

In *Corales v. Republic*,[138] the petition to assail an executive issuance was found to be premature and "based entirely on surmises, conjectures[,] and speculations."

In our 2018 ruling in *Provincial Bus Operators Association of the Philippines*,[139] an alleged diminution of the petitioners' income, wholly based on speculation, did not warrant the exercise of judicial review.

IV (B)

There are instances when this Court exercised the power of judicial review in cases involving newly-enacted laws.

In *Pimentel, Jr. v. Aguirre*,[140] this Court fixed the point at which a legal issue matures into an actual case or controversy—at the pre-occurrence of an "overt act":[141]

> In the unanimous *en banc case Tañada v. Angara*, this Court held that when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. *By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty.* Said the Court:
>
> > "In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. *Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. . . .* The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld.' *Once a 'controversy as to the application or interpretation of a constitutional provision is raised before this Court . . ., it becomes a legal issue which the Court is bound by constitutional mandate to decide.'*
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> > . . . .
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> > "As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the

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138 716 Phil. 432 (2013) [Per J. Perez, En Banc].

139 G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per J. Leonen, En Banc].

140 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].

141 Id. at 107.

> Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government."

In the same vein, the Court also held in *Tatad v. Secretary of the Department of Energy*:

> ". . . Judicial power includes not only the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, but also the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. The courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. Where the statute violates the Constitution, it is not only the right but the duty of the judiciary to declare such act unconstitutional and void."

By the same token, when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws, as in the present case, settling the dispute becomes the duty and the responsibility of the courts.[142] (Emphasis supplied, citations omitted)

Thus, in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*,[143] this Court stated: "[t]hat the law or act in question is not yet effective does not negate ripeness."[144]

Subsequently, this Court, in *Southern Hemisphere Engagement Network, Inc.*,[145] stated:

> The Court is not unaware that a reasonable certainty of the occurrence of a *perceived threat* to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be **sufficient facts** to enable the Court to intelligently adjudicate the issues.[146] (Emphasis in the original)

This Court's liberality in scrutinizing a petition for an actual case or controversy was more recently illustrated in *Belgica* and *Spouses Imbong v.*

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142 Id. at 107–108.

143 589 Phil. 387 (2008) [Per J. Carpio Morales, En Banc].

144 Id. at 484.

145 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

146 Id. at 481 *citing De Castro v. Judicial and Bar Council*, 629 Phil. 629 (2010) [Per J. Bersamin, En Banc]; *Buckley v. Valeo*, 424 U.S. 1, 113–118 (1976); and *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138–148 (1974).

Ochoa.[147] In *Belgica*, this Court found that there was an actual case or controversy:

> The requirement of contrariety of legal rights is clearly satisfied by the antagonistic positions of the parties on the constitutionality of the "Pork Barrel System." Also, the questions in these consolidated cases are ripe for adjudication since the challenged funds and the provisions allowing for their utilization — such as the 2013 GAA for the PDAF, PD 910 for the Malampaya Funds and PD 1869, as amended by PD 1993, for the Presidential Social Fund — are currently existing and operational; hence, there exists an immediate or threatened injury to petitioners as a result of the unconstitutional use of these public funds.[148]

Belgica was followed by *Araullo v. Aquino III*,[149] where this Court stated:

> An actual and justiciable controversy exists in these consolidated cases. The incompatibility of the perspectives of the parties on the constitutionality of the DAP and its relevant issuances satisfy the requirement for a conflict between legal rights. The issues being raised herein meet the requisite ripeness considering that the challenged executive acts were already being implemented by the DBM, and there are averments by the petitioners that such implementation was repugnant to the letter and spirit of the Constitution. Moreover, the implementation of the DAP entailed the allocation and expenditure of huge sums of public funds. The fact that public funds have been allocated, disbursed or utilized by reason or on account of such challenged executive acts gave rise, therefore, to an actual controversy that is ripe for adjudication by the Court.[150]

In *Spouses Imbong*, this Court found that there was an actual case or controversy, despite the Petition being a facial challenge:

> The OSG also assails the propriety of the facial challenge lodged by the subject petitions, contending that the RH Law cannot be challenged "on its face" as it is not a speech regulating measure.
>
> The Court is not persuaded.
>
> In United States *(US)* constitutional law, a **facial challenge**, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only **protected speech**, but also all other rights in the First Amendment. These include **religious freedom, freedom of the press**, and the **right of the people to peaceably assemble**, and to **petition the Government for a redress of grievances**. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's

147 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].
148 *Belgica v. Ochoa,* 721 Phil. 416, 520 (2013) [Per J. Perlas-Bernabe, En Banc].
149 737 Phil. 457 (2015) [Per J. Bersamin, En Banc].
150 Id. at 533.

> freedom of expression, as they are modes which one's thoughts are externalized.
>
> In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has **expanded** its scope to cover statutes not only regulating **free speech**, but also those involving **religious freedom**, and **other fundamental rights**. The underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also **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**. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution.
>
> Consequently, considering that the foregoing petitions have seriously alleged that the constitutional human rights to life, speech and religion and other fundamental rights mentioned above have been violated by the assailed legislation, the Court has authority to take cognizance of these kindred petitions and to determine if the RH Law can indeed pass constitutional scrutiny. To dismiss these petitions on the simple expedient that there exist no actual case or controversy, would diminish this Court as a reactive branch of government, acting only when the Fundamental Law has been transgressed, to the detriment of the Filipino people.[151] (Emphasis in the original, citations omitted)

IV (C)

Here, the Petition cannot be entertained as a facial challenge to Articles 1, 2, 46(4), and 55(6) of the Family Code.

A facial challenge is "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."[152] It is distinguished from "as-applied" challenges, which consider actual facts affecting real litigants.[153]

Facial challenges are only allowed as a narrow exception to the requirement that litigants must only present their own cases, their extant factual circumstances, to the courts. In *David v. Arroyo*:[154]

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151 732 Phil. 1, 125–126 (2014) [Per J. Mendoza, En Banc].

152 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 489 (2010) [Per J. Carpio Morales, En Banc].

153 Id.

154 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

> [F]acial invalidation of laws is considered as "manifestly strong medicine," to be used "sparingly and only as a last resort," and is "generally disfavored;" The reason for this is obvious. Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, *i.e.*, in other situations not before the Court. A writer and scholar in Constitutional Law explains further:
>
> > The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the "chilling;" deterrent effect of the overbroad statute on third parties not courageous enough to bring suit. The Court assumes that an overbroad law's "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties.[155]

However, in *Disini, Jr. v. Secretary of Justice*,[156] this Court distinguished those facial challenges that could be properly considered as presenting an actual case or controversy:

> When a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable. The inapplicability of the doctrine must be carefully delineated. As Justice Antonio T. Carpio explained in his dissent in *Romualdez v. Commission on Elections*, "we must view these statements of the Court on the inapplicability of the overbreadth and vagueness doctrines to penal statutes as appropriate only insofar as these doctrines are used to mount 'facial' challenges to penal statutes not involving free speech."
>
> In an "as applied" challenge, the petitioner who claims a violation of his constitutional right can raise any constitutional ground – absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness. Here, one can challenge the constitutionality

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155 Id. at 776–777.

156 727 Phil. 28 (2014) [Per J. Abad, En Banc].

> of a statute only if he asserts a violation of his own rights. It prohibits one from assailing the constitutionality of the statute based solely on the violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.
>
> But this rule admits of exceptions. A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute. The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence.[157] (Citations omitted)

To be entertained by this Court, a facial challenge requires a showing of curtailment of the right to freedom of expression, because its basis is that an overly broad statute may chill otherwise constitutional speech.[158]

The imperative of justiciability was reiterated in *Philippine Constitution Association v. Philippine Government*:[159]

> In *Province of North Cotabato v. GRP* (MOA-AD case), . . . the Court explained the limits of the power of judicial review and the prerequisites for the judicial determination of a case.
>
> In [that] case, the Court rejected the argument of the Solicitor General that there was no justiciable controversy that was ripe for adjudication. . . . The Court ruled that "[w]hen an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute." Moreover, in the MOA-AD case, the Executive was about to sign the initialed MOA-AD with the MILF in Kuala Lumpur, Malaysia in the presence of representatives of foreign states. Only the prompt issuance by this Court of a temporary restraining order stopped the signing, averting the implications that such signing would have caused.
>
> In the present case, however, the Court agrees with the Solicitor General that there is no actual case or controversy requiring a full-blown resolution of the principal issue presented by petitioners.
>
> Unlike the unconstitutional MOA-AD, the CAB, including the FAB, mandates the enactment of the Bangsamoro Basic Law in order for such peace agreements to be implemented. In the MOA-AD case, there was nothing in the MOA-AD which required the passage of any statute to implement the provisions of the MOA-AD, which in essence would have

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157 Id. at 126–127.

158 *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1104 (2017) [Per J. Perlas-Bernabe, En Banc].

159 801 Phil. 472 (2016) [Per J. Carpio, En Banc].

> resulted in dramatically dismembering the Philippines by placing the provinces and areas covered by the MOA-AD under the control and jurisdiction of a Bangsamoro Juridical Entity.
>
> . . . .
>
> Further, under the MOA-AD, the Executive branch assumed the mandatory obligation to amend the Constitution to conform to the MOA-AD. The Executive branch guaranteed to the MILF that the Constitution would be drastically overhauled to conform to the MOA-AD. . . . the Executive branch usurped the sole discretionary power of Congress to propose amendments to the Constitution as well as the exclusive power of the sovereign people to approve or disapprove such proposed amendments. . . . such *ultra vires* commitment by the Executive branch constituted grave abuse of discretion amounting to lack or excess of jurisdiction.
>
> . . . .
>
> Even if there were today an existing bill on the Bangsamoro Basic Law, it would still not be subject to judicial review. The Court held in *Montesclaros v. COMELEC* that it has no power to declare a proposed bill constitutional or unconstitutional because that would be in the nature of rendering an advisory opinion on a proposed act of Congress. The power of judicial review cannot be exercised in *vacuo*. As the Court in *Montesclaros* noted, invoking Section 1, Article VIII of the Constitution, there can be no justiciable controversy involving the constitutionality of a proposed bill. The power of judicial review comes into play only after the passage of a bill, and not before. Unless enacted into law, any proposed Bangsamoro Basic Law pending in Congress is not subject to judicial review.[160] (Citations omitted)

Ultimately, petitions before this Court that challenge an executive or legislative enactment must be based on actual facts, sufficiently for a proper joinder of issues to be resolved.[161] If litigants wish to assail a statute or regulation on its face, the burden is on them to prove that the narrowly-drawn exception for an extraordinary judicial review of such statute or regulation applies.

When faced with speculations—situations that have not yet fully ripened into clear breaches of legally demandable rights or obligations—this Court shall refrain from passing upon the case. Any inquiries that may be made may be roving, unlimited, and unchecked.[162] In contrast to political branches of government, courts must deal with specificities:

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[160] Id. at 486–491.

[161] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* 646 Phil. 452, 481 (2010) [Per J. Carpio Morales, En Banc] *citing De Castro v. Judicial and Bar Council,* 629 Phil. 629 (2010) [Per J. Bersamin, En Banc]; *Buckley v. Valeo,* 424 U.S. 1, 113–118 (1976); and *Regional Rail Reorganization Act Cases,* 419 U.S. 102, 138–148 (1974).

[162] *See* J. Leonen, Concurring and Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28 (2014) [Per J. Abad, En Banc].

> It is not for this court to rehearse and re-enact political debates on what the text of the law should be. In political forums, particularly the legislature, the creation of the text of the law is based on a general discussion of factual circumstances, broadly construed in order to allow for general application by the executive branch. Thus, the creation of the law is not limited by particular and specific facts that affect the rights of certain individuals, per se.
>
> Courts, on the other hand, rule on adversarial positions based on existing facts established on a specific case-to-case basis, where parties affected by the legal provision seek the courts' understanding of the law.
>
> The complementary nature of the political and judicial branches of government is essential in order to ensure that the rights of the general public are upheld at all times. In order to preserve this balance, branches of government must afford due respect and deference for the duties and functions constitutionally delegated to the other. Courts cannot rush to invalidate a law or rule. Prudence dictates that we are careful not to veto political acts unless we can craft doctrine narrowly tailored to the circumstances of the case.[163]

V

Jurisprudence on justiciability in constitutional adjudication has been unequivocal on the requirement of actual cases and controversies. In *Angara v. Electoral Commission*:[164]

> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. *Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very lis mota presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation.* More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the

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[163] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 337 (2015) [Per J. Leonen, En Banc].
[164] 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

government.[165] (Emphasis supplied)

Even now, under the regime of the textually broadened power of judicial review articulated in Article VIII, Section 1 of the 1987 Constitution, the requirement of an actual case or controversy is not dispensed with.[166] In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*:[167]

> Basic in the exercise of judicial power — whether under the traditional or in the expanded setting — is the presence of an actual case or controversy. For a dispute to be justiciable, a legally demandable and enforceable right must exist as basis, and must be shown to have been violated.
>
> . . . .
>
> The Court's expanded jurisdiction — ***itself an exercise of judicial power*** — does not do away with the actual case or controversy requirement in presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a prima facie showing of grave abuse of discretion in the assailed governmental act.[168] (Emphasis supplied, citation omitted)

V (A)

It is the parties' duty to demonstrate actual cases or controversies worthy of judicial resolution.

Pleadings before this Court must show a violation of an existing legal right or a controversy that is ripe for judicial determination. In a concurring opinion in *Belgica*:[169]

> Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted

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165 Id. at 158–159.
166 *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 453, 529 (2017) [Per J. Carpio, En Banc].
167 802 Phil. 116 (2016) [Per J. Brion, En Banc].
168 Id. at 140–141.
169 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, En Banc].

> any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.[170]

Facts are the basis of an actual case or controversy. To reiterate, "there must be **sufficient facts** to enable the Court to intelligently adjudicate the issues."[171] Thus, as illustrated in *Southern Hemisphere Engagement Network, Inc.*:

> **Petitioners' obscure allegations of sporadic "surveillance" and supposedly being tagged as "communist fronts" in no way approximate a credible threat of prosecution.** From these allegations, the Court is being lured to render an advisory opinion, which is not its function.
>
> Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are **merely theorized**, lie beyond judicial review for lack of ripeness.
>
> The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle **actual controversies involving rights which are legally demandable and enforceable**.[172] (Emphasis in the original, citations omitted)

V (B)

Parties coming to court must show that the assailed act had a direct adverse effect on them. In *Lozano v. Nograles*:[173]

> An aspect of the "case-or-controversy" requirement is the requisite of **"ripeness"**. In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another approach is the evaluation of the **twofold** aspect of ripeness: first, the fitness of the

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170 Id. at 661.

171 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* 646 Phil. 452, 481 (2010) [Per J. Carpio Morales, En Banc].

172 646 Phil. 452, 482–483 (2010) [Per J. Carpio Morales, En Banc].

173 607 Phil. 334 (2009) [Per C.J. Puno, En Banc].

> issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of *actual injury* to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a *direct adverse effect* on the individual challenging it. An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.[174] (Emphasis supplied, citations omitted)

VI

The need to demonstrate an actual case or controversy is even more compelling in cases concerning minority groups. This Court is a court of law. We are equipped with legal expertise, but we are not the final authority in other disciplines. In fields such as politics, sociology, culture, and economics, this Court is guided by the wisdom of recognized authorities, while being steered by our own astute perception of which notions can withstand reasoned and reasonable scrutiny. This enables us to filter unempirical and outmoded, even if sacrosanct, doctrines and biases.

This Court exists by an act of the sovereign Filipino people who ratified the Constitution that created it. Its composition at any point is not the result of a popular election reposing its members with authority to decide on matters of policy. This Court cannot make a final pronouncement on the wisdom of policies. Judicial pronouncements based on wrong premises may unwittingly aggravate oppressive conditions.

The scrutiny on the existence of actual facts becomes most necessary when the rights of marginalized, minority groups have been thrust into constitutional scrutiny by a party purporting to represent an entire sector.

VI (A)

In *Ang Ladlad LGBT Party v. Commission on Elections*,[175] this Court acknowledged that the LGBTQI+ community has historically "borne the brunt of societal disapproval":

> We are not blind to the fact that, through the years, homosexual conduct, and perhaps homosexuals themselves, have borne the brunt of societal disapproval. It is not difficult to imagine the reasons behind this censure — religious beliefs, convictions about the preservation of marriage, family, and procreation, even dislike or distrust of homosexuals themselves and their perceived lifestyle. Nonetheless, we recall that the

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[174] Id. at 341.

[175] 632 Phil. 32 (2010) [Per J. Del Castillo, En Banc].

> Philippines has not seen fit to criminalize homosexual conduct. Evidently, therefore, these "generally accepted public morals" have not been convincingly transplanted into the realm of law.[176] (Citation omitted)

A common position taken by those who socially disapprove of the LGBTQI+ community is that this community violates the complementarity of the sexes. Relying on natural law, the concept asserts that the sexual differences between a man and a woman are constitutive of one's identity, out of which the family is created.[177]

Consequently, this views the sexual orientation, gender identity, and gender expression of members of the LGBTQI+ community as unnatural, purely ideological, or socially constructed. These identities are criticized for being "often founded on nothing more than a confused concept of freedom in the realm of feelings and wants, or momentary desires provoked by emotional impulses and the will of the individual, as opposed to anything based on the truths of existence."[178] Lacking "an essential and indispensable finality"[179]—that is, procreative possibility—"homosexual acts are intrinsically disordered and can in no case be approved of."[180]

However, contrary to this view, same-sex conduct is a natural phenomenon:

> Homosexuality has been observed in most vertebrate groups, and also among insects, spiders, crustaceans, octopi and parasitic worms. The phenomenon has been reported in close to 1000* animal species, and is well documented for half that number, but the real extent is probably much higher.
>
> The frequency of homosexuality varies from species to species. In some species, homosexuality has never been reported, while in others the entire species is bisexual. In zoos around 1 in 5 pairs of king penguins are of the same sex. The record is held by orange fronted parakeets, where roughly half of all pairs in captivity are of the same sex.[181]

At the moment, there is no consensus among scientists about the exact reasons as to how an individual develops a particular sexual orientation.[182]

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176 Id. at 75.

177 CONGREGATION FOR CATHOLIC EDUCATION, "MALE AND FEMALE HE CREATED THEM": TOWARDS A PATH OF DIALOGUE ON THE QUESTION OF GENDER THEORY IN EDUCATION 14–15 (2019).

178 Id. at 11.

179 Sacred Congregation for the Doctrine of the Faith, *Persona Humana: Declaration on Certain Questions Concerning Sexual Ethics* (1975), available at <http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html> (last visited on September 2, 2019).

180 Id.

181 University of Oslo Natural History Museum, *Homosexuality in the Animal Kingdom* (2009) <https://www.nhm.uio.no/besok-oss/utstillinger/skiftende/tidligere/againstnature/gayanimals.html> (last visited on September 2, 2019).

182 American Psychological Association, *Sexual Orientation & Homosexuality,*

It has been suggested in scientific studies that sexual orientation is polygenetic and sociocultural:

> Although we emphasize the polygenicity of the genetic effects on same-sex sexual behavior, we identified five SNPs whose association with same-sex sexual behavior reached genome-wide significance. Three of these replicated in other independent samples whose measures related to identity and attraction rather than behavior. These SNPs may serve to generate new lines of enquiry. In particular, the finding that one of the replicated SNPs (rs28371400-15q21.3) is linked to male pattern balding and is nearby a gene (TCF12) relevant to sexual differentiation strengthens the idea that sex-hormone regulation may be involved in the development of same-sex sexual behavior. Also, that another replicated SNP (rs34730029-11q12.1) is strongly linked to several genes involved in olfaction raises intriguing questions. Although the underlying mechanism at this locus is unclear, a link between olfaction and reproductive function has previously been established. Individuals with Kallmann syndrome exhibit both delayed or absent pubertal development and an impaired sense of smell because of the close developmental origin of fetal gonadotropin-releasing hormone and olfactory neurons.
>
> Our study focused on the genetic basis of same-sex sexual behavior, but several of our results point to the importance of sociocultural context as well. We observed changes in prevalence of reported same-sex sexual behavior across time, raising questions about how genetic and sociocultural influences on sexual behavior might interact. We also observed partly different genetic influences on same-sex sexual behavior in females and males; this could reflect sex differences in hormonal influences on sexual behavior (for example, importance of testosterone versus estrogen) but could also relate to different sociocultural contexts of female and male same-sex behavior and different demographics of gay, lesbian, and bisexual groups. With these points in mind, we acknowledge the limitation that we only studied participants of European ancestry and from a few Western countries; research involving larger and more diverse samples will afford greater insight into how these findings fare across different sociocultural contexts.
>
> Our findings provide insights into the biological underpinnings of same-sex sexual behavior but also underscore the importance of resisting simplistic conclusions—because the behavioral phenotypes are complex, because our genetic insights are rudimentary, and because there is a long history of misusing genetic results for social purposes.[183] (Citations omitted)

Sexual orientation has also been correlated with physiological features in the brain. In 1991, neuroscientist Simon LeVay (LeVay) conducted research on "the anterior hypothalamus, which contains four cell groups called the interstitial nuclei of the anterior hypothalamus (INAH)."[184]

<https://www.apa.org/topics/lgbt/orientation> (last visited on September 2, 2019).

183 Andrea Ganna, et al., *Large-scale GWAS reveals insights into the genetic architecture of same-sex sexual behavior*, 365 SCIENCE 1, 6–7 (2019). Available at <https://science.sciencemag.org/content/365/6456/eaat7693> (last visited on September 2, 2019).

184 Nuffield Council on Bioethics, *Review of the evidence: sexual orientation, in* GENETICS AND HUMAN

LeVay's "research found that a particular group of neurons called INAH3 was significantly larger in heterosexual men than in homosexual men."[185] Other researchers that same year also proposed that the anterior commissure, a bundle of nerves that connects a small region of the right and left sides of the brain, "is bigger in homosexual men than in heterosexual men."[186] These studies propose that there are anatomical differences between men of different sexual orientations.

To insulate the human species from the natural phenomenon of same-sex conduct is to reinforce an inordinately anthropocentric view of nature. Giving primacy to "human reason and sentience[,]"[187] anthropocentrism is "the belief that there is a clear and morally relevant dividing line between humankind and the rest of nature, that humankind is the only principal source of value or meaning in the world."[188]

This "human-nature dualism contains a problematic inconsistency and contradiction,"[189] for it rejects the truth that human beings are part of nature.[190] Further, human superiority is conceived from the lens of human cognitive abilities[191] and imposes a socially constructed moral hierarchy between human beings and nature.[192]

Human-nature dualism lays the foundation "for a cultural context that legitimized domination. . . . [which] is at the root of other modern 'imaginary oppositions' such as the split between reason-emotion, mind-body, and masculine-feminine."[193] This dichotomy propels numerous forms of gender oppression in that anything attached to reason and culture is associated with masculinity, while anything attached to emotion, body, and nature is associated with femininity.[194] This anthropocentric view can only manifest itself "in a violent and self-destructive manner, fatal both to human and non-human life[.]"[195]

BEHAVIOUR: THE ETHICAL CONTEXT 104 (2014).

185 Id.

186 Id.

187 Martin Coward, *Against Anthropocentrism: The Destruction of the Built Environment as a Distinct Form of Political Violence,* 32 REVIEW OF INTERNATIONAL STUDIES 419, 420 (2006).

188 Ronald E. Purser, Changkil Park, and Alfonso Montuori, *Limits to Anthropocentrism: Toward an Ecocentric Organization Paradigm?*, 20 THE ACADEMY OF MANAGEMENT REVIEW 1053, 1054 (1995).

189 Id. at 1057.

190 Id. at 1057–1058.

191 Thomas White, *Humans and Dolphins: An Exploration of Anthropocentrism in Applied Environmental Ethics*, 3 REVIEW OF INTERNATIONAL STUDIES 85, 87 (2013).

192 Amy Fitzgerald & David Pellow, *Ecological Defense for Animal Liberation: A Holistic Understanding of the World, in* COUNTERPOINTS, VOL. 448, DEFINING CRITICAL ANIMAL STUDIES: AN INTERSECTIONAL SOCIAL JUSTICE APPROACH FOR LIBERATION 29 (2014).

193 Ronald E. Purser, Changkil Park & Alfonso Montuori, *Limits to Anthropocentrism: Toward an Ecocentric Organization Paradigm?*, 20 THE ACADEMY OF MANAGEMENT REVIEW 1053, 1057 (1995).

194 Amy Fitzgerald & David Pellow, *Ecological Defense for Animal Liberation: A Holistic Understanding of the World, in* COUNTERPOINTS, VOL. 448, DEFINING CRITICAL ANIMAL STUDIES: AN INTERSECTIONAL SOCIAL JUSTICE APPROACH FOR LIBERATION 29 (2014).

195 Adam Weitzenfeld and Melanie Joy, An Overview of Anthropocentrism, Humanism, and Speciesism in Critical Animal Theory, in COUNTERPOINTS, VOL. 448, DEFINING CRITICAL ANIMAL STUDIES: AN INTERSECTIONAL SOCIAL JUSTICE APPROACH FOR LIBERATION 6 (2014).

VI (B)

In the realm of the social sciences, a great number of 20th-century psychoanalysts unfortunately viewed homosexuality as something pathological.[196] This influenced the field of American psychiatry in the mid-20th century that when the American Psychological Association published the first edition of the Diagnostic and Statistical Manual in 1952, "it listed all the conditions psychiatrists then considered to be a mental disorder. DSM-I classified 'homosexuality' as a 'sociopathic personality disturbance.'"[197]

It was not until the research of biologist Alfred Kinsey and other scientists challenged the orthodoxy that homosexuality was delisted as a mental disorder in the next iteration of the Diagnostic and Statistical Manual:

> The Kinsey reports, surveying thousands of people who were not psychiatric patients, found homosexuality to be more common in the general population than was generally believed, although his now-famous '10%' statistic is today believed to be closer to 1%–4%. This finding was sharply at odds with psychiatric claims of the time that homosexuality was extremely rare in the general population. Ford and Beach's study of diverse cultures and of animal behaviors, confirmed Kinsey's view that homosexuality was more common than psychiatry maintained and that it was found regularly in nature. In the late 1950s, Evelyn Hooker, a psychologist, published a study in which she compared psychological test results of 30 gay men with 30 heterosexual controls, none of whom were psychiatric patients. Her study found no more signs of psychological disturbances in the gay male group, a finding that refuted psychiatric beliefs of her time that all gay men had severe psychological disturbances.[198]

However, the official removal of homosexuality from the Diagnostic and Statistical Manual as a mental disorder was not the last word on the subject. Homosexuality was still considered a "disorder," and it was not until several years later that all traces of what was mistakenly thought to be a "disease" would be completely removed from the manual:

> In any event, the events of 1973 did not immediately end psychiatry's pathologizing of some presentations of homosexuality. For in 'homosexuality's' place, the DSM-II contained a new diagnosis: Sexual Orientation Disturbance (SOD). SOD regarded homosexuality as an illness if an individual with same-sex attractions found them distressing and wanted to change. The new diagnosis legitimized the practice of

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196 Jack Drescher, *Out of DSM: Depathologizing Homosexuality*, BEHAVIORAL SCIENCES 568 (2015).
197 Id.
198 Id. at 569–570.

> sexual conversion therapies (and presumably justified insurance reimbursement for those interventions as well), even if homosexuality *per se* was no longer considered an illness. The new diagnosis also allowed for the unlikely possibility that a person unhappy about a heterosexual orientation could seek treatment to become gay.
>
> SOD was later replaced in DSM-III by a new category called 'Ego Dystonic Homosexuality' (EDH). However, it was obvious to psychiatrists more than a decade later that the inclusion first of SOD, and later EDH, was the result of earlier political compromises and that neither diagnosis met the definition of a disorder in the new nosology. Otherwise, all kinds of identity disturbances could be considered psychiatric disorders. 'Should people of color unhappy about their race be considered mentally ill?' critics asked. What about short people unhappy about their height? Why not ego-dystonic masturbation? As a result, ego-dystonic homosexuality was removed from the next revision, DSM-III-R, in 1987. In so doing, the APA implicitly accepted a normal variant view of homosexuality in a way that had not been possible fourteen years earlier.[199] (Citations omitted)

Homosexuality was officially removed from the Diagnostic and Statistical Manual in 1986.[200] According to the American Psychological Association:

> [L]esbian, gay and bisexual orientations are not disorders. Research has found no inherent association between any of these sexual orientations and psychopathology. *Both heterosexual behavior and homosexual behavior are normal aspects of human sexuality.* Both have been documented in many different cultures and historical eras. Despite the persistence of stereotypes that portray lesbian, gay and bisexual people as disturbed, several decades of research and clinical experience have led all mainstream medical and mental health organizations in this country to conclude that these orientations represent normal forms of human experience. Lesbian, gay and bisexual relationships are normal forms of human bonding. Therefore, these mainstream organizations long ago abandoned classifications of homosexuality as a mental disorder.[201] (Emphasis supplied)

The American Psychological Association's revision marked the "beginning of the end of organized medicine's official participation in the social stigmatization of homosexuality"[202] as similar movements also followed. In 1990, the World Health Organization removed homosexuality per se from the International Classification of Diseases.

Social forces have likewise shaped the use of penal laws to further

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[199] Id. at 571.

[200] Gregory M. Herek, *Facts About Homosexuality and Mental Health,* <https://psychology.ucdavis.edu/rainbow/html/facts_mental_health.html> (last visited on September 2, 2019).

[201] American Psychological Association, *Sexual Orientation & Homosexuality,* <https://www.apa.org/topics/lgbt/orientation> (last visited on September 2, 2019).

[202] Jack Drescher, *Out of DSM: Depathologizing Homosexuality*, BEHAVIORAL SCIENCES 568 (2015).

discrimination and persecution of the LGBTQI+ community:

> To a large extent, the religious and medical discourses became the bases for legal or state-prescribed discourses in early Western societies. As a result, the argument that homosexuality is both a sin and a sickness is strengthened. An illustration of this would be the laws against same-sex relations in colonies of the British Empire during the 19th century. The inclusion of Section 377, which refers to carnal intercourse between same-sex individuals, as an offense "against the order of nature" and "unnatural" is a clear indication that homosexuality is viewed as both a sin and a sickness (Carey, 2011; Kannabiran & Singh, 2009). Although the said legislation did not explicitly mention male-to-male or female-to-female sexual relations as a crime, they are considered to be "against the order of nature" and punishable by law (Indian Penal Code, 1860). Among the countries that adopted this law were Australia, Bangladesh, Bhutan, Brunei, Fiji, Hong Kong, India, Kiribati, Malaysia, Maldives, Marshall Islands, Myanmar (Burma), Nauru, New Zealand, Pakistan, Papua New Guinea, Singapore, Solomon Islands, Sri Lanka, Tonga, Tuvalu, and Western Samoa in the Asia Pacific region; and Botswana, Gambia, Ghana, Kenya, Tanzania, Uganda, Zambia, and Zimbabwe in the African region (Human Rights Watch, 2008). Germany, one of the most powerful countries during the Second World War, likewise had its own version of the sodomy law stated in Paragraph 175 of the German Criminal Code (Awareness Harmony Acceptance Advocates [AHAA], 2014).
>
> LGBT discrimination has a long history and serves as a remnant of the colonial era when the most powerful nations used laws as mechanisms of control over morality and standards of behavior (Human Rights Watch, 2008; United Nations Human Rights Commission [UNHRC], n.d.). The criminalization of homosexuality led to the LGBT people's repression, which persisted even beyond the end of the Second World War when the international community pushed for the recognition and respect for human rights.
>
> . . . .
>
> As of 2015, 113 United Nations member states have legally recognized same-sex relations (ILGA, 2015). Also, key international documents and human rights instruments were achieved, among them the Yogyakarta Principles in 2006, the UNHRC Resolution on Human Rights, Sexual Orientation and Gender Identity (SOGI) in 2011, and the UNHRC Core State Obligations on LGBT Human Rights in 2012.[203]

A 2012 coalition report[204] submitted by OutRight Action International,[205] together with 40 Philippine LGBTQI+ and human rights groups[206] and 13 activists,[207] to the 106th Session of the United Nations

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[203] Ma. Theresa Casal De Vela, *The Emergence of LGBT Human Rights and the Use of Discourse Analysis in Understanding LGBT State Inclusion*, LX PHIL. J, PUB, AD. 72, 75–79 (2016).

[204] International Gay and Lesbian Human Rights Commission, *Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines*, October 2012. Available at <https://www2.ohchr.org/english/bodies/hrc/docs/ngos/iglhrc_philippines_hrc106.pdf> (last visited on September 2, 2019).

[205] Formerly known as the International Gay and Lesbian Human Rights Commission.

[206] The groups are: Babaylanes, Inc.; Amnesty International Philippines - LGBT Group (AIPh-LGBT);

Human Rights Committee[208] showed that from 1996 to 2012, 163 LGBTQI+ persons have been murdered due to their gender identity, gender expression, or sexual orientation.[209] The report documented discriminatory acts against LGBTQI+ groups and persons both by State and non-State actors.

In 2016, EnGendeRights, Inc. and OutRight Action International, as with 34 Philippine groups and individuals,[210] submitted a report[211] to the Committee on the Elimination of Discrimination against Women.[212] This report documented the lack of national anti-discrimination, gender recognition, and hate crime legislation, as well as cases of discrimination by police,[213] health workers,[214] educators,[215] employers,[216] and the judiciary[217]

Bacolod and Negros Gender Identity Society (BANGIS); Bisdak Pride – Cebu; Cagayan De Oro Plus (CDO Plus); Changing Lane Women's Group; Coalition for the Liberation of the Reassigned Sex (COLORS); Elite Men's Circle (EMC); EnGendeRights, Inc.; Filipino Freethinkers (FF); Fourlez Women's Group; GAYAC (Gay Achievers Club); KABARO-PUP; LADLAD Cagayan De Oro; LADLAD Caraga, Inc.; LADLAD Europa; LADLAD LGBT Party; LADLAD Region II; Lesbian Activism Project Inc. (LeAP!), Inc.; Lesbian Pilipinas; Link Davao; Metropolitan Community Church – Metro Baguio City (MCCMB); Miss Maanyag Gay Organization of Butuan; OUT Exclusives Women's Group; OUT Philippines LGBT Group; Outrage LGBT Magazine; Philippine Fellowship of Metropolitan Community Churches (MCC); Philippine Forum on Sports, Culture, Sexuality and Human Rights (TEAM PILIPINAS); Pink Watch (formerly Philippine LGBT Hate Crime Watch (PLHCW); Pinoy Deaf Rainbow – Philippines; ProGay Philippines; Queer Pagan Network (PQN); Rainbow Rights Project (R-Rights), Inc.; Redbridge Books Publishing Co. (LGBTQI+ Publishing House); Society of Transsexual Women Advocates of the Philippines (STRAP); The Order of St. Aelred Friendship Society (OSAe); TLF Share Collective, Inc.; TMC Globe Division League; Tumbalata, Inc.; and UP Babaylan.

207 The individuals are Aleksi Gumela, Alvin Cloyd Dakis, Arnel Rostom Deiparine, Bemz Benedito, Carlos Celdran, Ian Carandang, Mae Emmanuel, Marion Cabrera, Mina Tenorio, Neil Garcia, Raymond Alikpala, Ryan Sylverio, and Santy Layno.

208 Formed pursuant to Part IV of the International Convention on Civil and Political Rights, the Human Rights Committee is a group of experts tasked with monitoring the compliance of State parties to the Convention. The Philippines is a State party to the International Convention on Civil and Political Rights. *See also Disini, Jr. v. Secretary of Justice*, 727 Phil. 28 (2014) [Per J. Abad, En Banc].

209 International Gay and Lesbian Human Rights Commission, *Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines*, October 2012, <https://www2.ohchr.org/english/bodies/hrc/docs/ngos/iglhrc_philippines_hrc106.pdf> 6 (last visited on September 2, 2019).

210 The groups and individuals are: Society of Transsexual Women of the Philippines (STRAP); ASEAN SOGIE Caucus (ASC); Association of Transgender People in the Philippines (ATP); Bahaghari Advocacy Group; Benilde Hive' Bohol LGBTs, Families, Friends, and Allies; Catholic Diocese of One-Spirit Philippines; Coalition for the Liberation of the Reassigned Sex (COLORS); Cordillera Rainbow Connection; DowneLink Philippines Community; Filipino Free Thinkers; Galang Philippines; ILGA World Trans* Secretariat; Initiative and Movement for Gender Liberation against Discrimination (IM GLAD); Ipride Manila; Kapederasyon LGBT Organization; LADLAD Caraga; LGBT Bus; LGBT Pinoyed; Metropolitan Community Church – Metro Baguio; Metropolitan Community Church – Quezon City; Metropolitan Community Church of Marikina; Old Balara Pride Council; Pinoy FTM; Pinoy LGBT Channel, Philippine Online Chronicles Promoting Rights and Equality for Society's Marginalized (PRISM) Rainbow Rights Project, Inc.; SHINE Mindanao; The Lovelife Project for Health and Environment, Inc.; TransMan Pilipinas; Trippers Philippines, Inc.; Universal LGBT Club; Alvin Cloyd Dakis; and Marlon Lacsamana.

211 "RE: PHILIPPINE LBT COALITION REPORT for 64th SESSION of CEDAW"; EnGendeRights, Inc. and OutRight Action International; June 9, 2016, available at <https://www.outrightinternational.org/sites/default/files/INT_CEDAW_NGO_PHL_24215_E.pdf> (last visited on September 2, 2019).

212 The Philippines is a State party to the Convention on the Elimination of all Forms of Discrimination Against Women.

213 *RE: PHILIPPINE LBT COALITION REPORT for 64th SESSION of CEDAW,* EnGendeRights, Inc. and OutRight Action International; June 9, 2016, at 7–8. Available at <https://www.outrightinternational.org/sites/default/files/INT_CEDAW_NGO_PHL_24215_E.pdf> (last visited on September 2, 2019).

against LGBTQI+ persons.

A more recent report submitted in 2017[218] by civil society organizations[219] to the Universal Periodic Review of the United Nations Human Rights Council continued to document human rights violations against LGBTQI+ persons, including an existing legal framework inadequate to address systemic problems of discrimination and exclusion.

This is not to say that there is a universal experience for the LGBTQI+ community. To do so would be to "provide homogenized and distorted views"[220] of the community, "advancing the interest of more privileged individuals."[221] As first noted by American professor Kimberlé Williams Crenshaw:

> This focus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination. I suggest further that this focus on otherwise-privileged group members creates a distorted analysis of racism and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon.[222]

Axes of privilege and empowerment, on one hand, and oppression and marginalization, on the other, provide a spectrum that reflects the diversity of lived experiences of LGBTQI+ persons and groups. This is not confined to the spheres of SOGIESC: class and economic status, ethnicity, religion, age, disability, and other identities[223] all play roles in the intersections of LGBTQI+ persons.

Therefore, any entity that attempts to speak for and on behalf of a

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214 Id. at 8.
215 Id. at 9–10.
216 Id. at 10–11.
217 Id. at 11–12.
218 *Universal Periodic Review*, Joint submission of civil society organizations on the situation of Lesbian, Bisexual, Transgender, Intersex and Queer (LGBTQI) persons in the Philippines (2017). Available at <https://aseansogiecaucus.org/images/resources/upr-reports/Philippines/Philippines-UPR-JointReport-3rdCycle.pdf> (last visited on September 2, 2019).
219 Id. at 24. Submitted by ASEAN Sexual Orientation, Gender Identity and Expression Caucus; Association of Transgender People of the Philippines; Babaylanes, Inc.; GALANG Philippines; LGBTS Christian Church, Inc.; Metropolitan Community Church of Marikina City; Metro Manila Pride; MUJER-LGBT Organization; PDRC/Deaf Resources Philippines; SHINE SOCCSKARGEN, Inc.; Side B Philippines; The Philippine LGBT Chamber of Commerce; and TLF Share.
220 Doug Meyer, *An Intersectional Analysis of Lesbian, Gay, Bisexual and Transgender People's Evaluations of Anti-Queer Violence*, 26 GENDER AND SOCIETY 849, 850 (2012).
221 Id.
222 Kimberlé Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIVERSITY OF CHICAGO LEGAL FORUM 140 (1989).
223 Doug Meyer, *An Intersectional Analysis of Lesbian, Gay, Bisexual and Transgender People's Evaluations of Anti-Queer Violence*, 26 GENDER AND SOCIETY 849, 852 (2012).

diverse community must be able to adequately thread the needle in representation of them, assisting this Court's understanding with sufficient facts that would enable it to empower, and not further exclude, an already marginalized community.

VI (C)

There is a perception within the LGBTQI+ community that the Philippines is considered among the most gay-friendly countries in the world.[224]

Accounts on the pre-colonial Philippine society report that different SOGIESC expressions were recognized and accepted in the islands.

For instance, the *Vocabulario de la Lengua Tagala*, published in 1860, and the *Vocabulario de la Lengua Bicol*, in 1865, both make reference to the word *asog*, which refers to men who dress in women's clothes and keep relations with fellow men.[225] These persons exercised significant roles in the pre-colonial Philippine society and were even revered as authorities:

> [F]rom the earliest encounters between the Spanish and the natives, gender-crossing was already very much a reality in a number of communities across the entire archipelago. Local men dressed up as—and acting like—women were called, among others, *bayoguin, bayok, agingin, asog, bido,* and *binabae*. The Spanish thought them remarkable not only because they effectively transitioned from male to female, but also because as spiritual intermediaries or *babaylan,* they were revered figures of authority in their respective communities. It's important to remember that their taking on the customary clothes of women—as well as their engagement in feminine work—was of a piece with a bigger and more basic transformation, one that redefined their gender almost completely as female. ***More than mere cross-dressers, these "men" were gender-crossers, for they didn't merely assume the form and behavior of women. Their culture precisely granted them social and symbolic recognition as binabae ("womanlike").***[226] (Emphasis supplied)

It has been noted that it was difficult to recognize the *asogs, bayoguins,* and *binabayis* as men because they carried extraordinary clothing, appearance, and actions similar to women.[227] This has been

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[224] Philip C. Tubeza, *PH ranks among most gay-friendly in the world* , The Philippine Daily Inquirer, <http://globalnation.inquirer.net/76977/ph-ranks-among-most-gay-friendly-in-the-world> (last accessed September 2, 2019).

[225] Jay Jomar F. Quintos, *A Glimpse Into the Asog Experience: A Historical Study on the Homosexual Experience in the Philippines*, 9(2) PLARIDEL: A PHILIPPINE JOURNAL OF COMMUNICATION, MEDIA, AND SOCIETY, available at <http://www.plarideljournal.org/article/a-glimpse-into-the-asog-experience-a-historical-study-on-the-homosexual-experience-in-the-philippines/> 155, 156–157 (2012).

[226] J. Neil C. Garcia, *Nativism or Universalism: Situating LGBT Discourse in the Philippines*, 20 KRITIKA KULTURA 48, 52–53 (2013).

[227] Jay Jomar F. Quintos, *A Glimpse Into the Asog Experience: A Historical Study on the Homosexual*

considered a manifestation of freedom as they had "liberty over their choice of wear, behavior, beliefs and way of living."[228]

Aside from this fluidity in gender expression, it has also been observed that "the local concept of matrimony was not imprisoned into male-and-female only."[229] According to various *cronicas y relaciones*, the *bayoguin, bayok, agi-ngin, asog, bido,* and *binabae,* among others, "were "married" to men, who became their *maridos* ("husbands"), with whom they indulged in regular sexual congress."[230]

It was only during the arrival of the Spanish colonizers in the Philippine islands that these activities previously engaged in by the *asog, bayoguin,* and *binabayi* became suppressed:

> The right of men to wed their fellow men was suppressed, and the tradition of the *asog* wearing long skirts and feminine clothes vanished. More than these, men were banned from having sexual relations with fellow men for this ran contrary to the dominant religion anointed by the Spanish. The church had a corresponding punishment for the natives who violated this rule. All sinners had to go through the sanctity of confession, for confession was the spring that cleansed man's sins (Rafael, 1988).[231]

In contemporary times, as this Court has noted, there is no penalty in the Philippines for engaging in what may be called "homosexual conduct."[232] Notably, Republic Act No. 11166, or the Philippine HIV and AIDS Policy Act, states a policy of non-discrimination in Section 2:

> SECTION 2. *Declaration of Policies.* — . . .
>
> . . . .
>
> Policies and practices that discriminate on the basis of perceived or actual HIV status, sex, gender, sexual orientation, gender identity and expression, age, economic status, disability, and ethnicity hamper the enjoyment of basic human rights and freedoms guaranteed in the Constitution and are deemed inimical to national interest.

Experience in the Philippines, 9(2) PLARIDEL: A PHILIPPINE JOURNAL OF COMMUNICATION, MEDIA, AND SOCIETY, available at <http://www.plarideljournal.org/article/a-glimpse-into-the-asog-experience-a-historical-study-on-the-homosexual-experience-in-the-philippines/> (last visited on September 2, 2019) 155, 159 (2012).

228 Id.

229 Id.

230 J. Neil C. Garcia, *Nativism or Universalism: Situating LGBT Discourse in the Philippines*, 20 KRITIKA KULTURA 48, 53 (2013).

231 Jay Jomar F. Quintos, *A Glimpse Into the Asog Experience: A Historical Study on the Homosexual Experience in the Philippines*, 9(2) PLARIDEL: A PHILIPPINE JOURNAL OF COMMUNICATION, MEDIA, AND SOCIETY 155, 161 (2012), available at <http://www.plarideljournal.org/article/a-glimpse-into-the-asog-experience-a-historical-study-on-the-homosexual-experience-in-the-philippines/> (last visited on September 2, 2019).

232 *Ang Ladlad LGBT Party v. Commission on Elections*, 632 Phil. 32, 75 (2010) [Per J. Del Castillo, En Banc].

However, discrimination remains. Hence, the call for equal rights and legislative protection continues.

To address the continuing discrimination suffered by the LGBTQI+ community in the Philippines, a number of legislative measures have been filed in Congress.

For instance, the following bills were filed in the 17th Congress: (1) House Bill No. 267, or the Anti-SOGIE (Sexual Orientation and Gender Identity or Expression) Discrimination Bill,[233] which was eventually consolidated, along with other bills, into House Bill No. 4982[234]; (2) House Bill No. 79, which focused on the same subject as House Bill No. 267;[235] (3) House Bill No. 2952, which aims to establish LGBT help and protection desks in all Philippine National Police stations nationwide;[236] House Bill No. 5584, which aims to define domestic violence against individuals, including members of the LGBTQI+ community other than women and children;[237] and Senate Bill No. 1271, otherwise known as the Anti-Discrimination Bill.[238]

As of the 18th Congress, steps are being taken to pass the Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) Equality Bill, with at least 10 congressional bills[239] and four Senate bills[240] against discrimination based on sexual orientation and gender identity pending.

While comprehensive anti-discrimination measures that address the specific conditions faced by the LGBTQI+ community have yet to be enacted, Congress has made headway in instituting protective measures. Republic Act No. 11313, or the Safe Spaces Act, specifically addresses "transphobic, homophobic, and sexist slurs" and penalizes gender-based street and public spaces sexual harassment:

> SECTION 3. Definition of Terms. — As used in this Act:
>
> (a) Catcalling refers to unwanted remarks directed towards a person, commonly done in the form of wolf-whistling and misogynistic, transphobic, homophobic, and sexist slurs;
>
> . . . .

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233 H. No. 267, 17th Cong., 1st Sess. (2017).
234 H. No. 4982, 17th Cong., 1st Sess. (2017).
235 H. No. 267, 17th Cong., 1st Sess. (2017).
236 H. No. 2952, 17th Cong., 1st Sess. (2016).
237 H. No. 5584, 17th Cong., 1st Sess. (2017).
238 S. No. 1271, 17th Cong., 1st Sess. (2016).
239 H. Nos. 95, 134, 160, 258, 640, 1041, 1359, 2167, 2211, and 2870, 1st Sess. (2019).
240 S. Nos. 159, 315, 412, and 689, 1st Sess. (2019).

> SECTION 4. *Gender-based Streets and Public Spaces Sexual Harassment.* — The crimes of gender-based streets and public spaces sexual harassment are committed through any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks.
>
> Gender-based streets and public spaces sexual harassment includes catcalling, wolf-whistling, unwanted invitations, misogynistic, transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on a person's appearance, relentless requests for personal details, statement of sexual comments and suggestions, public masturbation or flashing of private parts, groping, or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces such as alleys, roads, sidewalks and parks. Acts constitutive of gender-based streets and public spaces sexual harassment are those performed in buildings, schools, churches, restaurants, malls, public washrooms, bars, internet shops, public markets, transportation terminals or public utility vehicles.

In the absence of a comprehensive national law, local government units have passed ordinances recognizing and upholding SOGIESC. In Quezon City, City Ordinance No. 2357, or the Quezon City Gender-Fair Ordinance, was passed.[241] In Davao City, Ordinance No. 0417-12 was passed, penalizing acts that discriminate sexual and gender orientation.[242] In 2018, the Davao City Government announced that it would establish an "all-gender" comfort room to accommodate members of the LGBTQI+ community.[243] Its purpose, Vice Mayor Bernard Al-ag stated, is "to reduce discrimination in the preferred gender of the people."[244]

Meanwhile, the San Juan City Government passed Ordinance No. 55, which provides for anti-discrimination of members of the LGBT community.[245] The Mandaluyong City Government passed Ordinance No. 698 in 2018 to "uphold the rights of all Filipinos especially those discriminated by reason of gender identity and sexual orientation."[246] In 2019, during the Metro Manila Pride March and Festival, the Marikina City

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241 Rio N. Araja, *Herbert orders QC City Hall LGBT Workers to Band Together*, MANILA STANDARD, September 7, 2017. Available at <http://manilastandard.net/sunday-lgu-section-pdf/ncr/246337/herbert-orders-qc-city-hall-lgbt-workers-to-band-together.html> (last visited on September 2, 2019).

242 Available at <http://ordinances.davaocity.gov.ph/pdfViewer.aspx> (last visited on September 2, 2019).

243 F. Pearl A. Gajunera, *Davao to Put Up "All-Gender" CR at City Council Site – Al-ag*, MANILA STANDARD, April 18, 2018, available at <http://manilastandard.net/lgu/mindanao/263538/davao-to-put-up-all-gender-cr-at-city-council-site-al-ag.html> (last visited on September 2, 2019).

244 Id.

245 OutrageMag.com Staff, *City of San Juan passes LGBT anti-discrimination ordinance*, OUTRAGE, October 2, 2017. Available at <http://outragemag.com/city-of-san-juan-passes-lgbt-anti-discrimination-ordinance/> (last visited on September 2, 2019).

246 Mikee dela Cruz, *Mandaluyong City passes LGBT anti-discrimination ordinance*, OUTRAGE, May 28, 2018. Available at <http://outragemag.com/mandaluyong-city-passes-lgbt-anti-discrimination-ordinance/> (last visited on September 2, 2019).

Government announced the enactment of City Ordinance No. 065, its anti-discrimination ordinance.[247]

Moreover, the Philippine Commission on Women has listed other local government units that adopted anti-discrimination ordinances to prohibit discrimination based on sexual orientation and gender identity:

> Angeles City in Pampanga, Antipolo City, Bacolod City in Negros Occidental, Batangas City in Batangas, Candon City in Ilocos Sur, Cebu City, Dagupan City in Pangasinan, . . . Mandaue City, Puerto Princesa, . . . Vigan City in Ilocos Sur, Municipality of San Julian in Eastern Samar, Province of Agusan del Norte, Province of Batangas[,] and Province of Cavite.[248]

The history of erasure, discrimination, and marginalization of the LGBTQI+ community impels this Court to make careful pronouncements—lest it cheapen the resistance, or worse, thrust the whole struggle for equality back to the long shadow of oppression and exclusion. The basic requirement of actual case or controversy allows this Court to make grounded declarations with clear and practical consequences.

VII

Here, petitioner has no actual facts that present a real conflict between the parties of this case. The Petition presents no actual case or controversy.

Despite a goal of proving to this Court that there is a continuing and pervasive violation of fundamental rights of a marginalized minority group, the Petition is woefully bereft of sufficient actual facts to substantiate its arguments.

A substantive portion of the Petition merely parrots the separate concurring opinion of retired Chief Justice Puno in *Ang Ladlad LGBT Party*, concerning the concept of suspect classifications. Five (5) pages of the 29-page Petition are block quotes from retired Chief Justice Puno, punctuated by introductory paragraphs of, at most, two (2) sentences each.

A separate opinion is the expression of a justice's individual view

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[247] Katrina Hallare, *Marikina mayor signs anti-discrimination ordinance*, INQUIRER.NET, June 29, 2019. Available at <https://newsinfo.inquirer.net/1135560/marikina-mayor-signs-anti-discrimination-ordinance> (last visited on September 2, 2019).

[248] Philippine Commission on Women, *Policy Brief No. 11, Enacting an Anti-Discrimination Based on Sexual Orientation and Gender Identity Law*, available at <http://www.pcw.gov.ph/wpla/enacting-anti-discrimination-based-sexual-orientation-and-gender-identity-law> (last visited on September 2, 2019).

apart from the conclusion held by the majority of this Court.[249] Even first year law students know that a separate opinion is without binding effect.[250] This Court may adopt in a subsequent case the views in a separate opinion, but a party invoking it bears the burden of proving to this Court that the discussion there is the correct legal analysis that must govern.

Petitioner made no such effort. He did not explain why this Court should adopt the separate opinion of retired Chief Justice Puno. It is not enough, as petitioner has done, to merely produce copious quotations from a separate opinion. Even more curious, petitioner would eventually betray a lack of confidence in those quotations by ultimately saying that he "disagrees with the former Chief Justice's conclusion."[251] From his confused and disjointed reference to retired Chief Justice Puno, petitioner would arrive at the conclusion that Articles 1 and 2 of the Family Code must be examined through the lens of the strict scrutiny test.

In his separate concurring opinion in *Ang Ladlad LGBT Party*, retired Chief Justice Puno referred to submissions made by petitioner Ang Ladlad Party-List before respondent Commission on Elections on the "history of purposeful unequal treatment"[252] suffered by the LGBTQI+ community. This Court, however, cannot recognize Ang Ladlad Party-List's allegations, since they were made by a different party, in a different case, on a different set of facts, for a different subject matter, concerning a different law, to a different governmental body. These are not "actual facts" sufficient to engender a justiciable controversy here. They cannot be summarily imported and given any weight in this case, to determine whether there is a clash of rights between adversarial parties.

All told, petitioner's 29-page initiatory pleading neither cites nor annexes any credible or reputable studies, statistics, affidavits, papers, or statements that would impress upon this Court the gravity of his purported cause. The Petition stays firmly in the realm of the speculative and conjectural, failing to represent the very real and well-documented issues that the LGBTQI+ community face in Philippine society.

Even petitioner's choice of respondent exposes the lack of an actual case or controversy.

He claims that he impleaded the Civil Registrar General as respondent

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[249] *See Garcia v. Perez,* 188 Phil. 43 (1980) [Per J. De Castro, First Division]; *Coca-Cola Bottlers Philippines, Inc. Sales Force Union v. Coca-Cola Bottlers Phil. Inc.,* 502 Phil. 748 (2005) [Per J. Chico-Nazario, Second Division].

[250] *See Roque v. Commission on Elections*, 626 Phil. 75 (2010) [Per J. Velasco, Jr., En Banc].

[251] *Rollo*, p. 26.

[252] *Ang Ladlad LGBT Party v. Commission on Election*, 632 Phil. 32, 111 (2010) [Per J. Del Castillo, En Banc].

because "it is the instrumentality of the government that is tasked to enforce the law in relation with *(sic)* marriage[.]"[253]

Lest petitioner himself forget, what he asserts as ground for the allowance of his suit is the existence of grave abuse of discretion;[254] specifically, grave abuse of discretion *in the enactment of the Family Code*:

> 20. Petitioner submits that a *prima facie* case of grave abuse of discretion exists in the passage of Articles 1 and 2 of the Family Code. Limiting the definition of marriage as between man and woman is, on its face, a grave abuse of discretion[.][255]

Respondent Civil Registrar General was not involved in the formulation or enactment of the Family Code. It did not participate in limiting the definition of marriage to only opposite-sex couples. That is the province and power of Congress alone.

His choice of the Civil Registrar General as respondent is manifestly misguided. No factual antecedents existed prior to the filing of the Petition apart from the passage of the Family Code. Petitioner has never applied for a marriage license. He has never even visited the premises of respondent's office, or of anyone acting under its authority. Petitioner has never bothered to show that he himself acted in any way that asked respondent to exercise *any* kind of discretion. Indeed, no discretion was ever exercised by respondent. Without an exercise of discretion, there could not have been abuse of discretion, let alone one that could conceivably be characterized as "grave."

This rudimentary, but glaring, flaw was pointed out by Chief Justice Lucas P. Bersamin during the oral arguments:

> ATTY. FALCIS:
>
> Yes, Your Honor. We believe that it is proper to implead the Civil Registrar-General because when it comes to Rule 65 Petitions, Your Honors, in the way that petitions, petitioners invoked it, it's in the expanded . . . (interrupted)
>
> JUSTICE BERSAMIN:
>
> Yeah. I understand. Now, the expanded jurisdiction under the Second Paragraph of Section 1 of Article VIII, refers to abuse of discretion.
>
> ATTY. FALCIS:
>
> Yes, Your Honors.

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253 TSN dated June 19, 2018, p. 90.
254 *Rollo*, pp. 8–10.
255 Id. at 9.

> JUSTICE BERSAMIN:
>
> The Civil Registrar has no discretion. Meaning, it has only a ministerial duty to issue you a license or to deny you that license. So, could you not ever resulted (*sic*) to mandamus in the Regional Trial Court of where you have a refusal? You should have done that.
>
> ATTY. FALCIS:
>
> Your Honor, with this Court's indulgence, we are of the submission that in other laws that were questioned, other, the constitutionality of other laws that were questioned . . . (interrupted)
>
> JUSTICE BERSAMIN:
>
> No, you cannot make your case similar to those other laws because those other laws were against other branches of government. They were seeking genuine judicial review. *Here, you are asking us to perform a very ordinary task of correcting somebody's mistake which was not even a mistake because there was no instance where you asked that official to function as such.*[256] (Emphasis supplied)

Petitioner himself admitted that he has not suffered from respondent's enforcement of the law he is assailing:

> JUSTICE BERNABE:
>
> Have you actually tried applying for a marriage license?
>
> ATTY. FALCIS:
>
> No, Your Honors, because I would concede that I do not have a partner and that even if I do have a partner, it is not automatic that my partner might want to marry me and so, Your Honors, I did not apply or I could not apply for a marriage license.[257]

Petitioner noted[258] that grave abuse of discretion may be shown by *prima facie* evidence. This does not help his case. What it indicates is his own acknowledgement that proof cannot be dispensed with, and that he cannot win his case based on pure allegations of actual or imminent injury caused by respondent.[259] The burden is on petitioner to point to any grave abuse of discretion on the part of respondent to avail of this Court's extraordinary *certiorari* power of review.[260]

By petitioner's own standards, his Petition lacks an essential requisite that would trigger this Court's review.

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256 TSN, June 19, 2018, pp. 90–91.
257 Id. at 67–68.
258 *Rollo*, p. 8.
259 *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 140–141 (2016) [Per J. Brion, En Banc].
260 *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 453, 529 (2017) [Per J. Carpio, En Banc].

VIII

Aware of the need to empower and uphold the dignity of the LGBTQI+ community, this Court is mindful that swift, sweeping, and indiscriminate pronouncements, lacking actual facts, may do more harm than good to a historically marginalized community.

A proper ventilation of issues requires an appreciation of marriage past its symbolic value and towards a holistic view of its practical, cross-cutting, and even permanent consequences. This entails an overlapping process of articulation, deliberation, and consensus, which members of the LGBTQI+ community must undertake within their circles and through the political branches of the government, towards crafting a policy that truly embraces the particularities of same-sex intimacies.

VIII (A)

Despite seeking access to the benefits of marriage, petitioner miserably fails to articulate what those benefits are, in both his filed pleadings and his submissions during oral arguments.

More than being the "foundation of the family[,]"[261] the state of marriage grants numerous specific rights and privileges that affect most, if not all, aspects of marital and family relationships.

VIII (A)(1)

Included in the bundle of rights granted by the Family Code to married spouses is the right of support, shown in the obligation of each spouse to "render mutual help and support"[262] and to provide support to the family.[263] For instance, spouses are mandated to contribute to the expenses for the management of the household.[264] Likewise, spouses are jointly responsible for the "sustenance, dwelling, clothing, medical attendance, education[,] and transportation"[265] of the family.[266] The entitlement to this

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[261] CONST, art. XV, sec. 2.

[262] FAMILY CODE, art. 68 provides:

ARTICLE 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[263] FAMILY CODE, art. 70 provides:

ARTICLE 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from their separate properties.

[264] FAMILY CODE, art. 71 provides:

ARTICLE 71. The management of the household shall be the right and duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

[265] FAMILY CODE, art. 194 provides:

right continues even during proceedings for legal separation, annulment of marriage, or declaration of nullity of marriage.[267]

As these obligations are enforceable, they concomitantly grant either spouse relief when the other spouse reneges on his or her duty or commits acts that "tend to bring danger, dishonor or injury to the other or to the family[.]"[268] Either spouse may likewise object to the profession, occupation, business or activity of the other spouse on "valid, serious, and moral grounds."[269]

Although the Family Code does not grant the right to compel spouses to cohabit with each other,[270] it maintains that spouses are duty bound to "live together"[271] and to "fix the family domicile."[272] This is consistent with the policy of promoting solidarity within the family.[273]

Furthermore, the Family Code allows spouses to constitute a family home,[274] which shall be exempt from execution, forced sale, or attachment.[275] The family home may not be sold, donated, assigned, or

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ARTICLE 194. Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

266 FAMILY CODE, art. 70.

267 FAMILY CODE, art. 198 provides:

ARTICLE 198. During the proceedings for legal separation or for annulment of marriage, and for declaration of nullity of marriage, the spouses and their children shall be supported from the properties of the absolute community or the conjugal partnership. After final judgment granting the petition, the obligation of mutual support between the spouses ceases. However, in case of legal separation, the court may order that the guilty spouse shall give support to the innocent one, specifying the terms of such order.

268 FAMILY CODE, art. 72 provides:

ARTICLE 72. When one of the spouses neglects his/her duties to the conjugal union or commits acts which tend to bring danger, dishonor or injury to the other or to the family, the aggrieved party may apply to the court for relief.

269 FAMILY CODE, art. 73 provides:

ARTICLE 73. Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds.

270 *See Arroyo v. Vasques de Arroyo,* 42 Phil. 60 (1921) [Per J. Street, En Banc].

271 FAMILY CODE, art. 68.

272 FAMILY CODE, art. 69 provides:

ARTICLE 69. The husband and wife shall x the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

273 FAMILY CODE, art. 69.

274 FAMILY CODE, art. 152 provides:

ARTICLE 152. The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.

275 FAMILY CODE, art. 155 provides:

ARTICLE 155. The family home shall be exempt from execution, forced sale or attachment except:

(1) For nonpayment of taxes;
(2) For debts incurred prior to the constitution of the family home;
(3) For debts secured by mortgages on the premises before or after such constitution; and
(4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

otherwise encumbered by either spouse without the other's written consent.[276] Though an unmarried head of a family may constitute a family home,[277] only those persons enumerated in Article 154 of the Family Code may be considered beneficiaries.[278]

The Civil Code also offers an expansive coverage on the rights and privileges of spouses should either of them die. The law grants surviving legitimate spouses the right and duty to make funeral arrangements for the deceased spouse.[279] Accordingly, "no human remains shall be retained, interred, disposed of[,] or exhumed"[280] without proper consent from the legitimate spouse, who shall have a better right than the other persons enumerated in Article 199 of the Family Code.

In relation to this, Section 4 of Republic Act No. 7170 permits the surviving spouse to donate all or any part of the body of the deceased legitimate spouse, as long as there is no actual notice of contrary intentions by the deceased, or of opposition by a member of his or her immediate family.[281]

The Civil Code also covers the successional rights granted to spouses. This includes the division and partition of the deceased spouse's estate among the surviving spouse and other surviving descendants, ascendants, and collateral relatives.

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276 FAMILY CODE, art. 158 provides:

ARTICLE 158. The family home may be sold, alienated, donated, assigned or encumbered by the owner or owners thereof with the written consent of the person constituting the same, the latter's spouse, and a majority of the beneficiaries of legal age. In case of conflict, the court shall decide.

277 FAMILY CODE, art. 152.

278 FAMILY CODE, art. 154 provides:

ARTICLE 154. The beneficiaries of a family home are:

(1) The husband and wife, or an unmarried person who is the head of a family; and

(2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

279 CIVIL CODE, art. 305 provides:

ARTICLE 305. The duty and the right to make arrangements for the funeral of a relative shall be in accordance with the order established for support, under article 294 [now Article 199 of the Family Code]. In case of descendants of the same degree, or of brothers and sisters, the oldest shall be preferred. In case of ascendants, the paternal shall have a better right.

280 CIVIL CODE, art. 308 provides:

ARTICLE 308. No human remains shall be retained, interred, disposed of or exhumed without the consent of the persons mentioned in articles 294 [now Article 199 of the Family Code] and 305.

281 Republic Act No. 7170 (1992), sec. 4 provides:

SECTION 4. Person Who May Execute a Donation. –

(a) Any of the following, person, in the order of property stated hereunder, in the absence of actual notice of contrary intentions by the decedent or actual notice of opposition by a member of the immediate family of the decedent, may donate all or any part of the decedent's body for any purpose specified in Section 6 hereof:

(1) Spouse;

(2) Son or daughter of legal age;

(3) Either parent;

(4) Brother or sister of legal age; or

(5) Guardian over the person of the decedent at the time of his death.

(b) The persons authorized by sub-section (a) of this Section may make the donation after \\or immediately before death.

A surviving spouse succeeds concurrently with the deceased spouse's legitimate and illegitimate descendants and ascendants.[282] As compulsory heirs, they are entitled to receive a specific and definite portion of the deceased's estate.[283]

In cases where the deceased spouse left a will, the surviving spouse is entitled to one-half of the testator's entire estate.[284] If the spouse survives with legitimate or illegitimate children or descendants and/or acknowledged natural children, he or she receives a share equivalent to the share of a legitimate child.[285]

If either spouse dies without any will and the surviving spouse is the sole heir of the deceased, the spouse is entitled to the entire estate "without prejudice to the rights of brothers and sisters, nephews[,] and nieces"[286] of the deceased. If the spouse survives with the legitimate or illegitimate children or descendants of the deceased then the spouse is entitled to receive the same amount of share that a legitimate child is entitled to receive.[287]

The Civil Code also covers situations where the spouses were married *in articulo mortis*, and one (1) of them died three (3) months after such marriage. In these cases, the surviving spouse is entitled to one-third of the deceased's estate. However, where the spouses were living together as husband and wife five (5) years before a spouse dies, the surviving spouse is entitled to half of the estate.[288]

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282 CIVIL CODE, art. 887(3) provides:
ARTICLE 887. The following are compulsory heirs:
(3) The widow or widower[.]

283 CIVIL CODE, art. 886 provides:
ARTICLE 886. Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.

284 CIVIL CODE, art. 900 provides:.
ARTICLE 900. If the only survivor is the widow or widower, she or he shall be entitled to one-half of the hereditary estate of the deceased spouse, and the testator may freely dispose of the other half.

285 CIVIL CODE, art. 897 provides:
ARTICLE 897. When the widow or widower survives with legitimate children or descendants, and acknowledged natural children, or natural children by legal fiction, such surviving spouse shall be entitled to a portion equal to the legitime of each of the legitimate children which must be taken from that part of the estate which the testator can freely dispose of.; CIVIL CODE, art. 898. If the widow or widower survives with legitimate children or descendants, and with illegitimate children other than acknowledged natural, or natural children by legal fiction, the share of the surviving spouse shall be the same as that provided in the preceding article.

286 CIVIL CODE, art. 995 provides:
ARTICLE 995. In the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without prejudice to the rights of brothers and sisters, nephews and nieces, should there be any, under article 1001.

287 CIVIL CODE, art. 999 provides:
ARTICLE 999. When the widow or widower survives with legitimate children or their descendants and illegitimate children or their descendants, whether legitimate or illegitimate, such widow or widower shall be entitled to the same share as that of a legitimate child.

288 CIVIL CODE, art. 900 provides:

Aside from the rights and privileges between married spouses, the Civil Code also provides for the relationships between the spouses, as parents, and their children. Consistent with the constitutional provision on the "right and duty of parents in rearing the youth,"[289] the Family Code states that spouses shall exercise joint parental authority,[290] legal guardianship,[291] and custody over common children.

Parental authority encompasses a bundle of rights for unemancipated children. This includes the right to represent the common children in matters affecting their interests and to impose discipline on them as may be necessary, among others.[292]

The Family Code likewise provides that spouses shall exercise legal guardianship over the property of the minor child by operation of law.[293] This entitles the spouses to a right over the fruits of the child's property, which shall be used primarily for child support and secondarily for the family's collective needs.[294]

ARTICLE 900. If the marriage between the surviving spouse and the testator was solemnized in articulo mortis, and the testator died within three months from the time of the marriage, the legitime of the surviving spouse as the sole heir shall be one-third of the hereditary estate, except when they have been living as husband and wife for more than five years. In the latter case, the legitime of the surviving spouse shall be that specified in the preceding paragraph.

289 CONST., art. II, sec. 2 provides:

SECTION 2. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

290 FAMILY CODE, art. 211 provides:

ARTICLE 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

291 FAMILY CODE, art. 225 provides:

ARTICLE 225. The father and the mother shall jointly exercise legal guardianship over the property of their unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

292 FAMILY CODE, art. 220 provides:

ARTICLE 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
(2) To give them love and affection, advice and counsel, companionship and understanding;
(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
(4) To enhance, protect, preserve and maintain their physical and mental health at all times;
(5) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
(6) To represent them in all matters affecting their interests; To demand from them respect and obedience;
(7) To impose discipline on them as may be required under the circumstances; and
(8) To perform such other duties as are imposed by law upon parents and guardians.

293 FAMILY CODE, art. 225.

294 FAMILY CODE, art. 226 (2) provides:

Meanwhile, Republic Act No. 8552 covers the rights and privileges attached to adoption. One (1) of the significant rights granted by this law is the legitimate spouses' right to jointly adopt a child. Spouses who jointly adopt shall exercise joint parental authority and custody over the adoptee.[295]

The adoptees shall, for all intents and purposes, be considered as legitimate children of the adoptive parents.[296] As legitimate children, they may bear the surname of their adoptive parents.[297] They are likewise granted the right to receive support, the legitime, and other successional rights from both of the adoptive parents.

Moreover, inter-country adoption permits Filipino citizens permanently residing abroad to jointly file for adoption with their spouse. Though Section 9 of Republic Act No. 8043 restricts adopters to persons who are "at least twenty-seven (27) years of age and at least sixteen (16) years older than the child to be adopted, at the time of application[,]" the same provision allows an exception in favor of an adopter who is the legitimate spouse of the adoptee's natural parent.[298]

ARTICLE 226. The right of the parents over the fruits and income of the child's property shall be limited primarily to the child's support and secondarily to the collective daily needs of the family.

295 Republic Act. No. 8552 (1998), sec. 7(c) provides:

SECTION 7. *Who May Adopt.* — The following may adopt:

. . . .

(c) . . .

Husband and wife shall jointly adopt, except in the following cases:

(i) if one spouse seeks to adopt the legitimate son/daughter of the other; or

(ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: Provided, However, that the other spouse has signified his/her consent thereto; or

(iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses.

296 Republic Act. No. 8552 (1998), sec. 17 provides:

SECTION 17. *Legitimacy.* — The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.

297 CIVIL CODE, art. 365. An adopted child shall bear the surname of the adopter.

298 Republic Act. No. 8043 (1995), sec. 9 provides:

SECTION 9. *Who May Adopt.* — An alien or a Filipino citizen permanently residing abroad may file an application for inter-country adoption of a Filipino child if he/she:

(a) is at least twenty-seven (27) years of age and at least sixteen (16) years older than the child to be adopted, at the time of application unless the adopter is the parent by nature of the child to be adopted or the spouse of such parent;

(b) if married, his/her spouse must jointly file for the adoption;

(c) has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counselor in his/her country;

(d) has not been convicted of a crime involving moral turpitude;

(e) is eligible to adopt under his/her national law;

(f) is in a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted;

(g) agrees to uphold the basic rights of the child as embodied under Philippine laws, the U.N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of this Act;

VIII (A)(2)

Marriage has consequences in criminal law as well.

For instance, anyone who, after having suddenly come upon his or her legitimate spouse in the act of committing sex with another, kills any or both is only liable to suffer *destierro*. Should the offending spouse inflict physical injuries upon his or her spouse or the other person, he or she shall be exempt from criminal liability.[299]

Marital relations also influence the imposable penalty for crimes. Any person's criminal act in defense of his or her spouse is a justifying circumstance,[300] while immediate vindication of a grave offense to one's spouse is a mitigating circumstance.[301] That the victim is the spouse of the offender is considered an alternative circumstance, which may be considered as aggravating or mitigating depending on "the nature and effects of the crime and the other conditions attending its commission."[302] Commission of

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(h) comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption is allowed under his/her national laws; and

(i) possesses all the qualifications and none of the disqualifications provided herein and in other applicable Philippine laws.

299 REV. PEN. CODE, art. 247 provides:

ARTICLE 247. *Death or physical injuries inflicted under exceptional circumstances.*— Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of *destierro*.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.

Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article.

300 REV. PEN. CODE, art. 11(2) provides:

ARTICLE 11. *Justifying Circumstances.*— The following do not incur any criminal liability:

. . . .

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the revocation was given by the person attacked, that the one making defense had no part therein.

301 REV. PEN. CODE, art. 13(5) provides:

ARTICLE 13. *Mitigating Circumstances.*—The following are mitigating circumstances:

. . . .

5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (*delito*), his spouse, ascendants, or relatives by affinity within the same degrees.

302 REV. PEN. CODE, art. 15 provides:

ARTICLE 15. *Their concept.*— Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication, and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

the crime in full view of the spouse of the victim-spouse is also an aggravating circumstance in the crime of rape.[303] The Anti-Trafficking in Persons Act of 2003, as amended, also qualifies trafficking if the offender is a spouse of the trafficked person.[304] Further, a spouse who is an accessory to a crime is generally exempt from criminal liability.[305]

In the crimes of seduction, abduction, acts of lasciviousness, and rape, the marriage between the offending and the offended party extinguishes the criminal action and remits the penalty already imposed upon the offender.[306] In marital rape, "the subsequent forgiveness" of the offended wife extinguishes the criminal action or penalty against the offending husband.[307]

The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

303 REV. PEN. CODE, art. 266-B as amended by Republic Act No. 8353 (1997), provides:

ARTICLE 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

. . . .

3. When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity[.]

304 Republic Act No. 9208 (2003), sec. 6(d), as amended by Rep. Act No. 10364 (2012), sec. 9 provides:

SECTION 6. *Qualified Trafficking in Persons.* — Violations of Section 4 of this Act shall be considered as qualified trafficking:

(d) When the offender is a spouse, an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee.

305 REV. PEN. CODE, art. 20 provides:

ARTICLE 20. *Accessories who are exempt from criminal liability* .— The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provision of paragraph 1 of the next preceding article.

306 REV. PEN. CODE, art. 344 provides:

ARTICLE 344. *Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness.* — The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes.

307 REV. PEN. CODE, art. 266-C as amended by Republic Act No. 8353 (1997), provides:

ARTICLE 266-C. *Effect of pardon.* — The subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed.

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty; *Provided*, That the crime shall not be extinguished or the penalty shall not be abated if the marriage be void *ab initio.*

Likewise, adultery and concubinage cannot be prosecuted when the offended spouse has pardoned the offenders or has consented to the offense.[308]

Bigamy is committed by a person who has been previously married and who contracts a subsequent marriage before the first marriage has been legally dissolved or before the absent spouse has been declared presumptively dead by a court judgement.[309] Penalizing the act of contracting a subsequent marriage where one is still legally married to another person safeguards the institution of marriage, protecting the rights and status of the legitimate spouse.

VIII (A)(3)

The State's interest in marriage and married persons extends to taxation.

Under the National Internal Revenue Code, as amended by Republic Act No. 10963, the income taxes of married individuals are generally computed separately based on their respective total taxable income.[310]

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[308] RULES OF COURT, Rule 110, sec. 5 provides:

SECTION 5. *Who must prosecute criminal actions.* — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. In case of heavy work schedule of the public prosecutor in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecution to prosecute the case subject to the approval of the Court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents, or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents, or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents, or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding paragraph.

No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party.

The prosecution of complaints for violation of special laws shall be governed by their provisions thereof.

[309] REV. PEN. CODE, art. 349 provides:

ARTICLE 349. *Bigamy.* — The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgement rendered in the proper proceedings.

[310] TAX CODE, sec. 24 (A)(2)(a), as amended by Republic Act No. 10963 (2017), provides in part:

For married individuals, the husband and wife, subject to the provision of Section 51(D) hereof, shall compute separately their individual income tax based on their respective total taxable income:

However, for any income that "cannot be definitely attributed to or identified as income exclusively earned or realized by either of the spouses,"[311] Section 24 of the National Internal Revenue Code, as amended, provides that the amount shall be equally divided between the spouses for the computation of their respective taxable incomes.

Further, in the computation of an individual's taxable income, the National Internal Revenue Code, as amended, excludes from the computation of the gross income any amount received by an heir of an official or employee from the employer "as a consequence of separation of such official or employee from the service of the employer because of death sickness or other physical disability or for any cause beyond the control of the said official or employee."[312] Likewise, benefits received by a spouse from the Social Security System, in accordance with Republic Act No. 8282, as well as benefits received from the Government Service Insurance System, in accordance with Republic Act No. 8291, are excluded from the computation of an individual's gross income.[313]

On the filing of income tax returns, the National Internal Revenue Code, as amended, provides that married individuals, regardless of citizenship or residence, "who do not derive income purely from compensation," shall file an income tax return that includes the income of both spouses, except "where it is impracticable for the spouses to file one return," in which case each spouse may file separate income tax returns.[314]

Provided, That if any income cannot be definitely attributed to or identified as income exclusively earned or realized by either of the spouses, the same shall be divided equally between the spouses for the purpose of determining their respective taxable income.

311 TAX CODE, as amended by Republic Act No. 10963 (2017), sec. 24 (A)(2)(a).

312 TAX CODE, as amended by Republic Act No. 10963 (2017), sec. 32 (B)(6)(b) provides:

SEC. 32. *Gross Income.* — . . .

. . . .

(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

. . . .

(6) Retirement Benefits, Pensions, Gratuities, etc. —

. . . .

(b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death sickness or other physical disability or for any cause beyond the control of the said official or employee.

313 TAX CODE, as amended by Republic Act No. 10963 (2017), sec. 32 (B)(6)(e)(f) provides:

SEC. 32. *Gross Income.* —

. . . .

(B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

. . . .

(6) Retirement Benefits, Pensions, Gratuities, etc.-

. . . .

(e) Benefits received from or enjoyed under the Social Security System in accordance with the provisions of Republic Act No. 8282.

(f) Benefits received from the GSIS under Republic Act No. 8291, including retirement gratuity received by government officials and employees.

314 TAX CODE, as amended by Republic Act No. 10963 (2017), sec. 51(D) provides:

SECTION 51. *Individual Return.* —

. . . .

As for estate tax, the National Internal Revenue Code, as amended, provides that "the capital of the surviving spouse of a decedent"[315] is not deemed part of the gross estate. Consequently, "the net share of the surviving spouse in the conjugal partnership property" is "deducted from the net estate of the decedent."[316]

Likewise, when the decedent is a Filipino citizen or a resident of the Philippines, the National Internal Revenue Code, as amended, allows a deduction of the "current fair market value of the decedent's family home"[317] up to ₱10 million from the amount of the gross estate. Further, "any amount received by the heirs from the decedent's employee as a consequence of the death of the decedent-employee in accordance with Republic Act No. 4917"[318] is also deducted from the amount of the gross estate.

VIII (A)(4)

Even the Labor Code and other labor laws are influenced by the institution of marriage.

The narrow definition of "dependents" under the Labor Code includes "the legitimate spouse living with the employee."[319] As a consequence, the

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(D) Husband and Wife. Married individuals, whether citizens, resident or nonresident aliens, who do not derive income purely from compensation, shall file a return for the taxable year to include the income of both spouses, but where it is impracticable for the spouses to file one return, each spouse may file a separate return of income but the returns so filed shall be consolidated by the Bureau for purposes of verification for the taxable year.

315 TAX CODE, as amended by Republic Act No. 10963 (2017), sec. 85 (H) provides:

SECTION 85. *Gross Estate.* — The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated: Provided, however, that in the case of a nonresident decedent who at the time of his death was not a citizen of the Philippines, only that part of the entire gross estate which is situated in the Philippines shall be included in his taxable estate.

. . . .

(H) Capital of the Surviving Spouse. — The capital of the surviving spouse of a decedent shall not, for the purpose of this Chapter, be deemed a part of his/her gross estate.

316 TAX CODE, sec. 86 (C), as amended by Republic Act No. 10963 (2017), provides:

SECTION 86. *Computation of Net Estate.* - For the purpose of the tax imposed in this Chapter, the value of the net estate shall be determined:

. . . .

(C) Share in the Conjugal Property. — The net share of the surviving spouse in the conjugal partnership property as diminished by the obligations properly chargeable to such property shall, for the purpose of this Section, be deducted from the net estate of the decedent.

317 TAX CODE, as amended by Rep. Act No. 10963 (2017), sec. 86 (A)(7) provides:

(7) The Family Home. – An amount equivalent to the current fair market value of the decedent's family home: Provided, however, That if the said current fair market value exceeds Ten million pesos (P10, 000,000), the excess shall be subject to estate tax.

318 TAX CODE, as amended by Rep. Act No. 10963 (2017), sec. 86 (A)(8).

319 LABOR CODE, art. 173(i) provides:

ARTICLE 173. *Definition of Terms.* — As used in this Title, unless the context indicates otherwise:

. . . .

legitimate spouse is entitled to compensation from the state insurance fund in case of the disability or death of the employee.[320]

Further, under the Social Security Act of 1997[321] and the Government Service Insurance System Act of 1997,[322] the legal spouse of the member is included in the list of his or her dependents.

Similarly, the Overseas Workers Welfare Administration Act includes the legal spouse in the list of dependents of overseas Filipino workers.[323] Thus, certain benefits afforded to overseas Filipino workers are extended to the legal spouse.[324]

(i) "Dependents" means the legitimate, legitimated, legally adopted or acknowledged natural child who is unmarried, not gainfully employed, and not over twenty-one years of age or over twenty-one years of age provided he is incapable of self-support due to a physical or mental defect which is congenital or acquired during minority; the legitimate spouse living with the employee; and the parents of said employee wholly dependent upon him for regular support.

320 LABOR CODE, art. 178 provides:

ARTICLE 178. *Limitation of Liability.* — The State Insurance Fund shall be liable for compensation to the employee or his dependents, except when the disability or death was occasioned by the employee's intoxication, willful intention to injure or kill himself or another, notorious negligence, or otherwise provided under this Title.

321 Republic Act No. 1161 (1954), as amended by Republic Act No. 8282 (1997), sec. 8(e)(1) provides:

SECTION 8. *Terms Defined.* — For the purposes of this Act, the following terms shall, unless the context indicates otherwise, have the following meanings:

. . . .

(e) Dependents — The dependents shall be the following:

(1) The legal spouse entitled by law to receive support from the member;

(2) The legitimate, legitimated or legally adopted, and illegitimate child who is unmarried, not gainfully employed and has not reached twenty-one years (21) of age, or if over twenty-one (21) years of age, he is congenitally or while still a minor has been permanently incapacitated and incapable of self-support, physically or mentally; and

(3) The parent who is receiving regular support from the member.

322 Presidential Decree No. 1146 (1977) as amended by Republic Act No. 8291 (1997), sec. 2(f) provides:

SECTION 2. *Definition of Terms.* — Unless the context otherwise indicates, the following terms shall mean:

. . . .

(f) Dependents — Dependents shall be the following: (a) the legitimate spouse dependent for support upon the member or pensioner; (b) the legitimate, legitimated, legally adopted child, including the illegitimate child, who is unmarried, not gainfully employed, not over the age of majority, or is over the age of majority but incapacitated and incapable of self-support due to a mental or physical defect acquired prior to age of majority; and (c) the parents dependent upon the member for support[.]

323 Republic Act No. 10801 (2016), sec. 7(c) provides:

SECTION 7. *Definition of Terms.* — As used in this Act:

. . . .

(c) Dependent refers to any of the following:

(1) The legal spouse;

(2) The legitimate, illegitimate, legitimated, and legally adopted child, who is unmarried, not gainfully employed, and not over the age of majority, or is over the age of majority but incapacitated and incapable of self-support due to a mental or physical defect; and

(3) The parents who rely primarily upon the member-OFWs for support[.]

324 Republic Act No. 10801 (2016), sec. 35(e) provides:

SECTION 35. *Benefits and Services to OFWs* —

. . . .

(e) Social Benefits. — A member-OFW shall be covered with the following social benefits:

(1) Death and Disability Benefits:

(i) Death Benefits. — A member shall be covered with life insurance for the duration of his/her employment contract. The coverage shall include one hundred thousand pesos (P100,000.00) for natural death and two hundred thousand pesos (P200,000.00) for accidental death;

(ii) Disability and Dismemberment Benefits. — Disability and dismemberment benefits shall be included in a member's life insurance policy, as provided for in the impediment schedule

The Labor Code confines an employee's "primary beneficiaries" to his or her dependent spouse, until he or she remarries, and his or her dependent children.[325] Primary beneficiaries are entitled to receive full death benefits under the Labor Code.[326]

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contained in the OWWA Manual of Systems and Procedures. The coverage is within the range of two thousand pesos (P2,000.00) to fifty thousand pesos (P50,000.00);

(iii) Total Disability Benefit. — In case of total permanent disability, a member shall be entitled to one hundred thousand pesos (P100,000.00); and

(iv) Burial Benefit. — A burial benefit of twenty thousand pesos (P20,000.00) shall be provided in case of the member's death.

Based on actuarial studies, the Board may increase the amount of the abovementioned benefits.

(2) Health Care Benefits. — Within two (2) years from the effectivity of this Act, the OWWA shall develop and implement health care programs for the benefit of member-OFWs and their families, taking into consideration the health care needs of women as provided for in Republic Act No. 9710, or the Magna Carta of Women, and other relevant laws.

(3) Education and Training Benefits. — A member, or the member's designated beneficiary, may avail any of the following scholarship programs, subject to a selection process and accreditation of participating institutions:

(i) Skills-for-Employment Scholarship Program. — For technical or vocational training scholarship;

(ii) Education for Development Scholarship Program. — For baccalaureate programs; and

(iii) Seafarers' Upgrading Program. — To ensure the competitive advantage of Filipino seafarers in meeting competency standards, as required by the International Maritime Organization (IMO), International Labor Organization (ILO) conventions, treaties and agreements, sea-based members shall be entitled to one upgrading program for every three (3) membership contributions.

The annual scholarship lists of all these programs shall be submitted to the Board.

[325] LABOR CODE, art. 173(j) provides:

ARTICLE 173. *Definition of Terms.* — As used in this Title, unless the context indicates otherwise:

. . . .

(j) "Beneficiaries" means the dependent spouse until he/she remarries and dependent children, who are the primary beneficiaries. In their absence, the dependent parents and subject to the restrictions imposed on dependent children, the illegitimate children and legitimate descendants, who are the secondary beneficiaries: Provided, That the dependent acknowledged natural child shall be considered as a primary beneficiary when there are no other dependent children who are qualified and eligible for monthly income benefit.

[326] LABOR CODE, art. 194 provides:

ARTICLE 194. *Death.* — (a) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of the covered employee under this Title, an amount equivalent to his monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution, except as provided for in paragraph (j) of Article 167 149 hereof: Provided, however, That the monthly income benefit shall be guaranteed for five years: Provided, further, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly income benefit but not to exceed sixty months: Provided, finally, That the minimum death benefit shall not be less than fifteen thousand pesos.

(b) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of a covered employee who is under permanent total disability under this Title, eighty percent of the monthly income benefit and his dependents to the dependents' pension: Provided, That the marriage must have been validly subsisting at the time of disability: Provided, further, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly pension excluding the dependents' pension, of the remaining balance of the five-year guaranteed period: Provided, finally, That the minimum death benefit shall not be less than fifteen thousand pesos.

(c) The monthly income benefit provided herein shall be the new amount of the monthly income benefit for the surviving beneficiaries upon the approval of this decree.

(d) Funeral benefit. — A funeral benefit of Three Thousand Pesos (P3,000.00) shall be paid upon the death of a covered employee or permanently totally disabled pensioner.

In addition, under the Social Security Act of 1997[327] and the Government Service Insurance System Act of 1997,[328] the dependent spouse is included in the list of primary beneficiaries of the employee, until he or she remarries.

The Social Security Act of 1997 entitles the "primary beneficiaries as of the date of retirement" to receive the retirement benefits of the retired member upon his or her death.[329] They are also entitled to receive death benefits "[u]pon the death of a member who has paid at least thirty-six (36) monthly contributions prior to the semester of death."[330] The primary beneficiaries as of the disability are also entitled to receive the monthly pension of a permanent total disability pensioner upon the pensioner's death.[331]

On the other hand, the Government Service Insurance System Act of 1997 entitles the dependent spouse, as a primary beneficiary, to survivorship pension upon the death of a member.[332] This entitlement is likewise

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327 Republic Act No. 1161 (1954), as amended by Republic Act No. 8282 (1997), sec. 8(k) provides:

SECTION 8. *Terms Defined.* — For the purposes of this Act, the following terms shall, unless the context indicates otherwise, have the following meanings:

. . . .

(k) Beneficiaries — The dependent spouse until he/she remarries, the dependent legitimate, legitimated or legally adopted, and illegitimate children, who shall be the primary beneficiaries of the member: Provided, That the dependent illegitimate children shall be entitled to fifty percent (50%) of the share of the legitimate, legitimated or legally adopted children: Provided, further, That in the absence of the dependent legitimate, legitimated or legally adopted children of the member, his/her dependent illegitimate children shall be entitled to one hundred percent (100%) of the benefits. In their absence, the dependent parents who shall be the secondary beneficiaries of the member. In the absence of all of the foregoing, any other person designated by the member as his/her secondary beneficiary.

328 Presidential Decree No. 1146 (1977) as amended by Republic Act No. 8291 (1997), sec. 2(g) provides:

SECTION 2. *Primary beneficiaries* — The legal dependent spouse until he/she remarries and the dependent children[.]

329 Republic Act No. 1161 (1954) as amended by Republic Act No. 8282 (1997), sec. 12-B(d) provides:

SECTION 12-B. *Retirement Benefits.* —

. . . .

(d) Upon the death of the retired member, his primary beneficiaries as of the date of his retirement shall be entitled to receive the monthly pension: Provided, That if he has no primary beneficiaries and he dies within sixty (60) months from the start of his monthly pension, his secondary beneficiaries shall be entitled to a lump sum benefit equivalent to the total monthly pensions corresponding to the balance of the five-year guaranteed period, excluding the dependents' pension.

330 Republic Act No. 1161 (1954), as amended by Republic Act No. 8282 (1997), sec. 13 provides:

SECTION 13. *Death Benefits.* — Upon the death of a member who has paid at least thirty-six (36) monthly contributions prior to the semester of death, his primary beneficiaries shall be entitled to the monthly pension: Provided, That if he has no primary beneficiaries, his secondary beneficiaries shall be entitled to a lump sum benefit equivalent to thirty-six (36) times the monthly pension. If he has not paid the required thirty-six (36) monthly contributions, his primary or secondary beneficiaries shall be entitled to a lump sum benefit equivalent to the monthly pension times the number of monthly contributions paid to the SSS or twelve (12) times the monthly pension, whichever is higher.

331 Republic Act No. 1161 (1954) as amended by Republic Act No. 8282 (1997), sec. 13-A(c) provides:

SECTION 13-A. *Permanent Disability Benefits.* —

. . . .

(c) Upon the death of the permanent total disability pensioner, his primary beneficiaries as of the date of disability shall be entitled to receive the monthly pension: Provided, That if he has no primary beneficiaries and he dies within sixty (60) months from the start of his monthly pension, his secondary beneficiaries shall be entitled to a lump sum benefit equivalent to the total monthly pensions corresponding to the balance of the five-year guaranteed period excluding the dependents' pension.

332 Republic Act No. 1146 (1954) as amended by Republic Act No. 8291 (1997), sec. 21 provides:

afforded to qualified beneficiaries "[u]pon the death of an old-age pensioner or a member receiving the monthly income benefit for permanent disability."[333] Further, funeral benefits are provided under the Government Service Insurance System Act of 1997.[334]

Moreover, under the 2010 Philippine Overseas Employment Administration Standard Employment Contract,[335] a seafarer's beneficiaries

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SECTION 21. *Death of a Member.* — (a) Upon the death of a member, the primary beneficiaries shall be entitled to:

(1) survivorship pension: Provided, That the deceased:

(i) was in the service at the time of his death; or

(ii) if separated from the service, has at least three (3) years of service at the time of his death and has paid thirty-six (36) monthly contributions within the five-year period immediately preceding his death; or has paid a total of at least one hundred eighty (180) monthly contributions prior to his death; or

(2) the survivorship pension plus a cash payment equivalent to one hundred percent (100%) of his average monthly compensation for every year of service: Provided, That the deceased was in the service at the time of his death with at least three (3) years of service; or

(3) a cash payment equivalent to one hundred percent (100%) of his average monthly compensation for each year of service he paid contributions, but not less than Twelve thousand pesos (P12,000.00): Provided, That the deceased has rendered at least three (3) years of service prior to his death but does not qualify for the benefits under the item (1) or (2) of this paragraph.

(b) The survivorship pension shall be paid as follows:

(1) when the dependent spouse is the only survivor, he/she shall receive the basic survivorship pension for life or until he/she remarries;

(2) when only dependent children are the survivors, they shall be entitled to the basic survivorship pension for as long as they are qualified, plus the dependent children's pension equivalent to ten percent (10%) of the basic monthly pension for every dependent child not exceeding five (5), counted from the youngest and without substitution;

(3) when the survivors are the dependent spouse and the dependent children, the dependent spouse shall receive the basic survivorship pension for life or until he/she remarries, and the dependent children shall receive the dependent children's pension mentioned in the immediately preceding paragraph (2) hereof.

(c) In the absence of primary beneficiaries, the secondary beneficiaries shall be entitled to:

(1) the cash payment equivalent to one hundred percent (100%) of his average monthly compensation for each year of service he paid contributions, but not less than Twelve thousand pesos (P12,000): Provided, That the member is in the service at the time of his death and has at least three (3) years of service; or

(2) in the absence of secondary beneficiaries, the benefits under this paragraph shall be paid to his legal heirs.

(d) For purposes of the survivorship benefits, legitimate children shall include legally adopted and legitimate children.

333 Presidential Decree No. 1146 (1977) as amended by Republic Act No. 8291 (1997), sec. 22 provides:

SECTION 22. *Death of a Pensioner.* — Upon the death of an old-age pensioner or a member receiving the monthly income benefit for permanent disability, the qualified beneficiaries shall be entitled to the survivorship pension defined in Section 20 of this Act, subject to the provisions of paragraph (b) of Section 21 hereof. When the pensioner dies within the period covered by the lump sum, the survivorship pension shall be paid only after the expiration of the said period.

334 Presidential Decree No. 1146 (1977) as amended by Republic Act No. 8291 (1997), sec. 23 provides:

SECTION 23. *Funeral Benefit.* — The amount of funeral benefit shall be determined and specified by the GSIS in the rules and regulations but shall not be less than Twelve thousand pesos (P12,000.00): Provided, That it shall be increased to at least Eighteen thousand pesos (P18,000.00) after five (5) years and shall be paid upon the death of:

(a) an active member as defined under Section 2(e) of this Act; or

(b) a member who has been separated from the service, but who may be entitled to future benefit pursuant to Section 4 of this Act; or

(c) a pensioner, as defined in Section 2(o) of this Act; or

(d) a retiree who at the time of his retirement was of pensionable age under this Act but who opted to retire under Republic Act No. 1616.

335 POEA Memorandum Circular No. 010-10 (2010), or Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, defines the "beneficiaries" as "the person(s) to whom the death compensation and other benefits due under the

are entitled to a list of compensation and benefits in the event of the seafarer's work-related death.[336]

Meanwhile, under Republic Act No. 7192, or the Women in Development and Nation Building Act, "[m]arried persons who devote full time to managing the household and family affairs" shall be entitled to voluntary coverage under Pag-IBIG, the Government Service Insurance System, and Social Security System, which is equivalent to half of "the salary and compensation of the working spouse."[337] These contributions "shall be deducted from the salary of the working spouse."[338]

VIII (A)(5)

Aside from influencing provisions in substantive law, the status of marriage is also recognized in the Rules of Court.

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employment contract are payable in accordance with rules of succession under the Civil Code of the Philippines, as amended."

336 POEA Memorandum Circular No. 010-10 (2010), sec. 20 (B) provides:

SECTION 20. *Compensation and Benefits.* —

. . . .

B. Compensation and Benefits for Death

1. In case of work-related death of the seafarer, during the term of his contract, the employer shall pay his beneficiaries the Philippine currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

2. Where death is caused by warlike activity while sailing within a declared war zone or war risk area, the compensation payable shall be doubled. The employer shall undertake appropriate war zone insurance coverage for this purpose.

3. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws from the Social Security System, Overseas Workers Welfare Administration, Employee's Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-IBIG Fund).

4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:

a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.

c. The employer shall pay the beneficiaries of the seafarer the Philippine currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment.

337 Republic Act No. 7192 (1992), sec. 8 provides:

SECTION 8. *Voluntary Pag-IBIG, GSIS and SSS Coverage.* — Married persons who devote full time to managing the household and family affairs shall, upon the working spouse's consent, be entitled to voluntary Pag-IBIG (Pagtutulungan — Ikaw, Bangko, Industriya at Gobyerno), Government Service Insurance System (GSIS) or Social Security System (SSS) coverage to the extent of one-half (1/2) of the salary and compensation of the working spouse. The contributions due thereon shall be deducted from the salary of the working spouse.

The GSIS or the SSS, as the case may be, shall issue rules and regulations necessary to effectively implement the provisions of this section.

338 Republic Act No. 7192 (1992), sec. 8.

For instance, spouses may not be compelled to testify for or against each other during their marriage.[339] Likewise, during or even after their marriage, spouses, by reason of privileged communication, "cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage[.]"[340]

Moreover, the law accords to family courts exclusive jurisdiction over petitions for guardianship, custody of children, adoption of children, and support, as well as complaints for annulment, declaration of nullity of marriage, and property relations.[341]

A disputable presumption under our Rules on Evidence is that a man and a woman who deport themselves as spouses have entered into marriage.[342] It is also presumed that a property that is acquired by a man and a woman, who have the capacity to marry and live exclusively with each other as spouses without being actually married, was obtained by their joint efforts, work, or industry.[343] If such man and woman have acquired property

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339 RULES OF COURT, Rule 130, sec. 22 provides:

SECTION 22. *Disqualification by reason of marriage.* — During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants.

340 RULES OF COURT, Rule 130, sec. 24 provides:

SECTION 24. *Disqualification by reason of privileged communication.* — The following persons cannot testify as to matters learned in confidence in the following cases:

(a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants.

341 Republic Act No. 8369 (1997), sec. 5 provides:

SECTION 5. *Jurisdiction of Family Courts.* — The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

b) Petitions for guardianship, custody of children, *habeas corpus* in relation to the latter;

c) Petitions for adoption of children and the revocation thereof;

d) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;

e) Petitions for support and/or acknowledgment;

f) Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the "Family Code of the Philippines."

342 RULES OF COURT, Rule 131, sec. 3(aa) provides:

SECTION 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

(aa) That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage[.]

. . . .

343 RULES OF COURT, Rule 131, sec. 3(bb) provides:

SECTION 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

. . . .

(bb) That property acquired by a man and a woman who are capacitated to marry each other and who live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, has been obtained by their joint efforts, work or industry[.]

through their actual joint contribution, their contributions shall also be presumed as equal.[344]

VIII (A)(6)

Marriage likewise affects the application of other special laws. Several statutes grant a range of rights in favor of legitimate spouses. Among these is the National Health Insurance Act of 2013, which gives a legitimate spouse, as a "legal dependent," the right to receive health care benefits.[345] This right includes inpatient hospital care and payment for the services of healthcare professionals, and diagnostic and other medical services, among others.[346]

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[344] RULES OF COURT, Rule 131, sec. 3(cc) provides:

SECTION 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

. . . .

(cc) That in cases of cohabitation by a man and a woman who are not capacitated to marry each other and who have acquired property through their actual joint contribution of money, property, or industry, such contributions and their corresponding shares including joint deposits of money and evidences of credit are equal[.]

[345] Republic Act No. 7875 (1995), sec. 4(f) provides:

SECTION 4. . . .

. . . .

(f) *Dependent* — The legal dependents of a member are: 1) the legitimate spouse who is not a member; 2) the unmarried and unemployed legitimate, legitimated, illegitimate, acknowledged children as appearing in the birth certificate; legally adopted or stepchildren below twenty-one (21) years of age; 3) children who are twenty-one (21) years old or above but suffering from congenital disability, either physical or mental, or any disability acquired that renders them totally dependent on the member for support; 4) the parents who are sixty (60) years old or above whose monthly income is below an amount to be determined by the Corporation in accordance with the guiding principles set forth in Article I of this Act.

[346] Republic Act No. 7875 (1995), sec. 10 provides:

SECTION 10. *Benefit Package* — Subject to the limitations specified in this Act and as may be determined by the Corporation, the following categories of personal health services granted to the member or his dependents as medically necessary or appropriate shall include:

(a) Inpatient hospital care:
(1) room and board;
(2) services of health care professionals;
(3) diagnostic, laboratory, and other medical examination services;
(4) use of surgical or medical equipment and facilities;
(5) prescription drugs and biologicals; subject to the limitations stated in Section 37 of this Act;
(6) inpatient education packages;
(b) Outpatient care:
(1) services of health care professionals;
(2) diagnostic, laboratory, and other medical examination services;
(3) personal preventive services; and
(4) prescription drugs and biologicals, subject to the limitations described in Section 37 of this Act;
(c) Emergency and transfer services; and
(d) Such other health care services that the Corporation shall determine to be appropriate and cost-effective: Provided, That the Program, during its initial phase of implementation, which shall not be more than five (5) years, shall provide a basic minimum package of benefits which shall be defined according to the following guidelines:
(1) the cost of providing said package is such that the available national and local government subsidies for premium payments of indigents are sufficient to extend coverage to the widest possible population
(2) the initial set of services shall not be less than half of those provided under the current Medicare Program I in terms of overall average cost of claims paid per beneficiary household per year

Furthermore, the Insurance Code, as amended by Republic Act No. 10607, acknowledges that every person has an insurable interest in the life of his or her legitimate spouse.[347] This allows a married person to enter into an insurance policy upon the life of his or her spouse as owner and/or beneficiary.

As to survivorship benefits, legitimate spouses of retired chairpersons and commissioners of constitutional commissions—the Commission on Audit, Civil Service Commission, Commission on Elections—as well as of the Ombudsman are entitled under Republic Act No. 10084 to receive all the retirement benefits that the deceased retiree was receiving at the time of his or her demise.[348] Likewise, surviving legitimate spouses of deceased members of the judiciary, who were retired or eligible to retire at the time of death, are entitled to all the retirement benefits of the deceased judge or justice under Republic Act No. 910, as amended.[349] In both cases, the surviving legitimate spouse shall continue to receive such benefits until he or she remarries.

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(3) the services included are prioritized, first, according to its cost-effectiveness and, second, according to its potential of providing maximum relief from the financial burden on the beneficiary: Provided, That in addition to the basic minimum package, the Program shall provide supplemental health benefit coverage to beneficiaries of contributory funds, taking into consideration the availability of funds for the purpose from said contributory funds: Provided, further, That the Program shall progressively expand the basic minimum benefit package as the proportion of the population covered reaches targeted milestones so that the same benefits are extended to all members of the Program within five (5) years after the implementation of this Act. Such expansion will provide for the gradual incorporation of supplementary health benefits previously extended only to some beneficiaries into the basic minimum package extended to all beneficiaries: and Provided, finally, That in the phased implementation of this Act, there should be no reduction or interruption in the benefits currently enjoyed by present members of Medicare[.]

[347] Republic Act No. 10607 (2013), sec. 10 provides:

SECTION 10. Every person has an insurable interest in the life and health:

(a) Of himself, of his spouse and of his children;
(b) Of any person on whom he depends wholly or in part for education or support, or in whom he has a pecuniary interest;
(c) Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and
(d) Of any person upon whose life any estate or interest vested in him depends.

[348] Republic Act No. 10084 (2009), sec. 1 provides:

SECTION 1. In case of the death of a retired Chairman or Commissioner of the Commission on Audit, the Commission on Elections, the Civil Service Commission and the Ombudsman, the surviving legitimate spouse of said deceased retiree shall be entitled to receive on a monthly basis all the retirement benefits that the said deceased retiree was receiving at the time of his/her demise under the provisions of applicable retirement laws then in force. The said surviving legitimate spouse shall continue to receive such retirement benefits during his/her lifetime or until he/she remarries: Provided, That if the surviving legitimate spouse is receiving benefits under existing retirement laws, he/she shall only be entitled to the difference between the amount provided for in this Act and the benefits he/she is receiving.

[349] Republic Act No. 910 (1954) as amended by Republic Act. No. 9946 (2009), sec. 3(2) provides:

SECTION 3. . . .

. . . .

Upon the death of a Justice or Judge of any court m the Judiciary, if such Justice or Judge has retired, or was eligible to retire optionally at the time of death, the surviving legitimate spouse shall be entitled to receive all the retirement benefits that the deceased Justice or Judge would have received had the Justice or Judge not died. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.

Similarly, the surviving legitimate spouses of police or military personnel, including firefighters, who died in the performance of duty or by reason of their position, shall be given special financial assistance under Republic Act. No. 6963. They are also entitled to receive whatever compensation, pension, or any form of grant, to which the deceased person or his or her family was entitled.[350]

In addition, Republic Act No. 9049 entitles surviving legitimate spouses of deceased awardees of medals of valor to a lifetime monthly gratuity pay of ₱20,000.00, which shall accrue in equal shares and with the right of accretion, until he or she remarries and the common children reach the age of majority. This is separate from the pension, to which the surviving legitimate spouse is also entitled.[351]

Under Republic Act No. 10699, the "primary beneficiaries" of a deceased national athlete or coach, which include the surviving legitimate spouse, shall be entitled to a lump sum amount of ₱30,000.00 for funeral expenses.[352]

Republic Act No. 6173 entitles spouses who are both public officials and employees the right to jointly file their statement of assets, liabilities, and net worth and disclosure of business interests and financial connections.[353]

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350 Republic Act No. 6963 (1990), sec. 1 provides:

SECTION 1. The family [surviving legal spouse and his legitimate children or parents, or brothers and sisters, or aunts and uncles] or beneficiary of any police or military personnel, including any fireman assisting in a police or military action, who is killed or becomes permanently incapacitated while in the performance of his duty or by reason of his office or position, provided he has not committed any crime or human rights violations by final judgment on such occasion, shall be entitled to the special financial assistance provided for in this Act in addition to whatever compensation, donation, insurance, gift, pension, grant, or any form of benefit which said deceased or permanently incapacitated person or his family may receive or be entitled to.

351 Republic Act No. 9049 (2001), sec. 2 provides:

SECTION 2. A Medal of Valor awardee will henceforth be entitled to a lifetime monthly gratuity of Twenty thousand pesos (P20,000.00). This gratuity is separate and distinct from any salary or pension which the awardee is currently receiving or will receive from the government of the Philippines: *Provided,* That in the event of death of the awardee, the same shall accrue in equal shares and with the right of accretion to the surviving spouse until she remarries and to the children, legitimate, or adopted or illegitimate, until they reach the age of eighteen (18) or until they marry, whichever comes earlier: *Provided, further,* That such gratuity shall not be included in the computation, of gross income and shall be exempt from taxation under Title III, Chapter VI of Republic Act No. 8424, otherwise known as then "Tax Reform Act of 1997."

352 Republic Act No. 10699 (2015), sec. 7 provides:

SECTION 7. *Death Benefits.* — Upon the death of any national athlete and coach, the primary beneficiaries shall be entitled to a lump sum benefit of thirty thousand pesos (P30,000.00) to cover for the funeral services: Provided, That if the athlete and coach has no primary beneficiaries, the secondary beneficiaries shall be entitled to said benefits.

For purposes of this Act, primary beneficiaries shall refer to the legitimate spouse, legitimate or illegitimate children. Secondary beneficiaries shall refer to the parents and, in their absence, to the brothers or sisters of such athlete and coach.

353 Republic Act No. 6713 (1989), sec. 8 provides in part:

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

Meanwhile, legitimate spouses of persons arrested, detained, or under custodial investigation for lawful reasons are granted visitation rights under Republic Act No. 7438.[354]

Republic Act No. 9505, or the Personal Equity and Retirement Act, prescribes the aggregate maximum contribution of ₱100,000.00 per contributor. The same law includes a provision in favor of married contributors, such that each spouse may make a maximum contribution of ₱100,000.00 or its equivalent in any convertible foreign currency per year.[355]

Republic Act No. 8239, otherwise known as the Philippine Passport Act, also grants diplomatic passports to legitimate spouses of "persons imbued with diplomatic status or are on diplomatic mission[.]" They include the president, vice president, members of Congress and the judiciary, cabinet secretaries, and ambassadors, among others.[356] Moreover, an official

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[354] Republic Act No. 7438 (1992), sec. 2(f) provides:

SECTION 2. *Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers.* —

. . . .

(f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights of by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his/her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

[355] Republic Act No. 9505 (2008), sec. 5 provides:

SECTION 5. *Maximum Annual PERA Contributions.* — A Contributor may make an aggregate maximum contribution of One hundred thousand pesos (P100,000.00) ors its equivalent in any convertible foreign currency at the prevailing rate at the time of the actual contribution, to his/her PERA per year: *Provided*, That if the Contributor is married, each of the spouses shall be entitled to make a maximum contribution of One hundred thousand pesos (P100,000.00) or its equivalent PERA: *Provided, further*, That if the Contributor is an overseas Filipino, he shall be allowed to make maximum contributions double the allowable maximum amount.

[356] Republic Act No. 8239 (1996), sec. 7(a) provides:

SECTION 7. *Types of Passport.*— The Secretary or the authorized representative or consular officer may issue the following types of passports:

. . . .

(a) Diplomatic passport for persons imbued with diplomatic status or are on diplomatic mission such as:

1. The President and former Presidents of the Republic of the Philippines;
2. The Vice-President and former Vice-Presidents of the Republic of the Philippines;
3. The Senate President and the Speaker of the House of Representatives;
4. The Chief Justice of the Supreme Court;
5. The Cabinet Secretaries, and the Undersecretaries and Assistant Secretaries of the Department of Foreign Affairs;
6. Ambassadors, Foreign Service Officers of all ranks in the career diplomatic service; Attaches, and members of their families;
7. Members of the Congress when on official mission abroad or as delegates to international conferences;
8. The Governor of the Bangko Sentral ng Pilipinas and delegates to international or regional conferences when on official mission or accorded full powers by the President;
9. Spouses and unmarried minor-children of the above-mentioned officials when accompanying or following to join them in an official mission abroad.

passport shall be issued in favor of the legitimate spouses of all government officials who are "on official trip abroad but who are not on a diplomatic mission or delegates to international or regional conferences or have not been accorded diplomatic status" when accompanying them.[357]

More recently, in Republic Act No. 11035, legitimate spouses of science, technology, or innovation experts engaged in a long-term program have been granted certain privileges, such as roundtrip airfares from a foreign country to the Philippines and other special relocation benefits.[358]

VIII (B)

Yet, orienting same-sex relationships towards a state-sanctioned marriage cannot be attuned solely to its benefits and advantages. This approach usually ignores the burdens associated with marriage. As a legally-binding relationship that unites two (2) individuals, marriage becomes an "enabling constraint"[359] that imposes certain duties on married couples and even limitations on their actions.

The law imposes certain limitations on the property relations between spouses. For instance, the Family Code prescribes that in the absence of any

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The President of the Philippines and the Secretary of the Department of Foreign Affairs may grant diplomatic passports to officials and persons other than those enumerated herein who are on official mission abroad.

357 Republic Act No. 8239 (1996), sec. 7(b) provides:

SECTION 7. . . .

. . . .

(b) Official Passport to be issued to all government officials and employees on official trip abroad but who are not on a diplomatic mission or delegates to international or regional conferences or have not been accorded diplomatic status such as:

1. Undersecretaries and Assistant Secretaries of the Cabinet other than the Department of Foreign Affairs, the Associate Justices and other members of the Judiciary, members of the Congress and all other government officials and employees traveling on official business and official time;
2. Staff officers and employees of the Department of Foreign Affairs assigned to diplomatic and consular posts and officers and representatives of other government departments and agencies assigned abroad;
3. Persons in the domestic service and household members of officials assigned to diplomatic or consular posts;
4. Spouses and unmarried minor children of the officials mentioned above when accompanying or following to join them.

358 Republic Act No. 11035 (2018), sec. 7 provides:

SECTION 7. *Term-Specific Benefits, Incentives, and Privileges.* — Balik Scientist shall be eligible for the benefits, incentives, and privileges under the following terms of engagement:

. . . .

(c) Long-Term Program:

(1) One (1) round-trip airfare originating from a foreign country to the Philippines, exempt from Philippine Travel Tax, for the awardees, their spouses, and minor dependents;

(2) Special Relocation Benefits:

(i) Special nonimmigrant visa, for awardees, their spouses, and minor children: *Provided,* That the validity of the visa shall cover the duration of the awarded long-term engagement;

(ii) Exemption from the requirement to secure an alien employment permit from the Department of Labor and Employment (DOLE) for Balik Scientists and their Spouses[.]

359 William M. Hohengarten, *Same-Sex Marriage and the Right of Privacy,* 103 YALE L.J. 1495, 1498–1499 (1994).

settlement between the spouses, their properties shall be governed by the regime of absolute community of property.[360]

Under this regime, each spouse is considered a co-owner of all the properties they brought into the marriage, as well as those properties they will acquire after marriage, regardless of their actual contribution.[361]

The spouses may also choose a system of conjugal partnership of gains as their property regime. Under this, "the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance[.]"[362] Here, each spouse retains power and control over his or her exclusive properties, such that he or she may mortgage, encumber, alienate, or dispose of them during the marriage even without the consent of the other spouse.[363] However, each spouse bears the burden of proving that those properties acquired during the marriage form part of their exclusive property, as the law creates a presumption that property is conjugal even if the properties were made, contracted or registered in the name of only one spouse.[364]

The spouses may also decide on a separation of property during the marriage, subject to a judicial order.[365] Should the spouses choose this property regime, they may, in their individual capacity, dispose of their own properties even without the consent of the other.[366] However, despite the separation, the law mandates that the income of the spouses shall account for the family expenses.[367]

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360 FAMILY CODE, art. 75 provides in part:

ARTICLE 75. . . . In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of property as established in this Code shall govern.

361 FAMILY CODE, art. 91 provides:

ARTICLE 91. Unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.

362 FAMILY CODE, art. 106.

363 FAMILY CODE, art. 111 provides:

ARTICLE 111. A spouse of age may mortgage, encumber, alienate or otherwise dispose of his/her exclusive property, without the consent of the other spouse, and appear alone in court to litigate with regard to the same.

364 FAMILY CODE, art. 116 provides:

ARTICLE 116. All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved.

365 FAMILY CODE, art. 103 provides:

ARTICLE 103. In the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place except by judicial order. Such judicial separation of property may either be voluntary or for sufficient cause.

366 FAMILY CODE, art. 145 provides:

ARTICLE 145. Each spouse shall own, dispose of, possess, administer and enjoy his/her own separate estate, without need of the consent of the other. To each spouse shall belong all earnings from his/her profession, business or industry and all fruits, natural, industrial or civil, due or received during the marriage from his/her separate property.

367 FAMILY CODE, art. 146 provides:

ARTICLE 146. Both spouses shall bear the family expenses in proportion to their income, or, in

Donations made by reason of marriage are also governed by the Family Code.[368] While the provisions on ordinary donations under the Civil Code may apply, there are specific rules which restrict the kind of donations that can be made during marriage and even between the spouses. For instance, the Family Code provides that, should the married spouses choose a property regime other than the absolute community of property, the husband and the wife cannot donate more than one-fifth of their present property to each other.[369] If the spouses select the absolute community of property regime, they are proscribed from donating any part of the community property without the consent of the other spouse.[370]

Corollary to the right granted to spouses, as parents, over the person and property of their children is the responsibility to discipline them as may be required under the circumstances. Thus, under the law, spouses exercise joint parental authority directly and primarily. They are solidarily liable for the damage caused by the acts or omissions of their minor children who are living in their company and under their parental authority.[371] The courts may admonish those who exercise parental authority over delinquent children.[372]

While married persons may jointly adopt or be adopted, the law provides that either spouse may not adopt or be adopted without the written consent of the other spouse.[373] Thus, should a spouse seek to adopt his or her own illegitimate child, the other spouse must still consent.[374]

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case of insufficiency or default thereof, to the current market value of their separate properties. The liabilities of the spouses to creditors for family expenses shall, however, be solidary.

368 FAMILY CODE, arts. 82, 83, 84, 85, 86, and 87.

369 FAMILY CODE, arts. 84 provides:

ARTICLE 84. If the future spouses agree upon a regime other than the absolute community of property, they cannot donate to each other in their marriage settlements more than one-fifth of their present property. Any excess shall be considered void.

370 FAMILY CODE, arts. 98 provides:

ARTICLE 98. Neither spouse may donate any community property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the community property for charity or on occasions of family rejoicing or family distress.

371 FAMILY CODE, art. 220 provides:

ARTICLE 220. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law; *See Libi v. Intermediate Appellate Court*, 288 Phil. 797 (1992) [Per J. Regalado, En Banc].

372 CIVIL CODE, art. 362 provides:

ARTICLE 362. Whenever a child is found delinquent by any court, the father, mother, or guardian may in a proper case be judicially admonished.

373 Republic Act. No. 8552 (1998), sec. 9 provides:

SECTION 9. *Whose Consent is Necessary to the Adoption.* — After being properly counseled and informed of his/her right to give or withhold his/her approval of the adoption, the written consent of the following to the adoption is hereby required:

. . . .

(e) The spouse, if any, of the person adopting or to be adopted.

374 Republic Act. No. 8552 (1998), sec. 7(c)(ii).

Some crimes include marital relations among their elements. For instance, parricide covers the killing of one's legitimate spouse and is penalized by *reclusion perpetua* to death.[375]

In the crimes of theft, swindling, or malicious mischief, no criminal liability is incurred if the spouse is the offender.[376]

Further, Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, prohibits the spouse of any public official from "requesting or receiving any present, gift, material or pecuniary advantage from any other person having some business, transaction, application, request, or contract with the government, in which such public official has to intervene."[377] Spouses of the president, vice president, senate president, and speaker of the House of Representatives are also forbidden to intervene in any business, transaction, contract, or application with the government.[378] Moreover, in determining the unexplained wealth of a public official, the spouses' properties, bank deposits, and manifestly excessive expenditures are also considered.[379]

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375 REV. PEN. CODE, art. 246 provides:

ARTICLE 246. *Parricide.* — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death.

376 REV. PEN. CODE, art. 332 provides:

ARTICLE 332. *Persons exempt from criminal liability.* — No criminal, but only civil liability shall result from the commission of the crime of theft, swindling, or malicious mischief committed or caused mutually by the following persons:

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;
2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and
3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

The exemption established by this article shall not be applicable to strangers participating in the commission of the crime.

377 Republic Act. No. 3019 (1960), sec. 4 provides:

SECTION 4. *Prohibition on private individuals.* — (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift, material or pecuniary advantage from any other person having some business, transaction, application, request, or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assure free access to such public officer.

378 Republic Act. No. 3019 (1960), sec. 5 provides:

SECTION 5. *Prohibition on certain relatives.* — It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government: *Provided,* That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part on the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law, nor to any act lawfully performed in an official capacity or in the exercise of a profession.

379 Republic Act. No. 3019 (1960), sec. 8, as amended by Batas Pambansa Blg. 195 (1982), provides:

SECTION 8. *Prima facie evidence of and dismissal due to unexplained wealth.* — If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the

In civil actions, spouses are generally joint parties in a case irrespective of who incurred the obligation.[380] In criminal actions, the court may also cite in contempt the spouse of a drug dependent who refuses to cooperate in the treatment and rehabilitation of the drug dependent.[381]

Thus, the claim for a state-sanctioned marriage for same-sex couples should come with the concomitant willingness to embrace these burdens, as well as to submit to the State certain freedoms currently enjoyed outside the institution of marriage:

> *Critical awareness of the state's role as now-fundamental partner in the recognition and protection of a form of sexual rights should push us to regard these "victories" as necessarily ethically compromised.*
>
> The moral atrophy that has kept us from recognizing the tragedy of these strategies and outcomes is where more critical, and indeed discomfiting, work needs to be done by theorists and activists alike. This means rethinking the horizon of success. *"Victory" in the sense of gaining the state as a partner, rather than an adversary, in the struggle to recognize and defend LGBT rights ought to set off a trip wire that ignites a new set of strategies and politics. This must necessarily include a deliberate effort to counteract, if not sabotage, the pull of the state to enlist rights-based movements into its larger governance projects,* accompanied by an affirmative resistance to conceptions of citizenship that figure nationality by and through the creation of a constitutive other who resides in the state's and human rights' outside.[382] (Emphasis supplied)

Yet, petitioner has miserably failed to show proof that he has obtained even the slightest measure of consent from the members of the community

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name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation wealth is completed.

380 RULES OF COURT, Rule 3, sec. 4 provides:

SECTION 4. *Spouses as parties.* — Husband and wife shall sue or be sued jointly, except as provided by law.

381 Republic Act No. 9165 (2002), sec. 73 provides:

SECTION 73. *Liability of a Parent, Spouse or Guardian Who Refuses to Cooperate with the Board or Any Concerned Agency.* — Any parent, spouse or guardian who, without valid reason, refuses to cooperate with the Board or any concerned agency in the treatment and rehabilitation of a drug dependent who is a minor, or in any manner, prevents or delays the after-care, follow-up or other programs for the welfare of the accused drug dependent, whether under voluntary submission program, or compulsory submission program, may be cited for contempt by the court.

382 Katherine Franke, *Dating the State: The Moral Hazards of Winning Gay Rights,* 44 COLUM. HUM. RTS. L. REV. 1, 42 (2012).

that he purports to represent, and that LGBTQI+ persons are unqualifiedly willing to conform to the State's present construct of marriage.

VIII (C)

Limiting itself to four (4) specific provisions in the Family Code, the Petition prays that this Court "declare Articles 1 and 2 of the Family Code as unconstitutional and, as a consequence, nullify Articles 46(4) and 55(6) of the Family Code."[383] However, should this Court rule as the Petition asks, there will be far-reaching consequences that extend beyond the plain text of the specified provisions.

Articles 1 and 2 of the Family Code provide a definition and spell out basic requisites, respectively. Without passing upon the validity of the definition under Article 1, this Court nonetheless observes that this definition serves as the foundation of many other gendered provisions of the Family Code and other laws.

A significant number of provisions under current marriage arrangements pertain to benefits to or burdens on a specific sex (and are therefore dependent on what is assigned at birth based on the appearance of external genitalia). As our current laws are confined to a heteronormative standard, they do not recognize the existence and specificities of other forms of intimacy.

For instance, an incident of marriage granted by the law to spouses, specifically to wives, is the option to adopt their husbands' surname under the Civil Code.[384] The law also provides that should a marriage be annulled and the wife is an innocent party, she may continue to employ her husband's surname unless the court decrees otherwise, or when she or the former husband remarries.[385] If the husband dies, the wife may still use his surname as though he were alive.[386]

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383 *Rollo*, p. 31.

384 CIVIL CODE, art. 370 provides:
ARTICLE 370. A married woman may use:
(1) Her maiden first name and surname and add her husband's surname, or
(2) Her maiden first name and her husband's surname, or
(3) Her husband's full name, but prefixing a word indicating that she is his wife, such as "Mrs."

385 CIVIL CODE, art. 371 provides:
ARTICLE 371. In case of annulment of marriage, and the wife is the guilty party, she shall resume her maiden name and surname. If she is the innocent spouse, she may resume her maiden name and surname. However, she may choose to continue employing her former husband's surname, unless:
(1) The court decrees otherwise, or
(2) She or the former husband is married again to another person.

386 CIVIL CODE, art. 373 provides:
ARTICLE 373. A widow may use the deceased husband's surname as though he were still living, in accordance with article 370.

In case of artificial insemination of the wife with the sperm of the husband or of a donor, the Family Code specifies that, to establish paternity and filiation, the husband must consent to the procedure in a written instrument prior to the child's birth.[387]

The Family Code also contains provisions that favor the husband over the wife on certain matters, including property relations between spouses. For one, the administration over the community property belongs to the spouses jointly, but in case of disagreement, the husband's decision prevails.[388] Similarly, the administration over conjugal partnership properties is lodged in both spouses jointly, but in case of disagreement, the husband's decision prevails, without prejudice to the wife's right to file a petition before the courts.[389] And, in case of a disagreement between the spouses on the exercise of parental authority over their minor children, the father's decision shall also prevail.[390]

Our penal laws likewise contain sex-specific provisions. For instance, adultery is committed by a wife who had sex with a man who is not her husband.[391] In contrast, concubinage is committed when a husband keeps a mistress in the conjugal dwelling, has sex under scandalous circumstances, or cohabits in another place with a woman who is not his wife.[392] While a

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387 FAMILY CODE, art. 164(2) provides:

ARTICLE 164. . . .

. . . .

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.

388 FAMILY CODE, art. 96 provides:

ARTICLE 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

389 FAMILY CODE, art. 124(2) provides:

ARTICLE 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly.

In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

390 FAMILY CODE, art. 211(1) provides:

ARTICLE 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

391 REV. PEN. CODE, art. 333 provides:

ARTICLE 333. *Who are guilty of adultery.* — Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married, even if the marriage be subsequently be declared void.

Adultery shall be punished by prision correctional in its medium and maximum periods.

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed.

392 REV. PEN. CODE, art. 334 provides:

ARTICLE 334. *Concubinage.* — Any husand who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by pricion correcional in its minimum and

woman who commits adultery shall be punished with imprisonment, a man who commits adultery shall only suffer the penalty of *destierro*. Further, a husband who engages in sex with a woman who is not his wife does not incur criminal liability if the sexual activity was not performed under "scandalous circumstances."[393]

In labor law, Republic Act No. 8187, otherwise known as the Paternity Leave Act of 1996, provides that "every married male employee in the private and public sectors shall be entitled to a paternity leave[394] of seven (7) days with full pay for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting."[395]

VIII (D)

The litany of provisions that we have just recounted are not even the entirety of laws relating to marriage. Petitioner would have this Court impliedly amend all such laws, through a mere declaration of unconstitutionality of only two (2) articles in a single statute. This Court cannot do what petitioner wants without arrogating legislative power unto itself and violating the principle of separation of powers.

Petitioner failed to account for any of these provisions. He failed to consider whether his own plea for relief necessarily encompassed these and other related provisions. Thus, he failed in his burden of demonstrating to this Court the precise extent of the relief he seeks. He merely stated that we may somehow grant him relief under his generic, catch-all prayer for "other just and equitable reliefs." During the oral arguments:

JUSTICE LEONEN:
So what is your prayer?

ATTY. FALCIS:
The prayer of the petitions, Your Honor, initially says that to declare Articles 1 and 2 of the Family Code as null and void. However,

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medium periods.
The concubine shall suffer the penalty of destierro.

393 REV. PEN. CODE, art. 334.

394 Republic Act No. 8187 (1996), sec. 3 provides:
SECTION 3. *Definition of Term.* — For purposes of this Act, Paternity Leave refers to the benefits granted to a married male employee allowing him not to report for work for seven (7) days but continues to earn the compensation therefor, on the condition that his spouse has delivered a child or suffered a miscarriage for purposes of enabling him to effectively lend support to his wife in her period of recovery and/or in the nursing of the newly-born child.

395 Republic Act No. 8187 (1996), sec. 2 provides:
SECTION 2. Notwithstanding any law, rules and regulations to the contrary, every married male employee in the private and public sectors shall be entitled to a paternity leave of seven (7) days with full pay for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting. The male employee applying for paternity leave shall notify his employer of the pregnancy of his legitimate spouse and the expected date of such delivery.
For purposes of this Act, delivery shall include childbirth or any miscarriage.

> we also prayed for other just and equitable reliefs which we are of the position that in relation with (*sic*) *Republic vs. Manalo* that there is an alternative option for this Court in the exercise of its expanded power of judicial review to, in the light that the provisions is (*sic*) found . . . (interrupted)
>
> JUSTICE LEONEN:
>
> Wait a minute. You are saying or claiming that the proper reading of *Republic vs. Manalo* under the *ponen[c]ia* of Justice Peralta is that there is an alternative consequence to a finding that a provision is unconstitutional. Normally, if a provision is unconstitutional, it is void *ab initio*. And you are now saying that the Court has created new jurisprudence in *Republic vs. Manalo* that when we find a provision to be unconstitutional that it can be valid?
>
> ATTY. FALCIS:
>
> No, Your Honor. What petitioners are saying that our interpretations of this Court's guide in *Republic vs. Manalo* is that . . . (interrupted)
>
> JUSTICE LEONEN:
>
> So in essence you are asking the Court to find or to found new jurisprudence in relation to situation (*sic*) like yours?
>
> ATTY. FALCIS:
>
> No, Your Honors, we are only asking for a statutory interpretation that was applied in *Republic vs. Manalo* that two interpretations that would lead to finding (*sic*) of unconstitutionality the Court adopted a liberal interpretation, did not declare Article 26 paragraph 2 as unconstitutional. But because the Constitution is deemed written into the Family Code as well (*sic*) interpreted it in light of the equal protection clause.[396]

Petitioner miserably failed to discharge even the most elementary burden to demonstrate that the relief he prays for is within this Court's power to grant. It is curious, almost negligent, for him as petitioner and counsel not to present to this Court any other provision of law that will be affected as a consequence of his Petition.

VIII (E)

There is a myriad of laws, rules, and regulations that affect, or are affected by marriage.

Yet, none was ever mentioned in the Petition or the Petition-in-Intervention.

Whether by negligence or sheer ineptitude, petitioner failed to present to this Court even more than a handful of laws that provide for the benefits

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[396] TSN, June 19, 2018, p. 26.

and burdens which he claims are being denied from same-sex couples. He confined himself to a superficial explanation of the symbolic value of marriage as a social institution.

This Court must exercise great caution in this task of making a spectrum of identities and relationships legible in our marriage laws, paying attention to "who and what is actualized when the LGBT subject is given a voice."[397] We must be wary of oversimplifying the complexity of LGBTQI+ identities and relationships, and even render more vulnerable "a range of identities and policies that have refused to conform to state-endorsed normative homo- or heterosexuality."[398]

Thus, an immediate announcement that the current marriage laws apply in equal and uncalibrated measure to same-sex relationships may operate to unduly shackle those relationships and cause untold confusions on others. With the sheer inadequacies of the Petition, this Court cannot arrogate unto itself the task of weighing and adjusting each of these many circumstances.

VIII (F)

Consequently, the task of devising an arrangement where same-sex relations will earn state recognition is better left to Congress in order that it may thresh out the many issues that may arise:

> Marriage is a legal relationship, entered into through a legal framework, and enforceable according to legal rules. Law stands at its very core. *Due to this inherent "legalness" of marriage, the constitutional right to marry cannot be secured simply by removing legal barriers to something that exists outside of the law. Rather, the law itself must create the "thing" to which one has a right. As a result, the right to marry necessarily imposes an affirmative obligation on the state to establish this legal framework.*[399] (Emphasis supplied)

During oral arguments, Members of this Court pointed to civil unions that promote more egalitarian partnerships:

> JUSTICE LEONEN:
>
> What I'm asking you, Atty. Falcis, is other people, heterosexual couples that go into marriage more second class than what you can create.

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[397] Katherine Franke, *Dating the State: The Moral Hazards of Winning Gay Rights,* 44 COLUM. HUM. RTS. L. REV. 1, 38 (2012).

[398] Id. at 41–42.

[399] William M. Hohengarten, *Same-Sex Marriage and the Right of Privacy,* 103 YALE L.J. 1495, 1496 (1994).

ATTY. FALCIS:

No, Your Honors, . . .

JUSTICE LEONEN:

Because, well, it's a pre-packaged set of law. In fact, if you trace that law it comes from the Spanish Civil Code. Okay, the *Partidas* and then the *Nueva Recopilacion* and coming from the *fuer sus fuegos* before, correct?

ATTY. FALCIS:

Yes, Your Honor.

JUSTICE LEONEN:

And in sealed patriarchy, in fact there are still some vestiges of that patriarchy in that particular Civil Code and there are a lot of limitations, it is not culturally created. It's not indigenous within our system. Can you imagine same-sex couples now can make their own civil union, correct?

ATTY. FALCIS:

Yes, Your Honor.

JUSTICE LEONEN:

The idea of some legal scholars which is to challenge even the constitutionality of marriage as a burden into their freedoms is now available to same sex couples?

ATTY.FALCIS:

Yes, Your Honor, but that is not by choice, Your Honors. Same-sex couples do not have the choice out of marriage because we're not even allowed to opt thing (*sic*)...

JUSTICE LEONEN:

So isn't it accurate to say that you are arguing to get into a situation which is more limited?

ATTY. FALCIS:

Your Honors, there are some situations that would be limited under marriage. But there are other situations that are . . .

JUSTICE LEONEN:

But you see, Atty. Falcis, that was not clear in your pleadings? And perhaps you can make that clear when you file your memoranda? *What exactly in marriage, that status of marriage? So that status of marriage creates a bundle of rights and obligations. But the rights and obligations can also be fixed by contractual relations, is that not correct? And because it can be fixed by contractual relations, you can actually create a little bit more perfect civil union.* In fact, you can even say in your contract that we will stay together for ten years, after ten years, it's renewable, correct? That cannot be done by heterosexual couples wanting to marry. But if that is your belief then it can be established in that kind of an arrangement, correct? You may say not conjugal partnership or absolute community, you will specify the details of the co-ownership or

> the common ownership that you have of the properties that you have. You will say everything that I make is mine, everything that you make because you're richer therefore will be shared by us. That's more [egalitarian], correct? That's not in the Civil Code, right?
>
> ATTY. FALCIS:
>
> Yes, Your Honor.[400] (Emphasis supplied)

In truth, the question before this Court is a matter of what marriage seeks to acknowledge. Not all intimate relationships are the same and, therefore, fit into the rights and duties afforded by our laws to marital relationships.[401]

For this Court to instantly sanction same-sex marriage inevitably confines a class of persons to the rather restrictive nature of our current marriage laws. The most injurious thing we can do at this point is to constrain the relationships of those persons who did not even take part or join in this Petition to what our laws may forbiddingly define as the norm. Ironically, to do so would engender the opposite of loving freely, which petitioner himself consistently raised:

> The worst thing we do in a human relationship is to regard the commitment of the other formulaic. That is, that it is shaped alone by legal duty or what those who are dominant in government regard as romantic. *In truth, each commitment is unique, borne of its own personal history, ennobled by the sacrifices it has gone through, and defined by the intimacy which only the autonomy of the parties creates.*
>
> In other words, words that describe when we love or are loved will always be different for each couple. It is that which we should understand: *intimacies that form the core of our beings should be as free as possible, bound not by social expectations but by the care and love each person can bring.*[402] (Emphasis supplied)

Allowing same-sex marriage based on this Petition alone can delay other more inclusive and egalitarian arrangements that the State can acknowledge. Many identities comprise the LGBTQI+ community. Prematurely adjudicating issues in a judicial forum despite a bare absence of facts is presumptuous. It may unwittingly diminish the LGBTQI+ community's capacity to create a strong movement that ensures lasting recognition, as well as public understanding, of SOGIESC.

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400 TSN, June 19, 2019, pp. 41–42.

401 J. Leonen, Concurring Opinion in *Republic v. Manalo,* G.R. No. 221029, April 24, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64093> [Per J. Peralta, En Banc].

402 Id.

IX

Petitioner has no legal standing to file his Petition.

Legal standing is a party's "personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement."[403] Interest in the case "means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest."[404]

Much like the requirement of an actual case or controversy, legal standing ensures that a party is seeking a concrete outcome or relief that may be granted by courts:

> Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question." To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged." The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."
>
> The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:
>
> > A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.
>
> Standing in private suits requires that actions be prosecuted or defended in the name of the real party-in-interest, interest being "material interest or an interest in issue to be affected by the decree or judgment of the case[,] [not just] mere curiosity about the question involved." Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Those who bring the suit must possess their own

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403 *People v. Vera*, 95 Phil, 56, 89 (1937) [Per J. Laurel, En Banc].

404 *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000) [Per J. Kapunan, En Banc].

right to the relief sought.[405] (Citations omitted)

Even for exceptional suits filed by taxpayers, legislators, or concerned citizens, this Court has noted that the party must claim some kind of injury-in-fact. For concerned citizens, it is an allegation that the continuing enforcement of a law or any government act has denied the party some right or privilege to which they are entitled, or that the party will be subjected to some burden or penalty because of the law or act being complained of.[406] For taxpayers, they must show "sufficient interest in preventing the illegal expenditure of money raised by taxation[.]"[407] Legislators, meanwhile, must show that some government act infringes on the prerogatives of their office.[408] Third-party suits must likewise be brought by litigants who have "sufficiently concrete interest"[409] in the outcome of the dispute.

Here, petitioner asserts that he, being an "open and self-identified homosexual[,]"[410] has standing to question Articles 1, 2, 46(4), and 55(6) of the Family Code due to his "personal stake in the outcome of the case":[411]

> 30. Petitioner has a personal stake in the outcome of this case. Petitioner is an open and self-identified homosexual. Petitioner has sustained direct injury as a result of the prohibition against same-sex marriages. Petitioner has grown up in a society where same-sex relationships are frowned upon because of the law's normative impact. Petitioner's ability to find and enter into long-term monogamous same-sex relationships is impaired because of the absence of a legal incentive for gay individuals to seek such relationship.[412]

Petitioner's supposed "personal stake in the outcome of this case" is not the direct injury contemplated by jurisprudence as that which would endow him with standing. Mere assertions of a "law's normative impact"; "impairment" of his "ability to find and enter into long-term monogamous same-sex relationships"; as well as injury to his "plans to settle down and have a companion for life in his beloved country";[413] or influence over his "decision to stay or migrate to a more LGBT friendly country"[414] cannot be recognized by this Court as sufficient interest. Petitioner's desire "to find and enter into long-term monogamous same-sex relationships"[415] and "to

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405 *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per J. Leonen, En Banc].

406 *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003) [Per J. Carpio Morales, En Banc].

407 Id. at 896.

408 Id.

409 *White Light Corporation v. City of Manila*, 596 Phil. 444, 456 (2009) [Per J. Tinga, En Banc].

410 *Rollo*, p. 12.

411 Id.

412 Id.

413 Id.

414 Id.

415 Id.

settle down and have a companion for life in his beloved country"[416] does not constitute legally demandable rights that require judicial enforcement. This Court will not witlessly indulge petitioner in blaming the Family Code for his admitted inability to find a partner.

During the oral arguments, petitioner asserted that the very passage of the Family Code itself was the direct injury that he sustained:

> JUSTICE BERNABE:
>
> Now, what direct and actual injury have you sustained as a result of the Family Code provisions assailed in your Petition?
>
> ATTY. FALCIS:
>
> Your Honors, we are of multiple submissions. The first would be that as an individual I possess the right to marry because the right to marry is not given to couples alone; it is individual, Your Honors. Second, Your Honors, we are guided by this Court's pronouncements in the case of *Pimentel v. Aguirre* that the mere enactment of a law suffices to give a person either an actual case or standing. Because, Your Honors, we are invoking the expanded power of judicial review where in the most recent cases especially the one penned by Justice Brion, *Association of Medical Workers v. GSS*, this Court said that under the expanded power of judicial review, the mere enactment of a law, because Article VIII, Your Honors, Section 1 says that "Any instrumentality, the grave abuse of discretion of any instrumentality may be questioned before the Supreme Court, Your Honor." *And, therefore, the direct injury that I suffer, Your Honor, was the passage of a law that contradicts the Constitution in grave abuse of discretion because of the disregard of other fundamental provisions such as the equal protection clause, the valuing of human dignity, the right to liberty and the right to found a family, Your Honors.*[417] (Emphasis supplied)

Petitioner presents no proof at all of the immediate, inextricable danger that the Family Code poses to him. His assertions of injury cannot, without sufficient proof, be directly linked to the imputed cause, the existence of the Family Code. His fixation on how the Family Code is the definitive cause of his inability to find a partner is plainly *non sequitur*.

Similarly, anticipation of harm is not equivalent to direct injury. Petitioner fails to show how the Family Code is the proximate cause of his alleged deprivations. His mere allegation that this injury comes from "the law's normative impact"[418] is insufficient to establish the connection between the Family Code and his alleged injury.

If the mere passage of a law does not create an actual case or

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[416] Id.
[417] TSN, June 19, 2018, pp. 66–67.
[418] *Rollo*, p. 12.

controversy, neither can it be a source of direct injury to establish legal standing. This Court is not duty bound to find facts[419] on petitioner's behalf just so he can support his claims.

It does not escape this Court's notice that the Family Code was enacted in 1987. This Petition was filed only in 2015. Petitioner, as a member of the Philippine Bar, has been aware of the Family Code and its allegedly repugnant provisions, since at least his freshman year in law school. It is then extraordinary for him to claim, first, that he has been continually injured by the existence of the Family Code; and second, that he raised the unconstitutionality of Articles 1 and 2 of the Family Code at the earliest possible opportunity.[420]

Petitioner has neither suffered any direct personal injury nor shown that he is in danger of suffering any injury from the present implementation of the Family Code. He has neither an actual case nor legal standing.

X

The Petition-in-Intervention was also authored by petitioner. He only filed it after the Office of the Solicitor General had filed a Comment (Ad Cautelam) pointing out the procedural flaws in his original Petition. Still, the Petition-in-Intervention suffers from the same procedural infirmities as the original Petition. Likewise, it cannot cure the plethora of the original Petition's defects. Thus, it must also be dismissed.

Interventions are allowed under Rule 19, Section 1 of the 1997 Rules of Civil Procedure:

> SECTION 1. *Who may intervene.* — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Intervention is not an independent action but is ancillary and supplemental to existing litigation.[421]

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419 *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 453 (2017) [Per J. Carpio, En Banc].
420 *Rollo*, pp. 3–33.
421 *Garcia v. David*, 67 Phil. 279 (1939) [Per J. Laurel, En Banc].

X (A)

Intervention requires: (1) a movant's legal interest in the matter being litigated; (2) a showing that the intervention will not delay the proceedings; and (3) a claim by the intervenor that is incapable of being properly decided in a separate proceeding.[422] Here, while petitioners-intervenors have legal interest in the issues, their claims are more adequately decided in a separate proceeding, seeking relief independently from the Petition.

The Petition-in-Intervention suffers from confusion as to its real purpose. A discerning reading of it reveals that the ultimate remedy to what petitioners-intervenors have averred is a directive that marriage licenses be issued to them. Yet, it does not actually ask for this: its prayer does not seek this, and it does not identify itself as a petition for mandamus (or an action for mandatory injunction). Rather, it couches itself as a petition of the same nature and seeking the same relief as the original Petition. It takes pains to make itself appear inextricable from the original Petition, at the expense of specifying what would make it viable.

It does not escape this Court's notice that the Petition and Petition-in-Intervention were prepared by the same counsel, Falcis, the petitioner himself. The Petition-in-Intervention impleaded the same single respondent, the Civil Registrar General, as the original Petition. It also merely "adopt[ed] by reference as their own all the arguments raised by Petitioner in his original Petition[.]"[423] Notably, a parenthetical argument made by petitioner that barely occupied two (2) pages[424] of his Petition became the Petition-in-Intervention's entire subject: the right to found a family according to one's religious convictions.

Even though petitioners-intervenors Reverend Agbayani and Felipe, and Ibañez and her partner, all claim that they have "wish[ed] to be married legally and have applied for a marriage license but were denied[,]"[425] they only echoed the original Petition's prayer, merely seeking that Articles 1, 2, 46(4), and 55(6) of the Family Code be declared unconstitutional. Despite impleading respondent Civil Registrar General and asserting that they have a fundamental right to marry their partners, petitioners-intervenors never saw it proper—whether as the principal or a supplemental relief—to seek a writ of mandamus compelling respondent Civil Registrar General to issue marriage licenses to them.

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422 *Office of the Ombudsman v. Sison*, 626 Phil. 498 (2010) [Per J. Velasco, Jr., Third Division].
423 *Rollo*, p. 132.
424 Id. at 29–30.
425 Id. at 136.

X (B)

Given these, this Court can only arrive at the conclusion that the Petition-in-Intervention was a veiled vehicle by which petitioner sought to cure the glaring procedural defects of his original Petition. It was not a bona fide plea for relief, but a sly, tardy stratagem. It was not a genuine effort by an independent party to have its cause litigated in the same proceeding, but more of an ill-conceived attempt to prop up a thin and underdeveloped Petition.

Petitioner, as both party and counsel to petitioners-intervenors, miserably failed in his pretenses. A petition-in-intervention cannot create an actual case or controversy when the main petition has none. In *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas*:[426]

> We stress that neither the OSG's filing of its Comment nor the petition-in-intervention of PUMALU-MV, PKSK, and TDCI endowed De Borja's petition with an actual case or controversy. The Comment, for one, did not contest the allegations in De Borja's petition. Its main role was to supply De Borja's petition with the factual antecedents detailing how the alleged controversy reached the court. It also enlightened the RTC as to the two views, the mainland principle versus the archipelagic principle, on the definition of municipal waters. *Even if the Comment did oppose the petition, there would still be no justiciable controversy for lack of allegation that any person has ever contested or threatened to contest De Borja's claim of fishing rights.*
>
> The petition-in-intervention, on the other hand, also did not dispute or oppose any of the allegations in De Borja's petition. While it did espouse the application of the archipelagic principle in contrast to the mainland principle advocated by the OSG, it must be recalled that De Borja did not advocate for any of these principles at that time. He only adopted the OSG's position in his Memorandum before the RTC. *Thus, the petition-in-intervention did not create an actual controversy in this case as the cause of action for declaratory relief must be made out by the allegations of the petition without the aid of any other pleading.*[427] (Emphasis supplied, citations omitted)

This Court cannot, and should not, sanction underhanded attempts by parties and counsels to unscrupulously abuse the rules on intervention so that they may cure the glaring defects and missteps in their legal strategies.

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[426] 809 Phil, 65 (2017) [Per J. Jardeleza, Third Division].
[427] Id. at 84.

X (C)

Even if the Petition-in-Intervention is not a sham foisted by petitioner upon this Court, it still does not satisfy the requirements of justiciability.

Petitioners-intervenors invoke "third-party standing" as their basis for filing suit. But the requisites of third-party standing are absent here.

For a successful invocation of third-party standing, three (3) requisites must concur:

> Nonetheless, the general rules on standing admit of several exceptions such as the overbreadth doctrine, taxpayer suits, third party standing and, especially in the Philippines, the doctrine of transcendental importance.
>
> For this particular set of facts, the concept of third party standing as an exception and the overbreadth doctrine are appropriate. In *Powers v. Ohio*, the United States Supreme Court wrote that: "We have recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: the litigant must have suffered an 'injury-in-fact', thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect his or her own interests."[428] (Citations omitted)

Regarding injury-in-fact, petitioner-intervenor LGBTS Christian Church claims that its ability to recruit, evangelize, and proselytize is impaired by the lack of state recognition of the same-sex marriage ceremonies it conducts[429] as part of its religion. But there is no legally demandable right for a sect or denomination's religious ceremonies to be given State imprimatur. Likewise, and in a manner similar to petitioner, the Family Code has not been shown to be the proximate cause of petitioners-intervenors' alleged injury.

As to the requirement of some hindrance to a third party's ability to protect its own interests, petitioners-intervenors claim that "the relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance[.]"[430] This is a direct quotation from *White Light Corporation v. City of Manila*[431] but was made without any explanation or discussion. In *White Light Corporation*, there was an actual, demonstrable dearth of special interest groups involving patrons of White

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428 *White Light Corporation v. City of Manila*, 596 Phil. 444, 456 (2009) [Per J. Chico-Nazario, En Banc].
429 *Rollo*, p. 140.
430 Id.
431 596 Phil. 444, 456 (2009) [Per J. Tinga, En Banc].

Light Corporation's businesses. Here, petitioners-intervenors rely on nothing more than a bare allegation. They presented no proof that there is "relative silence in constitutional litigation" from groups concerned with LGBTQI+ causes that entitles them to raise arguments on behalf of third parties.

XI

Petitioner's choice of remedy further emphasizes his ignorance of basic legal procedure.

Rule 65 petitions are not per se remedies to address constitutional issues. Petitions for certiorari are filed to address the jurisdictional excesses of officers or bodies exercising judicial or quasi-judicial functions. Petitions for prohibition are filed to address the jurisdictional excesses of officers or bodies exercising judicial, quasi-judicial, or *ministerial* functions.[432] Rule 65, Sections 1 and 2 state:

> SECTION 1. *Petition for Certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46.
>
> SECTION 2. *Petition for Prohibition.* — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a 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 to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

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[432] See *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc]; *Galicto v. Aquino,* 683 Phil. 141 (2012) [Per J. Brion, En Banc]; *Philippine Migrant Rights Watch, Inc. v. Overseas Workers Welfare Administration,* 748 Phil. 348 (2014) [Per J. Peralta, Third Division]; and *Cawad v. Abad,* 765 Phil. 705 (2015) [Per J. Peralta, En Banc].

> The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Here, petitioner justifies his resort to Rule 65 on the basis of this Court's prior pronouncements that certiorari and prohibition are the remedies for assailing the constitutionality of statutes.[433] He cites, in particular, *Magallona* and *Araullo*. Petitioner even faults this Court, asserting that its failure to create a "specific remedial vehicle under its constitutional rule-making powers"[434] made his resort to Rule 65 appropriate.

Yet, petitioner's presentation of his case, which is lacking in an actual or imminent breach of his rights, makes it patently obvious that his proper remedy is not Rule 65, but rather, a petition for declaratory relief under Rule 63 of the 1997 Rules of Civil Procedure:

> SECTION 1. *Who May File Petition.* — Any person interested under a deed, will, contract or other written instrument, or *whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation* may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court *to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.*
>
> An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule. (Emphasis supplied)

This Court has been categorical[435] that, in certain instances, declaratory relief is proper should there be a question of the constitutionality of a statute, executive order or regulation, ordinance, or any other governmental regulation. The remedy of declaratory relief acknowledges that there are instances when questions of validity or constitutionality cannot be resolved in a factual vacuum devoid of substantial evidence on record[436] for which trial courts are better equipped to gather and determine.

Here, considering that there is an abysmal dearth of facts to sustain a finding of an actual case or controversy and the existence of a direct injury to petitioner, a petition for declaratory relief resolved after full-blown trial in

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433 *Rollo*, pp. 6–7.

434 Id. at 7.

435 *See Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529 (2004) [Per C. J. Davide, Jr., En Banc]; *Galicto v. Aquino*, 683 Phil. 141 (2012) [Per J. Brion, En Banc]; and *Concepcion v. Commission on Elections*, 609 Phil. 201 (2009) [Per J. Brion, En Banc].

436 *Blue Bar Coconut Philippines v. Tantuico*, 246 Phil. 714 (1988) [Per J. Gutierrez, En Banc].

a trial court would have been the more appropriate remedy.

As discussed, contrary to the basic requirement under Rule 65, petitioner failed to show that respondent Civil Registrar General exercised any judicial, quasi-judicial, or ministerial function. From this, no grave abuse of discretion amounting to lack or excess of jurisdiction can be appreciated. Petitions for certiorari and prohibition require the proper allegation not only of a breach of a constitutional provision, but more important, of an actual case or controversy.[437]

Not even the weightiest constitutional issues justify a blatant disregard of procedural rules that attempts to bypass or set aside judicious remedial measures put in place by this Court, under the guise that such remedies would take more than a modicum of effort and time on the part of a petitioner.[438] The requisites of justiciability should not be so lightly set aside.

XII

An equally compelling and independently sufficient basis for dismissing this Petition is petitioner's violation of the doctrine of hierarchy of courts.

XII (A)

The doctrine of hierarchy of courts ensures judicial efficiency at all levels of courts. It enables courts at each level to act in keeping with their peculiar competencies. This is so, even as this Court has original and concurrent jurisdiction with the regional trial courts and the Court of Appeals over petitions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*. In *Diocese of Bacolod v. Commission on Elections*:[439]

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the

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437 *In The Matter of: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement*, 751 Phil. 30 (2015) [Per J. Leonen, En Banc]. *See also* J. Leonen, Concurring and Dissenting Opinion in *Cawad v. Abad*, 764 Phil. 705 (2015) [Per J. Peralta, En Banc].

438 *Concepcion v. Commission on Elections*, 609 Phil. 201 (2009) [Per J. Brion, En Banc].

439 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

> facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
>
> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
>
> This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[440] (Citations omitted)

Very recently, in *Gios-Samar, Inc. v. Department of Transportation and Communications*,[441] this Court traced the jurisdictional history of the extraordinary writs of certiorari, mandamus, prohibition, *quo warranto*, and *habeas corpus*. We noted that while the 1973 Constitution[442] conferred on this Court original jurisdiction to issue these extraordinary writs, the same power was later extended to the Court of Appeals[443] and the regional trial courts[444] through Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980.

This concurrence of jurisdiction persists under the 1987 Constitution[445] and the 1997 Rules of Civil Procedure.[446]

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[440] Id. at 329–330.

[441] G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

[442] 1973 CONST., art. X, sec. 5(1) provides: The Supreme Court shall have the following powers:
(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.

[443] Batas Pambansa Blg. 129, sec. 9(1) provides:
SECTION 9. *Jurisdiction.* — The Court of Appeals exercise:
(1) Original jurisdiction to issue writs of *mandamus,* prohibition, *certiorari, habeas corpus,* and *quo warranto,* and auxiliary writs or processes[.]

[444] Batas Pambansa Blg. 129, sec. 21(1) provides:
SECTION 21. *Original Jurisdiction in other cases.*— Regional Trial Court shall exercise original jurisdiction:
(1) In the issuance of writs of *certiorari,* prohibition, *mandamus, quo warranto, habeas corpus,* and injunction which may be enforced in any part of their respective regions[.]"

[445] CONST., art. V, sec. 5(1) provides:
SECTION 5. The Supreme Court shall have the following powers:
(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari,* prohibition, *mandamus, quo warranto,* and *habeas corpus.*"

[446] RULES OF COURT, Rule 65, secs. 1, 2, and 3.

Time and again, this Court has held that the concurrent jurisdiction of the Court of Appeals and the regional trial courts with this Court does not give parties absolute discretion in immediately seeking recourse from the highest court of the land.[447] In *Gios-Samar*, we emphasized that the power to issue extraordinary writs was extended to lower courts not only as a means of procedural expediency, but also to fulfill a constitutional imperative as regards: (1) the structure of our judicial system; and (2) the requirements of due process.[448]

Considering the structure of our judicial system, this Court explained in *Gios-Samar*:

> In *Alonso v. Cebu Country Club, Inc.* (Alonso), this Court had occasion to articulate the role of the CA in the judicial hierarchy, viz.:
>
> > The hierarchy of courts is not to be lightly regarded by litigants. The CA stands between the RTC and the Court, and its establishment has been precisely to take over much of the work that used to be done by the Court. Historically, the CA has been of the greatest help to the Court in synthesizing the facts, issues, and rulings in an orderly and intelligible manner and in identifying errors that ordinarily might escape detection. The Court has thus been freed to better discharge its constitutional duties and perform its most important work, which, in the words of Dean Vicente G. Sinco, "is less concerned with the decision of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights." . . .
>
> Accordingly, when litigants seek relief directly from the Court, they bypass the judicial structure and open themselves to the risk of presenting incomplete or disputed facts. This consequently hampers the resolution of controversies before the Court. Without the necessary facts, the Court cannot authoritatively determine the rights and obligations of the parties. The case would then become another addition to the Court's already congested dockets.[449] (Citations omitted)

Enabling lower courts to grant extraordinary writs has contributed greatly to the practical concern of decongesting dockets. More important, it facilitates the need to enable factual issues to be fully ventilated in

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[447] *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc]; and *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, 809 Phil. 315 (2017) [Per J. Reyes, En Banc].

[448] Id.

[449] Id.

proceedings before courts that are better equipped at appreciating evidence, and ultimately bringing to this Court only issues of paramount and pervasive importance. As the final interpreter of the laws of the land, the cases brought before this Court should more appropriately be raising pure questions of law, with evidentiary matters having been authoritatively settled by lower courts.

If this Court were to burden itself with settling every factual nuance of every petition filed before it, the entire judicial machinery would bog down. Cases more deserving of this Court's sublime consideration would be waylaid. In *Gios-Samar*, this Court further explained:

> The doctrine of hierarchy of courts operates to: (1) prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction; (2) prevent further over-crowding of the Court's docket; and (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.[450] (Citations omitted)

Likewise, this Court discussed how the doctrine of hierarchy of courts serves the constitutional right of litigants to due process:

> While the term "due process of law" evades exact and concrete definition, this Court, in one of its earliest decisions, referred to it as a law which hears before it condemns which proceeds upon inquiry and renders judgment only after trial. It means that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Under the present Rules of Court, which governs our judicial proceedings, warring factual allegations of parties are settled through presentation of evidence. Evidence is the means of ascertaining, in a judicial proceeding, the truth respecting a matter of fact. As earlier demonstrated, the Court cannot accept evidence in the first instance. By directly filing a case before the Court, litigants necessarily deprive themselves of the op[p]ortunity to completely pursue or defend their causes of actions. Their right to due process is effectively undermined by their own doing.[451] (Citations omitted)

Immediately elevating evidentiary matters to this Court deprives the parties of the chance to properly substantiate their respective claims and defenses. It is essential for courts to justly resolve controversies. Parties who proceed headlong to this Court deny themselves their own chance at effective and exhaustive litigation.

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450 Id.
451 Id.

Thus, this Court's dismissal of petitions that inextricably entail factual questions and violate the doctrine of hierarchy of courts does not merely arise out of a strict application of procedural technicalities. Rather, such dismissal is a necessary consequence of the greater interest of enabling effective litigation, in keeping with the right to due process. The parties' beseeching for relief inordinately inflates this Court's competence, but we find no consolation in flattery. In the end, it is never for this Court to arrogate unto itself a task that we are ill-equipped to perform:

> In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus* (extraordinary writs), direct recourse to this Court is proper only to seek resolution of questions of law. Save for the single specific instance provided by the Constitution under Section 18, Article VII, cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies. This is the *raison d'être* behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. It is a bright-line rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised.[452] (Citations omitted)

XII (B)

The distinction between questions of fact and questions of law is settled. A question of fact exists when doubt arises as to the truth or falsity of the facts presented; a question of law exists when the issue arises as to what the law is, given a state of facts.[453]

That the issues involved are of transcendental importance is an oft-cited justification for failing to comply with the doctrine of hierarchy of courts and for bringing admittedly factual issues to this Court.

Diocese of Bacolod recognized transcendental importance as an exception to the doctrine of hierarchy of courts. In cases of transcendental importance, imminent and clear threats to constitutional rights warrant a direct resort to this Court.[454] This was clarified in *Gios-Samar*. There, this Court emphasized that transcendental importance—originally cited to relax rules on legal standing and not as an exception to the doctrine of hierarchy of courts—applies only to cases with purely legal issues.[455] We explained

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[452] Id.

[453] *Benito v. People*, 753 Phil. 616 (2015) [Per J. Leonen, Second Division].

[454] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[455] *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12,

that the decisive factor in whether this Court should permit the invocation of transcendental importance is not merely the presence of "special and important reasons[,]"[456] but the nature of the question presented by the parties. This Court declared that there must be no disputed facts, and the issues raised should only be questions of law:[457]

> [W]hen a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.[458]

Still, it does not follow that this Court should proceed to exercise its power of judicial review just because a case is attended with purely legal issues. Jurisdiction ought to be distinguished from justiciability. Jurisdiction pertains to competence "to hear, try[,] and decide a case."[459] On the other hand,

> [d]etermining whether the case, or any of the issues raised, is justiciable is an exercise of the power granted to a court with jurisdiction over a case that involves constitutional adjudication. Thus, even if this Court has jurisdiction, the canons of constitutional adjudication in our jurisdiction allow us to disregard the questions raised at our discretion.[460]

Appraising justiciability is typified by constitutional avoidance.[461] This remains a matter of enabling this Court to act in keeping with its capabilities. Matters of policy are properly left to government organs that are better equipped at framing them. Justiciability demands that issues and judicial pronouncements be properly framed in relation to established facts:

> *Angara v. Electoral Commission* imbues these rules with its libertarian character. Principally, Angara emphasized the liberal deference to another constitutional department or organ given the majoritarian and representative character of the political deliberations in their forums. It is not merely a judicial stance dictated by courtesy, but is rooted on the very nature of this Court. Unless congealed in constitutional or statutory text and imperatively called for by the actual and non-controversial facts of the case, this Court does not express policy. This Court should channel democratic deliberation where it should take place.

2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

456 Id.

457 Id.

458 Id.

459 *Land Bank of the Philippines v. Dalauta*, 815 Phil. 740, 768 (2017) [Per J. Mendoza, En Banc].

460 J. Leonen, Concurring Opinion in *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

461 Id.

. . . .

> Judicial restraint is also founded on a policy of conscious and deliberate caution. This Court should refrain from speculating on the facts of a case and should allow parties to shape their case instead. Likewise, this Court should avoid projecting hypothetical situations where none of the parties can fully argue simply because they have not established the facts or are not interested in the issues raised by the hypothetical situations. In a way, courts are mandated to adopt an attitude of judicial skepticism. What we think may be happening may not at all be the case. Therefore, this Court should always await the proper case to be properly pleaded and proved.[462]

Thus, concerning the extent to which transcendental importance carves exceptions to the requirements of justiciability, "[t]he elements supported by the facts of an actual case, and the imperatives of our role as the Supreme Court within a specific cultural or historic context, must be made clear":[463]

> They should be properly pleaded by the petitioner so that whether there is any transcendental importance to a case is made an issue. That a case has transcendental importance, as applied, may have been too ambiguous and subjective that it undermines the structural relationship that this Court has with the sovereign people and other departments under the Constitution. Our rules on jurisdiction and our interpretation of what is justiciable, refined with relevant cases, may be enough.[464]

Otherwise, this Court would cede unfettered prerogative on parties. It would enable the parties to impose their own determination of what issues are of paramount, national significance, warranting immediate attention by the highest court of the land.

XII (C)

In an attempt to divert this Court's attention from the glaring fundamental missteps of his Petition, petitioner—almost predictably—invokes transcendental importance.[465] This invocation fails to satisfy this Court of the need to resolve the Petition on the merits. It fails to alleviate glaring deficiencies, whether as to having violated the doctrine of hierarchy of courts, or the lack of legal standing.

Even if this Court were to go out of its way in relaxing rules and proceed to resolve the substantive issues, it would ultimately be unable to do

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462 Id.
463 Id.
464 Id.
465 *Rollo*, pp. 10–11.

so, as petitioner himself failed to present even an iota of evidence substantiating his case.

Associate Justice Francis H. Jardeleza (Associate Justice Jardeleza)'s interpellation during oral arguments highlighted this. Citing as an example the experience of then attorney and later Justice Thurgood Marshall when he attacked the "separate but equal" approach to schools in the segregation era of the United States, Associate Justice Jardeleza emphasized the need for a contextualization of petitioners' arguments using factual and evidentiary bases:

> JUSTICE JARDELEZA:
> . . . Now, did Thurgood Marshall go direct to the US Supreme Court?
>
> ATTY. FALCIS:
> No, Your Honor.
>
> JUSTICE JARDELEZA:
> That is the point of Justice Bersamin. And my point, you should read, . . . how the NAACP, . . . plotted/planned that case and *they had a lot of evidence, as in testimonial evidence, on the psychological effect of separate but allegedly equal schools. So, do you get my point about why you should be better off trying this case before the RTC?*
>
> ATTY. FALCIS:
> Yes, Your Honor.
>
> JUSTICE JARDELEZA:
> . . . And I'll give you another good example, that is why I asked questions from Reverend Agbayani. Even if the church remains as a party with standing, do you know why I asked that series of questions of (*sic*) him?
>
> ATTY. FALCIS:
> Because, Your Honor, what he was saying were factual issues, Your Honor.
>
> JUSTICE JARDELEZA:
> Yes. And what does *Escritor* tell you?
>
> ATTY. FALCIS:
> In terms of religious freedom, Your Honor?
>
> JUSTICE JARDELEZA:
> Yes. What does *Escritor* with respect to hierarchy of courts tell you?
>
> ATTY. FALCIS:
> *Estrada v. Escritor* remanded back the case, Your Honor, to the lower courts for . . .
>
> JUSTICE JARDELEZA:

Escritor tells you that you should reread it carefully. The religious claim is based on religious conviction, right?

ATTY. FALCIS:
Yes, Your Honor.

JUSTICE JARDELEZA:
Just like a fundamental right, religious conviction. *Bago ka dumating sa* conviction the first word is religious. That's why I was asking is there a religion? Is there a religion, to start with? Now, what is the difference between a religion and a sect? What, how many people need/comprise a religion? Can you have a religion of one? That is described in *Escritor*, that's one, is there a religion? No. 2, *Escritor* says, is the claim/burden being put by the government something that impinges on a practice or belief of the church that is a central tenet or a central doctrine. *You have to prove that in the RTC, that was I was (sic) asking, that's why I was asking what is the tenet of MCC? What is the different tenet? And you have to prove that and the question for example a while ago, you were asked by Justice Leonen, "What is the history of marriage in the Philippines?" You have your view, right? The government has a different view about the history and if I just listen to you, you will give me your views and if I just listen to the SOLGEN, he will give me his views. What I'm saying is the Court needs a factual record where experts testify subject to cross examination. Yun po ang ibig sabihin ng* hierarchy of courts. . . .[466] (Emphasis supplied)

At another juncture during the oral arguments, when interpellating Gatdula:

JUSTICE JARDELEZA:
. . . Mr. Falcis, for example, adverted to *Brown v. Board of Education*. And it should interest you and it is a fascinating history on how a group of people spearheaded by the NAACP effected social change "separate but equal is not constitutional". . . . And remember, the question there was separate but equal schools for black children and white children, "Was it causing psychological harm to the black children?" Of course, the whites were saying "no" because it's equal, they have equal facilities. The famous psychologist that they presented there is named Kenneth Clark, who had his famous doll test, manika. He was able to prove that to the satisfaction of the trial court that indeed black children sometimes even think that, you know, when you present them with dolls, that they are white. That is the type of evidence I think that we need in this case. Now, very quickly and I will segue to Obergefell, again, five cases four different states. They presented the Chairman of the Department of History of Yale. We heard a lot, the government is talking of tradition and history. But again, for example, SolGen is citing Blair and Robertson, that, of course, qualifies as a Learned Treaties, right? But again, for the proposition that the history of this country is in favor of same sex, I would love first to hear, as an expert, probably the Chairman of History of Ateneo and UP. As in Obergefell, they also had the Department of Psychology, Head of Washington and Lee University. *So, my plea to both of you, especially to the petitioner, at this point in time, I am not willing to*

[466] TSN, June 19, 2018, pp. 109–110.

> *ask you in your memo to discuss the merits because unless the petitioner convinces me that we have a proper exception to the hierarchy of court rules then I think, for the first time, this Court should consider that, when we say there is a violation of the hierarchy of rules, we stop, we don't go to merits. And that's why I'm, I cannot go, for the life of me, to the merits if you have this question of fact in my mind. "Who, which couples can better raise a child?" Again I say, "That is a question of fact". I am not a trier of fact, and my humble opinion is try it first.*[467] (Emphasis supplied)

The lack of material allegations and substantiation in petitioner's pleadings is glaring. He had nothing but this to say:

> 25. Lastly, Petitioner submits that the instant petition raises an issue of transcendental importance to the nation because of the millions of LGBT Filipinos all over the country who are deprived from marrying the one they want or the one they love. They are discouraged and stigmatized from pursuing same-sex relationships to begin with. Those who pursue same-sex relationships despite the stigma are deprived of the bundle of rights that flow from a legal recognition of a couple's relationship – visitation and custody rights, property and successional rights, and other privileges accorded to opposite-sex relationships.[468]

Petitioner's cursory invocation of transcendental importance—miserably bereft of proof—cannot possibly impress this Court. It only reveals petitioner's cavalier foolhardiness. Transcendental importance is not a life buoy designed to save unprepared petitioners from their own mistakes and missteps. Its mere invocation is not license to do away with this Court's own rules of procedure.[469] In *Lozano v. Nograles*:[470]

> **Moreover, while the Court has taken an increasingly liberal approach to the rule of locus standi, evolving from the stringent requirements of "personal injury" to the broader "transcendental importance" doctrine, such liberality is not to be abused. It is not an open invitation for the ignorant and the ignoble to file petitions that prove nothing but their cerebral deficit.**
>
> In the final scheme, judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury. When warranted by the presence of indispensable minimums for judicial review, this Court shall not shun the duty to resolve the constitutional challenge that may confront it. (Emphasis in the original)

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467 TSN, June 26, 2018, pp. 101–102.

468 *Rollo*, p. 11, Petition.

469 In The Matter of: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement, UDK-15143, January 21, 2015 [Per J. Leonen, En Banc].

470 607 Phil. 334 (2009) [Per C.J. Puno, En Banc].

Lacking even the indispensable minimum required by this Court, the Petition here cannot be resuscitated by an unthinking parroting of extraordinary doctrines.

XIII

The primordial duty of lawyers to their clients and cause is to act to the best of their knowledge and discretion, and with all good fidelity.[471] Canon 17 of the Code of Professional Responsibility states:

> CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

Competence and diligence should be a lawyer's watchwords:

> CANON 18 — A lawyer shall serve his client with competence and diligence.
>
> Rule 18.01 A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.
>
> Rule 18.02 A lawyer shall not handle any legal matter without adequate preparation.
>
> Rule 18.03 A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.
>
> Rule 18.04 A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

XIII (A)

Lawyers should be mindful that their acts or omissions bind their clients.[472] They are bound to zealously defend their client's cause, diligently and competently, with care and devotion:

> Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be

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[471] Lawyer's Oath.

[472] *Ramos v. Atty. Jacoba*, 418 Phil. 346 (2001) [Per J. Mendoza, Second Division].

> taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[473] (Citations omitted)

XIII (B)

Here, petitioner wagered in litigation no less than the future of a marginalized and disadvantaged minority group. With palpable vainglory, he made himself the lead plaintiff and also represented himself, only seeking assistance from other counsel for oral arguments.[474] By deciding to place this burden upon himself, petitioner should have acted with utmost care and thoughtfulness, drawing upon the limits of his skill and knowledge, to represent the LGBTQI+ cause.

However, at every stage of these proceedings, petitioner only exposed his utter lack of preparation, recklessness, and crudeness.

Petitioner had already been previously sanctioned for his negligence and incompetence during the June 5, 2018 preliminary conference. There, this Court underscored his ignorance of basic court procedure. In its July 3, 2018 Resolution,[475] this Court already reminded petitioner of the duty and responsibility that counsels have to the cause they purport to represent:

> Lawyers must serve their clients with competence and diligence. Under Rule 18.02 of the Code of Professional Responsibility, "[a] lawyer shall not handle any legal matter without adequate preparation." Atty. Falcis' appearance and behavior during the preliminary conference reveal the inadequacy of his preparation. Considering that the Advisory for Oral Arguments was served on the parties three (3) months prior to the preliminary conference, it was inexcusably careless for any of them to appear before this Court so barely prepared.
>
> The preliminary conference was not mere make-work. Rather, it was essential to the orderly conduct of proceedings and, ultimately, to the judicious disposition of this case. Appearance in it by counsels and parties should not be taken lightly.
>
> Atty. Falcis jeopardized the cause of his clients. Without even

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473 *Santiago v. Fojas*, 318 Phil. 79, 86–87 (1995) [Per J. Davide, Jr., First Division].
474 *Rollo*, pp. 290–293.
475 Id. at 601–605.

> uttering a word, he recklessly courted disfavor with this Court. His bearing and demeanor were a disservice to his clients and to the human rights advocacy he purports to represent.[476]

As a result, petitioner was found guilty of direct contempt of court and admonished. He was sternly warned that any further contemptuous acts shall be dealt with more severely.

XIII (C)

Undeterred by this Court's stern warning, petitioner, along with co-counsels, Attys. Angeles, Guangko, and Maranan of Molo Sia Dy Tuazon Ty and Coloma Law Office, failed to comply with this Court's June 26, 2018 Order to submit the required memorandum of both petitioner and petitioners-intervenors within 30 days, or until July 26, 2018.[477] Because of this, the Memorandum was dispensed with. Petitioner and his co-counsels were all ordered to show cause why they should not be cited in indirect contempt.[478]

Their explanations[479] are patently unsatisfactory. They fault the impulsivity of youth, other supposedly equally urgent professional work, reliance on Court pronouncements in other cases, and work disruptions caused by floods and typhoons.[480] These were the same bases raised in their prior Motion for Extension, which this Court found to be utterly lacking in merit and denied. These reasons failed to impress then, and they fail to impress now. As we observed then, the complexity of issues and other professional work did not delay the filing of memoranda by other parties.[481] There is no compelling reason to treat petitioner and his co-counsels differently. After all, it was petitioner who set all of these events in motion; the other parties merely responded to what he sought.

Petitioner and his co-counsel's reference to the "impulsivity of youth"[482] utterly fails to impress. If at all, this Court sees this as a deodorized admission of unreadiness and impotence.

In any case, as this Court has already stated in its July 3, 2018 Resolution:

> Atty. Falcis is not an uninformed layperson. He has been a

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476 Id. at 603–604.
477 Id. at 711.
478 Id. at 713.
479 Id. at 1348–1353, Manifestation and Compliance.
480 Id. at 1349.
481 Id. at 712.
482 Id. at 1349.

> member of the Philippine Bar for a number of years. As an officer of the court, he is duty bound to maintain towards this Court a respectful attitude essential to the proper administration of justice. He is charged with knowledge of the proper manner by which lawyers are to conduct themselves during judicial proceedings. His Lawyer's Oath and the Code of Professional Responsibility exhort him to maintain the requisite decency and to afford dignity to this Court.[483]

Youth and professional inexperience do not excuse the manifest inability of sworn court officers to follow lawful orders. Like petitioner, Atty. Angeles, Atty. Guangko and Atty. Maranan are members of the Philippine Bar, charged with basic knowledge of the rules of pleading and practice before the courts, especially this Court. They are not uninformed laypersons whose ignorance can be excused by inexperience. It bears noting that Atty. Angeles, Atty. Guangko, and Atty. Maranan are part of the law firm Molo Sia Dy Tuazon Ty and Coloma Law Offices and are, thus, presumably guided by more experienced litigators who should have been able to competently advise them on what is expected of those who appear before this Court.

XIV

Diligence is even more important when the cause lawyers take upon themselves to defend involves assertions of fundamental rights. By voluntarily taking up this case, petitioner and his co-counsels gave their "unqualified commitment to advance and defend [it.]"[484] The bare minimum of this commitment is to observe and comply with the deadlines set by a court.

Lawyers who wish to practice public interest litigation should be ever mindful that their acts and omissions before the courts do not only affect themselves. In truth, by thrusting themselves into the limelight to take up the cudgels on behalf of a minority class, they represent the hopes and aspirations of a greater mass of people, not always with the consent of all its members. Their errors and mistakes have a ripple effect even on persons who did not agree with or had no opportunity to consent to the stratagems and tactics they employed.

One who touts himself an advocate for the marginalized must know better than to hijack the cause of those whom he himself proclaims to be oppressed. Public interest lawyering demands more than the cursory invocation of legal doctrines, as though they were magical incantations swiftly disengaging obstacles at their mere utterance. Public interest

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[483] Id. at 603.

[484] *Samonte v. Atty. Jumamil*, 813 Phil. 795, 803 (2017) [Per J. Perlas-Bernabe, First Division].

advocacy is not about fabricating prestige. It is about the discomfort of taking the cudgels for the weak and the dangers of standing against the powerful. The test of how lawyers truly become worthy of esteem and approval is in how they are capable of buckling down in silence, anonymity, and utter modesty—doing the spartan work of research and study, of writing and self-correction. It is by their grit in these unassuming tasks, not by hollow, swift appeals to fame, that they are seasoned and, in due time, become luminaries, the standard by which all others are measured.

Petitioner courted disaster for the cause he chose to represent. He must have known what was at stake. Yet, he came to this Court scandalously unprepared, equipped with nothing more than empty braggadocio. For a shot at fame, he toyed with the hopes and tribulations of a marginalized class.

By failing to represent his cause with even the barest competence and diligence, petitioner betrayed the standards of legal practice. His failure to file the required memorandum on time is just the most recent manifestation of this betrayal. He disrespected not only his cause, but also this Court—an unequivocal act of indirect contempt.

A person adjudged guilty of indirect contempt may be punished by a fine not exceeding ₱30,000.00 or imprisonment not exceeding six (6) months, or both.[485] To serve as a reminder to the bench and bar, and in light of petitioner's being earlier adjudged guilty of contempt of court for a similar offense—for which he was specifically warned that any further contemptuous acts shall be dealt with more severely—this Court, while declining to mete out the penalty of imprisonment by way of clemency, imposes on petitioner the penalty of a fine.

Similarly, parties who come before this Court to intervene in a proceeding should be prepared to fully participate in all its stages, whenever this Court requires them to. Records show that after oral arguments, intervenor-oppositor Perito also never filed a memorandum pursuant to the June 26, 2018 Order. He has not made any manifestation or explanation for his noncompliance. His failure to comply with this Court's order likewise constitutes indirect contempt.

What we do in the name of public interest should be the result of a collective decision that comes from well-thought-out strategies of the movement in whose name we bring a case before this Court. Otherwise, premature petitions filed by those who seek to see their names in our jurisprudential records may only do more harm than good. Good intentions

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[485] RULES OF COURT, Rule 71, sec. 7.

are no substitute for deliberate, conscious, and responsible action. Litigation for the public interest of those who have been marginalized and oppressed deserves much more than the way that it has been handled in this case.

A Final Note

Our freedom to choose the way we structure our intimate relationships with our chosen significant other in a large sense defines us as human beings. Even opposite-sex couples continually adjust the day-to-day terms of their partnership as their relationships mature. It is in the sanctuary of their spaces that we authentically evolve, become better human beings, and thus contribute meaningfully within our society. After all, the companionship and understanding that we inevitably discover with the person we choose to spend the rest of our lives with provide the foundation for an ethic of care that enriches a democracy.

This Court sympathizes with the petitioner with his obvious longing to find a partner. We understand the desire of same-sex couples to seek, not moral judgment based on discrimination from any of our laws, but rather, a balanced recognition of their true, authentic, and responsive choices.

Yet, the time for a definitive judicial fiat may not yet be here. This is not the case that presents the clearest actual factual backdrop to make the precise reasoned judgment our Constitution requires. Perhaps, even before that actual case arrives, our democratically-elected representatives in Congress will have seen the wisdom of acting with dispatch to address the suffering of many of those who choose to love distinctively, uniquely, but no less genuinely and passionately.

WHEREFORE, the Petition for Certiorari and Prohibition and the Petition-in-Intervention are **DISMISSED**.

This Court finds petitioner Atty. Jesus Nicardo M. Falcis III, his co-counsels Atty. Darwin P. Angeles, Atty. Keisha Trina M. Guangko, Atty. Christopher Ryan R. Maranan, as well as intervenor-oppositor Atty. Fernando P. Perito, all **GUILTY** of **INDIRECT CONTEMPT OF COURT**.

Atty. Falcis is sentenced to pay a fine of Five Thousand Pesos (₱5,000.00) within thirty (30) days from notice. Atty. Angeles, Atty. Guangko, Atty. Maranan, and Atty. Perito are **REPRIMANDED** and **ADMONISHED** to be more circumspect of their duties as counsel. They are **STERNLY WARNED** that any further contemptuous acts shall be dealt with more severely.

Let copies of this Decision be included in the personal records of Atty. Falcis, Atty. Angeles, Atty. Guangko, Atty. Maranan, and Atty. Perito, and entered in their files in the Office of the Bar Confidant.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice

ANTONIO T. CARPIO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

I join the concurring opinion of J. Jardeleza

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court