G.R. No. 217910 (*Jesus Falsis III v. Civil Registrar General*).

Promulgated:

September 3, 2019

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SEPARATE OPINION

PERALTA, *J*.:

The Court ought to dismiss the case outright on the ground that there is no actual case or controversy ripe for judicial determination. Also, the petitioner does not have any *locus standi*. And even if we were to touch on the merits, he has not made out a clear case for a declaration of the unconstitutionality of the provisions of the *Family Code* (Executive Order No. 209) relative to its definition of marriage as a union between a man and a woman.

At the outset, it is to be pointed out that the role of the Court in constitutional adjudication is to determine the rights of the people under the Constitution, an undertaking that demands, among others, the presence of an actual case or controversy ripe for judicial pronouncement, and that the case must be raised by one who has the personality or standing to do so. Here, the petitioner fails to satisfy both requisites. He is practically beseeching the Court to come up with an advisory opinion about the presence of constitutionally protected right to same-sex marriages – in effect seeking to "convert the Court into an Office of Ombudsman for the ventilation of generalized grievances."[1]

An actual case or controversy refers to an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory. The controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests.[2] Further, "[a]n 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 concern is the evaluation of the twofold aspect of ripeness: *first*, the fitness of the issues for judicial decision; and *second*, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the

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[1] Separate Opinion of then Associate Justice Vicente V. Mendoza in *Tatad v. Garcia, Jr.*, 313 Phil. 296, 341 (1995).

[2] *John Hay Peoples Alternative Coalition v. Lim*, 460 Phil. 530, 545 (2003).

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."[3]

It has been held that "as to the element of injury, such aspect is not something that just anybody with some grievance or pain may assert. It has to be **direct and substantial** to make it worth the court's time, as well as the effort of inquiry into the constitutionality of the acts of another department of government. If the asserted injury is more imagined than real, or **is merely superficial and insubstantial,** then the courts may end up being importuned to decide a matter that does not really justify such an excursion into constitutional adjudication. The rationale for this constitutional requirement of *locus standi* is by no means trifle. Not only does it assure the vigorous adversary presentation of the case; more importantly, it must suffice to warrant the Judiciary's overruling the determination of a coordinate, democratically elected organ of government, such as the President, and the clear approval by Congress, in this case. Indeed, the rationale goes to the very essence of representative democracies."[4]

Intrinsically related to the presence of an actual case or controversy ripe for adjudication is the requirement that the issue be raised by the proper party, or the issue of *locus standi*. Even as this Court is the repository of the final word on what the law is, we should always be aware of the need for some restraint on the exercise of the power of judicial review. As then Associate Justice, later Chief Justice, Reynato S. Puno then intoned in one of his dissents: "Stated otherwise, courts are neither free to decide *all* kinds of cases dumped into their laps nor are they free to open their doors to *all* parties or entities claiming a grievance. The rationale for this constitutional requirement of *locus standi* is by no means trifle. It is intended 'to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary's overruling the determination of a coordinate, democratically elected organ of government.' It, thus, goes to the very essence of representative democracies."[5] Otherwise stated, "[a] party must show that he has been, or is about to be denied some personal right or privilege to which he is lawfully entitled. A party must also show that he has a real interest in the suit. By 'real interest' is meant a present substantial interest, as distinguished from a mere expectancy or future, contingent, subordinate, or inconsequential interest."[6]

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[3] *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, 686 Phil. 357, 369 (2012).

[4] *Galicto v. Aquino III*, 683 Phil. 141, 172 (2012), citing Gorospe, *Songs, Singers and Shadows: Revisiting Locus Standi In Light Of The People Power Provisions Of The 1987 Constitution*, UST LAW REVIEW, Vol. LI, AY 2006-2007, pp. 15-16, citing *Montecillo v. Civil Service Commission*, 412 Phil. 524 (2001); *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 374 Phil. 859 (1999); and *Tañada v. Angara*, 338 Phil. 547 (1997), and, then Associate Justice Reynato S. Puno's Dissenting Opinion in *Kilosbayan v. Guingona, Jr.*, 302 Phil. 107, 190 (1994).

[5] *Kilosbayan, Incorporated v. Guingona, Jr.*, *supra* note 4.

[6] *Montesclaros v. Commission on Elections*, 433 Phil. 620, 635-636 (2002).

Relative to the foregoing matter is the need to give the legislature space to do its job of determining policies as an aspect of the democratic process. In this regard, then Associate Justice Santiago M. Kapunan noted: "The idea that a norm of constitutional adjudication could be lightly brushed aside on the mere supposition that an issue before the Court is of paramount public concern does great harm to a democratic system which espouses a delicate balance between three separate but co-equal branches of government. It is equally of paramount public concern, *certainly paramount to the survival of our democracy*, that acts of the other branches of government are accorded due respect by this Court. x x x. Notwithstanding Article VIII, Section 1 of the Constitution, since the exercise of the power of judicial review by this Court is inherently anti-democratic, this Court should exercise a becoming modesty in acting as a *revisor* of an act of the executive or legislative branch."[7]

Prudential considerations should caution the Court from having to accept and decide each and every case presented to it just because the questions raised may be interesting, novel or challenging. There is a time for coffee table discussions of exotic ideas, but the Court does not sit to do such a discourse. In undertaking judicial review, it decides in accordance with the Fundamental Law issues that have particular relevance and application to actual facts and circumstances, not imagined or anticipated situations.

Petitioner Falsis does not assert that he has been directly injured by the provisions of the *Family Code*. If ever he would be prevented from marrying, that is still in the uncertain future, a contingency that may never happen. However, he tries to rectify this problem by making reference to the petition-in-intervention filed by *LGBTS Christian Church, Inc., et al.* who allegedly were prevented from having a same-sex marriage ceremony when the same-sex couple was not granted a marriage license. In this connection, ***intervention*** should never be allowed to be utilized as a means to correct a fatal omission in the principal action. Intervention is only ancillary to the main case and it should not be conveniently resorted to as a means to save the day for an intrinsically flawed petition.

And even if we were to go to the merits, I would like to call attention to the fact that the laws and judicial decisions are reflective of the reality in society – a recognition of the values and norms that the people hold, recognize and cherish. Congress is the democratic institution which initially may tackle issues and policies about interpersonal relations and institutions affecting its citizens, including the propriety or desirability of same-sex marriage. It is not for the courts to jump into the fray on the pretext that it is

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[7] Dissenting opinion in *Kilosbayan, Incorporated v. Guingona, Jr.*, *supra* note 4, at 211-212. (Emphasis supplied)

merely reading for the people the rights and liberties under the Constitution. Only in the presence of a clear violation of the tenets of the Fundamental Law may the courts proceed to declare that an unmistakable constitutional right has been impaired or otherwise trampled upon by the government. In the absence of such, the courts should stay their hand. In this particular instance, I do not see any such violation that would justify the Court getting into this social and political debate on same-sex marriages.

In any case, what is not to be overlooked is the reality that judicial adjudication has to be rooted in the Constitution and the laws which are expressions or manifestations of what society and the people aspire for, and the courts must necessarily get their bearings from them. Decisions cannot be oblivious to, nor detached from, what is the reality in society. In this particular instance, the petitioner keeps harking on the fundamental right to marry and by extension, right to same-sex marriage, claiming that it is a constitutional right pursuant to the guarantee of equal protection. However, there is nothing in the text or background of the constitutional provision that would allow for such an expansive reading. To society, the framers of the Fundamental Law, and the people who ratified it, there is no indication that they understood marriage to be other than the union between people of the opposite sex. This has been the traditional, history-bound understanding of marriage in Philippine setting. Accordingly, if a radical or seismic departure from the commonly understood notion of marriage is to be had, the same has to be decreed by Congress and the President, and not imposed by judicial fiat. Debates about policy on matters like this are for the political departments, as elected representatives of the people, to decide on.

In regard to the American case recognizing same-sex marriages, the U.S. Supreme Court itself was quite careful to make reference to the changing social milieu which allowed for a shift in legal thinking. We do not have a similar situation here. What the U.S. Supreme Court said in this regard is quite instructive:

> The ancient origins of marriage confirm its centrality, but it has not stood in isolation from developments in law and society. The history of marriage is one of both continuity and change. That institution—even as confined to opposite-sex relations—has evolved over time.
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> For example, marriage was once viewed as an arrangement by the couple's parents based on political, religious, and financial concerns; but by the time of the Nation's founding it was understood to be a voluntary contract between a man and a woman. See N. Cott, Public Vows: A History of Marriage and the Nation 9–17 (2000); S. Coontz, Marriage, A History 15–16 (2005). As the role and status of women changed, the institution further evolved. Under the centuries-old doctrine of coverture, a married man and woman were treated by the State as a single, male-dominated legal entity. See 1 W. Blackstone, Commentaries on the Laws of England 430 (1765). As women gained legal, political, and property rights, and as society began to understand that women have their own

equal dignity, the law of coverture was abandoned. See Brief for Historians of Marriage et al. as Amici Curiae 16–19. These and other developments in the institution of marriage over the past centuries were not mere superficial changes. Rather, they worked deep transformations in its structure, affecting aspects of marriage long viewed by many as essential. See generally N. Cott, Public Vows; S. Coontz, Marriage; H. Hartog, Man & Wife in America: A History (2000).

These new insights have strengthened, not weakened, the institution of marriage. Indeed, changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new generations, often through perspectives that begin in pleas or protests and then are considered in the political sphere and the judicial process.

This dynamic can be seen in the Nation's experiences with the rights of gays and lesbians. Until the mid-20th century, same-sex intimacy long had been condemned as immoral by the state itself in most Western nations, a belief often embodied in the criminal law. For this reason, among others, many persons did not deem homosexuals to have dignity in their own distinct identity. A truthful declaration by same-sex couples of what was in their hearts had to remain unspoken. Even when a greater awareness of the humanity and integrity of homosexual persons came in the period after World War II, the argument that gays and lesbians had a just claim to dignity was in conflict with both law and widespread social conventions. Same-sex intimacy remained a crime in many States. Gays and lesbians were prohibited from most government employment, barred from military service, excluded under immigration laws, targeted by police, and burdened in their rights to associate. See Brief for Organization of American Historians as *Amicus Curiae* 5–28.

For much of the 20th century, moreover, homosexuality was treated as an illness. When the American Psychiatric Association published the first Diagnostic and Statistical Manual of Mental Disorders in 1952, homosexuality was classified as a mental disorder, a position adhered to until 1973. See Position Statement on Homosexuality and Civil Rights, 1973, in 131 Am. J. Psychiatry 497 (1974). Only in more recent years have psychiatrists and others recognized that sexual orientation is both a normal expression of human sexuality and immutable. See Brief for American Psychological Association et al. *as Amici Curiae* 7–17.

In the late 20th century, following substantial cultural and political developments, same-sex couples began to lead more open and public lives and to establish families. This development was followed by a quite extensive discussion of the issue in both governmental and private sectors and by a shift in public attitudes toward greater tolerance. As a result, questions about the rights of gays and lesbians soon reached the courts, where the issue could be discussed in the formal discourse of the law.

This Court first gave detailed consideration to the legal status of homosexuals in *Bowers v. Hardwick*, 478 U.S. 186 (1986). There it upheld the constitutionality of a Georgia law deemed to criminalize certain homosexual acts. Ten years later, in *Romer v. Evans*, 517 U.S. 620 (1996), the Court invalidated an amendment to Colorado's Constitution that sought to foreclose any branch or political subdivision of the State from protecting persons against discrimination based on sexual orientation. Then, in 2003, the Court overruled *Bowers*, holding that laws

making same-sex intimacy a crime "demea[n] the lives of homosexual persons." *Lawrence v. Texas*, 539 U. S. 558, 575.[8]

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The right to marry is fundamental as a matter of history and tradition, but rights come not from ancient sources alone. They rise, too, from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era. Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here. But when that sincere, personal opposition becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied. Under the Constitution, same-sex couples seek in marriage the same legal treatment as opposite-sex couples, and it would disparage their choices and diminish their personhood to deny them this right.[9]

In fine, the claim of alleged unconstitutionality of the Family Code provisions defining marriage as a union between a man and a woman has no leg to stand on. It is not for this Court to write into the law purported rights when they are not expressly or by clear implication deemed available under the Fundamental Law. Same-sex marriage is a policy matter better left to the deliberations of the elected officials of the country.

DIOSDADO M. PERALTA
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

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[8] *Obergefell v. Hodges*, 576 U.S. (2015), at 6-8, Slip Decision. (https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf, accessed _____)

[9] *Id.* at 18-19, Slip Opinion.