

ADDING DECLARATORY RELIEF TO THE ORIGINAL JURISDICTION OF THE SUPREME COURT OF THE PHILIPPINES*

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ABSTRACT

The Essay proposes the formal institutionalization of declaratory relief within the original jurisdiction of the Supreme Court of the Philippines. Despite the Court lacking this power, the author argues that it effectively exercises it in cases of "transcendental importance." This Essay presents this reform as a "kosher" alternative to advisory opinions, which the Court strictly abhors based on the American model of judicial review, as declaratory relief still necessitates an actual case or controversy. The proposed amendment would grant the Court discretionary power to hear petitions for declaratory relief concerning constitutional issues of "transcendental or paramount importance" that affect substantial interests or rights. This mechanism would thus provide a vehicle for direct resort in significant constitutional cases, enabling the Court to address vital questions more readily, provide crucial precedent, and potentially forestall protracted litigation. Concerns regarding docket clogging or the Court's role as "not a trier of facts" can be addressed through its discretionary power to select cases and its existing internal mechanisms for delegating fact-finding and evidence reception.

KEYWORDS: declaratory relief, original jurisdiction, judicial review, transcendental importance, constitutional reform

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I. INTRODUCTION

There are two things that the Supreme Court of the Philippines says it does not do: advisory opinions and declaratory relief judgments. The reason for the Court's abhorrence of the first is grounded upon the foundations of the Philippine constitutional setup for the judiciary, which adheres to the American model of judicial review. The reason for the second is simply that it has simply never been included in the Court's original jurisdiction, due to long-established practice rooted in long-forgotten statutes.

Advisory opinions and declaratory relief judgments represent two opposite ends of a spectrum that, in this author's mind, should constitute the possible narrative of any future attempt to amend or add to the Court's original jurisdiction. The development in recent decades of a flourishing of constitutional jurisprudence relating to the requisites of judicial review, particularly in relation to cases that have been directly filed with the Court on grounds of transcendental importance, underscores the need to take the said spectrum seriously. Many policy advocates and proponents of constitutional change, sanctioned even by the Philippine Government itself, have geared towards the side or end of advisory opinions being introduced into our constitutional setup.

But as this Essay will indicate, the American model of judicial review has been firmly planted as part of the Philippine constitutional firmament and has been taken for granted for more than a century by Philippine magistrates and legal practitioners alike. This will inevitably make the legal profession and judiciary view the introduction of advisory opinions as an anathema. Thus, the other end of the spectrum, i.e., declaratory relief judgments, seems to be the better way forward for constitutional reform of the judicial department. This Essay will discuss the inherent similarities between advisory opinions and declaratory relief judgments and will argue that the latter is the "kosher" version of the former, more palatable to the Philippine legal setting.

Ultimately, this Essay argues that adding declaratory relief to the Court's original jurisdiction will actually be a formal institutionalization and

recognition of something that the Court has already been doing anyway, despite the insistence of common and accepted legal knowledge that such proceedings properly pertain to the Philippine trial courts of general jurisdiction, i.e., the regional trial courts. The counterarguments against incorporating declaratory relief are easily dealt with, but of course, there is room for speculation as to its unwanted and unintended consequences. The actual proposal and its potential operationalization may even prove ultimately insignificant, but this Essay concludes that it would be an absurdity for the Supreme Court not to have declaratory relief in its toolkit as it adjudicates constitutional questions, especially those that reach it through the invocation of transcendental importance. With Filipinos ordinary and plenipotentiary coming to the Court directly and constantly, the Philippines might as well formally recognize the need for the Court's declaratory relief in constitutional matters bearing heavily upon its rights and interests.

II. ADVISORY OPINIONS

For easy reference, the extant provisions of the 1987 Constitution relevant to the present discussion are Article VIII, Section 1, Paragraph 2 and Section 5, Paragraph 1. Section 1, Paragraph 2 succinctly states that “[j]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and 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.” Section 5, Paragraph 1 also succinctly states that the Supreme Court shall “[e]xercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.”

Based on the explicit wording of Article VIII, Section 1, Paragraph 2, there is indeed no room for any advisory opinions from any court in the judicial branch, since the requirements for judicial review are spelled out to exclude advisory opinions totally.

The first of the most eloquent pronouncements of late relative to the Supreme Court's abhorrence towards advisory opinions is Senior Associate Justice Mario Victor F. Leonen's concurring opinion in *Belgica v. Ochoa*.¹ In expounding on the Court's power of judicial review, he wrote: “Basic in litigation [...] is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion [...] It is

¹ [Hereinafter “*Belgica*”], G.R. No. 208566, 710 SCRA 1, Nov. 19, 2013.

inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law.”²

This echoes and complements the phraseology in the case’s main opinion (penned by retired Associate Justice Estela M. Perlas-Bernabe), which requires a “contrariety of legal rights” as part of the requirements of an actual case or controversy for judicial review.³ Justice Leonen’s discussions in *Belgica* heavily influenced his main opinion in the later case of *Falcis III v. Civil Registrar General*,⁴ which is the second most eloquent pronouncement relative to the Court’s relationship with advisory opinions. Said Justice Leonen:

This Court’s constitutional mandate does not include the duty to answer all of life’s questions. 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.”

This Court does not issue advisory opinions. 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. 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[.]

* * *

As this Court makes “final and binding construction[s] of law[.]” our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system, bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.⁵

² *Id.* at 278–79 (Leonen, *J.*, *concurring*).

³ *Id.* at 90, *citing* Province of North Cotabato v. Republic, 589 Phil. 387 (2008).

⁴ [Hereinafter “*Falcis*”], 861 Phil. 388 (2019).

⁵ *Id.*, *citing*, inter alia, Imbong v. Ochoa, G.R. No. 204819, 721 SCRA 146, Apr. 8, 2014 (Leonen, *J.*, *dissenting*); Bacolod-Murcia Planters’ Ass’n, Inc. v. Bacolod-Murcia Milling Co., Inc., 140 Phil. 457 (1969); Serrano v. Amores, 159 Phil. 69 (1975); Arevalo v. Planters Dev’t Bank, G.R. No. 193415, 670 SCRA 252, Apr. 18, 2012; *Belgica*, 710 SCRA 1.

Justice Leonen also cited and quoted his own main opinion in *Provincial Bus Operators Ass'n of the Philippines v. Department of Labor and Employment*,⁶ where he reiterated that advisory opinions were incompatible with the constitutional setup of the judicial department under the 1987 Constitution, *viz*:

Even the expanded jurisdiction of this Court under Article VIII, Section 1 [of the 1987 Constitution] 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 [*sic*] 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.⁷

A short note on the American origins of the Philippine judiciary's foreswearing of advisory opinions can be seen in the case of *Muskrat v. United*

⁶ G.R. No. 202275, 872 SCRA 50, July 17, 2018.

⁷ *Id.* at 99–100. *See also*, inter alia, *Angara v. Electoral Comm'n*, 63 Phil. 139 (1936); *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Coun.*, 646 Phil. 452 (2010); *Republic v. Roque*, G.R. No. 204603, 706 SCRA 273, Sept. 24, 2013; *Roy III v. Herbosa*, G.R. No. 207246, 810 SCRA 1, Nov. 22, 2016; *In re Save the Supreme Court*, 751 Phil. 30 (2015); *Info. Tech. Found. of the Phil. v. COMELEC*, 499 Phil. 281 (2005) (Resolution on Motion for Reconsideration); *Automotive Indus. Workers All. v. Romulo*, G.R. No. 157509, 449 SCRA 1, Jan. 18, 2005; *Allied Broad. Ctr., Inc. v. Republic*, G.R. No. 91500, 190 SCRA 782, Oct. 18, 1990; *Velarde v. Soc. Just. Soc'y*, G.R. No. 159357, 428 SCRA 283, Apr. 28, 2004; *Guingona, Jr. v. Ct. of Appeals*, G.R. No. 125532, 292 SCRA 402, July 10, 1998; *Republic Telecomm. Holdings, Inc. v. Santiago*, G.R. No. 140338, 529 SCRA 232, Aug. 7, 2007; *Private Hospitals Ass'n of the Phil., Inc. v. Medialdea*, G.R. No. 234448, 884 SCRA 350, Nov. 6, 2018; *Initiatives for Dialogue & Empowerment Through Alt. L. Servs, Inc. v. Senate*, 942 Phil. 1 (2023); *Lagman v. Ochoa*, G.R. No. 197422, 959 SCRA 258, Nov. 3, 2020; *Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, 899 SCRA 492, Apr. 2, 2019; *Kilusang Magbubukid ng Pilipinas v. Aurora Pac. Econ. Zone & Freeport Auth.*, G.R. No. 198688, 964 SCRA 1, Nov. 24, 2020; *Republic v. Moldex Realty, Inc.*, G.R. No. 171041, 783 SCRA 414, Feb. 10, 2016; *Reyes v. Insular Life Assurance Co., Ltd.*, G.R. No. 180098, 720 SCRA 401, Apr. 2, 2014; *Lim Bio Hian v. Lim Eng Tian*, G.R. No. 195472, 850 SCRA 13, Jan. 8, 2018; *Express Telecomm. Co., Inc. v. AZ Commc'n, Inc.*, G.R. No. 196902, 942 SCRA 418, July 13, 2020; *Uy Ong v. Senate*, 938 Phil. 929 (2023); *Balag v. Senate* 835 Phil. 451 (2018); *Ticzon v. Video Post Manila, Inc.*, G.R. No. 136342, 333 SCRA 472, June 15, 2000; *Tatad v. Comm'n on Appointments*, G.R. No. 183171, 562 SCRA 342, Aug. 14, 2008; and *Calleja v. Exec. Sec'y*, 918-B Phil. 1 (2021).

States,⁸ where Associate Justice William R. Day noted that advisory opinions, especially those “in the nature of advice concerning legislative action,” are “a function never conferred upon [the Supreme Court] by the Constitution, and against the exercise of which the Court has steadily set its face from the beginning.”⁹ Justice Day even alluded to a similar instance not found in American jurisprudence but in correspondence between the early founding fathers in the years after the American Revolution. In the correspondence, President Washington, acting through Secretary of State Jefferson, asked the Justices of the Supreme Court for their advice on interpreting treaties, laws of nations, and domestic laws. This advice was sought for important questions that often arose in circumstances not typically handled by the country's tribunals. However, the Supreme Court, under Chief Justice Jay, eventually declined to provide this extrajudicial advice to the Executive. Their decision was rooted in the constitutional separation of powers among the three branches of government. The Court also highlighted that the Constitution's provision for the President to call for opinions from “heads of departments” indicated that this advisory power was specifically tied to the executive departments.¹⁰

But despite the overwhelming renunciation of advisory opinions in Philippine jurisprudence, this author notes that there have been instances where the Supreme Court has effectively rendered such opinions anyway. A most recent example is *Pangilinan v. Cayetano*,¹¹ where, despite the usual admonitions against advisory opinions and the unnecessary tackling of academic questions, they were indeed present in the Court's reasoning. Here, Justice Leonen extensively discussed the Philippine Government's unilateral withdrawal from the International Criminal Court (ICC), despite the case becoming moot when the country's withdrawal was effectively recognized and noted by the ICC itself. Justice Leonen even provided guidelines, seemingly as binding precedent, for future cases, despite the nature of basically the entire *ratio decidendi* on the merits of the petitions as *obiter dicta*:

All told, the consolidated Petitions are dismissed for failing to demonstrate justiciability. While we commend the zealously of petitioners in seeking to ensure that the President acts within the bounds of the Constitution, they had no standing to file their suits. We cannot grant the reliefs they seek. The unfolding of events, including the International Criminal Court's acknowledgement of

⁸ 219 U.S. 346 (1911).

⁹ *Id.* at 362.

¹⁰ *Id.* at 354. *See also* *United Pub. Workers v. Mitchell*, 330 U.S. 75, 86 (1947); and *Chicago & Southern Airlines, Inc. v. Waterman Steamship Corp.*, 333 U.S. 103, 113 (1948).

¹¹ [Hereinafter “*Pangilinan*”], G.R. No. 238875, 976 SCRA 509, Mar. 16, 2021.

withdrawal even before the lapse of one year from initial notice, rendered the Petitions moot, removing any potential relief from this Court's sphere.¹²

* * *

As a guide for future cases, this Court recognizes that, as primary architect of foreign policy, the President enjoys a degree of leeway to withdraw from treaties which are *bona fide* deemed contrary to the Constitution or our laws, and to withdraw in keeping with the national policy adopted pursuant to the Constitution and our laws.

However, the President's discretion to withdraw is qualified by the extent of legislative involvement on the matter by which a treaty was entered into or came into effect. The President cannot unilaterally withdraw from treaties that were entered into pursuant to the legislative intent manifested in prior laws, or subsequently affirmed by succeeding laws. Treaties where Senate concurrence for accession is expressly premised on the same concurrent for withdrawal likewise cannot be the subject of unilateral withdrawal. The imposition of Senate concurrence as a condition may be made piecemeal, through individual Senate resolutions pertaining to specific treaties, or through encompassing legislative action, such as a law, a joint resolution by Congress, or a comprehensive Senate resolution.

Ultimately, the exercise of discretion to withdraw from treaties and international agreements is susceptible to judicial review in cases attended by grave abuse of discretion, as when there is no clear, definite, or reliable showing of repugnance to the Constitution or our statutes, or in cases of inordinate unilateral withdrawal violating requisite legislative involvement. Nevertheless, any attempt to invoke the power of judicial review must conform to the basic requisites of justiciability. Such attempt can only proceed when attended by incidents demonstrating a properly justiciable controversy.¹³

There have been other cases where, in the author's opinion, the Supreme Court engaged in purely academic and theoretical discussions—precisely the dangers inherent in advisory opinions. In *Magallona v. Ermita*,¹⁴ a group of students of the University of the Philippines College of Law, along

¹² *Id.* at 677.

¹³ *Id.* at 678–79.

¹⁴ [Hereinafter “*Magallona*”], G.R. No. 187167, 655 SCRA 476, Aug. 16, 2011.

with Professors Merlin M. Magallona and Herminio L. Roque, Jr., and then-party-list representative (now Senator) Ana Theresia N. Hontiveros-Baraquel, went directly to the Court on original actions for certiorari and prohibition to assail the constitutionality of Republic Act (“RA”) No. 9522, which was an updated revision and adjustment of the country’s archipelagic baselines.

Acting on the issue of the standing of the petitioners therein, who were suing in their capacities as citizens, taxpayers, and as a legislator (in the case of Representative Hontiveros-Baraquel), the Court had a single paragraph addressing the same, *viz*:

Petitioners themselves undermine their assertion of *locus standi* as legislators and taxpayers because the petition alleges neither infringement of legislative prerogative nor misuse of public funds, occasioned by the passage and implementation of RA 9522. Nonetheless, we recognize petitioners’ *locus standi* as citizens with constitutionally sufficient interest in the resolution of the merits of the case which undoubtedly raises issues of national significance necessitating urgent resolution. Indeed, owing to the peculiar nature of RA 9522, it is understandably difficult to find other litigants possessing “a more direct and specific interest” to bring the suit, thus satisfying one of the requirements for granting citizenship standing.¹⁵

But contrary to what the Court insisted, this author is of the opinion that there seemed to be no actual contrariety of rights that directly affected any of the petitioners in *Magallona*. Indeed, an honest assessment of how the Court tackled the case would yield a finding of pure academic speculation without any specific reference to any contrariety of rights or interests pertaining to the petitioners other than the nebulous assertion that they were interested or affected as citizens of the Philippines. None of the petitioners were fisherfolk or with any other claims of ties to the western or overall maritime boundaries of the country, yet the Court did precisely what it had consistently warned about regarding advisory opinions. The Court ultimately dismissed the case on the merits, but the reasoning behind the procedural aspects (especially as to standing) leaves much to be desired.

Recent trends in attempts toward reforming the 1987 Constitution, however, indicate a newfound recognition of the need to explore advisory opinions as a possible way forward in constitutional adjudication. The Consultative Committee to Review the 1987 Constitution, created by former President Rodrigo R. Duterte via Executive Order No. 10 (s. 2016), came up

¹⁵ *Id.* at 486–87.

with a draft for a federal constitution for the Philippines with provisions for a separate constitutional court empowered to issue advisory opinions, which draws from the European-Kelsenian model of judicial review. Article IX, Section 1 of the proposal provides:

SECTION 1. The judicial power shall be vested in the Federal Supreme Court, the Federal Constitutional Court, the Federal Administrative Court, the Federal Electoral Court, and in other 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 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 government; Provided, that the *Federal Constitutional Court may render advisory opinions* on constitutional questions properly referred to it in accordance with Section 12 of this Article; Provided further, that the Federal Administrative Court may render advisory opinion on whether the Federal Commission on Elections has complied with the processes, procedures, and preparations relative to the conduct of elections in accordance with subparagraph (b), Section 15 of this Article.¹⁶

And Section 12 of the same article provides the specific instances when the proposed Federal Constitutional Court may, with leave, render advisory opinions. The first instance is when the President, Senate President or Speaker of the House Representatives seeks an opinion on the constitutionality of any enrolled bill of paramount importance, although a favorable opinion from the Court on such a bill does not preclude a citizen of the Philippines from subsequently challenging the constitutionality of the law, once enacted, as applied to them. The second instance is upon the request of the Chairman of the Federal Commission on Elections regarding the constitutionality of any proposal to amend or revise the Constitution, or to enact, amend, or repeal any federal law by people's initiative.¹⁷

And without delving into the obvious question of potential conflict between the somewhat overlapping jurisdictions of the separate federal supreme and federal constitutional courts, Section 11, Paragraph (a) of the same article of the proposed federal constitution allocates the original

¹⁶ Consultative Committee to Review the 1987 Constitution, *Power to the People, Bayanihan Federalism, Power to the Regions: Draft Constitution for a Strong, Indissoluble Republic*, at 39 (July 17, 2018).

¹⁷ *Id.* at 43.

jurisdiction of the proposed Federal Constitutional Court by covering a comprehensive array of disputes involving the constitutionality of federal laws, treaties, international or executive agreements, presidential decrees, proclamations, orders, instructions, ordinances, other regulations, administrative issuances by the Federal Government or its departments and agencies, and the laws and issuances of legislative assemblies and executive departments of the Federated Regions, as well as any other matter involving questions of constitutionality.¹⁸

Reading these proposals, one can draw from the mind of the members of the Consultative Committee that they had indeed begun exploring advisory opinions as a possible reform, even if still limiting the scope of the same to federal statutes and enrolled bills, as well as to proposals for constitutional amendments and laws enacted by people's initiative. But such advisory opinions are intended to be without prejudice to any future and concrete cases involving actual rights, and it is still unclear what effect the previously issued advisory opinions would have on such cases. This is another indication of the enduring influence of the American model of judicial review: that the requisites of judicial review still hold even on the members of a presidential committee designed to overhaul the 1987 Constitution.

More importantly, the Consultative Committee may have also recognized that it would probably be a good idea to finally incorporate and institutionalize direct resort to the highest court handling constitutional cases, as evidenced by the text of the Federal Constitutional Court's proposed original and exclusive jurisdiction. One must note, though, that the said provision did not enumerate what modes or types of special civil actions were to be the procedural vehicles for petitioners. In fact, petitions for certiorari, prohibition, mandamus, and quo warranto are enumerated under the original jurisdiction of the proposed Federal Supreme Court—totally separate and distinct from the Federal Constitutional Court—as provided in Article IX, Section 8, Paragraph (a) of the Consultative Committee's proposal.¹⁹ It seems that the Consultative Committee did not bother to identify or label the proceedings that the proposed Federal Constitutional Court had jurisdiction to hold and hear relative to its own jurisdiction, or that the Consultative Committee was at a loss when it came to this seeming lacuna. Worse yet, the Consultative Committee did not anticipate that there would have to be a new kind of proceedings for the purpose, which could have easily been remedied by looking to other solutions from other courts, such as the trial courts.

¹⁸ *Id.* at 42.

¹⁹ *Id.* at 41.

In line with this Essay's proposal, this author is of the view that the Consultative Committee should have considered declaratory relief proceedings and declaratory judgments as the perfect procedural animal for the purpose. As will be discussed below, after a preliminary discussion on transcendental importance—which is important when ultimately framing how this Essay's proposed amendment is to be worded and operationalized—declaratory relief seems to be the perfect way forward for institutionalizing direct resort in cases that affect the overall constitutional fabric. It is more than likely that the Consultative Committee members, especially the lawyers, were still bound in their minds with the notion based on usage, procedure, and jurisprudence that declaratory relief could never be entertained by the Supreme Court—even if their exercise of proposing reforms empowered them to think outside the box.

III. TRANSCENDENTAL IMPORTANCE

In the author's own musings, the exceptional doctrine of transcendental importance can be described as a temperamental and unpredictable incantation that may or may not be utilized by the Supreme Court (as well as by litigants before it) to justify direct intervention in a case where either the petitioner has no clear legal standing, or when the petitioner jumps the line and goes directly to the Court for relief *vis-à-vis* a case seemingly impressed with constitutional issues. A discussion on transcendental importance goes without saying when dealing with any discussions relative to direct resort to the Court.

The case of *Gios-Samar, Inc. v. Department of Transportation and Communications*²⁰ provides the best synthesis and jurisprudential history of the concept. Basically, the Court in *Gios-Samar* noted that the concept of transcendental importance, which was originally meant to address the issue of lack of *locus standi* in cases involving judicial review, grew as a complementary dictum relative to two concepts: 1) the Court is not a trier of facts;²¹ and 2) the doctrine of hierarchy of courts.²² But with the advent of the expanded certiorari jurisdiction for judicial review under the 1987 Constitution, the Court noted that, in particular, transcendental importance became an important exception to the doctrine of hierarchy of courts.²³

²⁰ [Hereinafter "*Gios-Samar*"], G.R. No. 217158, 896 SCRA 213, Mar. 12, 2019.

²¹ *Id.* at 263–67.

²² *Id.* at 267–71.

²³ See *Diocese of Bacolod v. COMELEC*, G.R. No. 205728, 747 SCRA 1, Jan. 21, 2015, among many others.

The Court also noted, however, that the doctrine of transcendental importance, which allows it to tackle cases involving critical constitutional questions and issues, does not “clothe [the Court] with the power to tackle factual questions and play the role of the trial court.”²⁴ Interestingly, the Court also noted that “[t]he only circumstance when [it] may take cognizance of a case in the first instance, despite the presence of factual issues, is in the exercise of [its] constitutionally-expressed task to review the sufficiency of the factual basis of the President’s proclamation of martial law under Section 18, Article VII of the 1987 Constitution.”²⁵ Thus, the exceptional doctrine of transcendental importance is only limited to cases where “[the] resolution of factual issues was not necessary for the resolution of the constitutional issue/s.”²⁶ This Essay will return to this important point when discussing the actual operationalization of the proposed reforms to incorporate declaratory relief into the Court’s original jurisdiction.

In the end, the Court enunciated a rule when it came to the invocation of transcendental importance. In this rule, the Court will refuse to hear a case directly, regardless of its alleged transcendental importance, if the resolution of a legal issue hinges on a factual determination. Such cases must first be brought before a trial court or the Court of Appeals, as these courts have the necessary resources and expertise to handle factual questions. This ruling aims to further restrict the application of transcendental importance in cases of direct resort.²⁷

This has had an interesting effect on succeeding jurisprudence. In *Kilusang Magbubukid ng Pilipinas v. Aurora Pacific Economic Zone and Freeport Authority*,²⁸ the Court seems to have been at pains to note that the invocation of transcendental importance could not cover up the fact that the case before it had no justiciable issue, to wit:

While the Petitions claim that the laws violate several constitutional provisions, showing an actual case is indispensable. Transcendental importance is not an exception to justiciability.

Here, [...] [t]he sworn statements from affected residents [...] do not allege actual displacement and conversion, but merely the fear of possible, not actual, loss of livelihood and housing.

²⁴ *Gios-Samar*, 896 SCRA 213, 283.

²⁵ *Id.*

²⁶ *Id.* at 281.

²⁷ *Id.* at 296.

²⁸ G.R. No. 198688, 964 SCRA 1, Nov. 24, 2020.

* * *

There are narrow instances when this Court may review a statute on its face despite the lack of an actual case. A facial review is allowed in cases of patently imminent violation of fundamental rights. The violation must be so demonstrably blatant that it overrides the policy of constitutional deference. However, the facts constituting the violation must be complete, undisputed, and established in a lower court.

Petitioners should have first gone to our trial courts, which are equipped to receive and assess evidence, and may later appeal before the appellate court, so that the facts would be synthesized and conflicting claims resolved. By filing their Petitions immediately before this Court, petitioners missed the opportunity to have complete and clear factual submissions.

Without first resolving the factual disputes, it is not clear whether there was a direct, material, and substantial injury to petitioners. There is no factual concreteness and adversariness to enable this Court to determine the parties' rights and obligations.

An exception to the rule on hierarchy of courts is not warranted here. Strict adherence to the rule is our standing judicial policy. Bypassing it requires more than just raising issues of transcendental importance. To allow exceptions, there must first be justiciability.²⁹

There is indeed a distinct echo of the requirements for a declaratory relief petition before the relevant trial court here. It is as if the Court were lamenting its obvious lack of power to deal with the case as one for declaratory relief due to the need to square away primordial factual issues. This is clearly one instance where declaratory relief at the level of the Court would have been perfect to address the constitutional questions raised. But going back to its new strictness towards the exceptional doctrine of transcendental importance, jurisprudence of late has been remarkably consistent. In *Falcis*, the Court hammered the point that “[t]ranscendental importance is not a life buoy designed to save unprepared petitioners from their own mistakes and missteps,” and that “[i]ts mere invocation is not license to do away with this Court’s own rules of procedure.”³⁰ Even in *Pangilinan*, the Court emphasized the necessity of the strictures surrounding any invocation of transcendental

²⁹ *Id.* at 57–59 (Citations omitted.) *See also* *Abines v. Duque III*, 929 Phil. 828 (2022).

³⁰ *Falcis*, 861 Phil. 388, 556.

importance. While the petitioners invoked transcendental importance, their case did not involve funds or assets, a violation of a constitutional or statutory prohibition, or a showing that no other party has a “direct, personal and material interest.”³¹ This enumeration of circumstances was reiterated in *Baquirin v. Dela Rosa*,³² proving the point that the “magic” of the exceptional doctrine of transcendental importance was not all-powerful.³³

In *Evangelista v. Philippine Amusement and Gaming Corp.*,³⁴ another recent case, the Court also emphasized that any invocation of transcendental importance must have a clear basis such that “the elements, supported by the facts of an actual case, as well as the imperative of this Court’s role within a specific cultural or historic context, must be clear and properly pleaded.”³⁵

Thus, even for an obviously important issue such as the validity and constitutionality of a government regulatory issuance relative to the operations of offshore gambling outlets, the invocation of transcendental importance was not enough. Interestingly, the Court did discuss the lack of any justiciable controversy. However, it did not explicitly make the connection between said lack of justiciable controversy and the invocation of transcendental importance. But it still basically conformed to its previous admonition in *Gios-Samar*, to wit:

Similarly, in this case, petitioners failed to allege, much less show, how they will be adversely affected by the issuance of the RR-POGO. They failed to specify which of their legal and constitutional rights are supposedly infringed by the regulation of offshore gaming corporations by PAGCOR. To be sure, it is not the mere passage of a law that determines whether a particular case attacking constitutionality is justiciable. Where the constitutionality of a law is being assailed, more than the passage or effectivity of the law, the petitioners “must assert a specific and concrete legal claim, or show the law’s direct adverse effect on them. Without a definite showing of any clear right of petitioners supposedly violated by the issuance and implementation of the RR-POGO, there is no actual case or controversy for this Court to resolve.”³⁶

³¹ *Pangilinan*, 976 SCRA 509, 639.

³² 944 Phil. 279 (2023).

³³ *Id.* at 284–85 (Citations omitted.)

³⁴ 941 Phil. 342 (2023).

³⁵ *Id.* at 364.

³⁶ *Id.* at 367.

And in *Bayyo Ass'n Inc. v. Tugade*,³⁷ the Court reiterated that the mere enumeration of the perceived effects of a government regulation, being factual in nature, was fatal to the invocation of transcendental importance by the petitioners therein:

Here, the petitioners argue that the assailed [Department Order] No. 2017-11 is confiscatory, discriminatory, and violative of the rights of jeepney drivers and operators, as it allegedly compels PUJ operators and drivers to modernize their PUJs by phasing out their old units, in exchange for brand new and environment[-]friendly units, with prices ranging from P1.6 Million to P2.1 Million. As a result, the PUJ operators will be forced to incur unnecessary debts to acquire new units. This will allegedly exclude drivers and operators of public jeepneys from their chosen calling and profession and deprive them of their source of livelihood.

As can be readily seen from the foregoing averments, the issues raised by the petitioners are not purely legal.

The determination of whether DO No. 2017-11 is confiscatory, anti-poor, and deprives PUJ operators and drivers of their source of livelihood, as well as the purported financial impact of the modernization program on PUJ operators and drivers, including, among others, the cost of modernizing jeepneys, the loans and debts that will be obtained by PUJ operators and drivers to purchase the units, and the alleged losses in the daily income that will be sustained by the PUJ operators and drivers as a result of the implementation of DO No. 2017-11, are all factual questions which entail the reception and evaluation of evidence.

The Court cannot simply rely on the bar and unsubstantiated allegations of the petitioners as to the supposed adverse effects of the assailed DO No. 2017-11 on the livelihood of PUJ operators and drivers. These factual issues should have been first brought before the proper trial courts or the Court of Appeals, both of which are specially equipped to try and resolve factual questions.

* * *

It is well to remember that the Court is not a trier of facts. Whether in its original or appellate jurisdiction, this Court is not equipped to receive and weigh evidence in the first instance. When litigants bypass the hierarchy of courts, the facts they claim before the Court are incomplete and disputed. Bypassing the judicial

³⁷ [Hereinafter "*Bayyo*"], 944 Phil. 316 (2023).

hierarchy requires more than just raising issues of transcendental importance. Without first resolving the factual disputes, it will remain unclear if there was a direct injury, or if there was factual concreteness and adversariness to enable this Court to determine the parties' rights and obligations. Transcendental importance is no excuse for not meeting the demands of justiciability.³⁸

The foregoing discussions do highlight two important things. First, the Court seems to constantly but understandably bemoan its inability to deal with the multitude of important constitutional issues put before it on direct resort due to its jurisdictional and functional limitations. The invocation of the notion that it is not a trier of facts—despite the fact that constitutionally, it is so only for two very extreme occasions—still has a big influence in the Court's reasoning. At the slightest indication that there are factual issues either unresolved or enumerated, it conservatively exercises restraint and declines to tackle the petition in question. One wonders if such restraint will still have an inhibiting effect once there is a constitutional amendment introducing something like declaratory relief to the Court's original jurisdiction, especially if such cases are made purely discretionary.

Second, especially with reference to cases like *Bayo*, direct resort has firmly established itself as part of the constitutional and jurisprudential narrative—even if the Court has repeatedly noted that direct resort is a very narrow pass to traverse. The exceptional doctrine of transcendental importance, in the eyes of this author, should function as a veritable navigational lantern to help guide such a journey towards the ultimate goal of the Court's favorable action. However, the Court has more than often seen fit to adjudge such lantern as insufficient due to the inherent structural problems of the petitions themselves. But if down-on-their-luck jeepney drivers and other similarly aggrieved litigants still see the Court as the ultimate and best forum in which their grievances can best be aired out, one cannot ignore such sentiments when proposing changes to the Court's jurisdiction in the future.

At this stage, it is proper to transition to a discussion of declaratory relief proper and its many facets that make it arguably well-suited to form part of the Court's original jurisdiction. And with the exceptional doctrine of transcendental importance well in mind, one will be able to see how declaratory relief just might be the ticket towards a more meaningful and “seaworthy” vessel to traverse the perilous pathway of direct resort, which would also avoid the Court's aversion to advisory opinions. Verily, a well-

³⁸ *Id.* at 335–36.

prepared petition for declaratory relief based on true justiciable controversies, coupled with a proper invocation of transcendental importance (especially as an exception to the doctrine of hierarchy of courts) might just make it.

IV. DECLARATORY RELIEF PROPER

Rule 63 of the Rules of Court, as amended by A.M. No. 19-10-20-SC (dated October 15, 2019), provides for the current operationalization of declaratory relief as a remedy cognizable before the regional trial courts. Section 1, Paragraph 1 thereof provides that:

[a]ny person interested under a deed, will, contract or other written instrument, 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.

Sections 3 and 4 of Rule 63 provide for the involvement of the Office of the Solicitor General in declaratory relief proceedings where the validity of a statute, executive order, governmental regulation, or a local ordinance is involved. Section 5 provides for the purely discretionary nature of declaratory relief proceedings, with the provision that:

the court, *motu proprio* or upon motion, may refuse to exercise the power to declare rights and to construe instruments in any case where a decision would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration or construction is not necessary and proper under the circumstances.

Finally, Section 6 provides that:

[i]f before the final termination of the case, a breach or violation of an instrument or a statute, executive order or regulation, ordinance or any other governmental regulation should take place, the action may thereupon be converted into an ordinary action, and the parties shall be allowed to file such pleadings as may be necessary or proper.

All these provisions are virtually reproduced from Rule 64 of the 1964 Rules of Court.

Declaratory relief in the Philippines, with specific reference to its function of determining the validity of governmental issuances, finds its origin in the very succinct Act No. 3736 of the Philippine Legislature (approved November 22, 1930), *viz*:

SECTION 1. *Construction.* – Any person interested under a deed, contract or other written instrument, or whose rights are affected by a statute, may bring an action in a Court of First Instance to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder.

SECTION 2. *Before breach.* –A contract may be construed before there has been a breach thereof.

SECTION 3. *Discretionary.* – The court may refuse to exercise the power to declare rights and to construe instruments in any case where a decision under it would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration or construction is not necessary and proper at the time under all the circumstances.

SECTION 4. *Parties.* – When declaratory relief is sought[,] all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall, except as otherwise provided in these rules, prejudice the rights or persons not parties to the action.

SECTION 5. *Attorney-General.* – In any action which involves the validity of a statute[,] the Attorney-General shall, before judgment is entered, be notified by the party attacking the statute, and shall be entitled to be heard upon such question.

SECTION 6. *Municipal ordinance.* – In any action which involves the validity of a municipal ordinance[,] the provincial fiscal shall be similarly notified and entitled to be heard; and if the ordinance is alleged to be unconstitutional[,] the Attorney-General shall also be notified and entitled to be heard.

SECTION 7. This Act shall take effect on its approval.

Interestingly, US President Franklin D. Roosevelt signed only on June 14, 1934, the Federal Declaratory Judgments Act,³⁹ which introduced declaratory relief as a remedy before the American federal courts. The text of the similarly short statute is as follows:

SEC. 274D. (1) In cases of actual controversy the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.⁴⁰

Said Act was basically affirmed as valid and constitutional by the US Supreme Court in *Aetna Life Insurance Co. v. Haworth*.⁴¹ Interestingly also, the main opinion of Chief Justice Charles E. Hughes, Sr. noted the distinction of declaratory judgments from advisory opinions. In settling the dispute between the insured and the company regarding disability benefits, the Court pointed out that both parties presented present, definite claims with the insured claiming for total and permanent disability and the company asserting that the insured is not disabled and that the policies lapsed due to unpaid premiums. This made the dispute “manifestly susceptible of judicial determination [which] calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts.”⁴²

³⁹ Charles Moon, *Judgments—Federal Declaratory Judgments Act*, 36 MICH. L. REV. 466, 469 n.13 (1938), citing JUD. CODE, § 274d (1934) and 28 U.S.C. § 400 (1935).

⁴⁰ Edwin Borchard, *The Federal Declaratory Judgments Act*, 21 VA. L. REV. 35, 35–36 (1934), citing JUD. CODE, § 274d (1934).

⁴¹ 300 U.S. 227 (1937).

⁴² *Id.* at 242.

Philippine jurisprudence relative to declaratory relief, for its part, has focused mainly on the requirements of judicial review, since it has been recognized that declaratory relief petitions are indeed a mode whereby the regional trial courts can exercise such judicial power. The extensive outline of the requisites of a justiciable controversy and proper *locus standi* relative to declaratory relief proceedings found in *Velarde v. Social Justice Society*⁴³ is particularly instructive. The Court's wordings can sometimes indicate confusion as to the nature of declaratory relief proceedings, such as when it somehow mistakenly noted that the lack of any justiciable controversy would convert the petitions in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*⁴⁴ into ones for declaratory relief.

But in some other cases, the Court proves most edifying. In *Republic v. Roque*,⁴⁵ the Court restated the requirements for a declaratory relief petition:

[F]irst, the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; second, the terms of said documents and the validity thereof are doubtful and require judicial construction; third, there must have been no breach of the documents in question; fourth, there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; fifth, the issue must be ripe for judicial determination; and sixth, adequate relief is not available through other means or other forms of action or proceeding.⁴⁶

Relative to the lack of any justiciable controversy put forward by petitioners therein, the Court noted thus:

Pertinently, a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. Corollary thereto, by "ripening seeds" it is meant not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full[-]blown battle that looms ahead. The concept described a state of facts indicating imminent and

⁴³ G.R. No. 159357, 428 SCRA 283, Apr. 28, 2004.

⁴⁴ G.R. No. 178552, 632 SCRA 146, Oct. 5, 2010.

⁴⁵ G.R. No. 204603, 706 SCRA 273, Sept. 24, 2013.

⁴⁶ *Id.*, citing *Almeda v. Bathala Mkt'g Industries, Inc.*, G.R. No. 150806, 542 SCRA 470, Jan. 28, 2008.

inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.

A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the *Southern Hemisphere* cases, private respondents only assert general interests as citizens and taxpayers[,] and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA 9372 against them. In other words, there was no particular, real or imminent threat to any of them.⁴⁷

And in a foreshadowing of *Gios-Samar*, the Court added a small note on transcendental importance *vis-à-vis* the requirement of *locus standi* where in cases challenging the constitutionality of penal laws, closer judicial scrutiny of locus standi is necessary due to the compelling State and societal interests in prohibiting harmful conduct. A broad interpretation of *locus standi* in such instances would lead to the doctrine's corruption as it would imply that every "worthy cause" constitutes an interest shared by the public.⁴⁸

There have also been fairly recent rulings further delineating the contours of declaratory relief proceedings, as well as the flexibility of the Supreme Court in converting declaratory relief petitions into ordinary actions that can thus be acted upon immediately. In *Department of Trade and Industry v. Steelasia Manufacturing Corp.*,⁴⁹ the Court noted that Steelasia's declaratory relief petition was "unavailing since [it] claims that its constitutional right to equal protection had already been infringed when the D'TI Regulations became effective. Thus, Steelasia should have invoked instead the certiorari powers of

⁴⁷ *Id.* at 284.

⁴⁸ *Id.* at 285–86.

⁴⁹ [Hereinafter "*Steelasia*"], G.R. No. 238263, 962 SCRA 488, Nov. 16, 2020. *See* Gamboa v. Teves, G.R. No. 176579, 652 SCRA 690, June 28, 2011, where the Court treated a declaratory relief petition directly filed as one for mandamus instead due to the purely legal issue involved and "the far-reaching implications to the national economy" of the said issue. *See also* Salvacion v. Central Bank of the Phil., G.R. No. 94723, 278 SCRA 27, Aug. 21, 1997; and *All. of Gov't Workers v. Minister of Lab. & Emp't*, G.R. No. 60403, Aug. 3, 1983.

the courts to nullify the alleged *ultra vires* acts.”⁵⁰ But the Court there, citing the case of *Diaz v. Secretary of Finance*,⁵¹ opted to convert then and there the proceedings into one for certiorari, since “the present case [which involves importation and processes of the Department of Trade and Industry] also poses far-reaching implications on public welfare.”⁵²

Interestingly, in an earlier case that year, the Court also made a similar ruling on a tax regulation. In *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*,⁵³ the Court converted the declaratory relief proceedings on appeal into one for prohibition, also citing the *Diaz* case as jurisprudential basis. It must be noted, however, that the said case cited *Department of Transportation v. Philippine Petroleum Sea Transport Ass’n*,⁵⁴ which carries the utterly erroneous statement that “there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.”⁵⁵ Needless to say, this incorrect pronouncement is no longer good law thanks to more recent jurisprudence.

In fact, the Court in the recent case of *Universal Robina Corp. v. Department of Trade and Industry*⁵⁶ categorically stated that “[a] petition for declaratory relief is a viable remedy for questioning the constitutionality of a statute.”⁵⁷ Said the Court in more specific terms:

Therefore, declaratory relief as a remedy for constitutional challenge will succeed only when: (1) there is a clear and convincing contrariety of legal rights; or (2) facial review is allowed. Where neither condition exists, declaratory relief is not available, and parties may resort to other remedies, as may be appropriate to the circumstances.

Here, there is a clear and convincing showing that a contrariety of legal rights exists between respondent, the Department of Trade and Industry, which maintains its authority to determine when profiteering has occurred, and petitioner, which maintains that the provision on profiteering is void for vagueness.

⁵⁰ *Steelasia*, 962 SCRA 488, 504.

⁵¹ G.R. No. 193007, 654 SCRA 96, July 19, 2011, *citing* Macasiano v. Nat’l Housing Auth., G.R. No. 107921, 224 SCRA 236, July 1, 1993.

⁵² *Steelasia*, 962 SCRA at 50, *citing* *Diaz v. Sec’y of Fin.*, 654 SCRA 96, July 19, 2011.

⁵³ G.R. No. 215801, 928 SCRA 577, Jan. 15, 2020.

⁵⁴ G.R. No. 230107, 874 SCRA 204, July 24, 2018.

⁵⁵ *Id.* at 228.

⁵⁶ 936 Phil. 17 (2023).

⁵⁷ *Id.*

Petitioner may not be currently charged with profiteering, but it was again invited to discuss its prices and to explain its ex-mill prices to the Bureau of Trade Regulation and Consumer Protection. This invitation shows respondent's intent to hold petitioner liable for profiteering under the Price Act. Thus, notwithstanding the initial dismissal of the Complaint filed against petitioner, an actual case still exists.⁵⁸

The Court also basically hinted that there is a problem with declaratory relief proceedings being cognizable before the regional trial courts: the conservative tendency of the judiciary to provide deferential treatment to co-equal branches of government, which may tend to basically encourage lower courts to avoid invalidating major governmental acts and just let the higher appellate courts deal with the same.⁵⁹

And in *Republic v. Pryce Corp., Inc.*,⁶⁰ the Court gave its most exhaustive pronouncement on declaratory relief proceedings yet. Not only did it outline the definition, purpose, concept, and requisites of a declaratory relief petition, it also operationalized the difference between declaratory relief proceedings and advisory opinions, as well as the utilization of declaratory relief proceedings to clarify statutory and regulatory interpretations (i.e., not just for invalidating governmental acts). The Court said as much regarding the latter:

Contrary to petitioners' assertion, the terms of the assailed statutes, especially in relation to the pertinent IRR, have created doubts on the proper application of the 20% discount on funeral and burial services. Respondent, a corporation engaged in selling memorial lots and providing interment services, is directly affected by the assailed statutes and the IRR. As held by the RATC, there is [a] justiciable controversy on whether respondent may be compelled to grant a 20% discount on their interment services.

In this case, respondent filed the petition for declaratory relief to avoid being compelled to grant the 20% discount on interment services for senior citizens. It should be stressed that respondent, in filing the action for declaratory relief before the RTC, is not assailing the constitutionality of the laws and the IRR. Respondent is merely seeking a definitive construction of the terms of the law—

⁵⁸ *Id.* at 32–33. See also *Mendoza v. Pilipinas Shell Petroleum Corp.*, 936 Phil. 538, 561 (2023), citing *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas*, G.R. No. 185320, 823 SCRA 550, 567, Apr. 19, 2017.

⁵⁹ *Id.* at 28.

⁶⁰ [Hereinafter "*Pryce*"], 937 Phil. 639 (2023).

that is, whether Section 4(a) of RA 7432, as amended by RA 9257 and RA 9994, includes interment services as among those granted the twenty percent (20%) discount on the funeral and burial services for the death of senior citizens. Respondent precisely filed the action for declaratory relief, alleging that there is ambiguity in the law and its IRR. Respondent maintains that since “interment services” were not among the services mentioned in the law and the IRR, it should not be compelled to grant the 20% discount. On the other hand, petitioners insist that the wordings of the law are unambiguous and that the term “funeral and burial services” must be understood in its plain and ordinary meaning, which includes the ceremony, held for a dead person and the actual putting of a dead body in the ground. The contrariety of the parties’ interests is apparent. Moreover, the case is ripe for judicial determination considering that respondent, a corporation selling memorial lots and providing interment services, would inevitably be asked to grant the 20% discount on interment service for senior citizens, to which it insists, is not required to grant under the provisions of the law and the IRR.⁶¹

As to declaratory relief’s differentiation from advisory opinions, the Court had this to say:

It bears stressing that this case does not involve a theoretical issue, which calls for an advisory opinion. Indeed, one cannot file an action for declaratory relief based on theoretical or hypothetical questions because our courts are not advisory courts. In this case, respondent has shown that there is an actual controversy. Respondent is seeking the correct interpretation of the law and the IRR to determine its rights. To repeat, respondent is in the business of selling memorial lots and providing interment services. Thus, while it insists it is not required to grant a 20% discount on interment services of senior citizens as provided under the law, it is inevitable that its clients or customers would demand the said discount.

* * *

The issue of whether interment services for senior citizens are entitled to a 20% discount needs to be settled once and for all. Otherwise, respondent and those in the business of selling memorial lots and providing interment services could unjustly refuse to grant the 20% discount by claiming that it is not explicitly mentioned in the law and IRR as among those entitled to the 20%

⁶¹ *Id.* at 647–48.

discount. An official declaration of the correct interpretation of the law and the IRR will hopefully prevent further litigation.⁶²

Verily, recent jurisprudence affirms declaratory relief's viability as a vehicle for constitutional litigation. But it must be noted that these cases involved a simple determination of whether, legally, there existed such a contrariety of rights between those asserted by declaratory relief petitioners and the regulatory bodies responsible for the questioned issuances.

It remains to be seen if declaratory relief petitions filed with the Supreme Court will eventually require the presentation of evidence to prove such contrariety of rights, despite *Pryce* noting that the Court "clarified [in *Universal Robina*] that the exercise of judicial review may not always require facts resulting from the assailed law, since a clear and convincing demonstration of a contrariety of rights may suffice."⁶³ If the Court were to be granted original jurisdiction over declaratory relief petitions, it will have to be armed with sufficient procedures for the delegation of evidence reception.

This actually calls back to the actual deliberations of the 1986 Constitutional Commission, when Commissioner and former Chief Justice Roberto R. Concepcion emphatically noted that "[t]he Supreme Court has no jurisdiction to grant declaratory judgments."⁶⁴ Chief Justice Concepcion's aversion to the notion that the highest court in the land could theoretically entertain declaratory relief proceedings seems, however, to stem from his confusion of such petitions with requests for advisory opinions, for which he was eventually corrected by clarification in the same train of deliberations:

MR. CONCEPCION: I beg to call the Commissioner's attention to the fact that the Supreme Court has neither authority nor judicial power to pass or grant a declaratory judgment. Judicial power per se is merely the power to settle controversies.

MR. MAAMBONG: I understand that, Mr. Presiding Officer, but the first paragraph in Section 1 talks not only of the Supreme Court but also of such lower courts as may be established by law.

MR. CONCEPCION: That is right. That is why I said, [*viz*] judicial power is limited to the settling of actual controversies.

⁶² *Id.* at 649.

⁶³ *Id.*

⁶⁴ I RECORD CONST. COMM'N 475 (July 15, 1986).

It is very risky for any court to pass upon hypothetical questions. The same set of principal basic facts may be affected by the surrounding circumstances which will necessarily be lacking for a judgment on a hypothetical case.

Judicial powers deal with relations among people. Two persons may commit the same crime of homicide but the circumstances surrounding the same constitute part of the equities that may and should be considered by the court in deciding the case. Those equities are lacking in hypothetical cases.

MR. MAAMBONG: Just to leave this point, Mr. Presiding Officer, is it, therefore, the decision of the Committee that declaratory relief is actually an actual controversy? Is that the thinking of the Committee?

MR. CONCEPCION: Determination of what is the law, as between two parties who have a conflict based upon what the law is or whether there is any law, would be an actual controversy.

MR. MAAMBONG: And in the same category, Mr. Presiding Officer, quieting of title, for example, would also be an actual controversy[?]

MR. CONCEPCION: Yes.

MR. MAAMBONG: Thank you.

MR. CONCEPCION: Thank you.⁶⁵

Thus, at least even in the eyes of the 1987 Constitution's framers, declaratory relief was definitively distinguished from mere advisory opinions, especially since the former requires an actual case or controversy.

As has been shown, declaratory relief is ripe for institutionalization as a permanent tool for constitutional litigants to question or clarify governmental acts and issuances. And one can venture a viable hypothesis that the Supreme Court seems to actually want to have jurisdiction over such proceedings to squarely deal with important constitutional cases outright. The phrase "chomping at the bit" comes to mind.

If the Court is empowered so, and with the doctrine of transcendental importance in mind as an exception to the doctrine of hierarchy of courts,

⁶⁵ *Id.* at 476.

this author strongly believes that the Court can more readily and immediately address important constitutional questions presented before it, to the point of providing much-needed precedent that would actually forestall any related constitutional litigation through the other vehicles of certiorari, mandamus, and prohibition. Or at least, this author hopes so.

V. AMENDATORY PROPOSAL PROPER & RELATED ISSUES

Going now to the actual proposed amendment to the original jurisdiction of the Supreme Court as embodied in the 1987 Constitution, this author proposes that an additional paragraph be added to Article VIII, Section 5, Paragraph 1, *viz*:

At its discretion, and when the constitutional issues presented are of transcendental or paramount importance, the Court may exercise original jurisdiction over petitions for declaratory relief where the substantial interests or rights of persons are affected by a statute, executive order, local ordinance, or any other governmental regulation or issuance, in order to determine any question of constitutionality or validity arising thereunder, and to accordingly declare the parties' constitutional rights and duties emanating from the same.

The proposal is as remarkably straightforward as it is admittedly pregnant with potential complications in its operationalization. One seemingly innocent detail would be the fact that the doctrine of transcendental importance is not explicitly framed here as an exception to the doctrine of hierarchy of courts only. In other words, possible petitioners would invoke transcendental importance despite having no standard *locus standi*. But the very nature of declaratory relief would necessitate the requirement of *locus standi* here anyway, and the rest of the proposed provision makes it so. The requirement of a juridical or natural person's substantial interest is explicitly laid out as a condition *sine qua non* when petitioning the Supreme Court for declaratory relief from a governmental issuance or enactment, and to dispense with such requirement would negate the very essence of declaratory relief altogether.

In this author's mind, adding an explicit mention of transcendental importance merely as an exception to the doctrine of hierarchy of courts would be too cumbersome and prolix for such a simple amendment. Verily, this author trusts that if such amendment comes into force, and the Supreme Court is faced with such a question as to whether a petitioner with inadequate

locus standi can still petition for declaratory relief at the highest level of the judiciary, such question will be answered in the negative given the petition's very nature.

But even then, one admittedly concerning issue, even for this author, is the very requirement of *locus standi*, since this would preclude constitutional litigation when the issues do not have a direct bearing on petitioners' substantial interests or rights. Cases such as taxpayers' suits and other more common actions under certiorari, mandamus, or prohibition would thus still be the preferred modes. Then again, the relief demanded would not truly be in the nature of declaratory relief anyway.

Another possible issue could also be the exclusion of international agreements or treaties from the enumeration of governmental enactments that may be the subject of declaratory relief proceedings. However, this is intentional: declaratory relief has no history of being utilized to question such actions by the executive department relating to foreign affairs.⁶⁶ Moreover, any petition that aims to question or invalidate international agreements and treaties to which the Philippines is a party should not be subject to the strict requirements of *locus standi*. Indeed, it is this author's view that any questionable or invalid treaty or international agreement is properly the subject of an original certiorari or prohibition petition due to the possible grave abuse of discretion involved, but with all consideration given to the executive and legislative departments' powers in the arena of foreign affairs.

As for the doctrine of hierarchy of courts itself—which frowns upon such cases falling under concurrent jurisdiction of trial courts and the Supreme Court itself still being filed with the latter—the explicit listing of such declaratory relief proceedings as part of the Court's functions, which would only focus on issues concerning constitutionality and validity of governmental issuances and enactments of paramount significance, should necessarily filter through such petitions concerning less significant issues. In this author's view, the Supreme Court and even future legal commentators would probably label the proposed amendment as “limited” or “special” declaratory relief to differentiate the same from ordinary Rule 63 proceedings before the regional trial courts. Further “tweaks” to such proceedings could

⁶⁶ *But see* Senate v. OES, G.R. No. 251977, July 19, 2022 (Resolution), wherein the Court did not explicitly state that the petition for declaratory relief filed before it was improper due to the exclusive original jurisdiction of the regional trial courts. This is because the Court treated the petition as moot and academic due to the recalling of the abrogation of the Visiting Forces Agreement between the Republic of the Philippines and the United States.

also come in the form of an entire new rule for limited or special declaratory relief, which could further streamline and limit Court-bound petitions.

And very related to the aforementioned is the issue of the perennial clogging of the Supreme Court's docket. But in this author's view, such "clogging" should be viewed as a constant that should already be factored in any tweaking of the Court's original jurisdiction. In any case, the very wording of the proposed amendment grants the Court full discretionary power to either take cognizance of, or dismiss outright, any petition not worth the Court's time and attention. This is akin to the discretionary appellate jurisdiction of the US Supreme Court, which greatly aids the streamlining of its already very selective docket. The Philippine Supreme Court may even issue a rule in the future providing for a certain period within which it should act upon a declaratory relief petition, i.e., whether to dismiss it outright or to require respondents to file their comment. And in the event said period lapses, and the Court has taken no action relative to the petition, then said petition should be deemed dismissed. Again, the Court's full discretion here can help ward off unimportant or insubstantial petitions that do not even touch upon critical constitutional issues. Likewise, the parties are still at liberty to go through the regular route of declaratory relief before the regional trial courts, and still with the potential of the Court addressing their concerns on appeal.

In short, one need not worry about further clogging the Supreme Court's dockets if there is a built-in mechanism to allow the Court to choose which petitions would be deemed worthy of even a ruling in a minute resolution. This should be welcomed as a trend that will further strengthen the Court's independence, as clogging the Court's dockets can be seen as a way to limit the Court's work output and to keep it distracted from important constitutional matters. In this author's view, the Court's dockets may clog for a while once the proposed amendment comes into force but will stabilize once it realizes that in the amendment's operationalization, it has full power and discretion to manage what cases shall be given consideration. This should incentivize the work of the Court members and their court attorneys to be very attentive and alert when screening new petitions, and the result will be twofold: petitions either get resolved quickly by outright dismissal or are included in the court's calendar and agenda due to the obviously important constitutional matters raised.

A minor problem that seems to possibly loom large down the line would be the moment when breach of the questioned governmental enactment or issuance occurs, which would prompt the Supreme Court to necessarily convert the declaratory relief proceedings into petitions for certiorari, mandamus, or prohibition, as the case may be. This issue may be

addressed again by the Court's rulemaking power, where a rule regarding the said conversion on motion or *motu proprio* may be spelled out. Said rule may also include the Court's delegation of fact-finding and evidence reception to a designated trial or lower appellate court.

And with reference to such delegation and designation, this also somehow addresses the concern regarding the oft-mentioned mantra that the Supreme Court is not a trier of facts. Not only does the Court have the power to try facts in very select cases, as mentioned previously, but there already is an internal mechanism for the delegation of fact-finding and evidence reception that is currently in force and ready for invocation. Rule 3, Section 2 of A.M. No. 10-4-20-SC, otherwise known as the extant Internal Rules of the Supreme Court, states the following:

Section 2. *The Court not a trier of facts.* – The Court is not a trier of facts; its role is to decide cases based on the findings of fact before it. Where the Constitution, the law or the Court itself, in the exercise of its discretion, decides to receive evidence, the reception of evidence may be delegated to a Member of the Court, to either the Clerk of Court or one of the Division Clerks of Court, or to one of the appellate courts or its justices who shall submit to the Court a report and recommendation on the basis of the evidence presented.

Verily, this can be the basis for the relevant rule for special or limited declaratory relief proceedings as proposed here.

VI. OTHER CONSIDERATIONS & CONCLUSION

Probably the most persuasive argument for the adoption of the proposed amendment is that the Supreme Court, for all its invocations of the exclusive original jurisdiction of the regional trial courts in declaratory relief proceedings, has already exercised the power of promulgating declaratory judgments anyway. Recent facial challenges before the Court against very controversial legislative measures are perfect examples. Cases such as *Disini, Jr. v. Secretary of Justice*⁶⁷ and *Calleja v. Executive Secretary*⁶⁸ thus come to mind. These are effectively declaratory judgments because the actions challenging them were filed immediately after enactment but before effective enforcement of the questionable penal provisions therein. This is just so, even if the pleadings filed were petitions for certiorari, mandamus, prohibition, or a

⁶⁷ 727 Phil. 28 (2014).

⁶⁸ 918-B Phil. 1 (2021).

combination of the three. This author foresees that declaratory relief would thus become an additional label to Court-bound petitions alongside the other three, which should give the Court more flexibility and options in its consideration of the constitutional issues and matters presented.

And to consider latest developments in Philippine jurisprudence, the case of *Trillanes IV v. Medialdea*,⁶⁹ would have been perfect for declaratory relief proceedings. Verily, according to the Court's press release issued by the Supreme Court Public Information Office,⁷⁰ a presidential issuance in the form of Proclamation No. 572 (dated August 31, 2018) that invalidated the amnesty granted to former Senator Antonio F. Trillanes IV violated the latter's rights under the 1987 Constitution against *ex post facto* laws and double jeopardy. All the requisites of a declaratory relief petition here were present, but Senator Trillanes' petition was for certiorari, prohibition, and injunction. Had he been allowed to file for declaratory relief, he would not have had to argue for grave abuse of discretion on the part of the Office of the President for rescinding or revoking his valid amnesty; all he would have needed to argue was that the said executive issuance and act were patently invalid as to him personally.

As this brief but hopefully comprehensive Essay has shown, there is hope and potential for declaratory relief to form part of the Supreme Court's toolkit for it to fulfill its legal and constitutional functions. Declaratory relief will also be a radically helpful vehicle for constitutional litigants who wish to invoke the Court's jurisdiction to settle important constitutional controversies once and for all without the need for protracted trial and appellate litigation before a definitive precedent is promulgated. The Court has already been doing declaratory relief in all but name, and this ongoing reality should be recognized. The incorporation and institutionalization of the same in its original jurisdiction would merely be an affirmation and recognition of something that the Court seems to be eager, at times, to fully utilize. To this author, it does not make any sense at all for the Court, the highest tribunal in the Philippine judiciary, to not have declaratory relief as part of its powers and functions.

Ultimately, if finally enacted, adopted by the Filipino people, and operationalized, the proposed amendment may have unpredictable

⁶⁹ G.R. No. 241494, Apr. 3, 2024, slip op.

⁷⁰ *SC Declares Trillanes' Amnesty Valid; Strikes Down Proclamation No. 572 That Revoked Said Amnesty*, SUP. CT. OF THE PHIL. WEBSITE, Apr. 3, 2024, at <https://sc.judiciary.gov.ph/sc-declares-trillanes-amnesty-valid-strikes-down-proclamation-no-572-that-revoked-said-amnesty/>.

constitutional and jurisprudential implications. But still, one cannot ignore the fact that direct resort to the Court has slowly but surely made itself into a practice that will not go away anytime soon. It might as well be institutionalized the right way with declaratory relief providing the most appropriate vehicle for such Court-bound petitions without succumbing to the temptation to adopt advisory opinions. The Court is sure to adapt to the new environment such an amendment would generate, and one would hopefully look forward to a new strain and flourishing of jurisprudence relating to judicial review and constitutional litigation.

In the end, the proposed amendment presented here might seem like a small and insignificant tweaking of the Court's original jurisdiction that would not have any significant or consequential implications for the future of the Philippine constitutional narrative. But as any constitutionalist in any jurisdiction would likely say, such small things matter, and it is not the size of the constitutional amendment or reform, but how it will be used that really matters.